

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for show cause proceedings) Docket No. 080278-TL
against Verizon Florida LLC for apparent violation of)
Rule 25-4.070, F.A.C., service availability, and)
impose fines, by the Office of the Attorney General,)
Citizens of the State of Florida, and AARP)
_____)

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REBUTTAL TESTIMONY OF MICHELLE A. ROBINSON

ON BEHALF OF

VERIZON FLORIDA LLC

PUBLIC VERSION

August 20, 2009

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Michelle A. Robinson. I am President of the Southeast
3 Region for Verizon Communications. My business address is 201 N.
4 Franklin Street, Tampa, Florida 33602.

5

6 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE AND**
7 **EDUCATIONAL BACKGROUND?**

8 A. I have a master's degree in public policy analysis from the University of
9 Southern California and a bachelor's degree in political science from the
10 University of California Los Angeles. During my 11 year career with
11 Verizon, I have held a number of management positions located in
12 Texas, California, Georgia and Florida. I was named Southeast Region
13 President for Verizon in June of 2008. I am responsible for Verizon's
14 corporate interests including regulatory affairs, community relations, and
15 government affairs in the states of Florida, Georgia, Alabama,
16 Tennessee, Kentucky, Louisiana, Mississippi, North Carolina and South
17 Carolina. In addition to my responsibilities with Verizon, I am actively
18 involved with a number of community-based and business
19 organizations.

20

21 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

22 A. The purpose of my rebuttal testimony is to respond to the direct
23 testimony of Office of Public Counsel witness Earl Poucher and Staff
24 witness Rick Moses. I will give an overview of Verizon's case, explain
25 that Verizon's customers are highly satisfied with Verizon's repair

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08683 AUG 20 8

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1 service, discuss Verizon's repair performance in March and April 2008,
2 discuss Verizon's investment in its Fiber-to-the-Premises ("FTTP")
3 network, and describe the competition Verizon faces in Florida.

4

5

CASE OVERVIEW

6

Q. PLEASE PROVIDE AN OVERVIEW OF VERIZON'S CASE.

7

A. Verizon will demonstrate that it has used reasonable efforts to meet the
8 Commission's out-of-service ("OOS") and not-out-of-service ("NOOS")
9 objectives; that for the period at issue in this case Verizon did not
10 willfully violate Rule 25-4.070; and that the Commission does not have
11 rulemaking authority to apply the OOS and NOOS service objectives to
12 Verizon.

13

14

I am not a lawyer, but a straightforward reading of Rule 25-4.070 (as in
15 effect in 2007 and 2008) makes clear that it was not intended to impose
16 absolute standards. The Commission's rules define the terms "service
17 objective" and "service standard" and Rule 25-4.070 expressly
18 described the OOS and NOOS intervals as "service objectives," which
19 are defined as "[a] quality of service which is desirable to be achieved
20 under normal conditions."¹ At most, companies subject to the rule are
21 required to make "reasonable efforts" to achieve the objectives under
22 "normal conditions." Thus, when a company uses reasonable efforts to
23 meet the objectives, or when abnormal conditions prevent it from
24 meeting the objectives, it is in compliance with the rule.

25

¹ Rule 25-4.003(45).

1 Although I am not a lawyer, I understand that willfulness involves the
2 specific intent to do something unlawful or the specific intent to fail to do
3 something the law requires. Verizon had no such intention concerning
4 its OOS and NOOS performance. To the contrary, as I and the other
5 Verizon witnesses explain, Verizon sought to meet the service
6 objectives and used reasonable efforts to do so. Verizon's testimony
7 demonstrates that it fully complied with Rule 25-4.070 from January
8 2007 to September 2008 and used reasonable efforts to meet the rule's
9 service objectives in conditions that were anything but normal. These
10 efforts are evidenced in several ways.

11
12 First, as explained by Russell Diamond, Verizon has systems and
13 processes in place that enable it to receive repair calls at all hours, route
14 trouble tickets electronically and send out technicians for repairs seven
15 days a week. Second, Mr. Diamond explains that Verizon's dispatch
16 and field operations teams are aware of the service objectives and strive
17 to meet them despite the significant operational and competitive
18 challenges they face. Third, the performance data presented by
19 Deborah Kampert reflects Verizon's efforts to meet the service
20 objectives. She explains that Verizon's overall network performance is
21 strong, that relatively few Verizon customers experience an OOS or
22 NOOS condition, and that for those that do Verizon achieved the
23 regulatory objectives most of the time. When Verizon does not achieve
24 the regulatory objectives, it often comes close, which shows that it used
25 reasonable efforts to meet the objectives and that the impact to

1 customers was minimal. Fourth, as explained below, Verizon's
2 customer satisfaction scores for repair performance from 2001 to 2008
3 were consistently high. Fifth, Verizon's efforts to meet the service
4 objectives are evidenced by its investment of more than \$1.5 billion in its
5 FTTP network. As explained by Mr. Diamond, the FTTP network
6 reduces the opportunity for troubles in the first instance and makes it
7 easier for Verizon to repair outages and service-affecting troubles that
8 are reported. Sixth, the fierce competition in Verizon's service territory
9 that I describe below demonstrates that Verizon is no longer operating
10 under "normal" conditions as contemplated by Rule 25-4.070.

11

12 Finally, Verizon will explain in its post-hearing brief that the Commission
13 lacks the rulemaking authority to apply the service objectives to price-
14 regulated carriers like Verizon. Some parties may argue that Section
15 364.01, Florida Statutes, authorizes the Commission to take such
16 action. Verizon will address in its brief why such an argument must be
17 rejected as a matter of law. Moreover, as a factual matter such an
18 argument must fail because Verizon is not providing monopoly services.
19 To explain why, I describe below the competition Verizon faces
20 throughout its Florida service territory.

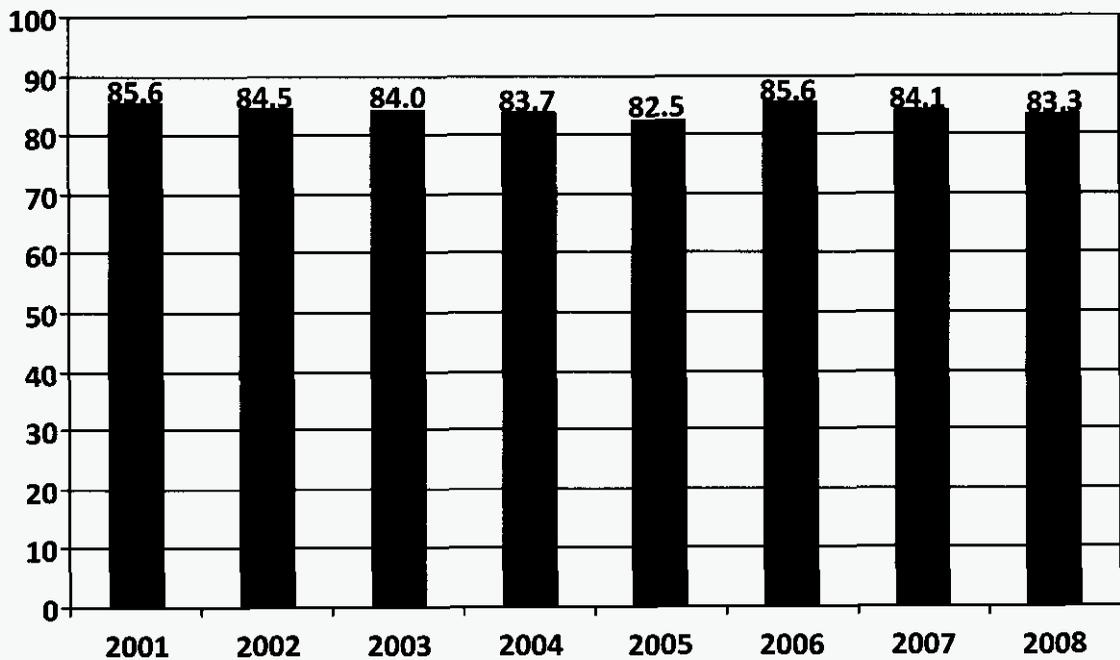
21

22 **VERIZON'S CUSTOMERS REPORT HIGH CUSTOMER SATISFACTION**

23 **Q. PLEASE DESCRIBE THE CUSTOMER SATISFACTION DATA THAT**
24 **VERIZON REPORTS TO THE FCC.**

25

1 A. Verizon annually files ARMIS reports with the FCC that include objective
2 data gathered by an independent third party concerning Verizon's
3 customer satisfaction. The third party surveys a number of Florida
4 customers each month who have received Verizon repair service, asks
5 the customers to evaluate Verizon's performance, and then submits
6 survey data annually to the FCC. The following chart shows the
7 percentage of customers each year from 2001 to 2008 stating that they
8 were satisfied or more than satisfied with Verizon's performance:



19
20 This data demonstrates that customers rated Verizon's performance as
21 highly in 2007 and 2008 as in the previous years when the Commission
22 raised no issue concerning Verizon's service quality. Indeed, Verizon's
23 customer satisfaction has remained remarkably consistent over time and
24 shows that Verizon's customers believe they are receiving good repair
25 service from Verizon.

1 **VERIZON'S PERFORMANCE IN MARCH AND APRIL 2008**

2 **Q. DID VERIZON'S OOS AND NOOS PERFORMANCE LEVELS DROP**
3 **IN MARCH AND APRIL 2008?**

4 A. Yes. Verizon sought to achieve the OOS and NOOS service objectives
5 while addressing a short-term manpower shortage and related budget
6 issues that resulted in a drop in Verizon's performance in March.
7 Verizon addressed the problem at the beginning of April 2008, but the
8 backlog from March took some time to address and service levels were
9 not restored until later in the month, which affected the April
10 performance results. Monthly service levels were back within Verizon's
11 typical performance range by May 2008.

12

13 **Q. DID VERIZON INFORM STAFF OF THE PROBLEM?**

14 A. Yes. Verizon met with Staff in early April to discuss the situation and
15 inform Staff of the steps Verizon was taking to correct it.

16

17 **VERIZON'S FTTP NETWORK**

18 **Q. PLEASE DESCRIBE VERIZON'S INVESTMENT IN ITS FTTP**
19 **NETWORK IN FLORIDA.**

20 A. Verizon has invested heavily in its Florida service territory, bringing its
21 state-of-the-art FTTP network past more than 1 million households.
22 Since 2004, Verizon has invested more than \$1.5 billion in its Florida
23 FTTP network – including several hundred million dollars in 2006, 2007
24 and 2008. This investment benefits consumers by providing them with
25 exceptionally high quality voice, data and video FiOS services that have

1 been rated the best in the country by Consumer Reports.

2

3 **Q. DOES THIS INVESTMENT ALSO DEMONSTRATE VERIZON'S**
4 **EFFORTS TO MEET THE COMMISSION'S SERVICE OBJECTIVES?**

5 A. Yes. As explained in the Mr. Diamond's rebuttal testimony, the FTTP
6 network reduces the number of trouble reports and makes it easier for
7 Verizon to repair outages and service-affecting troubles that are
8 reported.

9

10 **Q. STAFF WITNESS MOSES OPINES AT PAGES 13 AND 14 OF HIS**
11 **DIRECT TESTIMONY THAT VERIZON DOES NOT CONSIDER ITS**
12 **COPPER-BASED SERVICE TO BE A VIABLE BUSINESS? IS THAT**
13 **TRUE?**

14 A. No. The majority of Verizon's residential customers in Florida continue
15 to be served over Verizon's copper network and Verizon strives daily to
16 earn their loyalty. Verizon operates in an extremely competitive market
17 and it knows that if it does not satisfy its customers, it risks losing them.
18 Verizon seeks to provide all of its customers, including those served
19 over its copper network, with high quality service at competitive prices
20 so the company can maintain its existing customers and attract new
21 ones. Moreover, Verizon has been marketing offers specifically
22 targeted to customers on its copper network in an effort to keep their
23 business, which demonstrates its continuing commitment to those
24 customers. These offers are described at the following Verizon website:
25 <http://www22.verizon.com/residential/bundles/verizonbundlesab>.

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COMPETITION IN VERIZON'S SERVICE TERRITORY

Q. PLEASE DESCRIBE THE COMPETITIVE ENVIRONMENT IN VERIZON'S SERVICE TERRITORY IN THE TAMPA BAY REGION.

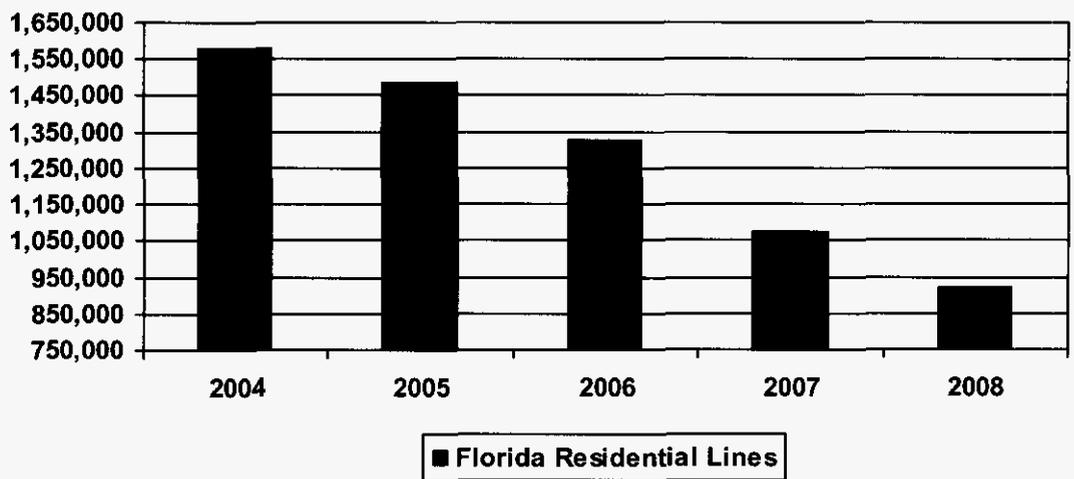
A. Verizon's Tampa Bay service territory is among the most competitive consumer markets in Florida, as measured by company line losses.² Cable companies, VoIP providers and wireless carriers have all engaged in aggressive marketing campaigns in the Tampa Bay region, giving consumers many competitive alternatives.

Q. WHAT EVIDENCE DO YOU HAVE THAT VERIZON FACES EFFECTIVE COMPETITION IN ITS FLORIDA SERVICE TERRITORY?

A. Verizon's year-over-year line losses evidence the head-to-head competition that is taking place in neighborhoods throughout the region. As noted in the Commission's 2009 Local Competition Report, from June 2004 to December 2008 Verizon's residential switched access lines decreased from 1.58 million to 918,000, a decline of about 42%,³ as shown in the chart below:

² See Commission's Division of Competitive Markets and Enforcement's *Report on the Status of Competition in the Telecommunications Industry as of December 31, 2008*, pp. 31-32 ("2009 Local Competition Report").
³ *Id.* at 31.

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Over the four-year period ending July 2008 (the most recent period for which census data is available), the number of households in the Tampa Bay area increased by almost 8%, which means these line-loss figures understate the impact of competition in the region.

Q. HAS VERIZON EXPERIENCED LINE LOSSES THROUGHOUT ITS REGION?

A. Yes. This vigorous competition effect is not confined to select areas within Verizon's service territory. Like all large ILECs in Florida, Verizon faces substantial competition from intermodal providers. As a consequence, Verizon has endured profound residential line losses over recent years. As shown on proprietary Exhibit MAR-1, **[BEGIN CONFIDENTIAL]** XXX
XX
XX
XXXX. **[END CONFIDENTIAL]**

1 **Q. PLEASE DESCRIBE THE VOIP COMPETITION FROM CABLE**
2 **PROVIDERS IN VERIZON'S REGION.**

3 A. Three cable companies offer voice service in the Tampa Bay area and
4 their facilities pass most homes. By 2007, cable telephony was
5 available to 93 percent of homes passed by cable facilities in Verizon's
6 region and cable modem service was available to all homes passed,
7 which means that customers could obtain access to VoIP service from a
8 cable broadband connection. Statewide, residential VoIP subscribership
9 grew an estimated 45% (from 1.1 million to 1.6 million) between year-
10 end 2007 and year-end 2008.⁴ Cable makes up approximately 1.2
11 million of the 1.6 million total Florida VoIP subscribers.⁵ As noted in the
12 Commission's 2009 Local Competition Report, "[t]he substantial growth
13 in residential VoIP subscribers has been driven by the remarkable
14 growth reported by cable VoIP providers."⁶

15
16 **Q. WHAT COMPETITION DOES VERIZON FACE FROM WIRELESS**
17 **PROVIDERS?**

18 A. Wireless service is available throughout Verizon's service territory, with
19 99.9% of households having access to three or more wireless carriers.⁷
20 While it would be difficult to establish the exact percentage of cord-
21 cutters that reside in Florida, national data shows that there are a
22 significant number of households that have already cut the cord and that
23 this number is growing rapidly. For example, the most recent National

⁴ *Id.*, page 46-47.

⁵ *Id.*, page 47.

⁶ *Id.*, page 49.

⁷ NERA, *Intermodal Competition in Florida Telecommunications*, pp. 12-14 (March 2008), filed in Docket No. 080159.

1 Health Survey issued by the Centers for Disease Control covering the
2 second half of 2008 states that more than one of every five American
3 homes (20.2 percent) had only wireless telephones – an increase of 2.7
4 percentage points since the first half of 2008.⁸ Whether the percentage
5 of wireless households in Verizon’s service territory is greater or less
6 than the results of this survey, it is obvious that wireless
7 communications firms operating in Tampa Bay are competing to win
8 customers from Verizon and all of the other landline providers in the
9 region.

10

11 **Q. DO OVER-THE-TOP VOIP PROVIDERS AND CLEC VOIP**
12 **PROVIDERS COMPETE IN THE TAMPA BAY REGION?**

13 A. Yes. Although I do not have region-specific data, the 2009 Local
14 Competition Report notes that as of year-end 2008, over-the-top VoIP
15 providers served 275,000 residential lines statewide. The phrase “over-
16 the-top VoIP” refers to a VoIP service that requires a consumer to obtain
17 broadband access from another company. Providers offering over-the-
18 top VoIP services in Florida include Vonage, Packet8, Skype,
19 magicJack, and Google.”⁹ The 2009 Local Competition Report also
20 notes that CLECs had 132,000 residential access lines statewide, most
21 of which (91,320) were served using VoIP.

22

23 **Q. WHAT DO YOU CONCLUDE BASED ON THIS DATA?**

⁸ CDC, “Wireless Substitution: Early Release of Estimates Based on Data From the National Health Interview Survey, July – December 2008,” at 1 (released May 6, 2009).

⁹ *Id.*, at 45.

1 A. Verizon's local services are not telecommunications services "for which
2 there is no effective competition, either in fact or by operation of law"
3 and they therefore are not "monopoly services" as that term is used in
4 section 364.01, Florida Statutes. In its post-hearing brief, Verizon will
5 explain why this conclusion provides an additional reason why the
6 Commission does not have rulemaking authority to apply the service
7 objectives to price-regulated carriers like Verizon.

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9

CONCLUSION

10 **Q. SHOULD THE COMMISSION TAKE COMPETITIVE CONDITIONS**
11 **INTO ACCOUNT WHEN EVALUATING VERIZON'S**
12 **PERFORMANCE?**

13 A. Yes. When determining whether Verizon used reasonable efforts to
14 meet the OOS and NOOS service objectives, the Commission should
15 view Verizon's performance in context. Carriers do not have unlimited
16 resources. This means that in a competitive market, they must deliver
17 high quality service at competitive prices within the real world of
18 competition and consumer demands. Working within those limitations,
19 Verizon has made reasonable efforts to meet the Commission's OOS
20 and NOOS service objectives. Moreover, the intense competition
21 Verizon now faces was not contemplated when the service objectives
22 were adopted in the local telephone monopoly era during the 1960s, and
23 such competition was still in its early stages when the Commission
24 modified Rule 25-4.070 in 2005. The circumstances Verizon now faces
25 thus are anything but "normal" when viewed in historical perspective.

1 Q. OPC WITNESS POUCHER CONTENDS (AT PAGES 7 AND 8) THAT
2 VERIZON WILFULLY VIOLATED RULE 25-4.070 BY NOT USING
3 ENOUGH RESOURCES TO ACHIEVE THE OBJECTIVES. IS THAT
4 CORRECT?

5 A. No. This opinion is based on the misconception that the rule imposes
6 absolute standards that must be met no matter the cost or the
7 circumstances. To the contrary, the rule requires companies to use
8 reasonable efforts to achieve 95% service levels, which means that
9 operational challenges and competitive forces must be taken into
10 account. Moreover, as Mr. Diamond points out, [BEGIN
11 CONFIDENTIAL] XX
12 XX
13 XXXX. [END CONFIDENTIAL] Mr. Poucher therefore is incorrect when
14 he suggests that Verizon has used insufficient resources for OOS and
15 NOOS troubles on its copper network.

16
17 Q. SHOULD VERIZON BE PENALIZED FOR ITS REPORTED OOS AND
18 NOOS PERFORMANCE?

19 A. No, for a number of reasons. First, Verizon should not be penalized at
20 all because it has not violated the Commission's service objectives,
21 willfully or otherwise, and as a price-regulated company it is not even
22 subject to them. Second, Verizon should not be penalized because its
23 network performance has been strong, very few customers have
24 complained about Verizon's repair service and customers surveyed
25 about Verizon's repair service have consistently given Verizon good

1 scores.

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

4 **A. Yes.**

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