

ORIGINAL



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August 2, 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

RECEIVED-FPSC
04 AUG -2 AM 10:22
COMMISSION
CLERK

Re: Docket No. *040805-TP*
Petition for Approval of Amendment No. 1 to the Interconnection, Resale,
Unbundling and Collocation Agreement between Verizon Florida Inc. and
KMC Data LLC

Dear Ms. Bayo:

Enclosed for filing are an original and five copies of the above-referenced Petition.
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

RAC:tas
Enclosures

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. for Approval)
of Amendment No. 1 to Interconnection, Resale,)
Unbundling and Collocation Agreement with)
KMC Data LLC)
_____)

Docket No. 040805-TP
Filed: August 2, 2004

**PETITION OF VERIZON FLORIDA INC. FOR APPROVAL OF AMENDMENT NO. 1 TO
INTERCONNECTION, RESALE, UNBUNDLING AND COLLOCATION AGREEMENT
WITH KMC DATA LLC**

Verizon Florida Inc. (Verizon) (formerly, GTE Florida Incorporated) files this petition before the Florida Public Service Commission (Commission) seeking approval of Amendment No. 1 to the interconnection, resale, unbundling and collocation agreement with KMC Data LLC.

KMC Data LLC's adoption with modifications of the existing negotiated terms of the Interconnection, Resale, Unbundling and Collocation Agreement between Sprint Communications Company L.P. and Verizon California Inc., f/k/a GTE California Incorporated, was acknowledged by the Commission on December 11, 2003 in Docket No. 030900-TP. Amendment No. 1 amends the terms of the agreement governing compensation for the exchange of local traffic and Internet traffic on a prospective basis.

Verizon respectfully requests that the Commission approve the attached amendment and that Verizon be granted all other relief proper under the circumstances.

Respectfully submitted on August 2, 2004.

By: Richard A. Chapkis

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P. O. Box 110, FLTC0717
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Telephone No. (813) 483-1256

Attorney for Verizon Florida Inc.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

AMENDMENT NO. 1
to the
INTERCONNECTION AGREEMENT
between
VERIZON FLORIDA INC.
and
KMC DATA, LLC
FOR FLORIDA

This Amendment No. 1 (this "Amendment") is effective May 12, 2004 ("Amendment Effective Date"), by and between Verizon Florida Inc. ("Verizon"), and KMC DATA, LLC ("KMC"). (Verizon and KMC may hereinafter be referred to, each individually, as a "Party," and, collectively, as the "Parties").

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated July 14, 2003, KMC adopted in Florida, the interconnection agreement between Sprint Communications Company L.P. ("Sprint") and Verizon California Inc., f/k/a GTE California Incorporated for California (such adoption letter and the underlying adopted interconnection agreement referred to herein collectively as the "Agreement");

WHEREAS, the Parties desire to agree terms governing compensation for the exchange of local traffic and Internet traffic on a prospective basis;

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. General/Term. This Amendment shall not become effective unless there are no outstanding billing disputes between the Parties as of the Effective Date between the parties with respect to intercarrier compensation charges assessed by either Party with respect to Local Traffic, Internet Traffic, Verizon originated intraLATA switched access traffic, and Verizon originated interLATA switched access traffic. The following terms shall govern the Parties' rights and obligations regarding compensation for Internet traffic and Local Traffic for a term of two (2) consecutive twelve (12) month periods from the Amendment Effective Date (the "Amendment Term"), notwithstanding any other provision of the Interconnection Agreement, any Tariff, any SGAT, or under Applicable Law, including but not limited to any provision governing the Parties' rights or

obligations in the event of a change in Applicable Law. Each consecutive twelve (12) month period during the Amendment Term shall be called a "Term Year." Verizon will provide KMC at least 135 days prior written notice of expiration of the Amendment Term (the "Termination Notice").

1.1 Compensation for Internet Traffic and Local Traffic. When Internet Traffic or Local Traffic is originated by the Customer of a Party on that Party's network (the "Originating Party") and delivered to the other Party (the "Receiving Party") for delivery to a Customer of the Receiving Party, within thirty (30) days following receipt of an appropriate invoice from the Receiving Party, the Originating Party shall pay intercarrier compensation to the Receiving party at an equal and symmetrical rate of \$.0005 per minute of use; **provided, however**, that Verizon shall be under no obligation to pay intercarrier compensation to KMC on Local Traffic or Internet Traffic insofar as the total combined minutes of use of such traffic originated by Verizon to KMC exceeds, in a Term Year, two (2) times the Compensable Base; and **provided further**, that the \$.0005/mou rate shall not apply to V/FX Traffic that is not Internet Traffic, which traffic type shall be subject to applicable switched exchange access tariff charges. The Parties hereby agree that, as of the Amendment Effective Date, they are exchanging only a de minimis amount of V/FX Traffic that is not Internet Traffic; the Parties further agree that, from time to time, upon written request from either Party, the Parties will review whether the amount of such V/FX Traffic that is not Internet Traffic exchanged between them remains de minimis.

1.2 Agreement to Comply with FCC Declaratory Ruling. The Parties agree to be bound by the FCC's Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC 04-97, WC Docket No. 02-361, (released April 21, 2004).

1.3 Transport. KMC agrees not to charge Verizon for facilities used to transport Local Traffic or Internet Traffic originated by Verizon customers from the physical point of interconnection of the Parties' networks to KMC's switch or to another similar network node in KMC's network.

2. Call Records. The Originating Party shall take steps to ensure that all calls (including VOIP Traffic) originated by its Customers (each a "Calling Customer") include any Charge Number, Calling Party Number ("CPN"), Automatic Number Identifier or similar signaling parameters intended to identify the Calling Customer ("Call Records") and that such Call Records are transmitted intact to the Receiving Party and to any intermediate service provider carrying these calls, as applicable. Except as may be required by Applicable Law or as may be agreed upon in writing by the Parties (any such agreement not to be unreasonably withheld), the Originating Party shall not (i) to the extent technically feasible, remove such Call Records, (ii) alter or replace such Call Records, or (iii) insert or add any Call Record information (such as Charge Number) that does not correspond to the local calling area of the Calling Customer. Neither Party shall knowingly and intentionally (a) strip or alter Call Records to disguise the

jurisdiction of a call or (b) permit third parties to do so for a Party's originated traffic. Inserting a billing telephone number ("BTN") or other designation that accurately reflects the jurisdiction of the call from the Originating Party's Customer shall not constitute a violation of the foregoing.

3. Waiver of Rights; Successor Terms.

3.1 Each Party irrevocably waives, with respect to the other Party, any and all rights that it may have or that it may obtain, from the beginning of time through and including May 11, 2006, under the Act (including, but not limited to, under Section 252(i) thereof), under any other Applicable Law, under the Interconnection Agreement, or otherwise (i) to adopt the terms of any other interconnection agreement, law, regulation, order, arbitration award or the like relating to the subject matter of this Amendment; or (ii) to seek through negotiation, arbitration, or otherwise terms or provisions that would modify, replace, alter or otherwise change the terms and provisions of this Amendment prior to May 12, 2006. Further, the Parties agree that, if they establish new or replacement interconnection agreements for the Interconnection Agreement, they shall implement the terms of this Amendment into such new or replacement interconnection agreements until such time as this Amendment is superceded in accordance with Section 3.2 directly below. Neither Party hereby waives any other rights accorded to it under Applicable Law, except to the extent expressly stated in this Amendment. Nothing in this Amendment should be construed or interpreted as limiting in any way either Party's rights to pursue in any forum regulatory or legislative reform and/or changes to Applicable Law.

3.2 The Parties agree to negotiate in good faith for successor terms and provisions with respect to the subject matter of this Amendment for any period on and after May 12, 2006. The date of Verizon's Termination Notice (described in Section 1 above) shall be deemed the negotiations request date for the purpose of determining the arbitration window (under Section 252 of the Act) applicable to the Parties' negotiation of such successor terms. If the Parties fail to execute a written agreement containing such successor terms by the first day of the opening of the arbitration window applicable to the above referenced negotiations, then either Party may initiate an arbitration under Section 252 of the Act. Notwithstanding any other provision of this Amendment, the terms of this Amendment shall remain in force and effect until replaced by successor terms to which the Parties agree in writing either voluntarily or pursuant to an arbitration order.

4. Definitions. The following terms shall have the meanings provided below for the purposes of this Amendment.

4.1 "Act" means the Communications Act of 1934 (47 U.S.C. §151 et seq.), as amended and in effect from time to time (including, but not limited to, by the Telecommunications Act of 1996).

4.2 “Applicable Law” means all effective laws and government regulations, rules, decisions and orders applicable to each Party’s rights, and performance of its obligations, under this Amendment and the Interconnection Agreement.

4.3 “Call Record” means any charge number, calling party number (“CPN”), automatic number identifier or similar signaling parameters intended to identify a calling customer.

4.4 “Compensable Base” means the total combined minutes of use of Local Traffic and Internet Traffic originated by Verizon to KMC in the state of Florida during calendar year 2003, which Verizon has agreed in writing are subject to intercarrier compensation. Any minutes of use which Verizon has not agreed are subject to intercarrier compensation, or as to which there remains an outstanding billing dispute between the Parties, shall not be included in the Compensable Base.

4.5 “Extended Local Calling Scope Arrangement” means an arrangement that provides a customer a local calling scope (Extended Area Service, “EAS”), outside of the customer’s basic exchange serving area. Extended Local Calling Scope Arrangements may be either optional or non-optional. “Optional Extended Local Calling Scope Arrangement Traffic” is traffic that under an optional Extended Local Calling Scope Arrangement chosen by the customer terminates outside of the customer’s basic exchange serving area.

4.6 “Internet Traffic” means any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission, including V/FX Internet Traffic.

4.7 “Local Traffic” consists of Telecommunications traffic for which compensation is required by both Section 251(b)(5) of the Act and 47 C.F.R Part 51; and, for the avoidance of any doubt, the following types of traffic, among others, do not constitute Local Traffic: Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access; toll traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; Optional Extended Local Calling Scope Arrangement Traffic; special access, private line, frame relay, ATM, or any other traffic that is not switched by the receiving party; tandem transit traffic; non-Internet V/FX Traffic; or voice Information Service traffic. Local Traffic does not include any Internet Traffic.

4.8 “Virtual Foreign Exchange Traffic” or “V/FX” Traffic means calls placed over the public-switched telephone network, or VOIP Traffic, in either case in which a Customer is assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the

exchange (as set forth in the LERG) associated with the actual physical location of such Customer's station.

4.9 "VOIP Traffic" means voice communications that are transmitted in whole or in part over packet switching facilities using Internet Protocol or any similar packet protocol and that originate from or terminate to the public switched telephone network. For purposes of this Amendment only (and without affecting any other matter), VOIP Traffic shall be treated as having been generated through provision of a Telecommunications Service (as such term is defined in the Act), and not an Information Service (as such term is defined in the Act).

5. **Scope of Amendment.** Except to the extent set forth in Sections 1 through 4 of this Amendment, the rates, charges and other provisions of the Interconnection Agreement shall remain in full force and effect after the Amendment Effective Date. Nothing in this Amendment shall be deemed to amend or extend the term of the Interconnection Agreement. This Amendment is not intended to modify the term of the Interconnection Agreement or to affect either Party's right to exercise any right of termination it may have under the Interconnection Agreement.

6. **Conflict Between this Amendment and the Interconnection Agreement.** This Amendment shall be deemed to revise the rates, charges and other provisions of the Interconnection Agreement to the extent necessary to give effect to the rates, charges and other provisions of this Amendment. In the event of a conflict between a rate, charge or other provision of this Amendment and a rate, charge or other provision of the Interconnection Agreement, this Amendment shall govern.

7. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their duly authorized representatives as of the Amendment Effective Date.

KMC DATA, LLC

Verizon Florida Inc.

By: 

By: 

Printed: MARVA BROWN JOHNSON

Printed: Jeffrey A. Masoner

Title: Vice President & Sr. Counsel

Title: Vice-President - Interconnection Services Policy & Planning

Date: 6/28/2004

Date: 7/22/04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via overnight delivery(*)
on July 30, 2004 and U.S. mail(**) on August 2, 2004 to:

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

KMC Data LLC(**)
Attention: Marva Brown Johnson
1755 North Brown Road
Lawrenceville, GA 30043

Richard A.
Richard Chapkis