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031116-TP

December 19, 2003

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

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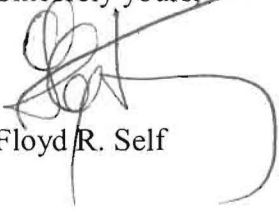
Dear Ms. Bayó:

Enclosed for filing on behalf of ITC^DeltaCom Communications, Inc. are an original and fifteen copies of the Complaint of ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom Against Verizon Florida, Inc. and Request for Emergency Relief and Mediation.

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

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb  
Enclosures  
cc: Parties of Record

RECEIVED & FILED  
*Ruth V. [Signature]*  
FPSC-BUREAU OF RECORDS

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint and Petition for Emergency Relief )  
by ITC^DeltaCom Against )  
Verizon Florida Inc. )  
\_\_\_\_\_ )

Docket No. 031116-JP

**COMPLAINT OF ITC^DELTACOM COMMUNICATIONS, INC.,  
D/B/A ITC^DELTACOM AGAINST VERIZON FLORIDA INC. AND  
REQUEST FOR EMERGENCY RELIEF AND MEDIATION**

ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom (“ITC^DeltaCom”), pursuant to Rules 28-106.201, Florida Administrative Code, and Florida Statutes sections 120.80(13), 364.01, 364.015, 364.161, 364.162, and 364.285. hereby brings this Complaint and Request for Emergency Relief against Verizon Florida Inc. (“Verizon”) for violations of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* (the “Federal Act”) and Florida Statutes chapter 364, including, but not limited to, sections 364.01, 364.015, 364.161, and 364.162. In support of this Complaint and Request for Emergency Relief, ITC^DeltaCom shows the Commission as follows:

**PARTIES**

1. ITC^DeltaCom is an Alabama corporation with its headquarters located at 1741 O.G. Skinner Drive, West Point, Georgia, 31833. ITC^DeltaCom has a Certificate of Authority issued by the Commission that authorizes ITC^DeltaCom to provide competitive local exchange service in Florida. Pleadings, orders, notices and other papers filed or served in this matter should be served upon:

Nanette Edwards, Esq.  
Director –Regulatory  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802

Floyd Self, Esq.  
fself@lawfla.com  
Messer, Caparello & Self  
Hand: 215 S. Monroe Street, Suite 701  
Tallahassee, FL 32301  
Mail: P.O. Box 1876  
Tallahassee, FL 32302-1876

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FPSC-COMMISSION CLERK

2. The records of the Florida Public Service Commission indicate that the contact for Verizon Florida Inc. is as follows: Michelle Robinson, Assistant Vice President – Regulatory, 201 North Franklin Street FLTC0616, Tampa, Florida, 33602-5182. Verizon is an incumbent local exchange carrier (“ILEC”) as defined by Section 251(h) of the Federal Act.

### **JURISDICTION**

3. The Commission has jurisdiction with respect to the claims asserted in this Complaint pursuant to section 364.01(4)(g), Powers of commission, legislative intent, wherein the Commission has the authority to ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint. The Commission has jurisdiction pursuant to section 364.015, wherein the Commission has the authority upon finding a violation of a Commission order in connection with the impairment of a telecommunications company’s service to seek relief, including temporary and permanent injunctions, or any other appropriate relief. Sections 364.161 and 162 provide the Commission with specific authority regarding the establishment of prices, rates, terms, and conditions for unbundled services, network features, functions or capabilities, and unbundled loops, and with the further authority to arbitrate and resolve disputes that may arise from such arrangements.

4. The Federal Act, 47 U.S.C. sections 251 and 252, confers authority on the Commission to approve or reject ITC^DeltaCom's interconnection agreement with Verizon. Specifically, the Commission has jurisdiction with respect to ITC^DeltaCom's claims pursuant to 47 U.S.C. § 251(c) requiring incumbent local exchange carriers to negotiate in good faith the particular terms and conditions for interconnection. The combined effect of both these federal and state statutory provisions is to ensure that basic telecommunications services are made available on terms and conditions that are fair, just, and reasonable, and to prevent anticompetitive behavior.

#### **FAILURE TO NEGOTIATE IN GOOD FAITH**

5. ITC^DeltaCom seeks emergency relief from the Commission to compel Verizon to accept and provision local service orders issued by ITC^DeltaCom. Specifically the Commission should direct Verizon to allow ordering, provisioning and maintenance of orders for UNE-P. ITC^DeltaCom is in serious jeopardy of failing to meet its commitments to its local customers in Florida due to Verizon's delays and stalling tactics. Specifically, if Verizon is not ordered to work orders, ITC^DeltaCom and the consumers of Florida will suffer irreparable harm for which there is no adequate remedy at law.

6. On or about October 7, 2003, pursuant to Section 252(i) ITC^DeltaCom requested that Verizon allow ITC^DeltaCom to opt-into an existing Commission approved interconnection agreement. Verizon sent a 7 page adoption contract which contained numerous provisions which do not comport with Section 252(i) and various FCC orders. ITC^DeltaCom requested that it be permitted to adopt the Sprint/Verizon interconnection agreement "as is" approved by the Commission. Verizon refused to agree to the adoption unless ITC^DeltaCom signed the Verizon adoption contract. In anticipation of potential problems with Verizon which ITC^DeltaCom has

encountered in the past, ITC^DeltaCom filed a Petition with the Commission to adopt the interconnection agreement on October 10, 2003, even as it continued to try to negotiate with Verizon. ITC^DeltaCom filed the Petition as ITC^DeltaCom has had great difficulty in the past completing an adoption pursuant to Section 252(i) with Verizon. In fact, ITC^DeltaCom operated under an adopted agreement pursuant to Commission Order No. PSC-00-1697-FOF-TP, issued September 21, 2000, Docket No. 000995-TP, because Verizon would not allow ITC^DeltaCom to adopt the Intermedia/GTE interconnection agreement “as is” which is required by Section 252(i) of the Act.

7. ITC^DeltaCom found it necessary to obtain a new interconnection agreement with Verizon because of its recent acquisition, Business Telecom, Inc. (“BTI”). Additionally, Verizon had already informed ITC^DeltaCom on March 25, 2003, that ITC^DeltaCom’s existing interconnection agreement with Verizon had expired.<sup>1</sup> ITC^DeltaCom acquired BTI on October 6, 2003, and BTI has a base of customers in Verizon territory that are served via UNE-P. ITC^DeltaCom’s existing agreement did not contain any provisions for UNE-P. ITC^DeltaCom contacted its Verizon negotiator and account team on numerous occasions to (1) complete the necessary contract adoption such that ITC^DeltaCom can place orders for UNE-P, and (2) complete any other necessary business requirements established by Verizon. Exhibit A contains correspondence between ITC^DeltaCom and Verizon with regard to the requested adoption.

8. Ultimately, ITC^DeltaCom’s Petition to Adopt the Verizon/Sprint interconnection agreement was approved by the Florida Public Service Commission on November 5, 2003. Unfortunately, Verizon has engaged in a practice of stalling tactics such that Verizon will not process

any local service orders for UNEP until February 3, 2004. It is noteworthy that BTI also has customers served via UNEP in Sprint territory in Florida, and ITC^DeltaCom had to work with its Sprint Account Team to make (1) necessary contract modifications, and (2) complete other necessary business requirements. Sprint took less than 10 days from the date ITC^DeltaCom executed the necessary amendment to the interconnection agreement. From the date of the first request for assistance from Verizon until the current projected date of February 3, 2004, Verizon has taken four (4) months.

9. The stalling tactics employed by Verizon include but are not limited to failure to provide any instruction on business paperwork; losing signed contracts and requiring ITC^DeltaCom to re-fax or re-send such documents; and rejecting completed Verizon business forms on a piece meal basis in order to delay as long as possible. It is noteworthy that ITC^DeltaCom had completed the identical or very similar business forms for Verizon previously because ITC^DeltaCom has an existing base of resale customers; however, Verizon was now requiring ITC^DeltaCom to submit new paperwork as though ITC^DeltaCom was not a current wholesale customer of Verizon.

#### **PRAYER FOR RELIEF**

WHEREFORE, for the foregoing reasons, ITC^DeltaCom requests that the Commission award the following relief:

(1) Issue an order requiring Verizon to complete local service order requests starting immediately.

(2) Allow carriers to adopt Commission approved interconnection agreements effective within 30 days of the date of request where the adoption is of the entire agreement (including

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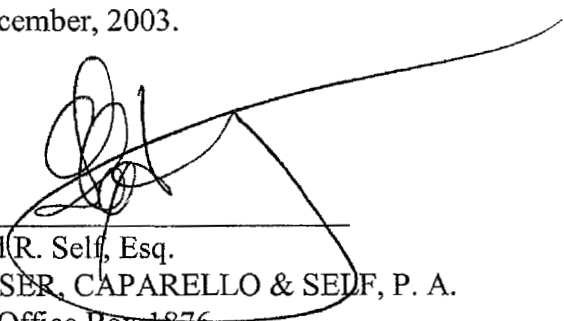
<sup>1</sup> Later, the Verizon negotiator rescinded that notice and indicated that Verizon did not consider the interconnection

Commission approved amendments) that is on file with the Commission. Verizon should not be permitted to continue to play games and delay carriers from adopting existing approved interconnection agreements pursuant to Section 252(i) of the Telecommunications Act of 1996.

(3) The Commission should levy such fines or penalties the Commission determines are appropriate pursuant to section 364.285, up to the maximum \$25,000 per day per occurrence, to sanction Verizon for its conduct, and should direct that Verizon reimburse ITC^DeltaCom for its attorney's fees.

(4) Finally, the Commission should order such other and further relief that the Commission deems just and proper.

Respectfully submitted, this 19<sup>th</sup> day of December, 2003.



Floyd R. Self, Esq.  
MESSER, CAPARELLO & SELF, P. A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720

and

Nanette S. Edwards, Esq.  
Regulatory Attorney  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, Alabama 35802  
Telephone No. (256) 382-3856  
Fax No. (256) 382-3936

Counsel for ITC^DeltaCom Communications, Inc.,  
d/b/a ITC^DeltaCom

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agreement expired.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by U. S. Mail this 19<sup>th</sup> day of December, 2003.

Richard A. Chapkis, Esq.  
Verizon Florida Inc.  
P.O. Box 110, FLTC0007  
Tampa, FL 33601-0110

Michelle Robinson  
Verizon Florida, Inc.  
201 N. Franklin Street, FLTC 0616  
Tampa, FL 33602-5182

  
\_\_\_\_\_  
Floyd R. Self