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February 5, 2004

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

Re: Docket No. 030852-TP
Implementation of requirements arising from 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

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Response to FCCA's Motion to Strike Verizon Testimony for filing 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 A. Chapkis

Richard A. Chapkis

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Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to FCCA's Motion to Strike in Docket No. 030852-TP were sent via electronic mail and U.S. mail on February 5, 2004 to:

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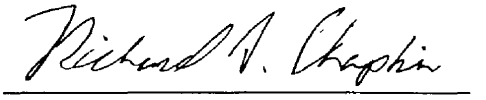

Richard A. Chapkis

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation Of Requirements Arising From Federal Communications Commission 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: February 5, 2004

VERIZON FLORIDA INC.'S RESPONSE TO FCCA'S MOTION TO STRIKE VERIZON TESTIMONY

Pursuant to Rule 28-106.204, Florida Administrative Code, Verizon Florida Inc. (Verizon) submits this Response to the Florida Competitive Carriers Association's motion to strike portions of the testimony of Orville D. Fulp and John White (FCCA's Motion to Strike).

I. INTRODUCTION

1. FCCA's Motion to Strike is nothing more than a thinly veiled attempt to exclude Verizon's evidence on the wholesale transport trigger because this evidence does not, FCCA asserts, fully prove Verizon's case under FCCA's interpretation of the law. FCCA's attempt to preclude the Commission from even considering probative evidence on the wholesale transport trigger must be rejected for three reasons. First, the evidence that FCCA seeks to strike is not only relevant, it is significant and highly probative -- if not dispositive – of this issue. Second, arguments over whether a party has met its burden of proof on a given issue are not proper basis of a motion to strike. Third, even if they were, FCCA's arguments regarding why Verizon has not met its burden of proof are based on a misinterpretation of the TRO. In light of the foregoing, FCCA's Motion to Strike must be denied in its entirety.

II. DISCUSSION

2. Under an erroneous conception of the term "irrelevant," FCCA asks the Commission to ignore all of the highly probative evidence submitted by Verizon regarding wholesale provision of transport because Verizon's direct and supplemental direct testimony is purportedly insufficient to fully prove Verizon's case. The Commission should deny FCCA's Motion to Strike because a disagreement over whether Verizon has met its burden of proof does not lead to a conclusion that the evidence is irrelevant.

3. The wholesale transport triggers require this Commission to find non-impairment if two or more CLECs along a transport route are willing to provide DS1, DS3 or dark fiber transport at wholesale.[1] Therefore, any evidence that CLECs are offering wholesale transport in Florida is relevant to this proceeding.[2]

4. Verizon's testimony is directly relevant to the wholesale triggers. It details by address and by route the specific customer locations and transport routes that satisfy the FCC's triggers. Moreover, it includes granular evidence, including carrier names and the specific capacity level offered by each carrier on each route or customer location.

5. Verizon's testimony also details the bases for its conclusions. As explained in the testimony, Verizon identified the end points of all dedicated transport routes included in its triggers case (i) from the CLECs' discovery responses, or (ii) through detailed visual inspections of the CLEC collocation arrangements forming the route end points. In these visual inspections, Verizon checked to verify that there was powered equipment in place, and that the collocating carrier had non-Verizon fiber optic cable that both terminated at its

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[1] TRO ¶337.

[2] Florida law defines "relevant evidence" as "evidence tending to prove or disprove a material fact." Florida Statutes, §90.401.

collocation facility and left the wire center. A collocation arrangement (i.e., one end of a route) was included in Verizon's initial testimony only if, through this rigorous process of inspection and verification, it was found to be operational and to have non-Verizon fiber. Verizon then identified the carriers providing wholesale service over these transport routes with objective evidence, such as the carrier holding itself out as a wholesale provider on its website without limitation to particular routes, the carrier supplying transport facilities to Universal Access, Inc. (a broker of transport services), and the carrier being listed in the New Paradigm CLEC Report 2003 as offering dedicated access transport.

6. Moreover, Verizon confirmed its testimony against information provided by the CLECs themselves. For example, FPL Fibernet identified itself as a wholesaler and responded to Commission Staff that it provides "access to on-net ILEC central offices, . . . carrier points of presence, and end customer premises . . . in the form of capacity, and or dark fiber.[3] Allegiance confirmed that it leases transport facilities from FPL, and identified the routes that connect to Verizon wire centers.[4]

7. Verizon also modified its testimony in response to information provided by the CLECs, where appropriate. For example, in the Direct Testimony submitted on December 22, 2003, Verizon identified 29 self-provisioned transport routes.[5] However, in the Supplemental Testimony submitted on January 9, 2004, Verizon reduced the number of self-provisioned routes to 25 after FPL Fibernet and Progress Telecom reported that they are strictly wholesalers.[6]

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[3] FPL's Redacted Response to Staff's TRO Data Request.

[4] Allegiance's Response to Verizon's First Set of Interrogatories, Attachments 1 and 2.

[5] Fulp/White Direct Testimony at page 12.

[6] Fulp/White Supplemental Direct Testimony at page 2.

8. Accordingly, Verizon's testimony clearly contains detailed evidence that is directly relevant to the wholesale transport triggers. Of course, what FCCA is really claiming is not that the proffered evidence is "irrelevant," but rather that it does not fully prove Verizon's case under FCCA's erroneous interpretation of the TRO. As explained below, this contention is based upon at least two false premises, and, more importantly, it is not the proper basis of a motion to strike.

9. The first false premise underlying FCCA's Motion to Strike is its erroneous interpretation of the TRO. According to FCCA, "a wholesale transport route cannot be removed from UNE availability unless there are actual alternatives to ILEC services already in use on that route."[7] This contention contradicts the TRO and the FCC's Rules. The wholesale trigger does not require that carriers must actually or currently provide wholesale service. Rather, it requires that carriers must be willing to provide wholesale transport service.[8] When the Commission considers the actual language regarding the application of the wholesale triggers, as opposed to FCCA's misinterpretation of that language, it is clear that Verizon's evidence should be admitted into the record.

10. The second false premise underlying FCCA's Motion to Strike is that Verizon is the only party in this proceeding with a burden to produce evidence, and that Verizon bears the entire burden of persuasion with respect to such evidence. As explained in detail in Verizon's Response to Covad's Motion for Final Summary Order, filed on January 28, 2004, this assertion contradicts both the TRO and state law. Under the TRO, Verizon does not by itself bear either the burden of production or the burden of persuasion with respect

[7] FCCA Motion to Strike at page 3.

[8] TRO at ¶ 412; 47 CFR 51.319(e)(1)(ii); 47 CFR 51.319(e)(2)(i)(B); 47 CFR 51.319(e)(3)(i)(B).

to the trigger analysis. The TRO makes clear that the FCC did not intend to place the burden of proof on either the incumbent or competitive carriers.[9] Moreover, under state law, the burden of proof shifts from Verizon to the CLECs once Verizon has established a prima facie case. Because Verizon's testimony regarding the dedicated transport triggers is more than sufficient to set out a prima facie case, the burden of proof has shifted to the CLECs to show that the triggers are not satisfied on a particular route or customer location identified by Verizon.[10]

11. Finally, FCCA's actual argument – that Verizon has not met its burden of proof – is not the proper foundation for a motion to strike. Florida law provides that only "irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible."[11] It does not provide, as FCCA would have the Commission believe, that the Commission may peremptorily exclude all of Verizon's evidence regarding wholesale transport triggers that does not prove Verizon's case under FCCA's incorrect interpretation of the law.

12. In sum, if FCCA wishes to argue in its post-hearing briefs that the totality of the evidence before this Commission does not satisfy the FCC's transport triggers, either generally or with regard to some routes or customer locations, it is free to do so. However, FCCA's attempt to preclude the finder of fact from even considering Verizon's evidence on the wholesale triggers is impermissible under Florida law. It is also directly contrary to the

[9] See Verizon's Response to Covad's Motion for Final Summary Order at pages 5 – 6.

[10] See Verizon's Response to Covad's Motion for Final Summary Order at pages 6 – 9.

[11] Florida Statutes, § 120.569(g).

FCC's admonition that this Commission "has an affirmative obligation to review the relevant evidence."[12]

III. CONCLUSION

13. For the foregoing reasons, the Commission should deny FCCA's Motion to Strike.

Respectfully submitted on February 5, 2004.

By:_____

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[12] TRO ¶ 417, note 1289; see also TRO ¶ 339, note 991.