

STATE OF FLORIDA

Commissioners:
J. TERRY DEASON, CHAIRMAN
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ



DIVISION OF APPEALS
DAVID SMITH
DIRECTOR
(850) 413-6245

Public Service Commission

October 17, 2000

Mr. Carroll Webb
Joint Administrative Procedures
Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

RE: PSC Docket No. 001556-TL

Dear Mr. Webb:

The Commission has received a Petition for Declaratory Statement from Verizon Florida Inc. on October 13, 2000. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Weekly on Friday, October 27, 2000.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore
Associate General Counsel

cc: Division of Records and Reporting
Enclosure

DOCUMENT NUMBER-DATE

13171 OCT 17 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement that)
Verizon Florida Inc. Must Pay Regulatory)
Assessment Fees Only on Its Own Revenues)
_____)

Docket No. 001556-TL
Filed: October 13, 2000

VERIZON FLORIDA INC.'S PETITION FOR DECLARATORY STATEMENT

Pursuant to Florida Administrative Code chapter 28-105, Verizon Florida Inc. (Verizon) asks the Commission for a declaratory ruling that Verizon is required to pay regulatory assessment fees only on its own intrastate operating revenues.

The legal provisions upon which the declaratory ruling is sought are Florida Statutes, section 364.336 ("Regulatory Assessment Fees") and Florida Administrative Code Rule 25-4.0161 ("Regulatory Assessment Fees; Telecommunications Companies").

Section 364.336 of the Florida Statutes states, in relevant part, that "each telecommunications company licensed or operating under this chapter, for any part of the preceding 6-month period, shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may not exceed 0.235 percent annually of its gross operating revenues derived from intrastate business."

Commission rule 25-4.0161, which implements section 364.336, provides, in relevant part, that "each company shall pay a regulatory assessment fee in the amount of 0.0015 of its gross operating revenues derived from intrastate business."

Under section 364.336 and rule 25-4.0161, telecommunications companies are required to pay regulatory assessment fees only on revenues they earn in this State. However, Verizon has been repeatedly advised by Commission Staff (first, the Division of Auditing and Financial analysis and later, the Division of Regulatory Oversight) that it

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must pay such fees not just on its own revenues, but on the revenues of an affiliate. Specifically, Verizon has been compelled to include revenues earned by Verizon Directories Corp. (formerly, GTE Directories Corporation) in the base for calculating Verizon's regulatory assessment fee.

There is no lawful basis for this imputation of directories revenues to Verizon. Under the Florida Statutes and the Commission's Rules, Verizon is required to pay a regulatory assessment fee only on its own "gross operating revenues derived from intrastate business." This language means just what it says. Telecommunications companies must pay a fee based on the revenue they earn in the State.

Under Verizon's existing contract with Verizon Directories Corp., Verizon earns revenue from providing certain services (like billing and collections) to Verizon Directories Corp. Verizon does not receive or book any revenues other than those it earns from the services it provides (whether to affiliates or non-affiliates). Yet it has been directed to calculate the regulatory assessment fee as if it were receiving directory advertising revenues that are earned and booked by the Directories company.

Treatment of directory advertising revenues for calculation of the regulatory assessment fee has been a point of contention between Verizon and Staff since at least 1996.¹ Based on communications between Staff and the Company over that time, Verizon believes that Staff bases its position on Florida Statutes 364.037 and Commission Rule 25-4.0405.

¹ See, e.g., Letter from Kimberly Caswell, GTE Florida Incorporated, to E. Sewell, Chief, Bureau of Fiscal Services, July 25, 1996, in which GTE stated that it did not intend to pay regulatory assessment fees on foreign and national directory revenues that GTE neither received nor booked. Staff disagreed with GTE's position and directed GTE to impute these directories revenues in calculating the fees due.

Section 364.037 directs the Commission to "consider revenues derived from advertising in telephone directories when establishing rates for telecommunications services." Commission rule 25-4.0405 implements the statute. By its terms, it "govern[s] the ratemaking treatment for telephone directory advertising revenues and expenses of rate-of-return regulated local exchange telecommunications companies." Rule 25-4.0405(1).

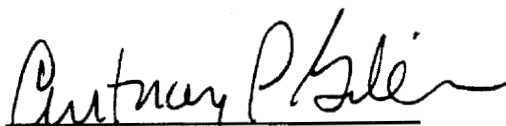
These provisions do not apply to Verizon's situation. Verizon is not a rate-of-return regulated carrier, having chosen price cap regulation effective January 1996. Under the price regulation scheme set forth in Florida Statutes section 364.051, price cap carriers "shall be exempt from rate base, rate of return regulation and the requirements of ss.... 364.037" and a number of other sections. Thus, by the express terms of the statute, Verizon cannot be subjected to the directories revenue imputation requirements of sections 364.037 or Commission rule 25-4.0405. Yet every time Verizon is compelled to pay fees on imputed directories revenues, the Commission is effectively making a ratemaking adjustment for purposes of calculating a fee. Aside from the fact that sections 364.33 and rule 25-4.0161 do not require any such revenue imputation, this practice is impermissible because the ratemaking provisions do not apply to Verizon.

The misapplication of relevant law has caused Verizon to pay hundreds of thousands of dollars extra in regulatory fees on revenues that it does not earn. Imputing directories revenues to Verizon for the year 2000, for example, will result in an overpayment of approximately \$285,000.

Aside from violating the law, this treatment discriminates against Verizon. None of the alternative local exchange companies (ALECs) that compete with Verizon must impute revenue from any of their affiliates when calculating the regulatory assessment fees they owe. The Commission's current practice of calculating Verizon's assessment fee thus imposes an artificial regulatory disadvantage on Verizon that is unfair and inimical to the efficient operation of the marketplace.

Verizon asks the Commission to declare that section 364.336 and rule 25-4.0161 mean exactly what they say—that Verizon must pay regulatory assessment fees only on the revenues it receives from its intrastate business here. Verizon also asks the Commission to acknowledge that it may deduct from its next regulatory assessment fee (in January 2001) the amount it overpaid in the July 2000 payment. At that time, Verizon notified the Commission that it was paying fees on imputed directories revenues only under protest, and that it planned to deduct the unjustified amount from its next payment. (A copy of Verizon's cover letter accompanying the July 31 payment is attached.) Verizon paid the full amount requested by accounting Staff only to avoid potential disputes about penalties and interest.

Respectfully submitted on October 13, 2000.

By: 
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Tampa, FL 33601-0110
Telephone: (813) 483-2617

Attorney for Verizon Florida Inc.



Beverly Y. Menard
Regulatory & Governmental Affairs
Assistant Vice President - Florida/Georgia

GTE Service Corporation

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813-483-2526
813-223-4888 (Facsimile)

Bureau Fiscal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

July 31, 2000

Subject: GTE Florida Incorporated's First Semiannual Regulatory Assessment Fee for 2000 for Company Codes TL710 (Local Exchange Company) and TF859 (Pay Telephone Service Provider)

Dear Sir or Madam:

You will find enclosed GTE Florida Incorporated's (GTEFL's) first assessment fee payment and Regulatory Assessment Fee Return for 2000 for company codes TL710 and TF859. The TL710 (LEC) payment was calculated on the basis of GTEFL's revenues, as well as revenues booked and kept by GTE Directories Corporation (Directories) in Florida. GTEFL included Directories revenues in the fee basis only because it understands that the Bureau of Fiscal Services has required such imputation in the past. However, GTEFL vigorously disagrees with the practice of imputing another company's revenue to GTEFL for purposes of calculating the assessment. Neither the Florida Statutes nor the Commission's Rules permit calculation of the regulatory assessment fee on any basis other than the revenues GTEFL earns in Florida.

GTEFL's counsel has sought the Commission Legal Staff's opinion as to the proper application of the regulatory assessment fee under Florida Statutes section 364.336 and Commission Rule 25-4.0161. I understand that the Legal Staff was not able to issue an opinion on this matter before GTEFL's fee was due. Thus, GTEFL reserves the right to reduce its next regulatory assessment fee payment by the amount associated with the imputed Directories revenues in this payment.

Please contact me if you have any questions.

Sincerely,

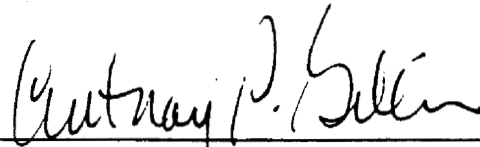
Beverly Y. Menard
Beverly Y. Menard

BYM:lrh
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Verizon Florida Inc.'s Petition for Declaratory Statement was sent via overnight delivery on October 12, 2000 to:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



for Kimberly Caswell