

ORIGINAL

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ocket No. and title: In re: Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and appropriate method for refunding overcharges for collect calls made from inmate pay telephones
 Docket No. 060614-TC

iled on behalf of: Evercom Systems, Inc. d/b/a Correctional Billing Services (Evercom)

umber of pages: 7

ocument attached: Objections to and Motion to Quash in Part or Limit Subpoena Duces Tecum Without Deposition

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and Appropriate method for refunding overcharges For collect calls made from inmate pay telephones

Docket No. 060614-TC

Filed: November 30, 2006

**EVERCOM SYSTEMS, INC. D/B/A CORRECTIONAL BILLING SERVICES
OBJECTIONS TO AND MOTION TO QUASH IN PART OR LIMIT
SUBPOENA DUCES TECUM WITHOUT DEPOSITION**

Evercom Systems, Inc. d/b/a Correctional Billing Services (Evercom), pursuant to rule 1.410(c), Florida Rules of Civil Procedure, and rule 28-106.212, Florida Administrative Code, hereby objects to and moves to quash in part or otherwise limit the Commission Staff subpoena served on Evercom on or about November 3, 2006.¹

1. On October 25, 2006, Commission Staff issued a Subpoena Duces Tecum Without Deposition to Evercom. Evercom received the subpoena on November 3, 2006. It has been mutually agreed that Evercom's response to the subpoena would be provided on December 4, 2006.

2. As a preliminary matter, Evercom states that it is not a party to this docket. The regulated company that is the subject of this investigation is TCG Public Communications, Inc. (TCG). Neither Evercom's filing of this Motion to Quash nor its provision of any documents or responses in regard to the subpoena should be construed as an intervention or appearance either as a party or interested person in connection with this proceeding, or as Evercom's agreement or consent to respond further in connection with this matter.

¹ Staff first attempted to serve a subpoena on Evercom on September 22, 2006, but it was apparently sent to the wrong place.

3. A subpoena must be “properly limited in scope, relevant in purpose, and specific in directive,” in order not to be unduly burdensome.” *Check ‘N Go of Florida, Inc. v. State*, 790 So.2d 454, 460 (Fl. 5th DCA 2001), *quoting, Dean v. State*, 478 So.2d 38, 40 (Fl. 1985). Staff’s subpoena, as currently framed, fails this test. It is Evercom’s understanding that the genesis of this docket and the subpoena to Evercom is related to pay telephone service provided to inmates at Miami-Dade Correctional facilities (Miami-Dade) pursuant to a contract between TCG and Miami-Dade and customer complaints associated with such service from the time period of approximately September 2003 through September 2005. Thus, Evercom objects to the subpoena because, as explained in detail below, it is overly broad and burdensome and requests information that is not relevant to the Commission’s proceeding. The Commission should modify the subpoena as outlined in this motion.²

4. For each of the requests sent to Evercom, Staff has requested a response for “the time period January 1999 and ending August 31, 2006.” The time frame of the requests, covering over 7 ½ years, is overly broad and burdensome. Further, the requests seek information for time periods not relevant to this proceeding and such requests are not reasonably calculated to lead to the discovery of admissible evidence. The time period for any requests should be for no longer than the last three (3) years.

In addition, Evercom is a large corporation with employees located in many different locations in Florida and in other states. In the course of its business, Evercom creates many documents. These documents are kept in numerous locations that are frequently moved from site to site as employees change jobs or as the business is

² Rule 1.410(c), Florida Rules of Civil Procedure, provides that a subpoena may be quashed or modified if it is unreasonable and oppressive.

reorganized. Therefore, it is possible that not every document has been identified in response to the requests. Evercom has made its best efforts to diligently search its files for the requested information (as limited by Evercom's Motion to Quash). To the extent the subpoena purports to require more, Evercom objects as such request would impose an undue burden and expense on Evercom. Further, Evercom objects to any requests which seek "any and all documents" as overly broad and burdensome.

5. Request No. 1 seeks: "Any and all requests and correspondence regarding telephone equipment sensitivity settings for the correctional facilities served by TCG in the state of Florida."³ This request is overly broad and burdensome as it seeks information for facilities other than those under the jurisdiction of the Miami-Dade County Correctional Department, which is the subject of this docket. This request also seeks information irrelevant to the Commission's investigation and not reasonably calculated to lead to the discovery of admissible evidence. The subpoena should be limited to documents related only to facilities under the jurisdiction of the Miami-Dade County Correctional Department and limited in time as discussed above.

Without waiving and subject to the foregoing limitations, Evercom will provide, pursuant to the Commission's confidentiality procedures, responsive documents, to the extent any exist, for the Miami-Dade County facilities on the agreed upon due date.

6. Request No. 2 seeks: "Any records of modifications and changes to sensitivity levels for the telephone equipment for the correctional facilities served by TCG in the state of Florida." This request is overly broad and burdensome as it seeks information for facilities other than those under the jurisdiction of the Miami-Dade

³ Evercom will not reiterate its objection to the time frame of the information requested in each separate request, but rather incorporates it by reference as to all the requests.

County Correctional Department, which is the subject of this docket. This request also seeks information irrelevant to the investigation and not reasonably calculated to lead to the discovery of admissible evidence. The subpoena should be limited to documents related only to facilities under the jurisdiction of the Miami-Dade County Correctional Department and limited in time as discussed above.

Without waiving and subject to the foregoing limitations, Evercom will provide , pursuant to the Commission's confidentiality procedures, responsive documents, to the extent any exist, for the Miami-Dade County facilities on the agreed upon due date.

7. Request No. 3 seeks: "Complete copies of any and all contracts between TCG and Evercom d/b/a Correctional Billing Services governing work performed for TCG by Evercom d/b/a Correctional Billing Services." This request is overly broad and burdensome as it seeks information for facilities other than those under the jurisdiction of the Miami-Dade County Correctional Department, which is the subject of this docket. It is further overly broad and burdensome as it seeks information unrelated to inmate pay telephone services provided to the Miami-Dade County Correctional Department, which is the subject of this docket. In addition, this request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence because the contract addresses many matters outside of the jurisdiction of the Commission and outside of the investigation in this docket.

Without waiving and subject to the foregoing limitations, Evercom will provide, pursuant to the Commission's confidentiality procedures, responsive documents, to the extent any exist, for the Miami-Dade County facilities on the agreed upon due date.

8. Request No. 4 states: "Please provide the information below for calls that terminated and another call was completed to the same telephone number within 10 minutes for correctional facilities, identified by month and location, served by TCG in the state of Florida.

- (a) LOCAL – Number of calls
- (b) Intrastate – Number of calls and minutes"

This request is overly broad and burdensome as it seeks information for facilities other than those under the jurisdiction of the Miami-Dade County Correctional Department, which is the subject of this docket. It is further overbroad as it seeks information for "terminated" calls. Most terminated calls are the result of one of the parties to the call hanging up. To the extent the Commission is seeking to investigate calls where a call was allegedly terminated due to a sensitivity setting of the custom calling detection system, the request for *all* terminated calls is vastly overbroad. Further, this request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving and subject to the foregoing limitations, Evercom will provide, pursuant to the Commission's confidentiality procedures, responsive documents, to the extent any exist, for the Miami-Dade County facilities on the agreed upon due date.

9. Finally, on October 18, 2006, TCG filed a Motion to Quash, or in the Alternative, to Limit, to Require a Copy, and to Issue a Temporary Protective Order for the Staff Subpoena to Evercom. Apparently, TCG received a copy of the initial subpoena to Evercom, dated September 22, 2006, which Evercom never received and which was reissued. In its Motion, TCG seeks to have the Commission require Evercom to provide

TCG with its responses to the Staff subpoena and to have the Commission keep the information confidential. TCG further asserts that data responsive to the subpoena "is in whole or in part TCG's data." Evercom is researching the issue of to whom the data requested belongs and suggests that such a determination is outside the Commission's jurisdiction and further unnecessary to a resolution of the issues surrounding the subpoena. Evercom will endeavor to work cooperatively with TCG to protect the confidential nature of any information provided pursuant to the subpoena and will provide information produced in response to the subpoena to TCG under an appropriate protective agreement or other process to protect the information's confidentiality.

WHEREFORE, Evercom requests that the Commission enter an order quashing and / or modifying the subpoena as set forth above.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Quash was furnished by electronic mail and U.S. Mail this 30th day of November, 2006 to:

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