



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD INVESTIGATION )  
REGARDING THE RECLASSIFICATION OF INCUMBENT )  
LOCAL EXCHANGE CARRIER (ILEC) SERVICES AS )  
COMPETITIVE )  
ORDER  
DOCKET NO. TX07110873

(SERVICE LIST ATTACHED)

BY COMMISSIONER FREDERICK F. BUTLER:

By Order dated November 28, 2007, in response to a request from Verizon New Jersey ("VNJ"), the Board determined that it is appropriate at this time to conduct a full investigation of and hearing on the question of whether incumbent local exchange carrier (ILEC) provided mass market retail services should be declared competitive pursuant to N.J.S.A. 48:2:21-19 (b), after review and consideration of the necessary criteria.

By letter dated December 21, 2007, the New Jersey Division of Rate Counsel ("Rate Counsel") has requested a Hearing Officer's decision and Order adopting a confidentiality/non-disclosure agreement for the parties to sign in this matter. According to Rate Counsel, on December 18, 2007, Rate Counsel circulated to all parties in this proceeding a proposed confidentiality agreement which is the standard agreement governing treatment of information which any party maintains is proprietary, prepared and circulated in other Board matters by the Attorney General's office. On December 18, 2007, Rate Counsel received an e-mail from VNJ objecting to the form of the proposed confidentiality agreement, on the basis that Rate Counsel's proposal did not cover documents which may be labeled "highly confidential" or "no copy."

In its December 21, 2007 letter Rate Counsel additionally states that VNJ's redacted Testimony contains no designation that the redacted portion is "highly confidential" or has "no copy" information, and VNJ did not state that the unredacted portions contain such information. Therefore, Rate Counsel argues since nothing in VNJ's testimony is designated as "highly confidential," it appears that VNJ's counter proposal is only offered for delay and requests that the Hearing Officer issue a decision as soon as possible regarding the appropriate order.

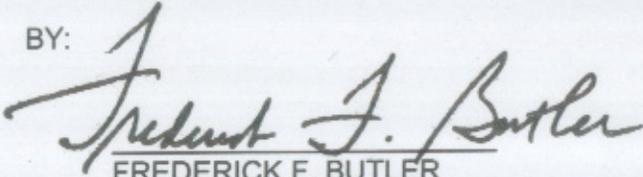
By e-mail to all the parties, Deputy Attorney General Babette Tenzer advised that if the parties cannot reach agreement by December 26, 2007, Commissioner Butler will issue an order determining the form of confidentiality agreement to be used in this proceeding.

DISCUSSION

Upon review of the Rate Counsel request, and in light of the fact that the parties have not been able to reach consensus, I HEREBY ORDER that the parties shall utilize and execute the same form of confidentiality agreement that was executed in Docket No. TX06120841, I/M/O the Board Investigation Regarding the Reclassification of Competitive Local Exchange Carrier (CLEC) Services As Competitive. A copy of the confidentiality agreement, adapted for the instant matter, is attached to this order. This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 12-27-07

BY:

  
FREDERICK F. BUTLER  
COMMISSIONER

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

<u>IN THE MATTER OF THE BOARD</u>	:	AGREEMENT OF NON-DISCLOSURE
<u>INVESTIGATION REGARDING THE</u>	:	OF INFORMATION CLAIMED TO BE
<u>RECLASSIFICATION OF INCUMBENT</u>	:	CONFIDENTIAL
<u>LOCAL EXCHANGE SERVICES (ILEC)</u>	:	BPU Docket No.: TX 07110873
<u>AS COMPETITIVE</u>	:	

It is hereby AGREED, as of the \_\_\_\_\_ day of December, 2007, by and among Verizon New Jersey Inc. ("Verizon NJ"), AT&T Communications of New Jersey and its regulated affiliates ("AT&T"), United Telephone Company of New Jersey, Inc. d/b/a Embarq ("Embarq"), Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Nextel of New York, Inc. ("Sprint Nextel"), XO Communications Services, Inc. ("XO"), the Staff of the Board of Public Utilities ("Board Staff"), and the Public Advocate, Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties") who have agreed to execute this Agreement of Non-Disclosure of Information Claimed to be Confidential ("Agreement") and to be bound thereby that:

WHEREAS, in connection with the above-captioned proceeding before the Board of Public Utilities ("Board"), Verizon NJ, AT&T, Embarq, Sprint Nextel, XO and/or another party (collectively, the "Providing Party") may be requested or required to provide petitions, pre-filed testimony, other documents, analyses and/or other data or information regarding the subject matter of these proceedings that the Providing Party may claim constitutes or contains confidential, proprietary or trade secret information, or which otherwise may be claimed by the Providing Party to be of a market-sensitive, competitive, confidential or proprietary nature (hereinafter sometimes referred to as "Confidential Information" or "Information Claimed to be Confidential"); and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the exchange of information while recognizing that under Board regulation N.J.A.C. 14:1-12 et seq., a request for confidential treatment shall be submitted to the Custodian who is to rule on requests made pursuant to the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, et seq., unless such information is to be kept confidential pursuant to court order, and also recognizing that a request may be made to designate any such purportedly confidential information as public through the course of these administrative proceedings;

NOW, THEREFORE, the Parties hereto, intending to be legally bound thereby, DO HEREBY AGREE as follows:

1. Any Information claimed to be Confidential that the Providing Party produces in connection with the above-captioned proceedings and pursuant to the terms of this Agreement shall be specifically identified and marked by the Providing Party as Confidential Information when provided hereunder. Additionally, any such purportedly confidential information submitted to the Board shall be provided in the form and manner prescribed by the Board's regulations at N.J.A.C. 14:1-12 et seq., unless such information is to be kept confidential pursuant to court or administrative order. If for some reason, during this proceeding it is necessary to produce documents designated as highly confidential or as no copy, those documents shall be subject to a separate non-disclosure addendum to be executed as necessary.
2. With respect to documents identified and marked as Confidential Information, if the Providing Party's intention is that not all of the information contained therein should be given protected status, the Providing Party shall indicate which portions of such documents contain the Confidential Information in accord with the Board's regulations at N.J.A.C. 14:1-12.2 and 12.3. Additionally, the Providing Party shall provide to all signatories of this agreement full

and complete copies of both the proposed public version and the proposed confidential version of any information for which confidential status is sought.

3. With respect to all Information Claimed to be Confidential, it is further agreed that:

(a) Access to the documents designated as Confidential Information, and to the information contained therein, shall be limited to the Party signatories to this Agreement and their identified attorneys, employees, experts and consultants whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding.

(b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than their identified employees and attorneys and any identified experts and consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert or consultant is retained specially and is not expected to testify, or is called to testify in this proceeding. All consultants or experts of any party to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Acknowledgment attached as "Attachment I", which executed Acknowledgment shall be forthwith provided to counsel for the Providing Party, with copies to counsel for Board Staff and Rate Counsel.

(c) No other disclosure of Information Claimed to be Confidential shall be made to any person or entity except with the express written consent of the Providing Party or their counsel, or upon further determination by the Custodian, or order of the Board, the Government Records Council or of any Court of competent jurisdiction that may review these matters.

4. The undersigned Parties have executed this Agreement for the exchange of claimed confidential information only to the extent that it does not contradict or in any way restrict any applicable Agency Custodian, the Government Records Council, or any Court of competent jurisdiction from conducting appropriate analysis and making a determination as to the confidential nature of said information, where a request is made pursuant to OPRA, N.J.S.A. 47:1A-1, et seq. Absent a determination by any applicable Custodian, Government Records Council, or any Court of competent jurisdiction that a document(s) is to be made public, the treatment of the documents exchanged during the course of these proceeding(s) and any subsequent appeals are to be governed by the terms of this Agreement.

5. In the absence of a decision by the Custodian, Government Records Council, or any Court of competent jurisdiction, the acceptance by the undersigned Parties of information which the Providing Party has identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Likewise, the affidavit(s) submitted pursuant to N.J.A.C. 14:1-12.8 shall not alone be presumed to constitute adequate proof that the Providing Party is entitled to a protective Order for any of the information provided hereunder. In the event that any Party seeks to use the Information Claimed to be Confidential in the course of any hearings or as part of the record of these proceedings, the Parties shall seek a determination by the trier of fact as to whether the portion of the record containing the Information Claimed to be Confidential should be placed under seal. Furthermore, if any Party wishes to challenge the Providing Party's designation of the material as Confidential Information, such Party shall provide reasonable notice to all other Parties of such challenge and the Providing Party may make a motion seeking a protective Order. In the event of such challenge to the designation of material as Confidential Information, the

Providing Party, as the provider of the Information Claimed to be Confidential, shall have the burden of proving that the material is entitled to protected status. However, all Parties shall continue to treat the material as Confidential Information in accordance with the terms of this Agreement, pending resolution of the dispute as to its status by the trier of fact.

6. Confidential Information that is placed on the record of these proceedings under seal pursuant to a protective order issued by the Board or any Court of competent jurisdiction shall remain with the Board under seal after the conclusion of the proceeding. If such Confidential Information is provided to appellate courts for the purposes of an appeal(s) from these proceedings, such information shall be provided, and shall continue to remain, under seal.

7. This Agreement shall not:

(a) Operate as an admission for any purpose that any documents or information produced pursuant to this Agreement are admissible or inadmissible in any proceeding;

(b) Prejudice in any way the right of the Parties, at any time, on notice given in accordance with the rules of the Board, to seek appropriate relief in the exercise of discretion by the Board for violations of any provision of this Agreement.

8. Within forty five (45) days of the final Board Order resolving the above-referenced proceedings, all documents, materials and other information designated as "Confidential Information," regardless of format, shall be destroyed or returned to counsel for the Providing Party. In the event that such Board Order is appealed, the documents and materials designated as "confidential" shall be returned to counsel for the Providing Party within forty-five (45) days of the conclusion of the appeal.

Notwithstanding the above return requirement, the Board Staff and Rate Counsel may maintain in their files copies of all pleadings, briefs, transcripts, discovery and other documents,

materials and information designated as "Confidential Information," regardless of format, exchanged or otherwise produced during these proceedings, provided that all such information and/or materials that contain Information Claimed to be Confidential shall remain subject to the terms of this Agreement. The Providing Party may request consultants or experts who received Confidential Information to certify in writing to counsel for the Providing Party that the terms of this Agreement have been met upon resolution of the proceedings.

9. The execution of this Agreement shall not prejudice the rights of any Party to seek relief from discovery under any applicable law providing relief from discovery.

10. The parties agree that one original of this Agreement shall be created for each of the signatory parties for the convenience of all. The signature pages of each original shall be executed by the recipient and transmitted to counsel of record for the Providing Party, who shall send a copy of the fully executed document to all counsel of record. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all Parties.

IN WITNESS THEREOF, the undersigned Parties do HEREBY AGREE to the form and execution of this Agreement.

VERIZON NJ AND VERIZON ACCESS

By: \_\_\_\_\_  
Richard A. Chapkis, Esq.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
ATTORNEY FOR THE STAFF OF THE BOARD  
OF PUBLIC UTILITIES

By: \_\_\_\_\_

PUBLIC ADVOCATE  
DIVISION OF RATE COUNSEL

By: \_\_\_\_\_  
Christopher White, Deputy Rate Counsel

AT&T

By: \_\_\_\_\_  
William K. Mosca, Esq.

Embarq

By: \_\_\_\_\_  
Colleen A. Foley, Esq.

Sprint Nextel

By: \_\_\_\_\_  
James C. Meyer, Esq.

XO

By: \_\_\_\_\_  
K.C. Halm, Esq.

ATTACHMENT I

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

<u>IN THE MATTER OF THE BOARD</u>	:	AGREEMENT OF NON-DISCLOSURE
<u>INVESTIGATION REGARDING THE</u>	:	OF INFORMATION CLAIMED TO BE
<u>RECLASSIFICATION OF INCUMBENT</u>	:	CONFIDENTIAL
<u>LOCAL EXCHANGE CARRIER (ILEC)</u>	:	BPU Docket No.: TX 07110873
<u>AS COMPETITIVE</u>	:	

The undersigned is an attorney, employee, consultant and/or expert for the Division of the Rate Counsel, Board Staff, or other Party who has received, or is expected to receive, Confidential Information provided by Verizon New Jersey Inc., AT&T, Embarq, Sprint Nextel, XO, other party (collectively, "Providing Party"), which has been identified and marked by the Providing Party as Confidential Information. The undersigned acknowledges receipt of the Agreement of Non-Disclosure of Information Claimed to be Confidential and agrees to be bound by the terms of the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(name, title, affiliation)

**IN THE MATTER OF THE BOARD INVESTIGATION REGARDING THE  
RECLASSIFICATION OF INCUMBENT LOCAL EXCHANGE CARRIER  
(ILEC) SERVICES AS COMPETITIVE**

**DOCKET NO. TX07110873**

John DeLuca  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[John.deluca@bpu.state.nj.us](mailto:John.deluca@bpu.state.nj.us)

Anthony Centrella, Director  
Division of Telecommunications  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[Anthony.centrella@bpu.state.nj.us](mailto:Anthony.centrella@bpu.state.nj.us)

Stefanie A. Brand, Esq.  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07102  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Jose Rivera-Benitez, Esq.  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101  
[jrivera@rpa.state.nj.us](mailto:jrivera@rpa.state.nj.us)

Collen A. Foley, Esq.  
Saul Ewing  
One Riverfront Plaza  
Newark, NJ 07102  
[cfoley@saul.com](mailto:cfoley@saul.com)

Christopher J. White, Esq.  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101  
[cwhite@rpa.state.nj.us](mailto:cwhite@rpa.state.nj.us)

Jeanne W. Stockman, Esq.  
United Telephone Company of New Jersey,  
Inc.  
d/b/a Embarq  
14111 Capital Blvd.  
Wake forest, NC 27587-5900  
[jeanne.w.stockman@embarq.com](mailto:jeanne.w.stockman@embarq.com)

Mark A. Keffer  
Philip S. Shapiro  
AT&T Communications  
3033 Chain Bridge Road  
Oakton, VA 22185  
[mkeffer@att.com](mailto:mkeffer@att.com)  
[psshapiro@att.com](mailto:psshapiro@att.com)

Garnet Goins, Director & Attorney  
Benjamin J. Aron  
State Reg. Affairs, Northeast  
Region  
Sprint Nextel Corp.  
2001 Edmund Halley Drive  
Reston, VA 20191  
[Garnet.goins@sprint.com](mailto:Garnet.goins@sprint.com)  
[benjamin.aron@sprint.com](mailto:benjamin.aron@sprint.com)

Ava Marie Madeam  
Verizon New Jersey, Inc.  
540 Broad Street, 20<sup>th</sup> Floor  
Newark, NJ 07102  
[avamarie.p.madeam@verizon.com](mailto:avamarie.p.madeam@verizon.com)

Lawanda Gilbert, Esq.  
Carol Artale, Esq.  
Counsel's Office  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07101  
[Lawanda.gilbert@bpu.state.nj.us](mailto:Lawanda.gilbert@bpu.state.nj.us)  
[Carol.artale@bpu.state.nj.us](mailto:Carol.artale@bpu.state.nj.us)

Patricia Campbell  
Division of Telecommunications  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07101  
[Patricia.campbell@bpu.state.nj.us](mailto:Patricia.campbell@bpu.state.nj.us)

James F. Murphy  
Division of Telecommunications  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07101  
[James.murphy@bpu.state.nj.us](mailto:James.murphy@bpu.state.nj.us)

Harold Bond  
Division of Telecommunications  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07101  
[Harold.bond@bpu.state.nj.us](mailto:Harold.bond@bpu.state.nj.us)

Thomas Chu  
Division of Telecommunications  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07101  
[Thomas.chu@bpu.state.nj.us](mailto:Thomas.chu@bpu.state.nj.us)

William Agee  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07101  
[William.agee@bpu.state.nj.us](mailto:William.agee@bpu.state.nj.us)

Susan M. Baldwin  
17 Arlington Street  
Newburyport, MA 01950  
[smbaldwin@comcast.net](mailto:smbaldwin@comcast.net)

Ralph V. Lee, Esq.  
Richard Chapkis, Esq.  
Vice President & General Counsel  
Verizon NJ  
540 Broad Street, 20<sup>th</sup> Floor  
Newark, NJ 07102  
[Ralph.v.lee@verizon.com](mailto:Ralph.v.lee@verizon.com)  
[Richard.chapkis@verizon.com](mailto:Richard.chapkis@verizon.com)

Nicholas Pascaretti  
J. Stoeberl  
Warwick Valley Telephone Company  
47-49 Main Street  
Warwick, NY 10990  
[n.pascaretti@wvtc.com](mailto:n.pascaretti@wvtc.com)  
[j.stoeberl@wtc.com](mailto:j.stoeberl@wtc.com)

Murray E. Bevan  
William K. Mosca  
Courter, Kobert & Cohen  
1001 Route 517  
Hackettstown, NJ 07840  
[mbevan@ckclaw.com](mailto:mbevan@ckclaw.com)  
[wmosca@ckclaw.com](mailto:wmosca@ckclaw.com)

Martin C. Rothfelder, Esq.  
Bradford M. Stern, Esq.  
Rothfelder Stern, L.L.C.  
625 Central Avenue  
Westfield, NJ 07090  
[mcrothfelder@rothfelderstern.com](mailto:mcrothfelder@rothfelderstern.com)  
[bmstern@rothfelderstern.com](mailto:bmstern@rothfelderstern.com)

Russell R. Gutshall  
EMBARQ  
240 North Third Avenue  
Suite 201  
Harrisburg, PA 17101  
[Russell.r.gutshall@embarq.com](mailto:Russell.r.gutshall@embarq.com)

Babette Tenzer, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
Newark, NJ 07101  
[babette.tenzer@dol.lps.state.nj.us](mailto:babette.tenzer@dol.lps.state.nj.us)

K.C. Halm, Esq.  
Davis Wright Tremaine LLP  
1919 Pennsylvania Ave., N.W.  
Suite 2001  
Washington, DC 20006  
[kchalm@dwt.com](mailto:kchalm@dwt.com)

Cherie R. Kiser, Esq.  
Ernest Cooper, Esq.  
Mintz, Levin, Cohn, Ferns, Glovsky &  
Popco, PC  
701 Pennsylvania Ave., N.W.  
Washington, DC 20004  
[ckiser@mintz.com](mailto:ckiser@mintz.com)  
[eccooper@mintz.com](mailto:eccooper@mintz.com)

Paul Flanagan, Assistant Director  
Division of Rate Counsel  
31 Clinton Street, P.O. Box 46005  
Newark, NJ 07101  
[pflanagan@rpa.state.nj.us](mailto:pflanagan@rpa.state.nj.us)

Richard A. Hrip  
EMBARQ  
240 North Third Ave., Suite 201  
Harrisburg, PA 17101  
[Richard.a.hrip@embarq.com](mailto:Richard.a.hrip@embarq.com)

Maria T. Novas-Ruiz, Esq.  
Division of Rate Counsel  
31 Clinton Street, P.O. Box 46005  
Newark, NJ 07101  
[mnovas-ruiz@rpa.state.nj.us](mailto:mnovas-ruiz@rpa.state.nj.us)

Arlene Pasko  
Jessica Campbell  
Deputy Attorney General  
Division of Law-Board of Public Utilities  
124 Halsey Street  
PO Box 45029  
Newark, NJ 07101-5029  
[arlene.pasko@dol.lps.state.nj.us](mailto:arlene.pasko@dol.lps.state.nj.us)  
[jessica.campbell@dol.lps.state.nj.us](mailto:jessica.campbell@dol.lps.state.nj.us)

Hesser McBride  
Wilentz Goldman & Spitzer  
90 Woodbridge Center Drive  
Suite 900 Box 10  
Woodbridge, NJ 070953-0958  
[hmcbride@wilentz.com](mailto:hmcbride@wilentz.com)

Kate Tasch, Esq.  
Vice President  
Legislative and Regulatory Affairs  
New Jersey Cable Telecommunications  
Association  
124 West State Street  
Trenton, NJ 08608  
[ktasch@cablenj.org](mailto:ktasch@cablenj.org)

Elana Shapochnikov  
Senior Regulatory Counsel  
Government Affairs  
Cablevision Lightpath, Inc.  
1111 Stewart Avenue  
Bethpage, NY 11714-3581  
[eshapoch@cablevision.com](mailto:eshapoch@cablevision.com)

James C. Meyer  
Riker, Danzig, Scherer, Hyland &  
Perretti, LLP  
Headquarters Plaza  
One Speedwell Ave.  
Morristown, NJ 07962  
[jmeyer@riker.com](mailto:jmeyer@riker.com)