

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 23, 2002

**TCG'S RESPONSE
TO VERIZON'S MOTION TO DISMISS**

Teleport Communications Group, Inc. and TCG South Florida (collectively "TCG") hereby files its response in opposition to the Motion to Dismiss filed by Verizon Florida, Inc. ("Verizon"). In support, TCG shows as follows:

1. In order for its motion to succeed, Verizon must show that the Commission *cannot* grant TCG's Petition. The function of a motion to dismiss is to raise the question of whether facts alleged in a petition are sufficient to state a cause of action upon which relief can be granted. Varnes v. Dawkins, 624 So.2d 349, 350 (Fla. 1st DCA 1993). The appropriate standard is whether, with all allegations in the petition assumed to be true, and without regard to affirmative defenses or evidence likely to be raised by the parties, the petition states a cause of action upon which relief can be granted. Id. Verizon's Motion to Dismiss should be denied because the relief requested by TCG is well within the Commission's authority to grant.

2. TCG has alleged that the parties have had an interconnection agreement, approved by the Commission, that the Agreement contains terms and conditions regarding submission of disputes to arbitration, and that Verizon has violated those terms and conditions. TCG has sought the Commission's assistance in enforcing those terms and conditions, and has requested that the Commission order Verizon to provide TCG with a specific document. The Commission

has clear authority to enforce interconnection agreements, and equally clear authority to require a certificated Florida telecommunications company to produce records and documentation. TCG thus has stated a claim for relief and Verizon's motion must be denied.

3. As noted in TCG's Petition, Section 2.1 of the TCG – Verizon Interconnection Agreement specifies that "[n]egotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between GTE and [TCG] arising out of this Agreement or its breach."¹ Both GTE/Verizon and TCG have a duty to submit disputes to arbitration, *with the concomitant obligation to comply with orders issued by the assigned Arbitrator*. Verizon, however, has refused to obey two lawful Orders issued by the assigned Arbitrator, thus breaching its obligation to submit to arbitration.

4. Verizon admits that the parties' interconnection agreement requires Verizon to submit all disputes to arbitration. Verizon admits to facts constituting a breach of that requirement, in that it has refused, and continues to refuse, to comply with orders issued by the assigned Arbitrator during the course of an arbitration proceeding. Verizon also admits that the arbitration requirement is enforceable under the Telecommunications Act, but argues that the Commission may not enforce that requirement by directing Verizon to provide a document to TCG in compliance with an Arbitrator's orders. Verizon is mistaken. The Commission has authority to enforce all terms and conditions of the parties' Interconnection Agreement, and has authority to require Verizon to provide a document to TCG.

4. As explained in TCG's Petition, the instant Agreement originally was executed by AT&T Communications of the Southern States, Inc. and GTE Florida Incorporated. It was approved by the Commission in Order No. PSC-97-0864-FOF-TP, issued on July 17, 1998.

TCG adopted the AT&T/GTE Agreement pursuant to 47 U.S.C. §252(i), TCG on or about March 3, 1998. The Commission clearly retains the authority to enforce its own orders, including the terms of Order No. PSC-97-0864-FOF-TP. Just as clearly, the Commission retains the authority to enforce the terms and conditions of interconnection agreements that it approved. The Commission never has declined to enforce its orders, or interconnection agreements approved by its orders, on the grounds that it lacks jurisdiction to do so.

5. Verizon argues that the instant dispute “does not fit within [the] delegation of authority” found in § 364.162, Florida Statutes because it does not “regard interpretation of interconnection or resale prices and terms and conditions”. That is, Verizon argues that the nature of the particular issues for which enforcement is sought determine whether the Commission does, or does not, have jurisdiction over this dispute. Verizon apparently believes that §364.162 requires, as a prerequisite to the exercise of jurisdiction to enforce an interconnection agreement, that the Commission first must examine the particular section of an interconnection agreement sought to be enforced and determine whether it falls within the narrow confines urged by Verizon. Under this theory the Commission may enforce some terms and conditions of an interconnection agreement, but lacks authority to enforce others. The Commission never has taken this limited view of its jurisdiction, and should not do so now. Section 364.162 does not support Verizon’s narrow reading of the Commission’s authority; rather, it grants the Commission full authority to *any dispute* regarding the interpretation of interconnection terms and conditions:

The commission shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions.

¹ Although TCG filed its Petition under confidential cover in order to provide Verizon with an opportunity to claim confidential treatment, Verizon has not done so. It therefore appears that the Petition need no longer be treated as confidential.

Verizon's narrow reading of this provision is clearly incorrect and inconsistent with the Commission's practice. Section 364.162 does not place any part of the instant Interconnection Agreement beyond the Commission's jurisdictional reach .

6. The Commission additionally has general regulatory authority over certificated Florida ILECs such as Verizon. The Commission may exercise that authority to require Verizon to produce records and documents pursuant to § 364.183, Florida Statutes, with or without a request from another telecommunications company.

7. The crucial issue in resolving Verizon's motion is whether TCG has alleged facts that are sufficient to state a claim, not, as Verizon essentially argues in its motion, whether the Commission *should* grant TCG's claim. As demonstrated above, the relief requested by TCG is well within the Commission's authority to grant, and Verizon's Motion to Dismiss should be denied.

8. Although parties are not required to request oral argument on pre-hearing motions, TCG hereby requests the opportunity for oral argument at agenda.

WHEREFORE, for all the reasons stated herein, TCG respectfully requests that Verizon's Motion to Dismiss be denied.

Respectfully submitted this 23rd day of October, 2002.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing was furnished by U.S. Mail this 23rd day of October, 2002 to the following:

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