

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Cavalier Telephone, LLC)	WC Docket No. 02-359
Pursuant to Section 252(e)(5) of the)	
Communications Act for Preemption)	
of the Jurisdiction of the Virginia State)	
Corporation Commission Regarding)	
Interconnection Disputes with Verizon)	
Virginia, Inc. and for Arbitration)	

PROTECTIVE ORDER

Adopted: September 3, 2003

Released: September 3, 2003

By the Chief, Wireline Competition Bureau:

Documents produced in discovery and/or submitted to the Commission and the Arbitrator in the course of the above-referenced proceeding may represent or contain confidential or proprietary information. To ensure that documents and materials in this proceeding that are considered by the parties to be confidential and proprietary are afforded protection, the parties have mutually agreed to the terms set forth herein. As a result, the Wireline Competition Bureau hereby enters this Protective Order:

1. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A “stamped confidential document” means any document that bears a legend, recorded upon it in a way that brings its attention to a reasonable examiner, that the document is subject to this agreement. Acceptable legends include, by way of example and not limitation, “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” “PROPRIETARY,” or “PROPRIETARY – NOT TO BE DISCLOSED WITHOUT WRITTEN PERMISSION.” For purposes of this order, the term “document” means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission’s rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but to the extent feasible, shall be prepared in such a manner that the confidential material is bound separately from that not entitled to protection.

2. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding and to any person designated by the Arbitrator in the interest of justice, upon such terms as the Arbitrator may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, and identifying with particularity the documents to be disclosed. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

3. Confidential Information filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the appropriate legend designating that the document contains confidential information.

4. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission or the Arbitrator in accordance with paragraph 4, the materials shall remain sealed while in the Secretary's office or such other place as the Arbitrator may designate so long as they retain their status as stamped confidential documents. The Arbitrator may, upon petition of a party and after allowing the producing party to respond, determine that

all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. §0.459.

5. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Any oral testimony offered in this proceeding which is expected to include references to confidential information will be taken *in camera* in the presence of only those persons who have been granted appropriate access to the confidential documents pursuant to this order, and that portion of the transcript placed under seal.

6. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of documents of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

7. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures set forth above.

8. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

9. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

10. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

11. Request to Return Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), the party

producing confidential information may make a written request that parties that have received stamped confidential documents either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

12. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24 or possible referral to the relevant local bar.

13. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), this Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau

ATTACHMENT A

WC DOCKET NO. 02-359

I have received a copy of the Protective Order in WC Docket No. 02-359. I have read the order and agree to comply with and be bound by the terms and conditions of this Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Protective Order.

SIGNATURE: _____

NAME PRINTED: _____

TITLE: _____

ADDRESS: _____

REPRESENTING: _____

EMPLOYER: _____

DATE: _____