

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Application Filing for a Compliance :
 Order Certificate by Verizon : Docket No. 2007-C-3
 New England, Inc. :

ORDER

*Decision In Response To Discovery Disputes in Docket No. 2007-C-3
(Compliance Order Certificate Phase)*

Whereas: Verizon New England, Inc. (“Verizon”) filed an application for a Compliance Order Certificate, in conformance with the requirements established in Section 3.3 of the Division’s Cable Rules, on September 28, 2007.

Whereas: A scheduling conference was subsequently conducted, whereby the Division established a deadline of November 26, 2007 for propounding all discovery requests. CoxCom, Inc. d/b/a Cox Communications (“Cox”) and Full Channel TV, Inc. (“Full Channel”), Intervenors in the docket, subsequently propounded a number of timely data requests. Verizon formally objected to several of the data requests on December 3, 2007. Both Cox and Full Channel later submitted written arguments urging the Division to compel responses to their discovery on December 5, 2007. The Division subsequently conducted a discovery conference on December 6, 2007, at which time the parties proffered oral argument in support of their respective positions.

Findings

In deciding on the merits of the discovery issues in dispute, the Division relied on the relevant pleadings and the oral arguments proffered at the December 6, 2007 discovery conference. This decision addresses the current remaining discovery-related disputes between Verizon and Cox and Full Channel.

1. Data Requests Cox-1, Cox-2, Cox-3, Cox-4 and Cox-17.

The Division finds these discovery requests neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon's observation that "*recent national studies have shown that areas with more than one cable operator have cable rates that are on average 15% lower than areas with a single provider*" is not tantamount to a claim that Verizon's rates are or will be 15% lower than Cox's rates. If Cox disputes the national studies referenced by Verizon, Cox is free to provide evidence to the contrary. Further, as the Division is preempted under the federal law from exercising any jurisdiction over cable television rates in service areas subject to "effective competition," the discovery in issue serves no material purpose in this proceeding. Therefore, the Division quashes these discovery requests.

2. Data Request Cox-6

The Division has twice previously addressed Cox's concerns over Verizon's RF signal leakage survey obligations under the federal law. Both times the Division declined to take up the matter in the context of a licensing

docket and found for Verizon.¹ For purposes of addressing this specific data request, the Division discerns no difference between Verizon's legal obligations, if any, to survey and report RF signal leakage from its own network or, alternatively, from its customers' premises. Therefore, this discovery request is quashed.

3. Data Request Cox-7

The Division finds this discovery request neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Therefore, this discovery request is quashed.

4. Data Request Cox-9

The Division finds this discovery request neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Therefore, this discovery request is quashed.

5. Data Request Cox-12

The Division finds this discovery request neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, taking the needs of the case into account, the Division finds this discovery request unduly burdensome. Therefore, this discovery request is quashed.

¹ See Order Nos. 18916, p.27; and 19021, p.44.

6. Data Request Cox-15

The Division finds this discovery request neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Therefore, this discovery request is quashed.

7. Data Requests Full Channel-2 and Full Channel-3

The Division finds Full Channel's request for the density numbers for Service Areas 1 and 4 to be relevant and reasonable. Verizon is directed to calculate the densities, in the event it hasn't already done so, and provide a response to these requests.

8. Data Request Full Channel-4

In view of the Division's findings above, the Division finds Full Channel's Data Request-4 to be relevant. Verizon is directed to clarify and/or supplement its response.

9. Data Request Full Channel-5

The Division finds Verizon's response to Full Channel's Data Request-5 to be reasonable. Therefore, this discovery request is quashed.

10. Data Request Full Channel-6

The Division finds Verizon's response to Full Channel's Data Request-6 to be reasonable. Therefore, this discovery request is quashed.

11. Data Request Full Channel-7

The Division finds this discovery request neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Therefore, this discovery request is quashed.

12. Data Request Full Channel-8

The Division finds Full Channel's amended Data Request-8 to be relevant. Verizon is directed to clarify and/or supplement its response.

13. Data Request Full Channel-9

The Division finds Full Channel's Data Request-9 to be relevant. Verizon is directed to clarify and/or supplement its response.

14. Data Request Full Channel-10

The Division finds Full Channel's Data Request-10 to be relevant. Verizon is directed to clarify and/or supplement its response.

Now, therefore, it is

(19141) ORDERED:

That the findings contained herein are hereby adopted as a dispositive resolution to the discovery issues in dispute.

Dated and Effective at Warwick, Rhode Island on December 10, 2007.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator

