

**IN THE SUPREME COURT OF FLORIDA**

ATTORNEY GENERAL CHARLES J. CRIST  
JR.,

Appellant,

v.

SC Case No. SC04-9

BRAULIO L. BAEZ, Chairman, and J. TERRY  
DEASON, LILA A. JABER, RUDOLPH “RUDY”  
BRADLEY, and CHARLES DAVIDSON,  
Commissioners, as and constituting the FLORIDA  
PUBLIC SERVICE COMMISSION, an agency of  
the STATE OF FLORIDA, et al.,

Appellees.

---

**ATTORNEY GENERAL’S RESPONSE TO  
VERIZON’S MOTION FOR PROTECTIVE ORDER**

This is an appeal by the Attorney General of the State of Florida from a Public Service Commission (PSC) decision subjecting Florida consumers to the largest telephone rate hike in Florida history. The Florida Constitution and general law entrust the final and only review of PSC decisions to this Court. Art. V, § 3(b)(2), Fla. Const.; § 350.128, Fla. Stat. (2003).

Verizon’s Motion for Protective Order asks the Court to exempt from the Public Records Act a substantial portion of the material information that will be contained in the record. It cites no rule or statute authorizing this wholesale exemption of judicial records from public access. It merely asks the Court to adopt, sight unseen, confidentiality orders of the PSC. Because no authority justifies this action, and because such wholesale exemption would be contrary to the well-established policy of this state, Verizon’s

motion should be denied.

### The Documents

Verizon's two-page Motion for Protective Order asks this Court to conceal seventeen documents from public view. If the record below is any indication, Verizon's motion is the first in what likely will be a wave of motions seeking to deny the public knowledge of the factual basis for a decision that affects nearly every citizen and business in this state. During proceedings before the PSC, Verizon and its fellow telephone companies filed at least 54 documents claimed to be confidential. (Exhibit 1) (PSC Docket with confidential items highlighted). They include hearing exhibits, sworn testimony, interrogatory answers, depositions, and work papers of expert witnesses. These documents are the heart of the record upon which this Court will base its final decision determining whether the telephone companies may impose upon the citizens of Florida the largest statewide telephone rate increase in history.<sup>1</sup>

Much of the material that Verizon seeks to maintain as confidential contains testimony fundamental to the issues in this appeal, such as complete answers to these questions:

You stated previously that Verizon would have to reduce its intrastate access revenues by approximately \$76.8 million to reduce its intrastate access rate to parity. Please explain how you calculated this amount.  
(8009-03) (redacted version of 8008-03)

Please describe the rate elements the company will adjust to effectuate the

---

<sup>1</sup> To the extent the record on appeal contains documents that were filed solely for the purpose of obtaining confidential classification and were neither considered nor relied upon by the Commission or Staff in rendering the final decision that is the subject of this appeal, the confidential status of such documents may need to be analyzed separately from documents that were introduced as evidence before the Commission. Unfortunately, Verizon's blanket motion draws no distinction between any documents filed with the Commission. The burden is on Verizon to identify specifically any documents as to which it claims exemption from the Public Records Act and set forth the facts and law supporting the claimed exemption.

\$76.8 million reduction. (*Id.*)

What results did you obtain from your average bill analysis? (12271-03)  
(redacted version of 11654-03)

Will all residential and business customers experience a reduction in their long distance bills? If not, which residential and business customers will and will not experience a reduction in their long distance bills? (11663-03) (redacted version of 11662-03)

(Cited documents attached as Composite Exhibit 2). With respect to at least one document for which Verizon sought and obtained confidential classification, pertaining to its 911 databases, Verizon conceded that the document did not constitute confidential information. Verizon nevertheless designated it as confidential “out of an abundance of caution to stave off claims that the unredacted use of this data is somehow improper.” (8007-03 Ex. C; 12061-03 Ex. C) (Composite Exhibit 3).

#### Discussion

Article I, Section 24 of the Florida Constitution establishes the organic law governing access to public records:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder . . . and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

This Court’s rules implement the constitutional policy of access. *In Re: Amendments to the Florida Rules of Judicial Administration - Public Access to Judicial Records*, 608 So. 2d 472 (Fla. 1992). They command that the public shall have access to all records of the judicial branch, with limited

exceptions. Fla. R. Jud. Admin. 2.051(a). “Records of the judicial branch” include transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and all records or tapes of court proceedings. Fla. R. Jud. Admin. 2.051(b)(1). Any documents transmitted by the Clerk of the PSC to this Court as part of the record on appeal are “records of the judicial branch.” Fla. R. App. P. 9.190, 9.200.

Verizon’s Motion for Protective Order does not cite any provision of the Florida Rules of Judicial Administration which supports a public records exemption for the documents in question. Verizon does not assert, for instance, that it is necessary to keep the documents confidential to protect a “trade secret” and therefore the documents are within the scope of Rule 2.051(9)(A)(ii). It is unlikely that Verizon would be able to make the required showing for trade secret protection under this subparagraph, as the statutory definition of a trade secret is substantially narrower than the definition for confidential information produced to the PSC. *Compare* § 688.002(4), Fla. Stat. (2003) *with* § 364.183(3), Fla. Stat. (2003).

Instead, Verizon relies solely upon the fact that the PSC deemed the documents exempt from the Public Records Act under section 364.183, Florida Statutes (2003).<sup>2</sup> That statute creates two limited public records exemptions for PSC proceedings. The only possible relevance this statute could have to proceedings in this Court is through Florida Rule of Judicial Administration 2.051(c)(7), which exempts from the public record documents that are made confidential under Florida law. Section 364.183, however, does not make any documents confidential during appellate review by this Court.

Section 364.183(1) creates a public records exemption which directly parallels the access it grants the PSC “to all records of a telecommunications company that are reasonably necessary for the disposition

---

<sup>2</sup> Verizon’s motion incorrectly cites section 364.183(3) which does not create any sort of an exemption. It only defines “proprietary confidential business information.”

of matters within the commission's jurisdiction." Records that the PSC demanded access to under the authority of Section 364.183(1) are not at issue before this Court. The record before this Court is one Verizon and the other parties created. Many of the documents Verizon wants to keep secret contain testimony and exhibits Verizon and its fellow telephone companies voluntarily put into evidence to support their argument for a rate increase.

Section 364.183(2) creates a similar exemption co-extensive with the discovery rights it creates. Subsection (2) permits the PSC to find records provided pursuant to discovery requests are "proprietary confidential business information" and exempt from the Public Records Act. It provides for the return of those records at the end of the case unless they are entered into the official record of the proceeding. This Court is, of course, will make its decision based upon the official record of the proceeding. The materials that may have once been discovery material are now evidence.

Nothing in section 364.183 indicates that its exemptions extend beyond documents produced in PSC proceedings to documents entered into evidence and reviewed by a judicial tribunal on appeal. Verizon takes a statute that might reasonably and narrowly be construed to apply to documents that the PSC requires a telephone company to produce or that are produced in discovery and construes it to apply to documents offered into evidence. It expands the statute by seeking to apply it to testimony of Verizon's own witnesses placed in the record to advance Verizon's cause. Verizon created and solicited the testimony and the exhibits for the hearing. The PSC did not demand access to them. They are not pre-existing documents produced in discovery.

Verizon is trying to metamorphose an exemption in a limited context for one purpose into an exemption for all contexts and all purposes. The exemption of section 364.183 serves to compensate for

the fact that telephone companies are required to give the PSC complete access to all their data and to provide discovery to third parties in PSC proceedings. This purpose does not justify transforming the exemption into authority to seal the appellate record upon which this Court will render its ultimate decision.

Any statute or rule creating an exemption to the Public Records Act must be narrowly construed in favor of openness. *See Halifax Hospital Medical Center v. News-Journal Corp.*, 747 So. 2d 567, 569 (Fla. 1999); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994); *Miami Herald Publ'g Co. v. City of North Miami*, 452 So. 2d 572, 573 (Fla. 3d DCA 1984). This is an “exacting constitutional standard . . . of specificity as to stated public necessity and limited breadth to accomplish that purpose . . . .” *Halifax*, 747 So. 2d at 567. Verizon’s attempt to apply section 364.183 beyond the PSC to judicial proceedings is inconsistent with this rule of narrow construction.

#### Effect on Proceedings

Granting confidential status to the documents in question would severely prejudice the Attorney General’s ability to prosecute this appeal as well as the public’s right to access judicial proceedings. In order to effectively present the merits of this case, the Attorney General must be able to refer openly to all materials in the record in both the briefs and during oral argument. If the Attorney General is required to treat the relevant documents as confidential, it will be impossible to do so without sealing all or parts of the briefs from public view and closing the oral argument to the public and press. This violates the principles of public access emphasized in *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 117 (Fla. 1988). Though they are not before the Court as parties, this proceeding directly affects millions of people—nearly every resident of Florida. Affected parties, this Court said in *Barron*, “should have the

opportunity of learning whether they are thus affected, and of protecting themselves accordingly; they have ‘a right to be present for the purpose of hearing what is going on.’” *Id.* Verizon would refuse the citizens of Florida access to the basis for the Court’s decision and ban them from oral argument, the final public hearing on the issues. This result is inimical to the policy of the State of Florida and the precedents of this Court.

Conclusion

The documents that Verizon seeks to seal contain the very factual basis upon which this Court is asked to decide the telephone rates Florida citizens must pay. They are the heart of this case. The rationale for exempting them from the public record when they were before the PSC does not apply to proceedings before this Court. Verizon’s Motion for Protective Order is not supported by any statute or rule and should be denied.

Respectfully submitted,

CHARLES J. CRIST, JR.  
ATTORNEY GENERAL

---

CHRISTOPHER M. KISE  
Solicitor General  
Florida Bar No. 0855545

Lynn C. Hearn  
Deputy Solicitor General  
Florida Bar No. 0123633

Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
(850) 414-3300

