

Ruth Nettles

From: ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Wednesday, March 11, 2009 2:04 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; cecilia_bradley@oag.state.fl.us; David Christian; Dulany O'Roark; Floyd R Self; Mike Twomey; Rosanne Gervasi; Lee Eng Tan; Vicki Gordon Kaufman
Subject: e-filing (Dkt. No. 080278-TL)
Attachments: 080278 OPC Opposition to Verizons Motion to Bifurcate and to Suspend Discovery.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

Charlie Beck, Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
beck.charles@leg.state.fl.us

b. Docket No. 080278-TL

In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 6 pages.

e. The document attached for electronic filing is the Citizens' Response in Opposition to Verizon's Motion to Bifurcate Proceeding and Suspend Discovery.

(See attached file: 080278.OPC Opposition to Verizon's Motion to Bifurcate and to Suspend Discovery.sversion.doc)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

DOCUMENT NUMBER-DATE
02134 MAR 11 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP.

Docket No. 080278-TL

Filed: March 11, 2009

Citizens' Response in Opposition to Verizon's Motion to Bifurcate Proceeding and Suspend Discovery

The Citizens of Florida, through the Office of Public Counsel, file this response in opposition to the motion filed by Verizon Florida LLC (Verizon) on March 4, 2009, entitled "Verizon Florida LLC's Motion to Modify Order Establishing Procedure, Bifurcate Proceeding and Suspend Discovery Not Related to Jurisdictional Issues."

Summary

Verizon grounds its motion on a contention that the Commission does not have statutory authority to apply its rules governing service quality to Verizon's local telephone service. Verizon not only waited over eight months to first raise this issue in this docket, but it now advances a position which contradicts the position taken by Verizon regarding the Commission's jurisdiction in docket 080159-TP. The Commission should deny Verizon's motion to bifurcate the proceeding and to suspend discovery. This new issue raised by Verizon should be considered in the normal course of this proceeding, along with the other issues in this case.

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Verizon's Position in this Docket Contradicts its Position in Docket 080159-TP

On March 14, 2008, Verizon and other local exchange telecommunications companies filed a petition to amend and adopt new rules governing service quality. Commission Rule 25-4.070, which is the rule at issue in this show cause proceeding, is also one of the rules addressed in the ILEC petition.

The March 14, 2008 petition alleged that the Commission has the authority to amend and adopt new rules governing service quality. The ILECs, including Verizon, argued that this authority arises from several statutory provisions, including Section 364.01(2), F.S., which states that regulation of telecommunications companies is the exclusive jurisdiction of the Commission¹. Specifically, the ILECs argued that sections (b), (f), (g), and (h) of section 364.01(2), F.S., give the Commission authority to initiate rulemaking governing service quality.² They argued that “the Commission thus has the authority and the obligation to revise its telecommunications rules to clarify and simplify the rules” and that “the Commission has jurisdiction to enact the rule revisions, deletions and addition” requested in their petition.³

On November 17, 2008, the ILECs amended their petition and asked the Commission to change Rule 25-4.070 so that it would apply only to basic residential telecommunications service. Verizon was a signatory to this amendment, just as it was a signatory to the March 14, 2008 petition. By asking

¹ March 14, 2008 Petition at 11.

² Id at 12.

³ Id. at 13.

the Commission to amend Rule 25-4.070, Verizon and the other ILECs once again recognized the Commission's jurisdiction over service quality.

There is Statutory Authority for Commission Rule 25-4.070

The specific authority cited by the Commission for adoption of Rule 25-4.070 is Section 350.127(2), Florida Statutes, which states that "[t]he commission is authorized to adopt, by affirmative vote of a majority of the commission, rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon it." Further, the rule states that it implements sections 364.01(4), 364.03, 364.15, 364.17, 364.18, 384.183, and 364.386, Florida Statutes.

Verizon now argues that as a price cap regulated company, Rule 25-4.070 does not apply to them. The price regulation section, 364.051, Florida Statute, does exempt price cap regulated companies from ". . . rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18." While the price cap regulation section exempts companies such as Verizon from some of the implementing laws of Rule 25-4.070 mostly related to rate of return regulation (364.03, 364.17, 364.18), it does not exempt them from all. They are still subject to Sections 364.01(4), 364.15, 384.183, and 364.386, Florida Statutes.

Section 354.01(4)(c), Florida Statutes, empowers the Commission to "[p]rotect the public health, safety, and welfare by ensuring that monopoly service provided by telecommunications companies continue to be subject to effective price, rate, and service regulation." It is clear from the plain language of the

statute that price cap regulated companies remain under the Commission's jurisdiction to implement effective service regulation such as those outlined in Rule 25-4.070. Section 364.01(4)(h), Florida Statutes, directs the Commission to "[r]ecognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices" Commission Rule 25.4.070 ensures that basic telecommunications service remains "adequate." Moreover, Section 364.15, Florida Statutes, authorizes that Commission to compel repairs, improvements, changes, additions, or extensions in any telecommunications facility. Further, Section 364.183, Florida Statutes, allows that Commission access to company records and the Commission can require the company to keep the information in a form specified by the Commission and keep it for a designated period of time.

Based on the applicable statutory sections discussed above, Commission Rule 25-4.070 implements specific powers and duties outlined in the enabling telecommunications statute. Pursuant to Section 120.536, Florida Statutes, the Commission ". . . may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statutes." Contrary to Verizon's contention in this docket that the Commission does not have the authority to implement such rule, the Commission is not only authorized to apply the objectives outline in Rule 25-4.070 to a price cap regulated company, but it

compels the agency to implement such rules. Section 120.54, Florida Statutes

Conclusion

The Commission should not bifurcate this proceeding, nor should it suspend discovery. Verizon let this proceeding go forward for over eight months without raising an issue about the Commission's jurisdiction. At the same time, it was urging the Commission to adopt a rule governing customer trouble reports (although one more to Verizon's liking) in docket 080159-TP. The Commission should see Verizon's motion for what it is: a last minute attempt to delay these proceedings further. While Verizon is entitled to belatedly raise this issue, it should be addressed in the same manner and time as other issues are addressed in this docket.

WHEREFORE, Citizens request the commission to deny Verizon's motion.

Respectfully submitted,

s/ Charlie Beck
Charlie Beck
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of Citizens' Response
In Opposition to Verizon's Motion to Bifurcate Proceeding and Suspend
Discovery has been furnished by electronic and U.S. Mail on this 11th day of
March, 2009, to the following:

Adam Teitzman
Theresa Tan
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Verizon Florida Inc
Dulaney L. O'Roark III
6 Concourse Parkway, Suite 600
Atlanta, GA 30328

Michael B. Twomey
Post Office Box 5256
Tallahassee, FL 32314-5256

Verizon Florida Inc.
David Christian
106 e. College Avenue Suite 710
Tallahassee, FL 32301-7721

Cecilia Bradley
Office of Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050

s/ Charlie Beck
Charlie Beck
Deputy Public Counsel