LGA FALL 2011 CONFERENCE

Keeping in Tune with the Tax Trio

By

Ellen F. M. Posner,
Assistant County Attorney
Office of the Fairfax County Attorney

October 20-22, 2011

Table of Contents

Keeping in Tune with the Tax Trio

LGA FALL 2011 CONFERENCE

Keeping in Tune with the Tax Trio

October 20-22, 2011

Ellen F. M. Posner
Assistant County Attorney
Fairfax County Attorney's Office[1]
12000 Government Center Parkway
Fairfax, Virginia 22035

I. PRINCIPLES OF VIRGINIA PROPERTY TAXATION

All real and personal property in Virginia is subject to taxation unless the Constitution of Virginia provides for an exemption. Va. Const. art. X, § 1. In addition, all real and personal property is to be segregated for and subject to local taxation and must be assessed in the manner prescribed by the Virginia General Assembly. Va. Const. art. X, §§ 1, 4.

All taxes on real property shall be levied and collected under general laws and are to be "uniform upon the same class of subjects within the territorial limits of the authority levying the tax . . . ." Va. Const. art. X, § 1. The Virginia General Assembly is authorized to define and classify taxable subjects. Va. Const. art. X, § 1.

Assessments are to be made at fair market value, as may be prescribed by law. Va. Const. art. X, § 2. Section 2 also provides that, so long as the Commonwealth levies upon public service corporations a state franchise or license fee or other similar tax measured by receipts or earnings, the real estate and tangible personal property of such corporations will be assessed centrally by the Virginia State Corporation Commission (the Commission).

---

[1] *All positions, opinions, and views expressed in this paper do not necessarily reflect the positions of the Fairfax County Board of Supervisors or the Fairfax County Attorney. Rather, they should be construed as representing the opinions and views of the author.*

A. Va. Const. art. X § 1

1. Va. Const. art. X, § 1 is not self-executing

The constitutional requirement that all property shall be taxed is not self-executing. A state or local taxing official must be able to place his or her "finger on the letter of authority" in order to lawfully impose the tax. *County of Prince William v. Thomason Park Inc.,* 197 Va. 861, 91 S.E 2d 441 (1956); *Commonwealth v. Stringfellow,* 173 Va. 284, 4 S.E.2d 357 (1939).

Governments may not contract to exempt property from taxation. *City of Bristol v. Dominion Nat. Bank*, 153 Va. 71, 149 S.E. 632 (1929). They also may not relinquish their taxing powers. *City of Richmond v. Virginia Ry. & Power Co.*, 124 Va. 529, 98 S.E. 691 (1919).

Legislation is required to implement the Section 1 requirement that all property is subject to taxation. *County of Prince William v. Thomason Park Inc.*, 197 Va. 861, 91 S.E.2d 441 (1956); *Old v. City of Norfolk,* 178 Va. 378, 17 S.E.2d 427 (1941); *Commonwealth v. Stringfellow*, 173 Va. 284, 4 S.E.2d 357 (1939). A similar rule applies to property assessments performed by the Commission. In *Southern Ry. v Commonwealth*, 200 Va. 431, 105 S.E. 2d 814 (1958), the Virginia Supreme Court held that the existence of enabling legislation was a necessary predicate for certain Commission railroad assessments.

2. Legislative classification powers

The Virginia General Assembly is expressly authorized to define and classify taxable subjects and to segregate property for local taxation. See *FFW Enterprises v. Fairfax Cnty.,* 280 Va. 583, 701 S.E.2d 795 (2010); *East Coast Freight Lines v. City of Richmond,* 194 Va. 517, 74 S.E.2d 283(1953). The power to classify is significant because different classes of taxable subjects may be assessed differently and may be taxed at different amounts and rates. See *R. Cross, Inc. v. City of Newport News*, 217 Va. 202, 228 S.E.2d 113 (1976).

3. Uniformity

The requirement for uniformity in assessments applies only to a *direct* tax on property and not to privilege taxes such as motor vehicle license taxes, *Town of Ashland v. Bd. of Supervisors*, 202 Va. 409, 117 S.E.2d 679 (1961) or local recordation taxes.

Pocahontas Consolidated Collieries Co. v. Commonwealth, 113 Va. 108, 73 S.E. 446 (1912).

The rate of tax must be the same on all property within a class. *Day v. Roberts*, 101 Va. 248, 43 S.E. 362 (1903). See *R. Cross, Inc. v. City of Newport News,* 217 Va. 202, 228 S.E.2d 113 (1976).

Methods of valuing property *within* a class set by the legislature may be different if they are based on rational distinctions which create subclasses within a statutory classification. *R. Cross, Inc. v. City of Newport News*, 217 Va. 202, 228 S.E.2d 113 (1976) (addressing the issue in the context of personal property). The Constitution mandates uniformity in assessment of properties having like characteristics and qualities located in the same area. *Lee Gardens Arlington Ltd. Partnership v. Arlington County Bd.,* 250 Va. 534, 463 S.E.2d 646 (1995) (addressing the issue in the context of real property). See *Smith v. City of Covington,* 205 Va. 104,135 S.E.2d 220 (1964). The Constitution does not, however, mandate uniformity as *between* property assessed by the Commission and property assessed by local assessment officers. *City of Richmond v. Commonwealth,* 188 Va. 600, 50 S.E.2d 654 (1948).

The Constitution restricts uniformity requirements to the "territorial limits of the authority levying the tax." *Moss v. Tazewell County,* 112 Va. 878, 72 S.E. 945 (1911); *Day v. Roberts*, 101 Va. 248, 43 S.E. 362 (1903).Territorial limits are the actual boundaries of the political subdivision as fixed by law. *Robinson v. City of Norfolk,* 108 Va.14, 60 S.E. 762 (1908). Towns are considered within the territorial limits of the counties in which they are located. See *Campbell v. Bryant,* 104 Va. 509, 52 S.E. 638 (1905). The uniformity provision is not violated if the tax rate on a class of property in a city is greater than on the same class of property in a county. *Tresnon v. Bd. of Supervisors of Henrico County,* 120 Va. 203, 90 S.E. 615 (1916).

B. Va. Const. art. X, § 2; "The Fair Market Value Clause"

Va. Const. art. X, § 2 requires that all assessments of real estate and tangible personal property be at fair market value, as prescribed by law. The concept of fair market value is the cornerstone of property valuation in Virginia. *Tuckahoe Woman's Club v. City of Richmond*, 199 Va. 734, 101 S.E.2d 571 (1958).

Fair market value and uniformity should be construed together. *Bd. of Supervisors v. Donatelli & Klein, Inc.*, 228 Va. 620, 325 S.E.2d 342 (1984); *R. Cross Inc. v. City of Newport News*, 217 Va. 202, 228 S.E.2d 113 (1976). The Virginia Supreme Court has held that when the principles of uniformity and fair market value conflict, the preferred standard is uniformity in assessments. *Bd. of Supervisors of Fairfax County v. Leasco Realty,* 221 Va. 158, 267 S.E.2d 608 (1980). But see *Bd. of Supervisors of Fairfax County v. Telecommunications Industries, Inc.,* 246 Va. 472, 436 S.E.2d 442 (1993).

A property's full fee simple and not its use value should be assessed. *City of Waynesboro v. Keiser,* 213 Va. 229, 191 S.E. 2d 196 (1972); *Tuckahoe Woman's Club v. City of Richmond*, 199 Va. 734, 101 S.E. 2d 571 (1958). In *Arlington County Bd. v. Commonwealth Dep't of Taxation*, 240 Va.108, 393 S.E. 2d 194 (1990), the Virginia Supreme Court stated that Article X, § 2 requires that fair market value be determined by considering a property's highest and best use in its particular location. See *Shoosmith Bros. v. County of Chesterfield,* 268 Va. 241, 601 S.E.2d 641 (2004); *Norfolk & W. Ry. v. Commonwealth,* 211 Va. 692,179 S.E.2d 623 (1971).

In Virginia, the concept of fair market value is considered the same for tax assessment purposes as it is for condemnation. *Russell v. Commonwealth Transp. Comm'r,* 261 Va. 617, 544 S.E.2d 311 (2001); *Fairfax County Park Authority v. Virginia Dept. of Transp.,* 247 Va. 259, 440 S.E.2d 610 (1994).

Fair market value is defined as the price the property will bring when offered for sale by a seller who desires but is not obliged to sell and bought by a buyer under no necessity of purchasing. *Clarke Associates v. County of Arlington*, 235 Va. 624, 369 S.E.2d 414 (1988); See also *Bd. of Supervisors of Fairfax County v. Telecommunications Industries, Inc.*, 246 Va. 472, 436 S.E.2d 442 (1993); *Bd. of Supervisors of Fairfax County v. Donatelli & Klein, Inc,* 228 Va. 620, 325 S.E.2d 342 (1985). Everything which affects market value should be considered. *American Viscose Corp. v. City of Roanoke*, 205 Va.192, 135 S.E.2d 795 (1964); *Appalachian Electric Power Company v. Gorman*, 191 Va. 344, 61 S.E.2d 33 (1950).

Valuation is not an exact science. Different methods may be employed in the determination of fair market value. *City of Norfolk v. Snyder*, 161 Va. 288, 170 S.E. 721 (1933). The value of land, buildings, and tangible personal property is dependent upon many factors that cannot be prescribed by a single rule. *Southern Ry. Co. v. Commonwealth,* 211 Va. 210, 214, 176 S.E.2d, 578, 580-81 (1970). There are many factors to be considered in deriving the fair market value of property. While the size and cost are to be given weight, other factors which may increase or diminish value should be considered. These factors include the property's design, style, location, appearance, access, availability of use and the prevailing economic circumstances at the time of valuation. *Smith v. City of Covington*, 205 Va. 104, 135 S.E.2d 220 (1964). See *Application of Elantic Telecom, Inc.*, PST-2004-00046 (July 17, 2008; August 1, 2008).

The sales price of the subject property is not conclusive evidence of fair market value, but is to be accorded substantial weight in the analysis. *Arlington County Bd. v. Ginsberg*, 228 Va. 633, 325 S.E.2d 348 (1985); *American Viscose Corp. v. City of Roanoke*, 205 Va. 192, 135 S.E.2d 795 (1964).

Distress values are not *ipso facto* credible indicators of fair market value. *Lake Monticello Service Co. v. Bd. of Supervisors of Fluvanna County*, 237 Va. 434, 377 S.E.2d 446 (1989) (properties sold at forced sales are generally not considered reliable evidence of fair market value). See *Cromer v. DeJarnette*, 188 Va. 680, 51 S.E.2d 201 (1949). When taxpayers appeal, their claimed fair market values should be property specific, not class based. See e.g. *TB Venture LLC v. Arlington Cnty.*, 280 Va. 558, 701 S.E.2d 791 (2010).

C. Is it real or is it personal?

The law of fixtures determines whether and when an item of personal property placed upon realty becomes real property. There are three basic tests to be applied in making that determination. They are annexation of the property to the realty, adaptation to the use or purpose of that portion of the realty to which the property is connected, and the intention of the parties. The intention of the party making the annexation is the principal factor to be considered. *Transcontinental Gas Pipe Line Corp. v. Prince William County*, 210 Va. 550, 172 S.E.2d 757 (1970).

D. Taxation of tangible personal property

In Virginia, the state and local governments are permitted to use different methods of valuing personal property among separate classes, so long as each method is uniformly applied within a particular class. See *R. Cross, Inc. v. City of Newport News*, 217 Va. 202, 228 S.E.2d 113 (1976). The Virginia Constitution does not require uniformity among separate classes of personal property. Any method must reasonably be expected to determine actual fair market value.

In *Bd. of Supervisors of Fairfax County v. Telecommunications Industries, Inc.*, 246 Va. 472, 436 S.E.2d 442 (1993), the Virginia Supreme Court held that it was manifest error when the County's tax officials failed to consider technological obsolescence in taxing the fair market value of a taxpayer's computers, after having been so requested.

Localities use the actual purchase price of tangible personal property plus any applicable state and local sales or use taxes to establish the original cost for the purposes of valuation by the depreciated cost method. When the depreciated cost method is used by a locality, the taxpayer reporting requirements of Va. Code Ann. § 58.1-3518 must be observed. Section 58.1-3518 requires that taxpayers who report personal property locally for taxation must include on their local tax returns the "total of original cost by year of purchase." Va. Code Ann. § 58.1-3518 (2009). Such cost is the original capitalized cost or the cost that would have been capitalized if the expense deduction in lieu of depreciation was elected under § 179 of the Internal Revenue Code. The total original cost requirement of § 58.1-3518 has been construed to include such items as sales tax, freight, and installation. See e.g. *Software AG of North America v. Fairfax County Board of Supervisors*, 42 Va. Cir. 423(1997). See also *Wang Federal Inc. v. Fairfax County Board of Supervisors*, 1997 Va. Cir. Lexis 550 (Cir Ct. Fairfax County; June 1997).

The Commission uses a similar method. Because the assessed valuations of tangible personal property are often derived by means of reference to a recognized pricing guide or by application of an internally developed standardized depreciation schedule, the fundamental issue will be whether use of a recognized guide or depreciation schedule reasonably satisfies the fair market value requirements of the Virginia Constitution.

E. <u>Commission assessments of telephone company property</u>

1. Subject to the requirements of Va. Const. art. X, § 2, the Commission is authorized to centrally assess the real and personal property of certain public service corporations to include telephone companies. Pursuant to Va. Const. art. IX, § 3, the Commission is also authorized to establish rules of practice and procedure not inconsistent with the basic due process requirements of reasonable notice and hearing opportunity and not inconsistent with applicable mandates of the Virginia General Assembly. See *VEPCO v. SCC*, 226 Va. 541, 312 S.E.2d 25 (1984).

2. The assessments of property of companies who hold certificates and qualify as telephone companies are performed pursuant to Va. Code Ann. §§ 58.1-2600-2676 (2009). A telephone company is defined as a "person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial

mobile service as defined in § 332(d) (1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service...." Va. Code Ann. § 58.1-2600(A)(2009).

3. Assessments of telephone company property are performed annually by the Commission. Personal property valuations are performed in accordance with the requirements of Va. Code Ann. §§ 58.1-2604 and 58.1-2633 (2009).

4. Pursuant to Va. Code Ann. § 58.1-2628, each telephone company on or before April 15 shall annually report to the Commission "all real and tangible personal property of any description in the Commonwealth" that it, as of the preceding January, owns, operates, or uses, with the exception of leased cars, trucks, or real estate. Va. Code Ann. § 58.1-2628(A) (2009). *Compare* Va. Code Ann. § 58.1-2628(A) *with* Va. Code Ann § 58.1-3015 (2009) (the latter section describes to whom property is taxed for strictly *local* assessment purposes).

5. If a company whose property is subject to central assessment fails to report its property, the Commission is empowered to make the assessment on the best information available. Va. Code Ann. § 58.1-2633(B) (2009). The Commission is also empowered to summon the taxpayer company, through its officers or employees, to appear before the Commission with whatever documents or records the Commission deems necessary for the making of the assessment. Va. Code Ann. § 58.1-2633(C)(2009).

6. The real and tangible personal property of telephone companies shall be assessed at the property's highest and best use. *County Bd. v. Commonwealth Dept. of Transp.* 240 Va. 108, 393 S.E.2d 194 (1990); *Norfolk & W. Railway v. Commonwealth,* 211 Va. 692, 179 S.E.2d 632 (1971).

7. Distress values are not credible indicators of fair market value. *Lake Monticello Service Co. v. Bd. of Supervisors of Fluvanna County*, 237 Va. 434, 377 S.E.2d 446 (1989); *Cromer v. DeJarnette*, 188 Va. 680, 51 S.E.2d 201(1949).

8. Once completed, the Commission is required to promptly forward copies of the assessment to the company and to appropriate local officials. Taxation of real and personal property of telephone companies remains with the locality where the property is located. Va. Code Ann. § 58.1-2606(A)(2009).

Except for certain motor vehicles and aircraft which are to be taxed at the applicable local personal property tax rate, the tangible personal property of telephone companies must be taxed at the same rate as local real estate. Va. Code Ann. §§ 58.1-2606 (A), (B) (2009).

9. Both the taxpayer and any affected locality have the right to apply to the Commission for review and correction of an assessment or of any particular item included in an assessment. An application for review and correction must be filed within three months from receipt of the assessment. Va. Code Ann. § 58.1-2670(2009).

II. TAXPAYER APPEALS OF ASSESSMENTS MADE BY THE VIRIGINIA STATE CORPORATION COMMISSION

A. Va. Code Ann. § 58.1-2670 affords an appeal to any taxpayer or any county, city or town "aggrieved by any action of the Commission in the ascertainment of... the value of any property of any corporation or company assessed by the Commission."

1. An application for review and correction must be filed within three months after receiving a certified copy of the assessment of value. Va. Code Ann. § 58.1-2670.

2. The application must specify and set out with reasonable certainty the items for which review and correction are sought and the grounds of the complaint. Va. Code Ann. § 58.1-2670.

3. The application must be verified by affidavit. Va. Code Ann. § 58.1-2670.

B. A circuit court does not have jurisdiction to entertain an application filed under Va. Code Ann. § 58.1-3984 by a public service corporation to correct a local tax levy on the grounds that the underlying valuation made by the Commission was erroneous, absent review and correction of the Commission's valuation by the Supreme Court. *City of Alexandria v. Richmond, Fredericksburg & Potomac R.R.*, 223 Va. 293, 288 S.E.2d 457 (1982). A party aggrieved by State Corporation Commission action has an appeal of right to the Supreme Court and "[n]o other court of the

Commonwealth shall have jurisdiction to review, reverse, correct or annul any action of the Commission." Va. Const. Art. IX, § 4.

C. The Commission has the powers of a court of record to administer oaths, to compel attendance of witnesses and the production of documents. Va. Const. Art. IX, § 3.

D. When an application is filed, the Commission must fix a time and place at which it will hear testimony. A copy of the notice of the time and place of the hearing must be served by the applicant upon the company or corporation and each locality whose revenue is, or may be, affected at least ten days prior to the hearing. Va. Code Ann. § 58.1-2671. See also Va. Const. Art. IX § 3.

   1. Localities may file a notice of participation as a respondent. 5 VAC 5-20-80.B.

   2. The notice of participation must contain (i) a statement of the locality's interest, (ii) a statement of the actions sought, to the extent known, and (iii) the factual and legal basis for the action. 5 VAC 5-20-80.B.

   3. Any locality filing a notice of participation shall be a party to the process. 5 VAC 5-20-80.B.

   4. The Commission may, by order, assign a matter to a hearing examiner. The hearing examiner may exercise all the adjudicatory powers of the Commission. The hearing examiner must issue a written final report and recommendation to the Commission. 5 VAC 5-20-120.

   5. The Commission will direct filing of testimony and exhibits by the parties. Any respondent that chooses not to file testimony and exhibits by the date set by the Commission may not thereafter present testimony and evidence, except with leave, but may participate in the process and cross examine staff and other parties. 5 VAC 5-20-240.

E. At any time within three months after a taxpayer receives the certified copy of its assessment of value, the Commission may of its own motion, after not less than 10 days notice to the taxpayer and each locality whose revenue is affected by the items or items to be reviewed and an opportunity to introduce testimony, review and correct the item or items as to which the Commission may have cause to believe that an error may have been made. Va. Code Ann. § 58.1-2672.

F. Pursuant to 5 VAC 5-20-260, certain limited interrogatories and document request may be propounded by the parities. In 2011, the Commission amended its rules this year to allow limited discovery to be propounded to Commission Staff. (Attachment I).

G. If, after the evidence in introduced at a hearing or its own investigation, the Commission is of the opinion that the assessment is excessive, it shall reduce the assessments. If the assessment is insufficient, it shall increase the assessment. Va. Code Ann. § 58.1-2673.

H. Any taxpayer or any locality aggrieved by any assessment by the Commission, after having proceeded before the Commission, may appeal from any final order or action of the Commission to the Supreme Court, as a matter of right. Va. Code Ann. § 58.1-2675. See also Va. Const. Art. IX § 4.

1. If the Supreme Court determines that the assessment is excessive, it shall reduce it, or if insufficient, it shall increase it. Va. Code Ann. §58.1-2676.

2. Unless assessed taxes were paid under protest, when due, the Court, if it disallows the claim on an appeal from a taxpayer, shall, enter judgment against the taxpayer for the taxes assessed and for a sum, "by way of damages," equal to interest at the rate of one percent a month upon the amount of the taxes from the time they were due. Va. Code Ann. §58.1-2676.

3. If the decision is in favor of the taxpayer, appropriate relief will be granted, including the right to recover any excess taxes paid, with interest and costs. Va. Code Ann. § 58.1-2676.

4. The Court may return the case to the Commission for further proceedings. Va. Code Ann. § 58.1-2676.

III. <u>THE VERIZON 2009 TAX APPEALS TO THE COMMISSION</u>

A. <u>Summary of Verizon Tax Appeals</u>

1. In December 2009 Verizon South Inc., and Verizon Virginia Inc., filed two statewide personal property tax appeals with the Commission. *Application of Verizon South Inc.*, PST-2009-00032; *Application of Verizon Virginia Inc.*, PST-2009-00033. The cases were consolidated into one proceeding before the Commission.

2. Over 107 localities intervened and actively participated in the proceeding.

3. The appeals involved Verizon's challenge to the Commission 2009 statewide assessment of all Verizon's personal property contained in five discrete taxable classes.

   Verizon's appeal was brought pursuant to Va. Code Ann. § 58.1-2670 (2009).

4. Given the extraordinary amount of property and equipment that entailed prodigious discovery was propounded among the parties. See also *Application of Elantic Telecom, Inc.*, PST-2004-00046/ PST-2005-00029/PST-2007-00021. (Attachment II composite).

5. Recognizing the need for economics of scale, the Commission requested and the localities endeavored to combine and consolidate their efforts, arguments, and presentations, wherever it made sense and whenever it did not prejudice the rights of an individual entity.

6. On December 10, 2010, over 70 localities collaborated and submitted a "Consolidated Motion for Final Summary Judgment and/or to Dismiss Applicants' Supplemental Applications, Request for Oral Argument and Stay of Proceedings." (Attachment III).

7. The Commission held a hearing on the localities' Consolidated Motion on May 3, 2011. Many localities offered legal argument in support of the Motion.

8. Although the Hearing Examiner denied the localities' consolidated motion on June 16, 2011 (Attachment IV), the rulings and findings that she included in that opinion led to Verizon's withdrawal of its supplemental applications on August 3, 2011, and granted on August 19, 2011. (Attachment V composite).

\\s17prolaw01\Documents\113243\PAW\376525.doc

ATTACHMENT I

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 9, 2011

CLERK'S OFFICE

2011 AUG -9 A 10: 06

11081028248

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. CLK-2011-00001

Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure

ORDER ADOPTING REVISIONS TO PART IV OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

On January 10, 2011, the State Corporation Commission ("Commission") issued its Order for Notice of Proceeding to Consider Revisions to the Commission's Rules of Practice and Procedure ("Order for Notice of Proceeding") in this case. The Commission determined that it was appropriate to revisit Part IV of the Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules"), to consider issues related to discovery in Commission proceedings. The Commission invited interested parties to address, among other things, whether: (i) the Commission's Staff ("Staff") should be subject to additional discovery and, if so, what types of additional discovery and in what types of proceedings; and (ii) whether experts or consultants retained by Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings. The Commission also invited interested parties to address how subjecting Staff to additional discovery may affect: (i) the Commission's ability to meet statutory deadlines in certain types of proceedings; (ii) available resources and efficiency in handling cases; (iii) the Staff's ability to interact informally with regulated entities and their customers to effect resolution of disputes; (iv) the ability of Staff to work with regulated entities in competitive industries; and (v) the protection of sensitive information provided to Staff by regulated entities.

The Commission received eight comments in response to its Order for Notice of Proceeding. The Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates ("Committees"), representing large industrial customers, filed comments in support of maintaining the Commission's existing Rules. The following filed comments suggesting revisions to the Rules: Columbia Gas of Virginia, Inc. ("Columbia Gas"); Washington Gas Light Company ("Washington Gas"); Verizon Virginia Inc. and Verizon South Inc. ("Verizon"); and the Virginia Telecommunications Industry Association ("VTIA"). One individual filed comments adopting the position of the VTIA. The Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed a Notice of Participation and raised no concerns with the existing Rules. Shenandoah Valley Electric Cooperative filed comments in support of electronic filing and management of documents.

On April 8, 2011, the Staff filed its Response to the comments submitted herein, addressing the necessity for the suggested revisions. Staff noted that no electric, water, or sewer utilities filed comments raising concerns with the Commission's Rules, nor did any companies or individuals associated with the financial services industry.

On May 26, 2011, the Commission issued an Order for Notice and Hearing to Consider Proposed Revisions to Part IV of the Commission's Rules of Practice and Procedure ("Order for Notice and Hearing"). The Order for Notice and Hearing, among other things: (1) identified proposed revisions to Part IV of the Rules ("Proposed Rules"), which expand the discovery on Staff in adjudicatory and regulatory cases; (2) directed that public notice of the Proposed Rules be given; (3) permitted interested persons and Staff to file written or electronic comments on the Proposed Rules; and (4) scheduled a public hearing to receive oral comment from interested persons on the Proposed Rules.

11081 0248

The public hearing was convened on July 12, 2011, at which time oral comment was received from the following, *seriatim*: Verizon; Virginia Electric & Power Company ("Virginia Power"); Columbia Gas; Consumer Counsel; Committees; and Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that we shall adopt the rules appended hereto as Attachment A, effective as of September 1, 2011. In making our determination in this matter, the Commission has considered all of the comments and arguments submitted in this proceeding. The rules approved herein, which satisfy all legal requirements, significantly expand Staff's obligation to respond to discovery in both adjudicatory and regulatory proceedings before the Commission.[1]

For example, in adjudicatory cases, Staff is required to provide the following – which will necessarily include any information that is favorable to the defendant:

- All relevant statements made by the defendant;
- All relevant statements made by Staff's witnesses;
- All relevant statements made by witnesses that Staff does not intend to call to testify at the hearing;
- All documents and objects that Staff intends to introduce at the hearing;
- All documents and objects that Staff obtained for purposes of the case (regardless of whether such will be introduced at the hearing); and
- A list of witnesses that Staff intends to call to testify at the hearing.[2]

[1] The rules approved herein also reflect changes to the Proposed Rules that, among other things: (i) require Staff to provide evidence that it does not intend to introduce at the hearing, including evidence favorable to the defendant; (ii) define a witness "statement" as used in these rules; and (iii) clarify that these rules do not require disclosure of information prohibited by statute or other legal privilege.

[2] Rule 5 VAC 5-20-280.

In addition, the rules adopted herein likewise require Staff to respond to discovery in regulatory proceedings and to provide the following:

- All factual information supporting workpapers of Staff or an expert or consultant filing testimony on behalf of Staff;
- All electronic spreadsheets, including underlying formulas and assumptions, supporting workpapers of Staff or an expert or consultant filing testimony on behalf of Staff;
- All documents relied upon as a basis for recommendations or assertions in prefiled Staff testimony, Staff reports or exhibits filed by Staff, or by an expert or consultant filing testimony on behalf of Staff; and
- The identity of other formal proceedings in which an expert or consultant filing testimony on behalf of Staff testified regarding the same or a substantially similar subject matter.[3]

The Commission received no opposition to the Proposed Rules from any investor-owned electric utility, any electric cooperative, any natural gas utility, any water and/or sewer company, any insurance company or agent, the banking industry, the securities industry, or any consumers or representatives thereof.

Virginia Power supported the Proposed Rules, stating that the rules "are adequate and will serve the parties well."[4] Similarly, Allegheny Power submitted a letter in support of the Proposed Rules.[5] Columbia Gas stated that the Proposed Rules "adequately address the

---

[3] Rule 5 VAC 5-20-260.

[4] Tr. 49.

[5] Allegheny Power's June 8, 2011 Letter.

comments" filed by Columbia Gas in this case.[6] Washington Gas also "does not object to the Proposed Rules, and does not, at this time, propose any revisions to the Proposed Rules."[7]

The Committees – comprised of large industrial users of electricity – argued that, even though they often take positions "fiercely adverse to those of … Staff:" (a) no party has shown that a discovery problem actually exists; (b) no additional discovery of Staff should be permitted; (c) the Proposed Rules are not necessary; and (d) additional obligations on Staff would be contrary to the public interest.[8] The Committees, however, did not ultimately object to adoption of the Proposed Rules.[9]

Consumer Counsel supported the Proposed Rules, explaining that the rules "expand the scope of discovery, both in regulatory and adjudicatory proceedings."[10]

Verizon and VTIA objected to the Proposed Rules.[11] While these participants asserted that the Proposed Rules should be further modified, we note that the final rules adopted herein extensively and meaningfully increase the discovery on Staff. The new discovery rules, for example, require Staff to provide: (1) evidence favorable to the defendant; (2) hearing exhibits and other documents obtained for the case; (3) a list of witnesses; (4) statements obtained from witnesses and non-witnesses; (5) factual information, including electronic spreadsheets, supporting Staff's workpapers; (6) access to information from experts testifying on behalf of

---

[6] Tr. 50.

[7] Washington Gas' July 5, 2011 Comments at 3-4. Washington Gas also "supports discovery of the Staff, and Staff's consultants or experts, to the same extent allowed for the applicant and other parties…." *Id.* at 4.

[8] Tr. 51-64; Committees' March 18, 2011 Comments at 4.

[9] Tr. 63.

[10] Tr. 50.

[11] *See, e.g.*, Verizon's July 5, 2011 Comments at 2; VTIA's July 5, 2011 Comments at 1.

Staff; and (7) documents relied upon by Staff or its testifying consultant. Indeed, Verizon conceded that, even for criminal cases, (i) Commonwealth Attorneys' prosecutorial staff is not subject to the type of discovery that Verizon seeks herein, and (ii) the federal Jencks Act (regarding discovery in federal criminal cases)[12] does not go as far as the discovery rules adopted here in terms of the discovery requirements placed on federal prosecutorial staff.[13]

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules of Practice and Procedure, as set forth in 5 VAC 5-20-10 *et seq.*, are hereby revised and adopted as set forth on the attachment to this Order Adopting Revisions to Part IV of the Commission's Rules of Practice and Procedure, effective as of September 1, 2011.

(2) The Commission's Division of Information Resources shall forward this Order Adopting Revisions to Part IV of the Commission's Rules of Practice and Procedure and the rules adopted herein to the Registrar of Virginia for publication in the *Virginia Register*.

(3) This case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all public utilities providing service within the Commonwealth of Virginia and to representatives of the insurance, banking, and securities industries as shown on the attached appendices and to the individuals and organizations on the service list attached hereto.

[12] *See* 18 U.S.C. § 3500.

[13] Tr. 41-46.

STATE CORPORATION COMMISSION, CLERK'S OFFICE

Proposed Amendments to Rules of Practice and Procedure

5VAC5-20-260. Interrogatories ~~to parties~~ or requests for production of documents and things.

The commission staff and any party in a formal proceeding before the commission, other than a proceeding under 5VAC5-20-100 A, may serve written interrogatories or requests for production of documents upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the staff or requesting party information as is known. Interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. Such otherwise untimely interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, may not be served until such leave is granted. ~~No interrogatories~~ Interrogatories or requests for production of documents may be served upon a member of the commission staff, ~~except~~ or an expert or consultant filing testimony on behalf of the commission staff, in a proceeding under 5 VAC 5-20-80 to discover: (i) factual information that supports the workpapers submitted by the staff pursuant to 5VAC5-20-270, including electronic spreadsheets that include underlying formulas and assumptions; (ii) any other documents relied upon as a basis for recommendations or assertions in prefiled testimony, staff reports or exhibits filed by staff, or by an expert or consultant filing testimony on behalf of the staff; or (iii) the identity of other formal proceedings in which an expert or consultant filing testimony on behalf of the staff testified regarding the same or a substantially similar subject matter. The disclosure of communications within the commission shall not be required and, except for good cause shown, no interrogatories or requests for production of documents may be served upon a member of the commission staff, or an expert or consultant filing testimony on behalf of the staff, prior to the filing of staff's testimony. All interrogatories and requests for production of documents shall be filed with the Clerk of the Commission. Responses to interrogatories and requests for production of documents shall not be filed with the Clerk of the Commission.

The response to each interrogatory or document request shall identify by name the person making the response. Any objection to an interrogatory or document request shall identify the interrogatory or document request to which the objection is raised, and shall state with specificity the basis and supporting legal theory for the objection. Objections shall be served with the list of responses or in such manner as the commission may designate by order. Responses and objections to interrogatories or requests for production of documents shall be served within 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory or document request and the response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. 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.

Where the response to an interrogatory or document request may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

5VAC5-20-280. Discovery applicable only to 5VAC5-20-90 proceedings.

This rule applies only to a proceeding in which a defendant is subject to a monetary penalty or injunction, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant:

1. Discovery of material in possession of the commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph [(exclusive of investigative notes)] : (i) any relevant written or recorded statements, the existence of which is known, after reasonable inquiry, by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by (a) the defendant, or representatives~~,~~ or agents of the defendant if the defendant is other than an individual, or (b) any witness whom the commission staff intends [, or does not intend,] to call to testify at the hearing [~~(exclusive of investigative notes)~~] , to a commission staff member or law enforcement officer; (ii) designated books, tangible objects, papers, documents, or copies or portions thereof, that are within the custody, possession, or control of commission staff and that commission staff intends to introduce into evidence at the hearing [or that the commission staff obtained for the purpose of the instant proceeding] ; and (iii) the list of the witnesses that commission staff intends to call to testify at the hearing. Upon good cause shown [to protect the identity of persons not named as a defendant] , the commission or hearing examiner may direct the

commission staff to withhold disclosure of [~~the identity of the persons described in clause (iii)~~ material requested under this rule. The term "statement" as used in relation to any witness (other than a defendant) described in clause (i) of this subdivision includes a written statement made by said witness and signed or otherwise adopted or approved by him, and verbatim transcriptions or recordings of a witness' statement that are made contemporaneously with the statement by the witness] .

A motion by the defendant [or staff] under this rule shall be filed and served at least ~~10~~ [~~20~~ 30] days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order or ruling granting relief under this rule shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

[~~The~~ Upon written motion of the] commission staff [, staff] may also obtain the list of witnesses that the defendant intends to call to testify at the hearing, and inspect, copy, and photograph, at commission staff's expense, the evidence that the defendant intends to introduce into evidence at the hearing.

The commission staff and the defendant shall be required to produce the information described above as directed by the commission or hearing examiner, but not later than 10 days prior to the scheduled hearing; and the admission of any additional evidence not provided in accordance herewith shall not be denied solely on the basis that it was not produced timely, provided the additional evidence was produced to commission staff or the defendant as soon as practicable prior to the hearing, or prior to the introduction of such evidence at the hearing. The requirement to produce the information described in this section shall be in addition to any requirement by commission staff or the defendant to timely respond to an interrogatory or document request made pursuant to 5VAC5-20-260.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute [or other legal privilege] . The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

2. Depositions. After commencement of a proceeding to which this rule applies, the commission staff or a party may take the testimony of (i) a party, or (ii) a person not a party for good cause shown to the commission or hearing examiner, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the Commonwealth. Except where the commission or hearing examiner finds that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed person resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or

the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

3. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the proceeding.

APPENDIX A 10810248

Donald Harrison
Manager, Regulatory Filing & Support
Berkley Underwriting Partners, LLC
215 Shuman Blvd, Suite 200
Naperville, IL 60563

Center for Quality Health Care Services
Virginia Health Dept.
3600 West Broad Street, Suite 210
Richmond, VA 23230

Amy Charette
National Conference of State Legislators
444 N. Capital Street, N.W., Suite 515
Washington, DC 20001

Becky Green
Westmont Associates Inc.
25 Chestnut Street, Suite 105
Haddonfield, NJ 08033

National Casualty Company
POB 4110
Scottsdale, AZ 85261-4110

Sason Mahdi
F & I Industry Research Dept.
Reynolds & Reynolds
3575 Koger Blvd. Ste 400
Duluth GA 30096-4958

Emanuel Levy
Editor
Southern Insurance
POB 9001
Mount Vernon NY 10552-9001

Kevin A. Green
Compliance Department
Edward Jones
12555 Manchester Rd
St Louis, MO 63131-3729

Richard A. Wolff, Vice President
The Underwriter Printing and Publishing Co.
225 Millburn Avenue, Suite 207
Milburn, NJ 07041-1712

Patricia Schauer
Senior Regulatory Research Analyst
American Medical Security
POB 19032
Greenbay, WI 54307-9032

K. Marshall Cook
Hirschler Fleischer, P.C.
304 River Road West
Manakin-Sabot VA 23103

C. William Waechter, Jr.
Williams Mullen Christian and Dobbins
2 James Center
POB 1320
Richmond, VA 23210-1320

Ben R. Lacy
Sands, Anderson, Marks & Miller
POB 1998
Richmond VA 23210-1320

Claudia S. Dodge
Legislative Counsel
BB&T Insurance Services, Inc.
POB 17370
Richmond VA 23226

David Ress
Business Writer
Richmond Times-Dispatch
POB 85333
Richmond VA 23293

John P. Pearle Associates
11136 Sherwood Farms Lane
POB 5424
Glen Allen VA 23059

Martin J. Milsen
General Counsel
Arch Insurance Group, Inc.
One Liberty Plaza 53rd Flr
New York NY 10006

Phyllis Katz
Sands, Anderson, Marks & Miller
POB 1998
Richmond VA 23218-1988

Laura McCord
NCCI
5 Marine View Plaza
Hoboken NJ 07030

Brian J. Murphy
ING Aetna Financial Services
Compliance TS31
151 Farmington Ave.
Hartford CT 06156

Robert N. Bradshaw Jr.
Independent Insurance Agents of VA Inc
8600 Maryland Drive
Richmond VA 23294

Cadaret, Grant Agency, Inc.
ATTN: Gerry Benosky
One Lincoln Center
110 West Fayette Street
Syracuse NY 13202

Don Overman
1035 Lindale LN
Norfolk VA 23503

J. Everett Johnson
FIC of Virginia
2604 N Parham Rd.
Richmond VA 23229

Julie White
Slabaugh Group Associates
9020 Stony Point Parkway STE200
Richmond VA 23235-1944

Michael Pirtle
President
National Coalition of Insurance Agents Inc.
POB 6148
Augusta GA 30916-6148

Leslie Herdegen
VLGA
1015 E Main Street 4th Flr
Richmond VA 23219

Reginald N. Jones
Williams Mullen Christian & Dobbins
2 James Center
POB 1320
Richmond VA 23210-1320

110810248

110810248

Leah Walters
American Council of Life Insurance
101 Constitution Ave NW Suite 700
Washington DC 20001

John Duni, CLU, CHFC
The New England
10900 Nuckols Rd. Suite 170
Glen Allen VA 23060-9260

Thomas Martenstein
8001 Franklin Farms Drive Ste. 242
Richmond VA 23229

Andy Laudenslager
Farmers Insurance
9201 Aboretum Pkwy. Suite 190
Richmond, VA 23226

Jennifer Soares
606 Sideling Court
Vienna VA 22180

Elisabeth Spoerl, FLMI, CPIW
Managing Director
The Insurance Center
Drake University
212 Aliber Hall
Des Moines IA 50311

Wilma Kidd
Manager of Corporate Operations
Anthem Health plans of Virginia Inc.
2015 Staples Mill Road
POB 27401 Dept 01J
Richmond VA 23279

Mr. William F. Burfeind
Executive VP
542 S Dearborn St. Ste. 400
Chicago IL 60605

Michael H. Sims
Executive Director
3708 Fringe Tree Place
Louisville KY 40241

Katharine L. Wade
CIGNA
W-30
900 Cottage Grove Rd.
Hartford CT 06152-5030

William J. Matze
Financial Services Instituite
POB 8012
Roanoke VA 24014

Danielle Spencer
Bureau & Regulatory Services
Nationwide Insurance
Commercial Insurance Services
One Nationwide Plaza
Columbus OH 43215-2220

Anita Rodriguez
Administrative Specialist
2450 Hollywood Blvd. Ste 700
Hollywood FL 33020

David W. Clarke
LeClair Ryan
707 E Main Street 11th Flr
Richmond VA 23219

W. Scott Johnson
Hancock, Daniel, Johnson & Nagle PC
POB 72050
Richmond VA 23255-2050

Maria Haley
Administrative Associates, Inc.
734 15th St Suite 500
Washington DC 20005

Allen C. Goolsby
Hunton & Williams
Riverfront Plaza, E. Tower
951 E Byrd Street
Richmond VA 23219-4074

Kathy Wilderson
Pennsylvania National Insurance Co.
POB 2361
Harrisburg PA 17105

Rod Perkins
Sr. Government Relations Mgr.
Genworth Financial
6620 W Broad St Bldg 4 2nd Flr.
Richmond VA 23230

Jay Berman
Professional Insurance Agents Association of VA & DC
8751 Park Central Drive Ste. 140
Richmond VA 23227

Diane Heidenreich
Zenith Insurance Co.
21255 Califa St.
Woodland Hills CA 91367

Laurie Carwile
Dennis Lane & Associates
POB 909
Warren MI 48090-0909

Daniel Lagrone
Pan-American Life Ins. Co.
Coordinator of Corporate Compliance
601 Poydrass Street 12th Flr
New Orleans LA 70130

Rita Garry Esq.
Banks-Baldwin Law Publishing Company
6111 Oak Tree Blvd.
POB 318063
Cleveland OH 44131

AARP
601 E Street NW
Washington DC 20049

Todd M. Packham
Legal Analyst
Allmerica Financial Life Ins. and Ann. Co.
440 Lincoln St.
Worcester MA 01653

Health Compliance – 5
Washington National Insurance Company
POB 2003
Carmel IN 46082-2003

Craig Comer
Zenith Insurance Company
21255 Califa Street
Woodland Hills, CA 91367

110810248

Timothy Harrington, FSA, MAAA
Principal
William M. Mercer, Inc.
200 Clarendon Street
Boston, MA 02116-5089

Linda Z. Caruthers
2605 Torquay Loop
Richmond, VA 23236-1351

Lisa Perras Williams
Westmont Associates, Inc.
Suite 105
25 Chestnut Street
Haddonfield, NJ 08033

Janet Holliday
Medical Mutual of Ohio
2060 East Ninth Street
Cleveland, OH 44115-135

Gerald A. Milsky, J.D., CIE, FLMI
Gov4.Relations
Compliance Consultant
Macaulay & Burtch, P.C.
1015 East Main Street
P.O. Box 8088
Richmond, VA 23223

Andrew M. Bell
President
Factory Mutual Service Bureau
1151 Boston-Providence Turnpike
Norwood, MA 02062

National Conference of Insurance Legislators
385 Jordan Road
Troy, New York 12180

Teresa Edwards
Vice President
Aon Rish Services
P.O. Box 88
Winston-Salem, NC 27102-0088

Dawn Bergsma
P.O. Box 50053
Sarasota FL 34232-0300

Claire Pizzuti, CLU, chFC, FLMI
Assistant Secretary
Manager, Compliance Department
Presidential Life Insurance Co.
69 Lydecker Street
Nyack, NY 10960

Michael Jennings
Vice President, Government Relations
The Prudential
841 Prudential Drive
Jacksonville, FL 32207-8106

John K. Conway
General Counsel
Kemper Insurance Companies
Kemper Insurance Building C-3
Long Grove, IL 60049-0001

Peter N. Bentzen
Utica National Insurance Group
P.O. Box 13560
Richmond, VA 23225

110810248

Linda Bergseng
Royal Insurance Company
9300 Arrowpoint Blvd.
P.O. Box 1000
Charlotte NC 28201-1000

Rob Cowman
PHICO Insurance Company
One PHICO Drive
P.O. Box 85
Mechanicsburg, PA 17055-0085

Jerry D. Daughtry
VP-RM
Nationwide Insurance Company
Box 10669
Lynchburg, VA 24506

Scott E. Henderson
Vice President State Government Affairs
UnitedHealth Group
6095 Marshalee Drive, Suite 200
Elkridge, MD 21075

Julie Hatton
Director
Government Affairs
Care First Blucross Blueshield
10455 Mill Run Circle
Owings Mills, MD 21117

Debra French
Actuarial Analysis Department
Interstate Mutual Fire Insurance Company
American General Center – 460S
Nashville, TN 37250

Carla Strauch
AID Association for Lutherans
4321 Ballard Rd
Appleton, WI 54919-0001

Randall Conner
Commercial Underwriter
Northern Neck Insurance Company
P.O. Box 419
Irvington, VA 22480

Michele Loomis
Product Manager
Progressive Commercial Auto Division
75-20 Astoria Blvd., Suite 130
East Elmhurst NY 11370

C. Ray Doggett, CPCU, CIC
Gett Insurance Agency, Inc.
Tidemill Center, Box 629
Gloucester Point, VA 23060

Christopher Young
AIPSO
302 Central Avenue
Johnston, RI 02919

Ren L. Tundermann, Esquire
Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, MD 21201-3111

Michael Fager
Legislative Affairs
Genworth Financial
6620 W. Broad Street Bldg 4
Richmond, VA 23230-1700

Craig Comer
Zenith Insurance Company
21255 Califa Street
Woodland Hills, CA 91367

National Association of Mutual Insurance Companies
122 C Street N.W., Suite 540
Washington, D.C. 20001

Gary L. Helton, CPCU
Virginia Mutual Insurance Company
P.O. Box 2460
Glen Allen, VA 23058-2460

James P. Jacobs, CPCU
Tabb, Brockenbrough and Ragland
4905 Dickens Road
Richmond, VA 23230-1943

Joanne Nolte
PennStuart
P.O. Box 617
Richmond, VA 23219

Ron Main
Safeco Insurance Co.
700 Stanley Drive
New Britain, CT 06053-1679

Ben Marshall
Regional PL Underwriting Officer
The Travelers Insurance Company
P.O. Box 26426
Richmond, VA 23260-6426

Walt Muller
Harleysville Mutual Insurance Company
Personal Lines Underwriting A-3
355 Maple Avenue
Harleysville, PA 19348

Connie Arnold
Balboa Life & Casualty
P.O. Box 19702
Irvine, CA 92623

L. David Murray
Liberty Mutual Insurance Company
P.O. Box 85059
Richmond, VA 23261-5059

Robert Bergin
General Manager
Hanover Insurance Company
P.O. Box 85612
Richmond, VA 23285-5612

Robert French Jr., CLU, FIC
Agency Manager
Modern Woodmen of America
16310 Goodes Bridge Rd.
Amelia, VA 23002

Pat Wallace
Amerisure Companies
P.O. Box 2060
Farmington Hills, MI 48333

Earl Miller
The Church Insurance Company
445 Fifth Avenue
New York, NY 10016

Susan Ward
Virginia Hospital & Health Care Assoc.
P.O. Box 31394
Richmond, VA 23294

ATTACHMENT II

Composite

SCC-62

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF

ELANTIC TELECOM, INC.

CASE NO. PST-2004-00046

For review and correction of assessments of the value of property subject to local taxation – Tax Year 2004

2008 JUL 17 P 12: 3

APPLICATION OF

ELANTIC TELECOM, INC.

CASE NO. PST-2005-00029

For review and correction of assessments of the value of property subject to local taxation – Tax Year 2005

REPORT OF MICHAEL D. THOMAS, HEARING EXAMINER

July 17, 2008

On December 15, 2004, Elantic Telecom, Inc. ("Elantic"), filed with the State Corporation Commission ("Commission") its Petition for Review and Correction of the Commission's assessment of the value, as of January 1, 2004, of property subject to local taxation ("2004 Appeal").

On June 14, 2005, the Commission issued its Order for Notice in which it docketed the application; directed Elantic to give public notice of the application; and established a schedule for the filing of notices of participation.

In its Order for Hearing dated August 22, 2005, the Commission, among other things, granted Elantic's July 7, 2005, Motion for Leave to Amend Petition for Review; assigned this matter to a hearing examiner; and scheduled a public hearing on the 2004 Appeal.

On December 20, 2005, Elantic filed an application for review and correction of its property tax assessments for Tax Year 2005 ("2005 Appeal"). By its Order for Notice dated January 9, 2006, the Commission docketed the 2005 Appeal; directed Elantic to provide notice of its application; and assigned the matter to a hearing examiner with instructions to coordinate proceedings in both cases to promote efficiency in the disposition of both applications.

The 2004 and 2005 Appeals have an extensive procedural history which was recited in my Report dated June 5, 2007. Therein I recommended that the Commission dismiss the Appeals with prejudice for Elantic's failure to comply with a January 22, 2007, Ruling directing Elantic to produce information relative to the original cost and configuration of the property at issue in the Appeals.

By its Order dated August 21, 2007, the Commission remanded the cases to this Examiner to conduct an evidentiary hearing and to issue a report with findings and recommendations.

An evidentiary hearing was convened on November 28, 2007. Elantic and the Respondent Localities filed Post-hearing briefs on January 17, 2008. Elantic filed a Reply to the Respondent Localities' Consolidated Post-Hearing Brief ("Reply Brief") on January 29, 2008. By Ruling dated February 19, 2008, the Reply Brief was accepted for filing.

On December 12, 2007, Elantic filed an Application for Review and Correction of 2007 Assessment ("2007 Appeal"). By its Order for Notice dated December 21, 2007, the Commission docketed the application and directed Elantic to provide notice to all affected localities.

On July 11, 2008, Elantic, by counsel, filed a motion to withdraw the applications for review and correction of assessments of the value of property subject to local taxation for Tax Years 2004 and 2005 ("Motion to Withdraw"). In support, Elantic states that by a proposed settlement, Elantic, the Division of Public Service Taxation ("the Division"), and the Respondent Localities in the 2007 Appeal, namely, the City of Richmond, the City of Norfolk, Fairfax County, Henrico County, the City of Alexandria, Prince William County, Chesterfield, and Hanover County have reached agreement regarding resolution of the 2007 Appeal, and the reduction of Elantic's assessment on Class 3A-1, Class 3B, and Class 3E property for Tax Year 2007. Elantic further states that by a concurrently filed Joint Motion for Approval of Proposed Settlement, Elantic, the Division, and the Respondent Localities in the 2007 Appeal request that the Commission enter a final order approving the proposed settlement and revising Elantic's 2007 Assessment consistent with the proposed settlement. Elantic, the Division, and the Respondent Localities agree that Elantic's withdrawal of its applications docketed as Case No. PST-2004-00046 and Case No. PST-2005-00029 is contingent upon the Commission's acceptance of the proposed settlement in Case No. PST-2007-00021. Counsel for the Division states that the Respondent Localities have no objection to the Motion to Withdraw contingent upon the Commission's acceptance of the proposed settlement in Case No. PST-2007-00021.

I find the Motion to Withdraw should be granted, and the 2004 and 2005 Appeals should be dismissed. Since the Division and all parties to these proceedings agree to the Motion to Withdraw, I further find there is no need to allow an opportunity for comments by the parties to this Report.

Accordingly, **I RECOMMEND** the Commission enter an order that:

(1) Dismisses with prejudice Elantic's 2004 and 2005 Appeals; and

(2) Passes the papers herein to the file for ended causes.

Respectfully submitted,

M D Thomas de

Michael D. Thomas
Hearing Examiner

A copy hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, VA 23219.

COMMONWEALTH OF VIRGINIA **080810019**

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 1, 2008

2008 AUG -1 P 3: 03

APPLICATION OF

ELANTIC TELECOM, INC. CASE NO. PST-2004-00046

For review and correction of assessments of the value of property subject to local taxation - Tax Year 2004

APPLICATION OF

ELANTIC TELECOM, INC. CASE NO. PST-2005-00029

For review and correction of assessments of the value of property subject to local taxation - Tax Year 2005

APPLICATION OF

ELANTIC TELECOM, INC. CASE NO. PST-2007-00021

For review and correction of assessments of the value of property subject to local taxation - Tax Year 2007

FINAL ORDER

Before the State Corporation Commission ("Commission") are the applications of Elantic Telecom, Inc. ("Elantic" or "Company"), for review and correction of the Commission's assessments of the value of certain property that is subject to local taxation for tax years 2004, 2005, and 2007. In Orders entered in Case Nos. PST-2004-00046, PST-2005-00029, and PST-2007-00021, we determined that Elantic had timely filed its applications for the respective tax years as provided by § 58.1-2670 of the Code of Virginia (hereinafter "Code") and docketed these cases.

As provided by § 12.1-31 of the Code and the State Corporation Commission Rules of Practice and Procedure, 5 VAC 5-20-120, Procedure before hearing examiners, we appointed a hearing examiner to conduct further proceedings in Case Nos. PST-2004-0046 and PST-2005-00029. On July 17, 2008, the Report of Michael D. Thomas, Hearing Examiner (hereinafter "Report"), was filed. Examiner Thomas recommended that the Commission grant Elantic's motions of July 11, 2008, to withdraw its applications for tax year 2004, Case No. PST-2004-00046, and for tax year 2005, Case No. PST-2005-00029. Also on July 11, 2008, Elantic, respondents, and the Commission Staff filed their Joint Motion for Approval of Proposed Settlement and Proposed Settlement in the tax year 2007 proceeding, Case No. PST-2007-00021. The Commission has considered the Reports filed in Case Nos. PST-2004-0046 and PST-2005-00029. We have also considered the proposed settlement and record in Case No. PST-2007-00021. For the reasons discussed in this Order, the Commission will adopt the recommendation in the Hearing Examiner's Report and the Proposed Settlement.

As Hearing Examiner Thomas related in his Report, at 2, Elantic's motions to withdraw its applications for tax years 2004 and 2005 is contingent upon Commission acceptance of the proposed settlement in the tax year 2007 proceeding. The parties and the Staff likewise noted the relationship of a settlement in Case No. PST-2007-00021 to the withdrawal of the tax years 2004 and 2005 applications. (Proposed Settlement at 9-10.)

The Commission has interpreted applicable tax statutes and our Rules of Practice and Procedure to permit an applicant for review and correction of an assessment of the value of property to withdraw its application voluntarily. When an application is withdrawn, our assessment of value remains in effect. In Case No. PST-2004-00046 and Case No. PST-2005-00029, Elantic has requested dismissal with prejudice on the condition that the Commission adopts the Proposed Settlement in PST-2007-00021.

If we adopt the Proposed Settlement, the value of several categories of Class 3 property shown in the Commission's Statement Showing the Value of Real and Tangible Personal Property of Telecommunications Companies in the Commonwealth of Virginia, assessed as of the beginning of the first day of January 2007, pursuant to Title 58.1, Chapter 26, Article 2, of the Code of Virginia, for Elantic would be reduced. In support of the recommended reductions in value in the Proposed Settlement, the parties and the Staff identified materials filed on December 12, 2007, with Elantic's original application, as supplemented on April 11, 2008. (Proposed Settlement at 2, 3.) The parties and the Staff recommended that the supplemental materials be made a part of the record. (Id.)

The proposed reductions in assessed values of the Class 3 property result, in part, from a corrected inventory of the locations, types, and quantity of equipment at various Elantic operating locations. The Company, affected respondents, and the Staff agree to these revisions, and they agree that the documents supporting the inventory be made a part of the record.

The Proposed Settlement provides for the greatest reduction in assessed value for Class 3, Value of central office equipment. The total assessed value for this property would be reduced from $46,689,448 to $22,094,353. The Commission's Public Service Taxation Division determined that the best available information on types of central office equipment, cost, and age had been provided by Elantic to the respondents and the Staff. Using this information provided by Elantic, the Public Service Taxation Division then applied a cost less depreciation methodology to develop fair market value for purposes of settlement. The local ratios provided by the Department of Taxation were then applied to arrive at the equalized assessed values in the Proposed Settlement. (Id. at 6-7.)

The Commission has used the cost less depreciation method in determining fair market value for many years, and the Virginia Supreme Court has approved. Norfolk & W. Ry. v. Commonwealth, 211 Va. 692, 698-98, 179 S.E.2d 623, 627 (1971). The proposed reduction in the assessed value of the central office equipment results from application of this methodology and use of the best available information.

It is the Commission's policy to encourage the settlement of tax cases. The Commission has adopted settlements when we find that an adequate record has been developed and that the public interest is furthered. The record in all three cases demonstrates active participation by the applicant and affected localities. The parties and Staff agree that the settlement in PST-2007-00021 is reasonable and that settling the case will avoid further expense to the parties. The Commission finds that the settlement in Case No. PST-2007-00021 should be adopted and that the applications in Case No. PST-2004-00046 and PST-2005-00029 should be dismissed in conjunction with adoption of the settlement.

Accordingly, IT IS ORDERED THAT:

(1) Case No. PST-2004-00046 be dismissed with prejudice from the Commission's docket and be placed in closed status in the records maintained by the Commission Clerk.

(2) Case No. PST-2005-00029 be dismissed with prejudice from the Commission's docket and be placed in closed status in the records maintained by the Commission Clerk.

(3) The documents listed in Paragraph 8 appearing on Page 3 of the Proposed Settlement filed on July 11, 2008, in Case No. PST-2007-00021 be made a part of the record in that proceeding.

(4) As provided by § 58.1-2673 of the Code, Elantic's application for review and correction of the equalized assessment of the value of its property subject to local taxation for tax

year 2007 be granted to the extent provided for in the Proposed Settlement filed on July 11, 2008, in Case No. PST-2007-00021 and otherwise denied.

(5) The Statement Showing the Value of Real and Tangible Personal Property of Telecommunications Companies in the Commonwealth of Virginia, assessed as of the beginning of the first day of January 2007, pursuant to Title 58.1, Chapter 26, Article 2, of the Code of Virginia, for Elantic be corrected as follows:

ALEXANDRIA CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 2,898,390 and insert, in lieu thereof, 4,710,973.
-Under column headed "Value of material and supplies/Plant under construction," strike out 1,554,624 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 5,585,443 and insert, in lieu thereof, 5,843,402.

CHARLOTTESVILLE CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 0 and insert, in lieu thereof, 880,650.
-Under column headed "Value of material and supplies/Plant under construction," strike out 357,323 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 383,743 and insert, in lieu thereof, 907,070.

DANVILLE CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 21,320 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 84,731 and insert, in lieu thereof, 63,411.

EMPORIA CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 44,252 and insert, in lieu thereof, 0.

-Under column headed "Value of material and supplies/Plant under construction," strike out 20,338 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 64,590 and insert, in lieu thereof, 0.

FAIRFAX CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 1,915,144 and insert, in lieu thereof, 0.
-Under column headed "Value of material and supplies/Plant under construction," strike out 8,143 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 1,923,287 and insert, in lieu thereof, 0.

FRANKLIN CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 200,188 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 200,188 and insert, in lieu thereof, 0.

FREDERICKSBURG CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 337,023 and insert, in lieu thereof, 369,137.
-Under column headed "Value of material and supplies/Plant under construction," strike out 86,341 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 464,982 and insert, in lieu thereof, 410,755.

HAMPTON CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 305,636 and insert, in lieu thereof, 103,113.
-Under column headed "Total value of all property," strike out 420,418 and insert, in lieu thereof, 217,895.

HARRISONBURG CITY

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 21,960 and insert, in lieu thereof, 39,159.

-Under column headed "Total value of all property," strike out 53,533 and insert, in lieu thereof, 70,732.

HOPEWELL CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 103,004 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 131,459 and insert, in lieu thereof, 28,455.

LEXINGTON CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 22,212 and insert, in lieu thereof, 158,517.

-Under column headed "Value of material and supplies/Plant under construction," strike out 37,850 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 60,062 and insert, in lieu thereof, 158,517.

LYNCHBURG CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 43,708 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 43,708 and insert, in lieu thereof, 0.

MANASSAS CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 272,127 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 431,508 and insert, in lieu thereof, 159,381.

NORFOLK CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 577,613 and insert, in lieu thereof, 1,351,751.

-Under column headed "Value of material and supplies/Plant under construction," strike out 3,364 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 1,384,744 and insert, in lieu thereof, 2,155,518.

PETERSBURG CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 113,469 and insert, in lieu thereof, 32,148.

-Under column headed "Total value of all property," strike out 146,707 and insert, in lieu thereof, 65,386.

RICHMOND CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 15,133,456 and insert, in lieu thereof, 3,521,509.

-Under column headed "Value of material and supplies/Plant under construction," strike out 79,224 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 17,400,803 and insert, in lieu thereof, 5,709,632.

ROANOKE CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 138,205 and insert, in lieu thereof, 731,837.

-Under column headed "Value of material and supplies/Plant under construction," strike out 433 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 138,638 and insert, in lieu thereof, 731,837.

SALEM CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 87,887 and insert, in lieu thereof, 218,282.

-Under column headed "Value of material and supplies/Plant under construction," strike out 62,911 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 165,123 and insert, in lieu thereof, 232,607.

STAUNTON CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 48,501 and insert, in lieu thereof, 209,048.

-Under column headed "Value of material and supplies/Plant under construction," strike out 10,336 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 94,899 and insert, in lieu thereof, 245,110.

SUFFOLK CITY
SLEEPY HOLE BOROUGH

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 467,820 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 467,820 and insert, in lieu thereof, 0.

WAYNESBORO CITY

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 37,764 and insert, in lieu thereof, 0.

-Under column headed "Value of material and supplies/Plant under construction," strike out 810 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 64,275 and insert, in lieu thereof, 25,701.

ALBEMARLE COUNTY
ALL DISTRICTS

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 349,111 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 985,011 and insert, in lieu thereof, 635,900.

AMHERST COUNTY
ALL DISTRICTS

(Printed Assessment)

-Under column headed "Value of central office equipment," strike out 14,609 and insert, in lieu thereof, 108,243.

-Under column headed "Value of material and supplies/Plant under construction," strike out 33,885 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 105,323 and insert, in lieu thereof, 165,072.

ARLINGTON COUNTY
NO DISTRICTS

(Printed Assessment)
- Under column headed "Value of central office equipment," strike out 1,703,168 and insert, in lieu thereof, 126,583.
- Under column headed "Value of automobiles and trucks," strike out 0 and insert, in lieu thereof, 6,238.
- Under column headed "Total value of all property," strike out 2,119,069 and insert, in lieu thereof, 548,722.

AUGUSTA COUNTY
ALL DISTRICTS

(Printed Assessment)
- Under column headed "Value of central office equipment," strike out 173,871 and insert, in lieu thereof, 0.
- Under column headed "Total value of all property," strike out 173,871 and insert, in lieu thereof, 0.

CRAIGSVILLE, TOWN OF

(Printed Assessment)
- Under column headed "Value of central office equipment," strike out 17,429 and insert, in lieu thereof, 0.
- Under column headed "Total value of all property," strike out 17,429 and insert, in lieu thereof, 0.

BOTETOURT COUNTY
ALL DISTRICTS

(Printed Assessment)
- Under column headed "Value of central office equipment," strike out 160,608 and insert, in lieu thereof, 0.
- Under column headed "Total value of all property," strike out 160,608 and insert, in lieu thereof, 0.

CAMPBELL COUNTY
ALL DISTRICTS

(Printed Assessment)
- Under column headed "Value of central office equipment," strike out 130,277 and insert, in lieu thereof, 0.
- Under column headed "Total value of all property," strike out 130,277 and insert, in lieu thereof, 0.

ALTAVISTA, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 166,383.
-Under column headed "Total value of all property," insert 166,383.

CHESTERFIELD COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 1,379,941 and insert, in lieu thereof, 593,028.
-Under column headed "Total value of all property," strike out 1,379,941 and insert, in lieu thereof, 593,028.

CLARKE COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 1,805,640 and insert, in lieu thereof, 124,659.
-Under column headed "Total value of all property," strike out 3,510,404 and insert, in lieu thereof, 1,829,423.

CULPEPER COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 408,177.
-Under column headed "Total value of all property," insert 408,177.

CULPEPER, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 37,455 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 37,455 and insert, in lieu thereof, 0.

DINWIDDIE COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 33,909 and insert, in lieu thereof, 0.

-Under column headed "Total value of all property," strike out 42,893 and insert, in lieu thereof, 8,984.

FAIRFAX COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 1,375,737 and insert, in lieu thereof, 2,971,668.
-Under column headed "Value of material and supplies/Plant under construction," strike out 307,218 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 1,687,703 and insert, in lieu thereof, 2,976,416.

HERNDON, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 649,979.
-Under column headed "Total value of all property," insert 649,979.

FAUQUIER COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 1,378,275 and insert, in lieu thereof, 246,240.
-Under column headed "Total value of all property," strike out 1,459,845 and insert, in lieu thereof, 327,810.

WARRENTON, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 48,959 and insert, in lieu thereof, 123,120.
-Under column headed "Total value of all property," strike out 48,959 and insert, in lieu thereof, 123,120.

FREDERICK COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 81,790 and insert, in lieu thereof, 118,161.
-Under column headed "Total value of all property," strike out 81,790 and insert, in lieu thereof, 118,161.

GREENE COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 48,340 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 48,340 and insert, in lieu thereof, 0.

GREENSVILLE COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 113,899 and insert, in lieu thereof, 116,280.
-Under column headed "Total value of all property," strike out 152,283 and insert, in lieu thereof, 154,664.

HANOVER COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 5,696,334 and insert, in lieu thereof, 0.
-Under column headed "Value of automobiles and trucks," strike out 0 and insert, in lieu thereof, 69,662.
-Under column headed "Value of material and supplies/Plant under construction," strike out 63,781 and insert, in lieu thereof, 1,638,824.
-Under column headed "Total value of all property," strike out 5,760,115 and insert, in lieu thereof, 1,708,486.

HENRICO COUNTY
ALL DISTRICTS (EXC. SANITARY DIST. 2 & 3)

(Printed Assessment)
-Under column headed "Value of land, buildings and towers," strike out 5,010,481 and insert, in lieu thereof, 0.
-Under column headed "Value of central office equipment," strike out 5,050,921 and insert, in lieu thereof, 1,693,115.
-Under column headed "Value of automobiles and trucks," strike out 0 and insert, in lieu thereof, 9,135.
-Under column headed "Value of material and supplies/Plant under construction," strike out 15,472,444 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 25,533,846 and insert, in lieu thereof, 1,702,250.

HENRY COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 39,540 and insert, in lieu thereof, 144,666.
-Under column headed "Value of material and supplies/Plant under construction," strike out 40,886 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 146,884 and insert, in lieu thereof, 211,124.

ISLE OF WIGHT COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 48,786 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 48,786 and insert, in lieu thereof, 0.

LOUDOUN COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 1,188,582 and insert, in lieu thereof, 900,642.
-Under column headed "Total value of all property," strike out 1,276,756 and insert, in lieu thereof, 988,816.

LEESBURG, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 342,207 and insert, in lieu thereof, 42,280.
-Under column headed "Total value of all property," strike out 419,021 and insert, in lieu thereof, 119,094.

LOUISA COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 168,435.
-Under column headed "Total value of all property," insert 168,435.

MADISON COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 71,158 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 71,158 and insert, in lieu thereof, 0.

MONTGOMERY COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 16,364 and insert, in lieu thereof, 39,971.
-Under column headed "Total value of all property," strike out 16,364 and insert, in lieu thereof, 39,971.

NELSON COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 73,180 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 73,180 and insert, in lieu thereof, 0.

PAGE COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 217,128 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 217,128 and insert, in lieu thereof, 0.

LURAY, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 158,517.
-Under column headed "Total value of all property," insert 158,517.

PITTSYLVANIA COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 313,560 and insert, in lieu thereof, 153,900.
-Under column headed "Total value of all property," strike out 313,560 and insert, in lieu thereof, 153,900.

PRINCE WILLIAM COUNTY
NO DISTRICTS (EXCL. FIRE DISTRICTS)

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 132,899 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 132,899 and insert, in lieu thereof, 0.

GAINESVILLE FIRE DISTRICT

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 898,105 and insert, in lieu thereof, 458,024.
-Under column headed "Total value of all property," strike out 898,105 and insert, in lieu thereof, 458,024.

RICHMOND COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of material and supplies/Plant under construction," strike out 3,233 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 3,233 and insert, in lieu thereof, 0.

ROCKBRIDGE COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 194,727 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 194,727 and insert, in lieu thereof, 0.

ROCKINGHAM COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 131,687 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 131,687 and insert, in lieu thereof, 0.

SOUTHAMPTON COUNTY
BRANCHVILLE, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 52,719 and insert, in lieu thereof, 103,241.
-Under column headed "Total value of all property," strike out 177,612 and insert, in lieu thereof, 228,134.

STAFFORD COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 67,345 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 67,345 and insert, in lieu thereof, 0.

SURRY COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 402,031 and insert, in lieu thereof, 0.
-Under column headed "Value of material and supplies/Plant under construction," strike out 788 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 402,819 and insert, in lieu thereof, 0.

WARREN COUNTY
ALL DISTRICTS

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 23,224 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 102,593 and insert, in lieu thereof, 79,369.

FRONT ROYAL, TOWN OF

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 40,313.
-Under column headed "Total value of all property," insert 40,313.

YORK COUNTY
BETHEL DISTRICT

(Printed Assessment)
-Under column headed "Value of central office equipment," strike out 86,254 and insert, in lieu thereof, 0.
-Under column headed "Total value of all property," strike out 86,254 and insert, in lieu thereof, 0.

BRUTON DISTRICT

(Printed Assessment)
-Under column headed "Value of central office equipment," insert 112,604.
-Under column headed "Total value of all property," insert 112,604.

(6) The Commission's Public Service Taxation Division shall mail an attested copy of this Order to: the Commissioners of the Revenue of the cities of Charlottesville, Danville, Emporia, Fairfax, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Norfolk, Petersburg, Roanoke, Salem, Staunton, Suffolk, and Waynesboro; the Commissioners of the Revenue of the counties of Amherst, Arlington, Augusta, Botetourt, Campbell, Chesterfield, Clarke, Culpeper, Dinwiddie, Fauquier, Frederick, Greene, Greensville, Hanover, Henry, Isle of Wight, Loudoun, Louisa, Madison, Montgomery, Nelson, Page, Pittsylvania, Richmond, Rockbridge, Rockingham, Southampton, Stafford, Surry, Warren and York; the Chief of Administration/Taxation of Albemarle County; the Chief Financial Officer of the city of Richmond; the Director of Tax Administration of Fairfax County; the Directors of Finance of the city of Alexandria and the counties of Henrico and Prince William;

and the town councils of the towns of Altavista, Branchville, Craigsville, Culpeper, Front Royal, Herndon, Leesburg, Luray, and Warrenton.

(7) Case No. PST-2007-00021 be dismissed with prejudice from the Commission's docket and be placed in closed status in the records maintained by the Commission Clerk.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

A True Copy
Teste: Joel H. Peck
Clerk of the
State Corporation Commission

Owens, Donald G.
Troutman Sanders LLP
Troutman Sanders Building
1001 Haxall Point
POB 1122
Richmond VA 23218-1122

Adams, Karen M.
Assistant County Attorney
County of Henrico
Office of the County Attorney
PO Box 27032
Richmond VA 23273-4342

Pessoa, Ignacio B.
City Attorney
City of Alexandria
301 King St Ste 1300
Alexandria VA 22314

Jones, Katherine H.
Assistant County Attorney
County of Roanoke
5204 Bernard Dr
PO Box 29800
Roanoke VA 24018-0798

Peele, Bernadette S.
Assistant County Attorney
County of Prince William
1 County Complex Court
Prince William VA 22192-9201

Prentace, Charles S.
Deputy City Attorney
City of Norfolk
900 City Hall Building
810 Union Street
Norfolk VA 23510

Halyard, Cherie L.
Legal Counsel
Arlington County, Virginia
Office of the Commissioner of R
2100 Clarendon Blvd Ste 200
Arlington VA 22201

Herrick, Andrew H.
Assistant County Attorney
County of Albemarle
401 McIntire Rd Ste 325
Charlottesville VA 22902-4596

Posner, Ellen F.
Assistant County Attorney
County of Fairfax Ste 549
12000 Government Center Pkwy
Fairfax VA 22035-0064

Williams, Roderick B.
Esquire
City of Alexandria
301 King St Ste 1300
Alexandria VA 22314

Rosenberg, Steven L.
County Attorney
County of Augusta
18 Government Center Lane
PO Box 590
Verona VA 24482-0590

Robinson, David W.
Assistant County Attorney
County of Chesterfield
PO Box 40
Chesterfield VA 23832-0040

Deal, Robert G.
Esquire
Roeder and Associates, P. C.
8280 Greensboro Dr Ste 601
McLean VA 22102

Rentz, Tabrica
Assistant City Attorney
City of Richmond
900 E Broad St Ste 300
Richmond VA 23219

ATTACHMENT III

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, VIRGINIA

APPLICATIONS OF	)
VERIZON SOUTH INC.	)
AND	)
VERIZON VIRGINIA INC.	)
	) Case No. PST-2009-00033
For review and correction of the equalized assessment of the value of property subject to local taxation – Tax Year 2009	)

RESPONDENT LOCALITIES' CONSOLIDATED MOTION FOR FINAL SUMMARY JUDGMENT AND/OR TO DISMISS APPLICANTS' SUPPLEMENTAL APPLICATIONS, REQUEST FOR ORAL ARGUMENT AND STAY OF PROCEEDINGS

COME NOW undersigned Respondent Localities ("Respondent Localities"), by their respective undersigned counsel, pursuant to Va. Code Ann. § 58.1-2670, Va. Code Ann. § 12.1-13, 5 VAC 5-20-110, and all other applicable rules and Orders of the Virginia State Corporation Commission ("the Commission") to submit Respondent Localities' Consolidated Motion for Final Summary Judgment and/or to Dismiss the Supplemental Applications of Applicants Verizon South Inc. and Verizon Virginia Inc. ("Verizon"), Request for Oral Argument and Stay of Proceedings. In support thereof, Respondent Localities submit the following.

I. Procedural Background and History

On or about December 9, 2009, Verizon filed with the Commission two Applications for Review and Correction of the Commission's 2009 Personal Property Tax Assessments ("the Initial Applications"). In the Initial Applications, Verizon claimed that the Commission's 2009 assessed value for virtually all of Verizon's tangible personal property dispersed throughout the

Commonwealth subsumed within five discrete classes of property exceeded fair market value. (Ex. A). For the most part, the Initial Applications were devoid of factual allegations regarding the equipment itself. The Initial Applications did, however, include an unequivocal across the board demand for mammoth reductions in the aggregate assessed value of the subject property.

On or about April 1, 2010, Verizon filed Supplemental Applications with the Commission ("the Supplemental Applications"). (Ex. B). Verizon's Supplemental Applications still lacked meaningful detail pertaining to the specified item or items of equipment that were allegedly over assessed by the Commission. In its Supplemental Applications, Verizon once again focused upon its ill fated business decisions made toward the latter part of the decade and sought enormous across the board reductions in aggregate assessed value.

In accordance with the Commission's April 13, 2010, and April 14, 2010, Orders for Notice and Hearing, Verizon served copies of the Supplemental Applications on those localities where Verizon reported having property for tax year 2009. Because Verizon reports to the Commission substantial amounts of personal property throughout the Commonwealth, a large number of Virginia's localities filed Notices of Participation and intervened in this proceeding.

Given the scarcity of background information relative to each specified item of claimed property, during the months of June 2010, through September 2010, most participant localities, whether large or small and from all corners of the Commonwealth, propounded their initial discovery requests to Verizon. (See e.g. various Respondent Localities' Initial Discovery Requests to Verizon) (Composite Ex. C)

Respondent Localities' initial discovery requests were substantially similar in substance, scope, and time and tracked the types of information routinely sought and provided in Commission personal property tax appeals. Narrowly tailored, Respondent Localities' discovery requests sought rudimentary background information, data, and records relative to each claimed piece of equipment situated within that locality's borders. Specificity of the claimed property per locality was of paramount importance to Respondent Localities since Va. Code Ann. § 58.1-2628 (2009) requires that Verizon annually report its personal property to the Commission, showing *with particularity*, the county, city, or town where such property is located.

For months, Verizon rebuffed, repelled, and resisted Respondent Localities' efforts to obtain basic and relevant information pertaining to each specified item of property in Verizon's claim, thereby thwarting Respondent Localities' attempts to analyze the claim's factual and legal underpinning. Verizon's incessant stonewalling led to the filing by Respondent Localities of dozens of Motions to Compel and a Joint Motion for Continuance.

On September, 10, 2010, the Hearing Examiner issued a ruling granting Respondent Localities' Joint Motion for Continuance. In her September 10, 2010, Ruling, the Hearing Examiner acknowledged the discovery difficulties experienced by Respondent Localities and adjusted the dates for filing testimony and presenting evidence. Under the current schedule, Respondent Localities are required to submit pre-filed testimony on or before March 31, 2011. The final hearing to present evidence is scheduled to begin on September 12, 2011.

Thereafter, on November 10, 2010, November 23, 2010, and December 3, 2010, the Hearing Examiner issued rulings in response to Respondent Localities' discovery motions. Using Fairfax County's Motions to Compel as universal templates, the Hearing Examiner parsed the disputed interrogatories and document and property inspection requests, reviewed Verizon's objections and responses thereto, and considered the various positions advanced by the parties. Granting the Motions to Compel on virtually every ground, the Hearing Examiner issued clear directives to Verizon as to the nature, scope, and timing of its discovery obligations. One of the key components of the Hearing Examiner's Ruling was the requirement that Verizon provide the requested data and documents to Fairfax County and other Respondent Localities within seven days such that inspections of the subject property could be completed by January 31, 2011[1]; thereby allowing Respondent Localities sufficient time to meet their March 31, 2011, testimonial filing deadline.

II. Argument

A. *Verizon's duties as the applicant in this proceeding are governed by the Virginia Constitution and Va. Code Ann. § 58.1-2670 (Supp. 2009).*

The analysis begins with the premise that this proceeding is governed by the Virginia Constitution and applicable Virginia Code provisions. In its Supplemental Applications, Verizon generally asserts that the Commission's 2009 statewide assessments made upon all Verizon's personal property (with the exception of vehicles and materials and supplies) were in excess of fair market value. Pursuant to Va. Const. art. X, § 2, all assessments of tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. Va. Const. art. X, § 2 also provides that, so long as the Commonwealth imposes a state franchise or license tax upon a public service corporation, such corporation's tangible personal property shall be assessed by a central agency as prescribed by law. See also Va. Const. art X, § 1 (all taxes shall be levied and collected under general law). The cited portions of Virginia's Constitution underscore the preeminent role that Virginia's legislature plays in the regulation and oversight of state and local property tax assessments.

Taxpayer claims to correct allegedly erroneous tax assessments did not exist at common law. They are purely creatures of statute and are controlled by the language of the specific statute that confers the right to appeal. *Smith v. Bd. of Supervisors*, 234 Va. 250, 361 S.E.2d 351

[1] For example, in her November 10, 2010, Ruling, the Hearing Examiner directed that, as applied to inspections of the claimed property, Verizon was to provide within seven days a complete list of claimed property as requested in Interrogatory No. 1. Once Verizon had provided the information requested in Interrogatory No. 1, Respondent Localities were to provide Verizon with a list of up to twenty percent of the accessible claimed property within their borders that Respondent Localities wished to inspect. (Hearing Examiner's Ruling; 11/10/10, at page 16.)

(1987); *Washington County v. Sullins College Corp.*, 211 Va. 591, 179 S.E.2d 630 (1971); *Barbour v. City of Roanoke*, 207 Va. 544, 151 S.E. 2d 398 (1966); *Town of Leesburg v. Loudoun National Bank*, 141 Va. 244, 126 S.E. 196 (1925). Where the right to apply for correction of an erroneous tax assessment is provided by the Virginia Code, then such application must be pursued in accordance with any "restrictions or conditions as may be contained therein." *Commonwealth v. Cross*, 196 Va. 375, 378, 83 S.E. 2d 722, 725 (1954). See also *Commonwealth v. Richmond-Petersburg Bus Lines*, 204 Va. 606, 132 S.E. 2d 728 (1963).

These principles apply equally to proceedings brought to challenge local tax appeals in the state's circuit courts or in proceedings brought to challenge assessments made by or on behalf of the Commission. In *Commonwealth v. Cross*, 196 Va. 375, 83 S.E.2d 722 (1954), the taxpayer initiated a proceeding in the Commission to seek a refund for an alleged overpayment of a gross receipts road tax. The question posed was when the taxpayer's right to seek the refund for the overpayment actually arose. The Supreme Court consulted the statute that conferred the right to the appeal for its answer. In so doing, the Court reaffirmed Virginia's long standing principle that the "right to apply for the correction of an assessment and for a refund is purely a statutory right and *it is incumbent upon one seeking relief to proceed according to the statute affording such relief.*" *Id.* at 378, 83 S.E.2d at 725 (emphasis added).

Here, Verizon's right to seek a reduction in the Commission's 2009 assessed value is derived from and controlled by Va. Code Ann. § 58.1-2670 (2009). In pertinent part, § 58.1-2670 provides that any taxpayer aggrieved by any action of the Commission in the assessment of the value of the property of any company or corporation assessed by the Commission "may apply to the Commission for a review and correction of any specified item or items thereof." Such application "shall set forth with reasonable certainty the item or items, of which a review and correction are sought." Va. Code Ann. § 58.1-2670 (2009).

The excerpted language from § 58.1-2670 is neither superfluous, nor window dressing. Section 58.1-2670 creates Verizon's right to appeal the Commission's 2009 assessments. It is the *only* statutory entrance way for Verizon's claims. No other Virginia Code provision confers the right to appeal a Commission personal property tax assessment.

The significance of the chosen words of the enabling statute should neither be overlooked, nor minimized. The word "specified" means "having mentioned or named in an explicit manner." 2005 Op. Va. Att'y Gen. 62, 67. The word "specific" from which the word "specified" is derived or is related has been construed as that from which other articles may be distinguished or distinguished as a part of the whole. See *Friedman v. Sabot*, 205 Va. 318, 136 S.E.2d 845 (1964); *Warner v. Baylor*, 204 Va. 869, 134 S.E.2d 263 (1964); *May v. Sherrard*, 115 Va. 617, 79 S.E. 1026 (1913) (Court defines the word specific in the context of legacies in distribution of an estate). The word "item" is defined as a "piece of the whole." Black's Law Dictionary, 850 (8th Ed. 2004). See *Gilmore v. Landsidle*, 252 Va. 388, 478 S.E.2d 307 (1996) ("item" in the context of an appropriation act interpreted to mean "smallest distinct unit").

The intent of Va. Code Ann. § 58.1-2670 can be gleaned from the plain meaning of its language. See *Schefer v. City Council of City of Falls Church*, 279 Va. 558, 691 S.E.2d 778 (2010); *City of Richmond v. Confrere Club of Richmond*, 239 Va. 77, 80, 387 S.E.2d 471,473 (1990). Because § 58.1-2670 creates the cause of action, prescribes the relief, informs the tribunal as to what is relevant, and instructs the applicant as to what it must prove, specificity in the applicant's claim is necessary to sustaining and proving a claim brought thereunder.

The need for property specific information and for particularity under § 58.1-2670 becomes especially critical when viewed in the context of a complex, multijurisdictional statewide property tax assessment appeal such as this one. Case law illustrates the point.

The Virginia Supreme Court discussed the necessity for particularization of claims that arose from the assessment of different pieces of property located in multiple jurisdictions in a slightly different procedural setting. In *City of Alexandria v. Richmond F& P.R. Co.,* 223 Va. 293, 288 S.E.2d 457 (1982), the Court reviewed the procedural history of RF&P's challenge to the Commission's valuation of separate properties in the City of Alexandria and Henrico County. RF&P had previously challenged the Commission's valuation of its property in Arlington County. The Supreme Court upheld RF&P's constitutional challenge and remanded the case to the Commission with instructions that the Commission correct the value and authorize recovery of the excess taxes that RF&P paid to Arlington County. *R F&P v. Corporation Commission,* 219 Va. 301, 246 S.E.2d 408 (1978). Thereafter, RF&P filed applications with the Commission for review and correction of the Commission's valuation of RF&P's other properties located in Alexandria and Henrico County. Based upon the Court's decision in the earlier Arlington County case, the Commission entered orders reducing the value of RF&P's properties in Alexandria and Henrico County and authorized RF&P to seek recovery of excess taxes from those localities. *City of Alexandria v. Richmond F&P.R. Co.*, 223 Va. at 296, 288 S.E.2d at 459. Although the Commission's valuation method as applied to the one piece of property in Arlington County had been declared invalid, a separate challenge to the other properties in Alexandria and Henrico County was necessary. While the taxpayer had discharged its burden with regard to the particular piece in Arlington County, that determination would not be extended to discrete pieces of property in other localities until and unless the taxpayer took the necessary procedural steps to properly challenge those assessments. *Id.*

Asset specific valuation was also at the forefront of the Supreme Court's holding in *Bd. of Supervisors v. Telecommunications Industries Inc.*, 246 Va. 472, 436 S.E.2d 442 (1993). There, the Supreme Court ruled that Fairfax County could not rely upon its class based computer valuation schedule used to assess two VAX 8550 mid range computers once the applicant had produced an individualized appraisal and specific market evidence for the two computers. Five years later in *Raytheon E-Systems v. Fairfax County Board of Supervisors*, Law No. 157959 (Fairfax Co. Cir.; April 8, 1998) (slip. op. 1998) (Ex. D), the Fairfax Circuit Court ruled that a taxpayer could not challenge a County tangible personal property tax assessment by simply supplanting the local assessor's methodology; i.e., by having the circuit court substitute the taxpayer's class based depreciation schedule for that employed by the County. When read together, the two Fairfax County cases stand for the proposition that a taxpayer's cause of action for correction of a personal property tax assessment is considered an *asset specific* cause of action[2], *not* one that is *class based* or *categorical* in nature.

Property specific valuation was more recently addressed in November of 2010, when the Supreme Court addressed whether a taxpayer had failed to meet its burden of proof in an erroneous tax assessment appeal, when that taxpayer failed to establish the market value of *each* individual unit of a condominium. In *TB Venture LLC v. Arlington County*, 2010 Va. Lexis 264 (Record No. 091621) (November 4, 2010), the taxpayer, through its expert, tried to demonstrate that the County's assessments of a condominium were erroneous by means of the expert's methodology of valuing all 21 individual units of the condominium as an integrated whole and then arbitrarily allocating values to each individual unit. The taxpayer did not separately value each individual unit. In rejecting the taxpayer's theory of property valuation, the Court was influenced by a Virginia statute that provides that condominium units are considered distinct units for tax purposes. The Court held that, even if there are market driven impediments to

[2] Similarly, in Henrico County, the Circuit Court ordered a taxpayer to file a Bill of Particulars, listing the assets the taxpayer alleged were erroneously assessed by the County; thereby implicitly acknowledging the asset specific nature of a cause of action for correction of a personal property tax assessment. *HCA Health Services of Virginia, Inc. v. County of Henrico*, CL99-1682 (Order, March 13, 2001). (Ex. E).

buying and selling individual units, those elements can be factored into *each* unit's fair market value. 2010 Va. Lexis 264 *11. See also *West Creek Assoc., LLC v. County of Goochland*, 276 Va. 393, 665 S.E.2d 834 (2008).

In 2007, the Commission addressed the necessity for specificity in a personal property tax appeal substantially similar to this one. In *Application of Elantic Telecom Inc.*, PST-2004-00046 (2007); (W.L. 2759985; Va. S.C.C.) (slip. op.) (Aug. 21, 2007), the applicant, Elantic Telecom Inc., requested a significant reduction in the Commission's assessed values for certain taxable telecommunications equipment and sought corresponding tax refunds from localities. Many localities intervened. After considering a host of discovery motions, the Commission issued a brief opinion, upholding an earlier ruling by the Hearing Examiner regarding the taxpayer's duty to provide certain asset specific information in discovery. *Id.*

The Hearing Examiner here likewise recognized the import of the words contained in Va. Code Ann. § 58.1-2670. In her November 10, 2010, Ruling, the Hearing Examiner cited the enabling statute, analyzed applicable case law, and observed: "Verizon initiated this proceeding, and carries the burden of proof to first identify the 'item or items' for which it seeks correction. Clearly some sort of itemization is required by statute and is essential to Verizon's case." (Hearing Examiner's Ruling; 11/10/2010; at pg. 8).

It is against the backdrop of § 58.1-2670 and cited decisions that Verizon's actions in response to the Hearing Examiner's Rulings, and the viability of its case must be judged. Under the Hearing Examiner's November 10, 2010, Ruling, Verizon was ordered to produce certain information directly related to the "specified" items of its claim to Fairfax County. Although the Hearing Examiner's November 10, 2010, Ruling related to Fairfax County's discovery requests, Verizon provided all localities serving substantially similar discovery requests with copies of its written supplemental responses and CD's containing documentation.[3]

What arrived on Respondent Localities' respective doorsteps was a monolithic Commonwealth wide data morass that was not reasonably asset specific, nor sorted by locality. Respondent Localities have diligently reviewed Verizon's original responses to discovery, its supplemental responses to discovery, and all other relevant submissions in order to ascertain whether Verizon complied with the requirements and directives of the Hearing Examiner's November 10, 2010, Ruling and successive related discovery rulings, as well as satisfied its larger obligations under § 58.1-2670. Although Verizon did provide supplementary information and data (Ex. F), Verizon failed to provide certain critical information and records that the Hearing Examiner directed be provided to Respondent Localities.

B. *Because Verizon's pleadings, discovery responses, pre-filed testimony, and other submissions conclusively demonstrate that, as a matter of law, Verizon cannot prevail on its claims under § 58.1-2670, entry of a final summary judgment upholding the Commission's 2009 assessments of Verizon's personal property and dismissing Verizon claims is appropriate at this time.*

Verizon's pleadings, submissions to the Commission, admissions, discovery responses, and pre-filed testimony demonstrate conclusively that Verizon cannot satisfy its burden of proof as the applicant under Virginia law and that Respondent Localities are entitled to entry of an order of final summary judgment in this proceeding.

Interrogatory No. 1(f) asked that Verizon provide the claimed market values for all specific items of challenged equipment in the respective localities. Even though the Hearing

---

[3] In its November 30, 2010, Status Report to the Hearing Examiner, Verizon made clear that it interpreted the Hearing Examiner's Ruling as applying to all jurisdictions that had served similar discovery requests. (Ex. F). In addition, in an email exchange between Verizon and Henrico County (Composite Ex. H-Henrico County's Affidavit, Attachment 1), Verizon confirmed that the information provided to Henrico County following entry of the Hearing Examiner's November 10, 2010, Ruling, was responsive to Henrico County's Interrogatories that sought asset identification and to all Henrico County's Document Requests.

Examiner directed that such information be provided, none has *ever been* forthcoming. (Hearing Examiner's Ruling; 11/10/2010 at pg. 8). Such information is not part of or appended to Verizon's pleadings and was not furnished by Verizon in discovery. (Ex. F.; Verizon 11/30/2010, Status Report; Attachment C). Indeed, in response to the Hearing Examiner's November 10, 2010, directive to produce such information to Fairfax County and other intervening localities, Verizon made the following representation and admission to the Commission in its November 30, 2010, Status Report: "*Verizon has not determined or calculated the fair market value of each individual item of property under appeal and thus does not have the information to produce.*" (Ex. F; Verizon 11/30/2010, Status Report; Attachment C at pg. 2). (emphasis added).

Moreover, such information is not part of the designated testimony of Verizon's proffered valuation expert, Gary Hunter. To the contrary, Hunter's opinions of value are *entirely* class based and allocation oriented. The ensuing colloquy between Hunter and Verizon's counsel set forth on page 42 of Verizon's June 4, 2010, designated testimony of its valuation expert represents Verizon's position:

Q. **WHAT IS YOUR CONCLUSION?**

A. Based on the analysis contained in the appraisal, the fair market value of personal property assets in Virginia was found to be $1,900,000,000 for Verizon Virginia and $561,000,000 for Verizon South.

Q. **IS IT POSSIBLE TO DETERMINE A VALUE FOR EACH TAXING JURISDICTION?**

A. We have determined a final value by asset category in Virginia. It is perfectly reasonable to distribute that value to the various localities based on the investment in those asset categories within the jurisdiction as compared to the total investment statewide.

(See June 4, 2010, Public Testimony of Gary Hunter at page 42, Lines 9-12, 20-24; Ex. G).

Not only are property specific market values relevant, they are necessary to sustaining a cause of action for correction of an allegedly erroneous property tax assessment. Absent such information, any such claim cannot proceed. The absence of property specific market values in Verizon's pleadings and discovery responses coupled with its November 30, 2010, admission to the Commission that it has no asset specific market values for the specified items of claimed property and the entirely class based valuation and allocation of value opinions of its putative expert conclusively demonstrate Verizon's failure to satisfy its burden of proof as the applicant under § 58.1-2670. For this reason alone, this proceeding should be dismissed.

Summary judgment is appropriate when the pleadings, orders, and admissions of a party show that there is no material issue of fact outstanding and the moving party is entitled to judgment as a matter of law. See Va. Sup. Ct. Rule 3:20; *Carson v. LeBlanc*, 245 Va. 135, 427 S.E.2d 189 (1993). Summary judgment is available in a Commission case. See *Blue Cross of Virginia v. Commonwealth*, 221 Va. 349, 269 S.E. 2d 827 (1980). Especially in a non-rate making case, because the Commission requires party submission of pre-filed testimony, summary disposition is an acceptable method of bringing a case to an expedited conclusion. *Id.* See also *GTE Sprint Communications Corp. v. AT&T,* 230 Va. 295, 337 S.E. 2d 702 (1985); *VEPCO v. SCC*, 226 Va. 541, 312 S.E. 2d 25 (1984).

This case is not a rate case. It is a personal property tax appeal. The Commission's property tax assessments are clothed with a presumption of correctness. *Norfolk & W. Ry. Co. v. Commonwealth*, 211 Va. 692, 179 S.E. 2d 623 (1971). As the applicant, Verizon bears the burden of proof to overcome the Commission's presumption of correctness and to prove that the specified item or items of claimed equipment were erroneously assessed or assessed in excess of fair market value. *Id.* See *City of Norfolk v. Snyder*, 161 Va. 288, 170 S.E. 721 (1941).

Verizon's pleadings, pre-filed testimony, November 30, 2010, admission to the Commission, discovery responses, and other submissions conclusively establish that Verizon cannot satisfy its burden of proof as the applicant in this proceeding. Verizon has not and/or cannot produce asset specific market values for the specified items of property that comprise its claim. This failure of proof is fatal. The plain meaning of the enabling statute's specified items requirement read with judicial precedent requiring that an applicant adduce individual market values for the *particular* items of claimed property demonstrate that Verizon's claim cannot be sustained as a matter of law. Therefore, Respondent Localities request that the Commission grant their motion for entry of Final Summary Judgment.

C. *Verizon's discovery responses and other submissions disclose that Verizon disobeyed the Hearing Examiner's Rulings.*

In addition to its failure to produce asset specific and locality specific market values as discussed above, Verizon has failed to comply with other aspects of the Hearing Examiner's November 10, 2010, Ruling and related successor discovery rulings. Respondent Localities will list and explicate examples of Verizon's non-compliance.

Verizon failed to provide locality specific, original cost documentation for each item of the claimed equipment. Interrogatory No. 1(d) and companion Request for Production No. 1 asked that Verizon provide to Fairfax County (and its sister localities that submitted substantially similar discovery requests) documentation reflecting the total original cost per claimed item, per locality. Document Request No. 1 specifically requested asset and locality specific invoices. The Hearing Examiner ruled that Verizon was to provide such information within seven days. (Hearing Examiner's Ruling; 11/10/2010 at pg. 11). After wading through all the information and records that Verizon has produced to date, Respondent Localities were unable to find original cost documentation, in particular, invoices segregated by claimed asset and by locality. (Composite Ex. H).

Verizon's failure to produce actual purchase documentation and invoices for each claimed item of property by locality inhibits Respondent Localities' ability to analyze and substantiate the specifics of Verizon's larger claim. In Virginia, a valid written contract for the purchase and sale of property is said to contain "a description of *the* thing sold, by which *it* can be known or identified, of the price to be paid for *it*, of the party who sells *it*, and the party who buys *it*." *Tidewater Ry. Co. v. Hurt*, 109 Va. 204, 63 S.E. 421 (1909) (emphasis added).

The absence of locality specific, per item acquisition documentation also limits Respondent Localities efforts to confirm the filings made by Verizon in its 2009 statewide tax reports. It also undermines, if not totally negates, Respondent Localities' efforts to undertake "the per asset cost figure as related to market value" analysis that the Commission endorsed in the *Elantic* case. In *Elantic,* the Commission stated: "[i]nformation relative to the original cost and configuration-including the serial numbers that could be used to ascertain original cost and configuration-is relevant, and perhaps even necessary, when considering value of the equipment at issue in these cases regardless of the assessment method employed." *Application of Elantic Telecom Inc.*, PST-2004-00046 (W. L. 22759985; Va. S. C. C.) (slip op. at pg. 4) (August 21, 2007). See *Smith v. City of Covington*, 205 Va. 104, 108-109, 135 S.E. 2d 220, 223 (1964) (original cost of an asset is one of the factors to be considered in its valuation for tax purposes).

The lack of per item invoices is especially problematic for those localities which have a plethora of Verizon's newest equipment. Any purchases of the claimed equipment proximate in time to January 1, 2009, are to be accorded substantial weight in the valuation process. See *American Viscose v. City of Roanoke*, 205 Va. 192, 135 S.E.2d 795 (1964); see also discussion *infra* at pgs. 14-16.

Verizon also has failed to provide to or has withheld from Respondent Localities critical information in response to Interrogatory No. 1(h) and Request for Production No. 9. (Composite

Ex. H). Interrogatory No. 1(h) and companion Document Request No. 9 sought information related to any third party sales and/or offers to purchase any of the items of the claimed equipment. Under Virginia law, such information must be factored into the analysis of a property's fair market value for taxation. Although not considered conclusive evidence of a property's market value, information related to the sale of a piece of property is accorded substantial weight in the valuation process. *Arlington County v. Ginsberg*, 228 Va. 633, 325 S.E. 2d 348 (1985); *American Viscose v. City of Roanoke*, 205 Va. 192, 135 S.E. 2d 795 (1964).

Recent sales of the subject property are also relevant to such property's disposal history and are probative in determining whether Verizon may have committed spoliation of evidence. If any of the claimed Virginia assets have been conveyed to a third party and relocated or reconfigured, they would be unavailable for inspection and arguably despoiled.

In this case, the discovery of material evidence related to sales of the subject equipment is not an academic exercise. During the course of their investigations, Respondent Localities became apprised that, at or about the assessment date of January 1, 2009, specified items of tangible property may have been part of a larger sale of assets from Verizon Communications (the parent company of the two Virginia subsidiary-applicants) to Frontier Communications. (Ex. I). As a result of that transaction, some of the claimed items of Virginia property may have been relocated to West Virginia or to other states. The prices that Verizon and/or Frontier Communications placed on the tangible properties, the substance of the negotiations that led to the eventual sales prices and the method by which those sales prices were determined are relevant and to be accorded substantial weight in ascertainment of fair market value. Despite the Hearing Examiner's directive, Verizon failed to furnish Respondent Localities with information relative to which specific items were conveyed as part of the Frontier sale, which Respondent Localities' properties, if any, were affected by the sale, the amount and nature of the consideration received by Verizon for the Virginia assets, the method by which the ultimate sale prices for the tangible items were derived, and the Virginia equipment's current whereabouts.

Albeit voluminous, the data that Verizon has provided also contains a multitude of jurisdictional property identification defects, inter and/or intra-jurisdictional property location errors, and property location anomalies that contradict Verizon's statewide reports. During their reviews of Verizon's data and documents, several Respondent Localities discovered that items of claimed property that Verizon asserted to be in one locality were actually in another. (Composite Ex. H). Other localities discovered that certain property that Verizon asserted had situs in that locality did not exist. (Composite Ex. H). Property identification and location errors of this magnitude render it virtually impossible for Respondent Localities to identify properties for inspection in accordance with the Hearing Examiner's Rulings and prepare pre-filed testimony.

Verizon's obfuscation, evidentiary roadblocks, and acts of disobedience have hamstrung Respondent Localities' efforts to prepare their cases. Respondent Localities cannot provide their experts with the information, records, and data that such experts need in order to analyze Verizon's claims and for preparation of their reports and pre-filed testimony. Respondent Localities also cannot test Verizon's theories, data, and opinions against the marketplace. At this juncture, without having in-hand the information, invoices, and records that the Hearing Examiner directed that Verizon produce, there is no realistic possibility that Respondent Localities can meet the Commission's January 31, 2011, or March 31, 2011, deadlines.

D. *Dismissal of Verizon's Supplemental Applications is appropriate and warranted.*

The legislature has endowed the Commission with significant powers to enforce and ensure compliance with its orders and directives. Va. Code Ann. § 12.1-13 (2006) provides that, for all matters within the Commission's jurisdiction, the Commission shall have all powers of a court of record to enforce compliance with its orders and punish the disobedient.

Virginia's judicial tribunals are armed with plenary authority to punish parties who ignore, disobey, or violate discovery orders. Va. Sup. Ct. Rule 4:12. See *Walsh v. Bennett*, 260 Va. 171, 530 S.E.2d 904 (2000); *Woodbury v. Courtney*, 239 Va. 651, 391 S.E.2d 293 (1990). Outright dismissal of a claim is an appropriate sanction in the face of a litigant's non-compliance with a discovery order. *American Safety Cas. Ins. Co. v. C. G. Mitchell Constr.*, 268 Va. 340, 601 S.E.2d 633 (2004). See *Brown v. Black*, 260 Va. 305, 534 S.E.2d 727 (2000); *Woodbury v. Courtney*, 239 Va. 651, 391 S.E.2d 293 (1990).

Virginia's appellate courts have expressly held that Virginia's quasi-judicial Commissions may properly impose severe sanctions upon disobedient parties if such Commissions are so authorized. *Jeff Coal, Inc. v. Phillips*, 16 Va. App. 271, 430 S.E.2d 712 (Va. App. 1993) (Court of Appeals upholds Virginia Worker's Compensation Commission's striking of disobedient party's defenses as a discovery sanction); *Hudcock v. Industrial Commission*, 1 Va. App. 474, 481, 340 S.E.2d 168, 172 (1986).

The Commission has the power to dismiss and should exercise that power here. For nearly six months, Verizon has either withheld or refused to provide discoverable information and documents in response to Respondent Localities' legitimate discovery requests and in disregard of a direct order of the Hearing Examiner. Verizon's relentless obfuscation has resulted in a monumental expenditure of time, money, and resources by Respondent Localities, Commission Staff, and the Commission and delayed this proceeding.

Notwithstanding the Hearing Examiner's Order and directives, Verizon persists in this costly and counter-productive gamesmanship. Verizon's "rules and orders don't apply to me" attitude should not be condoned. Accordingly, Respondent Localities request that the Commission find that Verizon has disobeyed a duly issued order, exercise its sanction powers under Va. Code Ann. § 12.1-13, and dismiss Verizon's Supplemental Applications.

III. Conclusion

WHEREFORE, Respondent Localities respectfully request that the Commission grant their Consolidated Motion for entry of an order of Final Summary Judgment in the above-captioned proceeding.

Additionally, or in the alternative, Respondent Localities respectfully request that the Commission grant their Consolidated Motion to Dismiss the Supplemental Applications in the above-captioned proceeding.

Respondent Localities also respectfully request that the Commission stay this proceeding during the pendency of this Motion, and schedule oral argument on this Motion once briefing on the Motion has been completed.

Respectfully submitted,

Undersigned Respondent Localities

ATTACHMENT IV

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATIONS OF

VERIZON SOUTH INC.,

and

VERIZON VIRGINIA INC.

CASE NO. PST-2009-00033

For review and correction of the equalized assessment of the value of property subject to local taxation – Tax Year 2009

HEARING EXAMINER'S RULING

June 16, 2011

On December 10, 2010, a large number of localities[1] joined together to file Respondent Localities' Consolidated Motion for Final Summary Judgment and/or to Dismiss Applicants' Supplemental Applications, Request for Oral Argument and Stay of Proceedings ("Motion" or individually, "Motion for Summary Judgment" or "Motion to Dismiss). They contend that Verizon South Inc. and Verizon Virginia Inc. (collectively, the "Applicants" or "Verizon") have failed to provide certain critical information and records as directed to be produced by the Examiner.[2] They assert that Verizon's pleadings, submissions to the Commission, admissions, discovery responses, and prefiled testimony demonstrate conclusively that Verizon cannot satisfy its burden of proof and that Respondent Localities are entitled to entry of an order of final summary judgment. They argue that Verizon also failed to provide locality-specific, original cost documentation for each item of the claimed equipment for which it seeks review and correction of the Commission's assessment. Respondent Localities represent that in addition to the failure to produce asset-specific and locality-specific market values, Verizon failed to comply with other aspects of the Hearing Examiner's

[1] Fairfax County Board of Supervisors; County of Henrico; City of Norfolk; Prince William County; City of Williamsburg; Amherst County; Appomattox County; Augusta County; Brunswick County; Caroline County; Essex County; Fauquier County; Franklin County; Isle of Wight County; Nelson County; Northumberland County; Pittsylvania County; Pulaski County; Rockbridge County; Warren County; Wise County; City of Danville; City of Fairfax; City of Falls Church; City of Hopewell; City of Lynchburg; City of Newport News; City of Roanoke; City of Staunton; Town of Herndon; Town of Pulaski; Alleghany County; Botetourt County; Town of Buchanan; Town of Christiansburg; City of Covington; City of Radford; Town of Vinton; Town of Leesburg; City of Richmond; Culpeper County Board of Supervisors; Hanover County; Amelia County; King William County; Surry County; City of Petersburg; County of Montgomery Board of Supervisors; New Kent County Board of Supervisors; King George County Board of Supervisors; Arlington County Board of Supervisors; City of Suffolk; Powhatan County; Roanoke County; City of Hampton; Chesterfield County Board of Supervisors; City of Fredericksburg; Frederick County Board of Supervisors; Spotsylvania County; City of Alexandria; Louisa County; Town of Louisa; Town of Mineral; Orange County; Town of Gordonsville; Town of Orange; Albemarle County; City of Chesapeake; Halifax County Board of Supervisors; James City County Board of Supervisors; Northampton County Board of Supervisors; and Buchanan County (Note: Amelia County; King William County; Town of Louisa; Town of Mineral; Town of Gordonsville; and Town of Orange have subsequently withdrawn from participation in this case).
[2] *See for example*, Hearing Examiner's Ruling on Fairfax County Motions to Compel, D.C.C. No. 101120033 (Nov. 10, 2010); Hearing Examiner's Ruling on Respondent Localities' Motions to Compel, D.C.C. No. 101130081 (Nov. 23, 2010); and Hearing Examiner's Ruling on Common Discovery Issues, D.C.C. No.101210088 (Dec. 3, 2010).

rulings, such as information about recent sales of comparable property. Respondent Localities request that the Commission grant their consolidated Motion for Summary Judgment. Additionally, or in the alternative, they request that the Commission grant their Motion to Dismiss. Finally, they request that the Commission stay the proceeding during the pendency of the Motion, and schedule oral argument.

Respondent Localities advised that during the months of June 2010 through September 2010, most participant localities propounded discovery requests to Verizon which were substantially similar in content and scope.[3] They further advised that the discovery requests sought rudimentary background information, data, and records relative to each claimed piece of equipment within that locality's boundaries.[4] Reviewing the discovery battles that ensued, they noted that dozens of motions to compel and a Joint Motion for Continuance were filed. In my rulings on those motions Verizon was directed to provide the requested data and documents to requesting localities and to coordinate inspections of specified properties. Verizon, however, was not required to conduct any special studies to facilitate such production. The Respondent Localities now contend that Verizon has continued to fail to produce that information, and has stated that it does not maintain such information on an item-specific basis.

On December 13, 2010, a ruling was entered establishing dates by which a response to the Motion and any reply thereto were due to be filed, and setting an oral argument on the motion.

On December 14, 2010, Loudoun County, and on February 7, 2011, the City of Virginia Beach, filed memoranda in support of, and joined in the Motion.

On December 15, 2010, however, Verizon requested a stay of this proceeding until 30 days after adjournment of the 2011 General Assembly Session pursuant to Virginia Code § 30-5. That stay was granted by ruling dated December 17, 2010. Both the House and the Senate adjourned on February 27, 2011, and accordingly the stay mandated by statute expired on March 29, 2011.

By Ruling dated March 25, 2011, Verizon was directed to respond to Respondent Localities' Motion on or before April 18, 2011. Respondent Localities were directed to reply five business days later, on or before April 25, 2011. Oral argument on the Motion was scheduled for May 3, 2011.

Verizon timely responded. It contends that it met the pleadings requirements contained in Virginia Code § 58.1-2670 and stated a prima facie case for review and correction of the Commission's assessment of its property. Verizon asserts that the Respondent Localities are wrong as a matter of law, and that to prevail it need only present a fair market value at the same level as the Commission's assessment, the class level. Verizon argues that, citing subsections A and F of Virginia Code § 58.1-2628, Virginia law requires it to report its property at the level required by the Commission on forms prepared and furnished by the Commission. Verizon contends that to challenge the Commission's assessment, it need only identify the items for which it seeks review with the same level of particularity at which it was assessed by the Commission. Thus, it argues

---

[3] Motion at 2.
[4] *Id.*

that in order to prevail in its appeal, it need only demonstrate the fair market value of the property at the class level.

At best, Verizon asserts, the Motion for Summary Judgment proves that there are material facts in dispute, notably, the fair market value of Verizon's property.[5] It argues that summary judgment is therefore not available and the case should proceed on its merits.

Verizon also alleges that it has fully complied with its discovery obligations, and the Respondent Localities' claim that Verizon has failed to comply with the Examiner's rulings is "simply untrue."[6] Verizon argues that Virginia courts reserve dismissal based on alleged discovery failures only to cases when a party's non-compliance demonstrates flagrant bad faith and materially prejudices the rights of the other parties. Verizon further contends that it is entitled to an evidentiary hearing on its application under the due process clauses of the United States and Virginia Constitutions.[7]

Fairfax County filed a reply. Fairfax County contends that Verizon completely misunderstands the law applicable to Commission personal property tax appeals. It asserts that Verizon's initial pleading may have survived a demurrer but that does not mean it cannot be subject to summary judgment if no material fact is at issue. Fairfax County also counters Verizon's contention that it only needs to produce information at the same level as set forth in the Commission's assessment forms. Such a class approach, argues Fairfax County, is contrary to the plain language in Virginia Code § 58.1-2670. Fairfax County further asserts that, notwithstanding Verizon's claim that it has complied with discovery compelled by the Examiner, Verizon has failed to fully and accurately respond and its applications should be dismissed.

The localities represented by Sands Anderson ("Sands Anderson Localities") also filed a reply. They continue to assert that Verizon cannot, or will not, comply with the statutory requirements at issue in this case, and the applications should be dismissed as a matter of law. They contend that Verizon has failed to prefile testimony to meet its burden under Virginia Code § 58.1-2670 that a taxpayer seeking a review and correction of a Commission assessment may apply to the Commission for a review and correction of any specified item or items and the taxpayer "shall set forth with reasonable certainty the item or items, of which a review and correction are sought." They further assert that Verizon has failed to produce the required information after being ordered to do so by the Examiner, and has admitted it cannot produce the value of the specific item or items for which review and correction are sought. They argue that Verizon has failed to produce compelled asset-specific information, and has explicitly conceded that it cannot produce asset-specific information to the localities, including, specifically, the market value of each item of property at issue. They continue to contend that without providing relevant property-specific information, including the fair market value of each item of property, Verizon cannot meet its burden of proof under § 58.1-2670, and its case should be dismissed at this stage, by summary judgment.

---

[5] Verizon Response at 2.
[6] *Id.* at 3.
[7] *Id.* at 4 citing United States Constitution, Amendment XIV, Section 1: Constitution of Virginia, Article I, Section 11.

Replies presenting the same argument were also filed by the City of Norfolk; Prince William County; Frederick County; City of Alexandria; Loudoun County; City of Richmond; City of Williamsburg; Henrico County; Halifax County; City of Hampton; Alleghany County; Botetourt County; the Town of Buchanan; the Town of Christiansburg; the City of Covington; the Town of Leesburg; the City of Radford; and the Town of Vinton.

The day before the scheduled oral argument, Verizon filed a Motion to Strike the affidavits attached to Respondent Localities' replies and portions of those replies referring to the affidavits, and asserted its opposition to any attempt to introduce affidavits into the record at the oral argument.

Oral argument was convened as scheduled on May 3, 2011. Appearances were entered by Jennifer L. McClellan, Esquire, counsel for Verizon; Glenn P. Richardson, Esquire, and Raymond L. Doggett, Esquire, counsel for Staff; James E. Cornwell, Esquire, Andrew R. McRoberts, Esquire, and Ann Neil Cosby, Esquire, counsel for a number of localities; Todd G. Patrick, Esquire, counsel to the City of Waynesboro; Bernadette Speller Peele, Esquire, counsel to Prince William County; Elizabeth Dillon, Esquire, counsel for Allegheny County, Botetourt County, and the Towns of Buchanan, Christiansburg, Covington, Leesburg, Radford, and Vinton; Kathleen Dooley, Esquire and Rob Eckstrom, Esquire, counsel for the City of Fredericksburg; Diana Gaston, Esquire, counsel for the City of Richmond; Roger Wiley, Esquire, and Jeffrey S. Gore, Esquire, counsel for the City of Petersburg; Michelle Gowdy, Esquire, counsel for New Kent County; Eric A. Gregory, Esquire, counsel to Powhatan County; Dana R. Harmeyer, Esquire, counsel to the City of Virginia Beach; William E. Hutchings, Jr., Esquire, counsel for the City of Suffolk; Martha P. McGann, Esquire, and Charles S. Prentice, Esquire, counsel for the City of Norfolk; Sharon E. Pandak, Esquire, and Brandi Law, Esquire, counsel for Orange and Louisa Counties; Ellen F.M. Posner, Esquire, counsel for Fairfax County; Jan L. Proctor, Esquire, counsel for the City of Chesapeake; Christina Workman Shelton, Esquire, counsel for the City of Williamsburg; Karen S. Snow, Esquire, counsel for the City of Alexandria; Courtney R. Sydnor, Esquire, and Belkys Escobar, Esquire, counsel for Loudoun County Board of Supervisors; Roderick B. Williams, Esquire, counsel for Frederick County; Karen M. Adams, Esquire, counsel for Henrico County; James R. Benkahla, Esquire, counsel for Spotsylvania; Matt Britton, Esquire, counsel for King George County; Brian R. Charville, Esquire, counsel for Arlington County; and Phyllis A. Errico, Esquire, counsel for the Virginia Association of Counties.

The Respondent Localities designated primary spokespersons to argue the various motions. Ms. Posner, Fairfax County, argued the request for summary judgment on behalf of all moving localities. Mr. McRoberts, Sands Anderson, was the primary spokesperson on the Motion to Dismiss, and Mr. Cornwell, also with Sands Anderson, argued against the Verizon Motion to Strike. Ms. McClellan, Verizon, argued all motions.

MOTION FOR SUMMARY JUDGMENT

Ms. Posner, arguing on behalf of all Respondent Localities, contends that summary judgment by the Commission after an applicant has prefiled direct testimony is appropriate and has been affirmed by the Virginia Supreme Court. In *Blue Cross of Virginia v. Commonwealth*, 221 Va. 349, 357 (1980), the Court held:

> And, as the Commission observed, defendants' evidence, which was unimpeached and not attacked by cross-examination, could not have been in a stronger position. And, too, defendants could hardly expect to develop during cross-examination of hostile witnesses facts significantly more favorable on the issue presented than those already developed through their own witnesses. Consequently, we hold that, in view of the Commission's specialized internal procedure dealing with pre-filed testimony, the Commission did not err in deciding the constitutional issue on summary judgment under the circumstances of this case.

Ms. Posner focused on the clear language of § 58.1-2670 of the Code of Virginia which provides:

> Any taxpayer, the Commonwealth or any county, city or town aggrieved by any action of the Commission in the ascertainment of, or the assessment for taxation of, the value of any property of any corporation or company assessed by the Commission,. . . at any time within three months after receiving a certified copy of such assessment of value or tax, may apply to the Commission for a review and correction of any specified item or items thereof. . . . Such application shall be in a form prescribed by the Commission and shall set forth **with reasonable certainty the item or items, of which a review and correction are sought**, and the grounds of the complaint. (emphasis added).

Respondent Localities contend that the language of Virginia Code § 58.1-2670 is clear, noting that the word "specified" means "having mentioned or named in an explicit manner" according to an opinion from the Virginia Attorney General. 2005 Op. Va. Att'y Gen. 62, 67. They turn to Black's Law Dictionary and the Virginia Supreme Court for the definition of "item." They argue that the word "item" has been defined as a "piece of the whole" Black's Law Dictionary 850 (8^{th} Ed. 2004); and the Virginia Supreme Court defined "item" in the context of an appropriation act as the "smallest distinct unit." *Gilmore v. Landsidle*, 252 Va. 388 (1996).[8]

Respondent Localities state that in a report dated November 30, 2010, Verizon advised the Examiner that it does not have any individual values for any specified item or items within its control. Moreover, they observe that Hunter, one of Verizon's witnesses, addresses valuation of Verizon's assets only on an aggregate basis in his pre-filed testimony.

Ms. Posner recognized that first the Commission and then the Examiner have concluded that Verizon meets the filing threshold requirements, but she contends that we are now at a different point in this proceeding. The earlier demurrer for instance, Ms. Posner argues, required a totally different analysis. She asserts that summary judgment should be considered based on the pleadings, admissions, and prefiled testimony; they show that movants are entitled to judgment at law.

Respondent Localities cite, among other cases, *Carson v. LeBlanc*, 245 Va. 135 (1993) in support of their proposition that summary judgment should be granted in their favor as a matter of

[8] Motion at 6.

law.[9] That case holds that summary judgment is appropriate when the pleadings, orders and admissions of a party show that there is no material issue of fact outstanding and if so, the moving party is entitled to judgment as a matter of law. They assert that since property-specific market values are necessary to proceed on a cause of action for correction of an allegedly erroneous property tax assessment, and since Verizon cannot, and will not, provide such information as compelled, summary judgment is appropriate as a matter of law.

Ms. Posner argues that although Verizon contends that the Motion for Summary Judgment proves that there are material facts in dispute, the only fact relevant to the Motion is Verizon's admission that it does not have individual values for property on a specific item-by-item basis. Verizon, Respondent Localities assert, is attempting to avoid its burden of proof by avoiding proving the value of specific items of the personal property that it challenges. Thus, Respondent Localities argue that the Commission has a statutory cause of action that Verizon cannot meet, and has admitted it cannot meet, therefore summary judgment is appropriate.

Verizon counsel counters that Respondent Localities rely on the wrong statute, and even then they misconstrue it. She contends that all statutes dealing with tax assessments should be considered and Respondent Localities improperly focused on only one statute, § 58.1-2670, that simply establishes the filing requirements for a petition for correction of an assessment. Ms. McClellan argues that the rest of Chapter 26 of the Virginia Code governing the assessment of property must also be considered. Notably, she asserts that Virginia Code § 58.1-2673 establishes the burden of proof and simply requires the taxpayer to carry the burden of proof that the value assessed by the taxing authority is excessive.

Verizon contends that a public service company need only establish its case to challenge an assessment based on the level of detail at which the Staff requires for assessment reports. It contends Staff only requires a class level for assessment purposes. Requiring utilities to report by property item, according to Verizon, is contrary to the way utilities build their systems, not by jurisdictional boundaries but by system needs. It contends that Verizon does not purchase on a jurisdictional basis but rather, purchases based on the needs of the system. Verizon also asserts that the Federal Communication Commission requires Verizon to keep its books according to mass or group asset accounting standards because Verizon has millions of transactions and millions of pieces of equipment. Verizon argues that the statutes and the Commission's assessment process have never provided notice to Verizon that it would ever have to prove its valuation on an item-by-item basis.

Verizon next asserts that it is entitled to due process and an oral argument is not sufficient to provide that due process. Verizon also complained that "[u]ntil the case started and until Staff files its report, Verizon can't conduct any discovery on the Staff. So Verizon has to guess at what the Commission did, what the Commission Staff did in developing this assessment."[10] Verizon concluded that it is at the hearing where Verizon must carry its burden of proof, not in its application, not in the discovery responses, and not in its initial round of prefiled testimony. Counsel again reiterated that there are clearly disputed facts that are material to the application, and indeed, the fair market value itself is disputed.

---

[9] *Id.* at 12.
[10] Transcript at 49-50.

Finally, Verizon countered that it "never said it could not develop a fair market value for each individual unit or property."[11] It clarified that it said in discovery responses that it did not have it, and creating it would require a special study, and the Commission's discovery rules and the Examiner's rulings do not require parties to conduct special studies in response to discovery. Verizon counsel stated that "if the Examiner or the Commission were to find that a fair market value were required - which [she] submit[s] it's not – Verizon would have the opportunity to either amend its direct testimony, put in new evidence in its second round of prefiled testimony, or put that evidence in on the stand at the hearing."[12]

The Commission's Division of Public Service Taxation ("Division" or "Staff") did not take a position on the pending Motion, however, Staff counsel addressed certain statements made in the pleadings and in argument that were not accurate and required correction. The statements generally fell into one of three categories: the Division's assessment process, Verizon's contention that it had to guess at the Commission's assessment, and statements made relative to discovery. First, in its response to the Motion, Verizon claimed that the Division assesses property at a class level and contends that the Division's assessments are not based on the level of detail that the localities are seeking through discovery.[13] Staff clarified that it relies heavily on the accuracy of the information contained in the annual tax reports when assessing the property of public service companies. Staff counsel noted that the Division has only 14 employees and receives almost 400 tax and gross receipts reports each year.[14] It must therefore rely on mass appraisal techniques when assessing the fair market value of the property of public service companies. However, when a public service company files an application for a review and correction of its assessment, the Division "routinely requests a detailed breakdown of the assets within each class reported by the company. After all . . . an assessed value for a class of property is simply the total fair market value of all the individual pieces of property making up that class."[15]

Staff also clarified that any impression that the Division allocates property among localities "is simply not accurate"[16] noting that Virginia Code § 58.1-2628 imposes a statutory duty on Verizon and all other public service companies to file an annual tax report providing all their real and tangible personal property "showing particularly the county, city, town, or magisterial district wherein such property is located."[17] Staff stated that the Division relies on the information provided by the companies when certifying assessments to each locality, and assumes that the companies are accurately reporting the status of their property to the Commission.[18]

Staff next responded to Verizon's statement that it does not know what valuation method the Division utilized and had to guess because it cannot request discovery on the Staff before Staff files its written testimony. Staff counsel advised that the Division provided Verizon with all of the data it used to assess Verizon's property in Virginia in the 2009 tax year, even down to the individual

[11] *Id.* at 48.
[12] *Id.* at 48-49.
[13] *Id.* at 57.
[14] *Id.* at 58.
[15] *Id.*
[16] *Id.* at 59.
[17] Virginia Code § 58.1-2628 A.
[18] Transcript at 60.

condition table by property class, prior to the filing of the pending applications.[19] Verizon's substituted outside counsel was provided with all the documents and work papers the Division used to determine the 2009 assessed values after he was retained by Verizon. Staff also advised Verizon that it was willing to meet to go through the 2009 assessment, but Verizon had not yet scheduled such a meeting. In short, Staff counsel advised that the Division has always been ready, willing and able to provide Verizon with all the information supporting the Division's assessment for the tax year 2009.[20]

There are a number of statutes, including but not limited to Virginia Code § 58.1-2670, that are critical to an analysis of an application for review and correction. Virginia Code § 58-2670 provides that any taxpayer "may apply to the Commission for a review and correction of any specified item or items thereof." Such application "shall set forth with reasonable certainty the item or items, of which a review and correction are sought."

The provisions of that Code section, as argued by the Respondent Localities, place the burden on the taxpayer to identify the specified item or items for which correction is sought. Both the Commission and I concluded early in this case that Verizon had provided sufficient information to docket and proceed with the case. However, I cautioned, and will do so again, that Verizon ultimately carries the burden herein.

Also important is Virginia Code § 58.1-2628 which provides in pertinent part:

> A. Each telegraph company and telephone company shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, owned, operated or used by it, except leased automobiles, leased trucks or leased real estate, as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.
>
> . . . .
>
> F. The report required by subsections A through E shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

This statute requires a taxpayer to show all tangible personal property "showing particularly the county, city, town or magisterial district wherein such property is located." This too is Verizon's burden. Staff clearly advised that it does not consider allocations to be adequate.

Verizon attempts to justify its failure to produce item specific information by relying on this statute and contends that if the Commission requires item specific information it should have required that detail in the annual assessment reports required of public service companies. I

[19] *Id.* at 61.
[20] *Id.* 61-62.

disagree. Staff counsel's explanation of the Division's assessment process was clear and proper. Staff must rely on the taxpayer to keep detailed and accurate records to backup and support the reports filed with the Commission. The taxpayer must be able to support the information contained in its report upon audit initiated by the Division or application for correction initiated by the taxpayer.

Finally, Virginia Code § 58.1-2673 is also relevant to this case and provides:

> If, from the evidence introduced at such hearing or its own investigations, the Commission is of opinion that the assessment or tax is excessive, it shall reduce the same or if it is insufficient, it shall increase the same. If the decision of the Commission is in favor of the taxpayer, in whole or in part, appropriate relief shall be granted, including the right to recover from the Commonwealth or local authorities, or both, as the case may be, any excess of taxes that may have been paid. The order of the Commission shall be enforced by mandamus, or other proper process, issuing from the Commission.

This statute clearly provides that Commission action should be based on evidence introduced at hearing.

Nonetheless, summary judgment may be available. I agree with Respondent Localities that unlike a demurrer, the standard for summary judgment in Virginia is not whether the initial pleading has stated a cause of action on its face, but rather, whether the pleadings, orders, and admissions of the party show that there is no genuine issue of material fact outstanding and the moving party is entitled to judgment as a matter of law. Although Verizon has stated time and time again that it has not provided detailed item-by-item property information to the Staff and Respondent Localities, I find there are other very material issues in dispute. Summary judgment at this point is not appropriate, and an evidentiary hearing on the applications should be scheduled. I am not yet persuaded, however, that Verizon can carry its burden of proof without providing the Commission the detail sought by the Respondent Localities consistent with the analysis Staff typically conducts when a taxpayer seeks review and correction of the assessment of the value of its property.

MOTION TO DISMISS

In addition, or in the alternative to the request for final summary judgment, the Respondent Localities request dismissal of the applications for Verizon's unjustified failure to produce information requested in discovery and compelled by the Examiner. Respondent Localities assert that to date, despite Verizon's claims of compliance, it has failed to produce the information requested and compelled for each piece of equipment for which Verizon seeks review and correction of its assessment on a locality-by-locality basis.[21]

[21] Respondent Localities attached affidavits to some of their pleadings in which the affiants discussed the Verizon responses to their interrogatories. Verizon moved to strike the affidavits and any references thereto in the pleadings, generally contending that the Examiner had scheduled an oral argument on the Motion and not an evidentiary hearing. Verizon had planned accordingly and was not prepared to address the evidence contained in those affidavits through

The Sands Anderson Localities also advised that the CDs received by the Examiner as part of a courtesy copy of its Response were only samplings of the nature of the information supplied by Verizon, but rather than complain, they had made a good faith effort to review and assess the "quagmire" of data dumped on them by Verizon. They assert they have been and continue to be prejudiced by Verizon's failure to provide information and data that is accurate, responsive, consistent, workable, and complete.[22]

Mr. McRoberts was the primary spokesperson for the Respondent Localities in oral argument on the Motion to Dismiss. Counsel reviewed the history of the case with an emphasis on the protracted discovery efforts to identify the information relating to the location of the personal property at issue in this proceeding, its description, and its fair market value, cost information, including appraisals, assessments, and the methods used by Verizon to determine the fair market value of its personal property.[23] The Respondent Localities contend that Verizon has not accurately and fully responded to discovery requests despite having been compelled to do so.[24] Mr. Roberts argued that "[a]nd what compliance has come has been so buried in fits and starts, full of inconsistencies, and so buried in a statewide data dump that it is useless to our localities."[25] He continued, contending that the way information has been produced to the localities is unworkable because the information is incomplete, inconsistent, unreliable, and cannot be reconciled back to the numbers that they used on their original tax reports.[26] He argued that "[i]nstead of producing Excel spreadsheets that could be manipulated to get some information, they are now producing PDFs, snapshots, pictures that we can't manipulate, can't add, subtract, sort, which essentially puts any information they do produce inside this lockbox that we can't access."[27] He added that many locations are not listed or are not listed accurately.[28] Counsel also complained that much of the information provided by Verizon has simply been unworkable.

Respondent Localities ask the Commission to sanction Verizon for its continuing failure to produce accurate information as it has been compelled to provide and dismiss the applications, stating that "[d]ue process is notice and opportunity for a hearing if you don't show bad faith and if you don't deserve a sanction."[29] Mr. McRoberts analogized that "[i]t's a little like the IRS gives you a 1040; they don't ask to see every charitable receipt when you send in your return.. But if you start saying you've incorrectly assessed me, I'm sure the IRS will give you an audit."[30] Respondent Localities contend that the time for Verizon to comply has long since passed and it is now time to dismiss the applications.

---

cross-examination and rebuttal testimony. That Motion was granted in part. I declined to receive evidence during the oral argument, but I did not strike allegations related to discovery responses in the pleadings or in argument presented by counsel. Transcript at 93-94.

22 Sands Anderson Localities' Reply at 11.

23 Transcript at 104.

24 *Id.* at 105.

25 *Id.*

26 *Id.* at 108.

27 *Id.* at 126

28 *Id.* at 121.

29 *Id.* at 127.

30 *Id.* at 129.

Elizabeth Dillon represents eight localities, but spoke to address the production of comparable sales information that was provided to Allegheny County concerning the sale of property to Frontier Communications.[31] She advised that although the interrogatory response identified a sale of property in the Crows-Hemalite exchange in Allegheny County to Frontier Communications no information regarding the particulars of the property, its cost, or consideration paid was produced.[32]

Other counsel speaking included Diana Gaston, with the City of Richmond;[33] Brandi Law, representing the Counties of Orange and Louisa;[34] Bernadette Peele, representing Prince William County;[35] Christina Shelton, representing the City of Williamsburg;[36] Matt Britton, representing King George County;[37] Todd Patrick, representing the City of Waynesboro;[38] Karen Adams, representing Henrico County;[39] and Ms. Posner, representing Fairfax County.[40] All counsel joined in with Mr. McRoberts' argument in support of the Motion to Dismiss adding their frustration with Verizon's alleged failure to fully and accurately respond to their interrogatories in a manner that was workable and understandable. Mr. Patrick summed up the sentiment of all localities when he stated that "[w]hen you ask a question, you should receive an answer specific to your response; you shouldn't get additional, extraneous information that you didn't ask for. Honestly, I don't care what Fairfax has. But why do I get it and why do I have to sort through it? I think that the responses should be tailor made to the individual request."[41]

Verizon counsel responded. Ms. McClellan contended that Virginia Code § 58.1-2628 F requires the Commission to include the information the Commission deems necessary for proper administration of Chapter 26 of the Code of Virginia on the form that public service companies must use to report its real and tangible personal property each year. She argues that the form created by the Commission should collect the data the Commission feels necessary for the proper reporting, assessing, taxing, and review and correction of an assessment. She claims that the form which requires reporting by class provided direction to Verizon that it was sufficient to keep its records on a class basis.[42]

Verizon contends that it complied with the rulings that compelled it to respond with specified information sought in discovery, noting that in those rulings the Examiner also advised that Verizon would not be required to conduct special studies to comply with discovery. Counsel reviewed the data bases from which information was shared with the localities, and explained that when one locality asked for a paper copy of the information Verizon extracted from its engineering data base, Verizon provided the *pdf.* format and offered to send it to that locality's printer of choice

[31] *Id.* at 133-134.
[32] *Id.* at 134-136.
[33] *Id.* at 137-140.
[34] *Id.* at 140-142.
[35] *Id.* at 142-145.
[36] *Id.* at 145-146.
[37] *Id.* at 146-153.
[38] *Id.* at 153-154.
[39] *Id.* at 154-155.
[40] *Id.* at 155-158.
[41] *Id.* at 153-154.
[42] *Id.* at 159-160.

to have it printed at the locality's expense.[43] Ms. McClellan contends that no party picked up the phone and complained about the *pdf.* format.[44] She asserts that the discovery deadlines in the rules and in this case make it impossible to locate and produce every single responsive document particularly to requests as broad as those sought here. She advised that Verizon produced what it had, continued to look, and continues to produce. Counsel asserts "that is not bad faith,"[45] and certainly not grounds for dismissal.

She contends that this case should not be dismissed without an evidentiary hearing. Indeed, she asserts that the statutes require the Commission to have a hearing and receive such evidence as any party would like to submit, and to fail to do so would deprive Verizon of its due process.[46] She recognized that "this is a huge case,"[47] stating that Staff has advised at least privately, if not in its pleadings, that this is probably the biggest proceeding for review and correction of an assessment that this Commission has ever seen.[48] She stated that "[t]o the extent the localities can't understand the discovery responses, can't work with them, it is incumbent upon them to ask follow-up questions either formally or informally. They haven't done that."[49] Verizon asserts that it has done the best that it can, and it should be severely sanctioned as urged by the localities.

The Respondent Localities countered that they did attempt to seek help from Verizon, and Verizon has been unresponsive.[50]

Discovery began twelve months ago and rulings compelling responses were issued in the November through December 2010 time period. Six months later the parties are still arguing over discovery. Even Staff represents that it has not yet received all of the information and documents it requested and further has also had difficulty working with the information provided on CDs in *pdf.* format. I am concerned that the parties have not been able to move beyond the discovery phase in this case. I also am troubled by the alleged inaccuracies and incomplete information and the confusing format of the data that has been produced to Staff and the localities. Verizon must be able to reconcile its data. It must get its house in order if it expects to proceed. The localities contend that it is past time to compel Verizon to be responsive to any outstanding discovery requests and it is time to dismiss this case because Verizon has failed to respond in good faith to discovery requests,[51] but I must disagree. I, however, will herewith direct Verizon to resubmit the data previously provided in *.pdf* format in an Excel spreadsheet with all information relative to each respective locality in a stand-alone document, and in separate spreadsheets by locality to the extent any locality also seeks statewide data. Moreover, Verizon should provide personnel to be available in Verizon's office to sit down with any locality desiring guidance on how to read, sort, and understand the documents provided. Verizon should also forthwith provide Staff with the strategic

---

[43] *Id.* at 162-164.
[44] *Id.* at 164.
[45] *Id.*
[46] *Id.* at 190.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 192.
[50] *Id.* at 194-195, 198-199.
[51] *Id.* at 107.

planning documents and forecast that Staff advised were still outstanding.[52] I also expect physical inspections as directed by previous rulings to be scheduled and conducted.

SPECIAL STUDIES

Although taxpayers report to the Commission based on classes, as Staff counsel clearly articulated, the taxpayer is responsible for supporting those class totals by proving the values of the specific item or items contained in the class. I have repeatedly emphasized that Verizon carries the burden of proof to identify the item or items for which it seeks correction by locality.[53] Accordingly, although I will not direct Verizon to conduct a special study to respond to discovery, I am at a loss to understand how I can be expected to evaluate Verizon's challenge of the Commission's fair market assessment without specific asset-based information. Therefore, I will direct Verizon to file information in this case detailing with specificity each item or items in each class for which it seeks correction, including specifically the fair market value of each item or items, broken down by locality, even if it requires a special study to do so. Accordingly,

IT IS DIRECTED THAT:

(1) The Respondent Localities' Consolidated Motion for Final Summary Judgment and/or to Dismiss Applicants' Supplemental Application is denied;

(2) Verizon is compelled to resubmit the data previously provided in *.pdf* format in an Excel spreadsheet with all information relative to each respective locality in a stand-alone document, and in separate spreadsheets to the extent a locality also seeks statewide data no later than July 7, 2011. Moreover, Verizon shall provide personnel to be available in Verizon's office to sit down with any locality desiring guidance on how to read, sort, and understand the documents provided. Verizon shall also forthwith provide Staff with the strategic planning documents and forecast that Staff advised were still outstanding. Physical inspections shall be scheduled and conducted upon the request of a locality. Those inspections should be completed by October 1, 2011;

(3) Verizon shall file information detailing with specificity each item or items in each class for which it seeks correction, including specifically the fair market value of each item or items, broken down by locality, even if it requires a special study, to do so, on or before September 1, 2011;

(4) On or before January 9, 2012, any respondent may file with the Clerk of the Commission an original and fifteen (15) copies of the testimony and exhibits by which it expects to establish its case and serve a copy of the testimony and exhibits on all other parties. In the alternative, testimony and exhibits may be filed electronically with the Clerk of the Commission as provided by SCC Rule of Practice and Procedure 5 VAC 5-20-140;

(5) On or before January 16, 2012, the Staff shall file the testimony and exhibits it intends to present at the hearing;

[52] *Id.* at 63.

[53] Hearing Examiner's Ruling on Fairfax County Motions to Compel, D.C.C. No. 10112033 (November 10, 2010), at 8.

(6) On or before February 6, 2012, the Company may file with the Clerk of the Commission an original and fifteen (15) copies of the testimony and exhibits it expects to offer in rebuttal and serve a copy of that testimony and exhibits on all other parties. In the alternative, that testimony and exhibits may be filed electronically with the Clerk of the Commission as provided by SCC Rule of Practice and Procedure 5 VAC 5-20-140; and

(7) The public hearing scheduled for September 23, 2011, shall be cancelled, and shall be re-scheduled to begin at 10:00 a.m. on March 5, 2012, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia.

Deborah V. Ellenberg

Deborah V. Ellenberg
Chief Hearing Examiner

Document Control Center is requested to mail a copy of the above Ruling to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

Attachment V

Composite

110810091

BEFORE THE
STATE CORPORATION COMMISSION
OF VIRGINIA

APPLICATIONS OF	)	
	)	
VERIZON VIRGINIA INC., and	)	
	)	
VERIZON SOUTH INC.	)	Case No. PST-2009-00033
	)	
For review and correction of the equalized assessments of the value of property subject to local taxation – Tax Year 2009	)))	

VERIZON VIRGINIA INC.'S AND VERIZON SOUTH INC.'S
NOTICE OF WITHDRAWAL OF APPLICATIONS

Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon") pursuant to Va. Code §§ 8.01-380, and 56-7, hereby withdraw their Applications in this proceeding. The Applicants respectfully request that the Hearing Examiner stay the procedural schedule and discovery and that the Commission dismiss the Applications.

Respectfully submitted,

Jennifer L. McClellan

Jennifer L. McClellan
Attorney for
Verizon Virginia Inc.
and
Verizon South Inc.
703 East Grace Street, 7th Floor
Richmond, VA 23219
(804) 772-1547 (tel)
(804) 772-2143 (fax)
jennifer.l.mcclellan@verizon.com

August 3, 2011

11081008 1

Of Counsel

Ann N. Sagerson
Verizon Communications, Inc.
1320 North Courthouse Rd, 9th Floor
Arlington, VA 22201-2525
Telephone: (703) 351-3064
Facsimile: (703) 351-3658

David J. Crapo
CRAPO | SMITH
299 South Main Street, Suite 1300
Salt Lake City, UT 84111
Telephone: (801) 534-4445
Facsimile: (801) 961-4001

11081091

Case No. PST-2009-00033
Applications of Verizon South Inc. and Verizon Virginia Inc.

For Review and Correction of the Equalized Assessment of
Value of Property Subject to Local Taxation – Tax Year 2009

SERVICE LIST

Accomack County, Virginia
Albemarle County, Virginia
Alexandria, City of
Alleghany County, Virginia
Amherst County, Virginia
Appomattox County, Virginia
Arlington County Board of Supervisors
Ashland, Town of
Augusta County, Virginia

Bedford, City of
Bedford County Board of Supervisors
Botetourt County, Virginia
Brunswick County, Virginia
Buchanan County Board of Supervisors
Buchanan, Town of

Campbell County, Virginia
Caroline County, Virginia
Charles City County, Virginia
Charlotte County Board of Supervisors and Charlotte County
Chase City, Town Council of the Town and Chase City
Chesapeake, City of
Chesterfield County, Virginia
Christiansburg, Town of
Clarke County Board of Supervisors
Colonial Beach, Town of
Covington, City of
Culpeper County Board of Supervisors

Danville, City of
Dickenson County Board of Supervisors
Dinwiddie County Board of Supervisors

Elkton, Town of
Essex County, Virginia

Fairfax, City of
Fairfax County Board of Supervisors
Falls Church, City of
Fauquier County, Virginia
Franklin County, Virginia
Frederick County Board of Supervisors
Fredericksburg, City of

Goochland County Board of Supervisors
Greensville County Board of Supervisors & Greensville County

Halifax County Board of Supervisors
Hamilton, Town of
Hampton, Virginia
Hanover County, Virginia
Henrico County, Virginia
Herndon, Town of
Hopewell, City of

Isle of Wight, Virginia

James City County, Virginia

King and Queen Board of Supervisors
King George County, Virginia
King William County, Virginia & Surry County, Virginia

Leesburg, Town of
Loudoun County Board of Supervisors
Louisa County, Virginia, Louisa, Town of & Mineral, Town of
Lynchburg, City of

Madison County, Virginia
Mecklenburg County of Board of Supervisors & Mecklenburg County
Middlesex County, Virginia
Montgomery County Board of Supervisors
Mount Crawford, Town of

Nelson County, Virginia
New Kent County Board of Supervisors
Newport News, City of
Norfolk, City of
Northampton County
Northumberland County, Virginia

Orange County, Virginia, Gordonsville, Town of & Orange, Town of

Pennington Gap, Town of
Petersburg, City of, Amelia County, Va., King William County, Va. & Surry County, Va.
Pittsylvania, County of
Portsmouth, City of
Powhatan County Board of Supervisors
Prince George County, Virginia
Prince William County, Virginia
Pulaski County, Virginia
Pulaski, Town of
Purcellville, Town of

Radford, City of
Remington, Town of
Richmond, City of
Roanoke, City of
Roanoke County, Virginia
Rockbridge County, Virginia
Rockingham County Board of Supervisors
Round Hill, Town of

Shenandoah County, Virginia
Southampton County Board of Supervisors
Spotsylvania County Board of Supervisors
Stafford County Board of Supervisors
Staunton, City of
Suffolk, City of

Vinton, Town of
Virginia Association of Counties
Virginia Beach, City of

Warren County Board of Supervisors
Waynesboro, City of
West Point, Town of
Williamsburg, City of
Winchester, County of
Wise County, Virginia

York County Board of Supervisors

Jennifer L. McClellan

COMMONWEALTH OF VIRGINIA

110830134

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 19, 2011

APPLICATIONS OF

VERIZON SOUTH INC.,
and
VERIZON VIRGINIA INC.

CASE NO. PST-2009-00033

For review and correction of the equalized assessment of the value of property subject to local taxation – Tax Year 2009

APPLICATION OF

VERIZON SOUTH INC.

CASE NO. PST-2010-00041

For review and correction of the equalized assessment of value of property subject to local taxation – Tax Year 2010

APPLICATION OF

VERIZON VIRGINIA INC.

CASE NO. PST-2010-00042

For review and correction of the equalized assessment of value of property subject to local taxation – Tax Year 2010.

ORDER GRANTING WITHDRAWAL

On December 9, 2009, Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon" or "Companies"), filed applications ("2009 Applications"), later supplemented and consolidated, with the State Corporation Commission ("Commission") for a review and correction of their personal property assessments for tax year 2009. The Commission issued an Order for Notice and Hearing on April 13, 2010, that, among other things, assigned a hearing examiner to rule on the 2009 Applications. On August 3, 2011, Verizon filed its Notice of Withdrawal of Applications in Case No. PST-2009-00033, seeking to withdraw the 2009

Applications pursuant to §§ 8.01-380 and 56-7 of the Code of Virginia ("Code"). On August 5, 2011, Chief Hearing Examiner Deborah V. Ellenberg issued her Report, suspending the procedural schedule and any outstanding discovery related to the 2009 Applications and recommending that the Commission enter an order dismissing Case No. PST-2009-00033 with prejudice from the Commission's docket. Parties were provided five (5) calendar days to comment on the Chief Hearing Examiner's Report; no such comments were filed.

On December 13, 2010, Verizon filed with the Commission applications for review and correction of its personal property assessments for tax year 2010 ("2010 Applications"). On August 3, 2011, Verizon filed a Notice of Withdrawal of Applications in Case Nos. PST-2010-00041 and PST-2010-00042, seeking to withdraw the 2010 Applications pursuant to §§ 8.01-380 and 56-7 of the Code.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Verizon's August 3, 2011 Notices of Withdrawal of Applications filed in Case Nos. PST-2009-00033, PST-2010-00041, and PST-2010-00042 shall be, and hereby are, granted.[1]

Accordingly, IT IS ORDERED THAT Case Nos. PST-2009-00033, PST-2010-00041, and PST-2010-00042 hereby are dismissed with prejudice from the Commission's docket of active cases, and the papers filed therein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Daniel M. Siegel, Esquire, James E. Cornwell, Esquire, Andrew R. McRoberts, Esquire, and M. Ann Neil Cosby, Esquire, Sands Anderson PC, 1111 East Main Street, Suite 2400, P.O. Box 1198, Richmond, Virginia 23218-1998; Jennifer McClellan, Esquire, Verizon Virginia Inc., 703 East Grace Street, Seventh Floor, Richmond, Virginia 23219; Ann N. Sagerson, Esquire, Verizon

[1] Any matters pending in Case Nos. PST-2009-00033, PST-2010-00041, or PST-2010-00042 are now moot, and we do not herein rule thereon.

Communications, Inc., 1320 North Courthouse Road, Ninth Floor, Arlington, Virginia 22201-2525; and David J. Crapo, Esquire, Crapo Smith, 299 South Main Street, Suite 1300, Salt Lake City, Utah 84111. The Clerk of the Commission also is requested to mail a copy of this Order to all persons on the official Service List in Case No. PST-2009-00033. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and Division of Public Service Taxation.

True Copy
Teste: Joel H. Peck
Clerk of the
State Corporation Commission