

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

**ORIGINAL**

STEPHEN A. ECENIA  
RICHARD M. ELLIS  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
MICHAEL G. MAIDA  
MARTIN P. McDONNELL  
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
MARSHA E. RULE  
GARY R. RUTLEDGE  
GOVERNMENTAL CONSULTANTS  
MARGARET A. MENDUNI  
M. LANE STEPHENS

September 2, 2003

Ms. Blanca S. Bayo, Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

RECEIVED-FPSC  
03 SEP -2 PM 4:57  
COMMISSION  
CLERK

Re: Docket No. 030643-TP

Dear Ms. Bayo:

Pursuant to direction by Florida PSC staff, TCG has amended the public (redacted) version of its Motion to Dismiss Verizon's petition in the above-referenced docket. Enclosed please find an original and fifteen copies of TCG's Amended Public Filing, in which TCG has redacted all information claimed to be confidential by either TCG or Verizon. There are no changes to the confidential filing.

Also enclosed please find an original and fifteen copies of Attachment 2 to TCG's Motion to Dismiss. Attachment 2 was originally filed under confidential cover, but Verizon has not requested confidential treatment of this document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance in handling this matter.

Sincerely,

Marsha E. Rule

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH \_\_\_\_\_

RECEIVED & FILED

14  
FPSC-BUREAU OF RECORDS

Amended motion 08173-03  
Attachment 2 08174-03

Page 2

September 2, 2003

Enclosures

cc: All Parties of Record

**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 ) Docket No. 030643-TP  
of a decision by The American Arbitration )  
Association in Accordance with Attachment 1 ) Filed: 9/2/03  
Section 11.2 (a) of the Interconnection Agreement )  
between GTE Florida Inc. and TCG South Florida )  
\_\_\_\_\_ )

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

Pursuant to Rule 28-106.204, Florida Administrative Code, Teleport Communications Group Inc. and TCG South Florida (collectively, "TCG") by and through undersigned counsel, hereby move to dismiss the petition of Verizon Florida Inc. for lack of jurisdiction. In its Petition, Verizon seeks review of a final order issued by an Arbitrator appointed by the American Arbitration Association in a private arbitration proceeding between TCG and Verizon. This Commission has already determined that it lacks jurisdiction to review the orders of a private arbitrator. In support of its motion, TCG states as follows:

**BACKGROUND**

1. On July 18, 1997, the Commission issued Order No. PSC-97-0864-FOF-TP, in which it approved a final Interconnection Agreement between AT&T Communications of the Southern States, Inc. and GTE Florida Incorporated (the "Agreement"), as a result of an arbitration proceeding before the Commission in Docket No. 960847-TP. TCG adopted the Agreement in full pursuant to 47 U.S.C. §252(i) in March, 1998.

2. Attachment 1 of the Agreement provides that private arbitration is the "exclusive remedy" for all disputes:

DOCUMENT NUMBER DATE

08173 SEP-28

AMENDED PUBLIC FILING

FPSC-COMMISSION CLERK

2. Exclusive Remedy

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

Attachment 1 is attached hereto as "Exhibit 1".

3. In compliance with the Arbitration Agreement, TCG filed a Petition for Arbitration before the American Arbitration Association ("AAA") in December, 2001, alleging that Verizon breached the Agreement by failing to pay reciprocal compensation for termination of ISP-bound traffic. Verizon filed a counter-claim relating to VFX traffic. The AAA docketed the matter as AAA Case No. 71 & 181 00852 1. The parties agreed upon the appointment of an Arbitrator and proceeded with the arbitration.

4. During the year-long course of the arbitration, the parties engaged in extensive discovery, including the deposition of a TCG witness, and each party moved for summary judgment. Verizon prefiled direct testimony, rebuttal testimony, and supplemental direct testimony, along with exhibits thereto. TCG prefiled direct, rebuttal and supplemental rebuttal testimony, with accompanying exhibits. Several days before the hearing was to begin, the parties agreed to stipulate all testimony and exhibits into the record, waive cross examination of witnesses, and present oral argument to the Arbitrator. The parties further agreed that the Arbitrator would decide all issues with the exception of the amount of damages, which would be resolved by the parties based on the Arbitrator's rulings. Thereafter, a hearing was held before the Arbitrator in Dallas, Texas.

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**STANDARD OF REVIEW**

7. The purpose of a motion to dismiss is to test the legal sufficiency of a complaint or petition which purports to invoke the Commission’s jurisdiction. If the petition fails to state a cause of action for which relief can be granted, it must be dismissed. *Varnes v. Dawkins*, 624 So.2d 349 (Fla. 1<sup>st</sup> DCA 1993). When reviewing the sufficiency of Verizon’s petition, the Commission “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.* at 350. Verizon’s petition must be dismissed because it sets forth a claim that the Commission has no authority to hear and seeks a remedy that is not within its power to grant.

**I.  
THE COMMISSION LACKS JURISDICTION TO REVIEW THE ARBITRATOR’S  
FINAL AWARD**

8. Verizon asks the Commission to cast aside the Arbitrator’s *Final Award* and issue an order more to Verizon’s liking. Verizon’s Petition is nothing short of outrageous and must be dismissed.

9. In a scant, two paragraph review of the Commission’s authority, Verizon asserts that the Commission has jurisdiction “to hear this dispute involving the interpretation of interconnection agreement terms and conditions” pursuant to 47 U.S.C. §252, §364.162, Florida Statutes, and §11.2(a) of Attachment 1 of the Agreement. Specifically, Verizon argues that the parties’ Agreement provides that:

“[a]ny decision by the AAA-appointed arbitrator can be directly appealed to the Florida PSC . . . where it is subject to de novo review in accordance with this Commission’s authority, under section 252 of the 1996 Act, to interpret and enforce previously-approved interconnection agreements. *See Verizon Maryland Inc. v. Maryland Pub. Serv. Comm’n*, 535 U.S. 635 (2002); *Bellsouth Telecomms. Inc. v. MCImetro Access Transmission Servs. Inc.*, 317 F.3d 1270, 1274 (11<sup>th</sup> Cir. 2003) (en banc) (“the authority to approve or reject agreements carries with it the authority to interpret agreements that have already been approved.”)

Verizon Petition, ¶¶ 5, 6. Verizon is wrong on all counts. None of these provisions empower the Commission to conduct any review whatsoever of an Arbitrator’s *Final Award*, and certainly do not authorize the Commission to act in an appellate capacity and vacate that order, or to conduct the de novo proceeding sought by Verizon herein.

A. The Commission has already determined that it lacks authority to review orders issued by private Arbitrators.

10. TCG recently asked the Commission to review an order issued by the same Arbitrator

in the same private AAA arbitration as the order proffered by Verizon herein. On September 20, 2002, TCG filed a Confidential Petition for Expedited Enforcement of an Interconnection Agreement with Verizon Florida Inc., which was docketed as Docket No. 021006-TP. A copy of the Petition is attached hereto as “Exhibit 2”. TCG asked the Commission to exercise its authority pursuant to 47 U.S.C. §252 and §364.162, Florida Statutes, to enforce the Arbitrator’s order directing Verizon to produce a specified document. TCG reasoned that Verizon’s refusal to comply with the Arbitrator’s order constituted a breach of its contractual obligation to submit disputes to arbitration and comply with orders issued by the Arbitrator, thus triggering the Commission’s authority to enforce interconnection agreements pursuant to §364.162, F.S., which provides as follows:

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

11. Verizon moved to dismiss TCG’s petition, arguing that “nothing in [§364.162, F.S.] gives the Commission the authority to enforce the type of private arbitration order at issue here.” Docket No. 021006-TP, Verizon Motion to Dismiss, pg. 4, October 11, 2002, attached hereto as “Exhibit 3”. Verizon asserted that the order was enforceable, “if at all, in an appropriate court of general jurisdiction.” *Id.*, pg. 1. In response, TCG urged a broader reading of the statute, arguing that it “grants the Commission full authority to [resolve] *any dispute* regarding the interpretation of interconnection terms and conditions.” TCG’s Response to Verizon’s Motion to Dismiss, ¶5 (“Exhibit 4”).

12. The Commission determined that it lacked subject matter jurisdiction to over orders issued by a private Arbitrator, and dismissed TCG’s petition. Specifically, the Commission held that the Arbitrator’s order itself did not constitute a term or condition of an interconnection

agreement, and thus was outside the Commission's jurisdiction:

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.

Order No. PSC-02-1705-FOF-TP, pg. 6 ("Exhibit 5").

13. This same analysis must be applied to the Arbitrator's *Final Award*. Although the discovery order in Docket No. 021006-TP and the Arbitrator's *Final Award* both arise out of an Arbitrator's interpretation of an interconnection agreement, neither the discovery order nor the Arbitrator's *Final Award* constitutes "terms or conditions of the interconnection agreement." Rather, both orders are the **result** of the Agreement, (*i.e.* "merely a consequence of compliance with the terms and conditions of the interconnection agreement which requires private arbitration"). Accordingly, the Commission lacks jurisdiction over the Arbitrator's *Final Award*, just as it lacked jurisdiction over his discovery order.

14. Verizon may argue that the ultimate relief it seeks (interpretation of an interconnection agreement) is within the Commission's jurisdiction and therefore justifies its exercise of jurisdiction over the *Final Award*. The Commission should reject this argument, just



as it rejected the same argument when made by TCG in Docket No. 021006-TP. The ultimate relief sought by TCG in that case (an order requiring Verizon to produce a document) was squarely within the Commission's authority pursuant to §364.183, Florida Statutes. However, the Commission recognized that TCG did not seek such relief in a vacuum, but instead sought to invoke the Commission's jurisdiction to enforce a private arbitration order over which it had no jurisdiction. Similarly, Verizon does not seek interpretation of an interconnection agreement in a vacuum; the Agreement has already been authoritatively construed in a mandatory and binding arbitration, which Verizon now seeks to *overturn*.<sup>1</sup> The Commission's authority to arbitrate interconnection disputes does not justify Verizon's demand that the Commission overturn an Arbitrator's order over which it admittedly has no jurisdiction.

15. Verizon fails to identify any statutory authority that would allow the Commission to review a private Arbitrator's order, let alone overturn that order and substitute a new decision in its place. The two federal cases cited by Verizon most certainly do not allow this result; they stand only for the proposition that the Commission may interpret and enforce interconnection agreements that it has approved. Those cases confer no authority for the Commission to review or vacate orders resulting from a private arbitration.

16. The Commission similarly lacks inherent or implied authority to review or vacate private arbitration orders:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction.

---

<sup>1</sup> See Verizon Petition at pg. 2 ("it is imperative that this Commission act to rectify this [decision] by reversing the Arbitrator's ruling . . ."); pg. 4 ("the Arbitrator's decision is subject to corrective review. . ."; "Verizon respectfully requests that the Commission reverse the Arbitrator's decision. . ."); pg. 16, ¶26 ("[The Arbitrator's] decision is unlawful, and cannot stand."); pg. 23 ("Verizon . . . respectfully requests that the Florida PSC . . . declare that the Arbitrator's decisions are invalid . . .").

*East Central Regional Wastewater Facilities Operating Bd. v. City of West Palm Beach*, 659 So.2d 402, 404 (Fla. 4<sup>th</sup> DCA 1995). See also *Deltona Corp. v. Mayo*, 342 So.2d 510 (Fla. 1977). The Commission has already determined that §364.162, Florida Statutes, does not imply jurisdiction to enforce orders issued in a private arbitration:

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.

Order No. PSC-02-1705-FOF-TP, pg. 6. The Commission has no more authority to vacate an Arbitrator's order than it does to enforce it.<sup>2</sup>

17. In Order No. PSC-02-1705-FOF-TP, the Commission firmly and clearly determined that its authority to arbitrate interconnection disputes did not allow it to intervene in a private arbitration regarding the same subject. The Commission must decline Verizon's invitation to reverse this decision.

B. The Interconnection Agreement does not support Verizon's claim for a "de novo review" of the *Final Award*

18. The Agreement requires all interconnection disputes to be submitted to formal, binding arbitration. Attachment 1 to the parties' Agreement, entitled "Alternative Dispute

---

<sup>2</sup> Additionally, as explained more fully below, judicial review of private arbitrators' orders is limited, and even the courts lack jurisdiction to grant the relief sought by Verizon herein.

Resolution”, specifies arbitration as the “exclusive remedy” for all interconnection disputes:

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.

This section further states that the results of such arbitration shall be binding upon the parties. Attachment 1, §11.1. The Agreement grants the Arbitrator all power and authority that would or could be exercised by a judge, including the power to grant any remedy that could be granted by a court:

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 authority to limit, expand, or otherwise modify the terms of this Agreement.

Attachment 1 also provides for judicial enforcement of the arbitration award, as well as a limited opportunity for appeal:

#### 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 therefore 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.

Agreement, Attachment 1, §11. In short, Attachment 1 provides the parties with every possible opportunity for obtain a full, fair and final hearing on their disputes.

19. Verizon attempts to dismiss the exclusive arbitration requirement of Attachment 1 as nothing more than a preliminary staging mechanism by which the parties firm up issues for the Commission's ultimate deliberation.<sup>3</sup> The most cursory review of Attachment 1 dispels this notion. Nothing in Attachment 1 authorizes Verizon's request for the Commission to second-guess the Arbitrator, dissect his *Final Award* and ultimately discard it in favor of a de novo review, the standard for which Verizon fails to reveal.<sup>4</sup>

---

<sup>3</sup> Verizon describes Attachment 1 as "a limited Alternative Dispute Resolution provision designed to encourage the expeditious resolution of contractual disagreements and to narrow disputes before they are brought before this Commission." Verizon Petition, ¶6.

<sup>4</sup> Verizon styles its claim as a "petition for review" (Verizon Petition, pg. 1), but fails to state any basis for its argument that the *Final Award* is subject to "review", and completely fails to describe the standard of review to be

20. Attachment 1 does not support Verizon's claim that "[a]ny decision by the AAA-appointed arbitrator can be directly appealed to the Florida PSC, *see* [Agreement], Attach. 1, §11.2, where it is subject to a *de novo* review. . . ." As shown above, Attachment 1 states that the Arbitrator's decision "shall be final and binding", and provides only a limited opportunity for appeal of matters "that are within the jurisdiction of the [Commission]". Even then, the Commission must agree to hear the matter. This provision does not purport to confer jurisdiction on the Commission; it merely allows an appeal if such jurisdiction exists, and certainly does not authorize the "de novo review" sought by Verizon.

21. Even if the Commission had jurisdiction over this matter, which it does not, it could and should refuse to hear Verizon's petition. Verizon's claims have already been heard and rejected in an arbitration proceeding that lasted well over one year and required an enormous expenditure of effort and funds. Both parties engaged in discovery and presented direct and rebuttal testimony as well as documentary evidence.<sup>5</sup> Verizon would have the Commission wipe the slate clean and start over, thus reducing this year-long arbitration to nothing more than an extremely expensive and time-consuming preliminary exercise to a Commission arbitration proceeding. This is not the result the Agreement requires, not the result the Commission could have anticipated when approving mandatory private arbitration clauses in interconnection

---

applied. Since Verizon hasn't provided the Commission with anything that resembles an appellate record, Verizon apparently believes that the Commission should conduct the proposed review on the basis of the random and incomplete assortment of documents attached to its petition: the interconnection agreement, a few selected pleadings (Verizon's Answer and Counterclaim to TCG's Demand for Arbitration, Verizon's Motion for Summary Judgment, TCG's Motion for Summary Judgment with none of its 13 original attachments, and Verizon's Response in Opposition thereto); a TCG response to a single Verizon request for admissions, TCG responses to five Verizon interrogatories, the direct testimony of a single Verizon witness, transcript of the oral argument, and the Interim and Final Awards. Verizon failed to provide TCG's direct, rebuttal and supplemental rebuttal testimony, most of its own testimony, or the numerous hearing exhibits.

<sup>5</sup>



agreements, and certainly not the result the Commission itself urged upon Verizon and TCG in Order No. PSC-02-1705-FOF-TP:

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.

*Id.* at pg. 6, 7. Few CLECs will be willing to go through the considerable expense and effort of private arbitration if the Commission treats it as nothing more than a detour on the way to a “real” Commission arbitration. The Commission must not allow Verizon to devalue the parties’ private arbitration in this fashion.

C. Verizon’s Petition was not timely filed

22. As noted above, any appeal of the Arbitrator’s *Final Award* must be filed within thirty days of the date it was issued: “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.” Attachment 1, §11.3. The Arbitrator issued his *Final Award* on June 13, 2003. Verizon filed its petition herein 35 days thereafter, on July 18, 2003.<sup>6</sup> Verizon’s failure to meet this simple requirement constitutes an independent ground for dismissal of its Petition.

**II.**  
**TEXAS, NOT FLORIDA, IS THE PROPER FORUM FOR VERIZON’S CLAIMS**

23. Private arbitration orders are not self-executing. They must be confirmed via entry of a judgment by a court of competent jurisdiction, which judgment is enforceable to the same extent as any other judgment. The Agreement provides for enforcement of the *Final Award* in

<sup>6</sup>

[REDACTED]

any state or federal court that has jurisdiction to do so:

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.

Attachment 1, §11.1. State court jurisdiction over arbitration proceedings is determined by each state's arbitration code. Jurisdiction of the federal courts is determined by the federal arbitration code (9 U.S.C. §§1-16). As shown below, the Texas arbitration code grants Texas state courts jurisdiction over the *Final Award*, and the federal arbitration code grants such jurisdiction to the U.S. District Court for the Northern District of Texas, but the Florida arbitration code does not grant such authority to the Florida courts.

24. The Agreement requires arbitration hearings to take place in Dallas, Texas, absent agreement to the contrary. Attachment 1, §10. In compliance with this provision, the parties held a hearing in Dallas, Texas, on October 11, 2002. Because the Agreement provides for a hearing in Texas, the Texas state courts have jurisdiction over the *Final Award*:

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.

Texas Civil Practice & Remedies Code §171.081 ("Texas arbitration code").<sup>7</sup> Excerpts from the Texas arbitration code are attached hereto as "Exhibit 6".

25. As noted above, the Agreement also offers parties the option of confirming the Arbitrator's *Final Award* in federal court: "Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision."

---

<sup>7</sup> Pursuant to §171.096(c), venue is proper in Dallas County, Texas because the arbitration was held there: "If a hearing before the arbitrators has been held, a party must file the initial application [for confirmation of an arbitration award] with the clerk of the court of the county in which the hearing was held."

Attachment 1, §11.1. Since the hearing was held in Dallas, Texas, the appropriate federal court is the U.S. District Court for the Northern District of Texas. 9 U.S.C. §9. Excerpts from the federal arbitration code (9 U.S.C. §1, *et. seq.*) are attached hereto as “Exhibit 7”.

26. In contrast, the Florida courts have no jurisdiction over the *Final Award* because the Agreement does not specifically state that it is subject to the Florida arbitration code, nor does it provide for arbitration within the 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

§682.18(1), Florida Statutes. Excerpts from the Florida arbitration code are attached hereto as “Exhibit 8”. Thus, Verizon is asking the Commission to exercise jurisdiction that the Florida legislature has denied to Florida courts.

27. Further, Verizon seeks a remedy that is beyond the authority of the courts to award. Judicial confirmation of an arbitration award is mandatory under the federal and Texas arbitration codes unless there are proper grounds to vacate or modify the award. 9 U.S.C. §9; Tex. Civ. Prac. & Rem. Code §171.087. Both arbitration codes provide extremely limited grounds for vacating an award, including only corruption, fraud, arbitrator’s misconduct in refusing to postpone a hearing, or where the arbitrator exceeded his power. 9 U.S.C. §10; Tex. Civ. Prac. & Rem. Code §171.087. Verizon does not allege that the Arbitrator engaged in any corruption or fraud, that he refused to delay a hearing, or that he exceeded either his statutory authority or the authority granted in Attachment 1. Thus, Verizon has failed to state grounds that would allow a court of competent jurisdiction to vacate the *Final Award*.



28. Grounds for modification or correction of an award are similarly circumscribed. Texas and federal courts may modify an arbitrator's award only if the award reveals a mathematical miscalculation or material mistake in the description of a person, thing or property; where the Arbitrator reached beyond the arbitration agreement to decide an issue not submitted to him; or where the form of the award is imperfect in a fashion that does not affect the merits of the dispute. 9 U.S.C. §11; Tex. Civ. Prac. & Rem. Code §171.091. None of these circumstances is present in the instant case, so Verizon is not entitled to even the limited form of modification that may be granted by a court of competent jurisdiction, and most certainly is not entitled to the de novo review and completely new order it seeks herein.

29. Finally, although the Florida courts do not have jurisdiction over the *Final Award*, TCG notes that the Florida arbitration code similarly requires confirmation of arbitration awards, subject to the same severely limited grounds for vacating or modifying such awards. See §§ 682.12, 682.13, 682.14, Florida Statutes. Even if Florida courts had jurisdiction over the *Final Award*, which they do not, a Florida judge could not vacate the award, conduct a de novo review, and substitute his own judgment for that of the Arbitrator.

30. Verizon argues that the Arbitrator's *Final Award* is "contrary to settled Florida PSC precedent, federal law, and the plain language" of the Agreement. Verizon also insists that the decision is arbitrary and capricious, contrary to the weight of the evidence, and "results from a failure to engage in reasoned decision making." This hodgepodge of complaints fails to state grounds for vacating or modifying the award under Texas, Florida or federal law, and must be dismissed.

### ATTORNEY'S FEES

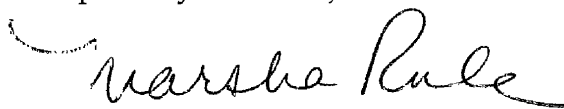
31. Verizon has participated in this proceeding for an improper purpose within the meaning of §120.595, Florida Statutes. TCG is therefore entitled to an award of reasonable costs and attorney's fees pursuant, and moves the Commission to make such an award pursuant to §120.595, Florida Statutes.

### CONCLUSION

32. Verizon asks the Commission to exercise jurisdiction it does not possess, and demands a remedy that neither the Commission nor the courts may grant, based upon a petition that was not timely filed. Verizon's petition wholly fails to state a cause of action upon which relief may be granted by the Commission, and must be dismissed.

WHEREFORE, TCG respectfully requests that the Commission dismiss Verizon's Demand for Arbitration in its entirety, with prejudice.

Respectfully submitted,



MARSHA E. RULE, ESQ.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P.O. Box 551  
Tallahassee, Florida 32302  
(850) 681-6788 (Telephone)  
(850) 681-6515 (Telecopier)

and

ROXANNE DOUGLAS  
AT&T  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, GA 30309  
(404) 810-8670 (Telephone)  
(404) 810-5901 (Telecopier)

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a redacted\* or unredacted \*\* copy of the foregoing was furnished by hand delivery this 2<sup>nd</sup> day of September, 2003, to the following:

Felicia Banks, Esq. \*  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL. 32399-0850

D. Bruce May, Esq. \*\*  
Holland & Knight, LLP  
P.O. Drawer 810  
Tallahassee, FL 32302

I further certify that an unredacted copy of the foregoing was furnished by U.S. Mail this 2<sup>nd</sup> day of September, 2003, to the following:

Aaron M. Panner, Esq.  
David Schwarz, Esq.  
Kellogg, Huber, Hansen, Todd & Evans  
1615 M. Street, N.W.  
Suite 400  
Washington, D.C. 20036-3209

Mary Coyne, Esq.  
Verizon  
1515 North Court House Road  
Suite 500  
Arlington, Virginia 22201

Richard Chapkis  
MC: FLTC0007  
201 North Franklin St.  
Tampa, FL 336-2

  
MARSHA E. RULE, ESQ.