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May 19, 2004

**BY HAND DELIVERY**

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

Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing are an original and 15 copies of AT&T 's Response to Verizon Florida's Motion to Hold Proceeding in Abeyance in the above-referenced docket.

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

Thank you for your assistance with this filing.

Sincerely yours,

Tracy W. Hatch

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

Docket No. 040156

Filed: May 19, 2004

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC'S RESPONSE TO VERIZON'S MOTION TO HOLD PROCEEDING IN ABEYANCE**

**Introduction**

AT&T Communications of the Southern States, LLC ("AT&T"), on its behalf and that of its affiliates, responds to Verizon Florida Inc.'s ("Verizon") Motion to Hold Proceeding in Abeyance until June 15, 2004.

As the principal basis for its motion, Verizon asserts that the parties need to "devote their full attention to commercial negotiation without the distraction of simultaneous litigation." AT&T agrees that the commercial negotiations are important as are the negotiations regarding the TRO amendment at issue in this proceeding. There is no doubt that this arbitration will proceed much more efficiently and expeditiously if the parties engage in substantive negotiation to identify and narrow the issues in dispute. Unfortunately, to date Verizon has failed to respond in any meaningful way to AT&T's detailed response to Verizon's proposed TRO amendment. Not only has Verizon failed to respond to AT&T's mark-up of Verizon's proposal, it has never

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provided even its initial position with respect to the completely new sections of the amendment proposed by AT&T on such topics as line splitting, line conditioning, subloops, and hot cuts. Until Verizon provides a substantive response to AT&T's (and the other CLECs') draft amendments or engages in good faith negotiations to narrow the issues in dispute, the scope of the arbitration will remain murky at best. Thus, as a matter of principle, AT&T is not at all averse to using the next month to engage in substantive negotiation both at the highest levels of the organizations and regarding the particular issues in this proceeding.

However, with each passing day AT&T suffers significant financial and operational harm as a result of Verizon's failure to meet its obligations under current law, the ICA and the Triennial Review Order ("*TRO*"). AT&T should not incur additional injury in order to accommodate Verizon's request for an abeyance. Thus, AT&T will agree to Verizon's request for an abeyance if Verizon (i) is required to perform routine network modifications as required under current law; and (ii) is prevented from unilaterally implementing its own interpretation of the interconnection agreements ("*ICAs*") before the Commission has the opportunity to consider fully Verizon's rights and obligations under such agreements.

## Argument

Despite unambiguous legal obligations, Verizon has failed to perform routine network modifications and to provide EELs as mandated. This causes ongoing harm to AT&T that AT&T needs addressed immediately. Instead, Verizon has held AT&T's rights hostage, demanding acquiescence to Verizon's unreasonable proposed *TRO* amendments before it will perform its legal obligations. As a result, AT&T opposes any abeyance that will delay its ability to obtain relief in the form of an order requiring Verizon to meet its existing contractual and legal obligations. In addition, AT&T is concerned that Verizon may unilaterally discontinue its provisioning of certain UNEs (or unilaterally charge more for such UNEs) should the *USTA II* decision become effective before the Commission has an opportunity to fully consider Verizon's contractual obligations under all applicable law.<sup>1</sup> As a result, any abeyance should be conditioned on an order that Verizon preserve the status quo and fulfill its current obligations under its ICAs until the Commission has the opportunity to determine Verizon's ongoing obligations under all applicable law.

### **I. VERIZON SHOULD BE REQUIRED TO PROVISION UNES REQUIRING ROUTINE NETWORK MODIFICATIONS AS MANDATED BY EXISTING LAW.**

In the absence of an order from the Commission's requiring Verizon to comply with its existing obligations to provision UNEs requiring routine network modifications, AT&T is

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<sup>1</sup> AT&T's concerns are substantiated by Verizon's continued refusal to inform CLECs of Verizon's intentions regarding the enforceability of ICAs after the June 15, 2004, expiration of the stay of the *TRO*. As recently as May 5, 2004, in a Commission Staff status conference regarding the *TRO*, both Verizon and BellSouth would provide no information to CLECs regarding the ILECs' post stay intentions regarding their ICAs.

prejudiced by delay in the arbitration. As explained below, however, if the Commission requires Verizon both to live up to its existing obligations under the TRO and preserve those obligations until the Commission has a full opportunity to consider Verizon's ongoing obligations, then AT&T agrees that a short abeyance is reasonable.

The *TRO* clarified that Verizon's ongoing refusal to perform routine network modifications violates *existing* law.<sup>2</sup> Because the FCC's clarification of Verizon's existing obligation does not constitute a change in those obligations, there is no "change of law" to consider and the issue regarding network modifications is, therefore, not ripe for arbitration; however, AT&T seeks an order from this Commission requiring Verizon to abide by the clarifications of the *TRO* concerning routine network modifications. Specifically, Verizon should be directed to abide by the FCC's definition of "routine network modifications" which include "those activities that incumbent LECs regularly undertake for their own customers."<sup>3</sup> Examples of such necessary loop modifications include "rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer."<sup>4</sup>

The Arbitrator in Rhode Island's TRO Arbitration and the Hearing Examiner in Maine's TRO Arbitration have already concluded that the *TRO* does not alter Verizon's obligations to provide routine network modifications and have ordered Verizon to comply with the clarified

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<sup>2</sup> *TRO*, n.1940; see also *AT&T Response to Verizon Petition*, pp. 18-19. This clarification was not modified by *USTA II*.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, ¶ 634.

definitions set forth in the *TRO*. A similar order is warranted here and should be made part of any order staying this proceeding.

Given these chronic failures by Verizon, which are causing significant harm to AT&T, Verizon's abeyance motion should be granted subject to an order that requires Verizon to (1) honor its existing contract obligation to provide UNEs at the prices specified in its ICAs when UNEs requiring routine network modifications of the types specified in the *TRO* are ordered; (2) maintain the status quo as described below.

**II. VERIZON SHOULD MAINTAIN THE STATUS QUO (AT EXISTING RATES) WHILE THE ARBITRATION IS PENDING.**

AT&T is concerned that delay in this proceeding will provide an opportunity for Verizon unilaterally to implement its proposed *TRO* amendments if *USTA II* becomes effective, and before the Commission can fully consider Verizon's rights and obligations under its ICAs pursuant to all applicable law. As a further condition for holding this proceeding in abeyance, Verizon should be required to provision all UNEs in the current ICAs, including but not limited to switching, loops and dedicated transport as specified under its ICAs until the Commission has had the opportunity to review Verizon's ongoing obligations under all applicable law.<sup>5</sup> Verizon should not be permitted simultaneously to stall these proceedings and unilaterally to discontinue certain offerings based on its self-serving interpretation of the *TRO* or the *USTA II* decision. Not only would such unilateral action by Verizon significantly disrupt

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<sup>5</sup> This includes not only sections 251 and 271 of the Telecommunications Act but also Verizon's obligations under state law and the Merger Commitments that Verizon consented to as a condition of the Bel Atlantic/GTE merger.

customers and cause widespread marketplace confusion, it would be entirely inconsistent with Verizon's legal and contractual obligations. Thus, Verizon should be required to continue to operate under its current ICAs until the Commission has had the opportunity to determine the scope of Verizon's post-*USTA II* obligations under all applicable law.

At least one State Commission has already issued a status quo order in response to SBC's similar motion for abeyance in a Texas arbitration proceeding. The Public Utility Commission of Texas conditioned its abeyance on the requirements that SBC continue to operate under its current ICAs and "UNEs will continue to be offered consistent with those agreements."<sup>6</sup> A similar order is warranted in this docket.

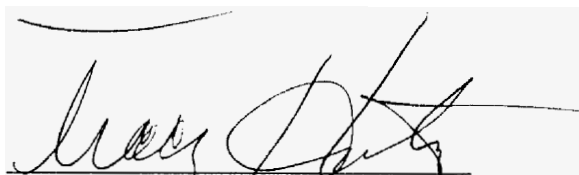
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<sup>6</sup> Order Abating Proceeding, Public Utilities Commission of Texas, Docket NO. 28821, May 5, 2004. Attached to Sprint's March 10, 2004 filing in this docket.

## Conclusion

For the reasons stated above, AT&T does not oppose Verizon's motion to hold the arbitration in abeyance, if (1) Verizon is required to perform routine network modifications as specified in the TRO; and (2) the status quo is preserved.

RESPECTFULLY SUBMITTED this the 19th day of May 2004.

A handwritten signature in black ink, appearing to read "Tracy Hatch", is written over a light gray rectangular background.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 040156-TP**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail and U.S. Mail or as indicated this 19th day of May 2004, the following parties of record:

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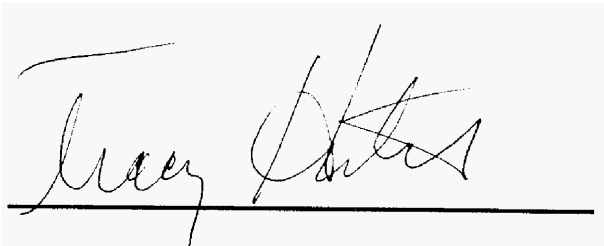
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A handwritten signature in black ink, appearing to read "Tracy W. Hatch", is written over a solid black horizontal line. The signature is cursive and somewhat stylized.

Tracy W. Hatch