

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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

DATED: OCTOBER 1, 2009

PROSECUTORIAL STAFF'S PREHEARING STATEMENT

Prosecutorial staff, in compliance with the Order Establishing Procedure (Order No. PSC-09-0107-PCO-TL) issued February 23, 2009, hereby files its Prehearing Statement in the captioned docket as follows:

A. Witnesses

Richard Moses (Direct)

Issue Nos. 1-4

Prosecutorial staff's witness presents both facts and policy considerations that support Prosecutorial staff's position on these issues. Prosecutorial staff's witness presents testimony regarding the show cause order, Order No. PSC-09-0015-SC-TL, issued January 5, 2009, against Verizon Florida LLC (Verizon) for apparent violation of Rule 25-4.070, Florida Administrative Code, Customer Trouble Reports.

Prosecutorial staff reserves the right to call additional witnesses, including witnesses to address or respond to inquires from the Florida Public Service Commission ("Commission" or "PSC"), to address issues not presently designated that may be designated by the Prehearing Officer at the Prehearing Conference to be held on October 15, 2009, and to address issues raised in any testimony by witnesses from Verizon Florida LLC that has not yet been filed.

B. Exhibits

Witness

Exhibits

Richard Moses

Exhibit RAM-1:

Verizon's self-reported Schedule 11s for residential customers' out-of-service and service affecting trouble reports by exchange for the years 2000 through 2008.

Exhibit RAM-2:

A compilation of Verizon's Schedule 11 information for years 2000 through 2008 in table format and two charts illustrating exchange service quality performance over time.

DOCUMENT NUMBER-DATE

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Exhibit RAM-3: Charts and graphs illustrating the total number of out-of-service and service affecting trouble reports for the years 2000 through 2008.

Confidential
Exhibit RAM-4: Data Verizon used to monitor its compliance with the rule for its cooper and fiber networks for 2008.

Confidential
Exhibit RAM-5: Verizon's Southeast FL Service Overview.

Exhibit RAM-6: NOAA Satellite and Information Service weather reports for Verizon exchanges for years 2000 through 2001.

Confidential
Exhibit RAM-7: Email sent by Verizon's Southeast Region DRC-Offline Manager, Kelly Austin.

Confidential
Exhibit RAM-8: Email sent by Verizon's Interim Director, Russell Diamond.

Confidential
Exhibit RAM-9: Email sent by Verizon's Executive Director, John DePhillips.

Confidential
Exhibit RAM-10: Verizon's Management's Discussion and Analysis of Results of Operations and Financial Condition overview.

C. Prosecutorial Staff's Statement of General Position

Based on the information that Verizon has reported to the Commission, Verizon has failed to comply with the provisions of Rule 25-4.070 (3)(a) and (b), Florida Administrative Code, during the time period of January 2007 through September 2008, a total of four hundred and fifty-six times (262 times in 2007 and 194 times 2008). Each time an exchange, by month and/or by quarter does not meet the rule requirement, it is considered a separate violation. In Docket No. 991376-TL, Transcript page 342, line 25 page 343 lines 1-4, Verizon's President acknowledged that the company understood that every time an exchange fails to meet the rule requirement it is considered a separate violation. Verizon is fully aware of the quality of service rule requirements and has demonstrated its capability of meeting those requirements in the past. Verizon was previously found to be in violation of these rules. Therefore, staff believes that Verizon should be penalized in the amount of \$10,000 per violation for a total of \$4.56 million.

D. Prosecutorial Staff's Position on the Issues

The following issues were filed in Prosecutorial staff's response in opposition to Verizon's Motion to Modify Order Establishing Procedure, Bifurcate Proceeding and Suspend Discovery not Related to Jurisdictional Issues. Prosecutorial staff's response was filed on March 11, 2009.

ISSUE 1: How many times over the period January 2007 through September 2008 did Verizon Florida LLC fail to meet the Service Objectives stated in:

- a. Rule 25-4.070(3)(a), Florida Administrative Code?
- b. Rule 25-4.070(3)(b), Florida Administrative Code?

Prosecutorial Staff:

- a. During the period of January 2007 through September 2008 Verizon failed to meet the Service Objectives stated in Rule 25-4.070(3)(a), Florida Administrative Code, a total of two hundred and nineteen (219) times. For the year 2007, Verizon reported that it failed to meet the Service Objectives a total of one hundred nineteen (119) times. For 2008, from January through September, Verizon reported that it failed to meet the Service Objectives one hundred (100) times.
- b. During the period of January 2007 through September 2008 Verizon failed to meet the Service Objectives stated in Rule 25-4.070(3)(b), Florida Administrative Code, a total of two hundred thirty-seven (237) times. For the year 2007, Verizon reported that it failed to meet the Service Objectives a total of one hundred forty-three (143) times. For 2008, from January through September, Verizon reported that it failed to meet the Service Objectives ninety-four (94) times.

ISSUE 2: Does each instance in which Verizon failed to meet the Service Objectives stated in Rules 25-4.070(3)(a) and 25-4.070(3)(b), Florida Administrative Code, constitute a rule violation?

Prosecutorial Staff: Yes. Rule 25-4.070, Florida Administrative Code, establishes parameters for Customer Trouble Reports, and defines requirements for service restoration and service objectives. The rule specially addresses the responsibility of each telecommunications company to provide and maintain specific service to its customers. The rule not only requires the company to make all reasonable efforts to minimize the extent and duration of trouble conditions that disrupt or affect customer service, it also explicitly states that the company shall meet or exceed a 95% clearance rate for restoration of interrupted service and service affecting

trouble reports. Therefore, each time that a Verizon exchange, by month and/or by quarter, does not meet the requirements of Rules 25-4.070(3)(a) and 25-4.070(3)(b), Florida Administrative Code, staff considers it to be a separate violation.

ISSUE 3: Do the rule violations, if any, identified in Issue 2 constitute willful violations of Rule 25-4.070(3), Florida Administrative Code? If so, does the Commission have authority to impose penalties pursuant to Section 364.285, Florida Statutes?

Prosecutorial Staff: Yes, the rule violations identified in Issue 2 do constitute willful violations of Rule 25-4.070(3), Florida Administrative Code. The Commission, pursuant to Section 364.285, Florida Statutes, has the power to impose a penalty upon any entity subject to its jurisdiction under Chapter 364 which is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission.

The phrase “willful violation” can mean *either* an intentional act of commission or one of omission, that is *failing* to act. See, Nuger v. State Insurance Commissioner, 238 Md. 55, 67, 207 A.2d 619, 625 (1965)[emphasis added]. As the First District Court of Appeal stated, “willfully” can be defined as:

An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or *with the specific intent to fail to do something the law requires to be done*; that is to say, with bad purpose either to disobey or to disregard the law.

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1st DCA 1998)[emphasis added]. In other words, a willful violation of a statute, rule or order is also one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982).

Thus, Verizon’s failure to meet the service quality requirements listed in Rule 25-4.070(3), F.A.C., meets the standard for a “refusal to comply” and a “willful violation” as contemplated by the Legislature when enacting Section 364.285, Florida Statutes. It is uncontroverted that Verizon has knowledge of both the service quality objectives and its continued failure to meet these objectives.

ISSUE 4: What action, penalty, or fine, if any, should be imposed by the Commission?

Prosecutorial Staff: Staff believes that the Commission should penalize Verizon \$10,000 per violation, for a total of \$4.56 million, for a total of four hundred fifty-six apparent

violations of Rule 25-4.070, Florida Administrative Code for the years January 2007 through September 2008.

E. Stipulations

The parties have entered no stipulations at this time.

F. Pending Motions

There are no pending motions at this time.

G. Pending Confidentiality Claims or Requests

Prosecutorial staff filed with its Direct Testimony of Witness Richard Moses confidential information provided to the Commission by Verizon via confidential data requests and may provide additional confidential information in response to future discovery.

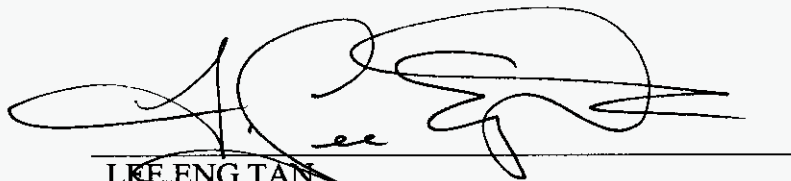
H. Compliance with Order No. PSC-09-0107-PCO-TL

Staff has complied with all requirements of the Order Establishing Procedure entered in this docket.

I. Other Requirements

Prosecutorial Staff knows of no requirements set forth in the Prehearing Order with which it cannot comply.

Respectfully submitted this 1st day of October, 2009.



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Staff Counsel

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DATED: OCTOBER 1, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of PROSECUTORIAL STAFF'S PREHEARING STATEMENT has been filed with Office of Commission Clerk and that a true copy thereof has been furnished to the following by electronic and U. S. mail or by (*) hand delivery, this 1st day of October, 2009:

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