

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements (Sprint/Verizon track).

DOCKET NO. 990649B-TP
ORDER NO. PSC-02-0415-PCO-TP
ISSUED: March 27, 2002

ORDER GRANTING IN PART AND DENYING IN PART
VERIZON'S MOTION TO COMPEL DISCOVERY

On March 12, 2002, Verizon Florida Inc. (Verizon) filed its Motion to Compel Discovery. In its Motion, Verizon seeks to compel AT&T Communications of the Southern States, LLC, (AT&T), MCI WorldCom Inc. (WorldCom) and Florida Digital Network, Inc. (FDN) (collectively the ALEC Coalition or Coalition) to supplement their responses immediately to fully respond to Verizon's First Request for Production of Documents (First Request).

In support of its Motion, Verizon asserts that its First Request contained 13 requests for relevant, non-privileged documentation. In response to the First Request, the ALEC Coalition responded that: "All responsive documents have been produced attached to Dr. Ankum's testimony." Verizon states that the "ALEC Coalition never specifies which documents purport to respond to which of Verizon's requests for production of documents." Consequently, Verizon requests that the ALEC Coalition be ordered to specify which documents are responsive to each of the requests for production or state that there are no documents responsive to the particular request.

On March 18, 2002, the ALEC Coalition filed its response to Verizon's Motion to Compel. In its response, the ALEC Coalition states that "a party is not required to produce records that are already within the possession of the requesting party or could be as reasonably obtained by the requesting party from public sources." While the ALEC Coalition believes it provided accurate and sufficient responses, it addresses each request in turn and supplements its responses to Verizon's First Request. I will also address each of these requests in turn.

Request 1. Denied. The ALEC Coalition has responded to Verizon's request and states that "there are no responsive documents in the

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possession custody or control of the Coalition."

- Request 2. Denied. The ALEC Coalition has responded to Verizon's request and states that "there are no responsive documents in the possession custody or control of the Coalition or Dr. Ankum."
- Request 3. Granted in part. This request refers to interrogatory 7, which asks Dr. Ankum to list all studies, analyses, and other documents he relied upon in determining each fill factor. It is unclear from the Coalition's response whether there are documents that explain how Dr. Ankum determined the fill factors he recommends. To that end, the Coalition shall provide the documents Dr. Ankum used to determine his fill factors. If those documents do not exist, then the Coalition shall so state that no documents exist.
- Request 4. Granted in part. The Coalition states that the engineering guidelines that support Dr. Ankum's claim that fiber will be placed to reinforce copper feeder facilities are already in the possession of Verizon. The Coalition further states that it has requested these documents in discovery, but has yet to receive them. When the Coalition receives these documents from Verizon, it shall specify the relevant portion of those documents that support Dr. Ankum's recommendation.
- Request 5. Denied. The ALEC Coalition has responded to Verizon's request and states that "there are no responsive documents in the possession custody or control of the Coalition or Dr. Ankum."

- Request 6. Granted in part. The Coalition states that the source of the requested information is Verizon's model. The Coalition shall specify the relevant portion of the model that supports Dr. Ankum's recommendation.
- Request 7. Denied. The ALEC Coalition has responded to Verizon's request.
- Request 8. Denied. The ALEC Coalition has responded to Verizon's request and states that "there are no responsive documents in the possession custody or control of the Coalition or Dr. Ankum."
- Request 9. Denied. The ALEC Coalition has responded to Verizon's request and states that "[a]ll the documents acquired in these various proceedings are no longer in the possession custody or control of Dr. Ankum or the ALEC Coalition."
- Request 10. Granted in part. The Coalition lists jurisdictions in which it believes feature costs are included in the monthly port charge. The Coalition states that the burden of performing additional research into publicly available information is the same for the Coalition as it is for Verizon.

The Coalition correctly points out that Rule 1.340(c) alleviates the burden to produce records when " . . . the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed" Nevertheless, to the extent that the Coalition believes that documents exist that support its position, then the

Coalition shall answer " . . . in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained"

Request 11. Granted in part. Consistent with the ruling on Request 10, to the extent that the Coalition believes that documents exist that support its position, then it shall provide a complete citation to those documents.

Request 12. Denied. The ALEC Coalition has responded to Verizon's request and states that all testimony submitted by Dr. Ankum from 2000 through 2002 is described in Dr. Ankum's Exhibit AHA-1 and is a matter of public record that can be as easily obtained by Verizon as the ALEC Coalition.

Request 13. Denied. The ALEC Coalition has responded to Verizon's request and states that the answer to the interrogatory that this request refers to is undeterminable. "Hence there can be no documents responsive to the request."

Where the ALEC Coalition is directed to provide additional responses and information to Verizon, said information shall be provided directly to Verizon by Friday, April 5, 2002.


Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Verizon Florida Inc.'s Motion to Compel Discovery, is hereby granted in part, and denied in part, as set forth in the body of this Order. It is further

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ORDERED that AT&T Communications of the Southern States, LLC, MCI WorldCom Inc. and Florida Digital Network, Inc. shall provide additional responses and information to Verizon Florida Inc. as set forth in the body of this Order by April 5, 2002.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 27th day of March, 2002.



BRAULIO L. BAEZ
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)

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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 the Commission Clerk and Administrative Services, 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.