ORIGINAL

**Timolyn Henry**

**From:** Martha Johnson [marthaj@fcta.com]

**Sent:** Wednesday, May 31, 2006 4:54 PM

**To:** Filings@psc.state.fl.us

**Cc:** David Christian; Sally Simmons; Patrick Wiggins; Michael Gross

**Subject:** Docket No. 060292-TL Petition for Formal Proceeding Pursuant to Section 120.57(1), Florida Statutes

**Attachments:** 060292 Exhibits.pdf; 060292 - Petition for Formal Proceeding Pursuant to Section 120.57(1), Florida Statutes.doc

**In Re: Docket No. 060292 -** Re: Review of tariff filing (T-060052) by Verizon Florida, Inc. to establish permanent promotional offering.

Attached please find the Florida Cable Telecommunications Association's Petition for Formal Proceeding Pursuant to Section 120.57(1), Florida Statutes and exhibits to be filed in the above referenced dockets. This filing has a total of 33 pages.

Thank you,

Martha Johnson
Regulatory Assistant
Florida Cable Telecommunications Association
246 E. 6th Avenue
Tallahassee, FL 32303
850/681-1990
850/681-9676 (fax)

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FPSC-COMMISSION CLERK

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of tariff filing (T-060052) by Verizon Florida Inc. to establish permanent promotional offering.**
_______________________________/

**Docket No. 060292-TL**

**May 31, 2006**

**PETITION OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION INC. FOR A FORMAL PROCEEDING PURSUANT TO SECTION 120.57(1), FLORIDA STATUTES, SEEKING EXPEDITED REVIEW OF PROPOSED AGENCY ACTION ORDER NUMBER PSC-06-0390-PAA-TL ALLOWING TARIFF TO REMAIN IN EFFECT AND FOR SUSPENSION AND CANCELLATION OF THE PERMANENT PROMOTIONAL TARIFF FILED BY VERIZON FLORIDA INC.**

Florida Cable Telecommunications Association Inc. (FCTA), pursuant to Rule 25-22.029, Florida Administrative Code, hereby petitions for a formal proceeding pursuant to Section 120.57(1), Florida Statutes, seeking expedited review of Proposed Agency Action Order (No. PSC-06-0390-PAA-TL) Allowing Tariff to Remain in Effect, issued on May 10, 2006, and for suspension and cancellation of the permanent promotional tariff filed by Verizon Florida Inc. (Verizon) and states:

1. The FCTA is a non-profit trade association representing the cable telecommunications industry in the State of Florida, cable companies providing cable services and information services in the State of Florida, as well as certificated competitive local exchange carriers (CLECs) providing voice communications services in the State of Florida (FCTA Members). The FCTA's business address is 246 E. 6th Avenue, Tallahassee, FL 32303.

2. The name and address of the person authorized to receive all notices, pleadings and other communications in this docket is:


Michael A. Gross
Vice President, Regulatory Affairs and Regulatory Counsel
Florida Cable Telecommunications Association
246 E. 6th Avenue, Suite 100

Tallahassee, FL 32303
Tel: 850/681-1990
Fax: 850/681-9676
E-mail: mgross@fcta.com

3. Verizon is a corporation organized and formed under the laws of the State of Florida, having an office at 201 North Franklin Street, Tampa, FL 33602, and at 106 East College Avenue, Tallahassee, FL 32301. Verizon provides local exchange and other services within its service territory. Verizon is an incumbent local exchange carrier (ILEC) under the terms of the Federal Telecommunications Act (the Act) and is certificated as a Florida ILEC.

4. The FCTA received notice of the proposed agency order of the Florida Public Service Commission (the Commission) on May 10, 2006, through a search of the Commission's website.

5. On January 27, 2006, Verizon filed to establish a permanent promotional tariff offering (T-060052). A copy of the tariff is attached as Exhibit A. The tariff became effective on February 11, 2006, fifteen days after the filing date.

According to the Staff recommendation dated April 6, 2006, Verizon designed its permanent promotional tariff offering primarily as a retention strategy to address a high rate of residential access line loss, especially to the incumbent cable company. A copy of the Staff recommendation is attached as Exhibit B. The Verizon product manager will develop and activate each promotion, with only one promotion available at any one time. The promotion will be offered if a residential customer calls Verizon to disconnect service and explains that he or she is accepting an offer from a competing company. Each promotional offer will not exceed ninety days in duration and will be available for resale to CLECs at no discount. The tariff itself indicates that it will be available throughout Verizon's service territory and will apply to residential service only. Since residential service can include both basic and nonbasic service, and the tariff contains no limitation as to the type of service to which it applies, it is inferred that it applies to both basic and non-basic service. Notwithstanding this fact, the Staff analysis focuses exclusively on the tariff as if it were applicable to nonbasic service only, and contains no analysis of the practical and legal implications of the promotional offerings to customers who request only basic service.

The tariff also indicates that its purpose is to retain customers or attract customers who currently receive their local service from a competing provider. However, both the Staff analysis and the Notice of Proposed Agency Action Order Allowing Tariff to Remain in Effect focus their analysis solely on the aspect of the promotional offering that would apply to the goal of retaining customers with no discussion or analysis of the portion of the tariff that applies to attracting customers. A copy of the PAA Order is attached as Exhibit C. Due to issues regarding the legality of the tariff, and the unique nature of this tariff offering, which includes provisions for variable benefits to customers, Staff brought the tariff before the Commission for review. The Staff recommendation to approve the tariff was itself approved by the Commission at an Agenda Conference on April 18, 2006.

The variable benefit approach is a departure from the status quo in which promotional tariffs detail the benefits to be provided to the customer. In addition, the variability raised a concern on the part of Staff of undue discrimination among customers, with some callers receiving a higher valued benefit than other callers. The tariff provides that promotional programs will be limited to qualifying customers contacting the company. Accordingly, Verizon will not be soliciting or contacting customers for the purpose of offering these special promotional programs. Pursuant to the tariff, Verizon will offer qualifying callers a one-time benefit, with no change in tariffed rates. The promotional benefit is described in the tariff as "including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services." However, the additional benefits implied and the non-regulated services are not identified in the tariff. The tariff states that on average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year. Verizon has informed Staff that service representatives will have specific decision criteria that must be followed before offering each promotion. Staff's understanding is that only one type of benefit will be offered under any one promotion. However, different valued benefits, such as both $25 and $50 gift cards, may be offered under the same promotion. Where different valued benefits are offered, the service representative will be instructed to offer the lower valued benefit first and only offer the higher valued benefit if necessary. Verizon has further advised Staff that the service representative's compensation will not be affected in any way by the promotion.

6. Verizon elected to be regulated under the price cap provisions of Section 364.051, Florida Statutes. Subsection 364.051(5)(a) provides that "[e]ach company subject to this section shall maintain tariffs with the commission containing the terms, conditions and rates for each of its nonbasic services, and may set or change, on fifteen days notice, the rate for each of its nonbasic services...." The requirement that Verizon file a tariff providing specific details as to the terms, conditions and rates for each its nonbasic services is a part of price regulation as well as a recognition of the market power and dominant character of Verizon as an ILEC in the telecommunications market within its service territory. Indeed the Commission's Report on the Status of Competition in the Telecommunications Industry, as of May 31, 2005, reflected that CLEC residential market share decreased from 10% in 2004 to 9% in 2005. The variable nature and lack of specificity in this tariff circumvents the fifteen day notice requirement applicable to each different promotion, as well as the policy of requiring specific information to be available to customers, competitors, and the public in general. Section 364.051(5)(a)2. does allow an ILEC to meet offerings of nonbasic services by any competitive provider, by deaveraging the price of

any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts, but the ILEC offerings designed to meet such competitive offerings must be contained in a filed tariff setting forth the specific terms, conditions and rates.

7. According to the PAA Order, under this permanent promotional tariff, Verizon will offer qualifying callers a one-time benefit, with no change in tariffed rates. In reality, the promotional benefit is in fact a rate which in this case should be, but is not tariffed, in violation of Section 364.051(5)(a). For example, gift cards and unidentified unregulated items have value that offsets the rate and should be considered in determining below cost pricing or whether the offset rates remain compensatory to Verizon.

8. The promotional benefit is described in the tariff as "including, but not limited to gift check/cards or bill credits on services, and offerings made up of non-regulated products or services." Accordingly, the tariff does not specify all promotional benefits which are going to be offered, and there has been no approval or review of these unidentified items. Nor is there any identification of the non-regulated products or services that are going to be included in the offering. It seems that Verizon will unilaterally decide the regulatory status of these unidentified services, which also have not been reviewed or approved by the Commission. The tariff also indicates that Verizon service representatives will have specific decision criteria that must be followed before offering the promotion. However, these decision making criteria are neither set for in the tariff, the Staff recommendation, nor the PAA Order. Once again, there has been no review or approval of these unidentified criteria.

9. Section 364.051(1)(c) enumerates several provisions of Chapter 364 which ILECs are exempted from under price cap regulation. The fact that the Legislature did not exempt ILECs under price cap regulation from the provisions of 364.08, 364.09, and 364.10, indicate a

legislative intent that these sections are still applicable even under price cap regulation. As stated earlier, the Verizon promotional tariff applies to basic services as well as nonbasic services. In Verizon's effort to stem the loss of access lines, it is highly probably that the promotional offering will be extended to customers seeking only basic service. Sections 364.08, 364.09, and 364.10, all unequivocally apply to basic service and thereby render Verizon's promotional tariff in clear violation of these sections.

Section 364.08 makes it unlawful to charge other than scheduled rates or charges on file or to offer free service or reduced rates "not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service." The first part of 364.08(1) appears to limit what a telecommunications company may charge to the rates set forth in its schedule of rates on file. Subsection(1) appears to prohibit a refund or remittance of any portion of the scheduled rate and require that the same concession is uniformly extended to all persons under like circumstances for like or substantially similar service. The language at the beginning of Section 364.051, "[n]otwithstanding any other provisions of this chapter...." may create an exception to 364.08(1) to the extent that 364.051(5)(a)2. permits an ILEC to meet offerings by a competitive provider of the same, or functionally equivalent, nonbasic services. This provides no conflict with the continuing applicability of the provisions of 364.08(1) to any promotions offered in connection with stand alone basic service.

As stated below, the Verizon tariff itself indicates that Verizon may offer its promotional benefits to any residential customer in any part of its service territory without any attempt to show that its offerings will not result in unreasonable discrimination among similarly situated customers. Considering that the ILECS, including Verizon, have consistently argued before the Commission that their rates for basic service are below costs, promotional benefits offered to a basic service customer would necessarily result in a rate that fails to cover Verizon's direct cost and render the promotional benefit non-compensatory for Verizon. It is previously stated by this Commission in Order No. PSC-03-0726-FOF-TP, issued on June 19, 2003, that such a finding would cause this Commission to "conclude that the tariff offerings are unfair, anticompetitive, or discriminatory." 2003 Order at p. 21-22.

Section 364.09 prohibits giving a rebate or special rate or receiving from any person a greater or lesser compensation for any service rendered that it charges "any other person for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions." The language in 364.09, "except as authorized in this chapter," once again merely allows an ILEC to meet a competitive offer for nonbasic services as provided in 364.051. Accordingly 364.09 which does not permit "reasonable" discrimination among similarly situated customers, still has continuing application to promotional offers in connection with stand alone basic service. Section 364.10(1) makes it unlawful to give "any undue or unreasonable preference or advantage to any person to subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." This subsection provides no exception for "reasonable" discrimination among similarly situated customers, and has continuing viability with respect to any promotional offers that target stand alone basic service customers.

10. Section 364.051(5) provides that "[n]othing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among

similarly situated customers." The tariff itself indicates that Verizon may offer its promotional benefits to any residential customer in any part of its service territory without any attempt to show that its offerings will not result in unreasonable discrimination among similarly situated customers. The PAA Order, while acknowledging that different customers may receive different valued benefits under the tariff, asserts that the pricing scheme is designed to allow Verizon to respond to customers who may not be similarly situated in terms of having the same competeting offers. In other words, Verizon may offer the same promotional benefits to customers who have the same competing offers.

The Commission addressed many of the same issues that have arisen in the Verizon promotional tariff in Order No. PSC-03-0726-PAA-TP, issued June 19, 2003, in consolidated *Docket Nos. 020119-TP, In Re: Petition for Expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc., 020578-TP, In Re: Petition for Expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association, and 021252-TP, In Re: Petition for Expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.* In this order, the Commission addressed the issue of geographic targeting under 364.051(5)(a)2., and stated that this subsection allowed BellSouth to meet competitors' offerings in a specific market or to a specific customer as long as it does not engage in any anticompetitive act or practice, or unreasonably discriminate among similarly situated customers. Order No. PSC-03-0726-FOF-TP, issued June 19, 2003, (2003 Order) at p.9. In the 2003 Order, the Commission addressed the discrimination of similarly situated customers. 2003 Order at p. 14. The Commission went on to find that BellSouth customers in different wire centers face different levels of competition, and that similarly situated customers are those for whom BellSouth faces competition from rivals offering substitute services. Further, the Commission found that BellSouth customers in wire centers with little or no competition would not be similarly situated to BellSouth customers in wire centers where competition is vigorous. The same competitive circumstances would not apply. In the case of the Verizon promotional tariff, different levels of competition in different geographic centers are not utilized to determine whether customers are similarly situated. Rather, with variable offers and unidentified benefits, and no way of determining the similarity of the situation and correlation of offers to similar customers, there is no effective way of confirming that the tariff is being applied in the same manner to similarly situated customers.

11. The Commission acknowledged that BellSouth has voluntarily initiated a ten-day waiting period after a customer leaves BellSouth for a competitor before any type of win-back activity is implemented. June 2003 Order at p. 41. The Commission also affirmed its prior finding in Order No. PSC-02-0875-PAA-TP, issued June 28, 2002, prohibiting BellSouth from including any marketing information in its final bills sent to customers who have switched providers. There are no similar provisions in the Verizon tariff with respect to a waiting period or including marketing information in a final bill sent to customers who have switched providers.

12. With respect to sharing of information, the Commission adopted the FCC's position that there is no prohibition against an ILEC initiating retention marketing as long as the information regarding a customer switch is obtained through independent retail means. 2003 Order at p.45. Ultimately, the Commission affirmed its previous finding contained in Order No. PSC-02-0875-PAA-TP, issued June 28, 2002, prohibiting BellSouth's wholesale division from sharing information with its retail division, such as informing the retail division when a customer is switching from BellSouth to a CLEC. There is no such provision in the Verizon tariff and,

accordingly, the Verizon tariff is deficient in this regard. This is a matter of great concern, since in the vast majority of cases, Verizon would only become aware of a customer switch through a number porting request. This is still a concern in spite of the fact that the Verizon tariff indicates that it will only market its promotional benefits to customers who contact them.

13. It should be noted that the Commission placed two conditions on Verizon's permanent promotional tariff. The first condition requires Verizon to provide Staff with one-day, advance written notice of each promotional offer made during 2006. The purpose of this condition is to enable Staff to judge any customer complaints that may be filed with the Commission. The second condition requires Verizon to provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006, and January 31, 2007. Neither one of these conditions will enable Staff to determine whether Verizon is offering similar promotions to similarly situated customers.

14. As set forth above with particularity, the Verizon tariff is both anticompetitive and discriminatory in violation of Sections 364.3381(3), 364.01(4)(a), (c) and (g), 364.08, 364.09, 364.10(1), and 364.051(5)(e)2.,(b), and (c). Both the Staff recommendation and the PAA Order expressly state that the Verizon permanent promotional tariff offering is primarily as a retention strategy to address a high rate of residential access line loss, especially to the incumbent cable company. Two of the FCTA's members, Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone and Bright House Networks, LLC, are certificated CLECs offering voice communications service in direct competition with Verizon in its service territory. Accordingly, the Verizon promotional tariff is expressly targeting these two FCTA members. The Verizon permanent promotional tariff has been in effect since February 11, 2006, and constitutes an immediate threat on the part of Verizon of obtaining existing and potential customers from Bright House

Networks and Comcast and retaining Verizon customers who wish to switch to Bright House Networks and Comcast, in a discriminatory and anticompetitive manner in violation of the previously cited provisions of Chapter 364, Florida Statutes. Both Bright House Networks and Comcast are threatened with and will immediately suffer irreparable loss of customers and economic harm, and , indeed may be presently suffering injury in fact.

15. If the Verizon permanent promotional tariff is permitted to remain in effect during the pendency of this proceeding, and during the monitoring period addressed in the two conditions placed on the tariff, irreparable harm and damage will already have been done.

16. The FCTA has a substantial interest in this proceeding in that its substantial interests are subject to determination or will be affected by this proceeding.

17. Allowing Verizon's permanent promotional tariff to remain in effect will inflict immediate and/or imminent injury in fact on the FCTA's members.

18. The FCTA's substantial injury is of a type or nature which this proceeding is designed to protect.

19. A substantial number of the FCTA's members are substantially affected by the Verizon permanent promotional tariff.

20. The subject matter of the proposed actions is within the FCTA's general scope of interest and activity, and the relief requested by the FCTA, i.e., and order canceling or suspending Verizon's permanent promotional tariff is the type of relief appropriate for the FCTA to receive on behalf of its members.

21. The rights and interests of FCTA's members cannot be adequately represented by any other party in this docket. The FCTA's participation in this docket will not unduly delay or prejudice the rights of other parties.

22. The FCTA's representation of its members in this docket will advance judicial

efficiency by consolidating the participation of multiple FCTA members.

23. Disputed issues of material fact include, but are not limited to the following:

(a) Whether the tariff contemplates pricing below incremental cost.

(b) Whether the Verizon permanent promotional tariff will be anticompetitive or unreasonably discriminate among similarly situated customers in the case of basic or nonbasic services offered to residential customers.

(c) Whether Verizon is in fact losing a significant number of access lines.

(d) Whether Verizon's wholesale division is sharing information with its retail division.

(e) Whether a substantial number of customers will call Verizon directly in order to switch service to another carrier or whether Verizon will use prohibited information and contact customers on an unsolicited basis.

(f) Whether Verizon is the dominant provider and has market power in its service territory.

(g) What promotional benefits are to be offered in addition to the promotional benefits described in the tariff.

(h) What non-regulated products or services will be offered that have not been identified in the tariff.

(i) What are the specific decision criteria, if any, that Verizon service representatives must follow before offering each promotion.

(j) Whether the two conditions placed on the tariff in the PAA Order will be sufficient to prevent and enforce against anticompetitive and discriminatory behavior in violation of the relevant sections of Chapter 364.

WHEREFORE, for the foregoing reasons, the FCTA requests that the Commission grant expedited review, immediately suspend Verizon's permanent promotional tariff during the pendency of this proceeding, permanently cancel Verizon's permanent promotional tariff, and grant such further relief as this Commission deems appropriate.

Respectfully submitted this 31st day of May, 2006.

*s/Michael A. Gross*

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Association
246 E. 6th Avenue
Tallahassee, FL 32303
Tel: 850/681-1990
Fax: 850/681-9676

## CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing Petition of Florida Cable Telecommunications Association for a Formal Proceeding pursuant to Section 120.57(1), Florida Statutes, Seeking Expedited Review of Proposed Agency Action Order No. PSC-06-0390-PAA-TL Allowing Tariff to Remain in Effect and for Suspension and Cancellation of the Permanent Promotional Tariff filed by Verizon Florida Inc. has been served upon the following parties electronically and by U.S. Mail this 31st day of May 2006.

Patrick Wiggins, Staff Counsel
Division of Legal Service
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399

Sally Simmons
Division of Competitive Markets & Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399

Verizon Florida, Inc.
Mr. David Christian
106 East College Avenue
Tallahassee, FL 32301-7748

*s/Michael A. Gross*

Michael A. Gross

EXHIBIT

A

# REQUEST TO ESTABLISH DOCKET

(Please Type)

| | | | |
|---|---|---|---|
| Date: | 3/30/2006 | Docket No.: | 060292-TL |

| | |
|---|---|
| 1. Division Name/Staff Name: | Competitive Markets & Enforcement/Simmons SAS |
| 2. OPR: | CMP |
| 3. OCR: | GCL |
| 4. Suggested Docket Title: | Review of tariff filing (T-060052) by Verizon Florida Inc. to establish permanent promotional offering |

5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):

| | |
|---|---|
| Verizon Florida, Inc. | |
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| | |

2. Interested persons and their representatives (if any):

| | |
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6. Check one:

☒ Documentation is attached.

☐ Documentation will be provided with recommendation.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

PSC\CCA 010-C (Rev. 11/04)

C:\establishdocket.doc

**David Christian**
Assistant Vice President
Regulatory Affairs Florida

verizon

106 E. College Ave
Tallahassee, Florida 32301
Telephone 850-224-3963
Fax 850-222-2912
david.christian@verizon.com

January 27, 2006

Ms. Beth W. Salak, Director
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Salak:

Attached is a new tariff page filed to become part of the Verizon Florida Inc. General Services Tariff.

<u>Section A2 General Regulations</u>
10th Revised Page 23

The purpose of this filing is to establish a permanent promotional tariff offering to retain or attract customers in a competitive environment.

If you require additional information, please call Joan Gage at (813) 483-2530.

Sincerely,
David M. Christian
Assistant Vice President
Regulatory Affairs Florida

DMC:sv
Attachments

## A2. GENERAL REGULATIONS

### A2.10 Special Promotions

.2 The following promotion is on file with the Florida Public Service Commission: (N)

| | Area of Promotion | Service | Application | Period |
|---|---|---|---|---|
| 325) | Company's Service Territory - Residential Service Only | <u>Permanent Promotion</u> Residential Service offerings to retain customers or attract customers who currently receive their local service from a competitive provider. | As dictated by competitive market conditions, Verizon Florida may periodically offer special promotional programs (including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services) to individual customers to attract or retain them as Verizon customers.<br><br>Promotional programs will be limited to qualifying customers contacting the company.<br><br>Regulations:<br>1) No specific offer will be available for more than 90 days.<br>2) On average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year. | Each promotional offering not to exceed 90 days in duration. |

(N)

(D)

(D)

A2.10 Special Promotions

(N)

.2 The following promotion is on file with the Florida Public Service Commission:

| | Area of Promotion | Service | Application | Period |
|---|---|---|---|---|
| 3251 | Company's Service Territory - Residential Service Only | Permanent Promotion<br>Residential Service offerings to retain customers or attract customers who currently receive their local service from a competitive provider. | As dictated by competitive market conditions, Verizon Florida may periodically offer special promotional programs, (including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services) to individual customers to attract or retain them as Verizon customers.<br><br>Promotional programs will be limited to qualifying customers contacting the company.<br><br>Regulations:<br>1) No specific offer will be available for more than 90 days.<br>2) On average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year. | Each promotional offering not to exceed 90 days in duration. |

(N)

(D)

~~.2 The following promotions are approved by the Commission: (Continued)~~

| | ~~Area of Promotion~~ | ~~Service~~ | ~~Charges Waived~~ | ~~Period~~ | ~~Authority~~ |
|---|---|---|---|---|---|
| ~~55)~~ | ~~Venice Exchange:~~<br>~~484, 485, 488~~ | ~~Custom~~<br>~~Calling~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge)~~ | ~~6/22/87~~<br>~~8/20/87~~ | ~~Docket No.~~<br>~~830411-TP~~<br>~~Order No.~~<br>~~12559~~ |
| ~~56)~~ | ~~Winter Haven Exchange:~~<br>~~965, 967~~ | ~~Custom~~<br>~~Calling~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge)~~ | ~~6/22/87~~<br>~~8/20/87~~ | ~~Docket No.~~<br>~~830411-TP~~<br>~~Order No.~~<br>~~12559~~ |
| ~~57)~~ | ~~Zephyrhills Exchange:~~<br>~~782, 783, 788~~ | ~~Custom~~<br>~~Calling~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge)~~ | ~~6/22/87~~<br>~~8/20/87~~ | ~~Docket No.~~<br>~~830411-TP~~<br>~~Order No.~~<br>~~12559~~ |
| ~~58)~~ | ~~Tampa Exchange:~~<br>~~641, 646~~ | ~~Custom~~<br>~~Calling~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge)~~<br>~~Recurring¹~~ | ~~6/22/87~~<br>~~8/20/87~~ | ~~Docket No.~~<br>~~830411-TP~~<br>~~Order No.~~<br>~~12559~~ |
| ~~59)~~ | ~~Tarpon Springs Exchange:~~<br>~~934, 937, 938, 942~~<br>~~665, 666~~ | ~~Custom~~<br>~~Calling~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge)~~<br>~~Recurring¹~~ | ~~6/22/87~~<br>~~8/20/87~~ | ~~Docket No.~~<br>~~830411-TP~~<br>~~Order No.~~<br>~~12559~~ |
| ~~60)~~ | ~~Company:~~<br>~~Company's Service~~<br>~~Territory Except:~~<br>~~223, 224, 225, 226, 228~~<br>~~251, 253, 254, 258, 259~~<br>~~293, 294, 299~~<br>~~351, 355, 359~~<br>~~644, 646, 647~~<br>~~680, 681, 684, 685, 687, 688, 689~~<br>~~872, 873, 874, 875, 876, 877~~<br>~~961, 962, 963, 969~~ | ~~Touch~~<br>~~Call~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge and~~<br>~~Individual and~~<br>~~Two Party Line~~<br>~~Service Charge)~~ | ~~6/22/87~~<br>~~8/20/87~~ | ~~Docket No.~~<br>~~830007-TP~~<br>~~Order No.~~<br>~~11546~~ |
| ~~61)~~ | ~~Sarasota Exchange:~~<br>~~351, 355, 359~~ | ~~Custom~~<br>~~Calling~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge)~~<br>~~Recurring¹~~ | ~~6/29/87~~<br>~~8.27.87~~ | ~~Docket No.~~<br>~~830411-TP~~<br>~~Order No.~~<br>~~12559~~ |
| ~~61)~~ | ~~Sarasota Exchange:~~<br>~~351, 355, 359~~ | ~~Touch~~<br>~~Call~~ | ~~Nonrecurring~~<br>~~(Secondary~~<br>~~Service Ordering~~<br>~~Charge and~~<br>~~Individual and~~<br>~~Two Party Line~~<br>~~Service Charge)~~ | ~~6/29/87~~<br>~~8/27/87~~ | ~~Docket No.~~<br>~~830007-TP~~<br>~~Order No.~~<br>~~11546~~ |

~~NOTE 1: A 30 day free trial on a full service package or on an individual Custom Calling feature is offered.~~

EXHIBIT

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# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION CLERK

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

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**DATE:** April 6, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Simmons) SAS
Office of the General Counsel (Wiggins)

**RE:** Docket No. 060292-TL – Review of tariff filing (T-060052) by Verizon-Florida Inc. to establish permanent promotional offering.

**AGENDA:** 04/18/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\060292.RCM.DOC

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## Case Background

On January 27, 2006, Verizon Florida Inc. (Verizon) filed to establish a permanent promotional tariff offering (T-060052) [Attachment A], Tariff filings by price regulated local exchange companies such as Verizon are presumptively valid, and non-basic service filings (which would include this type of tariff) go into effect on 15 days' notice pursuant to Section 364.051(5)(a), Florida Statutes. If there are issues regarding the legality of a tariff, staff prepares a recommendation for the Commission's consideration and determination as to whether the tariff should remain in effect or be canceled. Due to the unique nature of this tariff offering, which includes provisions for variable benefits to customers, staff is bringing this tariff before the Commission for review. Staff has had several discussions with Verizon to better understand the

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FPSC-COMMISSION CLERK

offering, identify concerns, and determine appropriate controls that would address staff's concerns and be workable for Verizon.

## Discussion of Issues

**Issue 1**: What action, if any, should the Commission take with respect to Verizon's permanent promotional tariff offering (T-060052)?

**Recommendation**: Staff recommends that Verizon's permanent promotional tariff offering (T-060052) be allowed to remain in effect, subject to two requirements. First, Verizon should be required to provide staff with one-day, advance written notice of each promotional offer made during 2006. Second, Verizon should be required to provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports should be due on July 31, 2006 and January 31, 2007. **(Simmons, Wiggins)**

**Staff Analysis**:

Verizon designed its permanent promotional tariff offering primarily as a retention strategy to address a high rate of residential access line loss, especially to the incumbent cable company. The Verizon product manager will develop and activate each promotion, with only one promotion available at any one time. The promotion will be offered if a residential customer calls Verizon to disconnect service and explains he/she is accepting an offer from a competing company. Each promotional offer will not exceed 90 days in duration and will be available for resale to CLECs at no discount, in keeping with the FCC's determination that "promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers." (FCC 96-325, ¶ 950)

As mentioned in the Case Background, this tariff offering provides for variable benefits to customers. This variable benefit approach is a departure from the status quo in which promotional tariffs detail the benefits to be provided to the customer. In addition, this variability raises a possible concern of undue discrimination among customers, with some callers receiving a higher valued benefit than other callers.

Pursuant to its permanent promotional tariff, Verizon will offer qualifying callers a one-time benefit, with no change in tariffed rates. The promotional benefit is described in the tariff as "including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services." The tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year."

Verizon has informed staff that service representatives will have specific decision criteria that must be followed before offering each promotion. Staff understands that only one type of benefit will be offered under any one promotion; however, different valued benefits, such as both $25 and $50 gift cards, may be offered under the same promotion. Where different valued benefits are offered, the service representatives will be instructed to offer the lower valued benefit first and only offer the higher valued benefit if necessary. Verizon has advised staff that the service representative's compensation will not be affected in any way by the promotion. For example, his/her compensation will not be affected by the representative's customer retention statistics or the average benefit value provided by the representative.

Legal Framework

While different customers may receive different valued benefits, staff does not view this possibility as prohibited discrimination, since the customers may not be similarly situated in terms of having the same competing offers. The basic legal framework for regulating the offerings of Verizon as an incumbent local exchange company is found in Section 364.051, Florida Statutes, which was enacted in 1995 and amended several times since. Under Section 364.051(5)(a), incumbent local exchange companies are authorized to meet competitive offers, but "shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers."

As suggested above, the statutory grant of pricing flexibility to ILECs is a recent development in regulatory history. One might argue that the purpose of previous regulatory approaches was just the opposite: to fix the prices of monopoly provider so that no flexibility was allowed to ensure that customers were not subjected to unfair treatment. As competition in telephony emerged, fixing the prices and controlling the behavior of the former monopoly provider also served the purpose of avoiding anticompetitive practices. While these two generalizations are overstated, they do highlight that Section 364.051 was introduced into Chapter 364 as an exception to the way economic regulation was formerly handled.

Consequently, Section 364.051(c) exempts the ILEC from several other more restrictive sections of the chapter. Section 364.051(c) provides specifically as follows:

> Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

Without these exemptions, the framework provided in Section 364.051 would be in irreconcilable conflict with the sections establishing the traditional approach to filing and approving tariffs.

There are two other sections in Chapter 364, Florida Statutes, that may be germane to Verizon's tariff but that were not exempted: Sections 364.08(1) and 364.09. Section 364.08(1) states in part "(a) telecommunications company may not refund or remit, directly or indirectly, any portion of the rate or charge so specified . . . not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service." Section 364.09 prohibits use of any "special rate, rebate, drawback, or other device or method" to obtain "greater or lesser compensation for any service" provided under the "same or substantially the same circumstances and conditions." Both of these sections were originally enacted in 1913 and were part of an overarching scheme to restrict pricing flexibility to avoid, among other things, discrimination among similarly situated customers.

In comparison to the older Sections 364.08(1) and 364.09, the newer Section 364.051(5)(a) prohibits *unreasonable* discrimination among similarly situated customers. Thus an initial legal question presents itself: does the statutory standard embraced in the older sections still apply?

Section 364.08(1) and 364.09 Not a Bar

Staff believes that Sections 364.08 and 364.09 do not prohibit Verizon's tariff. There are three reasons for this view. First, the initial sentence of Section 364.051 begins as follows: "Notwithstanding any other provisions of this chapter...." This creates a general exemption from conflicting provisions elsewhere in Chapter 364.

Second, the legislature specifically exempted the sections of Chapter 364 it believed to be in conflict with the approach established in Section 364.051. Thus one can reasonably infer that Sections 364.08(1) and 364.09 do not interfere with the operation of Section 364.05(1) and tariffs filed under that section.

Third, the actual language of the older sections can be reconciled with the newer section. Section 364.08 prohibits discrimination outside the tariff, but neither contemplates nor prohibits reasonable discrimination among customers as provided for in the tariff. Section 364.09 appears to prohibit absolutely special deals, rebates, etc., but contains the saving language "except as authorized in this chapter."

In sum, Sections 364.08(1) and 364.09 do not prohibit Verizon's tariff, which was filed under the framework created in Section 364.051. Moreover, staff believes that the tariff is not *unreasonably* discriminatory and complies with Section 364.051(5)(a), Florida Statutes. Staff believed it useful to provide this background because Verizon's tariff presents a case of first impression.

Regulatory Analysis

After considering the average promotional benefit and the incidence of use, Verizon has demonstrated that the permanent promotion covers incremental cost. The proprietary analysis shown to staff considered the residential subscription rates for all vertical services and average intraLATA billable usage, i.e., the typical residential customer profile, and determined a break-even period that was significantly lower than the expected location life. Staff notes that to the extent the permanent promotion is provided to atypical residential customers, with higher spending patterns, the break-even period would be shorter.

Because the tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year," staff believes that tracking is very important. Tracking is also essential for Verizon as the company will be experimenting to determine the most cost effective ways of retaining customers. Verizon has informed staff that the company will be tracking results on a monthly basis and monitoring statistics including offers made, offers accepted, and average dollar benefit provided.

Due to the flexible nature of the permanent promotional tariff, staff has identified some issues related to complaint handling, which have been discussed with the company and resolved to staff's satisfaction. Staff understands that Verizon is willing to provide written notification of each promotion to staff, thereby providing the necessary knowledge for staff to address any customer complaints that may be filed with the Commission. Further, the company has indicated that if a customer states the company promised a higher valued benefit, and the higher valued benefit is available under the promotion, the company will accept the customer's word.

The variable benefit nature of Verizon's permanent promotional tariff is a departure from the status quo. Staff notes that Section 364.057, Florida Statutes, provides for experimental and transitional rates. This section, which is applicable to price regulated local exchange companies such as Verizon, does not seem directly on point, since the promotional benefits in the tariff at issue do not really constitute rates. Nonetheless, this section may be of some interest. Under this section, approval of experimental or transitional rates may be limited geographically and must be limited in time. While staff does not believe that Verizon's permanent promotional tariff should be geographically constrained or time limited, staff does believes this tariff should be monitored closely during the first year. Depending on results for the first year, staff will assess whether further monitoring appears necessary.

Accordingly, staff recommends that Verizon's permanent promotional tariff offering (T-060052) be allowed to remain in effect, subject to two requirements. First, Verizon should be required to provide staff with one-day, advance written notice of each promotional offer made during 2006. Second, Verizon should be required to provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit to customers. Tracking reports should be due on July 31, 2006 and January 31, 2007.

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

**Recommendation**: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. **(Wiggins)**

**Staff Analysis**: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order.

ATTACHMENT A

David Christian
Assistant Vice President
Regulatory Affairs Florida

verizon

106 E. College Ave
Tallahassee, Florida 32301
Telephone 850-224-3963
Fax 850-222-2912
david.christian@verizon.com

January 27, 2006

Ms. Beth W. Salak, Director
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Salak:

Attached is a new tariff page filed to become part of the Verizon Florida Inc. General Services Tariff.

Section A2 General Regulations
10th Revised Page 23

The purpose of this filing is to establish a permanent promotional tariff offering to retain or attract customers in a competitive environment.

If you require additional information, please call Joan Gage at (813) 483-2530.

Sincerely,
David M. Christian
Assistant Vice President
Regulatory Affairs Florida

DMC:sv
Attachments

## A2. GENERAL REGULATIONS

### A2.10 Special Promotions

.2 The following promotion is on file with the Florida Public Service Commission: (N)

| | Area of Promotion | Service | Application | Period |
|---|---|---|---|---|
| 325) | Company's Service Territory - Residential Service Only | <u>Permanent Promotion</u> Residential Service offerings to retain customers or attract customers who currently receive their local service from a competitive provider. | As dictated by competitive market conditions, Verizon Florida may periodically offer special promotional programs (including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services) to individual customers to attract or retain them as Verizon customers.<br><br>Promotional programs will be limited to qualifying customers contacting the company.<br><br>Regulations:<br>1) No specific offer will be available for more than 90 days.<br>2) On average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year. | Each promotional offering not to exceed 90 days in duration. |

(N)

(D)

(D)

VERIZON~~GTE~~ FLORIDA INC.
~~INCORPORATED~~

GENERAL SERVICES TARIFF

10~~9~~th Revised Page 23
Cancelling 9~~8~~th Revised Page 23

A2. GENERAL REGULATIONS

A2.10 Special Promotions

(N)

.2 The following promotion is on file with the Florida Public Service Commission:

| | Area of Promotion | Service | Application | Period |
|---|---|---|---|---|
| 325) | Company's Service Territory - Residential Service Only | Permanent Promotion<br>Residential Service offerings to retain customers or attract customers who currently receive their local service from a competitive provider. | As dictated by competitive market conditions, Verizon Florida may periodically offer special promotional programs (including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services) to individual customers to attract or retain them as Verizon customers.<br><br>Promotional programs will be limited to qualifying customers contacting the company.<br><br>Regulations:<br>1) No specific offer will be available for more than 90 days.<br>2) On average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year. | Each promotional offering not to exceed 90 days in duration. |

(N)

(D)

~~.2 The following promotions are approved by the Commission: (Continued)~~

| | ~~Area of Promotion~~ | ~~Service~~ | ~~Charges Waived~~ | ~~Period~~ | ~~Authority~~ |
|---|---|---|---|---|---|
| ~~55)~~ | ~~Venice Exchange: 484, 485, 488~~ | ~~Custom Calling~~ | ~~Nonrecurring (Secondary Service Ordering Charge)~~ | ~~6/22/87 8/20/87~~ | ~~Docket No. 830111-TP Order No. 12559~~ |
| ~~56)~~ | ~~Winter Haven Exchange: 965, 967~~ | ~~Custom Calling~~ | ~~Nonrecurring (Secondary Service Ordering Charge)~~ | ~~6/22/87 6/20/87~~ | ~~Docket No. 830111 TP Order No. 12559~~ |
| ~~57)~~ | ~~Zephyrhills Exchange: 782, 783, 788~~ | ~~Custom Calling~~ | ~~Nonrecurring (Secondary Service Ordering Charge)~~ | ~~6/22/87 8/20/87~~ | ~~Docket No. 830111-TP Order No. 12559~~ |
| ~~58)~~ | ~~Tampa Exchange: 641, 646~~ | ~~Custom Calling~~ | ~~Nonrecurring (Secondary Service Ordering Charge) Recurring*~~ | ~~6/22/87 8/20/87~~ | ~~Docket No. 830111-TP Order No. 12559~~ |
| ~~59)~~ | ~~Tarpon Springs Exchange: 934, 937, 938, 942 665, 660~~ | ~~Custom Calling~~ | ~~Nonrecurring (Secondary Service Ordering Charge) Recurring*~~ | ~~6/22/87 8/20/87~~ | ~~Docket No. 830111 TP Order No. 12559~~ |
| ~~60)~~ | ~~Company: Company's Service Territory Except: 223, 224, 225, 228, 229 251, 253, 254, 258, 259 293, 294, 299 351, 355, 359 644, 646, 647 680, 681, 684, 685, 687, 688, 689 872, 873, 874, 875, 876, 877 961, 962, 963, 969~~ | ~~Touch Call~~ | ~~Nonrecurring (Secondary Service Ordering Charge and Individual and Two Party Line Service Charge)~~ | ~~6/22/87 8/20/87~~ | ~~Docket No. 830007-TP Order No. 11546~~ |
| ~~61)~~ | ~~Sarasota Exchange: 351, 355, 359~~ | ~~Custom Calling~~ | ~~Nonrecurring (Secondary Service Ordering Charge) Recurring*~~ | ~~6/29/87 8.27.87~~ | ~~Docket No. 830111-TP Order No. 12559~~ |
| ~~61)~~ | ~~Sarasota Exchange: 351, 355, 359~~ | ~~Touch Call~~ | ~~Nonrecurring (Secondary Service Ordering Charge and Individual and Two Party Line Service Charge)~~ | ~~6/29/87 8/27/87~~ | ~~Docket No. 830007-TP Order No. 11546~~ |

~~NOTE 1: A 30-day free trial on a full service package or on an individual Custom Calling feature is offered.~~

(D)

ALAN F. CIAMPORCERO~~JOHN A. FERRELL~~, PRESIDENT
TAMPA, FLORIDA

EFFECTIVE: December 22, 1998
ISSUED: December 7, 1998

EXHIBIT C

BEFORE THE PUBLIC SERVICE COMMISSION

| | |
|---|---|
| In re: Review of tariff filing (T-060052) by Verizon Florida Inc. to establish permanent promotional offering. | DOCKET NO. 060292-TL<br>ORDER NO. PSC-06-0390-PAA-TL<br>ISSUED: May 10, 2006 |

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER
ALLOWING TARIFF TO REMAIN IN EFFECT

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.

Introduction

On January 27, 2006, Verizon Florida Inc. (Verizon) filed to establish a permanent promotional tariff offering (T-060052). We have jurisdiction to review this tariff under Section 364.051, Florida Statutes. [1]

Tariff filings by price regulated local exchange companies such as Verizon are presumptively valid, and non-basic service filings (which would include this type of tariff) go into effect on 15 days' notice pursuant to Section 364.051(5)(a). If there are issues regarding the legality of a tariff, we consider and determine whether the tariff should remain in effect or be canceled.

We review this tariff because it includes provisions for variable benefits to customers. This is a departure from traditional approaches and raises potential legal and policy issues. Primarily, we must ensure that both as proposed and as applied the tariff does not result in undue discrimination among similarly situated customers or below-cost pricing.

[1] All statutory references in this Order are to Florida Statutes 2005.

The Tariff Offering

Verizon designed its permanent promotional tariff offering primarily as a retention strategy to address a high rate of residential access line loss, especially to the incumbent cable company. The Verizon product manager will develop and activate each promotion, with only one promotion available at any one time. The promotion will be offered if a residential customer calls Verizon to disconnect service and explains he/she is accepting an offer from a competing company. Each promotional offer will not exceed 90 days in duration and will be available for resale to CLECs at no discount, in keeping with the FCC's determination that "promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers." (FCC 96-325, ¶ 950)

Under this permanent promotional tariff, Verizon will offer qualifying callers a one-time benefit, with no change in tariffed rates. The promotional benefit is described in the tariff as "including, but not limited to gift checks/cards or bill credits on services, and offerings made up of non-regulated products or services." The tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year."

Verizon says that service representatives will have specific decision criteria that must be followed before offering each promotion. Only one type of benefit will be offered under any one promotion; however, different valued benefits, such as both $25 and $50 gift cards, may be offered under the same promotion. Where different valued benefits are offered, the service representatives will be instructed to offer the lower valued benefit first and only offer the higher valued benefit if necessary. Verizon says also that the service representative's compensation will not be affected in any way by the promotion. For example, compensation will not be affected by the representative's customer retention statistics or the average benefit value provided by the representative.

Legal & Regulatory Analysis

We first consider whether the tariff violates the statutory prohibition against undue discrimination. The basic legal framework for regulating the offerings of Verizon as an incumbent local exchange company is found in Section 364.051. This section was enacted in 1995 and has been amended several times since. Under Section 364.051(5)(a), incumbent local exchange companies are authorized to meet competitive offers, but "shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers."

While different customers may receive different valued benefits under this tariff, these differences do not result from an arbitrary pricing scheme; rather the pricing scheme is designed to allow Verizon to respond rationally to customers who may not be similarly situated in terms of having the same competing offers. Based on current information, we therefore conclude that the tariff does contemplate unreasonable discrimination among similarly situated customers.

We next consider whether the tariff contemplates pricing below incremental cost. After considering the average promotional benefit and the incidence of use, we conclude that the permanent promotion does cover incremental cost. The proprietary analysis provided to our staff by Verizon considered the residential subscription rates for all vertical services and average intraLATA billable usage, i.e., the typical residential customer profile, and determined a break-even period that was significantly lower than the expected location life. We note that to the extent the permanent promotion is provided to atypical residential customers, with higher spending patterns, the break-even period would be shorter.

Tracking Essential

The above conclusions are based on the tariff *as proposed.* We believe it essential to track Verizion's application of the tariff among similarly situated customers or below-cost pricing, or both. For example, the tariff states that "(o)n average, any combination of promotional benefits made to customers will not exceed $55 in any calendar year." We need to ensure that this limit is not exceeded, as this constraint is key to ensuring that incremental costs are covered. We thus conclude that Verizon must provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006 and January 31, 2007.

We also note that tracking is essential for Verizon as the company will be experimenting to determine the most cost effective ways of retaining customers. Verizon says that it will be tracking results on a monthly basis and monitoring statistics including offers made, offers accepted, and average dollar benefit provided.

Due to the flexible nature of the permanent promotional tariff, our staff identified some issues related to complaint handling, which they discussed with the company and resolved to their satisfaction. We understand that Verizon is willing to provide written notification of each promotion to staff, thereby providing the necessary knowledge for staff to address any customer complaints that may be filed with the Commission. Further, the company has indicated that if a customer states the company promised a higher valued benefit, and the higher valued benefit is available under the promotion, the company will accept the customer's word.

Conclusion

For the reasons stated above, we conclude that Verizon's permanent promotional tariff offering (T-060052) may remain in effect, subject to two requirements.

1. Verizon must provide staff with one-day, advance written notice of each promotional offer made during 2006; and

2. Verizon must provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006 and January 31, 2007.

Based on the foregoing, it is

**ORDERED** by the Florida Public Service Commission that a permanent promotional tariff offering (T-060052) of Verizon Florida Inc. (Verizon) may remain in effect subject to two explicit requirements:

1. Verizon must provide staff with one-day, advance written notice of each promotional offer made during 2006; and

2. Verizon must provide semi-annual tracking reports during 2006, by individual promotion and in total, showing the number of offers made, the number of offers accepted, and the average dollar benefit provided to customers. Tracking reports are due on July 31, 2006 and January 31, 2007.

**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 10th day of May, 2006.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

( S E A L )

PKW

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 May 31, 2006.

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.