



MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

www.lawfla.com

July 25, 2008

BY HAND DELIVERY

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
08 JUL 25 PM 4:08
COMMISSION
CLERK

Re: Docket Nos. 070691-TP and 080036-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast") are an original and 15 copies of the following documents:

1. Rebuttal Testimony of Beth Choroser; and
2. Comcast's Prehearing Statement.

Also enclosed is a 3 1/2" diskette with the Prehearing Statement on it in MS Word 2003 format.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

COM 5+1
 ECR _____
 GCL 2
 OPC _____
 RCP _____
 SSC _____
 SGA _____
 ADM FRS/amb
 CLK Enclosure
 cc: Parties of Record

DOCUMENT NUMBER-DATE
 06494 JUL 25 08
 FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail (*) and/or U. S. Mail this 25th day of July, 2008 upon the following:

Charlene Poblete, Esq.*
H. F. Mann, Esq.*
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Mr. David Christian*
Verizon Florida LLC
106 East College Avenue, Suite 710
Tallahassee, FL 32301

Beth Keating, Esq.*
Akerman Senterfitt Law Firm
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877

Marva Brown Johnson, Esq.*
Bright House Networks Information
Services, LLC
12985 North Telecom Parkway
Temple Terrace, FL 33637-0907

Christopher W. Savage, Esq.*
Davis Wright Tremaine, LLP
1919 Pennsylvania Avenue, NW, Suite 20
Washington, DC 20006

Dulaney L. O'Roark III, Esq.*
Verizon Florida LLC
5055 North Point Parkway
Alpharetta, GA 30022

Christopher McDonald, Esq.*
Comcast Phone of Florida, LLC d/b/a
Comcast Digital Phone
300 West Pensacola Street
Tallahassee, FL 32301-1618

Samuel F. Cullari, Counsel*
Comcast Cable
1500 Market Street
Philadelphia, PA 19102

David A. Konuch, Esq.*
Florida Cable Telecommunications
Association, Inc. (interested)
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

Howard E. Adams, Esq.
Pennington Law Firm (interested)
Post Office Box 10095
Tallahassee, FL 32302-2095

Ms. Carolyn Ridley
Time Warner Telecom (interested)
555 Church Street, Suite 2300
Nashville, TN 37219



FLOYD R. SELF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION
Docket Nos. 070691-TP and 080036-TP
REBUTTAL TESTIMONY OF BETH CHOROSER
JULY 25, 2008

I. INTRODUCTION AND SUMMARY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Beth Choroser and my business address is One Comcast Center, 1701 JFK Boulevard, 50th Floor, Philadelphia, PA 19103.

Q. ARE YOU THE SAME BETH CHOROSER WHO PROVIDED DIRECT TESTIMONY IN THIS MATTER?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony is offered in response to the direct testimony of Verizon's three witnesses in this matter. Specifically, my rebuttal testimony will address the following matters: why the level of competition in the market is not relevant to Verizon's illegal retention marketing program; the fact that the number porting process is not competitive; and the fact that Verizon's retention marketing practices are anticompetitive and not in the public interest.

Q. WHAT CONCLUSIONS CAN YOU DRAW BASED UPON YOUR REVIEW AND ANALYSIS OF VERIZON'S TESTIMONY?

A. First, there is no factual dispute regarding the processes and procedures that Verizon is engaged in with respect to its retention marketing practices.

DOCUMENT NUMBER - DATE
06494 JUL 25 08
FPSC-COMMISSION CLERK

1 Verizon receives the customer's porting request from Comcast, and that
2 request must work its way through Verizon's systems so that the number can
3 be ported to Comcast's switch. There is absolutely no dispute what must
4 happen or why. Likewise, simultaneous to the implementation of the
5 telephone number port, the customer's request also makes its way through
6 Verizon's systems for the purpose of terminating Verizon's telephone service
7 to that customer. There is also no dispute regarding how Verizon processes
8 the actual termination request. The anticompetitive act arises when Verizon's
9 retention marketing organization uses the *proprietary carrier information*
10 derived from the porting request to contact the customer Comcast has
11 competed away from Verizon prior to the completion of the port in an effort to
12 get the customer to stay with Verizon. Comcast and other competitive carriers
13 have no choice but to provide this carrier change information to Verizon
14 because Verizon's cooperation is needed for execution of the port. Thus, the
15 sole issue is whether it is permissible for Verizon to use this proprietary
16 carrier information for the purpose of retention marketing.

17

18 **Q. AS A PREFATORY MATTER, CAN YOU PLEASE UPDATE THE**
19 **COMMISSION WITH RESPECT TO THE STATUS OF THE FCC**
20 **DOCKET COMPLAINT AGAINST VERZION?**

21 A. Yes. Since the filing of our direct testimony, in a Memorandum
22 Opinion and Order released on June 23, 2008 (the "Order"), the FCC reversed
23 the Enforcement Bureau's April 11, 2008 Recommended Decision. The FCC
24 held that Verizon is violating section 222(b) of the Federal

1 Telecommunications Act of 1996 (the “1996 Act”) by using proprietary
2 information obtained in the number porting process for retention marketing
3 and the FCC ordered Verizon to “immediately cease and desist from such
4 unlawful conduct.” *In the Matter of Bright House Networks, LLC, et al.,*
5 *Complainants, v. Verizon California, Inc., et al., Defendants*, FCC 08-159,
6 File No. EB-08-MD-002, Memorandum Opinion and Order, 2008 WL
7 2491998 (F.C.C.), 45 Communications Reg. (P&F) 517 (June 23, 2008).
8 Verizon filed an appeal of the Order with the United States Court of Appeals
9 for the District of Columbia Circuit as well as a request for a stay of the Order.
10 In an order filed on July 16, 2008, the Court of Appeals denied Verizon’s
11 request for a stay and set the matter on an expedited schedule. It is unknown
12 when the Court will render a decision.

13 **Q. HAS VERIZON CEASED ITS RETENTION MARKETING**
14 **PROGRAM?**

15 A. To the best of our knowledge, Verizon has currently ceased its retention
16 marketing program.

17 **Q. IN VIEW OF THE FCC’S ORDER AND THE FACT THAT VERIZON**
18 **IS NOT CURRENTLY ENGAGED IN ITS RETENTION MARKETING**
19 **PROGRAM, WHY IS COMCAST CONTINUING WITH ITS**
20 **COMPLAINT IN THIS DOCKET?**

21 A. Since I am not an attorney, I cannot represent our legal analysis. However, as
22 I addressed in my direct testimony, Comcast’s position throughout this
23 proceeding has been that this Commission has its own independent statutory
24 authority and duty to address claims of anticompetitive conduct under Florida
25 law, and we certainly believe that Verizon’s conduct is anticompetitive and

1 therefore in violation of Florida law. Unless the Order is overturned by the
2 courts, Verizon is prohibited from engaging in retention marketing based upon
3 a number porting request. However, at this time we believe it is in the best
4 interests of Florida's consumers to proceed with this Florida state law
5 proceeding and obtain a decision regarding Verizon's violation of Florida law.
6 If there is a final, dispositive decision of the courts prohibiting Verizon from
7 continuing this conduct, then our attorneys will certainly advise this
8 Commission of whatever appropriate action they believe may be necessary at
9 that time.

10

11 **II. WIRELINE COMPETITION IN FLORIDA DOES NOT JUSTIFY**
12 **VERIZON'S RETENTION MAREKTING PROGRAM**

13

14 **Q. VERIZON'S WITNESS MR. CIAMPORCERO CLAIMS THAT THE**
15 **FLORIDA TELECOMMUNICATIONS MARKET IS HIGHLY**
16 **COMPETITIVE, WHICH JUSTIFIES VERIZON'S RETENTION**
17 **MARKETING PRACTICES. DO YOU AGREE?**

18 A. No, absolutely not. This Commission's own data simply does not support
19 Verizon's testimony and certainly market conditions do not support Verizon's
20 conclusions. Additionally, whether the market is highly competitive or not is
21 irrelevant to the illegality of Verizon's conduct.

22 **Q. PLEASE EXPLAIN.**

23 A. Quite frankly, the extent of competition in the local wireline market is still in
24 its very early stages. Based on the Commission's own research, competitive
25 providers have captured only roughly 12% of the Verizon market. Verizon's
26 hold on 88% of the market indicates the reality of the market. But more

1 importantly, the amount of market share Verizon or any other service provider
2 holds is irrelevant to the issue at hand. What is important is that Verizon is
3 using proprietary carrier change information that Comcast has no choice but to
4 provide Verizon for a port to be executed to target market the porting
5 customer. Verizon's conduct would be illegal and anti-competitive regardless
6 of the competitive state of the market.

7 **Q. VERIZON'S WITNESS MS. SMITH STATES AT PAGE 1 OF HER**
8 **DIRECT THAT RETENTION MARKETING IS ONE ASPECT OF**
9 **COMPETING FOR CUSTOMERS. IS THERE ANY LINKAGE**
10 **BETWEEN THE COMPETITIVENESS OF THE LOCAL WIRELINE**
11 **MARKET AND THE APPROPRIATENESS OF VERIZON'S**
12 **CONDUCT?**

13
14 A. No, there is not. No matter how much competition Verizon faces the entry
15 and evolution of competitors in the Verizon service area does not now and
16 never will justify the use of proprietary carrier change information obtained
17 during the number porting process for the purpose of engaging in retention
18 marketing. Verizon is certainly entitled to compete fairly for customers, but
19 Ms. Smith is flat out wrong when she claims that it is acceptable for Verizon
20 to compete by utilizing proprietary carrier change information provided by
21 Comcast for number porting. Moreover, Verizon's offer by Mr. Ciamporcero
22 that it is acceptable for Comcast to utilize Verizon's carrier change
23 information when Comcast ports a number back to Verizon doesn't work --
24 two wrongs don't make it right. Even if such a practice were permitted by
25 Florida rules, which it is not, the benefits of such practices are vastly more
26 beneficial to Verizon because they have the great majority of the existing

1 customer base. Because ports flow from Verizon to Comcast and other
2 competitors, Verizon's argument is merely self-serving.

3

4 **III. NUMBER PORTING IS NOT A COMPETITIVE PROCESS**

5 **Q. DO YOU HAVE ANY DISAGREEMENT WITH VERIZON'S**
6 **WITNESS MR. STEVENS REGARDING THE NUMBER PORTING**
7 **PROCESS?**

8 A. Certainly with respect to the actual number porting process, no. The basic
9 processes that Mr. Stevens describes in his direct testimony with respect to the
10 local number portability ("LNP") and service cancellation process reflect our
11 understanding of how Verizon handles this work.

12 **Q. ARE THERE ANY ISSUES YOU TAKE WITH RESPECT TO MR.**
13 **STEVENS' TESTIMONY?**

14 A. Yes, there are two matters I must respond to. First, Mr. Stevens states at page
15 3 of his direct testimony that Verizon's internal processes enable the porting
16 of telephone numbers "in a timely manner." I strongly disagree. Number
17 porting is not occurring in a timely manner when Verizon is cancelling
18 requests because of its illegal conduct. As I discussed in my direct testimony,
19 cancelling a customer port request based on an anticompetitive and illegal
20 retention marketing campaign is certainly a violation of this Commission's
21 Rule 25-4.082, which requires Verizon to port a number to the customer's
22 new carrier. The fact that Verizon may not delay the ports of customers who
23 do not respond to its retention marketing offers does nothing to mitigate the
24 fact that Verizon is cancelling valid porting requests.

1 Second, at pages 12 and 13 of his direct testimony, Mr. Stevens states
2 that Verizon processes porting requests within the industry standard interval of
3 four business days, but that cable companies often ask for extended port dates.
4 This is completely irrelevant to the issue at hand. Consumers should have the
5 option to decide when the most convenient time is for an installation. That
6 may be four days or more, but it may also be next day. Regardless of the
7 timeframe for the port, Verizon's current practice remains anticompetitive
8 because it illegally abuses and ultimately thwarts the number porting process.

9
10 **IV. VERIZON'S RETENTION MARKETING ACTIVITIES ARE**
11 **ANTICOMPETITIVE AND NOT IN THE PUBLIC INTEREST**

12
13 **Q. IS THERE ANY DISPUTE REGARDING VERIZON'S ACTUAL**
14 **MARKETING PRACTICES?**

15 A. Absolutely none. As Verizon's witnesses Ms. Smith and Mr. Ciamporcero
16 make very clear, Verizon is using the proprietary carrier information obtained
17 from carrier porting requests to target porting customers before Verizon has
18 completed its duty to port the customer's telephone number to Comcast.

19 **Q. MS. SMITH TESTIFIES AT PAGE 5 THAT VERIZON EMPLOYEES**
20 **DO NOT HAVE ACCESS TO THE LOCAL SERVICE REQUEST**
21 **("LSR") SUPPLIED BY COMCAST TO INITIATE THE PORT**
22 **PROCESS. IS THIS CORRECT?**

23 A. No, it is not. Verizon's retention marketing employees may not have access to
24 the actual electronic LSR record supplied by a competing carrier to Verizon to
25 initiate the port request. But not seeing the LSR is not the issue. Rather, the
26 point is that the carrier change information on the LSR flows throughout
27 Verizon's systems until Ms. Smith's organization retrieves it. As her

1 testimony makes clear at page 2, by the time Verizon sorts out all of the
2 customers Verizon is not going to contact, the only customers effectively left
3 are those whose information was supplied by Comcast and other facilities-
4 based competitors pursuant to a number port request.

5 If Comcast never supplied the information to Verizon, it appears that
6 Verizon would never directly contact the customer. While Comcast would
7 prefer not to identify to Verizon those customers we have won from Verizon,
8 we must do so in order for the customer's telephone number to be ported from
9 Verizon to Comcast. Hiding behind the fiction that Ms. Smith's organization
10 does not look at the actual LSR itself is preposterous. It is the very
11 information on that LSR that flows through electronically to Verizon's retail
12 operations where the responsibility lies for disconnection of the customer.
13 The sound public underlying this Commission's prior orders prohibiting
14 marketing to customers on the basis of information acquired in the process of
15 a customer switching carriers and even the requirement that carriers not
16 provide marketing information in the final bill to its former customer are
17 certainly violated Verizon's retention marketing program.

18 **Q. BOTH MS. SMITH AT PAGE 4 AND MR. STEVENS AT PAGES 13-15**
19 **DISCUSS HOW A JEOPARDY NOTICE IS ISSUED BY VERIZON IF**
20 **VERIZON IS ABLE TO PERSUADE THE CUSTOMER TO STAY**
21 **WITH VERIZON, AND THAT THEREAFTER THE CLECS ARE**
22 **CERTAINLY FREE TO ATTEMPT TO RECAPTURE THAT**
23 **CUSTOMER. IS THAT TRUE ?**

24 A. No, it is not. I agree with the factual testimony of Mr. Stevens that when
25 Verizon has retained a customer through its retention marketing it issues a

1 “jeopardy notice” to the CLEC telling the CLEC that the port will not be
2 executed. Further, Verizon then puts the port request “into conflict” by
3 sending a conflict code to the Number Portability Administration Center
4 (“NPAC”). As he states, the effect of that action is to put in place a lock on
5 that customer’s record that cannot be overridden by the CLEC absent engaging
6 in a lengthy process to resolve the conflict code or the CLEC submits a new
7 LSR. Therefore, the competitive carrier faces many obstacles that make it
8 very difficult for it to simply “recapture” the customers.

9 **Q. MR. CIAMPORCERO DISCUSSES SEVERAL BENEFITS OF**
10 **VERIZON’S RETENTION MARKETING PROGRAM BEGINNING**
11 **AT PAGE 14 OF HIS DIRECT TESTIMONY. FIRST, HE CLAIMS**
12 **THAT THE TIMING OF VERIZON’S RETENTION MARKETING**
13 **BENEFITS CONSUMERS. DO YOU AGREE?**

14 A. No. Comcast does not dispute that Verizon has the right to market its
15 competitive offers to customers. Comcast’s contention herein and throughout
16 these proceedings is simply that Verizon’s practice of using proprietary carrier
17 change information to target market customers who have requested to port
18 their telephone numbers to Comcast or another competing carrier during the
19 porting window is anticompetitive. Verizon is free to engage in television,
20 radio, newspaper, and other advertising that is not targeted to an individual
21 porting customer based on proprietary carrier change information all it wants.
22 Further, Mr. Ciamporcero’s contentions are short cited in that they speak only
23 to short term benefits realized by individual customers and ignore the damage
24 done to the porting process and the competitive marketplace. Indeed,
25 Verizon’s behavior is anticompetitive because it threatens the viability of one

1 of the cornerstones of the competitive voice market, the number porting
2 process as a whole. As, recognized by the FCC any short-term benefits to this
3 select group of customers is far outweighed by the long-term harm to viable
4 facilities-based competition. In its Memorandum Opinion and Order, the FCC
5 clearly held that while in the short term retention marketing may benefit some
6 customers, retention marketing's long-term harm to competition in the market
7 as a whole outweighs any short-term benefits to individuals. *In the Matter of*
8 *Implementation of the Telecommunications Act of 1996:*
9 *Telecommunications Carriers' Use of Customer Proprietary Network*
10 *Information and Other Customer Information, Order on Reconsideration and*
11 *Petitions for Forbearance, 14 FCC Rcd 14409, 14452-53 paras. 84-85. (1999)*
12 *(CPNI Reconsideration Order)*. Moreover, Verizon's witness simply
13 assumes, with no support, that material competition in the residential voice
14 market would continue to exist despite the barriers to competition that
15 retention marketing would entail.

16 Given all the circumstances, such marketing is not in the best
17 interests of customers and is clearly anti-competitive.

18 **Q. DO YOU AGREE WITH MR. CIAMPORCERO'S CLAIM THAT**
19 **PROHIBITING VERIZON'S RETENTION MARKETING DURING**
20 **THE PORTING PROCESS WOULD CREATE AN ARTIFICIAL**
21 **BARRIER TO COMPETITION?**

22 A. No. The number porting process and the rules created to support it exist to
23 promote competition in the voice services market. As detailed in my previous
24 testimony, enforcing the rules created to ensure the viability of the number

1 porting process will in turn help to forward competition in the market as a
2 whole.

3 **Q. MR. CIAMPORCERO'S FINAL CLAIM IS THAT CABLE**
4 **PROVIDERS HAVE HUGE MARKETING ADVANTAGES IN THE**
5 **BUNDLING OF SERVICES. IS THIS TRUE?**

6 A. This is also wrong for several reasons. First, while bundles of video,
7 broadband, and voice telephone service are valuable to consumers, the ability
8 to offer a bundled package of services does not justify Verizon's retention
9 marketing, for all of the reasons I have discussed above. Whether services are
10 bundled together or not is not relevant to the illegality of Verizon's conduct
11 for the reasons I have already stated. Second, the way the broadband and
12 video services are provided to customers are not relevant to any of the issues
13 in this case. Third, broadband and video services have different ordering and
14 provisioning characteristics, the most significant of which is the fact that you
15 do not have to contact your competitor to accomplish some task in order to
16 have a customer switch to your service – unlike voice service where you must
17 contact your competitor in order for the telephone number to be ported to the
18 new service provider. Fourth, as Mr. Ciamporcero discusses at length,
19 Verizon is in the process of rolling out its own network upgrades and video
20 service bundle, so Verizon is certainly not lacking in its own competitive
21 product. Indeed, since Verizon also controls one of the largest wireless
22 carriers in the country, Verizon is certainly not lacking in the ability to offer
23 competitive products and bundles. Finally, he references an article regarding
24 Comcast's marketing strategy as "win at any cost." I will only note that

1 however aggressive Comcast may be about its video services and bundled
2 service packages, Comcast has no intention of engaging in any illegal
3 retention marketing such as Verizon has done in this case.

4 **Q. IS THERE ANY BENEFIT TO CONSUMERS FROM VERIZON'S**
5 **RETENTION MARKETING PROGRAM?**

6 A. None. As I have already stated, what may be good for a few customers is not
7 good for competition. Verizon's offer to customers to stay may well have an
8 individual benefit to the customers receiving it. But any short term individual
9 benefit is far outweighed by the negative effect Verizon's retention marketing
10 practices will have on the competitive voice market as a whole. Competitive
11 markets and therefore customers will suffer due to the reduction in viable
12 competitive options for there voice service.

13 Verizon's conduct is premised on the illegal use of the proprietary
14 carrier porting information we must provide to Verizon to get the customer's
15 telephone number switched. It is imperative that the Commission make a
16 clear statement to stop this type of conduct. This is not about preventing
17 Verizon from getting its marketing information out – it is only about
18 preventing Verizon from using Comcast proprietary carrier information for
19 target marketing a porting customer during the porting window. Successful
20 number porting is critical to customers who want to enjoy the benefits of a
21 competitive market.

22 **V. CONCLUSION**

23 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

1 A. By utilizing proprietary carrier change information to target market customers
2 who have requested to port their telephone numbers to competing carriers
3 prior to the completion of port requests, Verizon is acting in an
4 anticompetitive and illegal manner under Florida law. While Verizon's
5 witnesses have attempted to cloud the issue by redirecting the Commission's
6 attention to the non-existent competitive benefits of its retention marketing
7 campaign or to the level of competition in the voice marketplace, the issue at
8 hand is a simple one. Competitive carriers have no choice but to provide
9 Verizon with proprietary information in order to facilitate a number port. By
10 using that information to target market to customers that have requested to
11 port their telephone numbers to competing carriers prior to the completion of
12 the port, Verizon is thwarting the number porting process and acting in an
13 anticompetitive and illegal manner.

14 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

15 A. Yes.