

State of Florida



Public Service Commission

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

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

DATE: April 24, 2008

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 080230-TL – Review of Tariff Filing (T-080233) by Verizon Florida LLC to Establish Bill Credit Trial

AGENDA: 05/06/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Unassigned

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\080230.RCM.DOC

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Case Background

On April 16, 2008, Verizon Florida LLC (Verizon or the Company) filed a tariff (T-080233) to offer a five-month trial wherein a portion of the residential customers who experience two or more repair problems within 30 days of a new, change, or move order would receive a bill credit of \$25.00. The trial period is April 17, 2008 through September 17, 2008. A copy of the tariff is included as Attachment 1 to this recommendation.

This bill credit trial does share some similarities with Verizon's Service Performance Guarantee (SPG), which is described in a different section of the same tariff, although the trial is incremental to this existing program and differs in some important respects. Under Verizon's SPG, if a residential customer's requested installation or repair of Company-owned facilities is

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not completed as agreed, the customer may request a \$25.00 credit. A comparison of Verizon's existing SPG to the instant trial reveals that the latter is limited to repair issues related to recent order activity and provides a Company-initiated bill credit, rather than a credit upon customer request.

Verizon's existing SPG program was not established by petition to the Commission under Rule 25-4.085 - Service Guarantee Program, Florida Administrative Code. When a program is established pursuant to this rule, the Company is relieved from the otherwise applicable rule requirement of each Commission service standard; in essence, the program acts as an alternative regulatory tool. Verizon's existing SPG program does not constitute a Service Guarantee Program pursuant to Rule 25-4.085, Florida Administrative Code.

In this instance, as with its existing SPG program, the Company is not seeking relief from Commission service standards. Staff understands that the trial is designed to evaluate whether a monetary benefit assists in retaining residential customers who are experiencing service problems. Verizon believes, and staff agrees, that customers who are having repair issues are more likely to change carriers. To gauge whether or not the monetary benefit does assist with residential customer retention, the company plans to establish test and control groups, whereby the former group would receive the bill credit and the latter would not. This trial discriminates among similarly situated residential customers by design, which appears to be at odds with Section 364.051(5)(a), Florida Statutes, which states in part that the "local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers." (emphasis added) By its experimental nature, this tariff may qualify for approval pursuant to Section 364.057(1), Florida Statutes, which authorizes the Commission to approve rates on an experimental or transitional basis to test marketing strategies.

Pursuant to Section 2.07C.5.a.(15) of the Administrative Procedures Manual (APM), staff has administrative authority to process filings that are compliant with Section 364.051, Florida Statutes. In this instance, the filing does not appear to be compliant with this section, which precludes staff from processing this filing administratively. For this reason and also because this filing may qualify for approval under Section 364.057(1), Florida Statutes, staff is seeking a determination from this Commission regarding whether this tariff should be allowed to remain in effect or be canceled.

Discussion of Issues

Issue 1: What action, if any, should the Commission take with respect to Verizon's Tariff Filing (T-080233) to establish a bill credit trial?

Recommendation: Staff recommends that Verizon's tariff filing (T-080233) to establish a bill credit trial be approved pursuant to Section 364.057(1), Florida Statutes, for the period April 17, 2008 through September 17, 2008. If the Commission finds to the contrary and determines that the tariff should be canceled, Verizon should be required to issue bill credits to all residential customers who experience two or more repair problems within 30 days of a new, change, or move order, over the pendency of the tariff. **(Simmons, Teitzman)**

Staff Analysis: As discussed in the Case Background, Verizon's tariff filing to offer a five-month trial will treat similarly situated residential customers differently by providing bill credits to only some qualifying customers, thereby discriminating by design. Marketing experiments often utilize a test group and a control group in order to gauge the effectiveness of the initiative being considered for general application. In this respect, there is a rational basis for the discrimination, yet the discrimination raises an issue of statutory compliance.

Section 364.051(5)(a), Florida Statutes, addresses nonbasic service offerings of price regulated LECs. This statute imposes certain pricing controls by limiting rate increases for each category of nonbasic services and establishing a cost standard for determining cross-subsidization. In addition, the statute provides several permissible vehicles for a price regulated LEC to meet competitive offers. Finally, of particular relevance is the passage that the "local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers." (emphasis added) Since qualifying customers apparently will be assigned randomly to the test and control groups, staff believes the trial creates unreasonable discrimination of the sort precluded by Section 364.051(5)(a), Florida Statutes. Nonetheless, the filing may qualify for approval under Section 364.057(1), Florida Statutes.

Section 364.057(1), Florida Statutes, authorizes the Commission to approve rates on an experimental or transitional basis to test marketing strategies:

The commission is authorized to approve rates it determines to be in the public interest on an experimental or transitional basis for any telecommunications company to test marketing strategies. The application of such rates may be for limited geographic areas and shall be for a limited period of time specified at the time of approval of such rates.

This section is applicable to price regulated LECs by virtue of not being listed among the sections not applicable (see Section 364.051(1)(c) for list of exemptions). Staff believes that this statute provides a basis for approving Verizon's tariff to test a retention marketing strategy. Since a bill credit reduces the effective rate paid by the residential customer, staff believes the statute can be applied in this instance.

In addition, there is another statute applicable to price regulated LECs, which we believe is relevant in the instant case. Section 364.09, Florida Statutes, prohibits rebates and special rates, yet has the caveat “except as authorized in this chapter.” The complete text of Section 364.09, Florida Statutes, is provided below.

A telecommunication company may not, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered with respect to communication by telephone or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service with respect to communications by telephone under the same or substantially the same circumstances and conditions. (emphasis added)

The language “except as authorized in this chapter” enables an otherwise precluded action, such as the differential treatment proposed in Verizon’s filing wherein only some qualifying customers will receive a bill credit, to be permitted under another statute, in this instance Section 364.057(1).

Staff believes the company has a need to test various strategies for retention marketing. Further, the company plans to run the trial for five months, which meets the criterion in Section 364.057(1), Florida Statutes, that the experiment be for a “limited period of time.” The test and control groups could be defined differently (e.g., perhaps geographically by exchange/zone) such that the residential customers in the test and control groups might not be similarly situated to the same degree, but staff believes the practical result would be much the same. In order to truly gauge the effectiveness of this retention strategy, only some customers in the target group can receive the bill credit. While it is possible to provide the bill credit to all qualifying customers and compare customer retention with the initiative to that observed previously, the comparison would not isolate the effect of the bill credit. To the extent other important factors (e.g., monthly rates charged by Verizon and its competitors) have changed over the same time period, the comparison would provide the combined effect of all changes, not just the effect of the bill credit.

If the trial is successful, this or a similar program likely will be extended to all customers with the same repair issues in the future. This potential outcome, wherein all similarly situated customers eventually would benefit, leads staff to conclude that the trial is in the public interest.

Therefore, staff recommends that Verizon’s Tariff Filing (T-080233) to establish a bill credit trial be approved pursuant to Section 364.057(1), Florida Statutes, for the period April 17, 2008 through September 17, 2008. If the Commission finds to the contrary and determines that the tariff should be canceled, Verizon should be required to issue bill credits to all residential customers who experience two or more repair problems within 30 days of a new, change, or move order, over the pendency of the tariff.

Docket No. 080230-TL

Date: April 24, 2008

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 the issuance of this Order. In the event of a timely protest, the tariff should remain in effect pending the outcome of further proceedings. **(Teitzman)**

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 the issuance of this Order. In the event of a timely protest, the tariff should remain in effect pending the outcome of further proceedings.

VERIZON FLORIDA LLC

GENERAL SERVICES TARIFF

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A2. GENERAL REGULATIONS

A2.11 Trials

1. The following trial is on file with the Florida Public Service Commission:

	Area of Trial	Service	Application	Period
1)	Company's Service Territory	Residential Services	Qualified customers are eligible residential customers who during the trial period experience two or more repair problems within 30 days of a New, Change or Move order. Up to 50% of qualifying customers will receive an automatic one-time proactive repair credit of \$25.00. Qualifying customers are limited to one offer during this trial period. This trial may not be combined with any other promotional offers except as authorized by Verizon.	04/17/2008 – 09/17/2008