

ORIGINAL

**Matilda Sanders**

**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Wednesday, April 27, 2005 3:48 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket 040156-TP - Verizon Arbitration  
**Attachments:** 2005-04-27, 040156, Competitive Carrier Group's Motion to Compel Discovery from Verizon Florida Inc.pdf

The person responsible for this electronic filing is:

Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
P.O. Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)

The Docket No. is 040156-TP - Verizon Petition for Arbitration

This is being filed on behalf of Competitive Carrier Group

Total Number of Pages is 6

Competitive Carrier Group's Motion to Compel Discovery from VERIZON Florida Inc

Ann Bassett  
Messer, Caparello & Self, P.A.  
Phone: 850-201-5225  
[abassett@lawfla.com](mailto:abassett@lawfla.com)

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LAW OFFICES  
Messer, Caparello & Self  
A Professional Association

Post Office Box 1876  
Tallahassee, Florida 32302-1876  
Internet: www.lawfla.com

April 27, 2005

**BY ELECTRONIC MAIL**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

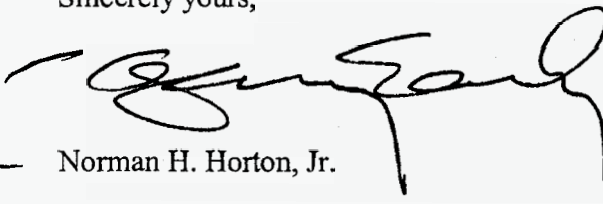
Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Competitive Carrier Group is an electronic copy of Competitive Carrier Group's Motion to Compel Discovery from Verizon Florida Inc. in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,

  
for Norman H. Horton, Jr.

NHH/amb  
Enclosures  
cc: Parties of Record

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment ) Docket No. 040156-TP  
to interconnection agreements with certain ) Filed: April 27, 2005  
competitive agreements with certain )  
competitive local exchange carriers and )  
commercial mobile radio service providers )  
in Florida by Verizon Florida Inc. )

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**COMPETITIVE CARRIER GROUP'S MOTION  
TO COMPEL DISCOVERY FROM VERIZON FLORIDA INC.**

DIECA Communications, Inc. d/b/a Covad Communications Company, IDT America Corp., KMC Data LLC, KMC Telecom TII LLC, KMC Telecom V, Inc., NuVox Communications, Inc., The Ultimate Connection L.C., XO Florida, Inc., Xspedius Management Co. Switched Services LLC and Xspedius Management Co. of Jacksonville LLC (hereinafter "Competitive Carrier Group" or "CCG"), by and through its undersigned counsel, and in accordance with Rule 28-106.206, Florida Administrative Code, and Florida Rule of Civil Procedure 1.380(a), hereby requests that the Florida Public Service Commission ("FPSC" or "Commission") or the prehearing officer enter an order compelling Verizon Florida Inc. ("Verizon") to provide answers to CCG's First Set of Interrogatories (Nos. 1-11) and Second Request for Production of Documents to Verizon Florida Inc. (No. 2-6), and state:

1. On April 8, 2005, CCG served Verizon with its First Set of Interrogatories (Nos. 1-11) and Second Request for Production of Documents to Verizon Florida Inc. (No. 2-6). Verizon filed no objections to the discovery, and thus waived any such objections.

2. Subsequent to service of the discovery, the parties to this proceeding, including CCG and Verizon, entered into a stipulation regarding the disposition of several issues, and the manner in which other issues would be presented to the Commission. The stipulation was filed with the

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Commission on April 26, 2005. The stipulation provided that "discovery responses described in the Staff's Exhibit List" would become part of the record of this proceeding. See, Stipulation letter dated April 26, 2005 at ¶3. The discovery that is the subject of this Motion to Compel is identified in proposed Staff Exhibit List that was provided to the parties, and thus has been stipulated by Verizon as being a part of the record for consideration by the Commission in this proceeding.

3. Although the stipulation narrowed the issues, it did not eliminate the need for responses to CCG's discovery requests. The Commission has recognized that discovery is proper and may be compelled if it is not privileged and is or likely will lead to relevant and admissible information. In that regard, the Commission has ruled that:

The test for determining whether discovery is appropriate is set forth in Rule 1.280(b)(1) of the Florida Rules of Civil Procedure which provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant for 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." Section 90.401 of the Florida Evidence Code defines "relevance" as evidence tending to prove or disprove a material fact.

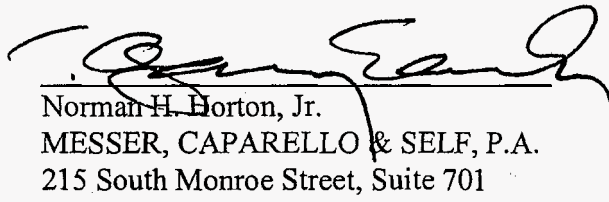
Order No. PSC-93-0652-PCO-WS, *In Re Jasmine Lakes Utilities Corporation*, Docket No. 920148-WS, dated April 28, 1993.

4. As the discovery at issue has been stipulated by all parties, including Verizon, it is clearly relevant for the subject matter of the pending action.

5. In order for the parties to have any meaningful opportunity to review the discovery responses and utilize them in preparation for the hearing, which starts on Wednesday, May 4, 2005 at 9:30 a.m., it is necessary that responses to the discovery be provided to CCG and all other parties by no later than 12:00 noon on Monday, May 2, 2005.

WHEREFORE, for the foregoing reasons, the Competitive Carrier Group respectfully requests that the Commission grant this Motion to Compel Discovery, and require that Verizon Florida Inc. provide full and complete responses to CCG's First Set of Interrogatories (Nos. 1-11) and Second Request for Production of Documents to Verizon Florida Inc. (No. 2-6) by no later than 12:00 noon on Monday, May 2, 2005.

Respectfully submitted this 27th day of April, 2005.



Norman H. Horton, Jr.  
MESSER, CAPARELLO & SELF, P.A.  
215 South Monroe Street, Suite 701  
Tallahassee, Florida 32301  
(850) 222-0720 (voice)  
(850) 224-4359 (facsimile)

Brett Freedson  
KELLEY DRYE & WARREN LLP  
1200 14th Street, N.W., Fifth Floor  
Washington, D.C. 20036  
(202) 955-9600 (voice)  
(202) 955-9792 (facsimile)  
Counsel to Competitive Carrier Group

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by electronic mail on this 27<sup>th</sup> day of April, 2005.

Lee Fordham, Esq.  
Office of General Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Patricia S. Lee  
Florida Public Service Commission  
Division of Competitive Markets &  
Enforcement  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Richard A. Chapkis, Esq.  
Verizon Florida Inc.  
P.O. Box 110, FLTC0717  
Tampa, FL 33601-0110

Aaron M. Panner, Esq.  
Scott H. Angstreich, Esq.  
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.  
Summer Square  
1615 M Street, N.W., Suite 400  
Washington, DC 20036

Eagle Telecommunications, Inc.  
5020 Central Avenue  
St. Petersburg, FL 33707-1942

Mr. Michael E. Britt  
LecStar Telecom, Inc.  
4501 Circle 75 Parkway, Suite D-4200  
Atlanta, GA 30339-3025

Donna McNulty, Esq.  
MCI  
1203 Governors Square Boulevard, Suite 201  
Tallahassee, FL 32301-2960

De O'Roark, Esq.  
MCI  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328

Ms. Martine Cadet  
Myatel Corporation  
P.O. Box 100106  
Ft. Lauderdale, FL 33310-0106

Susan Masterton, Esq.  
Sprint Communications Company Limited  
Partnership  
P.O. Box 2214  
Tallahassee, Florida 32316-2214

W. Scott McCollough  
David Bolduc  
Stumpf, Craddock Law Firm  
1250 Capital of Texas Highway South  
Building One, Suite 420  
Austin, TX 78746

Patrick Wiggins, Esq.  
Wiggins Law Firm  
P.O. Drawer 1657  
Tallahassee, FL 32302

Michael C. Sloan, Esq.  
Swidler Berlin  
3000 K Street, NW, Suite 300  
Washington, DC 20007

Matthew Feil, Esq.  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, FL 32751

Genevieve Morelli  
Brett H. Freedson  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> St., NW, Suite 500  
Washington, D.C. 20036

Floyd R. Self  
Messer, Caparello & Self, P.A.  
P.O. Box 1876  
Tallahassee, FL 32302-1876

Mr. Mark Hayes  
ALEC, Inc.  
250 West main Street, Suite 1920  
Lexington, KY 45717

Ms. Sonia Daniels  
AT&T  
1230 Peachstreet Street, #400  
Atlanta, GA 30309

Tracy Hatch  
AT&T  
101 N. Monroe Street, Suite 700  
Tallahassee, FL 32301

Mr. Larry Wright  
American Dial Tone  
2323 Curlew Road, Suite 7C  
Dunedin, FL 34683-9332

Ms. Jean Cherubin  
CHOICE ONE Telecom  
1510 N.E. 162<sup>nd</sup> Street  
North Miami Beach, FL 33162-4716

Mr. Charles E. Watkins  
Covad Communications Company  
1230 Peachtree Street, NE, Suite 1900  
Atlanta, GA 30309-3578

Mr. Dennis Osborn  
DayStar Communications  
18215 Paulson Drive  
Port Charlotte, FL 33954-1019

Marva Brown Johnson, Esq.  
KMC  
1755 North Brown Road  
Lawrenceville, GA 30048-8119

Mr. Greg Rogers  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021-8869

Ms. Amy J. Topper  
Local Line America, Inc.  
520 South Main Street, Suite 2446  
Akron, OH 44310-1087

Ms. Keiki Hendrix  
NewSouth Communications Corp.  
Two North Main Street  
Greenville, SC 29601-2719

Saluda Networks Incorporated  
782 N.W. 42<sup>nd</sup> Avenue, Suite 210  
Miami, FL 33126-5546

Ms. Ann H. Shelfer  
supra Telecommunications and Information Systems, Inc.  
1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301

Russel M. Blau  
Swidler Berlin  
3000 K Street, N.W., Suite 300  
Washington, DC 20007-5116

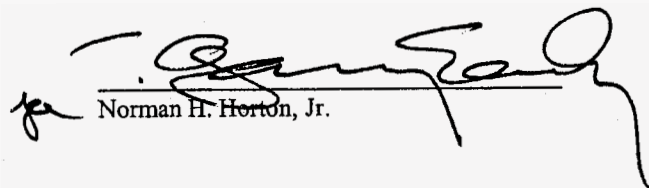
Tallahassee Telephone Exchange, Inc.  
P.O. Box 11042  
Tallahassee, FL 32302-3042

Ms. Carolyn Marek  
Time Warner Telecom of Florida, L.P.  
233 Bramerton Court  
Franklin, TN 37069-4002

Mr. David Christian  
Verizon Florida, Inc.  
106 East College Avenue  
Tallahassee, FL 32301-7748

Ms. Dana Shaffer  
XO Florida, Inc.  
105 Molloy Street, Suite 300  
Nashville, TN 37201-2315

James C. Falvey, Esq.  
Xspedius Management Co. of Jacksonville, LLC  
14405 Laurel Place, Suite 200  
Laurel, MD 20707

  
Norman H. Horton, Jr.