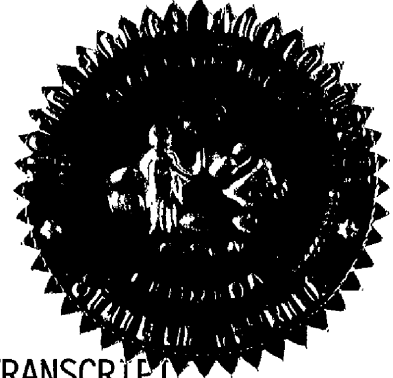


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991376-TL

In the Matter of:

INITIATION OF SHOW CAUSE PROCEEDINGS  
AGAINST GTE FLORIDA INCORPORATED  
FOR APPARENT VIOLATION OF SERVICE  
STANDARDS.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON  
Prehearing Officer

DATE: Wednesday, May 30, 2001

TIME: Commenced at 1:30 p.m.  
Concluded at 1:52 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter

## 1 APPEARANCES:

2 KIMBERLY CASWELL, Post Office Box 110, FLTC0007,  
3 Tampa, Florida 33601-0110, appearing on behalf of Verizon  
4 Florida Inc.

5 CHARLES J. BECK, Deputy Public Counsel, Office of  
6 Public Counsel, 111 West Madison Street, Room 812, Tallahassee,  
7 Florida 32399-1400, appearing on behalf of the Citizens of the  
8 State of Florida.

9 LEE FORDHAM, FPSC Division of Legal Services, 2540  
10 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
11 appearing on behalf of the Commission Staff.

12

## 13 ALSO PRESENT:

14 EARL POUCHER, Office of Public Counsel

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## P R O C E E D I N G S

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2 COMMISSIONER DEASON: Call the prehearing conference  
3 to order. Could I have the notice read, please.

4 MR. FORDHAM: Pursuant to notice published on  
5 May 11th, 2001, this time and place has been set for a  
6 prehearing conference in Docket Number 991376-TL for purposes  
7 set forth in the notice.

8 COMMISSIONER DEASON: Thank you. Take appearances.

9 MS. CASWELL: Kim Caswell for Verizon Florida  
10 Incorporated.

11 MR. BECK: Charlie Beck, and with me is Earl Poucher,  
12 Office of the Public Counsel, appearing on behalf of the  
13 Citizens of Florida.

14 MR. FORDHAM: Lee Fordham, legal Staff, Florida  
15 Public Service Commission.

16 COMMISSIONER DEASON: Okay. Mr. Fordham, do we have  
17 any preliminary matters?

18 MR. FORDHAM: Staff has none, Commissioner.

19 COMMISSIONER DEASON: Parties have any preliminary  
20 matters? Very well.

21 MR. BECK: I have two matters. I don't know if  
22 they're preliminary or not.

23 COMMISSIONER DEASON: Oh, well, let's just go ahead.  
24 We'll make them preliminary.

25 MR. BECK: Commissioner, the first item is on the

1 order of witnesses. The order in which we filed testimony was  
2 the Staff filed, and then we filed. Verizon then filed  
3 rebuttal to that, and finally, we filed surrebuttal to  
4 Verizon's testimony. And what I'd like to ask is that in the  
5 witnesses -- if we could have the witnesses appear in the same  
6 chronological order that we filed the testimony, so that would  
7 put Mr. Poucher where he is but also at the end for the  
8 surrebuttal testimony.

9 COMMISSIONER DEASON: Ms. Caswell.

10 MS. CASWELL: Yeah. We believe it makes more sense  
11 to keep the witness order as it is. The Commission typically  
12 combines direct and rebuttal testimony. In this case, it would  
13 be direct and surrebuttal, without any confusion on the  
14 Commission's part. Mr. Poucher's direct and surrebuttal  
15 basically discuss the same themes, raise the same arguments,  
16 and splitting cross examination between those two documents  
17 would be difficult, and it would be much more efficient to keep  
18 those testimonies together.

19 COMMISSIONER DEASON: Mr. Beck.

20 MR. BECK: Commissioner, in an other docket we had  
21 with GTE which is on the slamming, we had the same order of  
22 witnesses prefiling, and in that case, the Prehearing Officer  
23 allowed the surrebuttal to be given separately from the direct  
24 testimony.

25 MS. CASWELL: And I might add --

1 MR. BECK: Also, I don't agree with Ms. Caswell's  
2 characterization of the testimony being the same. The  
3 surrebuttal is direct rebuttal to the testimony filed by the  
4 three Verizon witnesses. In fact, in the surrebuttal, he goes  
5 through -- Mr. Poucher goes through sequentially and addresses  
6 the testimony provided by Mr. Ferrell, Mr. Diamond, and  
7 Mr. Appel.

8 COMMISSIONER DEASON: Okay. Anything further,  
9 Ms. Caswell?

10 MS. CASWELL: I would just point out that there are  
11 different considerations in the other docket involving VSSI,  
12 and it is the Commission's practice to combine rebuttal and  
13 direct.

14 COMMISSIONER DEASON: Well, it's the Commission's --  
15 it is not a hard-and-fast policy --

16 MS. CASWELL: I understand.

17 COMMISSIONER DEASON: -- but as a matter of  
18 convenience, and usually when the parties agree, it is done to  
19 expedite matters. However, in a case where the parties do not  
20 agree and there actually has been a sequence of testimony that  
21 has been filed and it is the preference of the party which  
22 filed that testimony to have it go in its natural and normal  
23 sequence, that's what I will allow. So Mr. Poucher may take  
24 the stand a second time to present his rebuttal testimony.

25 Is that what it is, rebuttal?

1 MR. BECK: Well, technically, it's surrebuttal.

2 COMMISSIONER DEASON: Surrebuttal?

3 MR. BECK: Yes.

4 COMMISSIONER DEASON: Very well. He will be allowed  
5 to take the stand to do that.

6 And, Ms. Caswell, obviously, you can -- if you think  
7 that the subject matter is the same, you can just cross  
8 Mr. Poucher one time, but you can cross him as many times as he  
9 takes the stand. That's up to you.

10 MS. CASWELL: Thank you.

11 COMMISSIONER DEASON: Okay. Any other preliminary  
12 matters?

13 MR. BECK: Yes, sir, I have one other matter, and  
14 that concerns confidentiality. All of the testimony right now  
15 is confidential in its entirety. The testimony filed by our  
16 office is confidential because Verizon claims it's  
17 confidential. It's based largely on documents that were  
18 covered by a temporary protective order by Verizon. Likewise,  
19 Verizon's testimony itself was filed as confidential.

20 Commissioner, we'd request that you order GTE to just  
21 as quickly as possible file a specific confidentiality request  
22 and have enough time so that we could respond to it and get a  
23 ruling before we go to the hearing.

24 COMMISSIONER DEASON: Okay. When are we scheduled to  
25 go to hearing?

1 MS. CASWELL: June 21st.

2 COMMISSIONER DEASON: June 21st?

3 MR. BECK: Correct.

4 COMMISSIONER DEASON: Just 22 days from now.

5 Ms. Caswell.

6 MS. CASWELL: Yeah. I'd like to point out as an  
7 initial matter that there are no pending motions at this time  
8 regarding confidentiality, and Verizon has no obligation to do  
9 specific requests at this time. And I would refer the  
10 Commission to its earlier order in this docket. We had a  
11 dispute early on about when Verizon was supposed to file a  
12 specific request for confidential protection. The Office of  
13 Public Counsel lost that dispute. The Commission agreed with  
14 us that nothing specific was due until 21 days after the  
15 material was admitted into evidence. It's the same material  
16 that's -- I believe most or all of it is attached to  
17 Mr. Poucher's various testimonies as well as our testimony.

18 Even though we have no obligation to file anything at  
19 this time, we've agreed with Public Counsel that if we have a  
20 reasonable period in which to file something, we can agree to  
21 do it before the hearing. I had suggested a week before the  
22 hearing.

23 COMMISSIONER DEASON: Mr. Beck.

24 MR. BECK: A couple of things. We've disagreed on  
25 the time frame. I'd request an earlier time for Verizon to

1 file simply because we would need time to respond and for the  
2 Commission to rule on it, so we could get the testimony  
3 distributed.

4           The second thing is, while Ms. Caswell is correct,  
5 early on, I think it was over a year ago when  
6 Commissioner Garcia was the Prehearing Officer, there was a  
7 dispute over confidentiality. We've had disputes in the VSSI,  
8 the slamming case. And in that case, the Prehearing Officer  
9 ruled that Verizon was required to file specific confidential  
10 requests. In any event, I think we need to move it forward so  
11 we don't have a closed hearing.

12           COMMISSIONER DEASON: Well, I'd like to move it  
13 forward too. But I guess my concern is, here we are 22 days  
14 before hearing, why hasn't this been brought to the  
15 Prehearing Officer before today?

16           MR. BECK: I raised it in our prehearing statement.

17           COMMISSIONER DEASON: Okay. When was that filed?

18           MR. BECK: May 16th.

19           COMMISSIONER DEASON: May the 16th. Well, that still  
20 has just been two weeks ago.

21           MR. BECK: Yes.

22           COMMISSIONER DEASON: When was testimony originally  
23 filed? That's been a long time ago.

24           MR. BECK: The first testimony was filed just over 13  
25 months ago. Again, we have had a dispute early on in the case,



1 and as Ms. Caswell stated, the Prehearing Officer ruled with  
2 Verizon on that. We had surrebuttal filed May 4th. Verizon  
3 filed their testimony on April 20th.

4 COMMISSIONER DEASON: Well, I'm certainly willing to  
5 try to expedite a ruling, realizing, though, that this is going  
6 to go to hearing in 22 days. It doesn't give us much time to  
7 have a filing, allow you a time to respond, and then have time  
8 for Staff to analyze and make a recommendation to me, and then  
9 have that reconsidered by the full Commission. It's just --  
10 it's not going to work, but I'm willing to try to expedite it  
11 as quickly -- Ms. Caswell, when can you have a specific request  
12 filed with the Commission?

13 MS. CASWELL: In two weeks.

14 COMMISSIONER DEASON: That's one week before the  
15 hearing; correct?

16 MS. CASWELL: Correct.

17 COMMISSIONER DEASON: So is that really going to do  
18 us any good to get this matter resolved? Mr. Beck.

19 MS. CASWELL: I'm not sure. But again, we don't  
20 think there is a matter to be resolved based on the  
21 Commission's prior order in this case. We are agreeing to do  
22 it as a compromise measure.

23 COMMISSIONER DEASON: Mr. Fordham, do you have  
24 anything to add?

25 MR. FORDHAM: Commissioner, the granting of the

1 request for temporary protection order was sometime back. This  
2 case, of course, has been languishing for well over a year. In  
3 more recent cases, the Commission has adopted a different  
4 perspective. I don't know that we have a hard, fast precedent  
5 because it's been recently that the Commission has adopted a  
6 different precedent wherein the specific request would have to  
7 be filed well enough in advance of the hearing in order to  
8 ensure that it was not a closed hearing, basically.

9           And as far as the time frame now, we are in a crunch,  
10 and I don't have any specific suggestions on time frame except  
11 to advise that there has been somewhat of a change in  
12 philosophy in more recent dockets regarding having the specific  
13 request filed prehearing.

14           COMMISSIONER DEASON: So what has been the change?  
15 I'm not following you.

16           MR. FORDHAM: Well, in -- consistent with the orders  
17 in this docket, in past dockets, we had allowed them 21 days  
18 subsequent to the hearing in order to file their specific  
19 request. Appeals has been working on the issue in recent  
20 months and determined that that specific request probably needs  
21 to be filed prior to the hearing, particularly in a case where  
22 it's so broad as to virtually close the hearing.

23           MR. BECK: We have a -- Commissioner, I have it. We  
24 fought this out in the slamming proceeding with Verizon, and in  
25 that case on March 27th, Commissioner Jaber issued an order

1 that specifically addressed this matter and required Verizon to  
2 file specific confidentiality. I realize that's not this case,  
3 but we have the same parties, all the same attorneys. We  
4 fought it out, and Verizon has been on notice about this.

5 MS. CASWELL: Commissioner, may I point something  
6 out?

7 COMMISSIONER DEASON: Surely.

8 MS. CASWELL: First of all, we believe the order in  
9 the VSSI case was mistaken. I think that's the only order  
10 interpreting the rule that way. The rule says, and this is  
11 25-22.006(8)(b), it states that when information subject to a  
12 claim of confidentiality, quote, is admitted into the  
13 evidentiary record of a hearing, unquote, the party claiming  
14 confidentiality shall file a request for confidential  
15 classification within 21 days of the conclusion of the hearing.  
16 That's the provision we used to ground our response to Public  
17 Counsel's motion early on, and that is what former  
18 Chairman Garcia used to ground his order that we did not have  
19 to file any specific requests.

20 So Verizon was not, contrary to Mr. Beck's argument,  
21 was not on notice before this that we'd have to file those  
22 requests. We have an order telling us we didn't need to in  
23 this docket. Now, I realize the VSSI docket went the other  
24 way. Again, there were other considerations there, and the  
25 material there was somewhat different.

1 COMMISSIONER DEASON: Mr. Fordham, what was the prior  
2 Prehearing Officer's ruling on this matter?

3 MR. FORDHAM: On this docket?

4 COMMISSIONER DEASON: In this docket, yes.

5 MR. FORDHAM: In this docket, the order issued  
6 granting temporary protective order and provided that the  
7 specific request be filed within 21 days subsequent to the  
8 hearing.

9 COMMISSIONER DEASON: And was there a reconsideration  
10 on that particular aspect of the Prehearing Officer's decision?

11 MR. FORDHAM: There was not a request for  
12 reconsideration.

13 COMMISSIONER DEASON: Okay. Mr. Beck, why was there  
14 no reconsideration of that matter?

15 MR. BECK: I couldn't tell you sitting here right  
16 now. I don't recall. That was about a year ago, if not more,  
17 I believe, that that happened. I don't have an answer for  
18 that.

19 COMMISSIONER DEASON: Well, I'm in no position at  
20 this point, particularly given there's not been a request to  
21 reconsider or to change that particular ruling that that ruling  
22 would stand, and --

23 MR. BECK: Commissioner?

24 COMMISSIONER DEASON: I'm sorry.

25 MR. BECK: That was not on any of the testimony.

1 That was on other documents. We had provided -- it's really  
2 separate from the issue of the testimony. That was concerning  
3 some documents that we gave notice to GTE that we would use in  
4 the proceeding, and that's what that order was about. It was  
5 simply about documents. Since that time, we've had a  
6 sequential filing of testimony, and that's what I'm addressing  
7 here now is the testimony.

8 MS. CASWELL: I would point out, though,  
9 Commissioner, that the same documents are covered by the order.  
10 Now they are just attached to testimony, and the confidential  
11 information in the testimony is tied to those documents. So  
12 it's the same information. It's the same documents except  
13 there's a smaller scope of them at this point.

14 MR. BECK: They're not the same. There may be some  
15 overlap. It's not the same documents at all.

16 MS. CASWELL: Well, he may be --

17 COMMISSIONER DEASON: Okay. I've heard enough.  
18 Thank you very much. We're going to quit the back and forth.  
19 The ruling still stands.

20 Mr. Beck, if you'd want a clarification as to whether  
21 it was the documents or testimony or how the documents would be  
22 used in testimony and what would have been the situation if  
23 those documents or other similar documents would have been used  
24 in testimony, that clarification should have been sought long  
25 before now.

1 Ms. Caswell, I'm going to ask you to file your  
2 specific request within ten days from today.

3 And, Mr. Beck, as soon as you can respond, you can do  
4 that when you wish. And since you're the party that wishes to  
5 have this matter expedited, I'm sure that your response will be  
6 as timely as possible. And then I want this brought to my  
7 attention as quickly as possible, and I'll make a ruling.

8 MR. BECK: Commissioner, let me -- just for the  
9 record, ten days from today, I guess with counting the weekend,  
10 would be Monday. I will not even be in the State for that  
11 week, so I will file it as soon as I can after, but it will be  
12 just days before the hearing.

13 COMMISSIONER DEASON: Very well. Okay. Any other  
14 preliminary matters?

15 As is customary, my desire is to proceed through the  
16 draft prehearing order. I anticipate that that can go rather  
17 quickly. And we'll begin with Section I. Any questions or  
18 comments? II. Section III. Section IV. Section V.  
19 Section VI. We've already discussed the order of witnesses,  
20 and, Mr. Fordham, you can make the change as consistent with  
21 that discussion.

22 MR. FORDHAM: Yes, sir.

23 COMMISSIONER DEASON: Any other concerns with the  
24 order of witnesses? Section VII, basic positions.  
25 Section VIII, Issue 1a and 1b. Issue 2a and 2b. Section IX,

1 exhibit list. And Section X, proposed stipulations. There are  
2 no proposed stipulations at this time. Section XI, pending  
3 motions. There are no pending motions at this time, but  
4 consistent with our discussion that there will be a filing on a  
5 specific request for confidentiality within ten days from  
6 today. Section XII addresses pending confidentiality matters.

7 MR. FORDHAM: Commissioner.

8 COMMISSIONER DEASON: I assume that there will  
9 be -- I'm sorry, go ahead.

10 MR. FORDHAM: I was just going to suggest that  
11 perhaps we add the Commissioner's ruling regarding those  
12 confidentiality matters in a section just after pending  
13 confidentiality matters, and title it "Rulings." Is that  
14 acceptable to the Commissioner?

15 COMMISSIONER DEASON: Well, we're going to need to  
16 issue this prehearing order in a timely manner. I assume  
17 you're talking about the rulings on the specific request for  
18 confidentiality?

19 MR. FORDHAM: Correct.

20 COMMISSIONER DEASON: If it's not going to be  
21 received until ten days from today and then by the time  
22 Mr. Beck responds to that, it's most likely there's going to  
23 perhaps be a ruling just right up until the time of the  
24 hearing.

25 MR. FORDHAM: I'm sorry, sir. I misunderstood the

1 question. What I was suggesting is that we just add that the  
2 Prehearing Officer ordered that it be submitted within ten  
3 days.

4 COMMISSIONER DEASON: That's fine. You certainly can  
5 clarify that. I thought you were just trying -- you were  
6 trying to --

7 MR. FORDHAM: Not a ruling --

8 COMMISSIONER DEASON: -- incorporate into the  
9 Prehearing Officer (sic) whatever the final ruling may be on  
10 the request.

11 MR. FORDHAM: No, that would not be able to appear  
12 here.

13 COMMISSIONER DEASON: Okay. Very well. Section  
14 XIII, other matters. Within this section, it's described that  
15 the parties would be allowed ten minutes for opening  
16 statements. I assume the parties are requesting opening  
17 statements. Is ten minutes sufficient, Mr. Beck?

18 MR. BECK: Yes.

19 COMMISSIONER DEASON: Ms. Caswell?

20 MS. CASWELL: Uh-huh.

21 COMMISSIONER DEASON: Very well. Any other matters  
22 to come before the Prehearing Officer?

23 MR. FORDHAM: None by Staff, Commissioner.

24 COMMISSIONER DEASON: Let me ask this question. How  
25 are we to proceed at hearing? Given the current state and



1 assuming no change that the information remains confidential,  
2 how will we proceed at hearing? Mr. Fordham.

3 MR. FORDHAM: Those items that are deemed to be  
4 confidential pursuant to the earlier orders of the Commission,  
5 if it's a written document, it would have to be redacted. If  
6 there is live testimony, then I think the procedure of the  
7 Commission has been to exclude from the room those other than  
8 Staff and parties.

9 MS. CASWELL: I can add, also in the past when we  
10 have done this, I think we've tried to do the cross such that  
11 we don't disclose the confidential information to avoid  
12 clearing the room, and we do hand out in red folders copies of  
13 the confidential information to the Commission and to Staff.

14 COMMISSIONER DEASON: Well, it's certainly my desire  
15 that the hearing is not -- will not be closed, and every  
16 possible and feasible means to accomplish that will be  
17 undertaken. I know that we do have the practice of providing  
18 in red folders confidential information and that counsel is  
19 instructed to conduct cross examination such that information  
20 can be referenced but not actually entered into the record in  
21 spoken form or any other way. It may be burdensome, but if  
22 that is the necessity, we've done it in the past, and I assume  
23 that we can do so in this proceeding.

24 Mr. Beck, is that your understanding as well?

25 MR. BECK: I will do everything I can. The problem

1 is, I have no idea what the scope of GTE's claim is going to  
2 be. Right now, it's every word, every page, every document,  
3 everything is confidential, so it really somewhat depends on  
4 the scope of what GTE specifically claims to be confidential.  
5 But I will certainly do everything I can in cross examination  
6 and otherwise to use documents without verbalizing it.

7 COMMISSIONER DEASON: Very well.

8 MS. CASWELL: And I can discuss with Mr. Beck after  
9 the prehearing what we consider respectively to be confidential  
10 and try and narrow the scope of the information.

11 COMMISSIONER DEASON: That would be helpful.

12 MS. CASWELL: Thank you.

13 COMMISSIONER DEASON: Okay. Anything else at this  
14 time?

15 MR. FORDHAM: Not by Staff.

16 COMMISSIONER DEASON: Mr. Beck.

17 MR. BECK: No, sir.

18 COMMISSIONER DEASON: Ms. Caswell.

19 MS. CASWELL: No, sir.

20 COMMISSIONER DEASON: Very well. Thank you. This  
21 prehearing conference is adjourned.

22 (Prehearing concluded at 1:52 p.m.)

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1 STATE OF FLORIDA     )  
2                             :             CERTIFICATE OF REPORTER  
3 COUNTY OF LEON        )

4  
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby  
6 certify that the foregoing proceeding was heard at the time and  
7 place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney or counsel of any of the parties, nor am I a relative  
15 or employee of any of the parties' attorneys or counsel  
16 connected with the action, nor am I financially interested in  
17 the action.

18 DATED THIS 4th DAY OF JUNE, 2001.

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23  
24  
25  


TRICIA DeMARTE  
FPSC Official Commission Reporter  
(850) 413-6736