

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition of Linda Thorpe
for a Declaratory Ruling

CG Docket No. 03-84

COMMENTS OF VERIZON FLORIDA

This proceeding is before the Commission as the result of a primary jurisdiction referral from a federal district court. The court found that the essential complaint made by plaintiff in that case was that she was required to pay certain tariffed charges even though she says she did not want and did not use interexchange service. The charge that Verizon Florida Inc. (“Verizon”) assessed that she complains about is the federal subscriber (or end user) common line charge (“SLC”). Throughout the relevant period, this charge was contained in Verizon’s tariffs filed with the Commission, and Verizon was, therefore, required to assess it on Thorpe and other subscribers.

Thorpe’s complaint and her declaratory ruling petition contain a variety of allegations that bear no relation to the issue identified by the court and the question referred to the Commission. For instance, she makes allegations about what Verizon service representatives told her and says that defendants’ conduct amounts to “slamming.” These filings also include complaints about charges imposed by carriers which Thorpe did not sue in her court action. None of these claims are before the Commission on this primary jurisdiction referral. The court has not asked the Commission to opine on, let alone to resolve, any of these other claims. Nor is it the

Commission's role here to decide the merits of Thorpe's complaint overall.¹ Rather, the Commission has merely been asked by the court to determine whether Thorpe was required to pay the tariffed SLC. The answer, of course, is that she was.

Unlike many primary jurisdiction referrals, in making this one the court did not formulate a series of questions it wanted the Commission to answer. This was perhaps because the question identified in its opinion was simple and straightforward — whether the charges in question were tariffed and whether Thorpe was required to pay them. Thorpe's petition to the Commission, however, offers three questions that she wants the Commission to answer, which talk of “bundling” local and long distance services and ask whether such practices violate the Communications Act. These questions miss the point of the issue identified by the court.

Prior Proceedings

Thorpe sued Verizon and others² in Florida state court, and the case was removed to the United States District Court for the Middle District of Florida. Each of the five counts of Thorpe's complaint alleges that she was required to pay for “unnecessary and unwanted long distance service.”³ Verizon moved to dismiss the complaint because it “has filed tariffs with the FCC that set forth the terms, rates and charges that Plaintiff disputes.” Therefore, “Plaintiff's

¹ *E.g., Flying J, Inc., and TON Services, Inc., Petition for Expedited Declaratory Ruling Regarding a Primary Jurisdiction Referral From the United States District Court for the District of Utah, Northern Division*, 18 FCC Rcd 9595 ¶¶ 7 & n.21 (2003).

² The only “Verizon” defendants were GTE Florida, a local exchange carrier, and GTE Corporation, the parent. Although Thorpe sued interexchange carriers AT&T and MCI, she did not sue GTE Communications Corp., the GTE affiliate which was her long distance provider for a period of time.

³ Complaint ¶¶ 43, 52, 58, 63, 69 (Ex. A to petition). This is also the way the district court viewed the allegations. See *Thorpe v. GTE Corp.*, Case No. 8:00-CV-1231-T-17EAJ, Order at 2-3 (M.D. FL Feb. 8, 2002) (Ex. B to petition) (“Court Order”).

claims are barred by well-settled federal law and regulations and by the filed-rate doctrine.”⁴ In the alternative, Verizon asked the court to refer Thorpe’s claims to the Commission pursuant to the doctrine of primary jurisdiction.⁵

The district court agreed with defendants as to what the case was all about, but elected not to dismiss it. It noted that the defendants had identified the charges about which Thorpe complained as “the Subscriber Line Charge, the Common Carrier Line Charge and the Presubscribed Interexchange Charge.”⁶ The court found that Thorpe’s claims “center around the fact that Plaintiff does not want long distance service on her second phone line,” but had to pay certain charges nonetheless.⁷ Because Verizon had argued that “the filed tariffs disclosed the charges at issue,”⁸ the court concluded that it was “appropriate to stay this case” and refer the question to the Commission.

The Question Before the Commission

The issue identified by the court is very narrow and different from the issues raised by Thorpe here.⁹ Thorpe in her declaratory ruling petition states the questions for the Commission as being:

“1) whether the state claims set forth by Petitioner in the complaint are preempted by the Communications Act giving exclusive jurisdiction to the Federal

⁴ Motion To Dismiss at 2 (Ex. E to petition).

⁵ Motion To Dismiss at 2.

⁶ Court Order at 4.

⁷ Court Order at 5-6. The court indicated that the Verizon charges at issue were “the Subscriber Line Charge, the Common Carrier Line Charge and the Presubscribed Interexchange Charge.” Court Order at 4.

⁸ Court Order at 6.

⁹ Because the Court did not frame its conclusion about the basis for a referral as a formal question to the Commission, Thorpe, in her petition, created her own questions for the Commission.

Communications Commission; 2) whether local telephone service providers may provide local service only to their customers, or must, by virtue of their filed tariff rates or otherwise, bundle local service with long distance service, even where a customer has no need for long distance service; and 3) if long distance service is not required to be bundled with local service in all events, is the practice of bundling these services a violation of the Communications Act.”¹⁰

Thorpe’s formulation of the questions raises a number of issues that either make no sense or are beside the point. More important, they do not address the question that was before the court on Thorpe’s claim against Verizon — namely, whether the Communications Act and the Commission’s regulations require Thorpe to pay Verizon’s tariffed SLC even if she never presubscribed to an interexchange carrier and never made an interexchange call.¹¹ There can be no question that they do.¹²

Section 203(a) of the Act requires Verizon to file with the Commission “schedules showing all charges for itself,” that is tariffs. Section 203(c)(1) provides that Verizon may not “charge, demand, collect, or receive a greater or less or different compensation . . . than the charges specified in the schedule then in effect.” Nor, according to section 203(c)(2), may Verizon “remit by any means or device any portion of the charges so specified” or, under section 203(c)(3), “extend to any person any privileges or facilities, in such communication, or employ or

¹⁰ See Public Notice at 1.

¹¹ Although the Commission’s task here is not to decide issues of fact, it should be noted that the bills Thorpe submitted with her petition show that she did, in fact, make long distance calls. Bill dated Sept. 4, 1999, at 3, contained in Petition Ex. A, Composite Exhibit A.

¹² Thorpe’s petition makes a variety of other allegations against Verizon, such as “slamming.” Petition at 6, 10. It also complains about the rates charged by Verizon’s long distance affiliate. Petition at 6. These claims are not included in the court’s primary jurisdiction reference or, in fact, in the questions framed by Thorpe herself.

enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.” Thus, Verizon is required to charge the rates contained in its tariffs.¹³

There is no dispute that Verizon’s tariffs provided for the collection of the subscriber line charge (“SLC”) and presubscribed interexchange carrier charge (“PICC”)¹⁴ — Thorpe attached copies of tariffs to her petition. These tariffs required that all subscribers pay the SLC.¹⁵ The tariffs also imposed PICCs on interexchange carriers and required that if a customer did not presubscribe, then the customer was to pay the PICC.¹⁶

These tariffs were consistent with the Commission’s regulations. Section 69.4 of the rules requires, “The end user charges for access service filed with this Commission shall include charges for the End User Common Line element,” section 69.5 requires, “End user charges shall be computed and assessed upon end users,”¹⁷ and section 69.152 describes how that charge is computed. Section 69.153 establishes the PICC, which is typically assessed on carriers. However, the rules go on to authorize assessing the PICC on any subscriber who has declined to select a presubscribed carrier: “If an end-user customer does not have a presubscribed

¹³ Effective tariffs conclusively and exclusively determine the rights of the carrier and the customer and have the force and effect of federal law. *E.g.*, *Marcus v. AT&T*, 138 F.3d 46, 58-59 (2d Cir. 1998); *AT&T v. City of New York*, 83 F.3d 549, 552 (2d Cir. 1995); *Taffet v. Southern Co.*, 967 F.2d 1483, 1488-89(11th Cir. 1992).

¹⁴ Because Thorpe was, in fact, presubscribed to an interexchange carrier, Verizon did not bill her for the PICC.

¹⁵ *E.g.*, Petition Ex. E, Ex. “1” at 74th Revised Tariff Page 312.

¹⁶ *E.g.*, Petition Ex. E, Ex. “1” at 4th Revised Tariff Page 308.3.7.1 & 9th Revised Tariff Page 308.3.7.2.

¹⁷ An end user is “any customer of an interstate or foreign telecommunications service that is not a carrier.” 47 C.F.R. § 69.2(m).

interexchange carrier, the local exchange carrier may collect the PICC directly from the end user.”¹⁸

Verizon’s tariffs clearly disclosed that Thorpe would have to pay the SLC. These tariffs were unquestionably consistent with the Commission’s rules. As a matter of federal law, then, Thorpe was required to pay the SLC, and it cannot be a violation of any state law for Verizon to assess it.

Thorpe’s Questions

While the questions posed by Thorpe badly miss the mark, an analysis of those questions as phrased by Thorpe leads to the same result.

1. Whether the state claims set forth by Petitioner in the complaint are preempted by the Communications Act giving exclusive jurisdiction to the Federal Communications Commission.

Federal law — the Communications Act and the Commission’s regulations — governs this case. The only charge imposed by Verizon about which Thorpe complains is the interstate SLC, which is assessed to recover costs that are jurisdictionally interstate. Federal law requires Verizon to file tariffs for its interstate services, to charge the rates in those tariffs and not to refrain from charging the rates in those tariffs. The SLC is a charge for interstate service, and, as long as the tariff is in effect, Verizon must assess it on its subscribers. To the extent that state law would lead to a different result — such as, requiring Verizon to refund tariffed charges — then that state law is preempted.

¹⁸ 47 C.F.R. § 69.153(b). The Commission did this to “eliminate the incentive for customers to access long-distance services solely through ‘dial around’ carriers in order to avoid paying long-distance rates that reflect the PICC.” *Access Charge Reform*, 12 FCC Rcd 15982 ¶ 92 (1998) (“*Access Reform Order*”).

2. Whether local telephone service providers may provide local service only to their customers, or must, by virtue of their filed tariff rates or otherwise, bundle local service with long distance service, even where a customer has no need for long distance service.

As an initial matter, this question bears no relation to the issue identified by the court.

There is no “bundling” issue in this case. On the contrary, Thorpe does not claim that Verizon made her use its long distance service. The issue identified by the court on which the court wanted the Commission’s opinion is simply whether Thorpe was required to pay Verizon’s SLCs even if she had no interest in long distance service.

It is fundamental that a subscriber does not have to make long distance calls or select a presubscribed interexchange carrier.¹⁹ But it is equally fundamental that the lack of long distance calling or the election not to presubscribe does not relieve the subscriber of the obligation to pay line charges contained in effective tariffs.

This makes perfect sense. The SLC (and the PICC) are not charges for long distance service; rather they are charges that allow Verizon to recover the interstate costs of providing facilities that subscribers use whether or not they make long distance calls or select a presubscribed interexchange carrier.²⁰ Thus, “[m]uch of the telephone plant that is used to provide local telephone service (such as the local loop, the line that connects a subscriber’s telephone to the telephone company’s switch) is also needed to originate and terminate interstate long-distance calls.”²¹ The Commission’s rules prescribe how a LEC must go through “a multi-step process” to record its costs, to separate those costs between the intrastate and interstate

¹⁹ Verizon has more than 300,000 customers in Florida who have chosen not to presubscribe to an interexchange carrier.

²⁰ See *Access Reform Order* ¶¶ 17, 21-25.

²¹ *Access Reform Order* ¶ 17.

jurisdictions and to “translate these interstate costs into charges for the specific interstate access services and rate elements.” They also “specify[] in detail the rate structure for recovering those costs.” As the Commission summed it up, “That is, the rules tell the incumbent LECs the precise manner in which they may assess charges on interexchange carriers and end users.”²²

Verizon incurs these costs to provide service to a particular customer even if she does not presubscribe or make any long distance calls. As the Commission itself noted when it originally adopted this rate structure, “A subscriber who does not use the subscriber line to place or receive [interstate] calls imposes the same NTS costs as a subscriber who does use the line.”²³ And that’s why the Commission has for twenty years allowed LECs to assess these charges on such customers.

The question as phrased by Thorpe, therefore, misses the point. By assessing SLCs, LECs are not “bundl[ing] local service with long distance service.” They are simply carrying out the Commission’s regulatory scheme for recovering certain interstate costs.²⁴

3. If long distance service is not required to be bundled with local service in all events, is the practice of bundling these services a violation of the Communications Act.

This question is, similarly, beside the point. Again, Thorpe’s case has nothing to do with the “bundling” of two types of service. And even if it did — if the claim were that a LEC made a customer presubscribe to an interexchange carrier— there would be no violation of the Act. First, the LEC would not be benefited and the subscriber would not be injured in any way if the LEC

²² *Access Reform Order* ¶ 22.

²³ *MTS and WATS Market Structure*, 93 F.C.C.2d 241 ¶ 121 (1983).

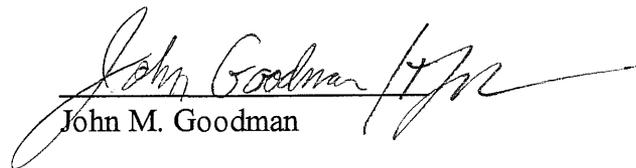
²⁴ Thorpe claims that the issue is whether Verizon could offer a “‘local-only’ telephone line.” Petition at 11. This too misses the point. Even if an access line were completely cut off from all toll services, regulation assigns part of the cost of that line to the interstate jurisdiction, and the Commission’s rules prescribe how those costs are to be recovered.

merely required the subscriber to presubscribe to some interexchange carrier, rather than not presubscribing at all — the LEC does not charge the subscriber more when she presubscribes than when she doesn't.²⁵ Second, in a competitive marketplace, if a customer is confronted by a LEC which was demanding that the customer do something which she did not want to do, the customer would simply go to a different provider.

Conclusion

The Commission should deny Thorpe's petition and should issue an opinion which advises the court that a local exchange carrier like Verizon is required abide by its effective tariffs and, if those tariffs require the assessment SLCs and PICCs on subscribers who do not presubscribe to an interexchange carrier, then the LEC must assess those charges.

Respectfully submitted,



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²⁵ In fact, any LEC that imposes PICCs would charge a non-presubscribing customer *more* than one who presubscribes.