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Sent: Monday, August 10, 2009 2:45 PM
To: Filings@psc.state.fl.us
Cc: Charles Murphy; David Christian; De O'Roark; Demetria Clark; Douglas Nelson; J. R. Kelly; Marsha Rule; Patty Christensen; Stephen Rowell; Timisha Brooks
Subject: Docket No. 080234-TP - Verizon Florida LLC's Supplemental Post-Hearing Brief
Attachments: 080234 VZ FL Supp Post-Hearing Brief 8-10-09.pdf



The attached is submitted for filing in Docket No. 080234-TP on behalf of Verizon Florida LLC by

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The attached document consists of a total of six pages - cover letter, Supplemental Brief, and Certificate of Service.

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August 10, 2009 – VIA ELECTRONIC MAIL

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

Re: Docket No. 080234-TP
Implementation of Florida lifeline program involving bundled service packages
and placement of additional enrollment requirements on customers

Dear Ms. Cole:

Enclosed for filing in the above matter is Verizon Florida LLC's Supplemental Post-Hearing Brief. A diskette with a copy of the Supplemental Brief in Word format is being sent via overnight mail. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1449.

Sincerely,


Dulaney L. O'Roark III

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program) Docket No. 080234-TP
involving bundled service packages and) Filed: August 10, 2009
placement of additional enrollment requirements)
on customers)
_____)

VERIZON FLORIDA LLC'S SUPPLEMENTAL POST-HEARING BRIEF

In compliance with the Third Order Modifying Procedure, Verizon Florida LLC ("Verizon") submits this supplemental brief addressing the impact of the 2009 Consumer Choice and Protection Act, Chapter 2009-226, Laws of Florida (the "Act"), on Issue 1 in this case. For the reasons explained below, the Act forecloses any argument that the Commission may require Eligible Telecommunications Carriers ("ETCs")¹ like Verizon to apply the Lifeline discount to bundled service offerings.

ISSUE AND ARGUMENT

ISSUE 1: Under applicable law, may the commission require Florida ETCs that charge federal end user common line charges, or equivalent federal charges, to apply the Lifeline discount to bundled service offerings which include functionality that is comparable to that described at 47 CRF 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

***VERIZON:** No. Under federal law, ETCs only are required to apply the Lifeline discount to basic service, not to other, nonbasic services, including bundled services. Florida law requires ETCs to provide a Lifeline plan meeting this federal requirement, and does not authorize the Commission to impose obligations exceeding that requirement.*

Issue 1 addresses whether the Commission may require ETCs to apply the Lifeline discount to bundled service offerings that include the services described in 47 C.F.R. 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes, which for simplicity's

¹ When Verizon refers to "ETCs" below, it is referring solely to ETCs that charge end user common line charges.

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sake will be referred to as "basic service."² Verizon explained in its Initial Brief why the Commission may not impose such a requirement. In short, federal regulations define Lifeline to mean a retail local service offering available only to low-income consumers that applies the Lifeline discount to basic service. Although the FCC has had ample opportunity, it has never expanded the federal Lifeline program to require ETCs to apply the discount to bundled services. (Initial Brief, pp. 4-7.) The Florida Legislature has linked the Florida Lifeline program to the federal program by, among other things, relying on the federal definition of Lifeline, and thus Florida law only requires that the Lifeline discount be applied to basic service. (Initial Brief, pp. 7-8.) Lifeline Assistance Plans comply with Florida law if they meet that requirement.

Staff makes several arguments in an effort to read Florida law more expansively (all of them refuted in Verizon's Initial Brief), but in essence it contends that the Commission may require ETCs to apply the Lifeline discount to bundled services for eligible customers because the discount only would be applied the basic "portion" of the bundle. For example, although Mr. Casey admitted that the FCC's regulations do not state that the Lifeline discount must be applied to bundled services, he argued that did not matter:

- Q. . . . I'm asking you whether there's any federal rule or regulation that states that the Lifeline discount must be applied to a bundled service.
- A. No, it does not say that. It states to be applied to basic local service. And if basic local, basic local service is included in a bundled package, then a Lifeline discount should be applied to that portion of the package which includes basic local service.³

² As Verizon noted in its Post-Hearing Brief ("Initial Brief"), the services described in 47 C.F.R. 54.101(a)(1)-(9) substantially correspond to basic service in Florida. (Initial Brief, p. 4.) Section 364.02(1) defines basic service.

³ Casey Cross, T. 145-46.

One obvious flaw in Staff's position is that, contrary to Florida and federal law, it radically expands a program that requires ETCs to provide one service offering that applies the Lifeline discount to basic service by requiring the discount to apply to virtually all service offerings requested by eligible customers. (Initial Brief, p. 6.) Mr. Casey acknowledged this point in the following segment of his cross-examination:

Q. . . . And your proposal is that the Commission should require ETCs to apply the Lifeline discount to any bundled service that includes local dial tone?

A. I am recommending that it be applied to the basic local service portion of any bundled package, not to the whole bundled package.

Q. And would you agree that most bundles with telecommunications services include basic service functionality?

A. Yes.

...

Q. You're requesting that the Lifeline discount be applied to most service bundles here in Florida?

A. If it includes basic local service.

Q. And you said that most do.

A. And most do to my knowledge, yes.⁴

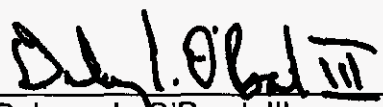
This approach ignores the federal definition of "Lifeline" that has been adopted in Florida and must be rejected for that reason alone. Moreover, Staff's view that bundled services could be divided into basic and nonbasic components misconstrued the definitions of basic and nonbasic service that applied before the Act became effective. (Initial Brief, pp. 8-10.)

⁴ *Id.*, T. 160.

The Act modified the definitions of basic and nonbasic service in a manner that makes even clearer that Staff's argument has no merit. The definition of basic service was narrowed to include only voice grade, single-line, flat-rate residential local exchange service that provides the listed functionalities.⁵ More importantly for purposes of Issue 1, the definition of nonbasic service was expanded to provide that "[a]ny combination of basic service along with a nonbasic service or an unregulated service is nonbasic service."⁶ Now that these modifications have become effective, the arguments Verizon originally made about the distinction between basic and nonbasic services remain valid. (See Initial Brief at 8-10.) The modifications underscore these points by making even more clear that when basic service is combined with a nonbasic or an unregulated service, the basic component must be treated as nonbasic. Staff's theory that a basic service component may be severed from the rest of a bundle and regulated as basic service must fail for this additional reason.

For the foregoing reasons, and those stated in its Initial Brief, Verizon respectfully requests the Commission to adopt its position on Issue 1.

Respectfully submitted on August 10, 2009.

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⁵ Section 364.02(1), Florida Statutes.

⁶ Section 364.02(10), Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail
and/or U.S. mail on August 10, 2009 to:

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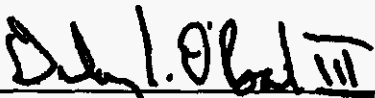
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