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June 9, 2008 – **VIA ELECTRONIC MAIL**

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

Re: Docket No. 080278-TL  
Joint Petition for show cause proceedings against Verizon Florida LLC for  
apparent violation of Rule 24-4.070, F.A.C., service availability, and impose fines,  
by the Office of the Attorney General, Citizens of the State of Florida, and AARP

Dear Ms. Cole:

Enclosed for filing in the above-referenced matter is Verizon Florida LLC's Response and Answer to Joint Petition. 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,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

**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 ) Filed: June 9, 2008  
Rule 24-4.070, F.A.C., service availability, and )  
impose fines, by the Office of the Attorney General, )  
Citizens of the State of Florida, and AARP )  
\_\_\_\_\_ )

**RESPONSE AND ANSWER OF VERIZON FLORIDA LLC TO JOINT PETITION**

Verizon Florida LLC (“Verizon”) hereby responds to the Joint Petition Requesting the Florida Public Service Commission to issue a Show Cause order Against Verizon Florida LLC for Repeated Willful Violation of Telephone Service Quality Rule (“Petition”) filed by Attorney General Bill McCollum, the Citizens of the State of Florida and AARP (collectively, “Petitioners”). For the reasons discussed below, Verizon respectfully requests the Commission to deny the Petitioners’ request to issue a show-cause order. Verizon also answers the specific allegations of the Petition and asserts its affirmative defenses.

**I. INTRODUCTION**

During 2007 the Commission logged one customer complaint about Verizon’s network performance for every 10,000 of its active lines. Despite the limited number of complaints from Verizon’s customers, Petitioners claim that Verizon’s performance was unsatisfactory and that Verizon should be fined more than \$6.5 million.<sup>1</sup> The Petition is deeply flawed for a number of reasons. First, Petitioners draw the wrong conclusions from Verizon’s performance reports based on their misunderstanding of Rule 25-4.070

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<sup>1</sup> Petitioners assert that the Commission should penalize Verizon the statutory maximum \$25,000 every time Verizon reported that it did not achieve a 95% service level, regardless of circumstances, for service restoration and clearing service-affecting troubles for any of its 24 exchanges.

and their failure to recognize critical information in the reports demonstrating Verizon's compliance with the rule. Second, Petitioners fail to take into account Verizon's massive investment in its fiber-to-the-premises ("FTTP") network in Florida, which not only reflects Verizon's enormous commitment to the state and to consumers in the state as a general matter, but also is enabling Verizon to reduce outages and more quickly restore service and clear troubles. Third, Petitioners misinterpret Rule 25-4.070 to authorize penalties whenever an ILEC does not achieve a 95% service level, when in fact the rule is designed to enable the Commission to monitor performance rather than to penalize it. In the final analysis, Petitioners fail to recognize that in today's highly competitive telecommunications market, customers are the ultimate regulator and impose the ultimate penalty by choosing one of the many alternative providers if they are dissatisfied with Verizon's performance.

Judging by the raw data alone, Verizon delivered solid maintenance and repair service in 2007. For example, based on just the raw data, Verizon achieved a result of at least 95% service restoration within 24 hours (the stated "service objective") more than 28% of the time (47 out of 166 reporting opportunities);<sup>2</sup> achieved a result of at least 90% service restoration within 24 hours almost 60% of the time; and achieved a result of at least 80% more than 90% of the time. The raw data should not be viewed in isolation, however. It must be viewed in the context of Rule 25-4.070, which does not impose an absolute requirement that ILECs like Verizon must meet the stated service levels under any circumstances, but rather provides service objectives that are "desirable to be achieved under normal conditions" and that ILECs must make

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<sup>2</sup> Verizon is required to report results for its nine exchanges with at least 50,000 lines on a monthly basis and for its fifteen exchanges with fewer than 50,000 lines on a quarterly basis, which creates 166 reporting opportunities.

“reasonable efforts” to meet. If it were an absolute requirement that warranted a penalty on every miss, the Commission would have implemented an automatic penalty plan, but it has not, because that is not the intent of the rule. Moreover, the raw data Verizon provides *understates* its performance because it does not exclude instances where the benchmark could not be met because Verizon was not operating under “normal conditions.” Rather than excluding these “misses,” Verizon provides with its service reports explanations of each instance in which conditions prevented it from achieving a 95% performance level for an exchange. Those explanations – which Petitioners simply ignore – demonstrate that Verizon made reasonable efforts to reach the 95% mark and that abnormal conditions prevented it from doing so. Verizon thus complied with Rule 25-04.070.

Not only did Verizon deliver good performance to its customers in 2007, it went to extraordinary lengths to simultaneously deliver the benefits of added competition and advanced technologies to Florida consumers while also improving its network reliability through the hundreds of millions of dollars invested in its FTTP network. That network improves maintenance and repair performance in part because of the physical properties of fiber, including for example its immunity to moisture, which make the new network less susceptible to outages than the old copper network. Moreover, when outages and troubles do occur on the fiber network, they are easier to diagnose and repair, which shortens the time to restore service and clear troubles. As Verizon continues to extend its FTTP network, and more customers take the FiOS<sup>3</sup> services offered on the network, Verizon’s already high network reliability will improve still further.

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<sup>3</sup> FiOS is Verizon’s service mark for a suite of services, provisioned over all-fiber distribution facilities, which include advanced voice, data and video capabilities.

Verizon's FTTP investment demonstrates both its massive commitment to the state and consumers in the state as well as its continuing commitment to service quality and its more than reasonable efforts to meet the Commission's service objectives.

The Commission may not penalize Verizon unless it finds that it has willfully violated a Commission rule or order or a provision of Chapter 364.<sup>4</sup> Petitioners mistakenly attempt to meet this standard by alleging that Verizon willfully violated Rule 25-4.070 each time it did not achieve a 95% performance level for service restoration and service-affecting trouble clearance for one of its exchanges. This assertion rests on the false assumption that these service objectives impose absolute requirements and that the failure to meet them constitutes a violation of Rule 25-4.070. Because the rule in fact requires only reasonable efforts to meet the benchmarks under normal conditions, Petitioners' theory is far off the mark. Petitioners' allegations, which tell the Commission nothing it did not already know and which ignore the detailed explanations that Verizon provided with its service quality reports, provide no basis to impose penalties and thus no reason to issue an order for Verizon to show cause why penalties should not be assessed.

## **II. THE COMMISSION SHOULD NOT ISSUE A SHOW-CAUSE ORDER**

### **A. Verizon Has Delivered Good Performance When Restoring Service and Clearing Service-Affecting Troubles**

Based on service complaint levels, Verizon's customers considered Verizon's service quality in 2007 to be good. The Commission logged 354 customer complaints concerning Verizon during the year, which at the end of 2007 had 1,543,608 access

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<sup>4</sup> Florida Statutes, section 364.285(1).

lines in its Florida service territory. Verizon's complaint rate per thousand lines was .2293, the lowest rate of the state's largest ILECs, and indeed of any ILEC for which complaints were logged. Of the 354 complaints, only about 165 concerned network performance (the others concerned billing), which means that during 2007 the Commission logged about one customer complaint concerning Verizon's network performance for every 10,000 Verizon access lines. By misreading Verizon's 2007 service reports after the fact, Petitioners reach the wrong conclusion about Verizon's performance; Verizon's customers, on the other hand, who actually experienced Verizon's service quality, correctly perceived that they received excellent service last year.

Petitioners' flawed assessment of Verizon's performance arises from their misunderstanding of the Commission's service quality rules and the reports they require. Contrary to Petitioners' allegations, Rule 25-4.070 does not establish absolute requirements for service restoration and clearing service-affecting troubles. Rather, it provides that ILECs must make "all reasonable efforts to minimize the extent and duration of trouble conditions that disrupt or affect customer telephone service"<sup>5</sup> and "every reasonable attempt to restore service on the same day that the interruption is reported to the serving repair center."<sup>6</sup> In order to monitor the status of those efforts, the Commission's rules require reports of performance compared to certain "service objectives," which the rules define as "[a] quality of service which is *desirable to be achieved under normal conditions*,"<sup>7</sup> as opposed to a "service standard," which is "[a] level of service that a telecommunications company, under normal conditions, is

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<sup>5</sup> Rule 25-4.070(1).

<sup>6</sup> Rule 25-4.070(1)(a).

<sup>7</sup> Rule 25-4.003(45) (emphasis added).

expected to meet in its certificated territory as representative of adequate services."<sup>8</sup> The Commission's rules thus do not require strict compliance with absolute requirements without regard to circumstances, but rather reasonable efforts to meet desirable goals under normal conditions.

The reporting process is designed to enable the Commission to monitor ILECs' efforts to meet the service objectives rather than to calibrate precisely whether ILECs have met the 95% service level under normal conditions. When ILECs report their results, they do not exclude performance "misses" when abnormal conditions prevent achievement of the objective except in extreme circumstances.<sup>9</sup> If the purpose of the reports were to assess penalties on ILECs when they missed their objectives, they would be inadequate because the lack of an exclusion for "misses" arising from abnormal conditions substantially understates ILECs' performance. Rather than having ILECs attempt to categorize their "misses" in this way, Rule 25-4.070 requires ILECs to provide an explanation for each exchange where service was not restored 95% of the time. Verizon provides such explanations to describe the conditions that lead to each "miss" and thus demonstrates that it is making reasonable efforts to meet the service objectives. To ignore those explanations, as Petitioners blithely do, is to ignore the Commission's actual rule and apply instead a completely different absolute standard that does not exist in Florida.

Verizon's experience demonstrates why the Commission's approach makes sense. Because Verizon's service territory on the central west coast of Florida is subject to severe weather, Verizon frequently operates under conditions that are

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<sup>8</sup> Rule 25-4.003(46).

<sup>9</sup> The primary exception is for outages that affect at least 10% of an exchange, requiring a truly catastrophic event. See Rule 25-4.070(6).

anything but normal. For example, in July 2007 there were more than 200,000 lightning strikes in Verizon's service territory, which created an unusually high number of service outages and delayed restoration because Verizon does not dispatch its employees during dangerous conditions. Although Verizon made reasonable efforts to reach the 95% service levels during July, these electrical storms outside its control prevented it from doing so for many of its exchanges. Most customers, who understood the conditions under which Verizon was operating, did not complain. The Commission, which received Verizon's report for its third quarter performance, including the explanation for why Verizon did not achieve the 95% mark in several of its exchanges in July, sensibly required no corrective action. Only Petitioners, reviewing the reports long after the fact and out of context, fail to understand that Verizon delivered good service in July under extremely challenging circumstances.

Verizon's other quarterly reports for 2007 also included explanations of the conditions that existed when it did not achieve the 95% service levels. As required by Rule 25-4.070, Verizon reported data on a monthly basis for exchanges with at least 50,000 access lines and on a quarterly basis for exchanges with fewer than 50,000 lines.<sup>10</sup> Often the explanation for Verizon not reaching 95% in an exchange was that one or more major outages had taken place, which were caused (or made more difficult to address) by events such as severe weather, cable cuts by other utilities and – in one case – extensive vandalism. Unless a major outage involves at least 10% of the access lines in an exchange, each attempt to restore service to affected customers must be reported even though it can be extremely difficult if not impossible to restore all service

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<sup>10</sup> Although not required to do so, Verizon also reported data for exchanges with fewer than 50,000 lines on a monthly basis.

within 24 hours when a major outage occurs.<sup>11</sup> In short, reading Verizon's reports without reference to the explanations, as Petitioners do, leads to erroneous conclusions, which explains why Petitioners' allegations concerning Verizon's performance are dead wrong.

Even if Rule 25-4.070 were ignored and Verizon's explanations were not considered, the raw data reported by Verizon in 2007 still demonstrates solid performance. For service restoration within 24 hours, using just the raw data, Verizon achieved a result of 95% more than 28% of the time (47 out of 166 reporting opportunities); achieved a result of at least 90% almost 60% of the time (98 out of 166); and achieved a result of at least 80% more than 90% of the time (150 out of 166). Based on the raw data, Verizon achieved a result of 95% for service-affecting trouble clearance with 72 hours almost 14% of the time (23 out of 166); achieved a result of at least 90% almost 36% of the time (59 of out 166); achieved a result of at least 80% almost 64% of the time (106 out of 166); and achieved a result of at least 70% almost 89% of the time (147 out of 166). These statistics reflect Verizon's reasonable efforts to meet the Commission's service objectives and (just as importantly) to meet the needs and expectations of its customers.

Moreover, the intense competition that exists in Verizon's Florida service areas will ensure continued market pressure to deliver good service in order to keep consumers from moving to competing alternatives, such as cable, wireless or VoIP. Indeed, the effect of this competitive pressure is reflected in current results. For example, May 2008 data (the most recent month available) demonstrates Verizon's

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<sup>11</sup> Because Verizon's first priority is to restore service, such outages can have an even greater effect on service-affecting trouble clearance than service restoration.

continuing efforts to meet its service objectives and improve its performance. For service restoration, based on Verizon's preliminary data,<sup>12</sup> Verizon achieved the 95% mark for 18 of its 24 exchanges; achieved a result of at least 90% for 21 exchanges; and achieved a result of at least 80% for all of its exchanges. For service-affecting trouble clearance, Verizon achieved the 95% level for 23 of its 24 exchanges and achieved a 90% result for all of its exchanges. Verizon will provide the final data to the Commission in its next quarterly report, which will include explanations for the few "misses" during the month.

In summary, Verizon's 2007 quarterly reports demonstrate that it complied with Rule 25-4.070. The Petition does not provide the Commission with any new information and does not even allege that the explanations Verizon provided with its reports were inaccurate in any way or inadequate in showing that Verizon was making reasonable efforts to meet the objectives regardless of whether circumstances were normal or not. Petitioners thus fail to provide the Commission with any reasonable basis for issuing a show-cause order.

#### B. Verizon Is Investing Heavily in Its Florida Network

Verizon's investment in its state-of-the-art FTTP network further demonstrates not only its commitment to the state and to Florida consumers but also its more than reasonable efforts to meet its service quality objectives. Verizon has invested heavily in its service territory, bringing the FTTP network past more than 900,000 households. Verizon is continuing to extend the network so that by the end of this year the number of homes passed will exceed 1 million. Since 2004, Verizon has invested substantially

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<sup>12</sup> These results are not final and the reported results may vary slightly.

more than \$1 billion in its Florida FTTP network – including several hundred million in both 2006 and 2007. This investment benefits consumers by providing them with exceptionally high quality voice, data and video FiOS services that recently have been rated the best in the country by Consumer Reports. The FTTP network also enables Verizon to improve overall service quality, as more and more customers move from the existing network to the fiber network.

FTTP has important technical advantages over copper that reduce the frequency and duration of service quality problems arising in the loop distribution plant, as well as the time required to detect and remedy those problems. Because fiber technology is based on optical transmission over a dielectric medium (glass), rather than electrical transmission over a conducting medium (copper), it is not susceptible to electromagnetic interference, is immune to corrosion due to moisture, and has a higher tensile strength than copper cable — all factors that can considerably reduce the contribution of weather conditions to service troubles. To date, Verizon’s experience is that the rate of service line troubles drops substantially – by almost 95% -- when FTTP replaces copper distribution.<sup>13</sup> Moreover, from the fourth quarter of 2005 to the fourth quarter of 2007, out-of-service reports and service-affecting trouble reports dropped 34%, in significant part because of the FTTP network.

Not only does the FTTP network experience fewer service quality problems, those problems that do occur are easier to diagnose, localize, and repair than on the traditional network. Verizon can use a device to send a light signal across the fiber and “ping” the Optical Network Terminal (“ONT”) at the home (*i.e.*, the network interface

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<sup>13</sup> This calculation is based on a comparison of total outside plant troubles for copper and fiber plant versus troubles arising from problems with the service line from the central office to the customer’s property (excluding the drop).

device for FTTP) to troubleshoot the network and identify the precise location of the problem, thus allowing the technician to fix it much faster than on the traditional network, where the technician may have to hunt for the problem, sometimes requiring multiple dispatches to repair a single problem. Thus, a comparatively faster repair interval for voice service on the FTTP network is both expected and desired – the whole point of building the new network is to provide a more advanced and more reliable network for Florida consumers. As a result, Verizon expects important service quality improvements as it continues to deploy fiber and as more customers, attracted by FiOS service offerings and pricing, are connected to the fiber network. And Florida customers have shown an extraordinary demand for these services – a demand that Verizon is working hard to keep up with every day. In short, Verizon’s deployment of FTTP – and the sales of FiOS services that depend on such deployment – promote the reliability and quality of Verizon’s network overall. As Verizon serves increasing numbers of customers on the all-fiber network, Verizon’s already solid service quality performance will improve still further, and Florida consumers will have numerous additional benefits, in the form of advanced communications services, available to them. Therefore, FTTP deployment and FiOS penetration are key components of Verizon’s long-term service quality strategy – and demonstrate not only reasonable but extraordinary efforts to improve service quality over time.

C. Verizon Has Not, Willfully or Otherwise, Violated Commission Rule 25-4.070

The Commission may not penalize Verizon unless it finds that Verizon has “refused to comply with or [has] willfully violated any lawful rule or order of the

commission or any provision of [Chapter 364].”<sup>14</sup> Because Verizon has not violated Rule 25-4.070, much less committed a willful violation, the Petition is without merit and a show-cause order should not be issued.

As discussed above, Rule 25-4.070 does not establish absolute requirements for service restoration and clearing service-affecting troubles, but rather requires reasonable efforts to meet the 95% objectives under normal conditions. Contrary to Petitioners’ allegations, therefore, an ILEC may not be penalized for simply failing to reach a 95% service level. This conclusion is not only required by the language of the rule, but also follows from how the rule is structured and implemented. For example, the 95% objective for service restoration and trouble clearance sets the bar high, which is consistent with aspirational goals monitored by the Commission, but not with a mechanically applied penalty system. Moreover, ILECs are not permitted to exclude “misses” caused by abnormal conditions, which would be necessary to calibrate performance accurately under the rule. Instead, ILECs provide explanations of situations where service restoration objectives were not met, which enables the Commission to monitor performance rather than assess penalties. Finally, the rule requires ILECs to compensate customers who experience service outages lasting more than 24 hours by refunding them for the time they were out of service. The rule thus provides an appropriate financial incentive for ILECs to restore service as soon as reasonably possible, while giving customers credit for the time they were not in service. For all of these reasons, the rule makes clear that it does not authorize penalties for the simple failure to achieve a 95% performance level.

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<sup>14</sup> Florida Statutes, section 364.285(1).

Failure to reach the 95% level, however, is all that Petitioners allege. These allegations fail to provide any reasonable basis for concluding that Verizon has done anything that would merit the assessment of penalties. Accordingly, the Commission should not issue a show-cause order for this additional reason.

### **III. ANSWER AND AFFIRMATIVE DEFENSES**

#### **A. Answer**

##### Answer to Numbered Paragraphs

In response to the numbered paragraphs of the Petition, Verizon states as follows:

1. In response to Paragraph 1 of the Petition, Verizon admits that the name and address of the Commission in Paragraph 1 have been stated correctly.

2. In response to Paragraph 2 of the Petition, Verizon admits that the Attorney General filed the petition jointly with Citizens of the State of Florida (“Citizens”) and AARP. Verizon states that the legal authorities cited in Paragraph 2 speak for themselves and no further response is necessary. Verizon is without information sufficient to form a belief as to the remaining allegations of Paragraph 2 and therefore denies such allegations.

3. In response to Paragraph 3 of the Petition, Verizon admits that Citizens is one of the Petitioners and is represented by the Office of Public Counsel. Verizon is without information sufficient to form a belief as to the remaining allegations of Paragraph 3 and therefore denies such allegations.

4. In response to Paragraph 4 of the Petition, Verizon admits that AARP is one of the Petitioners. Verizon states that the legal authority cited in Paragraph 4

speaks for itself and no further response is necessary. Verizon denies the implication in Paragraph 4 that reliable telephone service only may be obtained from the ILEC. Verizon further states that for several reasons, out-of-service situations no longer have the same impact on customers that they did a few short years ago.

First, as noted above, Verizon compensate customers who experience service outages lasting more than 24 hours by refunding them for the time they were out of service.

Second, in Verizon's experience, most customers say they have a cell phone or access to a cell phone in their household, meaning that customers experiencing outages are not cut off from essential services. When a trouble is reported, Verizon requests a "can-be-reached" number. This number is often a cell phone number. In fact, many times customers will give more than one cell phone number to the Verizon service representative. These customers retain access to E911 and other emergency services.

Third, at the customer's request, Verizon routinely routes customer calls from their landline to a wireless or other phone during the period of the outage. For customers who indicate that they have no access to any other telephone – that their Verizon service truly is the only phone available to them – Verizon can prioritize the repair dispatch for customers with medical emergencies and other critical situations. Verizon's consultant will work with the customer to establish an earlier appointment time. The minimal level of customer complaints provides a clear indication that this process has been successfully meeting the needs of the vast majority of Verizon's customers.

In short, widespread use of cell phones has dramatically changed the impact on customers of out-of-service conditions. While such conditions undoubtedly are an inconvenience, they no longer pose a potential for harm for the great majority of customers. In fact, this very fact constitutes a competitive vulnerability for Verizon's wireline service as a substantial and growing number of so-called "cut-the-cord" customers now purchase only wireless service and further emphasizes why Verizon strives to meet customer expectations for service restoral.

Verizon is without information sufficient to form a belief as to the remaining allegations of Paragraph 4 and therefore denies such allegations.

5. In response to Paragraph 5 of the Petition, Verizon states that the legal authorities cited in Paragraph 5 speak for themselves and no further response is necessary. Verizon further states that the performance data recited in Paragraph 5 is based on quarterly reports filed by Verizon with the Commission and those reports speak for themselves. Verizon denies that Rule 25-4.070 established "standards" and further denies that Verizon violated Rule 25-4.070(3)(a) or (b). Verizon denies the remaining allegations of Paragraph 5.

6. In response to Paragraph 6 of the Petition, Verizon states that the legal authorities cited in Paragraph 5 speak for themselves and no further response is necessary. Verizon denies that it violated the Commission's service quality rules, that it had "clear knowledge" of the alleged violations, that the alleged violations have been "repeated and worsening," or that such allegations evidence a willful violation of Rule 25-4.070. Verizon denies the remaining allegations of Paragraph 6.

7. Verizon denies the allegations in Paragraph 7 of the Petition.

## General Denial

Verizon denies all allegations of the Petition not expressly admitted herein.

### B. Affirmative Defenses

#### **First Affirmative Defense**

Rule 25-4.070 includes no requirement to meet its numeric service quality performance objectives. Rule 25-4.070 instead requires Verizon to use reasonable efforts to meet the service objectives it describes. Verizon used reasonable efforts to meet the service objectives during 2007 and therefore satisfied its obligations under Rule 25-4.070.

#### **Second Affirmative Defense**

Verizon's "misses" under the service objectives in Rule 25-4.070 may not be counted when they occurred during other than normal conditions. When such "misses" are excluded, Verizon met the service objectives and therefore satisfied its obligations under Rule 25-4.070.

#### **Third Affirmative Defense**

Rule 25-4.070, to the extent it purports to define a violation and fix a penalty with no definite standard, is unconstitutionally vague and void in violation of the Due Process Clause.

#### **Fourth Affirmative Defense**

The service objectives set forth in Rule 25-4.070 do not reflect the realities of the current competitive market place. Imposition of any penalties on Verizon for alleged

failure to meet service objectives that apply only to one among many competitors would be arbitrary, capricious and contrary to sound public policy.

### **Fifth Affirmative Defense**

The competitive environment and the associated loss of access lines are events beyond Verizon's control, such that Verizon is no longer operating under normal conditions. Instead, it is building a new fiber network, while maintaining the copper network – a set of tasks of unprecedented difficulty and unprecedented value to the citizens of Florida. The Commission should therefore suspend application of Rule 25-4.070.

WHEREFORE, Verizon respectfully requests that the Commission not grant the relief requested in the Petition and that the Petition be dismissed.

Respectfully submitted on June 9, 2008.

By: s/ Dulaney L. O'Roark III  
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Attorney for Verizon Florida LLC

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail and U. S. mail on June 9, 2008 to:

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