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December 1, 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

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 the Attorney General's Motion for Summary Final Order 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,

A handwritten signature in cursive script that reads "Richard A. Chapkis".

Richard A. Chapkis

APG:tas
Enclosures

DOCUMENT NUMBER-DATE

12146 DEC-18

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to the Attorney General's Motion for Summary Final Order in Docket No. 030867-TL were sent via electronic mail and overnight delivery on December 1, 2003 to:

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Richard Chapkis

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. to Reform)
Its Intrastate Network Access and Basic Local)
Telecommunications Rates in Accordance with)
Florida Statutes, Section 364.164)
_____)

Docket No. 030867-TL
Filed: December 1, 2003

**VERIZON FLORIDA INC.'S RESPONSE TO
THE ATTORNEY GENERAL'S MOTION FOR SUMMARY FINAL ORDER**

Pursuant to Rule 28-106.204(4), Florida Administrative Code, Verizon Florida Inc. (Verizon) submits this Response to the Attorney General's Motion for Summary Final Order (Motion).

I. INTRODUCTION

1. The Florida Public Service Commission (Commission) should deny the Attorney General's Motion because it fails to demonstrate the absence of genuine issues of material fact. Contrary to the Attorney General's contentions, Verizon has submitted extensive testimony demonstrating that its rate rebalancing plan satisfies the criteria set forth in Section 364.164(1), Florida Statutes.

2. Although it is unclear from the face of the Attorney General's Motion, the Attorney General may have sought a summary final order because of a perceived lack of evidence regarding how, and to what levels, the interexchange carriers (IXCs) will flow through access reductions to ratepayers. This is not a proper basis for a Motion for Summary Order. First, the access flow through issues are not properly considered in rendering a decision on Verizon's rate rebalancing plan. Second, the IXCs have now submitted testimony demonstrating how they plan to fulfill their access flow through requirements.

3. Accordingly, the Commission should afford Verizon its right to a hearing on the merits of its Petition.

II. DISCUSSION

A. Legal Standard Governing A Motion For Summary Final Order

4. A party may move for a final summary order whenever there is no genuine issue as to any material fact,¹ and the Commission may render a summary final order if it “determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists . . .”²

5. The movant bears the burden of demonstrating the absence of a genuine issue of material fact.³ The movant must make its showing “conclusively,” and the Commission “must draw every possible inference in favor of [the respondent].”⁴ “If the record reflects the existence of any issue of material fact, possibility of an issue, or even raises the slightest doubt that an issue might exist, summary judgment is improper.”⁵ Even if the facts are undisputed, a single issue regarding the interpretation of the facts may still preclude the Commission from rendering a summary final order.⁶

¹ Rule 28-106.204(4), Florida Administrative Code; Section 120.57(1)(h), Florida Statutes.

² Section 120.57(1)(h), Florida Statutes (emphasis added).

³ In re: Application for Transfer of Facilities and Certificates Nos. 353-W and 309-S, Docket No. 000277-WS, Order No. PSC-01-0360-PAA-WS (February 9, 2001), citing Christian v. Overstreet Paving Co., 679 So. 2d 839 (Fla. 2nd DCA 1996) and Snyder v. Cheezem Dev. Corp., 373 So. 2d 719 (Fla. 2nd DCA 1979).

⁴ Id., citing Moore v. Morris, 475 So. 2d 666, 668 (Fla. 1985), Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. St. DCA 1993), and Wills v. Sears, Roebuck & Co, 351 So. 2d 29 (Fla. 1997).

⁵ Id.

⁶ Id., citing Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475, 479 (Fla. 1st DCA 1983).

6. Because a summary final order brings a “sudden and drastic” conclusion to a proceeding – foreclosing parties from the right and benefit of a hearing on the merits – the Commission must exercise caution and carefully observe the procedural strictures inherent in Florida law when considering whether to render such an order.⁷ This is important because these strictures protect the parties’ constitutional rights to a hearing; they are not merely procedural niceties or technicalities.⁸

7. As demonstrated below, the Attorney General has failed to demonstrate (much less demonstrate conclusively) that there exist no genuine issues of material fact, and thus the Commission must deny the Attorney General’s Motion.

B. The Record Makes Clear That Verizon’s Rate Rebalancing Plan Will Create A More Attractive Competitive Local Exchange Market For The Benefit Of Residential Customers.

8. The Attorney General claims that there are no genuine issues of material fact regarding whether the granting Verizon’s Petition will benefit residential customers. This claim is flatly wrong.

9. The Attorney General’s Motion is premised on Section 364.164(1)(i), Florida Statutes. That section provides that the Commission shall consider whether granting Verizon’s petition “will remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers.”⁹ In other words, the Commission must determine

⁷ Id., citing Coastal Caribbean Corp. v. Rawlings, 361 So. 2d 719, 721 (Fla. 4th DCA 1978) and Page v. Staley, 226 So. 2d 129, 132 (Fla 4th DCA 1969).

⁸ Id.

⁹ Section 364.164(1)(i), Florida Statutes.

whether Verizon's rate rebalancing plan will remove current support for basic local services that prevents increased local competition for the benefit of residential consumers.

10. Contrary to the Attorney General's contentions, Verizon has submitted ample evidence on each of the foregoing issues.

11. First, Verizon has introduced the unbundled network element (UNE) rates established by this Commission in Order No. PSC-02-1574-FOF-TP, issued November 15, 2002, to demonstrate that its basic local services receive support.¹⁰ Verizon has also submitted testimony explaining that the increased basic local rates proposed by Verizon will remove support for those services.¹¹

12. Second, Verizon has demonstrated that reforming rates will promote local competition. More specifically, the Company has submitted testimony showing that prices that more closely reflect underlying costs, such as those proposed in Verizon's rate rebalancing plan, will increase the ability of other providers to profitably offer services at a price equal to or lower than that offered by Verizon, thus making the local exchange market more attractive to competitors.¹² Indeed, Verizon has submitted evidence that, in anticipation of rate reform, AT&T and Knology have already entered the local market.¹³

13. Third, Verizon has demonstrated that the increase in local competition resulting from its plan will benefit residential consumers. Specifically, Verizon has submitted testimony showing that enhanced market entry will benefit residential consumers

¹⁰ Amended Direct Testimony Of Orville D. Fulp On Behalf Of Verizon Florida Inc. at 20:14 – 27:4.

¹¹ Id.

¹² Amended Direct Testimony of Carl R. Danner On Behalf Of Verizon Florida Inc. (Danner Direct) at 5:23 – 10:24.

by encouraging competitors to offer the best prices and the newest and most innovative products.¹⁴ Verizon has also submitted testimony showing that reducing intrastate access rates, as called for in Verizon's plan, will increase consumer welfare by allowing residential customers to make more long distance calls at lower prices.¹⁵

14. In sum, the Attorney General's contention – that there is no issue of material fact regarding whether rate rebalancing will promote competition for the benefit of residential customers – is utterly incorrect. Verizon has submitted substantial evidence demonstrating that its plan meets each of the criteria of Section 364.164(1). Accordingly, the Attorney General's Motion must be denied.

C. The Access Flow Through Issues Are Not Properly Considered In This Proceeding

15. The Attorney General's Motion fails to provide any basis for the claim that there are no genuine issues of material fact regarding whether Verizon's rate rebalancing plan will benefit residential customers. The Attorney General may have made this claim because of a perceived lack of evidence regarding how the interexchange carriers (IXCs) will flow through access reductions to ratepayers. If the Attorney General relied on the access flow through issues to meet its burden of proof, however, he did so in error.

16. First, the Commission has recognized that it is not necessary to consider the IXC flow through issues to render a decision on Verizon's Petition. Specifically, in the

¹³ Rebuttal Testimony of Carl R. Danner On Behalf of Verizon Florida Inc. at 38:22-24. Also Danner Direct at 14:5-15:3.

¹⁴ Danner Direct at 11:17-13:22.

¹⁵ Id. at 16:11-14; 12:3-10.

Order Denying AARP's Motion to Dismiss, Order No. PSC-03-1331-FOF-TL, the Commission ruled that:

[T]he relevant market for use in making the final determination on the Petitions is the local exchange market. Thus, we find that, for purposes of Section 364.164, Florida Statutes, consideration of the impact on the toll market (and resulting impact on toll customers) is not required for the Commission's full and complete determination of the Petitions.

(Emphasis in original; footnote omitted).¹⁶

17. Second, as explained more fully in the ILECs' Joint Motion for Reconsideration or Clarification of the Prehearing Officer's Second Procedural Order, these issues are not properly considered when rendering a decision on Verizon's Petition.¹⁷

18. The instant proceeding is governed by section 364.164, Florida Statutes. That section defines and limits the scope of issues to be considered when deciding on the Company's rate rebalancing plan:

- (1) . . . In reaching its decision, the commission shall consider whether granting the petition will:
 - (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers,
 - (b) Induce enhanced market entry,
 - (c) Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years.

¹⁶ The footnote to the foregoing passage states that the Commission does not find that it is precluded from considering the impact on the toll market, only that it is not required to do so.

¹⁷ Joint Motion of Verizon Florida, Inc., Sprint-Florida, Inc., and BellSouth Telecommunications, Inc. for Reconsideration or Clarification of the Prehearing Officer's Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues, and Filing Dates, filed in Docket Nos. 030961-TI, 030867-TL, 030868-TL and 030869-TL, filed on November 20, 2003.

- (d) Be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2).

(Emphasis added).

19. Section 364.163(2), Florida Statutes, governs Docket 030961 (i.e., the proceeding to determine how, and to what levels, the IXCs shall be required to reduce their intrastate toll rates). That statute requires the IXCs to: (1) reduce their long distance revenues by the amount their switched access charges are reduced under Section 364.164(1); (2) reduce intrastate rates in a manner benefiting both residential and business customers; and (3) eliminate any in-state connection fee by July 1, 2006. Thus, to the extent IXCs' switched access rates are reduced as a result of petitions approved pursuant to Section 364.164(1), those carriers' long distance revenue decreases are governed by Section 364.163(2).

20. Section 364.164(1) does not provide that the Commission may consider how, and to what levels, IXCs may flow through the access rate reductions in rendering a decision. To the contrary, that statute directs the Commission to focus on assuring that the revenue support currently provided to local rates is eliminated to promote local competition for the benefit of residential consumers. Therefore, if the Commission were to consider IXC flow through issues in rendering a decision on Verizon's Petition, it would be exceeding the authority delegated to it by the Legislature. In short, Section 364.164(1) establishes the criteria the Commission may apply in evaluating a petition filed pursuant to that section, and the Commission may not add to those criteria without exceeding its statutory authority.

21. Third, even if it were appropriate to consider the IXC flow through issues in this proceeding, which it is not, the Attorney General's Motion would still have to be denied.

That is because the IXCs have submitted evidence demonstrating that they will flow through the access reductions for the benefit of their residential and business customers, as required by Section 364.163(2).¹⁸ For example, Verizon Long Distance has submitted testimony stating that it plans to flow through the benefits realized from access reductions to both residential and business customers based on the relative proportion of access minutes associated with these classes of customers.¹⁹ Moreover, Verizon Long Distance has identified the rate plans that it currently plans to use to flow through the access reductions.²⁰ The testimony filed by Verizon and the other IXCs erases any doubt that residential customers will not see the access reductions that will accrue from adopting the ILECs' rate rebalancing plans.

22. Accordingly, the Attorney General's reliance (if any) on the access flow through issues is misplaced.

¹⁸ It bears mention that the Attorney General's Motion was filed on November 17, 2003 – two days before the IXC's were scheduled to file direct testimony on the IXC flow through issues.

¹⁹ Direct Testimony of John Broten On Behalf Of Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, and Verizon Select Services Inc. at 5:12-20.

²⁰ Id. at 6:12-17.

III. CONCLUSION

23. For the foregoing reasons, the Commission should deny the Attorney General's Motion for Summary Final Order.

Respectfully submitted on December 1, 2003.

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