



# Public Service Commission

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DATE: 12/20/00

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (MOORE) *CYM DES*  
DIVISION OF COMPETITIVE SERVICES (WRIGHT) *bw*  
DIVISION OF ECONOMIC REGULATION (MAILHOT) *DM*

RE: DOCKET NO. 001556-TL - PETITION BY VERIZON FLORIDA INC. FOR DECLARATORY STATEMENT ON APPLICABILITY OF SECTION 364.336, F.S., AND RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES.

AGENDA: 1/2/01 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - PARTIES MAY PARTICIPATE AT THE COMMISSION'S DISCRETION

CRITICAL DATES: 1/11/01 - BY STATUTE, ORDER MUST BE ISSUED BY THIS DATE

SPECIAL INSTRUCTIONS: SHOULD NOT BE DEFERRED

FILE NAME AND LOCATION: S:\PSC\APP\WP\001556.RCM

### CASE BACKGROUND

Pursuant to section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code, Verizon Florida Inc. (Verizon), formerly known as GTE Florida Incorporated, filed a petition for a declaratory statement. The statute and rule that are at issue are section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, governing the payment of regulatory assessment fees. Verizon asks the Commission to declare that it is not required to pay regulatory assessment fees on directory advertising revenues.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission issue a declaratory statement that Verizon is not required to pay regulatory assessment fees on the directory advertising revenues booked by its affiliate company?

**RECOMMENDATION:** No, the Commission should issue a declaratory statement that Verizon is required to pay regulatory assessment fees on the directory advertising revenues from the directories for areas within its certificated territory.

**STAFF ANALYSIS:** Section 120.565, Florida Statutes, governs the issuance of a declaratory statement by an agency. In pertinent part, it provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Verizon's petition meets the threshold requirements for a declaratory statement.

Section 364.336, Florida Statutes, requires each telecommunications company licensed or operating under Chapter 364 to pay a fee to the Commission based on "its gross operating revenues derived from intrastate business . . ." Rule 25-4.0161, Florida Administrative Code, provides for the calculation and time for payment of the regulatory assessment fees.

Verizon's Circumstances:

Verizon contends that it should not be required to pay regulatory assessment fees on directory advertising revenues because the revenues are earned and booked by an affiliate, Verizon Directories Corp., formerly GTE Directories Corporation. Verizon states it has a contract with the directory affiliate under which Verizon earns revenues from providing certain services to the directory affiliate, such as billing and collections. The

directory company receives and books the revenues from the sale of advertising; thus, Verizon claims they are not its own revenues.

Verizon asserts that being required to pay fees on the directory advertising revenues discriminates against it because, it contends, none of the alternative local exchange companies (ALECs) that compete with Verizon must impute revenue from any of their affiliates when they calculate regulatory assessment fees. It asserts that this imposes an artificial regulatory disadvantage on Verizon.

Verizon states that it has communicated in the past with Commission staff on the fee issue. It believes that staff has relied on section 364.037, Florida Statutes, and Rule 25-4.0405, F.A.C., as the basis for including directory advertising revenues in the revenues on which the fees are paid. Section 364.037 directs the Commission to consider revenues derived from advertisements in telephone directories when establishing rates for telecommunications companies. Rule 25-4.0405 implements the statute and applies to "rate-of-return regulated local exchange telecommunications companies."

Verizon asserts that because it is not a rate-of-return regulated company, it is exempt from the requirements of section 364.037. § 364.051, Fla. Stat. According to Verizon, section 364.037, and Rule 25-4.0161, do not require imputing the revenues to Verizon, and the practice is also impermissible because the ratemaking provisions of 364.037 do not apply to it. For the year 2000, Verizon will pay approximately \$285,000 in additional regulatory assessment fees if the directories revenue is imputed to it. Verizon paid the fees on that revenue in July, 2000. It was paid under protest, however, and Verizon asks the Commission to allow it to deduct the amount of that payment from the amount that will be due in January 2001.

Analysis:

The Commission has addressed the treatment of directory advertising revenues with regard to regulatory assessment fees where it is an affiliate of the telecommunications company that receives and books the revenue. In re: Investigation into the regulatory assessment fee calculations for 1985 and 1986 of United Telephone Company of Florida, Order No 21364 issued June 9, 1989, in Docket 880149-T.L.. The facts in that docket are very similar to the ones presented by the petitioner here.

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United Telephone Company of Florida (United) stopped reporting its advertising revenues in its regulatory assessment fee reports after it entered into a publishing agreement with Directories America (DA), a subsidiary of United's parent company. The agreement covered the production, publication and distribution of United's telephone directories. United billed its customers for directory advertising and remitted the revenues to DA. After the agreement, United reported as revenue only the fees paid to it by DA.

The Commission issued an order for United to show cause why it should not pay regulatory assessment fees on all gross intrastate revenues derived from directory advertising irrespective of the recipient. Order No. 21206, issued May 10, 1989. In that order, the Commission found that the advertising revenues "ought to be attributed to United in order to prevent the circumvention of Section 350.113(3)(b) through a redirection of revenues to affiliated companies."

Section 350.113, Florida Statutes, was adopted in 1980 and requires each regulated company, including "each telephone company", under the jurisdiction of the commission to pay a fee based upon its gross operating revenues. Section 364.336, Florida Statutes, addresses only telecommunications companies, and it also requires each company to pay a fee on its gross operating revenues derived from intrastate business. Section 364.336 was not adopted until 1990, after the United order, however, there are no differences between sections 350.113 and 364.336 that would dictate or support a change in the outcome of the United proceeding.

The show cause proceeding was ultimately resolved by United agreeing to pay the fees on the revenues from the directories for areas within its certificated territory. The Commission agreed that fees were not due on the revenues associated with directories published for areas outside United's territory by the affiliates. In addition, United was not required to record the directory revenues and associated expenses of the affiliate on United's books and records. Order No. 21364, issued June 9, 1989. Thus, the revenue was imputed to the local exchange company (LEC), even though it was recorded on the books of the affiliate. Section 350.113 and not section 364.037, Florida Statutes, was referenced as the authority for collecting the fee.

The fact that the revenues at issue are booked by an affiliate was not determinative in the United proceeding, nor should it be here. Verizon's dealing with its directory affiliate is not an

arms-length transaction.<sup>1</sup> As in the United proceeding, the company should not be able to simply redirect revenues to affiliates, and thereby circumvent the regulatory assessment fee statute. In addition, it would not be fair if some LECs' advertising revenues were subject to regulatory assessment fees and others were not, merely because of differences in corporate structure.

Verizon asserts that none of the ALECs that compete with it must impute revenue from any of their affiliates when they calculate regulatory assessment fees. Verizon's assertion, however, is not supported with any facts, and staff is not aware of any facts to support such an assertion.

Verizon is correct that because it is a price cap regulated company, section 364.051(1)(c), Florida Statutes, exempts it from the requirements of section 364.037. Verizon is incorrect, however, that the Commission relies on section 364.037, Florida Statutes, for its authority to assess regulatory assessment fees on directory advertising revenues. Those revenues were included for the purpose of both regulatory assessment fees and for ratesetting before the adoption of section 364.037 in 1983.

The issue of excluding directory advertising revenues from consideration in setting rates was proposed by a LEC for the first time in 1981. In re: Petition of Southern Bell Telephone and telegraph Company for a rate increase, Docket No. 810035-TP, Order No. 10449, issued December 15, 1981. Prior to that time, all investment, expenses, taxes, and revenues attributable to the publication and sale of yellow pages advertising were included in determining rates. Id. at page 17.

In the Southern Bell rate case, the company asserted that the yellow pages revenues should be removed for ratemaking purposes. The Commission determined they should not, even though it did not regulate the rates charged for advertisements. The reasoning stated by the Commission in its order is instructive. The Commission was not persuaded by the company's claim of competition

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<sup>1</sup> While Verizon Directories Corp. (formerly GTE Directories Corporation) publishes Verizon's (formerly GTE) directories, the directory customer information pages assure customers that "GTE Directories is backed by the integrity and resources of GTE, one of the largest telecommunications companies in the world." (GTE's June 2000 combined white and yellow page telephone directory for Bartow, Florida, page 45; GTE's June 2000 white pages for Clearwater, Florida, page 59.)

from other yellow page publishers, and recognized that the company enjoyed a position not available to other publishers of yellow pages in that only the telephone company has entry into every subscriber's home or business place via its directory and only the company has complete up-to-date information concerning numbers. Id. at pages 16-18. The Commission also noted that the majority of other states also included yellow page revenues for ratemaking purposes.<sup>2</sup>

Much has changed in the telecommunications industry since 1981, however, Verizon does not allege that it has competition from other yellow page publishers, much less significant competition. Nor does Verizon allege that it does not still enjoy a position of dominance in the provision of local exchange service and a concomitant ability for it or its affiliate to derive great profits from directory advertising because of Verizon's dominance.<sup>3</sup>

More recently, the Commission concluded that yellow page advertising revenues should be included in the basic local exchange revenues available as a source of support for universal service on an interim basis. Order No. PSC-95-1592-FOF-TP, issued December 27, 1995, in Docket 950696-TP: Re Universal Service and Carrier of Last Resort Responsibilities. The fact that directories for several major LECs are published by affiliates apparently was not raised as an issue by the LECs. In any event, there is nothing in the Commission's order to suggest that corporate structure had any bearing on whether or not certain revenues should be included.

Verizon's rates may no longer be regulated by the Commission, but the Commission's jurisdiction to regulate Verizon's service continues. §§ 364.01(4), 364.02(2), 364.025, and 364.051, Fla.

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<sup>2</sup>In deciding that the Utilities Commission could properly include Southern Bell's directory advertising revenues for ratemaking purposes, the North Carolina Supreme Court found that the company's preferred position in the field of directory advertising, with all its benefits and revenues, was directly related to and the result of the company's public utility function. State, ex rel. Utilities Commission v. Southern Bell Telephone and Telegraph company, 299 S.E. 2d 763 (N.C. 1983).

<sup>3</sup>According to the December, 2000, report, "Competition in Telecommunications Markets in Florida", incumbent LECs' total market share of access lines is 93.9 percent. The percentage of business access lines 85.8. Of residential lines alone, the percentage is 97.3. Report, p. 7, 46.

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Stat. (1999). Part of that service regulation are the requirements that Verizon regularly publish and update telephone directories, that it furnish a copy of a directory to each subscriber, and that specified information is published in all directories. Rule 25-4.040, Florida Administrative Code.

There is nothing in Verizon's petition to demonstrate that Verizon does not still enjoy a great advantage over all competitors in the field of directory advertising, if Verizon has such competition. Staff believes this preferred position is directly related to and the result of the company's dominance in the provision of local exchange telecommunications service. The publication and furnishing of a yellow page directory does not, on the record here, appear to be a separate function or activity from the publication and furnishing of the directory Verizon is required by the Commission to publish and distribute.

Staff believes that the market for Verizon's affiliate's yellow page advertisements is directly related to Verizon's position as the incumbent LEC and its publication of the required directory listings. Because every customer must be furnished with a directory, every yellow page advertiser can be assured that its advertisement will be received by every one of Verizon's telecommunications services subscribers. There is no information in the record here that any other directory publisher has this advantage or ability. To the extent Verizon has any competition for its yellow page advertising, staff believes that customers still view the incumbent LEC's directory as the primary and most reliable one.

In summary, Verizon has not alleged any particular circumstances different from those presented in the United order. Nor has Verizon cited a change in the law that would appear to dictate a different result. Section 364.336 still requires telecommunications companies to pay a regulatory assessment fee based on its gross operating revenues derived from intrastate business. Section 364.051(1)(c), which exempts Verizon from certain other statutes, does not exempt it from 364.336. Thus, the fact that Verizon is no longer subject to rate regulation does not exempt its revenues from regulatory assessment fees.

Based on the circumstances presented by Verizon in its petition, staff believes there is not a sound basis for the Commission to grant the declaratory statement that Verizon seeks. The Commission should issue a declaratory statement that the directory advertising revenues from the directories for areas within Verizon's certificated territory that are billed and

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collected by Verizon, but which are booked by Verizon's affiliate, should continue to be imputed to Verizon and that Verizon is required to pay regulatory assessment fees on those revenues.

If the Commission determines that its longstanding policy should be reevaluated, then staff believes it should conduct a hearing to fully develop a record on which to base such a change. The facts presented in Verizon's petition are insufficient for that determination.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, if the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.

**STAFF ANALYSIS:** A declaratory statement is issued as a final order and the docket may be closed.

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