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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

May 1, 2002

On April 26, 2002, Verizon Virginia, Inc. ("Verizon") filed a Motion for Reconsideration of portions of the Hearing Examiner's Ruling dated April 25, 2002, related to a Motion to Compel filed by AT&T Communications of Virginia, LLC ("AT&T") on April 24, 2002. In its Motion to Compel, AT&T sought responses by Verizon to data requests AT&T propounded on April 17, 18 and 19, 2002. Verizon filed its objections to AT&T's first four sets of data requests on April 22, 2002.

In its Motion for Reconsideration, Verizon asked that it not be compelled to provide responses to AT&T questions related to Verizon's commercial activity in other states and wire center information. Specifically, Verizon asked that it not be required to provide responses to AT&T Requests 1-114, 3-64, 3-65, and 3-66 (a) through (j). Verizon based its objections to these questions on relevance, the burden to produce, and claims that the requested information is competitively sensitive.

On April 30, 2002, AT&T filed a reply to Verizon's Motion for Reconsideration. AT&T asserted that its requests were relevant and that the protective agreement signed by AT&T provides an adequate safeguard to any information that Verizon deemed to be competitively sensitive. Finally, AT&T submitted that the data it has requested is available in Verizon's system, and can be extracted with the proper queries.

To expedite consideration of Verizon's Motion for Reconsideration, a telephonic oral argument was scheduled for 10:00 a. m. on May 1, 2002. Verizon announced the call to all other interested parties via e-mail on April 30, 2002. Only representatives from Verizon, AT&T, and the Commission announced their presence on the call. A transcript of the oral argument was not made.

AT&T Set I, Request 114 – Much of the oral argument focused on the relevancy of information concerning "public interest" and on the competitively sensitive nature of the information. In relation to Verizon's application for authorization to provide in-region long-distance service, 47 U.S.C. § 271(d)(3)(C) directs the FCC to determine if "the requested authorization is consistent with the public interest, convenience, and necessity." From a practical perspective, the record assembled in this proceeding before the Commission will be the record relied upon by the FCC to make its determinations. In its application, Verizon offered evidence on public interest. Therefore, even though § 271(d)(2)(B) appears to limit a State's required role to

verifying "the compliance of the Bell operating company with the requirements of subsection [271](c)," I find parties in addition to Verizon should be provided with an opportunity to build a record regarding public interest. This does not mean that the Commission will make any findings or recommendations to the FCC concerning public interest. The ruling simply preserves the options of the Commission. Consequently, I find AT&T Set I, Request 114 to be relevant and reasonably calculated to lead to the discovery of admissible evidence.

As to the competitively sensitive nature of the requested information, AT&T has agreed to limit production of the requested information to paper copies, available only to counsel having signed the protective agreement. I find that these additional steps should adequately safeguard the requested information from improper use. Subject to these additional safeguards, Verizon's Motion for Reconsideration of AT&T Set I, Request 114 is denied.

AT&T Set III, Requests 64-65 – During oral argument AT&T withdrew these requests. Verizon's Motion for Reconsideration of AT&T Set III, Requests 64-65 is granted.

AT&T Set III, Request 66 – During oral argument AT&T agreed to modify this request and now seeks the following:

> Provide the following data for each year for the period 1997 through 2001 and those months of 2002 for which the data are available, by wire center:
>
> (a) The total number of UNE loops provided by Verizon to CLECs (for DS0 loops exclude loops that are part of a UNE-P);
> (b) The total number of UNE-P combinations provided by Verizon to CLECs;
> (c) The total number of resold lines provided by Verizon to CLECs; and
> (d) The number of directory listings provided for customers of CLECs, by business and residential.

The proposed change brings the requested information into a more current time period and replaces old subparts (a) through (j) of the original request, which were the subject of Verizon's Motion for Reconsideration, and eliminated old subpart (l). This last subpart sought the number of CLECs purchasing unbundled switching and the minutes of use purchased. Verizon had agreed to provide a response to subpart (l). In addition, Verizon agreed to provide a response to new subpart (d), which was originally designated as subpart (k).

Verizon challenged both the relevancy and the burden of complying with this request. In its application, Verizon offered testimony regarding the geographic breadth of competition within Virginia. This question as revised seeks information that may provide a more precise analysis of competition across Virginia. Thus, I find AT&T Set III, Request 66, as amended, to be relevant and reasonably calculated to lead to the discovery of admissible evidence.

Regarding questions concerning the burden of producing, based on the arguments of Verizon and AT&T, I find that a response to AT&T Set III, Request 66, as amended, should not be overly burdensome to Verizon. The four subparts AT&T now seeks may be less burdensome to provide that the two subparts Verizon originally agreed to provide. Therefore, Verizon's Motion for Reconsideration of AT&T Set III, Request 66, as amended, is denied.

Accordingly, Verizon is directed to provide responses as indicated above in a timely manner.

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Alexander F. Skirpan, Jr.
Hearing Examiner