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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 Cox Virginia Telcom, Inc.'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 Cox Virginia Telcom, Inc. ("Cox") to data requests Verizon propounded on May 15, 2002. Cox filed its objections to Verizon's data requests on May 17, 2002.

Cox objected to several of the requests made by Verizon on the grounds that the requests were overly broad, as they sought information regarding other carriers and requested documents not in Cox's possession, custody, and control. Included within these requests were subparts (b) of Verizon's Cox Requests I-1 through I-10 and Verizon's Cox Requests I-15 through I-17. In addition, Cox objected to the relevance of Verizon's Cox Request I-4(c), which sought information regarding the training that Cox provides its representatives. Cox objected to the form of Verizon's Cox Requests I-12 through I-14, which sought admissions from Cox. Cox objected to Verizon's Cox Requests I-15 through I-17 on the additional grounds that these requests sought information unrelated to Verizon's 271 Application. Cox objected to Verizon's Cox Request I-20 because Verizon failed to attach an Industry Letter to which the question referred. Finally, Cox objected to the relevance of Verizon's Cox Request I-24, which sought information regarding pole attachment arrangements between Cox and other CLECs.

In its Motion, Verizon argued that Cox should be compelled to provide answers to Verizon's requests, which merely seek the factual basis and underlying data that support specific allegations contained in Cox's testimony.

On May 21, 2002, Cox filed a response to Verizon's Motion. In its response, Cox agreed to respond to most of Verizon's requests with certain limitation. Cox continued its objections to subpart (c) of Verizon's Cox Request I-4, and Verizon's Cox Requests I-15 through I-17, and I-24.

The Commission's Rules of Practice and Procedure establish an extremely broad standard for discovery.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved. . . . It is not grounds for objection that the

information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.¹

As to the limitations sought by Cox and specific requests Cox has not agreed to provide I find as follows:

Limitations - In its response to Verizon's Motion, Cox states that it will provide non-privileged information that:

(i) does not require a special study, (ii) is within the knowledge of the person under whose supervision the response was prepared, (iii) encompasses documents and data within the possession, custody, and control of the person under whose supervision the response was prepared, and (iv) where applicable, makes business records available for Verizon's inspection.

As in other discovery rulings in this proceeding, Cox should not be compelled to perform special studies. However, in such situation, if Cox declines to make the requested study, it shall make the requested information available for review by Verizon. Further, I disagree with attempts to limit responses to knowledge or documents and data within the possession, custody, and control of the person preparing the response. In its Motion, Verizon stated that its requests "seek all evidence that support the specific Cox contention, including but not limited to all documents and data in Cox's control." Presumably, if Cox's witness responds to the interrogatory, there should be little or no difference between Cox or Verizon's proposed limitation. On the other hand, if someone other than the witness prepares Cox's response to discovery or if someone other than the witness is the true subject matter expert, then Cox's proposed limitation may withhold relevant data from Verizon. Thus, I find that Cox should be required to provide all data its witness relied upon or otherwise forms the basis of its testimony.

Verizon's Cox Request I-4(c) – In its Motion, Verizon claimed that the performance of its NMC representatives is dependant upon the level of training of CLEC representatives that interact with the NMC. Thus, the level training of Cox representatives that interact with the NMC appears reasonably calculated to lead to the discovery of admissible evidence. Therefore, Verizon's Motion is granted as to this request, but only for those Cox employees directly interacting with Verizon's NMCs related to Virginia matters.

Verizon's Cox Requests I-15 through I-17 – I agree with Verizon that these requests seek information related to issues raised by Cox and are relevant to this proceeding and appear reasonably calculated to lead to the discovery of admissible evidence. Therefore, Verizon's Motion is granted as to these requests.

Verizon's Cox Request I-24 – In its Motion, Verizon maintained that "other CLECs have claimed that Verizon's alleged practice of limiting CLEC's ability to rearrange Verizon facilities

¹ 5 VAC 5-20-260.

is unreasonable, and the issue of whether or not Cox permits other CLECs to rearrange its facilities is directly relevant to the issue of whether Verizon's practices are reasonable." Cox has not raised any issues in this proceeding concerning pole attachments. More importantly, I can find no relevance of Cox's pole attachment practices to whether Verizon meets the requirements of § 271(c)(2)(B)(iii) to provide non-discriminatory access to its poles, ducts, and rights-of-way at just and reasonable rates. Therefore, Verizon's Motion is denied as to this request.

Accordingly, Cox is directed to provide responses as indicated above in a timely manner. Responses to the original requests were due within seven calendar days. For purposes of calculating the due date for the responses directed by this Ruling, Cox may subtract the days beginning with the filing of its objection and ending with the filing of this Ruling.

Alexander F. Skirpan, Jr.

Hearing Examiner