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January 2, 2001

Blanca S. Bayo, Director
Division of Records and Reporting
Public Service Commission
4750 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Docket No. 001745-TP

Dear Ms. Bayo:

Enclosed is an original and fifteen (15) copies of Pilgrim Telephone, Inc.'s Opposition to Motion to Dismiss in the above docket.

We have also enclosed a copy of the document on diskette, prepared in Microsoft Word 7.0 on a Windows 95 operating system. The diskette is a "2HD" density and 1.44 MB.

Thank you in advance for your assistance.

Sincerely yours,

Seann M. Frazier

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Before the
PUBLIC SERVICE COMMISSION
of the
STATE OF FLORIDA

In the Matter of PETITION FOR ARBITRATION OF PILGRIM TELEPHONE, INC. PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934	DOCKET NO. 001745-TP

OPPOSITION TO MOTION TO DISMISS

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Before the
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In the Matter of PETITION FOR ARBITRATION OF PILGRIM TELEPHONE, INC. PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934	DOCKET NO. 001745-TP

OPPOSITION TO MOTION TO DISMISS

Pilgrim Telephone, Inc. ("Pilgrim"), through counsel, submits the following Opposition to the Motion To Dismiss ("Motion") filed by Verizon Florida, Inc. ("Verizon") on December 21, 2000, in the above-captioned proceeding.

I. INTRODUCTION

Verizon argues in its Motion that Pilgrim should not be permitted to exercise its right to file an arbitration petition pursuant to Section 252 of the Communications Act of 1934 ("Act") because Pilgrim is not a telecommunications carrier, as defined by the Act. Verizon also argues that the Commission should dismiss two issues raised by Pilgrim in its Petition for Arbitration ("Petition")[1] because the issues are not appropriate for inclusion in an arbitration petition.

[1] The first issue relates to whether Verizon should provide billing and collection service as an unbundled network element ("UNE") for certain types of calls transiting the Pilgrim network. The second issue relates to whether Verizon should be required to provide access to billing name

For the reasons discussed in the following sections, Pilgrim urges the Commission to deny Verizon's Motion and to proceed to the consideration of the merits of Pilgrim's Petition.

II. ARGUMENTS

Verizon first raises a jurisdictional argument regarding whether Pilgrim's Petition should be considered by the Commission, and then suggests that specific issues included in Pilgrim's Petition should be dismissed because they are outside the scope of an arbitration proceeding. These arguments are addressed in turn in the following sections.

A. Pilgrim Qualifies as a Telecommunications Carrier under the Terms of the Act and Is Therefore Entitled To File a Petition for Arbitration

Verizon argues that Pilgrim is not entitled to file a petition for arbitration because Pilgrim is not a telecommunications carrier as defined by the Act; Pilgrim does not have services, facilities, or customers in Florida; Pilgrim is not certificated by the Florida Commission; and Pilgrim's interexchange carrier ("IXC") certification has been denied by the Florida Commission. Pilgrim disagrees with Verizon's arguments and asserts that there are sound statutory and policy reasons for the Commission to deny Verizon's Motion.

First, Verizon contends that Pilgrim is not entitled to file a petition for arbitration because Pilgrim is not a telecommunications carrier as defined by the Act.[2] The Act defines a telecommunications carrier as "any provider of telecommunications services . . . ."[3] "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the

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and address and to 900 number blocking information for use by Pilgrim in providing any type of telecommunications service.

[2] Verizon Motion at 1-2.

[3] 47 U.S.C. § 153(44).

public, regardless of the facilities used."[4] Pilgrim clearly falls within the definition of telecommunications carrier because Pilgrim currently provides interstate telecommunications services pursuant to a tariff on file with the Federal Communications Commission ("FCC") and also provides intrastate telecommunications services in several states.

Second, Verizon argues that Pilgrim is not entitled to file a petition for arbitration because Pilgrim does not provide telecommunications services in Florida, but offers only interstate, interexchange services.[5] Similarly, Verizon contends that Pilgrim is not entitled to file this petition because Pilgrim has not applied for certification in the State of Florida.

There are no provisions in the Act that require a carrier to provide services within a state or to be certificated by a state commission as a prerequisite to a carrier's eligibility to file an arbitration petition with a particular state commission. The statute merely requires that a party filing an arbitration petition must be a telecommunications carrier.

Section 252(a)(1) of the Act provides that any telecommunications carrier may request negotiations with an incumbent local exchange carrier ("LEC") for interconnection, services, or network elements pursuant to Section 251 of the Act. Section 252(b)(1) indicates that any party that is eligible to be involved in negotiations under Section 252(a)(1) (*i.e.*, an incumbent LEC or any telecommunications carrier making a request under Section 252(a)(1)) is entitled to file a petition for arbitration.

Because Pilgrim provides telecommunications services, it has met the only statutory threshold of eligibility to request negotiations with incumbent LECs under Section 252(a)(1) and to file arbitration petitions under Section 252(b)(1). There are no statutory provisions which

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[4] 47 U.S.C. § 153(46).

[5] Verizon Motion at 2.

attach any geographical parameters or requirements to the definition of telecommunications carrier. In other words, there is no test established in the statute under which a party's status as a telecommunications carrier can vary from state to state depending on whether it is certificated in a given state.

This interpretation of the Act is supported by decisions of the FCC. In its *Local Competition Order*, the FCC found that, as part of a duty to negotiate in good faith, "a party may *not* condition negotiation on a carrier first obtaining state certification."[6] Thus, a carrier requesting negotiations is not required to be certificated by any state public service commission. Both Sections 252(a)(1), regarding negotiation requests, and Section 252(b)(1), regarding arbitration requests, grant rights and protections to "telecommunications carriers." Neither section otherwise modifies this grant of rights. The definition of telecommunications carrier is exactly the same in both sections. If a telecommunications carrier need not be certificated to request negotiation, it also need not be certificated to seek arbitration. To impose such a requirement would add an additional definitional element not found within the four corners of the statutory language. Verizon's contention that Pilgrim must be certificated to be a telecommunications carrier is erroneous -- this Commission should decline to adopt Verizon's novel statutory construction.

Verizon cites another FCC decision for the proposition that "[t]he FCC has confirmed that a state commission is acting well within its discretion when it dismisses a request for

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[6] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15577 (para. 154) (emphasis added) (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom.* Competitive Telecom. Ass'n v. Federal Comm. Comm'n, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom.* Iowa Utils. Bd. v. Federal Comm. Comm'n, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part, and remanded sub nom.* AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

arbitration because the requesting party is not a telecommunications carrier."[7] Verizon claims that the FCC Order approved dismissals of arbitration petitions by three state commissions, and Verizon observes that these dismissals were based on the agencies' conclusions that the petitioning party was not certificated in their states.[8]

Pilgrim believes, however, that Verizon's reliance on the FCC's *LTD Order* is misplaced. The FCC did not in fact confirm, approve, or otherwise endorse the actions taken by the state commissions in dismissing arbitration petitions. Low Tech Designs, Inc. (LTD) had requested the FCC to assume jurisdiction of arbitration proceedings in three state jurisdictions and to preempt the authority of the state commissions in those proceedings. The FCC observed that it has authority under Section 252(e)(5) of the Act to preempt the jurisdiction of a state commission *only* if it finds that the state commission has failed to act on an arbitration petition. The FCC noted that it construes the statutory "failure to act" test "to mean a state's failure to complete its duties in a timely manner[,]" and the FCC denied LTD's petition for the assumption of FCC jurisdiction because LTD had not demonstrated any state commission's failure to act under this standard.[9]

The FCC also observed that, although LTD did advance legal arguments that the requirements imposed by the state commissions violate Section 253(a) and Section 253(b) of the

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[7] Verizon Motion at 4, citing Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with BellSouth Before the Georgia Public Service Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with GTE South Before the Public Service Commission of South Carolina, CC Docket Nos. 97-163, 97-164, 97-165, Memorandum Opinion and Order, 13 FCC Rcd 1755 (1997) (*LTD Order*).

[8] *Id.*

[9] *LTD Order* at paras. 2, 31.

Act, the FCC was not expressing any views on the merits of these legal arguments because LTD had not sought preemption of these state requirements pursuant to Section 253(d) of the Act and LTD had not presented adequate record evidence to demonstrate that the state requirements would prohibit LTD's ability to provide any interstate or intrastate telecommunications service.[10] The FCC did express concern about any state requirements that might have such an effect, and noted that, if LTD were to file a petition on these issues pursuant to Section 253, the FCC "would take appropriate action under section 253(d)."[11] Finally, the FCC observed that LTD could seek a remedy in federal district court against the state commissions' actions dismissing its arbitration petitions.[12]

The Commission must not condone Verizon's misreading of the *LTD Order* that the FCC has confirmed the discretion of a state commission to dismiss an arbitration petition if it determines that the petitioner is not a telecommunications carrier. As we have discussed, the FCC, in ruling on the issue of whether there was a basis for the assertion of federal jurisdiction under Section 252 of the Act, did not reach the merits of any of LTD's legal arguments.

Finally, Verizon argues that Pilgrim is not entitled to file a petition for arbitration because Pilgrim is not a telecommunications carrier as evidenced by the fact that the Commission has

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[10] *Id.* at para. 38.

[11] *Id.*

[12] *Id.* at para. 37. The FCC also pointed out that one of the state commissions (Illinois) whose actions were challenged by LTD found that the fact that LTD was not certified to operate in Illinois was not the issue upon which the Illinois Commission relied in reaching its decision. *Id.* at para. 10. Rather, the Illinois Commission concluded that LTD was not a telecommunications carrier because it was not providing telecommunications services anywhere in the country. *Id.* at para. 10. The FCC declined, however, to address the merits of the Illinois Commission's decision. *Id.* at para. 38. Therefore, the issue before this Commission was not the basis for the Illinois Commission's determination, and was not reviewed by the FCC. By contrast to the determinative issue in the LTD proceeding, Pilgrim does provide telecommunications services throughout the country.

affirmatively denied Pilgrim IXC certification.[13] On July 19, 2000, the Commission dismissed Pilgrim's IXC certification without prejudice, permitting Pilgrim to refile its application for certification at any time.[14] The Commission, however, made no substantive findings regarding Pilgrim's overall qualifications to provide interexchange service or any other services within the State of Florida. Although Pilgrim's IXC certification was dismissed, Pilgrim still offers interstate telecommunications services. Moreover, Pilgrim intends to file with the Florida Commission a new application for IXC certification along with an application for certification as a local exchange carrier as soon as it knows the outcome of this arbitration proceeding and can evaluate, based upon the conclusions reached in this proceeding, what services it can offer in Florida, and the price it must charge for those services to recover its costs and profit margin. Thus, Pilgrim is entitled to file the Petition. The Act does not require a carrier to have an IXC certification from a particular state prior to filing a petition for arbitration.

B. Significant Policy Reasons Also Support a Decision To Permit Pilgrim To File an Arbitration Petition Before It Completes the Carrier Certification Process

There are significant policy reasons supporting the conclusion that the Commission should permit Pilgrim to file an arbitration petition even though Pilgrim is not yet certificated in the State of Florida. Specifically, the pro-competitive and pro-consumer policies of the Act would be best served by permitting competitive telecommunications carriers to negotiate with incumbent LECs, and file for arbitration of unresolved issues, prior to the competitive carriers' becoming certificated.

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[13] Verizon Motion at 3.

[14] *See* Application for Certificate to Provide Interexchange Telecommunications Service by Pilgrim Telephone, Inc., Docket No. 991665-TI; Order No. PSC-00-1304-PAA-TI (July 19, 2000).

It is more efficient, and more conducive to competitive entry, to permit competitive telecommunications carriers to pursue the two tracks of reaching interconnection agreements with incumbent LECs and of obtaining certification from state commissions without being required to complete the certification process before completing the negotiation and arbitration process. Being able to work along both paths simultaneously, without regard to which process is completed first, provides competitive telecommunications carriers with needed flexibility as they try to expedite their entry into local markets. Given the fact that this entry serves competitive goals and benefits consumers, it makes sense that regulatory processes should facilitate such entry in order to promote these goals and benefits. Pilgrim believes that in some cases it can be difficult for a competitive telecommunications carrier to complete the certification process until it has first finalized its interconnection arrangements. The types of services that the competitive telecommunications carrier represents it will offer in its certification application and price list can be affected by the nature of its interconnection agreement with the incumbent LEC.

Pilgrim, for example, is seeking billing and collection from Verizon as a network element, in order to enable Pilgrim to provide casual calling services in the State of Florida. It is potentially problematic for Pilgrim to attempt to reflect the possible offering of these services in its application and price list until the issue of whether Verizon is required to furnish billing and collection as a UNE is resolved. Pilgrim might be faced with the unnecessary and costly burden of amending its application and its price list if it is required to pursue and complete the certification process before being able to arbitrate the issue of whether it is entitled to receive billing and collection from Verizon as a UNE. More directly on point, however, is the fact that whether Pilgrim can obtain certain network elements from Verizon, and the price of those elements, will be determinative whether Pilgrim can offer certain services in Florida. If Pilgrim

cannot obtain billing and collection for casual collect calling services (like 1-800-COLLECT which Verizon bills for MCI), Pilgrim may not be able to offer collect calling services in Florida, or only offer it to Pilgrim subscribed customers. Pilgrim would not be able to offer the service statewide, as it would have no way to bill Verizon customers for the service.

It is true that there is some risk that the Commission itself might face unwarranted administrative costs by permitting a competitive telecommunications carrier that is not yet certificated to file an arbitration petition. But Pilgrim believes that these risks are not substantial. The only situation in which such a risk would materialize is one in which the competitive telecommunications carrier is permitted to go forward with the arbitration proceeding, but then fails in its efforts to become certificated. In addition, the risk is extremely low that a telecommunications carrier, such as Pilgrim, would invest the time and money to get to arbitration and then not apply for certification from a state commission.

Pilgrim believes, however, that this risk is not substantial because in most cases the competitive telecommunications carrier will engage in efforts sufficient to ensure to the fullest extent possible that it will become certificated. In Pilgrim's case, for example, Pilgrim has already invested considerable time and resources in attempting to arrive at a satisfactory interconnection agreement with Verizon. This investment illustrates the fact that Pilgrim is committed to entering telecommunication markets in the state, and also demonstrates that Pilgrim has a strong incentive to pursue certification and cure whatever difficulties may arise in the certification process in order to become certificated.

Pilgrim thus believes that, in balancing the competitive goals that would be served by permitting a competitive telecommunications carrier that is not yet certificated to file an arbitration petition against the risk that unnecessary administrative costs could be imposed by

permitting the arbitration, the Commission should conclude that the advantages outweigh the risks.

C. Issues Raised in Pilgrim's Arbitration Petition Regarding Billing and Collection and Access to Certain Customer Information Are Appropriate for Consideration and Should Be Addressed and Resolved by the Commission

1. *Billing and Collection for Casual Calling Services Is a Network Element That Should Be Unbundled, and the Issue Is Appropriate for Inclusion in This Petition for Arbitration*

Verizon asserts that Issue C raised in Pilgrim's Petition[15] is a billing and collection issue, and thus, is inappropriate for inclusion in a petition for arbitration.[16]

First, Verizon contends that billing and collection services are not a UNE. Verizon is wrong in suggesting that billing and collection services do not qualify as a UNE. Section 251(c)(3) of the Act requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis . . . ."[17] Pilgrim has made clear in its Petition that it believes the statute must be construed as treating billing and collection for casual calling services as a network element that must be made available by Verizon on an unbundled basis in accordance with the requirements of Section 251(c)(3).[18]

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[15] Issue C is whether Verizon should be required to provide billing and collection services to Pilgrim pursuant to which Verizon would bill and collect on behalf of Pilgrim in the case of information service calls made by Verizon customers that are directed to information service providers and that are transmitted over Pilgrim's network facilities.

[16] Verizon Motion at 4-9.

[17] 47 U.S.C. § 251(c)(3).

[18] Pilgrim Petition at 12-14.

Next, Verizon contends that the FCC has never named billing and collection as a UNE.[19] Although the FCC has been silent on the exact issue of whether billing and collection is a UNE, in the *Local Competition Order* a "minimum list" of UNEs was identified by the FCC.[20] The FCC has held that state commissions have authority under the Act to "impose additional unbundling requirements, as long as the requirements [are] consistent with the 1996 Act."[21] Therefore, this issue should not be dismissed without the Commission affording Pilgrim a hearing where it will be permitted to prove why billing and collection services fit within the definition of a UNE.

Additionally, Verizon argues that the Commission could not designate billing and collection as a UNE without contravening FCC policy.[22] Verizon states that the FCC detariffed billing and collection services almost 14 years ago, concluding that billing and collection is not a communications service, but rather, an administrative service. Verizon asserts that billing services are competitive and by definition billing and collection could not meet the Act's "necessary and impair" standard for UNE designation.

Verizon is attempting to confuse the issue of whether the Commission should require the offering of billing and collection for casual calling services as a UNE. Whether billing and collection is a communications service is not relevant to this issue. It is important to note, however, that the FCC's decisions regarding billing and collection were made prior to the

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[19] Verizon Motion at 5.

[20] *Local Competition Order*, 11 FCC Rcd at 15499 (para. 262).

[21] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 1999 WL 1008985, released Nov. 5, 1999 (*UNE Remand Order*), at para. 145.

[22] Verizon Motion at 6.

passage of the Telecommunications Act of 1996 and prior to its definition of UNEs. Also, these FCC decisions were made in the context of incumbent LECs providing billing and collection to IXCs with presubscribed customers.[23] In that context, the FCC has found that it has authority to regulate LEC billing and collection through the exercise of its ancillary jurisdiction.[24] Specifically, the FCC has held that LEC billing and collection "is incidental to the transmission of wire communication and thus is properly considered a communications service under section 3(a) of the Act."[25] Moreover, the FCC has stated that "the billing and collection service that [a local exchange carrier] provides for AT&T are [*sic*] also closely related to the provision of [communications] service, since billing and collection must occur accurately and efficiently for [a] carrier to offer its services on an economically sound basis."[26]

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[23] Verizon also cites Audio Communications, Inc., Petition for 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 697 (Com.Car.Bur. 1993), but that case is also inapposite. In *Audio Communications*, the FCC's Common Carrier Bureau found that billing and collection of 900 services by IXCs (rather than LECs) is not a common carrier service, and declined to exercise the agency's ancillary jurisdiction. This decision involved billing and collection by IXCs, and was issued prior to the passage of the Telecommunications Act of 1996 and its requirements that incumbent LECs unbundle network elements.

[24] Detariffing and Billing and Collection Services, CC Docket No. 85-88, Report and Order, 102 FCC 2d 1150, 1169 (para. 36) (1986) (Billing and Collection Order). The Commission cited Section 4(i) of the Act, 47 U.S.C. 154(i), which empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."

[25] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No, 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3533 n.50 (para. 26) (1992).

[26] Public Service Commission of Maryland and Maryland People's Counsel Application for Review of a Memorandum Opinion and Order by the Chief, Common Carrier Bureau, Denying the Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4005 (para. 42) (1989) (internal quotations omitted), *aff'd on other grounds sub nom.* Pub. Serv. Comm'n of Md. v. FCC, 909 F.2d 1510 (D.C. Cir. 1990).

The pertinent question is whether billing and collection services qualify as a network element. As argued in Pilgrim's Petition, the statutory definition of network element must be construed to include billing and collection.[27] Verizon does not dispute in its Motion that billing and collection meets the definition of a network element, which is very broad and is not limited to communications services. In regard to whether the Act requires that billing and collection be made available on an unbundled basis to requesting telecommunications carriers, the Commission shall consider, at a minimum, "whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services it seeks to offer."[28]

The FCC, in applying these statutory provisions, has noted that, "[f]or effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services that they seek to offer . . . ."[29] The FCC also observed that, "[d]espite the development of competition in some markets, incumbents still control the vast majority of facilities that compromise the local

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[27] Pilgrim Petition at 12-14..

[28] Section 251(d)(2)(B) of the Act, 47 U.S.C. § 251(d)(2)(B). The Act also requires that the FCC, in deciding what network elements must be made available, must consider whether "access to such network elements as are proprietary in nature is necessary. . . . ." Section 251(d)(2)(A) of the Act, 47 U.S.C. § 251(d)(2)(A). Pilgrim does not consider this "necessary" standard to be relevant in the case of billing and collection because Pilgrim does not believe there is any basis for claiming that there are any proprietary aspects to incumbent LECs' billing and collection operations. In fact, the FCC noted in the *UNE Remand Order* that commenters suggested that few, if any, network elements are entirely proprietary in nature, that other commenters have pointed out that most network equipment and services are nonproprietary because of the need for interoperability of networks, and that, therefore, the FCC expects "that the 'necessary' standard will be invoked only when there is a serious question of whether access to the element will infringe upon the incumbent's intellectual property." *UNE Remand Order*, at para. 47.

[29] *UNE Remand Order*, at para. 13.

telecommunications network, giving them advantages of economies of scale and scope not enjoyed by competitive LECs."[30]

Although the FCC did not directly address in the *UNE Remand Order* the issue of whether incumbent LEC billing and collection services should be made available to requesting carriers on an unbundled basis, the FCC did develop a set of criteria for applying the statutory test in Section 251(d)(2)(B) of the Act. In doing so, the FCC held that the failure to provide access to a network element would impair the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer.[31] The FCC concluded that the materiality component, although it cannot be quantified precisely, requires that there be substantive differences between the alternative outside the incumbent LEC's network and the incumbent LEC's network element that, collectively, impair a requesting carrier's ability to provide service.[32] There can be no question that Pilgrim is materially and adversely affected by the denial of access to Verizon's billing and collection service; without such access, Pilgrim is severely handicapped in its efforts to receive revenues associated with its provision of services to non-subscribed customers, particularly calls placed by Verizon customers over Pilgrim's network. The arbitration hearing will provide Pilgrim an opportunity to

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[30] *Id.*

[31] *Id.* at para. 51.

[32] *Id.*

submit evidence that its operations are impaired without access to Verizon's billing and collection services.

Next, Verizon argues that the Commission has rejected arguments that billing and collection is a telecommunications service,[33] but cites no authority for this proposition. As explained above, whether billing and collection is a telecommunications service is irrelevant for determining whether it must be offered as a UNE.

Verizon also argues that the Commission has declined to order Verizon to provide billing and collection for non-telecommunications services, citing as authority *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 Statues, and request for relief,* 99 FPSC 4:572 (1999). However, that case is irrelevant. In *Valley Yellow Pages*, GTE Florida was providing billing and collection services to Valley Yellow Pages for yellow pages advertising pursuant to a Billing Services Agreement. GTE Florida decided to discontinue Valley's billing and collection services for yellow pages advertising while at the same time GTE continued to provide billing and collection services for yellow pages advertising to its own affiliate. Valley brought a complaint and requested that the Commission issue an order directing GTE Florida to provide billing and collecting services on a non-discriminatory basis. The Commission dismissed the complaint, holding that billing for yellow pages is not a regulated service nor a telecommunications service, and thus, the Commission had no jurisdiction over the case.

The *Valley Yellow Pages* case is inapplicable to the instant case because Pilgrim is requesting billing and collection services as a UNE for the provision of telecommunication services, as those services are defined by the Act. Unlike the petitioner in *Valley Yellow Pages*,

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[33] Verizon Motion at 6.

Pilgrim is not asking Verizon to provide billing and collection for a non-telecommunications service. In addition, the FCC has found that if a telecommunications carrier is using UNEs for the provision of a telecommunications service, the carrier can also use the UNE for the provision of information services.[34] Thus, if Pilgrim uses a billing and collection UNE for the provision of telecommunications services, it may also use the billing and collection UNE for the provision of information services.

Finally, Verizon argues that Pilgrim is not entitled to arbitration of issue C because such billing and collection services do not belong in a local interconnection agreement, but rather should be addressed through commercial billing and collection contracts.[35] Verizon's motion to dismiss this issue from the arbitration proceeding should be denied by the Commission because Verizon is mistaken in suggesting that the issue does not arise under Section 251 of the Act. Section 251(c)(3) of the Act requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis . . . ."[36] Pilgrim has made clear in its Petition that it believes the statute must be construed as treating billing and collection for casual calling services as a network element that must be made available by Verizon on an unbundled basis in accordance with the requirements of Section 251(c)(3).[37]

There is no basis for Verizon's attempt to avoid a decision on the merits by claiming that the issue bears no relation to Verizon's duties and responsibilities under Section 251. The issue placed before the Commission requires a determination of whether Pilgrim is correct on the

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[34] *Local Competition Order*, 11 FCC Rcd at 15990 (para. 995).

[35] Verizon Motion at 9.

[36] 47 U.S.C. § 251(c)(3).

[37] Pilgrim Petition at 12-15.

merits of its argument that billing and collection service is subject to the network element unbundling requirements established by the Act. Therefore, this issue should not be dismissed.

Finally, Verizon recounts that it provided billing services to Pilgrim under contract for many years prior to July 1998, but the contract was not renewed in 1998 because of what Verizon characterizes as an unacceptable number of customer complaints regarding Pilgrim's pay-per-call services, and the high ratio of billing disputes.[38] Verizon alludes to funds it claims are still owed by Pilgrim under the expired contract, describes Pilgrim's recent efforts to obtain a billing and collection contract and an interconnection agreement with Verizon, and voices the view that "Pilgrim apparently is trying to circumvent Verizon's [billing and collection] contract terms . . . through an interconnection agreement."[39]

In discussing these previous contractual arrangements between Verizon and Pilgrim and speculating about Pilgrim's objectives in seeking to obtain an interconnection agreement, Verizon is again attempting to cloud the issue of its statutory duties and responsibilities by making insinuations about Pilgrim's prior activities and by attempting to raise suspicions about Pilgrim's current motives. The Commission should ignore this type of argumentation by misdirection. Pilgrim vigorously objects to Verizon's characterizations regarding complaints generated by services provided by Pilgrim in conjunction with its previous billing and collection contract with Verizon, and also points out that Verizon failed to honor the terms of its contract with Pilgrim by depriving Pilgrim of any adequate opportunity to be apprised of, and to respond to, customer complaints that were first directed to Verizon.

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[38] Verizon Motion at 7.

[39] *Id.* at 8.

In addition, there is no basis for Verizon's implication that, because Verizon makes billing and collection services available through contract, it should not be subject to any requirement to make such services available as a UNE. The issue being presented to the Commission is whether Pilgrim is correct in its analysis that billing and collection service must be classified as a network element under the terms of the Act, and that billing and collection must be made available on an unbundled basis pursuant to the statute's "impair" standard. The Commission should reject out of hand Verizon's suggestion that Pilgrim's petition should be dismissed because Pilgrim "apparently is trying to circumvent Verizon's contract terms", and instead force Verizon to defend on the merits its objection to Pilgrim's legal and policy claims that billing and collection must be made available as a UNE.

2. *OSS Information Must Be Available as a UNE and Thus Is Appropriate for Inclusion in This Arbitration Proceeding*

Verizon claims that Issue D in Pilgrim's Petition[40] "is not appropriate for inclusion in a local interconnection agreement."[41]

Verizon again is wrong in suggesting the issue framed in Pilgrim's Petition is outside the scope of the arbitration proceeding. Pilgrim has made clear in its Petition that it believes that Section 251(c)(3) of the Act prohibits Verizon from restricting the purposes for which information obtainable through OSS can be used by telecommunications carriers seeking access to that information for the provision of telecommunications services. Verizon's proposed text for the interconnection agreement would bar Pilgrim from using the information for purposes other

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[40] Issue D is whether Verizon should be required to specify in the interconnection agreement that it would provide access to OSS, including access to certain customer record information that includes billing name and address and 900 number blocking information, for the provision of telecommunications services.

[41] Verizon Motion at 9.

than pre-ordering and ordering local exchange services for former Verizon customers who have decided to subscribe to Pilgrim.

Verizon contends that the kinds of billing and collections matters Pilgrim raises are more properly addressed through the negotiation of a billing contract, and that Pilgrim should not be permitted to obtain through an interconnection agreement what it cannot through a billing contract.[42] Pilgrim maintains in its Petition, however, that Section 251(c)(3) of the Act requires that the use of information available through OSS cannot be restricted and must be available for use in connection with the provision of *any* telecommunications service.[43] Therefore, as is the case regarding Issue C, the issue before the Commission requires a determination of whether Pilgrim is correct on the merits of its argument that OSS information must be available as a UNE for use in connection with the provision of any telecommunications service.

D. Pilgrim Should Be Afforded an Opportunity To Argue These Issues At an Arbitration Hearing Before the Florida Commission

The issues placed before the Commission in Pilgrim's Petition give rise to the need for an arbitration hearing. Pilgrim should be provided the opportunity to submit evidence to this Commission that Pilgrim qualifies as a telecommunications carrier, that billing and collecting is subject to the network unbundling requirements established by the Act, and that OSS information is subject to the network unbundling requirements established by the Act. These issues should not be summarily dismissed as requested by Verizon, but rather decided on the merits.

E. If the Commission Grants Verizon's Motion to Dismiss, the Commission Should Permit Pilgrim To Refile Its Arbitration Petition Immediately After Becoming Certificated

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[42] *Id.*

[43] Pilgrim Petition at 17.

If the Commission decides to require that Pilgrim must complete the certification process before the Commission will take any action in an arbitration proceeding, then Pilgrim respectfully requests that the Commission permit Pilgrim to immediately refile its arbitration petition pursuant to Section 252(b)(1) of the Act after becoming certificated, rather than requiring Pilgrim to reinstitute negotiations with Verizon and wait an additional 135 days before refiling its petition.[44] Such an approach would serve to expedite Pilgrim's ability to begin providing services in the State of Florida.

V. VERIZON'S ARGUMENTS ARE DISINGENUOUS, UNSUPPORTED BY ITS PRIOR CONDUCT, AND INCONSISTENT WITH ITS POSITIONS IN OTHER STATES

A. Disingenuous Nature of Verizon's Arguments

Pilgrim notes that it has been negotiating its interconnection agreements with Verizon for the entire statutory period in all Verizon (GTE) operating states. At no time during those negotiations has Verizon suggested that it was improper for the companies to negotiate interconnection agreements, or has Verizon's position been that interconnection was not available to Pilgrim until certification was completed. It is disingenuous for Verizon to lead Pilgrim through months of intense negotiations, causing Pilgrim to incur substantial negotiation related expenses, only now to claim that Pilgrim cannot request arbitration. Verizon's actions belie its true intent -- that is, to preempt this Commission's determination of the issues in this arbitration based upon a full and complete record. Instead, Verizon seeks to truncate this proceeding and deny Pilgrim the opportunity to present, and the Commission to decide on a full and complete record, the substantial issues presented by Pilgrim.

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[44] *See* 47 U.S.C. § 252(b)(1).

B. Verizon's Arguments are Inconsistent with Its Actions in Other States

Verizon argues that billing and collection and database access are not proper subjects for an interconnection agreement, and that those issues should be dismissed in this proceeding. Verizon's arguments, however, stand in stark contrast to the obligations it places in its agreements, and services it has offered to other parties in interconnection agreements.

1. Current Agreement

The current agreement under negotiation illustrates that Verizon recognizes the necessity of an interconnecting carrier being able to collect for information services calls that traverse its network and are placed by the other carrier's customers. The information services traffic section contained in the Draft Comprehensive Agreement provides Pilgrim with the option to route voice information services traffic originated on its network by its customers to an information service connected to Verizon's network. In such a case, Pilgrim must either enter into a billing and collection agreement with Verizon under which Pilgrim collects charges from its customers and remits these charges to Verizon, or (in the absence of such an agreement) Pilgrim must pay information service provider charges billed to it by Verizon. These charges must be paid to Verizon in full regardless of whether Pilgrim collects the charges from its own customers.

The information services covered by the Verizon Draft Comprehensive Agreement are not necessarily information services provided by Verizon. The only reason why Verizon would be rendering a bill for information services is that Verizon provides those services, or has billing and collection agreements with information services providers. Thus, Verizon insists upon payments, either through billing and collection agreements or otherwise, for information services traffic originated by Pilgrim's customers when Verizon has a billing and collection agreement with the ultimate information services provider, but Verizon refuses to include in the Agreement

a reciprocal arrangement under which Verizon would bill and collect for information services traffic originated by its customers that transits Pilgrim's network.

2. *Other Verizon Agreements Contain Billing and Collection Language; and Verizon Provides This Service to Other Carriers as Part of an Interconnection Agreement*

Verizon also fails to disclose that it provides billing and collection services in other interconnection agreements, and will be providing this service to Pilgrim through an interconnection agreement in Kentucky. Pilgrim is opting into the Adelphia interconnection agreement in Kentucky. This agreement provides Pilgrim the billing and collection network elements that Pilgrim seeks in the instant proceeding. In addition to the Adelphia agreement in Kentucky, Verizon also provides BellSouth Mobility with the billing and collection services that Pilgrim seeks here.

Pilgrim has a current agreement in place with Verizon in New York, which agreement provides for both billing and collection for casual calling services and information services, as well as access to the information databases Pilgrim seeks, without restrictions. Verizon is aware of these interconnection agreements, but fails to disclose them to this Commission in its arguments. Verizon's arguments should be dismissed by this Commission, as it is clear that not only are billing and collection and database access proper subjects for an interconnection agreement, but that Verizon has agreements with Pilgrim and others that contain the provisions that Pilgrim seeks in the instant proceeding.

C. Availability Under Contract is Irrelevant

The fact that billing and collection and database access may be granted under separate agreements or tariffs is irrelevant to the inquiry before this Commission. The 1996 amendments to the Act mandate the availability of terms and conditions of interconnection without regard to whether these issues may have been the subject of separate agreements in the past. In addition,

services which are the subject of an interconnection agreement are not subject to use limitations and are subject to competitive pricing rules – neither of which apply to private contracts. Pilgrim is entitled to all of the protections guaranteed by Congress in interconnection agreements, and Verizon's attempts to deny Pilgrim those protections should be dismissed.

VI. RELIEF REQUESTED

WHEREFORE, Pilgrim respectfully requests:

1. That the Commission deny in all respects the motion to dismiss filed by Verizon.

2. That, in the alternative, if the Commission dismisses Pilgrim's petition, the Commission permit Pilgrim to refile the petition immediately after becoming certificated as a telecommunications carrier in the State of Florida.

This 2nd day of January, 2001.

Respectfully submitted,

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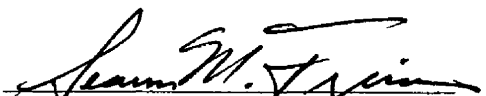
By: 
Counsel for Pilgrim Telephone, Inc.

CERTIFICATE OF SERVICE
Docket No. 001745-TP

I hereby certify that a copy of the foregoing was served upon the following, by U.S. mail, postage prepaid, this 2nd day of January, 2001.

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