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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 22, 2002

On May 21, 2002, Verizon Virginia, Inc. ("Verizon") filed a Motion to Compel Cavalier's Responses to Verizon Virginia Inc.'s First Set of Requests for Admission, Interrogatories, and Requests for Documents ("Motion") in which it sought responses by Cavalier Telephone, LLC ("Cavalier") to data requests Verizon propounded on May 15, 2002. Cavalier filed its objections to Verizon's data requests on May 20, 2002.

Cavalier objected to all of Verizon's First Set of Requests of Admission, Interrogatories, and Requests for Documents on various grounds. However, at the end of its objections, Cavalier stated as follows:

Subject to and without waiver of the foregoing objections, Cavalier will respond appropriately to the First Requests and make available for inspection and copying all non-privileged, non-confidential, non-competitively-sensitive, and responsive documents.

In its Motion, Verizon expressed concern over Cavalier's limitations to its responses, which would deny Verizon access to Cavalier's confidential and competitively sensitive information. As Verizon pointed out in its Motion, the protective agreement put in place for this proceeding provides for the disclosure and protection of confidential and competitively sensitive information. For example, ¶ 2 of the protective agreement adopted for this proceeding on March 29, 2002, provides for the disclosure of confidential information as follows:

Access to Confidential Information shall be specifically limited to Verizon, Staff, or Interested Parties, their counsel and to support personnel who are working on this case under the direction of their counsel and to whom it is necessary that the Confidential Information be shown for the purposes of this proceeding, so long as counsel for such party has executed an Agreement to Adhere to Protective Ruling ("Agreement"), which is Attachment A to this Ruling. Staff and Staff counsel are not required to sign the Agreement but are hereby ordered to preserve the confidentiality of the materials. Upon execution, all Agreements shall be promptly forwarded to the producing party and to the

Commission's Hearing Examiner at Office of Hearing Examiners,
P.O. Box 1197, Richmond, VA 23218-1197.

Representatives from both Verizon and Cavalier have signed the protective agreement. Therefore, I find that Cavalier should not withhold confidential information from Verizon in response to Verizon's requests. Verizon's Motion should be granted as to confidential information.

As to competitively sensitive information, ¶ 6 of the protective agreement states:

Where a party contends that they should not be required to produce, other than to Staff, specific documents, materials, or information due to their commercially or competitively sensitive nature ("Competitively Sensitive Information"), or that access to Competitively Sensitive Information should be restricted, such party shall bear the burden of proving that such specific documents, materials, or information should not be discoverable, or access should be restricted by appropriate motion directed to the Hearing Examiner for this matter.

Thus, Cavalier may object to providing competitively sensitive information, or may seek additional protections on such information, but depending upon the specific nature of the information, Cavalier may be directed to provide the requested information. Decisions concerning competitively sensitive information must be made on a case by case basis. Therefore, it is premature to rule on Verizon's Motion in regards to competitively sensitive information.

Finally, there is one other category of information covered by the protective agreement for this proceeding. In paragraph 5, the protective agreement deals with information in the possession of Cavalier that is confidential to a third party.

Verizon and Interested Parties shall not disclose information in their possession that may be held to be confidential by a third party without express authorization of the third party.

In responding to Verizon's requests, Cavalier should indicate if information is not supplied because it is confidential to a third party and that the third party has not provided Cavalier with express authorization to disclose the information.

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

Alexander F. Skirpan, Jr.
Hearing Examiner