BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

In Re:	
Implementation Of Requirements Arising From The Federal Communications Commission's Triennial UNE Review: Location-Specific Review For DS1, DS3 And Dark Fiber Loops, and Route-Specific Review For DS1, DS3 And Dark Fiber Transport	**Docket No. 030852-TP**
	Filed: January 29, 2004

FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S MOTION TO STRIKE VERIZON TESTIMONY

Pursuant to Rule 28-106.204, Florida Administrative Code, the Florida Competitive Carriers Association ("FCCA"), by its undersigned counsel, moves to strike portions of the testimony of Orville D. Fulp and John White ("Fulp/White testimony") submitted by Verizon Florida Inc. ("Verizon") in the above captioned proceeding.[1] Specifically, FCC moves to strike those portions of Verizon's testimony pertaining to wholesale dedicated transport.

After finding on a nationwide basis that requesting carriers are impaired without access to unbundled loops and transport at the dark fiber, DS3 and DS1 levels, the FCC delegated to state commissions "the fact-finding role to determine on a route-specific basis

AUS
CAF
CMP
COM 5
CTR
ECR
GCL
OPC
MMS
SEC 1
OTH

[1] *See* Verizon Florida Inc., Joint Direct Testimony of Orville D. Fulp and John White, Docket No. 030852-TP (Dec. 22, 2003); Verizon Florida Inc., Joint Supplemental Direct Testimony of Orville D. Fulp and John White, Docket No. 030852-TP (Jan. 09, 2004) (collectively, "Fulp/White Testimony"). Attachment A to this Motion lists the specific portions of the Fulp/White Testimony that the Commission should strike from the record.

where alternatives to the incumbent LECs' networks exist such that competing carriers are no longer impaired."[2] The FCC emphasized that when the states conduct their route-specific analyses, state commissions "need only address routes for which there is *relevant evidence in the proceeding* that the route satisfies one of the triggers." Triennial Review Order, ¶¶ 339, 417 (emphasis added). As explained below, the Fulp/White Testimony fails to present any route-specific evidence that wholesale service is available on the challenged dedicated transport routes, and, therefore, Verizon has failed to present any "relevant evidence" that the route satisfies the wholesale trigger. The Commission should strike Verizon's generalized assertions of wholesale availability of dedicated transport routes from the record.

ARGUMENT

Florida's Administrative Procedure Act requires the Commission to exclude irrelevant, immaterial or unduly repetitious evidence from the proceeding. Section 120.569(2)(g), Florida Statutes. In the case of the wholesale triggers, Verizon has failed to produce any relevant evidence to support its assertion that the carriers that it has identified as trigger candidates make their own facilities available at wholesale, or that these carriers are operationally ready to provide facilities on a wholesale basis on the routes in issue at each capacity level. Verizon has filed, and supplemented, its Direct Testimony presenting its evidence challenging the FCC's findings of impairment. Verizon has had access to the responses to the Commission's data requests, and has had the opportunity to propound discovery on

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2 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 398 (Aug. 21, 2003) ("Triennial Review Order").

CLECs. Verizon, however, has failed to provide route-specific evidence for each route and at each capacity level for which it challenges the FCC's finding of impairment. Accordingly, the Commission should strike the Fulp/White Testimony insofar as it claims that wholesale facilities are made available for dedicated transport.

The Commission should reject Verizon's transparent effort to ignore the wholesale facilities trigger set forth in the *Triennial Review Order*, and should strike the Fulp/White Testimony accordingly. The purpose of the FCC's wholesale facilities trigger is to determine where CLECs truly are not impaired without access to, in this case, dedicated transport as a UNE. As such, a wholesale transport route cannot be removed from UNE availability unless there are actual alternatives to ILEC services already in use on that route. Verizon, however, is asking the Commission to eliminate UNEs on a transport route based on a CLEC's mere presence in a given Central Office ("CO").[3]

Even more egregiously, Verizon explicitly ignores the FCC trigger requirement that the ILEC present route-specific information for each transport route where it challenges the FCC's finding of impairment. Verizon readily admits that it does not present route-specific information, but instead relies on "a carrier's general willingness to offer its transport facilities on a wholesale basis and treat all such carrier's transport facilities as available for leasing at wholesale."[4] Using this structure and ignoring the tests set out by the FCC, Verizon classifies entities as wholesale carriers if any of the following circumstances exist: (1) the carrier "holds

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[3] Fulp/White December 22 Testimony at 25. Verizon asks the Commission to rely on evidence of a carrier's general willingness to provide wholesale service as a substitute for particularized, location-specific evidence. Verizon also does not provide specific evidence as to the capacity levels at which the carrier provides wholesale service, but instead claims that the carrier provides wholesale service on all capacity levels. *Id.* at 22-25.

[4] Fulp/White December 22 Testimony at 25.

itself out as a wholesale provider on its website – and does not limit its representation to particular routes"; (2) the carrier supplies transport facilities to Universal Access, Inc.; (3) the carrier is listed in the New Paradigm CLEC Report 2003 as offering "dedicated access transport."[5] This argument, such as it is, bears no resemblance to the FCC's requirement of route-specific evidence, and the Commission should strike the testimony from the record. *See* Triennial Review Order, ¶¶ 339, 417. In fact, the FCC already rejected Verizon's proposed test – and similar tests proposed by BOCs – when it adopted the triggers, and the Commission should reject Verizon's efforts to circumvent the FCC's rules.[6]

The Triennial Review Order requires states to conduct a granular, route-specific analysis of impairment with respect to unbundled transport. As the FCC explained, it made "affirmative national findings of impairment and non-impairment for transport at the national level, as supported by the record." Triennial Review Order, ¶ 394. The FCC found, however, that the evidence in the record was not sufficiently detailed for it to identify those specific routes "where carriers likely are not impaired without access to unbundled transport in some particular instances." *Id.* Therefore, it delegated to the states, "the fact-finding role *of identifying on which*

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5 Fulp/White December 22 Testimony at 23-24.

6 *See, e.g.,* Triennial Review Order, ¶ 397 (rejected a collocation-based trigger, specifically, the existence of pricing flexibility, because the "measure does not indicate that the competitive fiber facilities connect to collocations in any other incumbent LEC central offices. The measure may only indicate that numerous carriers have provisioned fiber from their switch to a single collocation rather than indicating that transport has been provisioned to transport traffic between incumbent LEC central offices."); ¶ 401 (rejected BOC arguments that the FCC should use fiber-based collocation as a trigger, and stating that the proposal is "based solely on the presence of alternative transport at one end of a route such that when one end of a route is competitive (a central office with fiber-based collocation), no unbundled transport would be available into or out of that competitive central office." The FCC recognized that these "proposals would effectively leverage the existence of competition without any evidence that a requesting carrier could self-provide or utilize alternative transport to reach those other locations.").

routes requesting carriers are not impaired ... when there is evidence that two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale transport service completing that route." Triennial Review Order, ¶ 412 (emphasis added).

The purpose of state application of the triggers was to enable the impairment analysis to be conducted at a granular, route-specific level and at each capacity level, in order to identify where actual deployment demonstrated that requesting carriers would not be impaired. This fact-finding role requires that the Commission receive evidence relating to each specific route that is challenged by a carrier. Here, Verizon has failed to present the granular evidence necessary for the Commission to do so. Although Verizon presents route-specific evidence that CLEC-owned facilities exist on an "A to Z" route, nowhere in its testimony does Verizon assert that a carrier, in fact, provides wholesale transport on the route.[7] On the key question of whether the identified facilities are made "readily available" on the route (*see* Triennial Review Order, ¶ 414 n.1279), Verizon is silent. Verizon asks the Commission to infer wholesale availability on all routes based on its own non-granular assertions that the carrier offers some form of "wholesale". This evidence, even if credited, would not establish that the carrier offered wholesale service on the particular routes in question. As a legal matter, the Commission only can delist a route under the wholesale trigger if, and only if, there are at least two unaffiliated carriers provide that access on a wholesale basis on each and every route identified by Verizon.

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[7] To be clear, Verizon's evidence concerning facilities deployment is flawed in its own respect, including, by way of illustration, Verizon's erroneous assumption that two collocations necessarily indicate a transport route. Because the testimony is route-specific, however, CLECs will respond to these assertions in their testimony.

Because Verizon has failed to connect its wholesale evidence with any of the transport routes challenged, its testimony on wholesale availability should be stricken as irrelevant.[8]

It is not sufficient for the ILEC challenging the FCC finding to cite to a "general willingness" to wholesale, as Verizon admits that it does.[9] The FCC test avoids reliance on a "general willingness" in favor of actual availability on the route. As the FCC explained in the Triennial Review Order, the competitive wholesale facilities trigger safeguards *against* "counting alternative fiber providers that may offer service, but ... are otherwise unable immediately to provision service along the route" and *avoids* "counting alternative transport facilities owned by competing carriers not willing to offer capacity to their network on a wholesale basis." Triennial Review Order, ¶ 414. In short, the test "ensures that transport can readily be obtained from a firm using facilities that are not provided by the incumbent LEC." Triennial Review Order, ¶ 412. Without route-specific evidence, and evidence that a carrier actually provides wholesale services on the specified routes, these purposes cannot be satisfied.

Verizon tries to gloss over this deficiency by arguing that the burden is on CLECs to refute that they offer wholesale service on the routes. Verizon cannot shift to CLECs its burden of proof to overcome the FCC's findings of impairment. Moreover, Verizon has failed to provide any evidence of wholesale alternatives on the specific transport routes.

The Commission served a comprehensive discovery request upon CLECs on December 10, 2003. Verizon has chosen to ignore the route-specific information that CLECs produced in response to the Commission's discovery, presumably because the data severely

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8 Among other things, under Verizon's criteria, the carriers in question could offer wholesale service in another state altogether, but not in Florida, and not on the specific routes challenged by Verizon.

9 Fulp/White December 22 Testimony at 25.

undermines its efforts to show wholesale availability on any routes. Further, Verizon chose not to propound discovery on CLECs until December 22, 2003, the due date for the direct testimony. By eschewing route-specific information and the opportunity to obtain such information, Verizon has substantially inflated the number of transport routes that it challenges.

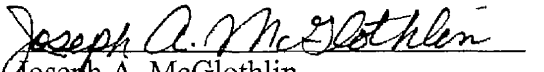
Verizon's "general willingness" evidence fails even to make a *prima facie* case of wholesale availability as defined by the triggers. Two of the enumerated transport criteria – "holding oneself out" as a wholesale provider and being listed in the New Paradigm CLEC Report 2003 – offer no evidence that the carrier uses its own facilities to provision transport. Even if the carrier offered service at wholesale (which Verizon's evidence does not show), the carrier satisfying these criteria could be reselling special access services of the ILEC. With respect to wholesaling based on the provision of facilities to Universal Access, Verizon offers no evidence that the facilities alleged to be provided to Universal Access terminate in a collocation arrangement at each end of the transport route, and thus are even "transport" as defined in the trigger. Moreover, Verizon does not allege that the wholesale carriers make any of the transport routes identified available to other carriers through Universal Access. As a result, even if some facilities are made available to Universal Access, those facilities are not relevant to any of the routes that Verizon has placed into issue.

In sum, Verizon's evidence of wholesale availability is irrelevant to the granular analysis required by the FCC's triggers. Because Verizon has been given every opportunity to develop and present relevant evidence that wholesale facilities are made available on the routes it challenges, and Verizon has failed to do so, the Commission should strike those portions of Verizon's testimony relating to wholesale facilities. CLECs should not be made to refute, on a

"particularized, [route]-specific basis," evidence that does not address those routes in the first place.

CONCLUSION

For the reasons explained above, Verizon fails to present any relevant evidence on which the Commission could rely to conclude that competitive facilities are made available at wholesale on any of the transport routes that Verizon identified in its testimony. Accordingly, the Commission should strike those portions of Verizon's testimony that relate to wholesale facilities.



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Attachment A

Portions of Verizon Testimony
To be Stricken

Fulp/White December 22, 2003, Direct Testimony

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Fulp/White January 09, 2004, Supplemental Direct Testimony

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Attachment A

Portions of Verizon Testimony
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Exhibit F.3	All
Exhibit F.4	All

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion of the Florida Competitive Carriers Association to Strike Verizon Testimony has been provided by (*) hand delivery, (**)email and U.S. Mail this 29th day of January, 2004, to the following:

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