

LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

December 20, 2005

BY HAND DELIVERY

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

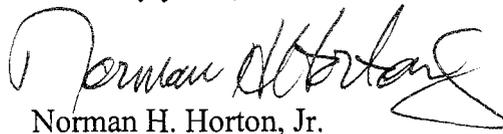
Dear Ms. Bayó:

Enclosed for filing on behalf of XO Communications Services, Inc. (formerly XO Florida, Inc. and Allegiance Telecom of Florida, Inc.) ("XO") is an original and 15 copies of XO Communications Services, Inc.'s Petition for Reconsideration in the above referenced docket.

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

Thank you for your assistance with this filing.

Sincerely yours,


Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER-DATE

**Before the
FLORIDA PUBLIC SERVICE COMMISSION**

In re Petition for Arbitration of an Amendment)
to Interconnection Agreements with Certain) Docket No. 040156-TP
Competitive Local Exchange Carriers and) Filed: December 20, 2005
Commercial Mobile Radio Service Providers in)
Florida by Verizon Florida Inc.)

MOTION FOR RECONSIDERATION AND CLARIFICATION

XO Communications Services, Inc. (formerly XO Florida, Inc. and Allegiance Telecom of Florida, Inc.) (“XO”), through counsel and pursuant to the procedural rules of the Florida Public Service Commission (the “Commission”), FLORIDA ADMIN CODE R. 25-22.060, hereby submits this Motion for Reconsideration and Clarification of certain issues decided by the Commission in the consolidated interconnection agreement amendment arbitration proceeding between Verizon Florida Inc. (“Verizon”) and competitive local exchange carriers (“CLECs”) within the State of Florida, under section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252 (the “1996 Act”). As discussed more fully below, certain of the Commission’s rulings set forth in its final arbitration Order¹ are inconsistent with the unbundling determinations of the Federal Communications Commission (“FCC”) in the *Triennial Review Order*² and the *Triennial Review Remand Order*.³ Accordingly, the Commission should grant this Motion for

¹ Order No. PSC 05-1200-FOF-TP (Dec. 5, 2005) (the “Arbitration Order”).

² *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (rel. Aug. 21, 2003), vacated and remanded in part, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). (“*Triennial Review Order*” or “TRO”)

³ *In the Matter of Unbundled Access to Network Elements* (WC Docket No 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order on Remand, FCC 04-290 (rel. Feb. 4, 2005) (“*Triennial Review Remand Order*”).

Reconsideration and Clarification, and order that Verizon and Florida CLECs adopt the relevant contract language proposed by XO in the above-captioned proceeding.⁴

I. The Commission Must Clarify that De-Listed Section 251 UNEs Remain Subject to Transition Pricing Where No Physical Change to Existing Circuits is Required to Effectuate Commingling (Issues 3 and 5)

In the Arbitration Order, the Commission concluded that there may be no new adds of dedicated transport where the FCC determines no section 251(c)(3) unbundling requirement exists.⁵ The Commission should clarify its ruling to establish that commingling of de-listed section 251 UNEs, including DS1 and DS3 dedicated transport circuits, *does not* constitute a “change” to existing facilities that effectively would remove such facilities from the requesting CLEC’s embedded base, and thus, would deny the requesting CLEC the opportunity to avail itself of the transition rates to which it otherwise is entitled for the affected circuits. Commingling does not constitute a change for purposes of the “no new adds” rule, as Verizon need not make any physical change to existing DS1 and DS3 dedicated transport circuits to effectuate the commingling obligations imposed by the *Triennial Review Order* and the FCC’s modified unbundling rules.

In addition, the assignment of new identification numbers to commingled arrangements is undertaken at Verizon’s election, and solely for the purpose of Verizon’s administrative ease. A contrary interpretation of the Arbitration Order would subject Florida CLECs to higher wholesale rates where a de-listed section 251 UNE is commingled with a service or facility provided by Verizon. These increased wholesale rates would be tantamount to a monetary penalty imposed on commingling. Therefore, the Commission must clarify that

⁴ XO is a party to the proposed interconnection agreement amendment submitted by the Competitive Carrier Group in the above-captioned proceeding.

⁵ Arbitration Order at 33.

commingling of a de-listed section 251 UNE does not constitute a “change” where no physical change to the facility takes place, such as where Verizon, at its discretion, undertakes to assign a new circuit identification number.

II. The Commission Should Adopt a Process to Verify “Non-Impairment” Wire Center Designations by Verizon (Issues 4 and 5)⁶

In Arbitration Order, the Commission declined to adopt a process whereby the Commission may review and verify that claims by Verizon for section 251(c)(3) loop and dedicated transport unbundling relief comply with the thresholds set forth in the *Triennial Review Remand Order*. Such a process is essential to ensure accuracy of future modifications to Verizon’s list of claimed non-impaired wire center and route locations for which such unbundling relief is available. The Commission and Florida CLECs need confirmation that Verizon’s current list does, in fact, meet the non-impairment thresholds established by the FCC, and does not erroneously count business lines and/or fiber-based collocators. At a minimum, the Commission must provide a forum to verify Verizon’s application of the criteria for section 251 loop and dedicated transport unbundling relief, as directed by the *Triennial Review Remand Order* and the FCC’s unbundling rules. Any decision of the Commission to forego verifying Verizon’s list designating wire center and route locations where unbundled loops and dedicated transport facilities no longer are available under section 251(c)(3) of the 1996 Act would effectively deprive Florida CLECs any opportunity to access,⁷ or undertake a meaningful review

⁶ In the Arbitration Order, the Commission declined to address this issue for DS1 and DS3 loops because Verizon has not yet claimed “non-impairment” for such facilities at any wire center within the State of Florida. However, the process support by XO should be adopted by the Commission for claims by Verizon impacting both DS1 and DS3 loops and dedicated transport facilities that Verizon currently provides under section 251(c)(3) of the 1996 Act.

⁷ In the *Triennial Review Remand Order*, the FCC recognized that CLECs may not have in its possession all the data necessary to apply the thresholds for section 251 unbundling relief. The FCC stated: “. . . the requesting carrier seeking access to the UNE . . . is

of the factual data supporting Verizon's claims that unbundling relief is available,⁸ and in turn, frustrates CLECs' diligent efforts to self-certify that a specified wire center or route location in fact does not exceed the thresholds for unbundling relief established by the FCC, under the *Triennial Review Remand Order*.

The FCC did not contemplate that the CLEC self-certification process set forth in the *Triennial Review Remand Order* would serve as the exclusive means of addressing disagreements between requesting CLECs and the incumbent LECs regarding the proper application of the criteria established for section 251 loop and dedicated transport unbundling relief.⁹ Indeed, while the *Triennial Review Remand Order* allows an incumbent LEC to dispute provisioning any section 251 UNE before the appropriate state commission, the FCC expressly stated that the process suggested for addressing incumbent LEC challenges to self-certified CLEC requests for unbundled loops and dedicated transport facilities “**is simply a default process**, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative

unlikely to have in its possession all information necessary to evaluate whether the network element meets the factual impairment criteria in our rules.” *Triennial Review Remand Order* at ¶ 234, n. 659. For this reason, XO has repeatedly asked Verizon for the necessary data to confirm Verizon's list, and has even done so in response to a Verizon Notice of Dispute Resolution in which Verizon claims that XO is not complying with Verizon's wire center designations. However, Verizon has consistently refused to provide the requested information. The Commission should be aware that when asked for carrier information to verify Verizon's wire center list, Verizon has steadfastly denied such request claiming the information as “proprietary.” Verizon, however, has had no problem providing such third party “proprietary” data for purposes of its merger proceedings with MCI.

⁸ For example, CLECs must be entitled to confirm that Verizon has not overstated the number of wire centers in Florida that satisfy the criteria for section 251 unbundling relief by double-counting fiber-based collocators, or by interpreting the FCC's rules in a manner that inflates the business line count at a particular location. XO is aware that Verizon already has overstated the number of fiber-based collocators because it has counted XO and Allegiance operating subsidiaries, now merged into a single entity, as two fiber-based collocators.

⁹ *Triennial Review Remand Order* at ¶ 234.

arrangements.”¹⁰ Thus, the *Triennial Review Remand Order* does not foreclose the Commission from approving, in the course of the section 252 interconnection amendment arbitration process, contract language that provides both Verizon and Florida CLECs with the certainty that a wire center verification process overseen by the Commission would provide. In addition, the process set forth in the *Triennial Review Remand Order* and the interconnection agreement amendment proposed by XO reasonably provides the parties a mutual opportunity to analyze claims by Verizon that unbundled loops or dedicated transport facilities requested by a CLEC at a specified wire center or route location are no longer available under section 251(c)(3) of the 1996 Act.¹¹

The self-certification and dispute resolution process approved by the Commission does not, by itself, provide adequate regulatory certainty critical to the stability of CLECs’ business plans within Florida. Indeed, the possibility of future litigation initiated by Verizon, for the purpose of challenging a requesting carrier’s self-certified order for UNEs that Verizon claims no longer are available under section 251(c)(3) of the Act, threatens to consume substantial CLEC resources, as may be necessary to defend each such unbundling order, on a case-by-case basis. Moreover, in the event that Verizon prevails in challenging a self-certified CLEC order for “de-listed” UNE loops or UNE dedicated transport facilities, the requesting carrier will be subject to retroactive billing of higher wholesale rates. Therefore, in order to avoid the burden and expense of multiple, successor proceedings, the Commission must approve contract language that provides a process to permit the parties to verify Verizon’s initial designation of wire center and route locations that it claims exceed the thresholds set forth in the *Triennial Review Remand Order* as well as any subsequent modifications.

¹⁰ *Id.* (emphasis added).

¹¹ Proposed Amendment of the Competitive Carrier Group at § 3.10.

III. The Commission Should Reverse its Ruling That Requires Circuit-by-Circuit Re-Certification of All Pre-Triennial Review Order EELS (Issues 21 and 25)

Under the Arbitration Order, the Commission adopted contract language proposed by Verizon that requires Florida CLECs to re-certify that all currently provisioned EEL arrangements comply with the service eligibility criteria established by the FCC, and set forth in the FCC's unbundling rules at 47 C.F.R. § 51.318.¹² Consistent with the *Triennial Review Order*, the Commission should reconsider and reverse its decision to impose on Florida CLECs an obligation to submit to Verizon written re-certification of compliance for all embedded base EELs.

Under the *Triennial Review Order*, the FCC expressed no intent to limit the availability of EELs provided by the incumbent LECs, including Verizon, to requesting telecommunications carriers. To the contrary, the FCC's rule implementing the service eligibility criteria for high capacity EELs explicitly applies only on a prospective basis, where a requesting telecommunications carrier seeks access to network elements to "establish a new circuit or to convert an existing circuit from a service to unbundled network elements."¹³ Neither the *Triennial Review Order*, nor the FCC's unbundling rules promulgated thereunder, establish a "re-certification" process for EELs obtained by CLECs under the FCC's prior "safe harbor" rules that effectively would eliminate arrangements complying with the predecessor regulatory framework. The contract language proposed by Verizon, and approved in the Order, is inconsistent with the FCC's approach, and would impose on Florida CLECs additional burdens and expenses to re-certify existing EELs. Accordingly, the Commission must reverse the conclusion in the Arbitration Order to incorporate in the Amendment a requirement that Florida

¹² Arbitration Order at 111.

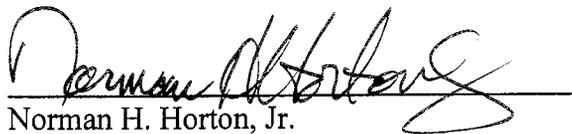
¹³ 47 C.F.R. 51.318(a) (emphasis added).

CLECs re-certify, on a circuit-by-circuit basis, that all currently provisioned EELs comply with the service eligibility criteria set forth in the FCC's unbundling rules, at 47 C.F.R. § 51.318.

CONCLUSION

For the reasons set forth herein, the Commission should grant this Motion for Reconsideration and Clarification, and adopt the relevant contract language proposed by XO Communications Services, Inc.

Respectfully submitted,



Norman H. Horton, Jr.
MESSER CAPARELLO & SELF, P.A.
215 South Monroe Street
Suite 701
Tallahassee, Florida 32302
(850) 222-0720 (telephone)
(850) 224-4351 (facsimile)

Genevieve Morelli
Brett Heather Freedson
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

Counsel to XO Communications Services, Inc.

Dated: December 20, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U.S. Mail on this 20th day of December, 2005.

Lee Fordham, Esq.
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Susan Masterton, Esq.
Sprint Communications Company Limited
Partnership
P.O. Box 2214
Tallahassee, Florida 32316-2214

Patricia S. Lee
Florida Public Service Commission
Division of Competitive Markets &
Enforcement
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

W. Scott McCollough
David Bolduc
Stumpf, Craddock Law Firm
1250 Capital of Texas Highway South
Building One, Suite 420
Austin, TX 78746

Richard A. Chapkis, Esq.
Verizon Florida Inc.
P.O. Box 110, FLTC0717
Tampa, FL 33601-0110

Michael C. Sloan, Esq.
Swidler Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007

Aaron M. Panner, Esq.
Scott H. Angstreich, Esq.
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036

Matthew Feil, Esq.
FDN Communications
2301 Lucien Way, Suite 200
Maitland, FL 32751

Eagle Telecommunications, Inc.
5020 Central Avenue
St. Petersburg, FL 33707-1942

Genevieve Morelli
Brett H. Freedson
Kelley Drye & Warren LLP
1200 19th St., NW, Suite 500
Washington, D.C. 20036

Mr. Michael E. Britt
LecStar Telecom, Inc.
4501 Circle 75 Parkway, Suite D-4200
Atlanta, GA 30339-3025

Floyd R. Self
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876

Donna McNulty, Esq.
MCI
1203 Governors Square Boulevard, Suite 201
Tallahassee, FL 32301-2960

Mr. Mark Hayes
ALEC, Inc.
250 West main Street, Suite 1920
Lexington, KY 45717

De O'Roark, Esq.
MCI
6 Concourse Parkway, Suite 600
Atlanta, GA 30328

Ms. Sonia Daniels
AT&T
1230 Peachstreet Street, #400
Atlanta, GA 30309

Ms. Martine Cadet
Myatel Corporation
P.O. Box 100106
Ft. Lauderdale, FL 33310-0106

Tracy Hatch
AT&T
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301

Mr. Larry Wright
American Dial Tone
2323 Curlew Road, Suite 7C
Dunedin, FL 34683-9332

Ms. Jean Cherubin
CHOICE ONE Telecom
1510 N.E. 162nd Street
North Miami Beach, FL 33162-4716

Mr. Charles E. Watkins
Covad Communications Company
1230 Peachtree Street, NE, Suite 1900
Atlanta, GA 30309-3578

Mr. Dennis Osborn
DayStar Communications
18215 Paulson Drive
Port Charlotte, FL 33954-1019

Marva Brown Johnson, Esq.
KMC
1755 North Brown Road
Lawrenceville, GA 30048-8119

Mr. Greg Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021-8869

Ms. Amy J. Topper
Local Line America, Inc.
520 South Main Street, Suite 2446
Akron, OH 44310-1087

Ms. Keiki Hendrix
NewSouth Communications Corp.
Two North Main Street
Greenville, SC 29601-2719

Saluda Networks Incorporated
782 N.W. 42nd Avenue, Suite 210
Miami, FL 33126-5546

Russel M. Blau
Swidler Berlin
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116

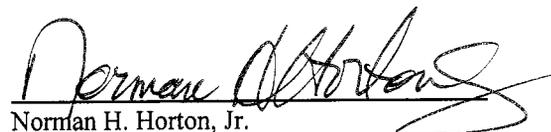
Tallahassee Telephone Exchange, Inc.
P.O. Box 11042
Tallahassee, FL 32302-3042

Ms. Carolyn Marek
Time Warner Telecom of Florida, L.P.
233 Bramerton Court
Franklin, TN 37069-4002

Mr. David Christian
Verizon Florida, Inc.
106 East College Avenue
Tallahassee, FL 32301-7748

Ms. Dana Shaffer
XO Florida, Inc.
105 Molloy Street, Suite 300
Nashville, TN 37201-2315

James C. Falvey, Esq.
Xspedius Management Co. of Jacksonville, LLC
14405 Laurel Place, Suite 200
Laurel, MD 20707


Norman H. Horton, Jr.