

Timolyn Henry

From: terry.scobie@verizon.com
Sent: Tuesday, August 03, 2004 2:24 PM
To: Filings@psc.state.fl.us
Cc: Richard Chapkis; David Christian; demetria.c.watts@verizon.com
Subject: Docket No. 040713-TP - VZ FL Answer to Complaint and Petition



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swer to Compla

Attached for filing is Verizon Florida Inc.'s Answer to AT&T Communications of the Southern States, LLC's and TCG South Florida's Emergency Complaint and Petition in Docket No. 040713-TP. This filing is submitted by

Richard A. Chapkis
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The attached .pdf document contains a transmittal letter (1 page), certificate of service (1 page), service list (1 page), and Answer with Exhibits A and B (19 pages) - total of 22 pages.

(See attached file: 040713 VZ FL Answer to Complaint 8-3-04.pdf)

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August 3, 2004 – VIA ELECTRONIC MAIL

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040713-TP
Emergency complaint and petition by AT&T Communications of the Southern
States, LLC and TCG South Florida for order directing continuation of wholesale
service by Verizon Florida Inc.

Dear Ms. Bayó:

Enclosed for filing is Verizon Florida Inc.'s Answer to the above-referenced complaint
and 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,

/s/ Richard A. Chapkis

Richard A. Chapkis

RAC:tas

Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Answer to AT&T Communications of the Southern States, LLC and TCG South Florida's Emergency Complaint and Petition in Docket No. 040713-TP were sent via U.S. mail on August 3, 2004 to the parties on the attached list.

/s/ Richard A. Chapkis

Richard A. Chapkis

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint and Petition)
by AT&T Communications of the Southern)
States, LLC and TCG South Florida for)
Order Directing Continuation of Wholesale)
Service By Verizon Florida Inc.)
_____)

Docket No. 040713-TP
Filed: August 3, 2004

**VERIZON FLORIDA INC.'S ANSWER TO AT&T COMMUNICATIONS
OF THE SOUTHERN STATES, LLC'S AND TCG SOUTH FLORIDA'S
EMERGENCY COMPLAINT AND PETITION**

Pursuant to Rule 28-106.203, Florida Administrative Code, Verizon Florida Inc. (Verizon) respectfully responds to the Emergency Complaint and Petition filed by AT&T Communications of the Southern States, LLC (AT&T) and TCG South Florida (TCG) (collectively, Joint CLECs).

I. INTRODUCTION

1. The Joint CLECs claim that they are concerned that they will be unable to continue to serve customers in Florida unless the Commission orders Verizon to continue operating under their existing interconnection agreements after they are terminated effective July 31, 2004. For several compelling reasons, the Commission should reject the Joint CLECs' attempts to persuade the Commission to act precipitously and unlawfully.

2. First, there is no need for the Commission to act on an emergency basis. The parties have reached an agreement in principle on the terms of amendments to the AT&T and TCG agreements that would, among other things, extend the term of each agreement until at least November 30, 2004. In light of the consummation of those negotiations (and imminent finalization of contractual documentation), on July 30, 2004,

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Verizon provided a letter to each of the Joint CLECs placing the termination notices in abeyance until August 31, 2004, so that the parties have time to finalize and execute the relevant documentation (which Verizon expects to occur by August 6, 2004). Upon execution of the relevant documentation, Verizon will provide AT&T and TCG letters withdrawing the notices of termination.

3. Second, contrary to the Joint CLECs' claims, there is no reason to believe that the Joint CLECs will be unable to continue providing service in Florida after their contracts expire. Verizon has not threatened to cut off service to the Joint CLECs, nor would it, based on the interconnection agreements having been terminated. The real issue here is what terms would govern the parties' interconnection if and, *after*, the agreements are terminated (which, as noted above, is unlikely to happen any time soon).

4. Third, while the interconnection agreements have not been terminated, Verizon has a contractual right to do so, pursuant to the respective terms of each such agreement, and the agreements do not contain an "evergreen" or like provision that would allow them to continue in effect while the parties negotiate or arbitrate successor agreements. Thus, the Commission cannot extend the terms of the interconnection agreements, as doing so would contravene the express intent of the parties as memorialized in the body of such agreements.

5. Fourth, the Commission has no authority to modify binding interconnection agreements. Nor can the Commission purport to do so under the guise of "interpreting" the agreements.

6. Fifth, it would be poor public policy to allow the Joint CLECs unilaterally to extend the terms of the interconnection agreements. Forcing Verizon to continue providing service under the terms of expired agreements while the parties try to establish new agreements would discourage the Joint CLECs (and, indeed, all Florida CLECs) from negotiating in good faith. The Joint CLECs have no legitimate concerns about service disruption; rather, they wish to keep the TCG agreement alive for as long as possible to try to force Verizon to continue paying reciprocal compensation on VNXX traffic, even though neither this Commission nor the FCC has imposed any such requirement.

7. In light of the foregoing, the Commission should refrain from deciding the Joint CLECs' Emergency Complaint and Petition on an emergency basis. Rather, the Commission should afford the parties sufficient time to finalize and execute an amendment to each of the interconnection agreements.

8. If, in the unlikely event, the parties (for some unexpected reason) are unable to finalize and execute the amendments by August 31, 2004, the Commission should deny the Joint CLECs' Emergency Complaint and Petition, and require the parties to enter into Verizon's current template agreement on an interim basis, as of September 1, 2004, until successor agreements are established or, in the alternative, should require the Joint CLECs to opt into an available interconnection agreement between Verizon and another CLEC on an interim basis, as of September 1, 2004, until successor agreements are established.

9. If, in the unlikely event, the Commission needs to address, but decides not to implement, either of the foregoing interim arrangements, Verizon offers a further

compromise solution: the Commission should, in such case, allow the terminated interconnection agreements to remain in effect pending Commission approval of successor agreements, with the proviso that, effective September 1, 2004, Verizon shall not be required to pay the Joint CLECs reciprocal compensation or any other compensation on VNXX traffic (including, without limitation, the transitional compensation rates that were established in the FCC's ISP Remand Order).¹ This compromise would meet the purported concerns of the Joint CLECs, meet the requirements of federal law, and be consistent with good public policy.

II. BACKGROUND

10. The Commission approved the final interconnection agreement between AT&T (previously known as AT&T Communications of the Southern States Inc.) and Verizon (previously known as GTE Florida Incorporated) in Order No. PSC-97-0864-FOF-TP, issued on July 18, 1997. TCG adopted the AT&T agreement effective March 6, 1998.

11. The AT&T agreement expressly provides that Verizon may terminate the agreement on 30 days' written notice, and the TCG agreement expressly provides that Verizon may terminate the agreement on 90 days' written notice. As the Joint CLECs recognize, neither agreement contains an "evergreen" clause, which would have allowed the Joint CLECs to operate under the existing terms of the agreements until new agreements were reached.

¹ See Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 ¶ 78 (2001) (*ISP Remand Order*), remanded sub nom. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

12. In accordance with the terms of the agreements, Verizon properly notified AT&T and TCG that their respective interconnection agreements will terminate on July 31, 2004.²

13. On or about July 30, 2004, the parties reached an agreement in principle on the terms of amendments that would, among other things, extend the term of each agreement until at least November 30, 2004. As a result of the consummation of negotiations, by letters dated July 30, 2004, Verizon notified AT&T and TCG that it was placing the termination notices in abeyance until August 31, 2004. Upon execution of the relevant documentation, Verizon will withdraw the notices of termination.³

III. THERE IS NO REASON TO DECIDE THE COMPLAINT AND PETITION ON AN EMERGENCY BASIS

14. Before the parties reached an agreement in principle on amendments extending the term of the agreements, the Joint CLECs requested that the Commission decide their Petition and Complaint on an emergency basis. In the wake of that request, the Commission posted a CASR showing that Staff is scheduled to issue its recommendation on August 5, 2004, and the Commission is scheduled to hear this matter at the August 17, 2004 agenda conference. Due to an important change in circumstances, this schedule should be extended so that the parties have a short period of time in which to finalize and execute the relevant contractual documentation. As stated above, in light of the consummation of negotiations between the parties (and the imminent finalization of contractual documentation) regarding the amendments and related matters, Verizon placed the termination notices in abeyance until August 31,

² See AT&T Emergency Complaint and Petition, Exhibits A, B, D and E.

³ Copies of the letters are attached hereto as Exhibits A and B.

2004. Verizon anticipates that the parties will finalize and execute the relevant documentation before then (i.e., likely by August 6, 2004) and, assuming that this occurs, Verizon will withdraw its termination notices. Verizon requests that the Commission revise the CASR so that the parties can finalize and execute the amendments before they receive any indication from Staff or the Commission about the relative merit of their positions. The issuance of a Staff recommendation prior to that date could upset the balance that allowed the parties to reach an agreement in principle.

IV. THE COMMISSION SHOULD DENY THE JOINT CLECS' EMERGENCY COMPLAINT AND PETITION

15. Although the Joint CLECs claim that their primary concern is to be able to continue serving customers in Florida, they are actually trying to persuade the Commission to unlawfully rewrite the interconnection agreements that they signed and this Commission approved. Specifically, the Joint CLECs are trying to persuade the Commission to write an "evergreen" clause into the agreements, so that the Joint CLECs will be able to impose the terms of these agreements – after they are terminated – on Verizon. The Joint CLECs want unilaterally to extend the terms of the agreements because an arbitrator has recently ruled, erroneously, that the TCG agreement requires the payment of reciprocal compensation on VNXX traffic. The Commission should not impose the terms of these agreements (if and to the extent they are terminated) on Verizon, as the Joint CLECs suggest, because that would violate the intent of the parties expressed in the agreements, as well as violate federal law, and set unsound public policy.

16. Before delving into the terms of the agreements and the law governing the dispute between the parties, it is important to re-emphasize that there is no danger that the Joint CLECs will have to cease providing service in Florida. Verizon has not threatened to cut off service to the Joint CLECs, nor would it, based on the interconnection agreements having been terminated.

17. Moreover, the Joint CLECs' contention that Verizon acted in bad faith is preposterous. Verizon lawfully gave notice that it would terminate the interconnection agreements pursuant to their terms, which were negotiated and accepted by the Joint CLECs and approved by this Commission. Although the Joint CLECs may now wish that they had not voluntarily agreed to the termination provisions in the agreements and had given themselves more time to adopt a successor agreement, their current dissatisfaction with their interconnection agreements provides absolutely no basis for the contention that Verizon failed to act in good faith.

18. The real issue here is that the Joint CLECs want the existing interconnection agreements to remain in effect for as long as possible so that they can argue that they should continue to receive reciprocal compensation on VNXX traffic. Contrary to the Joint CLECs' contentions, absent agreement of the Parties (which, as noted above, appears imminent), the existing interconnection agreements cannot continue in effect after August 31, 2004, while the parties negotiate or arbitrate successor agreements. As the Joint CLECs candidly admit, the parties did not include an "evergreen" clause in the agreements, whereby the existing terms of the agreements would continue until new agreements were reached. To the contrary, the parties agreed that Verizon would provide adequate notice to the Joint CLECs that it was terminating

one or both of the agreements, so that the Joint CLECs could adopt successor agreements. Accordingly, this Commission cannot impose the terms of the agreements on Verizon – if and, after, they are terminated – because doing so would unlawfully reform the contract, contrary to the parties’ intent.

19. Rewriting the agreements, as the Joint CLECs request, would also violate federal law. Under federal law, the terms of an interconnection agreement, once approved by a state commission, are “binding” on the parties. 47 U.S.C. § 252(a) (“an incumbent local exchange carrier may enter into a “binding” agreement with the requesting telecommunications carrier”). If Verizon has a contractual right to terminate an agreement, the Commission cannot void that contractual right by forcing Verizon to continue operating under that agreement until a new agreement is established. A state commission decision that, under the guise of interpreting an agreement “effectively changes [its] terms,” “contravenes the Act’s mandate that interconnection agreements have the binding force of law.” *Pacific Bell v. Pac West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9th Cir. 2003). Thus, this Commission cannot, despite the Joint CLECs’ request, inject an “evergreen” clause into the agreements.

20. Even if the Commission had the power to graft an “evergreen” clause onto the interconnection agreements, which it does not, the Commission should not do so because rewriting the agreements would be poor public policy. Allowing the Joint CLECs to unilaterally extend their interconnection agreements simply by refusing to reach closure on new agreements would encourage the Joint CLECs to “slow roll” negotiations, and increase the likelihood of the necessity for Commission intervention. Worse, if the Commission does grant the Joint CLECs’ request to effectively add an

evergreen clause onto the agreements, it can count on many more such disputes coming before it. If the Commission rules that the Joint CLECs may continue to operate indefinitely under an agreement that has been terminated in accordance with its terms, it will encourage other CLECs to seek the same thing. In other words, if Verizon terminates a CLEC's agreement, but the CLEC wishes to continue to operate under that agreement, it will have nothing to lose by asking the Commission to do for it the same thing the Commission did for the Joint CLECs. In fact, if the Commission shows that it is willing to rewrite contracts just because the CLECs don't like certain terms—which is the issue here—CLECs will inevitably be before this Commission to change not just termination provisions, but any provisions that, in hindsight, they wish they had not agreed to.

21. Moreover, it would be unwise to extend the term of an agreement that an arbitrator has determined (erroneously) requires the payment of reciprocal compensation on VNXX traffic, because, under federal law, interexchange traffic, including VNXX traffic, is not subject to reciprocal compensation. Section 251(g) of the 1996 Act and FCC Rule 51.701(b)(1) exempt “interstate or intrastate exchange access, information access, or exchange services for such access” from reciprocal compensation.⁴ Because VNXX calls are interexchange (in that they always begin and end in different local calling areas), they are “exchange services for . . . access” — the third of the three categories of traffic that are exempt from reciprocal compensation. The FCC has ruled that “exchange services for . . . access” and the other categories of

⁴ 47 C.F.R. § 51.701(b)(1); 47 U.S.C. § 251(g); *ISP Remand Order* ¶ 34.

traffic listed in section 251(g) are services associated with access services, so all of these interexchange services are carved out from reciprocal compensation:

All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access. Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers *in order to connect calls that travel to points — both interstate and intrastate — beyond the local exchange*. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationships. Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).⁵

22. VNXX calls undeniably fall within this carve-out, and are not subject to reciprocal compensation. In a VNXX call, Verizon's network is used "to connect calls that travel to points . . . beyond the local exchange"; hence, the call is "excluded" from reciprocal compensation. Phrased in terms of section 251(g) and FCC Rule 51.701(b)(1)'s list of categories, VNXX calls involve "exchange services for . . . access," defined by the FCC as "the provision of services in connection with *interexchange* communications."⁶ This result is consistent with the FCC's interpretation of its rules: in its March 2003 decision granting Verizon's application to provide long-distance service in Maryland, West Virginia, and the District of Columbia, the FCC found nothing in its rules or precedent suggesting that ILECs have a duty to pay CLECs reciprocal compensation for VNXX traffic.⁷

⁵ *ISP Remand Order* ¶ 37 (emphasis added) (footnotes omitted).

⁶ *Id.* ¶ 37 n.65 (emphasis added).

⁷ See Memorandum Opinion and Order, *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC Rcd 5212 ¶ 151 (2003).

23. It would also be unwise to extend the term of an agreement that requires the payment of reciprocal compensation on VNXX traffic because this Commission, like the FCC, has not imposed reciprocal compensation on VNXX traffic.⁸ Moreover, the overwhelming number of states in other jurisdictions that have addressed this issue — 20 to date — have relied on this very reasoning to conclude that VNXX traffic is not subject to reciprocal compensation. These states include Colorado,⁹ Connecticut,¹⁰ Delaware,¹¹ Georgia,¹² Illinois,¹³ Iowa,¹⁴ Massachusetts,¹⁵ Minnesota,¹⁶ Mississippi,¹⁷

⁸ First Order on Petition for Arbitration, *Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with Verizon Florida Inc. by US LEC of Florida Inc.*, 2003 Fla. PUC LEXIS 399, at *64-65 (FL P.S.C. June 25, 2003); Order Denying Motions for Reconsideration, *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, 2003 Fla. PUC LEXIS 44 (FL P.S.C. Jan. 8, 2003); 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, 2002 Fla. PUC LEXIS 748 (FL P.S.C. Sept. 10, 2002).

⁹ See Initial Commission Decision, *Petition of Qwest Corporation for Arbitration of an Interconnection Agreement with AT&T Communications of the Mountain States, Inc. and TCG-Colorado Pursuant to 47 U.S.C. § 252(b)*, Docket No. 03B-287T, 2003 Colo. PUC LEXIS 1149, *45 (CO P.U.C. Oct. 14, 2003).

¹⁰ See Decision, *Application of MCI WorldCom Communications, Inc., et al., for Arbitration*, Docket No. 00-04-35RE01, 2002 Conn. PUC LEXIS 216 (CT Dep't Pub. Util. Control Nov. 13, 2002); Decision, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29RE01, 2002 Conn. PUC LEXIS 217 (CT Dep't Pub. Util. Control Nov. 13, 2002); Decision, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, 2002 Conn. PUC LEXIS 23, at *125 (CT Dep't Pub. Util. Control Jan. 30, 2002) (concluding that "[t]he purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call" and continuing that "since these calls [i.e., V/FX calls] are not local, they will not be eligible for mutual compensation").

¹¹ Arbitration Award, *Petition by Global NAPs, Inc., for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware Inc.*, PSC Docket No. 02-235, at 24-25 (Del. P.S.C. Dec. 18, 2002).

¹² Order on Disputed Issues, *Petition for Arbitration of Interconnection Agreement: Global NAPs, Inc. v. ALLTEL Georgia, Inc., et al.*, Docket No. 14529-U, 2002 Ga. PUC LEXIS 96 (GA P.U.C. Nov. 5, 2002).

¹³ Arbitration Decision, *AT&T Communications of Illinois, Inc., Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Illinois Bell Telephone Company (SBC Illinois), Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. 03-0239, at *303 (IL Commerce Comm'n Aug. 26, 2003); Order on Rehearing, *Global NAPs Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North, Inc.*, Docket No. 02-0253, 2002 Ill. PUC LEXIS 946 (IL Commerce Comm'n Nov. 7, 2002); Arbitration Decision, *Global NAPs Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection*

Missouri,¹⁸ Nevada,¹⁹ New Hampshire,²⁰ New Jersey,²¹ Ohio,²² Pennsylvania,²³ Rhode Island,²⁴ South Carolina,²⁵ Tennessee,²⁶ Texas,²⁷ and Vermont.²⁸ A number of these

Agreement with Verizon North, Inc., Docket No. 02-0253, 2002 Ill. PUC LEXIS 1069 (IL Commerce Comm'n Oct. 1, 2002); Order, *Essex Telcom, Inc. v. Gallatin River Communications, L.L.C. Complaint and Request for Dispute Resolution of Essex Telcom, Inc. Against Gallatin River Communications, L.L.C. Pursuant to Section 13-514 and Section 13-515 of the Public Utilities Act*, Docket No. 01-0427, 2002 Ill. PUC LEXIS 703 (IL Commerce Comm'n July 24, 2002); Arbitration Decision, *Global NAPs, Inc. Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Illinois Bell Company d/b/a Ameritech*, Docket No. 01-0786, 2002 Ill. PUC LEXIS 491 (IL Commerce Comm'n May 14, 2002); Arbitration Decision, *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332, 2000 Ill. PUC LEXIS 676 (IL Commerce Comm'n Aug. 30, 2000).

¹⁴ Final Decision and Order, *Sprint Communications Company L.P., and Level 3 Communications, LLC*, Docket Nos. SPU-02-11, SPU-02-13, 2003 Iowa PUC LEXIS 229, at *12 (IA Utils. Bd. Jun. 6, 2003) (“[U]sing an end-to-end analysis considering only the use of the public switched telephone network . . . the VNXX call is interexchange.”).

¹⁵ Order, *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, Docket No. D.T.E. 02-45, at 33 (Mass. D.T.E. Dec. 12, 2002) (*Mass. DTE Order*).

¹⁶ Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement, *Petition of AT&T Communications of the Midwest, Inc., for Arbitration of an Interconnection Agreement With Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-442, 2003 Minn. PUC LEXIS 128, at *30-32 (MN P.U.C. Nov. 18, 2003).

¹⁷ Final Order, *Consideration of the Provision of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96*, Docket No. 97-AD-321, at 45 (MS P.S.C. Oct. 4, 2001) (“The Commission agrees that FX traffic is long distance traffic and therefore not subject to reciprocal compensation.”).

¹⁸ Arbitration Order, *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., For Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, 2001 Mo. PSC LEXIS 368, at *60 (MO P.S.C. June 7, 2001) (finding that VNXX traffic should “not be classified as a local call”).

¹⁹ Order Adopting Revised Arbitration Decision, *Petition of PAC-WEST Telecomm, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Nevada Bell et al.*, Docket Nos. 98-10015, 99-1007, ¶ 64 (NV P.S.C. Apr. 12, 1999) (finding that “a local call is based on the physical location of the originating and terminating parties . . . [t]o define a local call based on the rate center of the NXX codes as proposed by Pac-West and ATG would subvert industry custom and practice. It could allow them to avoid access charges for toll calls and interLATA calls as well.”).

²⁰ Final Order, *Investigation As To Whether Certain Calls Are Local*, Docket Nos. DT 00-223, DT 00-054, 2002 N.H. PUC LEXIS 165, at *58 (NH P.U.C. Oct. 28, 2002) (*NH Order*) (stating that non-ISP-bound VNXX traffic “shall continue to be defined as local or toll by the physical location of end-users”).

²¹ Final Decision, *Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon New Jersey, Inc., f/k/a Bell Atlantic-New Jersey*, Docket No. TO02060320 at 12 (NJ B.P.U. Mar. 7, 2003).

²² Arbitration Award, *Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon North Inc.*, Case No. 02-876-TP-ARB, 2002 Ohio PUC LEXIS 776 (OH P.U.C. Sept. 5, 2002); Arbitration Panel Report, *Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Case No. 02-876-TP-ARB, 2002 Ohio PUC LEXIS 644 (OH P.U.C. July 22, 2002); Entry on Rehearing, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 636 (OH P.U.C. July 18, 2002); Arbitration Award, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 426 (OH P.U.C. May 9, 2002) (OH GNAPs Order); Arbitration Panel Report, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 282 (OH P.U.C. Mar. 28, 2002); Arbitration Award, *Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, 2001 Ohio PUC LEXIS 712 (OH P.U.C. Oct. 4, 2001).

²³ Opinion and Order, *Petition of Global NAPs South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, A-310771F7000, at 35-36, 45 (PA P.U.C. Apr. 21, 2003).

²⁴ Final Arbitration Decision and Order, *Review of the Arbitrator's Decision in Global NAPs, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon Rhode Island*, Docket No. 3437, 2003 R.I. PUC LEXIS 9 (RI P.U.C. Jan. 24, 2003); Supplemental Arbitration Decision, *Arbitration of the Interconnection Agreement Between Global NAPs and Verizon-Rhode Island*, Docket No. 3437, 2002 R.I. PUC LEXIS 19 (RI P.U.C. Nov. 12, 2002); Arbitration Decision, *Arbitration of the Interconnection Agreement Between Global NAPs and Verizon-Rhode Island*, Docket No. 3437, 2002 R.I. PUC LEXIS 20, at *40 (RI P.U.C. Oct. 16, 2002).

²⁵ Order on Arbitration, *Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.*, Docket No. 2002-181-C, 2002 S.C. PUC LEXIS 9, at *43 (SC P.S.C. Aug. 30, 2002) (SC US LEC Order); Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, *Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2001-209-C, 2002 S.C. PUC LEXIS 3 (SC P.S.C. Feb. 14, 2002); Order on Arbitration, *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, 2001 S.C. PUC LEXIS 8 (SC P.U.C. Jan. 16, 2001).

²⁶ Interim Order of Arbitration Award, *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, at 42-44 (TN Reg. Util. Comm'n Jun. 25, 2001).

²⁷ Arbitration Award, *Re: Reciprocal Compensation*, Docket No. 21982, at 18 (TX P.U.C. Aug. 29, 2001); Arbitration Award, *Reciprocal Compensation*, Docket No. 21982, 2000 Tex. PUC LEXIS 95 (TX P.U.C. Jul. 14, 2000).

states have further recognized that, because VNXX calls are interexchange calls, intrastate access charges apply to them, just as they do to any other inbound, intrastate, interexchange call (whether or not a toll charge is also assessed on the call).²⁹ This is consistent with the FCC's recognition that Congress explicitly intended to avoid disrupting the access regimes that pre-dated the Act.³⁰

24. In sum, the Commission should deny the Joint CLECs' request to rewrite the existing agreements, because granting that request would violate those agreements and federal law, and would constitute poor public policy.

V. THE COMMISSION SHOULD ESTABLISH FAIR AND LAWFUL INTERIM ARRANGEMENTS PENDING THE ADOPTION OF SUCCESSOR AGREEMENTS

25. It cannot be disputed that: (1) Verizon gave notice of termination of the existing interconnection agreements in accordance with their terms; (2) if, in the unlikely event, the parties do not execute contract amendments (as described herein) revising the term and termination provisions, the existing agreements will no longer be in effect

²⁸ Order Re: Motion for Stay, *Petition of Global NAPs, Inc., for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon New England Inc. d/b/a Verizon Vermont*, Docket No. 6742, 2003 Vt. PUC LEXIS 115 (VT P.S. Bd. Apr. 17, 2003); Opinion, *Petition of Global NAPs, Inc., for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon New England Inc. d/b/a Verizon Vermont*, Docket No. 6742, 2002 Vt. PUC LEXIS 272 (VT P.S.C. Bd. Dec. 26, 2002) (*VT GNAPs Order*).

²⁹ See, e.g., *NJ GNAPs Order* at 10 ("A carrier access charge should apply to interLATA traffic for traffic across the boundaries of Verizon's local calling areas. To rule otherwise could amount to Verizon subsidizing Global's operations."); *SC US LEC Order* at *41 ("[T]he only sensible result is that [the CLEC] should compensate Verizon for the services that it continues to provide [in connection with a VNXX call] — i.e., Verizon should continue to receive at least a portion of the toll charges that it would otherwise receive from its customer in the form of access charges paid by [the CLEC.]"); Final Order, *Investigation as to Whether Certain Calls are Local*, Docket Nos. DT 00-223, DT 00-054, 2002 N.H. PUC LEXIS 165, at *60 (NH P.U.C. Oct. 28, 2002); Arbitration Award, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, 2002 Ohio PUC LEXIS 426, at *26 (OH P.U.C. May 9, 2002) (*OH GNAPs Order*).

³⁰ *ISP Remand Order* ¶ 39.

after August 31, 2004; and (3) there will be no interconnection agreements in place after that date unless the Commission establishes an interim arrangement pending the negotiation or adoption of successor agreements. Because it would be unlawful and contrary to sound public policy to allow the existing interconnection agreements to continue beyond August 31, 2004, the Commission should establish fair and lawful interim arrangements pending the adoption of successor agreements – if the parties do not execute the subject contractual documentation within a reasonable time period.

26. Verizon recommends that the Commission order the parties to enter into Verizon's current template agreement, or in the alternative, to opt into an available interconnection agreement between Verizon and another CLEC. This outcome would be consistent with the parties' intent in the existing interconnection agreements, given that the Joint CLECs originally bargained for – and received – a 90-day notice period during which to negotiate or adopt successor agreements.

27. If the Commission decides not to implement either of the foregoing interim arrangements, it would also be reasonable for the Commission to keep the existing interconnection agreement in effect throughout the negotiation and arbitration period for a new agreement with the proviso that, effective September 1, 2004, Verizon will not be required to pay the Joint CLECs reciprocal compensation or any other compensation on VNXX traffic. This approach would be reasonable because Verizon (and the Joint CLECs) negotiated the right to terminate the interconnection agreements; Verizon properly gave notice that it was terminating the agreements in accordance with their terms, and it should not be forced to continue operating under an agreement that has wrongly been interpreted as requiring payment of reciprocal compensation on VNXX

traffic; and Verizon should not be penalized for the Joint CLECs' failure to negotiate or adopt a new agreement during the notice period. The Joint CLECs knew when the agreements would terminate and had the responsibility and opportunity to prevent the situation in which they now find themselves. They are not entitled to Commission protection from the risky and imprudent course they adopted.

VI. CONCLUSION

28. For the foregoing reasons, the Commission should refrain from deciding the Joint CLECs' Emergency Complaint and Petition on an emergency basis. Rather, the Commission should afford the parties sufficient time to finalize and execute the amendments to the AT&T and TCG agreements. If, for some unexpected reason, the parties are unable to finalize and execute the amendment by August 31, 2004, the Commission should deny the Joint CLECs' Emergency Complaint and Petition, and should:

- order the parties to enter into Verizon's current template agreement on an interim basis, as of September 1, 2004, until a successor agreement is established; or
- in the alternative, order the Joint CLECs to opt into an available agreement between Verizon and another CLEC on an interim basis, as of September 1, 2004, until a successor agreement is established; or
- in the alternative, continue to keep the existing agreement in effect on an interim basis until a successor agreement is established with the proviso that, effective September 1, 2004, Verizon will not be required

to pay the Joint CLECs reciprocal compensation or any other compensation on VNXX traffic.

Respectfully submitted,

/s/ Richard A. Chapkis

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Attorney for Verizon Florida Inc.

August 3, 2004

John C. Peterson, Director
Contract Performance and Administration
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VIA FAX AND DHL EXPRESS

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July 30, 2004

L. Fredrik Cederqvist
District Manager, AT&T
ICA Negotiations
Room E-561
32 Avenue of the Americas
New York, NY 10013
FAX: 212-539-9492

Subject: AT&T Florida Interconnection Agreement

Dear Mr. Cederqvist,

As you know, Verizon Florida Inc., f/k/a GTE Florida Incorporated ("Verizon"), sent to you a letter, dated May 6, 2004, providing notice of termination (effective July 31, 2004) of the Interconnection Agreement between Verizon and AT&T Communications of the Southern States Inc. ("AT&T") in the State of Florida (the "Agreement"). In light of the consummation of negotiations between the parties (and the imminent finalization of contractual documentation) regarding certain amendments and related matters, Verizon hereby places the foregoing notice in abeyance until at least August 31, 2004. Verizon anticipates that the parties will finalize and execute the relevant documentation shortly. Assuming that this occurs, Verizon will provide to you another letter, which withdraws the foregoing notice of termination.

Sincerely yours,

A handwritten signature in black ink that reads "John C. Peterson".

John Peterson
Director

cc: Peggy Nelson, Senior Attorney
AT&T Law & Government Affairs
679 Bluff Street
Glencoe, IL 60022

Tonya Littlejohn
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John C. Peterson, Director
Contract Performance and Administration
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July 30, 2004

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District Manager, AT&T
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New York, NY 10013
FAX: 212-539-9492

Subject: TCG South Florida Interconnection Agreement

Dear Mr. Cederqvist,

As you know, Verizon Florida Inc., f/k/a GTE Florida Incorporated ("Verizon"), sent to you a letter, dated April 15, 2004 (together with a clarifying letter, dated April 27, 2004), providing notice of termination (effective July 31, 2004) of the Interconnection Agreement between Verizon and TCG South Florida ("TCG") in the State of Florida (the "Agreement"). In light of the consummation of negotiations between the parties (and the imminent finalization of contractual documentation) regarding certain amendments and related matters, Verizon hereby places the foregoing notice in abeyance until at least August 31, 2004. Verizon anticipates that the parties will finalize and execute the relevant documentation shortly. Assuming that this occurs, Verizon will provide to you another letter, which withdraws the foregoing notice of termination.

Sincerely yours,

A handwritten signature in black ink that reads "John C. Peterson".

John Peterson
Director

cc: Peggy Nelson, Senior Attorney
AT&T Law & Government Affairs
679 Bluff Street
Glencoe, IL 60022

Tonya Littlejohn
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