COMMISSION HEARING OFFICER DIRECTIVE

ADMINISTRATIVE MATTERS	☐	DATE	December 1, 2008
MOTOR CARRIER MATTERS	☐	DOCKET NO.	**2008-328-C**
UTILITIES MATTERS	☒	ORDER NO.	**N/A**

HEARING OFFICER: **B. Randall Dong**

DOCKET DESCRIPTION:

Application of Time-Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of PBT Telecom, Inc. and for Alternative Regulation

MATTERS UNDER CONSIDERATION:

Time Warner Cable's Motion to Compel PBT Telecom, Inc. to Respond to Discovery Requests, or in the Alternative, Motion in Limine

HEARING OFFICER ACTION:

This matter comes before the Hearing Officer on the motion of TWCIS ("Applicant") for an order compelling PBT Telecom, Inc. ("Intervenor") to respond more fully to Interrogatories Nos. 1-1, 1-2, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 1-13, and 1-14, and Requests for Production Nos. 1-2, 1-3, 1-4, 1-5, 1-6, 1-9, 1-10, 1-11, and 1-12.

Our Rules provide for a broad scope of discovery. Commission Regulation 103-833(A) provides that "[a]ny material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." Rule 26(b)(1) of the South Carolina Rules of Civil Procedure further elaborates that materials are discoverable if they appear "reasonably calculated to lead to the discovery of admissible evidence." Commission Regulation 103-835 incorporates by reference the South Carolina Rules of Civil Procedure governing discovery matters not covered in Commission Regulations.

However, while the scope of permissible discovery is broad, discovery may be limited upon a showing that:

> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
> (ii) the party seeking the discovery has had ample opportunity by discovery in the action to obtain the information sought; or
> (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

S.C.R.C.P. 26(a).

In response to Interrogatories 1-1, 1-2, and 1-9, the Intervenor has objected and refused to answer on the basis of its assertion that the information sought is irrelevant. The Intervenor does not assert that the matter requested is privileged, unreasonably cumulative or duplicative, or that it is obtainable from a more convenient, less burdensome or less expensive source. Upon review of the statutes governing this Commission's review of the Application, the Hearing Officer finds that the data requested in Interrogatories 1-1, 1-2, and 1-9 are reasonably calculated to lead to the discovery of admissible evidence with regard to the question of whether the Applicant's provision of service will adversely impact the availability of affordable local exchange service, and he therefore directs the Intervenor to supplement its answers to these interrogatories accordingly.

The Intervenor's responses to Interrogatories 1-4 through 1-6, 1-8, and 1-10 through 1-13, in which the Intervenor reserves objections but provides answers subject to its objections, appear to be adequate. To the extent that the Intervenor's answers to these interrogatories may change over the course of this case, the Hearing Officer reminds all parties of the duty to provide timely supplementation of responses pursuant to S.C.R.C.P. 26(e).

Interrogatory 1-7 seeks information pertaining to the Intervenor's offerings, if any, of video and/or cable television services. The Hearing Officer finds that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence and therefore declines to direct the Intervenor to supplement its response.

Interrogatory 1-14 is reasonably calculated to lead to the discovery of admissible evidence, and the Intervenor's response is inadequate. The Hearing Officer therefore directs the Intervenor to supplement its response.

The Intervenor's responses to Production Requests 1-2 and 1-3, in which the Intervenor reserves objections but provides responses subject to its objections, appear to be adequate. The Hearing Officer therefore declines to direct the Intervenor to supplement its response.

With regard to the Applicant's Production Requests 1-5 and 1-6, the Hearing Officer finds that the requests are reasonably calculated to lead to the discovery of admissible evidence, and to the extent that they request production of documents filed with the Federal Communications Commission, the U.S. Department of Agriculture, the Universal Service Administrative Company, or the National Exchange Carrier Association, and such documents actually exist and were not filed under condition of confidentiality, the Hearing Officer directs the Intervenor to produce to the Applicant the responsive documents.

With regard to Production Request 1-9, the Hearing Officer declines to direct the Intervenor to produce commercially sensitive financial projections unless it intends to rely upon those projections to oppose the Application. To the extent that Production Request 1-10 seeks documents filed under condition of confidentiality, the Hearing Officer declines to direct the Intervenor to produce such confidential documents. Similarly, the Hearing Officer declines to direct the production of any proprietary or confidential communications with investors, stockholders, or board members in response to Production Request 1-11. Any documents responsive to these requests which are not proprietary or confidential should be produced.

With regard to Production Request 1-12, the Hearing Officer finds that the request is reasonably calculated to lead to the discovery of admissible evidence, and therefore directs that the Intervenor produce documents responsive to the requests which have been generated since the beginning of 2006.