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May 27, 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

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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

Dear Ms. Bayo:

CMP \_\_\_\_\_ Enclosed for filing in the above matter are an original and 15 copies of Verizon Florida  
COM S Inc.'s Motion For Leave To File Clarification and Clarification of Verizon Florida Inc.  
CTR \_\_\_\_\_ 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.

ECR \_\_\_\_\_ Sincerely,  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_ *Richard Chapkis (RW)*  
MMS \_\_\_\_\_ Richard Chapkis

RCA \_\_\_\_\_ RAC:tas  
SCR \_\_\_\_\_  
SEC + Enclosures  
OTH \_\_\_\_\_

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*Richard Chapkis*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion For Leave To File Clarification and Clarification of Verizon Florida Inc. in Docket No. 030643-TP were sent via U.S. mail on May 27, 2004 to:

Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Bruce May  
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Tallahassee, FL 32302-0810

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Richard A. Chapkis

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Verizon Florida Inc. (f/k/a GTE ) Docket No. 030643-TP  
Florida Inc.) against Teleport Communications ) Filed: May 27, 2004  
Group, Inc. and TCG South Florida, for review of a )  
decision by The American Arbitration Association )  
in accordance with Attachment 1 Section 11.2(a) of )  
the Interconnection Agreement between GTE )  
Florida Inc. and TCG South Florida )  
\_\_\_\_\_ )

**MOTION OF VERIZON FLORIDA INC.  
FOR LEAVE TO FILE CLARIFICATION**

Verizon Florida Inc. (Verizon) hereby seeks leave to file the attached Clarification of its Supplemental Brief filed on May 17, 2004. In its Order of May 3, 2004, the Commission ordered Verizon to address both threshold questions of jurisdiction and additional issues – enumerated as issues (a) to (d) – identified in the Staff’s recommendation.

It has come to Verizon’s attention that, although Verizon addressed in its brief all the issues raised in the agenda conference and in the Staff’s recommendation, the Commission might find it helpful if Verizon’s specific responses to each of the issues identified by the Staff were set out individually. Verizon is not seeking to add or to modify the arguments already included in its Supplemental Brief, but is seeking only to clarify the presentation of some of that material.

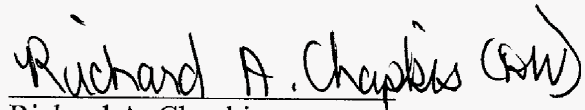
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Because this clarification may assist the Commission in the resolution of the issues presented by TCG's motion to dismiss and will not prejudice TCG, there is good cause to grant the motion.

Respectfully submitted,



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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Verizon Florida Inc. (f/k/a GTE )  
Florida Inc.) against Teleport Communications )  
Group, Inc. and TCG South Florida, for review of a )  
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Florida Inc. and TCG South Florida )  
\_\_\_\_\_ )

Docket No. 030643-TP  
Filed: May 27, 2004

**CLARIFICATION OF VERIZON FLORIDA INC.**

On May 17, 2004, pursuant to the Commission's Order of May 3, 2004, Verizon Florida Inc. (Verizon) filed its Supplemental Brief in the above-captioned proceeding. In that brief, Verizon addressed both threshold questions of jurisdiction and additional issues – enumerated as issues (a) to (d) – identified in the Staff's recommendation. In this filing, Verizon seeks to clarify its responses to the issues identified by the Staff.

(a) *What are the specific factual, legal, and policy issues for which review is sought?*

Verizon seeks Commission review of two basic issues.

1. The first issue is whether the arbitrator erred when he ruled that Verizon is required to pay reciprocal compensation on VNXX traffic. See Verizon Supp. Br. at 13-14. In a VNXX call, the carrier serving the called party assigns a telephone number to the called party associated with the calling party's local calling area – even though the called party is located in a different local calling area. Thus, VNXX traffic is interexchange traffic for which the originating carrier cannot collect toll charges.

Verizon's challenge to this ruling raises important issues of law and policy. This Commission has never held that an interconnection agreement like the one between Verizon and TCG – which provides for reciprocal compensation only for traffic that originates and terminates

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in the same local calling area – requires payment of reciprocal compensation for VNXX traffic. To the contrary, this Commission has squarely ruled that “carriers shall not be obligated to pay reciprocal compensation for [VNXX] traffic.” Order on Reciprocal Compensation, *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP, (Sept. 10, 2002) (“*Reciprocal Compensation Order*”). Specifically, the Commission found that Virtual NXX traffic is not subject to reciprocal compensation because it is not local traffic, *i.e.*, it does not physically terminate in the same local calling area in which it originates. As the Commission explained in that order, “intercarrier compensation for calls to [VNXX] numbers shall be based upon the end points of the particular calls.” *Id.* at 33. Because “calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation,” the Commission found that reciprocal compensation does not apply to such calls. *Id.*

This issue also presents an important question of policy. By requiring Verizon to pay reciprocal compensation for VNXX traffic, the arbitrator has created a subsidy, where Verizon’s local subscribers are forced to bear the costs of transporting intraLATA toll traffic for TCG and its customers.

2. The second issue is whether the arbitrator erred in determining that Verizon is required to pay reciprocal compensation for Internet-bound traffic originated by its customers and delivered to TCG. *See* Verizon Supp. Br. at 14-15. This issue presents a clear question of law: does the agreement between Verizon and TCG require the payment of compensation for such traffic? The arbitrator mistakenly understood this Commission’s prior orders to *require* payment of reciprocal compensation on Internet-bound traffic *even if* the parties clearly intended

to exclude such traffic from the scope of their agreement. That was error: the Commission has made clear that it is the intent of the contracting parties that governs. And the evidence before the arbitrator established unequivocally that the parties to this agreement did not intend to pay reciprocal compensation on ISP-bound traffic; his failure to consider that evidence constituted an error of law.

(b) *Why should the Commission agree to review the arbitrator's decision on each issue identified?*

As Verizon has explained in its brief, the Commission should hold that it does not have discretion over whether to exercise jurisdiction to review the arbitrator's decision. In any event, the Commission *should* exercise its jurisdiction here.

1. Commission review of the arbitrator's decision on VNXX traffic is critical for three basic reasons. *See Verizon Supp. Br. at 13-14.* First, this Commission has never interpreted any interconnection agreement to require the payment of reciprocal compensation on VNXX traffic, and the issue is therefore an important legal issue of first impression that this Commission should resolve. Second, the arbitrator's reasoning contradicted the Commission's ruling in the *Reciprocal Compensation Order*. Third, as noted above, the arbitrator's ruling leads to a policy result sharply at odds with the Commission's prior orders and basic fairness.

Notably, in ruling against Verizon, the arbitrator – who had no prior experience in telecommunications – stated that, in 1996, it was “*well known*” that “ISPs routinely provision dial-up internet service through FX and VFX telephone numbers and have done so as a *standard practice long before the TCG-Verizon interconnection Agreement went into effect.*” Interim Decision at 5 (emphasis added). As the Commission was aware, prior to the advent of local competition, VNXX arrangements *did not exist*, because NXX codes were generally assigned to central offices physically located within the rate center associated with the number. Because that

issue of industry practice implicates the Commission's special expertise, review is particularly appropriate.

2. Review of the arbitrator's ruling regarding ISP-bound traffic is also warranted. *See Verizon Supp. Br.* at 14-15. Most critically, the arbitrator understood that prior Commission decisions require payment of reciprocal compensation on such traffic irrespective of the terms of particular agreements. This Commission is best situated to determine the scope of its prior orders, and whether the arbitrator properly construed the agreement at issue in this case.

(c) *What type of proceeding should be held on each issue?*

The Commission should review the arbitrator's decision based on the record below without allowing the parties any additional discovery. In that respect, the proceedings would resemble an action for review of administrative action. *See Verizon Supp. Br.* at 7-8.

(d) *What standard of review would apply on each issue?*

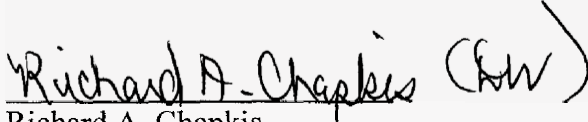
The appropriate standard of review is that which applies to review of administrative action by a non-expert agency. *Id.* Thus, findings of fact are entitled to deference if they are supported by substantial evidence on the record; conclusions of law are reviewed *de novo*. All of the issues presented by Verizon's Petition are legal in nature.



## CONCLUSION

The Commission should agree to hear the issues presented by Verizon's petition.

Respectfully submitted,

  
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