

State of Florida



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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:** October 6, 2008  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
**FROM:** Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM*  
**RE:** Docket No. 080159-TP

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Please place the attached comments from the Communications Workers of America in the docket file.

CM/mrd  
Attachment

DOCUMENT NUMBER-DATE

09405 OCT-6 8

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**Cindy Miller**

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**From:** Gail Marie Perry [cwacouncil@earthlink.net]  
**Sent:** Friday, October 03, 2008 4:52 PM  
**To:** Cindy Miller; cwacouncil@earthlink.net  
**Subject:** CWA Comments Docket No. 080159-TP  
**Importance:** High  
**Attachments:** CWA+Comments 1 .doc

# COMMUNICATIONS WORKERS of AMERICA

## COUNCIL OF FLORIDA

PO BOX 1766  
Pompano Beach, Florida 33061

Comments Re: Docket No. 080159-TP

The Communications Workers of America have been on the forefront of communications policy for well over 50 years in our country. The Communications Workers of America Council of Florida has been active as an organization since 1972 in the great state of Florida. Our major focus since 1982 has been on the cutting edge of technology and the policy for the good of all citizens. We watched and participated as the telecommunications industry was taken from monopoly status governed by the Public Service Commission for the protection of the consumer, to what we have today, a call for doing away with the majority of PSC consumer affecting oversight and the belittling of service quality. It is not enough to say that competition will determine who has good customer service, or, the consumer will move their service to another company. What kind of economic stability in the marketplace is that point of view? We saw what competition did in the beginning to unsuspecting consumers; slamming and cramming, and we worked for 3 years to bring about laws to protect the citizens. Yes, three years before we made major strides to protect the right of the citizens not to be ripped off by rogues in the industry.

We see the slow inaction by the Federal Communications Commission to bring forth a National Communications Policy, afraid to impede competition, allowing our nation to fall behind the rest of the world. Competition was sold to the citizens to lower prices, not do away with quality of service. We are talking about Florida and our national communication infrastructure. The FCC may make major policy decisions but they are very lax about oversight, leaving it up to the states. Are we about to abandon the infrastructure, the backbone that carries our communications to the world?

The Communications Workers of America Council of Florida believes if the objectives are impeding outcome then maybe it is time to lessen the objectives. But, don't throw the baby out with the bath water. Maintenance of the backbone is vital, now and for the future of communications. Not asking for data to prove that the backbone is being maintained, that billing is correct, that there is no degradation of customer service, is not what was promised to the citizens and consumers. Citizens and consumers in Florida were told competition: would lower prices; not give them less service.

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FPSC-COMMISSION CLERK

Compromise is in the best interest for all: lessen penalties; maintain oversight.

We gratefully submit this paper and the words we spoke at your workshop and know you will do not just what is good for the industries but what is best for the citizens and consumers of Florida.

In Unity,  
Gail Marie Perry  
Chair, CWA Council of Florida  
954 850 4055  
cwacouncil@earthlink.net

**Before the  
FLORIDA PUBLIC SERVICE COMMISSION  
Tallahassee Florida**

In the Matter of Joint Petition )  
To Initiate Rulemaking to Adopt )  
New Rule in Chapter 25-24, F.A.C. )  
Amend and Repeal Rules in )  
Chapter 25-4, F.A.C., and )  
Amend Rules in Chapter 25-9, F.A.C., )  
By Verizon Florida LLC, BellSouth )  
Telecommunications, Inc. d/b/a )  
AT&T Florida, Inc., Quincy Telephone )  
Company d/b/a TDS Telecom, )  
And Winstream Florida, Inc. )

Docket No. 080159-TP

Comments of  
Communications Workers of America

Gail Marie Perry  
Chair, CWA  
Council of Florida  
PO BOX 1766  
Pompano Beach,  
Florida 33061  
954 850-4055

October 3, 2008

The Communications Workers of America (CWA) submits these comments in response to the Joint Petition by incumbent local exchange carriers (ILECs) for radical deregulation of basic telephone service. CWA urges the Commission to reject the Joint Petitioners request as harmful to the public interest in universal, affordable, quality telephone service.

CWA represents approximately 20,000 employees in the state of Florida, including almost 15,000 employees at AT&T. Our members have a direct interest in this proceeding as workers in the industry who are committed to providing quality service and as consumers of telephone service.

The Joint Petition consists of two parts. First, the Joint Petitioners propose a radical relaxation of competitive criteria to establish eligibility for streamlined regulation for telecommunications markets and companies. Second, the Joint Petitioners propose to eliminate essential consumer protections applicable to competitive markets or streamlined regulation companies. Taken together, these changes would leave too many Florida consumers with little protection against price increases and deterioration of basic telephone service, and with inadequate information to exercise consumer choice.

The Joint Petitioners argue that there is vibrant competition for basic telephone service throughout the state of Florida, and that this competition will protect consumers from price increases or service decline. In a competitive market, they contend, consumers will vote with their feet if their telephone provider raises prices or lets service deteriorate. Therefore, they reason, regulatory oversight is no longer necessary in a competitive environment. Further, they

note that regulation creates an unfair competitive environment, since incumbent telephone companies bear regulatory costs that do not apply to other carriers in the market.

The Joint Petitioners' argument fails on two counts. First, competition is not thriving in *every* telecommunications market in the state of Florida. Many Florida customers, particularly those in rural markets, do not have alternatives for affordable, basic telephone service. The expansive competitive criteria proposed by the Joint Petitioners would leave these consumers, many of whom live in rural areas of the state, without any protection. Since affordable telephone service is essential for public health, safety, and welfare, the Commission must exercise an abundance of caution before it adopts the radical deregulation of basic telephone service proposed by the Joint Petitioners.

Second, competition alone does not serve to protect consumers. In fact, providers frequently respond to growing competition in local telecommunications markets by directing capital and human resources precisely to those markets where competition is most intense – the market for high-end business and residential customers. At the same time, these same providers neglect customers that generate less revenue and where there is little if any competitive choice. In these markets and for these customers, market forces alone do not provide sufficient discipline over price and service. Further, even in competitive markets, public disclosure and reporting is an important consumer safeguard. Markets function best when consumers have access to comprehensive information about the goods and services they are purchasing, including the quality of service and price of those services.

CWA acknowledges that regulatory requirements that apply only to incumbent carriers put the incumbent carriers at a competitive disadvantage. Regulatory parity, rather than radical deregulation, is the appropriate solution, serving to maintain important consumer protections, while at the same time eliminating opportunities for regulatory arbitrage. Therefore, CWA urges the Commission to reject the Joint Petition, and instead to apply reporting requirements and service standards that serve the public interest to all telecommunications providers. At a minimum, CWA urges the Commission to adopt a much more tailored and economically sound competitive market definition, and to subject all carriers to important service quality and reporting requirements that serve the public interest.

**A. The Commission Should Reject the Joint Petitioners' Proposed New Rule for Determination of Streamlined Regulation for Telecommunications Markets and Companies**

The Joint Petitioners propose radical and overly expansive criteria to determine whether telecommunications markets and companies should be subject to streamlined regulation. The Joint Petitioners' geographic market definition is too broad, fails to differentiate product markets, definition, and erroneously defines complementary technologies as competitive alternatives.

The Joint Petitioners' proposed market definition is far too broad. The Joint Petitioners propose that "a market may be defined, *at the telecommunications company's option*, as a Metropolitan Statistical Area, an exchange, the company's service territory, or on such other basis as submitted by the telecommunications company." (italics added) (Proposed Rule 25-4.008(1)(a)). As an initial matter, the Commission and not the telecommunications company must be the arbiter of the appropriate market definition. Appropriate market definition is central to any



competitive analysis. The Commission must establish the appropriate geographic market based on objective, economic criteria, and not leave that decision to the telecommunications company, which have a clear self-interest that may have nothing to do with standard competition analysis.

The Commission should adopt the U.S. Department of Justice/Federal Trade Commission Horizontal Merger Guidelines “smallest market” principle. Adopting an overly broad geographic market definition such as the entire state or service area would combine areas with widely different competitive conditions, such as rural and urban areas. Allowing streamlined regulation on this basis would pose considerable harm to consumers and competition. For example, a carrier would then be free to raise prices or let service decline for those consumers in the area of the state or service area without competitive options.

The appropriate geographic market should be the telephone exchange area. In a recent case, the Virginia Corporation Commission concluded that “telephone exchange areas...most closely fit the definition of an appropriate geographic market as contained in the DOJ merger guidelines.” The Virginia Commission expressly rejected both the state and the MSA as appropriate geographic markets, noting that an “MSA is too large and economically diverse to be an appropriate geographic market area for making a competitiveness determination.” (Order on Application, Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same, Case No. PUC-2007-00008, Dec. 14, 2007, page 30, “Virginia Order”).

The Joint Petitioners do not propose any product market definition in their proposed rule. This is a glaring omission that would leave many residential consumers without appropriate protection. Federal Communications Commission merger reviews consistently differentiate between mass market residential, small business, and large business markets. The Virginia Corporation Commission similarly found that “the mass market residential and business local telephone services and products are separate product markets ... and should be treated separately... We note that several of the states (and Canada) that have deregulated local telephone services to varying extents have treated mass market residential and business services separately in their deregulation frameworks.” The Virginia Commission also differentiated the enterprise business market. (Virginia Order, page 30)

The Joint Petitioners propose that the new rule consider a market competitive if there are at least three local service access alternatives present within the market, and that at least two-thirds of households within the market have access to at least three different providers using any local service access alternative. The proposed rule would consider a telecommunications company subject to streamlined regulation if at least two-thirds of its access lines are in markets that have been determined to be competitive, using the same criteria. The Joint Petitioners propose that the Commission define “local service access alternative” as wireline, wireless, broadband, cable or other technology approved by the Commission.

The Commission should not consider wireless, broadband, or cable as “local service” alternatives to basic telephone service. The Commission should only count cable where it has been upgraded to provide telephone service. Wireless and broadband are complements, not

substitutes, to basic telephone service, and thus do not function as effective regulators of price and service, as defined in the DOJ/FTC competition guidelines. Broadband is not available everywhere, costs more than basic telephone service, requires computer ownership, and a high degree of technical knowledge to use as a voice equivalent. Similarly, VoIP is not a substitute for basic local telephone service. VoIP requires a broadband connection, which is not available everywhere, and which costs more than basic phone service. VoIP does not provide E-911 and other capabilities comparable to wireline basic telephone service. Wireless is not a substitute for basic telephone service because it costs significantly more, is not available everywhere, and does not have the same reliability as basic telephone service.

In summary, the Commission should reject the Joint Petitioners proposed new rule for determination of streamlined regulation. In the alternative, the Commission should adopt a market definition that fits the DOJ/FTC competition guidelines. The appropriate geographic market is the local telephone exchange and the product market should differentiate between residential, small business, and enterprise business. The Commission should consider as “local service access alternatives” only those technologies that are economic substitutes to basic telephone service, which would exclude cable, broadband, and wireless.

**B. The Commission Should Require *All* Providers of Local Exchange Service to Meet Service Quality Standards and Other Public Reporting Requirements that Serve the Public Interest**

The Commission’s service quality and other public reporting rules continue to be necessary to serve the public interest in affordable, quality, universal telephone service. Even in a competitive environment, public disclosure of service quality and other information is an

important consumer safeguard. Free markets function best when consumers have access to comprehensive information about the goods and services they are purchasing, including the quality of service provided. As the Federal Communications Commission noted, “we believe that even in a robustly competitive environment, public disclosure of quality of service information can be an important way to safeguard consumer interests.” (FCC, NPRM, In the Matter of 2000 Biennial Review – Telecommunications Service Quality Reporting Requirements, CC Docket No. 00-229, page 11).

The primary rationale for relaxation of service quality and other standards rests on the erroneous belief that the “invisible” hand of competition will force companies to improve service quality. But in fact, today’s competitive environment has not exerted appropriate market discipline to protect the public’s need for quality telephone service. Rather, providers have reduced staff and investment in networks serving less lucrative populations and regions.

Telecommunications act as the lifeline between the home, the office, the home-office, and the outside world. If selected companies are allowed to provide inadequate service, public safety goals such as ensuring access to enhanced emergency service and continuing emergency access may be jeopardized. Public safety agencies rely upon the public switched network and even upon basic exchange service to provide public safety services. Conversely, consumers rely on properly working phones to contact public safety answering points. It is absolutely essential that the Commission continue to maintain service quality standards and other essential public reporting requirements.

CWA concurs with the Joint Petitioners that regulation should not advantage some providers over others. Competition must be based on service, price, and innovation, not regulatory arbitrage. Therefore, CWA urges the Commission to apply reporting requirements and service standards that continue to serve the public interest in quality, affordable, universal basic telephone service to all telecommunications providers.