

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

JUNE 29, 2004

RE: Docket No. 040156-TP - 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.

Issue 1: Should the Commission grant Sprint's Motions to Dismiss Verizon's Petition based on its procedural deficiencies?

Recommendation: Yes. Verizon has not complied with the procedural requirements of Section 252(b), nor has it identified specific parties and provided the essential information on the agreements with each of those parties at a level sufficient to enable this Commission to proceed with an arbitration. Therefore, Verizon's Petition is facially deficient. Accordingly, Verizon's Petition should be dismissed, without prejudice, for failure to meet the requirements set forth in Section 252 of the Act. Staff recommends that Verizon be granted leave to refile

MODIFIED

Staff's recommendation was approved with the modification that Verizon be allowed 60 days for filing a corrected petition.

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Charles M. Davidson
Mark G. ...
...
J. Terry ...
Rudy Bradley

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

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its corrected Petition(s) within 20 days of the Commission's vote. Additionally, if Verizon elects to refile, its petition(s) should contain, in addition to the requirements of Section 252(b), sufficient information to ease the logistical and administrative burdens of handling Verizon's Petition. That additional information should include, at a minimum, the following:

1. The name of each company with which arbitration is being requested.
2. The present agreement expiration date for each company with which Verizon has a current agreement.
3. The unresolved issues with each specific company.
4. The position of each of the parties with respect to those issues.
5. Whether the present agreement contains a change of law provision.
6. The nature of the change of law provision.
7. Whether the present agreement contains an alternative dispute resolution provision.
8. The type of alternative dispute resolution required.

Though a specific format should not be required, staff recommends that, in the event a future Verizon petition contains multiple companies, a matrix would be valuable for the purpose of organizing and setting forth the required information. (See Attachment A of staff's June 17, 2004 memorandum for example.)

Staff further recommends that if Verizon elects to refile within the 20-day time frame, responses to the corrected Petition should be due within 20 days of service of Verizon's filing. If Verizon elects not to refile within the allotted time frame, and the time frame is not otherwise extended by the Commission, the Commission's Order should thereafter be deemed final for purposes of appeal.

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Issue 2: Should the Motions to Dismiss filed by the Competitive Carrier Coalition, Time Warner, Eagle/Myatel, Z-Tel, and AT&T be granted?

Recommendation: If the Commission approves staff's recommendation on Issue 1, these Motions will technically be rendered moot. However, staff recommends that the Commission consider and vote on this issue so as to have these matters settled for purposes of future pleadings in this Docket. Staff recommends that the Commission make the following findings:

- A. Dismissal should not be granted based on allegations of failure to negotiate in good faith, because this allegation does not demonstrate that Verizon has failed to state a cause of action upon which relief can be granted.
- B. Dismissal should not be based on Verizon's alleged failure to follow the Change in Law provisions in its interconnection agreements. This may serve as the basis for denial or summary final order at a later date, but there is insufficient information at this time for this to serve as the basis for dismissal of the Petition in its entirety.
- C. Dismissal should not be based upon allegations that the Petition is premature and a "waste of time" because of the uncertain status of the TRO and the D.C. Circuit's decision in United States Telecom Association v. Federal Communications Commission and United States of America, 359 F.3d 554 (D.C. Cir. 2004) (USTA II). Subject to the applicability of arguments regarding carriers' Change of Law provisions in interconnection agreements, Verizon appears to have otherwise complied with the arbitration filing time frames set forth in Section 252 of the Act. Furthermore, this allegation does not show that Verizon has failed to state a cause of action upon which relief can be granted.
- D. Dismissal should not be based on allegations that the Act does not provide for amendments to arbitration petitions filed outside the arbitration "window" of the 135th and 160th day. While the Act does not provide for such amendments, it also does not preclude them. The Act does, however, limit consideration to issues in the Petition and the Response, which may arguably preclude any new issues raised subsequent to the initial pleading. This question need not be resolved at this time.
- E. Dismissal should not be granted based on allegations that an arbitration can only be opened by a CLEC Petition. Section 252(b)(1) clearly states that ". . . the carrier or *any other party to the negotiation* may petition a State commission to arbitrate any open issues." (emphasis added)

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- F. Dismissal should not be based solely on Verizon's failure to identify the agreement status of each named CLEC. While this does appear to identify a flaw in Verizon's Petition, it does not appear to be a requirement for filing an arbitration under Section 252 and as such, does not appear to be a fatal flaw in that it does not show Verizon has failed to state a cause of action upon which relief can be granted. As set forth in Issue 1, Verizon should, however, be directed to correct this flaw when and if it files an Amended Petition in order to ease the logistical and administrative burdens of handling Verizon's Petition.
- G. Dismissal should not be based on the BellAtlantic/GTE merger conditions. Those conditions do not appear to remain in effect. Furthermore, while this allegation could serve as a basis for a summary final order or as a basis for denial of the Petition after hearing, this allegation does not show that Verizon has failed to state a cause of action upon which relief can be granted.

NO VOTE

Issue 3: Should this Docket be closed?

Recommendation: No.

MODIFIED

Consistent with decision
in Issue 1.