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August 4, 2006 – **VIA ELECTRONIC MAIL**

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. 060173-EU
Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code

Docket No. 060172-EU
Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events

Dear Ms. Bayo:

Enclosed are the Initial Comments of Verizon Florida Inc. Concerning Proposed Rules 25-6.0341 and 25-6.0342 and Affidavit of Steven R. Lindsay for filing in the above matters. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 770-284-5498.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent via U.S. mail on August 4, 2006 to the parties on the attached list.

s/ Dulaney L. O'Roark III

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding) Docket No. 060173-EU
overhead electric facilities to allow more)
stringent construction standards than required)
by National Electric Safety Code)
and)
In re: Proposed rules governing placement of) Docket No. 060172-EU
new electric distribution facilities underground,)
and conversion of existing overhead) Filed: August 4, 2006
distribution facilities to underground facilities,)
to address effects of extreme weather events)
_____)

**INITIAL COMMENTS OF VERIZON FLORIDA INC.
CONCERNING PROPOSED RULES 25-6.0341 AND 25-6.0342**

Verizon Florida Inc. ("Verizon") submits these Initial Comments in compliance with the Commission's Order Establishing Procedures to be Followed at Rulemaking Hearing in this docket.¹ In support of these comments, Verizon also is filing the Affidavit of Steven R. Lindsay. For the reasons stated below, proposed Rules 25-6.0341 and 25-6.0342 should not be adopted in their current form.

A. Introduction

As a company that has made substantial investments in utility poles and attachments in Florida, Verizon shares the Commission's concern about network reliability and storm readiness. Verizon owns approximately 107,863 poles in Florida, almost 30,000 of which bear attachments by electric utilities.² Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of

¹ By Orders dated July 27, 2006 and August 2, 2006, the Commission established different filing schedules for the other proposed rules and rule amendments under review. Verizon will address other proposed rules and amendments in accordance with the schedules adopted in those Orders.

² Lindsay Aff. ¶ 2.

poles Verizon owns.³ Verizon's affiliates MCImetro Access Transmission Services LLC d/b/a Verizon Transmission Services and MCI Communications Services, Inc. attach to an additional 3,000 electric utility poles.⁴ Verizon already has placed a substantial part of its Florida network underground and is rapidly installing additional facilities below ground as part of its FiOS project.⁵ FiOS, which provides fiber to customers' homes, is provisioned almost entirely underground, protecting it from storms.⁶ Verizon thus has made, and continues to make, significant strides toward a storm-hardened network.

Although Verizon shares the Commission's goal of network reliability, proposed Rules 25-6.0341 and 25-6.0342 as currently drafted could potentially harm Verizon and its customers in several ways. First, for example, depending on how the electric utilities exercise the discretion that would be given them under Rule 25-6.0341, Verizon could be forced to incur substantial costs, such as paying increased rent for additional poles or paying to migrate facilities underground.⁷ Because Verizon attaches to so many electric poles in Florida, these increased costs could be enormous.⁸ Second, proposed Rules 25-6.0341 and 25-6.0342 (along with the other proposed rules and amendments) threaten to divert Verizon's resources from the FiOS project it is rolling out to meet the intense competition it faces in its Florida market.⁹ Third, proposed Rule 25-6.0342 would authorize electric utilities to establish standards for pole attachments varying from the National Electrical Safety Code ("NESC"), which could require Verizon to upgrade, rearrange or even remove its attachments from electric utility poles. Not only might

³ *Id.*

⁴ *Id.*

⁵ *Id.* ¶ 3.

⁶ *Id.* ¶¶ 3, 8.

⁷ *Id.* ¶ 5. Whether Verizon would have to pay additional rent would depend on the terms of the applicable joint use agreement.

⁸ *Id.* ¶¶ 5-7.

⁹ *Id.* ¶ 8.

such standards conflict with Verizon's joint use and license agreements, but they could increase its rental rates and impose additional financial and operational burdens.¹⁰

Verizon addresses its concerns with proposed Rules 25-6.0341 and 25-6.0342 in more detail below.

B. Proposed Rule 25-6.0341

Proposed Rule 25-6.0341 states as a general principle that “to the extent practical, feasible, and cost-effective,” electric distribution facilities normally should be placed in front of customers’ premises, adjacent to public roads. Three subsections apply this principle to scenarios involving (1) construction of overhead facilities; (2) installation of underground facilities; and (3) conversion of overhead facilities to underground facilities. In the third scenario, a local government requesting the conversion must meet the electric utility’s financial and operational requirements before the electric utility must place facilities in road rights of way. When the projects described in proposed Rule 25-6.0341 affect third-party attachments, the electric utility must seek input from the third-party attachers, but it is not required to take any action based on the input it receives. The electric utility also must, “to the extent practical, coordinate the construction of its facilities with the third-party attacher,” but the timing and extent of the required coordination are not specified.

Proposed Rule 25-6.0341 fails to take into account sufficiently the burdens that could be placed on third-party attachers by electric utility construction, installation and migration projects. For example, by failing to specify the amount of notice that must be

¹⁰ *Id.* ¶ 9. Again, whether Verizon would be required pay additional pole would depend on the terms of the applicable joint use agreement.

given or the extent of the coordination that must be afforded in connection with such projects, the proposed rule leaves electric utilities free to move forward with little regard for the operational disruption that could result to attachers. As noted above, Verizon is in the midst of a massive project to bring its FiOS network to customers' homes. To the extent electric utilities were to rely on this proposed rule to install or move their own facilities, Verizon would require extensive notice (at least 12 months) and effective coordination so Verizon could make any necessary adjustments to its plans. For instance, Verizon would want to avoid relocation of copper facilities when its plans call for replacing those facilities with fiber in the near future. With effective coordination, such costly duplication of effort could, at least to some extent, be avoided. Further revisions to the rule are necessary to ensure that the required notice is specified and the duty to coordinate is described in detail.

The proposed rule also does not address the costs that would be incurred by third-party attachers. To the extent electric utilities add poles when moving them from the back property line to the front, the additional costs to attachers could be enormous. If Verizon were required to place attachments on 10% more poles, its costs would increase by some \$20 million, most of which would be one-time engineering and transfer costs.¹¹ If the number of poles to which Verizon attaches were increased by 50%, Verizon's cost would be \$50 million.¹² Moving facilities underground also entails tremendous costs. In a feasibility study Verizon conducted to determine the cost of

¹¹ *Id.* ¶ 6 and Attachment A. Note that this figure represents the costs that would be experienced during the first year after installation. This figure assumes an increase to attachment fees, which, if imposed under the applicable joint use agreement, would continue on a recurring basis, raising Verizon's costs further still.

¹² The potential for increasing the number of pole attachments by 50% or even more becomes greater when the extreme wind loading standards addressed in proposed Rule 25-6.034 are taken into account.

moving facilities underground on Davis Islands, it determined the cost to be \$4,000 per household.¹³ Placing copper facilities underground would be particularly expensive and wasteful for Verizon because of its plans to install underground fiber facilities. If, on the other hand, Verizon decides not to migrate its facilities, it may be required to buy the poles that have been abandoned and pay for easement rights.¹⁴ Although the proposed rules provide compensation to the electric utilities, no similar provision is made for attachers, nor are attachers given any right to object to electric utilities' plans to migrate facilities. Proposed Rule 25-6.0341 should be revised to take into account the costs that would be imposed on third-party attachers.

Proposed Rule 25-6.0341 also raises serious concerns with respect to Verizon's carrier-of-last resort obligations under Florida law, which among other things require local exchange telecommunications companies, until January 1, 2009, "to furnish basic local exchange telecommunication service within a reasonable time period to any person requesting such service within the company's service territory." Fla. Stat. § 364.025(1). To the extent that standards under the proposed rule disrupt Verizon's ability to fulfill its carrier-of-last-resort obligations, the standards would conflict with Florida law. The proposed rule should be revised to prevent such a conflict.

C. Proposed Rule 25-6.0342

Proposed Rule 25-6.0342 requires electric utilities to include in their construction standards "safety, reliability, pole loading capacity, and engineering standards and procedures for" third-party attachments. Electric utilities would be required to develop

¹³ Lindsay Aff. ¶ 7.

¹⁴ *Id.* ¶ 5.

these standards within 180 days, after seeking input from other entities with joint use agreements, but without any requirement that the electric utilities accept any of the input they receive. No prior Commission approval of the standards is contemplated, whether for the initial standards or any subsequent revisions. Indeed, the electric utility is not even required to provide the Commission with access to a copy of the standards unless the Commission makes a specific request.¹⁵ Only broad guidance is provided as to what requirements the third-party attachment standards must meet. They are required to “meet or exceed” the applicable edition of the NESC, as well as other applicable standards under state and federal law to ensure “as far as reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility’s service territory.” Disputes concerning implementation of the proposed rule are to be resolved by the Commission.

As a threshold matter, the Commission lacks jurisdiction to regulate the rates, terms and conditions of pole attachments. Under federal law, the FCC has such jurisdiction unless “such matters are regulated by a State.” 47 U.S.C. § 224 (b)(1) and (c)(1). Whether a state may be said to regulate such rates, terms and conditions is not left in doubt, because a state that regulates pole attachments is required to file a certification to that effect with the FCC. 47 U.S.C. § 224 (c)(2). There can be no dispute, therefore, that the Florida legislature has not authorized the Commission to regulate pole attachments. When the Commission issued an order more than 25 years

¹⁵ These procedural requirements are stated in proposed Rule 25-6.034, which describes the development of the construction standards of which the third-party attachment standards are to be a part.

ago certifying that it had such authority, the Florida Supreme Court quashed the order. *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648 (Fla. 1980). To Verizon's knowledge, the Commission has not issued any subsequent order certifying its authority to regulate pole attachments, and no party to this docket has asserted otherwise. Thus, only the FCC may regulate the rates, terms and conditions of pole attachments in Florida, and to the extent proposed Rule 25-6.0342 would regulate such rates, terms and conditions, it would stand on infirm ground.

Proposed Rule 25-6.0342 also is problematic because it gives far too much discretion to the electric utilities to determine third-party attachment standards.¹⁶ There is a significant risk that electric utilities could abuse that discretion by adopting standards that could harm attachers by requiring them to upgrade, rearrange or remove their attachments. The standards adopted by electric utilities apparently would remain in place until the completion of a dispute resolution proceeding, which could take several months, if not a year or more. As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers. Again the attachers would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. In short, giving electric utilities broad discretion to define and implement their own standards is particularly inappropriate in this context and should not be permitted.

¹⁶ Although SB 888 authorized the *Commission* to adopt construction standards that exceed the NESC, it did not authorize the Commission to permit electric utilities to establish those standards.

Verizon's pole attachment rates in Florida already are the highest of any operating company in the Verizon West (former GTE) footprint, and those rates are increasing at an alarming pace.¹⁷ Proposed Rule 25-6.0342 threatens to accelerate the rate of increase by imposing even greater costs on attachers. Unlike rate-regulated electric utilities, telecommunications carriers cannot simply pass these cost increases on to their customers. The cost impact of the proposed rule to third-party attachers should be taken into account before any final rule is adopted.

For the foregoing reasons, Verizon respectfully submits that proposed Rules 25-6.0341 and 25-6.0342 should not be adopted in their current form. Further consideration of the interests and concerns of third-party attachers and other interested parties should be given before final rules are adopted.

Respectfully submitted on August 4, 2006.

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Attorney for Verizon Florida Inc.

¹⁷ Lindsay Aff. ¶ 10.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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AFFIDAVIT OF STEVEN R. LINDSAY

The undersigned, being duly sworn, states as follows:

1. I am employed by Verizon as a Staff Consultant – Network Engineering with responsibility for the negotiation and administration of joint use contracts with electric power companies, competitive local exchange carriers, cable TV companies, railroads, and governmental entities in the states of Florida, North Carolina, and South Carolina. My background in the telephone industry spans 26 years. I have worked as a cable splicer and an outside plant construction supervisor, and have held various other positions in outside plant engineering, most recently as a staff consultant negotiating joint use contracts. I was a Director on the Oregon Joint Use Association (OJUA) in 2005-06 prior to coming to Florida. I represented both Verizon and the OJUA in the Oregon joint use workshops and Commission formal and informal hearings concerning safety and joint use rule making. I have a Bachelors degree in Business Management from Nova University in Florida.

2. Verizon Florida Inc. (“Verizon”) owns 107,863 poles in Florida, about 29,632 of which bear electric utility attachments. Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of poles that it owns. In addition, Verizon’s affiliates, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc., are attached to approximately 3,000 power poles under separate agreements.

3. Verizon actively maintains its network and invests heavily to ensure network reliability. A substantial portion of Verizon’s Florida network already has been placed underground and through its FiOS project, Verizon is aggressively spending hundreds of millions of dollars to install its new, storm-hardened, fiber network, 99.9% of which is underground. This new passive optical (PON) network is virtually impervious to storm damage, flooding, and lightning strikes, and improves the survivability and recovery of the network. Unlike copper networks, a PON network does not employ live electronic signals; instead, fiber emits refracted light waves from point A to point B. Moreover, there are significant operational benefits with fiber that enables faster recovery and restoration. Verizon has passed 600,000 Florida households to date and has placed more than 26 million feet of fiber in the state. Verizon has made a \$550 million investment in Florida so far and the project is moving ahead full speed. As the FiOS project is further deployed, it is Verizon’s intention to migrate existing customers served by copper facilities to fiber facilities.

4. Proposed new Rules 25-6.0341 and 25-6.0342 threaten significant harm to Verizon, both financially and operationally. Below I address three of the potential problems that implementation of these rules could pose.

5. First, proposed Rule 25-6.0341, as drafted, could lead to dramatically increased costs for pole attachers. For example, if electric utilities increase the number of poles in service, move their facilities to new poles or relocate facilities underground, third-party attachers will be affected.¹ Not only must they pay engineering and transfer expenses when poles are added or replaced with stronger poles, but under their joint use agreements they may be required to pay increased attachment fees.² And when an electric utility elects to move or relocate facilities Verizon may have to pay to acquire the abandoned facilities and pay for easement rights. While the proposed rules provide for the compensation of the electric utilities making these changes, they do not provide for the compensation of third-party attachers, and the electric utilities would have no incentive to take the carriers' costs into account.

6. Verizon presented an exhibit at the July 13, 2006 Staff workshop that projects estimated costs associated with proposed storm hardening requirements.³ Assuming that Verizon is required to place 10% more poles in its network to comply with the electric companies' yet-to-be-defined standards, the additional cost experienced during the first year after installation would be approximately \$20 million, most of which would be from one-time engineering and transfer costs. This figure assumes an increase to attachment fees, which would continue after the first year, raising Verizon's

¹ Other proposed rules could have the same kind of cost impact. For example, the amendments to proposed Rule 25-6.034 could result in an increased number of poles to shorten span lengths or an increase in pole sizes. Proposed Rule 25-6.034 and other proposed rules will be discussed in a subsequent filing.

² Whether Verizon must pay electric utilities additional attachment fees in a particular case will depend on the applicable joint use agreement.

³ See Attachment A - Partial Cost Impact Analysis. The number of poles used represents 4% budgeted over actual number of poles placed.

costs further still. Making another equally valid assumption that 50% more poles would be required,⁴ Verizon's first-year cost would be \$100 million.

7. The relocation of aerial facilities underground brings additional complexities and costs to the forefront that affect industry participants as well as customers. For example, Verizon participated in a multiple-phase project to investigate the feasibility of converting overhead utilities to underground facilities on Davis Islands located in Tampa, Florida. The project identified several benefits, including disaster preparedness and recovery. Verizon estimated that it would cost approximately \$10 million or \$4,000 per household to relocate its facilities in a scenario that included close coordination and cooperation with other utilities. The effort made it clear that undergrounding brings physical and legal complexities, including damage and disruptions caused by excavation, high costs associated with relocation, cost recovery issues, right-of-way issues, and negotiation of easements.

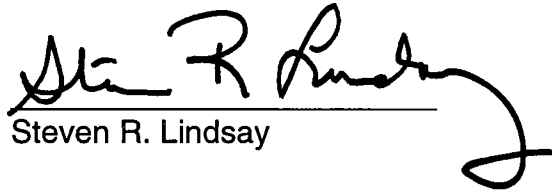
8. Second, proposed Rules 25-6.0341 and 25-6.0342 (as well as the other proposed rules) threaten to divert Verizon's resources from its capital-intensive FiOS project, which Verizon is rolling out to meet the heated competition it faces in its Florida market. FiOS brings fiber to customers' homes, providing them with telephone, broadband and television services, and enabling Verizon to compete head to head with cable companies and other service providers. To the extent Verizon is forced to expend resources coordinating with electric utilities' projects undertaken under the proposed rules, the FiOS rollout will be impeded, to the detriment of Florida consumers.

⁴ This assumption becomes more probable when the extreme wind loading standards addressed in proposed Rule 25-6.034 are taken into account.

9. Third, if Rule 25-6.0342 were adopted as currently proposed, Verizon would have to comply with the construction and maintenance standards set by the electric utilities with respect to third-party attachments. Because these new standards may differ from the existing, uniform national NESC standards, they could require Verizon to upgrade or rearrange its attachments to electric utility facilities, or even to remove them. To the extent new standards are imposed on Verizon through the proposed rule, they may also conflict with Verizon's joint use and license agreements that govern Verizon's attachments to electric facilities. Among other things, the new standards could dramatically affect Verizon's rental rates (depending of the terms of applicable joint use agreements) and impose additional financial and operational burdens that are not contemplated under the existing contracts.

10. Verizon's pole attachment rates are already increasing at an alarming rate and proposed Rule 25-6.0342 as currently drafted would accelerate this pace. Florida pole attachments rates are the highest of any other operating company in the Verizon West (former GTE) foot print. As an example, Verizon received a proposed attachment rate increase of 21% covering 2005 to 2006 from one electric utility. This proposed increase equals \$781,986 per year. The reason cited for the larger than anticipated increase is the utility's rising pole and maintenance costs, including costs from the 2004 storm season not recoverable from its rate payers. This utility also indicated that as a result of Florida legislation additional improvements will be made and costs will be reflected for the first time in the 2006 FERC data used to calculate charges.

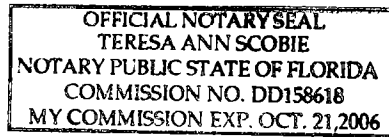
Further Affiant sayeth naught.


Steven R. Lindsay

Subscribed and sworn to before me this 4th day of August, 2006.


Notary Public, State of Florida

My commission expires:



Attachment A



PARTIAL COST IMPACT ANALYSIS

Verizon 3rd Party Projected Attachment Costs Due to Storm Hardening Requirements by Florida PSC

Based on Current Florida Attachments of:					397,246
Percent New Poles	Number of New Poles	Attachment Costs	Engineering Costs	Transfer Costs	Totals
10%	39,725	\$1,231,463	\$8,342,166	\$10,328,396	\$19,902,025
15%	59,587	\$1,847,194	\$12,513,249	\$15,492,594	\$29,853,037
20%	79,449	\$2,462,925	\$16,684,332	\$20,656,792	\$39,804,049
25%	99,312	\$3,078,657	\$20,855,415	\$25,820,990	\$49,755,062
30%	119,174	\$3,694,388	\$25,026,498	\$30,985,188	\$59,706,074
35%	139,036	\$4,310,119	\$29,197,581	\$36,149,386	\$69,657,086
40%	158,898	\$4,925,850	\$33,368,664	\$41,313,584	\$79,608,098
45%	178,761	\$5,541,582	\$37,539,747	\$46,477,782	\$89,559,111
50%	198,623	\$6,157,313	\$41,710,830	\$51,641,980	\$99,510,123

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