

Kimberly Caswell
Vice President and General Counsel, Southeast
Legal Department

RECEIVED-FPSC

02 MAY 10 PM 1:28

COMMISSION
CLERK



FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-2606
Fax 813 204-8870
kimberly.caswell@verizon.com

May 10, 2002

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. 010963-TP
Investigation into telecommunications rate center consolidation in the
State of Florida

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Post-
Workshop Comments for filing in the above matter. If there are any questions
regarding these Comments, please contact me at (813) 483-2617.

Sincerely,

Kimberly Caswell/dm
Kimberly Caswell

KC:tas
Enclosures

c: Staff Counsel (w/e)

AUS _____
DAF _____
DMP *Fordham* _____
COM _____
CTR _____
ECR _____
SCL _____
DPC _____
AMS _____
SEC _____
DTH *Done* _____

Done
5/15/02

RECEIVED & FILED
RKM
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05074 MAY 10 08

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into)
telecommunications rate center)
consolidation in the State of Florida)
_____)

Docket No. 010963-TP
Filed: May 10, 2002

VERIZON FLORIDA INC.'S POST-WORKSHOP COMMENTS

Verizon Florida Inc. (Verizon) hereby files its post-workshop comments on rate center consolidation as a number resource conservation measure.

I. INTRODUCTION

On March 15, 2002, the Florida Public Service Commission (Commission) held a workshop in this docket to address the viability of rate center consolidation as a number conservation strategy. At the conclusion of the workshop, Staff asked the parties to file comments to assist the Commission in its consideration of the difficult problem of number scarcity. Although the scope and content of the comments were left largely to the discretion of those filing, the Commission asked for specific input on the following issues:

- What is the effect of the "utilization threshold" on Florida's competitive market?
- Would an incentive-based program be useful for establishing rate center conservation?
- To offset the costs of implementing rate center consolidation, could the Commission grant an ILEC authority to raise rates for basic local service under Section 364.051(4), Florida Statutes (the "changed circumstances" provision)?

DOCUMENT NUMBER-DATE

05074 MAY 10 02

FPSC-COMMISSION CLERK

II. PROCEDURAL BACKGROUND

Before addressing the above questions, it is useful to provide the context within which the Commission's consideration of rate center consolidation is made. The workshop, as well as the other activities contemplated in the docket, is part of the Commission's continuing efforts to avoid the harsh consequences of an inadequate supply of local telephone numbers. Although the Commission's concern about the dearth of local telephone numbers is long-standing, this docket can be reasonably viewed as the progeny of Docket No. 981444-TP, which was opened on October 28, 1998, to investigate the use and conservation of local telephone numbers. Six months later, in April 1999, the Commission petitioned the Federal Communications Commission (FCC) for the requisite authority to implement various number conservation measures, including rate center consolidation.

The FCC responded favorably to the Commission's petition and initiative. In an Order issued on September 15, 1999, the FCC granted the Commission interim authority to institute thousands-block pooling; reclaim unused and reserved NXX codes; maintain rationing procedures for six months following area code relief; set numbering allocation standards; request number utilization data from all carriers; and implement NXX code sharing. (*Florida Pub. Serv. Comm'n Petition to F.C.C. for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, FCC 99-249 (*Florida Numbering Order*), at para. 38.)

With respect to rate center consolidation, the FCC clarified that: "Rate center consolidation, as it involves matters relating to local calling scopes and local call rating, falls under state utility commissions' rate-making authority." The FCC observed that

because rate center consolidation was already within the state Commission's purview, no FCC action appeared necessary with regard to this aspect of the Commission's petition. (*Florida Numbering Order* at para. 1.) Nevertheless, the FCC granted the Florida Commission's request "for any additional authority it may need to consolidate rate centers" since rate center consolidation could enhance efficient use of numbering resources, over which the FCC has plenary jurisdiction. (*Id.* at para. 38.)

When the Legislature revised Chapter 364 in 1995, it removed the Commission's authority to unilaterally order rate consolidation for price-regulated carriers, such as Verizon. Section 364.385 of the Florida Statutes prohibits the Commission from initiating any new proceedings (after July 1, 1995) to consider requests for "extended area service, routes, or extended calling service." Because rate center consolidation would necessarily involve extension of customers' local calling areas and service, the Commission may not force companies to implement any such consolidation.

The Commission understands this constraint. For example, in Order number PSC-97-0971-FOF-TL, the Commission denied an EAS request submitted by the Hamilton County Board of County Commissioners:

BellSouth and Sprint opted for price regulation, effective January 1, 1996, and January 2, 1996, respectively, in accordance with Section 364.051, Florida Statutes. Pursuant to Section 364.385, Florida Statutes, any requests for EAS or extended calling service (ECS) filed after July 1, 1995, and subsequently implemented in a price-regulated LEC's territory, become a non-basic service. We cannot order a price-regulated LEC to implement a non-basic service; thus we are without jurisdiction to require the price-regulated LECs to implement post-July 1, 1995, request for EAS or ECS.

(Order No. PSC-97-0971-FOF-TL, at 3.)

Thus, the only way the FCC's Florida Numbering Order could give the Commission the authority to compel rate center consolidation is if that Order preempted sections 364.385 and 364.051. There is no indication whatsoever that the FCC intended its Order to supersede those provisions or that it even knew they existed. The Commission's Petition included no discussion of the Commission's authority (or lack of authority) to order rate center consolidation under state law. (See *generally* Petition to FCC for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, April 2, 1999). As such, it was reasonable for the FCC to assume that the Commission already had the requisite state grant of authority.

The FCC made clear that local rates and local calling scopes are *state*, not federal, matters. While the FCC did, almost offhandedly, give the Commission unspecified *additional* authority it might need to implement rate center consolidation in the event the Commission should need it, it did not purport to give it any *different* authority than it already had under state law. Its grant of additional authority was explicitly grounded in the FCC's jurisdiction over "numbering resources," not local calling scopes. It was not intended to and could not alter state law on this matter.

A federal statute or ruling will not be deemed to preempt a state statute "in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc. et al. v. Paul, et al.*, 373 U.S. 132, 142 (1963). There are no such persuasive reasons here. As the FCC itself made clear, it controls numbering resources, not local calling scopes. The FCC cannot delegate a power it

does not have, and Congress has given it no authority to change or establish local calling scopes or local retail rates.

Nevertheless, the limits of the Commission's statutory authority to order rate center consolidation does not mean it must sit on its hands in the face of the number exhaustion, nor does it mean that the Commission must abandon its leadership role in this matter. Rather, it means that the Commission and the parties must work together to find creative ways to address difficult and complex problems within the statutory framework.

III. THE BASIC QUESTION: IS RATE CENTER CONSOLIDATION A VIABLE STRATEGY IN FLORIDA FOR AVOIDING NUMBER EXHAUSTION?

The usefulness and cost-effectiveness of rate center consolidation cannot be established in the abstract, but can only be determined on a case-by-case basis. As a practical matter, rate center consolidation is not the first line of defense against exhaustion of number resources and, as BellSouth's Mr. Greer pointed out at the workshop, rate center consolidation is most useful only at the start of relief for a particular area code. Other conservation techniques are more suited to picking the "low hanging fruit," and this Commission is aggressively and successfully pursuing those techniques. It has, for example, voluntarily implemented thousands-block number pooling ahead of the FCC's schedule, which has accomplished some of the same results that rate center consolidation would have accomplished absent pooling. Verizon encourages the Commission to continue to consider less extreme measures that can and will achieve the same objectives as rate center consolidation.

Rate center consolidation is a major undertaking, as reflected in the September 2000 report of the Rate Center Consolidation Working Group (RCC-WG) (which was established by Staff and the industry here in October 1999, as part of the Florida Number Conservation Steering Committee). The RCC-WG concluded there are only certain area codes where it makes sense to contemplate rate center consolidation: 305/786, 407/321, 561, 727, 813, 904 and 954. The RCC-WG estimated that rate center consolidation could extend the lifespan of the existing numbers in a particular area from 25 to 30 percent—a useful outcome, but certainly not a cure.

Aside from the above-discussed legal constraints, rate center consolidation would cause the incumbent local exchange carriers to incur substantial costs. For example, Verizon estimates that rate center consolidation in the 813 area code will cost it at least \$20 million a year in lost revenues. Verizon could not agree to implement rate center consolidation in the absence of a suitable mechanism to recover all of the costs and revenue losses caused by rate center consolidation.

IV. EFFECTS OF UTILIZATION THRESHOLD ON FLORIDA'S COMPETITIVE MARKET

At this point, the effects of the FCC's utilization threshold on Florida's competitive markets does not appear to be dramatic or widespread. As explained below, however, in certain rate centers, this threshold can put Verizon at a competitive disadvantage.

The Utilization Threshold. The FCC's Numbering Order (00-104, released on March 31, 2000) requires local exchange carriers (LECs) to manage numbering resources at a rate center level. The FCC followed the Numbering Order with its Second Report and Order (00-429, released December 29, 2000) which requires a LEC

to satisfy a number utilization percentage at a rate center level before receiving additional numbering resources. Currently, the utilization percentage – or threshold – is 60%. On June 30, 2002 the threshold will be raised to 65%; over the following two years, the threshold will be increased to 75%.

Effects of the Utilization Threshold. Thresholds are applied to the use of the numbers within the rate center, not within the central office. Consequently, the thresholds will have little impact in rate centers with a single central office. But where a rate center includes multiple central offices, the threshold could frustrate the LEC's ability to satisfy customer demands for numbers. The numbering resources issued to the multiple central offices must be treated as a single resource when the LEC requests additional numbers from the North American Numbering Plan Administrator (NANPA). If there is significant asymmetry in number resource use among the multiple offices, the LEC may not be able to satisfy customer demand out of one of the high-use offices.

As a hypothetical example, consider a rate center with two central offices. If one central office is at 89% utilization and the other central office is at 28% utilization, no numbering resources would be granted to the office with 89% utilization until the composite average of these offices reaches 60%. If a Verizon customer makes a numbering request, such as a specific thousand block of consecutive numbers, it is possible that the office with 89% utilization will not be able to meet the request with existing resources, because the threshold test is applied to the entire rate center, but numbers are exhausted on a central office-by-central office basis.

In this situation, if an ALEC could meet the customer requirements, it would have a competitive advantage over Verizon. In such situations, the FCC has provided a

means for state commissions to intervene on behalf of disadvantaged LECs and order NANPA to release numbers to LECs that have been denied numbering resources. (FCC Order no. 00-104, at para. 123.) While the Florida Commission has developed an expedited process to accommodate such situations, any exception process necessarily increases the time and effort the ILEC must spend to obtain numbering resources, and thus exacerbates any competitive disadvantage. The requisite exception process also places an additional burden on Commission staff to review the submissions and order NANPA to overturn previous number requests that have been denied. Returning to management of numbers at switch level versus a rate center level would eliminate these concerns.

V. INCENTIVE-BASED PROGRAM

The parties have been asked whether an incentive-based program could be used to facilitate rate center consolidation. Based on the report of the RCC-WG, it appears that an incentive-based program is not necessary to promote consolidations where they may be useful.

Broadly speaking, incentive-based programs can be used for both “special missions” and to elicit and then sustain patterns of behavior. Behavioral psychologists are fond of saying there are only two fundamental questions in managing people: (1) how do you get someone to do something, and (2) how do you get him or her to do it again. An incentive-based program can be viewed as management’s answer to those two questions. And whether the program uses the carrot or the stick or both, the incentives are not set unless they are useful to achieving the results desired.

Based on the report of the RCC-WG, no external incentives are needed to achieve rate center consolidation. Rather, what is needed is a determination that the consolidation is necessary, and a method for assuring that those who benefit from the consolidation bear the cost.

If the Commission does, however, determine that further study of an incentive-based program is warranted, a first step would be recognizing that while numbers are treated as a free resource, their unfettered use imposes substantial costs on the public. Our current system encourages tying up local numbers by failing to recognize the costs of so doing. Consequently, those who tie up this valuable public resource are able to avoid bearing the costs they impose on the public. Any incentive-based system would have to address this situation.

VI. CHANGED CIRCUMSTANCES

Verizon is not opposed to implementing rate center consolidation for area code 813 if further analysis indicates this is a cost-effective measure, and if an adequate mechanism is implemented to recover the costs and lost revenues caused by rate center consolidation. Indeed, as a matter of law, the consolidation would have to be done on a keep-whole basis to avoid an unconstitutional taking.

However, because increases in price-regulated carriers' basic rates are constrained by statute (section 364.051), the Commission cannot simply issue an order modifying rates to allow for rate center consolidation. The Commission has thus raised the possibility of using Section 364.051(4), the "changed circumstances" provision, to allow the ILEC to recover its costs.

Section 364.051(4) reads in its entirety as follows:

Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The costs and expenses of any government program or project required in part II shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier-of-last-resort obligations as provided for in part II. The commission shall act upon any such petition within 120 days of its filing.

In this case, the “changed circumstances” justifying the rate increase would be the rate center consolidation. Because no company has yet petitioned for relief under this provision, there is no guidance as to how it might be administered.

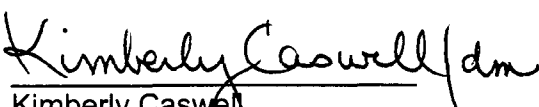
For section 364.051(4) to be useful in the rate center consolidation context, the Commission and the parties must have a common understanding about the scope of the proceeding. In particular, it must be made clear, at the outset, that it would not be a rate case or other type of earnings review, which would be inconsistent with the price regulation scheme the Legislature has established. In order to avoid disagreements and misunderstandings about the nature and scope of the proceeding, the Commission would need to issue an initial order (perhaps a declaratory ruling) stating that the proceeding will be limited to (1) quantifying the costs to the company of the “changed circumstance” (that is, rate center consolidation) and (2) reviewing the ILEC’s proposed adjustments to basic local rates necessary to generate the required additional revenue to offset these costs. Discovery would be strictly limited to just these objectives.

The clarification about the scope of the proceeding would need to occur *before* an ILEC filed a petition under section 364.051(4), so that discovery could be properly

limited to the proceedings' two specified objectives. In addition, establishing the ground rules at the beginning of the proceeding is likely the only way the Commission would be able to comply with the statutory 120-day period for ruling on the changed circumstances petition (section 364.051(4).)

In no event would Verizon undertake rate center consolidation until the recovery mechanism was in place. It would be unreasonable to expect Verizon to agree to implement rate center consolidation, and then merely hope to redress its negative financial impact through a "changed circumstances" petition.

Respectfully submitted on May 10, 2002.

By: 
Kimberly Caswell
P. O. Box 110, FLTC0007
Tampa, Florida 33601
(813) 483-2617 Telephone
(813) 204-8870 Facsimile
Email: kimberly.caswell@verizon.com

Patrick K. Wiggins
Katz, Kutter, Alderman, Bryant & Yon, P.A.
106 East College Avenue, Suite 1200
Tallahassee, Florida 32301
(850) 577-6755 Telephone
(850) 222-0103 Facsimile
Email: pkwiggins@katzlaw.com

Counsel for Verizon Florida Inc.