ORIGINAL

RECEIVED-FPSC

McWHIRTER REEVES

ATTORNEYS AT LAW

01 SEP 27 PM 4:08

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

COMMISSION CLERK

September 27, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 011252-TP

Dear Ms. Bayo:

XO Florida, Inc. (XO), filed on Tuesday, September 24, 2001, a Complaint for Expedited Relief. Inadvertently, two pages were omitted from Exhibit B to the Complaint. I have attached the complete exhibit for filing and distribution.

Please acknowledge receipt of the above by stamping and returning the extra copy. Thank you for your assistance.

Sincerely,

Jon A. McGlothlin for

Vicki Gordon Kaufman

VGK/bae
Enclosure
cc: Dana Shaffer
Lennie Fulwood
All Parties of Record

APP
CAF
CMP
COM 5
CTR
ECR 1
LEG 1
OPC
PAI
RGO
SEC 1
SER
OTH

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
12251 SEP 27 a
FPSC-COMMISSION CLERK

STATE OF FLORIDA

DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

July 23, 2001

XO Florida, Inc.
Ms. Kerri Barsh
1221 Brickell Avenue
Miami, Florida 33131

Dear Ms. Barsh:

We received your July 24, 2000 complaint letter, which alleges that Verizon was not providing sufficient trunking to deliver traffic from Verizon's (formerly GTE Florida, Inc.) customers to XO's (formerly NEXTLINK Florida, Inc.) customers. Hence, Verizon's customers attempting to reach XO's customers experienced blockage, which you believe to be discriminatory. Staff noted the following reasons you stated as responsible for traffic blockage:

> (1) [Verizon] has refused to provide our requested levels of trunking from its access tandem for local traffic, citing "lack of capacity" problems; and (2) [Verizon] has implemented a new policy in which it refuses to order any trunking to route calls from its network to any other carrier network if the traffic on such requested trunk groups includes dial-up traffic bound for Internet Service Providers, or ISPs.

On August 17, 2000, Verizon responded claiming the traffic at issue is virtually all Internet Service Provider traffic that is outside the scope of the parties interconnection agreement, which states:

> Pending resolution of the issue by the FCC and/or the [State] Commission in a decision binding on GTE, Local Traffic excludes Information Service Provider ('ISP') traffic (e.g., Internet, etc.).

Moreover, Verizon suggested that XO's traffic blockage problems are caused by XO's "own failure to accurately forecast its trunking demands" and order trunks appropriately, not discriminatory behavior by Verizon. Additionally, Verizon explained that both of its tandems are experiencing capacity problems. Specifically, "the 01T tandem is currently at maximum capacity," so Verizon added spectrum processor modules (SPMs) to increase capacity at the tandem. Consequently, the additions of SPMs should facilitate an estimated one-and-one-half years of closely managed growth. Thus, Verizon encouraged carriers to establish direct end-office trunking.

Exhibit B

Upon hearing both parties' issues on August 8, 2000, staff suggested that the parties share proprietary information, which would determine the technical feasibility and necessity of XO's trunking request. On September 12, 2000, Verizon agreed that XO's trunking request was necessary and technically feasible.

Via a conference call on October 9, 2000, the issue of whether Verizon's computations to determine ISP traffic allows Verizon to discriminately provide trunking to XO, pursuant to the interconnection agreement, was discussed. Staff expressed that this type of dispute is beyond the scope of the informal complaint resolution process. Moreover, staff advised that the contractual dispute resolution or formal complaint process would be the proper forum to handle this matter; however, the parties agreed to continue negotiating informally.

At staff's request on January 11, 2001, Verizon provided a trunk billing information spreadsheet to rebut XO's assertion of discriminatory charges for end office trunking. Thereafter, XO was allowed to order the trunks sought. Staff notes that both carriers provide trunking to the other carrier's network for transport of traffic originating from their respective networks. On January 29, 2001, XO and staff identified two central offices billed inconsistently with Verizon's claim to reciprocate outbound direct end-office trunks (DEOTs), Bradenton and North Gulf Beach. Further, Verizon admitted to instituting a universal billing policy change without modifying the Agreement language. However, Verizon believed that its policy change was allowed by the agreement's language. During the call, staff observed that Verizon was not certain of the effective date of the policy change. Therefore, staff requested the following information from Verizon:

- The Carrier Notification Letter/documentation provided to XO or all carriers.
- The formula Verizon used to establish the percentage of the trunks carriers must pay for.
- Information relative to how frequently the formula is re-calculated.
- Explanation of why XO is paying for inbound and outbound trunking at particular COs.
- What was the agreement or what happened in the blocking scenario.

Again, staff reiterated to the parties that contract interpretation is beyond the scope of an informal complaint. However, in order to determine the true discrepancies surrounding the dispute, optimistically seeking resolution, XO opted to continue informally.

Per conference call on February 7, 2001, Verizon agreed to modify its trunking charges, retroactive to the order date, for both the Bradenton and North Gulf Beach central offices. It appeared to staff that all the preliminary issues were resolved, and therefore the parties could negotiate the language interpretation dispute. Staff expressed concern regarding Verizon's decision not to inform the Commission of its universal billing policy modification, which may or may not be appropriate under the terms and conditions of the agreement. Additionally, Verizon acknowledged that its method of modification forced competitors to abide by the new policy, if recognized, and seemingly provided no means for carriers to protest. However, staff notes that XO was the only carrier pursuing the matter at this time.

On May 3, 2001, XO informed staff that another conference call may be necessary to complete negotiations between the parties. At staff's request, each party presented staff with its position on the trunking charges in dispute. XO's position is as follows:

We offer to deliver and pick-up traffic at the same point of interconnection – basically, each party be responsible for its network on its side of the point of interconnection. Verizon has refused. They want the financial benefit on both sides – different compensation arrangements for them than for us, in that they can charge us, but we can't charge them.

Verizon's position:

Verizon offered to not charge for the Direct End Office Trunks from our end office to Verizon's tandem. In addition, Verizon would not charge XO for the trunks which XO ordered from Verizon's tandem to XO's switch. To ensure that there were no issues on compensation, Verizon's proposal also stated that XO would not charge Verizon for the facilities from Verizon's access tandem to XO' switch.

Staff notes that Verizon refused to credit XO for mis-billed trunks, as agreed upon on February 7, 2001, unless XO agreed to accept Verizon's tandem trunking compensation offer. Verizon maintained that Verizon was unwilling to negotiate its position. Therefore, staff determined that the informal complaint process should be discontinued, since the parties were at an impasse.

Staff Analysis & Conclusion:

At first blush, it appears to staff that the issue is whether Verizon is obligated to provision outbound trunks for ISP traffic, pursuant to the agreement. Also, XO seeks clarification of whether Verizon has the right to require direct end-office trunking, and if so, who bears the trunking costs, pursuant to the agreement. Staff notes that the duties of an ILEC in a tandem exhaust situation has not been addressed by this Commission. Therefore, staff opines that rendering a decision addressing the rights of carriers in this matter would be inappropriate in an informal complaint, since the evidence gathered would be insufficient. Moreover, staff's decision would not be enforceable, because staff believes that informal complaints should only address rule violations or other related customer service claims. Therefore, staff urges parties to address the tandem exhaust issue formally at the Commission.

Staff investigated XO's claim that Verizon bills discriminately between carriers, which have identical agreement language. Staff notes that both parties agree that when there is a balance in direct end-office trunking, the Bill and Keep agreement language identifies each party as responsible for the transport of traffic originated from its end-users to the end-office of the respective carrier. (See Figure 3.1)

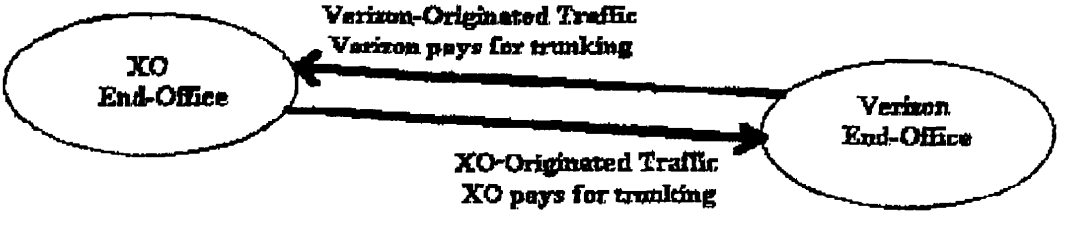

Figure 3.1

However, Verizon contends that when there is an imbalance of traffic, identifiable by inbound trunks to Verizon versus outbound trunks to XO, such traffic is ISP traffic. Hence, according to Verizon's agreement interpretation, Verizon is not responsible for the trunking cost to XO for the disproportionate amount of outbound traffic. Although staff does not necessarily agree with Verizon's position, in accordance with Verizon's position and billing information provided, staff discovered that there are billing discrepancies at two end-offices, Bradenton and North Gulf Beach. Staff notes that Verizon agreed to retroactively compensate XO for the apparent billing errors on February 7, 2001.

On May 31, 2001, staff notes that Verizon reneged on its agreement to credit XO, unless XO agrees to compensate Verizon for the transport between Verizon's tandem and Verizon's end-offices. Staff identifies transport segment "B" in Figure 4.1. as the new issue in dispute.

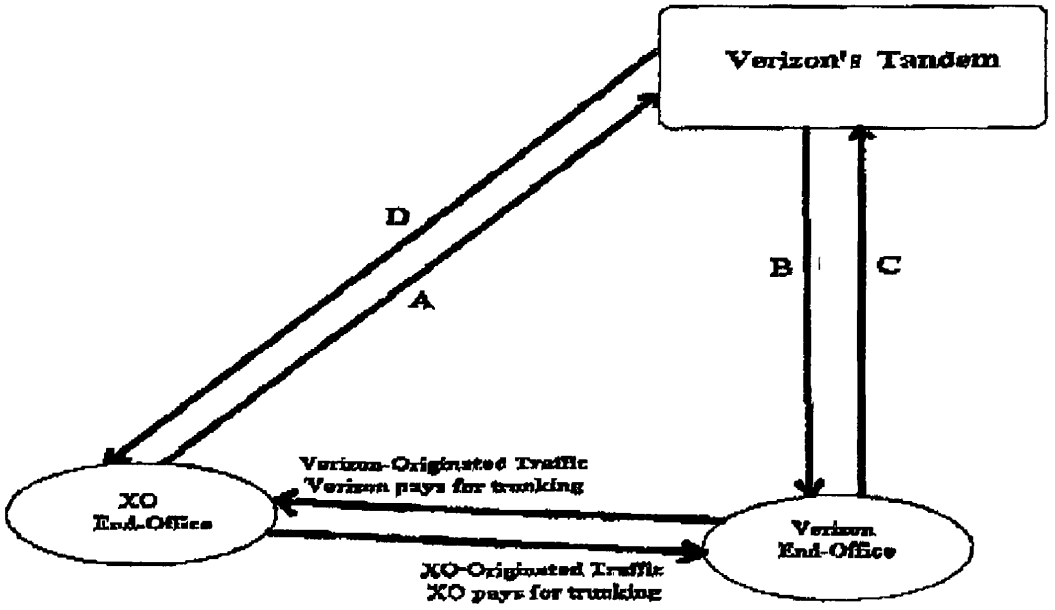

Figure 4.1

It appears to staff that when XO selects the tandem as the interconnection point, Verizon would be responsible for the transport of XO-originated local traffic to its end-offices. In support, staff refers to section 1.38 of the agreement, which reads:

> "Interconnection Point" ("IP") means the physical point on the network where the two parties interconnect. The "IP" is the demarcation point between ownership of the transmission facility.

Staff believes that XO has the right, pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point(s) of interconnection. Also, staff refers to Section

3.2.2 of the parties' agreement, which addresses compensation for the exchange of traffic between the parties:

> Bill-and-Keep. The Parties shall assume that Local Traffic is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a joint traffic study be performed no more frequently than once a quarter. . . .

Relying on the agreement and documentation provided by both parties, it is clear to staff that Verizon has the duty to deliver local traffic from its end offices to its tandem. Also, Verizon admits that it has the duty to deliver Verizon-originated local traffic from its tandem to XO's end offices. Further, in accordance with Sections 1.38, 3.2, and 4.3 of the agreement, staff believes that Verizon has the duty to deliver local traffic from its tandem to its end offices, where the tandem is designated as the point of interconnection by XO. Thus, cost for segments B, C, and D should be Verizon's responsibility, while segment A should be XO's responsibility. Staff notes that although the burden of transport may seem biased, Verizon did not identify any language in the agreement or law to rebut staff's conclusions, or to support its assertion that segment "B" should be XO's responsibility.

Further, staff questions whether Verizon has negotiated in good faith. In support, staff notes that Verizon attended conference calls without the proper personnel present to answer questions at issue; Verizon changed the subject of dispute after over 8 months of negotiations; and Verizon reneged on its agreement to issue credits to XO for mis-billed trunks. Moreover, Verizon dangled the credit that it had previously agreed to compensate XO, as contingent upon acceptance of its new proposal. Again, staff notes that Verizon admits to modifying its interpretation of the parties agreement without formal notification to the other party or the Commission.

Based on the foregoing, we are closing your complaint. Should you have questions or desire additional information, please contact me at (850)413-6572. Staff reiterates that these issues are beyond the scope of an informal complaint. Both on October 9, 2000 and January 29, 2001, staff informed XO of the Commission's lack of authority within the context of an informal complaint. However, it appears to staff that XO sought to identify the distinct discrepancies between the parties rather than filing a complaint that does not identify the issues. Thus, XO understands that this decision is not enforceable.

Sincerely,

Lennie Fulwood Jr.
Engineer III
Bureau of Market Development

Enclosures
File: CATS #326533T