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March 8, 2005 – **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. 040156-TP  
Petition for Arbitration of Amendment to Interconnection Agreements With  
Certain Competitive Local Exchange Carriers and Commercial Mobile Radio  
Service Providers in Florida by Verizon Florida Inc.

Dear Ms. Bayo:

Enclosed for filing is Verizon Florida Inc.'s Response to Petitions for Intervention of XO Florida, Inc. and Allegiance Telecom of Florida, Inc.; Covad Communications Company; IDT America Corporation; and KMC Telecom in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at 813-483-1256.

Sincerely,

/s/ Richard A. Chapkis

Richard A. Chapkis

RAC:tas  
Enclosures

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to Petitions for Intervention of XO Florida, Inc. and Allegiance Telecom of Florida, Inc.; Covad Communications Company; IDT America Corporation; and KMC Telecom in Docket No. 040156-TP were sent via U. S. mail on March 8, 2005 to the parties on the attached list.

/s/ Richard A. Chapkis

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Verizon Florida for Arbitration ) Docket No. 040156-TP  
of Amendment to Interconnection Agreements ) Filed: March 8, 2005  
with Certain Competitive Local Exchange )  
Carriers and Commercial Mobile Radio )  
Service Providers in Florida by Verizon )  
Florida Inc. )  
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**VERIZON FLORIDA INC.'S RESPONSE TO PETITIONS FOR INTERVENTION OF  
XO FLORIDA, INC. AND ALLEGIANCE TELECOM OF FLORIDA, INC.;  
COVAD COMMUNICATIONS COMPANY; IDT AMERICA CORPORATION;  
AND KMC TELECOM**

On February 24, 2005, XO Florida, Inc. and Allegiance Telecom of Florida, Inc.; DIECA Communications Inc. d/b/a Covad Communications Company; and KMC Telecom II LLC, KMC Telecom V, Inc., and KMC Data LLC filed Petitions to Intervene in this arbitration. IDT America Corp. filed its Petition to Intervene on February 25, 2005. Verizon did not name these companies as parties in its September 9, 2004 Petition for Arbitration that is the basis for this proceeding. Each Petitioner argues that it is entitled to intervene because it “will lose any meaningful opportunity to exercise its rights under its Agreement with Verizon if the Commission does not permit immediate intervention in this docket.” (Covad Petition, at 3-4, 2, 5; XO/Allegiance Petition, at 2, 4, 5; IDT Petition at 2, 3-4, 5; KMC Petition, at 2-3, 4, 5.) The Petitioners have misunderstood the nature and purpose of this proceeding.

This docket concerns arbitration of a *new* amendment to implement findings in the *Triennial Review Order*<sup>1</sup> and *Triennial Review Order on Remand*.<sup>2</sup> It does not concern interpretation of *existing* interconnection agreements. All of the issues identified for resolution in this case address what provisions should be included in the new amendment. *None* of them ask the Commission to resolve any dispute about the interpretation of particular interconnection agreements. See Order Establishing Procedure, Order No. PSC-04-1236-PCO-TP, App. A.

Potential disagreements between Verizon and the Petitioners about the proper construction of their interconnection agreements do not affect Verizon's right, as the sole petitioner for arbitration, to designate the parties with which it wishes to arbitrate a *TRO* amendment. And Verizon's decision not to name the Petitioners as parties to this arbitration does not affect their rights under their interconnection agreements, including the opportunity to file a contract enforcement action in accordance with any applicable dispute resolution provisions in those agreements.

Other state commissions that have considered arguments like those the Petitioners make here for intervention have correctly ruled that the *TRO* arbitrations are not the appropriate place to entertain disputes about interpretation of interconnection agreements. In the analogous *TRO* arbitration in Vermont, the Commission held that the "purpose of this proceeding is to arbitrate proposed changes to interconnection agreements, not to interpret language in existing agreements to which no party seeks

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<sup>1</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*TRO*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied, NARUC v. United States Telecom Ass'n*, Nos. 04-12, 04-15 & 04-18 (U.S. Oct. 12, 2004).

<sup>2</sup> Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-290 (Feb. 4, 2005) ("*TRRO*").

changes.”<sup>3</sup> Likewise, an arbitrator with the Rhode Island Commission determined that “[r]egardless of who is correct on the merits, the purpose of this arbitration is not to interpret individual[] ICAs but to amend ICAs. This issue is not within the scope of this arbitration.”<sup>4</sup> And the New York Commission also held that Verizon’s arbitration petition “concerns proposed amendments to Verizon’s interconnection agreements,” not “whether Verizon has the right, under its current interconnection agreements, to cease providing unbundled network elements.”<sup>5</sup>

These other commission decisions are sensible, as well as legally correct. There is no need for the Commission to interpret any interconnection agreement at this time. Rather, the Commission should resolve disputes about the proper construction of specific interconnection agreement provisions only in the context of concrete, factual disputes brought by particular CLECs under the relevant dispute resolution provisions in their agreements.

The Commission has a longstanding policy against intervention in arbitration proceedings under section 252 of the Act.<sup>6</sup> It has repeatedly held that the possibility

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<sup>3</sup> *Order Re: Verizon Motion of Withdrawal, Petition of Verizon New England Inc. for Arbitration*, Docket No. 6932, at 4 (Vt. PSB Aug. 25, 2004) (“Vermont Order”) (Exhibit 1).

<sup>4</sup> Second Procedural Arbitration Decision, *Petition of Verizon-Rhode Island for Arbitration*, Docket No. 3588, at 5 (RI PUC Aug. 187, 2004) (Exhibit 2).

<sup>5</sup> Ruling Allowing Verizon to Withdraw Arbitration, *Petition of Verizon New York Inc. for Consolidated Arbitration*, Cases 04-C-0314, et al., at 6 (NY PSC Sept. 22, 2004) (Exhibit 3).

<sup>6</sup> See, e.g., *Complaint and/or Petition for Arbitration by Global NAPS, Inc. for Enforcement of Section VI(B) of its Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. PSC-99-2526-PCO-TP483 (1999) (“GNAPs Order”); *Complaint of WorldCom Technologies, Inc. Against BellSouth Telecomm., Inc. for Breach of Terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecomm. Act of 1996*, Order No. PSC-98-0642-PCO-TP (1998) (“WorldCom Order”); *Petition by Metropolitan Fiber Systems of Florida, Inc. for Arbitration with BellSouth Telecommunications, Inc. Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecomm. Act of 1996*, Order No. PSC-98-0007-PCO-TP (1998); *Petition for Approval of Interconnection Agreement Between BellSouth Telecommunications, Inc., and Time Warner AxS of Florida, L.P. and Digital Media Partners*, Order No. PSC-96-1092-PCO-TP (1996).

that an arbitration decision may affect the terms of other parties' interconnection agreements in the future is not enough to justify intervention.<sup>7</sup>

The Prehearing Officer did, nevertheless, relax this policy in this consolidated arbitration by permitting Sprint to intervene (Order Granting Intervention, Nov. 5, 2004 (without interpreting Sprint's interconnection agreement)). Petitioners, likewise, note that they may file their own arbitration petitions on the issues in this case and that the "interests of administrative economy" would be served by allowing their intervention. (Covad Petition, at 4; XO/Allegiance Petition at 4; IDT Petition, at 4; KMC Petition, at 4.)

Although Verizon opposes intervention on the basis that this *TRO* amendment arbitration may somehow affect Petitioners' existing contracts, Verizon would not oppose intervention on the basis of administrative efficiency, "to eliminate the need for the Commission to review numerous individual arbitration petitions as to similar interconnection agreement issues." *Id.*

Under Florida law, "[i]ntervenors take the case as they find it." Fla. Admin. Code ch. 25.-22.039. Therefore, if Petitioners are allowed to intervene, they cannot, in any event, raise new issues concerning interpretation of their interconnection agreements, but must confine their presentations to the issues already identified for resolution.

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<sup>7</sup> WorldCom Order, at 3; GNAPS Order, at 7.



Petitioners have, likewise, lost the opportunity to submit direct testimony, which was filed on February 25, 2005.

Respectfully submitted,

/s/ Richard A. Chapkis

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March 8, 2005