

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Time Warner Telecom of Florida, L.P. against Verizon Florida Inc., as successor to GTE Florida Incorporated, for Breach of Terms of Florida Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and Request for Relief.

Docket: 020353-TP
Filed: April 19, 2002

COMMISSION CLERK

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**COMPLAINT OF TIME WARNER TELECOM OF FLORIDA, L.P.
FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT
WITH VERIZON FLORIDA, INC.**

Time Warner Telecom of Florida, L.P. ("TWTC"), through its undersigned counsel, pursuant to Section 364.01, Florida Statutes, Rule 25-22.036, Florida Administrative Code, 47 U.S.C §251 and §252 (e)(1), hereby files this Complaint against Verizon Florida Incorporated, successor in interest to GTE Florida Incorporated ("Verizon"), for breach of the terms of the Interconnection Agreement dated June 26, 2000 by and between Verizon and TWTC (the "Agreement"). As grounds for this Complaint and demand for relief, TWTC states as follows:

I. PROCEDURAL BACKGROUND

1. This is an administrative action to enforce the terms of the Agreement, approved by this Commission in Order No. PSC-00-1772-FOF-TP issued on September 27, 2000, in Docket No. 000836-TP.

II. PARTIES

2. The exact name and address of the complainant is:

Time Warner Telecom of Florida, L.P.
2251 Lucien Way, Suite 320
Maitland, Florida 32751-7023

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Mrs
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3. All notices, pleadings, orders and documents in this proceeding should be provided to the following persons:

Peter M. Dunbar
Karen M. Camechis
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 South Monroe St., 2nd Floor
Tallahassee, FL 32301
E-Mail: Pete@penningtonlawfirm.com
Karen@penningtonlawfirm.com
Phone: (850) 222-3533
Fax: (850) 222-2126

Carolyn M. Marek
Time Warner Telecom of Florida, L.P.
233 Bramerton Court
Franklin, TN 37069
Phone: (615) 376-6404
Fax: (615) 376-6405

Charles B. Welch, Jr.
Farris Mathews Branan Bobango & Hellen, PLC
618 Church St., Suite 300
Nashville, TN 37219
Phone: (615) 726-1200
Fax: (615) 726-1776

4. The complete name and principal place of business of the respondent to the Complaint is:

Verizon Florida Inc.
106 East College Avenue, Suite 810
Tallahassee, FL 32301-7704

5. To the best of Complainant's knowledge, all notices to Verizon should be sent to:

Director – Contract Performance and Administration
Verizon Wholesale Markets
600 Hidden Ridge – HQEWMNOTICES
Irving, Texas 75038

Vice President and Associate General Counsel
Verizon Wholesale Markets
1320 N. Court House Road, 8th Floor
Arlington, Virginia 22201

Kimberly Caswell
Vice President/General Counsel Southeast
Verizon Florida, Inc.
201 N. Franklin St.
Tampa, FL 33602
Tel: (813) 483-2617
Fax: (813) 204-8870
Email: kimberly.caswell@verizon.com

III. JURISDICTION

6. TWTC and Verizon are local telecommunications exchange carriers (“LECs”) authorized to provide local exchange services in the State of Florida, and have interconnected their networks pursuant to and as required 47 U.S.C. §251(a), of the Telecommunications Act of 1996 (“Act”), which enables each of the companies’ end user customers to place calls to the customers of the other.

7. In compliance with 47 U.S.C. §251(b)(5), Verizon and TWTC, as local exchange carriers, established reciprocal compensation arrangements for the transport and termination of local telecommunications traffic, including an agreed method for determining liability for payment of reciprocal compensation for calls to their respective ESP/ISP customers.

8. Pursuant to 47 U.S.C. §252, TWTC and Verizon negotiated the Agreement and filed it with the Florida Public Service Commission (“Commission”) for approval on July 11, 2000. The Commission approved the Agreement as noted above in accordance with 47 U.S.C. §252(2). A copy of pertinent portions of the Agreement are attached hereto as Exhibit A and incorporated herein by reference.

9. The Commission has jurisdiction to consider this Complaint pursuant to Sections 364.01, 364.03, and 364.285, Florida Statutes. Thus, the Commission has clear jurisdiction to interpret and to enforce the terms of the Agreement as alleged herein.

IV. STANDING

10. TWTC maintains a substantial interest in this Complaint in the enforcement of the Agreement between TWTC and Verizon with respect to the provision of local exchange telecommunications services throughout the State of Florida.

11. Accordingly, TWTC has standing to bring this Complaint for hearing before this Commission pursuant to Section 120.569, Florida Statutes.

V. TERMS OF THE AGREEMENT

12. The Agreement, which is in excess of 100 pages in length, was negotiated over the course of several months and was executed as a voluntary agreement pursuant to the provisions of the Act.

13. By the Agreement, the Parties clearly provided for the payment of mutual compensation for the exchange of Local Traffic between their networks, and have compensated each other periodically in amounts calculated pursuant to agreed rates effective as the result of the occurrence of certain contingencies.

Due to the Parties' inability to agree that ESP/ISP Traffic should be compensated as Local Traffic, the Parties agreed to identify such traffic and maintain reliable data and records until such time as the issue of compensation was subsequently resolved by "governing law."

14. Specifically, the clear language of the Agreement resolved the Parties' dispute as follows:

[W]ithout waiving any of its right to assert and pursue its position on issues related to ESP/ISP Traffic, each Party agrees . . . the Parties shall exchange and track ESP/ISP Traffic but no compensation shall be paid for ESP/ISP traffic exchanged between the Parties and neither Party shall bill the other for such traffic. At such time as the law governing the issue of compensation for termination of ESP/ISP Traffic is resolved the Parties will conduct a true-up to apply, effective as of the effective date of this Agreement, the appropriate compensation principles established by such governing law to the ESP/ISP Traffic tracked by the Parties, or if such governing law precludes any compensation, no compensation will apply.¹

In anticipation of an FCC Rule issued as a result of its NPRM, which might adopt a compensation methodology or process rather than certain rates, the Parties further agree as follows:

[T]hat if the FCC issue rules as a result of its NPRM on the perspective treatment of ESP/ISP Traffic which do not prescribe a specific compensation scheme or prescribe compensation for ESP/ISP Traffic, but instead establish a process for negotiation or resolution of disputes relating to such compensation, the Parties will follow such process to resolve the issue of compensation for such traffic under this Agreement and will apply the outcome retroactively to the effective date of this Agreement.

15. Moreover, the Agreement explicitly reserves the rights of the parties as to issues regarding the exchange and/or compensation of ESP/ISP Traffic, stating that “the interim agreement not to compensate for ESP/ISP Traffic, *shall in no manner whatsoever* establish any precedent, waiver, course of dealing or in *any way* evidence either Party’s position or intent with regard to exchange and/or compensation of ESP/ISP Traffic, each Party *reserving all its rights with respect to these issues.*”²

16. These provisions establish the binding obligations of TWTC and Verizon to exchange and track ESP/ISP minutes of use, but not to rate or bill such until the FCC determined guidelines for the minutes of use rates.

17. On April 18, 2001, the FCC adopted an Order on Remand and Report and Order (“Order”) establishing intercarrier compensation rates and rate caps for ISP-Bound traffic.³

18. Expressly, the Order “does not pre-empt any state commission decision regarding compensation for ISP Bound Traffic for the period prior to the effective date of the interim regime...”

¹ See Article V, Section 3.1 of the Agreement.

² See *Id.* (emphasis added).

³ See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic, ORDER ON REMAND AND REPORT AND ORDER, CC Docket No. 96-98, CC Docket No. 99-68.

⁴ and, therefore, applies prospectively from the date of Order to all ESP/ISP Traffic being exchanged pursuant to the Agreement while previous decisions of the Florida Public Service Commission applies to resolve the dispute between the Parties prior to that date.

VI. DEMAND FOR PAYMENT

19. The Agreement, read in light of the Order, obligates the Parties to conduct a true-up to apply the FCC mandated rates.

20. In accordance with the FCC Order and the Agreement between the Parties, TWTC demanded payment from Verizon for termination of ESP/ISP Traffic.

21. To date, Verizon has refused compensation owed to TWTC for transporting and terminating ESP/ISP Traffic from Verizon customers to TWTC customers in Florida.

22. Verizon's refusal to conduct a true-up and pay reciprocal compensation is a breach of the Agreement.

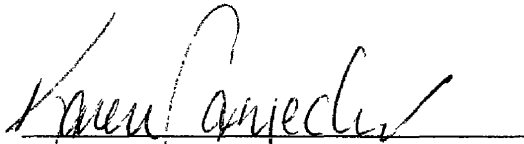
VII. REQUEST FOR RELIEF

WHEREFORE, TWTC requests that the Commission:

1. Determine that the provisions of the Agreement concerning local traffic exchange contemplate telephone exchange service calls that terminate to ESPs including ISPs;
2. Determine that Verizon has breached the Agreements by failing to pay TWTC reciprocal compensation for the transport and termination of ESP/ISP Traffic;
3. Enforce the Agreement by ordering Verizon to treat telephone exchange service calls that terminate to TWTC ESP/ISP customers in accordance with the provisions of the Agreement as subsequently amended by the Order; and
4. Grant such other relief as the Commission deems appropriate.

⁴ See *Id.* at IV(C)(2).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter M. Dunbar", is written over a horizontal line.

PETER M. DUNBAR, ESQ.

Fla. Bar No. 146594

KAREN M. CAMECHIS, ESQ.

Fla. Bar No. 0898104

Pennington, Moore, Wilkinson,

Bell & Dunbar, P.A.

Post Office Box 10095

Tallahassee, Florida 32302-2095

(850) 222-3533

(850) 222-2126 (fax)

Charles B. Welch, Jr.

Farris Mathews Branan Bobango & Hellen, PLC

618 Church St., Suite 300

Nashville, TN 37219

(615) 726-1200

Attorneys for Time Warner Telecom of Florida, LP

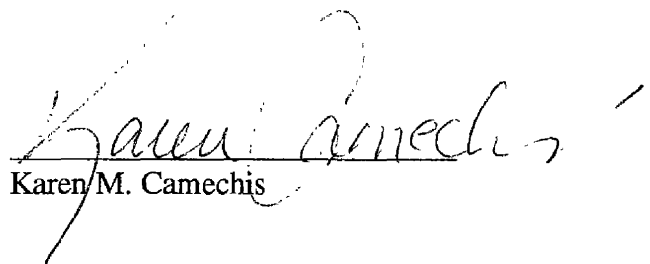
CERTIFICATE OF SERVICE

I, Karen M. Camechis, do hereby certify that on this 19th day of April, 2002, I have caused a copy of the foregoing Compliant of Time Warner Telecom of Florida, L.P., for Enforcement of Interconnection Agreement with Verizon Florida, Inc., to be served via first-class United States Mail, postage pre-paid, upon the persons listed below:

Director – Contract Performance and Administration
Verizon Wholesale Markets
600 Hidden Ridge – HQEWMNOTICES
Irving, Texas 75038

Vice President and Associate General Counsel
Verizon Wholesale Markets
1320 N. Court House Road, 8th Floor
Arlington, Virginia 22201

Kimberly Caswell
Vice President and General Counsel
Verizon
20 1 North Franklin Street
Mail Code FLTC0007
Tampa, FL 33602


Karen M. Camechis

INTERCONNECTION, RESALE AND UNBUNDLING AGREEMENT

BETWEEN

GTE FLORIDA INCORPORATED

AND

TIME WARNER TELECOM



INTERCONNECTION, RESALE AND UNBUNDLING AGREEMENT

This Interconnection, Resale and Unbundling Agreement (the "Agreement"), is by and between GTE Florida Incorporated, with its address for purposes of this Agreement at 600 Hidden Ridge Drive, Irving, Texas 75038 ("GTE"), and Time Warner Telecom, in its capacity as a certified Provider of local two-way wireline dial-tone service ("TWTC"), with its address for this Agreement at 233 Bramerton Court, Franklin, Tennessee 37069 (GTE and TWTC being referred to collectively as the "Parties" and individually as a "Party"). This Agreement covers services in the State of Florida only (the "State").

WHEREAS, interconnection between competing Local Exchange Carriers (LECs) is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network; and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon interconnection points; and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties; and

WHEREAS, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations on LECs with respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights-of-way and, in certain cases, the offering of certain Unbundled Network Elements (UNEs) and physical collocation of equipment in LEC premises; and

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GTE and TWTC hereby covenant and agree as follows:

the terminating office and shall end at the time of call disconnect by the calling or called subscriber, whichever occurs first.

- 2.4.2 Minutes of use (MOU), or fractions thereof, shall not be rounded upward on a per-call basis, but will be accumulated over the billing period. At the end of the billing period, any remaining fraction shall be rounded up to the nearest whole minute to arrive at total billable minutes for each interconnection. MOU shall be collected and measured in minutes, seconds, and tenths of seconds.

3. Transport and Termination of Traffic.

3.1 Traffic to be Exchanged.

The Parties shall reciprocally terminate Local, IntraLATA Toll, optional EAS and jointly provided IXC traffic originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).

The Parties have not agreed as to how ESP/ISP Traffic should be exchanged between the Parties and whether and to what extent compensation is due either Party for exchange of such traffic. GTE's position is that the FCC cannot divest itself of rate setting jurisdiction over such traffic, that such traffic is interstate and subject to Part 69 principles, and that a specific interstate rate element should be established for such traffic. TWTC's position is that ESP/ISP traffic should be treated as local for the purposes of inter-carrier compensation and should be compensated on the same basis as voice traffic between end users and that state commissions may continue to rule on the issue of mutual compensation for ESP/ISP Traffic. The FCC has issued a NPRM on prospective treatment of ESP/ISP Traffic. Nevertheless, without waiving any of its rights to assert and pursue its position on issues related to ESP/ISP Traffic, each Party agrees, solely for the purposes of facilitating the completion of this Agreement pending further regulatory action on these issues, that until such issues are resolved, the Parties shall exchange and track ESP/ISP Traffic but no compensation shall be paid for ESP/ISP Traffic exchanged between the Parties and neither party shall bill the other for such traffic. At such time as the law governing the issue of compensation for termination of ESP/ISP Traffic is resolved the Parties will conduct a true-up to apply, effective as of the effective date of this Agreement, the appropriate compensation principles established by such governing law to the ESP/ISP Traffic tracked by the Parties, or if such governing law precludes any compensation, no compensation will apply. The parties further agree that if the FCC issues rules as a result of its NPRM on the prospective treatment of ESP/ISP traffic which do not prescribe a specific compensation scheme or proscribe compensation for ESP/ISP Traffic, but instead establish a process for negotiation or resolution of disputes relating to such compensation, the Parties will follow such process to resolve the issue of compensation for such traffic under this Agreement and will apply the outcome retroactively to the effective date of this Agreement. This interim agreement not to compensate for ESP/ISP Traffic, shall in no manner whatsoever establish any precedent, waiver, course of dealing or in any way evidence either Party's position or intent with regard to exchange and/or compensation of ESP/ISP Traffic, each Party reserving all its rights with respect to these issues.

3.2 Compensation For Exchange Of Traffic.

- 3.2.1 Mutual Compensation. The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. This factor is applied to terminating usage to determine the jurisdiction for rate application (See Section 4.35 below). Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. IntraLATA toll billing between GTE and TWTC and Interexchange traffic is billed to the Interexchange Carrier per meet point guidelines.
- 3.2.2 Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers 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 traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for ESP/ISP Traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1 above.
- 3.2.3 Sharing of Access Charges on Calls to Ported Numbers. Until permanent number portability is implemented, the Parties agree that switched access termination to a ported number will be billed by the party providing interim number portability and that the party billing the switched access will share the switched access revenue with the other party. After permanent number portability is implemented, the Parties agree to renegotiate sharing of access charges to ported numbers in accordance with permanent number portability requirements. In lieu of actual measurements of minutes and/exchange of billing records for this traffic the Parties agree that the Party providing the ported number will pay the other Party the rate per line/per month as specified in Appendix B.
- 3.2.3.1 The number of lines/talk paths per ported number that are subject to compensation will be determined at the time the end user customer's local service is changed from one party to the other. The number of lines per number eligible for the shared revenue arrangement described in this section will be limited to the number of lines in service on the date of conversion plus a 10% growth margin. After conversion the number of lines per number available for compensation can only be increased by mutual consent of the parties.