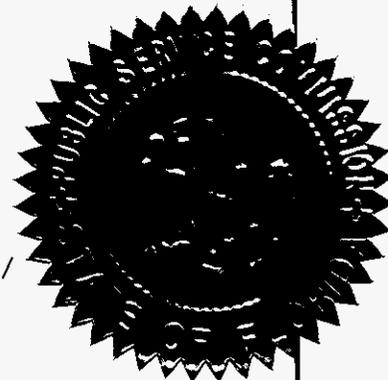


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080278-TL

In the Matter of:

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.



PROCEEDINGS: SCHEDULING CONFERENCE

BEFORE: COMMISSIONER NATHAN A. SKOP

DATE: Monday, April 6, 2009

TIME: Commenced at 1:37 p.m.
Concluded at 2:45 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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5 appearing on behalf of the Citizens of the State of
6 Florida.

7 DULANEY L. O'ROARK, III, ESQUIRE, Verizon
8 Florida LLC. 5055 North Point Parkway, Alpharetta,
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10 LEE ENG TAN, ESQUIRE, and ROSANNE GERVASI,
11 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
12 Boulevard, Tallahassee, Florida 32399-0850, representing
13 Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER SKOP: Good afternoon. I'd like
3 to call this Scheduling Conference to order.
4 Commissioner Nathan A. Skop presiding.

5 If advisory staff counsel could please read
6 the notice.

7 MS. GERVASI: Pursuant to notice, this time
8 and place has been set for a preliminary conference in
9 Docket Number 080278-TL, In Re: Joint Petition for Show
10 Cause Proceedings Against Verizon Florida, LLC, for
11 Apparent Violation of Rule 25-4.070, F.A.C., Customer
12 Trouble Reports.

13 COMMISSIONER SKOP: Thank you. And if we
14 could please take appearance of counsel.

15 MR. O'ROARK: Good afternoon, Commissioner
16 Skop. De O'Roark with Verizon Florida, LLC.

17 MR. BECK: Charlie Beck, Office of Public
18 Counsel, on behalf of the citizens of Florida.

19 MS. TAN: Lee Eng Tan on behalf of
20 prosecutorial staff.

21 MS. GERVASI: And Rosanne Gervasi on behalf of
22 the advisory staff.

23 COMMISSIONER SKOP: Thank you. The purpose of
24 today's Scheduling Conference is two-fold: First, to
25 discuss the dates set by way of the Order Establishing

1 Procedure which sets forth the controlling dates for the
2 hearing that will be held, and also to discuss the
3 motions filed in the docket which argue for one or more
4 hearing dates that will be held at a later time.

5 I'd like to briefly set some ground rules of
6 how I wish to proceed. I'd like to allow the parties to
7 make their scheduling arguments. We'll start with OPC.
8 I'd request that we limit those to ten minutes. If we
9 can do it in less time, that would be appropriate, and
10 we'll go from there. I'll ask some specific questions,
11 if I have any, with respect to that and then move
12 forward with either rendering a ruling or taking the
13 arguments under advisement and ruling at a later date.

14 So if we could start with OPC, which filed its
15 motion to convene the Scheduling Conference, I'll move
16 forward with hearing the arguments. Thank you.

17 MR. BECK: Thank you, Commissioner.
18 Commissioner, we became very concerned with the dates
19 for filing testimony. As you know, the original order
20 on procedure had April 1st as the date to file
21 testimony, and we didn't see how we could possibly meet
22 that, particularly with discovery issues. I won't take
23 long. What we have asked for is enough time to conduct
24 two full rounds of discovery with interrogatories and
25 requests for production of documents, to be followed by

1 depositions, and then have our testimony due a
2 reasonable time after that.

3 In preparing for this afternoon I sketched out
4 some, some possible dates, but, of course, much of that
5 depends on how the discovery proceeds and when they're
6 produced. This is what I scratched out as a thought on
7 the scheduling.

8 There's motions to compel both by our office
9 and prosecutorial staff that are pending. If those
10 documents were produced by April 15th, then, or whatever
11 your ruling was, then we feel we could review those
12 documents and get out a second round of requests by
13 May 1st. I suspect strongly that Verizon would have
14 objections to whatever we sent out, and so that would,
15 you would have to deal with that and we'd have a motion
16 to compel and a response by Verizon and then an order.
17 I wouldn't expect to get the documents before July 1st
18 on the second round, then -- and it might be a little
19 later than that. I was foreseeing depositions maybe
20 early August, if this hypothetical schedule came down,
21 with testimony due September 1st. So that's, that's
22 our, at least that's my initial thoughts on scheduling,
23 but all of that depends on, on discovery disputes and
24 how those, those proceed. Thank you.

25 COMMISSIONER SKOP: Thank you.

1 I guess Mr. O'Roark.

2 MR. O'ROARK: And, Commissioner Skop, just so
3 I'm clear, at this point I'm going to confine my remarks
4 to the scheduling point and not get into bifurcation.

5 COMMISSIONER SKOP: Okay.

6 MR. O'ROARK: As a general matter, we don't
7 have a problem with lengthening the schedule. As we'll
8 get into later, we've got some thoughts about how it
9 ought to be structured.

10 On the discovery, I mean, just to be clear, we
11 have filed objections to the outstanding discovery and
12 we have not produced documents or given other responses
13 because we have sought a protective order because we
14 believe that the jurisdictional issue should be decided
15 first.

16 Depending on how you rule on bifurcation, we
17 would, of course, move ahead with -- if you rule against
18 us on bifurcation, we would move ahead with discovery.
19 With respect to the first round, we think we would need
20 a couple of weeks to pull responses together, perhaps a
21 little bit more than that.

22 The, once the jurisdictional issue is
23 resolved, there are some other scope issues that it may
24 well be that the parties could work out. But if not,
25 those are, would not prevent us from moving forward with

1 production. It might just have to do with precisely
2 what the scope of that production would look like.

3 So to summarize, I'm generally not opposed to
4 lengthening the schedule, but would like to discuss
5 bifurcation when you're prepared to do that.

6 COMMISSIONER SKOP: Very well. We'll hold off
7 on that for now and we'll move to prosecutorial staff.

8 MS. TAN: Prosecutorial staff is in agreement
9 with OPC.

10 COMMISSIONER SKOP: Thank you.

11 Okay. At this point I'd like to hear argument
12 from the various parties with respect to the
13 jurisdictional and bifurcation process. And I guess we
14 can start with -- advisory staff, who would be
15 appropriate to start with, OPC or would it be Verizon on
16 the motion?

17 MS. GERVASI: Probably Verizon since they
18 raised the argument.

19 COMMISSIONER SKOP: Okay. Mr. O'Roark, you're
20 recognized.

21 MR. O'ROARK: Thank you. Commissioner Skop,
22 toward the end of last year Verizon began to look into
23 the question of whether the Commission has authority to
24 apply its service quality rules to price-regulated
25 companies like Verizon. We concluded that it appeared

1 that there was not jurisdiction. We retained outside
2 counsel, Rick Melson, the former General Counsel of the
3 Commission, to do a detailed analysis of that issue for
4 us. Mr. Melson completed that analysis in early January
5 because we wanted to make sure that before we asserted
6 that position that we were on solid ground. We believe
7 that we are. We raised the jurisdictional issue when we
8 responded to the Commission's show cause order on
9 January 26th.

10 In our motion -- subsequently we met with the
11 parties to talk about whether we might reach agreement
12 on procedure for dealing with the procedural, with the
13 jurisdictional question. Unfortunately the parties were
14 not able to agree. We then filed our motion to
15 bifurcate.

16 What we did, Commissioner, was summarized at a
17 fairly high level what the jurisdictional argument is.
18 We did not seek to go into great detail, so the issue is
19 not ready for a decision on the merits. The point we
20 were trying to make was that there is a serious issue
21 here that needs to be resolved.

22 The reasons we think that the case ought to be
23 bifurcated, number one, a hearing officer has authority
24 to bifurcate proceedings. And we think it makes sense
25 here because if the Commission lacks jurisdiction, it

1 lacks the power to prosecute the case and address the
2 merits. We think jurisdiction is a threshold question
3 here. And in a case like this where there is a serious
4 jurisdictional question, pressing ahead without
5 resolving that question poses serious risk that the
6 Commission will waste a great deal of resources, both
7 its own and those of the parties.

8 I'll give you a quick summary on the
9 jurisdictional issue, Commissioner. And, again, we're
10 not providing it for purposes of you reaching a decision
11 on the merits, just to give you an idea of the gist of
12 what the argument is.

13 Rulemaking is a legislative function, so
14 existing or proposed rules are valid only if they are
15 adopted under a proper delegation of authority. Now
16 under the Administrative Procedure Act, before a state
17 agency may adopt or apply a rule three things have to be
18 true. First, there's got to be a general grant of
19 jurisdiction. The Commission clearly has that under
20 Section 350.127(2). Next, the existing or proposed rule
21 has to implement or interpret specific statutory powers
22 and duties, and that means that the powers and duties
23 have to be explicitly stated in the statute. And then a
24 third thing -- there's actually more than this in the
25 APA, but for our purposes these are the three points I

1 want to emphasize. The rule must not enlarge, modify or
2 contravene the statute being implemented.

3 So as a practical matter, the analysis you go
4 through when you look at 25-4.070, which is the rule in
5 question here that includes the service objectives that
6 we're talking about, you look at the statutory
7 provisions that the rule purports to implement and you
8 do the APA analysis on each one.

9 There are seven statutory provisions that
10 25-4.070 purports to implement. Three of those
11 statutory provisions only apply to rate-of-return
12 regulated carriers. They do not apply to
13 price-regulated carriers like Verizon. So that rules
14 out those three.

15 That leaves you, leaves you with four
16 provisions to consider. One of them is 364.183 that
17 allows the Commission to access company data and require
18 reports. It doesn't say anything about service quality.
19 364.386 only requires companies to provide data to the
20 Commission for its annual local competition report. So
21 that rules out those two.

22 That leaves us with two left. One of those is
23 364.15. That authorizes the Commission to order repairs
24 or extensions to a telecommunications facility in a case
25 initiated by a party or by the Commission itself. The

1 reason that 364.15 would not authorize service quality
2 rules is that the statute itself is confined to
3 Commission orders that are issued on a given set of
4 facts on either a party's complaint or based on the
5 Commission's own motion. It is limited to those
6 circumstances and therefore rules out rulemaking.

7 So that leaves you with one final statutory
8 provision and that's 364.01. 364.01 does not impose any
9 explicit powers or duties. What it does is it expresses
10 general legislative intent or policy. There is a DOAH
11 case that is right on point here. We cite it in our
12 motion. It's *GTE Florida versus the Commission*. It
13 rejected 364.01 as a statutory basis for the
14 Commission's fresh look rule.

15 One other point about 364.01 is that the more
16 specific statutory provision that deals with service
17 quality rules is 364.03. That does expressly authorize
18 the Commission to deal with service quality and would
19 authorize the Commission to implement or enforce service
20 quality rules. The reason that 364.03 doesn't come into
21 play here is that it is one of the rules that has been
22 expressly held by the Legislature, or not held, but
23 there's a -- in 364.05 the Legislature expressly
24 provided that 364.03 does not apply to price-regulated
25 companies like Verizon. Because that very specific

1 statutory basis has been removed, that should rule out
2 any ability to rely on 364.01 as a basis for service
3 quality rules. Commissioner Skop, those are the, that's
4 the legal analysis.

5 One final point, if we kind of zero in on
6 364.01, even if you were to conclude, as we think you
7 should not, that 364.01 might apply, the additional
8 observation I'd make is that 364.01 in the subsections
9 that we're talking about talk about monopoly services.
10 Monopoly service is a defined term in the act. It means
11 a telecommunications service for which there is no
12 effective competition either in fact or by operation of
13 law. So even if you were to conclude, as we think you
14 should not, that 364.01 might provide a jurisdictional
15 basis, it would only provide a jurisdictional basis to
16 the extent that we're talking about monopoly services.

17 As you know, Tampa Bay is extremely
18 competitive and what that would lead you to is a factual
19 analysis of the level of competition in Tampa Bay and
20 expert testimony as to the extent of the competition
21 there.

22 So, again, Commissioner, the reason I lay all
23 that out is simply to say that there is a, a serious
24 jurisdictional issue here and that's why we think it's
25 appropriate for the Commission to deal with that issue

1 first before we get into the merits of the case. Thank
2 you.

3 COMMISSIONER SKOP: Thank you, Mr. O'Roark.
4 Just a quick question in reference to the case that you
5 cited. Can you please refer me to the page number that
6 that would appear on in terms of your response to the
7 motion, and also do you have a copy of that case
8 available?

9 MR. O'ROARK: I did not bring a copy of the
10 case with me. I can -- I'll certainly get it to you.

11 COMMISSIONER SKOP: Do you have a citation for
12 it?

13 MR. O'ROARK: I believe I do. Yes. And it
14 appears on Page 6 of our motion, Commissioner. It's
15 Footnote 14. It's *GTE Florida, Inc. versus Florida*
16 *Public Service Commission*, 2000 Florida Division of
17 Administrative Hearings, LEXIS 5215. It's a 2000
18 decision.

19 COMMISSIONER SKOP: Thank you.

20 Next I'd like to hear from OPC, please.

21 MR. BECK: Thank you, Commissioner.

22 Commissioner, we don't contest Verizon's ability to
23 raise this issue, but we take great exception to the
24 timing of it and the way that it contradicts the
25 positions they've had previously.

1 First of all, this case had been pending eight
2 months or over eight months before Verizon initially
3 raised this issue at all. As you know, in the
4 rulemaking, as cited in our response to Verizon's
5 motion, in the rulemaking proceeding which was brought
6 by all of the major ILECs including Verizon they argued
7 just the opposite of what Verizon is arguing today, and
8 that is that the Commission does have jurisdiction over
9 quality of service rules. So throughout 2008 Verizon
10 was proposing rules, proposing changes to the quality of
11 service rules, ones more to their liking than the
12 Commission ultimately adopted, but they were positively
13 urging the Commission to adopt a rule. And then once
14 that rule was passed, then Verizon comes in and says,
15 Commission, oh, you don't have any jurisdiction
16 whatsoever over these types of rules. So we disagree on
17 the merits of what they say, but the timing raises an
18 issues of laches as well. To have waited eight months
19 and then bring this for the first time is simply an
20 effort, as we see it, simply to delay the case.

21 In our response we've also argued that we
22 disagreed with the conclusions they've reached if you
23 ultimately get to the issue of whether they have
24 jurisdiction. Specifically I would cite to you,
25 Commissioner, Section 364.014(h) and what that provision

1 of the statute says. It says, "The Commission shall
2 exercise its exclusive jurisdiction in order to," and
3 then in number four, "recognize emergence of a
4 competitive telecommunications environment through
5 flexible regulatory treatment of competitive
6 telecommunications services where appropriate, if doing
7 so does not reduce the availability of adequate basic
8 local telecommunications service." And I believe that
9 phrase gives the Commission -- it actually gives the
10 duty upon the Commission to make sure that the rules do
11 not reduce the availability of adequate basic local
12 telecommunications service. And the quality of service
13 rule goes to just that; it defines what is adequate.
14 And the Commission has stated what is adequate by the
15 quality of service rules.

16 That's our response, Commissioner, thank you.

17 COMMISSIONER SKOP: Thank you. And just a
18 question in response to the argument that you asserted
19 in terms of subject matter jurisdiction. Can a party
20 raise that at any time in terms of the proceedings? I'm
21 a little bit rusty on that.

22 MR. BECK: Yes, I think so.

23 COMMISSIONER SKOP: Thank you.

24 At this point I'd like to hear from
25 prosecutorial staff.

1 MS. TAN: Good afternoon. Lee Eng Tan on
2 behalf of prosecutorial staff. Thank you, Commissioner,
3 for the opportunity to be heard on this matter today.
4 Prosecutorial staff believes that Verizon's argument
5 that the Commission no longer has jurisdiction is
6 tantamount to a rule challenge.

7 Section 120.56, *Florida Statutes*, specifically
8 sets forth that an entity that wishes to challenge an
9 agency rule is to file a petition with DOAH. As such,
10 the Commission is not the appropriate venue for Verizon
11 to challenge the validity of Rule 25-4.070, and
12 Verizon's motion for bifurcation should not be adopted
13 as an issue in this show cause proceeding.

14 Verizon also challenges whether it should be
15 required to meet the standards set forth in Rule
16 25-4.070, *Florida Administrative Code*. Unlike Verizon's
17 proposed rule challenge, prosecutorial staff believes
18 that application of this rule is an appropriate issue to
19 be addressed in this proceeding and can be handled in
20 the normal course of an administrative hearing.

21 This show cause docket is about service
22 quality standards of Florida's consumers, about the
23 level and speed of care that consumers are entitled to
24 and which this Commission is mandated to protect and
25 promote.

1 Thank you.

2 COMMISSIONER SKOP: Thank you.

3 At this point I'd like to briefly adjourn.
4 I'd like to be able to pull the GTE case and consult
5 with advisory staff. So we'll adjourn for 15 minutes
6 and reconvene shortly after ten after the hour.

7 (Recess taken.)

8 Okay. We're going to go back on the record.
9 And I'm going to have a few questions for the parties,
10 but I'll need one moment.

11 First to Mr. O'Roark, I have a few questions
12 with respect to some of the issues that have been raised
13 in your arguments.

14 First, I looked at the GTE case that you cited
15 on Page 6 of your motion. Why should this case be
16 applicable in the instant case, and would it not be
17 correct that the appropriate forum to challenge
18 jurisdiction to adopt a rule would be with DOAH?

19 MR. O'ROARK: Commissioner, we've got an
20 interesting situation. The status in Florida for a long
21 time, until the last week or two, has been that there
22 has been at least one rate-of-return regulated carrier
23 in the state. The last one was Frontier, as you know.

24 And so the reason that we have not been
25 able to go to DOAH at least up until now is that

1 Rule 25-4.070 could be applied to at least one carrier
2 in Florida, and so that has ruled out a DOAH challenge.
3 And what it means is that the way you, the way the issue
4 of the Commission's authority comes up is if in an
5 enforcement action like this one the Commission seeks to
6 enforce the rule, then our affirmative defense is
7 respectfully, Commission, you don't have the authority
8 to apply that rule in this circumstance. That's the
9 appropriate way for us to raise the issue.

10 Now I will grant you that going forward we
11 would be able to seek a DOAH challenge. That could
12 invalidate the rule going forward and it could also
13 provide a very useful precedent and analysis for the
14 Commission because obviously the rule, you know, is
15 today as it has been for a long time and that may be
16 something the Commission considers. But that's the
17 basic backdrop to where we are now.

18 COMMISSIONER SKOP: Okay. So then for the
19 purposes of our discussion, you would agree that whether
20 a given rule applies to Verizon is a valid issue in play
21 in this case on this issue before us and the Commission
22 could rule upon that. And then previously I guess
23 Verizon alleges that it was unable to go to DOAH for a
24 rule challenge, but that option is a separate and
25 distinct possibility now for Verizon.

1 MR. O'ROARK: That's correct, Commissioner.

2 COMMISSIONER SKOP: All right. And then with
3 respect to -- let's see. The next question would
4 probably be to OPC, Mr. Beck. I guess Mr. O'Roark
5 raised an issue about the term "monopoly" being defined,
6 and I would just like to see if OPC had any response to
7 that argument.

8 MR. BECK: Monopoly is not used in every
9 portion of 364.01. I think Mr. O'Roark, as I recall,
10 was referring to 364.01(4)(c). To protect the public
11 health, safety and welfare by ensuring that monopoly
12 services provided by telecommunications companies
13 continue to be subject to effective price rate and
14 service regulation.

15 The section I quoted you earlier, (h), is not
16 limited to monopoly services. There it talks about
17 flexible regulatory treatment for competitive,
18 competitive telecommunications services, if doing so
19 does not reduce the availability of adequate basic local
20 telecommunications service. So I don't think that's
21 tied to the term "monopoly."

22 MR. O'ROARK: Commissioner, may I respond to
23 that?

24 COMMISSIONER SKOP: Brief response. Yes,
25 briefly.

1 MR. O'ROARK: I've got the statute right here.
2 I'd be happy to show it to you. (H) does refer to
3 monopoly services.

4 COMMISSIONER SKOP: If you can approach.

5 MR. BECK: Oh.

6 MR. O'ROARK: Do you have it?

7 MR. BECK: Yeah. I've got it. I think the
8 sections referred to by Mr. O'Roark follow the sections
9 I was discussing.

10 COMMISSIONER SKOP: Thank you, Mr. O'Roark.
11 You can have this back. So based on the above,
12 Mr. Beck, would you concur with Mr. O'Roark's argument
13 or are you still standing by --

14 MR. BECK: No. No. Because that gives an
15 exception to it about monopoly services. But the
16 portion above it that I was reading talks about adequate
17 basic local telecommunications service. I don't think
18 that portion is tied to monopoly.

19 COMMISSIONER SKOP: Very well. I believe I
20 have two other questions; one going back to Mr. O'Roark.

21 And, again, I'm trying to better understand
22 the argument for bifurcation and reaching a
23 jurisdictional issue versus the traditional way the
24 Commission has handled things to the extent that we have
25 an issue like Issue 1, per se, will be does the

1 Commission have jurisdiction? Yes. If there's a
2 finding of jurisdiction, that you move on to Issue 2.
3 And then Issue 2 becomes moot if the Commission rules
4 against the jurisdictional issue in Issue 1. So I'm
5 trying to find the best way to, to address the issues
6 before the Commission in my capacity of the Scheduling
7 Conference that we're having here.

8 One question, one pointed question to
9 Mr. O'Roark and Verizon, in 2001 in Docket Number
10 991376-TL there was initiation of a very similar show
11 cause procedure under the same rule. Settlement was
12 reached in that case. And I guess the question I have
13 or I would like to know if the Commission had
14 jurisdiction for that particular matter and it's the
15 same rule in play, why would the Commission not have
16 jurisdiction now?

17 MR. O'ROARK: Commissioner, to my knowledge,
18 the jurisdictional issue was not raised in 1999/2000
19 when that case was prosecuted. I don't know that anyone
20 thought to raise this issue. And I think you had made
21 the point before -- well, maybe you didn't quite. Let
22 me not put those words in your mouth.

23 Subject matter jurisdiction is conferred by
24 the Legislature. It can't be created by a party and it
25 can't be waived by a party. It may be that Verizon

1 missed this issue in 2000. That does not change one bit
2 the authority that the Commission has today.

3 COMMISSIONER SKOP: Very well. Thank you.
4 And then just a question to I guess, I believe for
5 prosecutorial staff. As far as prosecutorial staff is
6 aware, do any provisions of the pending legislation
7 entitled, short title, Consumer Choice and Protection
8 Act, would any of those provisions, if enacted, preempt
9 the proceeding before the Commission?

10 MS. TAN: I do not have a copy of that
11 legislation in front of me. At this time I do not
12 believe it would have any impact, but that would be
13 subject to check.

14 COMMISSIONER SKOP: Okay. So to the best of
15 your knowledge there is no retroactive provision that
16 would preempt addressing this matter before us?

17 MS. TAN: Correct. But I would need to review
18 it again to be able to say anything different.

19 COMMISSIONER SKOP: Okay. Thank you. What
20 I'd like to do, just to give the parties some surety as
21 to how we're going to proceed forward, I would like to
22 take another brief five-minute recess, at which time
23 I'll come back and make the rulings I feel comfortable
24 ruling on. If there are any other rulings and I'm not,
25 I'll take them under advisement and issue the respective

1 order encompassing those decisions at a predetermined
2 date in the near future. But I would like to see
3 what -- based on the evidence that's been provided and
4 the issues raised by the parties, I'm sure there are
5 some issues that I have a comfort level with and I'd
6 like to go ahead and make those rulings. So we'll stand
7 adjourned for five to ten minutes.

8 (Recess taken.)

9 We're going to go back on the record.

10 Based upon the discussion at today's
11 Scheduling Conference, my ruling is going to be as
12 follows: I am going to deny the motion to bifurcate and
13 suspend discovery for the reasons set forth in both the
14 OPC and prosecutorial staff's responses. The parties
15 are free, however, to file a motion for summary final
16 order or a motion to dismiss on jurisdictional grounds,
17 and those will be taken up as a preliminary matter in
18 advance of the hearing scheduled in the case.

19 With respect to the Order Establishing
20 Procedure, that order will be revised to reflect the
21 hearing dates and to adopt the OPC proposed discovery
22 schedule dates. And the outstanding motions to compel,
23 in this case there's two of them to my knowledge, those
24 will be ruled upon via separate order and those orders
25 will be forthcoming in the near future.

1 So advisory staff, do we have any other
2 further matters that we need to consider?

3 MS. GERVASI: No, sir, I'm not aware of any.

4 COMMISSIONER SKOP: All right. Thank you.

5 MR. O'ROARK: Commissioner Skop.

6 COMMISSIONER SKOP: Yes, Mr. O'Roark, you're
7 recognized.

8 MR. O'ROARK: Thank you. A couple of minor
9 points. First, I agreed with prosecutorial staff that
10 Verizon's response to its motion to compel, which is
11 currently due tomorrow, we would be permitted to file
12 Friday.

13 And then the second point, I'd just
14 respectfully request that when you issue the new
15 scheduling order, I am planning to be on vacation the
16 first couple of weeks of July. So if I could put in a
17 pitch for trying to keep those dates free, I would very
18 much appreciate it.

19 COMMISSIONER SKOP: Advisory staff, do we have
20 any problems accommodating either of those requests? I
21 think that we should probably be able to get out the
22 orders on the outstanding motions to compel relatively
23 quickly, hopefully by -- I guess there's a response due
24 and then we'd get them out shortly thereafter.

25 MS. GERVASI: Yes, sir.

1 COMMISSIONER SKOP: Okay. Any other further
2 comments from the parties?

3 MR. O'ROARK: One further point, Commissioner
4 Skop. As I think about your ruling, when you consider
5 the motions to compel, I mean, obviously given your
6 ruling here today we will proceed to respond to
7 discovery so that some of those issues -- certainly the
8 issue that we raised on every request had to do with the
9 jurisdictional question. So that having been resolved
10 will take care of a good bit of the motion to compel.
11 And so we will understand that that's your ruling and
12 we'll proceed to as quickly as we can provide responses.
13 I understand that we've still got some issues as to the
14 scope. And to the extent that any of those issues are
15 resolved before you rule on the motion to compel,
16 obviously the parties will inform you of that.

17 COMMISSIONER SKOP: Thank you.

18 Just two quick other matters for advisory
19 staff. With respect to the other Intervenors in the
20 case, it's my understanding it's the Attorney General --
21 citizens, OPC that's here today. And the AARP, but both
22 the Attorney General's Office as well as AARP did not
23 participate in today's scheduling conference; is that
24 correct?

25 MS. GERVASI: Yes, sir.

1 COMMISSIONER SKOP: Okay. Thank you.

2 I think that concludes our business. Just one
3 final note in passing. Again, I think that the hearing
4 process is always something that the Commission tries to
5 avoid if it's able to do so. Again, a lot of that comes
6 down to the willingness of the parties to try and engage
7 in good faith discussions and achieve settlements.
8 Again, the Commission I guess historically has preferred
9 allowing the parties to try and resolve differences
10 amongst themselves. So, again, in the interest of
11 efficiency, I would encourage the parties to continue to
12 try and work together to see if common ground can be
13 achieved on any of those issues just as a matter of
14 policy to try and avoid the hearing process, if that's a
15 possibility to do so. But, again, those are my rulings.
16 And I think with that we stand adjourned.

17 (Scheduling Conference adjourned at 2:45 p.m.)
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1 STATE OF FLORIDA)
 2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
 4 I, LINDA BOLES, RPR, CRR, Official Commission
 5 Reporter, do hereby certify that the foregoing
 6 proceeding was heard at the time and place herein
 7 stated.

8 IT IS FURTHER CERTIFIED that I
 9 stenographically reported the said proceedings; that the
 10 same has been transcribed under my direct supervision;
 11 and that this transcript constitutes a true
 12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
 14 employee, attorney or counsel of any of the parties, nor
 15 am I a relative or employee of any of the parties'
 16 attorneys or counsel connected with the action, nor am I
 17 financially interested in the action.

18 DATED THIS 13th day of April, 2009.

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 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
 (850) 413-6734