

Kimberly Caswell
Vice President and General Counsel, Southeast
Legal Department



FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-2606
Fax 813 204-8870
kimberly.caswell@verizon.com

November 19, 2001

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
CLERK

011591-TP

Re: Docket No.
Petition for Approval of Fifth Amendment to Adopted Terms Between
Verizon Florida, Inc. and Florida Digital Network, Inc.

Dear Ms. Bayo:

Please find enclosed for filing Verizon Florida Inc.'s Petition for Approval of Fifth Amendment to Adopted Terms with Florida Digital Network, Inc. The amendment consists of a total of six pages. 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.

Very truly yours,

Kimberly Caswell

bc

KC:tas
Enclosures

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Fifth Amendment)
to Adopted Terms Between Verizon Florida, Inc.)
and Florida Digital Network, Inc.)
_____)

Docket No. *011591-TP*
Filed: November 19, 2001

**PETITION OF VERIZON FLORIDA INC. FOR APPROVAL OF
FIFTH AMENDMENT TO ADOPTED TERMS WITH
FLORIDA DIGITAL NETWORK, INC.**

Verizon Florida Inc. (Verizon) (formerly GTE Florida Incorporated) files this petition before the Florida Public Service Commission (Commission) seeking approval of the fifth amendment to the adopted terms of the interconnection, resale and unbundling agreement with Florida Digital Network, Inc. (FDN). In support of this petition, Verizon states:

FDN's 252(i) letter adopting the Verizon/KMC Telecom II, Inc. interconnection, resale and unbundling agreement (Underlying Agreement) was filed with the Commission on November 18, 1998. The Underlying Agreement was approved by the Commission on October 9, 1998 in Docket No. 980892-TP. The attached amendment restates in its entirety Article III, Section 2.1 relating to termination of the Adopted Terms.

Verizon respectfully requests that the Commission approve the attached amendment and that Verizon be granted all other relief proper under the circumstances.

Respectfully submitted on November 19, 2001.

By: *Kimberly Caswell*
bc Kimberly Caswell
P. O. Box 110, FLTC0007
Tampa, Florida 33601-0110
Telephone No. (813) 483-2617

Attorney for Verizon Florida Inc.

DOCUMENT NUMBER-DATE
14681 NOV 19 2001
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**FIFTH AMENDMENT TO THE
ADOPTED TERMS
BETWEEN
VERIZON FLORIDA INC., F/K/A GTE FLORIDA INCORPORATED
AND
FLORIDA DIGITAL NETWORK, INC.**

THIS FIFTH AMENDMENT TO THE ADOPTED TERMS (“Amendment”) is entered into on this 5th day of November, 2001, by and between Verizon Florida Inc., f/k/a GTE Florida Incorporated (“Verizon”) and Florida Digital Network, Inc. (“FDN”) (Verizon and FDN being referred to collectively as the “Parties” and each individually as a “Party”). This Amendment amends the Adopted Terms between the Parties pertaining to services provided by Verizon and FDN in the state of Florida (the “State”).

RECITALS

WHEREAS, FDN has previously adopted terms (the “Adopted Terms”) of the Interconnection, Resale and Unbundling Agreement between Verizon and KMC Telecom II, Inc. (“Underlying Agreement”) pursuant to Section 252(i) of the Telecommunications Act of 1996 (the “Act”);

WHEREAS, the Underlying Agreement was approved by the Florida Public Service Commission’s (“Commission”) Order dated October 9, 1998 in Docket No. 980892-TP, and FDN’s adoption of the Adopted Terms was deemed approved by the Commission;

WHEREAS, the Underlying Agreement, and thus the Adopted Terms, have terminated effective April 8, 2001 (the “Termination Date”);

WHEREAS, Verizon and FDN are currently in good faith negotiations regarding an interconnection agreement pursuant to Section 251 and 252 of the Act to replace the Adopted Terms (the “New Interconnection Agreement”);

WHEREAS, FDN and Verizon did not complete negotiations in a manner to permit the time schedule set forth in Section 252 of the Act to be fulfilled before the Adopted Terms were set to expire;

WHEREAS, FDN has maintained that the Commission would not allow an interruption in service even though the Adopted Terms will terminate or have been terminated; and

WHEREAS, in light of the foregoing, and subject to the terms and conditions set forth herein, the Parties agree to amend the term of the Adopted Terms.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual promises, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties hereby agree that Article III, Section 2.1 of the Adopted Terms shall be amended and restated in its entirety to read:

This Agreement shall remain in effect until the earlier of: (1) this Agreement has been replaced by a new Agreement approved by the Florida Public Service Commission; or (2) the time period for petitioning for arbitration under Section 252(b)(1) of the Act has passed without either party petitioning for arbitration, where the time period for petitioning for arbitration is based on the date of August 1, 2001, the date on which Verizon is deemed by Stipulation between the parties, attached hereto as Exhibit A, to have received FDN's request pursuant to Sections 251 and 252 of the Act to initiate negotiations regarding a new interconnection agreement. Nothing in this Agreement shall preclude the Parties from a subsequent stipulation and amendment which modifies the date from which timelines under Sections 251 and 252 of the Act are calculated.

2. Except as provided herein, all other provisions contained in the Adopted Terms, including but not limited to all other terms, conditions and reservations of rights, shall remain unchanged and in full force and effect. Capitalized terms used, but not defined herein, shall have the meaning proscribed to them in the Adopted Terms.

3. The Parties intend that, regardless of when this Amendment is approved by the Commission, the effective date of this Amendment shall be November 9, 2001 (the "Amendment Effective Date"). In light of this, the Parties hereby agree that their obligations pursuant to the Amendment shall remain in effect during the period when the Commission reviews and approves this Amendment, notwithstanding the Commission's possible initial rejection thereof during such period.

4. By entering into this Amendment, Verizon does not waive any right, and hereby expressly reserves each and all of its rights, to challenge and/or defend the legality of certain arbitrated terms, rates and/or charges included in the Adopted Terms ("Arbitrated Terms")¹, including its rights to assert or continue to assert that: (a) certain

1. _____
¹ Verizon's reservation of rights and positions regarding the Adopted Terms set forth in the Adoption Letter, dated October 28, 1998, and the Underlying Agreement, are reiterated as if fully set forth herein. In addition, Verizon further expressly reserves its rights pursuant to the Adopted Terms in the event that such terms are impacted due to changes in legal requirements, including but not limited to the decisions by the United States Court of Appeals for the District of Columbia on March 7, 2000 (*See GTE Services Corp. et al v Federal Communications Commission and the United States of America*, No. 99-1176, consolidated with, No. 99-1201, 2000 U.S. App. LEXIS 4111(D.C. Cir. 2000)) and the United States Court of Appeals

of the Arbitrated Terms are unlawful, illegal and improper, including, without limitation, the positions stated in any pending or future Verizon court challenge regarding certain of the Arbitrated Terms; (b) the Arbitrated Terms do not afford Verizon the opportunity to recover its actual costs, as mandated by the Act and applicable law; (c) the Arbitrated Terms should not become effective until such time as the Commission has established an explicit, specific, predictable, sufficient and competitively neutral universal service mechanism that provides Verizon the opportunity to recover its actual costs; and (d) certain provisions of the FCC's First, Second, Third and Fourth Report and Order in FCC Docket No. 96-98 and other FCC orders or rules (collectively, the "FCC Orders") are unlawful, illegal and improper. Verizon further expressly reserves its past, present and future rights to challenge and seek review of any and all Arbitrated Terms or any permanent rates or charges established in any generic rate proceeding or any other proceeding, in any court or commission of competent jurisdiction or other available forum.

5. The Parties expressly agree that, pursuant to Article IV, Section 3.3.2 of the Adopted Terms, the Parties are currently in Bill and Keep for the exchange of Local Traffic, and will continue in Bill and Keep for the duration of this amendment.

6. This Amendment constitutes the entire agreement of the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Amendment other than those specifically set forth herein.

7. If any provision in the Adopted Terms conflicts with this Amendment, this Amendment shall control.

8. This Amendment shall be solely governed by and interpreted under applicable federal law and Florida law, without regard for any choice of law principles in Florida law.

9. This Amendment may be signed in counterparts and may be transmitted by facsimile.

1. _____
for the Eighth Circuit on July 18, 2000 (*See Iowa Utilities Bd. et al. v Federal Communications Commission and the United States of America*, No. 96-3321).

IN WITNESS WHEREOF, each Party has executed this Amendment and it shall be effective upon the Amendment Effective Date.

Verizon Florida Inc.

Florida Digital Network, Inc.

By: Jeffrey A. Masoner

By: Mike Gallagher

Name: Jeffrey A. Masoner _____

Name: Mike Gallagher

Title: Vice President - Interconnection Services

Title: CEO

Date: 11-09-01

Date 11/7/01



Jeffrey A. Masoner
Vice President – Interconnection Services

Network Services
2107 Wilson Blvd., 11th Floor
Arlington, VA 22201

Phone 703/974-4610
Fax 703/974-0314
jeffrey.a.masoner@verizon.com

November 5, 2001

Mr. Matthew Feil
General Counsel
Florida Digital Network
390 N. Orange Avenue, Suite 2000
Orlando, FL 32801

**Re: Stipulation As To Date Upon Which Verizon
Received Florida Digital Network's Requests for Interconnection**

Dear Mr. Feil:

This letter confirms the agreement between Verizon Florida Inc., f/k/a GTE Florida Incorporated ("Verizon") and Florida Digital Network (FDN) as to the date upon which Verizon received FDN's request to negotiate an interconnection agreement pursuant to Sections 251 and 252(a) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), for the Verizon service area in the state of Florida (the "State").

With the execution of this letter, Verizon and FDN have entered, or will soon enter, into an amendment to extend the term of FDN's current Adopted Terms in the State. The amendment specifically contemplates that the companies will use the extended time period provided for by the amended term to negotiate a new interconnection agreement for the State pursuant to Sections 251 and 252 of the Act.

With the foregoing in mind, the parties agree that Verizon will be deemed to have received a valid request to initiate such negotiations with FDN on August 1, 2001. Based on that date, the 135th day (the opening of the arbitration window) will fall on December 14, 2001, and the 160th day (the closing of the arbitration window) will fall on January 8, 2002.

The parties agree that their agreement upon this date in this case is based on the particular circumstances presented here. It is entirely without prejudice to either party's respective position with regard to when any other Section 252(a) request might be deemed to have been received either in general or in any other particular case.

Please indicate your agreement with the foregoing by signing in the space provided below.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey A. Masoner

Agreed to by:

By: Mike Gally

Name: Mike Gally

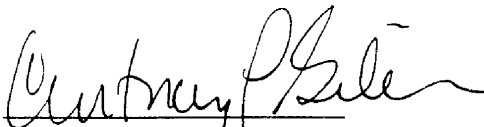
Title: CEO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Verizon Florida Inc.'s Petition For Approval of Fifth Amendment to Adopted Terms with Florida Digital Network, Inc. was sent via overnight delivery(**) on November 16, 2001 and U.S. mail(**) on November 19, 2001 to:

Staff Counsel(*)
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Florida Digital Network, Inc.(**)
Attention: Matthew Feil, General Counsel
390 N. Orange Avenue, Suite 2000
Orlando, FL 32801


for Kimberly Caswell