

ORIGINAL



Kimberly Caswell
Vice President and General Counsel, Southeast
Legal Department

RECEIVED-FPSC

02 FEB -5 AM 11:48

COMMISSION
CLERK

FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-2606
Fax 813 204-8870
kimberly.caswell@verizon.com

February 5, 2002

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. 010774-TP
Petition of the Office of Public Counsel to initiate rulemaking which will require
telephone companies to give customers reasonable notice before customers
incur higher charges or change in services, and allow them to evaluate offers
for service from competing alternative providers

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of the Further Comments of Verizon
Florida Inc. for filing in the above matter. If there are any questions regarding this
matter, please contact me at (813) 483-2617.

Sincerely,

Kimberly P. Caswell
Kimberly Caswell

KC: *108*
Enclosures
Staff Counsel (w/e)

DISTRIBUTION CENTER

02 FEB -5 AM 11:48

- AUS
- CAF
- CMP
- COM
- CTR
- ECR
- GCL
- OPC
- MMS
- SEC
- OTH

RECEIVED & FILED
RLM
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

01351 FEB-58

FPSC-COMMISSION CLERK

Cover pg

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Office of Public Counsel) Docket No. 010774-TP
To Initiate Rulemaking Which Will Require) Filed: February 5, 2002
Telephone Companies to Give Customers)
Reasonable Notice Before Customers Incur)
Higher Charges or Change in Services, and)
Allow Them to Evaluate Offers for Service)
From Competing Alternatives)
_____)

FURTHER COMMENTS OF VERIZON FLORIDA INC.

After the meeting in this docket on January 15, 2002, Staff asked parties to file comments on the Staff and Office of Public Counsel (OPC) draft rules that have been proposed in this case. The parties tried to negotiate a rule and had made significant progress, but OPC appears to have reverted back to supporting its originally proposed rule.

Verizon Florida Inc. (Verizon) does not support either proposed rule, or, for that matter, any rule requiring specific forms of customer notification of rate changes. Verizon already provides such notice, typically in the form of a bill insert or bill message. Verizon has not received customer complaints indicating any problem with lack of notice of rate changes. In fact, neither Staff nor OPC has produced any evidence of local exchange customer (LEC) customer complaints regarding inadequate notice of rate changes. Apparently, there were a few complaints (reportedly, about 20) for the entire year about certain interexchange carriers (IXCs) raising rates without sufficient notice, but there has been no information about how many of these complaints may have been justified. In any event, the number is insignificant, given the hundreds of IXCs certificated to operate in Florida.

DOCUMENT NUMBER-DATE

01351 FEB-5 2002

FPSC-COMMISSION CLERK

A rule must be “supported by competent and substantial evidence” and must not be “arbitrary or capricious.” (Fla. Stat. § 120.52(8)(e) & (f).) When a rule is filed for final adoption, it must include “a detailed written statement of the facts and circumstances justifying the rule.” (Fla. Stat. § 120.536(e)1.)

It would be impermissible to adopt either of the proposed rules because there is no evidence, let alone competent and substantial evidence, of the need for any rule. It would be impossible for the Commission to adequately detail the facts and circumstances justifying a rule, particularly a rule applicable to LECs, which have not been the target of complaints about rate change notice.

If the Commission is determined to adopt a rule, despite the likelihood of a legal challenge to it, then the Staff’s draft rule is far better than OPC’s proposed rule, because it allows carriers more flexibility in notice procedures. Verizon already provided comments on OPC’s rule in Responses to Staff’s Data Requests, filed in this docket on August 29, 2001. Because OPC’s proposed rule remains the same today, Verizon has the same criticisms of it and will not repeat them here. Verizon will comment on a few specific aspects of the Staff rule, with the understanding that Verizon maintains that no rule is necessary.

First, if any rule is adopted, it should not apply to local exchange carriers (LECs). To Verizon’s knowledge, there is no evidence of any consumer complaints about the LECs’ rate changes, so a rule to remedy notice problems is patently unjustifiable under Florida’s Administrative Procedure Act (see above).

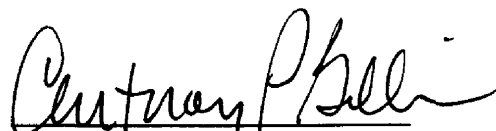
Second, one of the presumptively acceptable means of notice under the Staff’s rule is “first class mail.” (Draft rule 25-4.1105(2)(a).) Verizon recommends changing

“first class mail” to “a direct mailing” (this change is shown on the attached redlined document). Verizon and other companies inside and outside the telecommunications industry frequently use postcards to notify their customers of rate or service changes and other matters. Notice by means of a postcard is at least as effective as notice in a sealed envelope, but postcards are not first class mail. Verizon’s change would recognize that any direct mailing, rather than just first class mailings, would be presumptively acceptable.

Third, as Verizon reads the rule, it applies only to companies that render bills on their own behalf or through a billing company. A pay telephone provider would not, for instance, be able to comply with a rule requiring notice of rate changes to “affected subscribers” because it has no presubscribed users and it does not issue regular bills.

If Verizon is reading the rule correctly, then no changes are needed to recognize that it does not apply to rate changes for companies who do not bill any subscribers for particular services. If the draft rule could be construed to apply to such companies, then it would need to be changed accordingly.

Respectfully submitted on February 5, 2002.

By: 
Kimberly Caswell
P. O. Box 100, FLTC0007
Tampa, FL 33601
(813) 483-2617

Attorney for Verizon Florida Inc.

STAFF'S DRAFT RULE:

25-4.1105 Notice to Customers Prior to Increase in Rates or Charges

- (1) All telecommunications companies shall provide reasonable notice of any increase in intrastate telecommunications rates, or any changes in terms or conditions that would cause a material increase in customer charges, to each of their affected subscribers, prior to implementation of the increase.
- (2) The notice shall be clear and conspicuous, shall be identified with the heading: "Notice of Price Increase," or "Notice of Price Change," if the change will result in a price increase for some customers and a price decrease for some customers, and shall be presumed reasonable if provided in the following manner:
- a) First classA direct mailing postmarked at least 15 days prior to the effective date of the increase in rates or charges to the customer;
 - b) A bill insert or bill message mailed to the customer no later than one billing cycle prior to the effective date of the increase in rates or charges to the customer;
 - c) For those customers who have elected to receive electronic billing, an electronic message sent at least 7 days prior to the effective date of the increase in rates or charges to the customer; or
 - d) Pursuant to a written contract signed by the subscriber that specifically prescribes a method for notice of price increases.

Specific authority: 350.127; 364.0252; 364.19, F.S.

Law implemented: 364.0252; 364.19, F.S.

History: New _____

OPC'S DRAFT RULE:

25-4.1105 Notice to Customers Prior to Increase in Rates or Charges

All telecommunications companies furnishing service within this state shall provide notice of any change in rates or other terms and conditions of service directly to each customer that may be affected by the change. If the change may increase the cost of service for a customer, notice shall be provided at least 30 days in advance of any change in rates or terms and conditions of service. Notice of price increase shall be sent via first class mail. Service by mail of the notice of price increase shall be complete upon mailing. No change in tariffs, price lists, or terms and conditions that may increase the cost of service for a customer will be effective unless notice of the change is provided to customers as required by this rule. In the case of a rate decrease, telecommunications companies shall notify each affected customer no later than the first bill following implementation of the rate change. Any notice required by this sub-section shall be printed in a 12-point type or larger, and shall be clear, conspicuous, and legible. The notice shall include, at a minimum, the name and nature of any and all services to be changed, the past rates and the anticipated new rates. Notice of price increase shall include as a heading **"NOTICE OF PRICE INCREASE"** in uppercase, bold print. The envelope containing the notice of price increase shall contain a notice on the front thereof: **"NOTICE OF PRICE INCREASE ENCLOSED"** in uppercase, bold print. That telecommunications companies have tariffs or price lists for services on file with the commission is not a defense to any action brought for failure to disclose prices for which disclosure is required under this rule.

Specific authority: 350.127; 364.0252; 364.19, F.S.

Law implemented: 364.0252; 364.19, F.S.

History: New_____