

Matilda Sanders

From: terry.scobie@verizon.com  
Sent: Friday, February 17, 2006 2:18 PM  
To: Filings@psc.state.fl.us  
Cc: leigh.a.hyer@verizon.com; David Christian; demetria.c.watts@verizon.com  
Subject: Docket No. 060042-TP - Response of Verizon Florida Inc.

Attachments: 060042 VZ Florida Response 2-17-06.pdf



060042 VZ  
Florida Response 2

The attached filing is submitted in Docket No. 060042-TP on behalf of Verizon Florida Inc. by

Leigh A. Hyer  
P. O. Box 110, FLTC0007  
Tampa, Florida 33601  
(813) 483-1256  
leigh.a.hyer@verizon.com

The attached .pdf document contains 14 pages - transmittal letter (1 page), certificate of service (1 page), and Response (12 pages).

(See attached file: 060042 VZ Florida Response 2-17-06.pdf)

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Verizon Legal Department  
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FPSC-COMMISSION CLERK

**ORIGINAL**



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**February 17, 2006 – VIA ELECTRONIC MAIL**

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 060042-TP  
Complaint by Franklin Templeton Companies, LLC against Verizon Florida Inc.  
for allegedly breaching telecommunications service agreement and violating  
Section 364.051(5)(b), Florida Statutes, and Rule 25-4.110, Florida  
Administrative Code

Dear Ms. Bayo:

Enclosed is Verizon Florida Inc.'s Response for filing in the above-referenced matter.  
Service has been made as indicated on the Certificate of Service. If there are any  
questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

s/ Leigh A. Hyer

Leigh A. Hyer

LAH:tas  
Enclosures

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of Verizon Florida Inc.'s Response in Docket No. 060042-TP were sent via U.S. mail on February 17, 2006 to

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

William P. Cox  
Abel Band Law Firm  
P. O. Box 49948  
Sarasota, FL 34230-6948

Lawrence Chew  
Franklin Templeton Companies, LLC  
960 Park Place, 2<sup>nd</sup> Floor  
San Mateo, CA 94403

s/ Leigh A. Hyer

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint by Franklin Templeton Companies, )	Docket No. 060042-TP
LLC against Verizon Florida Inc. for allegedly )	Filed: February 17, 2006
breaching telecommunications service agreement )	
and violating Section 364.051(5)(b), Florida Statutes, )	
and Rule 25-4.110, Florida Administrative Code )	
_____ )	

**RESPONSE OF VERIZON FLORIDA INC.**

Pursuant to the Commission's Notice of Complaint, issued January 19, 2006, Verizon hereby answers the Complaint, filed by Franklin Templeton Companies, LLC ("Franklin Templeton") and files a Counterclaim for breach of the terms of an individual case basis ("ICB") contract (ICB FL0002476) (the "Agreement") and for unpaid amounts due under the terms of Verizon's applicable tariffs for services provided to Franklin Templeton.

**ANSWER**

1. Verizon admits that it entered into ICB FL0002476 (the "Agreement") with Franklin Templeton Corporate Service[s], Inc. ("FTCS"), attached to the Complaint as Exhibit A. Verizon states that, on information and belief, Franklin Templeton is the successor in interest to FTCS and the Agreement. The remaining allegations in paragraph 1 are not directed to Verizon and thus no response is necessary.

2. The allegations in paragraph 2 are not directed to Verizon and thus no response is necessary.

3. Verizon admits the allegations in paragraph 3 of the Complaint.

4. All pleadings, correspondence, and other record materials in this docket should be served on the following on behalf of Verizon:

DOCUMENT NUMBER-DATE

01415 FEB 17 8

FPSC-COMMISSION CLERK

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5. Verizon states that the Commission's jurisdiction is limited to claims relating to regulated, intrastate services provided under the Agreement. Verizon denies any remaining allegations in paragraph 5.

6. Verizon admits the allegations in paragraph 6.

7. Verizon admits the allegations in the first three sentences of paragraph 7. Verizon does not understand the reference to "Franklin Templeton's carriage of interexchange and local carrier access on the SONET ring." To the extent that Franklin Templeton means that the SONET ring was used exclusively to provide local and interexchange service to and for the benefit of Franklin Templeton and for no other end user customer, Verizon admits those allegations.

8. Verizon admits the allegations in paragraph 8.

9. Verizon admits that the term of the Agreement was three years from the in-service date for the Service provided (as defined in the Agreement), unless Franklin Templeton terminated the Service prior to that date. The "Service" is defined as "a Custom Fiber Optic Three (3) Node OC12 SONET Ring Route with Nodes at two Customer locations, 100 North Fountain Parkway, Building #1, St. Petersburg, and 205 9<sup>th</sup> Street North, St. Petersburg, and at the Feathersound Verizon Central Office ("C.O.')." Verizon admits that Franklin Templeton requested removal of the 9<sup>th</sup> Street node from the SONET ring in March 2002. Removal of that node meant that Franklin

Templeton was no longer purchasing the Service set forth in the Agreement but instead was receiving a different, two-node SONET diverse route arrangement (not a SONET "ring"). Verizon denies the remaining allegations in paragraph 9.

10. Verizon denies that Franklin Templeton received a "limited response" from Verizon to its request for a new ICB arrangement. To the contrary, Verizon sales representatives worked diligently beginning in October 2003 through May 2004 to develop a service solution for Franklin Templeton that would replace the Agreement and presented Franklin Templeton with several service options based on the FCC tariff rates. Verizon further denies that Franklin Templeton initiated these activities. During this period of time, Franklin Templeton continued to pay the same ICB rates set forth in the Agreement (which expired in December 2003) for the nodes on the SONET facility, minus the charge for the 9<sup>th</sup> Street node, even though Franklin Templeton was receiving a different service than that contemplated under the ICB and should have been paying tariff rates for the service. On information and belief, Franklin Templeton knew throughout this period that it had no intention of remaining a Verizon customer and instead planned to transfer its communications services to another carrier.

On May 19, 2004, Verizon received an email from Mr. Richard Kuehn, of RAK Associates, a consultant for Franklin Templeton, informing Verizon for the first time that Franklin Templeton had little or no intention of signing another contract with Verizon. Thereafter, on or about May 21, 2004, Mr. Robert Darrah, Regional Sales Manager, Verizon Enterprise Solutions, sent a letter to Mr. Kuehn informing him of the rate changes that would result from a transition to state and federal tariff rates, including non-recurring charges. Under the filed rate doctrine, Franklin Templeton must pay the

tariff rates in the absence of a lawful ICB agreement. Mr. Darrah explained that if Franklin Templeton did not take action, all service would be terminated on June 26, 2004. Verizon denies the remaining allegations in paragraph 10.

11. Verizon admits that Franklin Templeton rejected all of Verizon's proposed replacement ICB agreements, and further states that, on information and belief, Franklin Templeton planned prior to May 2004 to transition its services to Time Warner, but led Verizon to believe that it was negotiating in good faith. Verizon denies the remaining allegations in paragraph 11 and specifically denies that it charged Franklin Templeton for any circuits provided to IXCs over the SONET facility. Verizon further states that it has no knowledge of, involvement in, or control over the rates that AT&T charged Franklin Templeton for interexchange services.

12. Although Franklin Templeton alleges that it "purchased the SONET ring services from Verizon with the intention of replacing the FDDI connection," Franklin Templeton did not place a disconnect order for the FDDI circuit. Verizon will not disconnect a customer's service based on the subjective "intention" of the customer – the customer must take affirmative steps to submit a disconnect request. Moreover, Franklin Templeton continued to use the FDDI circuit until April 2002, Verizon continued to bill Franklin Templeton for that circuit, and Franklin Templeton paid all invoiced charges for the circuit without dispute. Nothing in the Agreement states that the services described therein are the only services that Franklin Templeton would order and receive from Verizon. To the contrary, the Agreement explicitly contemplates that other telecommunications services may be separately provided under tariff along the same route. Verizon denies the remaining allegations in paragraph 12.

13. Verizon denies that any circuits provisioned for IXCs on the SONET ring were "unauthorized." To the contrary, Franklin Templeton was the only end user on the ring, so any and all IXC circuits on the SONET ring were used exclusively to provide interexchange service to Franklin Templeton at Franklin Templeton's request. Moreover, the Agreement expressly provides for the use of the SONET ring by "carriers which may be selected by the Customer" and requires Verizon to "reasonably cooperate" in the installation of circuits for other carriers to serve Franklin Templeton over the SONET ring. Verizon denies the remaining allegations in paragraph 13.

14. Under the Agreement, termination liability applies "[i]f for any reason the Customer terminates or discontinues the Service prior to the expiration of the three (3) year term." The "Service" is defined as "a Custom Fiber Optic Three (3) Node OC12 SONET Ring Route with Nodes at two Customer locations, 100 North Fountain Parkway, Building #1, St. Petersburg, and 205 9<sup>th</sup> Street North, St. Petersburg, and at the Feathersound Verizon Central Office ("C.O.')." When Franklin Templeton disconnected the second of the two customer nodes in March 2002 (twenty months prior to the end of the term), it discontinued the Service as defined in the Agreement and replaced it with something different – a SONET diverse route arrangement.<sup>1</sup>

Under the Agreement, the termination liability charge is calculated as "twenty-five (25%) percent of the monthly charges times the number of months remaining in the term." When Franklin Templeton discontinued the SONET ring facility described in the Agreement in March 2002, the termination liability was calculated at \$46,321.65.

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<sup>1</sup> As set forth above in Verizon's answer to paragraph 9, a SONET ring must have three nodes. A two-node SONET facility must be configured as a diverse route arrangement. Otherwise, the service will not operate as a SONET facility.



Verizon did not assess the termination charge based on the total Service, but instead assessed the termination charge based on the monthly recurring charge of a single customer node. Verizon denies the remaining allegations in paragraph 14.

15. Verizon denies the allegations in paragraph 15. As set forth in Verizon's answer to paragraph 13, Franklin Templeton was the only end user on the ring, so any and all IXC circuits on the SONET ring were used exclusively to provide interexchange services to Franklin Templeton at Franklin Templeton's request and thus were "Customer specified communications services." Moreover, the Agreement expressly provides for the use of the SONET ring by "*carriers* which may be selected by the Customer" and requires Verizon to "reasonably cooperate" in the installation of circuits for other carriers to serve Franklin Templeton over the SONET ring. Verizon did not charge Franklin Templeton a circuit rider charge for the individual circuits used by the IXCs to provide service to Franklin Templeton and thus there was no "double compensation." Verizon further states that Franklin Templeton should have been paying tariff charges after the expiration of the Agreement in December 2003, and thus Franklin Templeton may have been undercharged. Verizon denies the remaining allegations in paragraph 15.

16. Franklin Templeton was the only end user on the SONET facility, so any and all IXC circuits were used exclusively to provide interexchange service to Franklin Templeton at Franklin Templeton's request and thus were "Customer specified communications services." Moreover, the Agreement expressly provides for the use of the SONET ring by "*carriers* which may be selected by the Customer" and requires Verizon to "reasonably cooperate" in the installation of circuits for other carriers to serve

Franklin Templeton over the SONET ring. Verizon admits that, when Franklin Templeton requested that the equipment be removed, Verizon technicians discovered that there were live circuits on the facility providing service to Franklin Templeton. Verizon representatives were concerned that removing the equipment might disrupt service to Franklin Templeton and thus sought assurances that the IXCs had requested disconnection of the circuits on the facility. Verizon denies the remaining allegations in paragraph 16.

17. Franklin Templeton was the only end user on the ring, so any and all IXC circuits on the SONET ring were used exclusively to provide interexchange service to Franklin Templeton at Franklin Templeton's request and thus were "Customer specified communications services." Moreover, the Agreement expressly provides for the use of the SONET ring by "carriers which may be selected by the Customer" and requires Verizon to "reasonably cooperate" in the installation of circuits for other carriers to serve Franklin Templeton over the SONET ring. Verizon did not charge Franklin Templeton a circuit rider charge for the individual circuits used by the IXCs to provide service to Franklin Templeton and thus there was no "double compensation" by Verizon, nor did the IXC's use of the SONET facility to provide service to Franklin Templeton increase the amount that Verizon charged Franklin Templeton. Verizon further states that it has no knowledge of, involvement in, or control over the rates that IXCs charged Franklin Templeton for interexchange services. Verizon denies the remaining allegations in paragraph 17.

18. Verizon denies the allegations in paragraph 18. Verizon further states that Franklin Templeton owes Verizon for unpaid termination liability and other charges, and

may also owe Verizon for the difference between the ICB rates in the Agreement and tariff rates from December 2003 through disconnection.

**COUNT I:**

19. Verizon incorporates by reference its answers to paragraphs 1 through 18 of the Complaint, as though fully set forth here.

20. Verizon denies Franklin Templeton's claim that the services provided under the Agreement were somehow "monopoly services." To the contrary, the services provided under the Agreement are highly competitive services offered by a number of competitors of Florida. Indeed, Franklin Templeton admits that it now uses Time Warner as an alternative provider of the same services. Verizon further denies that the Commission has any authority to act as a "surrogate for competition" in the circumstances set forth in the Complaint. The remaining allegations in paragraph 20 are legal conclusions to which no response is required.

21. Verizon denies the allegations in paragraph 21 and further claims that there is no separate cause of action for "willfull[ly]" or "gross[ly] negligenc[t]" breach of contract under Florida law.

22. Verizon denies the allegations in paragraph 22. Verizon further states that Franklin Templeton terminated the Service under the Agreement in December 2003 and can assert no cause of action for breach of the Agreement after that date. All services provided to Franklin Templeton are governed by the terms of Verizon's applicable tariffs.

23. Verizon denies the allegations in paragraph 23.

**COUNT II:**

24. Verizon incorporates by reference its answers to paragraphs 1 through 18 of the Complaint, as though fully set forth here.

25. The allegations in paragraph 25 are legal conclusions to which no response is required.

26. The allegations in paragraph 26 are legal conclusions to which no response is required.

27. Verizon denies the allegations in paragraph 27.

**PRAYER FOR RELIEF:**

28. Wherefore, Verizon requests that the Commission deny each and every request set forth in the Prayer for Relief and dismiss the Complaint. Verizon further states that the Commission lacks jurisdiction to award contract damages.

**AFFIRMATIVE DEFENSES**

1. Franklin Templeton's claims for overbilling are barred by the 60-day time limits set forth in Verizon's tariff(s) and time limits set forth under applicable law.

2. Franklin Templeton's claims are barred because they fail to state a claim for which relief may be granted.

3. Franklin Templeton's claims are barred by the filed rate doctrine.

4. Franklin Templeton's claims are barred by the doctrine of laches.

5. Franklin Templeton's claims are barred by estoppel.

6. Franklin Templeton's claims are barred by the doctrine of unclean hands.

7. Franklin Templeton's claims are barred because Franklin Templeton has failed to mitigate its damages, if any.

8. Franklin Templeton's claims are barred by setoff or recoupment.

9. Franklin Templeton's claims are barred to the extent that they relate to tariffed interstate services, which are outside this Commission's jurisdiction.

### **COUNTERCLAIM FOR BREACH OF CONTRACT**

The arguments and factual allegations set forth in the Answer above are hereby incorporated by reference herein. Unless otherwise indicated, the definitions in the numbered paragraphs below are as indicated above in the Answer.

1. Under the Agreement, termination liability applies "[i]f for any reason the Customer terminates or discontinues the Service prior to the expiration of the three (3) year term." The "Service" is defined as "a Custom Fiber Optic Three (3) Node OC12 SONET Ring Route with Nodes at two Customer locations, 100 North Fountain Parkway, Building #1, St. Petersburg, and 205 9<sup>th</sup> Street North, St. Petersburg, and at the Feathersound Verizon Central Office ('C.O.')."

2. The in-service date for the three-node ring under the Agreement was December 15, 2000. Franklin Templeton requested disconnection of the second of the two customer nodes in March 2002 (twenty months prior to the end of the term of the Agreement). In doing so, Franklin Templeton discontinued the Service as defined in the Agreement and replaced it with something different – a SONET diverse route arrangement. As set forth above in Verizon's answer to paragraph 9 of the Complaint, a SONET "ring," by definition, must have three nodes. A two-node SONET facility, on the other hand, must be configured as a diverse route arrangement. Otherwise, the service will not operate as a SONET facility.

3. Under the Agreement, the termination liability charge is calculated as "twenty-five (25%) percent of the monthly charges times the number of months remaining in the term." When Franklin Templeton discontinued the SONET ring facility described in the Agreement in March 2002, the termination liability was calculated at 25% of the remaining monthly recurring charges for the dropped node, which was \$46,321.65.

4. Franklin Templeton has not paid the termination liability due under the Agreement and thus has breached a material term of the Agreement.

5. The Agreement expired in December 2003. From that point forward, Franklin Templeton was subject to the terms and conditions of Verizon's applicable tariffs – including tariff rates – for the services provided, since Franklin Templeton did not enter into a replacement ICB arrangement with Verizon. As a result, in addition to termination liability under the Agreement, Franklin Templeton owes Verizon the difference – if any – between the ICB rates in the terminated Agreement and the tariff rates applicable to SONET services provided by Verizon between its Feathersound Central Office and Franklin Templeton's North Fountain Parkway location after March 2002.

WHEREFORE, Verizon respectfully requests that the Commission issue an Order declaring that Franklin Templeton is liable to Verizon for termination liability of \$46,321.65 under the terms of the Agreement and for tariff charges for services received from Verizon after December 2003, to the extent of the Commission's jurisdiction.

Respectfully submitted on February 17, 2006.

By: s/ Leigh A. Hyer  
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