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IN THE MATTER OF

VERIZON VIRGINIA, INC.

CASE NO. PUC-2002-00046

**To verify compliance with the
conditions set forth in 47 U.S.C. § 271(c)**

HEARING EXAMINER'S RULING

August 15, 2002

On July 12, 2002, the Hearing Examiner issued his Report in this matter.

On July 19, 2002, WorldCom, Inc. ("WorldCom") filed a Motion to Reopen the Record to incorporate the FCC's decision in the non-cost portion of the WorldCom/Verizon Virginia, Inc. ("Verizon") arbitration proceeding.¹ Specifically, WorldCom requested that: (i) Verizon be required to either amend its § 271 application filed with the Commission to comply with the *FCC Arbitration Decision* or indicate that it intends to appeal; (ii) parties be afforded an opportunity to respond to Verizon's filing; and (iii) the Hearing Examiner be given an opportunity to revise his Report to the Commission.²

On July 22, 2002, Cavalier Telephone, LLC ("Cavalier") filed a Motion to Reopen the Record, in which it incorporated and adopted the reasons advanced by WorldCom.³ On July 23, 2002, AT&T Communications of Virginia, LLC ("AT&T") filed a Response and Motion in support of the motions to reopen the record made by WorldCom and Cavalier. AT&T argued that Verizon should be required to demonstrate that it has complied with the *FCC Arbitration Decision*, or alternatively, that it intends to appeal that decision.⁴ In addition, AT&T urged the Commission to require Verizon to make the same showing in response to the FCC's pricing arbitration when the FCC issues that decision.⁵

On July 24, 2002, Verizon filed a response to the motions to reopen the record of WorldCom, Cavalier, and AT&T. Verizon offered four arguments against reopening the record. First, Verizon asserted that it has demonstrated that its practices and processes are the same as those used in other states that have already been granted § 271 approval.⁶ Second, Verizon maintained that the only rules and obligations relevant for § 271 purposes are those in place at

¹ *In the Matter of Petition of WorldCom, Inc. 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 Expanded Arbitration*, Memorandum Opinion and Order, CC Docket No. 00-218 (Released July 17, 2002) ("*FCC Arbitration Decision*").

² WorldCom Motion to Reopen the Record at 3.

³ Cavalier Motion to Reopen the Record at 1.

⁴ AT&T Response and Motion at 1.

⁵ *Id.* at 2-3.

⁶ Verizon Response at 2.

the time Verizon filed its application with the Commission.⁷ Third, Verizon argued that the FCC has determined that a BOC does not have to demonstrate compliance with rules that have yet to take effect, and that the *FCC Arbitration Decision* is not final.⁸ Finally, Verizon contended that any § 271 issues related to the *FCC Arbitration Decision* should be raised before the FCC.⁹

On July 25, 2002, AT&T filed a reply to Verizon's response in which it claimed to seek only a demonstration of Verizon's compliance with the *FCC Arbitration Decision* or notification that it intends to appeal.¹⁰ Nonetheless, AT&T alleged that if Verizon fails to comply with the *FCC Arbitration Decision* until it has exhausted all of its rights to appeal, then it will be "quite some time before Verizon[] will be compliant with . . . aspects of the competitive checklist."¹¹ Furthermore, AT&T submitted that the *FCC Arbitration Decision* is not a new rule, but is an application of the FCC's current rules.¹² Thus, AT&T argued that the *FCC Arbitration Decision* leads to the conclusion that Verizon is not meeting the checklist requirements under existing rules.¹³ Finally, AT&T contended that this Commission must consider the *FCC Arbitration Decision* before it can fulfill its role in the § 271 process.¹⁴

On July 29, 2002, WorldCom filed a letter in reply to Verizon's response. WorldCom averred that its motion to reopen was not an attempt to delay and accused Verizon of delaying the arbitration case before the FCC.¹⁵ WorldCom maintained that standards applied in the *FCC Arbitration Decision* are the same standards that should be applied in Verizon's § 271 proceeding.¹⁶ In addition, WorldCom asserted that in determining what rules apply, the "time of filing" refers to the filing at the FCC.¹⁷ Therefore, WorldCom warned that if the Commission's consultative report fails to consider the *FCC Arbitration Decision* and the FCC reviews Verizon's § 271 filing with the benefit of the *FCC Arbitration Decision*, "[t]hat would render this Commission's consultative report to the FCC incomplete and conceivably irrelevant on certain issues."¹⁸

On August 1, 2002, Verizon filed its application with the FCC in which it seeks § 271 authority for Virginia. Also, on August 1, 2002, the Commission submitted a letter, along with the Hearing Examiner's Report, to the FCC as this Commission's consultative report to be used by the FCC in Verizon's § 271 application.

⁷ *Id.* at 2-3.

⁸ *Id.* at 4.

⁹ *Id.* at 4-5.

¹⁰ AT&T Reply at 1-2.

¹¹ *Id.* at 2.

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 3-4.

¹⁵ WorldCom Reply at 2.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 3-4.

This matter is now before the FCC. The Hearing Examiner's Report, which is part of the Commission's consultative report, summarized the record before this Commission and explained the basis of any recommendations.¹⁹ The focus of the Commission's consultative report was on what was and continues to be in place in Virginia.²⁰ Thus, the arbitrations before the FCC did not form the basis for the recommendations contained in the report. Verizon opposes reopening the record to consider the *FCC Arbitration Decision*, and has chosen to go forward with its application before the FCC. Any risk that the *FCC Arbitration Decision* has rendered the Commission's report irrelevant or that the Commission has failed to fulfill its consultative obligations appears to rest upon Verizon.

Moreover, I agree with Verizon's argument that any § 271 issues raised by the *FCC Arbitration Decision* are best raised directly before the FCC. WorldCom and AT&T essentially ask this Commission to reopen the record to determine if an FCC arbitration decision has changed FCC-established standards for § 271 review and authority. Since the FCC will make the final determination in this matter, has established all of the underlying standards, and will give all parties an opportunity to raise issues related to the *FCC Arbitration Decision*, I find the record should not be reopened before this Commission in this matter. Accordingly,

IT IS DIRECTED that the motions by WorldCom, Cavalier, and AT&T to reopen this record are hereby denied.

Alexander F. Skirpan, Jr.
Hearing Examiner

¹⁹ Hearing Examiner's Report at 23.

²⁰ *Id.*