

**FLORIDA PUBLIC SERVICE COMMISSION**

In the matter of: Teleport Communications )  
Group, Inc. and TCG South Florida for )  
Expedited Enforcement of an ) Docket No. \_\_\_\_\_  
Interconnection Agreement between )  
TCG and GTE Florida Incorporated, ) Filed: 9/20/02  
now known as Verizon Florida, Inc. )  
\_\_\_\_\_ )

**TELEPORT COMMUNICATION GROUP, INC. AND  
TCG SOUTH FLORIDA'S  
CONFIDENTIAL PETITION FOR EXPEDITED ENFORCEMENT  
OF AN INTERCONNECTION AGREEMENT  
WITH VERIZON FLORIDA, INC.**

Teleport Communications Group Inc. and TCG South Florida (collectively, "TCG") by and through undersigned counsel, hereby request expedited enforcement of certain provisions of their interconnection agreement with GTE Florida Incorporated ("GTE"), now known as Verizon Florida, Inc. ("Verizon"). TCG seeks an order compelling Verizon to comply with its interconnection agreement by producing certain documentary information in connection with an ongoing arbitration before the American Arbitration Association. In support of its claim, TCG states as follows:

**I. PARTIES**

1. The complete name and address of the Complainant is:

TCG South Florida  
1200 Peachtree Street  
8<sup>th</sup> Floor  
Atlanta, GA 30309  
404-810-4922

2. All pleadings, notices, staff recommendations, orders and other documents filed or served in this docket should be served upon the following on behalf of TCG:

Kenneth A. Hoffman, Esq.  
Martin P. McDonnell, Esq.

DOCUMENT NUMBER DATE

08174 SEP-28

FPSC-COMMISSION CLERK

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

With copies sent to:

Michael Karno, Esq.  
Roxanne Douglas, Esq.  
TCG/AT&T Communications of the Southern States, Inc.  
1200 Peachtree Street, N.W.  
Suite 8100  
Atlanta, Georgia 30309  
(404) 810-8294 (Telephone)  
(404) 877-7624 (Telecopier)

3. To the best of TCG's knowledge and belief, the complete name and principal place of business of Respondent GTE, now known as Verizon, is:

Verizon, Inc.  
600 Hidden Ridge  
Irving, TX 75038

4. The names, addresses and contact numbers for Respondent's legal representatives during the ongoing dispute with TCG are as follows:

Mary Coyne, Esq.  
1515 North Courthouse Road  
Suite 500  
Arlington, Va. 22201  
(703) 351-3026 (telephone)  
(703) 351-3655 (facsimile)

David Schwarz  
Kellog, Huber, Hansen, Todd & Evans  
1615 M Street, Suite 400  
Washington, D.C. 20036-3209  
(202) 326-7900 (telephone)  
(202) 326-7999 (facsimile)

## II. JURISDICTION

5. Teleport Communications Group Inc. ("Teleport"), a wholly-owned subsidiary of AT&T Corporation, is the holding company parent of TCG South Florida (hereinafter referred to

collectively as "TCG"). TCG is authorized to provide local exchange and exchange access services as well as intrastate interLATA and intraLATA toll services in the State of Florida. TCG is an alternative local exchange telecommunications company ("ALEC") within the meaning of Section 364.02(1), Florida Statutes, and is authorized by the Florida Public Service Commission ("Commission") to provide local exchange telecommunications services in the State of Florida pursuant to ALEC Certificate No. 3519. TCG is thus subject to the Commission's regulatory jurisdiction.

6. Verizon is authorized to provide local exchange and exchange access services in the State of Florida and is a "local exchange telecommunications company" within the meaning of Section 364.02(7), Florida Statutes. Verizon is an incumbent local exchange company under the terms of the Interconnection Agreement at issue in this proceeding and within the meaning of 47 U.S.C. §251(h). Verizon thus is subject to the Commission's jurisdiction.

7. The Commission also has subject matter jurisdiction over the instant dispute. On July 17, 1998, 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 "Interconnection Agreement"), as a result of an arbitration proceeding before the Commission in Docket No. 960847-TP.<sup>1</sup> Pursuant to 47 U.S.C. §252(i), TCG adopted in full the AT&T/GTE Agreement. TCG's adoption of the AT&T/GTE Agreement was executed by TCG and GTE on or about March 3, 1998. This adoption is attached hereto as Exhibit A.

---

<sup>1</sup> The Commission previously had arbitrated and resolved the interconnection issues between AT&T and GTE in Order No. PSC-97-0064-FOF-TP, issued on January 17, 1997, and Order No. PSC-97-0585-FOF-TP on May 22, 1997.

Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996 (“the Telecom Act”), the terms and conditions of the AT&T/GTE Agreement are binding on TCG and GTE. The resulting contract will be hereinafter referred to as the “TCG/GTE Agreement.” The Commission retains jurisdiction to interpret and enforce the TCG/GTE Agreement pursuant to Section 364.162, Florida Statutes.

### **III. CONFIDENTIAL TREATMENT**

8. TCG may be required to treat the arbitration proceeding as confidential pursuant to Section 13 of Attachment 1 to the TCG/GTE Agreement (the “Arbitration Agreement”), attached hereto as Exhibit B, and therefore will file this Petition under confidential cover. TCG does not believe that this Petition or any attachment thereto constitutes “confidential business information” of either Verizon or TCG and therefore does not believe that the Petition or its attachments are exempt from § 119.07(1), Florida Statutes. However, in order to comply with its obligation under the Arbitration Agreement, TCG respectfully requests that the Commission treat this Petition and its attachments as confidential pending an opportunity for Verizon to request confidential treatment.

### **IV. BREACH OF THE ARBITRATION AGREEMENT**

9. Pursuant to the provisions of the Arbitration Agreement, the parties agreed to resolve contractual disputes in an arbitration conducted in accordance with the rules of the American Arbitration Association (“AAA”). See Sec. 2.1 of the Arbitration Agreement. In compliance with the Arbitration Agreement, TCG filed a Petition for Arbitration before the AAA in December, 2001, alleging that Verizon breached the TCG/GTE Agreement by failing to pay reciprocal compensation for termination of ISP-bound traffic. Verizon filed a counter-claim and the matter currently is set

for final hearing beginning on October 9, 2002, before an Arbitrator assigned by the AAA. Due to the short time remaining before the hearing begins, TCG requests expedited treatment of this Petition.

10. In accordance with the Arbitration Agreement, TCG's reciprocal compensation claim will be resolved by the AAA arbitration. In this Petition, however, TCG seeks the Commission's assistance in enforcing the Arbitration Agreement itself.

11. Section 1 of the Arbitration Agreement states that it "is intended to provide for the expeditious, economical, and equitable resolution of disputes between GTE and [TCG] arising under this [Interconnection] Agreement....". Section 2.1 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." 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 contractual obligation to submit to arbitration.

12. On August 9, 2002, the assigned Arbitrator issued an Order directing Verizon to produce three AAA arbitration award orders. On August 20, Verizon produced only one of the three AAA award orders, stating that the other two "were each settled." On August 21, 2001, TCG filed a Request for Immediate Conference and Further Orders, stating that it had a "good faith belief that at least one other arbitration award was issued in the above cases, yet Verizon has refused to provide it."

13. On August 22, 2002, TCG counsel telephoned Verizon's outside counsel and asked directly whether arbitration orders had been issued in the KMC and second e.spire cases. Despite

his representation in an earlier email message to the Arbitrator and TCG that he provided the first e.spire arbitration award to TCG “after full consultation with my client”, Verizon’s counsel replied that he did not know. In a second telephone call, TCG counsel suggested that the question of whether an order had been issued could be determined by the AAA case coordinator, and requested that Verizon join TCG in contacting the coordinator to request such information. Verizon’s counsel would not agree to this request.

14. On August 26, 2002, during a tele-conference between the Arbitrator and the parties, counsel for Verizon represented that no arbitration award order had ever been issued in one of the AAA arbitration cases. After direct questioning, however, counsel admitted that an arbitration award order had indeed been issued in AAA Case No. 71 181 00126 01, *In the Matter of e.spire Communications, Inc. on behalf of itself and its Florida Operating Subsidiaries ACSI Switched Local Services, Inc. v. Verizon Florida Inc. f/k/a GTE Florida Inc.* Verizon’s counsel stated that Verizon and e.spire had later settled the case, after which Verizon took steps to vacate the order. In response to further questioning, counsel for Verizon also stated that she could not recall when the award order was issued and she could not state when it was vacated.<sup>2</sup> Verizon’s counsel also stated that the arbitration award order was confidential pursuant to agreement between Verizon and e.spire; that Verizon’s refusal to produce the order was based on Verizon’s rights, rather than any obligation to e.spire; and that Verizon would not produce the order to TCG despite the Arbitrator’s clear mandate to do so and regardless of whether e.spire waived its right to confidentiality. Although Verizon acknowledged that the confidential information in the second e.spire arbitration award order

---

<sup>2</sup> TCG notes that AAA rules do not provide a procedure for vacating valid orders.

was unrelated to the instant dispute, Verizon refused to produce the arbitration award order to the Arbitrator for an *in camera* inspection. Counsel did not attempt to cite any statute, rule or order defending Verizon's outright refusal to comply with the Arbitrator's Order. Instead, counsel stated that TCG would have to "take [Verizon] to court".

15. On August 27, 2002 the assigned Arbitrator issued an Order directed to Verizon, attached hereto as Exhibit C. As recited in the Order, the Arbitrator twice ordered Verizon to produce the above-referenced e.spire arbitration award order. As recited in the Order, Verizon expressly and steadfastly refused to obey the Arbitrator's direct order:

I find that Verizon has violated the terms of my August 9, 2002 Order by failing to produce the [e.spire] award order as directed and again by its verbal refusal during the [August 26] teleconference to produce the award order as directed.

Order at pg. 3. The Arbitrator then directed Verizon, for the third time, to produce the e.spire award order:

It is therefore ORDERED that Verizon shall immediately produce the arbitration award order issued in AAA Case No. 71 181 00126 01, *In the Matter of e.spire Communications, Inc. on behalf of itself and its Florida Operating Subsidiaries ACSI Switched Local Services, Inc. v. Verizon Florida Inc. f/k/a GTE Florida Inc.*, and that the parties shall treat the award order as third party confidential information pursuant to the TCG-Verizon Protective Agreement.

Order at pg. 4. Verizon refuses to comply with this Order.<sup>3</sup>

16. The e.spire award order is essential to the resolution of TCG's reciprocal compensation dispute with Verizon, and TCG suffers irreparable harm due to Verizon's refusal to

---

<sup>3</sup> As noted by the Arbitrator, Verizon and TCG have executed a Protective Agreement maintaining the confidentiality nature of documents exchanged between the parties.

produce the document in flagrant violation of the Arbitrator's direct order. The e.spire arbitration order is an authoritative ruling construing, interpreting and enforcing under Florida and federal law the very same Interconnection Agreement at issue between TCG and Verizon, and thus the very same terms governing treatment of ISP-bound traffic. AAA arbitration awards are not available to the public, so TCG has no alternative means of obtaining the e.spire arbitration award order.<sup>4</sup>

17. In the Order, the Arbitrator noted his "limited enforcement authority" and directed that TCG "may enforce my August 9 Order as well as this Order in any appropriate forum." As demonstrated above, this Commission has jurisdiction as well as regulatory authority over both TCG and Verizon, and retains authority to enforce the terms of the original AT&T - GTE Interconnection Agreement which was adopted by TCG. The Commission therefore is an appropriate forum for enforcing the Arbitrator's Order. In addition, the Arbitration Agreement itself provides for the possibility of a "state regulatory authority exercis[ing] jurisdiction and decid[ing] any dispute related to this Agreement", and allows for appeal to the Commission if a matter is within the Commission's jurisdiction. *See* Arbitration Agreement, Sections 2.1.2 and 11.2.

18. This matter is set for hearing beginning on October 9, 2002. TCG requests that the Commission consider this Petition on an expedited basis so that TCG may obtain the requested relief in time to prepare for the hearing. To facilitate expedited relief, TCG requests that the Commission direct Verizon to file a response to this Petition by September 25, 2002, and that the Commission, a panel of Commissioner or a duly designated Commissioner enter a ruling enforcing the Arbitrator's

---

<sup>4</sup> Verizon's continued refusal to produce the e.spire arbitration award order is particularly suspect because Verizon attached to its Answer and Counterclaim an AAA arbitration award order resulting from the arbitration of a North Carolina interconnection agreement between AT&T and GTE. It appears that Verizon refuses to produce the e.spire order simply because it does not like the result.



Order as soon as possible, with or without oral argument.

WHEREFORE, for all the reasons stated herein, TCG respectfully requests that the Commission Verizon be required immediately to comply with the terms of the Arbitrator's Order, and for such other relief to which TCG may be entitled.

Respectfully submitted this 20th day of September, 2001.

---

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

and

MICHAEL KARNO, ESQ.  
ROXANNE DOUGLAS, ESQ.  
AT&T  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, GA 30309  
(404) 810-8294 (Telephone)  
(404) 877-7624 (Telecopier)

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing Petition was furnished by email and facsimile (without attachments) and Federal Express (with attachments) this 20<sup>th</sup> day of September, 2002 to the following:

Mary Coyne, Esq.  
1515 North Courthouse Road  
Suite 500  
Arlington, Va. 22201  
(703) 351-3026 (telephone)  
(703) 351-3655 (facsimile)

David Schwarz  
Kellog, Huber, Hansen, Todd & Evans  
1615 M Street, Suite 400  
Washington, D.C. 20036-3209  
(202) 326-7900 (telephone)  
(202) 326-7999 (facsimile)

---

MARSHA E. RULE, ESQ.