

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of 9278  
Communications, Inc. for apparent violation of  
Sections 364.02 and 364.04, Florida Statutes.

DOCKET NO. 030696-TI  
DATED: APRIL 20, 2005

STAFF'S MOTION TO COMPEL

The Florida Public Service Commission Staff (Staff), by and through its undersigned counsel, pursuant to rule 28-106.204, Florida Administrative Code, respectfully moves this Commission for an order requiring 9278 Communications, Inc. (9278) to respond to Staff's First Set of Discovery. As grounds therefore, Staff states:

Introduction

1. Pursuant to the protest by 9278 Communications, Inc. of Notice of Proposed Agency Action Order No. PSC-04-0022-PAA-TI, this matter is currently set for an administrative hearing. On February 8, 2005 Staff served its First Set of Discovery.

2. On February 25, 2005, 9278 filed a Motion for Extension of Time, requesting an additional 10 days to respond to Staff's discovery request. 9278 asserted that additional time was needed and that an extension will neither inconvenience any party nor result in a delay of this case. On March 14, 2005, 9278 filed an Amended Request for Extension of Time, asking for an extension to file its responses to Staff's discovery to March 18, 2005.

3. To date, none of the discovery responses have been received; thus, Staff has been forced to file this Motion to Compel. 9278's failure to respond to Staff is a flagrant violation of the Order Establishing Procedure. (Order No. PSC-05-0119-PCO-TI)

Standard for Ruling on Discovery Requests

4. The scope of discovery is broad. *See Allstate v. Boecher*, 733 So.2d 993, 935 (Fla. 1999). Rule 1.280(b), Florida Rules of Civil Procedure, addresses the scope of discovery:

Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action . . . 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.

DOCUMENT NUMBER DATE

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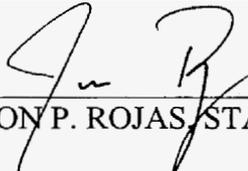
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5. The purpose of discovery is “to simplify the issues of the case, to eliminate the element of surprise, . . . to avoid costly litigation, and to achieve a balanced search for the truth and achieve a fair trial.” *See Elkins v. Syken*, 672 So.2d 517, 522 (Fla. 1996). In *Dodson v. Persell*, 390 So.2d 704, 707 (Fla. 1980), the Florida Supreme Court stated that: “A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal.” The Court also stated that a main purpose of discovery is “to provide each party with all available sources of proof as early as possible to facilitate trial preparation.” *Id.* at 706. When the above standards for discovery are applied, it is clear that 9278 must respond to Staff’s discovery. The information staff seeks is relevant and likely to lead to the admission of relevant evidence because the information bears directly on the issues before the Commission in this proceeding.

6. Staff has contacted counsel for 9278 and is authorized to represent that local counsel is seeking leave to withdraw from the proceeding. Staff’s phone calls to the company have not been returned.

WHEREFORE, Staff requests that the Commission enter an order requiring 9278 to immediately respond to Staff’s discovery requests.

Respectfully submitted,



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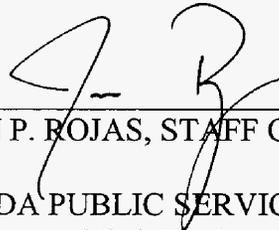
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of STAFF'S MOTION TO COMPEL has been served by U.S. Mail and via Electronic Mail, to Norman Horton, Jr. Esquire and Albert T. Gimbel, Esquire, Messer Law Firm, Post Office Box 1876, Tallahassee, FL 32302, on behalf of 9278 Communications, Inc., and the following sent by U.S. Mail this 20<sup>th</sup> day of April, 2005:

9278 Communications, Inc.  
Sajid Kapadia/Craig Libson  
1942 Williamsbridge Road  
Bronx, NY 10461

Messer Law Firm  
Norman Horton, Jr./Albert T. Gimbel  
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Tallahassee, FL 32302

Respectfully submitted,



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