

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
ORDER NO. PSC-09-0243-PCO-TL
ISSUED: April 22, 2009

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL
RESPONSE TO THE OFFICE OF PUBLIC COUNSEL'S DOCUMENT REQUEST NO. 8
FROM ITS FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
VERIZON FLORIDA LLC

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

On January 28, 2009, the Office of Public Counsel (OPC) served its First Set of Requests for Production of Documents (Nos. 1-14) on Verizon Florida LLC (Verizon). Verizon filed general and specific objections thereto on March 4, 2009. On March 19, 2009, OPC filed its First Motion to Compel, seeking full and complete responses to its first set of discovery requests. Verizon filed a Response to OPC's First Motion to Compel on March 26, 2009. Since that time, the parties have advised that they have reached a resolution on all of the Requests for Documents contained in OPC's First Set of Requests for Production of Documents except with respect to Document Request No. 8. This Order addresses the outstanding discovery dispute with respect to that document request.

OPC's Document Request No. 8 requests Verizon to "provide a copy of all service quality measurement reports that Verizon has received each month from Verizon headquarters since January 1, 2005, that compares the service quality and customer satisfaction results for Verizon Florida as compared to other Verizon subsidiaries."

Verizon objected to this request on the ground that the Commission lacks statutory authority to apply the service objectives in Rule 25-4.070, F.A.C., to price-regulated companies and to services that are subject to effective competition and therefore lacks jurisdiction over this proceeding. That objection has been mooted by the decision made at the April 6, 2009, preliminary conference, denying Verizon's Motion to Bifurcate Proceeding and Suspend Discovery Not Related to Jurisdictional Issues.

Moreover, Verizon objects on the ground that the request is overbroad and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it

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seeks documents concerning reports about service quality and customer satisfaction results of other Verizon subsidiaries, reports that do not relate to Verizon's repair services, and reports outside the temporal scope of this proceeding. In its First Motion to Compel, OPC states that it does not object to restricting the scope of documents produced to Verizon's regulated Florida services that relate to Verizon's repair services. Therefore, this Order addresses whether OPC's Document Request No. 8 is overbroad and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents concerning reports about service quality and customer satisfaction results of other Verizon subsidiaries and reports outside the temporal scope of this proceeding.

In its First Motion to Compel, OPC argues that it is entirely appropriate to request documents created a reasonable length of time before the rule violations at issue in this case because practices and procedures would likely have been set in place before 2007 that affect the number of violations in 2007 and 2008. OPC further argues that in order to show that the violations that occurred in 2007 and 2008 were willful, it is relevant to look at patterns of procedures and behavior set in place before 2007 and 2008.

In its Response to OPC's First Motion to Compel, Verizon argues that OPC fails to address Verizon's relevance objection to providing reports comparing Verizon's service quality and customer satisfaction results to other Verizon subsidiaries. Verizon argues that reports comparing Verizon's performance in Florida to the performance of Verizon's affiliates in other states can have no possible bearing on the issues in this case. According to Verizon, the circumstances in each state are different, making such comparisons meaningless.

I find that OPC has not shown how information related to the performance of Verizon's affiliates in other states comparative to its performance in Florida would be reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Service quality rules vary from state to state and this proceeding concerns only Verizon's performance in Florida. I further find that information concerning Verizon's performance in Florida dating back to 2005 is reasonably calculated to lead to the discovery of admissible evidence for the reasons set forth by OPC. Therefore, OPC's First Motion to Compel Verizon to provide a response to Document Request No. 8 is granted in part and denied in part. Verizon is hereby directed to fully and completely respond to OPC's Document Request No. 8 within fourteen days of the issuance date of this Order, with the understanding that the scope of documents produced by Verizon shall be restricted to Verizon's regulated services related to its repair services in Florida only.

Based upon the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Office of Public Counsel's First Motion to Compel Response to Document Request No. 8 from its First Set of Requests for Production of Documents To Verizon Florida LLC is granted in part and denied in part. It is further

ORDERED that Verizon Florida LLC shall provide its full and complete response to the Office of Public Counsel's Document Request No. 8 within fourteen days of the issuance date of this Order, with the understanding that the scope of documents produced by Verizon Florida LLC shall be restricted to its regulated services related to its repair services in Florida only.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 22nd day of April, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.