



Timothy M. Boucher
Assistant General Counsel
Federal Regulatory Affairs
660 North Capitol Street NW Suite 240
Washington, DC 20001
Tel: (303) 992-5751
Timothy.Boucher@lumen.com

REDACTED – PUBLIC VERSION

May 12, 2023

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

**Re: *Empowering Broadband Consumers Through Transparency,*
CG Docket No. 22-2**

Dear Ms. Dortch:

On May 9, 2023, Lumen filed an ex parte in the above-referenced docket. Subsequently, it has come to Lumen's attention that there is an inadvertent typographical error on page two.

The following sentence on page two currently reads as follows:

To begin with, when it comes to the overall burden of the new label requirements, Lumen estimates that initial IT development employee hours (i.e for first year of implementation) will exceed [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] hours.

The sentence is corrected to read as follows:

To begin with, when it comes to the overall burden of the new label requirements, Lumen estimates that initial development employee hours (i.e for first year of implementation) will exceed [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] hours.

As indicated, on line two Lumen strikes the word "IT" immediately preceding the words "development employee hours".

Ms. Marlene H. Dortch
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For the convenience of the Commission and the parties to this proceeding, a copy of the corrected May 9, 2023 Ex Parte Letter is also being filed today as an attachment to this erratum.

Please contact the undersigned with any questions.

Sincerely,

/s/ Timothy M. Boucher

Copy via email to: Zac Champ

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Via ECFS

May 9, 2023 (re-filed May 12, 2023)

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2
Lumen Request for Confidential Treatment

Dear Ms. Dortch:

Lumen respectfully requests, pursuant to sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.0457, 0.0459, that the Commission withhold from public inspection and afford confidential treatment to the information redacted in the public version of Lumen's ex parte submitted on May 9, 2023 in the above referenced matter. Lumen requests confidential treatment of financial information related to its estimated employee time required to implement the requirements set forth in the Broadband Label Order and its estimate of the monthly and annual volume of calls to Lumen's telephone-based customer care team related to broadband services.¹

Please contact the undersigned if you have any questions.

Sincerely,

/s/ Timothy M. Boucher

Enclosure

¹ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order, FCC 22-86 (rel. Nov. 17, 2022) (Broadband Label Order).

APPENDIX

Confidentiality Request/Justification

47 C.F.R. §§ 0.457 (2017) and 0.459 (2011)

Information for which confidential treatment is sought

Lumen's ex parte submission contains commercially sensitive information that the Company considers proprietary and confidential. This information describes the Company's anticipated estimated employee time required to implement the Broadband Label Order and its estimate of the monthly and annual volume of calls to Lumen's telephone-based customer care team related to broadband services.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The ex parte letter includes commercial information that Lumen considers proprietary and confidential. This information describes the Company's business practices and operating procedures, including procedures to its compliance obligations, as well as non-public cost and prospective customer volume data. The Commission has long recognized that, for purposes of Exemption 4, 47 C.F.R. § 0.457(d), "records are 'commercial' as long as the submitter has a commercial interest in them." *Robert J. Butler*, FOIA Control No. 91-120, Memorandum Opinion and Order, 6 FCC Rcd 5414, 5415 ¶ 12 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 866 (2d Cir. 1978).

Degree to which the information concerns a service that is subject to competition; and description of how disclosure of the information could result in substantial competitive harm

This information is competitively sensitive information that would not normally be released to the public, as such release would have a substantial negative competitive impact on Lumen. Lumen does not have access to information of this nature for its competitors; and, if Lumen information were to become available to the company's competitors, those competitors would enjoy an unfair and irreversible competitive advantage over Lumen. The D.C. Circuit Court of Appeals has found that parties do not have to "show actual competitive harm" to justify confidential treatment. Rather, "actual competition and the likelihood of substantial competitive injury is sufficient to bring commercial information within the realm of confidentiality."²

Measures taken to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

² *Public Citizen Health Research Group v. FDA*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

Lumen has treated and treats the information disclosed in its subject ex parte letter as confidential and has protected it from public disclosure.

Justification of the period during which Lumen asserts that the material should not be available for public disclosure

At this time, Lumen cannot determine any date on which this information should not be considered confidential or become stale for purposes of the current matters, except that it will be handled in conformity with Lumen's general records retention policy, absent any continuing legal hold.

Other information that Lumen believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable FCC and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.



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May 09, 2023 (re-filed May 12, 2023)

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2

Dear Ms. Dortch:

In further follow-up to the joint Lumen, Verizon, and AT&T meeting on April 27, 2023 with staff,¹ Lumen joins Verizon and AT&T² in submitting additional data demonstrating that the Commission's recent Paperwork Reduction Act (PRA) burden estimate understated the burdens imposed by the consumer label rules recently adopted in this proceeding.³

In doing so, Lumen echoes the requests made by Verizon and AT&T that the Commission take the opportunity to enable less burdensome compliance approaches when it comes to certain of the more onerous aspects of the label rules.

To begin with, when it comes to the overall burden of the new label requirements, Lumen estimates that initial development employee hours (i.e for first year of implementation) will exceed [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] hours. While more

¹ See Ex parte letter from Linda S. Vandeloop, AT&T, to Marlene H. Dortch, FCC, CG Docket No. 22-2 (filed May 1, 2023) ("May 1 Ex Parte").

² Ex parte letter from Linda S. Vandeloop, AT&T, to Marlene H. Dortch, FCC, CG Docket No. 22-2 (filed May 5, 2023) ("AT&T May 5 Ex Parte"); Ex parte letter from Ian Dillner, Verizon, to Marlene H. Dortch, FCC, CG Docket No. 22-2 (filed May 4, 2023) ("Verizon May 4 Ex Parte").

³ See *Information Collection Being Reviewed by the Federal Communications Commission*, 88 Fed. Reg. 7973 (2023) ("PRA Notice").

Ms. Marlene H. Dortch
Federal Communications Commission
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difficult to estimate, Lumen also sees significant hours of support work being needed after initial development for ongoing compliance.

Thus, these data further demonstrate that the Commission's PRA burden estimate greatly underestimates the cost and time it will take to comply with the label requirements.

To alleviate these concerns, the Commission should, at a minimum, grant the industry's Joint Petition for Clarification or, in the Alternative, Reconsideration (Joint Petition)⁴ and address the concerns raised in the Lumen, AT&T, and Verizon April 27, 2023 meeting. AT&T and Verizon already provided further data in support of the Joint Petition's requests regarding the treatment of state and local fees in the labeling rules – and with respect to the Joint Petition's requests regarding the new requirement that service providers “document each instance when it directs a consumer to a label at an alternative sales channel and retain such documentation for two years.”⁵ Further with respect to the latter point, Lumen's telephone-based customer care team, in the last year, received [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] calls per month – i.e. [BEGIN CONFIDENTIAL] [REDACTED] calls [END CONFIDENTIAL] annually - related to broadband services. Needless to say, these data make clear that the proposed new document retention requirements would be exceedingly burdensome.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being filed in the appropriate dockets.

Sincerely,

/s/ Timothy M. Boucher

Copy via email to: Zac Champ

⁴ Joint Petition for Clarification or, in the Alternative, Reconsideration filed by ACA Connects, NTCA, CTIA, USTelecom, and NCTA, CG Docket No. 22-2 (filed Jan. 17, 2023) (“Joint Petition”).

⁵ See *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-86, ¶ 95 (Nov. 17, 2022); AT&T May 5 Ex Parte; Verizon May 4 Ex Parte.