

EXHIBIT A



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August 11, 2005

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Re: Maryland Public Information Act

Dear Cliff:

This is to follow up our discussion on Monday concerning the confidentiality under the Maryland Public Information Act ("PIA") of the draft cable franchise agreement that Verizon Maryland Inc. ("Verizon"), proposed to the County on June 7, 2005, and any subsequent drafts that may be prepared and delivered to or by the County as negotiations ensue. As indicated, we have requested the City of Bowie to refuse a request for disclosure of a draft franchise agreement on the ground that the draft constitutes confidential commercial information that is exempt from disclosure under the PIA. Our reasoning is set forth in greater detail below, and Verizon opposes any disclosure of draft franchise agreements in Maryland.

The PIA, Title 10, Subtitle III of the State Government Article ("SG") of the Maryland Code, requires a government record custodian to, "except as otherwise provided by law, permit a person or governmental unit to inspect any public record at any reasonable time." Md. Code Ann., SG §10-613(a). However, Maryland Code Section 10-617 excludes the drafts from disclosure under PIA. Section 10-617 sets forth mandatory exemptions from this right to inspection under the PIA, which include, among others, an exemption for confidential commercial information. Specifically, Section 10-617(d) states that:

A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental entity: ... (2) confidential commercial information ...

The franchise drafts contain information that is customarily regarded as confidential, the disclosure of which would cause substantial harm to Verizon's competitive position. In determining whether "commercial" information is "confidential," the Maryland Attorney General has held that "[i]n our view, the proper test for confidentiality under this [PIA] exemption is that applied under the analogous exemption in the federal Freedom of Information Act ("FOIA"):

Clifford Royalty, Esquire
August 11, 2005
Page 2

‘[C]ommercial or financial information is confidential for purposes of the exception if disclosure of the information is likely to have either of the following effects: (1) to impair the Government’s ability to obtain the necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

69 Md. Op. Atty. Gen. 231 (1984) *quoting National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974)¹

The Maryland Public Information Act Manual, published by the Maryland Attorney General, mirrors the opinion expressed in 69 Md. Op. Atty. Gen. 231 (1984). The Maryland Public Information Act Manual advises that SG §10-617(d) prevents disclosure of trade secrets and confidential, commercial or financial information. Again relying on analogous interpretations of FOIA, the manual, notes that:

Financial or commercial information that persons are *required* to give the government should be considered confidential if disclosure of the information is likely to have either of the following effects: (1) to impair the government’s ability to obtain the necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Commercial or financial information that is given to the government *voluntarily* should be considered confidential “if it is of the kind that the provider would not customarily release to the public.”

THE MARYLAND PUBLIC INFORMATION ACT MANUAL (9th ed., February 2004) (“Manual”) (internal citation omitted).²

¹ The *National Parks* test was likewise adopted by the Fourth Circuit in *Acumenics Research & Technology v. U.S. Dept. of Justice*, 843 F.2d 800 (4th Cir. 1988). Subsequently, the D.C. Circuit in *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 880 (D.C. Cir. 1992) expanded its *National Parks* test holding that commercial information that is given to the government *voluntarily* should be considered confidential “if it is of the kind that the provider would not customarily release to the public.”

² The Manual provides substantial additional authority, citing the following cases: *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45 (D.C. Cir. 1981) (substantial cost savings to competitors

Clifford Royalty, Esquire
August 11, 2005
Page 3

Franchise drafts are precisely the kind of information that is customarily regarded as confidential by Verizon and the cable industry in general, and that is protected from disclosure by the PIA.

Verizon's competitive concerns from disclosure are at least two fold. First, disclosure of the drafts to the public would provide incumbent cable competitors with a specific roadmap of Verizon's contract development, negotiation procedures, operations and competitive strategy, the disclosure of which are of great detriment to Verizon. Verizon cannot afford to be undercut at the franchise negotiation stage as competing incumbent cable providers would be handed an opportunity to unduly influence and sow confusion by mischaracterizing ongoing and, by definition, incomplete negotiations to Verizon's detriment and to unfairly obtain a competitive advantage. As a result of the foregoing harm that results to a cable operator and localities if draft cable agreements are released, such drafts are generally regarded as confidential in the cable industry. By protecting the drafts from disclosure, the County would be recognizing the compelling private interest of Verizon to protect the drafts from its competitors and avoiding the possibility that Verizon will not disclose similar information to the County in the future.

Secondly, Verizon is negotiating franchises in other communities. Public disclosure of drafts in one community can adversely impact Verizon's ability to negotiate in other communities. During negotiations parties must be free to propose terms and conditions which, in the context of the whole agreement and surrounding circumstances, are acceptable to that party but which would not be acceptable in the absence of the terms and conditions of the whole agreement or under different surrounding circumstances.

Public disclosure of franchise agreement drafts during negotiations with a franchise authority would have a chilling effect on the ability of Verizon to engage

through FOIA access to data may result in substantial competitive harm to data submitter); *Orion Research Inc. v. EPA*, 615 F.2d 551 (1st Cir. 1980) (disclosure of bid proposal would have chilling effect on willingness of potential bidders to submit future proposals); *Gulf & Western Industries, Inc. v. United States*, 615 F.2d 527 (D.C. Cir. 1980) (ability of competitors to calculate data submitter's future bids and pricing structure would be substantial competitive harm); *Environmental Technology, Inc. v. EPA*, 822 F. Supp. 1226 (E.D. Va. 1993) (unit price information voluntarily provided by government contractor to procuring agency was "confidential" and not subject to disclosure under FOIA, where information was of a kind that contractor would not customarily share with competitors); *Audio Technical Services Ltd. v. Department of the Army*, 487 F. Supp. 779 (D.D.C. 1980) (successful bidder's customer list, design concepts and recommendations, and biographical data on key employees were exempt).

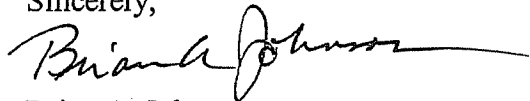
Clifford Royalty, Esquire
August 11, 2005
Page 4

in creative negotiations (and conversely the ability of the franchise authority to receive information respecting such efforts), for fear that even discussing such matters conceptually in one community will be improperly raised in another community out of context or under non-comparable circumstances. This at a minimum would create delays and confusion and discord with respect to Verizon's ability to successfully, competitively and timely negotiate other franchises – all arising out of draft terms and conditions that are non-binding points of discussion in another community and may never be placed in a final agreement.

The entirety of franchise drafts are commercial in nature as a result of the fact that they are draft contracts between Verizon and the County which, for the above state reasons, contain integrated, interconnected terms and conditions which are related to and dependant upon the presence of other terms and conditions. Thus, even portions of franchise drafts should not be released, as this would only foster opportunities of others to sow confusion by commenting on an incomplete document, let alone a draft incomplete document.

Based on the foregoing, Verizon believes that franchise drafts are not releasable under the confidential commercial information exemption in the PIA. Accordingly, Verizon requests that if the County should receive any requests they should be denied.

Sincerely,



Brian A. Johnson

cc: Matthew C. Ames, Esquire

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