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December 26, 2000

ORIGINAL

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

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 Response to 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,

for Kimberly Caswell

KC:mcp
Enclosures

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Leg-1
Comm-5
Sec-1

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of Pilgrim Telephone, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996	)))	Docket No. 001745-TP Filed: December 26, 2000

VERIZON FLORIDA, INC.'S RESPONSE TO PETITION FOR ARBITRATION OF PILGRIM TELEPHONE, INC.

Verizon Florida Inc. (Verizon) responds to the Petition for Arbitration (Petition) of Pilgrim Telephone, Inc (Pilgrim). On December 21, 2000, Verizon filed a Motion to Dismiss the Petition because Pilgrim is not a telecommunications carrier and is thus not entitled to arbitration under the Telecommunications Act of 1996 (Act). Verizon also explained that the billing and collection services Pilgrim seeks are not an unbundled network element (UNE); they are not part of Verizon's operations support systems (OSS) obligations; and they do not otherwise belong in a local interconnection contract. Pilgrim can, instead, obtain these billing services through a commercial contract from Verizon or another provider.

If the Commission dismisses Pilgrim's Petition in its entirety, as it should, there will be no reason for the Commission to consider this Response. However, if the Commission allows Pilgrim to proceed on any of the issues it has raised, then Verizon urges the Commission to reject Pilgrim's positions on these issues and to instead adopt Verizon's positions.

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I. BACKGROUND

Pilgrim's chronological account of the parties' negotiations appears to be generally correct, although Verizon denies that it unduly "complicated" the negotiations by asking Pilgrim to consider a revised generic interconnection agreement after GTE's merger with Bell Atlantic. In fact, Verizon was required to offer such a multi-state agreement as a condition of the FCC's approval of the merger, precisely because it would *avoid* unnecessary complications and expense for companies, like Pilgrim, that wish to execute an agreement covering multiple Verizon states. *Application of GTE Corp. and Bell Atlantic Corp.*, Memo. Op. & Order, 15 FCC Rcd 14032, at para. 306 (June 16, 2000).

In any case, as Verizon explained in its Motion to Dismiss Pilgrim's Petition, a local interconnection agreement is not the proper vehicle for the billing and collection services Pilgrim seeks. Verizon can provide some insight as to why Pilgrim has taken the unconventional (and mistaken) approach of seeking these services through an arbitration under the Act—despite the fact that it is not a telecommunications carrier.

Pilgrim provides pay-per-call (*e.g.*, 900 and 976) services, for which the caller ordinarily pays a toll charge plus the information service charge, on a call-by-call basis. Pilgrim either provides the audio text messages itself or contracts with information providers to do so.

Verizon performed billing for Pilgrim's information services for many years prior to July 1998. Pilgrim's contract was not renewed at that time because of the unacceptable number of customer complaints and billing disputes associated

with Pilgrim's pay-per-call services. In the last year of Verizon's contract with Pilgrim, it was necessary to recourse to Pilgrim 100% of the revenues Verizon had billed on Pilgrim's behalf.

Pilgrim still owes the Verizon companies $2 million for adjustments made to customers' bills under the 1997 contract. Pilgrim has not paid Verizon back for these charges Verizon removed from its customers' bills, so the matter has been turned over to a collection agency.

Because of the inordinate number of complaints and billing disputes provoked by pay-per-call services, such as those Pilgrim provides, Verizon (then, GTE) adopted a policy of excluding pay-per-call services from billing contracts executed after January 1, 1999.

Several months ago, Pilgrim contacted Verizon to negotiate a new billing services contract. Pilgrim was advised that Verizon would agree to a new contract on the same terms and conditions as other similarly situated billing service customers (*i.e.*, no pay-per-call services), once the debt from the previous contract was paid. A draft billing services agreement was provided to Pilgrim in the fall of this year.

During this same period, Verizon received Pilgrim's request for an interconnection agreement. Discussions since then have focused on Pilgrim's desire to bill Verizon's end users for Pilgrim's pay-per-call services. Pilgrim has also indicated its interest in being able to bill "masquerade" 900 pay-per-call message traffic (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 service provided).

As noted, Verizon does not now bill for pay-per-call and masquerade pay-per-call services, and also prohibits charges for material that refers to sexual conduct, alludes to racism, sexism or bigotry, is deceptive in its advertising content or delivery, is designed to take advantage of minors or the general public, or that results in an unacceptably high number of end user complaints. These policies, which the Commission has reviewed in the past, are reasonable and intended to reduce consumer complaints to both the Company and the Commission. But because they are not to Pilgrim's liking, Pilgrim is trying to circumvent them through an interconnection agreement.

II. VERIZON'S POSITION ON THE DISPUTED ISSUES DESIGNATED BY PILGRIM

Issue A: Dispute Resolution Procedures

Pilgrim's proposed approach to dispute resolution is complex, potentially confusing, expensive, and time consuming. The parties agree that they should first try to resolve disputes through good faith negotiations. If those negotiations fail, Verizon's position is that the parties are then free to pursue their remedies at law, including proceedings before this Commission or the FCC. In contrast to this simple and straightforward solution, Pilgrim suggests a multi-layered approach that includes "mandatory binding arbitration," but with no waiver of any right to bring a complaint before the state commission or the FCC "with regard to any regulated public service obligations." (Petition at 6.) Injunctive relief could

also be sought in the courts, but only to enforce the agreement or the dispute resolution clause.

Although Pilgrim claims the "express purpose" of its proposal is to avoid litigation and that it would reduce the Commission's caseload (Petition at 6-7), in practice, it would have just the opposite result. Pilgrim's unnecessarily complex scheme would facilitate multiple litigations of the same matter (that is, private arbitrations and Commission proceedings); despite the "mandatory" private arbitration proposal, parties would still remain free to take up their grievances with this Commission under the broad and vague "regulated public service obligation" exception. At the very least, the confusing jurisdictional provision would lead to disputes about which forum could hear the complaint in the first instance, before the parties could even start to litigate the merits. This is not the kind of proposal that would reduce the Commission's caseload or the parties' expenses.

In addition, in Verizon's experience, arbitrations have proved to be somewhat drawn-out and costly affairs, particularly when discovery is permitted. The use of three arbitrators (rather than one), as Pilgrim suggests, is another unnecessarily expensive suggestion.

Finally, it is unclear how Pilgrim's proposal would work. For instance, Pilgrim's approach would require the parties to "continue to provide services to each other during the pendency of dispute resolution procedures" (Petition at 6), apparently despite any potential fraud or abuse by Pilgrim or its customers. If Pilgrim's approach is adopted, it seems that Verizon would be foreclosed from

seeking an injunction to stop serving Pilgrim if Pilgrim was providing services in violation of law or the agreement. There is also the question—a critical one, in view of Pilgrim's past payment history with Verizon—as to whether Verizon would have to continue providing service to Pilgrim in the case of unpaid bills. Common sense and sound policy counsel against requiring Verizon to offer services under these conditions, but that is what Pilgrim appears to propose.

The Commission should instead accept Verizon's approach to dispute resolution, which will leave the parties free to agree to either binding or non-binding arbitration, rather than imposing Pilgrim's convoluted and confusing "mandatory arbitration" scheme.

Issue B: Limitation of Liability

Section 1.2 of the draft agreement establishes an order of precedence in the event of conflict among provisions in the interconnection agreement, a party's tariffs, and service orders. Section 25.6 specifically addresses conflicts between limitations of liability. It states that where both the contract and a tariff exclude or limit liability, the lesser measure—either under the contract or any applicable tariff—will control.

Pilgrim seeks to delete section 25.6, claiming it is "inconsistent" with section 1.2. (Petition at 7), and that Verizon, in any event, should not be permitted to rely on the tariffed limitation of liability where it differs from the contract limitation (Petition at 9).

First, there is no inconsistency between sections 1.2 and 25.6. Section 1.2 addresses conflicts between competing contract and tariff terms *that are not resolved by the agreement itself.* Because section 25.6 speaks clearly and directly to conflicts between tariff and contract measures of liability, these conflicts are resolved by the agreement itself. So there is no inconsistency between the general conflicts provision (section 1.2) and the more specific provision dealing with limitations of liability (section 25.6).

Second, reliance on tariffed limitations of liability where a party takes tariffed services is reasonable and customary. Pilgrim cannot accept services or functions under the agreement pursuant to tariff, but eliminate just the portion of the tariff that addresses Verizon's potential liability. This position is at odds with the very concept of a tariff. Tariff prices are based on average costs that are calculated on the assumption that Verizon's potential liability associated with the tariffed service cannot exceed the limitation that is part of the tariff. Tariffed limitations of liability are typical features of utility tariffs because of the longstanding public policy against making ratepayers pay for possibly extreme or unforeseeable consequences of telecommunications service failures. If Pilgrim wishes to take a tariffed service, but circumvent the tariffed limitation of liability, then the tariffed price is no longer appropriate, not just for Pilgrim, but for any customer taking service under the tariff. If Verizon is subject to a higher measure of liability for the service, then its tariffed price must be increased to cover Verizon's potentially greater liability. Pilgrim cannot be permitted to choose the

tariff terms it regards as favorable, while discarding other features adopted as an inherent part of the entire tariff offering

In arguing against the tariffed limitation of liability, Pilgrim raises the specter that if its position is rejected, Verizon will "have the opportunity to include provisions in its tariffs that limit its liability for willful misconduct." (Petition at 9.) Verizon has never attempted to take such an extreme position in all the years its tariffs have been in effect and cannot, in any event, imagine the Commission sanctioning such a change if Verizon were improvident enough to propose it. Pilgrim's reliance on this plainly implausible example shows how ill founded its argument is.

The Commission should adopt Verizon's recommended language, which clarifies that the tariffed limitation of liability will take precedence when both the tariff and a provision of the agreement limit or exclude liability in particular situations.

Issue C: Billing and Collection Services

The sole predicate for Pilgrim's request to arbitrate a billing and collection agreement is "Pilgrim's belief that Verizon is required to make billing and collection available to competitive carriers as a UNE." (Petition at 12-13.) As Verizon explained in its Motion to Dismiss, billing and collection services are not a UNE; they are widely available under commercial contracts from Verizon and a host of other providers; and Verizon, in any case, makes available to Pilgrim all the information it needs to bill its own customers.

If the Commission, however, does not grant Verizon's Motion to Dismiss, then it should nevertheless deny Pilgrim's request for billing and collection services for the following reasons (some of which also underlie Verizon's Motion to Dismiss).

First, as Verizon explained above and in its Motion to Dismiss, billing and collection services are not a UNE. They have never been designated as such by either the FCC or this Commission. Pilgrim's effective request to add billing and collection to the Commission's UNE list in this arbitration is procedurally inappropriate, as the Commission has decided to consider UNE costs, rates, and deaveraging in a generic proceeding (that is, Docket No. 990649). A company-specific, time-constrained arbitration proceeding is not the proper forum to evaluate whether ILECs in Florida need to offer a new billing and collection UNE.

Pilgrim attempts to support its "billing as UNE" position by contending that Verizon has incorporated billing and collection provisions into interconnection agreements in Kentucky and New York. (Petition at 14-15.) But these agreements did *not* designate billing and collection to be a UNE. The limited billing provisions were, instead, ancillary features of the contracts—that is, not necessary for interconnection. These provisions in the Kentucky contract were likely intended to pass call rating data from certain information service providers (ISPs) to allow the contracting carrier to bill *its* end users for use of the ISPs' services—which is much different from Pilgrim's objective. In any event, no billing and collection services were ever furnished under the Kentucky agreement. This contract dates back to 1997, and only months remain until its

expiration. At the time it was executed, the Company had not yet adopted its prohibition against billing for pay-per-call services. In short, nothing in either contract undermines Verizon's view that billing and collection services are not a UNE and that they are properly addressed through specific billing and collection agreements, rather than interconnection contracts.

Second, even if the Commission were willing to consider adding a billing and collection UNE to its list in the context of this arbitration, Pilgrim has failed to plead and cannot show that billing and collection would satisfy the Act's "necessary and impair" test in Section 251(d)(2). Verizon's billing and collection services are proprietary to Verizon under Section 251(d)(2)(A), because they are the product of an investment "to develop proprietary information or network elements that are protected by patent, copyright or trade secret law." *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking (FCC UNE Remand Order), 15 FCC Rcd 3696, at para. 35 (1999). As such, Verizon cannot be required to make its billing services available as a UNE unless access to them is "necessary." (Act sec. 251(d)(2)(A).) The FCC has concluded that a proprietary network element, such as Verizon's billing services, is "necessary" under the Act only "if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the service it seeks to offer."

FCC Remand Order at para. 44 [emphasis in original.] Verizon's billing and collection services are not necessary because they are available from hundreds, if not thousands, of other providers. In fact, Verizon's own billing and collection services are available to Pilgrim under Verizon's standard billing contract. The fact that Pilgrim has not used Verizon's billing services since 1998 is conclusive proof that they are not necessary for Pilgrim to bill its pay-per-call messages.

As Verizon pointed out in its Motion to Dismiss, the FCC found billing and collection services to be competitive when it detariffed them 14 years ago. *See Detariffing of Billing and Collection Services*, 102 FCC 2d 1150, 1170-71 (1986), *recon. denied*, 1 FCC Rcd 445 (FCC Detariffing Order) (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). And neither the FCC nor this Commission considers billing services to be telecommunications services. FCC Detariffing Order, *supra*; *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).* These decisions preclude a finding that billing and collection services are a UNE.

This conclusion holds true even if the Commission were to analyze Verizon's billing and collection services under the standard for non-proprietary elements, which requires material "impairment" of a carrier's ability to offer its services without the function. (FCC Remand Order at para. 51-52.) Again, the touchstone for the analysis is the availability of the element outside an ILEC's

network. *Id.* Pilgrim's ability to provide its pay-per-call services (which are not, in any event, telecommunications services) is not materially impaired when it has so many billing choices other than the ILEC.

Third, even if billing and collection were somehow deemed a UNE, Verizon has no obligation to provide these services to Pilgrim, because Pilgrim is not a telecommunications carrier under the Act. As Verizon explained more fully in its Motion to Dismiss, Verizon is not required to arbitrate interconnection agreements with the public at large, but only with "telecommunications carriers." *See* Act secs. 251(c)(1)-(3). Pilgrim is not a telecommunications carriers because it provides no telecommunications services in Florida. Its Petition refers to no customers, services, or facilities here. It has never applied for certification as an alternative local exchange carrier, and has shown no intention to do so in the months it has been negotiating with Verizon. In addition, this Commission has denied Pilgrim's request for interexchange carrier certification. *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).

In sum, the Commission should accept Verizon's position on this issue. The facts and existing law preclude consideration of billing and collection as a UNE, and Verizon has no obligation to provide Pilgrim, which is not a telecommunications carrier, any UNEs in any event. If Pilgrim wishes to obtain billing and collection services from Verizon or another provider, it can do so in the usual manner--through a billing and collection contract.

Issue D: Access to "OSS Functions"

Verizon sought dismissal of Issues D and C, above, for much the same reasons. If the Commission does not dismiss these issues, then it should at least reject Pilgrim's positions on them. Here again, the decisive consideration is that Pilgrim is not a telecommunications carrier, so Verizon has no OSS obligations toward Pilgrim. Even if it did, the "customer record information" Pilgrim seeks goes beyond any OSS requirement under the Act, and is not a proper subject for a local interconnection agreement.

Although Pilgrim is somewhat vague as to what kind of "customer record information" it wants and why, it appears principally interested in access to billing name and address (BNA) and 900 blocking information. Again, it would use such information not to bill any of its own local end users, but to bill Verizon's customers making pay-per-calls on a casual basis. Even Pilgrim does not appear to claim that the information it requests is truly necessary for it to perform billing. The customer records it seeks would instead help Pilgrim ensure that it gets paid for its information services, by allowing it to determine, on a call-by-call basis, who the customer is, whether they are in good standing with Verizon, and whether they have 900 blocking. (Petition at 20-21.)

Pilgrim proposes to obtain customer records through specified contract changes that would (1) revise the contract definition of "customer" to include an end user of information services; (Petition at 16); (2) clarify that Verizon's OSS facilities and information may be accessed for Pilgrim's provision of information services (Petition at 17); and add language requiring Verizon to "make access to

database information available in real time, twenty-four (24) hours per day, and seven days per week." (Petition at 17.)

Pilgrim's first two proposals for language changes only emphasize the fundamental problem that merits outright dismissal of Pilgrim's Petition. As explained here and in Verizon's Motion to Dismiss, Pilgrim cannot obtain arbitration of a local interconnection agreement under the Act if it is not a telecommunications carrier. Pilgrim's suggested contract revisions are tantamount to an admission that it does not meet this basic criterion. There would be no reason to extend the contract language to information services and their end users if Pilgrim were providing telecommunications services.

Pilgrim is even more forthcoming on this point in its footnote 17: "It is important to note that, to the extent that Pilgrim were to engage in the provision of services in Florida as a competitive LEC providing local exchange services to its own base of customers, Pilgrim's need for the network elements at issue in this proceeding would be minimized." (Petition at 20 n. 17.) In other words, if Pilgrim were or intended to become a telecommunications carrier in Florida, it wouldn't even need the billing services it's asking for in its Petition.

Contrary to Pilgrim's apparent belief, nothing in the Act requires an ILEC to provide interconnection, including OSS features, to companies (like Pilgrim) that are information service providers that furnish no telecommunications services. As such, Pilgrim's request for customer information under the OSS rubric must be denied.

Even if Pilgrim were a telecommunications carrier, its request has nothing to do with OSS or local interconnection. Instead of seeking access to legitimate OSS functions, like pre-ordering, ordering, provisioning, maintenance, or billing features that would permit Pilgrim to provide local exchange service to its own customers, Pilgrim wants customer information to help it bill (or at least help it collect for) Verizon's subscribers' calls to its 900, 976 and/or masquerade 900 services.

In any event, neither BNA nor the 900 blocking Pilgrim seeks is "available through Verizon's OSS facilities," as Pilgrim claims. (Petition at 20.) There is no existing "database," OSS or otherwise, that Verizon could make available to Pilgrim on a round-the-clock basis for Pilgrim to check BNA and blocking information. BNA, of course, is a typical element of billing and collection service, not an OSS function. Verizon's tariffed BNA service is available to Pilgrim, just as it is to any other entity.

Even if Verizon had the technical means to grant Pilgrim's request, it would likely violate Section 222 of the Act, which protects the privacy of customer information, including credit history, information contained in a customer's bill and information about services a customer has ordered (which would include 900 blocking). Carriers holding customer proprietary information may not disclose it except upon written authorization of the customer. (Act sec. 222 (c)(2).)

Verizon does, as part of its pre-ordering OSS functions, make customer service record information available to carriers, but not without the requisite

authorization under Section 222. The written authorization required by the Act could not be obtained on a call-by-call basis, as Pilgrim's request would require.

While there are exceptions in Section 222(d) for billing for *telecommunications services*; for protecting *telecommunications users and carriers* from fraudulent, abusive, or unlawful use of *telecommunications services*; and for providing administrative services to customers on customer-initiated calls, Verizon does not believe these exceptions were intended to apply here. Even leaving aside the decisive factor that Pilgrim is not billing for any *telecommunications services*, Pilgrim is not seeking the information to bill its customers *at all*, let alone protect them from fraud or provide them administrative services. Pilgrim's purpose is, instead, to help ensure its success in collecting the charges assessed to Verizon's customers' for their use of Pilgrim's pay-per-call services.

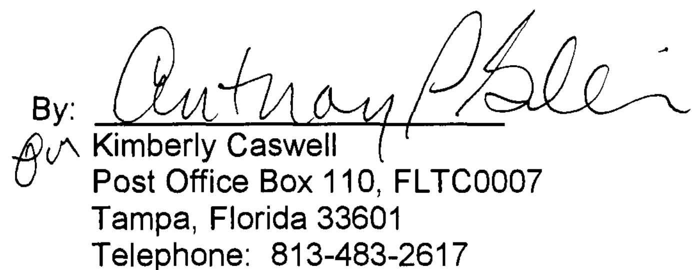
Finally, it is not clear that Pilgrim's "OSS" request, if granted, would even be lawful. Pilgrim seems to need 900 blocking information primarily (or perhaps solely) in cases where Verizon customers access Pilgrim's pay-per-call services through an 800 number. These "masquerade" 900 pay-per-call services have caused so many problems and customer complaints that federal law now prohibits use of 800 numbers in this way, except under certain very specific conditions. (47 U.S.C. sec. 228.) The calling party must have either a written agreement that meets the requirements specified in the statute; or the calling party must be charged for the information by a credit, prepaid, debit, charge or calling card and the provider must include an introductory disclosure of the terms

and charges on each call. (47 U.S.C. sec. 228(7)-(9).) Although Pilgrim alludes to these conditions in a footnote (page 21, note 18), it does not claim to comply with them. (Indeed, Pilgrim's request for billing and collection as a UNE seems geared toward callers who do not have a subscription agreement with Pilgrim and who are not paying by any of the specified means.) Even if the features Pilgrim seeks were aspects of OSS, Pilgrim is obliged to better explain why it needs them and prove that it is in compliance with section 228 of the Communications Act.

III. CONCLUSION

For the reasons set forth in Verizon's Motion to Dismiss, Pilgrim's Petition should be dismissed in its entirety. To the extent that the Commission does not dismiss all of the Issues Pilgrim has raised, Verizon asks the Commission to deny all of Pilgrim's requests and to accept Verizon's position on each of the designated Issues.

Respectfully submitted on December 26, 2000.



By: ____________________

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Attorney for Verizon Florida Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to the Petition for Arbitration of Pilgrim Telephone, Inc. in Docket No. 001745-TP were sent via U.S. mail on December 26, 2000 to:

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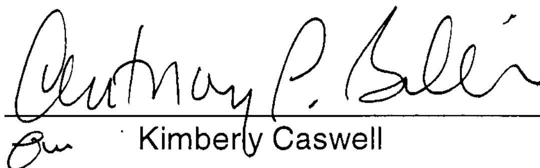

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