Matilda Sanders

From: terry.scobie@verizon.com
Sent: Friday, April 29, 2005 2:06 PM
To: Filings@psc.state.fl.us
Cc: Richard Chapkis; Kimberly Caswell; David Christian; demetria.c.watts@verizon.com
Subject: Docket 040156-TP - Verizon Florida Inc.'s Opposition to Competitive Carrier Group's Motion to Compel Discovery from Verizon

Attachments: 040156 VZ FL Response to CCG Motion to Compel-4-29-05.pdf


040156 VZ
sponse to CC

The attached filing is submitted in Docket No. 040156-TP on behalf of Verizon Florida Inc. by

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The attached .pdf document contains 10 pages - transmittal letter (1 page), certificate of service (1 page), service list (2 pages) and Opposition to Motion to Compel Discovery (6 pages).

(See attached file: 040156 VZ FL Response to CCG Motion to Compel-4-29-05.pdf)

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April 29, 2005 – **VIA ELECTRONIC MAIL**

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040156-TP
Petition for Arbitration of Amendment to Interconnection Agreements With Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.

Dear Ms. Bayo:

Enclosed for filing is Verizon Florida Inc.'s Opposition to Competitive Carrier Group's Motion to Compel Discovery From Verizon in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at 813-483-1256.

Sincerely,

/s/ Richard A. Chapkis

Richard A. Chapkis

RAC:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to Competitive Carrier Group's Motion to Compel Discovery from Verizon in Docket No. 040156-TP were sent via U.S. mail on April 29, 2005 to the parties on the attached list.

/s/ Richard A. Chapkis

Richard A. Chapkis

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.	)))))	Docket No. 040156-TP Filed: April 29, 2005

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

Verizon Florida Inc. ("Verizon") asks the Prehearing Officer to deny the Competitive Carrier Group's Motion to Compel Discovery from Verizon Florida Inc., filed April 27, 2005.

Verizon did not respond to CCG's First Set of Interrogatories and Second Set of Requests for Production of Documents because they were filed late. As CCG notes, they were served on April 8, 2005, and purported to require responses by April 25, 2005. Under the Order Establishing Procedure, discovery must have been completed by April 22, 2005. (Order PSC-04-1236-PCO-TP, at 5 (Dec. 13, 2004).) The period for responding to discovery in this case is 15 days. (Order No. PSC-05-0221-PCO-TP, at 9 (Feb. 24, 2005).) Fifteen days from April 8 is April 23, past the cut-off date for discovery. As such, Verizon was under no obligation to respond in any way to CCG's discovery.

Verizon did not waive any rights or objections by declining to respond to CCG's improper discovery, as CCG incorrectly suggests (CCG Motion at 1). No objections were necessary, because CCG had no right to serve late discovery in the first place. Under CCG's theory, CCG could, for example, force Verizon to respond to discovery a month from now, if it served discovery purporting to require a response then. But CCG

has no right to reset the discovery deadline the Prehearing Officer established. Whether CCG was 1 or 100 days late with its discovery, the result is the same—a failure to comply with the established discovery completion deadline. Nothing in the Commission's Rules or anything else requires parties to respond to unauthorized filings, such as CCG's discovery requests.

CCG does not deny that its discovery did not comply with the discovery completion deadline. Instead, it claims that Verizon agreed that CCG's discovery at issue was relevant and that Verizon would respond to it. That is not true.

Under the stipulation filed on April 26, 2005, Verizon agreed that the discovery responses listed in "Staff's Exhibit List" would be submitted into the record. At the time the Stipulation was signed, there was no final Exhibit List--just a ***proposed*** Exhibit List that had been changed at least once by that time, and that the parties knew was subject to further changes based on parties' input. (*See* 4/25/2005 e-mail from Felicia Banks to the parties, attaching a "revised proposed stipulated exhibit list" and seeking responses by April 27, 2005.) Neither Verizon nor any other party agreed to stipulate into the record everything on "the proposed Exhibit List as of April 26," nor could they, because a number of the documents listed did not even exist at that time. And the parties certainly did not commit to answering all of the questions in all of the discovery listed in the Staff's proposed Exhibit List, nor did they admit that all of the listed discovery was relevant to the proceeding. If that were the case, then all of the parties that signed the Stipulation would have to drop the irrelevancy objections they made to particular questions and they would now have to submit responses to those questions.

Of course, the parties never made any such agreements. The reference to

Staff's Exhibit List was added to the Stipulation by AT&T's counsel at the last minute, after negotiations had concluded, as a shorthand way to make clear that any discovery produced in the case and placed on the Exhibit List to be used at the hearing would be stipulated into the record. AT&T's counsel assured Verizon's counsel that the reference to the Exhibit List was *not* intended to change the terms of the already-negotiated stipulation--let alone impose any affirmative obligation upon any party to answer untimely discovery, eliminate any party's right to object to any discovery requests on the draft Exhibit List, or override the discovery completion date established by the Prehearing Officer.

As Verizon indicated to Staff and to CCG's counsel before CCG filed its Motion, Verizon would not have produced anything in response to CCG's discovery even if it had been timely, because all of it is irrelevant. CCG makes no attempt to rebut this point. It simply claims that its discovery is relevant based on its incorrect theory that, by entering the Stipulation, the parties agreed to answer all of the discovery requests listed in the draft hearing exhibit as of April 26.

Although Verizon need not explain why CCG's untimely discovery is irrelevant, the reason is readily apparent. All of CCG's interrogatories and document requests concern the process through which Verizon calculated whether particular wire centers met the FCC's non-impairment criteria for dedicated transport and high-capacity loops. These questions are not relevant to any issue in this arbitration. In its *Triennial Review Remand Order*,[1] the FCC established a specific process to implement its rules

[1] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 (FCC rel. Feb. 4, 2005) ("*TRRO*").

governing access to high-capacity loops and transport. Under paragraph 234 of the *TRRO*, "to submit an order to obtain a high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry" in order to certify that it is entitled to unbundled access to the facility under the *TRRO* criteria. If the request "indicates that the UNE meets the relevant factual criteria," the ILEC must process the request. To the extent that an incumbent LEC seeks to challenge a particular CLEC request, the ILEC must bring the dispute "before a state commission or other appropriate authority." (*TRRO*, ¶ 234.)

The FCC has thus established a complete system, "based upon objective and readily obtainable facts" (*TRRO*, ¶ 234), through which CLECs may order and obtain access to UNE loops and transport under its new unbundling rules. That system requires a requesting carrier to undertake a reasonably diligent inquiry before it submits a UNE loop or transport order. It does not contemplate a state commission pre-certification in an arbitration proceeding that would short-circuit the procedures the FCC has prescribed.

Moreover, the case-by-case dispute resolution process the FCC prescribed is designed to be flexible enough to account for changes in facts affecting central offices, such as installation of new collocation arrangements. It is impermissible to freeze in place an initial decision applying the FCC's unbundling criteria to Verizon's central offices by memorializing the list of exempt wire centers in interconnection agreements. Under this approach, the CLECs would, no doubt, then use the Commission's approval of a particular list as an excuse to prohibit any changes in that list outside of a lengthy negotiation and arbitration process.

Verizon cannot be required to accept any alternative system for implementing the FCC's unbundling rules for high-capacity loops and transport. As the FCC has made clear, if there are any disputes about whether a particular wire center meets the FCC's non-impairment criteria, the ILEC must provide the facility, and then ***the ILEC*** must bring the dispute to the appropriate authority. At this point, Verizon has not brought any such disputes before the Commission, so there is nothing for the Commission to do. Indeed, as Verizon's wire center list filed with the FCC reflects, Verizon has not identified *any* Florida wire centers that qualify for unbundling relief for DS1 or DS3 loops. It has identified only 13 of Verizon's 87 wire centers as either Tier 1 or Tier 2 wire centers for purposes of determining availability of dedicated transport. So high-capacity loops will remain available everywhere they are available in Verizon's territory today, and dedicated transport will remain available on most routes, unless and until changes in the facts qualify additional offices for unbundling relief.

Finally, as CCG's own documents produced in response to Staff's discovery show, Verizon offered to provide CCG's members the backup data for Verizon's wire center designations weeks before they asked for it here in Interrogatories. (*See, e.g.*, CCG's Attachment for POD #7 and #10, Letters from Anthony Black, Verizon, to XO Communications Services, Inc., IDT America, and Covad.) At least three of CCG's members (XO, The Ultimate Connection, and Covad) have, in fact, signed the non-disclosure agreement necessary for Verizon to make this confidential information available, and received the backup data prior to CCG's discovery request.

* * *

Verizon asks the Prehearing Officer to deny CCG's Motion, because CCG has no excuse for failing to comply with the established discovery completion date, and because Verizon never agreed that CCG's discovery was relevant or otherwise proper.

Respectfully submitted on April 29, 2005.

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