

**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 Certificate           :  
                  of Authority to Operate by Verizon       :   Docket No. 2007-C-1  
                  New England, Inc.                         :

**ORDER**

*Decision In Response To Discovery Disputes in Docket No. 2007-C-1  
(Certificate of Authority to Operate Phase)*

Whereas: The Division takes administrative notice of Order Nos. 19021, 19092 and 19116, which were previously issued in this docket on August 21, October 5, and November 7, 2007, respectively.

Whereas: Verizon New England, Inc. ("Verizon") filed an application for a Certificate of Authority to Operate, in conformance with the requirements established in Section 3.5 of the Division's Cable Rules, on November 7, 2007.

Whereas: The Division subsequently scheduled a public hearing for December 3, 2007 and allowed the parties to conduct discovery during the period of time leading up to the hearing. CoxCom, Inc. d/b/a Cox Communications ("Cox"), an Intervenor in the docket, subsequently propounded a number of timely data requests. Verizon formally objected to several of the data requests on November 20, 2007. Cox thereupon filed a motion to compel on November 27, 2007. This decision addresses the current discovery-related dispute between Verizon and Cox.

## **Discovery Issues in Dispute**

### **1. Data Request Cox-3**

Data request “Cox-3” seeks the following information:

*“Please identify each community...in which Verizon will not be prepared to provide cable service beginning on or about December 17, 2007”.*

Verizon objected to this request *“because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.”* Verizon further objected claiming that *“the requested data is the confidential and proprietary business information of Verizon, and if obtained by Cox would substantially harm Verizon interests and place it at a competitive disadvantage.”*

In its motion to compel, Cox argues that the requested information is relevant to Verizon’s claims that granting its requested waiver would serve the public interest. Cox maintains that the “claim is without merit as to any community which would not benefit from the requested waiver.”

### **2. Data Request Cox-4**

Data request “Cox-4” seeks the following information:

*“Please provide the number and percentage of total households for each community to which Verizon will not be prepared to provide cable service beginning on or about December 17, 2007”.*

Verizon similarly objected to this request *“because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.”* Verizon further objected claiming that *“the requested*

*data is the confidential and proprietary business information of Verizon, and if obtained by Cox would substantially harm Verizon interests and place it at a competitive disadvantage.”*

Consistent with its arguments regarding Data Request 3, above, Cox similarly asserts that the requested information is relevant to Verizon’s claims that granting its requested waiver would serve the public interest. Cox also argues that “Verizon’s argument as to relevance is without merit.”

### 3. Data Request Cox-5

Data request “Cox-5” seeks the following information:

*“Please explain whether Verizon has claimed readiness to provide cable service within Service Areas 2, 3 and 8 as of any date prior to December 17, 2007. If so, please provide each such date and any document in which such date was communicated to any public officials, including the Division, the press, current or prospective customers, or any other third parties.”*

Verizon similarly objected to this request “*because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.*”

In its motion to compel, Cox repeats its argument that the requested information is relevant to Verizon’s claims that granting its requested waiver would serve the public interest.

### 4. Data Request Cox-6

Data request “Cox-6” seeks the following information:

*“Please state whether Verizon or any affiliate has been conducting any direct or other pre-sale marketing of cable service to residential households, businesses, multi-dwelling unit owners, governmental bodies or*

*other potential customers located in Service Area 2, Service Area 3 and/or Service Area 8. If your answer is in the affirmative, please provide a complete description of all such pre-sale marketing and marketing documents.”*

Verizon similarly objected to this request “*because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.*” Verizon further objected claiming that “*this request is so vague as to be unanswerable.*” However, without waiving its objection, Verizon stated “*that neither Verizon nor any affiliate of Verizon has engaged in pre-sale marketing of cable service directed to potential customers in Service Area Two, Three, and Eight, although Verizon’s general advertising may have reached some customers in these service areas.*”

#### 5. Data Request Cox-7

Data request “Cox-7” seeks the following information:

*“Please provide a copy of Verizon’s commercial leased access applications and contract form (as Cox provided as part of its Application for a Certificate of Authority to Operate for Service Area 5)”.*

Verizon similarly objected to this request “*because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.*” However, without waiving its objection, Verizon attached a copy of its “*National Leased Access Policy Statement*” (VZ-1) to its discovery response.

In its motion to compel, Cox contends that Section 3.5(c) of the Cable Rules requires that Verizon produce a copy of its “commercial leased access

application and contract form.” Cox argues that the National Leased Access Policy Statement provided by Verizon does not satisfy the data request, and that the Division should compel Verizon to provide a complete response to its discovery request.

#### 6. Data Request Cox-8

Data request “Cox-8” seeks the following information:

*“Please provide a map and street listings for the initial segment of each of Service Areas 2, 3 and 8 that Verizon will be prepared to provide cable service by December 17, 2007 (as Cox provided as part of its Application for a Certificate of Authority to Operate for Service Area 5).”*

Verizon similarly objected to this request *“because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.”* Verizon further objected claiming that *“the requested data is the confidential and proprietary business information of Verizon, and if obtained by Cox would substantially harm Verizon interests and place it at a competitive disadvantage.”*

Regarding Data Request Cox-8, Cox repeats its argument that the requested information is relevant to Verizon’s claims that granting its requested waiver would serve the public interest. Cox also questioned Verizon’s claim that the requested information is confidential.

#### 7. Data Request Cox-10

Data request “Cox-10” seeks the following information:

*“Please provide calculations, assumptions, workpapers and other documents supporting Verizon’s contention that it will be prepared to provide cable service to*

*approximately twenty-nine percent (29%) of the residential households in Service Areas 2, 3 and 8 beginning on or about December 17, 2007.”*

Verizon similarly objected to this request “*because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.*” Verizon further objected claiming that “*the requested data is the confidential and proprietary business information of Verizon, and if obtained by Cox would substantially harm Verizon interests and place it at a competitive disadvantage.*”

Regarding Data Request Cox-10, Cox repeats its argument that the requested information is relevant to Verizon’s claims that granting its requested waiver would serve the public interest.

#### 8. Data Request Cox-11

Data request “Cox-11” seeks the following information:

*“Reference the following statement on Page 2 of Verizon’s waiver request: ‘It is clearly in the public interest and the best interests of the residents of Providence, North Providence, Cranston, Foster, Scituate, Johnston, Westerly, Hopkinton, Richmond, Charlestown, South Kingstown, and Narragansett for Verizon to be allowed to provide cable service as soon as possible after the Division grants it Certificates of Authority to Operate.’ For each named community, please identify the percentage of residents to whom Verizon will be able to provide cable service prior to January 6, 2008. Provide supporting calculations, assumptions, workpapers and documents.”*

Verizon similarly objected to this request “*because the information being sought is neither relevant...nor reasonably calculated to lead to the discovery of admissible evidence.*” Verizon further objected claiming that “*the requested*

*data is the confidential and proprietary business information of Verizon, and if obtained by Cox would substantially harm Verizon interests and place it at a competitive disadvantage.*

Regarding Data Request Cox-11, Cox again repeats its argument that the requested information is relevant to Verizon's claims that granting its requested waiver would serve the public interest.

### **Findings**

After reviewing and considering the above-identified discovery disputes, the Division makes the following findings:

Regarding Data Requests Cox-3, Cox-4, Cox-5, Cox-8, Cox-10 and Cox-11, the Division finds that the information being requested by Cox exceeds the scope of Verizon's burden of proof under Section 3.5 of the Cable Rules, and therefore is neither relevant to the Division's consideration of Verizon's application nor reasonably calculated to lead to the discovery of admissible evidence. With respect to Verizon's requested waiver of Section 3.5(b) and claim that it "will be prepared to provide cable service to approximately twenty-nine percent (29%) of the residential households in Service Areas 2, 3 and 8 beginning on or about December 17, 2007", the Division finds the claim to be superfluous relative to the actual issue of whether a waiver of Section 3.5(b)'s 60-day notice requirement is warranted in this docket. The Division's consideration of Verizon's waiver petition will focus on the question of whether the general public interest will be served by the granting of the Section 3.5(b) waiver petition in this docket. Further, in considering the "public interest"

question, the Division must recognize that the Applicant/Petitioner is not constructing a new network and, therefore, will naturally be prepared to offer cable services sooner than contemplated under the Division's existing Cable Rules. In view of this undisputed fact, the Division would be more interested in confirming whether any potential customers would benefit from the requested 60-day notification waiver and/or whether the general public would be unfavorably impacted by the granting of the waiver, rather than basing such a decision on some amorphous disputed quantum of potential customers that may be available to be served on December 17, 2007.<sup>1</sup>

Additionally, in considering Cox's request for the specific communities and locations, and number of potential customers Verizon would be prepared to offer cable services to on or about December 17, 2007, the Division performed a balancing test in order to weigh Cox's interest in obtaining this information against Verizon's interest in protecting commercially valuable information. In conclusion, even if the Division considers the requested information relevant, material and necessary information, the Division must find that the harm posed to Verizon by the dissemination of this proprietary business information outweighs Cox's need for the information in this final *Certificate of Authority to Operate* phase of the instant docket.

Regarding Data Request Cox-7, the Division agrees with Cox and finds Verizon's objections without merit and its data response inadequate. Verizon is

---

<sup>1</sup> See "public interest" discussion in Order No. 18676, pp. 51-53 (Docket No. D-06-13), issued on July 25, 2006.



therefore directed to produce a copy of its commercial leased access applications and contract form.

Regarding Data Request Cox-6, the Division finds that Verizon has adequately responded to the discovery request and that no further action is necessary.

Now, therefore, it is

(19135) 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 November 28, 2007.

---

John Spirito, Jr., Esq.  
Hearing Officer

APPROVED: \_\_\_\_\_  
Thomas F. Ahern  
Administrator