

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against GTE Florida Incorporated for apparent violation of service standards.

DOCKET NO. 991376-TL
ORDER NO. PSC-01-1286-PHO-TL
ISSUED: June 13, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 30, 2001, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Charles J. Beck, Deputy Public Counsel, office of the Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400

On behalf of Citizens of Florida.

Kimberly Caswell, Esquire, Post Office Box 110, FLTC0007, Tampa, Florida 33601-0110

On behalf of Verizon Florida Inc..

C. Lee Fordham, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

07326 JUN 13 2001

FPSC-RECORDS REPORTING

II. CASE BACKGROUND

On November 23, 1995, Verizon Select Services Inc. (F/k/a GTE Communications Corporation "Verizon") received Certificate Number 4080 to operate as an interexchange telecommunications company in Florida. On September 10, 1999, based on continued self reported failures to meet the Commission rules on service standards, staff opened this docket. On September 17, 1999, the Office of Public Counsel (OPC) filed a notice of intervention. The matter is currently set for administrative hearing on June 21, 2001.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the

Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so

answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Don McDonald	Staff	1 and 2
Earl Poucher	OPC	1 and 2
John A. Ferrell	Verizon	1 and 2
Russell B. Diamond	Verizon	1 and 2
John C. Appel	Verizon	1 and 2
Earl Poucher (surrebuttal)	OPC	1 and 2

VII. BASIC POSITIONS

OPC: Verizon willfully violated the Commission's out of service repair rule 179 times during 1996, 124 times during 1997, 164 times during 1998, and 102 times during 1999, for a total of 569 willful violations during the four year period. Verizon also willfully violated the Commission's installation rule 26 times during 1996, 13 times during 1997, 18 times during 1998, and 127 times during 1999, for a total of 204 willful violations during the same period.

These repeated, continuous violations over the four year period reflect Verizon's decision to place profits before service. In pursuit of profits, the company dramatically reduced its expense per access line during the four year period, but in doing so it failed to provide the resources

necessary to install and repair lines in compliance with the intervals established by this Commission.

The Commission should fine Verizon \$19.3 million for its repeated, willful violations during the four period. Such a fine would send a message that the Commission will not condone the willful violation of its service rules by a company that chooses to place profits before meeting minimum customer service standards.

VERIZON:

Verizon did not willfully violate the Commission's repair and installation standards at issue in this case. Meeting Commission service standards has always been a top priority for Verizon management at the local and national levels. While Verizon did miss the standards in limited circumstances, there were good reasons for these misses, and none of them was in any way intentional. Verizon explained the reasons for any misses in its quarterly service quality reports filed with the Commission, and reasonably assumed these explanations were acceptable—particularly in view of the fact that Florida's exchange-specific standards are some of the toughest in the country.

In any event, Verizon has sustained compliance with the Commission's repair and installation standards for all of last year and this year to date. These improved service levels are the result of action plans developed by local management well before this docket was initiated. These compliance statistics prove that effective and efficient management is the key to maintaining compliance with Commission service standards

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. Staff believes that GTE Florida Incorporated n/k/a Verizon Florida Incorporated (Verizon), during the period of January 1996 through December 1999, was in violation of Rule 25-4.070 (3) (a), Florida Administrative Code, which requires

restoration of interrupted service within 24 hours of report for 95% of the repairs in each exchange. Verizon, was also in violation of Rule 25-4.066 (2), Florida Administrative Code, which requires installation of primary service within 3 working days for 90% of the installations in each exchange. During the period in question, Staff has determined that Verizon had 569 violations of Rule 25-4.070 (3)(a), and 204 violations of Rule 25-4.066 (2).

VIII. ISSUES AND POSITIONS

- ISSUE 1:** (a) During the time period of January 1996 through December 1999, was GTE Florida Incorporated in willful violation of Rule 25-4.070(3)(a), Florida Administrative Code, which requires restoration of interrupted service within 24 hours of report for 95% of the repairs in each exchange?
- (b) If so, how many violations were there, if any, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any violations?

POSITIONS

OPC: Verizon willfully violated the Commission's out of service repair rule 179 times during 1996, 124 times during 1997, 164 times during 1998, and 102 times during 1999, for a total of 569 willful violations during the four year period. The Commission should fine Verizon \$25,000 for each violation.

VERIZON:

- (a) No.
- (b) Because Verizon did not willfully violate the repair standard at issue, the Commission may not fine or otherwise penalize Verizon.

STAFF:

- (a) Staff believes that Verizon did willfully violate Rule 25-4.070 (3)(a), Florida Administrative Code.

- (b) There were 569 violations of Rule 25-4.070 (3)(a), Florida Administrative Code. Staff believes the appropriate penalty should be comparable to that imposed in similar cases.

ISSUE 2: (a) During the time period of January 1996 through December 1999, was GTE Florida Incorporated in willful violation of Rule 25-4.066(2), Florida Administrative Code, which requires installation of primary service within 3 working days for 90% of the installations in each exchange?

- (b) If so, how many violations were there, if any, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any violations.

POSITIONS

OPC: Verizon willfully violated the Commission's installation rule 26 times during 1996, 13 times during 1997, 18 times during 1998, and 127 times during 1999, for a total of 204 willful violations during the four year period. The Commission should fine Verizon \$25,000 for each violation.

VERIZON:

- (a) No.
- (b) Because Verizon did not willfully violate the installation standard at issue, the Commission may not fine or otherwise penalize Verizon.

STAFF:

- (a) Staff believes that Verizon did willfully violate Rule 25-4.066 (2), Florida Administrative Code.
- (b) There were 204 violations of Rule 25-4.066 (2), Florida Administrative Code. Staff believes the appropriate penalty should be comparable to that imposed in similar cases.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
R. Earl Poucher	OPC	_____	N e t w o r k
		(REP-1)	Troubles per 100
		_____	Balancing Cost and Quality
		(REP-2)	
		_____	Only Real Answer..Change Regulation
		(REP-3)	
		_____	C o r p o r a t e Strategy to L o w e r Standards
		(REP-4)	
		_____	Find the Dollars to Fix Outside Plant
		(REP-5)	
		_____	Defective OSP Expenditures
(REP-6)			
_____	Weather vs. Trouble Load		
(REP-7)			
_____	Inadequately G r o u n d e d Crossboxes		
(REP-8)			
_____	Deterioration of OSP Never Stops		
(REP-9)			
_____	Unsatisfactory P l a n t Conditions		
(REP-10)			
_____	TAC Focus Spending		
(REP-11)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
R. Earl Poucher	OPC	_____	Actual vs.
		(REP-12)	Projected Productivity
		_____	1997 results vs. Budget
		(REP-13)	
		_____	B u d g e t Reduction - 1998
		(REP-14)	
		_____	B u d g e t Reduction - 1999
		(REP-15)	
		_____	N e g a t i v e Impact - Budget Reductions
		(REP-16)	
		_____	H e a d c o u n t Reductions - 1999
(REP-17)			
_____	Headcount - 1998		
(REP-18)			
_____	C a p i t a l Spending Reductions - 1999		
(REP-19)			
_____	F l o r i d a Appeals Budget Cuts		
(REP-20)			
_____	Competitive Strategy		
(REP-21)			
_____	Cost Per Line Reductions		
(REP-22)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
R. Earl Poucher	OPC	_____	PSC audit
		(REP-23)	"Special" Preparations
		_____	Market Share
		(REP-24)	
		_____	PSC Rules -
		(REP-25)	All States
		_____	Installations
		(REP-26)	Have Trouble
		_____	PSC measures
		(REP-27)	not to be traded off
		_____	Meeting
(REP-28)	Budgets and P S C Expectations are Minimum Standards		
_____	1999 Headcount		
(REP-29)	Based on Targets You Have Received		
_____	Service		
(REP-30)	Improvement Plan 1999		
_____	Over Budget		
(REP-31)	(5/2/96)		
_____	Florida Can		
(REP-32)	Absorb Increased Demand		
_____	DAKS Request		
(REP-33)	For Help		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
R. Earl Poucher	OPC	_____	We Have Got to
		(REP-34)	Find The
			Dollars to Fix
			Outside Plant
		_____	S e r v i c e
		(REP-35)	Assurance 1/98
			Recommenda-
			tions
		_____	Budget Cut '98
		(REP-36)	
_____	Reports Beyond		
(REP-37)	C l e a r i n g		
	Capacity of		
	Force		
_____	Failing Test,		
(REP-38)	GTE Has Rules		
	Changed		
_____	Lines Crossed		
(REP-39)	for Phone		
	Company		
_____	V e r i z o n		
(REP-40)	Problems Mid		
	'99		
_____	Cost Controls-		
(REP-41)	- L e s s		
	Competitive .		
_____	P h o n e		
(REP-42)	C u s t o m e r s		
	Steaming About		
	Service		
John A. Ferrell	Verizon	_____	Comparison of
		(JAF-1)	PSC Standards

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John A. Ferrell	Verizon	_____	April 2, 1998
		(JAF-2)	Kampert Letter with Service R e p o r t Attachments
		_____	Operations
		(JAF-3)	R e p o r t s Excerpts
		_____	Daks Letters
		(JAF-4)	and Reports
		_____	September 1999
		(JAF-5)	Repair Action Plan
		_____	R e p a i r
		(JAF-6)	Improvement Plan
		_____	D i s p a t c h
		(JAF-7)	Reduction Plan
_____	Florida PSC		
(JAF-8)	S e r v i c e Improvement Plan		
_____	F l o r i d a		
(JAF-9)	Results E-mail		
_____	S e r v i c e		
(JAF-10)	Standard Mis's Explanations		
_____	L i g h t n i n g		
(JAF-11)	Stroke Report		
_____	W e a t h e r		
(JAF-12)	Documents		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Russell B. Diamond	Verizon	_____	1998 Projected and Actual Dispatches
		(RBD-1)	
John C. Appel	Verizon	_____	H i r i n g Requisitions Log
		(RBD-2)	
		_____	Florida PSC Measures Correspondence
		(JCA-1)	
Don B. McDonald	Staff	_____	March 17, 1998 Daks Note
		(JCA-2)	
		_____	August 26, 1999 Keith Note
		(JCA-3)	
Don B. McDonald	Staff	_____	December 3, 1999 Appel note
		(JCA-4)	
Don B. McDonald	Staff	_____	Results of service quality evaluation of GTE Florida Incorporated conducted by staff in 1996 involving service orders and trouble reports.
		(DBM-1)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Don B. McDonald	Staff	<hr/> (DBM-2)	Graph of GTE Florida's Periodic Reports (Schedules 2 & 11) for 1996 showing the percentage of exchanges that missed the standards for installation of new primary service and out of service restoral.
		<hr/> (DBM-3)	Results of service quality evaluation of GTE Florida Incorporated conducted by staff in 1997 involving service orders and trouble reports.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Don B. McDonald	Staff	<hr/> (DBM-4)	Graph of GTE Florida's Periodic Reports (Schedules 2 & 11) for 1997 showing the percentage of exchanges that missed the standards for installation of new primary service and out of service restoral.
		<hr/> (DBM-5)	Correspondence between GTE Florida and FPSC Staff involving the 1997 service quality evaluation.
		<hr/> (DBM-6)	Results of service quality evaluation of GTE Florida Incorporated conducted by staff in 1998 involving service orders and trouble reports.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Don B. McDonald	Staff	<hr/> (DBM-7)	Graph of GTE Florida's Periodic Reports (Schedules 2 & 11) for 1998 showing the percentage of exchanges that missed the standards for installation of new primary service and out of service restoral.
		<hr/> (DBM-8)	Results of the service quality evaluation of GTE Florida Incorporated conducted by staff in 1999 involving trouble reports.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Don B. McDonald	Staff	_____ (DBM-9)	Graph of GTE Florida's Periodic Reports (Schedules 2 & 11) for 1999 showing the percentage of exchanges that missed the standards for installation of new primary service and out of service restoral.
		_____ (DBM-10)	Graph of GTE Florida's Periodic Reports (Schedules 2 & 11) for the years of 1996 through 1999 showing the number of exchanges that missed the standards for installation of new primary service and out of service restoral.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

Order No. PSC-00-1140-PCO-TL, issued June 23, 2000, granted Verizon's Motion for Temporary Protective Order filed January 27, 2000, and Verizon's Motion for Temporary Protective Order filed February 8, 2000.

XIII. RULINGS

Verizon shall file its Specific Request for Confidentiality no later than Monday, June 11, 2001. OPC is directed to provide its response in the shortest possible time to allow time for a ruling prior to the Hearing.

XIV. OTHER MATTERS

Parties shall be allowed ten minutes for opening statements.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 13th Day of June, 2001.

A handwritten signature in black ink, appearing to read "J. Terry Deason", is written over a horizontal line.

J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

CLF

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,

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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.