

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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CLERK

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DATE: April 6, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Simmons) *SAS*
Office of the General Counsel (Wiggins) *pmw*

RE: Docket No. 060292-TL – Review of tariff filing (T-060052) by Verizon-Florida Inc. to establish permanent promotional offering. *mt*

AGENDA: 04/18/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060292.RCM.DOC

Case Background

On January 27, 2006, Verizon Florida Inc. (Verizon) filed to establish a permanent promotional tariff offering (T-060052) [Attachment A], Tariff filings by price regulated local exchange companies such as Verizon are presumptively valid, and non-basic service filings (which would include this type of tariff) go into effect on 15 days' notice pursuant to Section 364.051(5)(a), Florida Statutes. If there are issues regarding the legality of a tariff, staff prepares a recommendation for the Commission's consideration and determination as to whether the tariff should remain in effect or be canceled. Due to the unique nature of this tariff offering, which includes provisions for variable benefits to customers, staff is bringing this tariff before the Commission for review. Staff has had several discussions with Verizon to better understand the

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offering, identify concerns, and determine appropriate controls that would address staff's concerns and be workable for Verizon.

Discussion of Issues

Issue 1: What action, if any, should the Commission take with respect to Verizon's permanent promotional tariff offering (T-060052)?

Recommendation: Staff recommends that Verizon's permanent promotional tariff offering (T-060052) be allowed to remain in effect, subject to two requirements. First, Verizon should be required to provide staff with one-day, advance written notice of each promotional offer made during 2006. Second, Verizon should be required to provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports should be due on July 31, 2006 and January 31, 2007. **(Simmons, Wiggins)**

Staff Analysis:

Verizon designed its permanent promotional tariff offering primarily as a retention strategy to address a high rate of residential access line loss, especially to the incumbent cable company. The Verizon product manager will develop and activate each promotion, with only one promotion available at any one time. The promotion will be offered if a residential customer calls Verizon to disconnect service and explains he/she is accepting an offer from a competing company. Each promotional offer will not exceed 90 days in duration and will be available for resale to CLECs at no discount, in keeping with the FCC's determination that "promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers." (FCC 96-325, ¶ 950)

As mentioned in the Case Background, this tariff offering provides for variable benefits to customers. This variable benefit approach is a departure from the status quo in which promotional tariffs detail the benefits to be provided to the customer. In addition, this variability raises a possible concern of undue discrimination among customers, with some callers receiving a higher valued benefit than other callers.

Pursuant to its permanent promotional tariff, Verizon will offer qualifying callers a one-time benefit, with no change in tariffed rates. The promotional benefit is described in the tariff as "including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services." The tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed \$55 in any calendar year."

Verizon has informed staff that service representatives will have specific decision criteria that must be followed before offering each promotion. Staff understands that only one type of benefit will be offered under any one promotion; however, different valued benefits, such as both \$25 and \$50 gift cards, may be offered under the same promotion. Where different valued benefits are offered, the service representatives will be instructed to offer the lower valued benefit first and only offer the higher valued benefit if necessary. Verizon has advised staff that the service representative's compensation will not be affected in any way by the promotion. For example, his/her compensation will not be affected by the representative's customer retention statistics or the average benefit value provided by the representative.

Legal Framework

While different customers may receive different valued benefits, staff does not view this possibility as prohibited discrimination, since the customers may not be similarly situated in terms of having the same competing offers. The basic legal framework for regulating the offerings of Verizon as an incumbent local exchange company is found in Section 364.051, Florida Statutes, which was enacted in 1995 and amended several times since. Under Section 364.051(5)(a), incumbent local exchange companies are authorized to meet competitive offers, but “shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.”

As suggested above, the statutory grant of pricing flexibility to ILECs is a recent development in regulatory history. One might argue that the purpose of previous regulatory approaches was just the opposite: to fix the prices of monopoly provider so that no flexibility was allowed to ensure that customers were not subjected to unfair treatment. As competition in telephony emerged, fixing the prices and controlling the behavior of the former monopoly provider also served the purpose of avoiding anticompetitive practices. While these two generalizations are overstated, they do highlight that Section 364.051 was introduced into Chapter 364 as an exception to the way economic regulation was formerly handled.

Consequently, Section 364.051(c) exempts the ILEC from several other more restrictive sections of the chapter. Section 364.051(c) provides specifically as follows:

Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

Without these exemptions, the framework provided in Section 364.051 would be in irreconcilable conflict with the sections establishing the traditional approach to filing and approving tariffs.

There are two other sections in Chapter 364, Florida Statutes, that may be germane to Verizon’s tariff but that were not exempted: Sections 364.08(1) and 364.09. Section 364.08(1) states in part “(a) telecommunications company may not refund or remit, directly or indirectly, any portion of the rate or charge so specified . . . not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.” Section 364.09 prohibits use of any “special rate, rebate, drawback, or other device or method” to obtain “greater or lesser compensation for any service” provided under the “same or substantially the same circumstances and conditions.” Both of these sections were originally enacted in 1913 and were part of an overarching scheme to restrict pricing flexibility to avoid, among other things, discrimination among similarly situated customers.

In comparison to the older Sections 364.08(1) and 364.09, the newer Section 364.051(5)(a) prohibits *unreasonable* discrimination among similarly situated customers. Thus an initial legal question presents itself: does the statutory standard embraced in the older sections still apply?

Section 364.08(1) and 364.09 Not a Bar

Staff believes that Sections 364.08 and 364.09 do not prohibit Verizon's tariff. There are three reasons for this view. First, the initial sentence of Section 364.051 begins as follows: "Notwithstanding any other provisions of this chapter...." This creates a general exemption from conflicting provisions elsewhere in Chapter 364.

Second, the legislature specifically exempted the sections of Chapter 364 it believed to be in conflict with the approach established in Section 364.051. Thus one can reasonably infer that Sections 364.08(1) and 364.09 do not interfere with the operation of Section 364.05(1) and tariffs filed under that section.

Third, the actual language of the older sections can be reconciled with the newer section. Section 364.08 prohibits discrimination outside the tariff, but neither contemplates nor prohibits reasonable discrimination among customers as provided for in the tariff. Section 364.09 appears to prohibit absolutely special deals, rebates, etc., but contains the saving language "except as authorized in this chapter."

In sum, Sections 364.08(1) and 364.09 do not prohibit Verizon's tariff, which was filed under the framework created in Section 364.051. Moreover, staff believes that the tariff is not *unreasonably* discriminatory and complies with Section 364.051(5)(a), Florida Statutes. Staff believed it useful to provide this background because Verizon's tariff presents a case of first impression.

Regulatory Analysis

After considering the average promotional benefit and the incidence of use, Verizon has demonstrated that the permanent promotion covers incremental cost. The proprietary analysis shown to staff considered the residential subscription rates for all vertical services and average intraLATA billable usage, i.e., the typical residential customer profile, and determined a break-even period that was significantly lower than the expected location life. Staff notes that to the extent the permanent promotion is provided to atypical residential customers, with higher spending patterns, the break-even period would be shorter.

Because the tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed \$55 in any calendar year," staff believes that tracking is very important. Tracking is also essential for Verizon as the company will be experimenting to determine the most cost effective ways of retaining customers. Verizon has informed staff that the company will be tracking results on a monthly basis and monitoring statistics including offers made, offers accepted, and average dollar benefit provided.

Due to the flexible nature of the permanent promotional tariff, staff has identified some issues related to complaint handling, which have been discussed with the company and resolved to staff's satisfaction. Staff understands that Verizon is willing to provide written notification of each promotion to staff, thereby providing the necessary knowledge for staff to address any customer complaints that may be filed with the Commission. Further, the company has indicated

that if a customer states the company promised a higher valued benefit, and the higher valued benefit is available under the promotion, the company will accept the customer's word.

The variable benefit nature of Verizon's permanent promotional tariff is a departure from the status quo. Staff notes that Section 364.057, Florida Statutes, provides for experimental and transitional rates. This section, which is applicable to price regulated local exchange companies such as Verizon, does not seem directly on point, since the promotional benefits in the tariff at issue do not really constitute rates. Nonetheless, this section may be of some interest. Under this section, approval of experimental or transitional rates may be limited geographically and must be limited in time. While staff does not believe that Verizon's permanent promotional tariff should be geographically constrained or time limited, staff does believe this tariff should be monitored closely during the first year. Depending on results for the first year, staff will assess whether further monitoring appears necessary.

Accordingly, staff recommends that Verizon's permanent promotional tariff offering (T-060052) be allowed to remain in effect, subject to two requirements. First, Verizon should be required to provide staff with one-day, advance written notice of each promotional offer made during 2006. Second, Verizon should be required to provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit to customers. Tracking reports should be due on July 31, 2006 and January 31, 2007.

Docket No. 060292-TL

Date: April 6, 2006

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. **(Wiggins)**

Staff Analysis: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order.

Docket No. 060292-TL
Date: April 6, 2006

ATTACHMENT A

David Christian
Assistant Vice President
Regulatory Affairs Florida



106 E. College Ave
Tallahassee, Florida 32301
Telephone 850-224-3963
Fax 850-222-2912
david.christian@verizon.com

January 27, 2006

Ms. Beth W. Salak, Director
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Salak:

Attached is a new tariff page filed to become part of the Verizon Florida Inc. General Services Tariff.

Section A2 General Regulations
10th Revised Page 23

The purpose of this filing is to establish a permanent promotional tariff offering to retain or attract customers in a competitive environment.

If you require additional information, please call Joan Gage at (813) 483-2530.

Sincerely,
David M. Christian
Assistant Vice President
Regulatory Affairs Florida

DMC:sv
Attachments

VERIZON FLORIDA INC.

GENERAL SERVICES TARIFF

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A2. GENERAL REGULATIONS

A2.10 Special Promotions

2 The following promotion is on file with the Florida Public Service Commission:

Area of Promotion	Service	Application	Period
325) Company's Service Territory - Residential Service Only	Permanent Promotion Residential Service offerings to retain customers or attract customers who currently receive their local service from a competitive provider.	As dictated by competitive market conditions, Verizon Florida may periodically offer special promotional programs (including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services) to individual customers to attract or retain them as Verizon customers. Promotional programs will be limited to qualifying customers contacting the company. Regulations: 1) No specific offer will be available for more than 90 days. 2) On average, any combination of promotional benefits made to customers will not exceed \$55 in any calendar year.	Each promotional offering not to exceed 90 days in duration.

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VERIZON FTE FLORIDA INC.
INCORPORATED

GENERAL SERVICES TARIFF

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Canceling 98th Revised Page 23

A2. GENERAL REGULATIONS

A2.10 Special Promotions

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2 The following promotions are approved by the Commission: (Continued)

Area of Promotion	Service	Charges Waived	Period	Authority
56) Venice Exchange: 484, 485, 488	Custom Calling	Nonrecurring (Secondary Service Ordering Charge)	6/22/87 8/20/87	Docket No. 830411-TP Order No. 12550
56) Winter Haven Exchange: 965, 967	Custom Calling	Nonrecurring (Secondary Service Ordering Charge)	6/22/87 8/20/87	Docket No. 830411-TP Order No. 12550
57) Zephyrhills Exchange: 782, 783, 789	Custom Calling	Nonrecurring (Secondary Service Ordering Charge)	6/22/87 8/20/87	Docket No. 830411-TP Order No. 12550
58) Tampa Exchange: 641, 645	Custom Calling	Nonrecurring (Secondary Service Ordering Charge) Recurring*	6/22/87 8/20/87	Docket No. 830411-TP Order No. 12550
59) Tarpon Springs Exchange: 934, 937, 938, 942 665, 666	Custom Calling	Nonrecurring (Secondary Service Ordering Charge) Recurring*	6/22/87 8/20/87	Docket No. 830411-TP Order No. 12550
60) Company: Company's Service Territory Except: 223, 224, 225, 226, 228 251, 253, 254, 258, 259 293, 294, 299 351, 355, 359 644, 646, 647 680, 681, 684, 685, 687, 688, 689 872, 873, 874, 875, 876, 877 961, 962, 963, 969	Touch Call	Nonrecurring (Secondary Service Ordering Charge and Individual and Two-Party Line Service Charge)	6/22/87 8/20/87	Docket No. 830007-TP Order No. 11546
61) Sarasota Exchange: 351, 355, 359	Custom Calling	Nonrecurring (Secondary Service Ordering Charge) Recurring*	6/20/87 8/27/87	Docket No. 830411-TP Order No. 12550
61) Sarasota Exchange: 351, 355, 359	Touch Call	Nonrecurring (Secondary Service Ordering Charge and Individual and Two-Party Line Service Charge)	6/20/87 8/27/87	Docket No. 830007-TP Order No. 11546

NOTE 1: A 30 day free trial on a full service package or on an individual Custom Calling feature is offered.

ALAN F. CIAMPORCERO/JOHN A. FERRELL, PRESIDENT
TAMPA, FLORIDA

EFFECTIVE: December 22, 1998
ISSUED: December 7, 1998