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June 25, 2004 – *VIA ELECTRONIC MAIL*

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.
Verizon Florida Inc.'s Petition and Complaint Regarding Customer Transfer
Charges Imposed By TCG South Florida

Dear Ms. Bayo:

Enclosed for filing is Verizon Florida Inc.'s Petition and Complaint Regarding Customer Transfer Charges Imposed By TCG South Florida. 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,

/s/ Richard A. Chapkis

Richard A. Chapkis

RAC:tas

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Petition and Complaint Regarding Customer Transfer Charges Imposed By TCG South Florida were sent via overnight delivery on June 25, 2004 to:

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

Tracy W. Hatch
AT&T Communications
101 N. Monroe Street, Suite 700
Tallahassee, FL 32302

Lisa A. Sapper
TCG South Florida
1200 Peachtree Street, N.E., Suite 8026
Atlanta, GA 30309-3579

s/ Richard A. Chapkis

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Verizon Florida Inc.'s Petition and)
Complaint Regarding Customer Transfer)
Charges Imposed by TCG South Florida)
_____)

Docket No.
Filed: June 25, 2004

PETITION AND COMPLAINT

RICHARD A. CHAPKIS
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FLTC0717
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(813) 483-1256
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Pursuant to Rules 25-22.036 and 28-106.201, Florida Administrative Code, Verizon Florida Inc. (Verizon) files this petition and complaint regarding the customer transfer charge tariff filed by TCG South Florida (TCG).¹

I. INTRODUCTION

1. TCG's local tariff purports to impose "customer transfer charges" that "apply when a TCG local customer served by a TCG switch is transferred from TCG to an Incumbent Local Exchange Carrier (ILEC) or to a Competitive Local Exchange Carrier . . ." ² These winback charges are nothing less than a tax on carriers who successfully compete with TCG, and a barrier in the path of end-user customers who wish to switch carriers. As such, these charges are unfair and anticompetitive, and should be stricken as unlawful under sections 334.337(5) and 364.01(g), Florida Statutes.

2. In other jurisdictions, TCG has sought to justify these winback charges on the grounds that they are comparable or equal to Verizon's hot cut charge. The Commission should not be misled by this erroneous argument. Verizon's hot cut rate is a connection charge incurred as a result of a CLEC's wholesale request to use a Verizon unbundled loop to serve a customer. Because Verizon does not serve its retail customers using TCG's network, Verizon neither uses TCG's facilities, nor requests a

¹ Last year, Verizon filed a petition and complaint regarding customer transfer charges imposed by TCG South Florida, which it later withdrew. Since Verizon withdrew its complaint, certain TCG affiliates in other jurisdictions have agreed to withdraw, and have withdrawn, customer transfer charge tariffs similar to the tariff at issue here. However, TCG has refused to withdraw its customer transfer charge tariff in Florida, so Verizon is refiling its petition and complaint.

² TCG South Florida, Local Tariff, Section 3.8. A copy of TCG's "customer transfer charge" tariff, filed on July 24, 2003, is attached hereto as Exhibit A.

hot cut (or any other rearrangement of TCG's network) when it wins a TCG customer. There is simply no wholesale service that Verizon requests or that TCG performs for Verizon in connection with such a customer transfer. Thus, to the extent that there are any network or administrative costs that TCG incurs in connection with the loss of its retail customer, such costs are properly assigned to its retail business, and do not provide an appropriate basis for a wholesale charge. Thus, there is absolutely no wholesale basis for TCG to charge Verizon for the mere "transfer" of a customer.

3. Other state commissions have determined that similar CLEC customer transfer charges should either be eliminated entirely or recovered through retail rates, and this Commission should make the same determination here. In a case brought by Verizon New York regarding an AT&T affiliate's "customer transfer charge," the New York Public Service Commission held that "[t]he coordination of discontinuing billing is clearly a retail function" and ordered that the tariff be withdrawn.³ Similarly, the Pennsylvania Public Utility Commission, on its own motion, found that the winback charge of another AT&T affiliate, TCG Delaware Valley, Inc., was not comparable to Verizon Pennsylvania's hot cut charge. The Pennsylvania PUC gave TCG the choice of either withdrawing the tariff or facing a commission investigation into its basis.⁴ TCG

³ *Complaint of Verizon New York Inc. Concerning Customer Transfer Charges Imposed by TC Systems, Inc.*, Order Granting Verizon's Petition and Complaint (Feb. 13, 2004), at 5. A copy of this Order is attached hereto as Exhibit B.

⁴ *See Pennsylvania Public Utility Commission v. TCG Delaware Valley, Inc.*, Order, Docket No. R-00027928 (entered Dec. 20, 2002) at 2-3. A copy of this Order is attached hereto as Exhibit C.

promptly withdrew the tariff.⁵ The Virginia State Corporation Commission would not even accept Cavalier Telephone's customer transfer charge tariff for filing, stating "that it was not clear as to whom these charges will be billed, the subscriber or the UNE Loop provider [and that] if they apply to the loop supplier then such charges should be in the appropriate interconnection agreement, **not the CLEC tariff.**"⁶

4. For the foregoing reasons, Verizon respectfully requests that the Commission: (1) immediately suspend TCG's customer transfer charge tariff; (2) commence an investigation into the tariff; and (3) after completion of the investigation and any proceedings related thereto, strike the tariff as unfair and anticompetitive in violation of sections 334.337(5) and 364.01(g), Florida Statutes.

II. PARTIES

5. Complainant, Verizon, is an incumbent local exchange carrier that is authorized by the Commission to provide, and that does provide, telecommunications service in the state of Florida. All notices and correspondence regarding this Complaint should be sent to:

⁵ In fact, CLECs generally have withdrawn customer transfer charges from their tariffs once challenges have been filed against these charges. In Delaware, TCG Delaware Valley recently withdrew a similar "customer transfer charge tariff", after Verizon filed a complaint against that tariff. See *Complaint of Verizon Delaware Inc. Concerning Customer Transfer Charges Imposed By TCG Delaware Valley, Inc.*, PSC Docket No. 02-389T. As a result of a Complaint filed by Verizon's affiliates in Massachusetts and Rhode Island, on April 7, 2004 AT&T amended its tariffs in those states by removing what it characterized as "Customer Transfer Charges." Similarly, after Verizon's April 16, 2004 complaint against an Allegiance Telecommunications of Massachusetts ("Allegiance") tariff containing a "Customer Transfer Charge" that purported to charge carriers when customers transferred service to another carrier, Allegiance withdrew the "Customer Transfer Charge" from its tariff on May 26, 2004.

⁶ Letter of Garland Hines, Senior Telecommunications Specialist, Virginia SCC, to Martin Clift, Jr., Vice President - Regulatory Affairs, Cavalier Telephone LLC, dated January 27, 2003 (emphasis added). A copy of this letter is attached hereto as Exhibit D.

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6. Respondent, TCG, is a subsidiary of AT&T Corporation. TCG is a local exchange carrier that provides telecommunications service in the state of Florida. Upon information and belief, TCG is represented by:

Tracy W. Hatch
101 N. Monroe Street
Suite 700
Tallahassee, FL 32302
Tel: (850) 425-6360
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III. BACKGROUND

7. On November 13, 2002, TCG amended its local tariff to include customer transfer charges. TCG revised its customer transfer charge tariff on July 24, 2003.

8. Section 3.8.1 of the tariff describes “customer transfer charges” as charges that apply

when a TCG local customer served by a TCG switch is transferred from TCG to an Incumbent Local Exchange Carrier (ILEC) or to a Competitive Local Exchange Carrier (CLEC) that imposes charges similar to those imposed by the ILEC for activities related to customer migration between carriers. A Customer Transfer Charge may also apply to non-standard requests for migration of a customer between TCG and a CLEC. Payment of these charges is the responsibility of the ILEC or CLEC, to which the customer’s service is being migrated.

9. Section 5.12 of the tariff, under a heading entitled “Rates and Charges,” states that, for orders requesting the transfer of less than 100 telephone numbers or less than 100 DS-0 equivalents, the customer transfer charge is \$87.25 per DS-0 facility and \$49.00 for expedited service.⁷ For DS-1 facilities, the customer transfer charge is \$750.00 for the first facility and \$300.00 for each additional facility, and the expedite charge for DS-1 facilities is \$600.00 for the first facility.

10. In addition to these charges, the tariff imposes a “supplemental charge” of \$1.65 per transfer request – presumably, this charge would be incurred when a transfer request is changed (for example, when a customer changes a service due date) – plus another charge of \$1.65 if the request is canceled.

11. The tariff implies erroneously that the foregoing customer transfer charges are for a service that is equivalent to Verizon’s hot cut service. For example, section 5.12.a of the tariff states, “Customer Transfer Charges apply per each DS-0 and DS-1 facility, **and will be equal to the New Service Request special access or UNE-loop charges applied by the dominant LEC**” (emphasis added). Section 5.12.e also refers to “**Reciprocal Pricing.**” And the Rates and Charges Section provides that “[n]otwithstanding any other provision of this tariff, rates and charges in this Section may be increased by [TCG] to an amount equal to the rate charged by the incumbent LEC for similar such activities.”

12. However, as explained in more detail below, the charges levied by TCG are not comparable to Verizon’s hot cut charge because Verizon does not use TCG’s

⁷ As originally filed, TCG’s “expedite charge” per DS-0 facility was \$600. On July 24, 2003, TCG reduced the expedite charge to \$49.00 per DS-0 facility.

network in any way when it successfully competes for a TCG customer. Rather, the customer transfer charges imposed by TCG are simply an unprincipled attempt to make it more expensive for ILECs to winback customers from TCG.

IV. TCG'S WINBACK TARIFF IS UNLAWFUL, AND THUS SHOULD BE STRICKEN.

13. TCG's winback tariff is nothing more than an unfair, anti-competitive and retaliatory tax levied by TCG solely as the result of Verizon successfully competing with TCG for its customers. By seeking to impose a fee on customer choice and to erect a barrier to that choice under the guise of a customer transfer charge, this tariff harms end users and distorts competition in violation of Florida law, and thus should be stricken in its entirety.

14. Florida law makes clear that this Commission has the power to strike down anti-consumer and anti-competitive tariffs. Section 334.337(5) expressly states:

The commission shall have continuing regulatory oversight over the provision of basic local exchange telecommunications service provided by a certificated competitive local exchange telecommunications company . . . for purposes of . . . ***ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.*** (Emphasis added)

15. Not only does Florida law give the Commission this power, it makes clear that the Commission must exercise its authority to strike down tariffs that harm consumers and distort competition. More specifically, section 364.01(g), Florida Statutes, provides that the Commission "shall exercise its exclusive jurisdiction" to "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint."

16. The Commission should strike the TCG customer transfer charge as unfair and anti-competitive because TCG does not provide any wholesale service to Verizon, and there is no allowable charge that can be imposed by TCG for the bare act of customer migration. The charges at issue here cannot be justified simply by a showing that Verizon also imposes a hot cut charge in certain circumstances, since the circumstances underlying the application of Verizon's hot cut charge bear no relationship to those surrounding the transfer of a customer from TCG to Verizon.

A. TCG's Customer Transfer Charges Are Not Comparable to Verizon's Hot Cut Charge.

17. TCG's customer transfer charges are not similar to Verizon's hot cut charge, and the purported justification for these charges – set forth both in the tariff and in proceedings filed by Verizon against TCG in other states – is contradicted by the facts.

18. First, Verizon does not have any "customer transfer charges" as such, and does not charge carriers for the mere "transfer" of a Verizon customer to another carrier, as TCG seeks to do here.

19. Second, TCG's customer transfer charges are not comparable to Verizon's hot cut charge, because Verizon and TCG do not perform the same or even similar services when they lose a retail customer to another carrier.

20. When TCG wins a customer from Verizon and requests to serve that customer through an already-working local loop on Verizon's network, Verizon performs a hot cut – at TCG's request – to provision the unbundled loop to the end user's address with minimal interruption of service. The hot cut process involves manually disconnecting the customer's loop in the Verizon central office and reconnecting the

loop at TCG's collocation space (and thus to TCG's network). The process also involves detailed coordination on the part of Verizon to ensure that dial tone is present when the loop is cut over and that the customer's telephone number is transferred to TCG at or shortly after the cut over. Consequently, Verizon's hot cut charge is a non-recurring provisioning charge that is incurred in connection with TCG's request to use a Verizon unbundled loop.

21. In contrast, Verizon does not use, or ask to use, TCG's network in any way when it successfully competes for a TCG customer. Prior to the transfer of the customer to Verizon, the customer is served by an unbundled Verizon loop that is connected to TCG's network. A customer transfer from TCG to Verizon simply requires that the connection between the loop and TCG's network be disconnected, and that a new connection be established between the loop and Verizon's network. The physical work involved in disconnecting and reconnecting the loop is performed *entirely* by Verizon, not by TCG. Therefore, there is no basis for TCG imposing any wholesale charge on Verizon for a customer transfer because TCG is not providing a wholesale service to Verizon.

B. The Tasks That TCG Purports To Undertake Do Not Justify Its Customer Transfer Charges.

22. In the other proceedings brought by Verizon's affiliates against TCG/AT&T Customer Transfer Charges, TCG's affiliates have also sought to defend the charges by identifying a number of "provisioning" tasks they purportedly perform when one of their

customers chooses another carrier.⁸ However, TCG does not undertake any wholesale task, nor does it provide any wholesale service, in releasing a customer to Verizon. Therefore, it cannot justify its attempt to impose a wholesale charge on Verizon for the mere act of a customer transfer.

23. As noted above, the transfer of a customer from TCG to Verizon simply requires that the connection between the loop serving the customer and TCG's network be disconnected, and that a new connection be established between the loop and Verizon's network. Moreover, there is no need for detailed coordination on TCG's part because when the customer is transferred from TCG's network to Verizon's network the new dial tone is being provided by Verizon.

24. The only other step necessary for the transfer of the customer is sending final notification to the Number Portability Administration Center (NPAC) to transfer (port) the customer's telephone number to Verizon. Yet, Verizon is also the carrier that completes this task. In sum, ***all three requirements for the successful establishment of new service*** – physical cut over, dial tone availability and number porting – ***are performed by Verizon.***

25. On the other hand, TCG's role in the transfer process is minimal. It receives the Local Service Request (LSR) from Verizon – which is the notification that the customer has chosen Verizon as its new carrier – and must perform a few ministerial functions to allow Verizon to port the customer's telephone number.

⁸ *Answer of AT&T Communications of New York, Inc., et al.*, New York PSC Case No. 03-C-0636, at 11 (“Provisioning, however, represents a significant proportion of comparable work performed by AT&T . . .”); *Answer of AT&T Communications of New England, Inc. et al.*, Rhode Island PUC Docket No. 3539, at 7 (same).

26. No customer transfer charge can be justified based on the cost of these minor, porting-related functions.

27. Indeed, even if this were not the case, the FCC has made it clear that costs directly related to providing number portability, and the rates to recover these costs, are within its exclusive regulatory jurisdiction.⁹ Therefore, these costs may not be recovered through the tariffed intrastate charges that TCG is attempting to levy here.

28. Finally, while TCG may claim to perform other internal tasks after authorizing the release of the customer's telephone number, these tasks have nothing to do with providing a wholesale service to Verizon. TCG may move, disconnect, or rearrange facilities on its network, as well as issue certain internal notifications to ensure that it will cease providing services and sending bills to its former customer. However, these steps are taken for TCG's benefit and their costs should not be borne by other carriers. Unlike Verizon's hot cut process, the work that TCG may perform on its network is not necessary to give Verizon access to TCG's network elements because Verizon does not use TCG's elements to provide service to customers.

⁹ See *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701 (rel. May 12, 1998), ¶29 ("we conclude that an exclusively federal recovery mechanism for long-term number portability will enable the Commission to satisfy most directly its competitive neutrality mandate, and will minimize the administrative and enforcement difficulties that might arise were jurisdiction over long-term number portability divided."); *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (rel. February 15, 2002), ¶12 ("[W]e affirm our decision in the *Third Report and Order* that we have exclusive jurisdiction over the distribution and recovery of both intrastate and interstate costs of implementing long-term number portability.").

C. TCG's Customer Transfer Charge Tariff Is Unlawfully Vague And Ambiguous.

29. TCG's customer transfer charge tariff is also unjust and unlawful because its language is vague and ambiguous, and this could result in subjective and discriminatory decisions regarding its application.

30. For example, section 3.8.1 of the tariff states that "Customer Transfer Charges apply when a TCG local customer served by a TCG switch is transferred from TCG to an Incumbent Local Exchange Carrier . . . or to a Competitive Local Exchange Carrier . . . *that imposes charges similar to those imposed by the ILEC for activities related to customer migration between carriers.*" (Emphasis added). However, since Verizon does not charge for the mere act of "customer migration between carriers" there is no clear basis for the charges stated in the tariff.

31. Likewise, the statement in section 3.8.1 that "[a] Customer Transfer Charge *may* also apply to non-standard requests for migration of a customer between TCG and a CLEC" is unlawfully imprecise. Other than the reference to a CLEC, a competitive carrier cannot clearly determine when it may incur a customer transfer charge from this language.

32. Furthermore, despite the tariff's repeated statements that its charges will be "equal to the rate charged by the Incumbent LEC for *similar such activities*" (emphasis added), the tariff does not identify the Verizon "activities" it is mirroring. Thus, on its face, the tariff has no link to any wholesale activity or service that Verizon provides to other carriers and its rates do not equal any wholesale rate Verizon charges to other carriers.

33. Lastly, although TCG apparently serves customers through its own facilities through UNE-loop arrangements combined with the use of its own facilities and through the UNE platform, the tariff does not explicitly distinguish between the different types of arrangements it uses to serve transferring customers. Rather, the tariff is based solely on the number of lines transferred. Therefore, there is no explanation, or distinction, as to the rates or activities that apply when a transferred customer was served under different provisioning arrangements.

34. A tariff should be clear and explicit so as to give carriers fair notice, simply by reading the tariff language itself, as to when it applies. TCG's customer transfer charge tariff is unlawfully vague and ambiguous because a carrier cannot determine from its language the terms under which they will incur charges. The FCC has overturned tariffs precisely for this reason,¹⁰ and the Commission should do so here.

¹⁰ See *Bell-Atlantic Delaware, Inc., et al. v. Global NAPs, Inc.*, 15 FCC Rcd 20665, Memorandum Opinion and Order (rel. Oct. 26, 2000), at ¶23 (“[A] tariff must be clear and explicit on its face as to when it applies, in order to give fair notice to carriers or other customers about the terms under which they might be taking service and incurring charges.”).

V. CONCLUSION

35. As shown above, TCG's customer transfer charge tariff is unfair and anticompetitive, and is unlawful under sections 334.337(5) and 364.01(g), Florida Statutes. Therefore, the Commission should: (1) immediately suspend TCG's customer transfer charge tariff; (2) commence an investigation into the tariff; and (3) after completion of the investigation and any proceedings related thereto, strike the tariff as unfair and anticompetitive in violation of sections 334.337(5) and 364.01(g), Florida Statutes.

Respectfully submitted on June 25, 2004.

/s/ Richard A. Chapkis

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July 24, 2003

BY HAND DELIVERY

Ms. Beth Salak, Director
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0866

Dear Ms. Salak:

Attached for filing with the Commission are revisions to the TCG South Florida Price List to be effective July 25, 2003. The revised sheets are as follows:

58th Revised Sheet 2
30th Revised Sheet 2.1
Second Revised Sheet 47
Second Revised Sheet 51.11.1.2

Seventh Revised Sheet 51.11.2
First Revised Sheet 64.1
First Revised Sheet 66.2

This filing deletes the Check Sheets in the Price List; introduces new rates and makes changes to existing rates for PrimeConnect and PrimeConnect PRI; clarifies the Customer Transfer Charge language; and decreases the DS-0 facility expedite charges for BellSouth, Verizon and Sprint territories. If you have any questions regarding this filing, please do not hesitate to give me a call.

Best regards,

Brian Musselwhite

Attachments

TCG South Florida

58th Revised Sheet 2
Canceling 57th Revised Sheet 2

RESERVED FOR FUTURE USE

D

D

Issued: July 24, 2003

Effective: July 25, 2003

Leslie O. Buford, Tariff Administrator
227 W. Monroe Street
Chicago, IL 60606

TCG South Florida

30th Revised Sheet 2.1
Canceling 29th Revised Sheet No. 2.1

RESERVED FOR FUTURE USE

D

D

Issued: July 24, 2003

Effective: July 25, 2003

Leslie O. Buford, Tariff Administrator
227 W. Monroe Street
Chicago, IL 60606

TCG South Florida

Second Revised Sheet 47
Cancels First Revised Sheet 47

SECTION 3.0 SERVICE DESCRIPTION DEDICATED ACCESS SERVICES(cont'd)

3.7 OmniLink (continued)

OC-12 Capacity

DS1s and/or DS3s may be ordered not to exceed OC12 capacity per the following table. The configuration of DS1s and DS3s is dependent on the capacity of the TCG transmission equipment located at the Customer's location.

Interface Combinations

<u>DS1</u>		<u>DS3</u>
	and	0-12
0-28	and	0-11
0-56	and	0-10
0-84	and	0-9
0-112	and	0-8
0-140	and	0-7
0-168	and	0-6
0-196	and	0-5
0-224	and	0-4
0-252	and	0-3
0-280	and	0-2
0-308	and	0-1
0-336	and	0

3.8

Customer Transfer Charges

3.8.1

Description

Customer Transfer Charges apply when a TCG local customer served by a TCG switch is transferred from TCG to an Incumbent Local Exchange Carrier (ILEC) or to a Competitive Local Exchange Carrier (CLEC) that imposes charges similar to those imposed by the ILEC for activities related to customer migration between carriers. A Customer Transfer Charge may also apply to non-standard requests for migration of a customer between TCG and a CLEC. Payment of these charges is the responsibility of the ILEC or CLEC, to which the customer's service is being migrated.

Issued: July 24, 2003

Effective: July 25, 2003

Leslie O. Buford, Tariff Administrator
227 W. Monroe Street
Chicago, IL 60606

TCG South Florida

Second Revised Sheet 51.11.1.2
Cancels First Revised Sheet 51.11.1.2

SECTION 4 - SERVICE DESCRIPTION NETWORK SERVICES (cont'd.)

4.7 TCG PrimePlex PRI Service (Cont'd.)

4.7.11 Rates (Cont'd.)

The following rates are available to new Customers effective 05/1/02.

BellSouth Territory

-Stand alone

PrimePlex PRI Voice and Data:

Non-Recurring Charge:** \$1,100.00

Monthly Recurring charge:

	<u>1 Year</u>	<u>2 Year</u>	<u>3 Year</u>
Initial 23B + D	\$980.00	\$900.00	\$880.00
24B	\$980.00	\$900.00	\$880.00
23B + Backup D	\$980.00	\$900.00	\$880.00

PrimePlex PRI Data Only:

Non-Recurring Charge:** \$1,100.00

Monthly Recurring Charge:

	<u>1 Year</u>	<u>2 Year</u>	<u>3 Year</u>
Initial 23B + D	\$960.00	\$880.00	\$865.00
24B	\$960.00	\$880.00	\$865.00
23B + Backup D	\$960.00	\$880.00	\$865.00

Incoming Call Redirect Option

<u>Non-Recurring</u>		<u>Monthly Recurring</u>	
Per T1	\$250.00	Per T1	\$80.00
Per Change	\$ 80.00	Local Usage Rate Plan	
		(per minute)	\$.02

PrimePlex PRI High Volume Inbound Calling Option: PrimeConnect PRI (N)

Non-Recurring Installation: Per DS1 Facility
\$2,000.00

Monthly Recurring: Per DS1 Facility

Month-to-Month	\$1,055.00
1 Year Term	\$1,055.00
2 Year Term	\$975.00
3 Year Term	\$955.00

(N)

**Initial installation charges will be waived for new customers, or existing customers adding new locations (not applicable for moves), where service is available, when Customer signs a new contract with a minimum one year term commitment, and selects TCG as the primary carrier for Local and IntraLATA toll calling. If Customer terminates their Term Plan prior to expiration they will be billed the appropriate installation charge.

Issued: July 24, 2003

Effective: July 25, 2003

By: Leslie O. Buford, Tariff Administrator
227 W. Monroe Street
Chicago, IL 60606

TCG South Florida

Seventh Revised Sheet 51.11.2
Canceling Sixth Revised Sheet 51.11.2

SECTION 4 - SERVICE DESCRIPTION NETWORK SERVICES (cont'd.)

4.7 TCG PrimePlex PRI Service (Cont'd.)

4.7.11 Rates (Cont'd.)

GTE Territory

- Stand alone

PrimePlex PRI Voice - Flat Rated:

Non-Recurring Charge:** \$1,100.00

Monthly Recurring Charge:

	<u>1 Year</u>	<u>2 Year</u>	<u>3 Year</u>
Initial 23B + D	\$990.00	\$940.00	\$825.00
24b	\$990.00	\$940.00	\$825.00
23b + Backup D	\$990.00	\$940.00	\$825.00

PrimePlex PRI Voice and Data - Usage Rated:

Non-Recurring Charge:** \$1,100.00

Monthly Recurring charge:

	<u>1 Year</u>	<u>2 Year</u>	<u>3 Year</u>
Initial 23B + D	\$760.00	\$715.00	\$640.00
24b	\$760.00	\$715.00	\$640.00
23b + Backup D	\$760.00	\$715.00	\$640.00

Incoming Call Redirect Option

Per T1	Non-Recurring	\$250.00	Per T1	Monthly Recurring	\$80.00
Per Change	\$ 80.00		Local Usage Rate Plan		
			(per minute)	\$.02	

PrimePlex PRI High Volume Inbound Calling Option: PrimeConnect PRI (N)

Non-Recurring Installation: Per DS1 Facility
\$2,000.00

Monthly Recurring: Per DS1 Facility

Month-to-Month	\$1,065.00
1 Year Term	\$1,065.00
2 Year Term	\$1,015.00
3 Year Term	\$ 900.00

(N)

**Initial installation charges will be waived for new customers, or existing customers adding new locations (not applicable for moves), where service is available, when Customer signs a new contract with a minimum one year term commitment, and selects TCG as the primary carrier for Local and IntraLATA toll calling. If Customer terminates their Term Plan prior to expiration they will be billed the appropriate installation charge.

Issued: July 24, 2003

Effective: July 25, 2003

By: Leslie O. Buford, Tariff Administrator
227 W. Monroe Street
Chicago, IL 60606

TCG South Florida

First Revised Sheet 64.1
Canceling Original Sheet 64.1

SECTION 5.0 RATE SCHEDULE DEDICATED ACCESS SERVICES (continued)

5.12 Customer Transfer Charges

Application of Charges

The following non-recurring charges apply:

- a. Customer Transfer Charges apply per each DS-0 and DS-1 facility, and will be equal to the New Service Request special access or UNE-loop charges applied by the dominant LEC.
- b. A Supplemental Charge applies per each request made to change or revise the original order.
- c. An Expedite Charge applies in instances where TCG receives a request to reduce the migration interval to less than the standard, published TCG interval pertaining to expedites.
- d. A Cancellation Charge applies in instances where a Customer Transfer Request is cancelled.
- e. Reciprocal Pricing, as specified below applies.

Rates and Charges

Notwithstanding any other provision of this tariff, rates and charges in this Section may be increased by the Company to an amount equal to the rate charged by the incumbent LEC for similar such activities.

The rates and charges below are applicable to each TCG local customer transfer, per service transferred.

- a. For orders requesting the transfer of less than one hundred (100) telephone numbers or less than one hundred (100) DS-0 equivalents:

	<u>Per Request</u>	<u>Per DS-0 Facility</u>	<u>Per DS-1 Facility</u>	
			First Facility	Each Add'l Facility
Customer Transfer Charge				
Bell South Territory		\$15.57	\$750.00	\$300.00 T
Verizon Territory		\$87.25	\$750.00	\$300.00 T
Sprint Territory		\$38.40	\$750.00	\$300.00 T
Expedite Charge				
Bell South Territory		\$59.00	\$225.00	\$ 0.00 T R
Verizon Territory		\$49.00	\$600.00	\$ 0.00
Sprint Territory		\$59.00	\$225.00	\$ 0.00 T R
Supplemental Charge	\$1.65			
Cancellation Charge	\$1.65			

- b. For orders requesting the transfer of more than one hundred (100) telephone numbers or more than one hundred (100) DS-0 equivalents:

	First Hour Or Fraction Thereof	Each Add'l Hour Or Fraction Thereof
Per Transfer Request	\$175.00	\$50.00

Issued: July 24, 2003

Effective: July 25, 2003

Leslie O. Buford
227 W. Monroe Street
Chicago, IL 60606

TCG South Florida
Price List

First Revised Sheet 66.2
Cancels Original Sheet 66.2

SECTION 6.0 RATE SCHEDULE NETWORK SERVICES (cont'd.)

6.2 PrimeXpress Network Service (cont'd.)

C) DID Numbers:

Monthly Recurring:

	<u>Bell South Territory</u>	<u>GTE Territory</u>
First 20:	\$3.60	\$7.20
Add'l 10:	\$1.80	\$3.60

D) Misc:

Change Order Charge:	\$100.00
Re-Arrangement Charge:	\$500.00

E) PrimeXpress High Volume Inbound Calling Option: PrimeConnect Rates

BellSouth Territory

	<u>Per DS1 Facility</u>	
Non-Recurring Installation:	\$2,000	
<u>Monthly Recurring:</u>	<u>Per DS1 Facility</u>	
Month-to-Month	\$1,265	(R)
1 Year Term	\$1,265	(N)
2 Year Term	\$1,145	
3 Year Term	\$1,120	(N)

GTE/Verizon Territory

(N)

	<u>Per DS1 Facility</u>	
Non-Recurring Installation:	\$2,000	
<u>Monthly Recurring:</u>	<u>Per DS1 Facility</u>	
Month-to-Month	\$710	(R)
1 Year Term	\$710	(N)
2 Year Term	\$695	
3 Year Term	\$610	(N)

Issued: July 24, 2003

Effective: July 25, 2003

Leslie O. Buford
227 W. Monroe Street
Chicago, IL 60606

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 03-C-0636 - Complaint of Verizon New York Inc. Concerning
Customer Transfer Charges Imposed by TC
Systems, Inc.

ORDER GRANTING VERIZON'S PETITION AND COMPLAINT
(Issued and Effective February 13, 2004)

BY THE COMMISSION:

BACKGROUND

TC Systems, Inc.¹ filed an amendment to its Access
Services Tariff P.S.C. No. 3 on November 1, 2002 to impose
customer transfer charges when a local customer is transferred
from TC Systems to an incumbent local exchange carrier (ILEC) or
in some cases to another competitive local exchange carrier
(CLEC). In this order we grant Verizon's complaint.

TC Systems Tariff

The tariff specifies that TC Systems may increase the
rates "to an amount equal to the rate charged by the incumbent
LEC for similar such activities." The tariff imposes a charge
of \$35.00 per voice-grade (DS0) facility per customer transfer

¹ TC Systems, Inc., TC Systems, and AT&T Communications
(collectively "TC Systems, Inc.").

CASE 03-C-0636

and \$600.00 for an expedited transfer.² For a high capacity facility (DS1), the tariff imposes a charge of \$275 per customer transfer and \$600.00 for an expedited transfer. These wholesale customer transfer charges are applicable only where customers are served by UNE-L (loop) facilities, not UNE-P (platform) customers.

Verizon New York Inc. Complaint and Petition

On April 25, 2003 Verizon New York Inc. (Verizon) filed a Petition and complaint with the Commission concerning the customer transfer charges imposed by TC Systems.³ Verizon requested that the Commission review the validity of TC Systems' customer transfer charges. Verizon also requested that the Commission reduce those customer transfer charges to zero on a temporary basis pending the conclusion of the proceeding.

Verizon claims that it does not charge TC Systems for customer transfers. Verizon states that the customer transfer charges imposed by TC Systems do not reflect work performed by TC Systems at the request of Verizon, are not wholesale charges, and should not be imposed upon Verizon. Verizon claims that TC Systems' customer transfer charge is intended to be a mirror of the \$35 hot-cut charge imposed by Verizon, yet TC Systems does not perform a hot-cut when a customer transfer takes place, and thus, these are not "similar such activities" as reflected in TC Systems' tariff.

TC Systems' Response to Verizon Complaint

On May 22, 2003 TC Systems responded to Verizon's petition. TC Systems notes that it is entitled to recover costs

The \$600 expedite service charge for DS0 service transfer contained in TC Systems' tariff and referenced in Verizon's complaint was a clerical error. TC Systems indicates the correct charge for DS0 expedite service is \$49.

Letter to Honorable Janet Deixler, former Secretary to the Commission.

CASE 03-C-0636

of work it performs when a customer transfers from its system to that of an ILEC or another CLEC. TC Systems further notes that it performs numerous manual provisioning tasks necessary to complete such a transfer. TC Systems states that the customer transfer is at the request of Verizon and that the charges apply when TC Systems receives a local service request (LSR) from Verizon. TC Systems also points out that the tariff was lawfully filed with the Commission and remains in effect

In response to Verizon's claim that TC Systems' customer transfer charges are not mirroring charges to the Verizon hot-cut charges, TC Systems acknowledges that it does not perform all of the functions that Verizon performs for a hot-cut, but that it must perform many similar functions to enable a customer transfer. TC Systems submitted a list of each function performed by Verizon for a hot-cut and identified those functions from the list that it must perform to effectuate a customer transfer. TC Systems states that its charges for transfer functions do not exceed those of Verizon for similar functions performed.⁴ TC Systems notes that the cost for the transfer functions it performs actually exceed the \$35 Verizon rate

⁴ The two-wire hot-cut rate implemented by the Commission Order deciding Module 3 of the Verizon Second UNE proceeding for basic and expedite service was \$185 and \$271, respectively. Case 98-C-1357, Order on Unbundled Network Element Rates (issued January 28, 2002). However, the Verizon Incentive Plan (VIP), approved shortly thereafter, provided for a negotiated rate of \$35 for both basic and expedited two-wire and four-wire individual hot-cuts. Case 98-C-1945 and 98-C-1357, Order Instituting Verizon New York Inc. Incentive Plan (issued February 27, 2002). Additionally, the VIP resulted in the institution of a proceeding which is examining new hot-cut processes and associated costs on an individual and bulk basis that are currently under examination in the Commission's Bulk Hot-Cut proceeding. Case 02-C-1425, Order Instituting Proceeding (issued November 22, 2002).

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Subsequent Responses

On September 22, 2003 TC Systems provided further details to staff and Verizon concerning the functions it performs for a DS0 level customer transfer. TC Systems explained that it makes the customer service record (CSR) available to Verizon and coordinates with Verizon to ensure no service interruption or degradation. On September 26, 2003 Verizon responded that it had no objection in principle to a charge for the provision of a CSR, however, unless TC Systems justified a different rate through the submission of a fully documented cost study it may only charge Verizon's rate, which is approximately ten cents.⁵ On November 10, 2003 TC Systems further elaborated on its DS1 charges at Staff's request. Verizon responded on November 12, 2003 that these charges were not legitimate wholesale functions. Finally, on December 3, 2003 staff met with TC Systems via teleconference and the company subsequently provided and described an updated spreadsheet on the functions it performs for a DS0 customer transfer. At this meeting staff further queried TC Systems about the basis for its DS1 charges.

DISCUSSION

The Commission's initial focus associated with the transfer of customers centered on Verizon's ability to allow CLECs to obtain customers. Those efforts resulted in the development by Verizon of an efficient operational support system to allow electronic ordering by CLECs. As the market developed, churn coupled with Verizon "win back" efforts have seen customers moving back to Verizon. CLECs, which have historically been paying Verizon for processing their wholesale orders, sought to "level" the playing field and began to

Verizon Tariff PSC No. 9, section 10.9.2

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institute what they termed "mirroring charges" to process Verizon's wholesale orders.

In the past, rather than requiring CLECs like TC Systems to submit cost studies to verify individual charges, the Commission allowed CLECs to set rates based on the ILEC rates. However, as Verizon does not separately charge for a customer transfer, and has no such wholesale tariff, TC Systems has based its rates on purportedly analogous rates in Verizon's wholesale tariff for a hot cut (for DS0 loops) and for provisioning a 4-wire circuit (for DS1 loops). The problem is the tasks that TC Systems performs when these types of customers are transferred to Verizon are not analogous to most of the tasks Verizon performs. Indeed, while TC Systems does some administrative work (provides a customer service record (CSR) or circuit identification number to Verizon, processes a Local Service Request Order (LSR), and performs some tasks to coordinate the transfer and update two databases -- a telephone numbering database and the E911 database), it is Verizon that does the lions share of the physical network activity necessary for a customer transfer

TC Systems has not shown that these costs, other than CSR costs which are negligible, warrant explicit recovery. The coordination of discontinuing billing is clearly a retail function. If a customer were to simply disconnect its retail service TC Systems would have to review an order form and perform some coordination activities and administrative tasks such as updating databases. These retail costs are traditionally recovered in retail rates. In contrast to TC Systems rate design, Verizon recovers many of the disconnect costs associated with its activities through a non-recurring charge imposed at the time of installation. Therefore, supported customer transfer costs are more appropriately

CASE 03-C-0636

recovered, if they are not already, in retail rates, or in up front connection charges, but not in a separate charge, such as TC System's customer transfer charge.

Under different circumstances, it may be appropriate to reassess the wholesale market so that every company that actually performs a hot-cut could impose reciprocal charges to reflect the costs associated with that wholesale activity.

CONCLUSION

TC systems' DS0 and DS1 customer transfer charges should be eliminated and Verizon's complaint granted.

The Commission orders:

1. Verizon New York Inc.'s petition and complaint is granted, consistent with the discussion in this order.
2. TC Systems, Inc.'s is directed to file a cancellation supplement, effective no later than March 1, 2004, to cancel the tariff amendments listed in Appendix A
3. The requirements of newspaper publication pursuant to Section 92(2) of the Public Service Law are waived.
4. This case is closed.

By the Commission

(SIGNED)

JACLYN A. BRILLING
Secretary

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APPENDIX A
Page 1 of 1

Filing by: TC SYSTEMS, INC.

P.S.C No. 3 - Telephone

Original Page No. 61.1

First Revised Page No. 72.1

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265**

Public Meeting held December 19, 2002

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick
Kim Pizzingrilli

Pennsylvania Public Utility Commission
v.
TCG Delaware Valley, Inc.

Docket Number
R-00027928

ORDER

BY THE COMMISSION:

On November 5, 2002, TCG Delaware Valley, Inc. ("TCG Delaware Valley" or "Company"), filed Supplement No. 32 to Tariff Telephone Pa. PUC No. 5 to introduce "Customer Transfer Charges" - a fee on other carriers when a TCG Delaware Valley local customer is transferred to another carrier. The filing was made to become effective on January 5, 2003

The instant tariff filing is similar to filings made by Choice One Communications of Pennsylvania, Inc. ("Choice One") on November 27, 2001, at Docket No. R-00016940, and on May 9, 2002, at Docket No. R-00027409, which also sought to impose a fee on other carriers for switching Choice One's end user customers to the other carriers' networks. By orders entered February 7, 2002 (Docket No. R-00016940) and June 27, 2002 (Docket No. R-00027409), the Commission suspended the filings and gave Choice

One the alternative to withdraw the filings. On March 5, 2002, Choice One requested withdrawal of the filing at Docket No. R-00016940 and on March 14, 2002, a Secretarial Letter was issued approving the withdrawal and indicating the record would be marked closed. On August 7, 2002, Choice One withdrew the filing at Docket No. R-00027409, and a Secretarial Letter was issued on September 4, 2002 to close that proceeding.

As in the above mentioned filings, TCG Delaware Valley is attempting to impose charges similar to those imposed by the incumbent local exchange carrier (ILEC) for activities related to customer migration between carriers. However, as the Commission found in its February 7, 2002 order, at Docket No. R-00016940:

Verizon, being the largest incumbent local exchange carrier in the Commonwealth, is required by the Telecommunications Act, to interconnect its network with other carriers and to resell its services to other telephone companies on a wholesale basis. The Act as well as the Commission mandates Verizon to resell local services to new entrants to provide telecommunication services in Pennsylvania. These services are made available to the CLECs pursuant to Tariff No. 216, Services for Other Telephone Companies, which is approved by the Commission and are made available pursuant to an interconnection agreement with other telephone companies that contains descriptions, terms and conditions for products and services. Verizon's Tariff No. 216 also contains schedules and rates applicable for its unbundled services as required by the Federal Communications Commission as well as this Commission for Unbundled Network Elements and Unbundled Network Element-Platform based. Order at 3.

Also we are concerned that the proposed charges for switching TCG Delaware Valley's end user customers to the other carriers' networks may result in a barrier to entry as determined in the Choice One February 7 order to wit:

Additionally, the Choice One proposed tariff to access "Porting Charges" appears to be inconsistent with the provisions of §253 of the Telecommunications Act of 1996, 47 U.S.C. §253, which preempts States from imposing any legal requirement that prohibit or have the effect of prohibiting the ability of any entity to provide any intrastate telecommunications services. This Commission has

implemented several measures to remove barriers to entry for carriers to come into Pennsylvania and offer telecommunication services and to promote competition. The Commission has also implemented Access Reforms and Unbundled Network Element proceedings for promoting competition in Pennsylvania. Choice One, by imposing a Porting Charge for porting its customer to another carrier, appears to be acting counter to the Commission's stated policies to promote competition. As such this Commission will not approve Choice One's proposed "Porting Charge." Order at 5.

We note that other CLECs may be proposing charges similar to those proposed by Choice One and TCG Delaware Valley related to coordinated hot cuts and migrations involving porting of telephone numbers since currently, absent contractual or tariff termination obligations, carriers cannot charge end-user customers for any costs that may be associated with disconnecting service. While being a "disconnect" for one carrier and a "new connect" for a second carrier, more work may be involved for the prior carrier than a pure disconnect would involve. Further, this process can frequently involve more than just two carriers. Since the potential exists for varying approaches to coordinated cutover procedures as end-user customers migrate between the various local exchange carriers we have recently established a collaborative at Docket No. M-00011583 with the purpose of recommending formal regulations that will set forth an orderly process for customer movement between local service providers. By having relatively stable and predictable procedures in place, carriers should be able to better control and project their costs.

Accordingly, we shall direct the parties participating in the collaborative to identify all the ways in which migrations may differ from pure disconnects. The collaborative should consider these issues from the point of view of the prior carrier as well as the point of view of the new carrier.

Our review of the proposed tariff filing indicates that it may be unlawful, unjust, unreasonable, and contrary to the public interest. Accordingly, we shall suspend TCG

Delaware Valley's Supplement No. 32 to Tariff Telephone Pa. PUC No. 5, and give the company the alternative to withdraw Supplement No. 32; **THEREFORE,**

IT IS ORDERED:

That Supplement No. 32 to TCG Delaware Valley's Tariff Telephone Pa. PUC No. 5, which was filed on November 5, 2002 to become effective on January 5, 2003, to introduce "Customer Transfer Charges" is suspended for a period not to exceed six months, or until July 5, 2003, pursuant to 66 Pa. C.S.A. §1308.

2. That the Company shall file, or cause to be filed, the appropriate tariff suspension supplements.

3. That the Company is given the alternative to file a supplement to withdraw Supplement No. 32 to Tariff Telephone Pa. P.U.C. No. 5, within five (5) days after the date of entry of this Order.

4. That if the Company files to withdraw Supplement No. 32 to Tariff Telephone Pa. PUC No. 5, in accordance with ordering paragraph No. 3, above, then it is further ordered that the suspension shall be terminated and the case marked closed.

5. That if the Company does not file to withdraw Supplement No. 32 to Tariff Telephone Pa. PUC No. 5, then it is further ordered:

a) That an investigation, on Commission motion shall be instituted, without further order of the Commission, to determine the lawfulness, justness and reasonableness of the rates, rules and regulations contained in the proposed tariff supplement and all items of concern delineated in the body of this Order shall be

investigated, as well as an examination and disposition of any other relevant issues related to the proposed tariff supplement;

b) That the Office of Administrative Law Judge shall assign this matter to an Administrative Law Judge for recommended decision and shall schedule such hearings as may be necessary;

c) That the investigation shall include, but shall not be limited to, all of the items of concern delineated in the body of the Order;

6. That the parties to the Changing Local Service Providers Collaborative at Docket No. M-00011583 shall address all the ways in which migrations differ from pure disconnects. The collaborative should consider this issue from the point of view of the prior carrier as well as from the point of view of the new carrier.

7. That a copy of this Order be served upon TCG Delaware Valley, Inc., the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Communications, the Office of Trial Staff, the Office of Administrative Law Judge, the Bureau of Consumer Services and all competitive local exchange carriers doing business in the Commonwealth of Pennsylvania.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 19, 2002

ORDER ENTERED: December 20, 2002

COMMONWEALTH OF VIRGINIA

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DEPUTY DIRECTORSTATE CORPORATION COMMISSION
DIVISION OF COMMUNICATIONS

January 27, 2003

Mr. Martin Clift, Jr.
Vice President - Regulatory Affairs
Cavalier Telephone, LLC
Fax Letter To: 422-4599

Dear Mr. Clift:

Staff is returning as unacceptable Cavalier's January 21, 2003 filing that proposed UNE Loop Service charges .

This filing is in violation of the CLEC Rate Cap rules under 20VAC 5-400-180, and did not comply with the 30 day filing interval for this type of filing.

The tariff is not clear as to whom these charges will be billed, the subscriber or the UNE Loop provider. Those applying to the subscriber would fall under the rate cap rule addressed above, however, if they apply to the loop supplier then such charges should be in the appropriate interconnection agreement, not the CLEC tariff.

The filing will be returned under separate letter.

Garland Hines
Senior Telecommunications Specialist

CC:

K. Cummings
J. Coleman