REDACTED

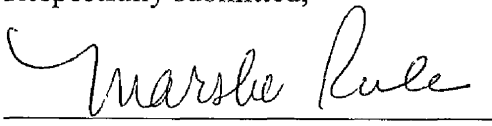
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida, Inc. (f/ka/ GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in Accordance with Attachment 1 Section 11.2 (a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP
	)	Filed: 8/6/03

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

REDACTED PUBLIC FILING

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a redacted* or unredacted ** copy of the foregoing was furnished by U.S. Mail this 6th day of August, 2003, to the following:

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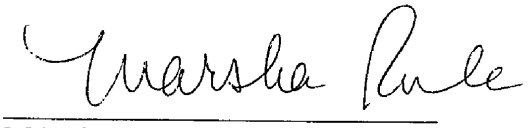

MARSHA E. RULE, ESQ.

ALTERNATIVE DISPUTE RESOLUTION

1. **Purpose**

This Attachment 1 is intended to provide for the expeditious, economical, and equitable resolution of disputes between GTE and AT&T arising under this Agreement, and to do so in a manner that permits uninterrupted, high quality services to be furnished to each Party's customers.

2. **Exclusive Remedy**

2.1 Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between GTE and AT&T arising out of this Agreement or its breach. GTE and AT&T agree not to resort to any court, agency, or private group with respect to such disputes except in accordance with this Attachment.

2.1.1 If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes.

2.1.2 If, for any reason, the FCC or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any GTE Tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:

2.1.2.1 To the extent required by law, the agency ruling shall be binding upon the parties for the limited purposes of regulation within the jurisdiction and authority of such agency.

2.1.2.2 The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

2.1.3 Nothing in this Attachment 1 shall limit the right of either GTE or AT&T to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Attachment 1. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

3. **Informal Resolution of Disputes**

3.1 Prior to initiating an arbitration pursuant to the American Arbitration Association ("AAA") rules, as described below, the Parties to this Agreement shall submit any dispute between GTE and AT&T for resolution to an Inter-Company Review Board consisting of one representative from AT&T at the Director-or-above level and one representative from GTE at the Vice-President-or-above level (or at such lower level as each Party may designate). The dispute will be submitted by either Party giving written notice to the other Party, consistent with the notice requirements of this Agreement, that the Party intends to initiate the Informal Resolution of Disputes process. The notice shall define the dispute to be resolved. The Parties may use a mediator to help informally settle a dispute.

The initial representatives of each Party shall be as follows:

AT&T

_____
_____
_____

Telephone: _____
Telecopier: _____

GTE

_____
_____
_____

Telephone: _____
Telecopier: _____

A representative shall be entitled to appoint a delegee to act in his or her place as a Party's representative on the Inter-Company Review Board for any specific dispute brought before the Board.

3.2 The Parties may enter into a settlement of any dispute at any time. The Settlement Agreement shall be in writing, and shall identify how the Arbitrator's or mediator's fee for the particular proceeding, if any, will be apportioned.

3.3 At no time, for any purposes, may a Party introduce into evidence or inform the Arbitrator appointed under Section 6 below of any statement or other action of a Party in connection with negotiations between the Parties

pursuant to the Informal Resolution of Disputes provision of this Attachment 1.

3.4 By mutual agreement, the Parties may agree to submit a dispute to mediation prior to initiating arbitration.

4. **Initiation of an Arbitration**

If the Inter-Company Review Board is unable to resolve a non-service affecting dispute within 30 days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, the Parties shall initiate an arbitration in accordance with the AAA rules. Any dispute over a matter which directly affects the ability of a Party to provide high quality services to its customers will be governed by the procedures described in Appendix 1 to this Attachment 1.

5. **Governing Rules for Arbitration**

The rules set forth below and the rules of Commercial Arbitrations of the AAA shall govern all arbitration proceedings initiated pursuant to this Attachment; however, such arbitration proceedings shall not be conducted under the auspices of the AAA unless the Parties mutually agree. Where any of the rules set forth herein conflict with the rules of the AAA, the rules set forth in this Attachment shall prevail.

6. **Appointment and Removal of Arbitrator**

6.1 Within forty-five (45) days following the Effective Date of this Agreement the Parties will appoint three arbitrators, each of whom will have experience in the field of telecommunications. Each such Arbitrator shall serve for the full term of this Agreement, unless removed pursuant to Section 6.3 of this Attachment. Each of the three Arbitrators will be appointed by mutual agreement of the Parties in writing within the aforementioned forty-five day period. Each Arbitrator so appointed shall receive an assignment designation number (1, 2 or 3), and the Arbitrators shall be assigned in that sequence as disputes arise that are subject to this Attachment. In the event that any of the three initial Arbitrators so appointed resigns or is removed pursuant to Section 6.3 of this Attachment, or becomes unable to discharge his or her duties, the Parties shall, by mutual written agreement, appoint a replacement Arbitrator within thirty (30) days after the date of such resignation, removal or disability. All matters pending before the departing Arbitrator shall be

reassigned as provided in Section 6.4 of this Attachment; provided however that such matters shall not be assigned to the replacement Arbitrator. New matters will be assigned the replacement Arbitrator in accordance with the procedure set forth herein(above).

6.2 For each dispute properly submitted for arbitration under this Attachment, the Parties shall assign a sole Arbitrator from among the three Arbitrators appointed under Section 6.1 in accordance with the assignment sequence described therein. Each such assignment shall be made within ten (10) days of the expiration under Section 4 of this Attachment of the Inter-Company Review Board review period. Insofar as common issues arise concerning more than one Interconnection, Resale and Unbundling Agreement signed between an AT&T Affiliate and a GTE Affiliate, the Parties agree that such common issues will be combined and submitted to the same Arbitrator for resolution.

6.3 The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator. Notwithstanding the foregoing, any Arbitrator may be removed at any time unilaterally by either Party as permitted in the rules of the AAA. Furthermore, upon (30) days' prior written notice to the Arbitrator and to the other Party, a Party may remove an Arbitrator with respect to future disputes which have not been submitted to arbitration in accordance with the requirements of Section 4 of this Attachment 1, as of the date of such notice.

6.4 In the event that an Arbitrator resigns or is removed pursuant to Section 6.3 of this Attachment, or becomes unable to discharge his or her duties, or is otherwise unavailable to perform the duties of Arbitrator, any matters then pending before that departing or disabled Arbitrator will be assigned to the incumbent Arbitrator with the next assignment designation number (in ascending order). Such assignment will be made effective by written notice of the Parties to be provided within ten days following the resignation, removal or unavailability that necessitates such reassignment.

6.5 In the event that the Parties do not appoint an Arbitrator or replacement Arbitrator within the time periods prescribed in Section 6.1 of this Attachment 1, either Party may apply to AAA for appointment of such Arbitrator. Prior to filing an application with the AAA, the Party filing such application shall provide ten (10) days' prior written notice to the other Party to this Agreement.

7. Duties and Powers of the Arbitrator

7.1 The Arbitrator shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrator shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrator may not award punitive damages or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of this Agreement.

7.2 The Arbitrator shall not have the authority to limit, expand, or otherwise modify the terms of this Agreement.

8. **Discovery**

GTE and AT&T shall attempt, in good faith, to agree on a plan for document discovery. Should they fail to agree, either GTE or AT&T may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between GTE and AT&T, and such resolution with respect to the scope, manner, and timing of discovery shall be final and binding.

9. **Privileges**

Although conformity to certain legal rules of evidence may not be necessary in connection with arbitrations initiated pursuant to this Attachment, the Arbitrator shall, in all cases, apply the attorney-client privilege and the work product immunity doctrines.

10. **Location of Hearing**

Unless both Parties agree otherwise, any hearings shall take place in Dallas, Texas.

11. **Decision**

11.1 Except as provided below, the Arbitrator's decision and award shall be final and binding, and shall be in writing and shall set forth the Arbitrator's reasons therefor for decision unless the Parties mutually agree to waive

the requirement of a written opinion. Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision.

11.2 A decision of the Arbitrator shall not be final in the following situations:

a) a Party appeals the decision to the Commission or FCC, and the matter is within the jurisdiction of the Commission or FCC, provided that the agency agrees to hear the matter;

b) the dispute concerns the misappropriation or use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party, and the decision appealed by a Party to a federal or state court with jurisdiction over the dispute.

11.3 Each Party agrees that any permitted appeal must be commenced within thirty (30) days after the Arbitrator's decision in the arbitration proceedings is issued. In the event of an appeal, a Party must comply with the results of the arbitration process during the appeal process.

12. **Fees**

Unless otherwise mutually agreed in writing, each Arbitrator's fees and expenses shall be shared equally between the Parties, provided, however, that in the arbitration of any particular dispute either Party may request that all fees and expenses directly related to that arbitration matter be imposed on the other Party, and the Arbitrator shall have the power to grant such relief, in whole or in part.

13. **Confidentiality**

13.1 GTE, AT&T, and the Arbitrator will treat the arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court or governmental body.

13.2 In order to maintain the privacy of all arbitration conferences and hearings, the Arbitrator shall have the power to require the exclusion of any person, other than a Party, counsel thereto, or other essential persons.

13.3 To the extent that any information or materials disclosed in the course of an arbitration proceeding contains proprietary or confidential Information of either Party, it shall be safeguarded in accordance with Section 17 of this Agreement. However, nothing in Section 17 of this Agreement shall be construed to prevent either Party from disclosing the other Party's Information to the Arbitrator in connection with or in anticipation of an arbitration proceeding. In addition, the Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information.

14. **Service of Process**

14.1 Service may be made by submitting one copy of all pleadings and attachments and any other documents requiring service to each Party and one copy to the Arbitrator. Service shall be deemed made (i) upon receipt if delivered by hand; (ii) after three (3) business days if sent by first class certified U.S. mail; (iii) the next business day if sent by overnight courier service; (iv) upon confirmed receipt if transmitted by facsimile. If service is by facsimile, a copy shall be sent the same day by hand delivery, first class U.S. mail, or overnight courier service.

14.2 Service by AT&T to GTE and by GTE to AT&T at the address designated for delivery of notices in this Agreement shall be deemed to be service to GTE or AT&T, respectively. The initial address for delivery of notices is specified in Subsection 3 above.

Appendix I to Attachment 1

ALTERNATIVE DISPUTE RESOLUTION

Procedure for Resolution of Service-Affecting Disputes

1. Purpose.

This Appendix 1 describes the procedures for an expedited resolution of disputes between GTE and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers and which cannot be resolved using the procedures for informal resolution of disputes contained in Attachment 1 to the Agreement.

Except as specifically provided in this Appendix 1 to Attachment 1, the provisions of Attachment 1 shall apply.

2. Initiation of an Arbitration.

a) If the Inter-Company Review Board is unable to resolve a service affecting dispute within two (2) business days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, a Party may initiate an arbitration in accordance with the requirements of this Appendix 1 to Attachment 1. However, in the sole discretion of the Party which submitted the dispute to the Inter-Company Review Board, the dispute may be arbitrated in accordance with the general procedures described in Attachment 1 rather than the expedited procedures of this Appendix 1 to Attachment 1.

b) A proceeding for arbitration will be commenced by a Party ("Complaining Party") filing a complaint with the Arbitrator and simultaneously serving a copy on the other Party ("Complaint").

c) Each Complaint will concern only the claims relating to an act or failure to act (or series of related acts or failures to act) of a Party which affect the Complaining Party's ability to offer a specific service (or group or related services) to its customers.

A Complaint may be in letter or memorandum form and must specifically describe the action or inaction of a Party in dispute and identify with particularity how the complaining Party's service to its customers is affected.

3. **Response to Complaint.**

A response to the Complaint must be filed within five (5) business days after service of the Complaint.

4. **Reply to Complaint.**

A reply is permitted to be filed by the Complaining Party within three (3) business days of service of the response. The reply must be limited to those matters raised in the response.

5. **Discovery.**

The Parties shall cooperate on discovery matters as provided in Section 8 of Attachment 1, but following expedited procedures.

6. **Hearing.**

a) The Arbitrator will schedule a hearing on the Complaint to take place within twenty (20) business days after service of the Complaint. However, if mutually agreed to by the parties, a hearing may be waived and the decision of the Arbitrator will be based upon the papers filed by the Parties.

b) The hearing will be limited to four (4) days, with each Party allocated no more than two (2) days, including cross examination by the other Party, to present its evidence and arguments. For extraordinary reasons, including the need for extensive cross-examination, the Arbitrator may allocate more time for the hearing.

In order to focus the issues for purposes of the hearing, to present initial views concerning the issues, and to facilitate the presentation of evidence, the Arbitrator has the discretion to conduct a telephone prehearing conference at a mutually convenient time, but in no event later than three (3) days prior to any scheduled hearing.

Each Party may introduce evidence and call witnesses it has previously identified in its witness and exhibit lists. The witness and exhibit lists must be furnished to the other Party at least three (3) days prior to commencement of the hearing. The witness list will disclose the substance of each witness' expected testimony. The exhibit list will identify by name (author and recipient), date, title and any other identifying characteristics the exhibits to be used at the arbitration. Testimony from

witnesses not listed on the witness list or exhibits not listed on the exhibit list may not be presented in the hearing.

c) The parties will make reasonable efforts to stipulate to undisputed facts prior to the date of the hearing.

d) Witnesses will testify under oath and a complete transcript of the proceeding, together with all pleadings and exhibits, shall be maintained by the Arbitrator.

7. Decision.

a) The Arbitrator will issue and serve his or her decision on the Parties within five (5) business days of the close of the hearing or receipt of the hearing transcript, whichever is later.

b) The Parties agree to take the actions necessary to implement the decision of the Arbitrator immediately upon receipt of the decision.

CONFIDENTIAL EXHIBIT 2

to TCG's Motion to Dismiss
Petition of Verizon Florida Inc.

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

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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(202) 326-7900

Attorneys for Verizon Florida Inc.

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.

Kimberly Caswell

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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 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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Attorneys for Teleport Communications Group, Inc. and TCG South Florida

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:

Kimberly Caswell
Verizon Florida Inc.
201North Franklin St.
Tampa, FL 33602

Aaron M. Panner
David Schwarz
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M. Street, NW, Suite 400
Washington DC 20036

MARSHA E. RULE, ESQ.

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 ORDER NO. PSC-02-1705-FOF-TP ISSUED: December 6, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER GRANTING MOTION TO DISMISS

BY THE COMMISSION:

BACKGROUND

On September 20, 2002, Teleport Communications Group, Inc. and TCG South Florida (TCG) filed its Confidential Petition for Expedited Enforcement of an Interconnection Agreement with Verizon Florida, Inc. On October 11, 2002, Verizon Florida, Inc. (Verizon) filed its Motion to Dismiss the Complaint of TCG. On October 23, 2002, TCG filed its response to Verizon's Motion to Dismiss. In its Response, TCG notes that since Verizon did not claim confidential treatment, it appears that its Petition no longer needs to be treated as confidential.

In its Motion to Dismiss, Verizon states that the underlying dispute between the parties arose from TCG's claims for reciprocal compensation and Verizon's counter-claims for TCG's alleged breach of the interconnection agreement submitted to private arbitration pursuant to the parties' agreement. Verizon asserts that during the course of the arbitration, TCG filed a Motion to Compel the

production of arbitration awards involving other Verizon interconnection agreements. Verizon states that it opposed TCG's Motion to Compel on procedural grounds based on TCG's failure to provide a written discovery request and that the motion was time barred. Further, Verizon states that it argued that the arbitration awards were confidential and therefore not subject to discovery.

However, on August 9, 2002, the Arbitrator granted TCG's Motion to Compel. Verizon states that it produced one of the previous awards not subject to a confidentiality provision, but did not produce the other awards because it believed the order exceeded the Arbitrator's authority. TCG requested a conference with the Arbitrator on August 26, 2002, and the Arbitrator issued another order. According to Verizon, TCG has not sought to enforce either of the Motions to Compel in court, but rather has filed a petition before this Commission.

MOTION TO DISMISS

Verizon's Motion

Verizon argues in its Motion that we should dismiss TCG's petition because TCG has not properly invoked this Commission's jurisdiction. Verizon states that under the parties' interconnection agreement, they were to submit all disputes arising out of the agreement or its breach to private arbitration. Verizon asserts that the arbitration provision is valid and enforceable under the Telecommunications Act of 1996. Verizon states that in fact the matter has been submitted to a private arbitrator and discovery has been completed and a hearing was scheduled for October 11, 2002.

Verizon states that TCG does not seek to enforce the interconnection agreement but rather TCG's complaint is directed at enforcing the Arbitrator's order. Verizon argues that enforcement of an Arbitrator's order, like the enforcement of a subpoena issued by a court, is a role for a court of general jurisdiction.[1]

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[1]Verizon citing to Western Employer Ins. Co. v. Merit Inc. Co., 492 F. Supp. 53, 54 (N.D. Ill. 1979)(enforcing in part and

Verizon further argues that it is well-settled law that this Commission is not a court of general jurisdiction but rather only has those powers granted by statute expressly or by necessary implication.[2] Verizon cites to East Central Regional Wastewater Facilities Operating Bd. v. City of West Palm Beach, 659 So.2d 402,404 (Fla. Dist. Ct. App. 1995), for the proposition that "'[A]s a creature of statute,' the Commission 'has no common law jurisdiction or inherent power.'"

Verizon contends that nothing in the statute grants this Commission the authority to enforce the type of private arbitration order at issue here. Verizon states that Section 364.162, Florida Statutes, on which TCG relies, is inapplicable by its plain terms. Verizon states that Section 364.162, Florida Statutes, provides that "the Commission 'shall have the authority to *arbitrate* any dispute *regarding interpretation of interconnection or resale prices and terms and conditions.*'" (emphasis in original) Verizon argues that the issue in dispute here has nothing to do with arbitration but rather the enforceability of a collateral discovery order issued in a private arbitration. Verizon points out that the issue that this Commission would be called on to resolve is the Arbitrator's power to compel Verizon to produce documents, which in no way implicates this Commission's regulatory responsibility or area of expertise.

Verizon concludes that nothing in Florida law provides this Commission with the authority to enforce a private arbitration order. As such, TCG's complaint should be dismissed. Verizon states that if its motion is granted, TCG still has a remedy to seek enforcement by going to a court of general jurisdiction.

TCG's Response

In its Response, TCG states that for Verizon's Motion to Dismiss to succeed, Verizon must show that this Commission cannot grant its petition. TCG argues that under Varnes v. Dawkins, 624 So.2d 349, 350 (Fla. 1st DCA 1993), Verizon's motion should be

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quashing in part arbitrator's subpoena).

[2]Deltona Corp. v. Mayo, 342 So.2d 510, 512, n.4 (Fla. 1977)

denied because the relief requested by TCG is well within this Commission's authority to grant.

TCG argues that the parties have an interconnection agreement, approved by this Commission, that contains terms and conditions regarding submission of disputes to arbitration. TCG argues that Verizon has violated those terms and conditions. TCG asserts that it has sought this Commission's assistance in enforcing those terms and conditions and has requested that this Commission order Verizon to provide TCG with a specific document. TCG contends that this 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 states that as noted in its petition, Section 2.1 of the parties' 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'." TCG argues that both parties have a duty to submit to arbitration and comply with orders issued by the assigned Arbitrator. TCG asserts that Verizon has refused to obey two lawful orders issued by the Arbitrator, thereby breaching its obligation to submit to arbitration.

TCG argues that contrary to Verizon's assertion that this Commission does not have authority to direct compliance with the Arbitrator's order, this Commission has authority to enforce all terms and conditions of the interconnection agreement and has the authority to require Verizon to provide the document. TCG states that this Commission clearly approved the agreement which was later adopted by TCG and therefore retains the authority to enforce the terms and conditions of the interconnection agreement it approved. TCG contends that this Commission has never declined to enforce its orders, or interconnection agreements approved by its orders, on the grounds it lacks jurisdiction to do so.

TCG contends that under Verizon's theory, this Commission may enforce some terms and conditions of an interconnection agreement, but lacks authority to enforce others. TCG argues that Section 364.162, Florida Statutes, does not support Verizon's narrow interpretation, but rather it grants this Commission full authority

to address any dispute regarding the interpretation of interconnection terms and conditions. Further, TCG asserts that this Commission has general regulatory authority over certificated Florida ILECs such as Verizon and that under Section 364.183, Florida Statutes, this Commission may require Verizon to produce records and documents with or without a request from a telecommunication company.

TCG concludes that the crucial issue in resolving Verizon's Motion is whether TCG has alleged facts sufficient to state a claim, not whether this Commission should grant TCG's claim. TCG asserts that the relief it has requested is well within this Commission's authority to grant and thus Verizon's Motion should be denied.

Decision

Under Florida law the purpose of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. In re Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc., 95 FPSC 5:339 (1995); Varnes, 624 So. 2d at 350. When "determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side." Id. However, we note that Verizon's Motion to Dismiss questions our authority to hear the subject matter. Thus, regardless of whether all of TCG's allegations in its Complaint were facially correct, if we were to determine that we lack subject matter jurisdiction, the Complaint would have to be dismissed.

As noted by the parties, TCG's complaint arises from a private arbitration conducted in accordance with the parties' current interconnection agreement which was approved by us. Essentially, TCG requests that we order Verizon to comply with two orders issued by the private Arbitrator. TCG's argument is that we have

authority to grant this relief based on Section 364.162, Florida Statutes, which authorizes us to arbitrate disputes regarding terms and conditions of interconnection agreements.

We disagree with TCG's analysis that the discovery orders are terms and conditions of a Commission approved interconnection agreement thereby invoking our jurisdiction. The private Arbitrator's discovery orders are not terms or conditions of the interconnection agreement. Rather, the discovery orders are merely a consequence of compliance with the terms and conditions of the interconnection agreement which requires private arbitration. The alleged act of non-compliance with the Arbitrator's order by a party does not confer this Commission with jurisdiction over the Arbitrator's orders.

As noted by Verizon, in Deltona Corp. v. Mayo, the Court found that this Commission has only those powers granted by statute expressly or by necessary implication. Further, in East Central Regional Wastewater Facilities Bd., the Fourth Circuit noted that as a statutory creature, this Commission has no common law jurisdiction or inherent power. Id. at 404. Contrary to TCG's assertion, we find that Section 364.162, Florida Statutes, does not confer by necessary implication the power to enforce a foreign jurisdiction's discovery orders. Further, we note that Section 364.015, Florida Statutes, only authorizes this Commission to seek equitable relief in an appropriate circuit court, not to order equitable relief. Should the parties wish to enforce any orders issued from the private arbitration, we believe that the appropriate forum for such enforcement would be a court of general jurisdiction.

Thus, we find that this Commission lacks the subject matter jurisdiction to grant the relief sought by TCG to enforce the discovery orders issued by the private Arbitrator. Therefore, we grant Verizon Florida, Inc.'s Motion to Dismiss Teleport Communications Group, Inc. and TCG South Florida's Confidential Petition for Expedited Enforcement of an Interconnection Agreement.

Although we find this Commission is not the appropriate forum to enforce these discovery orders, we expect that the parties will comply with arbitration orders just as they comply with Commission

orders. Further, we encourage the continued use of arbitration and negotiation.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Verizon Florida, Inc.'s Motion to Dismiss Teleport Communications Group, Inc. and TCG South Florida's Confidential Petition for Expedited Enforcement of an Interconnection Agreement is hereby granted. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th day of December, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

PAC

Commissioner Palecki dissents as follows:

In this docket, Verizon, the moving party on a Motion to Dismiss, did not find it necessary to have a representative present at the agenda conference to address Commissioners' concerns. TCG's petition should not have been dismissed until a representative of Verizon was present to address the Commission.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Excerpts from Chapter 171, Texas Civil Practice & Remedies Code

§ 171.054. Modification or Correction to Award

(a) The arbitrators may modify or correct an award:
(1) on the grounds stated in Section 171.091; or
(2) to clarify the award.

(b) A modification or correction under Subsection (a) may be made only:
(1) on application of a party; or
(2) on submission to the arbitrators by a court, if an application to the court is pending under Sections 171.087, 171.088, 171.089, and 171.091, subject to any condition ordered by the court.

(c) A party may make an application under this section not later than the 20th day after the date the award is delivered to the applicant.

(d) An applicant shall give written notice of the application promptly to the opposing party. The notice must state that the opposing party must serve any objection to the application not later than the 10th day after the date of notice.

(e) An award modified or corrected under this section is subject to Sections 171.087, 171.088, 171.089, 171.090, and 171.091.

Added by Acts 1997, 75th Leg., ch. 165, § 5.01, eff. Sept. 1, 1997.

§ 171.081. Jurisdiction

The making of an agreement described by Section 171.001 that provides for or authorizes an arbitration in this state and to which that section applies confers jurisdiction on the court to enforce the agreement and to render judgment on an award under this chapter.

Added by Acts 1997, 75th Leg., ch. 165, § 5.01, eff. Sept. 1, 1997.

§ 171.087. Confirmation of Award

Unless grounds are offered for vacating, modifying, or correcting an award under Section 171.088 or 171.091, the court, on application of a party, shall confirm the award.

Added by Acts 1997, 75th Leg., ch. 165, § 5.01, eff. Sept. 1, 1997.

§ 171.088. Vacating Award

(a) On application of a party, the court shall vacate an award if:
(1) the award was obtained by corruption, fraud, or other undue means;
(2) the rights of a party were prejudiced by:
(A) evident partiality by an arbitrator appointed as a neutral arbitrator;
(B) corruption in an arbitrator; or
(C) misconduct or wilful misbehavior of an arbitrator;
(3) the arbitrators:
(A) exceeded their powers;
(B) refused to postpone the hearing after a showing of sufficient cause for the postponement;
(C) refused to hear evidence material to the controversy; or
(D) conducted the hearing, contrary to Section 171.043, 171.044, 171.045, 171.046, or 171.047, in a manner that substantially prejudiced the rights of a party; or
(4) there was no agreement to arbitrate, the issue was not adversely determined in a proceeding under Subchapter B, and the party did not participate in the arbitration hearing without raising the objection.

(b) A party must make an application under this section not later than the 90th day after the date of delivery of a copy of the award to the applicant. A party must make an application under Subsection (a)(1) not later than the 90th day after the date the grounds for the application are known or should have been known.

(c) If the application to vacate is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

Added by Acts 1997, 75th Leg., ch. 165, § 5.01, eff. Sept. 1, 1997.

§ 171.089. Rehearing After Award Vacated

(a) On vacating an award on grounds other than the grounds stated in Section 171.088(a)(4), the court may order a rehearing before new arbitrators chosen:
(1) as provided in the agreement to arbitrate; or
(2) by the court under Section 171.041, if the agreement does not provide the manner for choosing the arbitrators.

(b) If the award is vacated under Section 171.088(a)(3), the court may order a rehearing before the arbitrators who made the award or their successors appointed under Section 171.041.

(c) The period within which the agreement to arbitrate requires the award to be made applies to a rehearing under this section and commences from the date of the order.

Added by Acts 1997, 75th Leg., ch. 165, § 5.01, eff. Sept. 1, 1997.

§ 171.091. Modifying or Correcting Award

(a) On application, the court shall modify or correct an award if:
(1) the award contains:
(A) an evident miscalculation of numbers; or
(B) an evident mistake in the description of a person, thing, or property referred to in the award;
(2) the arbitrators have made an award with respect to a matter not submitted to them and the award may be corrected without affecting the merits of the decision made with respect to the issues that were submitted; or
(3) the form of the award is imperfect in a manner not affecting the merits of the controversy.

(b) A party must make an application under this section not later than the 90th day after the date of delivery of a copy of the award to the applicant.

(c) If the application is granted, the court shall modify or correct the award to effect its intent and shall confirm the award as modified or corrected. If the application is not granted, the court shall confirm the award.

(d) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Added by Acts 1997, 75th Leg., ch. 165, § 5.01, eff. Sept. 1, 1997.

Title 9, U.S.C.
Federal Arbitration Code

Section 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

Section 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Section 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration -

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

Florida Arbitration Code

§682.01, Florida Statutes, et. seq.

§682.12 Confirmation of an award.--Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in ss. 682.13 and 682.14.

History.--s. 11, ch. 57-402; s. 12, ch. 67-254.

Note.--Former s. 57.21.

§682.13 Vacating an award.--

(1) Upon application of a party, the court shall vacate an award when:

(a) The award was procured by corruption, fraud or other undue means.

(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.

(c) The arbitrators or the umpire in the course of her or his jurisdiction exceeded their powers.

(d) The arbitrators or the umpire in the course of her or his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.

(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(2) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(3) In vacating the award on grounds other than those stated in paragraph (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with s. 682.04, or, if the award is vacated on grounds set forth in paragraphs (1)(c) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with s. 682.04. The time within which the agreement or

provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.

(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History.--s. 12, ch. 57-402; s. 12, ch. 67-254; s. 729, ch. 97-102.

Note.--Former s. 57.22.

§682.15 Judgment or decree on award.--Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

History.--s. 14, ch. 57-402; s. 12, ch. 67-254.

Note.--Former s. 57.24.

§682.18 Court; definition; jurisdiction.--

(1) The term "court" means any court of competent jurisdiction of this state. The making of an agreement or provision for arbitration subject to this law and providing for arbitration in this state shall, whether made within or outside this state, confer jurisdiction on the court to enforce the agreement or provision under this law, to enter judgment on an award duly rendered in an arbitration thereunder and to vacate, modify or correct an award rendered thereunder for such cause and in the manner provided in this law.

(2) Any judgment entered upon an award by a court of competent jurisdiction of any state, territory, the Commonwealth of Puerto Rico or foreign country shall be enforceable by application as provided in s. 682.17 and regardless of the time when said award may have been made.

History.--s. 17, ch. 57-402; s. 12, ch. 67-254.

Note.--Former s. 57.27.