

ORIGINAL
verizon

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October 11, 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

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COMMISSION
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Re: Docket No. 021006-TP
Petition for expedited enforcement of interconnection agreement with Verizon
Florida Inc. by Teleport Communications Group, Inc. and TCG South Florida

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Motion to Dismiss Complaint of Teleport Communications Group, Inc. and TCG South Florida for filing in the above matter. 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.

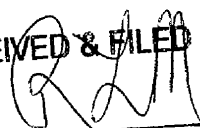
Sincerely,



Kimberly Caswell

KC:tas
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited enforcement)
of interconnection agreement with)
Verizon Florida Inc. by Teleport)
Communications Group, Inc. and)
TCG South Florida)
_____)

Docket No. 021006-TP
Filed: October 11, 2002

**VERIZON FLORIDA INC.'S MOTION TO DISMISS
COMPLAINT OF TELEPORT COMMUNICATION GROUP, INC.
AND TCG SOUTH FLORIDA**

Verizon Florida Inc. ("Verizon") hereby moves to dismiss the complaint of Teleport Communication Group, Inc. and TCG South Florida (collectively "TCG") for lack of jurisdiction. In its complaint, TCG seeks to enforce a discovery order issued by an arbitrator of the American Arbitration Association in a private arbitration proceeding between TCG and Verizon. TCG has brought its complaint in the wrong forum. This Commission has no general authority to enforce the orders of a private arbitrator. Rather, such orders are enforceable, if at all, in an appropriate court of general jurisdiction.

BACKGROUND

The underlying dispute between the parties arises out of TCG's claims for reciprocal compensation – and Verizon's counter-claims for TCG's breach of the parties' interconnection agreement – that were submitted to private arbitration pursuant to the parties' agreement.

In the course of those proceedings, TCG filed a motion to compel production of arbitration awards concerning interconnection agreements to which Verizon is a party. Verizon opposed the motion to compel primarily on procedural grounds: TCG had never sought production of the documents in a written discovery request; and its motion

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to compel was time barred. Verizon additionally argued that one of the awards that TCG sought was confidential, and was therefore not subject to discovery in the arbitration proceeding.

On August 9, 2002, the Arbitrator granted TCG's motion to compel. Verizon thereafter produced the one arbitration award that was not subject to a confidentiality provision. However, Verizon did not comply with the order insofar as it required Verizon to turn over confidential materials that were not the proper subject of discovery, maintaining that the order exceeded the Arbitrator's authority. As Verizon had explained, the plain language of the agreement that gave rise to the confidential arbitration proceedings precluded Verizon from producing any materials relating to the arbitration unless "required by an order or lawful process of a court or governmental body." TCG requested a conference with the Arbitrator, which took place on August 26, 2002. In the course of the conference, the Arbitrator ruled that he would issue an order, which TCG could attempt to enforce in court, requiring Verizon to produce the confidential arbitration award.¹

For reasons of its own, TCG has never attempted to enforce the order in court. Instead, three weeks after the Arbitrator issued the Order, it filed a "Motion for Sanctions and Attorneys' Fees" before the Arbitrator, in which TCG asked the arbitrator to impose additional sanctions on Verizon. Verizon filed its opposition to that motion on September 24, 2002; the Arbitrator has taken no action on it. In the meantime, TCG

¹ TCG also made (and repeats here) incorrect allegations regarding Verizon's supposed attempt to conceal the existence of particular confidential awards. Verizon has refuted those allegations before and the Arbitrator struck those allegations from the August 27 Order.

filed its complaint – styled as a “Petition for Expedited Enforcement of an Interconnection Agreement” on September 20, 2002.

ARGUMENT

The Commission should dismiss TCG’s complaint because TCG has not properly invoked this Commission’s jurisdiction. Under the parties’ interconnection agreement, both Verizon and TCG are to submit all disputes “arising out this Agreement or its breach” to private arbitration. That provision is valid and enforceable under the Telecommunications Act of 1996. 47 U.S.C. § 252(a)(1). And, in fact, the parties *have* submitted their dispute to a private arbitrator and proceedings are well underway; discovery is complete and the hearing in that matter is to take place on the date that this motion to dismiss is due – October 11, 2002.

Thus, TCG does not seek to enforce the parties’ interconnection agreement, and whether this Commission would have jurisdiction over such a proceeding is not at issue. Rather, as TCG explicitly acknowledges, its complaint is directed at “enforcing the *Arbitrator’s Order*.” TCG Complaint ¶ 17 (emphasis added). Enforcement of such an order – like the enforcement of a subpoena issued by a court – is a role for a court of general jurisdiction. *See Western Employers Ins. Co. v. Merit Ins. Co.*, 492 F. Supp. 53, 54 (N.D. Ill. 1979) (enforcing in part and quashing in part arbitrator’s subpoena).

It is settled law, however, that this Commission is *not* a court of general jurisdiction. Rather, “[t]he Commission has only those powers granted by statute expressly or by necessary implication.” *Deltona Corp. v. Mayo*, 342 So.2d 510, 512 n.4 (Fla. 1977). “[A]s a creature of statute,” the Commission “has no common law

jurisdiction or inherent power.” *East Central Regional Wastewater Facilities Operating Bd. v. City of West Palm Beach*, 659 So.2d 402, 404 (Fla. Dist. Ct. App. 1995).

Moreover, nothing in the statute grants the Commission the authority to enforce the type of private arbitration order at issue here. In arguing that the Commission nonetheless has jurisdiction over its complaint, TCG relies exclusively on section 364.162 Florida Statutes. But that provision is inapplicable by its plain terms. It provides that the Commission “shall have the authority *to arbitrate* any dispute *regarding interpretation of interconnection or resale prices and terms and conditions.*” (Emphasis added). The dispute does not fit within that delegation of authority. The dispute here does not “regard interpretation of interconnection or resale prices and terms and conditions,” but the enforceability of a collateral discovery order issued in a private arbitration.

This point becomes especially clear if one considers the issues that the Commission would be called upon to decide if it attempted to exercise jurisdiction over TCG’s petition. Those issues would have *nothing* to do with interconnection or resale prices and terms and conditions. Instead, the issues that would be litigated in such an enforcement proceeding would concern the power of the Arbitrator to compel Verizon to produce a confidential settlement document to TCG, in the absence of any showing of particularized need for the document (for TCG has never claimed that the document contains any relevant evidence). Those issues in no way implicate this Commission’s area of regulatory responsibility or (respectfully) its area of expertise.

Because nothing in Florida law provides this Commission with the authority to enforce a private arbitration order, TCG’s complaint should be dismissed. That does

not leave TCG without a remedy to the extent the Arbitrator's order is valid. To the contrary, it has the same remedy that the Arbitrator identified when he first issued the order that TCG seeks to enforce – an appropriate action in a court of general jurisdiction.

CONCLUSION

For all the reasons set forth in this Motion, Verizon asks the Commission to dismiss the Complaint.

Respectfully submitted on October 11, 2002.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion to Dismiss Complaint of Teleport Communications Group, Inc. and TCG South Florida in Docket No. 021006-TP were sent via U.S. mail on October 11, 2002 to the parties on the attached list.



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