

ORIGINAL

DISTRIBUTION CENTER

SUPREME COURT OF FLORIDA

Case No. SC02-2647

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VERIZON FLORIDA, INC.

Appellant,

v.

LILA A. JABER, et al.

Appellees.

990649B-TP

**APPELLANT'S RESPONSE TO
FLORIDA PUBLIC SERVICE COMMISSION'S
MOTION TO DISMISS OR ABATE**

Appellant, Verizon Florida Inc., hereby responds to the Florida Public Service Commission's Motion to Dismiss or Abate served on or about January 8, 2003. In short, Verizon Florida Inc. ("Verizon") does not oppose abatement of this appeal to allow the Public Service Commission to resolve the pending Motion for Reconsideration filed by AT&T Communications of the Southern States, LLC ("AT&T") and other parties, provided that the Commission does not assert that Verizon must implement and comply with the subject order until after the disposition of the reconsideration motion.

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC
- OTH _____

The Commission asserts in its motion that Verizon's Notice of Appeal is premature because the subject order is not final due to the pending motion for

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reconsideration (rendition of the order has been suspended). Verizon filed its Notice of Appeal, however, in an abundance of caution because existing Florida law raises a concern that rendition is not postponed with respect to claims disposed of in the final order between parties who have no post-judgment motions pending with respect to any of those claims. See, e.g., J.D. Coats v. Climatic Products Corp., 756 So. 2d 1104, 1105 (Fla. 1st DCA 2000); Friedman v. BankAtlantic, 592 So. 2d 776 (Fla. 3d DCA 1992). See also St. Paul Fire & Marine Insurance Company v. Indemnity Insurance Company of North America, 675 So. 2d 590 (Fla. 1996).

In the instant case, Verizon did not file a motion for reconsideration, and AT&T's motion is not directed to some of the issues on which Verizon will seek review. Thus, it is unclear whether the order from which appeal was taken could be considered final (rendition not suspended) at least with regard to Verizon and certain issues on which it will seek review. For these reasons, Verizon timely filed its notice of appeal from the subject order.

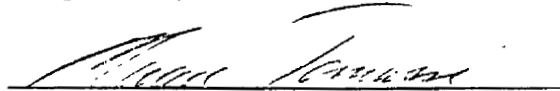
Verizon also has filed with the Commission a motion seeking to stay the effectiveness of the subject order pending appeal because at the time Verizon filed its stay motion, it was unclear whether the Commission would take the position that Verizon must implement the subject order despite the pending motion for

reconsideration. In subsequent oral conversations with the Commission, however, Verizon has been advised that the Commission considers the subject order to be non-final and believes that it would be illogical and impractical for Verizon to negotiate rate amendments with the competitive carriers while the motion for reconsideration is pending given that if that motion is granted, the reconsideration order could alter the decision. Verizon understands that the Commission considers the motion for stay unnecessary because the order is not yet effective and presumably this is why the Commission has yet to rule on the pending motion for stay, filed more than a month ago.

If the Commission considers the subject order non-final and not subject to implementation until disposition of the motion for reconsideration, then Verizon has no objection to an abatement of this appeal to allow the motion for reconsideration to be determined by the Commission. Verizon agrees that such an approach would allow for a streamlined appeal in which all potential issues concerning the UNE rates can be determined. If the Commission asserts that the subject order is effective and must be implemented despite the pending motion for reconsideration, however, then Verizon cannot agree to an abatement because it cannot be placed in the untenable position of

having an order with which it is being instructed to comply but from which it cannot seek either a stay or appellate review by this Court.

Respectfully submitted,



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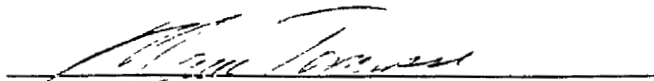
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Appellant's Response To Florida Public Service Commission's Motion To Dismiss Or Abate** has been furnished, by U.S. Mail, on January 21, 2003 to the parties on the attached list.



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