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May 30, 2008

BY HAND DELIVERY

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

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Re: Docket Nos. 070691-TP and 080036-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast") are an original and 15 copies of the direct testimony of Beth Choroser.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosure
cc: Parties of Record

- Handwritten list of initials: DMP, CDAE, JBY, JCF, JCL, JPC, JCA, JCR, JCA, JEC, OTH

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail (*) and/or U. S. Mail this 30th day of May, 2008 upon the following:

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION
Docket Nos. 070691-TP and 080036-TP
DIRECT TESTIMONY OF BETH CHOROSER
May 30, 2008

I. INTRODUCTION AND BACKGROUND

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Beth Choroser and my business address is 1500 Market Street, Philadelphia, PA 19102.

Q. WHO IS YOUR EMPLOYER AND WHAT IS YOUR PROFESSIONAL CAPACTIY?

A. I am employed by Comcast Cable Communications, LLC as the senior director of regulatory compliance. In that role, I have responsibility for a wide variety of regulatory matters related to Comcast’s voice telephone service business, which include compliance at both the state and federal levels.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am appearing on behalf of Comcast Phone of Florida, LLC, d/b/a/ Comcast Digital Phone, the complainant in this case. Comcast Phone of Florida is a Delaware limited liability company registered with the Florida Secretary of State, and is certified by this Commission to provide intrastate telecommunications service in Florida pursuant to Interexchange Telecommunications Certificate of Public Convenience and Necessity No.

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1 7834 and as a Competitive Local Exchange Carrier (“CLEC”) pursuant to
2 Certificate of Public Convenience and Necessity No. 4404.

3 **Q. WHAT IS THE RELATIONSHIP BETWEEN YOUR EMPLOYER,**
4 **COMCAST CABLE COMMUNICATIONS, LLC, AND COMCAST**
5 **PHONE OF FLORIDA, LLC, D/B/A COMCAST DIGITAL VOICE?**

6 A. Comcast Phone of Florida, LLC, d/b/a/ Comcast Digital Phone (“Comcast
7 Phone of Florida”) is an indirect wholly owned subsidiary of Comcast Cable
8 Communications, LLC (“Comcast”).

9 **Q. WHAT IS YOUR EDUCATIONAL AND WORK BACKGROUND?**

10 A. I received a Bachelor of Arts Degree from Pennsylvania State University and a
11 Master of Business Administration from Syracuse University. I have worked
12 in various capacities in both the communications industry and the electric
13 utility industry. My experience includes work in the areas of rates, billing,
14 taxation, regulatory reporting, tariffs, interconnection, numbering, and overall
15 regulatory compliance. From 1985 to 1988, I worked for New England
16 Electric System as a rate analyst and later as staff assistant to the Chief
17 Operating Officer. In these roles, I performed cost-of-service studies, fuel cost
18 studies, and testified before the state commission on fuel cost charges. I also
19 oversaw budgeting for the Chief Operating Officer. From 1997 to 1999, I was
20 with ATX Telecommunications. Initially, I had responsibility for billing
21 specifications and revenue assurance. Subsequently, I managed the end-user
22 taxation and regulatory functions. I have been with Comcast since 2000.
23 From 2000 to 2003, I was the manager of Regulatory Compliance for the
24 company’s start-up commercial voice business, Comcast Business

1 Communications, LLC. I was responsible for tariffs, billing compliance,
2 interconnection, regulatory reporting, end user taxation, and surcharging.
3 From 2003 until the present, I have held positions of increasing responsibility
4 in the company's residential voice business and am currently a Senior
5 Director.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED ON BEHALF OF COMCAST?**

7 A. Yes. I have testified on behalf of Comcast Phone of Arizona, LLC in its
8 certification approval hearing before the Arizona Corporation Commission. I
9 have also testified on behalf of Comcast IP Phone, LLC before the State of
10 Missouri Public Service Commission.

11 **II. PURPOSE AND SUMMARY OF TESTIMONY**

12 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY AND**
13 **PROVIDE A SUMMARY OF ITS CONCLUSIONS.**

14 A. My testimony is offered in support of Comcast Phone of Florida's claim that
15 Verizon is engaging in retention marketing efforts in violation of Florida law.
16 More specifically, my testimony is intended to explain: (1) how Comcast
17 offers competitive services to consumers in Florida; (2) how a customer's
18 telephone number is transferred from Verizon to Comcast following a
19 consumer decision to switch providers; (3) how Verizon engages in retention
20 marketing by improperly using customer information Comcast provides to
21 Verizon to enable the number porting process to alert its retail division that the
22 customer has decided to switch to Comcast's service, so that the retail division
23 can attempt to win the customer back to Verizon; (4) why Verizon's illegal
24 retention marketing activities are anticompetitive and cause irreparable harm

1 to Florida consumers and the providers, like Comcast, who serve them; and
2 (5) why such marketing violates Florida Statutes Sections 364.01(4),
3 364.3381, and 364.10, and is in contravention of Florida Administrative Code
4 Rule 25-4.082.

5 **III. DESCRIPTION OF COMCAST PHONE OF FLORIDA**

6 **Q. PLEASE PROVIDE BACKGROUND INFORMATION ABOUT**
7 **COMCAST, INCLUDING ITS NETWORK AND THE SERVICES IT**
8 **OFFERS IN FLORIDA.**

9 A. Comcast is a leading provider of cable, entertainment, and communications
10 products and services in the United States. In the past decade, encouraged by
11 regulatory policies promoting the deployment of broadband services through a
12 deregulatory environment, Comcast has invested billions of dollars in
13 upgrading its cable television facilities to create a national network through
14 which it also can offer retail voice telephone services and high-speed Internet
15 access as well as advanced video services. This network currently serves
16 millions of customers nationwide.

17 Comcast currently provides Voice over Internet Protocol (“VoIP”)
18 services to the public in competition with various incumbent local exchange
19 carriers (“ILECs”) and other providers, including Verizon. In Florida,
20 Comcast-branded retail VoIP services are marketed to the public under the
21 trade name “Comcast Digital Voice” (“CDV”) by Comcast IP Phone, LLC,
22 Comcast IP Phone II, LLC, and Comcast IP Phone III, LLC (collectively,
23 “Comcast’s retail VoIP providers”), all of which are wholly-owned
24 subsidiaries of Comcast.

1 Comcast's retail VoIP services provided by Comcast's retail VoIP
2 providers are not "telecommunications services" under Florida law, and so are
3 not subject to state telecommunications regulation. However, Comcast,
4 through its distinct wholly-owned subsidiary Comcast Phone of Florida, enters
5 into interconnection agreements with telecommunications carriers for the
6 exchange of traffic and provides wholesale telecommunications services to the
7 Comcast retail VoIP providers. The services Comcast Phone of Florida
8 provides to the Comcast retail VoIP providers include the provision of the
9 underlying transport, interconnection, access to 911 networks, and numbering
10 resources used by our customers. Thus, Comcast's retail VoIP providers, who
11 serve end-users directly, act in partnership with Comcast Phone of Florida to
12 obtain public switched telephone network ("PSTN") connectivity and to
13 obtain other services on a wholesale basis.

14 **Q. PLEASE DESCRIBE THE MARKET FOR COMPETITIVE LOCAL**
15 **EXCHANGE TELEPHONE SERVICES IN FLORIDA TODAY.**

16
17 A. Comcast is a new entrant into what remains largely a monopoly market for
18 voice services in Florida. According to the March 2008 FCC Wireline
19 Competition Bureau report, *Local Telephone Competition: Status as of June*
20 *30, 2007*, Table 7 reports that as of June 30, 2007, in Florida there were
21 1,295,973 end-user switched access lines (13%) served by CLECs as
22 compared to 8,707,976 lines (87%) served by ILECs. This same report in
23 Table 11 shows us that only 17% of those CLEC access lines, a mere 220,045,
24 are CLEC-owned. While these access line figures may not completely

1 account for some VoIP service providers, they do nevertheless paint a picture
2 of a market that is still dominated by the ILECs. Moreover, they reflect that
3 for what CLEC competition there is, there is an extreme dearth of true
4 facilities-based competition.

5 Today, Comcast competes primarily for residential telephone service
6 customers throughout Florida wherever its facilities based network has been
7 deployed. Specifically, with respect to Verizon's local service territory,
8 Comcast offers its CDV service in Sarasota and Manatee counties. While
9 Comcast has made some entry into the market within the Verizon incumbent
10 local service area, Verizon still retains the vast majority of the local residential
11 market.

12 **IV. DESCRIPTION OF HOW NUMBER PORTING WORKS**

13 **Q. WHEN A CUSTOMER WANTS TO CHANGE PROVIDERS, HOW IS**
14 **THE CUSTOMER'S NUMBER TRANSFERED FROM THE OLD**
15 **PROVIDER TO THE NEW PROVIDER?**

16 A. In most cases, when customers choose to receive service from Comcast, those
17 customers want to keep their existing telephone number. Therefore, to
18 compete in the marketplace, Comcast must interact with its competitors to
19 port each customer's number from the old service provider to Comcast. The
20 customer's request to port a telephone number to Comcast's voice telephone
21 service is handled by Comcast Phone of Florida pursuant to industry standard
22 procedures.

23 Specifically, with respect to Verizon customers that choose Comcast
24 and who want to retain an existing telephone number, Comcast first confirms

1 the customer's choice of Comcast by using an outside vendor to conduct a
2 third-party verification ("TPV") or by obtaining a letter of authorization
3 ("LOA") that the customer wishes to change providers. This way we have
4 documented evidence of the customer's selection of Comcast and the decision
5 to terminate service with Verizon.

6 After the order has been confirmed, Comcast Phone of Florida submits
7 a Local Service Request ("LSR") through Verizon's electronic interface,
8 requesting that Verizon port the customer's North American Numbering Plan
9 ("NANP") telephone number to Comcast Phone of Florida. The current LSR
10 requires that Comcast Phone of Florida identify itself, give its order a unique
11 Purchase Order Number, designate the type of transaction desired, and
12 indicate the date for the termination of Verizon's service to the customer. In
13 addition, the LSR contains information about the customer, including the
14 customer's name, location, Verizon account number, and desired treatment for
15 the customer's telephone number listing.

16 After receiving a valid LSR to out-port a customer number, typically
17 referred to as a "Port Out," Verizon creates an internal order in its Service
18 Order Processor ("SOP") system which coordinates communication with
19 Comcast Phone of Florida and ensures that the proper orders are issued to
20 accomplish the work processes needed to complete the number transfer.
21 Typically within 24 hours of receiving the LSR, Verizon transmits to Comcast
22 Phone of Florida a Firm Order Confirmation ("FOC") providing concurrence
23 of the due date for the execution of the number port. Upon receipt of the FOC

1 issued by Verizon, Comcast Phone of Florida submits a pending subscription
2 record to the Number Portability Administration Center (“NPAC”) database.
3 This last step is necessary so that carriers will route calls for that customer’s
4 telephone number to Comcast’s switch and no longer to Verizon.

5 **Q. AS PART OF THIS PORTING PROCESS, DOES VERIZON TAKE**
6 **AFFIRMATIVE STEPS TO FACILITATE THE PORT?**

7 A. Yes. Verizon takes several affirmative steps in order to execute a Comcast
8 port request. First, Verizon schedules a date for the cut-over, which triggers
9 the ultimate removal of the implicated number from the Verizon switch
10 serving the customer and the disconnection of the pair of wires serving the
11 customer from the frame in the central office. In addition, Verizon delivers
12 information to the E911 database to unlock the customer’s record so that it can
13 be modified by Comcast Phone of Florida, implements any changes to the
14 customer’s directory listing, and, after service is disconnected, informs its
15 billing systems to cease billing the customer and generate a final bill.

16 Verizon also establishes a “conditional ten-digit trigger” in the Verizon
17 switch serving the customer so that incoming calls to the customer will be
18 correctly routed on the port due date during the limited period of time after
19 Comcast has physically completed the installation of the customer’s service
20 but prior to Verizon fully disconnecting the customer’s number translations
21 from its own switch.

22 Third, Verizon confirms the pending subscription record previously
23 established in the NPAC database by Comcast Phone of Florida.

1 On the due date, Comcast Phone of Florida transmits an appropriate
2 instruction to NPAC to activate the port, and NPAC broadcasts the new
3 routing instructions for the ported number to all subtending providers. At this
4 point, as long as either (a) a 10-digit trigger is in place or (b) the old service
5 provider has disconnected the customer's old service, calls to the customer's
6 new service provider will properly route to the customer through the new
7 provider.

8 **V. VERIZON'S RETENTION MARKETING ACTIVITIES**

9 **Q. WHAT PRECISELY ARE THE MARKETING PRACTICES**
10 **COMCAST IS CHALLENGING HERE?**

11 A. Verizon is using information obtained from customer porting requests to target
12 those customers before Verizon has completed its duty to port the customer's
13 telephone number to Comcast. These are the practices Comcast is
14 challenging. In particular, since the summer of 2007 and continuing to this
15 day, Verizon is utilizing Comcast's business information and contacting
16 Comcast's customers by phone and by overnight mail during the brief window
17 of time after Comcast notifies Verizon of the customer's decision to port the
18 number and while Verizon is supposed to be completing the port. Verizon
19 does not contact these customers by chance, or based on information it has
20 independently obtained. Indeed, Verizon unashamedly admits that it is using
21 the customer information Comcast has provided to Verizon to initiate the
22 number port in order to persuade these customers to cancel their Comcast
23 service before it has even started and to change back to Verizon. Verizon

1 offers these customers inducements to remain with Verizon, including cash
2 incentives, retail merchandise, and gift certificate cards. It is *only* because of
3 Comcast supplying customer information to Verizon that Verizon engages in
4 the retention marketing directed to these specific customers.

5 **Q. DOES COMCAST CHALLENGE VERIZON'S MARKETING**
6 **PRACTICES IN OTHER RESPECTS?**

7 A. No. Under Florida law, Verizon is free to attempt to retain customers through
8 any general marketing to the public at large and, after Verizon has completed a
9 port request and terminated service, Verizon may specifically target those
10 customers that have exercised their right to choose an alternative provider.
11 Comcast believes in full and fair competition and believes in its ability to
12 retain customers as a result of its superior service offerings in the face of such
13 general marketing practices or post-termination marketing after the customer
14 is receiving Comcast's service. But the fact that Verizon believes that it is
15 entitled to use Comcast business information during that brief window of time
16 when Verizon controls the implementation of the customer's decision to
17 change carriers is an inappropriate and unfair short-cut that is contrary to how
18 a competitive market operates. It is the misuse of that information that is anti-
19 competitive and violates Florida law.

20 **VI. VERIZON'S RETENTION MARKETING ACTIVITIES ARE**
21 **ANTICOMPETITIVE**

22 **Q. WHY IS VERIZON'S USE OF THE PORTING INFORMATION**
23 **PROVIDED BY COMCAST TO MARKET CUSTOMERS DURING**
24 **THE PORTING WINDOW ANTI-COMPETITIVE?**

1 A. First, allowing Verizon to market in this brief window based on porting
2 information provided by Comcast creates an inherent conflict of interest that
3 undermines the porting process. For voice competition to work, customers
4 must be able to seamlessly and transparently have their telephone numbers
5 transferred to a new carrier when they switch carriers. And for number
6 porting to work, the old and new carriers must communicate and work with
7 each other in order for the port to occur and for the customer to not be without
8 telephone service during the switchover. If Verizon is allowed to misuse this
9 customer information to engage in retention marketing, Verizon's own
10 employees will be working at cross purposes: while one part of Verizon is
11 supposed to be seamlessly moving the customer from Verizon to Comcast, at
12 the same time another part of Verizon is trying to stop that move. It does not
13 matter whether it is the "wholesale" or "retail" employees within Verizon –
14 the bottom line is that the pressure within Verizon to delay, or to fail to do the
15 port altogether, is simply too great. It is telling that no incumbent except
16 Verizon has dared to use the porting information in this manner. Indeed, as I
17 will discuss later, the Commission has approved the AT&T/BellSouth
18 decision to voluntarily not engage in any marketing of customers lost to a
19 CLEC until ten days after the port and termination of AT&T/BellSouth service
20 has been completed. Whatever the alleged short-term benefits such retention
21 marketing might bring to an individual customer, over the long term allowing
22 such marketing practices is harmful to competition and thereby reduces
23 customer choice and benefits. If Verizon is permitted to continue its unlawful

1 behavior, then all service providers will be encouraged to engage in the same
2 anti-competitive acts. Customers will ultimately be discouraged from porting
3 their telephone numbers, which goes to the heart of competition for
4 consumers.

5 **Q. ARE THERE OTHER ANTI-COMPETITIVE ASPECTS TO**
6 **VERIZON'S RETENTION MARKETING PRACTICES?**

7 A. Yes. Retention marketing during the brief porting window allows Verizon a
8 significant competitive advantage vis-à-vis other providers, and so undermines
9 competition even apart from the inherent conflict of interest it creates. As the
10 party responsible for fulfilling the customer's request to port a telephone
11 number, Verizon is in the unique position of having acquired confidential
12 knowledge that a customer is changing service providers on a specific date.
13 With this insider information, Verizon can engage in immediate targeted
14 marketing aimed at the customer, without having to compete against other
15 providers. In other words, permitting retention marketing during the porting
16 interval creates a separate and unequal playing field whereby Verizon, as a
17 result of its dominant position in the voice service marketplace (based on its
18 existing customer rolls) and the insider information it receives, can maximize
19 its marketing investment by focusing its marketing on those customers who it
20 knows are susceptible to changing carriers. On the other hand, the other
21 carriers in the market do not know which customers are receptive to provider
22 change and which are not, and so they must expend millions of dollars on
23 generalized marketing campaigns to reach everyone.

1 Consequently, with this insider information, Verizon can do what its
2 competitors cannot – maximize profits by acquiescing to customer demands to
3 the least extent required. After all, Verizon knows what it was charging the
4 customer and by contacting the customer, Verizon can learn exactly what it
5 was that motivated the change. With this information, Verizon can then very
6 specifically tailor its response to that customer’s sensitivities. This type of
7 information is invaluable in the competitive marketplace, and all of it was
8 obtained by Verizon not by its own actions but by Comcast requesting that the
9 customer’s number be ported.

10 Without curative action by this Commission, Verizon will be allowed
11 to continue its highly profitable practice of (1) ignoring the customer until the
12 moment the customer gets so fed up he decides to leave and, at that point, (2)
13 sweetening its offer to the minimal amount necessary to convince the
14 customer to stay. The ultimate result of allowing retention marketing
15 practices during the porting process is that competition is undermined, and
16 Verizon will continue to outperform its competitors in the marketplace – not
17 by dint of merit, but by anti-competitive tactics – to the great expense of
18 consumers.

19 **Q. YOU HAVE DISCUSSED THE UNFAIR ADVANTAGES THAT**
20 **VERIZON GAINS THROUGH THIS PRACTICE, WHAT ARE THE**
21 **CONSEQUENCES TO COMCAST?**

22
23 A. Besides the obvious – unnecessary delays in the porting process and
24 potentially losing the customer – Comcast has been forced to subsidize
25 Verizon’s marketing. Before Comcast makes the request to port the

1 customer's telephone number, Comcast has engaged in its own general and
2 specific marketing in order to identify, solicit, and ultimately close the sale.
3 By the time a customer chooses to switch from Verizon, Comcast has invested
4 a significant amount of time and money in winning over that customer. But
5 the cost to Comcast does not end at that point. Once the customer has agreed
6 to receive the competitor's service offering, Comcast must then continue to
7 expend additional time and money to switch the customer's phone number and
8 to make the other arrangements necessary for the customer's telephone service
9 to work. If Verizon is allowed to continue to utilize information Comcast
10 supplies to Verizon to market to those very same customers, Comcast is in
11 essence subsidizing Verizon's marketing efforts to its own detriment.

12 Remember, the only reason Verizon is marketing to these customers is
13 because Comcast has requested that the number be ported. This is not pro-
14 competitive, but rather is the essence of anticompetitive activity.

15 **Q. WHY ISN'T VERIZON CORRECT THAT ANY MARKETING – EVEN**
16 **ITS RETENTION MARKETING BASED ON PORTING**
17 **INFORMATION PROVIDED BY COMCAST – IS BY ITS VERY**
18 **NATURE PRO-COMPETITIVE?**

19 A. Even apart from the fact that retention marketing undermines competition over
20 the long run, and tilts the competitive playing field unfairly to the incumbent
21 provider, Verizon's claim of short-term consumer benefits is flawed and
22 misleading for several reasons. First, Verizon tries to muddy the waters for
23 the Commission by framing the issue as about whether Verizon should be able
24 to provide information to the public about their services. This case is not

1 about the provision of information; it is about illegally using data from an
2 LSR to *target specific consumers* who have made a clear decision to end their
3 relationship with Verizon during the period when Verizon's sole charge and
4 legal duty is to port the customer and close the account. Comcast fully
5 supports *generally applicable* marketing efforts (e.g., television, newspaper,
6 radio, or internet advertisements) by Verizon to provide consumers with the
7 exact same information that it is currently using in its targeted campaign. And
8 Comcast has no objection to targeted marketing, so long as it is not based on
9 information obtained from Comcast because of a customer's request to port a
10 telephone number and conducted during the porting interval. Comcast
11 believes in its product, and it welcomes vigorous market competition with
12 Verizon. What is patently unfair to customers and to Comcast is for a
13 company in Verizon's position to market to customers during the time it is
14 obligated to fulfill the customer's request. It is Verizon that evidently is
15 fearful of a full and fair competitive fight and seeks to preempt that fight
16 through its retention marketing campaign. Verizon's claim that consumers are
17 harmed in any way by a limited marketing ban during the small window of
18 time while the port is pending to allow the port to proceed is simply not
19 credible. This is supported by the fact that the largest telephone company in
20 Florida has voluntarily agreed not to participate in this anti-competitive
21 activity.

22 Second, Verizon has failed to offer a satisfactory explanation for why
23 the customer is likely to receive a superior service package or pricing as a

1 result of permitting retention marketing during the porting window as opposed
2 to marketing while customers are in place, or after the window has closed.
3 Indeed, common sense would suggest that a customer would actually receive a
4 more competitive package and price from Verizon *after* having moved to a
5 different provider. Because of the significant hassle involved in moving from
6 one provider to another, while such a transfer is still pending, it follows that
7 Verizon needs to offer less to get the customer to stay. Verizon knows this
8 fact, which is why it is fighting so vigorously to establish a right to engage in
9 retention marketing: without retention marketing, Verizon will not be able to
10 rely on porting customers' responding to offerings targeted solely at them; it
11 will have to offer a better product at a better price, just as Comcast did to win
12 away the customers in the first place.

13 **Q. HAS THE COMMISSION PREVIOUSLY RECOGNIZED THE ANTI-**
14 **COMPETITIVE NATURE OF THE RETENTION MARKETING**
15 **VERIZON IS ENGAGED IN?**

16
17 A. Yes it has, in several different contexts. In Docket No. 020119-TP, this
18 Commission examined a win-back program as a part of an investigation
19 regarding BellSouth's Key Customer Tariff Program and Winback
20 Promotions. In Order No. PSC-02-0875-PAA-TP (June 28, 2002), at page 19,
21 the Commission observed that "we believe ALECs [the former statutory term
22 for CLECs] who have obtained a new customer from an ILEC should be
23 allowed a period of time to complete the customer conversion." While the
24 marketing issue the Commission addressed involved post-termination of
25 service win-back marketing efforts, the Commission, consistent with its desire

1 to not allow an ILEC to interfere with the customer conversion to the new
2 carrier, at page 22 ordered that BellSouth was “prohibited from including any
3 marketing information in its final bill sent to customers who have switched
4 providers.”

5 Further, the Commission ordered that “BellSouth’s wholesale division
6 shall be prohibited from sharing information with its retail division, such as
7 informing the retail division when a customer is switching from BellSouth to
8 an ALEC.” In addition to expressly prohibiting the type of conduct that
9 Verizon is now engaged in, the Commission acknowledged that BellSouth had
10 voluntarily agreed to a 10-day waiting period before engaging in any win-back
11 marketing after the customer had been successfully transferred to the new
12 carrier.

13 While I recognize that this 10-day waiting period was voluntary,
14 reading the order as a whole it is clear that the Commission’s concern was that
15 an ILEC should not be allowed to interfere with or delay the transfer of a
16 customer. This policy of non-interference with customer transfers is reflected
17 in the prohibitions against sharing information *within* the company of the
18 transfer, recognizing that marketing information could not be included in final
19 bills, and the Commission’s acceptance of the 10-day waiting period as a
20 reasonable customer measure to avoid confusion or interruptions in service.

21 But more important is the Commission decision to prohibit the sharing
22 of information within the ILEC’s operations. While Verizon claims that its
23 wholesale operation is not passing information up to its retail division, *the*

1 *result is the same.* Whether a Verizon wholesale employee directly conveys
2 the information to a Verizon retail employee is not the determining factor.
3 The fact of the matter is the information provided by Comcast to Verizon is
4 *used* by the retail operation to identify the customer and to make the
5 marketing calls. If the information had not been entered into the Verizon
6 system, then the retail operation would not have it to contact the customer.
7 The Commission’s policy from this order is clear – information provided to
8 the ILEC to transfer a customer’s service cannot and should not be used by
9 any employee of that ILEC for marketing during the transfer process.

10 **Q. IS THIS THE ONLY COMMISSION DECISION REGARDING**
11 **RETENTION OR WIN-BACK MARKETING?**

12
13 A. No. A year after the 2002 Commission decision, the Commission addressed
14 three additional complaint dockets against BellSouth for additional key
15 customer promotional tariffs. Again, with respect to ILEC marketing, the
16 Commission heard new allegations regarding post-transfer marketing
17 practices. At page 40 of Order No. PSC-02-0726-FOF-TP (June 19, 2003),
18 regarding ILEC retention marketing, the Commission cited with approval the
19 FCC’s statement that “We believe that such action by an ILEC is a significant
20 concern during the time subsequent to the customer’s placement of an order to
21 change carriers and prior to the change actually taking place.” This is exactly
22 the period of time at issue in Comcast’s complaint against Verizon. At page
23 44 of the Commission’s 2003 Order, the Commission reaffirmed its 2002
24 decision to prohibit BellSouth from including marketing information in the

1 customer's final bill and, while rejecting a 30-day waiting period, the
2 Commission again cited with approval the 10-day waiting period BellSouth
3 had voluntarily imposed. Finally, with respect to the sharing of information
4 within an ILEC for the purpose of retention marketing, at page 47 of this order
5 the Commission again affirmed "our finding contained in Order No. PSC-02-
6 0875-PAA-TP, issued June 28, 2002, prohibiting BellSouth's wholesale
7 division from sharing information with its retail division, such as informing
8 the retail division when a customer is switching from BellSouth to an ALEC."

9 Finally, later in 2003, the Commission again addressed a complaint
10 regarding the misuse of carrier-to-carrier information. In Order No. PSC-03-
11 1392-FOF-TP (December 11, 2003), at page 11, the Commission again
12 affirmed its decisions in Order No. PSC-02-0875-PAA-TP and Order No.
13 PSC-030726-FOF-TP "which prohibit BellSouth's wholesale division from
14 sharing information with its retail division." Consistent with this
15 reaffirmation of the policy to prohibit the use of such customer information
16 during a transfer of service, the Commission went further and made it clear
17 that the issue is not whether information is directly passed from a person in the
18 wholesale operation to a person in the retail operation, but rather that it is the
19 information itself that is protected and which cannot be used by anyone, retail
20 or wholesale. At page 12, after again reaffirming the two prior orders, the
21 Commission concluded: "Therefore, we find that BellSouth shall not be
22 allowed to use carrier-to-carrier information, acquired from its wholesale OSS
23 and/or wholesale operations, to furnish leads and/or marketing data to its in-

1 house and third party marketers.” I believe that this statement makes it very
2 clear that Verizon’s conduct in this case clearly violates this policy regardless
3 of whether it is a wholesale or retail employee and how the information is
4 acquired by that person. The point is that information supplied by a
5 competitor cannot be used by anyone for marketing purposes until after the
6 ILEC has terminated its service to that customer.

7 **VII. VERIZON’S RETENTION MARKETING ACTIVITIES VIOLATE**
8 **FLORIDA LAW**

9 **Q. DOES THE STATE OF FLORIDA HAVE ANY STATUTES THAT**
10 **APPLY TO ANTI-COMPETITIVE RETENTION MARKETING**
11 **PRACTICES?**

12 A. Yes. While I am not an attorney, I understand that Florida Statutes Section
13 364.01(4)(g) empowers the Commission to “[e]nsure that all providers of
14 telecommunications services are treated fairly, by preventing anticompetitive
15 behavior,” and Florida Statutes Section 364.01(4)(i) directs the Commission to
16 “continue its historical role as a surrogate for competition for monopoly
17 services provided by local exchange telecommunications companies.”
18 Similarly, Florida Statutes Section 364.3881(3) provides for the
19 Commission’s “continuing oversight jurisdiction over cross-subsidization,
20 predatory pricing, or other similar anticompetitive behavior.” Finally, Florida
21 Statutes Section 364.10 prevents a telecommunications company from giving
22 “any undue or unreasonable preference or advantage to any person,” including
23 the telecommunications company itself.

24 **Q. DO VERIZON’S RETENTION MARKETING PRACTICES VIOLATE**
25 **FLORIDA STATUTES SECTION 364.01(4)(g)?**

1 A. Yes. Where there is anticompetitive behavior by a provider of
2 telecommunications services, the Commission has jurisdiction to prohibit that
3 practice, and that is exactly the case here. As I have just described, Verizon's
4 retention marketing practices are clearly anticompetitive and in violation of
5 prior Commission decisions that have prohibited the exact use of customer
6 information that Verizon is now employing. Facilities-based voice
7 competitors have just begun to fulfill the promise of the Telecommunications
8 Act of 1996 and the Florida Legislature's 1995 amendments to bring choices
9 to Florida consumers for telephone service. Indeed, Verizon's anticompetitive
10 marketing practices are obviously a response to the competition that threatens
11 its monopoly position. The Commission plainly has broad authority under
12 Section 364.01(4)(g) to proscribe anticompetitive behavior by
13 telecommunications carriers and to expressly apply its prior policy decisions
14 to Verizon.

15 **Q. SHOULD THE COMMISSION BAR VERIZON FROM ENGAGING IN**
16 **ITS RETENTION MARKETING PRACTICES PURSUANT TO**
17 **FLORIDA STATUTES SECTION 364.01(4)(i)?**

18 A. Yes. In Section 364.01(4)(i), the Commission is charged with acting "as a
19 surrogate for competition for monopoly services provided by local exchange
20 telecommunications companies" and Verizon remains a monopoly provider of
21 the service in Florida. Most particularly, Verizon and the other ILECs control
22 some 87% of the lines and telephone numbers in the state, and competitors
23 must have access to those numbers if there is to be competition in Florida.
24 Abuse of the porting process therefore is very much an effort by monopolists

1 to retain monopoly control over numbering resources and, ultimately,
2 customers. Since receiving customer information and the specific date a
3 customer is leaving provides an out-porting company with a valuable
4 competitive advantage if it is permitted to use this information to engage in
5 retention marketing prior to the completion of the port, the Commission acts
6 as a surrogate for competition by banning the practice, which it has already
7 done with respect to AT&T /BellSouth.

8 The Commission's duty to act "as a surrogate for competition" is
9 especially vital in this case because Verizon's monopoly has particularly
10 distortionary effects: Verizon has historically dominated the voice service
11 market in its service territory such that a relatively new entrant like Comcast
12 must rely on winning away existing Verizon customers, rather than on
13 enrolling unaffiliated consumers. The Commission should reaffirm its prior
14 decisions and order Verizon to stop using customer information from the
15 number porting process by anyone in any manner within Verizon.

16 **Q. SHOULD THE REFERENCE TO "SERVICE" IN FLORIDA**
17 **STATUTES SECTION 364.01(4)(i) BE READ NARROWLY TO LIMIT**
18 **THE COMMISSION'S ABILITY TO REGULATE VERIZON'S**
19 **MARKETING PRACTICES?**

20 A. No. Florida Statutes Section 364.02(13) clearly states that, with respect to
21 Chapter 364, "'service' is to be construed in its broadest and most inclusive
22 sense." In this way, Florida law is different than federal law, which contains
23 no such rule of construction. The number porting provided by local exchange
24 telecommunications companies like Verizon easily satisfies this expansive

1 definition no matter how the Commission considers the services at issue here.
2 Moreover, the fact that Verizon is a monopolist with respect to the porting
3 processes involving its own customers only exacerbates the harm and further
4 compels Commission action to remedy this anticompetitive conduct.

5 **Q. SHOULD THE COMMISSION ALSO BAR VERIZON FROM**
6 **ENGAGING IN ITS RETENTION MARKETING PRACTICES**
7 **PURSUANT TO FLORIDA STATUTES SECTION 364.3381?**

8 A. Yes. As discussed above, and detailed in Section VI, Verizon’s retention
9 marketing activities amount to “anticompetitive behavior” over which the
10 Commission has been given “continuing oversight jurisdiction” to investigate
11 and root out as it has already done in the 2002 and 2003 orders I have
12 discussed.

13 **Q. HAS VERIZON ALSO VIOLATED FLORIDA STATUTES SECTION**
14 **364.10?**

15 A. Yes. By the terms of Florida Statutes Section 364.10(1), Verizon “may not
16 make or give any undue or unreasonable preference or advantage to any
17 person,” including itself. However, that is exactly what it is doing by
18 providing confidential information acquired through the porting process
19 concerning the disconnection of a customer to its retail arm to facilitate
20 retention marketing. None of Verizon’s competitors (other than the carrier
21 who provided the information to Verizon in the first place) have this vital
22 customer-change information and, because it puts Verizon at a clear
23 competitive advantage, Verizon does not provide this notice to any voice
24 provider besides its own retail arm.

1 In addition, I am concerned that the rates being offered to these
2 customers are not generally available to all customers and therefore may also
3 violate Section 364.10 as well.

4 **Q. ARE YOU SUGGESTING THAT A TELECOMMUNICATIONS**
5 **COMPANY HAS TO PROVIDE ALL UNIQUE INFORMATION IT**
6 **ACQUIRES ABOUT CUSTOMERS TO ITS COMPETITORS IN**
7 **ORDER TO COMPLY WITH FLORIDA STATUTES SECTION**
8 **364.10?**

9 A. No. The important thing to remember is that Florida Statutes Section 364.10
10 bars Verizon from making or giving *undue or unreasonable* preference or
11 advantage to itself, not *any* preference or advantage. For example, if Verizon
12 learned through independent customer service calls that customers greatly
13 appreciated a new feature, it could pass this information on to its retail wing
14 (who could emphasize this service in marketing materials) without having to
15 tell all market participants about its discovery. By contrast, it is clear that
16 Verizon is unduly and unreasonably advantaging its retail operations by
17 providing insider information that it has been given to it by Comcast for the
18 sole purpose of completing the necessary mechanical processes to transfer a
19 customer.

20 **Q. DOES THE COMMISSION HAVE ANY RULES THAT GOVERN THE**
21 **TRANSFER OF A CUSTOMER'S NUMBER FROM ONE PROVIDER**
22 **TO ANOTHER?**

23 A. Yes. Florida Administrative Code Rule 25-4.082(1) mandates that a “serving
24 local provider shall facilitate porting of [a] subscriber’s telephone number
25 upon request from the acquiring company.”

26 **Q. HAS VERIZON VIOLATED FLORIDA ADMINISTRATIVE CODE**
27 **RULE 25-4.082?**

1 A. Yes. When a port is requested, Verizon’s duty under the rule is to complete
2 the port – period, and without any delay. Engaging in the retention marketing
3 of a customer while the number portability request is pending is inconsistent
4 with Verizon’s unambiguous obligation to “facilitate” the transfer of the
5 number. Moreover, the use of customer information to engage in retention
6 marketing has nothing to do with Verizon’s obligation to “facilitate porting.”
7 Verizon’s scheme is plainly directed to prevent, and reverse, the transfer of the
8 number. This is a textbook example of violating the clear language and intent
9 of the rule that ports be conducted seamlessly and transparently to the
10 customer.

11 **VIII. CONCLUSION**

12 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

13 A. Verizon’s retention marketing activities violate Florida law and are
14 dangerously anticompetitive. They tighten Verizon’s stranglehold on the
15 market at the expense of Florida consumers and threaten to undermine the
16 competitive advances made by providers like Comcast that are finally
17 beginning to penetrate Florida’s voice market, especially for residential
18 customers. Because of Verizon’s illegal interference with customers who
19 have freely chosen to establish relationships with Comcast, Comcast has
20 suffered and continues to suffer irreparable harm. To remedy this egregious
21 situation, pursuant to Section 364.01(4) the Commission should “exercise its
22 exclusive jurisdiction in order to . . . [e]nsure that all providers of
23 telecommunications services are treated fairly, by preventing anticompetitive

1 behavior” Accordingly, consistent with prior Commission decisions and
2 the acknowledged practices of Verizon, the Commission should find that
3 Verizon’s retention marketing practices violate Florida Statutes Sections
4 364.01(4), 364.3381, and 364.10 and Florida Administrative Code Rule 25-
5 4.082. Further, the Commission should order Verizon to cease any and all
6 retention marketing practices during the number porting process and to
7 otherwise not use the customer information supplied by Comcast or other
8 CLECs requesting a number port.

9 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

10 A. Yes.