

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

MAY 3, 2004

RE: Docket No. 030643-TP - Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida for review of decision by The American Arbitration Association, in accordance with Attachment 1 Section 11.2(a) of interconnection agreement between GTE Florida Inc. and TCG South Florida. (Deferred from April 6, 2004 conference.)

Issue 1: Should Verizon Florida Inc.'s request for oral argument be granted?

Recommendation: Yes. Staff recommends that Verizon Florida Inc.'s request for oral argument be granted. If the Commission grants oral argument, staff recommends that each party be allowed ten minutes to present oral argument.

APPROVED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures in the majority column]

REMARKS/DISSENTING COMMENTS.

Commissioner Davidson participated in the conference by telephone. He agreed with the majority vote and will sign the vote sheet upon return to the office.

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Issue 2: Did Verizon timely file its appeal of the American Arbitration Association's award according to the parties' interconnection agreement?

Recommendation: Yes. Staff recommends that Verizon's filing of its appeal of the AAA order should be considered timely.

APPROVED

Issue 3: Should TCG's Motion to Dismiss be granted?

Recommendation: No. TCG's Motion to Dismiss should be denied. As a general matter, the Commission has jurisdiction to resolve disputes arising under an approved interconnection agreement unless its role is restricted by a binding dispute resolution provision in the agreement. The agreement in this case expressly provides that an arbitrator's decision resolving an interconnection agreement dispute shall not be final if (1) a party appeals the decision to the Commission, (2) the matter is within the jurisdiction of the Commission, and (3) the agency agrees to hear the matter. The first two prongs of this provision are met, so it is not appropriate to dismiss for lack of jurisdiction.

The Motion and Response do not, however, provide sufficient information for staff to recommend whether the Commission should exercise its discretion to "agree" to hear an appeal under the third prong. Therefore, staff recommends that within 20 days of the issuance of the Order, Verizon should submit a memorandum that (a) identifies the specific factual, legal and policy issues for which review is sought, (b) addresses the reasons that the Commission should agree to review the arbitrator's decision on each issue identified, (c) specifies the type of proceeding that should be held on each issue (e.g., a de novo evidentiary hearing or appellate review based on the record in the arbitration proceeding) and (d) identifies the applicable standard of review for each issue. TCG should then be given 20 days to respond. Staff would subsequently file a recommendation on whether, and under what procedures, the Commission should agree to hear the appeal.

MODIFIED

A decision on this matter was deferred to allow Verizon to file a brief within 10 business days and for TCG to file a response within 10 business days.

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Issue 4: Should this docket be closed?

Recommendation: If the Commission denies staff's recommendation in Issue 3, this docket shall be closed as no further Commission action is required. If however, the Commission approves staff's recommendation in Issue 3, this docket should remain open pending the resolution of the issues in the docket.

MODIFIED

The docket shall remain open pending the resolution of the issues in the docket.