

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of tariff filing (T-060052) by
Verizon Florida Inc. to establish permanent
promotional offering.

DOCKET NO. 060292-TL
ORDER NO. PSC-06-0390-PAA-TL
ISSUED: May 10, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER
ALLOWING TARIFF TO REMAIN IN EFFECT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Introduction

On January 27, 2006, Verizon Florida Inc. (Verizon) filed to establish a permanent promotional tariff offering (T-060052). We have jurisdiction to review this tariff under Section 364.051, Florida Statutes.¹

Tariff filings by price regulated local exchange companies such as Verizon are presumptively valid, and non-basic service filings (which would include this type of tariff) go into effect on 15 days' notice pursuant to Section 364.051(5)(a). If there are issues regarding the legality of a tariff, we consider and determine whether the tariff should remain in effect or be canceled.

We review this tariff because it includes provisions for variable benefits to customers. This is a departure from traditional approaches and raises potential legal and policy issues. Primarily, we must ensure that both as proposed and as applied the tariff does not result in undue discrimination among similarly situated customers or below-cost pricing.

¹ All statutory references in this Order are to Florida Statutes 2005.

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The Tariff Offering

Verizon designed its permanent promotional tariff offering primarily as a retention strategy to address a high rate of residential access line loss, especially to the incumbent cable company. The Verizon product manager will develop and activate each promotion, with only one promotion available at any one time. The promotion will be offered if a residential customer calls Verizon to disconnect service and explains he/she is accepting an offer from a competing company. Each promotional offer will not exceed 90 days in duration and will be available for resale to CLECs at no discount, in keeping with the FCC's determination that "promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers." (FCC 96-325, ¶ 950)

Under this permanent promotional tariff, Verizon will offer qualifying callers a one-time benefit, with no change in tariffed rates. The promotional benefit is described in the tariff as "including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services." The tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed \$55 in any calendar year."

Verizon says that service representatives will have specific decision criteria that must be followed before offering each promotion. Only one type of benefit will be offered under any one promotion; however, different valued benefits, such as both \$25 and \$50 gift cards, may be offered under the same promotion. Where different valued benefits are offered, the service representatives will be instructed to offer the lower valued benefit first and only offer the higher valued benefit if necessary. Verizon says also that the service representative's compensation will not be affected in any way by the promotion. For example, compensation will not be affected by the representative's customer retention statistics or the average benefit value provided by the representative.

Legal & Regulatory Analysis

We first consider whether the tariff violates the statutory prohibition against undue discrimination. The basic legal framework for regulating the offerings of Verizon as an incumbent local exchange company is found in Section 364.051. This section was enacted in 1995 and has been amended several times since. Under Section 364.051(5)(a), incumbent local exchange companies are authorized to meet competitive offers, but "shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers."

While different customers may receive different valued benefits under this tariff, these differences do not result from an arbitrary pricing scheme; rather the pricing scheme is designed to allow Verizon to respond rationally to customers who may not be similarly situated in terms of having the same competing offers. Based on current information, we therefore conclude that the tariff does contemplate unreasonable discrimination among similarly situated customers.

We next consider whether the tariff contemplates pricing below incremental cost. After considering the average promotional benefit and the incidence of use, we conclude that the

permanent promotion does cover incremental cost. The proprietary analysis provided to our staff by Verizon considered the residential subscription rates for all vertical services and average intraLATA billable usage, i.e., the typical residential customer profile, and determined a break-even period that was significantly lower than the expected location life. We note that to the extent the permanent promotion is provided to atypical residential customers, with higher spending patterns, the break-even period would be shorter.

Tracking Essential

The above conclusions are based on the tariff *as proposed*. We believe it essential to track Verizon's application of the tariff among similarly situated customers or below-cost pricing, or both. For example, the tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed \$55 in any calendar year." We need to ensure that this limit is not exceeded, as this constraint is key to ensuring that incremental costs are covered. We thus conclude that Verizon must provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006 and January 31, 2007.

We also note that tracking is essential for Verizon as the company will be experimenting to determine the most cost effective ways of retaining customers. Verizon says that it will be tracking results on a monthly basis and monitoring statistics including offers made, offers accepted, and average dollar benefit provided.

Due to the flexible nature of the permanent promotional tariff, our staff identified some issues related to complaint handling, which they discussed with the company and resolved to their satisfaction. We understand that Verizon is willing to provide written notification of each promotion to staff, thereby providing the necessary knowledge for staff to address any customer complaints that may be filed with the Commission. Further, the company has indicated that if a customer states the company promised a higher valued benefit, and the higher valued benefit is available under the promotion, the company will accept the customer's word.

Conclusion

For the reasons stated above, we conclude that Verizon's permanent promotional tariff offering (T-060052) may remain in effect, subject to two requirements.

1. Verizon must provide staff with one-day, advance written notice of each promotional offer made during 2006; and
2. Verizon must provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006 and January 31, 2007.

Based on the foregoing, it is

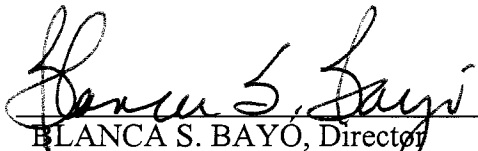
ORDERED by the Florida Public Service Commission that a permanent promotional tariff offering (T-060052) of Verizon Florida Inc. (Verizon) may remain in effect subject to two explicit requirements:

1. Verizon must provide staff with one-day, advance written notice of each promotional offer made during 2006; and
2. Verizon must provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006 and January 31, 2007.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of May, 2006.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

PKW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 31, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.