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September 26, 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. 020412-TP
Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

Dear Ms. Bayo:

Please find enclosed for filing in the above matter an original and 15 copies of the Rebuttal Testimonies of William Munsell and Terry Haynes on behalf of Verizon Florida 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,

Anthony P. Gillman

Kimberly Caswell

KC:tas
Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Rebuttal Testimonies of William Munsell and Terry Haynes on behalf of Verizon Florida Inc. in Docket No. 020412-TP were sent via overnight delivery(*) on September 25, 2002 and U.S. mail(**) on September 26, 2002 to the parties on the attached list.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.	)	Docket No. 020412-TP

REBUTTAL TESTIMONY OF TERRY HAYNES ON BEHALF OF VERIZON FLORIDA INC.

SEPTEMBER 26, 2002

Q. ARE YOU THE TERRY HAYNES WHO TESTIFIED PREVIOUSLY IN THIS PROCEEDING?

A. Yes.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. I will address several points in the testimony of Wanda Montano. US LEC has claimed that its effort to reap reciprocal compensation payments on interexchange traffic – and to avoid the access charges that apply to such interexchange traffic – is pro-competitive. That claim is incorrect. In fact, US LEC is attempting to compete, not on the basis of increased efficiency or superior products, but purely on the basis of getting Verizon to bear the costs of the service that US LEC provides to its customers. The FCC has identified this as the kind of regulatory arbitrage that harms competition.

Q. MS. MONTANO SEEMS TO SUGGEST THAT VERIZON OBJECTS TO ROUTING AND RATING CALLS ACCORDING TO THE NXX CODE OF THE DIALED NUMBER. IS THAT CORRECT?

A. No. The parties' dispute has nothing to do with either the routing or the rating of calls. Calls are routed according to their assigned NXX code. As a general rule, each NXX code is identified in the Local Exchange Routing Guide ("LERG") with particular routing information; the LERG tells the originating carrier where to send the traffic. Verizon has not proposed any type of change to that system. And calls likewise are rated – that is, the charge to the originating caller is determined – by the NXX code of the called number. If the NXX code is associated with the local calling area of the caller, the call will be rated as local. That is true whether the called party is in the same local calling area or in a different local calling area within the same LATA. It would even be true if the called party were located across the country.

Q. IF THE PARTIES AGREE THAT CALLS ARE RATED AND ROUTED ACCORDING TO THE NXX CODE, WHAT IS THE PARTIES' DISAGREEMENT?

A. The parties' sole disagreement for purposes of this proceeding is whether the NXX code should be used to determine intercarrier compensation, *i.e.*, whether reciprocal compensation must be paid when the called party is actually located in a different local calling area from the calling party. In other words, if a Verizon customer in Sarasota places a call to a US LEC customer located in Tampa, the question is whether reciprocal compensation should apply if the US LEC customer has been assigned an NXX code associated in the LERG with Sarasota rather than Tampa. Verizon maintains that reciprocal compensation should not be paid; that is also what the FCC has held, as I explained in my direct testimony.

Q. WHAT REASONS DOES MS. MONTANO GIVE FOR REQUIRING RECIPROCAL COMPENSATION ON VIRTUAL FX TRAFFIC?

A. As I understand her testimony, she offers three basic arguments. First, she argues that payment of reciprocal compensation is consistent with regulatory rules governing inter-carrier compensation in other contexts. Second, she argues that failure to order reciprocal compensation would discourage the deployment of Virtual FX arrangements. Third, she claims that payment of reciprocal compensation is required by the FCC's *TSR Wireless Order*.[1] None of those arguments is correct.

Q. IS MS. MONTANO CORRECT THAT IT IS INDUSTRY PRACTICE TO PAY INTER-CARRIER COMPENSATION BASED ON NXX CODES?

A. No. In fact, as I explained in my direct testimony, in the access charge context, the FCC has directly held that carriers must pay compensation based on the physical location of the called party, not the NXX code of the called party, which is generally associated with the local calling area of the calling party. In other words, the FCC has already decided that although FX traffic may be treated as local for purposes of rating the call to the originating end-user, it should not be treated as local traffic for purposes of inter-carrier compensation. Thus Ms. Montano's statement that "according to FCC Rules and Orders, access charges cannot be imposed on locally dialed calls" (Montano Testimony at 25:3-4) is flatly wrong.

Q. BUT WASN'T THE TRAFFIC AT ISSUE IN THE FCC ORDER YOU DISCUSSED INTERLATA TRAFFIC?

A. Yes, but the principle is the same. If a local telephone subscriber originates a call to an interLATA FX number, the local exchange carrier

[1] Memorandum Order and Opinion, *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (2000) ("*TSR Wireless Order*").

delivers the call to the interexchange carrier's point of presence for onward transmission to a called party; the local exchange carrier is entitled to originating access for such a call, even though the call is *rated* as a local call. Likewise, in the case of virtual FX traffic, the local exchange carrier delivers the traffic to the CLEC's point of interconnection; the CLEC then delivers the call to the called party, which is by definition located in a different local calling area (which may or may not be within the same LATA). Because the call is interexchange, no reciprocal compensation applies. (I should also note that it should not matter from the point of view of inter-carrier compensation what specific technology a carrier uses to complete the interexchange call. US LEC has testified in other proceedings that it uses "remote call forwarding" technology to provision its interLATA FX arrangements. But as US LEC has described its "Local Toll Free" service, it is not a remote call forwarding service, that is, it does not provide a local subscriber the ability to forward a call *from* its home number *to* a different number assigned to a different subscriber, the functionality provided by remote call forwarding. Instead, US LEC assigns its customer a foreign exchange number so that *all* calls to that number will be delivered to the customer's location in another LATA. In any event, from the point of view of regulatory policy, it is the substance of the communication, not the specific technology used, that should matter; otherwise, the regulator will encourage uneconomic regulatory arbitrage.)

Q. BUT VERIZON HAS ADMITTED IN ITS RESPONSE TO US LEC'S DISCOVERY THAT VERIZON ITSELF MAY HAVE CHARGED RECIPROCAL COMPENSATION ON FX TRAFFIC. ISN'T THAT INCONSISTENT WITH YOUR POSITION HERE?

A. Verizon has charged an immaterial amount of reciprocal compensation for CLEC-originated calls bound for Verizon FX numbers. In this regard, I should correct a misimpression that may have been left by my direct testimony. I testified there that FX traffic makes up less than one-half of one percent of traffic originated by CLEC customers and delivered to Verizon. In fact, such traffic makes up only about *five one-hundredths* of one percent of such traffic, or about $130 per month in reciprocal compensation billing for *all CLECs in the state combined.* In other words, Verizon was perfectly justified in estimating reciprocal compensation billings in the way it did – even though FX traffic is not subject to reciprocal compensation – because the amount of such traffic received by Verizon is negligible in relation to the total amount of traffic received.

As I explained in my direct testimony, the same cannot be said of traffic delivered to CLECs. Indeed, it is hard to see why any CLEC would be litigating this issue so aggressively unless it were already exploiting or hoping to exploit a perceived regulatory arbitrage opportunity by implementing non-local Virtual FX arrangements on a substantial scale.

Q. MS. MONTANO ALSO CLAIMS THAT NOT REQUIRING PAYMENT OF RECIPROCAL COMPENSATION MAY DISCOURAGE

DEPLOYMENT OF VIRTUAL FX ARRANGEMENTS. DO YOU AGREE?

A. It is correct that payment of reciprocal compensation on Virtual FX traffic provides an additional incentive for CLECs to deploy those arrangements, but that is an argument against requiring reciprocal compensation, not in favor of it. Payment of reciprocal compensation would permit a CLEC improperly to transfer to Verizon some of the costs of the service that it provides to its customer. That is uneconomic and inefficient. As the FCC has said, in such circumstances, "carriers . . . compete, not on the basis of the quality and efficiency of the services they provide, but on the basis of their ability shift costs to other carriers."[2] The FCC has identified such regulatory arbitrage as a major impediment to the development of genuine local competition.

Q. CAN YOU ELABORATE?

A. Yes. Suppose that a Verizon customer in Sarasota wants to subscribe to a Tampa FX number. Under traditional FX arrangements, the customer would have to subscribe to service from a Tampa wire center, and then pay for transport from the Tampa wire center providing the number to his normal serving wire center in Sarasota, a local channel from the Sarasota wire center to his premises, and applicable usage charges. In that circumstance, the customer is paying for the right to receive calls made to the Tampa exchange and to have those calls transported to Sarasota.

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[2] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9183, ¶ 71 (2001) ("*ISP Remand Order*"), *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

In the case of the type of virtual FX service that US LEC wants to be able to offer, the customer in Tampa would be assigned an NXX number associated with a Sarasota exchange. But Verizon – which is the carrier actually bearing the cost of providing service in the Sarasota exchange – receives no compensation from the customer for the provision of local exchange service in Sarasota, even though the customer is benefiting from that service. Moreover, US LEC wants to be able to force Verizon to bear the cost of transporting the traffic from Sarasota to Tampa, without paying Verizon for that service. Verizon would be doing almost as much work under the virtual FX arrangement as under a traditional FX arrangement provided by Verizon, but receiving no compensation from the virtual FX customer. That is a classic example of shifting costs away from the cost causer – the virtual FX customer – and onto Verizon. And that is a very bad result from the point of view of regulatory policy, because it deprives all parties of accurate price signals. Now, on top of that, US LEC wants to be paid a bounty in the form of reciprocal compensation for each call that Verizon originates in Sarasota and transports to Tampa. That result is blatantly anticompetitive.

Q. MS. MONTANO CLAIMS THAT VIRTUAL FX SERVICE OFFERS CUSTOMERS IN REMOTE AREAS (SARASOTA IN THE ABOVE EXAMPLE) ADDITIONAL PROVIDER CHOICES. IS THAT CORRECT?

A. That claim is nonsense – akin to Ms. Montano's claim that US LEC has "a 'virtual' presence in the calling area" (Montano Testimony at 28:19-

20) when it has no presence at all in that local calling area. Providing reciprocal compensation on Virtual FX traffic actually discourages carriers like US LEC from deploying facilities in remote areas that would compete with Verizon's facilities, because US LEC must bear the cost of those facilities. Instead, it is more profitable for US LEC instead to allow Verizon to continue providing service and to search for ways to be paid for the service that Verizon provides, as with virtual FX arrangements. Ms. Montano comes close to admitting as much, when she claims that US LEC should be permitted to take advantage of Verizon's "ubiquitous network" (Montano Testimony at 37:20-21) without constructing facilities of its own. US LEC is seeking a free-ride on that network, pure and simple. Payment of reciprocal compensation on virtual FX traffic would amount to paying US LEC *not* to compete.

I should note in this regard that Ms. Montano's claim that Verizon's proposed language "would give Verizon a competitive advantage over US LEC in the ISP market" (Montano Testimony at 32:5-6) is also nonsense. There is nothing about Verizon's proposed language – which applies equally to Verizon and to US LEC – that would give Verizon any type of regulatory advantage in any market.

Q. YOU HAVE ALREADY EXPLAINED THAT VIRTUAL FX SERVICE DOES NOT INVOLVE ANY STATE-OF-THE-ART TECHNOLOGY. DO YOU HAVE ANYTHING TO ADD ON THAT POINT?

A. I would just like to emphasize that the issue here is simply whether reciprocal compensation should be paid on interexchange traffic. To the extent that US LEC has a new or innovative service to offer, it can still offer it; it simply will not be able to collect compensation to which it is not entitled.

Q. SO SHOULD THE COMMISSION PROHIBIT VIRTUAL FX ARRANGMENTS?

A. That is not my point, and Verizon is not proposing any sort of impediment on CLECs' implementing Virtual FX arrangements. But Verizon should not be unfairly burdened with the costs of such arrangements. This is partly a matter of requiring parties to bear an appropriate share of the cost of interconnection arrangements. But it is also crucial that the Commission not order payment of reciprocal compensation on this interexchange traffic. Such compensation is not only contrary to law, it is also plainly wrong from the point of view of regulatory policy.

Q. MS. MONTANO CLAIMS THAT THE COMMISSION HAS NOT RESOLVED THE ISSUE WHETHER RECIPROCAL COMPENSATION IS PAYABLE ON VIRTUAL FX TRAFFIC. DO YOU AGREE?

A. No. As I explained in my direct testimony, the Commission has approved the Staff Recommendation on this issue, which squarely provides that "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned are not local calls for purposes of reciprocal compensation."[3]

[3] Staff Memorandum, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996*, Issue 15, at 93 (Nov. 21, 2001), approved at the Commission's Dec. 5, 2001 Agenda Conference.

Q. MS. MONTANO CLAIMS THAT *TSR WIRELESS* SUPPORTS US LEC'S POSITION HERE. DO YOU AGREE?

A. No. As I explained in my direct testimony, *TSR Wireless* did not address the issue presented here. Indeed, that decision merely ruled that incumbent LECs could not charge paging carriers for existing facilities used to deliver *local* traffic generated on the LEC's network to the paging carrier's switch. The FCC did not rule that any *non-local* traffic would be subject to reciprocal compensation, did not rule that *non-local* traffic had to be delivered without charge, and did not address any issues related to network architecture. The question whether the traffic at issue in *TSR Wireless* was interexchange traffic did not arise because, under the FCC's rules, traffic between CMRS providers and LECs is subject to reciprocal compensation so long as it originates and terminates *within the same Major Trading Area*, an area encompassing many exchanges. *See* 47 C.F.R. § 51.701(b)(2).

Q. MS. MONTANO CLAIMS THAT "THERE IS NO PRACTICAL, COST-EFFECTIVE WAY TO SEGREGATE THE DISPUTED TRAFFIC" FROM LOCAL TRAFFIC. DO YOU AGREE?

A. No. As I have explained in my direct testimony, it is a simple and straightforward matter to identify FX traffic; Verizon has offered to do it for US LEC, as long as US LEC supplies Verizon a list of Virtual FX numbers. Ms. Montano's claim to the contrary is without any technical foundation and is incorrect.

Q. MS. MONTANO ALSO CLAIMS THAT IMPLEMENTING VERIZON'S PROPOSAL "WOULD BE UNJUSTIFIABLY BURDENSOME, EXPENSIVE, AND DISRUPTIVE." (MONTANO TESTIMONY AT 39:13-14.) DO YOU AGREE?

A. No. First, as I have noted, determining the volume of FX traffic is neither burdensome, nor expensive, nor disruptive. If US LEC is unsure how to distinguish Virtual FX traffic from local traffic, Verizon would be happy to cooperate with their technical personnel to implement a reliable system; it is not hard to do. And there is nothing "unjustifiable" about ensuring that the parties' billing complies with the requirements of federal law, particularly when failing to do so would lead to uneconomic arbitrage.

Q. MS. MONTANO CLAIMS THAT ACCESS CHARGES SHOULD NOT APPLY TO VIRTUAL FX TRAFFIC. DO YOU AGREE?

A. No. As I explained in my direct testimony, the reason for this is simple: a virtual FX arrangement, like traditional FX arrangements or other toll-free calling arrangements, allows a subscriber to receive calls from a distant exchange without the calling party incurring the toll charges that would normally apply. In place of those toll charges, the called party with FX service must pay for a Local Channel, interoffice transport, plus applicable usage charges. In the case of toll-free service, the customer must pay toll charges for calls received. In the case of toll-free calls, the interexchange carrier then pays originating access charges to the originating local exchange carrier. The situation is the same here: the CLEC has set up a toll-free calling arrangement for its customer. The customer is thus able to take advantage of the local exchange service that Verizon is providing in that distant exchange, yet Verizon not only receives no subscriber revenue from the CLEC customer; it is also deprived of the toll charges that would ordinarily apply. Access charges provide the originating LEC some measure of compensation for the service that it provides.

Q. MS. MONTANO ARGUES THAT VERIZON DOES NOT INCUR ANY ADDITIONAL COSTS IN DELIVERING VIRTUAL FX TRAFFIC. DO YOU AGREE?

A. The claim is misleading. Obviously, the costs of delivering traffic to a CLEC depend on the interconnection architecture in place; if a virtual FX call is delivered to the same point of interconnection as a local call from the same point, Verizon's costs of delivering the traffic will be the same. But if the Commission were to exempt the CLEC from paying the access charges that ordinarily apply to such interexchange traffic (or, even worse, require Verizon to pay the CLEC reciprocal compensation), the Commission would be encouraging the CLEC to implement these arrangements even when they are inefficient. This is because the CLEC (and the CLEC's customers) would not bear the appropriate costs of providing the services that they consume. Thus, Verizon would have to originate and carry a great deal more traffic, and would therefore be required to bear significantly higher costs, than if access charges were properly applied.

Moreover, Ms. Montano ignores the fact that virtual FX arrangements mean that Verizon will be unable to collect toll charges from its customers where toll charges would apply (but for the assignment of a virtual NXX code). Again, I am not asserting that there is anything wrong with a CLEC setting up such toll free arrangements for its customers, so long as the CLEC complies with applicable state and federal regulations. But it is wrong for the CLEC to attempt to shift the costs of those arrangements to Verizon, and it is also wrong to exempt the CLEC and its customers from bearing an appropriate share of the costs of providing local exchange service in the distant exchange. As long as Verizon is the carrier providing that local exchange service, it is entitled to be compensated for it, and access charges provide that compensation.

Q. MS. MONTANO CLAIMS THAT VERIZON IS ALREADY COMPENSATED FOR THIS BY ITS END USERS.

A. That is wrong. Local exchange charges compensate Verizon for providing service within the local exchange. If a call travels outside the local exchange, Verizon should be entitled to additional compensation. Virtual FX service should be no exception.

Q. MS. MONTANO ALSO STATES THAT REQUIRING PAYMENT OF ACCESS CHARGES WOULD BE INAPPROPRIATE BECAUSE

ACCESS CHARGES ARE ABOVE COST. DO YOU AGREE?

A. No. This Commission has approved tariffed intraLATA access charges that are designed to ensure that Verizon can recover the costs of providing local exchange service. In the case of virtual FX service, the CLEC customer is benefiting from the local exchange service that Verizon is providing in that distant exchange, and the Commission has determined that access charges provide the appropriate compensation for that service. US LEC cannot challenge those access charges in this proceeding, nor does it give any legitimate reason that it should be exempt from the charges that all other intraLATA interexchange carriers must pay.

Q. **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

A. Yes.