

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida LLC for waiver of Rule 25-4.040(2), F.A.C. | DOCKET NO. 100327-TL
ORDER NO. PSC-10-0599-PAA-TL
ISSUED: September 30, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING TEMPORARY WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

On June 14, 2010, Verizon Florida LLC (Verizon), an incumbent local exchange telecommunications company (ILEC), filed a petition for a permanent rule waiver pursuant to Section 120.542, Florida Statutes (F.S.), and Rule 28-104.002, Florida Administrative Code (F.A.C.). Verizon seeks relief from Rule 25-4.040(2), F.A.C., which requires Verizon to furnish a copy of a telephone directory that lists local residential and business telephone numbers to each of its subscribers.

Upon approval, the waiver relieves Verizon of the requirement to provide up-front a printed copy of the residential white pages directory. The residential white pages directory would be available via the Internet, or a subscriber could request a printed copy or a CD-ROM version, free of charge, by calling a toll-free telephone number. Subscribers would continue to receive an up-front printed copy of directories that include the business and government white pages, the consumer guides, and business yellow pages.

On June 30, 2010, our staff requested additional information from Verizon regarding several aspects of the waiver request. On July 15, 2010, our staff received responses to its

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inquiry from Verizon. Notice of Verizon's permanent waiver request was published in the Florida Administrative Weekly on July 2, 2010, and no written comments were received during the 14-day comment period. We have jurisdiction in this matter pursuant to Sections 120.542, 350.127 and 364.02(1), F.S.

II. Analysis

A person affected by our rules may petition the Commission for a waiver of a rule pursuant to Section 120.542, F.S., and Rule 28-104.002, F.A.C. We have statutory authority to grant this waiver under Section 120.542(2), F.S., which states in part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute¹ will be or has been achieved by other means by the person and when the application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

Rule 28-104.002, F.A.C., states in part:

(2) The petition must include the following information:

(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;

Rule 25-4.040(2), F.A.C., states in part:

Each subscriber served by a directory shall be furnished one copy of that directory for each access line. Subject to availability, additional directories shall be provided by the local exchange telecommunications company, which may charge a reasonable fee therefor.

Pursuant to Rule 25-4.040, F.A.C., certain information must be included in the directory such as an alphabetical listing of all local subscribers except those subscribers with unlisted or unpublished telephone numbers; an alphabetical listing designated as "Poison Information

¹ Section 364.02(1), F.S., defines basic local telecommunications service to include an alphabetical directory listing.

Center” and a local telephone number where the exchange served has local calling to a Poison Information Center; a description of the local calling scope; name of individual exchanges included and directory publication date; 911 instructions; information regarding repair service, directory assistance, service disconnection procedures, and emergency interrupt; business and payment offices; No Sales Solicitation; and inside wiring policy.

Conditions for Granting a Rule Waiver

When considering a waiver of a rule, two conditions must be met in order for the waiver to be granted. Specifically, the petitioner must demonstrate how the purpose of the underlying statute would be achieved through other means and how the petitioner would suffer a substantial hardship if the waiver is not granted. To achieve the purpose² of the underlying statute, Verizon asserts that a printed copy or a CD-ROM version of the residential white pages directory would be provided to subscribers free of charge, upon request, and subscribers would also be able to access the directory information through Internet websites.

Verizon asserts that in recent years subscribers have used the printed directories less and instead use alternate methods such as Internet directories, directories in wireless and wireline devices, and specialized directories provided by organizations. The Gallup Organization through a contractual arrangement with Verizon conducted a study that shows that the percentage of households using stand-alone residential white pages has dropped from 28 percent in 2005 to 11 percent in 2008.³ Supplemental information from the study that relates to the above percentages was provided under confidential cover to the Commission by Verizon, and reviewed by our staff.

Verizon also asserts that the requirements of Rule 25-4.040(2), F.A.C., imposes a substantial hardship in economical and environmental terms because subscribers using the residential white pages listing have greatly declined and the cost incurred to publish and distribute them can no longer be justified. Verizon estimates that each year numerous directories are produced and distributed that are not used by many subscribers and asserts that more than a 1000 tons of paper and the energy costs associated with printing, binding, and distributing these directories could be saved if the waiver is granted. Verizon stated that under the current arrangement it would not realize any immediate savings because the cost to publish and deliver the directories is borne by the publisher, SuperMedia LLC. (SuperMedia). However, Verizon maintains that the waiver would enable SuperMedia to operate more efficiently and reduce the possibility of Verizon having to absorb the costs of publishing and distributing the directories if SuperMedia is not successful.

Verizon’s waiver request is similar to AT&T Florida’s waiver request that was addressed by this Commission in 2009 regarding the discontinuance of up-front distribution of residential white pages listing to each of its subscribers. In the AT&T Florida case, we determined that the purpose of the underlying statute would be met through alternate means. It also was discussed

² Rule 25-4.040, F.A.C., requires that subscribers shall be provided a copy of the directory and that certain information must be included in the directory.

³ Verizon considers certain back up information that was provided to our staff from the Gallup Organization 2005 and 2008 study to be proprietary based upon a contractual agreement.

during the Agenda Conference that the Commission has significant discretion when determining if the petitioner would suffer a hardship if the waiver was not granted. AT&T Florida explained that the hardship is an environmental hardship because AT&T Florida is required to provide printed copies of the white pages directories and 2.5 million CD-ROMs, even though the number of subscribers using them continues to decline. We denied AT&T Florida's permanent rule waiver and instead granted a two-year temporary waiver⁴ of Rule 24-4.040(2), F.A.C., and instructed AT&T Florida and the Commission staff to solicit feedback from Florida consumers regarding the change. Verizon points out that the two-year temporary waiver granted to AT&T Florida has been in effect since July 2009 and allowed the Commission opportunity to evaluate how it impacts Florida consumers over an extended period of time. Accordingly, Verizon asks that we grant similar relief on a permanent basis.

Notification of Changes to the Automation Delivery of Directories

Proper and timely notification to subscribers regarding the discontinuance of up-front delivery of the printed residential white pages directory and how they can, upon request, receive a free copy of the residential white pages is crucial. Verizon submits that subscribers throughout its Florida service territory would be notified of the changes regarding the delivery of the residential directory and the options available to them through the following communications:

- a Verizon press release that would be sent to various newspapers, radio stations, television stations and also available through online sources.
- a quarterly Verizon bill message that would first appear on Florida subscribers' bills the month the directory is scheduled to be delivered.
- a notice in 14-point type on Verizon's Superyellowpages page cover and the 911 page of the directory.
- a SuperMedia⁵ notice and explanation that would be placed in the front pages of the superyellowpages directory in the consumer guide section that would provide a toll-free telephone number for ordering a free printed residential directory or a CD-ROM version. In the Guide subscribers also would be provided the following website for accessing residential telephone numbers: www.verizon.com/whitepages.
- a notice on SuperMedia's webpage, and on Verizon's webpage.

Verizon asserts that its yellow pages directories would have a blow-in⁶ hard card insert that includes a notice regarding the change to the residential white pages directory. In response

⁴See Order No. PSC-09-0492-PAA-TL, issued July 8, 2009, in Docket No. 090082-TL, In re: Petition by BellSouth Telecommunication, Inc., for Waiver of Rule 25-4.04(2), Florida Administrative Code.

⁵ SuperMedia LLC (formerly Idearc Media LLC) is Verizon's directory publisher and distributor of the directories.

⁶ According to Verizon's staff, a blow-in hard card is a large removable card that is inserted or blown in the directory that is printed on two sides on 8 ½ by 5 ½ semi-gloss card stock.

to our staff's inquiry, Verizon provided supplemental information on July 15, 2010, to clarify several aspects of the petition and also attached colored copies of SuperMedia's Superyellowpages cover and the 911 page. Further, Verizon states that the online White Pages would be available to customers by the delivery start date and that the directory it provides to its residential customers free of charge would also be provided to CLEC customers free of charge.

Verizon points out that in the message that would appear in its subscribers bills that directories delivered in Florida would not include a residential white pages listing. Verizon also asserts that except for Tampa, St. Petersburg, Clearwater, Zephyrhills, Palmetto, and Bradenton, all of its directories currently include business and residential white pages plus the yellow pages in the same directory. Verizon states that the waiver would allow Verizon to eliminate up-front delivery of residential white pages for most cities in its Florida territory, but in some markets it might not be cost-effective to do so. Accordingly, Verizon states that the residential white pages directory might not be eliminated in some markets with a small residential white page listing.

III. Decision

The permanent waiver request recognizes advances in technology while protecting the interests of subscribers who want to continue to receive a free printed residential white pages directory. It also provides an alternate directory plan that would allow the residential white pages directory to be made available to Florida consumers.

The purpose of Rule 25-4.040(2), F.A.C. and its underlying statute, Section 364.02(1), F.S., would be achieved through the alternate directory plan offered by Verizon, which includes printed listings or CD-ROMs available upon request at no charge and online Internet access via Verizon's and SuperMedia's websites. At the July 2009 Agenda Conference, when deliberating AT&T Florida's request for waiver, we considered several types of hardships that would satisfy Section 120.542(2) F.S. We note that Verizon's waiver request is similar to the AT&T Florida request.

Based upon the information submitted for Verizon's waiver request, and consistent with our prior decisions, we hereby deny Verizon's request for a permanent waiver of the residential directory requirement of Rule 25-4.040(2), F.A.C., and instead grant a temporary waiver for two years. Verizon shall submit for our staff's review the press release and bill message notifying customers of the temporary waiver and how they may obtain a residential white pages directory. Additionally, during the two years while the waiver is in effect, Verizon and staff shall solicit feedback from Florida consumers to determine how they feel about the discontinuance of an up-front copy of the residential white pages directory.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Verizon Florida LLC's request for a permanent rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.) of Rule 25-4.040(2), F.A.C., is denied. It is further

ORDERED that Verizon Florida LLC is granted a temporary rule waiver of the residential directory requirements of Rule 25-4.040(2), F.A.C. This temporary rule waiver shall remain in effect for a period of two (2) years from the issuance of the Consummating Order. It is further

ORDERED that Verizon Florida LLC shall submit for our staff's review the press release and bill message notifying customer's of the temporary waiver and how they may obtain a residential white pages directory. It is further

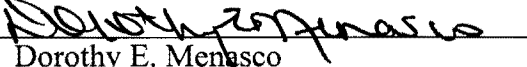
ORDERED that during the two (2) years this rule waiver remains in effect, both this Commission and Verizon Florida LLC shall engage in public outreach designed to seek input from consumers regarding the implementation and effect of the rule waiver. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open for the purpose of soliciting and reviewing consumer feedback.

By ORDER of the Florida Public Service Commission this 30th day of September, 2010.

ANN COLE
Commission Clerk

By: 
Dorothy E. Menasco
Chief Deputy Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 21, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.