



Frederick E. Moacdieh  
Executive Director  
Federal Regulatory and Legal Affairs

1300 I Street, NW, Suite 500 East  
Washington, DC 20005  
Phone 202.515.2590  
Fax 202.920.5801  
[frederick.moacdieh@verizon.com](mailto:frederick.moacdieh@verizon.com)

September 16, 2020

**Verizon Request for Confidential Treatment of Demand Data**  
In support of Transmittal No. 1411 being filed on a streamlined basis  
on 15 days' notice under Section 204(a)(3) of the Communications Act.

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Attention: Wireline Competition Bureau

Dear Ms. Dortch:

Today, the Verizon Telephone Companies<sup>1</sup> are submitting their Exogenous Cost Updates for Tariff FCC Nos. 1, 11 and 16, Access Services, and Tariff FCC No. 14, Facilities for Interstate Access, under Transmittal No. 1411, which is being filed on 15 days' notice pursuant to the Commission's Tariff Streamlining Order.<sup>2</sup> Because of the competitively sensitive nature of the information, Verizon has redacted certain projected lines at the exchange level demand data, used in the ARC Spreadsheets. Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's rules, Exemption 4 of the

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<sup>1</sup> Verizon Delaware LLC, Verizon Maryland LLC, Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon North LLC, Verizon Pennsylvania LLC, Verizon South Inc., Verizon Virginia LLC, and Verizon Washington, D.C. Inc.

<sup>2</sup> *In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 2170 (1997) ("Tariff Streamlining Order").

Freedom of Information Act (“FOIA”), as well as the Tariff Streamlining Order and the rules adopted thereunder, Verizon is hereby requesting that such demand data be treated as confidential and be made subject to the standard Protective Order and Declaration adopted by the Commission in the Tariff Streamlining Order and published in Appendix B thereof, as subsequently modified. Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170 (1997) as modified, Public Notice, 35 FCC Rcd 5793 (2020); 47 C.F.R. §§ 0.457, 0.459; *see* 5 U.S.C. § 552(b)(4). Last year, the U.S. Supreme Court held Exemption 4 “[a]t least” applies to “commercial or financial information [that] is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy,” although the Court did not reach the issue of whether government assurances of privacy were necessary. Order on Reconsideration, *In the Matter of Am. Broadband & Telecommunications Co.*, 35 FCC Rcd 3762 para. 7 & n.22 (2020) (quoting *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363, 2366 (2019)); *see also* *Washington Post Co. v. U.S. Dep’t of Health and Human Servs.*, 690 F.2d 252 (D.C. Cir. 1982) (FOIA exemption 4 protects from public disclosure confidential commercial or financial information obtained from a person outside of the government). Information in support of this request for confidential treatment and response to Section 0.459(b) of the Commission’s rules, 47 C.F. R. § 0.459(b), is provided below.

**(1) Identification of the specific information for which confidential treatment is sought.** The information for which Verizon seeks confidential treatment is competitively sensitive particularized demand data which, if made available to competitors and alternative providers, would provide such entities with valuable information regarding Verizon’s customer base in particular exchanges within a state.

**(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** 2020 Exogenous Cost Updates filing for Tariff FCC Nos. 1, 11 and 16, Access Services, and Tariff FCC No. 14, Facilities for Interstate Access, under Transmittal No. 1411, which is being filed on 15 days’ notice pursuant to the Commission’s Tariff Streamlining Order.

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The demand data for which Verizon requests confidential treatment is commercial and financial information, not routinely available for public inspection. *See, e.g.*, 47 C.F.R. §0.457(d). Verizon has not filed this type or level of data and considers this valuable information at the level of services and locations to be proprietary. Similarly, the Commission has consistently treated information relating to carriers’ demand data as protected confidential information not subject to public inspection. *See e.g., John E. Wall, Jr.; On Request for Inspection of Records*, 22 FCC Rcd 2561 ¶ 3 (2007) (“the records sought by Wall may be withheld pursuant to FOIA Exemption 4 [because].... the information sought would result in competitive harm by enabling competitors to identify demand for individual types of services, thereby targeting facility construction and service marketing to the detriment of Verizon Business”).

**(4) Explanation of the degree to which the information concerns a service that is subject to competition.** These data relate to demand in a highly competitive marketplace in which Verizon is subject to actual and potential competition.

**(5) Explanation of how disclosure of information could result in substantial competitive harm.** As the Commission recently recognized, the Supreme Court overruled long standing lower court precedent requiring a showing of substantial competitive harm to qualify for FOIA Exemption 4. Order on Reconsideration, *In the Matter of Am. Broadband & Telecommunications Co.*, 35 FCC Rcd 3762 para. 7 (2020) (discussing *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364-65 (2019)). Section 0.459(b) of the Commission's rules, however, still requires a showing of substantial competitive harm. While the showing cannot be required to qualify for confidential treatment, this request nonetheless addresses all requirements of Section 0.459(b). Disclosure of confidential financial information "could allow competitors already serving particular markets to respond to new entry or allow other competitors to free ride on the efforts of the first new entrants to identify areas where competition is more likely to be successful [and] could also provide 'valuable information about where [a] filer is focusing its efforts to acquire customers and [about] the overall financial health of the filer.'" *Center for Public Integrity v. FCC*, 505 F. Supp. 2d 106, 116 (D.D.C. 2007). This information would assist competitors in targeting their marketing efforts to the areas with the largest concentrations of customers. Verizon is subject to actual and potential competition with respect to all of its services. The demand data provides a roadmap detailing the level of success Verizon is experiencing with specific types of services in particular geographic areas. If competitors are able to gain an unfair advantage by obtaining such a detailed picture of Verizon's strategies and successes, they may be able to anticipate Verizon's strategic initiatives in a targeted way.

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** Verizon does not customarily make available to the public this type or level of data at the level of services and location.

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.** This demand data for which confidentiality is sought are not made available to the public and has not been disclosed to third parties.

**(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Given the competitively sensitive nature of the demand information for which confidentiality is requested, Verizon requests that confidential treatment apply indefinitely. This period of time is necessary to prevent an unfair competitive advantage for Verizon's competitors who may be able to use historical data to gain insight into Verizon's competitive offerings and strategies.

**(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.** Here, as described above, the information for which the exemption is requested is confidential demand information, submitted by Verizon, a non-government entity and thus should be considered confidential. See 5 U.S.C. § 552(b)(4). In light of the Supreme Court's decision in *Argus Leader*, agencies should no longer apply the "substantial competitive harm" test from *Nat'l Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) to determine whether information is "confidential" under Exemption 4. The Supreme Court detailed in its *Argus Leader* decision that agencies should apply the ordinary meaning of the term "confidential." That meaning "[a]t least" applies to "commercial or financial information [that] is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy" although the Court did not reach the issue of whether government assurances of

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privacy were necessary because both prongs were “clearly satisfied[.]” *See Argus Leader*, 139 S. Ct. at 2363.

Therefore, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, Verizon respectfully requests that the demand data filed herewith be treated under the Commission’s rules as not available for public inspection. Verizon additionally requests that its information not be included in any publication while this request is pending. Verizon respectfully requests that the Commission grant confidential treatment to certain exchange level detail end user demand information submitted in support of Transmittal No.1411, and that such information be subject to the standard protective order provided for in the Tariff Streamlining Order and published in Appendix B thereof, as updated and modified in the FCC’s June 9, 2020, Public Notice (DA 20-604).

Pursuant to the non-disclosure agreement that provides for review of information granted confidential treatment by interested parties, for the specific purpose of review and comment on the instant transmittal only, Verizon will provide access and review of such information to signatories of such an agreement made with the contact at the location listed below.

All correspondence and inquiries in connection with this request should be forwarded to Frederick Moacdieh, Executive Director, Federal Regulatory Affairs, via facsimile on (202) 920-5801 or by hand-delivery to 1300 I Street, NW, Suite 500 East, Washington, DC 20005.

A handwritten signature in black ink, appearing to read "F. Moacdieh", is enclosed within a thin black rectangular border.

Frederick Moacdieh  
Executive Director, Federal Regulatory Affairs