

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against GTE Communications Corporation (n/k/a Verizon Select Services Inc.) For apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

DOCKET NO. 990362-TI
ORDER NO. PSC-01-0809-PCO-TI
ISSUED: March 27, 2001

ORDER DENYING REQUEST FOR TEMPORARY PROTECTIVE ORDER AND
AMENDED REQUEST FOR TEMPORARY PROTECTIVE ORDER AND
ORDER ON MOTION TO COMPEL COMPLIANCE
WITH AGREEMENT AND TO PROVIDE OTHER RELIEF

The Commission opened this docket to address numerous complaints against Verizon Select Services, Inc. f/k/a GTE Communications Corporation (Verizon) for unauthorized carrier changes in violation of Rule 25-4.118, Florida Administrative Code. Verizon offered the Commission a settlement agreement to resolve the matter, which the Commission approved by Proposed Agency Action Order No. PSC-00-1348-PAA-TI, issued July 26, 2000. The Office of Public Counsel (OPC) protested the PAA order on August 16, 2000. An evidentiary hearing has been set for this proceeding, as requested.

At issue here is the appropriate reading of the Commission's rule on confidentiality, Rule 25-22.006, Florida Administrative Code, and whether under the circumstances of this case Verizon must file before the hearing a specific, line-by-line justification of the material it claims as confidential.

Verizon filed a Request for Temporary Protective Order on December 18, 2000. Verizon sought protection for the deposition of Larry Commons and an accompanying confidential exhibit, which OPC filed on December 8, 2000, as well as for the testimony and exhibit of OPC witness R. Earl Poucher, which OPC filed on December 15, 2000. In its request, Verizon argued that Rule 25-22.006(8)(b) requires it to file a specific request for permanent protective order 21 days after the conclusion of the hearing only if OPC uses the confidential information at the hearing. OPC responded in opposition to Verizon's protective order request on January 3,

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2001. OPC argued that because it has already stated it plans to use the above information at hearing, Rule 25-22.006(6)(c), Florida Administrative Code, requires Verizon to file a specific request for a protective order prior to the hearing. According to OPC, Verizon's misreading of the confidentiality rule would result in a closed hearing to address information which Verizon has not yet proved to be confidential.

Verizon filed an Amended Request for Temporary Protective Order on January 23, 2001, in which it stated it would file a specific request by February 2, 2001, but that it had not changed its interpretation of Rule 25-22.006(8)(b). Verizon filed this amended request based on its understanding that in return OPC would withdraw its response in opposition to Verizon's original request.

OPC never withdrew its response in opposition, and Verizon never filed a specific request. Instead, OPC filed a Motion to Compel Compliance With Agreement And to Provide Other Relief, on February 8, 2001, in which OPC alleged Verizon violated their agreement by failing to file a specific request by February 2, 2001. OPC argued that the scope of the information for which Verizon should be required to file a specific request should be expanded to also include the supplemental direct testimony and exhibit of R. Earl Poucher filed January 9, 2001; the deposition and exhibit of Wayne Weaver filed January 11, 2001; and the rebuttal testimony of Christopher D. Owens and Joseph P. Caliro filed January 31, 2001.

Verizon filed a response in Opposition to Office of Public Counsel's Motion to Compel Compliance With Agreement And to Provide Other Relief on February 20, 2001. Verizon argued that the Commission, in a different show cause proceeding, has already rejected OPC's argument that a specific request is required prior to a hearing, citing In re: Initiation of Show Cause Proceedings Against GTE Florida Incorporated for Apparent Violation of Service Standards, Order No. PSC-00-1140-PCO-TL, 00 F.P.S.C. 6:312 (2000). According to Verizon, it did not file its specific request on the date promised due to discussions with OPC directed toward resolution of the case. Verizon asserted it would voluntarily file specific requests in a reasonable time prior to the hearing if the case is not resolved without a hearing. Verizon argued no party

would be prejudiced from this approach, and it would ensure that the hearing is not closed.

The Commission's rule on confidentiality draws a distinction between confidential information which is provided to the parties during the discovery phase of a proceeding, and confidential information which is actually filed at the Commission to be included in the record of a docketed proceeding. Subsection (6) of Rule 25-22.006 codifies our policy to protect confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to the parties. Rule 25-22.006(6), Florida Administrative Code, in pertinent part, provides:

(6) Discovery.

(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

* * *

(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be

used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

The request for confidential treatment filed under subsection (6) does not require specificity. On the other hand, when a confidential document is filed at the Commission, subsection (4) of Rule 25-22.006 requires a line-by-line justification to be included in the request for confidential treatment. As the Commission has recognized:

The purpose of a temporary protective order issued pursuant to Rule 25-22.006(5)(c)¹ is to facilitate the examination of potentially confidential information by temporarily exempting the information from the disclosure provision of Florida's Public Records Act, Section 119.07(1), Florida Statutes. Under the rule, if information subject to a temporary protective order is to be used in a proceeding, then the utility must file a specific request for confidential treatment. Alternatively, if the material is not to be used in a proceeding, then the material shall be returned to the utility.

In re: Comprehensive review of the requirements and rate stabilization plan of Southern Bell Telephone and Telegraph Company, Order No. PSC-96-0975-PCO-TL, 96 F.P.S.C. 7:639 (1996).

For the information at issue here, we are past the discovery phase of the case. The order relied upon by Verizon is not applicable to this case because it concerned information that was still considered discovery and had not been filed at the Commission. In re: Initiation of Show Cause Proceedings Against GTE Florida Incorporated, Order No. PSC-00-1140-PCO-TL, 00 F.P.S.C. 6:312 (2000). In this case, it is clear that the information in dispute will become part of the record of the case. OPC has already filed the direct testimony and supplemental direct

¹ Paragraph (5)(c) was renumbered to paragraph (6)(c) when the rule was amended on April 21, 1996.

testimony and accompanying exhibits of R. Earl Poucher. In addition, OPC has filed the deposition transcripts of Mr. Commons and Mr. Weaver and has announced its intention to use this information during the course of the proceeding. Finally, Verizon has already filed the rebuttal testimony of Christopher D. Owens and Joseph P. Caliro. Thus, Verizon's request and amended request for a temporary protective order are denied. Verizon shall file specific requests for confidential treatment of this prefiled testimony and accompanying exhibits, and deposition transcripts, pursuant to subsection (4) of Rule 25-22.006, within 21 days of the date of this order. Because it is the operation of Rule 25-22.006 that requires Verizon to file a specific request, OPC's motion seeking compliance with its agreement with Verizon and other relief is rendered moot.

OPC shall notify Verizon within a reasonable time before the hearing of any other information which it plans to use during the hearing. Verizon shall file specific requests for confidential treatment for this information identified by OPC prior to the hearing.

The information discussed above shall remain protected from public disclosure by this order until the time expires for Verizon to file a specific request for confidential treatment. The redacted information in the specific request would then remain confidential until ruled upon by the Commission.

This decision balances the needs of OPC, Verizon, and the public. OPC will have the ability to work with confidential information in the least restrictive means possible at the hearing. Verizon will be required to file, prior to the hearing, specific requests for confidential treatment only for information that OPC has affirmatively stated it will use during the hearing. Finally, this decision is consistent with the Commission's policy that Commission proceedings are to be open to the public at all times.

The parties are reminded that the Order Establishing Procedure in this case, Order No. PSC-00-1835-PCO-TI, issued October 6, 2000, requires the parties to notify the prehearing officer and the other parties to the case at least seven days prior to the hearing that confidential information will be used during the course of the proceeding. The notice must include a recommended procedure for

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maintaining the confidentiality of the confidential information during the hearing.

It is, therefore

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the Verizon Select Services, Inc.'s Request for Temporary Protective Order and Amended Request for Temporary Protective Order are hereby denied as discussed above. It is further

ORDERED that the Office of Public Counsel's Motion to Compel Compliance With Agreement And to Provide Other Relief is hereby rendered moot as discussed above. It is further

ORDERED that Verizon shall file, within 21 days of the date of this order, specific requests for confidential treatment, including line-by-line justifications, pursuant to Rule 25-22.006(4), Florida Administrative Code, of the prefiled testimony and deposition transcripts identified above.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 26th day of March, 2001.



LILA A. JABER
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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, 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.