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November 6, 2001

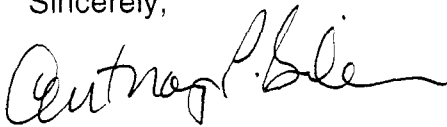
Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 011497-TL
Petition of Verizon Florida Inc. To Revise Customer Contact Protocol

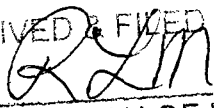
Dear Ms. Bayo:

Please find enclosed for filing Verizon Florida Inc.'s Petition to Revise Customer Contact Protocol. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at (813) 483-2617.

Sincerely,


Kimberly Caswell

KC:tas
Enclosures

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DOCUMENT NUMBER-DATE
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COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc.)
For Approval to Revise Customer)
Contact Protocol)
_____)

Docket No. *011497-TL*
Filed: November 6, 2001

**VERIZON FLORIDA INC.'S PETITION TO REVISE
CUSTOMER CONTACT PROTOCOL**

Verizon Florida Inc. (Verizon) asks the Commission to allow Verizon to revise its customer contact protocol for communicating intraLATA toll choices to new customers, in order to harmonize its intraLATA and interLATA procedures and achieve consistency across the Verizon footprint. This request is consistent with the Commission's order authorizing intraLATA toll competition, in which it stated that "when new customers sign up for service they should be made aware of their options of intraLATA carriers in the same fashion as for interLATA carriers." *Investigation into IntraLATA Presubscription*, Order PSC-95-0203-FOF-TP, 95 FPSC 2:206, at 72-73 (Feb. 13, 1995) (*IntraLATA Presubscription Order*). Competitive conditions in the intraLATA toll market confirm the need to revise the existing, Commission-mandated protocol forbidding Verizon from recommending its intraLATA services to new customers.

I. History of the Commission's Customer Contact Protocol

The genesis of the customer contact restriction at issue was a 1996 ruling on a complaint against BellSouth Telecommunications, Inc. (BellSouth). *Complaint of Florida Interexchange Carriers Ass'n, MCI Telecomm. Corp. and AT&T Comm. Of the Southern States, Inc. Against BellSouth Telecomm., Inc. (BellSouth Complaint Order)*, Order PSC-96-1569-FOF-TP, 96 FPSC 12:459 (Dec. 23, 1996). In that case,

interexchange carriers (IXCs) complained about a number of BellSouth intraLATA marketing practices, including its asserted deviation from interLATA practices in contravention of the *IntraLATA Presubscription Order*. (See *BellSouth Complaint Order* at 7-8.) No complaint about intraLATA marketing abuses was ever filed against Verizon (known then as GTE Florida Incorporated), which had not engaged in similar conduct.

The *BellSouth Complaint Order* imposed a number of restrictions on BellSouth's intraLATA toll marketing. Among these was a set of "competitively neutral" prompts for use in communicating information to new customers about intraLATA choices. Under these prompts, BellSouth would first advise the customers that "due to the newly competitive environment," they have an option of selecting a local toll carrier; it would offer to read the list of available carriers; if the customer declined to hear the list, BellSouth would ask the customer to identify his carrier of choice; if the customer was not sure, BellSouth would again offer to read the list of carriers and encourage the customer to select one; if the customer did not choose a carrier, BellSouth would tell him that he would need to dial an access code to reach an intraLATA carrier on each toll call. (*BellSouth Complaint Order* at 10-11.)

After the Commission issued its *BellSouth Complaint Order*, it launched a generic proceeding to examine whether to impose the BellSouth restrictions on the other ILECs in the state, despite the fact that there was no evidence or even allegations of marketing abuses by these carriers. *Generic Consideration of ILEC Business Office Practices and Tariff Provisions in the Implementation of IntraLATA Presubscription*, Order No. PSC-97-0709-FOF-TP (June 13, 1997) (*Generic Order*). A hearing was held on some issues, but most were resolved by stipulation among the parties. With regard to

communications to new customers. the parties agreed that no action was needed because:

The ILECs assert and the other parties agree not to contest in this proceeding, that their interLATA and intraLATA procedures for communicating information about toll choices are consistent and in compliance with PSC Order No. PSC-95-0203-FOF-TP, which states that 'when new customers sign up for service they should be made aware of their options of intraLATA carriers in the same fashion as for interLATA carriers.' The procedures are the same in that the ILEC asks each customer if he has a choice of carrier. If the customer does not, then the ILEC will read a random list of carriers.

(Order No. PSC-98-0710-FOF-TP, ATT. A, at 2.) (May 22, 1998)

In its *Generic Order*, the Commission also approved Sprint's inclusion of the phrase, "in addition to us," prior to reading the list of intraLATA carriers. (Generic Order at 5.) The Commission later allowed BellSouth to use the same "in addition to us" language in its script advising new customers of their intraLATA choices. *Petition of BellSouth Telecomm., Inc. to Lift Marketing Restrictions Imposed by Order No. PSC-96-1569-FOF-TP*, Order No. PSC-98-1469-FOF-TP (Oct. 28, 1998).

On February 10, 1999, Verizon petitioned the Commission for a declaratory statement that its proposed intraLATA customer contact protocol for new customers complied with the Commission's Order implementing 1+ intraLATA presubscription. Verizon proposed to recommend its own intraLATA service after offering to read the list of competing carriers. On May 11, 1999, the Commission issued a declaratory statement that Verizon's suggested language was inconsistent with the Commission's previous orders on customer contact protocols.

In this Petition, Verizon seeks Commission authorization to recommend its intraLATA service on new customer contacts, while informing the customer that he has

a choice of local toll providers and offering to read the list. Verizon maintains that this approach is consistent with the Commission's Order implementing intraLATA presubscription. However, to the extent the Commission believes Verizon's proposal departs from any later-imposed customer contact policies, then Verizon asks the Commission to allow such limited departure.

II. There Is No Legitimate Reason to Maintain the Restriction.

As noted, the Commission's IntraLATA Presubscription Order mandates that new customers "should be made aware of their options of intraLATA carriers in the same fashion as for interLATA carriers." The Commission has never modified that condition, which was the foundation for the parties' 1998 stipulation not to litigate the issue of whether the Commission should order the non-BellSouth ILECs to put in place the customer contact protocols mandated for BellSouth.

What Verizon asks to do in this case is exactly what the Commission ordered and what it again approved in 1998—use of the same interLATA and intraLATA new customer contact protocols. The FCC has long allowed an ILEC "to recommend its own long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance service and offers to read a list of all available interexchange carriers in random order." *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Op. & Order, FCC 97-418, at para. 237 (Dec. 24, 1997). Under this approach, Verizon tells the customer he has a choice of toll providers, informs him that Verizon provides toll service, and offers to read the list of

other providers if the customer is not sure which company he'd like. This is the approach Verizon follows for communicating interLATA choices to new customers (and for communicating intraLATA choices in other states). It was approved by the FCC in 1997 because it struck the correct balance between equal access obligations and the right to engage in joint marketing. *Id.*

Despite the Commission's instructions to use the same interLATA and intraLATA contact procedures, it has effectively forbidden Verizon to do just that. The customer contact prohibition originated not from anything Verizon had done, but was fashioned in response to *BellSouth's* alleged anticompetitive practices. Again, *the Commission never imposed its "competitively neutral" customer contact protocols on Verizon*, because the parties to the generic proceeding stipulated that there was no need to do so.

In any event, the Commission's intraLATA marketing restrictions were intended to increase customer awareness and allow the interexchange carriers (IXCs) to establish a presence in the intraLATA marketplace. *Petition by GTE Florida Inc. for Declaratory Statement that Its IntraLATA Customer Contact Protocol Complies with Order PSC-95-0203-FOF-TP*, Declaratory Statement, at 5 (May 11, 1999.) If these restrictions were ever necessary—and Verizon maintains they were not for Verizon—then they have certainly outlived their usefulness. Two years ago, the Commission conceded that the intraLATA market was competitive, based on Verizon's showing that it had lost almost 54% of its intraLATA toll PIC-able lines and that 67% of new customers chose an intraLATA carrier other than Verizon. (*See id.* at 6; GTE's Petition for Declaratory Statement, Feb. 10, 1999, at 5.)

Competition has grown even more intense since then. In September of 2001, for example, on all new service orders initiated, 81% of residential customers did NOT choose Verizon for intraLATA service. In addition, as of August, 2001, only 25.8% of total PICable lines were subscribed to Verizon. This has happened in less than 5 years after completion of intraLATA equal access implementation for Verizon. In contrast, it took 15 years after divestiture for AT&T's interLATA market share to reach 40%.

This information proves, beyond any doubt, that the objectives underlying the customer contact restrictions—assuring customer awareness of their intraLATA choices and allowing the IXCs to establish themselves in the intraLATA market—have been fully met. Maintaining such restrictions in a vigorously competitive market can only harm consumers, as they compromise Verizon's ability to provide useful information about rate plans and the like that could benefit customers. The Commission itself has recognized that the restriction "precludes [the ILEC] from explaining fully its products and services." *Petition of BellSouth Telecomm., Inc. to Lift Marketing Restrictions*, Order No. PSC-98-1469-FOF-TP (Oct. 28, 1998).

The customer contact restriction puts Verizon at a competitive disadvantage vis a vis the IXCs--especially the large IXCs, like AT&T and Sprint—which can freely market their services in any manner they choose. These companies are already well known to customers as long-distance toll providers, so they can easily leverage off this familiarity to sell their local toll services.

In addition, because the FCC and other states allow Verizon to recommend its toll services, Verizon must bear administrative costs of maintaining a special protocol for

Florida. Nationwide standardization of its customer contact protocols will help Verizon operate more efficiently, which is in the public interest.

In the *Generic Order* allowing Sprint to use its “in addition to us” language on new customer contacts, the Commission pointed to several factors that distinguished Sprint’s circumstances from those in the BellSouth case. It explained that Sprint had not been the subject of any complaints, that competition in the intraLATA market had “begun to emerge” and that customer awareness and sophistication had increased. (*Generic Order* at 5.)

This reasoning applies with even more force here. Verizon was never the subject of a complaint about anticompetitive intraLATA marketing practices. To the contrary, it voluntarily implemented measures the Commission recognized as pro-competitive, such as one free intraLATA PIC change.

Verizon has scrupulously complied with the Commission’s intraLATA marketing guidelines. It has never even used the “in addition to us” language that Sprint adopted and that BellSouth later began to employ.

Verizon’s reasonable and neutral intraLATA business practices, along with the further competitive evolution of the intraLATA market, justify granting Verizon’s request for incremental movement away from the Commission-mandated contact protocol.

III. The “Gatekeeper” Rationale Is Unjustified.

Verizon does not believe the Commission would dispute the competitive vigor of the intraLATA market. However, the Commission in the past has pointed to the asserted lack of competition in the *local* market to justify maintaining the communication

protocols it adopted years ago. (*Declaratory Statement* at 6.) The Commission's apparent concern is that the ILEC might use its "gatekeeper" position to unduly influence customers' choice of intraLATA carriers. (*BellSouth Petition Order* at 8; *Declaratory Statement* at 6.) Continued reliance on this rationale is unjustified for several reasons.

First, Verizon's proposed customer contact revisions are plainly reasonable and will not improperly influence customers. Verizon will not recommend its own intraLATA service until after telling the customer he has a choice of providers and offering to read the list of available carriers. The customer will thus have a meaningful opportunity to consider a carrier other than Verizon.

Second, the danger of undue influence is, in any event, no longer a valid concern. The potential to unduly influence a customer is a function of his level of awareness. As the Commission recognized in 1998, "as awareness grows, customers will become more informed and thereby seek the necessary information to enable them to make informed decisions." (*BellSouth Petition Order* at 8.) Three years later, it is clear that customers are sophisticated enough to gather the information they need to make informed decisions. With the growth in competition in all sectors of the telecommunications market (particularly the intraLATA market) and ever-present telecommunications advertising, customers are well aware of their options. They do not need special protections against dissemination of truthful information that may well save them money or meet other needs.

Third, as explained above, Verizon has never shown any tendency to engage in unfair intraLATA marketing tactics or even to aggressively interpret the Commission's marketing guidelines.

Fourth, local competition in all forms has increased. The use of wireless technologies has exploded. About 40% of people in the U.S. carry a cell phone. (Tampa Tribune, Oct. 1, 2001, Business and Finance, at 7.) Cellular companies are often also large IXCs, like AT&T and Sprint. The Commission can be sure that these companies market all of their toll services, both intra- and interLATA, when customers contact them to sign up for cellular service.

While wireline residential competition is not as widespread as business competition, it may never be until the ILECs' rates are rationalized to remove implicit subsidies. New entrants target businesses because that's where the profits are; no company will enter the market to lose money, as it likely would by matching the ILECs' below-cost residential rates.

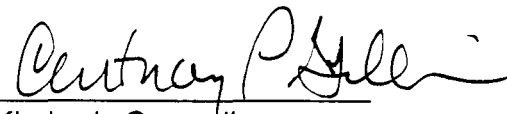
Curbing Verizon's intraLATA marketing will do nothing to promote competition in the local exchange market. It makes no sense to use wireline local competition, rather than intraLATA competition, as the touchstone for deciding whether to eliminate the intraLATA contact restriction. If the Commission follows this misguided theory, Verizon's intraLATA market share could drop to 0% tomorrow and the Commission would still refuse to lift the restriction. The Commission should be very wary of unduly hampering the ILECs' intraLATA toll marketing, as toll revenues have traditionally been a source of contribution to holding down basic local rates.

* * *

In ruling on this Petition, Verizon urges the Commission to consider facts, rather than hypothetical possibilities. The facts show that the intraLATA market is competitive and that Verizon has no special advantage in that market. Indeed, Verizon is at a disadvantage relative to its large and well-established competitors, which are subject to no marketing constraints. The wholly speculative and--based on experience, unlikely--possibility that Verizon might abuse its position as an ILEC is not sufficient reason to maintain the customer contact restriction at issue.

Verizon respectfully requests the Commission to allow Verizon to recommend its own intraLATA services on new customer contacts if the customer does not volunteer a preference and declines to have the list of carriers read to him.

Respectfully submitted on November 6, 2001.


By: 
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Attorney for Verizon Florida Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Verizon Florida Inc.'s Petition to Revise Customer Contact Protocol was sent via overnight delivery on November 5, 2001 to:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



per Kimberly Caswell