

ORIGINAL

JAMES E. "JIM" KING, JR.
PRESIDENT

JOHNNIE BYRD
SPEAKER



STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL



C/O THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

Charles J. Beck
Interim
Public Counsel

October 22, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

COMMISSION
CLERK

OCT 22 PM 4:15

FILED 1180

RE: Docket No. 030867-TL

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Request for an *In Camera* Inspection of Documents Relating to Citizens' First Motion to Compel Production of Documents from Verizon Florida, Inc. for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

H F. Mann
Associate Public Counsel

HFM/dsb

Enclosures

- US _____
- CAF _____
- MP _____
- COM _____
- CTR _____
- ECR _____
- BCL _____
- DPC _____
- MMS _____
- SEC 1
- OTH _____

DOCUMENT NUMBER-DATE
10435 OCT 22 8
FPSC-000008670101

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Verizon Florida Inc. to Reform)	
Its Intrastate Network Access and Basic Local)	Docket No. 030867-TL
Telecommunications rates in Accordance with)	
Florida Statutes, Section 364.164)	Filed: October 22, 2003

**CITIZENS' REQUEST FOR AN *IN CAMERA* INSPECTION OF
DOCUMENTS RELATING TO CITIZENS' FIRST MOTION TO
COMPEL PRODUCTION OF DOCUMENTS FROM VERIZON FLORIDA, INC**

The Citizens of Florida (Citizens), through the Office of Public Counsel, pursuant to Order No. PSC-03-1155-PCO-TL, Rule 28-106.204, Florida Administrative Code, and Rules 1.280, 1.350, and 1.380, Florida Rules of Civil Procedure, file this motion requesting the Prehearing Officer to conduct an *in camera* inspection of certain documents that Verizon Florida, Inc. ("Verizon" or "Company") has claimed to be privileged in response to Citizens' First Request for Production of Documents; to determine which, if any, documents qualify as privileged; and to order Verizon to produce all such documents which are not privileged.

1. On September 3, 2003, Citizens served their first set of requests for production of documents to Verizon. This request for *in camera* inspection addresses three of those production requests, identified below - - **Number 5, Number 6 and Number 20.**

2. On September 10, 2003, Verizon served its Initial Objections to Citizens' First Set of Production of Documents. These irrelevant "initial" and "preliminary" objections, which addressed nothing in particular, were followed by the Company's specific objections to individual production requests.

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3. On September 17, 2003, Citizens filed their motion with the Prehearing Officer to compel production by Verizon.

4. On September 19, 2003, Verizon served Citizens with its Privilege Log regarding Citizens' first request for production of documents.

5. Citizens' production of documents request Number 5 asked 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.

6. Citizens' production of documents request Number 6 requests all documents in Verizon's possession, custody or control that discuss or evaluate the typical, average, or median bill of customers for local telecommunications services, including ancillary services.

7. Citizens' production of documents request Number 20 requests copies of 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 customers.

8. Verizon's specific objection to all three of these requests, respectively, was "on the grounds that it seeks documents that are exempt from discovery under the attorney-client and work product privileges."

9. Verizon's Privilege Log, served on September 19, two days after the filing of Citizens' motion to compel, identifies titles and dates of documents that relate to production requests Number 5, Number 6, and Number 20, respectively, and provides a "Reason for Claim of Privilege." That is, "Attorney-

Client and Work-Product Privilege: This document was created at the request of counsel in anticipation of the instant proceeding. It has been confidentially maintained by the Company.”

10. The Company’s Privilege Log lists six documents that are responsive to production requests Number 5 and Number 20, respectively, and seven documents responsive to Number 6. The “Creator” of each of these documents is one Adolf Andrzejewski. His position with the Company is unknown. It is not indicated that he is an attorney. Each of the documents that Verizon claims to be privileged had multiple corporate employees as recipients, in addition to the Company attorney, Mr. Chapkis.

11. The Florida Supreme Court, in *Southern Bell Telephone and Telegraph Company, v. J. Terry Deason, et al.*, 632 So.2d 1377 (Fla. 1994), has provided a test to be applied to claims of privilege in the corporate context. The Court said that such claims of privilege will be subjected to a heightened level of scrutiny in order to minimize the threat of corporations cloaking information with the attorney-client privilege in order to avoid discovery. The Court set forth the following test to determine whether a communication is covered by the privilege:

- (1) the communication would not have been made but for the contemplation of legal services;
- (2) the employee making the communication did so at the direction of his or her corporate superior;
- (3) the superior made the request of the employee as part of the corporation’s effort to secure legal advice or services;

(4) the content of the communications relates to the legal services being rendered, and the subject matter of the communication is within the scope of the employee's duties;

(5) the communication is not disseminated beyond those persons who, because of the corporate structure, need to know its contents.

12. On October 20, 2003, the Prehearing Officer issued Order No. PSC-03-1155-PCO-TL ("Order"), which ruled on Citizens' First Motion to Compel. As regards the above three production requests, the Prehearing Officer ruled that:

To the extent, if any, that the privilege 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. Order, pages 25, 26, and 33.

13. As Verizon states, on page 24 of the Order, the Company served a Privilege Log to Citizens on September 19, two days after Citizens filed their motion to compel. The responses provided by Verizon in its Privilege Log to these three production requests do not resolve, however, the issue of whether these documents are appropriately shrouded with the claim of privilege.

14. As stated in paragraph 10, above, Citizens believe that the information provided in Verizon's Privilege Log does not support a finding of privilege to be attached to these three production requests. From a review of the Privilege Log, Citizens suggest that these communications exemplify the

concern of the Court, expressed in *Southern Bell*, about the threat of corporations cloaking information with the attorney-client and work product privileges in order to avoid discovery. Each of these documents was created by a person who is not identified as an attorney, and was distributed to numerous corporate recipients. The simple inclusion of one or more attorneys among the numerous corporate recipients does not make the communication privileged.

15. As these three production requests are still in dispute, Citizens request, as suggested by the Order, that the Prehearing Officer conduct an *in camera* inspection of the seven documents identified on Verizon's Privilege Log as they relate to production requests Number 5, Number 6, and Number 20, respectively.

WHEREFORE, Citizens request that the Prehearing Officer conduct an *in camera* inspection of the seven documents, all created by Adolf Andrzejewski, identified on Verizon's Privilege Log, regarding Citizens' First Set of PODs.

Respectfully submitted,

CHARLES J. BECK
Interim Public Counsel
Florida Bar No. 217281



H F. Rick Mann
Associate Public Counsel
Florida Bar No. 763225

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
Attorney for Florida's Citizens

**CERTIFICATE OF SERVICE
DOCKET NO.: 030867-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 22nd day of October, 2003.

Patty Christensen, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Richard Chapkis
Vice President & General Counsel
Verizon Florida, Inc.
201 North Franklin Street, FLTC0717
Tampa, Florida 33601

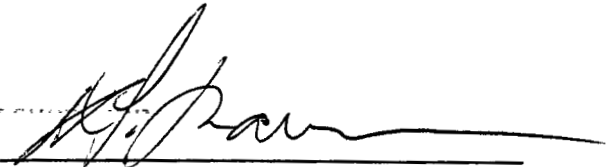
Tracy Hatch
AT&T
101 North Monroe, Suite 700
Tallahassee, FL 32301

Michael Gross
Florida Cable Telecomm. Assn.
246 East 6th Avenue
Tallahassee, FL 32303

Donna McNulty
MCI WorldCom, Inc.
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301-2960

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256

Mark Cooper
504 Highgate Terrace
Silver Spring, MD 20904



H F. Mann