

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration  
of open issues resulting from  
interconnection negotiations  
with Verizon Florida Inc. by  
DIECA Communications, Inc. d/b/a  
Covad Communications Company.

DOCKET NO. 020960-TP  
ORDER NO. PSC-03-0941-PCO-TP  
ISSUED: August 18, 2003

ORDER GRANTING MOTION TO STRIKE

Pursuant to a Petition by DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) for arbitration of unresolved issues in an agreement with Verizon Florida Inc. (Verizon), this matter was set for an administrative hearing by Order No. PSC-02-1589-PCO-TP, issued November 15, 2002. Hearing was held on May 14, 2003, wherein all testimony and exhibits were stipulated into the record and all cross examination was waived by the parties.

On July 15, 2003, Covad filed its Notice of Filing Supplemental Authority, accompanied, without comment, by the Arbitration Order of the New York Public Service Commission in a recently concluded arbitration between Covad and Verizon in New York. That Order had been entered in New York on June 26, 2003, subsequent to the conclusion of the present Florida arbitration. On July 18, 2003, Verizon filed its Letter Regarding the New York Public Service Commission's Decision in the Arbitration between Verizon and Covad.

On July 29, 2003, Covad filed its Motion to Strike the letter filed by Verizon. On August 1, 2003, Verizon filed a Response to Covad's Motion to Strike.

In its Motion, Covad argues that Verizon's Letter is unauthorized and amounts to an inappropriate effort to re-brief the issues in this Docket. Covad urges that Verizon lauds the portions of the New York Order which are in favor of Verizon, but attempts to explain away portions of the Order which are adverse to Verizon. Covad argues that Verizon could have incorporated findings from the New York Order in its Post-Hearing Brief, but failed to do so. At this point, allowing Verizon's Letter would be tantamount to

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allowing a "second brief," which is not permitted under the rules of this Commission.

Verizon, in its response, argues that it believes its short letter would be of assistance to the Commission in assessing the relevance of the New York PSC's decisions to the issues presented here. Verizon points out that this Commission "has traditionally been liberal in allowing leave to file supplemental authority" and has "generally considered supplemental authority pursuant to the provisions of Rule 9.2[2]5, Florida Rules of Appellate Procedure." Order No. PSC-02-0159-PCO-TP at 2-3, Docket No. 001305-TP (Feb. I, 2002). Rule 9.225 provides that such a notice "may identify briefly the points argued on appeal to which the supplemental authorities are pertinent, but shall not contain argument." Verizon believes that its letter - which identifies briefly the points argued in this proceeding to which the supplemental authority is pertinent is not a brief and is consistent with this Commission's past practice.

I have reviewed the pleadings which are the subject of this Order. I find that Covad's submission of the new authority, without comment, is appropriate and consistent with our past practices. The Verizon Letter, however, goes beyond attempting to assist us in assessing the relevance of the New York Order to our decision. The Letter is an attempt to urge the findings in New York in the light most favorable to Verizon, thereby constituting new post-hearing argument. Accordingly, Covad's Motion to Strike will be granted.

Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Motion to Strike filed by Covad Communications Company is hereby granted.

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 18th day of August, 2003.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

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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

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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.