

Richard A. Chapkis  
Vice President & General Counsel, Southeast Region  
Legal Department

FLTC0007  
201 North Franklin Street (33602)  
Post Office Box 110  
Tampa, Florida 33601-0110

Phone 813 483-1256  
Fax 813 273-9825  
richard.chapkis@verizon.com

ORIGINAL



106 East College Avenue, Suite 810  
Tallahassee, FL 32301

Phone 850.222.6300  
Fax 850.222.2912

December 4, 2003

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RECEIVED FPSC  
DEC 4 PM 3:40  
COMMISSION  
CLERK

Re: Docket No. 030746-TP  
Complaint of Cargill Crop Nutrition, Inc., f/k/a Cargill Fertilizer, a subsidiary of  
Cargill Corporation, against Verizon Florida Inc. for enforcement of FCC Orders  
and Florida Public Service Commission decisions eliminating application of tariff  
charges for complex inside wiring, and request for relief

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of Verizon Florida Inc.'s Answer  
to Amended Complaint of Cargill Fertilizer, Inc. in the above matter. Service has been  
made as indicated on the Certificate of Service. If there are any questions regarding  
this filing, please contact me at 813-483-1256.

Sincerely,

Richard Chapkis

RC:tas  
Enclosures

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Answer to Amended Complaint of Cargill Fertilizer, Inc. in Docket No. 030746-TP were hand-delivered(\*) and/or sent via U.S. mail(\*\*) on December 4, 2003 to the parties listed below:

Staff Counsel(\*)  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Greg Lefor, Controller(\*\*)  
Cargill Phosphate Production  
8813 Highway 41 South  
Riverview, FL 33569

Raymond W. Smith(\*\*)  
Williams Management Services & Associates  
821 South Orleans  
Tampa, FL 33606

R. Vernon Williams(\*\*)  
Williams Management Services  
1413 Emerald Creek Drive  
Valrico, FL 33594

Stephen Murray(\*\*)  
IT Infrastructure Manager  
Cargill Crop Nutrition  
8813 Highway 41 South  
Riverview, FL 33569



Richard Chapkis

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Cargill Crop Nutrition, Inc., )	Docket No. 030746-TP
f/k/a Cargill Fertilizer, a subsidiary of Cargill )	Filed: December 4, 2003
Corporation, against Verizon Florida Inc. for )	
enforcement of FCC Orders and Florida )	
Public Service Commission decisions )	
eliminating application of tariff charges for )	
complex inside wiring, and request for relief )	
_____ )	

**ANSWER OF VERIZON FLORIDA INC. TO  
AMENDED COMPLAINT OF CARGILL FERTILIZER, INC.**

Verizon Florida Inc. (Verizon) answers the Amended Complaint of Cargill Fertilizer, Inc. (Cargill) as follows:

1. Verizon denies each and every allegation in the Amended Complaint except as expressly admitted herein.

2. In response to the allegations of Paragraph 1, Verizon admits that all issues have been resolved except the issue involving Verizon General Service Tariff 113.2, entitled "Extension Line Channel." Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the remaining allegations of Paragraph 1 and on that basis denies them.

3. The allegations of Paragraph 2 are denied. Verizon did not err when it submitted its Extension Line Channel (ELC) tariff filing in 1993. To the contrary, Order No. PSC-93-0587-FOF-TL, issued in Docket No. 930178-TL on April 15, 1993, expressly approved GTE Florida Incorporated's (now Verizon Florida Inc.) ELC tariff filing.

4. In response to the allegations of Paragraph 3, Verizon admits that Cargill has requested that the Florida Public Service Commission (FPSC or Commission)

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investigate, clarify and rule on the legality of Verizon General Services Tariff 113.2 in light of FCC Orders and Commission orders and decisions.

5. The allegations of Paragraph 4 are denied because Verizon General Service Tariff 113.2 was properly applied and no credits or monies are due Cargill.

6. The allegations of Paragraph 5 are denied to the extent that they imply that Cargill has incurred damages as the result of Verizon's application of its General Service Tariff 113.2.

7. The allegations of Paragraph 6 are denied. Verizon's actions have not damaged Cargill.

8. Paragraph 7 states that "In support of the Amended Complaint, Cargill makes the following showing." Verizon's responses to the paragraphs setting forth Cargill's purported showing are set forth below.

9. Paragraph 8 states that "Cargill incorporates by references as though fully set forth herein the allegations of paragraphs 1 – 6 above." Verizon's responses to Paragraphs 1 – 6 of the Amended Complaint are set forth above.

10. The allegations of Paragraph 9 are admitted.

11. The allegations of Paragraph 10 are admitted.

12. The allegations of Paragraph 11 are admitted.

13. The allegations of Paragraph 12 are admitted.

14. Paragraph 13 states that "Cargill incorporates by reference as though fully set forth herein the allegations of paragraphs 1 – 12 above." Verizon's responses to Paragraphs 1 – 12 are set forth above.

15. In response to the allegations of Paragraph 14, Verizon admits that the Commission has jurisdiction over this dispute to the extent that the services at issue are regulated services. However, Verizon denies that the legal authorities cited by Cargill provide the necessary support for the relief requested.

16. The allegations of Paragraph 15 are admitted to the extent that the services at issue are regulated services.

17. In response to the allegations of Paragraph 16, Verizon admits that the dispute is ripe for resolution. However, Verizon denies that Cargill has incurred damages as the result of Verizon's application of Verizon General Service Tariff 113.2.

18. The allegations of Paragraph 17 are admitted to the extent the services at issue are regulated services.

19. Paragraph 18 states that "Cargill incorporates by reference as though fully set forth herein the allegations of paragraphs 1 – 17 above." Verizon's responses to Paragraphs 1 – 17 are set forth above.

20. In response to the allegations of Paragraph 19, Verizon admits that Cargill purchased a PBX from Verizon and that there is a single physical demarcation point. Verizon denies the remaining allegations in this paragraph to the extent that they imply that Verizon did not maintain the existing copper facilities.

21. In response to the allegations of Paragraph 20, Verizon admits that this paragraph accurately describes the location of the Disputed Cable. Moreover, Verizon admits that it placed this cable in service before 1985. However, Verizon denies that no regulated service has been provided over this cable.

22. The allegations of Paragraph 21 are admitted.

23. In response to the allegations of Paragraph 22, Verizon admits that the Disputed Cable provided transport for PABX station lines terminated at other buildings on the campus. Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the remaining allegations of this paragraph and on that basis denies them.

24. In response to the allegations of Paragraph 23, Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations and on that basis denies them.

25. In response to the allegations of Paragraph 24, Verizon admits that it responded to a request for bid proposals. Verizon avers that Cargill has cited only brief snippets from Verizon's proposal, which speaks for itself. Verizon is presently attempting to locate the entire proposal, but to date has been unable to do so. As a result, Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the remaining allegations of Paragraph 24 and on that basis denies them. It bears mention, however, that the excerpt from Verizon's proposal, attached as Exhibit C to the Amended Complaint, makes clear that the Disputed Cable was not the subject of the proposal. That excerpt provides that "All existing cable Plant backbone are to **remain in place** and the above bids are to increase cable pair sizes throughout the plant to give relief to the congested cable now in place." (Emphasis added). Moreover, the reference to the Disputed Cable in that excerpt appears to have been a tangential reference not directly related to the fiber proposal. The engineer may have simply been unaware that the Disputed Cable was covered by Verizon General Service Tariff 113.2.

26. In response to the allegations of Paragraph 25, Verizon repeats that Cargill has cited only brief snippets from Verizon's proposal, which speaks for itself. Verizon is presently attempting to locate its entire proposal, but to date has been unable to do so. As a result, Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations of Paragraph 25 and on that basis denies them. Given that Verizon's proposal did not pertain to the disputed cable, however, it would not be surprising if the proposal does not (1) speak to whether the Disputed Cable is regulated or (2) discuss maintenance and repair of the Disputed Cable.

27. In response to the allegations of Paragraph 26, Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations and on that basis denies them.

28. In response to the allegations of Paragraph 27, Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the allegations and on that basis denies them.

29. The allegations of Paragraph 28 are denied.

30. The allegations of Paragraph 29 are admitted.

31. The allegations of Paragraph 30 are denied.

32. The allegations of Paragraph 31 are denied. This Paragraph erroneously alleges that Verizon's 1999 bid proposal was for the replacement of the Disputed Cable. To the contrary, the excerpt from the bid proposal, attached as Exhibit C to the Amended Complaint, makes clear that the Disputed Cable is "to remain in place."

33. In response to the allegations of Paragraph 32, Verizon avers that Cargill's allegations as to what would or would not have happened as a result of Verizon's bid review process are mere speculation and on that basis denies them.

34. In response to the allegations of Paragraph 33, Verizon admits that Cargill sent a letter to Verizon requesting a refund. Verizon is presently attempting to locate the letter, but to date has been unable to do so. As a result, Verizon is without sufficient knowledge or information at this time to form a belief as to the truth of the remaining allegations of Paragraph 33 and on that basis denies them.

35. In response to the allegations of Paragraph 34, Verizon admits that it continues to assert that its reliance on Verizon General Service Tariff 113.2 is justified. Verizon denies that the past maintenance bills clearly show the status of the facility as deregulated. Order No. PSC-93-0587-FOF-TL, issued in Docket No. 930178-TL on April 15, 1993, ruled that GTE Florida Incorporated (now Verizon Florida Inc.) shall obsolete its tariff pertaining to residence and business ELCs, not detariff its ELC service.

36. The allegations of Paragraph 35 are admitted with one exception. Verizon denies that the FPSC Order cited in Footnote 21 applies to the instant case.

37. In response to the allegations of Paragraph 36, Verizon admits that the letter from Verizon to Cargill, attached as Exhibit E to the Amended Complaint, provides as follows:

If Verizon inadvertently charged for CPE maintenance of the cabling in contravention of Cargill's ELC [Extension Line Channel] service, then a refund of such invoices may be appropriate. Please provide all copies of such invoices (with any supporting information you feel will establish that the invoices pertain to the ELC cable) for receipt of a credit against the Cargill account.



Verizon denies Cargill's unsubstantiated claim in Footnote 24 that Verizon should refund monies to Cargill without sufficient justification from Cargill as to why a refund is due.

38. In response to the allegations of Paragraph 37, Verizon admits that Cargill provided Verizon with a copy of the FPSC Order. Verizon also admits that Cargill offered its interpretation of the Order, which Verizon disputes. That Order arose out of a case that did not involve Verizon, and thus has no precedential effect here. Verizon also admits that Cargill requested that Verizon review its November 6 position in light of the FPSC Order, and the request was forwarded to Verizon's Legal Department.

39. The allegations of Paragraph 38 are admitted.

40. In response to the allegations of Paragraph 39, Verizon admits that Cargill repeated its request that Verizon review its position on this matter. Verizon also admits that it reviewed its position again and determined that its position was correct. A copy of the e-mail declining Cargill's request for credit is attached as Exhibit G to the Amended Complaint (not as Exhibit H as indicated in Footnote 27 of the Amended Complaint).

41. The allegations of Paragraph 40 are denied.

42. In response to the allegations of Paragraph 41, Verizon denies that its General Services Tariff 113.2 is in violation of previous FCC and FPSC rules and orders. Verizon avers that the FPSC Order speaks for itself and, as stated above, has no applicability to the instant case.

43. The allegations of Paragraph 42 are denied.

44. The allegations of Paragraph 43 are denied.

45. The allegations of Paragraph 44 are denied.

46. In response to the allegations of Paragraph 45, Verizon admits that it billed Cargill \$669.70 per month plus taxes for 181 units under Verizon General Service Tariff 113.2 until September 30, 2003, when Cargill requested that Verizon cease providing the service. Verizon has not charged Cargill for the service since that time.

47. In response to the allegations of Paragraph 46, Verizon avers that if it inadvertently charged for CPE maintenance of the cabling in contravention of Cargill's ELC service, then a refund of such charges may be appropriate. To date, however, Cargill has not demonstrated that this occurred.

48. In response to the allegations of Paragraph 47, Verizon denies that it should have to pay for any of Cargill's capital expenditures to install a fiber cable on Cargill's property.

49. Paragraph 48 states, "Under the conditions specified of Paragraph 45, Cargill makes the following demands." Verizon's responses to the paragraphs setting forth Cargill's demands are set forth below.

50. In response to the demands of Paragraph 49, Verizon avers that if it inadvertently charged for CPE maintenance of the cabling in contravention of Cargill's ELC service, then a refund of such charges may be appropriate. To date, however, Cargill has not demonstrated that this occurred. Until Cargill demonstrates that this did occur, Verizon should not be required to refund any monies to Cargill.

51. In response to the demands of Paragraph 50, Verizon avers that if there is a discrepancy between the billed quantity and actual quantity of extension line channels

(ELCs), than a refund of may be appropriate. To date, however, Cargill has not demonstrated that such a discrepancy exists.

52. In response to the demands of Paragraph 51, Verizon avers that there is no legal basis to compel it to pay for Cargill's decision to supplement copper facilities with fiber facilities. Verizon did not have an obligation to provide Cargill with fiber facilities. It merely had an obligation to provide Cargill with its ELC service, which it did.

#### FIRST AFFIRMATIVE DEFENSE

53. The allegations set forth in the Amended Complaint fail to state facts sufficient to state a cause of action. By Order No. PSC-93-0587-FOF-TL, issued in Docket No. 930178-TL on April 15, 1993, the Commission ruled that GTE Florida Incorporated (now Verizon Florida Inc.) shall obsolete its tariff pertaining to residence and business ELCs, but shall continue to provide this service to existing customers. Prior to the issuance of that Order, Verizon was providing Cargill with ELC service. Therefore, in accordance with that Order, Verizon continued to provide Cargill with its ELC service, as requested by Cargill, and properly charged Cargill for this service in accordance with its tariff.

#### SECOND AFFIRMATIVE DEFENSE

54. This Commission cannot enforce Order No. PSC-97-0385-FOF-TL against Verizon because that Order arose out of a complaint case that did not involve Verizon. It is worthwhile to note, moreover, that the Commission did not Order a retroactive refund of the charges billed by Bell South in that case.

THIRD AFFIRMATIVE DEFENSE

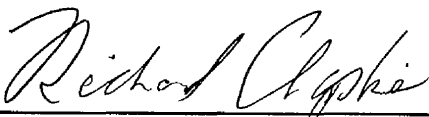
55. To the extent the Amended Complaint seeks recovery of charges beyond the state statute of limitations, such recovery should be denied.

FOURTH AFFIRMATIVE DEFENSE

56. To the extent that the Amended Complaint seeks damages or remedies beyond the jurisdiction of the Commission, such requests for damages and/or remedies must be stricken and dismissed.

WHEREFORE, defendant Verizon requests that the Commission deny the Amended Complaint and the relief sought by Cargill, dismiss the Amended Complaint, and grant such other and further relief, as the Commission deems appropriate.

Respectfully submitted on December 4, 2003

By:   
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RICHARD A. CHAPKIS  
201 North Franklin Street, FLTC0717  
Tampa, Florida 33601  
Tel: 813-483-1256  
Fax: 813-204-8870  
e-mail: [richard.chapkis@verizon.com](mailto:richard.chapkis@verizon.com)

Attorney for Verizon Florida Inc.