

State of Florida



ORIGINAL

RECEIVED-FPSC

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

04 DEC 28 PM 1:12

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: December 28, 2004
TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director
FROM: Samantha M. Cibula, Senior Attorney, Office of the General Counsel *S.M.C.*
RE: Docket No. 010795-TP – Petition by Sprint Communications Company Limited Partnership for arbitration with Verizon Florida Inc. pursuant to Section 251/252 of the Telecommunications Act of 1996.

Please place the attached documents into the above referenced docket file. They are the Order and Judgment from the United States District Court for the Northern District of Florida.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH Lockard

DOCUMENT NUMBER-DATE

13538 DEC 28 3

FPSC-COMMISSION CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

VERIZON FLORIDA, INC.,

Plaintiff,

vs.

CASE NO. 4:03cv298-SPM/AK

SPRINT COMMUNICATIONS COMPANY
A LIMITED PARTNERSHIP, et al.,

Defendants.

ORDER

This case is before the Court pursuant Verizon's appeal of the Florida Public Service Commission's decision concerning the rate Sprint must pay to Verizon for voice activated dialed calls that originate and terminate in the same local calling area. This Court has jurisdiction under the Telecommunications Act of 1996, 42 U.S.C. §§ 251-252, to review the Commission's decision. De novo review applies to the Commission's interpretation of the meaning and import of the Telecommunications Act. AT&T Communications of Southern States v. GTE Florida, Inc., 123 F.Supp.2d 1318, 1322 (N.D. Fla. 2000). The arbitrary and capricious standard of review applies to the Commission's application of the Act. Id.

I. BACKGROUND

Voice activated dialing is a product that Sprint developed for all of its long distance service customers, including customers who subscribe to local service through other carriers. The voice activated dialing, or VAD, allows a Sprint customer to program names and numbers into the VAD system. The customer could then dial "00" from a home phone and say the name of the person to be called. The VAD system would look up the name, find the number, and complete the call accordingly. Both long distance calls and local calls can be completed using Sprint's VAD system.

For long distance VAD calls that pass through Verizon's local network, Sprint and Verizon agreed that the rate of compensation Sprint pays to Verizon should be based on "access charges." Access charges were developed by the Federal Communications Commission and state commissions as the standard method for compensating local telephone carriers for use of local network facilities by long distance carriers. Access charges are not limited to the pure cost of using the network, and they include additional fees to subsidize local, universal service.

For local VAD calls that pass through Verizon's network, Verizon and Sprint could not agree on the rate of compensation. Sprint proposed to compensate Verizon at a lower rate that is known as "reciprocal compensation." Reciprocal compensation is a bare cost based rate that was developed under

the Telecommunications Act to encourage competition in the local phone service market. Verizon did not agree to the reciprocal compensation rate and took the position that the VAD local calls were not subject to reciprocal compensation because the calls originate and terminate on Verizon's network. Verizon and Sprint arbitrated the matter before the Commission, which ruled in favor of Sprint.

II. DISCUSSION

In determining the appropriate rate of compensation for voice activated dialed local calls, the Commission first determined whether the traffic generated by the calls were jurisdictionally local or jurisdictionally long distance. This analysis is consistent with the Federal Communications Commission's implementation of the Telecommunications Act which separates traffic into two categories. Local traffic, also known as exchange service, is jurisdictionally local and therefore subject to a cost based reciprocal compensation rate to promote local competition. Bell Atlantic Tel. Companies v. F.C.C., 206 F.3d 1, 4-5 (D.C. Cir. 2000). Long distance traffic, also known as exchange access, is jurisdictionally non-local and subject to an above cost access charge that subsidizes local services. Id.

Using an end to end analysis, to which Verizon does not object (see doc. 32 at p. 9), the Commission found that the calls were jurisdictionally local. As such, the Commission concluded that a reciprocal compensation rate, as opposed to an access charge, would provide the appropriate rate of

compensation for use of Verizon's network. The Commission's ruling is consistent with the local competition provisions of the Telecommunications Act, which require an incumbent local carrier, like Verizon, to provide reciprocal compensation arrangements for the transport and termination of telecommunications involving local traffic. 47 U.S.C. § 251(b)(5) and 47 C.F.R. 51.707(a).

Verizon does not seek a ruling from this Court that the Commission should have adopted an access charge rate. Doc. 32 at p. 4, n.4. Instead, Verizon argues that a reciprocal compensation rate should not apply to the local VAD calls. Other than the access charge, however, Verizon does not suggest an alternative rate.

Verizon's argument rests primarily on the wording of 47 U.S.C. § 252(d)(2)(A)(i) and 47 C.F.R. 51.701(e). According to Verizon, reciprocal compensation is designated within the Telecommunications Act for "calls that originate on the network facilities of [an]other carrier." 47 U.S.C. § 252(d)(2)(A)(i). Federal regulations also designate reciprocal compensation for "calls that originate on the network facilities of [an]other carrier." 47 C.F.R. 51.701(e). Verizon argues that since the local VAD calls both originate and terminate on Verizon's own network, reciprocal compensation is not applicable.

The Commission recognized, however, that to promote competition in local services, reciprocal compensation generally applies to local traffic. The

VAD local calls at issue fall within the jurisdiction of local traffic based on an end to end analysis of the calls. Furthermore, the VAD local calls are not subject to access charges under the Telecommunications Act because they fit within the scope of 47 C.F.R. 51.701(a), which contemplates cost based compensation when local traffic is exchanged between two carriers. Access charges, on the other hand, apply when three carriers (two local carriers and a long distance carrier) collaborate to complete a long-distance call. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, CC Docket No, 96-98, First Report and Order, ¶1034.

The Commission did recognize Verizon's contention that a typical reciprocal compensation arrangement would only provide compensation for terminating a call, and therefore would not adequately compensate Verizon for the local VAD calls, which originate and terminate on Verizon's network. The Commission therefore approved a compensation arrangement that pays Verizon, at cost based reciprocal compensation rates, for Sprint's use of its network to originate and terminate the calls.

The Commission's decision is consistent with the Telecommunications Act, which requires local carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(5). Sprint's VAD service, similar to directory assistance, is a local

service that may be provided on a competitive basis. The cost based reciprocal compensation rate determined by the Commission does not violate federal law or policy. Accordingly, it is

ORDERED AND ADJUDGED that the Commission's final order is affirmed and Verizon's Motion for Summary Judgment (doc. 25) is denied.

DONE AND ORDERED this 29th day of September, 2004.

s/ Stephan P. Mickle
Stephan P. Mickle
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

VERIZON FLORIDA INC.

VS

CASE NO. 4:03cv298 SPM/AK

SPRINT COMMUNICATIONS
COMPANY LP, FLORIDA PUBLIC
SERVICE COMMISSION, LILA A.
JABER, J. TERRY DEASON, BRAULIO
L. BAEZ, RUDOLPH BRADLEY, AND
CHARLES M. DAVIDSON

JUDGMENT

This action came to trial or hearing before the Court with the Honorable Stephan P. Mickle presiding. The issues have been tried or heard and a decision has been rendered.

Judgment is entered in favor of the Defendants, Sprint Communications Co. LP, Florida Public Service Commission, Lila A. Jaber, J. Terry Deason, Braulio L. Baez, Rudolph Bradley, Charles M. Davidson and against the Plaintiff, Verizon Florida, Inc. pursuant to Court's order denying Plaintiff's Motion for Summary Judgment and affirming the Commission's final order. Costs are allowed as provided by law.

WILLIAM M. McCOOL, CLERK OF COURT

September 30, 2004
DATE

s/Louise Trautman
Deputy Clerk: Louise Trautman