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May 14, 2002

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

Re: Docket No. 020355-TP
Request for arbitration concerning complaint of Time Warner Telecom of
Florida, L.P. against Verizon Florida Inc. for alleged breach of terms of
interconnection agreement

Dear Ms. Bayo:

Please find enclosed for filing in the above matter the original and 15 copies of
Verizon Florida Inc.'s Motion to Dismiss Time Warner's Complaint For Lack of
Jurisdiction, Or, In the Alternative, to Stay All Proceedings Pending the Decision of
the United States Supreme Court in *Verizon Maryland v. Public Service Commission
of Maryland Inc.* Service has been made as indicated on the Certificate of Service.

If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

KC:tas
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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 No. 020355-TP
Filed: May 14, 2002

**MOTION OF VERIZON FLORIDA INC. TO DISMISS
TIME WARNER'S COMPLAINT FOR LACK OF JURISDICTION,
OR, IN THE ALTERNATIVE, TO STAY ALL PROCEEDINGS PENDING THE
DECISION OF THE UNITED STATES SUPREME COURT IN
VERIZON MARYLAND INC. V.
PUBLIC SERVICE COMMISSION OF MARYLAND INC.**

On April 19, 2002, Time Warner Telecom of Florida, L.P. ("Time Warner") filed this complaint asking the Commission to find that Verizon Florida Inc. ("Verizon") breached the parties' interconnection agreement. This Commission lacks the authority under both federal and state law to adjudicate the parties' interconnection agreement. This Commission does not have authority under federal law because the United States Court of Appeals for the Eleventh Circuit ruled in *BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services*, 278 F.3d 1223 (11th Cir. 2002), that section 252(e)(6) of the Telecommunications Act of 1996 ("the Act") does not grant state commissions the authority to interpret previously approved interconnection agreements. This Commission also does not have authority to adjudicate this complaint under the three Florida statutes Time Warner expressly relies on in its complaint. Verizon therefore requests that Time Warner's complaint be dismissed.

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In the alternative, Verizon requests that all proceedings in this action be stayed pending the ruling of the United States Supreme Court in *Verizon Maryland Inc. v. Public Service Commission of Maryland et al.*, 121 S.Ct. 2548 (No. 00-1531) (cert. granted 2001), 122 S.Ct. 679 (No. 00-878) (cert. granted 2002). The Supreme Court's decision, which is expected no later than the end of June 2002, may moot the Eleventh Circuit's jurisdictional ruling in *BellSouth v. MCImetro*.

ARGUMENT

I. Time Warner's Breach of Contract Complaint Must Be Dismissed.

In its complaint, Time Warner asks this Commission to interpret and enforce the terms of the parties' interconnection agreement. In *BellSouth v. MCImetro*, however, the Eleventh Circuit held that state commissions lack the authority under section 252(e)(6) of the Act to adjudicate interconnection agreement disputes. According to the *BellSouth* court, section 252(e)(6), by its plain terms, grants state commissions "the power to approve or reject interconnection agreements, *not to interpret or enforce them.*" 278 F.3d at 1232 (emphasis added). Thus, under the holding in *BellSouth*, there is no basis under section 252 (or any other provision of federal law) for this Commission's exercise of jurisdiction over Time Warner's breach of contract complaint, and it must be dismissed.

Verizon disagrees with the Eleventh Circuit's decision in *BellSouth*, and believes that the power expressly conferred on state commissions in section 252 to approve or reject interconnection agreements necessarily carries with it the authority to interpret

and enforce the terms of such agreements.¹ Nonetheless, this Commission and the parties are bound by the Eleventh Circuit's contrary interpretation of federal law.

Presumably in the hope of evading the preclusive effect Eleventh Circuit's ruling, Time Warner alleges in its complaint that this Commission has jurisdiction to adjudicate the parties' interconnection agreement under three provisions of Florida law: sections 364.01, 364.03, and 364.285. Complaint ¶ 9. Even assuming this Commission could in fact proceed based on state law alone, none of the Florida law provisions cited by Time Warner provides the Commission with authority to adjudicate this post-interconnection agreement dispute. Section 364.01 simply declares "the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies," and provides the Commission with the "powers conferred by this chapter." Fla. Stat. § 364.01(2); see also § 364.01(1) (Commission shall exercise "the powers conferred by this chapter"). Accordingly, Time Warner can invoke this provision only to the extent that it can point to some other affirmative grant of authority to the Commission.

Neither section 364.03 nor section 364.285 can shoulder that burden. Section 364.03 concerns dealings between telecommunications companies and end users, not between two telecommunications companies, and, in any event, does not confer on this Commission adjudicatory powers. Section 364.03(1) simply provides that: "All rates, tolls, contracts, and charges of, and all rules and regulations of, telecommunications

¹ On this jurisdictional issue, the Eleventh Circuit apparently stands alone. To our knowledge, all other federal circuit courts to consider the issue of state commission jurisdiction under section 252(e)(6) have explicitly or implicitly taken the position that state commissions do have this interpretive authority. See *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 337-38 (7th Cir. 2000); *Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493, 497 (10th Cir. 2000); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000); *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, 208 F.3d 475, 479-80 (5th Cir. 2000).

companies for messages, conversations, services rendered, and equipment and facilities supplied, whether such message, conversation, or service is to be performed over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable, and sufficient, and the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner." Fla. Stat. § 364.03(1) (emphasis added). Section 364.285 merely allows this Commission to penalize willful violations of "any lawful rule or order of the commission or any provision of this chapter" Fla. Stat. § 364.285(1), or to commence proceedings for injunctive relief in courts, *id.* § 364.2852.

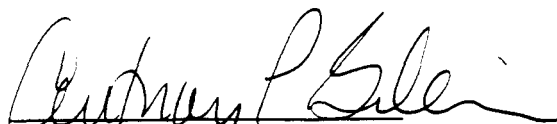
In sum, this Commission has no authority to adjudicate this dispute. Time Warner's complaint therefore must be dismissed.

II. Alternatively, Time Warner's Action Should Be Stayed.

In the alternative, Verizon requests that this action be stayed pending the decision of the United States Supreme Court in *Verizon Maryland Inc.* Although the narrow issue ruled on by the Eleventh Circuit -- state commission jurisdiction to interpret and enforce interconnection agreements -- is not directly before the Supreme Court, the Court is considering the ancillary question of whether the Maryland Commission's interpretation of an interconnection agreement may be challenged in federal court under section 252(e)(6). In support of federal court jurisdiction to review such state commission interpretive decisions, Verizon has argued that because an interpretation of an interconnection agreement is a "determination" under section 252, a federal district court has subject matter jurisdiction under section 252(e)(6) to review the decision. If the Court agrees with Verizon (and the Fifth, Seventh, Eighth, and Tenth Circuits) and

concludes that a state commission's interpretation of an interconnection agreement is a "determination" for purposes of federal court jurisdiction under section 252(e)(6), that conclusion would effectively nullify the conclusion in *BellSouth v. MCImetro* that state commissions lack authority to interpret interconnection agreements under section 252. The Supreme Court is expected to rule no later than the end of June 2002.

Respectfully submitted on May 14, 2002.

By: 
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Attorney for Verizon Florida Inc.

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion to Dismiss Time Warner's Complaint For Lack of Jurisdiction, Or, In the Alternative, to Stay All Proceedings Pending the Decision of the United States Supreme Court in *Verizon Maryland v. Public Service Commission of Maryland Inc.* in Docket No. 011252-TP were sent via U.S. mail on May 14, 2002 to:

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