

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.

DOCKET NO. 030867-TL

In re: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes.

DOCKET NO. 030868-TL

In re: Petition for implementation of Section 364.164, Florida Statutes, by rebalancing rates in a revenue-neutral manner through decreases in intrastate switched access charges with offsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.

DOCKET NO. 030869-TL
ORDER NO. PSC-03-1155-PCO-TL
ISSUED: October 20, 2003

ORDER ON OPC'S FIRST MOTIONS TO COMPEL AND
VERIZON'S MOTION FOR PROTECTIVE ORDER

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications, Inc. (BellSouth), each filed petitions pursuant to Section 364.164, Florida Statutes, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003. Part of the new Tele-Competition Act is the new Section 364.164,

DOCUMENT NUMBER-DATE

10221 OCT 20 8

FPSC-COMMISSION CLERK

Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier (ILEC) may petition the Commission to reduce its intrastate switched network access rate in a revenue-neutral manner. This matter has been set for hearing on December 10-12, 2003.

On September 17, 2003, the Office of Public Counsel (OPC) filed its First Motion to Compel Answers to Interrogatories From Verizon Florida, Inc. and its First Motion to Compel Production of Documents From Verizon Florida, Inc. (Motions to Compel). On September 24, 2003, Verizon filed its Responses to OPC's First Motions to Compel.

I. ARGUMENT

A. OPC's Motion

In support of its Motions, OPC states that on September 10, 2003, Verizon served its Initial Objections to its First Set of Interrogatories and First Set of Production of Documents dated September 3, 2003. OPC asserts that Verizon lists thirteen "initial" and "preliminary" objections to its discovery, none of which identifies a single interrogatory or request for production of documents (PODs) to which any or all of them may apply. OPC claims that as such Verizon has presented to it a wonderful game of "read the Company's mind." OPC asserts emphatically that these "initial" and "preliminary" objections of Verizon are wholly inapplicable to its discovery requests. OPC goes through each of "initial" and "preliminary" objections made by Verizon, twelve regarding the interrogatories and thirteen regarding the PODs.

OPC cites to the Order Establishing Procedure, Order No. PSC-03-0994-PCO-TL, which instructs the parties regarding discovery that "Any objection to . . . discovery requests shall be made within five business day of service of the discovery request." OPC contends that it does not believe that instruction envisioned a listing of any and all objections that might be available to a party in the event that some specific discovery request was made of that party to which one or more of those available objections could be claimed and argued. OPC argues that not one of these "initial" and "preliminary" objections made by Verizon identifies a single interrogatory or POD to which it might apply. OPC states that if

these objections were actually applicable to its discovery, OPC would be faced with the impossible task of responding directly to these "initial" and "preliminary" objections, all of which address nothing in particular. OPC contends that these objections are wholly inappropriate and totally irrelevant to its discovery requests.

OPC states that after listing their "initial" and "preliminary" objections, Verizon identifies some specific objections to particular discovery requests, as required by the Florida Rules of Civil Procedure. OPC then proceeds to identify the specific objections by interrogatory and POD and its responses to same which are summarized below.

B. Verizon Argument

Verizon states that in regard to its use of general objections, nothing in Order No. PSC-03-0994-PCO-TL precludes the use of general objections and, in light of the expedited discovery time frames in this proceeding, Verizon's use of general objections - in which it lists standard discovery objections and reserves its rights - is entirely appropriate. Verizon further states that in this instance, Verizon has not refused to respond to a single interrogatory based on its general objections. Verizon contends that it has interposed specific objections to those interrogatories that seek information beyond the scope of discovery in this proceeding, and Verizon has only exercised its right not to respond where it has interposed specific objections.

The individual interrogatories or PODs specific arguments are addressed below. Further, the decision relating to each interrogatory and POD is addressed under that individual interrogatory and POD.

II. DECISION

After reviewing the parties' motions and responses, as well as the interrogatories and PODs in questions, OPC's Motions to Compel shall be granted in part and denied in part in the manner and for the reasons set forth below.

Rule 1.280(b) states that:

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

However, certain of the requests appear to be burdensome; therefore, those requests are limited as set forth below. The information will be limited as set forth below.

A. Interrogatories

Interrogatory No. 3:

OPC states that Verizon specifically objects to its Interrogatory No. 3 which ask Verizon to identifying cost studies in this docket that have been completed in other jurisdictions.¹ OPC contends that contrary to Verizon's assertion, its witnesses, Gordon and Danner, freely utilize data from jurisdictions outside of Florida in an attempt to bolster their market testimony. OPC contends that witness Danner specifically refers to the pricing reform order of 1994, by the California Public Utility Commission that was similar to the price increase proposed here by Verizon in the Florida case. (Witness Danner direct testimony at pps. 25-26) OPC states that it is inquiring about cost studies the Company has used to help establish its case in other jurisdictions, such as California, and if the Company is going to use arguments made in those jurisdictions to bolster its testimony here, then the Commission and OPC need to know the alleged facts that were submitted in those cases by Verizon.

OPC notes that, contrary to the Company's assertion, witness Gordon refers extensively to state policies pricing basic local service "below cost" in a number of states and the resultant frustrations of the policy goal of federal and state regulators because of the continuation of those policies. (Witness Gordon at p. 8) OPC contends that witness Gordon's testimony compares Florida rates to national averages rates, despite the fact that the statute

¹OPC refers to its responses to POD No. 18.

says nothing about the cost of telephone services in other parts of the country. (Witness Gordon at p. 10) OPC states that witness Gordon even calculates the ranking of Florida rates compared with those of Georgia, Alabama, Louisiana and Virginia, yet the Company seeks to prevent OPC from learning of similar cost comparisons for the Commission's consideration. OPC asserts that finally the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced. OPC contends that the discovery addressed in that section pertains only to the rate adjustment filings identified in Section 364.164(2), Florida Statutes, and addressed in Section 364.164(3), Florida Statutes, and Section 364.164(7), Florida Statutes.

Verizon in its response, contends that OPC's arguments should be rejected. Verizon contends that it referred to out-of-state orders and the experiences of its witnesses in other states to demonstrate that granting its petition will: (1) remove current support for basic local telephone service that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers; and (2) induce enhanced market entry. Verizon asserts that it did not refer to this information to address the loop allocation claim. Verizon argues that even if the Commission broadly construes Subsections 364.164(1) and (3), Florida Statutes, to mean that discovery is limited to issues addressed in Verizon's Petition (which it should not), this interrogatory falls outside the scope of permissible discovery.

Verizon contends that OPC's argument that the discovery limitation set forth in Section 364.164(3), Florida Statutes, only applies to certain subsections of Section 364.164, Florida Statutes, is erroneous. Verizon argues that Section 364.164(3), Florida Statutes, plainly states that "[a]ny discovery or information requests under this section shall be limited to verification of historical pricing units. . ." Verizon contends that by the plain language of the statute, the discovery limitation applies to discovery requests under all the section, not just certain subsections.

Decision

Subsection 364.164(3), Florida Statutes, reads as follows:

Any filing under this section must be based on the company's most recent 12 months' pricing units in accordance with subsection (7) for any service included in the revenue category established under this section. The commission shall have the authority only to verify the pricing units for the purpose of ensuring that the company's specific adjustments, as authorized by this section, make the revenue category revenue neutral for each filing. *Any discovery or information requests under this section must be limited to a verification of historical pricing units necessary to fulfill the Commission's specific responsibilities under this section of ensuring that the company's rate adjustments make the revenue category revenue neutral for each annual filing.*

Subsection 364.164(3), Florida Statutes. (Emphasis added).

When interpreting statutory provisions, one first should look to the provision at issue to determine whether the "language is clear and unambiguous and conveys a clear and definite meaning. . . ." Holly v. Auld, 450 So. 2d 217 (Fla. 1984), citing A.R. Douglass Inc. v. McRaney, 102 Fla. 1141 (1931). If the meaning is clear, there is no need to resort to statutory interpretation. Furthermore, an unambiguous statutory provision cannot be construed to extend, modify, or limit its express terms or its reasonable and obvious implications. Holly, at 219. However, a statute should not be given its literal reading if such reading would lead to an unreasonable conclusion. Id.

In this instance, it is appropriate to use the rules of statutory interpretation to decipher the true intent behind Subsection 364.164(3), Florida Statutes. This provision is ambiguous in that a literal reading leads to an unreasonable result. If read in its most literal sense, the discovery

limitation in Subsection 364.164(3), Florida Statutes, would prevent parties, as well as the Commission's own staff, from conducting any discovery on the ILECs' petitions to reduce intrastate switched access rates beyond discovery necessary to verify the historical pricing units in the companies' filings. This must not be the Legislature's intent, because in subsection 1 of Section 364.164, the Legislature clearly delineated a number of factors that this Commission must consider in addressing the ILECs' petitions. Specifically, the Commission must consider whether granting the petitions will:

- (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers;
- (b) Induce enhanced market entry;
- (c) Require intrastate switched network access rate reduction to parity over a period of not less than 2 years or more than 4 years; and
- (d) Be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2).

In order to give full effect to the Legislature's expressed intent that this Commission consider these factors, sufficient information must be obtained and verified, and thereafter, entered into the record of this proceeding for this Commission's consideration.

Further, this interpretation is supported by the placement of the language limiting discovery in Subsection 364.164(3), Florida Statutes. The location of the language being interpreted is a valid consideration when the provision at issue is ambiguous. See State of Florida v. Robarge, 450 So. 2d 855 (Fla. 1984) (noting validity of Baeumel² rule, whereby placement of statutory exception is means for determining whether it is an element of a statutory offense.); and Bolden v. State Farm Mutual Automobile Insurance Co., 689 So. 2d 339 (Fla. 4th DCA 1997) (construing the placement of

²Baeumel v. State, 26 Fla. 71 (1890).

a provision on timing of benefits within body of Section 627.736(4), Florida Statutes, to demonstrate the general purpose of coordinating coverage, instead of providing additional coverage.)

Here, the limiting language is located at the end of subsection 3 of Section 364.164. The subsection is dedicated to addressing the pricing units upon which the parties' filings must be based, and it discusses this Commission's verification of those pricing units. The limitation on discovery follows that discussion. As such, the Legislature must have intended the limitation only to apply to discovery regarding the actual pricing units. Had the Legislature intended that discovery be limited regarding all aspects of the parties' petitions, the Legislature would have located that discovery language in a more prominent location in Section 364.164, clearly delineating its application to the entire provision. Had the Legislature intended the limiting language to apply to Section 364.164 in its entirety, the language would have been located much earlier in the Section and would likely have been a separately numbered provision, not buried at the end of a subsection that addresses a specific aspect of the petitions.

Contrary to Verizon's argument, the language in Section 364.164(3), Florida Statutes, limits discovery only on discovery regarding the pricing units upon which the parties' petitions are based. Thus, to the extent the discovery request goes to information contained in Verizon's petition not related to the pricing units, discovery as permitted under the Florida Rules of Civil Procedures, is appropriate.

Based on the foregoing, this discovery request appears relevant. Thus, Verizon shall respond to this discovery request.

Interrogatory No. 4:

OPC states that Verizon specifically objects to its Interrogatory No. 4 which asks Verizon to state whether it has developed cost studies for bundled services since January 1, 2000, where the basic residential local exchange service component was bundled with additional products and services and provided at a

single reduced rate.³ OPC argues that Verizon has filed a request for \$71.4 million in increased rates for basic residential service customers in Florida, alleging that the price of residential service is below cost. OPC contends that it and the Commission should have a right to have identified, as well as review, all of Verizon's cost studies that characterize the revenue/cost relationships of basic residential services, including those instances where Verizon has specifically introduced competitive packages plans that include the basic residential service component. OPC asserts that this information is highly relevant and extremely critical to the evaluation of the benefits or the harm that basic residential telecommunication customers will experience as a result of the Verizon Petition. OPC states that witness Leo at page 17, Table VI, of his testimony includes specific references to bundled service offerings of six Florida competitors. OPC argues that consequently their request is relevant to Verizon's testimony. OPC refers back to their response that the discovery addressed in Section 364.164(3), Florida Statutes, pertains only to the rate adjustment filings identified in Section 364.164(2), Florida Statutes, and addressed in Section 364.164(3), Florida Statutes, and Section 364.164(7), Florida Statutes.

Verizon argues that this interrogatory runs afoul of the discovery limitations imposed by Subsection 364.164(1). Verizon contends that under Subsection 364.164(1)(i), the Commission must consider whether granting its Petition will remove support for basic local services. Verizon asserts that bundles that include residential local telecommunications services are not basic local services. Verizon asserts that as a consequence such services are outside the scope of the issues to be considered by the Commission under Subsection 364.164(1)(i).

Verizon states that OPC's contention that Verizon should be compelled to respond to this interrogatory because OPC is seeking information regarding the "revenue/cost relationships of basic residential services" is misplaced. Verizon contends that given that bundles are non-basic services, cost studies for bundled services have no bearing on the "revenue/cost relationship of basic

³OPC refers to its response to POD No. 19.

services." Verizon argues that the "revenue/cost relationship of basic services" is not germane to any issue deemed relevant by the Legislature under Section 364.164(1).

Verizon also contends that interrogatory is prohibited by Section 364.164(3). Verizon asserts that even if the Commission should determine this limitation does not apply, it should not be required to respond to this interrogatory because its Petition does not focus on the costs of its bundled offerings.

In addition, Verizon asserts that merely because it refers to the bundled offerings of the other carriers does not entitle OPC to the cost studies for its bundled offerings. Verizon states that it relies on other carriers' bundled offering to show that, once rates are rebalanced, such offerings will be more competitive with its basic local service offerings. Verizon contends that the costs of its bundled service offerings are not discussed in Verizon's Petition and cannot be used for this purpose. Verizon argues that accordingly, Verizon should not be required to respond to this interrogatory.

Decision

Verizon's argument that the revenue/cost relationship of basic services is not germane to any issue deemed relevant by the Legislature under Section 364.164(1), is incorrect. Section 364.164(1), lists four criteria this Commission must consider in rendering its decision. Specifically, this interrogatory appears to apply to the following criteria:

- (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers;
- (b) Induce enhanced market entry.

For the reasons articulated under the decision in Interrogatory No. 3, Verizon's contention that this interrogatory is prohibited by Section 364.164(3), is incorrect. Moreover, Verizon's assertion that merely because it refers to the bundled offerings of the other carriers does not entitle OPC to the cost

studies for its bundled offerings, is without merit because testimony filed by its witness refers to bundled offerings in regarding to the 364.164(1) criteria.

Based on the foregoing, this discovery request appears relevant. Thus, Verizon shall respond to this discovery request.

Interrogatory No. 5:

OPC states that Verizon specifically objects to its Interrogatory No. 5 which ask Verizon to explain how it calculates the costs of SS7 in its costing of basic local exchange residential service as shown in DDC-1. OPC contends that witness Fulp's testimony states that the Company is proposing to remove \$76.8 million of intrastate switched access revenue support that goes to basic services and he proposes that the basic services should be increased by the same amount. (Witness Fulp direct testimony at p. 3) OPC asserts that witness Fulp then introduces his cost support to justify the proposed rate increases starting on page 19, line 13 of his testimony, and further amplified on pages 22 and 23, as well as specifically in the exhibit he has attached to his testimony. OPC argues that its request here is for witness Fulp to quantify the methodology he uses to calculate the costs of SS7 signaling. OPC contends that this information is critical to its case, since SS7 is common equipment utilized by many, if not all, of the retail and wholesale services provided by the company. OPC asserts that the parallel between SS7 and local loop costs is strong, and it seeks to determine if Verizon's methodologies are consistent.

Verizon states that prior to reading OPC's reasons for compelling a response to this interrogatory, Verizon did not understand that OPC wanted its witness Fulp to explain the methodology that he used to calculate the costs of SS7 signaling is set forth in Verizon's response to Interrogatory No. 7.

Decision

Verizon appears to have no objection to responding to this interrogatory and asserts it has done so in its response to Interrogatory No. 7. It appears that Verizon has answered this question. However, to the extent it has not already answered this question, Verizon shall respond to this discovery request.

Interrogatory No. 6:

OPC states that Verizon specifically objects to its Interrogatory No. 6 which ask Verizon to explain how Verizon calculates the costs of SS7 signaling costs required for vertical services. OPC refers to the response given under Interrogatory No. 5.

Verizon argues that OPC failed to show that this interrogatory seeks relevant information. Verizon asserts that as stated in specific objection, it relied on Commission-approved UNE rates to estimate the incremental cost of provisioning basic local telecommunications services, and those rates do not include vertical services. Verizon contends that therefore the SS7 signaling costs required for vertical services are not relevant.

Verizon contends that this interrogatory is prohibited by the discovery limitation imposed by section 364.164(3). Verizon argues that even if this limitation does not apply, this interrogatory should be rejected because its Petition does not focus on the cost of SS7 signaling required for vertical service. Therefore, Verizon contends it should not be required to respond to this interrogatory.

Decision

For the reason given in the decision for Interrogatory No. 3, Verizon's contention that this interrogatory is prohibited by Section 364.164(3), is incorrect. In addition, Verizon's assertion that it should not be required to respond to this interrogatory because its Petition does not focus on the cost of SS7 signaling required for vertical service, is misplaced. Clearly, its witness Fulp refers to SS7 signaling in his testimony. It appears that Verizon is stating that it does not have the information because it relied on the approved UNE rates and vertical services were not addressed in those rates. Thus, the discovery appears relevant and to the extend Verizon has such information, it shall be required to produce such response.

Interrogatory No. 10:

OPC states that Verizon specifically objects to its Interrogatory No. 10, which asks Verizon to state the annual rate of growth for basic residential service access lines for each of the past five years starting with December 31, 1998 and ending with December 31, 2002. OPC asserts that the number of Verizon's residential customers in Florida is relevant to the issues in the case. OPC contends that Verizon proposes to implement this rate increase to the customers of record on two separate dates, during which, the number of customers will change, either upward or downward. OPC argues that the current growth rate for residential service is relevant to those issues. OPC asserts that in order to characterize whether the price increase is beneficial to residential customers, it is important to know how the number of residential customers is changing, over time, at the present rates. OPC contends that finally, regarding the Company's reliance on Section 364.164(3), Florida Statutes, the discovery addressed in Section 364.164(3), Florida Statutes, pertains only to the rate adjustment filings identified in Section 364.164(2), Florida Statutes, and addressed in Section 364.164(3), Florida Statutes, and Section 364.164(7), Florida Statutes.

Verizon contends that contrary to OPC's argument, the growth rate of residential customers is irrelevant given that Section 364.164(7) expressly states that revenues shall be calculated using the most recent 12 months demand units and multiplying that number by the price of the service.

Verizon further argues that OPC's attempt to avoid the discovery limitations set forth in 364.164(3) is misplaced. As stated above, Section 364.164(3) plainly states that "[a]ny discovery or information requests under this section shall be limited to a verification of historical pricing units . . ." Verizon argues that by the plain language of the statute, the discovery limitation applies to discovery requests under all of the section, not just certain subsections.

Decision

Verizon's argument that Section 364.164(3) limits all discovery is misplaced. However, it is clear that Section

364.164(3) limits discovery regarding the company's revenues to ". . . verification of historical pricing units necessary to fulfill the Commission's specific responsibilities under this section of ensuring that the company's rate adjustments make the revenue category revenue neutral for each annual filing." It appears that OPC is attempting to obtain discovery regarding Verizon's revenues that goes beyond the 12-month historical pricing unit verification which is the limitation set forth in Section 364.164 (3). Therefore, Verizon shall not be required to respond to this interrogatory.

Interrogatory No. 11:

OPC states that Verizon specifically objects to its Interrogatory No. 11, which asks Verizon to state the annual rate of growth in intrastate access line revenues for each of the past five years starting with December 31, 1999 and ending with December 31, 2002. OPC argues that Verizon's witness Fulp's testimony on page 8, explains how the company has calculated the composite access rates over the past 12 months to calculate the amount of the increase for basic local exchange subscribers. OPC argues that it has a right to test the validity of witness Fulp's calculations, and the prior year revenues are highly relevant to the evaluation of the testimony offered by the Verizon witness's use of a composite rate. OPC asserts that witness Fulp takes two pages to explain why he has used a composite rate. (Witness Fulp direct testimony at pps. 8-9) OPC contends that his testimony states that the composite rates are the only good way to compare inter- and intra-state access rates that have different demand characteristics. OPC asserts that it seeks information about the demand characteristics for intrastate access charges in this request. OPC argues that the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced referring to its previous analysis of this section in Interrogatory No. 3.

Verizon asserts that contrary to OPC's argument, the growth rate of residential customers is irrelevant given that Section 364.164(7) expressly states that revenues shall be calculated using the most recent 12 months demand units and multiplying that number by the price of the service. Verizon states that second, witness Fulp's testimony provides the necessary support for his composite rate calculations using the units for the 12-month period ending

May 31, 2003. Verizon contends that third, years prior to the 12-month period ending May 31, 2003 have no bearing on the accuracy of witness Fulp's composite calculations.

Verizon further argues that OPC's attempt to avoid the discovery limitations set forth in 364.164(3) is misplaced. As stated above, Section 364.164(3) plainly states that "[a]ny discovery or information requests under this section shall be limited to a verification of historical pricing units . . ." Verizon argues that by the plain language of the statute, the discovery limitation applies to discovery requests under all of the section, not just certain subsections.

Decision

Verizon's argument that Section 364.164(3) limits all discovery is misplaced. However, it is clear that Section 364.164(3) limits discovery regarding the company's revenue based on the 12-month historical pricing units to ". . . verification of historical pricing units necessary to fulfill the Commission's specific responsibilities under this section of ensuring that the company's rate adjustments make the revenue category revenue neutral for each annual filing." It appears that OPC is attempting to obtain discovery regarding Verizon's revenues that goes beyond the 12-month historical pricing unit verification which is the limitation set forth in Section 364.164 (3). Therefore, Verizon shall not be required to respond to this interrogatory.

Interrogatory No. 13:

OPC states that Verizon specifically objects to its Interrogatory No. 13, which asks Verizon to state whether it has developed cost studies for bundled services since January 1, 2000, where the basic residential local exchange service component as bundled with additional products and services and provided at a single reduced rate. OPC states Verizon has filed a request for \$71.4 million in increased rates for basic residential service customers in Florida, alleging that the price of residential service is below its cost. OPC states that it and the Commission should have a right to have identified, as well as review, all of Verizon's cost studies that characterize the revenue/cost relationships of basic residential services, including those

instances where Verizon has specifically introduced competitive package plans that include the basic residential service component. OPC contends that this information is highly relevant and extremely critical to the evaluation of the benefits or the harm that basic residential telecommunication customers will experience as a result of Verizon Petition. OPC witness Leo at page 17, Table VI, in his testimony, includes specific references to bundled service offerings of six Florida competitors. OPC states that consequently, their request is relevant to Verizon's testimony. OPC asserts that finally, regarding the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced referring to its previous analysis of this section in Interrogatory No. 3.

Verizon argues that this interrogatory runs afoul of the discovery limitations imposed by Subsection 364.164(1). Verizon contends that under Subsection 364.164(1)(i), the Commission must consider whether granting Verizon's Petition will remove support for basic local services. Verizon asserts that bundles that include residential local telecommunications services are not basic local services. Verizon contends that consequently, such services are outside the scope of the issues to be considered by the Commission under Subsection 364.164(1)(i).

Verizon contends that OPC's argument that it should be compelled to respond to this interrogatory because OPC is seeking information regarding the "revenue/cost relationships of basic residential services" is misplaced. Verizon asserts that given that bundles are non-basic services, cost studies for bundled services have no bearing on the "revenue/cost relationship of basic services." Verizon contends that the "revenue/cost relationship of basic residential services" is not germane to any issue deemed relevant by the Legislature under Section 364.164(1).

Verizon argues that this interrogatory is also prohibited by the discovery limitations imposed by Section 364.164(3). Verizon states that even if this Commission broadly construes this subsection to mean that discovery is limited to issues addressed in Verizon's Petition, as opposed to the verification of historical pricing units (which it should not), Verizon should not be required to respond to this interrogatory because its Petition does not focus on the cost of its bundled offerings.

Verizon contends that its references to the bundled offerings of other carriers do not entitle OPC to the cost studies for its bundled offerings. Verizon states that it relies on other carriers' bundled offerings to show that, once rates are rebalanced, such offerings will be more competitive with Verizon's basic local service offerings. Verizon contends that the costs of its bundled service offerings are not discussed in its Petition and cannot be used for this purpose. Verizon argues that accordingly it should not be required to answer this interrogatory.

Decision

For the reasons articulated under the decision in Interrogatory No. 3, Verizon's contention that this interrogatory is prohibited by Section 364.164(3), is incorrect. In addition, Verizon's assertion that even if the Commission should construe this limitation does not apply, it should not be required to respond to this interrogatory because its Petition does not focus on the costs of its bundled offerings, is without merit because testimony filed by its witness refers to bundled offerings in regards to the 364.164(1) criteria. Moreover, Verizon's assertion that merely because it refers to the bundled offerings of the other carriers does not entitle OPC to the cost studies for its bundled offerings, is also without merit because testimony filed by its witness refers to bundled offerings in regards to the 364.164(1) criteria.

Based on the foregoing, this discovery request appears relevant. Thus, Verizon shall respond to this discovery request.

Interrogatory No. 17:

OPC states that Verizon specifically objects to its Interrogatory No. 17, which asks Verizon what percentage of Verizon's CLEC lines in Florida are furnished to prepaid local exchange services companies. OPC contends that Verizon has submitted testimony in this docket relating to the amount of competition that exists in Florida and asserting that customers will not experience "rate shock" and that the proposal will not impact universal service. (See, witness Leo direct testimony entitled "Local Competition in Florida" and witness Gordon direct testimony at pps. 16-17). OPC asserts that it seeks to fully explore the testimony of Verizon's witness. OPC contends that

prepaid local exchange companies provide local telephone service at rates that are typically \$50 per month. OPC assert that the rates charged by prepaid companies are not comparable to the ILEC charges for local service and could never be considered as competitive services under any objective analysis. OPC asserts that the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced, referring to its previous analysis of this section in Interrogatory No. 3.

Verizon contends that its initial specific objection should be sustained for the reason set forth therein. The specific objection is that interrogatory seeks information precluded by the discovery limitation in Section 364.164(3). Further, prepaid local exchange service companies are not discussed in its Petition or the testimony of its witnesses. Moreover, Verizon states it has not determined a means to obtain this information.

Decision

This discovery request is beyond the scope of the Petition since neither the Petition nor the testimony addresses prepaid local exchange service. Thus, this interrogatory is not reasonably calculated to lead to admissible evidence and thus, is irrelevant. Verizon shall not be required to respond to this interrogatory.

Interrogatory No. 18:

OPC states that Verizon specifically objects to its Interrogatory No. 18, which asks Verizon to refer to witness Danner's testimony at page 4, lines 8-10, to state the amount of contribution that future intrastate access charges will make toward joint and common costs, based on the access charge rates filed in this docket. OPC contends that witness Danner clearly states that the access charge reductions and basic rate increase serve to remove support from access lines to basic services because the basic service is priced below its cost. OPC states that the witness explains that the basic local service makes no contribution to Verizon's joint and common costs, and he references testimony submitted by Verizon witness Fulp. (Witness Fulp direct testimony at p. 4). OPC contends that its interrogatory deals directly with the testimony of Verizon's witnesses. OPC asserts that it and the Commission have the duty, to be assured that the rates proposed by

the Company will not result in a reverse subsidy as defined by witness Danner, where intrastate access rates will not make a contribution towards joint and common costs.

Verizon contends that Subsection 364.164(1)(i) provides that the Commission shall consider whether granting Verizon's Petition will "remove current support for basic local telecommunications service that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers." Verizon argues that this interrogatory seeks information regarding an issue that is outside the scope of Subsection 364.164(1) (i.e. the source of the support). Verizon contends that this interrogatory seeks information that is outside the scope of the issues deemed relevant by the Legislature, and thus outside the scope of discovery. Verizon asserts that Verizon continues to be subject to Subsections 364.3381(1), (2) and (3) (requiring that all of Verizon's services cover their costs) is wholly irrelevant to this proceeding.

Decision

Contrary to Verizon's assertion, this interrogatory is not beyond the scope of the Petition and its testimony. Verizon's witness addresses this issue; thus, OPC is entitled to seek discovery regarding this issue. Verizon shall respond to this interrogatory.

Interrogatory No. 20:

OPC states that Verizon specifically objects to its Interrogatory No. 20, which asks Verizon to state the Company's future plans to increase the residential local rates in its territory in order to eliminate all support from other services. OPC states that the testimony of Verizon witnesses Danner and Gordon is primarily devoted to the issue of whether the basic local exchange service in Verizon's territory is furnished at rates that are below cost, and they have alleged the customer benefits that will accrue when the support from the other services is eliminated. OPC contends that witness Gordon states that under the approach specified in the Tele-Competition Act that "there is still no guarantee that residential basic local services recover at least their forward-looking direct costs once intrastate access rates are

set to parity with interstate switched access rates." (Witness Gordon direct testimony at p. 21) OPC contends that in order to properly evaluate the benefits that this proposal will provide to customers, it is absolutely essential that OPC know how much more the basic rates will be increased if the Commission adopts the cost philosophies of Verizon, as well as the specific plans the company may have to increase its rates, given future pricing flexibility that the company will receive if the Commission approves the Verizon Petition. OPC asserts that finally, regarding the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced referring to its previous analysis of this section in Interrogatory No. 3.

Verizon contends that its initial specific objection should be sustained for the reason set forth therein, that the request is not reasonably calculated to lead to admissible evidence because it goes beyond the criteria of Subsection 364.164(1)(i) and discovery is limited under Subsection 364.164(3), nor is its future plans in its Petition or testimony. Verizon contends that notwithstanding its objections, it has not made any decisions regarding whether or not to eliminate additional support from basic local rates.

Decision

Verizon in its response has already addressed this interrogatory.

Interrogatory No. 21:

OPC states that Verizon specifically objects to its Interrogatory No. 21, which asks Verizon if basic local rates are supported by access charges, whether this means that any bundled service that includes basic local service as a component is also supported. OPC states that Verizon has filed its request for \$71.4 million in increased rates for basic residential service customers in Florida, alleging that the price of residential service is below its cost. OPC asserts that it and the Commission should have a right to have identified, as well as review, all of Verizon's cost studies that characterize the revenue/cost relationships of basic residential services, including those instances where Verizon has specifically introduced competitive package plans that include the basic residential service component. OPC argues that this

information is highly relevant and extremely critical to the evaluation of the benefits or the harm that basic residential telecommunication customers will experience as a result of Verizon Petition. OPC contends that witness Leo at page 17, Table VI, of his direct testimony includes specific references to bundled service offerings of six Florida competitors. OPC asserts also that regarding the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced referring to its previous analysis of this section in Interrogatory No. 3.

Verizon refers back to its argument against responding to Interrogatory No. 4.

Decision

For the reason previously articulated in the decision regarding Interrogatory No. 4, Verizon shall respond to this interrogatory.

Interrogatory No. 22:

OPC states that Verizon specifically objects to its Interrogatory No. 22, which asks Verizon to explain when and how the company plans to compete for basic residential customers in the Florida exchanges of other bell operating companies, Sprint, and other rural LECs and to explain why the company has no plan for competing with other carriers in Florida. OPC argues that Verizon witness Leo's entire testimony relates to the amount of Local Competition that exists in Florida. OPC contends that contrary to the objections of Verizon, witness Leo's testimony contains numerous references to the Commission's competitive studies and numerous references to national publications that utilize nationwide data in an effort to make specific points supporting his testimony of the witness Leo. OPC asserts that witness Leo's testimony on page 8 of his testimony specifically quotes the Florida Commission's characterization of the entire Florida competitive market, not Verizon's Florida market. OPC seeks to know why the company has not entered any competitive markets in Florida, including the business markets of the other companies that are currently priced at rate levels that Verizon has characterized in this case as sufficient to attract new competitors for the benefit of residential customers. (See, witness Danner direct

testimony at page 8). OPC again contends that the Company's reliance on Section 364.164(3), Florida Statutes, is misplaced, referring to its previous analysis of this section in Interrogatory No. 3.

Again, Verizon contends that this interrogatory runs afoul of the discovery limitations imposed by Subsection 364.164(1). "How the company plans to compete for basic residential customers in the Florida exchanges of other Bell operating companies" is not one of the four issues to be considered by the Commission under Section 364.164(1). Verizon argues that the relevant issue is how Verizon's rate rebalancing plan will affect customers in its service territory.

Verizon also asserts that this interrogatory is prohibited by Subsection 364.164(3). Verizon argues that this interrogatory should also be rejected because its Petition explains how rebalancing its retail rates will promote competition in its service territory by enhancing the ability of competitors to enter and serve its basic local customers. Verizon contends that witness Leo's reference to statewide data to show how Verizon's rate rebalancing plan will affect customers in its service territory does not mean that OPC is entitled to data relating to the service territories of other ILECs. Verizon contends that BellSouth and/or Sprint's service territories are simply not the subject of its Petition. Thus, Verizon argues that it should be required to respond to this interrogatory.

Decision

This interrogatory is relevant to the criteria set forth in Section 364.164(1)(a), specifically. Since Verizon witness Leo's testimony addresses the competitive market through out Florida, OPC's interrogatory regarding Verizon's intention to compete in the Florida market is reasonably calculated to lead to admissible evidence. Thus, Verizon shall respond to this interrogatory.

Interrogatory No. 23:

OPC states that Verizon specifically objects to its Interrogatory No. 23, which asks Verizon that if basic business rates are already high enough in some exchanges (where there is no support) of other Florida bell operating companies, Sprint, and other rural LECs, explain why the company does not compete for basic business customers in these areas, when and how the company plans to compete for these basic business customers in the exchanges of other LECs and why the company has no plan for competing with other carriers in Florida if this is so. OPC refers back to its explanation regarding Interrogatory No. 22.

Verizon refers back to its argument against responding to Interrogatory No. 22.

Decision

For the reason previously articulated in the decision regarding Interrogatory No. 22, Verizon shall respond to this interrogatory.

Production of Document Requests

POD No. 1:

OPC states that Verizon specifically objects to its POD No. 1, which asks Verizon to provide Verizon Wireless's intrastate access rates and associated terms and conditions for each wireless and Interexchange carrier for which Verizon Wireless interconnects in Florida. OPC contends that Verizon has filed tariffs in this docket that purport to reduce its intrastate access charges by \$76.8 million and has provided extensive testimony regarding the increased competition it faces in the Florida telecommunications market. OPC asserts that witness Leo at pages 14-16 of his first exhibit quantifies the impact of wireless competition with wireline service. OPC contends that on page 15, witness Leo's exhibit states "that wireless calling prices are already competitive with, and in some case better than, wireline calling rates." OPC argues that it seeks relevant information in this POD in order to determine the role that access charges play in the pricing of Verizon's competitive wireless services. OPC asserts that such

comparative information is essential if the Commission is to make an informed decision that will shift \$76.8 million in access charges to Verizon's basic customers. OPC contends that Verizon has introduced this topic in its testimony, and OPC has the right to test the assumptions that Verizon has introduced in support of its contention that the changes proposed by the company will benefit basic residential customers.

Verizon contends that OPC failed to address two of its specific objections that OPC seeks documents: 1) relating to an entity other than Verizon Florida Inc.; and 2) belonging to an entity that is not within the jurisdiction of the Commission. Verizon asserts that these objections are proper and unchallenged and should therefore be sustained.

Verizon also argues that these documents go beyond the limitations of 364.164(3). Further, Verizon argues that these documents also beyond the scope of discovery allowable under 364.164(1). Verizon contends that its Petition does not focus on whether reducing wireless access charge would create a more attractive competitive local exchange market and/or induce enhanced market entry by enhancing the ability of wireless carriers to compete with Verizon. Verizon states rather the its Petition explains that increasing basic local rates will make basic local customers more attractive target to competitors. Verizon asserts that, therefore, wireless intrastate access rates and associated terms are beyond the scope of discovery permitted in this proceeding.

Decision

The POD in question requests Verizon Wireless's intrastate access rates and associated terms and conditions for each wireless and Interexchange carrier for which Verizon Wireless interconnects in Florida. This POD goes beyond the scope of the Petition and testimony. Although witness Leo speaks of wireless competition in general, this does not open the door to this POD. Furthermore, Verizon Wireless is an entity separate from Verizon Florida Inc.; thus, this request is overly broad, unduly burdensome, and oppressive. Verizon shall not have to respond to this POD.

POD NO. 4:

OPC states that Verizon specifically objects to its POD No. 4, which asks Verizon to provide all documents in its possession, custody or control discussing or evaluating the impact of rate rebalancing in general, or the petition the company filed in this proceeding, on customers' bills. OPC states that consistent with Rule 1.280(b)(5), Florida Rules of Civil Procedure, the first instruction included in its first request for documents states the following:

If any document is withheld under any claim of privilege, please furnish a list identifying each document for which privilege is claimed, together with the following information: date, sender, recipients, recipients of copies, subject matter of the document, and the basis upon which such privilege is claimed.

OPC claims that Verizon's objection based on claims of privilege ignore Rule 1.280(b)(5), Florida Rules of Civil Procedure, which provides that when a party responds to a discovery request with a claim of privilege, the party "shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." OPC argues that Rule 28-106.206, Florida Administrative Code, makes Rule 1.280(b)(5), Florida Rules of Civil Procedure, directly applicable to this proceeding. OPC contends that its discovery instructions requiring the company to identify documents withheld on account of a claim of privilege merely implement the provisions of the Florida Rules of Civil Procedure. OPC asserts the company in its response, has failed to identify such documents, even though it is required to do so by the Florida Rules of Civil Procedure. OPC contends, that, in addition, work product is not automatically exempt from discovery, but rather may be subject to discovery upon a proper showing pursuant to Florida Rule of Civil Procedure 1.280(b)(3).

Verizon contends that OPC's argument that it ignored Rule 1.280(b)(5), Florida Rules of Civil Procedure, is flatly incorrect. Verizon states that prior to the date on which OPC filed its

Motion, OPC sent Verizon an e-mail asking whether Verizon would produce a privileged log. Verizon agreed and served OPC with a privileged log on September 19, 2003. Verizon contends that the privileged log makes clear that the documents responsive to this request are protected from disclosure by the attorney-client and work-product privileges. OPC has made no showing to the contrary, and therefore has no basis to compel the production of the documents listed on the privileged log.

Decision

To the extent, if any, that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule. Should this item remain in dispute, an in camera inspection may be conducted to further determine the applicability of the privilege claimed.

POD NO. 5:

OPC states that Verizon specifically objects to its POD No. 5, which asks Verizon to provide all documents in its possession, custody or control discussing or showing the mean, median, or other distribution of customer intrastate long distance calling in Florida. OPC cites to its previous argument presented regarding POD 4 as applicable to this POD.

Verizon also refers to its response POD NO. 4.

Decision

To the extent, if any, that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule. Should this item remain in dispute, an in camera inspection may be conducted to further determine the applicability of the privilege claimed.

POD NO. 6:

OPC states that Verizon specifically objects to its POD No. 6, which asks Verizon to provide all documents in your possession,

custody or control discussing or evaluating the typical, average, or median bill of customers for local telecommunications services, including ancillary services. OPC cites to its previous argument presented regarding POD 4 as applicable to this POD.

Verizon refers to its response POD NO. 4.

Decision

To the extent that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule.

POD NO. 8:

OPC states that Verizon specifically objects to its POD No. 8, which asks Verizon to provide all documents in your possession, custody or control discussing or showing the mean, median, or other distribution of customer intrastate long distance calling in Florida. OPC cites to its previous argument presented regarding POD No. 4 as applicable to this POD. OPC contends Verizon's Petition states, "[b]ecause Verizon's rate rebalancing plan advances the public interest by spurring competition and creating a more attractive local exchange market for residential consumers." OPC asserts that the internal plans of Verizon regarding the reasons why it has not yet entered the residential markets readily available to them in Florida, and its future commitments and plans regarding those markets is critical for this Commission to understand whether the company is simply making speeches or aggressively pursuing actions that will achieve a fully competitive residential telephone market in Florida.

Verizon argues that this discovery request runs afoul of the discovery limitations imposed by Subsection 364.164 (1). Verizon asserts that whether it "is aggressively pursuing actions that will achieve a fully competitive residential telephone market in Florida" is not one of the four issues to be considered by the Commission under Section 364.164(1). Verizon contends that it is futile to argue, as OPC does, that the request seeks information that is "critical" to understanding that issue.

Verizon further argues that this discovery request is prohibited by Section 364.164(3). Verizon contends that even if that section is read broadly, OPC's request should be rejected because its Petition explains how rebalancing its retail rates will promote competition in its service territory by enhancing the ability of competitors to enter and serve its basic customers. Verizon argues that BellSouth and/or Sprint's service territories are not subject of its Petition. Verizon asserts that, therefore, it should not be required to respond to this response.

Decision

This interrogatory is relevant to the criteria set forth in Section 364.164(1)(a), specifically. Since Verizon witness Leo's testimony addresses the competitive market throughout Florida, OPC's POD regarding Verizon's intention to compete in the Florida market is reasonably calculated to lead to admissible evidence. Thus, Verizon shall respond to this POD.

POD NO. 11:

OPC states that Verizon specifically objects to its POD No. 11, which asks Verizon to provide all Verizon internal data and documents reviewed by Evan T. Leo in preparation of his testimony or exhibits. OPC asserts that it assumes Verizon's objection to mean that it intends to comply with this production request, in compliance with the Commission's confidentiality procedures, notwithstanding the Company's recital of its superfluous "initial" and "preliminary" objections and its assertion of a specific objection based upon confidential and proprietary information. OPC contends that in the event that Verizon's meaning is something other than that it will comply with the request, OPC emphasizes that the company's recourse is to follow the Prehearing Officer's direction that is set forth in the Order Establishing Procedure.

Verizon states it has already produced all documents responsive to this request.

Decision

To the extent Verizon has already produced all documents responsive to this request, OPC's Motion to Compel regarding this POD is moot.

POD NO. 15:

OPC states that Verizon specifically objects to its POD No. 15, which asks Verizon to provide all studies or other documents concerning the company's choices for products and services that would be increased in order to obtain revenue neutral recovery of the access line reductions requested in this docket. OPC cites to its previous argument presented regarding POD No. 4 as applicable to this POD.

Verizon refers to its response to POD No. 4.

Decision

To the extent, if any, that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule. Should this item remain in dispute, an in camera inspection may be conducted to further determine the applicability of the privilege claimed.

POD NO. 16:

OPC states that Verizon specifically objects to its POD No. 16, which asks Verizon to provide all cost studies or other documents completed since January 1, 1998, that the company used to evaluate and quantify the existing cost of intrastate switched network access. OPC contends that the cost of switched network access is highly relevant to this docket and it is surprising that Verizon has failed to have already introduced its cost studies to demonstrate the amount of support its access services are contributing to basic telecommunications services. OPC asserts that Section 364.164 requires the Commission to consider whether the Company's Petition will remove such support. OPC contends that if the Company is to meet its burden of proof regarding this

criterion, the cost studies supporting this filing are absolutely critical for the Commission to make an informed determination.

OPC asserts that additionally, Verizon continues to be subject to Section 364.3381(1)(2) and (3), Florida Statutes (2002), that requires it to ensure that all of its services cover their respective costs, and do not result in subsidy from basic local telecommunications services and are not anti-competitive. OPC argues that accordingly, for the Commission to fulfill its responsibility of weighing the benefits and detriments that basic residential service ratepayers will experience as a result of the Company's filing, a review of these cost studies is necessary. OPC states that Verizon's witness, Mr. Fulp, states that "The Rate Rebalancing Plan Removes Current Support for Basic Local Telecommunication Services" and then attempts to demonstrate this fact by providing a cost study of basic local exchange service. OPC contends that since any support for basic local exchange service, if in fact there is any, could emanate from any or all of the Company's broad spectrum of service offerings, it is Verizon's to demonstrate the amount of support that comes from access services if it is to prove that the changes it recommends are beneficial to basic residential service customers and in compliance with Section 364.164, Florida Service.

Verizon contends that Subsection 364.164(1)(i) provides that the Commission shall consider whether granting its Petition will "remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers." Verizon argues that since this request seeks information regarding an issue that is outside the scope of Subsection 364.164(1) (i.e. the source of the support), this request seeks information that is outside the scope of the issues deemed relevant by the Legislature, and thus outside the scope of discovery. Verizon asserts that just because it continues to be subject to Subsection 364.3381(1)(2) and (3), Florida Statutes, is wholly irrelevant to this proceeding.

Decision

Contrary to Verizon's assertion, this POD is not beyond the scope of the Petition and its testimony. The existing cost of intrastate switched network access is pertinent to this proceeding,

thus OPC is entitled to seek discovery regarding this issue. Thus, Verizon shall address this POD.

POD NO. 17:

OPC states that Verizon specifically objects to its POD No. 17, which asks Verizon to refer to the testimony of witness Fulp, and provide copies of all regulatory decisions received by Verizon in its operating territory since January 1, 2001, where regulatory agencies did not agree with the recommendations of Verizon witnesses TSLRIC based cost study proposals. OPC asserts that witness Fulp has worked for Verizon (GTE) since 1991, when he became the Manager-Access Pricing for GTE Telephone Operations and he has submitted testimony before 12 state commissions over that period of time. OPC asserts that they are asking Verizon to produce information that is well known to the witness, is readily available to the company, and is essential for the Commission to consider, so that witness Fulp's testimony before this Commission may be properly evaluated in light of his testimony regarding TSLRIC-based cost studies before other regulatory agencies.

Verizon argues that this request seeks all decisions, without any limitation as to time, where a regulatory agency disagreed with a TSLRIC cost study submitted by any Verizon witness. Verizon states that nevertheless, in its Motion to Compel, OPC appear to be limiting this request to instances in which a regulatory agency disagreed with a TSLRIC cost study submitted by its witness Fulp. Verizon asserts that if OPC agree to so limit this request, Verizon will produce the responsive documents, if any, in its possession.

Decision

Contrary to Verizon's belief, OPC has limited the time frame of this request to ". . .copies of all regulatory decisions received by Verizon in its operating territory since *January 1, 2001* . . ." Since Verizon has already agreed to provide these documents, Verizon shall respond to this POD.

POD NO. 18:

OPC states that Verizon specifically objects to its POD No. 18, which asks Verizon to provide all studies made by Verizon since

January 1, 1998 that calculate the costs of basic residential service in Florida or any other Verizon state based on an assumption that the loop costs are common costs shared by all services, including vertical services and interstate and intrastate access services. OPC asserts the contrary to the company's assertion, Verizon's witnesses, Gordon and Danner, freely utilize data from jurisdictions outside of Florida in an attempt to bolster their market testimony. OPC contends that witness Danner specifically refers to the pricing reform order of 1994 by the California Public Utility Commission, which was similar to the price increase proposed here by Verizon in the Florida case. OPC asserts that it is requesting the cost studies the company has used to help establish its case in other jurisdictions, such as California, and if the company is going to use arguments made in those jurisdictions to bolster its testimony here, then the Commission and OPC need to know the alleged facts that were submitted in those cases by Verizon.

OPC also notes that contrary to the company's assertion, witness Gordon refers extensively to state policies on pricing basic local service "below cost" in a number of states and the resultant frustration of the policy goal of federal and state regulators because of the continuation of those policies. OPC asserts that witness Gordon's testimony compares Florida rates to national average rates, despite the fact that the statute says nothing about the cost of the telephone services in other parts of the country. OPC contends that witness Gordon even calculates the ranking of Florida rates compared with those of Georgia, Alabama, Louisiana and Virginia, yet the company seeks to prevent it from obtaining similar cost comparisons for this Commission's consideration.

Verizon asserts that OPC's argument should be rejected. Verizon contends that Verizon referred to out-of-state orders and the experiences of its witnesses in other states to demonstrate that granting its Petition will: 1) remove current support for basic local telephone services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers; and 2) induce enhanced market entry. Verizon contends that it did not refer to this information to address the loop allocation theory. Verizon argues that even if the Commission broadly construes Subsection 364.164(1) and (3) to

mean that discovery is limited to issues addressed in its Petition (which it should not), this request falls outside the scope of permissible discovery.

Decision

Contrary to Verizon's assertion, this POD is not beyond the scope of the Petition and its testimony. Verizon's witness addresses this issue, thus OPC is entitled to seek discovery regarding this issue. Thus, Verizon shall address this POD.

POD NO. 19:

OPC states that Verizon specifically objects to its POD No. 19, which asks Verizon to provide the results of all Verizon cost studies developed in Florida or other Verizon states for bundled service since January 1, 2000, where the basic residential local exchange service component was bundled with additional products and services and provided at a single reduced rate. OPC states that Verizon has filed a request for \$71.4 million in increases for basic residential service customers in Florida, alleging that the price of residential service is below its cost. OPC contends that it and this Commission should have a right to review all of Verizon's cost studies that characterize the revenue/cost relationships of basic residential services, including those instances where Verizon has specifically introduced competitive package plans that include the basic residential service component. OPC asserts that this information is highly relevant and extremely critical to the evaluation of the benefits or the harm that basic residential telecommunication customers will experience as a result of the Verizon petition. OPC contends that furthermore the testimony of witness Leo, page 17, Table VI, includes specific references to bundled service offerings of six Florida competitors. OPC asserts consequently, that its request is relevant to Verizon testimony.

Verizon argues that this discovery request runs afoul of the discovery limitations imposed by Subsection 364.164(1). Verizon contends that under Subsection 364.164(1)(i), this Commission must consider whether granting its Petition will remove support for basic local services. Verizon asserts that bundles that include residential local telecommunications services are not basic local

services as defined in Chapter 364. Verizon contends that consequently, such services are outside the scope of the issues to be considered by this Commission under Subsection 364.164(1)(i).

Verizon asserts that given that bundles are non-basic services, cost studies for bundled services have no bearing on the "revenue/cost relationship of basic services." Verizon also asserts that the "revenue/cost relationship of basic residential services" is not germane to any issue deemed relevant by the Legislature under Section 364.164(1). Further, Verizon contends this request is also prohibited by the discovery limitations imposed by Section 364.164(3). Verizon also asserts that it should not be required to respond to this request because bundle costs are not addressed in its Petition.

Decision

For the reasons articulated under the decision in Interrogatory No. 3, Verizon's contention that this interrogatory is prohibited by Section 364.164(3), is incorrect. In addition, Verizon's assertion that even if the Commission should determine this limitation does not apply, it should not be required to respond to this POD because its Petition does not focus on the costs of its bundled offerings. This argument is without merit because testimony filed by Verizon's witness refers to bundled offerings in regards to the 364.164(1) criteria since testimony filed by its witness refers to bundled offerings in relation to the 364.164(1) criteria. Moreover, Verizon's assertion that merely because it refers to the bundled offerings of the other carriers does not entitle OPC to the cost studies for its bundled offerings, is likewise not persuasive.

The discovery request appears relevant and likely to lead to admissible evidence. Thus, Verizon shall respond to this discovery request.

POD NO. 20:

OPC states that Verizon specifically objects to its POD No. 20 which asks Verizon to provide copies of all documents in the company's possession relating to the average long distance bill of

the company's residential subscribers. OPC cites to its previous argument presented regarding POD 4 as applicable to this POD.

Verizon refers to its response to its arguments to POD No. 4.

Decision

To the extent, if any, that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule. Should this item remain in dispute, an in camera inspection may be conducted to further determine the applicability of the privilege claimed.

POD NO. 21:

OPC states that Verizon specifically objects to its POD No. 21 which asks Verizon to provide copies all documents in the company's possession relating to the number or percentage of customers who do not make a long distance call during a given month or any documents that quantify low usage long distance. OPC cites to its previous argument presented regarding POD No. 4 as applicable to this POD.

Verizon refers to its response to its arguments to POD No. 4.

Decision

To the extent, if any, that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule. Should this item remain in dispute, an in camera inspection may be conducted to further determine the applicability of the privilege claimed.

POD NO. 22:

OPC states that Verizon specifically objects to its POD No. 22 which asks Verizon to provide copies all documents in the company's possession relating to the relationship between the proposed increase for residential customers and the average savings those customers will gain in reduced long distance rates. OPC cites to

its previous argument presented regarding POD No. 4 as applicable to this POD.

Verizon refers to its response to its arguments to POD No. 4.

Decision

To the extent, if any, that the privileged log has not provided the response as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure, Verizon shall provide a response in accordance with this rule. Should this item remain in dispute, an in camera inspection may be conducted to further determine the applicability of the privilege claimed.

POD NO. 23:

OPC states that Verizon specifically objects to its POD No. 23, which asks Verizon to provide all documents in the company's possession relating to elasticity of demand for residential services resulting from the proposed rate increases in this docket. OPC argues that Verizon's five reasons why a response to this POD should not be compelled are without merit. OPC contends that this request seeks to determine whether Verizon has calculated in this docket how many residential customers it will lose as a result of the price increases it has proposed. OPC asserts that the issue goes squarely to the question of whether the proposals by Verizon will benefit or harm Florida customers. OPC argues that every single residential customer who is forced to leave the network due to Verizon's proposal is harmed. OPC contends that it has a right to know what Verizon's analysis has produced in this regard.

Verizon states that OPC failed to address its objection that the request is over broad and unduly burdensome on the grounds that it is not limited to any stated period of time. Verizon contends that the objection is proper and unchallenged and therefore should be sustained.

Verizon also contends that OPC fails to show that this request seeks documents within the scope of discovery allowable under Sections 364.164(1) and (3). Verizon states the OPC argument that this request is relevant to determining whether granting its rate rebalancing plan will benefit customers because this request bears

on how many customers it will lose if its Petition is granted. Verizon asserts that OPC's argument is wrong. Verizon asserts that first, a showing that customers may leave Verizon in response to an increase in basic local rates does not show customer harm. Verizon argues that customers that leave Verizon may not be leaving the network, as OPC suggests, but may instead be switching to another provider. Verizon contends that second, the broad issue of whether Verizon's rate rebalancing plan will benefit or harm customers is not before this Commission. Verizon argues that rather, the Legislature tasked this Commission with deciding the narrow issue of whether granting its Petition "will remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential customers." Verizon argues that discovery relating to elasticity of demand for residential services has no bearing on that narrow issue.

Verizon states that subject to the foregoing, it has determined that it has not conducted any studies, and does not possess any documents, relating to elasticity of demand for residential services resulting from the proposed rate increases in this docket.

Decision

Since Verizon has already provided a response to this POD, OPC's Motion to Compel regarding this POD is moot.

POD NO. 24:

OPC states that Verizon specifically objects to its POD No. 24, which asks Verizon to provide all Verizon documents produced since 1990 that characterize, describe or quantify the elasticity of demand for basic residential services. OPC cites to its previous argument presented regarding POD No. 23 as applicable to this POD. In addition, OPC states that it agrees that this request may seem overly broad and thus clarifies its request to limit any residential elasticity of demand analyses that discuss overall residential elasticity that are readily available, plus the elasticity of demand analysis used in its last general rate case in Florida, Docket No. 920188-TL.

Verizon refers to its response to POD No. 23.

Decision

To the extent that Verizon's response is that it does not possess any documents responsive to this POD, OPC's Motion to Compel is denied as to this POD.

POD NO. 25:

OPC states that Verizon specifically objects to its POD No. 25, which asks Verizon to provide all documents that identify, by month, the number of residential customers in Florida who have been temporarily denied due to non-payment for year 2000, 2001 and 2002. OPC asserts witness Gordon states that the Verizon proposal will not make (residential) service unaffordable to Florida consumers. OPC states that likewise, Section VI of witness Danner's testimony, starting on Page 26, goes to great lengths to show that Verizon's proposed price increases will not cause "notable difficulties for customers." OPC asserts that the beginning point for the evaluation of customer harm is the current number of residential customer disconnections for non-payment that Verizon is experiencing at the present rates. OPC contends that this information is vital if the Commission is to understand fully the implications for customers resulting from the Verizon proposals in this docket.

Verizon states that after reviewing OPC's reason for moving to compel a response, it has determined that it does not track the number of its residential customers in Florida who have been temporarily denied due to non-payment. Verizon states that however, it does track the total number of residential and business customers (combined) who have been temporarily denied for non-payment. Accordingly, Verizon states it will provide the total number of residential and business customers in Florida who have been temporarily denied due to non-payment for the years that it maintains this data.

Decision

Since Verizon has already provided a response to this POD, OPC's Motion to Compel regarding this POD is moot.

POD NO. 26:

OPC states that Verizon specifically objects to its POD No. 26, which asks Verizon to provide all documents that identify, by month, the number of residential customers in Florida who have been disconnected for non-payment for year 2000, 2001, 2002. OPC cites to its previous argument presented regarding POD No. 25 as applicable to this POD.

Verizon contends that after reviewing OPC's reasons for moving to compel a response to this request, it has determined that it does not track the number of its residential customers in Florida who have been disconnected due to non-payment. Verizon states that it does, however, track the total number of residential and business customers (combined) who have been disconnected for non-payment. Verizon states that accordingly it will provide the total number of residential and business customers in Florida who have been disconnected due to non-payment for the years that it maintains this data.

Decision

Since Verizon has already provided a response to this POD, OPC's Motion to Compel regarding this POD is moot.

C. Timeframes

In view of the short time frame for this proceeding, Verizon is directed to respond to the interrogatories and PODs for which the Motion to Compel has been granted within 7 days of the date of this Order. The responses shall be provided to OPC with a copies to the parties, including staff, by hand delivery or facsimile, to be received by no later than 5:00 p.m. on that date.

Based on the foregoing, it is

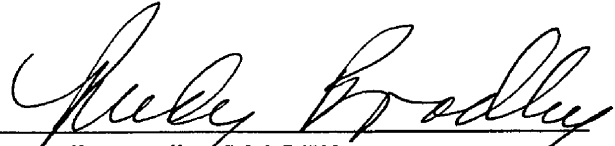
ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel is granted in part and denied in part as set forth in the body of this Order. It is further

ORDER NO. PSC-03-1155-PCO-TL
DOCKETS NOS. 030867-TL, 030868-TL, 030869-TL
PAGE 40

ORDERED that Verizon Florida Inc. shall respond to the discovery requests set forth in the body of this Order within the time limits and in the manner described in the body of this Order. It is further

ORDERED that this Docket shall remain open pending resolution of the matters to be addressed at hearing.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 20th Day of October, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

PAC

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.

ORDER NO. PSC-03-1155-PCO-TL
DOCKETS NOS. 030867-TL, 030868-TL, 030869-TL
PAGE 41

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 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.