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May 17, 2004 – *VIA ELECTRONIC MAIL*

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

Re: Docket No. 030643-TP
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) Against Teleport Communications Group, Inc. and TCG South Florida For Review of Decision by the American Arbitration Association in Accordance with Attachment 1 Section 11.2(a) of Interconnection Agreement Between GTE Florida Inc. and TCG South Florida

Dear Ms. Bayo:

Enclosed is the Supplemental Brief of Verizon Florida Inc. for filing in the above matter. A diskette with a copy of the Brief in Word format will follow via overnight mail. 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 Chapkis

RAC:tas

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Supplemental Brief in Docket No. 030643-TP were sent via overnight delivery(*) and U.S. mail(**) on May 17, 2004 to:

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s/ Richard A. Chapkis

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	Docket No. 030643-TP Filed: May 17, 2004

SUPPLEMENTAL BRIEF OF VERIZON FLORIDA INC.

Pursuant to the Commission's order of May 3, 2004, Verizon Florida Inc. ("Verizon") hereby files its brief addressing two threshold issues in this proceeding. First, the Commission has jurisdiction, under section 364.162 of the Florida Statutes, to hear this matter. Second, under the circumstances presented here, the Commission must – and, in any event, should – exercise that jurisdiction.[1]

SUMMARY

The interconnection agreement at issue in this case contains a distinctive dispute resolution provision that requires the parties to follow a series of steps before submitting any dispute to this Commission for resolution. The last step in that private process is formal arbitration.

As a matter of state and federal law, where private parties agree to binding arbitration, the possible grounds for challenge to a private arbitration decision are narrow. *But the parties did not agree to final, binding arbitration here*. Rather, the parties specifically agreed that "[a] decision of the Arbitrator *shall not be final*" if "a Party appeals the decision to the [Florida

[1] Verizon will attempt to avoid repeating arguments already included in its original opposition to TCG's motion to dismiss, and incorporates that earlier pleading here by reference.

Public Service] Commission or FCC, and the matter is within the jurisdiction of the Commission or FCC, provided that the agency agrees to hear the matter." Section 11.2 (emphasis added). There can thus be no dispute that the parties agreed to submit disputes to this Commission – even after private arbitration. *The Commission approved that agreement as consistent with the public interest*, and it is therefore binding. 47 U.S.C. § 252(a)(1).

In its deliberations on TCG's motion to dismiss, the Commission has identified two threshold questions, reflecting the terms of the Agreement. As to the first – whether this is a "matter . . . within the jurisdiction of the Commission" – the Commission should hold that it has jurisdiction to hear this case. Under section 364.162, the Commission "shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions." Fla. Stat. Ann. § 364.162. There can be no doubt that this is a "dispute regarding interpretation of interconnection . . . terms and conditions."

The fact that the parties agreed to engage in private dispute resolution procedures before bringing the matter to the Commission does not mean that the Commission is stripped of jurisdiction. First, as noted above, the parties did *not* agree to be bound by private arbitration; instead, they agreed that either party would be able to appeal to this Commission. Thus any law or policy favoring finality for arbitration decisions *where parties have agreed to such final, binding arbitration* is inapposite here. Second, the fact that the parties have already engaged in discovery, that the arbitrator has issued a decision, and that the parties refer in their Agreement to this proceeding as an "appeal" does not mean that this Commission is acting as an "appellate" tribunal rather than as a tribunal of first instance. There has been no prior submission of this dispute to any governmental adjudicator. But even if the Commission were, in some sense, acting in an "appellate" capacity, this would not affect its jurisdiction under section 364.162.

This would still be a dispute over the interpretation of an interconnection agreement, and this Commission would still be called upon to "arbitrate" – *i.e.*, to decide – that dispute.

As to the second issue the Commission has identified, the Commission should not require any extraordinary showing before exercising the authority delegated to it by the legislature. As a matter of basic administrative law, when a dispute is brought before the Commission and it is within the Commission's adjudicatory jurisdiction, the Commission has an obligation to decide that matter. Even if the Commission's exercise of jurisdiction were discretionary, the Commission should not erect artificial hurdles in cases where parties have first resorted to private dispute resolution procedures, because the inevitable result would be that parties will be increasingly unwilling to agree to any such private procedures in the first instance. The parties expressly preserved a right to submit disputes to this Commission after private arbitration, and the Commission approved that arrangement. The Commission should honor, not frustrate, the parties' agreement and thereby encourage informal dispute resolution efforts.

Even if some additional showing were required before a case like this one could proceed, this case would merit a hearing. As this Commission has held, even in cases involving an *exclusive* arbitration clause – and this is not such a case – the Commission retains jurisdiction "over matters of public policy, or interpretation of, and compliance with, state or federal law." Order Granting Motion to Dismiss, *Request for arbitration concerning complaint of XO Florida, Inc. against Verizon Florida Inc.*, Order No. PSC-01-2509-FOF-TP, at 3 (Dec. 21, 2001) ("*XO Order*"). This case presents such issues. First, this Commission has determined as a matter of law that Virtual NXX traffic – *i.e.*, traffic that appears to be local because a CLEC has assigned a customer located in one calling area a telephone number associated with a different local calling area – is not local traffic subject to reciprocal compensation. The arbitrator reached a contrary

decision in violation of state law and policy. Second, the arbitrator interpreted this Commission's prior decisions as requiring payment of reciprocal compensation on Internet-bound traffic *even if* the parties had intended to exclude such traffic from the scope of their agreement. In both cases, correction of these errors is necessary to vindicate this Commission's prior orders and to avoid results that are contrary to the public interest.

The Commission should deny the motion to dismiss and direct the parties to brief the merits of Verizon's claims.

ARGUMENT

In its recommendation to this Commission, the staff proposed that TCG's motion to dismiss for lack of jurisdiction be denied. First, the staff examined the language of the parties' interconnection agreement, and determined that the agreement explicitly allows for Commission review, provided that the agency has jurisdiction and agrees to hear the matter. Second, the staff determined that the Commission has jurisdiction to hear this matter under section 364.162 of the Florida Statutes. The staff also noted that whether the Commission should "agree" to hear the matter was a matter "of first impression" on which the staff could make no recommendation without additional information.

Verizon respectfully submits that the staff's legal analysis regarding the scope of this Commission's jurisdiction is correct. None of the arguments that TCG raised at the agenda conference provide a basis for dismissal of Verizon's petition. Furthermore, Verizon submits that the Commission has no discretion as to whether to hear this case: when the legislature delegates adjudicatory authority to an administrative agency, the agency must exercise it when a party has properly invoked its jurisdiction. Even if the Commission had discretion about whether to exercise its jurisdiction, it should agree to hear this case.

I. THE COMMISSION HAS JURISDICTION OVER VERIZON'S PETITION PURSUANT TO THE TERMS OF THE AGREEMENT AND FLORIDA STATUTE

A. The Parties Agreed that an Arbitrator's Decision Would Be Subject to Commission Review

Verizon does not dispute that, in cases where parties agree to final, binding arbitration, the grounds for review of an arbitration decision are limited by both federal and state law. *See* 9 U.S.C. §§ 10, 11; Fla. Stat. Ann. §§ 682.13, 682.14, F.S. TCG does not argue, however, that the limitations on review contained in the Federal Arbitration Act and the Florida Arbitration Code apply here, and for good reason. The parties' Agreement specifically provides that arbitration of disputes arising under the Agreement is *not* necessarily final. Section 11.1 provides that "*Except as provided below*, the Arbitrator's decision and award shall be final and binding . . . ." Section 11.2 then provides:

> 11.2 A decision of the Arbitrator *shall not be final* [if] . . .
>
> a) a Party appeals the decision to the [Florida Public Service] Commission[2] or FCC, and the matter is within the jurisdiction of the Commission or FCC, provided that the agency agree to hear the matter . . . .

The parties thus explicitly agreed *not* to give up the right to seek adjudication by this Commission or the FCC of the parties' dispute. This agreement was reviewed and approved by the Commission as consistent with the public interest. *See* 47 U.S.C. § 252(e)(2).

The specific provisions of this agreement are critical because they distinguish this case from two other types of cases that the Commission might confront. This is not a case where one party is attempting to pursue litigation before this Commission *before* complying with the

[2] Under the Agreement, the "Commission" is defined as the Florida Public Service Commission. The Agreement thus specifically designates the appropriate forum for further litigation of any dispute.

alternative dispute resolution procedures set forth in a binding interconnection agreement. *Compare XO Order*. Nor is this a case where a party seeks to attack a final and binding arbitration decision. In those circumstances, this Commission has *no* jurisdiction.

Here, on the other hand, the parties *agreed* that an arbitration decision should not be final until the parties had an opportunity to pursue further proceedings before this Commission. The Agreement is clear on this point; indeed, TCG has never argued to the contrary. To be sure, the parties could not be certain that a Commission forum would be available, because at the time the Agreement was negotiated, it was far from clear that state commissions would have *any* authority to resolve disputes over interpretation of interconnection agreements. Likewise, the parties could not be certain whether the Commission would have any obligation to exercise authority. For example, if the Commission's authority to adjudicate this case arose entirely under federal law, the Commission could decline to exercise that authority. *See* 47 U.S.C. § 252(e)(5), (6). The Agreement recognizes those two hypothetical possibilities. But it places no conditions on the parties' right to *seek* a ruling from this Commission.

B. This Commission Has Statutory Jurisdiction Over this Case

Section 364.162 of the Florida Statutes provides that "[t]he Commission *shall have the authority* to arbitrate *any dispute regarding interpretation of interconnection or resale prices and terms and conditions.*" (Emphasis added.) This broadly worded and explicit delegation of authority to the Commission to decide "any dispute" over "interconnection . . . terms and conditions" plainly reaches a dispute over the proper interpretation and enforcement of a 1996 Act interconnection agreement. Indeed, this Commission has adjudicated many such cases in the

past.[3] Such authority is fully consistent with federal law. *See* Verizon Opposition to TCG Motion to Dismiss at 5-7.

It has been suggested that Section 364.162 does not provide the Commission with jurisdiction over this case because Verizon's petition constitutes an "appeal" and this Commission lacks "appellate" jurisdiction. Both the premise and the conclusion of this argument are incorrect. First, this action is not, technically speaking, an "appeal" in the legal sense. Black's Law Dictionary defines appeal as submission of a decision to a "higher authority" for review; *i.e.*, "submission of a lower court's or agency's decision to a higher court for review and possible reversal." Black's Law Dict. at 94 (7th ed. 1999). But, here, the Commission is the first public authority to hear this dispute. Although the parties have engaged in relatively extensive *private* proceedings, the Commission reviews the earlier private determination as a tribunal of first instance. Indeed, in any case where a party seeks review of a private arbitration decision – even a decision that, unlike this one, is final – such review is had by filing a civil action in a trial-level court, not by filing an appeal in a court of appeals.

It is also true that the parties referred to these Commission proceedings as an "appeal" in their agreement. Agreement § 11.2. This language indicates that the parties anticipated that any proceedings before this Commission would resemble an appeal, in that they would not involve any additional discovery, and the administrator's decision would be subject to review based on

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[3] *Request for arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for enforcement of interconnection agreements with BellSouth Telecommunications, Inc.*, Docket No. 020919-TP; Order No. PSC-03-1082-FOF-TP, 2003 Fla. PUC LEXIS 619, at *6 (Fla. PSC 2003) ("[§ 364.162] plainly authorizes us to resolve complaints regarding the interpretation of interconnection agreements, which is the case herein."); *Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc*., Docket No. 001305-TP, Order No. PSC-02-0413-FOF-TP, 2002 Fla. PUC LEXIS 232, at *32 (Fla. PSC 2002) ("The specific language says 'any' dispute.").

the record developed before the arbitrator. But such review is frequently the function of a tribunal of first instance – for example, decisions of this Commission under the 1996 Act are subject to review in federal *district* court; such review is initiated by filing a civil action pursuant to 47 U.S.C. § 252(e)(6), and the district court's review is restricted to the record before the state commission. *See*, *e.g.*, *AT&T Communications of the Southern States, Inc. v. GTE Florida, Inc.*, 123 F. Supp. 2d 1318, 1323-24, 1328 (N.D. Fla. 2000). The parties clearly intended to pursue a similar proceeding before this Commission to obtain expert review of a private arbitrator's decision.

In any event, even if Verizon's petition could properly be characterized as an "appeal," section 364.162 unambiguously authorizes this Commission to hear it. The terms of that provision are broad: it provides the Commission with unqualified "authority" to "arbitrate *any* dispute regarding interpretation of interconnection . . . terms and conditions." The "dispute" before the Commission unquestionably falls within that category. Indeed, this is so whether one considers the "dispute" to be a disagreement about what obligations the interconnection agreement imposes, or a challenge to the arbitrator's decision – because that decision is itself an "interpretation of interconnection . . . terms and conditions." In either case, this dispute lies at the heart of the subject matter that the legislature authorized this Commission to adjudicate. Moreover, by using the word "arbitrate" – a word that has no narrow technical definition but instead simply means to resolve a dispute – the legislature did not limit the Commission's role to any particular type of adjudication.

As this Commission has said, section 364.162 is "clearly an assignment of quasi-judicial authority by the state legislature," and it "does not limit or otherwise distinguish between our authority to resolve (1) disputes arising out of the initial establishment of an interconnection or

resale agreement and (2) disputes arising out of previously approved agreements." *Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes*, Docket No. 001097-TP; Order No. PSC-02-0484-FOF-TP, 2002 Fla. PUC LEXIS 275, at * 38 (Fla. PSC 2002) (citing *Florida Public Service Commission v. Bryson*, 569 So.2d 1253, 1255 (Fla. 1990) (PSC is authorized "to interpret statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly.")). Indeed, the Florida Supreme Court has said that "the PSC must be allowed to act when it has *at least a colorable claim* that the matter under consideration falls within its exclusive jurisdiction as defined by statute." *Bryson*, 569 So.2d at 1255 (emphasis added).

In sum, the parties explicitly agreed to submit disputes like this one to this Commission for adjudication, and the legislature explicitly delegated to this Commission authority to hear such disputes. The Commission therefore has jurisdiction over Verizon's petition.

II. THE COMMISSION SHOULD DECIDE VERIZON'S PETITION

A. The Commission Has an Obligation To Exercise Adjudicatory Authority Delegated by the Legislature

Although the parties' agreement refers to the possibility that the Commission might not "agree[]" to hear a matter like this one, the question whether the Commission has discretion to exercise jurisdiction granted by the legislature depends on state law governing the Commission's role, not the parties' agreement. And it is a basic principle of administrative law that when, as here, the legislature has delegated quasi-judicial authority to an administrative agency, the agency does not have discretion to decline to exercise that authority. *South Lake Worth Inlet Dist. v. Town of Ocean Ridge*, 633 So. 2d 79, 90 (Fla. Dist. Ct. App., 1994). There is no legal basis for the Commission to dismiss Verizon's petition.

The jurisdiction of this Commission is open to "any dispute regarding interpretation of interconnection or resale prices and terms and conditions." § 364.162. Because this constitutes a delegation of *quasi-judicial* authority, its exercise is not discretionary in cases that fall within its terms. As one appeals court stated in a comparable circumstance:

> When the legislature decides in an enactment to infuse an executive department with primary jurisdiction to regulate a specific subject, that represents a decision by our lawmakers that special expertise is required to resolve questions embraced by the subject . . . . It would effectively nullify our lawmakers' policy decision if the agency . . . could simply reject the statutorily imposed responsibility . . . .

South Lake Worth Inlet Dist. 633 So. 2d at 90. The same is true here: the statute delegates to the Commission the responsibility for deciding cases of this nature – no other state tribunal is available – as is proper given the Commission's relevant knowledge and expertise.

The principle that an administrative agency may not decline to exercise quasi-judicial authority – as opposed to rulemaking or enforcement authority – is well settled. In one case, the FCC declined to adjudicate a complaint on the basis that it presented issues that the agency intended to resolve in a rulemaking proceeding. The D.C. Circuit reversed the agency's decision, reasoning that agencies "cannot avoid their responsibilities in an adjudication properly before them." *AT&T v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992). The reason for this rule is plain: where a genuine controversy exists, as it does here, and where the tribunal invested with jurisdiction over it fails to exercise that jurisdiction, the aggrieved party may be deprived of all remedy. By way of analogy, the Supreme Court has spoken of "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Verizon is aware of no precedent that permits an agency to decline to adjudicate a claim that is properly before it. Accordingly, this Commission should require no special showing before proceeding to decide the merits of Verizon's claims.

B. If the Commission Has Discretion, It Should Agree To Hear this Case, Which Raises Substantial Issues of Law and Policy

Even if the Commission had discretion over whether to rule on Verizon's claims, it should exercise its jurisdiction in this case for two basic reasons. First, a failure to exercise jurisdiction here would discourage parties from engaging in private alternative dispute resolution in cases where they are unwilling to forgo entirely the possibility of Commission oversight. Second, even if the Commission could appropriately limit its review to cases raising "matters of public policy, or interpretation of, and compliance with, state or federal law" (Order No. PSC-01-2509-FOF-TP, at 3), this case raises such issues.

1. In suggesting that the Commission should decline to exercise its jurisdiction in this case to promote alternative dispute resolution, TCG has matters exactly backwards. The parties here agreed to go to great lengths to resolve disagreements over their obligations under the agreement through alternative dispute resolution procedures. But the parties did *not* agree to forgo decision-making by the Commission altogether. Instead, they agreed to submit disputes to a private arbitrator in the first instance and then to allow the losing party to seek Commission review. If the Commission restricts the parties' access to a Commission forum by erecting artificial barriers to a decision on the merits, the Commission will discourage, not encourage, alternative dispute resolution efforts. Here, if the parties had to choose between Commission adjudication in the first instance or private arbitration with no possibility of resort to the Commission, there can be little doubt that they would have chosen to proceed before the Commission.

Moreover, TCG is wrong to argue that further proceedings before the Commission would render the parties' private dispute resolution efforts superfluous, or that Verizon's pursuit of its claims amounts to "forum shopping." Verizon does not seek to take additional discovery or to

litigate new claims. By agreeing to preserve a right to "appeal" arbitration decisions to this Commission, the parties agreed that the Commission would perform a function similar to that of a judicial tribunal undertaking administrative review, with the added benefit of Commission subject-matter expertise. The parties engaged in extensive discovery before the arbitrator, and it is on the basis of this record that Verizon seeks to pursue its claim that the arbitrator committed legal error. And the only possible forum for Verizon's claim is this Commission (or, if the Commission declines to exercise its jurisdiction, the FCC). Verizon is pursuing its claims in precisely the manner that the parties agreed.

2. In the *XO Order*, this Commission determined that it would retain jurisdiction to hear disputes over interconnection agreements even where parties included a provision designating arbitration as the *exclusive* remedy for disputes. In such cases, the Commission retains jurisdiction "over matters of public policy, or interpretation of, and compliance with, state or federal law." *XO Order*, at 3. It would be inappropriate for the Commission to apply a similar screening test here, because the parties did *not* agree that private arbitration would be the exclusive remedy under the agreement; rather, they agreed to preserve a right to challenge any arbitration decision before this Commission. Nevertheless, even if there were a basis for screening out claims that did not raise substantial questions of law and policy, Verizon's claims could still proceed.

The decision below involved two distinct issues. First, TCG brought a claim seeking to recover reciprocal compensation for Internet-bound traffic originated by Verizon's customers and delivered to the Internet by ISPs served by TCG. Second, Verizon brought a counterclaim, alleging that, even if Internet-bound traffic were to be treated as conventional voice traffic under the Agreement, much of the traffic delivered to TCG was "Virtual NXX" traffic, that is, traffic

that TCG delivered to ISP customers located outside the calling party's local calling area, but rated as local to Verizon's retail customers because the telephone number that TCG assigned to its customer made the call "appear" as if it were local.

The arbitrator ruled against Verizon on both issues, and both issues call out for Commission review. Taking the Virtual NXX issue first, this Commission has *never* required payment of reciprocal compensation on traffic that originates in one local calling area and is delivered to a telephone subscriber located in another local calling area. To the contrary, this Commission has squarely ruled that "carriers shall not be obligated to pay reciprocal compensation for [VNXX] traffic." 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, Order No. PSC-02-1248-FOF-TP, (Sept. 10, 2002). Specifically, the Commission found that Virtual NXX traffic is not subject to reciprocal compensation because it is not local traffic, *i.e.*, it does not physically terminate in the same local calling area in which it originates. As the Commission explained in that order, "intercarrier compensation for calls to [VNXX] numbers shall be based upon the end points of the particular calls." *Id.* at 33. Because "calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation," the Florida PSC found that reciprocal compensation does not apply to such calls. *Id*.

The arbitrator ignored this definitive Commission ruling and instead relied on his purported personal knowledge of industry practice in ruling against Verizon – even though the arbitrator was a retired criminal court judge with no telecommunications industry experience. *See* Petition ¶¶ 26, 31. Most glaringly, the arbitrator ruled that, in 1996, it was "*well known*" that

"ISPs routinely provision dial-up internet service through FX and VFX telephone numbers and have done so as a *standard practice long before the TCG-Verizon interconnection Agreement went into effect*." Interim Decision[4] at 5 (emphasis added). As this Commission is well aware, this is simply false. Because the Arbitrator's decision conflicts with this Commission's decisions on point, and because payment of reciprocal compensation on Virtual NXX traffic is contrary to law and basic fairness, Commission review is critical.

Second, in making his determination concerning the application of the reciprocal compensation provisions, the Arbitrator relied on his understanding that this Commission's prior orders *require* payment of reciprocal compensation on Internet-bound traffic *even if* the parties clearly intended to exclude such traffic from the scope of their agreement. *See id.* at 4. But the Arbitrator misunderstood this Commission's view: indeed, the Commission has made clear that it is the intent of the contracting parties that governs.[5] Moreover, AT&T, at the time the original agreement was negotiated, had squarely argued that Internet-bound traffic is access traffic that should be treated like long-distance traffic, not local traffic, for purposes of compensation. The Arbitrator ignored this unrebutted evidence. This Commission is best situated to correct this error of law.

Accordingly, this decision is especially appropriate for the Commission's expert review, just as the parties intended.

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[4] Interim Award of Arbitrator, *TCG South Florida v. Verizon Florida Inc.*, No. 71 Y 181 00852 1 (AAA Dec. 30, 2002) ("Interim Decision") (attached to the Petition of Verizon Florida Inc. ("Petition") as Ex. P).

[5] *See*, *e.g.*, Order on Arbitration of Interconnection Agreement, *Request for Arbitration Concerning Complaint of Intermedia Communications, Inc. against GTE Florida Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and Request for Relief*, Order No. PSC-99-1477-FOF-TP, Docket No. 980986-TP, 99 FPSC at 7:379 (July 30, 1999).

CONCLUSION

The Commission should deny the motion to dismiss and direct the parties to brief the merits of Verizon's claims.

Respectfully submitted,

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