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Sent: Friday, May 07, 2010 1:42 PM
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Cc: Jeff Bates; Samantha Cibula; Tracy Hatch; sandy.khazraee@centurylink.com; O'Roark, Dulaney L; David Christian; Clark, Demetria Germaine
Subject: Undocketed - Verizon Florida LLC Tariff Rule Post-Workshop Comments
Attachments: VZ FL Tariff Rule Post-Workshop Comments 5-7-10.pdf



The attached is submitted for filing on behalf of Verizon Florida LLC by

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The attached document consists of a total of 7 pages - cover letter (1 page) and Post-Workshop Comments (6 pages).

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5/7/2010

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May 7, 2010 – VIA ELECTRONIC MAIL

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

Re: Undocketed
Initiation of Rulemaking to Amend Rules in 25-4 and 25-24, Florida Administrative
Code, to Address Publication of Service Schedules by Telecommunications
Companies

Dear Ms. Cole:

Enclosed for filing in the above matter are the Post-Workshop Comments of Verizon
Florida LLC. If there are any questions regarding this filing, please contact me at (770)
284-3620.

Sincerely,

s/Dulaney L. O'Roark III

Dulaney L. O'Roark III

tas

c: Jeff Bates, FPSC – via electronic mail
Samantha Cibula, FPSC – via electronic mail
Sandy Khazraee, CenturyLink – via electronic mail
Tracy Hatch, AT&T – via electronic mail

DOCUMENT NUMBER-DATE

3880 MAY-7 2010

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Rulemaking to Amend Rules) Docket: Undocketed
in 25-4 and 25-24, Florida Administrative) Filed: May 7, 2010
Code, to Address Publication of Service)
Schedules by Telecommunications Companies)

)

POST-WORKSHOP COMMENTS OF VERIZON FLORIDA LLC

At the proposed rule development workshop held on March 30, 2010, Staff requested comments from the parties on draft revisions to several Commission rules relating to tariffs and price lists. Verizon Florida LLC (“Verizon”) files these comments to address two concerns: (i) many of the proposed rules would exceed the Commission’s statutory authority; and (ii) the proposed rules would eliminate a provision expressly authorizing customer service arrangements.

A. BACKGROUND

Before it was revised in 2009, section 364.04, Florida Statutes, required that every telecommunications company, upon order of the Commission, file with the Commission schedules showing its rates, terms and conditions and to make those schedules available for public inspection. Under section 364.051(5)(a), price-regulated ILECs were permitted to publish nonbasic rates, terms and conditions, rather than filing them, subject to publication guidelines established by the Commission. The 2009 statutory revisions substantially changed this scheme. Section 364.04(1) now permits telecommunications companies to file their schedules with the Commission or publish them “through other reasonably publicly accessible means, including on a website.” Consistent with these changes, the optional tariffing language provision in section

364.051(5)(a) was removed because it was no longer necessary. Moreover, *the legislature eliminated the Commission's authorization to establish publication guidelines.*

The current Commission rules require telecommunications companies to maintain on file with the Commission tariffs that set forth the rates, terms and conditions of the carriers' services.¹ Rule 25-4.034(1), Florida Administrative Code. The current rules describe when and where tariffs must be filed, how they must be formatted and what contents must be included. Rule 25-4.034(2)-(7). They also make clear that contract service arrangements for an individual customer need not be filed when the tariff describes the circumstances under which arrangements are offered for specified services. Rule 25-4.034(1).

The proposed rules would impose a number of new requirements on published service schedules, regardless of whether they were filed at the Commission or published online or elsewhere. The proposed rules would require, for example, that published schedules use simple language, include a table of contents or index, include specified information, publish promotions in a specific way and meet certain timing requirements. They would prohibit carriers from making any public statement about their "service quality, rates, or service offerings or billings" that is misleading or that differs from the terms in the carrier's service schedules. And the proposed rules would require carriers to make their retail service schedules available to public inspection, notify the Commission of changes to nonbasic service one day before the changes become effective, and retain information on schedule changes for six years.

¹ This requirement is subject to exceptions for certain services and providers.

B. STATUTORY AUTHORITY

To be valid under the Administrative Procedure Act, a rule adopted under the Commission's general rulemaking authority² must implement or interpret specific statutory powers and duties, which means those powers and duties must be stated explicitly in the statute. *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594, 599 (Fla. 1st DCA 2000). Statutory language generally describing the Commission's powers and functions, or setting forth general legislative intent or policy, does not suffice to create authority for rulemaking purposes. See Fla. Stat. §§ 120.52(8), 120.536(1). Moreover, the rule must not enlarge, modify or contravene the statute being implemented. Fla. Stat. § 120.52(8)(c).

The proposed rules purport to implement sections 364.04, 364.051(5) and 364.183, Florida Statutes, but the proposed rules in fact go far beyond the scope of these statutory provisions. As discussed above, section 364.04 permits carriers to publish rates, terms and conditions at the Commission or through other reasonably publicly accessible means, such as a website. This provision does not authorize the Commission to establish publication guidelines, and indeed such authority was eliminated by the 2009 statutory revisions. Section 364.051(5) establishes certain parameters for nonbasic pricing and no longer addresses the publication of rates. Section 364.183 provides the Commission with access to certain data and authorizes it

² See Fla. Stat. § 350.127(2) ("The commission is authorized to adopt, by affirmative vote of a majority of the commission, rules pursuant to s. 120.536(1) and 120.54 to implement provisions of laws conferring duties on it").

to require carriers to file certain information “directly related to matters within the commission’s jurisdiction.”

Many provisions in the proposed rules would go beyond the bounds of the Commission’s rulemaking powers. For example:

- The proposed rules include a number of provisions that would regulate the style, structure, terms and timing of carriers’ publications. (See proposed Rule 25-4.034(1)(a), (b), (c), (e), (f) and (i) and (2).) Such publication guidelines are no longer authorized.
- The proposed prohibition on making public statements about service quality, rates, offerings and billings that are misleading or different than the terms in a carrier’s service schedules (see proposed Rule 25-4.034(1)) purports to regulate carriers’ speech relating to their published terms. Nothing in Chapter 364 gives the Commission such powers and such a rule would give rise not only to issues of statutory authority, but also of constitutionality.
- The requirement that carriers make their retail service schedules available to public inspection was eliminated in the 2009 revisions to Chapter 364. The proposed rules, however, would continue to impose such a requirement (see proposed Rule 25-4.034(1)(g)) despite the lack of statutory authority.
- Proposed Rule 25-4.034(1)(h) would require carriers to provide one-day’s notice of nonbasic rate changes to the Commission. Section 364.051(5) permits price-regulated ILECs to set or change nonbasic rates on one-day’s notice, but does not require that carriers give such notice to the Commission. To be sure, for carriers that publish their nonbasic rates through a schedule filed with the Commission, the only way

to provide the statutory notice is through a Commission filing. But for carriers that publish their nonbasic rates online, the best way to provide customer notice is through an online posting.

- Proposed Rule 25-4.034(3) would require carriers to retain schedule changes for six years. As a matter of business practice, carriers almost certainly will retain records for some reasonable period so they can address customer questions and disputes. But section 364.183 does not authorize the Commission to regulate how carriers maintain their business records.

In short, the 2009 revisions to Chapter 364 concerning publication of rates, terms and conditions were intended to provide carriers with an alternative to the traditional tariff system. The proposed rules in many ways would perpetuate the old regulatory regime by imposing many of the same tariff requirements to rates, terms and conditions that are published online. Such requirements would undermine the purpose of the statutory revisions and therefore should not be included in the new rules.

C. CUSTOMER SERVICE ARRANGEMENTS

Rule 25-4.034(1) provides that “[t]he rates and charges for contract service arrangements for an individual customer need not be filed where the company's tariff provides a description of the circumstances under which such arrangements are offered for specified tariffed services.” The proposed rules would eliminate this provision, apparently because the term “contracts” was removed from section 364.04 in the 2009 statutory revisions. The customer service arrangement language is still necessary, however, to make clear that customer service arrangements continue to be authorized.

The existing provision therefore should be retained, but revised so it applies regardless of how publication is made.

Respectfully submitted on May 7, 2010.

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