

KEN PRUITT
President of the Senate



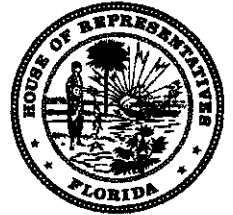
J.R. Kelly
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STATE OF FLORIDA
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MARCO RUBIO
Speaker of the House of
Representatives



080278-TZ

May 15, 2008

RECEIVED-FPSC
08 MAY 15 AM 11:35
COMMISSION
CLERK

Anne Cole, Commission Clerk
And Administrative Services
Room 100, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Joint Petition for the Commission to issue a show cause against Verizon for
Violation of service availability rule 25-4.070, F.A.C. and impose fines.

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket are the original and 15 copies
of the Joint Petition Requesting the Florida Public Service Commission to Issue a Show
Cause Order Against Verizon Florida LLC for Repeated Willful Violation of Telephone
Service Quality Rule. A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this
letter and return it to our office.

- OCM
- CTR
- ECR
- GCA *2*
- OPC
- RCA
- SCR
- BGA
- SEC *PAC:bsr*
- CLK *2*
- OTH

Sincerely,

Patricia A. Christensen
Associate Public Counsel

DOCUMENT NUMBER-DATE

04041 MAY 15 8

FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint Petition for the Commission to issue a show cause against Verizon for violation of service availability rule 25-4.070, F.A.C., and impose fines.

Docket No.: 080278-TL
Filed: May 15, 2008

JOINT PETITION REQUESTING THE FLORIDA PUBLIC SERVICE COMMISSION TO ISSUE A SHOW CAUSE ORDER AGAINST VERIZON FLORIDA LLC FOR REPEATED WILLFUL VIOLATION OF TELEPHONE SERVICE QUALITY RULE

Attorney General Bill McCollum (Attorney General), the Citizens of the State of Florida (Citizens), and AARP, by and through undersigned counsel, pursuant to Chapter 120, Florida Statutes (2006), Rule 28-106.201, Florida Administrative Code; and Article IV, Section 4 of the Florida Constitution file this Petition. The Attorney General, Citizens, and AARP allege that Verizon Florida LLC (Verizon) willfully violated the Florida Public Service Commission's (Commission) service availability rule¹ 262 times during 2007 and request the Commission to issue a show cause order requiring Verizon to show cause why it should not be fined approximately \$6.5 million.

Commission Rule 25-4.070 requires Florida incumbent local exchange companies to repair no less than 95% of their service interruption (out of service) repair trouble reports in each exchange within 24 hours and 95% of its service affecting trouble reports in each exchange within 72 hours. For larger exchanges with at least 50,000 access lines, the requirements must be met each month, and for smaller exchanges with fewer than 50,000 access lines the requirements must be met each quarter. Verizon has 9 exchanges with at least 50,000 access lines and 15 exchanges with fewer than 50,000 access lines.

¹ Rule 25-4.070, Florida Administrative Code (Customer Trouble Reports).

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The last major investigation into Verizon's compliance with the service quality rules (Docket No. 99-1376-TL) was settled in 2001 by Verizon with a \$2 million voluntary contribution to the general revenue fund of the state of Florida. Since then, however, Verizon's compliance with the Commission's service quality rule for repair of telephone line troubles has declined precipitously. The deterioration in Verizon's service performance is graphically illustrated in the attachments to this Petition.

For example in 2001, the Company repaired 97% of its out of service reports within the 24 hour limit on a statewide basis. Even excluding the hurricane months for 2004, the total statewide average performance had declined to 95% in 2004. In 2006, the statewide average had declined to 92.9% for out of service reports. By 2007, the company only repaired 87.8% of its out of service reports within the 24 hour limit.

Thus, according to the Company's own reports, during 2007 Verizon violated the Commission Rule 25-4.070, Florida Administrative Code, 119 times for repair of out-of-service troubles. In addition, Verizon's deteriorating performance during 2007 in the repair of its service-affecting troubles caused Verizon to violate the Commission Rule 25-4.070, Florida Administrative Code, 143 times. In total, Verizon violated Commission Rule 25-4.070, Florida Administrative Code, 262 times in 2007. Based upon \$25,000 per violation for 2007, the fine would be \$6,550,000.

In support of their Petition, the Attorney General, Citizens, and AARP state:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No.: _____

2. The Attorney General files this Petition jointly with Citizens and AARP pursuant to Article IV, Section 4 of the Florida Constitution as the chief state legal officer authorized to intervene in all actions affecting the citizens of Florida. *See State ex rel. Landis v. S.H. Kress & Co.*, 155 So. 823 (Fla. 1934); *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891, 893 (Fla. 1972); and *Shevin v. Kerwin*, 279 So. 2d 836, 838 (Fla. 1973).

The Attorney General's address and telephone number are as follows:

Office of the Attorney General
The Capitol – PL01
Tallahassee, Florida 32399-1050
Telephone No.: (850) 414-3300

3. Citizens include customers of Verizon whose substantial interests have been affected by Verizon's violations of Rule 25-4.070, Florida Administrative Code. Pursuant to Section 350.0611, Florida Statutes (2006), Citizens who file this Petition are represented by the Office of Public Counsel ("Citizens" or "OPC") with the following address and telephone number:

Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No.: (850) 488-9330

4. AARP is a nonprofit, nonpartisan membership organization dedicated to addressing the needs and interests of persons 50 and older. AARP has staffed offices in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. AARP has more than 39 million members in total, 3 million of whom reside in the State of Florida. AARP's Florida members reside throughout the state and a significant number of them are necessarily residential telecommunications customers of Verizon. AARP advocates for affordable and accessible telephone services on the federal and state levels.

Reliable telephone service is crucial to health and personal welfare. This is especially true for older Americans. For example, the ability to contact police, fire, medical and other services in times of emergency is critical to all telecommunications customers, including AARP's members in Florida served by Verizon. The loss of any of these utility services could have devastating consequences. Unnecessary and unwarranted loss of service could result from the failure of a telecommunications company to comply with this Commission's rules including those governing repair of out-of-service troubles and the repair of its service-affecting troubles. AARP's members served by Verizon have substantial interests affected by Verizon's alleged violations of Rule 25-4.070, Florida Administrative Code, as alleged herein. *See Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981). AARP is represented by:

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256
Phone: (850) 421-9530
Email: miketwomey@talstar.com

5. The following facts are at issue in this proceeding:

a. Pursuant to Rule 25-4.070, Florida Administrative Code, Customer Trouble Reports, the Commission set the standard for service objectives for restoration of service to customers.

b. Rule 25-4.070(3)(a), Florida Administrative Code, Service Interruption, states:

Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange that contains at least 50,000 lines and will be measured on a monthly basis. For exchanges that contain less than 50,000 lines, the results can be

aggregated on a quarterly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.

c. Verizon violated Rule 25-4.070(3)(a), Florida Administrative Code, regarding restoration of interrupted service standard 119 times in 2007. For the 9 exchanges with more than 50,000 lines, Verizon failed to meet the 95% restoration of service 70 times. The table below show the number of exchanges by month which failed to meet the standard for the 9 exchanges greater than 50,000 lines:

2007	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	total
Out of service	6	9	2	3	2	6	6	9	8	7	7	5	70

d. Verizon failed to meet the 95% restoration of service times 49 times for the 15 exchanges with less than 50,000 lines. In accordance with the rule the violations are based on the quarterly reports submitted by Verizon. The table below shows the number of exchanges that failed to meet the standards by quarter for the 15 exchanges with less than 50,000 lines:

2007	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Out of service	10	9	14	16	49

e. Rule 25-4.070(3)(b), Florida Administrative Code, Service Affecting, states:

Clearing of service affecting trouble reports shall be scheduled to insure at least 95 percent of such reports are cleared within 72 hours of the report in each exchange which contains at least 50,000 lines and will be measured on a monthly basis. For exchanges which contain less than 50,000 lines, the results can be aggregated on a quarterly basis.

f. Verizon violated Rule 25-4.070(3)(b), Florida Administrative Code, regarding the clearing of service affecting trouble report standard 143 times in 2007. For the 9 exchanges with more than 50,000 lines, Verizon failed to meet the 95% clearing of such reports within 72 hours 88 times. The table below show the number of exchanges by month which failed to meet the standard for the 9 exchanges greater than 50,000 lines:

2007	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	total
Service-affecting	8	6	6	8	4	7	9	9	9	8	8	6	88

g. Verizon failed to meet the 95% clearing of affected service times 55 times for the 15 exchanges with less than 50,000 lines. In accordance with the rule the violations are based on the quarterly reports submitted by Verizon. The table below shows the number of exchanges that failed to meet the standards by quarter for the 15 exchanges with less than 50,000 lines:

2007	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Service-affecting	14	11	14	16	55

6. Pursuant to section 364.285, Florida Statutes, the Commission may impose upon any entity subject to its jurisdiction which is found to have refused to

comply with or to have willfully violated any lawful rule of the Commission a penalty for each offense of not more than \$25,000. The phrase "willful violation" can mean *either* an intentional act of commission or one of omission, that is *failing* to act. See, *Nuger v. State Insurance Commissioner*, 238 Md. 55, 67, 207 A.2d 619, 625 (1965)[emphasis added]. As the First District Court of Appeal stated, "willfully" can be defined as:

An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or *with the specific intent to fail to do something the law requires to be done*; that is to say, with bad purpose either to disobey or to disregard the law.

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1st DCA 1998)[emphasis added]. In other words, a willful violation of a statute, rule or order is also one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, *L. R. Willson & Sons, Inc. v. Donovan*, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982). In view of the fact that Verizon self-reports its service quality performance to the FPSC every quarter, the company had clear knowledge of its violations of the PSC service quality rule. In addition, Verizon's repeated and worsening violations of the Commission's service quality rule evidences its willful violation of the rule.

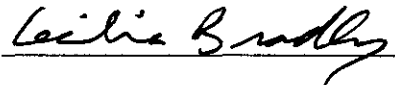
7. The Attorney General, Citizens, and AARP request that the Commission issue a Show Cause Order to Verizon for the 262 willful violations of its Rule 25-4.070, Florida Administrative Code. In accordance with Section 364.285, Florida Statutes, the

Attorney General, Citizens, and AARP request the Show Cause Order to require Verizon to show cause why it should not be fined \$25,000 per violation, for a total of \$6,550,000.


WHEREFORE, the Attorney General, Citizens, and AARP hereby request that the Commission grant its Petition and conduct a review pursuant to the provisions of Chapter 120, Florida Statutes.

Respectfully Submitted,

Bill McCollum
Attorney General



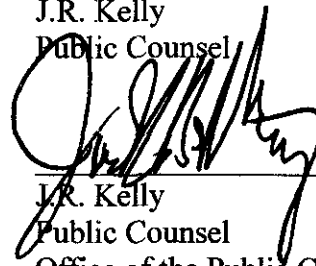
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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel, AARP and Attorney General's Joint Petition had been furnished by U.S. Mail on this 15th day of May, 2008, to the following:

Florida Public Service Commission
Ann Cole, Commission Clerk
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Verizon Florida Inc
Dulaney L. O'Roark III
6 Concourse Parkway, Suite 600
Atlanta, GA 30328

Michael Cooke
General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Verizon Florida Inc.
David Christian
106 e. College Avenue Suite 710
Tallahassee, FL 32301-7721



Patricia A. Christensen
Associate Public Counsel

VERIZON REPAIR

PSC RULE VIOLATIONS

OUT OF SERVICE TROUBLES

SERVICE AFFECTING TROUBLES

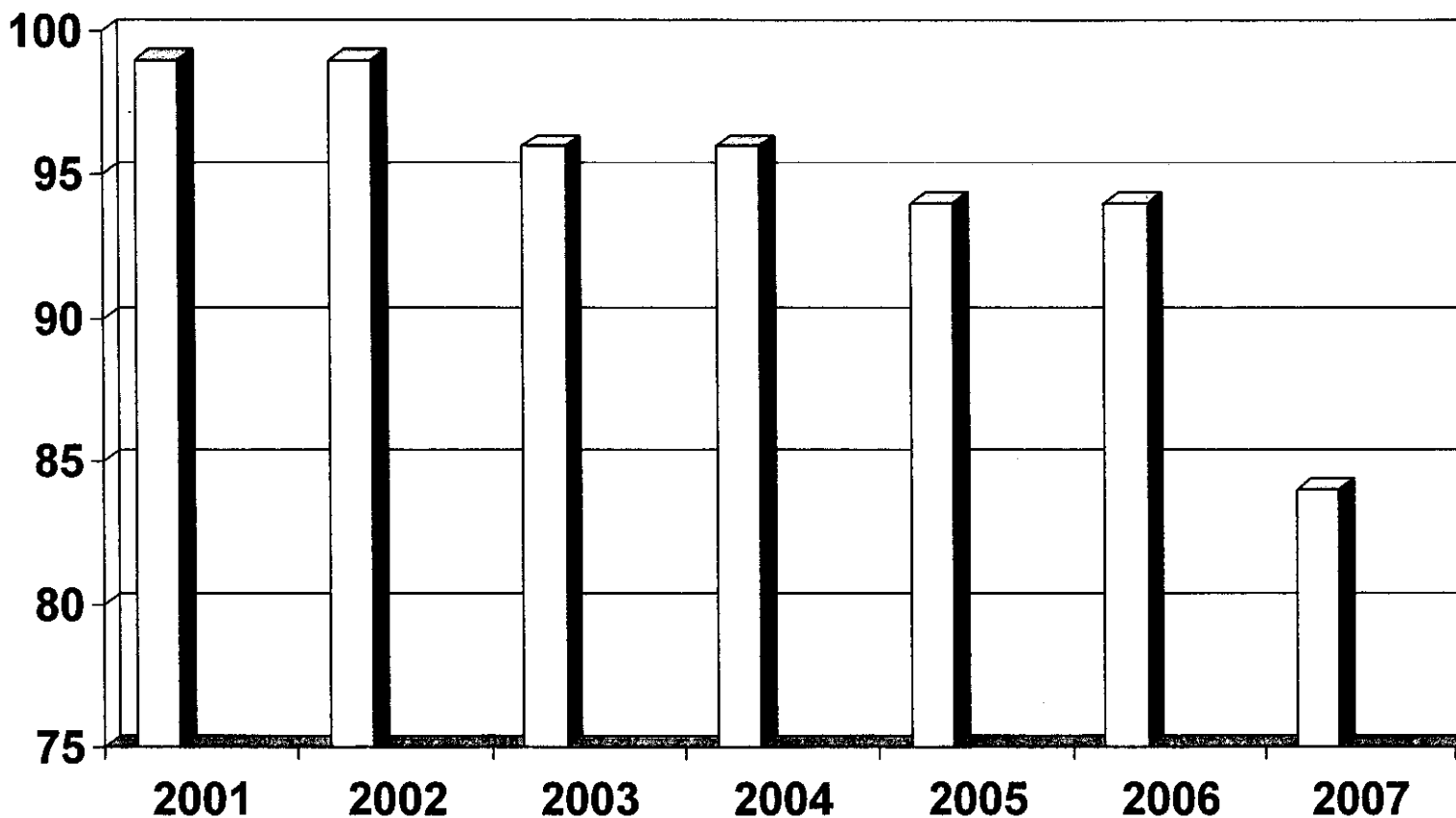
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Service Affecting Repaired—72 Hrs PSC Rule = 95%

Total State Performance Excluding Hurricanes

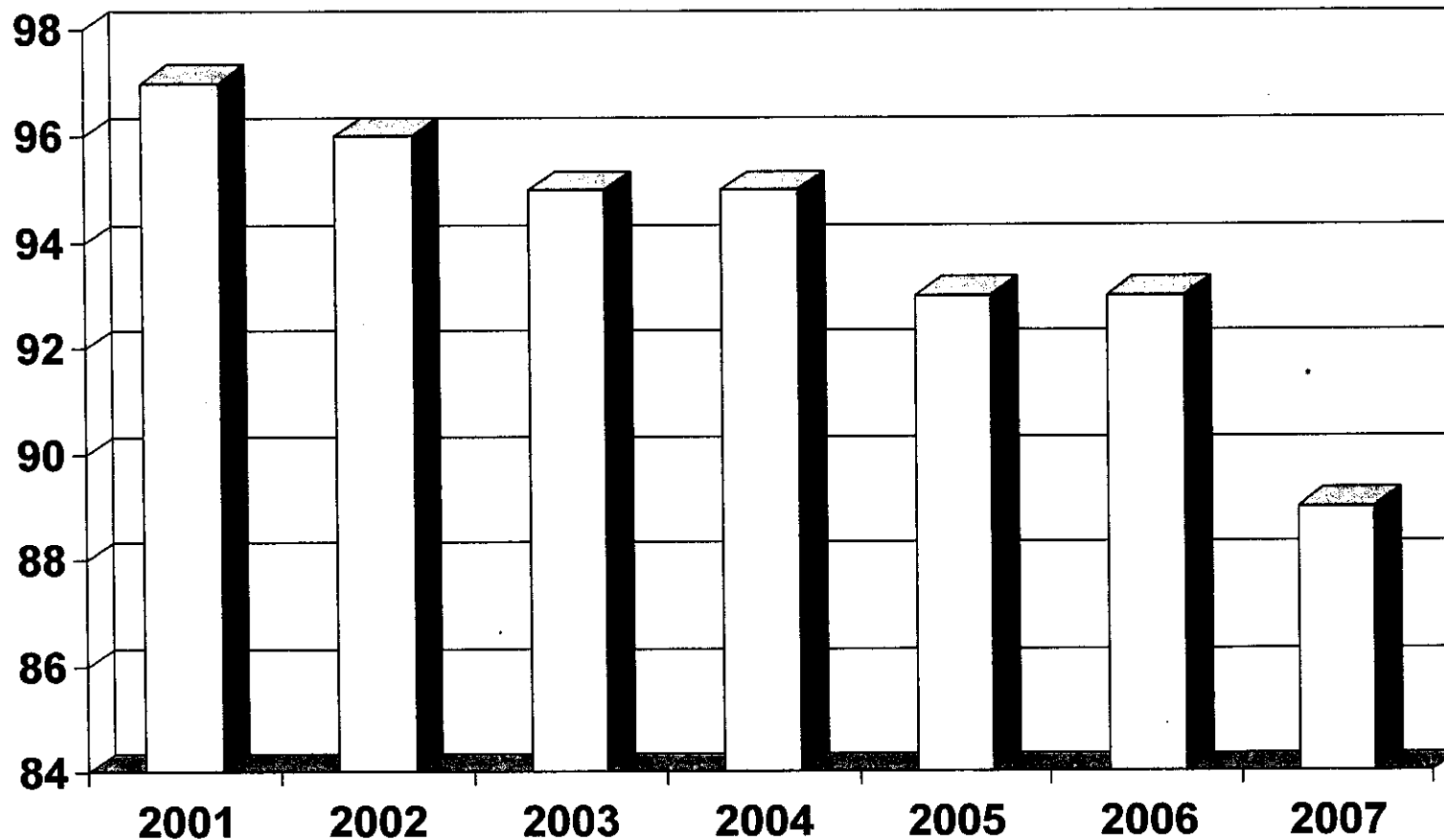


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Out of Service Repaired--24 Hrs

PSC Rule = 95%

Total State Performance Excluding Hurricanes



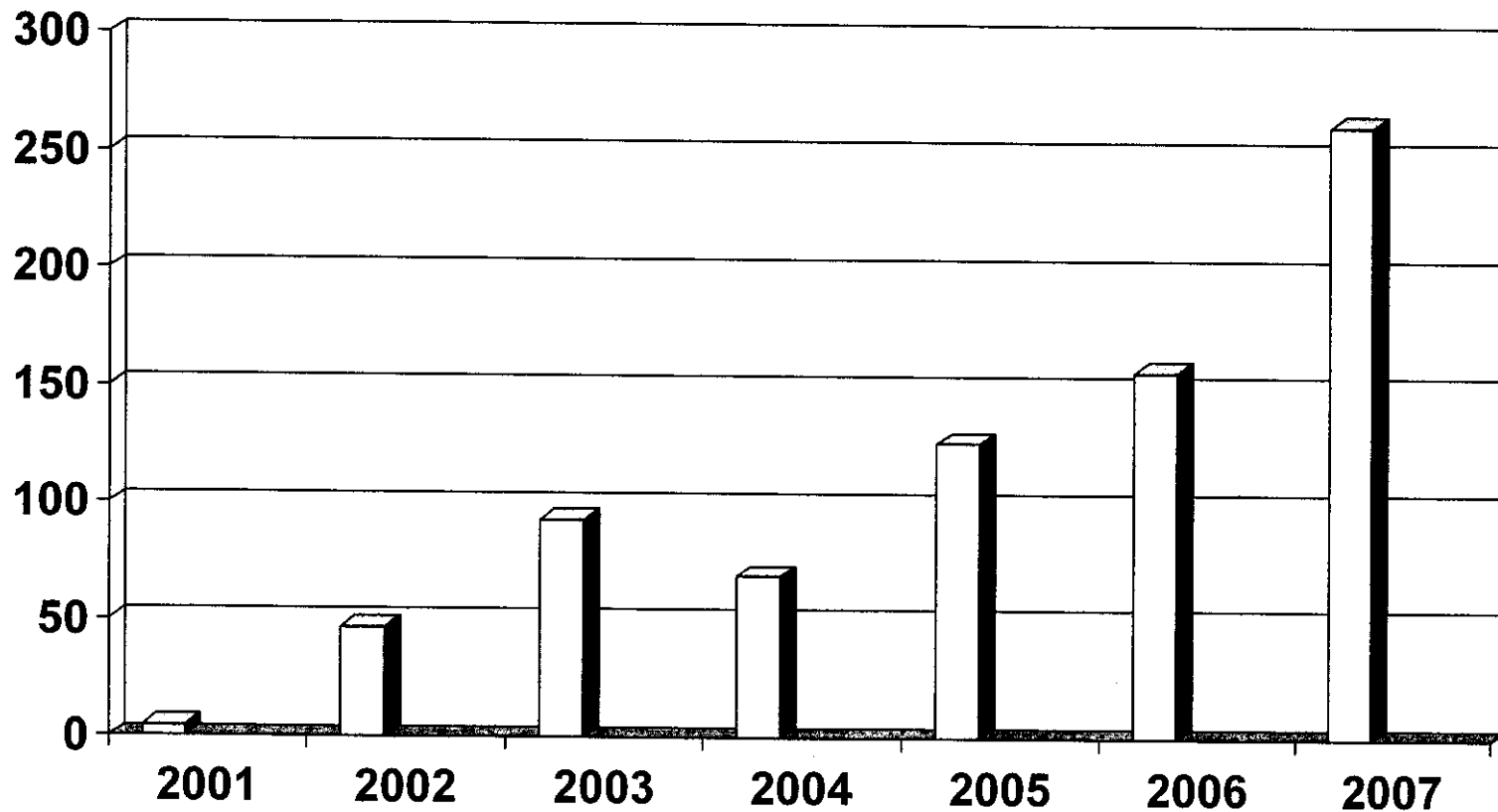
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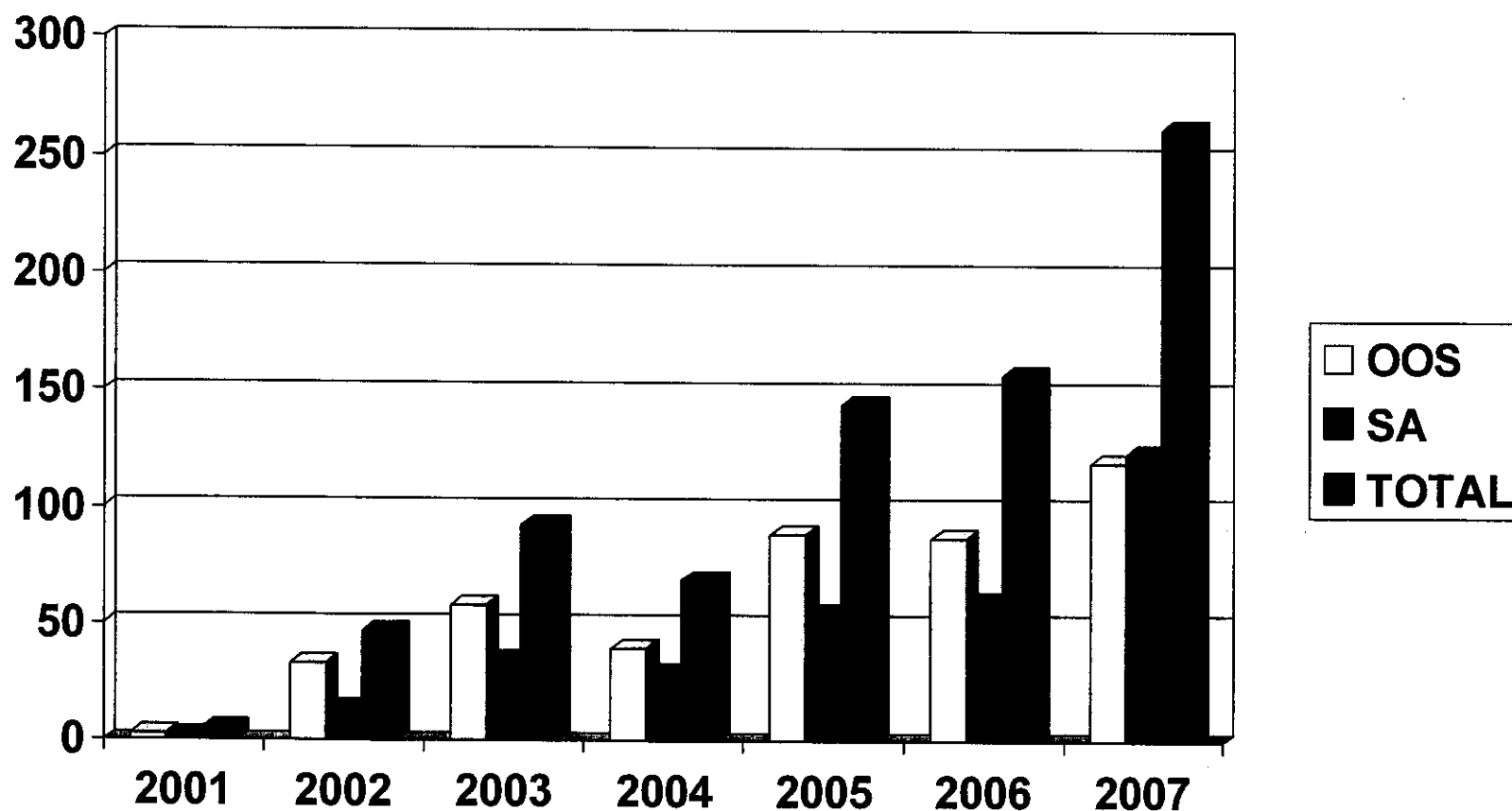
VERIZON REPAIR

Out of Service/Service Affecting PSC Rule Violations 2001-2007



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Verizon Repair Rule Violations Hurricane Adjusted



DOCUMENT NUMBER-DATE

04041 MAY 15 08

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VERIZON**REPAIR QUALITY OF SERVICE****% OUT OF SERVICE (OOS) TROUBLES REPAIRED WITHIN 24 HRS****% SERVICE AFFECTING(SA) TROUBLES REPAIRED WITHIN 72 HRS****TOTAL PERCENT--ALL EXCHANGES**

	2001	2001	2002	2002	2003	2003	2004	2004	2005	2005	2006	2006	2007	2007
	OOS	SA	OOS	SA	OOS	SA	OOS	SA	OOS	SA	OOS	SA	OOS	SA
JAN	98	99	96	100	95	99	97	99	92	87	93	93	92	85
FEB	98	99	97	100	97	100	96	98	97	98	88	94	90	90
MAR	96	98	98	100	95	99	96	96	92	86	94	99	94	88
APRIL	98	93	98	100	98	100	97	98	95	96	97	98	94	86
MAY	99	99	98	100	98	100	97	99	95	98	97	99	95	96
JUN	97	100	97	100	85	89	89	91	90	95	92	91	89	86
JUL	96	98	93	99	95	94	*	*	*	*	92	93	80	72
AUG	97	98	97	100	93	83	*	*	*	*	91	89	84	80
SEPT	96	99	96	99	96	90	*	*	91	95	91	83	83	80
OCT	98	100	96	100	97	99	*	*	90	96	96	96	85	77
NOV	98	100	96	99	95	98	*	*	92	96	92	93	86	80
DEC	97	100	86	88	97	99	90	93	92	95	92	94	92	93
AVG	97	99	96	99	95	96	95	96	93	94	93	94	89	84

Red indicates months when total statewide results failed to meet requirements of rules.

*Year 2004 and year 2005 data excludes hurricane-impacted months

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