

ORIGINAL

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September 10, 2003

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

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Re: Docket No. 030867-TL
Petition of Verizon Florida Inc. to Reform Its Intrastate Network Access and Basic
Local Telecommunications Rates in Accordance with Florida Statutes, Section
364.164

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of Verizon Florida Inc.'s
Response to Citizens' Motion to Dismiss in the above matter. Service has been made
as indicated on the Certificate of Service. If there are any questions regarding this filing,
please contact me at 813-483-1256.

Sincerely,

RECEIVED & FILED

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FPSC-BUREAU OF RECORDS

Richard Chapkis

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to Citizens' Motion to Dismiss in Docket No. 030867-TL were sent via electronic mail and hand-delivery(*) or overnight delivery(**) on September 10, 2003 to:

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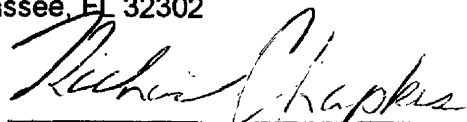
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. to Reform) Docket No. 030867-TL
Its Intrastate Network Access and Basic Local) Filed: September 10, 2003
Telecommunications Rates in Accordance with)
Florida Statutes, Section 364.164)
_____)

**VERIZON FLORIDA INC.'S RESPONSE TO
CITIZENS' MOTION TO DISMISS**

Pursuant to Rule 28-106.204 of the Florida Administrative Code, Verizon Florida Inc. (Verizon) submits this Response to the Motion to Dismiss filed by the Citizens of Florida (Citizens).

I. INTRODUCTION

1. The Florida Public Service Commission (Commission) should deny Citizens' Motion to Dismiss because it misconstrues Section 364.164. That section allows Verizon to make one set of revenue neutral rate adjustments during the first 12-month period after its petition is granted, and a final set of revenue neutral adjustments during the second 12-month period. It does not, as Citizens contends, require Verizon to wait until the third 12-month period to make its final set of revenue neutral adjustments.

2. Moreover, the Commission should deny Citizens' Motion to Dismiss because it is procedurally inappropriate in that it seeks a determination on a substantive matter that will be made in the final order. Section 364.164(1) provides that the Commission shall "consider" four criteria in reaching its decision on Verizon's Petition. Whether Verizon's Petition requires intrastate switched network access rate reductions to parity over a period of not less than two years or more than four years is just one of the four criteria. The

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Commission should weigh the relative importance of each of the four criteria and evaluate Verizon's case as a whole before deciding on its Petition.

II. DISCUSSION

A. Legal Standard For A Motion To Dismiss

3. A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the petition to be true and determine whether the petition states a cause of action upon which relief may be granted. Heekin v. Florida Power & Light Co., Order No. PSC-99-1054-FOF-EI, 1999 WL 521480 *2 (citing Varnes, 624 So. 2d at 350). All reasonable inferences drawn from the petition must be made in favor of the petitioner. Id. Further, in order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the matter. Id.

4. As discussed below, applying this standard to the instant case, it is clear that Citizens' Motion to Dismiss must be denied.

B. Citizens' Motion to Dismiss Misconstrues Section 364.164

5. Citizens contends that Verizon must wait until the third year after its Petition is granted to make its final set of revenue neutral adjustments. This contention is flatly incorrect.

6. Section 364.164(1)(c) provides that the Commission shall consider whether granting a rate rebalancing petition "will require intrastate switched network access rate

reductions to parity over a period of not less than 2 years or more than 4 years.” Section 364.164(2) gives meaning to the phrase “not less than 2 years.” That subsection provides that “[t]he local exchange company . . . shall . . . adjust the various prices and rates . . . **once in any 12-month period.**” (Emphasis added). In other words, Verizon is entitled to make one set of annual rate adjustments during the first year, and a second set of annual rate adjustments during the second year, but cannot make both sets of rate adjustments before the commencement of the second year. The phrase “not less than two years” is therefore properly read to mean “not less than two annual adjustments.”

7. Other provisions in Section 364.164 show that the Legislature contemplated that Verizon would make “annual” or one-year adjustments. Section 364.164(2) provides that “[a]ll **annual** rate adjustments within the revenue category established pursuant to this section must be implemented simultaneously and must be revenue neutral.” (Emphasis added). In addition, Section 364.164(3) provides that “[a]ny discovery or information requests under this section must be limited to a verification of historical pricing units necessary to fulfill the commission’s specific responsibilities under this section of ensuring that the company’s rate adjustments make the revenue category revenue neutral **for each annual filing.**” (Emphasis added). Accordingly, the Legislature intended that Verizon would make at least two annual filings – one in the first year and another in the second year.

8. The overall legislative scheme also demonstrates that the Legislature contemplated that Verizon would make a minimum of two annual adjustments. The rate changes that are the subject of the two-year limitation in Section 364.164(1)(c) must be

revenue neutral. See Section 364.164(2). If a rate change is made in the beginning of a year, revenue neutrality is not achieved until the end of that year.¹ Therefore, if Verizon were required to make its final adjustment at the beginning of the third year, as Citizens urges, Verizon would not achieve revenue neutrality until the end of the third year – a full year after the two-year minimum timeframe conceived of by the Legislature.

9. In an effort to prop up the current inefficient rate regime, which distorts competition and harms ratepayers, Citizens ignores Sections 364.164(2) and (3) and the overall legislative scheme. Instead, Citizens relies on a dictionary definition of a “year” in an attempt to manufacture a result that deviates from the Legislature’s intent. Citizens’ reliance on a dictionary definition is misplaced, however, given that Section 364.164 itself imbues the phrase “not less than two years” with the meaning “not less than two annual adjustments.”

10. In light of the foregoing, Citizens’ Motion to Dismiss should be denied because it relies on a fundamental misinterpretation of Section 364.164(1)(c).

C. Citizens’ Motion to Dismiss Is Procedurally Inappropriate

11. Even if the Commission determines that it should consider Public Counsel’s issue – despite the clear language of the statute to the contrary – the Commission should not dismiss Verizon’s Petition. As stated above, the “two year” criterion relied on by Citizens is just one of four criteria to be considered by the


¹ This is because there are differences in demand for basic local and intrastate access services over the course of the year. In recognition of this fact, the legislation bases the test for revenue neutrality on the most recent twelve-months billing units.

Commission when it makes its final substantive decision. If the Commission were to grant Citizens' Motion, it would be prejudging the entire case before it had (1) heard Verizon's case addressing this criterion and (2) fully examined all of the other criteria. As such, it is not the proper subject of a motion to dismiss.

III. CONCLUSION

12. For the foregoing reasons, the Commission should dismiss Citizens' motion to dismiss.

Respectfully submitted on September 10, 2003.

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