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July 26, 2006

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VIA HAND DELIVERY

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

Re: DOCKET NO. 060479-TP - PETITION BY VERIZON FLORIDA INC. FOR DISPUTE RESOLUTION WITH XO COMMUNICATIONS SERVICES, INC. CONCERNING NON-UNE TRANSPORT FACILITIES RETAINED AT UNE PRICES

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Dear Ms. Bayó:

Enclosed for filing, please find the original (*highlighted-confidential*) and 15 copies of XO Communications Services, Inc.'s (*redacted*) Answer to Verizon Florida Inc.'s Petition in this Docket, along with a redacted version in diskette. In addition, you will also find the original and 15 copies of XO's Claim of Confidentiality for certain information contained in its Answer with an attached confidential (*highlighted*) and public (*redacted*) version of the Answer. Service has been made as indicated on the service list.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

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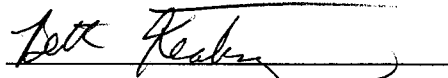
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FPSC-COMMISSION CLERK

Ms. Blanca S. Bayó, Director
July 26, 2006
Page 2

If you have any questions, please do not hesitate to contact me at (850) 521-8002.

Sincerely,



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Enclosures

REDACTED

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of: Petition by Verizon Florida)
Inc. for resolution of dispute with XO)
Communications Services, Inc. concerning)
non-UNE transport facilities retained at)
UNE prices.)

Docket No. 060479-TP
Filed: July 26, 2006

**XO COMMUNICATIONS, INC.'S ANSWER TO
VERIZON FLORIDA INC.'S PETITION FOR DISPUTE RESOLUTION
AND REQUEST FOR DOCKET CONSOLIDATION**

XO Communications, Inc. ("XO") hereby files, pursuant to Rule 28-106.203, Florida Administrative Code, its Answer to Verizon Florida Inc.'s ("Verizon") Petition for Dispute Resolution, as well as a Request for Docket Consolidation, and states the following:¹

GENERAL RESPONSE

By its Petition, Verizon brings to the Commission a limited aspect of the dispute XO has already brought to the Commission's attention by way of XO's Complaint filed with the Commission on May 1, 2006, in Docket No. 060365-TP. While XO is pleased to see that Verizon has now committed to having the Commission resolve some of the issues between the parties regarding Verizon's designations of non-impaired wire centers in Florida, XO believes that the scope of Verizon's Petition does not fully represent the dispute that the Commission should address.²

XO believes that a broader, over-arching issue exists that must also be addressed. Specifically, Verizon has misapplied the FCC's definition of the term "fiber-based collocators."

¹ XO does not respond to each one of Verizon's arguments regarding the TRRO or the ICA amendment. These documents speak for themselves and to the extent that there are disagreements regarding the appropriate interpretation of the TRRO or the ICA, these arguments are best addressed in legal briefs.

² As set forth at p. 15 of XO's Complaint in Docket No. 060365-TP, Verizon's delay in seeking dispute resolution for the wire centers that XO has disputed has caused XO to cease ordering in many wire centers that it would otherwise have continued to dispute.

Consequently, it has overstated the number of fiber-based collocators and, therefore, may have also overstated the number of wire centers in its Florida territory that meet the non-impairment standard. Furthermore, in spite of reasonable and diligent inquiry by XO, Verizon has failed to provide sufficient information to allow XO to sufficiently verify Verizon's designation of wire centers as non-impaired.

XO's concerns regarding the extent of Verizon's misapplication of the definition of "fiber-based collocators" have been fueled by recent decisions in other jurisdictions. For instance, on March 10, 2006, the New Hampshire Public Utilities Commission ("PUC")³ released its decision that investigated and rejected many aspects of Verizon's approach in applying the FCC's non-impairment threshold tests and the wire centers Verizon identified as satisfying those tests in New Hampshire. The New Hampshire PUC rejected Verizon's interpretation of the FCC's definition of a "fiber-based collocator" and found that "only fiber-optic cables, not fiber strands or lit fiber-optic facilities, should be counted as fiber-based collocators."⁴ Therefore, the New Hampshire PUC found that Verizon improperly counted CLECs that are collocated in a Verizon wire center as fiber-based collocators when they have individual fiber strands in a cable that had already been counted to qualify another CLEC as a fiber-based collocator.⁵ The New Hampshire PUC also rejected Verizon's attempt to count CLECs that obtain Verizon's Dedicated Cable Support (DCS) and Dedicated Transit Service (DTS) services as fiber-based collocators.⁶ It concluded that because these services facilitate connections between two collocation

³ *In the Matter of Wire Center Investigation, Revisions to Tariff 84—Order Classifying Wire Centers and Addressing Related Matters*, New Hampshire PUC Docket Nos. 05-083 and 06-012, Order No. 24,598 (N.H. P.U.C. Mar. 10, 2006) ("*NH Wire Center Investigation Decision*") (attached hereto as Exhibit 3 to the Petition).

⁴ *Id.*

⁵ *NH Wire Center Investigation Decision* at 37.

⁶ *NH Wire Center Investigation Decision* at 38.

arrangements and because any fiber-optic cable qualifying a CLEC as a fiber-based collocator must run from its termination in a collocation and exit the wire center, DCS or DTS arrangements do not count.⁷ In the final analysis, the New Hampshire PUC found that in order “to operate” a cable, a CLEC “must be able to control not only the lighting of the fiber within it, but a broader range of functions such as the placement, capacity and configuration of the cable itself.”⁸ At the end of the day, based on this analysis, the New Hampshire PUC rejected Verizon’s designations of certain wire centers as being “non-impaired.” In each state where Verizon operates as an ILEC, it is XO’s understanding that Verizon took the same approach that it did in New Hampshire in identifying fiber-based collocators and the wire centers Verizon claims satisfy the FCC’s non-impairment threshold tests for loops and transport. Because of this, the same problems that the New Hampshire PUC found with Verizon-New Hampshire’s approach almost certainly exist in Florida.

It is also XO's understanding that, in other states, Verizon has counted carriers that are merely cross-connected in a central office (CO) with another fiber-based collocator on Verizon's list as fiber-based collocators, even though the cross-connected carrier does not have fiber facilities that enter or leave the CO, and does not have a indefeasible right-of-use arrangement regarding the fiber facilities. In its September 20, 2005, decision on the issue, the Michigan Public Service Commission determined that this practice results in inappropriate double counting, and excluded those carriers from AT&T’s (formerly SBC) listing of fiber-based collocators. XO also understands that Verizon implements such policies throughout its

⁷ *NH Wire Center Investigation Decision* at 38.

⁸ *Id.* at 37.

territories.⁹ Consequently, based on the information available, XO believes that Verizon has implemented the same practice of double counting in Florida.

In addition, the Commission should confirm Verizon's business line count methodology. In its November 17, 2005 notice identifying additional non-impaired wire centers, Verizon did change the availability of loops at one wire center – *****– claiming that lines in that wire center had *dramatically* increased from December 2003 to December 2004. As a result, Verizon claims that CLECs are not impaired for DS3 UNE loops in this wire center.

In addition, Verizon has separately counted both XO and XO's wholly-owned affiliate, Allegiance Telecom, as fiber-based collocators, thereby overstating the number of fiber-based collocators.¹⁰ Under the FCC's definition of "fiber-based collocator," two or more affiliated fiber-based collocators in a single wire center collectively are to be counted as a *single* fiber-based collocator. If Verizon has made this error with respect to XO, XO believes Verizon may have done likewise with other affiliated companies collocating in the same wire center in Florida.¹¹ This may have an effect on Verizon's non-impaired wire center list, especially in combination with the improper counting of a collocator who merely cross-connects with a fiber-based collocator as the New Hampshire PUC held.

Compounding the problem has been the fact that XO is unable to obtain sufficient information from Verizon to enable XO, upon reasonable and diligent inquiry, to determine the extent to which Verizon's misapplication of the definition of "fiber-based" collocators has

⁹ *In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon*, MPSC Case No. U-14447, Order Sept. 20, 2005, attached hereto as Petition Exhibit 4.

¹⁰ XO took over management control of Allegiance in April 2004, and merged effective January 1, 2005, which was before Verizon issued its first wire center list.

¹¹ Based on the information provided thus far by Verizon, it appears that Verizon may have actually counted XO as a "fiber-based collocator" in two wire centers in Florida in which XO does not fit that definition.

impacted Verizon's designation of non-impaired wire centers in Florida. As already noted, XO believes that findings in other jurisdictions demonstrate that Verizon is misapplying the definition in all its territories; the question simply remains as to what extent that misapplication of the definition has impacted the number of wire centers designated as "non-impaired" in Florida.¹²

Although Verizon does provide some information regarding carriers in a wire center, it fails to provide information that would enable CLECs to determine whether the identified carriers are, indeed, fiber-based collocators in a particular wire center. Verizon claims the information is customer proprietary information, and will only provide the required level of detailed information that actually pertains to the requesting CLEC itself. The consequences for XO of this limited access to the necessary information has been that XO is unable to determine which wire centers are legitimately impaired; thus, XO generally has either not self-certified in wire centers it believes should not be on Verizon's list or has withdrawn self-certifications for such wire centers in order to avoid being forced to pay the much higher month-to-month special access rates retroactive to the date of its self-certification should it lose a wire center dispute before the Commission.

To this point, Verizon now indicates in its Petition that it is willing to provide the pertinent information to the Commission so that the Commission's staff can verify that the carriers identified as "fiber-based collocators" are, in fact, "fiber-based collocators." While XO believes that Verizon should, instead, implement a cooperative review process with the CLECs,

¹² Furthermore, Verizon's methodology, as set forth in Exhibit 19 to its Petition is woefully inadequate, and does not fully address the issue of what carriers Verizon counted as "fiber-based collocators."

as BellSouth has done,¹³ XO is amenable to having Commission staff review Verizon's information to determine whether Verizon's wire center designations are appropriate. The Commission should also require that Verizon properly apply the term "fiber-based collocators" when designating wire centers in order to avoid an ongoing need for the Commission to review any new designations by Verizon. In so doing, the Commission should require that Verizon not include carriers that are merely cross-connected with other "fiber-based collocators," or those that are merely connected to a competitive alternate transport terminal ("CATT") arrangement nor to double-count affiliated carriers.

In addition, in accordance with Section 3.9.2.1 of the parties' TRO Amendment, Verizon should be required to allow XO to continue to obtain embedded UNE facilities at UNE rates in those wire centers where XO has made the decision to self-certify impairment.¹⁴ As XO points out in its Complaint in Docket No. 060365-TP, Verizon can point to nothing in the TRRO that would indicate that the FCC would not permit CLECs to self-certify existing circuits by letter and new circuits through the ordering process. The orders for the existing circuits have already been submitted. Consequently, these circuits were appropriately self-certified via letter. For new orders, the self-certification is provided as part of the order. Thus, where XO has or does self-certify impairment, Verizon should be required "continue" to provide the embedded base at

¹³ In the nine (9) BellSouth states, BellSouth and a CLEC coalition have voluntarily established a process for the review of BellSouth's wire center classifications that is similar to XO's request. The process includes a method for ensuring protection of confidential matters under non-disclosure agreements and/or protective orders from the applicable state commission, a process not unlike other broad protective orders and confidential protections used in cooperative processes in Florida. XO disagrees with Verizon that the TRRO amendment sanctions Verizon's refusal to disclose the identities of the fiber-based collocators where, as here, a dispute has been brought to the Commission to resolve.

¹⁴ Contrary to XO's previous understanding, it appears, based on the analysis at page 3 of Verizon's Petition, that Verizon may now agree it must continue provide the embedded base of UNE circuits, in accordance with the parties' TRO Amendment, rather than require XO to place new orders for these circuits. Nevertheless, XO includes these arguments in its Answer in an abundance of caution and based upon its prior understanding of Verizon's position with regard to the embedded base UNE circuits.

UNE rates pending resolution of any dispute Verizon may have regarding XO's self-certification of impairment in the pertinent wire centers, in accordance with Section 3.9.2.1 of the parties' TRO Amendment.

Finally, with regard to Verizon's request to disconnect these circuits and for various true-ups at Verizon's month-to-month special access rates and the imposition of late payment penalties, XO responds that permitting Verizon to disconnect these circuits and thereby disrupt service is totally inappropriate and unnecessary. In addition, XO responds that a true-up is not appropriate unless and until the facts associated with these particular circuits are known. There are several reasons why the imposition of the rates and penalties that Verizon seeks would be inappropriate. For example, Verizon claims that it is entitled to a true-up and late penalties for circuits that XO did not convert as of March 11, 2006. XO disagrees with Verizon that the ICA provides for MTM rates in this situation. Also, some of these circuits were not converted because they were not on the list that Verizon provided to XO as the circuits that XO needed to convert. Subsequently, Verizon identified additional circuits that Verizon originally did not identify. Even if the ICA provides for a true-up for these circuits at MTM rates, which it does not, XO should not have to pay Verizon's MTM interstate special access rates, which are substantially higher than the rates XO receives under its discount plan with Verizon, or late fees because of Verizon's mistake.

In addition, if the Commission in any way finds fault with Verizon's methodology for determining wire centers that are not impaired, then imposing any financial penalties on XO would not be inappropriate. Thus, for example, if the Commission concludes that Verizon overstated fiber-based collocators by counting collocators that do not operate their own fiber, then XO should not have to pay penalties even if the specific wire centers that XO challenged

were not directly impacted by Verizon's erroneous methodology. Furthermore, to the extent, if any, that Verizon seeks true-up for any circuits that were out of wire centers that XO now disputes, XO emphasizes that true-up is not appropriate, according to 3.9.2.1 of the parties' TRO amendment, until the dispute now before the Commission is resolved.

SPECIFIC RESPONSE TO THE PETITION

XO does not dispute that it currently has *****out of Verizon wire centers that Verizon has designated as meeting the FCC's non-impairment criteria established in the *Triennial Review Remand Order*.¹⁵ XO does, however, dispute that these wire centers meet the FCC's non-impairment criteria.¹⁶

As for the specific wire centers in dispute, XO contends that there are actually *** in dispute:

While XO agrees that it is currently obtaining UNE circuits only out of the ***** wire centers identified by Verizon,¹⁷ XO continues to dispute *****.
These are wire centers identified by Verizon as *****. XO either had *****out of these wire centers, or included these wire centers in its near-term business plans for *****. XO has a specific business interest in ensuring that these wire centers are not improperly included on Verizon's list of non-impaired wire centers, and believes that these wire centers have been

¹⁵ *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket 04-313

¹⁶ In some instances, it is still unclear whether Verizon's records are in fact correct as to circuits ordered by XO. XO also disputes Verizon's claim that XO's March 3, 2006 letter indicates that XO was refusing to submit conversion orders for de-listed facilities. On the contrary, the letter states that XO was preparing a list of circuits to be converted in accordance with the TRRO.

¹⁷ XO does not dispute the fourth wire center identified by Verizon, but has circuits out of this wire center by virtue of the fact that it is the corresponding wire center for a circuit obtained out of a wire center that XO does dispute.

included on the non-impaired list improperly. XO has elected to disconnect circuits out of these wire centers and put on hold plans for new orders out of these wire centers pending further review by the Commission of the propriety of Verizon's designation of these wire centers as "non-impaired." XO has been forced to use this approach, rather than assume the risk of possible retroactive application of Verizon's tariffed month-to-month special access rates, because Verizon has refused to provide the specific information regarding Verizon's basis, or bases, for including these three wire centers on its list of "non-impaired" wire centers.

Nevertheless, these wire centers are disputed by XO. XO believes that there is sufficient evidence that Verizon is misapplying the term "fiber-based collocators," that it has done so in numerous states, that it continues to do so in numerous jurisdictions including Florida, and that it will continue to do so until otherwise instructed by the appropriate state commissions. Based on the limited information that XO has been able to obtain, the ***** wire centers identified here by XO are among those most likely negatively impacted by Verizon's misapplication of the term "fiber-based collocators." Specifically, XO is aware that Verizon has identified XO as a "fiber-based collocator" in one wire center in which XO is not a "fiber-based collocator."

Furthermore, as noted herein, Verizon indicates that it has not included *****in its petition for dispute resolution simply because XO has not yet ordered UNEs out of these wire centers. These wire centers must, nevertheless, be included in this dispute resolution process. Specifically, ¶ 234 of the TRRO, as implemented in Section 3.6.1.1 of the parties' TRO Amendment, requires that a CLEC must undertake a reasonably diligent inquiry before self-certifying and ordering UNE circuits in a wire center; XO is, however, unable to complete its reasonably diligent inquiry into these wire centers, because it is unable to access crucial information. To be clear, XO does have sufficient direct and

circumstantial evidence to cause it to believe that Verizon has improperly designated these wire centers as "non-impaired." Nevertheless, it is prohibited from actually placing orders in these wire centers by the substantial financial risk associated with ordering UNE circuits out of disputed wire centers based upon insufficient information regarding the carriers collocated in these wire centers and the number of business lines served.

Notably, in its Final Order in Verizon's TRO Arbitration proceeding, the Commission stated that it did not need to "conduct a proceeding to verify wire center designations until and unless a dispute is brought" before it.¹⁸ Now that a dispute is before the Commission, it is most appropriate and administratively efficient to address questions regarding all of the wire centers in dispute between these companies. It would simply not make sense for the Commission to address essentially the same dispute between these two parties over and over again for each wire center as XO implements its business plan for orders in the wire centers at issue. Thus, XO respectfully suggests that the disputed wire centers that should be addressed in this proceeding are actually: *****.

REQUEST FOR CONSOLIDATION

In the interest of administrative efficiency and the full and complete resolution of all the pending issues between XO and Verizon, which are quite clearly interrelated as set forth herein, XO respectfully requests that the Commission address Verizon's Petition in this Docket in conjunction with XO's Complaint in Docket No. 060365-TP through a consolidated proceeding. The issues and assertions raised in both Dockets are closely related, and some are, in fact,

¹⁸ Order No. PSC-05-1200-FOF-TP, issued in Docket No. 040156-TP, at p. 37.

identical. Resolution of all issues in one, unified proceeding will ensure that all wire center issues between these parties are addressed, that the Commission has the most complete record before it, and will significantly reduce any need for the parties to bring repetitive issues before the Commission within a short time frame.

CONCLUSION

In conclusion, XO respectfully requests: that the Commission proceed to address the parties' dispute regarding the disputed wire centers identified herein; that the process for verifying Verizon's wire center designations suggested by Verizon in its Petition be implemented expeditiously for all *** wire centers identified herein; that the Commission determine whether or not Verizon has properly applied the definition of "fiber-based collocators" and, if it is determined that Verizon has not, that the Commission require Verizon to revisit its list of non-impaired wire centers and revise the list in accordance with proper application of that definition. In addition, Verizon should be prohibited from implementing any true-up to special access

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pricing until the dispute resolution process has run its course. Finally, this Docket should be consolidated with Docket No. 060365-TP for resolution.

Respectfully submitted this 26th day of July, 2006.

XO COMMUNICATIONS SERVICES, INC.

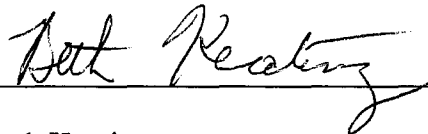

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail First Class this 26th day of July, 2006, to the persons listed below:

| | |
|---|--|
| Kimberly Caswell, Associate General Counsel Verizon Florida, Inc. P.O. Box 110, FLTC 0007 Tampa, FL 33601-0110 kimberly.caswell@verizon.com | Jason Fudge, Senior Attorney* Kira Scott, Senior Attorney* Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 jfudge@psc.state.fl.us kscott@psc.state.fl.us |
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