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January 10, 2008

Via E-Mail Transmission Only For Electronic Filing

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Comcast Phone of Florida, LLC v. Verizon Florida, LLC
Complaint of Comcast Phone of Florida, LLC, for New Docket

Dear Ms. Cole:

Please accept this correspondence and Comcast Phone of Florida's ("Comcast") Complaint against Verizon Florida for electronic filing. This Complaint initiates a new docket on the subject of Verizon Florida's retention marketing practices. The Complaint is fourteen (14) pages, including a two page exhibit.

William B. Graham and Jason C. Taylor of Carr Allison are filing this Complaint on behalf of Comcast. Contact information, including e-mail addresses, mailing address and phone and fax numbers are listed above and on the Complaint itself.

Please contact us if you have any questions or you require any additional action by us for filing of this Complaint with the Florida Public Service Commission.

Respectfully,

William B. Graham
Jason C. Taylor

JCT

cc: Dulaney L. O'Roark, III, VP/General Counsel, Verizon Florida LIP
David Christian, Verizon, Florida LIP
Patrick Wiggins, Supervising Attorney, FPSC
Beth Salak, Dir. Competitive Markets and Enforcement, FPSC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comcast Phone of Florida, L.L.C.,
d/b/a Comcast Digital Phone
Complainant,

v.

FPSC Docket Number: _____

Verizon Florida, L.L.C. (TL 710),
Defendant.

COMPLAINT AND REQUEST FOR EMERGENCY RELIEF

Comcast Phone of Florida, L.L.C., (hereinafter "Comcast"), through counsel and pursuant to Rule 25-22.036, Florida Administrative Code, files with the Florida Public Service Commission (hereinafter "Commission") its original Complaint and Request for Emergency Relief against Verizon Florida, L.L.C. (hereinafter "Verizon"), and alleges Verizon is conducting anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, Florida Statutes. Comcast further alleges Verizon failed and continues to fail to properly transfer (or "port") customers' numbers to Comcast upon request, contrary to Rule 25-4.082, Florida Administrative Code.

JURISDICTION

1. Jurisdiction for this action with the Commission is proper pursuant to section 364.01(4), *Florida Statutes* (2007). The specific language of the statute in subsection 364.01(4)(g) empowers the Commission to address anti-competitive actions, stating "The Commission shall exercise its exclusive jurisdiction in order to . . . [e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior" The Commission is also charged by the Florida Legislature to "[r]ecognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate," pursuant to subsection

364.01(4)(h). This includes the Commission's authority to adjudicate complaints alleging violations of Florida statutes regulating telecommunications companies, such as Verizon.

The Commission has previously considered complaints regarding similar retention marketing practices. See, Final Order on BellSouth's Alleged Use of Carrier to Carrier Information, Order No. PSC-03-1392-FOF-TP, December 11, 2003 (In re Complaint by Supra Communications and Information Systems, Inc., against BellSouth Telecommunications, Inc., Docket No. 031349-TP) and Final Order on BellSouth's Key Customer Tariff's, Order No. PSC-03-0726-FOF-TP, June 19, 2003 (In re Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs, Docket No. 20119-TP). In each of those cases, the Commission took jurisdiction and resolved the matter, even though the telephone company conduct under review also arguably violated applicable federal law. Further, in its Final Order on BellSouth's Alleged Use of Carrier to Carrier Information, Order No. PSC-03-1392-FOF-TP, the Commission specifically noted the interaction of the applicable federal and state laws and the Commission's ability to analyze state law based on this interaction.

PARTIES

2. Comcast Phone of Florida, L.L.C. (originally certified by this Commission as Continental Florida Telecommunications, Inc., PSC-96-0293-FOF-TX, February 27, 1996), is a Delaware limited liability company. Comcast was granted CLEC authority by transfer approval in 2002 and has been offering its services since that time. It currently provides telephony as well as other services throughout the Sarasota and Central Florida area, as well as the Tallahassee and North Florida area. Comcast's registered address with the Commission is 300 West Pensacola Street, Tallahassee, Florida 32301. Comcast's representatives for this matter are:

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3. On information and belief, Verizon is a Delaware limited liability company. Verizon is the ILEC, as that term is defined in 47 U.S.C. § 251(h), for various areas in Florida, including many of the areas where Comcast offers its service, as well as a local exchange telecommunications company as that term is defined in Section 364.02(8), Florida Statutes. On information and belief, Verizon serves large numbers of both residence and business customers in Florida. Verizon's registered address with the Commission is 106 East College Avenue, Suite 710, Tallahassee, FL 32301-7721.

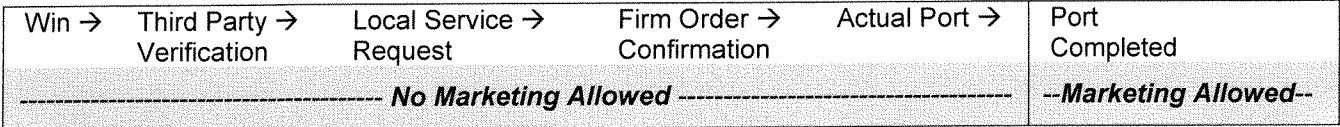
FACTUAL BACKGROUND

4. Comcast is a competitive local exchange carrier ("CLEC") that provides telecommunications services in Florida and has a Commission approved interconnection agreement with Verizon, the incumbent local exchange carrier ("ILEC"). As a facilities-based CLEC, Comcast does not rely on Verizon for any unbundled network elements ("UNEs") nor does it resell any Verizon services. Given Verizon's status as the ILEC within the area in which Comcast primarily operates, however, many of Comcast's customers formerly received voice

services from Verizon. Consequently, Comcast must rely on Verizon to port telephone numbers when Comcast competes for and wins the business of an existing Verizon customer.

5. Comcast relies on Verizon to execute the transfer of a customer phone number pursuant to industry adopted Local Number Portability (“LNP”) guidelines because Comcast cannot unilaterally port an existing Verizon number to itself in order to serve a customer. Comcast must have Verizon’s cooperation to do so. This is the case because it is the winning carrier’s responsibility to submit the request for number porting and the executing carrier’s responsibility to execute a validly submitted Local Service Order request (“LSR”) and port the number without delay or interference.

6. When Comcast signs up a new customer, Comcast verifies the requested change by using an outside vendor to conduct third party verification (“TPV”) or by obtaining a letter of authorization (“LOA”) that the customer wishes to change providers. After verification, Comcast uses an electronic interface with Verizon to initiate the carrier change process. Comcast submits to Verizon an LSR, asking that the customer’s phone number be ported from Verizon to Comcast. Within 24 hours of receiving each such request, Verizon is to transmit to Comcast a Firm Order Confirmation (“FOC”), which provides acceptance of the date for execution of the port. That due date for “simple ports,” pursuant to current industry LNP guidelines, must be no earlier than 4 business days after submission of the port order, unless a later date is requested by Comcast. This coordination is necessary to ensure a seamless transition in telephone service for the customer in order to prevent service interruptions, call routing errors and potential double billing of the customer. The porting process is depicted as follows:



7. Until recently, when Comcast submitted a carrier change request to Verizon, that request would normally be executed by Verizon on a FOC due date that was issued within accepted industry timeframes. Beginning in the summer of 2007, however, Comcast began to receive “jeopardy” or error notices from Verizon for ports that Verizon previously confirmed via a FOC. Concurrent with executing the transfer of the customer as required by Florida law, within 24 hours of receiving a port request from Comcast, Verizon routinely sends the customer a marketing letter, email or phone call. If Verizon convinces the customer to remain with Verizon, it places the port request “in conflict” in the Number Portability Administration Center (“NPAC”) preventing Comcast from transferring the customer’s number on the agreed upon and confirmed, requested order due date. Placing the request in conflict has the effect of blocking the carrier change, ultimately resulting in its cancellation. This cancellation of the port is the direct result of Verizon’s unlawful retention marketing activities.

8. Verizon is, therefore, unlawfully exploiting the advance notice it receives from this carrier-to-carrier interface for coordination of the customer’s carrier change to engage in efforts to retain the customer. Specifically, once Comcast sends Verizon the number portability notices (which includes the disconnect request of the phone number to be ported) Verizon notifies its retail division using the information it receives from the LSR porting order Comcast submits to Verizon.

9. Verizon’s notice of this carrier-to-carrier wholesale exchange to its retail division is not per se objectionable. The retail division of Verizon needs to know of the pending disconnect in order to cease billing the customer. However, Verizon’s use of this information by its retail division to engage in retention marketing during the porting process violates Florida law.

10. Comcast has lost and is continuing to lose a significant number of customers in response to Verizon’s illegal retention marketing efforts. A representative sampling of the

customers that had chosen to transfer service to Comcast, but that were contacted by Verizon shortly after the request for number porting and before number porting was complete, includes the following:¹

- 994074-01 – contacted by Verizon by UPS;
- 916564-02 – contacted by Verizon by UPS;
- 973908-01 - contacted by Verizon by phone and UPS;
- 935584-02 – contacted by Verizon representative and offered incentives to remain and was told she did not need to contact Comcast;
- 854305-02 – contacted by Verizon, offered incentives and was told not to contact

Comcast; and

- 964833-02 - contacted by Verizon, offered incentives and was told not to contact

Comcast.

11. The above examples represent only a sampling of the customers who informed Comcast of Verizon's improper retention marketing. Comcast is working to develop a better estimate of the number of lost customers. However, these and many other lost customers translate into significant lost revenues over the next several years. These losses will increase as long as Verizon is permitted to continue its unlawful retention marketing.

12. In light of the foregoing Comcast seeks an order directing Verizon to immediately cease its practice of retention marketing to those customers as to whom Verizon's only source of retail knowledge is not independent, but instead the result of the pending carrier-to-carrier wholesale porting requests Comcast makes.

VERIZON'S RETENTION MARKETING EFFORTS VIOLATE FLORIDA LAW

13. Comcast repeats and realleges the allegations contained in Paragraphs 1 through 12 above.

¹ The customers above were listed by Comcast account number only to prevent unnecessary and potentially harmful disclosure of personal information.

14. Verizon is using information obtained from Comcast's submission of service disconnection and number porting requests to initiate retention marketing efforts directed toward the customers Comcast competed away from Verizon. This information is one of the types of carrier-to-carrier information on which Verizon cannot base its retention marketing because it is not information obtained independently by the retail division.

15. Specifically, Verizon actions include sending letters to and contacting soon-to-be-former customers by phone, urging them to stay with Verizon and offering them inducements to do so. A copy of the letter Verizon sent to one such consumer is attached to this Complaint as Exhibit A. In addition to violating Florida law in practice, the letter contains misrepresentations as to the quality of Comcast's service and network.

16. The incentives Verizon offers come in the form of alleged lower rates, but also come in the form of retail merchandise and gift certificate cards, wholly unrelated to the provision of local phone service.

17. Prior Commission rulings, noted above and in other dockets, have emphasized there is no violation where an ILEC's retail division independently obtains information on which to base its retention marketing. However, the Commission must reject any argument that communication from Verizon's wholesale division to its retail division following a porting request can be an independent basis or retail-to-retail transaction from which it can proceed with retention marketing. Such an argument is inaccurate not only from the concept of carrier-to-carrier, wholesale interaction, but also violates basic common sense and ignores the original source of the information as coming from Comcast. The consumer has made a decision to change carriers and Verizon's failure to follow through with this decision does not garner competition but instead thwarts the consumer's choice.

18. Verizon's practices as described above violate the anticompetitive emphasis of section 364.01(4)(g) *Florida Statutes* (2007). This statute specifically directs the Commission to prevent such conduct by empowering the Commission to "[e]nsure that all providers of

telecommunications services are treated fairly, by preventing anticompetitive behavior”

19. It is plainly anticompetitive for Verizon to exploit its wholesale division’s advance knowledge that a customer is leaving Verizon to engage in efforts to keep that customer. The Commission expressed this position and its reasoning for same in Order No. PSC-03-0726-FOF-TP, Order No. PSC-03-1392-FOF-TP, *supra*, and Notice of Proposed Agency Action Order Regarding BellSouth’s 2002 Key Customer Tariff Program and Winback Promotions, Order No. PSC-02-0875-PAA-TP, June 28, 2002 (In re Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.’s Key Customer Promotional Tariffs, Docket No. 20119-TP).

20. In Order No. PSC-03-0726-FOF-TP, although the Commission did not create specific marketing practices, it did note and find adequate BellSouth’s 10 day waiting period. This waiting period began after conversion to the ALEC was complete. The Commission further prohibited BellSouth from including marketing materials in its final bill to leaving customers, which would presumably occur after a request for number porting would be complete.

21. To this same effect, section 364.3881(3), *Florida Statutes* (2007), enables the Commission to prevent anti-competitive practices by carriers such as Verizon. The statute provides for the Commission’s “continuing oversight jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior.” Verizon’s undermining of the orderly transfer of a customer from one carrier to another, by virtue of relying on confidentially-supplied information, constitutes “anticompetitive behavior” the Commission is empowered to prevent.

22. Verizon’s practices further violate the protection to be given competition in section 364.01(4)(i), *Florida Statutes* (2007), which directs the Commission to “continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.”

23. Section 364.02(13), *Florida Statutes* (2007) goes further to state the term

“service” is used in Chapter 364 “in its broadest and most inclusive sense.” In the instant case, Comcast has no choice but to work with Verizon in coordinating the disconnection of soon-to-be-former Verizon customers and porting their numbers. Comcast must share this porting information (and provide advance notice) to the very competitor from which it has won a customer. Therefore, Verizon is in a unique position as the current service provider and executing carrier for those porting services and the Commission must act to prevent Verizon from abusing that position.

24. Additionally, Commission Rule 25-4.082 requires Verizon to “facilitate” the transfer of a customer’s number to Comcast “upon request.” Retention-marketing of a customer while the number portability request is pending is inconsistent with Verizon’s unambiguous obligation to “facilitate” the transfer of the number. Verizon’s current course of conduct is plainly directed to prevent, and reverse, the transfer of the number.

25. Verizon’s practices also violate section 364.10(1), *Florida Statutes* (2007), which bars Verizon from giving “any undue or unreasonable preference or advantage to any person,” which includes Verizon itself. Verizon, as the carrier serving a soon-to-be-former customer, is uniquely situated to give a preference to itself by using its unique (and confidentially-acquired) knowledge the customer is leaving, on a specific date, to market to that customer. Comcast is not in a similar position to try to ensure that the transfer of this same customer occurs by similar marketing efforts, particularly when Verizon instructs the potential customer not to speak to Comcast and Verizon blocks the port from occurring by putting the previously confirmed number into a “Conflict” status within NPAC. As a result Verizon’s practices inherently constitute an unlawful preference and advantage to itself.

26. The violation of section 364.10(1) also extends to the customers offered the discounts described above. Verizon extends these discounts only to those consumers who attempt to change their service from Verizon to another company. The statute prohibits “undue or unreasonable preference or advantage to any person or locality.” However, Verizon is

creating a second class of customers obtained through its improper marketing procedures in violation of section 364.10(1).

27. Finally, as noted above, on at least two occasions, this Commission has specifically noted the merit of the concept that retention marketing efforts by an ILEC should not occur for a 10-day “quiet period” following the customer’s initial transfer. The only exception is if the ILEC’s retail marketing operations independently and legitimately obtain information that the customer is leaving. See Order No. PSC-03-1392-FOF-TP (December 11, 2003) and Order No. PSC-03-0726-FOF-TP (June 19, 2003), *supra*. This 10-day “quiet period” is longstanding and constitutes the Commission’s endorsement of what are “reasonable” and “just” practices in this regard, in accordance with the specific Florida law identified above.

28. Verizon’s “regulations and practices” surrounding its retention marketing efforts clearly constitute an anticompetitive practice that is harmful to competitive providers and to Florida consumers. It is unjust and unreasonable for Verizon to interfere with the competitive process — which requires carrier-to-carrier service “behind the scenes” for number porting — and uses the advance notice that those “behind the scenes” activities necessitate to try to retention market such customers before the porting is complete.

29. Accordingly, Verizon’s practice of retention marketing based on information it receives from Comcast on the wholesale side is anticompetitive and violates Florida law.

RELIEF REQUESTED

Based on the foregoing, Comcast respectfully requests that the Commission:

a. On an expedited basis, issue a ruling stating that Verizon’s retention marketing efforts based on pending disconnect orders received from Comcast is an undue and unreasonable preference or advantage to Verizon and an undue and unreasonable prejudice or disadvantage to Comcast in violation of section 364.01(4)(g), and Florida’s policy of encouraging competition in the voice services market.

b. Issue an order directing Verizon to immediately cease its retention marketing

practices and instead to apply the same 10-day quiet period that BellSouth uses when a customer shifts from BellSouth to another carrier.

- c. Award Comcast reasonable attorneys' fees; and
- d. Such additional relief as the Commission considers just and reasonable in the circumstances.

Respectfully submitted,



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Attorneys for:
Comcast Phone of Florida, L.L.C.,
d/b/a Comcast Digital Phone

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail, this 10th day of January, 2008, to the persons listed below:

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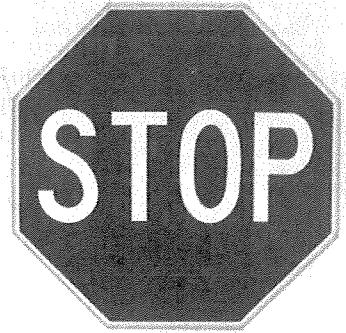
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IF YOU LEAVE NOW YOU'LL MISS OUT ON GREAT NEW SAVINGS!

Dear Valued Customer,

We've just received your request to disconnect your Verizon service.

Did you know that you could be switching to voice over Internet service? Most cable companies use VoIP—Voice over Internet Protocol—to deliver phone service. VoIP requires a good, reliable network to function properly. You want to ensure your service is on a network that can handle it. Luckily for you, the Verizon network has the reliability to handle any type of phone service you choose. In fact, your current voice service with Verizon is on a network that is 99.9% reliable.

And by combining it with other Verizon services such as Internet, TV, or wireless, you can enjoy our great bundle prices.

- ➔ **Our Triple Play bundle includes unlimited calling (in the U.S., Canada, Puerto Rico, and more), high speed Internet connection, and access to over 140 all-digital channels. ***
- ➔ **Plus, if you order now, you may be eligible to get an additional \$10 off per month and up to \$200 in American Express®-branded Reward Cards! ****

That's unlimited calling, broadband service, and digital video entertainment for under \$95 a month, on one bill, **and \$200 in American Express®-branded Reward Cards!**

Avoid the hassle of switching companies—you can still stay with Verizon and keep the reliability you expect. Please call us today at **1-888-292-4755** between 8AM and 6PM EDT Monday through Friday to speak with a Verizon representative.

Thank you for allowing us to serve your voice, broadband and entertainment needs.

Sincerely,

Alicia Trigo
Executive Director
Sales & Marketing, Southeast Region

It's the Network

See reverse side for important Consumer Information

INFO1-LH

EXHIBIT A

*Requires Verizon Freedom Essentials, 3.0Mbps DSL and DIRECTV service through Verizon with one year commitment or Verizon Freedom Essentials, FiOS Internet and FiOS TV Premier with two year commitment.

**Promotional offer of an American Express® -branded reward card value of \$100 available to customers who order qualifying services between 10/15/07 and 12/22/07. After retaining all services for 12 months you will receive an anniversary American Express® -branded reward card value of \$100. Limit one initial and one anniversary offer per customer. Allow up to 8 weeks for delivery of cards. American Express® -branded reward card can be used at establishments identified on the list provided with the card and at "www.homepointscard.com". Card is point-based, with 1 point = \$1 in purchasing power. Additional card terms and conditions apply. Offer cannot be combined with other promotions or offers.

Rates subject to change after first or second year depending on package. Early termination fee applies. Activation charges may apply. Includes direct-dialed domestic calls only. Additional charges, taxes and terms apply. Service availability, speed and uninterrupted service not guaranteed. ©2007 Verizon.