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August 2, 2000

Ms. Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 990649-TP  
Investigation into Pricing of Unbundled Network Elements

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of Verizon Florida Inc.'s Motion to Bifurcate and Suspend Proceedings for filing in the above 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) 483-2617.

Sincerely,

Kimberly Caswell

KC:tas  
Enclosures

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CAF \_\_\_\_\_  
CMP 5  
COM 5  
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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09333 AUG-28

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into pricing )  
of unbundled network elements )

Docket No. 990649-TP  
Filed: August 2, 2000

**VERIZON FLORIDA INC.'S MOTION TO  
BIFURCATE AND SUSPEND PROCEEDINGS**

With this Motion, Verizon Florida Inc. ("Verizon") (formerly GTE Florida Incorporated) asks the Commission to: (1) bifurcate these proceedings to allow costing and pricing issues to be heard separately for Verizon; and (2) suspend the remaining procedural events with regard to Verizon until the issue of appropriate methodology for pricing unbundled network elements (UNEs) is resolved at the federal level. Verizon further requests expedited consideration of this Motion, as the current procedural schedule would require Verizon to file rebuttal testimony on August 21, less than three weeks from today.

Verizon has long opposed the total element long-run incremental cost (TELRIC) standard the FCC has established for use in determining UNE prices. Nevertheless, in accordance with that standard and this Commission's Order number PSC-99-2467-PCO-TP in this docket, Verizon's cost studies and proposed prices for UNEs and designated UNE combinations in this proceeding comport with the TELRIC approach reflected in the FCC's Rules, including Rule 51.505.

Rule 51.505(b)(1) states, in part, that "[t]he total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." 47 C.F.R. sec. 51.505(b)(1).

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FPSC-RECORDS/REPORTING

In an opinion filed July 18, 2000, the U.S. Court of Appeals for the Eighth Circuit vacated many of the FCC's UNE pricing rules, including rule 51.505(b)(1).<sup>1</sup> The Court held the FCC's TELRIC standard to be impermissibly hypothetical, in violation of "the plain meaning of the Act." (Eighth Circuit Order at 7.) It explained that Congress intended UNE rates to be based on "the cost of providing the actual facilities and equipment that will be used by the competitor (and not some state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor)." (Eighth Circuit Order at 8.) In short, "Congress was dealing with reality, not fantasizing about what might be." (*Id.* at 7-8.)

The Eighth Circuit's ruling effects a material change in the law controlling this proceeding. This change must be addressed by the parties and the Commission. Because Verizon's cost study and associated prices submitted in this docket are based on the vacated FCC rules, it would be inappropriate for the Company to go forward with its case presentation, as filed.

Verizon is now analyzing the degree to which its cost methodology should be modified in light of the Eighth Circuit decision. If that decision ultimately remains in effect, it will probably be necessary to complete new cost studies after the FCC issues new pricing rules on remand. Even if a stay of the Eighth Circuit Order is granted pending appeal, it is safe to say that there is considerable uncertainty as to the costing standard that this Commission must ultimately follow in setting new UNE prices.

Under the circumstances, it would not be a prudent or efficient use of the Commission's or the parties' resources to go forward with the effort to set new UNE

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<sup>1</sup> *Iowa Utilities Bd. v. F.C.C.*, No. 96-3321, Order (8<sup>th</sup> Cir. July 18, 2000) ("Eighth Circuit Order"). The Eighth Circuit has not yet issued its mandate, although it can be anticipated that it will do so shortly.

rates for Verizon. Verizon cannot continue to advocate rates that are rooted in a TELRIC methodology that has been deemed unlawful. Moreover, even if the FCC immediately issued new pricing rules, it would be impossible for Verizon to complete and offer for evaluation a new study within the existing procedural schedule for this docket.

The only viable resolution to this dilemma is a delay in the proceedings as to Verizon. Specifically, Verizon requests a suspension of the proceedings until the FCC issues any new cost rules on remand.<sup>2</sup>

This is the only approach certain to avoid unnecessary waste of resources, as the Massachusetts Department of Telecommunications & Energy confirmed in its July 27 ruling denying an AT&T petition to open an investigation into whether UNE rates in that state comport with the FCC's TELRIC methodology. The Department decided to maintain the status quo for UNE prices and the wholesale discount pending either a ruling by the FCC on remand or any Supreme Court ruling on appeal from the Eighth Circuit. It concluded: "Clearly, it would not be an efficient use of the Department's or others' resources to conduct a new investigation using pricing rules that have been vacated and remanded to the FCC." (Letter Ruling, Mass. Dep't of Telecomm. & Energy, July 27, 2000 ("Mass. Ruling," at 2).)

Consistent with this logic, the Competitive Telecommunications Association (CompTel) has urged state commissions to avoid considering changes to existing UNE rates until the FCC issues a new costing rule on remand and conclusion of any appeal

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<sup>2</sup> Delaying submission of new cost studies pending any new FCC costing rules is the only certain way to avoid another potential UNE rate-setting docket on the heels of this one. However, if the Commission declines to wait for the FCC to rule on any remand, Verizon would still need sufficient time to prepare a new cost study and rates that it could support, in accordance with the Eighth Circuit's Order.

of the Eighth Circuit's decision. (July 19, 2000 letter from CompTel to NARUC, *cited in* Mass. Ruling at 2.)

Verizon seeks a suspension of the remaining procedural dates only as to its own presentation in this docket. Verizon understands that BellSouth wishes to move forward with UNE rate-setting based on the cost model it has already submitted. Verizon takes no position on the substantive merits of BellSouth's approach, but does not object to BellSouth continuing under the existing procedural schedule. If BellSouth wishes to proceed, bifurcation will be necessary to eventually establish a new procedural track for Verizon (and presumably for Sprint, which has also indicated its intention to seek bifurcation and a delay).

Until the Commission can determine rates for Verizon under any new cost standard, Verizon's existing interim deaveraged loop rates would remain in place. These rates were established by Commission Order approving a stipulation among the parties to this docket.<sup>3</sup> They would be made available to any ALEC seeking interconnection with Verizon.<sup>4</sup>

For UNEs other than the loops designated in the stipulation and associated Order, the rates under existing interconnection contracts would be maintained. (In most instances, these are the rates the Commission established in Verizon's arbitration with AT&T and MCI, Order No. PSC-97-0064-FOF-TP (Jan. 17, 1997).)

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<sup>3</sup> Order PSC-00-0380-S-TP (Feb. 22, 2000). Currently, the stipulation states that the interim rates will remain in effect until the earlier of the date they are replaced by permanent deaveraged rates in this docket or June 30, 2001. *Id.* at 12.

<sup>4</sup> The existing stipulation makes the interim deaveraged rates available only to parties with existing interconnection agreements.

There are a few items for which no rates have been established, including sub-loops, dark fiber facilities, and intrabuilding wire.<sup>5</sup> In this interim period, Verizon would propose to negotiate prices for these elements on a bona fide request (BFR) basis. This is not a significant departure from Verizon's existing position in this proceeding. For example, even though Verizon was obliged to submit TELRIC-based prices for unbundled feeder and distribution facilities in this docket, Verizon witness Trimble proposed a BFR approach to subloop unbundling in his Direct Testimony filed in May. This was the same approach Verizon proposed in its 1996 arbitration with AT&T, MCI, and Sprint. Since that time, only one ALEC has requested subloop unbundling, and the ALEC ultimately cancelled that request. In any event, Mr. Trimble explained that case-by-case, BFR treatment is best for elements such as subloops, dark fiber, and inside wire, where access is location-specific and customer-specific and can occur at numerous different points. (Trimble Direct Testimony at 13-14.)

Verizon does not believe that maintenance of the status quo (that is, the existing UNE rates) in this interim period will prejudice any party to this proceeding. All required UNEs will continue to be made available. Indeed, in view of the current uncertainty over the applicability of TELRIC standards, the current rates are, if anything, below those that may ultimately apply under a different cost standard that does not rely on hypothetical network assumptions.

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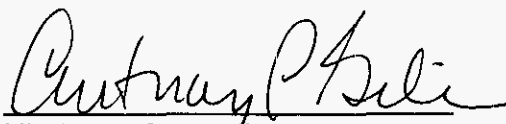
<sup>5</sup> Although customized routing is not a UNE, the appropriate rate for this feature was identified as an issue in this proceeding. Verizon took the position that rates for this feature (for which the company has received no requests since 1996) should be established on a case-by-case basis and submitted no cost studies or rate proposals for customized routing. Trimble Direct Testimony at 28-29.

In any event, Verizon intends to withdraw its cost studies, proposed prices, and associated testimony. Specifically, Verizon is withdrawing its recurring cost study and all prefiled testimony of David Tucek; its non-recurring cost study and all testimony of Linda Casey; all testimony of Michael Norris (except as to Verizon's support of statutory state and federal tax rates as model inputs); and all testimony and exhibits of Dennis Trimble that reflect previously recommended prices or otherwise address issues remaining for the hearing currently scheduled for September.

At this time, Verizon does not believe it will be necessary to withdraw any testimony associated with the issues addressed in the July 17 hearing in Phase I. Verizon still plans to file a posthearing statement setting forth its position on these issues on October 16, 2000.

For all the reasons discussed above, Verizon urges the Commission to bifurcate these proceedings so that the Commission may address costing and pricing issues separately for Verizon; and to suspend the remaining procedural events for Verizon pending final resolution of the issue of the appropriate cost standard to use in pricing UNEs.

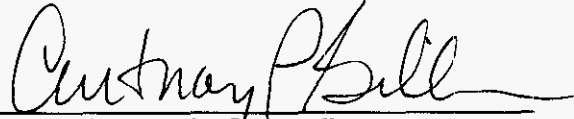
Respectfully submitted on August 2, 2000.

By:   
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Attorney for Verizon Florida Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion to Bifurcate and Suspend Proceedings in Docket No. 990649-TP were sent via electronic mail on August 1, 2000 and U.S. mail on August 2, 2000 to the parties on the attached list.

A handwritten signature in cursive script, appearing to read "Kimberly Caswell", written over a horizontal line.

Kimberly Caswell



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