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December 23, 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 Response to FDN's Cross Motion for Reconsideration, which we ask that you file in the captioned docket. Also included is a diskette containing the response 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.

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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 RESPONSE TO
FDN'S CROSS MOTION FOR RECONSIDERATION**

Pursuant to Rule 25-22.060 of the Florida Administrative Code, Verizon Florida Inc. ("Verizon") hereby files its response to the cross motion for reconsideration filed in this docket on December 19, 2003, by Florida Digital Network, Inc. d/b/a FDN Communications ("FDN").¹

INTRODUCTION

The Commission should deny FDN's Cross Motion, which ostensibly requests "clarification" of the Commission's requirement that "the acquiring CLEC . . . satisf[y] all requirements of its interconnection agreement with the ILEC" in a CLEC-to-CLEC transfer situation,² but actually seeks to eliminate that obligation.³ The Commission's requirement is plain on its face and clearly appropriate; there is no reason to allow a

¹ Response of Florida Digital Network, Inc. d/b/a FDN Communications to Verizon Florida Inc.'s Motion for Clarification and Partial Reconsideration (Dec. 19, 2003) ("Cross Motion").

² Order No. PSC-03-1358-FOF-TP, at 19 (Nov. 26, 2003) ("Order").

³ Cross Motion at ¶ 3 & n.6.

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CLEC in breach of its interconnection agreement to end-run an ILEC's "embargo list" by purchasing collocation space from another CLEC.

The Commission should also reject FDN's mischaracterizations of Verizon's position on Issue 3 (CLEC-to-CLEC transfers). Contrary to FDN's claims,⁴ Verizon is not asking the Commission to decide in this proceeding whether particular interconnection agreements, tariffs or other applicable law requires CLECs to pay off all debts prior to transferring collocation space. Rather, Verizon is merely requesting that the Commission make it clear that it has not prejudged this issue.

ARGUMENT

I. THE COMMISSION SHOULD REJECT FDN'S ATTEMPT TO UNDERCUT THE REQUIREMENT THAT A CLEC MUST FIRST SATISFY THE TERMS OF ITS INTERCONNECTION AGREEMENT BEFORE IT MAY ACQUIRE COLLOCATION FACILITIES FROM ANOTHER CLEC.

FDN claims that Verizon has misinterpreted the Commission's requirement that "the acquiring CLEC . . . [must] satisf[y] all requirements of its interconnection agreement with the ILEC"⁵ in a CLEC-to-CLEC transfer situation.⁶ According to FDN, the acquiring CLEC should at most have to satisfy only the collocation terms in the interconnection agreement and nothing more.⁷

FDN's interpretation of this requirement misses the mark. As multiple witnesses explained at the hearing, if an ILEC has properly exercised its right under the interconnection agreement to stop providing a CLEC additional facilities and/or services, for whatever reason, then that CLEC should not be permitted to end-run these

⁴ See *id.* at ¶¶ 1-2, 4.

⁵ Order at 19.

⁶ See Cross Motion at ¶ 3 & n.6.

⁷ See *id.*

restrictions by acquiring collocation space from another CLEC rather than from the ILEC.⁸ No party contested this position, which plainly formed the basis for the Commission's requirement.

A CLEC may properly be embargoed for breaches of the interconnection agreement that have nothing to do with collocation. Once embargoed, the CLEC must cure its breaches before it may purchase any facilities or services from the ILEC, including collocation space. An embargoed CLEC should not be permitted to avoid this obligation by purchasing collocation space from another CLEC. Thus, the Commission should reject FDN's request for "clarification."

II. THE COMMISSION SHOULD REJECT FDN'S MISCHARACTERIZATIONS OF VERIZON'S RECONSIDERATION MOTION.

In its reconsideration motion,⁹ Verizon seeks two clarifications of the Commission's decision on Issue 3. First, "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."¹⁰ Second, Verizon asks the Commission to "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."¹¹

FDN mischaracterizes both of Verizon's clarification requests. First, FDN claims that Verizon seeks a regulatory right to a "pre-condition [of transfer] that all [transferring

⁸ See 8/11/03 Tr., at 315, 318-19 (Fox); 8/12/03 Tr., at 503-06 (Bailey).

⁹ Verizon Florida Inc.'s Motion for Clarification and Partial Reconsideration (Dec. 11, 2003) ("Verizon Reconsideration Motion").

¹⁰ *Id.* at 6.

¹¹ *Id.* at 7.

CLEC] balances for all non-collocation services be paid in full.”¹² That is not true. Rather, Verizon merely asks the Commission to clarify that its Order does not *eliminate* any contractual or other legal rights that Verizon may have in connection with the transfer of collocation space.¹³ Even FDN concedes that an “ILEC has remedies it can pursue under interconnection agreements and/or tariffs.”¹⁴ Thus, FDN and Verizon appear to be in agreement on this issue, once Verizon’s position is properly characterized.

Second, FDN worries that a transfer agreement provision requiring the acquiring CLEC to be jointly and severally liable for balances owed by the transferring CLEC that are determined to be valid post-transfer could lead to unforeseen liabilities for the acquiring CLEC.¹⁵ But that is no reason to eliminate the requirement; the transferring CLEC should disclose to the acquiring CLEC all disputed amounts owed to the ILEC (or the acquiring CLEC can conduct its own due diligence and learn of these amounts). Although Verizon generally agrees with FDN’s statement that “[t]he transferor should be responsible for [its debts to the ILEC],”¹⁶ the question is whether the transfer agreement may include a provision making the acquiring CLEC, which has the benefit of the ILEC’s facilities and services, also liable for these debts. The answer is clearly yes. The acquiring CLEC can always protect itself from the risk that it may owe the ILEC amounts in the future incurred by the transferring CLEC by demanding an indemnity agreement

¹² Cross Motion at ¶ 5.

¹³ Indeed, Verizon specifically explains that it “is not asking the Commission to rule at this time on the scope of these [contractual and other legal] obligations, but rather just to make it clear that its Order does not alter them in any way.” Verizon Reconsideration Motion at 6-7.

¹⁴ Cross Motion at ¶ 5.

¹⁵ *Id.* at ¶ 4.

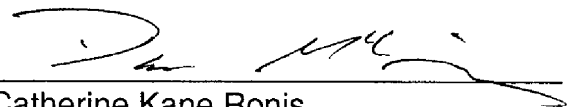
¹⁶ *Id.*

or making an appropriate adjustment to the purchase price; without a joint and several liability provision, the ILEC has no such options. FDN's argument that "Verizon . . . should bear [the burden of debts unpaid by the transferring CLEC]"¹⁷ is clearly specious and should be rejected.

CONCLUSION

For the foregoing reasons, the Commission should deny FDN's Cross Motion for "clarification" of the Commission's Issue 3 decision.

Respectfully submitted,



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Dated: December 23, 2003

Attorneys for Verizon Florida Inc.

¹⁷ *Id.* at ¶ 1.

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 23rd day of December, 2003 to the following.

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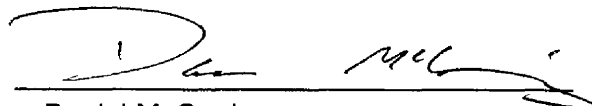
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