

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon
Florida Inc. for approval to
revise customer contact
protocol.

DOCKET NO. 011497-TL
ORDER NO. PSC-02-0362-PAA-TL
ISSUED: March 19, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REVISION OF CUSTOMER
CONTACT PROTOCOL

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On November 6, 2001, Verizon Florida, Inc. (Verizon) filed a petition seeking relief from our intraLATA toll customer contact protocols. More specifically, Verizon seeks our permission to recommend its intraLATA toll service on new customer contacts after it informs customers that they have a choice of intraLATA toll providers and offers to read a list of those providers. No other party has filed a response to this petition.

We have an extensive history related to customer contact protocols. The issue of customer contact protocols arose from our decision to allow intraLATA toll presubscription. In our *IntraLATA*

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Presubscription Order,¹ we found intraLATA presubscription was in the public interest and ordered the four large incumbent local exchange companies to implement intraLATA presubscription by the end of 1997. IntraLATA presubscription is the ability of a telephone customer to preselect a telecommunications company to carry that customer's intraLATA toll calls by dialing the digit "1," the area code, and the called number. This is also known as "1+" dialing. Prior to intraLATA presubscription, all "1+" dialing was reserved for a customer's serving local exchange company (LEC), and customers who desired to make intraLATA toll calls with a company other than their serving LEC had to enter a carrier access code prior to normal dialing.

During the implementation of intraLATA presubscription, complaints were filed against BellSouth alleging that BellSouth marketed its intraLATA toll service in an anti-competitive manner. Specifically relevant to this case, it was alleged that BellSouth's prompts to new customers unduly influenced them into selecting BellSouth's intraLATA toll service by suggesting that BellSouth was the exclusive provider of intraLATA toll service. The complainants were especially critical of this alleged behavior because BellSouth's status as an incumbent local exchange company (ILEC) ensured that new customers would initially approach it for phone service. This, according to the complainants, justified placing special limitations on how BellSouth could market its intraLATA toll services.

In Order No. PSC-96-1569-FOF-TP, we determined that in order to ensure the proper development of competition in the intraLATA toll market, BellSouth must maintain competitively neutral customer contact protocols. *BellSouth Restriction Order*² These neutral

¹In Re: Investigation into IntraLATA Presubscription, Docket No. 930330-TP, PSC-95-0203-FOF-TP, issued February 13, 1995. (*IntraLATA Presubscription Order*)

²In Re: Complaint of Florida Interchange Carriers Association, MCI Telecommunications Corporation, and AT&T Communications of the Southern States, Inc. Against BellSouth Telecommunications, Inc., Docket No. 960658-TP, Order No. PSC-96-1569-FOF-TP, issued December 23, 1996. (*BellSouth Restriction Order*)

customer contact protocols required BellSouth to: 1) inform each customer that due to the newly competitive environment they have a choice of intraLATA toll carriers; 2) offer to read the customer a list of available carriers; and 3) if the customer did not choose a presubscribed carrier, offer to read the list again and if the customer remained noncommittal, explain that a carrier access code would have to be used for intraLATA toll calls absent selecting a primary interchange carrier. *Id.* at 6. In addition to requiring these customer contact protocols, we prohibited BellSouth from initiating marketing efforts designed to retain customers who decided to switch their intraLATA toll service from BellSouth to another carrier for a period of eighteen months. *Id.* at 7.

After imposing restrictions on BellSouth, we turned our attention to the other ILECs. In our Proposed Agency Action³ (*PAA Order*), we found the other LECs should also use the competitively neutral prompts when they communicate information about intraLATA toll carrier choices to new customers. The *PAA Order* was protested and set for hearing. As a result of that hearing, we issued an Order⁴ (*ILEC Order*), which reaffirmed our prior ruling that the other ILECs, including Verizon, were required to use the same neutral customer contact protocols as BellSouth.

In our *ILEC Order*, we also allowed Sprint to use the phrase "in addition to us" when notifying customers of the availability of multiple intraLATA toll carriers. We found that Sprint's contact script met the underlying principle of the restriction "to insure that customers have an opportunity to make informed decisions regarding the choice of intraLATA toll providers." *ILEC Order* at 5.

³In Re: Generic Consideration of Incumbent Local Exchange (ILEC) Business Office Practices and Tariff Provisions in the Implementation of IntraLATA Presubscription, Docket No. 970526-TP, Order No. PSC-97-0709-FOF-TP issued June 13 1997. (*PAA Order*)

⁴In Re: Generic Consideration of Incumbent Local Exchange (ILEC) Business Office Practices and Tariff Provisions in the Implementation of IntraLATA Presubscription, Docket No. 970526-TP, Order No. PSC-98-0710-FOF-TP, issued May 22, 1998. (*ILEC Order*)

Later, in response to a petition by BellSouth⁵ (*BellSouth Restriction Modification Order*), we considered lifting the marketing restrictions imposed on BellSouth. We noted that intraLATA toll customer activity was the only circumstance that had changed over the 18 months since our order prohibiting the marketing activity BellSouth again sought to conduct. *Id.* at 9. We found that because of interexchange company marketing efforts, customers had become sufficiently informed to make educated choices despite any inherent advantage BellSouth had due to it being the first entity most consumers approach for phone service by virtue of its ILEC status. *Id.* at 10. We granted BellSouth relief from the *BellSouth Restriction Order* by revising the first step in the protocol. BellSouth is now allowed to advise customers that "due to the newly competitive environment, customers have the option of selecting a carrier for their local toll calls in addition to us." *Id.* at 11-12 (Emphasis supplied).

On February 10, 1999, Verizon Florida, then known as GTE Florida, requested a declaratory statement from this Commission which would allow it to recommend its intraLATA toll service on new customer contacts after informing customers that they had a choice of intraLATA services and offering to read a list of available carriers. We denied the relief proposed by Verizon's request for a declaratory statement⁶ (*Declaratory Statement*), stating that the marketing restrictions were intended to ensure competitively neutral customer contact protocols, increase customer awareness, and allow the IXCs to establish a presence in the intraLATA toll marketplace. *Id.* at 5. We found the reading of the phrase "I'd like to recommend" went beyond this competitively neutral standard by marketing Verizon's service in a manner other intraLATA toll competitors did not have available. *Id.* at 7. We found this a sharp contrast to the approved phrase "in addition to us," which

⁵ In Re: Petition of BellSouth Telecommunications, Inc., to Lift Marketing Restrictions Imposed by Order No. PSC-96-1569-FOF-TP, Docket No. 971399-TP, Order No. PSC-98-1469-FOF-TP, issued October 28, 1998. (BellSouth Restriction Modification Order)

⁶In Re: Petition of GTE Florida Incorporated for declaratory statement that its intraLATA customer contact protocol complies with Order PSC-95-0203-FOF-TP, Docket No. 990157-TL, Order No. PSC-99-0955-FOF-TP, issued May 11, 1999. (Declaratory Statement)

we stated simply informs the customer of all the available carriers but does not emphasize one carrier over another. *Id.*

II. ANALYSIS

In its instant petition, Verizon seeks relief from our intraLATA toll customer contact protocols. Specifically, Verizon seeks permission to recommend its intraLATA toll service on new customer contacts, after informing customers that they have a choice of local toll providers and offering to read a list of all available intraLATA toll providers. (Petition at 1) Verizon argues that this request is consistent with our order implementing intraLATA toll presubscription, (*IntraLATA Presubscription Order*) because it desired that intraLATA and interLATA services be explained in the same way. (Petition at 1) Furthermore, Verizon claims we never modified our declaration that intraLATA and interLATA should be treated the same way, and that declaration was the foundation for ILECs such as Verizon stipulating in 1998 not to litigate the issue of whether we should order non-BellSouth ILECs to use customer contact protocols. (Petition at 4)

Verizon contends that the FCC has long allowed an ILEC "to recommend its own long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance and offers to read a list of all available interexchange carriers in random order." (Petition at 4, quoting BellSouth's South Carolina 271 Application' at ¶ 237) Verizon contends the FCC found this approach provides the right balance between equal access obligations and the right to engage in joint marketing for intraLATA as well as interLATA services. (Petition at 5 quoting *Id.*)

The purpose behind the customer contact protocols, according to Verizon, was to allow the interexchange carriers (IXCs) to develop market share and to create customer awareness about competitive intraLATA toll services. (Petition at 5) These goals,

⁷*Application of BellSouth Corp., et. al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, Memorandum Op. & Order, FCC 97-418, issued December 24, 1997.*

Verizon asserts, have been met. (Petition at 5) Information Verizon obtained from its Activation Management System (AMS) database indicates that as of August 2001, 74.2% of eligible lines were not presubscribed to Verizon's intraLATA toll service. (Petition at 6) As an additional example that competition has developed in the intraLATA toll market, Verizon cites the month of September 2001. Verizon's Call Center Order Entry System indicates that in September of 2001, 81% of all new service orders initiated by residential customers did not presubscribe to Verizon's intraLATA toll service. (Petition at 6) Verizon asserts "[t]his information proves, beyond any doubt, that the objectives underlying the customer contact restrictions, assuring customer awareness of their intraLATA choices and allowing IXCs to establish themselves in the intraLATA market, have been fully met." (Petition at 6)

Verizon claims the current customer contact protocols place it at a competitive disadvantage with IXCs, who can market their intraLATA toll service without limitation. (Petition at 6) Verizon is particularly concerned with large IXCs like AT&T and Sprint that are already well-known to consumers as long distance providers and can use that familiarity to sell intraLATA toll services. (Petition at 6) Verizon claims its intraLATA toll service is increasingly subject to competition from cellular companies that market intraLATA toll service without the restrictions that hinder Verizon. (Petition at 9) According to Verizon, 40% of the people in the U.S. carry a cell phone. (Petition at 9) Verizon asserts that our customer contact protocols prevent it from giving useful information about rate plans to consumers. (Petition at 6) Other states, and the FCC, according to Verizon, allow it to recommend its intraLATA service. (Petition at 6) Verizon argues that revising customer contact protocols to conform with other states in Verizon's territory and with FCC requirements will result in administrative cost savings, because Verizon customer service representatives could be trained to handle all calls in the same manner, as opposed to having to learn a separate, Florida-only procedure. (Petition at 6-7)

Verizon asserts that the current customer contact protocols are not a response to wrongdoing on its part, but rather were created to address alleged anti-competitive behavior by BellSouth. (Petition at 7) Verizon contends when we allowed Sprint to change

its customer contact protocols, we were persuaded by the fact that Sprint had not been subject to complaints for anti-competitive behavior. (Petition at 7) Verizon reiterates that it, like Sprint, was never subject to any complaints involving anti-competitive intraLATA marketing practices. (Petition at 7) Verizon asserts it did not even use the "in addition to us" language that was once used by Sprint and later adopted by BellSouth. (Petition at 7) In fact, Verizon contends it voluntarily implemented pro-competitive steps such as offering one free intraLATA primary interexchange carrier (PIC) change. (Petition at 7)

Additionally, Verizon argues the "gatekeeper" rationale, which influenced our decision to institute customer contact protocols, no longer justifies maintaining them. (Petition at 8) By "gatekeeper" rationale, Verizon is referring to the argument that an ILEC, as likely first contact for many new phone customers, would use its position to unduly influence customers into selecting the ILEC's intraLATA toll service. (Petition at 8) Verizon contends this "gatekeeper" rationale no longer applies because of the increased local and intraLATA toll service competition, and greater consumer knowledge of intraLATA toll competition. Increased local competition and the dramatically increased prevalence of cell phone use have greatly reduced Verizon's once dominant position as an ILEC. (Petition at 9) Verizon contends the danger of it using its ILEC status to exert undue influence on customers is unfounded because it has never shown any tendency to engage in unfair intraLATA marketing tactics or to aggressively interpret our marketing guidelines. (Petition at 9)

As an added measure, Verizon will keep a number of key customer contact protocols in place. It will still inform customers that they are free to choose among numerous intraLATA toll carriers and offer to read a list of all available carriers to insure customer awareness of intraLATA toll competition. (Petition at 8) Verizon also argues that we should not use residential local competition as a factor to determine if customer contact protocols are still needed. Subsidies inherent in the system are the reason for low residential competition, not Verizon's behavior. (Petition at 9) Verizon also asserts that granting the relief it is seeking would help shore up intraLATA toll revenues which have historically been used to keep basic phone service rates low. (Petition at 9)

II. DECISION

As noted in the case background, Verizon seeks our permission to recommend its intraLATA toll service to new customer contacts after it informs customers that they have a choice of local toll providers and offers to read a list of available intraLATA toll providers. This is the same request Verizon made and we denied in 1999. *Declaratory Statement* at 2. However, since we denied Verizon's request in 1999, we find that current market data illustrates a significant increase in consumer awareness of intraLATA toll competition and intraLATA toll market share now held by competitors. The increase in competition leads to our finding that our goals behind the customer contact protocols, to ensure that competition for intraLATA toll service developed and that customers are educated about intraLATA toll competition, have been met.

We generated our neutral customer contact protocols out of a concern that ILECs would use their status as "gatekeeper" of local phone service (i.e., the first company most new phone customers have contact with) to unduly influence new customers into selecting their own intraLATA toll service. *BellSouth Relief Order* at 10. We found a customer's first "buying experience" was crucial and, as such, required ILECs to use competitively neutral protocols when negotiating with a new customer about the selection of an intraLATA toll carrier. *Id.* at 9. The neutral customer contact protocols required ILECs to: 1) inform each customer that due to the newly competitive environment they had a choice of intraLATA toll carriers; 2) offer to read the customer a list of available carriers; and 3) if the customer did not choose a prescribed carrier, offer to read the list again and if the customer remained noncommittal, explain that a carrier access code would have to be used for intraLATA toll calls absent selecting a primary interchange carrier. *BellSouth Restriction Order* at 6. We stated that the objectives underlying the customer contact restrictions were to assure customer awareness of their intraLATA choices and to allow IXCs to establish themselves in the intraLATA toll market. *Declaratory Statement* at 5. While we felt the newly competitive intraLATA toll environment justified the customer contact protocols when first issued, we also stated "While this gatekeeper position gives an [ILEC] an advantage in theory, we believe market data is

a more telling indicator since this data is the product of actual customer and company actions." *BellSouth Relief Order at 10*. This statement reflects our intent to limit customer contact protocols when actual market data proved that intraLATA toll competition was firmly developed and that consumers were aware of the competitive intraLATA toll environment.

We find that the current market data illustrates that customer awareness of intraLATA toll competition and IXC intraLATA toll market share have increased significantly. These increases in customer awareness and IXC market share lead us to find whatever advantage Verizon enjoyed by virtue of its ILEC status has been reduced to where Verizon should be granted the relief it is seeking. That is, we find that Verizon should be permitted to recommend its intraLATA toll service after it informs customers that they have a choice of intraLATA carriers and offers to read a list of available carriers. When Verizon filed its first request for relief with us in 1999, approximately 54% of eligible customers did not presubscribe to Verizon's intraLATA toll service. (Petition at 5) Now, as of August 2001, 74.8% of eligible customers are not presubscribed to Verizon's intraLATA toll service. (Petition at 6) Further, among new customers, the disparity is even greater. A sample month of September 2001, indicated that 81% of new service orders initiated by residential customers did not presubscribe to Verizon's intraLATA toll service compared to approximately 67% in 1999. (Petition at 5-6) We find that allowing Verizon to recommend its intraLATA toll services will not adversely affect the state of the market because the market data overwhelmingly show that customers have become sufficiently informed to make educated choices, despite any inherent advantage Verizon has due to its "gatekeeper" position.

In our Declaratory Statement, we recognized that competition for local residential service should be a factor in determining what customer contact protocols are appropriate for an ILEC promoting its intraLATA toll services. See *Declaratory Statement at 7*. However, we find any negative inference drawn from low levels of residential competition in the local market is offset by the almost 75% market share competitors possess in Verizon's intraLATA toll market. We find this level of toll market penetration indicates that consumers who select Verizon for intraLATA toll service will be doing so because they genuinely

desire Verizon as their intraLATA toll carrier rather than due to lack of knowledge about competition. Additionally, we find Verizon's potential for undue influence on a customer's selection of intraLATA toll provider by virtue of its ILEC status dwindles more and more as cell phone use continues to rise. While we have not verified that 40% of Americans carry cell phones, as Verizon contends, we do believe that cell phones have become a viable competitor for local service for many people. Further, safeguards will remain in place to ensure consumer awareness of intraLATA toll competition remains high. Verizon representatives will still be required to inform customers that they are free to select the intraLATA toll carrier of their choosing, and Verizon representatives must still offer to read a list of available intraLATA toll carriers to the customer before recommending Verizon's own intraLATA toll service.

Additionally, we hold that allowing Verizon to recommend its intraLATA toll services, only after it informs customers they are free to select the intraLATA toll carrier of their choice and offers to read a list of available providers, levels the playing field among competitors. There are no restrictions placed on the manner in which IXCs or cellular companies can market their intraLATA services. We have stated that a customer contact protocol "precludes [an ILEC] from explaining fully its products and services." *BellSouth Restriction Modification Order* at p. 9. We find that while the requested relief does not place Verizon on an equal footing with its competitors due to its unique position as an ILEC, it does allow Verizon's voice to be heard in the marketplace.

In conclusion, we find that Verizon shall be allowed to recommend its intraLATA toll service on new customer contacts after it informs customers that they have a choice of intraLATA toll carriers and offers to read a list of toll providers in random order. The market data indicates that customers have become sufficiently informed to make educated choices regarding the selection of an intraLATA toll carrier, despite any advantage that Verizon may have due to its "gatekeeper" status as an ILEC.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that Verizon Florida, Inc. be allowed to recommend its intraLATA toll service on

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new customer contacts after it informs customers that they have a choice of intraLATA toll carriers and offers to read a list of toll providers in random order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of March, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 9, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.