

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 25, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (M. Watts) *[Signature]*
 Office of the General Counsel (Tan) *[Signature]*
 Division of Service, Safety & Consumer Assistance (Moses) *[Signature]*

RE: Docket No. 090550-TL – Petition for variance from Rules 25-4.0185 and 25-4.073, F.A.C. by Verizon Florida LLC.

AGENDA: 04/06/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RAD\WP\090550.RCM.DOC

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Case Background

On December 28, 2009, Verizon Florida LLC (Verizon) filed a petition for variance from Rules 25-4.0185 and 25-4.073, Florida Administrative Code (F.A.C.). On October 2, 2009, the Florida Public Service Commission (Commission) issued Order No. PSC-09-0660-FOF-TP¹ noticing the adoption with changes of amendments to its service quality rules. Of significance in these changes is that, effective October 21, 2009, the service quality rules would apply to residential basic local telecommunications service customers only, not all residential lines.

¹ Docket No. 080641-TP – Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.

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Verizon is requesting a temporary variance from the reporting requirements of Rule 25-4.0185, F.A.C., as it pertains to answer time measurements required by Rule 25-4.073, F.A.C., to allow it to report its answer time performance measurement for all residential lines until it can modify its systems to distinguish basic from nonbasic customers.

On January 22, 2010, the Commission published a notice in the Florida Administrative Weekly of receipt of the petition from Verizon seeking waiver of Rules 25-4.0185 and 25-4.073, F.A.C.

On February 8, 2010, staff issued a data request to Verizon seeking clarification of what services it believes to be basic telecommunications services. Verizon filed its response (Attachment A) on February 12, 2010.

On February 16, 2010, Verizon filed an amended petition, seeking to include a variance of Rules 25-4.070 and 25-4.066, F.A.C., in the petition. Verizon states in the amended petition that, similar to the systems monitoring answer time measurement, it would have to modify the systems that report the data required by these rules to distinguish basic and nonbasic customers.

On March 19, 2010, Verizon again amended its petition to remove the request for variance of Rules 25-4.070 and 25-4.066, F.A.C. Verizon states that it has modified the systems that collect and report the service quality data required by these rules to distinguish basic from nonbasic customers. The effect of the second amendment is to return the petition to its original form.

The Commission is vested with jurisdiction over this matter pursuant to Sections 120.569, 364.01, 364.03, 364.035, 364.15, 364.17, and 364.183, F.S.

Discussion of Issues

Issue 1: Should the Commission approve Verizon Florida LLC's request for variance from certain requirements of Rules 25-4.0185 and 25-4.073, F.A.C., to allow it to report answer time performance measurements for all residential lines instead of just basic local telecommunications service lines until June 30, 2010, and should the Commission authorize staff to administratively approve another six month extension if needed?

Recommendation: The Commission should approve Verizon Florida LLC's request for variance from the answer time requirements of Rules 25-4.0185 and 25-4.073, F.A.C., to allow it to report answer time performance measurements for all residential lines instead of just basic local telecommunications service lines until June 30, 2010 and authorize staff to administratively approve another six month extension if needed. **(M. Watts/Moses/Tan)**

Staff Analysis: Rule 25-4.0185, F.A.C., states:

- (1) Each local exchange telecommunications company shall file with the Commission's Division of Service, Safety and Consumer Assistance the information required by Commission Form PSC/SSC 28 (10/09), which is incorporated into this rule by reference. Form PSC/SSC 28, entitled "Engineering Data Requirements," may be obtained from the Commission's Division of Service, Safety and Consumer Assistance.
- (2) The information required by schedules 2, 3, 8, 11, and 15 of Form PSC/SSC 28 shall be filed on a quarterly basis by the large LECs and semiannually by the small LECs on or before the end of the month following the reporting period.
- (3) Schedules 2, 3, 11, and 15 of Form PSC/SSC 28 shall apply to basic local telecommunications service only.
- (4) Each local exchange telecommunications company shall begin recording basic local telecommunications service data for reporting on schedules 2, 3, 11 and 15 no later than January 1, 2010.

Verizon is requesting this variance pursuant to Rule 28-104.002, F.A.C., which states in pertinent part:

- (2) The petition must include the following information:
 - (d) The applicable rule or portion of the rule;
 - (e) The citation to the statute the rule is implementing;
 - (f) The type of action requested;
 - (g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;
 - (h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
 - (i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall

include the dates indicating the duration of the requested variance or waiver.

Verizon is requesting a variance from certain requirements of Schedule 15 of Form PSC/SSC 28, which pertains to answer time performance measurements. As stated in the rule, the measurements should only be reported for residential basic local telecommunications lines. However, Verizon states in its petition that the systems it uses to gather answer time data are not capable of distinguishing between basic and nonbasic residential lines. Verizon estimates that it will require 10,000 hours for its technical staff to implement the necessary system changes. Therefore, it is unable to meet the January 1, 2010 implementation requirement of Rule 25-4.0185, F.A.C., for answer time performance measurement. Application of the rule, as it stands, would create a substantial hardship for Verizon. Therefore, it requests that it be allowed to report the answer time performance measurements for all residential lines, not just the basic local telecommunications service lines.

Verizon estimates that it will need six months to complete the necessary system changes to meet the rule requirement. Therefore, it requests the variance remain in effect until June 30, 2010, with the option for staff to authorize an additional six months in the event it takes Verizon longer than expected to complete the system changes.

The variance meets the requirements of the underlying statutes (Sections 364.01(4) and 364.183(1), F.S.) because Verizon will be reporting on a broader measure that includes the basic local telecommunications service lines covered by the rule. Because Verizon will be measuring its compliance with the answer time rules on all of its residential lines, not just its basic local telecommunications service lines, basic local service customers will not be harmed, while nonbasic customers will receive a benefit by being included in the answer time measurement and reporting. Verizon acknowledges that the Commission may treat the call-answer-time data that Verizon would provide during the variance period as if it were basic-only data.

On February 8, 2010, staff sent a data request to Verizon seeking clarification as to which services a Verizon customer is eligible for protection under the Commission's service quality rules. In its responses to staff's data request, Verizon listed its rationale for classifying a service as basic or nonbasic (Attachment A). Verizon concurs with the Commission's findings in Docket No. 090461-TL, In Re: Petition for modification of Service Guarantee Program by BellSouth Telecommunications, Inc. d/b/a AT&T Florida, that basic local telecommunications service as defined in Section 364.02, F.S., does not include a primary interexchange carrier (PIC) or a local primary interexchange carrier (LPIC). In other words, if a customer selects a local toll or long distance toll provider, the customer's line is not basic service and will not be protected by the Commission's service quality rules.

Staff believes that Verizon's rule variance request is reasonable, and that it has met the requirements of Rule 28-104.002, F.A.C., Petition for Variance or Waiver. Therefore, staff recommends that the Commission should approve Verizon Florida LLC's request for variance from the answer time requirements of Rules 25-4.0185 and 25-4.073, F.A.C., to allow it to report answer time performance measurements for all residential lines instead of just basic local

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telecommunications service lines until June 30, 2010 and authorize staff to administratively approve a six month extension if needed.

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Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed administratively upon notification by Verizon that the software modifications have been completed. **(Tan)**

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed administratively upon notification by Verizon that the software modifications have been completed.

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Verizon's Responses to Staff's Data Requests (Nos. 1-8)

Verizon Florida LLC ("Verizon") responds as follows to Staff's data requests:

1. The definition of *Basic Local Telecommunications Service* in Section 364.02, F.S., in part requires that access be provided to all locally available interexchange companies. Please identify the method(s) (dialing pattern) that consumers may use to gain access to locally available interexchange companies.

Response: Verizon basic local telecommunications service customers may use the following dialing patterns to make long distance calls using the interexchange carrier of their choice:

- A. 1+10 digits (IXC preselected)
- B. 1+8XXX NXX-XXXX
- C. 1010XXX=1=10 digits
- D. 0+NPA-NXX-XXXX
- E. Calling Cards

2. For each customer example provided in the table below, please state, using Y (Yes) or N (No), if the customer is eligible for protection under the Commission's SQRs with Verizon's proposed variance. Assume the customer has Verizon's dial tone and only has the specific feature or only completes a specific act as presented in the table.

Response: Verizon seeks a variance so that it may continue to report SQR data based on all of Verizon's basic and nonbasic residential customers while Verizon makes the systems changes necessary to collect and report SQR data exclusively for basic customers. Accordingly, during the period for which the variance is in place, Verizon would continue to report this data as it has in the past.

Following the variance period, Verizon would comply with the Commission's SQRs, consistent with its decision in Docket No. 0904761. Verizon's understanding of the Commission's ruling in that docket is reflected in the chart below:

No.	Feature	SQR Eligible	Rationale Label
a.	Inside wire maintenance	N	A
b.	Caller ID	N	B
c.	Call Forwarding	N	B
d.	Call Waiting	N	B
e.	Any combination of Caller ID/Call Forwarding/Call Waiting	N	B
f.	Caller ID Blocking	N	B
g.	Anonymous Call Rejection	N	B
h.	Three-way calling	N	B
i.	Return Call	N	B

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No.	Feature	SQR Eligible	Rationale Label
j.	Repeat Dial	N	B
k.	Call Trace	N	B
l.	User-ordered third party product submitted by a clearinghouse and billed via the LEC	Y	C
m.	Verizon Internet Service	N	A
n.	Verizon Unlimited toll calling plan (With LPIC/PIC)	N	A
o.	PIC and LPIC to Verizon LD without selection of a Verizon calling plan	N	A
p.	PIC and LPIC to Verizon LD with selection of a Verizon calling plan	N	A
q.	Completes a 911 call	Y	D
r.	Completes 0+ call billed via the LEC	Y	D
s.	Completes 0+ call not billed via the LEC	Y	D
t.	Completes Relay Call via 711 billed via the LEC	Y	E
u.	Completes Relay Call via 711 not billed via the LEC	Y	E
v.	Completes Relay Call via toll-free access billed via the LEC	Y	E
w.	Completes Relay Call via toll-free access not billed via the LEC	Y	D
x.	Completes DA Call – service provided and billed by the LEC	Y	D
y.	Completes DA Call – service not provided by the LEC but billed via the LEC	Y	D
z.	Completes DA Call – service not provided by the LEC and not billed via the LEC	Y	E
aa.	No LPIC/No PIC	Y	F
ab.	No LPIC/No PIC and Local Toll Call completed by dial around code, billed by LEC.	Y	D
ac.	No LPIC/No PIC and Local Toll Call completed by dial around code, not billed by LEC.	Y	D
ad.	No LPIC/No PIC and LD Toll Call completed by dial around code, billed by LEC.	Y	D
ae.	No LPIC/No PIC and LD Toll Call completed by dial around code, not billed by LEC.	Y	D
af.	No LPIC/With PIC	N	A
ag.	No LPIC/With PIC – LD calls billed by LEC	N	G
ah.	No LPIC/With PIC – LD calls not billed by LEC	N	G
ai.	No LPIC/with PIC and Local Toll Call completed by dial around code, billed by LEC.	N	G
aj.	No LPIC/with PIC and Local Toll Call completed by dial around code, not billed by LEC.	N	G
ak.	No LPIC/with PIC and LD Toll Call completed by dial around code, billed by LEC.	N	G
al.	No LPIC/With PIC and LD Toll Call completed by dial around code, not billed by LEC.	N	G
Am.	With LPIC/No PIC and Local Toll Call completed by dial around code, billed by LEC.	N	G

No.	Feature	SQR Eligible	Rationale Label
an.	With LPIC/No PIC and Local Toll Call completed by dial around code, not billed by LEC.	N	G
ao.	With LPIC/No PIC and LD Toll Call completed by dial around code, billed by LEC.	N	G
ap.	With LPIC/No PIC and LD Toll Call completed by dial around code, not billed by LEC.	N	G
aq.	With LPIC/With PIC	N	A
ar.	With LPIC/With PIC and Local Toll Call completed by dial around code, billed by LEC.	N	G
as.	With LPIC/With PIC and Local Toll Call completed by dial around code, not billed by LEC.	N	G
at.	With LPIC/With PIC and LD Toll Call completed by dial around code, billed by LEC.	N	G
au.	With LPIC/With PIC and LD Toll Call completed by dial around code, not billed by LEC.	N	G
av.	With LPIC/With PIC – all toll calls billed via LEC	N	G
Aw.	With LPIC/With PIC – all toll calls not billed via LEC	N	G
ax.	Collect Call billed via the LEC	Y	D
ay.	Collect Call not billed via the LEC	Y	D
az.	900 Service Calls billed via the LEC	Y	D
ba.	PIC and LPIC to an IXC other than Verizon/Verizon affiliate	N	A

3. Please provide Verizon's legal and/or policy rationale for why each example in the table above is or is not SQR eligible. Assuming some of the examples may have the same rationale, please list the various rationales as a response to this question, assign each rationale a label, and identify the rationale label in the column titled "Rationale Label" in the above table.

Response: Verizon's legal and policy rationales listed below are based on the definitions of "basic local telecommunications service" and "nonbasic service" in Section 364.02, Florida Statutes, and the Commission's interpretation of those definitions in Docket No. 094761.

Rationale Labels Used in Table Provided in Response to Data Request No. 2

- A. The added service is unregulated.
- B. The added service is nonbasic.
- C. The added service is unregulated, but transitory, and for purposes of the SQRs, Verizon would treat the customer's line as basic.
- D. The added service is nonbasic, but transitory, and for purposes of the SQRs, Verizon would treat the customer's line as basic.
- E. The added service is nonbasic, but transitory and offered free of charge, and for purposes of the SQRs, Verizon would treat the customer's line as basic.

- F. The service meets the definition of "basic local telecommunications service" under Section 364.02(1), Florida Statutes.
 - G. The scenario identifies a PIC or LPIC (or both), which means the customer has added a nonbasic service.
4. Please add any combination of dial tone service, along with a feature or specific action that is not listed that Verizon believes should be listed in the table.

Response: N/A

5. If a Verizon customer is not eligible for the SQRs due to some combination(s) of dial tone services and feature(s), and the service is changed to a status that qualifies for the SQRs, will Verizon automatically qualify the customer for SQR eligibility?

Response: Yes.

6. Does a Verizon customer stay nonbasic if there is a one time use of a non-SQR eligible feature or service?

Response: No. A basic customer that uses a non-SQR eligible feature or service on a one-time basis would remain a basic customer.

7. Please estimate the number of residential customers that will be covered by the SQRs based on Verizon's interpretation of the definition of Basic Local Telecommunications Service in Section 364.02, F.S.

Response: Confidential (X).

8. How many residential customers will or would be covered by the SQRs if Verizon concludes that residential customers with a PIC/LPIC are SQR eligible?

Response: The Commission has determined in Docket No. 0904761 that such customers are not SQR eligible and Verizon will provide SQR reporting consistent with that decision. Verizon will respond further once it has obtained the customer count Staff has requested.