

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP.

DOCKET NO. 080278-TL  
DATED: MARCH 31, 2009

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PROSECUTORIAL STAFF'S MOTION TO COMPEL

The prosecutorial staff of the Florida Public Service Commission, by and through its undersigned counsel and pursuant to Rules 28-106-204 and 28-106.211, Florida Administrative Code, moves the Florida Public Service Commission (Commission) or the prehearing officer to enter an order compelling Verizon Florida, LLC (Verizon) to fully respond to prosecutorial staff's First Set of Interrogatories Nos. 1-29, Production of Documents Nos. 1-11, and Requests for Admissions, Nos. 1-3. As grounds therefore, prosecutorial staff states:

This docket is an investigation into whether Verizon has violated the Commission's service quality rules. The Commission filed an Order to Show Cause<sup>1</sup>, requesting Verizon to respond why it should not be penalized in the amount of \$10,000 per violation, for a total of \$2.62 million, for 262 apparent violations of Rule 25-4.070, F.A.C., during 2007; and \$10,000 per violation, for a total of \$1.94 million, for 194 apparent violations of Rule 25-4.070, F.A.C., during 2008.

On January 26, 2009, Verizon filed a Request for Administrative Hearing.

On February 23, 2009, the Commission issued Order No. PSC-09-0107-PCO-TL, (Order Establishing Procedure) for an Administrative Hearing, setting out controlling and hearing dates.

<sup>1</sup>Order No. PSC-09-0015-SC-TL, issued on January 5, 2009.

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On March 3, 2009, prosecutorial staff served its First Set of Interrogatories Nos. 1-29, Production of Documents Nos. 1-11, and Requests for Admissions, Nos. 1-3 on Verizon.

On March 13, 2009, Verizon filed Notice of Service for Verizon's Objections to Staff's First Request for Interrogatories Nos. 1-29, Production of Documents Nos. 1-11, and Requests for Admissions, Nos. 1-3.

***Jurisdiction***

Verizon claims that the Commission does not have the statutory authority to apply the service objectives in Rule 25-04.070, F.A.C. to price regulated companies and to services that are subject to effective competition. Verizon further claims that the Commission lacks jurisdiction over this proceeding. Prosecutorial staff acknowledges that the question of the Commission's jurisdiction has been raised by Verizon in this proceeding. Therefore, prosecutorial staff adopts our Response in Opposition to Verizon's Motion to Modify Order Establishing Procedure, Bifurcate Proceeding and Suspend Discovery Not Related to Jurisdictional Issues<sup>2</sup>. Prosecutorial staff also adopts the Office of Public Counsel's Response in Opposition to Verizon's Motion to Bifurcate Proceeding and Suspend Discovery<sup>3</sup>. Further, it is prosecutorial staff's belief that the Commission has statutory authority to apply the service objectives in Rule 25-4.0-70, F.A.C. Prosecutorial staff does not believe that the issue of jurisdiction is appropriately raised as a preliminary objection to prosecutorial staff's discovery and should be raised concurrent with other issues at the administrative hearing. Therefore, prosecutorial staff believes that Verizon's objections to prosecutorial staff's discovery on

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<sup>2</sup> Filed with Commission on March 11, 2009.

<sup>3</sup> Filed with the Commission on March 11, 2009 by the Office of the Attorney General, Office of Public Counsel and AARP.

jurisdictional grounds are nothing more than an attempt to delay the ultimate resolution of this case.

Prosecutorial staff believes that the information that it seeks through discovery is vital to the Commission's resolution of this proceeding and respectfully requests that the Commission reject Verizon's objections on jurisdictional grounds and compel responses to Interrogatory Nos. 1-29, Production of Documents Request Nos. 1-11, Requests for Admission Nos. 1-3.

***Relevancy***

Prosecutorial staff's discovery requests seek to obtain the level of detailed information necessary to properly assess Verizon's actions regarding service quality during 2007 through the third quarter of 2008. The Commission has consistently recognized that discovery is proper and may be compelled if it is not privileged and is or likely will lead to relevant and admissible evidence.<sup>4</sup> The test for determining whether discovery is appropriate is set forth in rule 1.280(b)(1) of the Florida Rules of Civil Procedure, providing that

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

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<sup>4</sup> Fla. R. Civ. Pro. Rule 1.340, Interrogatories to Parties, Rule 1.350, Production of Documents and Rule 1.370, Requests for Admissions.

Section 90.401 of the Florida Evidence Code further defines “relevance” as evidence tending to prove or disprove a material fact.”<sup>5</sup>

Verizon objects to the discovery requests on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information outside the temporal scope of this proceeding. Relying on these objections, Verizon does not intend to produce any information regarding its operations, process and procedures. Specifically, Verizon objected on relevancy grounds to Interrogatory Nos. 3-7, 17, 19(a) and (b), 20, 22-26, Production of Documents Request Nos. 1-3, 7-10, Requests for Admission Nos. 1-3.

Prosecutorial staff believes that Verizon’s responses to prosecutorial staff’s discovery requests will produce information that directly impacts the Commission’s consideration of the issues in the instant proceeding. Specifically, prosecutorial staff’s requests seek information that is directly related to Verizon’s operations and service quality and which should be available for review by the Commission.

Prosecutorial staff disagrees with Verizon’s general objection that prosecutorial staff’s requests are “neither relevant nor reasonably calculated to lead to the discovery of admissible evidence”. Prosecutorial staff firmly believes that the information it seeks through discovery will lead to admissible evidence that directly addresses the matters at issue in this case. As discussed above, prosecutorial staff’s discovery requests are clearly “reasonably calculated to

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<sup>5</sup> Order No. PSC-07-0787-PHO-TP, *In re: Complaint by DPI-Teleconnect, L.L.C. against BellSouth Telecommunications, Inc. for dispute arising under interconnection agreement. (information sought appears reasonably calculated to lead to the discovery of admissible evidence and is, therefore, compelled)* and Order No. PSC-02-0274-PCO-TP, *In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information System, Inc. for resolution of billing disputes, and In re: Request for arbitration concerning complaint of TCG South Florida and Teleport Communications Group against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement*, Order No. PSC-01-1300-PCO-TP (where the Commission found that information requested was reasonably calculated to lead to the discovery of admissible evidence and is, therefore, relevant).

lead to the discovery of admissible evidence”. Further, prosecutorial staff seeks information that will allow the Commission to clearly review how Verizon dealt with its out of service and service affecting repairs. Such information goes directly to the heart of the matter at issue, whether the violations by Verizon were willful. Prosecutorial staff believes that information is relevant and ultimately will be necessary in determining whether or not Verizon violated Rule 25-4.070, F.A.C. for 2007 and 2008.

Based on the arguments set forth above, prosecutorial staff respectfully requests the Commission reject Verizon’s relevancy objections and compel responses to Interrogatory Nos. 3-7, 17, 19(a) and (b), 20, 22-26, Production of Documents Request Nos. 1-3, 7-10, Requests for Admission Nos. 1-3.

***Overly Broad***

Verizon objects to the discovery to the extent that they seek documents or information equally available to prosecutorial staff through public sources, or records which are already in the possession, custody or control of prosecutorial staff. Verizon also objects on grounds that prosecutorial staff seeks information with discovery requests that are overly broad. Prosecutorial staff notes that Verizon has failed to quantify how the discovery requests are overly broad. In order to object to discovery on the grounds that it is “overly broad”, a party must delineate the manner in which the discovery qualifies as such; First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass’n, Inc., 545 So. 2d 502, 503 (Fla. 4<sup>th</sup> DCA 1989). Verizon has provided nothing more than a baseless objection and has not provided any quantitative factors to provide the Commission with information such as the volume of documents, or the numbers of hours required to respond to prosecutorial staff’s request.

Based on the arguments set forth above, prosecutorial staff respectfully requests that the Commission reject Verizon's burdensome and overly broad objections and compel responses to Interrogatory Nos. 13, 17, 22, and Production of Documents Request Nos. 4, 5-6.

***Vague and ambiguous***

Verizon objects that prosecutorial staff's requests are vague and ambiguous and that in Interrogatory No. 6, prosecutorial staff seeks information Verizon neither tracks nor maintains in the form requested. Verizon also generally objects to the discovery requests where it believes that terms are undefined or vaguely defined. Specifically, in Interrogatory No. 7, Verizon objects to the term "directives" and in Interrogatory 13, Verizon objects to the phrase "inclement weather days and the number of these days when repairs could not be made" as vague. Verizon further objects to the term "business practices" in Interrogatory 22. While prosecutorial staff does not agree with Verizon, prosecutorial staff is willing to further define the above-referenced terms if it would engender a response by Verizon to the discovery requests. Prosecutorial staff respectfully requests the Commission reject Verizon's objections and compel responses to Interrogatory Nos. 6 -7, 13, 22, and Production of Documents Request Nos. 4, 10.

***Attorney-Client privilege***

Verizon objects generally to the extent that prosecutorial staff's discovery requests seek information that is protected by attorney client privilege, the attorney-work product doctrine or any other privileges or doctrines. Verizon also objects generally to any discovery requests that seek confidential business, financial or other proprietary documents or information. Verizon has not attempted to "describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will

enable other parties to assess the applicability of the privilege or protection” as required by Rule 1.280(b)(5) of the Discovery Rules.<sup>6</sup> Verizon is not precluded from requesting any confidential business, financial, or other proprietary documents produced as a result of a discovery request, be treated as proprietary confidential business information, in accordance with Section 364.183(3), Florida Statutes, and Rule 25- 22.006, Florida Administrative Code. As such, prosecutorial staff respectfully requests Verizon’s objections regarding privilege be rejected and the requested information be compelled.

***Reservation of Rights***

Verizon has claimed and reserved the right to amend, replace, supersede, or supplement its responses as may become appropriate in the future. Although prosecutorial staff believes that Verizon has no such right pursuant to the Commission’s Rules or the Florida Rules of Civil Procedure<sup>7</sup>, prosecutorial staff has no objection if Verizon wishes to supplement its initial responses to prosecutorial staff’s discovery requests.

***Conclusion***

Verizon’s failure to respond to prosecutorial staff’s discovery requests and to produce documents responsive to our First Set of Interrogatories Nos. 1-29, Production of Documents Nos. 1-11, and Requests for Admissions, Nos. 1-3, handicaps prosecutorial staff’s ability to adequately prepare for the evidentiary hearing in this matter. Prosecutorial staff’s discovery is relevant, is reasonably calculated to lead to the discovery of admissible evidence. Prosecutorial staff’s discovery is not overbroad, vague or ambiguous. In order for prosecutorial staff to

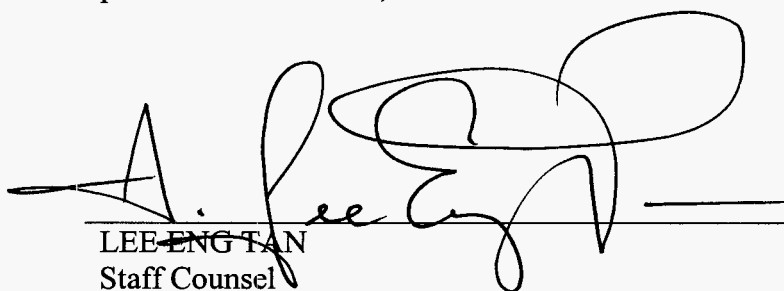
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<sup>6</sup> See, TIG Ins. Corp of America v. Johnson, 799 So. 2d 339 (Fla 4<sup>th</sup> DCA 2001).

<sup>7</sup>Florida Rule of Civil Procedure 1.280(e) provides that a party which has responded to a discovery request completely does not have a duty to supplement the response with information not available at the time of the initial response.

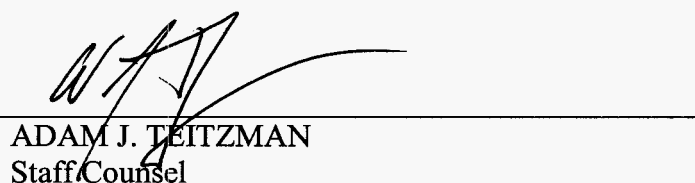
properly prepare its pre-filed direct testimony, prosecutorial staff is in need of Verizon's responses to the above-referenced discovery.

WHEREFORE, for the foregoing reasons, prosecutorial staff respectfully requests that the Commission grant this Motion to Compel Discovery and compel Verizon Florida LLC to provide full and complete responses to the Commission's First Set of Interrogatories Nos. 1-29, Production of Documents Nos. 1-11, and Requests for Admissions, Nos. 1-3.



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DATED: MARCH 31, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and five correct copies of MOTION TO COMPEL have been filed with Office of Commission Clerk and one copy has been furnished to the following by U. S. mail or by (\*) hand delivery, this 31st day of March, 2009:

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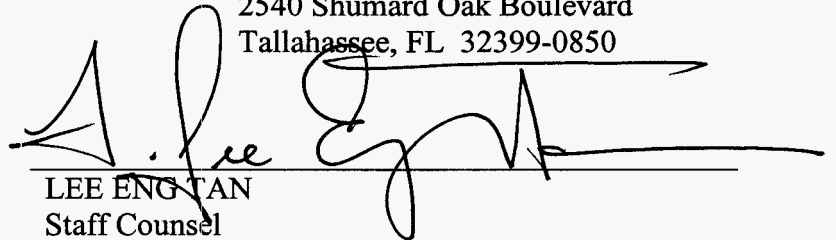
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