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December 10, 2003

Mrs. Blanca S. Bayó
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Verizon Florida Inc.'s Motion for Clarification and Partial Reconsideration, which we ask that you file in the captioned docket. Also included is a diskette containing the motion in Word format.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Daniel McCuaig

cc: All Parties of Record
Charles Schubart

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local Competition in BellSouth Telecommunications Inc.'s service territory	)	Docket No. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.	)	Docket No. 990321-TP

VERIZON FLORIDA INC.'S MOTION FOR CLARIFICATION AND PARTIAL RECONSIDERATION

INTRODUCTION

Pursuant to Rule 25-22.060 of the Florida Administrative Code, Verizon Florida Inc. ("Verizon") hereby seeks clarification and reconsideration of certain aspects of the Commission's decisions on Issues 1A and 3 in its Order No. PSC-03-1358-FOF-TP, issued November 26, 2003 ("Order").

Verizon asks the Commission to reconsider its decisions on Issue 1A forbidding Verizon from charging the CLECs: (i) an application fee when they submit a collocation application; and (ii) a deposit equal to 50 percent of the nonrecurring construction costs Verizon incurs on the CLECs' behalf.

With respect to Issue 3, which addresses the transfer of collocation space from one CLEC to another, Verizon requests that the Commission clarify: (i) that its Order does not change in any way the contractual or other legal rights and/or obligations that may arise in connection with such transfer, including, if applicable, Verizon's right to insist as a condition of its consent to an assignment under the transferring CLEC's

interconnection agreement to a cure of all undisputed outstanding debts arising under that interconnection agreement; and (ii) that Verizon may require that the acquiring CLEC be jointly and severally liable with the transferring CLEC for all applicable balances, including disputed balances that are later determined to be valid.

Reconsideration and clarification of Issues 1A and 3 are justified because the Commission's decisions overlook and fail to properly consider several important points of fact and law.[1] In addition, with respect to Issue 3, the Commission did not consider Verizon's arguments during the proceeding because the parties changed their proposals in their post-hearing briefs in light of the hearing, and thus Verizon had no opportunity to respond to certain issues raised in the briefs.

ARGUMENT

I. VERIZON SHOULD BE PERMITTED TO RECOVER COSTS ASSOCIATED WITH PROCESSING THE CLECS' COLLOCATION APPLICATIONS (ISSUE 1A).

Although the Commission correctly noted that "the application fee is designed to recover the costs associated with assessing the ALEC's space requirements and developing the associated price quote,"[2] it inexplicably concluded that this fee should not be due (or would have to be refunded) "if the application were not a Bona Fide Application or if there w[ere] no space available in the requested central office."[3] The Commission's ruling therefore is inherently contradictory. As the Commission seems to recognize, Verizon incurs costs associated with processing the CLEC's application,

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1 *See, e.g., Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingtree v. Quaintance*, 394 So. 2d 161 (Fla. Dist. Ct. App. 1st Dist. 1981).

2 Order at 13. For example, as Verizon explained, the application fee covers the costs Verizon incurs in processing the application, performing the initial site audit, and planning the arrangement. *See* Exh. BKE-1 at 9-10.

3 Order at 13.

which are recovered in the application fee, *regardless of whether the CLEC ultimately requests that Verizon proceed with the order.* Indeed, AT&T admitted this fact at the hearing.[4] The Commission's decision to deny Verizon the right to recover these costs violates the Act, which permits Verizon to recover its forward-looking costs,[5] and should therefore be reversed.

Verizon, moreover, should be permitted to require that the application fee be paid at the time the CLEC submits its application. Forbidding Verizon from doing so provides the CLECs with the wrong incentives because, if applications are "free," they would have the incentive to flood Verizon with collocation applications simply to determine whether space is available in a particular central office. That would waste Verizon's time and resources and would affect its ability to handle legitimate collocation applications. A CLEC should submit an application only when it has definite business plans to collocate at Verizon's premises. Verizon charges an upfront application fee in all other jurisdictions and should be permitted to do so in Florida.

II. VERIZON SHOULD BE PERMITTED TO REQUIRE A DEPOSIT BEFORE INCURRING CONSTRUCTION COSTS ON THE CLEC'S BEHALF (ISSUE 1A).

The Commission acknowledged in its Order that Verizon brought to its attention clear FCC precedent permitting ILECs "to require interconnectors to pay up to 50 percent of the cost of construction or other nonrecurring costs before commencement of work."[6] In its analysis of the issue, however, the Commission failed even to address,

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[4] 8/12/03 Tr. at 697: 2-7 (King).

[5] 47 U.S.C. § 252(d)(1); *see also* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 622 (1996) ("[I]ncumbent LECs' rates for interconnection and unbundled elements must recover costs in a manner that reflects the way they are incurred."); *id.* at ¶ 682 ("[I]ncumbent LECs' prices for interconnection and unbundled network elements shall recover the forward-looking costs directly attributable to the specified element").

[6] Order at 10 (quoting Second Report and Order, *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd 18730 ¶ 41 (1997) ("Second Interconnection Order"). *See also* Second

much less to distinguish, this FCC holding.[7] Instead, the Commission based its decision to reject this requirement on two grounds: (i) that the CLEC's commitment to the collocation arrangement is established by its firm order; and (ii) that stipulated Issue 1C ensures that the ILEC will be compensated for the construction work it performs on the CLEC's behalf.[8] Neither finding is persuasive, particularly in light of the countervailing FCC precedent.

First, Verizon does not even *have* a firm order rate element,[9] and the application fee contemplated by the Order would amount to only a tiny fraction of the nonrecurring construction costs associated with a typical collocation request. For example, Verizon's proposed application fee for a new arrangement ("Engineering/Major Augment — Caged/Cageless") is $1,380.25, while the proposed NRCs (excluding the application fee) for the five caged arrangements provided in response to Staff's first interrogatory average over $23,000.[10] Thus, if a CLEC is required to pay 50 percent of the NRCs Verizon incurs on its behalf, before Verizon incurs them, then it will carefully consider whether it wants to proceed with the arrangement. The small application fee, in contrast, likely would not create such an incentive.

Interconnection Order at ¶ 41 ("Based on the record, we are convinced that advance payment of up to 50 percent of the construction costs would not only cover the LECs' initial construction costs, but would help ensure that LECs recover all their construction costs from interconnectors. We agree . . . that the advance payment of up to one-half of the construction or other nonrecurring costs is a reasonable requirement that is consistent with standard commercial construction contracts.").

7 *See* Order at 14.

8 *Id.*

9 A "firm order" is a BellSouth rate element; Verizon considers an order "firm," and thus begins the construction work, when the CLEC submits the 50 percent deposit. Verizon should not have to incur the considerable costs to alter its billing and accounting systems to mirror BellSouth. *See* Bailey & Ellis Surrebuttal, filed Sept. 26, 2003, at 4-16.

10 *See* Verizon's Response to Staff's First Set of Interrogatories, Attach. 1.

Nor does the requirement in Issue 1C that the CLEC reimburse Verizon for all costs incurred if the CLEC subsequently cancels the collocation arrangement create the right incentives or make Verizon whole. The CLEC should be required to make the decision of whether to proceed with the arrangement before Verizon begins the construction process, and simply requiring the CLEC to reimburse Verizon at some later, undefined time creates no incentive to do so. Moreover, this requirement provides Verizon no protection if the CLEC becomes insolvent subsequent to ordering the arrangement.

For these practical reasons, as well as to come into compliance with FCC precedent, the Commission should reverse its decision forbidding Verizon from requiring a deposit of 50% of the nonrecurring charges associated with provisioning a collocation arrangement before Verizon commences work.

III. THE COMMISSION SHOULD CLARIFY THE CLECS' OBLIGATIONS WHEN COLLOCATION SPACE IS TRANSFERRED FROM ONE CLEC TO ANOTHER (ISSUE 3).

The Commission's Issue 3 analysis is very brief, likely because of its understanding that "the parties appear to be very close to agreement on this issue, and the general consensus is that transfers should be allowed subject to reasonable conditions."[11] However, there are a number of critical issues regarding those "reasonable conditions" that the Commission's Order does not address or with respect to which it could be misconstrued.[12] Verizon therefore seeks clarification on two points: (i) that the Order does not change in any way the contractual or other legal rights and/or obligations that may arise in connection with such transfer, including, if applicable,

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[11] Order at 18.

[12] As the Commission knows, the parties significantly narrowed the scope of their dispute on this Issue at the hearings. Thus, the CLECs did not lay out their final proposals until the post-hearing briefs, to which Verizon had no opportunity to reply.

Verizon's ability to insist as a condition of consenting to an assignment under an interconnection agreement that all undisputed outstanding debts of the transferring CLEC arising under the transferring CLEC's interconnection agreement with Verizon be cured; and (ii) that Verizon may require the acquiring CLEC to be jointly and severally liable for any applicable charges, including charges that may later be deemed to be owed to Verizon by the transferring CLEC.

First, because the Order specifies that the *acquiring* CLEC must "satisfy[] all requirements of its interconnection agreement with the ILEC,"[13] but does not expressly impose the same requirement on the *transferring* CLEC, Verizon is concerned that the Order could be (mis)read to imply that the transferring CLEC must comply *only* with the Order's enumerated requirements, to the exclusion of any independent contractual or legal obligations. To avoid the unnecessary litigation of such a controversy down the road, Verizon requests that the Commission clarify its Order by stating that its Issue 3 decision does not change in any way the CLECs' contractual or other legal obligations to Verizon that may arise in connection with the transfer. For example, the parties' interconnection agreement, Verizon's tariff, or other applicable law may require Verizon's reasonable consent to permit an assignment of collocation arrangements, may require all debts to be paid, and may require joint and several liability by transferor and transferee. As a reasonable condition for granting such consent, Verizon may require that all of the undisputed outstanding debts owed to Verizon under the transferring CLEC's interconnection agreement (as opposed to just "collocation" balances) be cured prior to the transfer of contractual rights to collocation arrangements that exist solely for interconnection with Verizon. Importantly, Verizon is not asking the

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[13] Order at 19.

Commission to rule at this time on the scope of these obligations, but rather just to make it clear that its Order does not alter them in any way.

Second, the Commission's Order on Issue 3 is clear that both the transferring CLEC and the acquiring CLEC must enter into a transfer agreement with the ILEC, and that the ILEC may reasonably withhold its approval of the transfer.[14] The Commission, however, should clarify that Verizon may require that the transfer agreement contain a term specifying that the acquiring CLEC is jointly and severally liable with the transferring CLEC not only for the acknowledged debts discussed above but also for disputed balances that later are determined to be valid. Often, a CLEC seeking to transfer its collocation arrangements will be on the brink of insolvency, and before the CLEC has paid its undisputed debts it may have filed for bankruptcy and by the time any disputed balances are determined to be valid, it may no longer exist as an operating entity. Without a joint-and-several liability term, Verizon would be left holding the bag, even though the acquiring CLEC would be enjoying the collocation arrangement that Verizon built on the transferring CLEC's behalf and the transferring CLEC (and/or its creditors) would have pocketed the financial consideration it obtained from the transfer.

The Commission therefore should clarify that Verizon may require that the transfer agreement contain a term specifying that the acquiring CLEC is jointly and severally liable with the transferring CLEC for all applicable balances, including disputed balances that later are determined to be valid.[15]

In making such clarification, the Commission should bear in mind that these are fundamentally issues of commercial transactions in which one CLEC is seeking to

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[14] Order at 19.

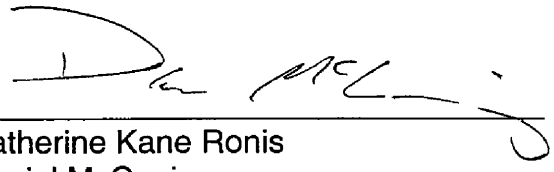
[15] The acquiring CLEC could protect itself through an indemnity agreement or an appropriate adjustment to the purchase price.

obtain a financial benefit from another CLEC where the basis of the financial benefit derives directly from and depends solely upon the status of the potential CLEC transferor's contractual rights in the property of the third party ILEC. To the extent that the ILEC has not received all the payments to which it is contractually entitled, the ILEC should not be compelled to forego such contractual rights by compulsory assignment on regulated terms.

CONCLUSION

For the foregoing reasons, the Commission should reconsider and clarify its Issue 1A and Issue 3 decisions.

Respectfully submitted,



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Dated: December 10, 2003

CERTIFICATE OF SERVICE
Docket No. 981834-TP and 990321-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via FedEx or regular U.S. Mail this 10th day of December, 2003 to the following.

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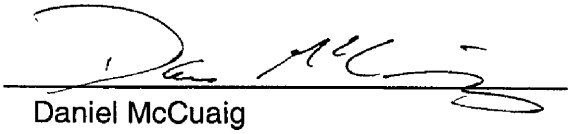

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