

**DISCLAIMER**

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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 28, 2002**

On May 24, 2002, Verizon Virginia, Inc. ("Verizon") filed a Motion to Compel Cavalier's Responses to Verizon Virginia Inc.'s Third 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 20, 2002. Cavalier filed its objections to Verizon's data requests on May 22, 2002.

Verizon's Third Set of Requests of Admission, Interrogatories, and Requests for Documents to Cavalier was comprised of the following question:

Regarding page 33 lines 15-18 of Cavalier's testimony. For each of the 844 orders that were cancelled from the period of January to March 2002 due to IDLC deployment, please provide:

- (a) A listing of each order in Verizon VA territory. Include the PON and the date Cavalier cancelled the order.
- (b) For each of the orders in section (a), provide all documentation that validates the claim that the order was canceled due to IDLC deployment.

Cavalier's objection was as follows:

Cavalier objects to the request as overly broad and unduly burdensome. Cavalier further objects to the request as calling for information that is (a) not maintained by Cavalier in the form requested and/or (b) already within Verizon's possession, custody, or control. Cavalier already provided the supporting information that is available on this point, and Verizon is improperly trying to impose on Cavalier the burden of researching these orders (which may or may not be possible, given Verizon's purging of records) to provide additional information in a format requested by Verizon. Further, Verizon should have access to the same documentation, generated through its own LSOG and GUI, that this request purports to seek

from Cavalier. For all of these reasons, the request is improper and Cavalier objects to it in its entirety.

In its Motion, Verizon explained that it seeks a list of the 844 cancelled orders about which Cavalier complains as well as the PON and the date that Cavalier cancelled each of these Virginia orders. Furthermore, Verizon seeks the documentation that supports Cavalier's contention that these orders were cancelled due to IDLC deployment. Verizon questions the validity of Cavalier's assertion and therefore seeks the supporting evidence Cavalier relied upon.

On May 28, 2002, Cavalier filed a response to Verizon's Motion. In its response Cavalier pointed out that Exhibit 20 to its testimony already provides Verizon with all of the detailed information available from Cavalier's records. This exhibit provides the order date, telephone number, and customer name for each of the 844 orders cancelled due to no facilities. Moreover, Cavalier asserted that it does not maintain listings of the requested information by PON and by cancellation date. Cavalier argued that it should be able to limit its response to information relied upon or otherwise forms the basis of its testimony, which it already has provided.

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.<sup>1</sup>

While I agree with Cavalier that it may limit its responses to information it relied upon or otherwise forms the basis of its testimony, Cavalier's testimony also includes its attached exhibits. In addition, I agree that Cavalier should not be required to provide information that is not maintained or it does not possess. Nonetheless, Verizon is entitled to an opportunity to review the underlying documentation supporting Cavalier's testimony. Therefore, Cavalier should provide Verizon with, or access to, its underlying documentation supporting its allegation regarding the 844 orders, including Exhibit 20.

**Accordingly**, Cavalier 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, Cavalier may subtract the days beginning with the filing of its objection and ending with the filing of this Ruling.

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Alexander F. Skirpan, Jr.  
Hearing Examiner

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<sup>1</sup> 5 VAC 5-20-260.