

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 29, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Tan, Teitzman)
Division of Regulatory Compliance (Curry, Kennedy, Williams)

RE: Docket No. 080278-TL – 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.

Handwritten initials: ATW, RK, CW, and others.

Docket No. 080234-TP – Implementation of Florida Lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

AGENDA: 11/10/09 – Regular Agenda – Parties May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080278.RCM.DOC

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Case Background

On May 15, 2008, Attorney General Bill McCollum (Attorney General), the Citizens for the State of Florida (Citizens), and AARP, (collectively, the Petitioners) filed a joint petition requesting that the Florida Public Service Commission (Commission) issue a Show Cause Order against Verizon Florida LLC (Verizon) requiring Verizon to show cause why it should not be penalized approximately \$6.5 million for the company's apparent violation of Rule 25-4.070,

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F.A.C., Customer Trouble Reports. The Petitioners allege that the rate at which Verizon meets the performance standard for Rule 25-4.070, F.A.C., has declined in recent years and was below the required 95% compliance standard. The Petitioners allege that Verizon willfully violated the Commission's telephone service quality rule, Rule 25-4.070, F.A.C., two hundred and sixty-two (262) times in 2007. On June 9, 2008, Verizon filed a response and answer to the Joint Petition. Verizon requested that the Commission deny the Petitioners request to issue a Show Cause Order.

By Order No. PSC-09-0015-SC-TL, issued January 5, 2009, the Commission ordered Verizon to show cause in writing why it should not be penalized in the amount of \$2.62 million, for a total of two hundred sixty-two apparent violations of Rule 25-4.070, F.A.C., during 2007. The Commission further ordered Verizon to show cause why it should not be penalized in the amount of \$1.94 million, for a total of one hundred ninety-four apparent violations of Rule 25-4.070, F.A.C., during 2008.

On January 26, 2009, Verizon filed a Request for an Administrative Hearing pursuant to Rule 28-106.2015(5), F.A.C. An Order Establishing Procedure, Order No. PSC-09-0107-PCO-TL, was issued on February 23, 2009. On March 4, 2009, Verizon filed a Motion to Modify Order Establishing Procedure, Bifurcate Proceeding, and Suspend Discovery Not Related to Jurisdictional Issues. On April 6, 2009, the Prehearing Officer held a meeting to discuss scheduling matters in this Docket. Verizon's Motion to Bifurcate Proceeding and Suspend Discovery not Related to Jurisdictional Issues was denied by the Prehearing Officer by Order No. PSC-09-0244-PCO-TL, issued April 22, 2009. The Order also modified Order No. PSC-09-0107-PCO-TL reflecting changes to the controlling dates for this case.

Several meetings were held between the Petitioners, Verizon, and Commission staff to discuss settlement negotiations and other aspects of this docket. In a meeting on October 7, 2009, the Petitioners agreed in principle to a settlement presented by Verizon that staff can support. On October 10, 2009, the Petitioners and Verizon filed a joint motion for postponement of the prehearing conference scheduled for October 15, 2009. On October 28, 2009, Verizon and the Petitioners filed a joint motion seeking Commission approval of a settlement agreement. The settlement agreement, jointly entered by Verizon and the Petitioners, has been offered to resolve the issues in Docket No. 080278-TL. Also, the settlement agreement proposed resolutions for Issues 1 and 3¹ in Docket No. 080234-TP, as discussed below.

Docket No. 080234-TP

On April 24, 2008, Docket No. 080234-TP, In Re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment

¹ Issue 1- Under applicable law, may the Commission require Florida ETCs that charge federal End User Common Line charges, or equivalent federal charges, to apply the lifeline discount to bundled service offerings which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

Issue 3 - Should the Commission require each Florida ETC that charges federal End User Common Line charges, or equivalent federal charges, to apply the lifeline discount to its bundled services which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

requirements on customers, was established to address the application of the Lifeline discount to bundled service packages. Verizon's current policy is to deny the Lifeline discount to applicants who subscribe to bundled service packages. However, by Order No. PSC-08-0417-PAA-TP, issued June 23, 2008, the Commission ordered that pursuant to 47 C.F.R. § 54.403(b) and consistent with Chapter 364, Florida Statutes, eligible telecommunications carriers (ETC) are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic services. On July 14, 2008, Verizon protested the Commission's proposed agency action order and requested a hearing. On September 15, 2008, Order No. PSC-08-0594-PCO-TP, Order Establishing Procedure was issued and a list of issues for the docket were identified. A hearing was conducted on March 2, 2009.

This recommendation addresses Verizon and the Petitioners' settlement agreement offer to resolve Verizon's apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, during 2007 and 2008 and to provide Lifeline discounts to all eligible customers who request the discount and receive regulated telecommunications service packages. The Commission is vested with jurisdiction of these matters pursuant to 47 U.S.C. § 254(f), and Sections 364.01(1) and (4), 364.025(1), 364.03, 364.10, 364.17, 364.18, and 364.285, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission accept the provisions of the joint Settlement Agreement between Verizon Florida LLC, the Attorney General Bill McCollum, the Citizens for the State of Florida, and AARP, whereby Verizon Florida LLC will issue credits totaling \$1.75 million to residential local exchange telecommunications services customers, will contribute \$250,000 to the General Revenue Fund, and will provide Lifeline discounts to all eligible customers who request the discount and receive regulated telecommunications service packages, to resolve the apparent violations of Rule 25-4.070, F.A.C., that occurred during 2007 and the first three quarters of 2008, and Issues 1 and 3 in Docket 080234-TP?

Recommendation: Yes, the Commission should accept the provisions of the joint Settlement Agreement between Verizon Florida LLC, the Attorney General Bill McCollum, the Citizens for the State of Florida, and AARP, whereby Verizon Florida LLC will issue credits totaling \$1.75 million to residential local exchange telecommunications services customers, will contribute \$250,000 to the General Revenue Fund, and will provide Lifeline discounts to all eligible customers who request the discount and receive regulated telecommunications service packages, to resolve the apparent violations of Rule 25-4.070, F.A.C., that occurred during 2007 and the first three quarters of 2008, and Issues 1 and 3 in Docket 080234-TP. **(Curry, Kennedy, Williams, Tan)**

Staff Analysis: During 2007 and 2008 Rule 25-4.070(3) (a) and (b), F.A.C., Customer Trouble Reports, stated:

(a) Service Interruption: Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange that contains at least 50,000 lines and will be measured on a monthly basis. For exchanges that contain less than 50,000 lines, the results can be aggregated on a quarterly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.

(b) Service Affecting: Clearing of service affecting trouble reports shall be scheduled to insure at least 95 percent of such reports are cleared within 72 hours of the report in each exchange which contains at least 50,000 lines and will be measured on a monthly basis. For exchanges which contain less than 50,000 lines, the results can be aggregated on a quarterly basis.

On May 15, 2008, the Petitioners filed a joint petition requesting that the Commission issue a Show Cause Order against Verizon requiring the company to show cause why it should not be penalized for the its apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, during 2007. Staff also believes that for the first nine months (January through September) of calendar year 2008, Verizon failed to comply with the provisions of Rule 25-4.070, F.A.C.

By Order No. PSC-09-0015-SC-TL, issued January 5, 2009, the Commission ordered Verizon to show cause why it should not be penalized. On January 26, 2009, Verizon submitted

Date: October 29, 2009

a request for an Administrative Hearing. A hearing date was set; however, prior to hearing, in Docket No. 080278-TL, Verizon and the Petitioners reached a settlement agreement.

To resolve the issues in Docket No. 080278-TL, on October 28, 2009, Verizon submitted a settlement agreement (Attachment A). Verizon, the Office of Public Counsel, the Attorney General, and AARP have stipulated to a settlement whereby Verizon will issue \$1.75 million in credits to its residential local exchange telecommunications service customers and make a contribution in the amount of \$250,000 to the General Revenue Fund, with no admission of liability or wrongdoing by Verizon. Verizon will provide the customer credits within 90 days after the settlement agreement is approved by the Commission. The credits will be divided evenly among customers who receive residential local exchange telecommunications service as of the date the settlement agreement takes effect. Verizon will provide the Commission with reports concerning the issuance of the customer credits in accordance with Rule 25-4.114, F.A.C., Refunds.

Verizon will also submit a payment in the amount of \$250,000 to the Commission within 90 days after the issuance of the Final Order. Upon receipt of the payment, the Commission will forward the payment to the Department of Financial Services for deposit into the General Revenue Fund.

In addition, as part of this Settlement Agreement, Verizon offers resolution for Issues 1 and 3 in Docket No. 080234-TP, In Re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers. Going forward, Verizon will provide the Lifeline discount to all eligible customers who request the discount and receive regulated telecommunications service packages, including packages with voice mail. Verizon will not offer the Lifeline discount for service packages or bundles that include unregulated services such as high speed internet access or cable television. Verizon will begin offering the discount within 90 days after the Settlement Agreement becomes effective.

Staff believes the Settlement Agreement resolves all matters in the current docket and is in the public interest. Therefore, staff recommends that the Commission should accept the provisions of the joint Settlement Agreement between Verizon Florida LLC, the Attorney General Bill McCollum, the Citizens for the State of Florida, and AARP, whereby Verizon Florida LLC will issue credits totaling \$1.75 million to residential local exchange telecommunications services customers, will contribute \$250,000 to the General Revenue Fund, and will provide Lifeline discounts to all eligible customers who request the discount and receive regulated telecommunications service packages, to resolve the apparent violations of Rule 25-4.070, F.A.C., that occurred during 2007 and the first three quarters of 2008, and Issues 1 and 3 in Docket 080234-TP.

Issue 2: Should these dockets be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1 Verizon will issue service credits within 90 days after the issuance of the Final Order in the amount of \$1.75 million to its residential local exchange telecommunications service customers. Verizon shall also provide a final report no later than May 15, 2010, verifying that the company has issued the customer credits. Verizon will also submit a payment in the amount of \$250,000 to the Commission within 90 days after the settlement becomes effective. Upon receipt of the payment, the Commission will forward the payment to the Department of Financial Services for deposit into the General Revenue Fund. If Verizon fails to demonstrate that it has complied with the provisions of the Commission's Order, Docket No. 080278-TL shall remain open pending further action. This Docket No. 080278-TL shall be closed administratively upon the submission of Verizon's final report verifying that the company issued the customer credits and upon receipt of the \$250,000 payment.

Verizon will begin providing the Lifeline discounts to all eligible customers who request the discount and receive regulated telecommunications service packages within 90 days after the settlement becomes effective, and Issues 1 and 3 in Docket No. 080234-TP will be dismissed without prejudice. Docket No. 080234-TP shall remain open pending further action. **(Tan)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.

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., service availability, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP)	Docket No. 080278-TL
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In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers)	Docket No. 080234-TP
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SETTLEMENT AGREEMENT

Pursuant to Section 120.57(4), Florida Statutes, Verizon Florida LLC (“Verizon”), the Office of the Attorney General, the Office of Public Counsel (“OPC”) and AARP (collectively, the “Parties”) have entered into this Settlement Agreement to effect an informal disposition and complete a binding resolution of any and all matters and issues that were or might have been addressed by the Florida Public Service Commission (“Commission”) in Docket No. 080278-TL and in Issues 1 and 3 of Docket No. 080234-TP. This Settlement Agreement avoids the time, expense and uncertainty associated with adversarial litigation, in keeping with the Commission’s longstanding policy and practice of encouraging parties in contested proceedings to settle issues whenever possible. The terms of this Settlement Agreement are as follows:

1. In lieu of any fine or other penalty that the Commission might otherwise assess in Docket No. 080278, Verizon will issue \$1.75 million in credits to its residential local exchange telecommunications service customers and make a contribution of \$250,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing by Verizon.

2. Verizon will provide the service credits described in Paragraph 1 within 90 days after this Settlement Agreement takes effect, dividing the credits evenly among customers who receive residential local exchange telecommunications service as of the date the Settlement Agreement takes effect. Verizon will provide reports concerning the payment of these credits in accordance with Rule 25-4.114, Florida Administrative Code.

3. This Settlement Agreement will resolve all matters that were or might have been addressed by the Commission in Docket No. 080278-TL related to Rule 25-4.070, Florida Administrative Code, and resolves any claims concerning Verizon's alleged violation of Rule 25-4.070, Florida Administrative Code, taking place at any time up to and including the date the Settlement Agreement takes effect.

4. To resolve Issues 1 and 3 in Docket No. 080234-TP, Verizon will provide the Lifeline discount to all eligible customers who request the discount going forward (after Verizon begins offering it) and receive regulated telecommunications service packages (including packages with long distance and voice mail) except for service packages or bundles that include unregulated services such as VoIP, high speed Internet access or cable television. Verizon will begin offering the discount described in the preceding sentence within 90 days after this Settlement Agreement takes effect. As a result of this resolution, Issues 1 and 3 will be dismissed without prejudice.

5. This Settlement Agreement will take effect the day after it is approved by the Commission. The Parties understand that the Commission's decision will be reflected in a final order.

6. No Party to this Settlement Agreement will request, support or seek to impose a change in the application of any provision of this Settlement Agreement. Provided the Commission approves the Settlement Agreement, each Party waives its right to request further administrative or judicial proceedings concerning any an all matters which were or might have been addressed by the Commission in resolving Docket No. 080278-TL, except proceedings to enforce this Settlement Agreement. This waiver of the right to further administrative or judicial proceedings shall include, but not be limited to: a petition for a formal proceeding, in the form provided by Rule 28-106.201 or 28-106.2015, Florida Administrative Code; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, Florida Administrative Code; or a notice of appeal to initiate judicial review by the Florida Supreme Court pursuant to Rule 9.110, Florida Rules of Appellate Procedure, in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

7. This Settlement Agreement is contingent on the Commission's accepting the entire Settlement Agreement, which acceptance shall include the Commission's explicit recognition that its order approving this Settlement Agreement (i) resolves all matters that were or might have been addressed in Docket No. 080278-TL related to Rule 25-4.070, Florida Administrative Code, and resolves any claims concerning Verizon's alleged violation of Rule 25-4.070, Florida Administrative Code, taking place at any time up to and including the date the Settlement Agreement takes effect; and (ii) dismisses Issues 1 and 3 in Docket No. 080234-TP without prejudice.

8. This Settlement Agreement resolves all matters in Docket No. 080278-TL and Issues 1 and 3 in Docket No. 080234-TP in accordance with Section 120.57(4),

Florida Statutes. Docket No. 080278-TL will be closed effective on the date the Commission order approving this Settlement Agreement is final. The submission of this Settlement Agreement by the parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved without modification by an order not subject to further proceedings or judicial review, then the settlement proposal is rejected and the Settlement Agreement shall be considered null and void and of no further force or effect.

9. If the Commission does not accept the Settlement Agreement in its entirety pursuant to its terms, (i) this document shall not be admissible in any hearing on the matters established by either of these Dockets, or in any other docket or forum; and (ii) no Party to this Settlement Agreement waives any position on any issue that it could have otherwise asserted in any docket in which it is a party, as if this document had never been developed and written. This Settlement Agreement shall not constitute an admission of liability.

10. This Settlement Agreement is being executed in duplicate originals, with an original to be filed by the Parties in Docket No. 080278-TL and by Verizon and OPC in Docket No. 080234-TP.

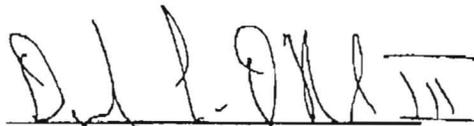
11. This Settlement Agreement may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

12. This Settlement Agreement constitutes a single, integrated written contract expressing the entire agreement between the Parties and superseding all other agreements, representations and understandings on the subject matter hereof. There is

no other agreement, oral or written, expressed or implied, between the Parties with respect to the subject matter hereof, except this Settlement Agreement.

The Parties evidence their acceptance and agreement with the provisions of this Settlement Agreement by their signatures:

By:



Dulaney L. O'Roark III
Verizon Florida LLC
P. O. Box 440, MC FLTC0007
Tampa, Florida 33601-0110
Email: de.oroark@one.verizon.com

By:

Cecilia Bradley
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By:

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By:

Michael B. Twomey
AARP
P. O. Box 5256
Tallahassee, FL 32314-5256
miketwomey@talstar.com

no other agreement, oral or written, expressed or implied, between the Parties with respect to the subject matter hereof, except this Settlement Agreement.

The Parties evidence their acceptance and agreement with the provisions of this Settlement Agreement by their signatures:

By:

Dulaney L. O'Roark III
Verizon Florida LLC
P. O. Box 110, MC FLTC0007
Tampa, Florida 33601-0110
Email: de.oroark@one.verizon.com

By:



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By:

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By:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on October 28, 2009 to:

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s/ Dulaney L. O’Roark III