COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of DSCI Corporation for Declaratory Orders to Ensure Verizon-Massachusetts Compliance with Resale Obligations with Respect to Customer Specific Pricing Contracts	)	D.T.E. 05-28

July 22, 2005

HEARING OFFICER RULING ON MOTION FILED BY DSCI CORPORATION TO COMPEL RESPONSES TO INFORMATION REQUESTS

I. INTRODUCTION

On July 12, 2005, DSCI Corporation ("DSCI") filed with the Department of Telecommunications and Energy ("Department") a Motion to Compel Discovery Responses ("Motion to Compel") from Verizon New England, Inc., d/b/a Verizon-Massachusetts ("Verizon"). In its Motion to Compel, DSCI requested that the Department require Verizon to respond to two information requests propounded by DSCI, i.e., DSCI 1-6 and DSCI 1-7 (DSCI Motion to Compel at 1). On July 19, 2005, Verizon filed an opposition to DSCI's Motion to Compel ("Verizon Opposition").

II. STANDARD OF REVIEW

With respect to discovery (i.e., information requests), the Department's regulations provide:

> The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of the issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled.

220 C.M.R. § 1.06(6)(c)(1). Hearing Officers have discretion in establishing discovery procedures and are guided, but not bound, in this regard by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26, et seq.
220 C.M.R. § 1.06(6)(c)(2). Mass. R. Civ. P. 26(b)(1) provides that:

> Parties may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Finally, G.L. c. 30A, § 12(1) provides agencies with the power to require the testimony of witnesses and the production of evidence. G.L. 30A, § 12(3) states, in part, that any party to an adjudicatory proceeding shall be entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. The Department's rule, 220 C.M.R. § 1.10(9), embodies the statutory authority to compel the appearance of witnesses and production of documents by subpoena.

III. POSITIONS OF THE PARTIES

A. DSCI

In its Motion to Compel, DSCI argues that the Department should require Verizon to respond to DSCI 1-6 and DSCI 1-7 because the information sought in those information requests is closely tied to issues raised in DSCI's Complaint and Verizon's responses will assist the Department in making its decision (DSCI Motion to Compel at 1). According to DSCI, the information requests are relevant to its claim that Verizon failed to provide timely and complete responses to DSCI's requests for pricing, terms, and conditions of Verizon's existing customer specific pricing ("CSP") arrangements to determine the availability of the CSP arrangements for resale (id. at 3).

DSCI states that, in its information request DSCI 1-6, it was attempting to determine whether Verizon had adopted a timetable for requests from competitive local exchange carriers ("CLECs") similar to the timetable that Verizon uses internally (id. at 3-4). DSCI argues that such a determination is relevant to assist the Department in determining whether Verizon is discriminating against CLECs in violation of federal and state law (id. at 4).

Similarly, with respect to DSCI 1-7, DSCI states that it seeks to obtain information on the process Verizon uses when a CSP is extended, modified, or terminated with a Verizon end-user customer (id. at 5). DSCI argues that Verizon's information as to its processes is specifically relevant in establishing Verizon's conduct at issue in this matter (id. at 5-6).

B. Verizon

In its Opposition, Verizon asserts that DSCI's Motion to Compel should be denied because the two information requests are irrelevant to the resolution of the issues in this proceeding (Verizon Opposition at 3). Verizon argues that DSCI is seeking information as to

Verizon's processes relating to retail customers, which, Verizon asserts, has no impact on Verizon's processes for reselling to wholesale customers (id. at 4-5). In addition, Verizon contends that there is no legal requirement that such processes follow similar timeframes (id. at 4).

IV. ANALYSIS AND FINDINGS

As an initial matter, the Department's Ground Rules for this docket require the parties to attempt to resolve discovery disputes prior to filing a motion to compel responses to information requests. The Ground Rules state:

> Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest extent possible. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference . . . . Motions unaccompanied by such certificate will be denied without prejudice.

D.T.E. 05-28, Procedural Notice at 6 (May 18, 2005). DSCI's Motion to Compel did not contain the certification required above. At the request of the hearing officer, DSCI provided a written statement by electronic mail in which DSCI asserted that it did not request a discovery dispute conference with Verizon because DSCI believed it would not be fruitful given that there appeared to be no middle ground for negotiations (see e-mail from Rob Munnelly to Carol Pieper (July 21, 2005)). DSCI also asserted that the close proximity of the hearing date precluded DSCI from spending time in unproductive discussions with Verizon (id.).

I conclude that, notwithstanding the fact that DSCI believed that a conference with Verizon regarding the discovery dispute would not be fruitful, DSCI was still obligated to undertake such a conference. It was at DSCI's request that the Department is addressing this dispute on an expedited basis, and it is even more imperative when on an expedited schedule, that parties comply with Department requirements designed to streamline the process.

However, DSCI is correct that the evidentiary hearing scheduled in this case is impending. Given our procedural schedule, denying DSCI's motion without prejudice on the basis of failure to comply with the discovery dispute requirement, and allowing DSCI to re-file its motion following the conference with Verizon (if the conference did not resolve the dispute) prior to the hearing is no longer an option. Therefore, I waive the requirement for a discovery dispute conference in this instance and will address the merits of DSCI's Motion to Compel.

In considering the appropriateness of DSCI's Motion to Compel, I determine that the information sought is relevant to this proceeding. Under the Massachusetts Rules of Civil Procedure, the standard for determining relevant discovery is extremely broad.[1] Moreover, federal regulations state in pertinent part that "a LEC must provide services to requesting telecommunications carriers for resale . . . provided within the same provisioning time intervals that the LEC provides these services to others, including end users." 47 C.F.R. § 51.603(b). In addition, in Verizon's Opposition and prefiled testimony, Verizon agrees that, in reselling CSPs, Verizon is required to coordinate between its wholesale and retail divisions (Verizon Opposition at 4, citing Direct Testimony of Pamela McCann at 3-5). However, Verizon argues that the process used for retail customers is inapplicable because such coordination "may introduce delays into this wholesale process that are not within Verizon MA's control" (id. at 4). Without knowledge of the actual process, including the time frames used for retail customers, the Department will have no way of determining whether there are, in fact, unreasonable delays in the wholesale process. Thus, I determine it is appropriate to allow DSCI to obtain the information requested in DSCI 1-6 and DSCI 1-7 regarding the time intervals with respect to Verizon's retail CSP customers.

In DSCI 1-7, DSCI also sought to determine whether Verizon would alert any CLEC reselling a CSP of an impending modification to the CSP. In its response, Verizon stated it does not provide any such notification to CLECs. While DSCI raises concerns as to the appropriateness of Verizon's lack of CLEC notification, those concerns are not pertinent to a motion to compel because Verizon did, in fact, respond to the question DSCI asked. Therefore, it is not necessary to rule on this portion of DSCI's Motion to Compel.

V. RULING

Accordingly, after due consideration, DSCI's Motion to Compel is granted in part. Given the expedited nature of this proceeding, Verizon should provide its responses to the Information Requests no later than 10:00 a.m., on Tuesday, July 26, 2005.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

/s/
Carol M. Pieper, Hearing Officer

---

[1] Under Mass. R. Civ. P. 26(b)(1), the information sought must be "reasonably calculated to lead to the discovery of admissible evidence."