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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 23, 2002

On May 22, 2002, Verizon Virginia, Inc. ("Verizon") filed a Motion to Compel Covad Communications Company'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 Covad Communications Company ("Covad") to data requests Verizon propounded on May 16, 2002. Covad filed its objections to Verizon's data requests on May 21, 2002.

Verizon's First Set of Requests for Admission, Interrogatories, and Requests for Documents consisted of the following question:

Ms. Evans and Mr. Clancy contend that "Verizon's real life billing practices fall short of meeting the FCC's pro-competitive truth-in-billing principles and guidelines." (p. 20)

- (a) Specify the principles and guidelines referred to.
- (b) State each and every fact on which you rely in making this contention.
- (c) Provide all evidence that supports this contention, including but not limited to all documents and data in your possession, custody or control.

Covad objects to the question on the grounds that the request calls for information already possessed by Verizon, and on the grounds that the question is overly broad, unduly burdensome, vague, and ambiguous. Further, Covad objects because it claims that in order to respond to the request, Covad's witness would be required to perform "special research to provide documents and data not in his or her possession, custody or control or evidence beyond his or her knowledge."

In its Motion, Verizon explained that its question "merely asks Covad to provide the factual basis for a specific allegation contained in Covad's testimony." Though it may possess all invoices and bills rendered to Covad by Verizon, Verizon argued that it has a right to know the specific facts and evidence upon which Covad relied in making its allegation. Finally, Verizon asserted that if Covad must undertake a special study or if the witness does not possess

subject matter knowledge, “[W]hat was Covad’s good faith basis for making the accusation in the first place?”

On May 23, 2002, Covad responded to Verizon’s Motion. In its response, Covad stated that it was willing to support its claims and was willing to provide portions of invoices that support its allegations. Nonetheless, Covad contended that a request for all documents in its possession is overly broad, burdensome, vague and ambiguous. Covad illustrated this by stating that “a recent Verizon monthly invoice to Covad for the Commonwealth of Virginia contained approximately 9,000 pages.”

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

I agree with Verizon that its question sought information related to an issue raised by Covad, is relevant to this proceeding, and appears reasonably calculated to lead to the discovery of admissible evidence. Covad may limit its response to information relied upon or otherwise forms the basis of the statement of its witness. Moreover, Covad need not provide Verizon with information already in Verizon’s possession. However, Covad must specify the facts and evidence relied upon. Therefore, I find Verizon’s Motion should be granted.

Accordingly, Covad 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, Covad 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

¹ 5 VAC 5-20-260.