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December 21, 2000

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

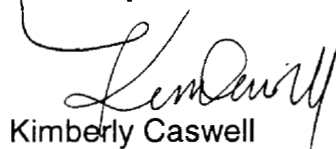
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RECORDS AND
REPORTING

Re: Docket No. 001745-TP
Petition by Pilgrim Telephone, Inc. for Arbitration of Terms of Interconnection
Agreement with Verizon Florida Inc.

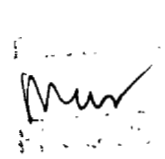
Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Motion to Dismiss the above-referenced petition. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,


Kimberly Caswell

KC:tas
Enclosures


RECORDS AND REPORTING

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FPSC-RECORDS REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of Pilgrim Telephone, Inc. Pursuant to Section 252(b) of the Communications Act of 1934)) Docket No. 001745-TP Filed: December 21, 2000

VERIZON FLORIDA INC.'S MOTION TO DISMISS PETITION FOR ARBITRATION OF PILGRIM TELPHONE, INC.

On December 8, 2000, Pilgrim Telephone Inc. (Pilgrim) filed a Petition for Arbitration under Section 252 of the Telecommunications Act of 1996 (Act). Verizon Florida Inc. (Verizon) asks the Commission to dismiss Pilgrim's Petition because Pilgrim is not a telecommunications carrier under the Act, and as such is not entitled to arbitration.¹ If the Commission does not dismiss the entire Petition, then it should dismiss at least Pilgrim's Issues C and D, which concern billing and collection. The billing and collection services Pilgrim seeks are not unbundled network elements (UNEs), much less telecommunications services, and are not necessary for Pilgrim to serve local customers. They are thus inappropriate for inclusion in a local interconnection agreement arbitration under the Act.

A. The Commission Should Dismiss the Petition Because Pilgrim Is Not a Telecommunications Carrier Under the Act.

The right to seek arbitration under the Act is controlled by Sections 252 and 251. Pursuant to Section 252, incumbent local exchange carriers (ILECs) are to negotiate terms for interconnection and access to unbundled elements upon request of a "telecommunications carrier." (Act sec. 252 (a).) While Verizon has engaged in

¹ Verizon will file its response to Pilgrim's Petition for Arbitration by December 26, 2000.

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negotiations with Pilgrim (as evidenced by the Petition, paragraphs 5 and 6), it has no duty to arbitrate an agreement for interconnection because Pilgrim is not a telecommunications carrier.

An ILEC has no duty to interconnect with the public at large. Rather, its obligations to provide interconnection and UNEs are limited to telecommunications carriers. (See Act. sec. 251 (c) (1) (duty to negotiate owed to "requesting telecommunications carrier"); sec. 251 (c) (2) (duty to interconnect facilities with any "requesting telecommunications carrier"); and sec. 251 (c) (3) (duty to provide unbundled network elements to "requesting telecommunications carriers".) The Act defines a telecommunications carrier as "any provider of telecommunications services." (Act. sec. 3(a)(2)(49).) A "telecommunications service" "means the offering of telecommunications for a fee directly to the public," (Act sec. 3(a)(2)(51)), and "telecommunications" is "the transmission, between or among points specified by the user, of information of the user's choosing" (Act sec. 3(a)(2)(48)).

Pilgrim cannot obtain arbitration under the Act because it does not meet the basic criterion of being a telecommunications carrier. As the Petition itself reveals, Pilgrim provides no telecommunications services in Florida. Pilgrim alleges only that it "offers a variety of interstate, interexchange services" (Petition at 1)--with its presubscribed long-distance services limited only to Massachusetts (Petition at 2)--and that it "plans to offer local exchange telecommunications services." It mentions no services, facilities, or customers in Florida.

What Pilgrim does, in fact, provide are 900, 976, and other information services or the billing for such services. As Verizon explains in the following section, it does not bill for such services, which generate a disproportionate amount of complaint and billing

disputes. In any event, Pilgrim's providing or billing for such information services does not make it a telecommunications carrier.

In fact, Pilgrim has never even applied for certification as a local exchange carrier in Florida. If it truly did intend to provide local exchange services here, it is reasonable to expect that it would have filed an application by now. As Pilgrim points out, it first requested negotiations with Verizon six months ago (Petition at 2.) Yet in all that time, Pilgrim never made any move to complete the relatively simple filing that is necessary to become an alternative local exchange carrier here.

Moreover, at about the same time Verizon and Pilgrim began negotiations, the Commission affirmatively denied Pilgrim interexchange (IXC) carrier certification. After Pilgrim filed an IXC application, Commission Staff informed Pilgrim that it was defective because it lacked the requisite tariff information. When over six months had passed, without Pilgrim submitting the required information, the Commission denied the application, finding that "it is not in the public interest to grant a certificate, to provide interexchange telecommunications service, to Pilgrim Telephone, Inc." *Application for a certificate to provide interexchange telecommunications service by Pilgrim Tel., Inc.*, Proposed Agency Action Order Denying Application for Certificate, Order No. PSC-00-1304-PAA-TI, at 1 (July 19, 2000).

Because Pilgrim is not a telecommunications provider under the Act, it is not entitled to arbitrate an interconnection agreement with Verizon. Verizon thus urges this Commission to take the same action other state commissions have in response to a Pilgrim petition for arbitration—that is, to dismiss the petition because Pilgrim is not a telecommunications carrier. See *Order Dismissing Arbitration*, Georgia P.S.C. Docket No. 7270-U (May 19, 1997); *Order*, North Carolina Utils. Comm'n Docket No. P-895

(Sept. 22, 1999). The FCC has confirmed that a state commission is acting well within its discretion when it dismisses a request for arbitration because the requesting party is not a telecommunications carrier. *Re Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech, etc*, 13 FCC Rcd 1755 (1997) (approving dismissals of request for arbitrations by the Illinois, Georgia and South Carolina state commissions). As each of these agencies has concluded, it would be a waste of limited regulatory resources to conduct arbitration when there is no assurance that the party requesting arbitration will ever serve any customers in the state. This Commission, likewise, has no time or effort to waste on arbitrating an agreement with Pilgrim, which is not a telecommunications carrier here and which has taken no steps to become one. Verizon thus asks the Commission to dismiss Pilgrim's Petition in its entirety. If and when Pilgrim decides to seek certification here, then the Commission can entertain an appropriate arbitration petition, should Pilgrim file one.

B. If the Commission Does Not Dismiss the Entire Petition, It Should at Least Dismiss Pilgrim's Request for Billing and Collection Services as a UNE

Pilgrim seeks arbitration of two issues that concern billing and collection services. With its Issue C, Pilgrim seeks to compel Verizon to provide billing and collection services for Pilgrim's pay-per-call information services provided to Verizon's end users. (Petition at 11-16.) With its Issue D, Pilgrim seeks billing name and address (BNA) and "900 blocking information," assertedly to help it bill non-presubscribed users of Pilgrim's information services. Neither of these issues is arbitrable under the Act.

These billing and collection issues, at least, should be dismissed, even if the Commission declines to dismiss the entire Petition.

With regard to Issue C, Pilgrim argues that it is entitled to inclusion of billing and collection services in a local interconnection agreement because these services are a UNE. This argument is wrong for at least two reasons.

First, billing and collection services are not a UNE. Section 3(a)(2)(45) of the Act defines network element as “a facility or equipment used in the provision of a telecommunications service.” It includes features and functions associated with the telecommunications service, including “information sufficient for billing and collection.” As noted, Pilgrim is not providing any telecommunications services in Florida, so the Act creates no UNE obligations running to Pilgrim in any event. Even if Pilgrim were providing telecommunications services, the Act does not impose any requirement for an ILEC to actually provide the billing and collection for such services—at most, the ILEC is obliged to furnish information sufficient for the ALEC to perform its own billing for its own customers.

Consistent with these observations, the FCC has never named billing and collection as a UNE. States have the ability to establish additional unbundling obligations, but they must be consistent with the Act and the FCC’s national policy framework. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999). This Commission has not established any UNEs beyond those required by the FCC, nor is it considering billing and collection as a UNE in its ongoing generic UNE costing and deaveraging cases.

Indeed, the Commission could not designate billing and collection as a UNE without contravening FCC policy, as well as its own decisions. The FCC detariffed billing and collection services almost 14 years ago, concluding that billing and collections is not a communications service, but rather, an administrative service. See *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150, 1170-71 (1986), *recon. denied*, 1 FCC Rcd 445 (1986); see also *Audio Communications, Inc., Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act*, 8 FCC Rcd 8697 (1993) (FCC ruled that billing and collection is not a common carrier service, so Sprint could refuse to provide billing for 900 pay-per-call services.) Even then, the FCC found billing services to be competitive; in the years since then, hundreds of new billing services have entered the market, leaving no doubt as to its competitive nature. By definition, then, billing and collections could not meet the Act's "necessary and impair" standard for UNE designation. (Act sec. 251(d)(2).)

This Commission has, likewise, rejected arguments that billing and collection is a telecommunications service, and has declined to order Verizon to provide billing and collections for non-telecommunications services. *Complaint of AGI Publishing, Inc. d/b/a Valley Yellow Pages against GTE Florida Incorporated for violation of Sections 364.08 and 364.10, Florida Statutes, and request for relief*, 99 FPSC 4:572 (1999).

As explained above, Pilgrim is not a telecommunications carrier. Even if it were, consideration of billing and collections as a UNE would be contrary to this Commission's past precedent as to both UNE and billing matters.

A second reason why Pilgrim is not entitled to arbitration of Issue C is that the kind of billing and collection services Pilgrim seeks do not belong in a local

interconnection agreement. The purpose of such an agreement is to allow interconnection between Verizon's and Pilgrim's respective local networks, so that Pilgrim can provide local service to its own end users. Here, though, Pilgrim seeks to have Verizon collect for Verizon's *own* customers who might access Pilgrim's information services through toll calls. Such an arrangement is not within Verizon's obligations under section 251 of the Act. As Pilgrim knows, the kind of billing and collection services Pilgrim seeks are instead addressed through commercial billing and collection contracts, and Verizon's billing and collection services are available to Pilgrim through such a contract.

In fact, Verizon has ample experience with Pilgrim in this regard. Verizon provided billing services to Pilgrim under contract for many years prior to July of 1998. The billing and collection contract was not renewed in 1998 because of the unacceptable number of customer complaints regarding Pilgrim's pay-per-call services and the high ratio of billing disputes. In the last year of Verizon's contractual relationship with Pilgrim, Verizon was compelled to recourse back to Pilgrim 100% of the revenues billed, because of customer complaints. Pilgrim was consistently near the top of the list for the highest ratio of customer complaints to messages billed. The overwhelming majority of the customer complaints related to Pilgrim's pay-per-call services.

Pilgrim still owes Verizon operating companies almost \$2 million for post-billing adjustments and over \$60,000 for ancillary billing charges under the 1997 contract. Pilgrim has failed to pay these past due amounts, so the matter has been turned over to a collection agency.

Because of the inordinately high number of customer complaints and billing disputes related to pay-per-call services, such as those Pilgrim provides, Verizon adopted a policy of not including pay-per-call services in new billing contracts after January 1, 1999.

Several months ago, Pilgrim contacted Verizon to negotiate a new billing services contract. Verizon advised Pilgrim that it would agree to a new contract on the same terms and conditions as other similarly situated billing services customers, once the debt from the previous contract was paid. A draft billing services contract was provided to Pilgrim earlier this fall.

Verizon's next contact with Pilgrim was the receipt of a request for an interconnection agreement. Discussions since then have focused on Pilgrim's desire to bill Verizon's end users for pay-per-call services provided by Pilgrim. Pilgrim has also indicated its interest in being able to bill the kind of "masquerade" 900 pay-per-call message traffic that has raised serious concerns with this Commission (that is, toll free 1-800 calls that convert into 900 pay-per-calls, operator assisted collect calls, credit card calls or international calls, coupled with a charge for the information services provided).

Pilgrim did not request an interconnection agreement until after its attempts to negotiate a billing service agreement for pay-per-call services failed. Pilgrim apparently is trying to circumvent Verizon's contract terms (that is, no billing for pay-per-call or masquerade pay-per-call messages) through an interconnection agreement. Contrary to Pilgrim's apparent understanding, Verizon has not and does not provide third-party pay-per-call billing services for any ALEC under existing interconnection agreements. In any event, because billing services are neither a UNE nor a telecommunications

service, Pilgrim has no right to seek to have them included in a local interconnection agreement.

Turning to Pilgrim's Issue D, Pilgrim purports to seek "certain customer information" under the rubric of "access to OSS." This tack is just as unavailing as Pilgrim's UNE argument under Issue C. As in that case, this issue should be dismissed because it is not appropriate for inclusion in an arbitration of a local interconnection agreement. Although the Petition is somewhat confusing, again Pilgrim appears to want information that may facilitate its billing for customers of Verizon, not any local customers of Pilgrim. The kind of information Pilgrim seeks is not associated with any telecommunications services, nor is it necessary for Pilgrim to bill its casual callers to those services. Rather, the BNA and "900 blocking" information Pilgrim seeks seems geared only to assuring that Pilgrim can hold down its own uncollectible amounts. (See Pilgrim Petition at 20-21.)

In short, this is a billing and collection matter—not an OSS matter. Verizon will provide access to OSS for pre-ordering, ordering and provisioning, maintenance and repair, and billing, but Pilgrim's request goes far beyond these obligations. As Verizon explained above, the kinds of billing and collections matters Pilgrim raises are more properly addressed through negotiation of billing contracts. Pilgrim cannot be allowed to obtain through an interconnection agreement what it cannot through a billing contract—that is, the ability to bill for the kind of traffic that has been shown to generate unacceptably high levels of consumer complaints and billing disputes.

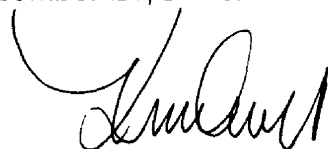
In any event, Verizon does make available billing name and address service under tariff. With this information, Pilgrim can use other billing services (e.g., credit cards) to bill the charges, or bill the messages directly to Pilgrim's end users.

Conclusion

For the reasons noted above, Pilgrim's Petition should be dismissed in its entirety. If the Commission declines to dismiss the entire Petition, it should at least dismiss Pilgrim's Issues C and D, concerning billing and collection services, from the arbitration.

Respectfully submitted on December 21, 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 Dismiss the Petition for Arbitration of Pilgrim Telephone, Inc. in Docket No. 001745-TP were sent via U.S. mail on December 21, 2000 to:

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