Leigh A. Hyer
Vice President-General Counsel, Southeast Region
Legal Department

FLTC0717
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-1256
Fax 813 204-8870
leigh.a.hyer@verizon.com

May 22, 2006 – **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. 060365-TP
Complaint and request for relief regarding Verizon Florida Inc.'s determination of non-impaired wire centers under the TRRO, by XO Communications Services, Inc.

Dear Ms. Bayo:

Enclosed for filing is Verizon Florida Inc.'s Motion to Dismiss XO Communications Services, Inc.'s Complaint and Request for Relief in the above docket. 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/ Leigh A. Hyer

Leigh A. Hyer

LAH:tas
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent via U.S. mail on May 22, 2006 to:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Beth Keating
Akerman Law Firm
106 East College Avenue, Suite 1200
Tallahassee, FL 32301

Kelly Faul
XO Communications Services, Inc.
11111 Sunset Hills Road
Reston, VA 20190-5339

Karen M. Potkul
XO Communications, Inc.
1601 Trapelo Road, Suite 397
Waltham, MA 02541

s/ Leigh A. Hyer

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request for relief regarding Verizon Florida Inc.'s determination of non-impaired wire centers under the TRRO, by XO Communications Services, Inc.	)))))	Docket No. 060365-TP Filed: May 22, 2006

VERIZON FLORIDA INC.'S MOTION TO DISMISS XO COMMUNICATIONS SERVICES, INC.'S COMPLAINT AND REQUEST FOR RELIEF

Verizon Florida Inc. ("Verizon") asks the Commission to dismiss the Complaint and Request for Relief Regarding Verizon's Determination of Non-Impaired Wire Centers Under the *TRRO* ("Complaint"), filed by XO Communications Services, Inc. ("XO") on May 1, 2006. XO has failed to properly allege that Verizon violated any statute enforced by the Commission or any Commission rule or order, as it must in order to initiate a complaint proceeding under Florida law. Fla. Admin. Code § 25-22.036(2) & 3(b). To the extent XO may be claiming that Verizon violated any provision in the parties' amended interconnection agreement ("Agreement"), then it must seek dispute resolution in accordance with the terms of that Agreement, which does *not* provide for enforcement through a Commission complaint.

XO's Complaint is also improper because it seeks to do just what the Commission has ruled, at least three times now, that XO cannot do—that is, initiate a generic investigation of all of Verizon's wire center designations. Under the *TRRO*,[1] the

[1] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 (Feb. 4, 2005) ("*TRRO*").

Commission's decision in Verizon's *TRO*[2]*/TRRO* arbitration and the associated Amendment, it is *Verizon* that must seek resolution of disputes about wire center designations, and that is exactly what Verizon is preparing to do. The Commission should reject XO's attempt to re-litigate issues already determined in Verizon's *TRO* arbitration, and to obtain relief directly contrary to the Commission's rulings and the contract language it approved there.

Although Verizon disagrees with XO's representation of the facts relating to the parties' disputes and its characterization of other state proceedings, a factual rebuttal would be outside the scope of a motion to dismiss. If, however, the Commission denies Verizon's Motion, Verizon will file an answer responding to the substance of XO's Complaint.

I. XO Failed to Satisfy the Requirements for Initiating a Complaint Proceeding under Rule 25-22.036.

Florida Administrative Code section 25-22.036, which governs the initiation of formal Commission proceedings, provides that: "A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order." F.A.C. §25-22.036(2). Among other things, a complaint must name "[t]he rule, order, or statute that

[2] 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).

has been violated" and "[t]he actions that constitute the violation." *Id.* § 25-22.036(3)(b)(1)&(2).

XO purports to have filed its Complaint under Rule 25-22.036(2). (Complaint at 1.) As the basis for its Complaint, XO alleges four "acts or omissions" by Verizon.

First, XO claims that Verizon "mis-applied" the *TRRO*'s certification and provision-then-dispute requirements. Complaint at 1-2 & § III.

Second, XO claims that Verizon overstated the number of fiber-based collocators in determining which wire centers meet the FCC's non-impairment tests for high-capacity facilities. *Id.* at 2 & § IV.

Third, XO claims that Verizon has not provided information that would allow XO to verify Verizon's designation of wire centers as non-impaired. *Id.* at 2, § V.

Fourth, XO claims that Verizon failed to properly implement the *TRRO*'s self-certification process. *Id.* at 2 & § VI.[3]

The introduction to XO's Complaint makes the vague, general claim that these "actions are in clear violation of the *TRRO* and the FCC's implementing rules, 47 C.F.R. §§ 51.319 *et seq*, as well as the Commission's intent as set forth [in] Order No. PSC-05-1200-FOF-TP," which is the Commission's Order resolving the issues in Verizon's *TRO* arbitration.[4] XO Complaint at 2. The Complaint sections discussing each of XO's allegations avoid claiming that Verizon violated anything, alleging only that Verizon "mis-applied" and "failed to properly implement" the self-certification and dispute

[3] All of XO's allegations are incorrect, but, as noted, a discussion of their lack of merit is beyond the scope of a motion to dismiss. Verizon will deny all of XO's claims if it is later required to file an answer to XO's Complaint.

[4] Order on Arbitration, Petition for Arbitration of Amendment to Interconnection Agreements, Order No. PSC-05-1200-FOF-TP, Docket No. 040156-TP (Dec. 5, 2005) ("*Arbitration Issues Order*").

process in *TRRO* paragraph 234 (Complaint at 6, 15), and acted "contrary to the FCC's intent" in that paragraph (*id.* at 15).

XO has not specified any violation of a Commission rule, Commission order, or Commission-enforced statute, as it must in order to bring a Complaint under rule 25-22.036. XO does not claim a violation of, or even mention, *any* statute, enforced by the Commission or not, nor does it mention *any* Commission rule. The only rules it cites are *the FCC's*, and even then, XO never specifies any provision Verizon allegedly violated, let alone how Verizon may have violated it. Rather, it refers to the entire body of the FCC's unbundling rules (47 C.F.R. § 51.319), along with unspecified rules after section 51.319 ("*et. seq.*"). Complaint at 2.

XO does mention the Commission's *Arbitration Issues Order*, but this is not sufficient to sustain its Complaint. First, XO does not explain how any alleged Verizon action might have violated the Order, as rule 25-22.036 requires. A vague claim that Verizon violated the Order's "intent" (Complaint at 2) plainly does not satisfy the requirement to plead a specific violation.

Second, and more fundamentally, XO ignores the fact that the rulings in the *Arbitration Issues Order* were implemented through the specific contract language the Commission prescribed in its *Conforming Language Order.*[5] This language is included in the parties' *TRO/TRRO* Amendment which was executed on March 15, 2006.[6] There are no inchoate obligations in the *Arbitration Issues Order* that exist apart from

---

[5] *See* Order on Arbitration, *Petition for Amendment to Interconnection Agreements*, Order No. PSC-06-0212-FOF-TP, Docket No. 040156-TP, at 1 (Mar. 15, 2006) ("*Conforming Language Order*") ("We adopt the amendment, identified as Attachment A to this Order, to implement our rulings in Order Nos. PSC-05-1200-FOF-TP and PSC-06-0078-FOF-TP....").

[6] Under the *Conforming Language Order*, the parties' Amendment took effect on March 11, 2006. Conforming Language Order, at 7; *see also* XO/Verizon Interconnection Agreement, Amendment 2, at 1.

the Amendment terms ordered in the *Conforming Language Order*. XO's attempt to convince the Commission to interpret the *Arbitration Issues Order* in ways that are contrary to the Amendment terms themselves is an impermissible attempt to re-litigate issues the Commission already resolved.

Because XO has failed to properly allege that Verizon violated any Commission rule, order, or Commission-enforced statute, its Complaint does not satisfy the standard in rule 22-22.036 and it must be dismissed.

II. The Commission Has Repeatedly Ruled that a CLEC Cannot Initiate a Generic Review of an ILEC's Wire Center Lists

The principal objective of XO's Complaint is to initiate a generic investigation of Verizon's wire center designations. XO asks the Commission to "require Verizon to revisit its wire center list" and "file all of its data...for each wire center that Verizon alleges is non-impaired for either high capacity loops and/or dedicated transport." Complaint at 19. XO claims that such a proceeding is necessary to verify that Verizon has not mis-counted fiber-based collocators for purposes of applying the FCC's non-impairment standards, and for XO to obtain information necessary to allow it to certify entitlement to order high-capacity facilities.

XO's request to start a proceeding to verify Verizon's wire center designations is the same request it and other CLECs have repeatedly made, and that the Commission has repeatedly denied. The Commission has made clear that carriers must instead follow the *TRRO*'s certification and dispute process, which, the Commission found, requires the *ILEC* to dispute CLEC certifications of *specific* facilities.

In the first quarter of last year, numerous CLECs (including XO) asked the Commission to stop BellSouth and Verizon from implementing the FCC's "no-new-adds" directives with respect to the elements "de-listed" in the *TRRO*. The Commission denied these requests, ruling that carriers must follow the *TRRO*'s certification and dispute resolution provisions:

> As for high capacity loops and dedicated transport, we find that a requesting CLEC shall self-certify its order for high-capacity loops or dedicated transport. Thereafter, the ILEC shall provision the high capacity loops or dedicated transport pursuant to the CLEC's certification. The ILEC may subsequently dispute whether the CLEC is entitled to such loop or transport, pursuant to the parties' existing dispute resolution provisions.[7]

XO and other CLECs, nevertheless, tried in Verizon's *TRO* arbitration to convince the Commission to allow CLECs to initiate wire center disputes and to establish generic reviews of Verizon's wire center designations. The Commission rejected the CLECs' requests, reminding them that it had already addressed the appropriate dispute resolution procedure in its *No-New-Adds Order*. It quoted the same passage from that *Order* that appears above, reiterating that "it is the ILEC who may dispute a CLEC's entitlement to an unbundled loop." *Arbitration Issues Order* at 27. The Commission emphasized that: "Nowhere in the TRRO does it imply or express that state commissions should conduct a proceeding to verify wire center designations until and unless a dispute is brought before them " *Id.* at 36.

On reconsideration, XO argued that the Commission has misread the *TRRO* and that it could establish a process to verify Verizon's non-impairment wire center

---

[7] *Emergency Petition of Ganoco Inc. d/b/a American Dial Tone, Inc. for a Commission Order Directing Verizon Florida Inc. To Continue to Accept New Unbundled Network Element Orders,* Order No. PSC-05-0492-FOF-TP, at 6 (Fl. PSC May 5, 2005) ("*No-New-Adds Order*").

designations, even in the absence of any dispute brought by the ILEC.[8] Again, the Commission disagreed, finding that XO had not identified any point of fact or law the Commission had failed to consider: "The second challenge in the XO Motion, the verification of 'non-impairment' wire center designations by Verizon, has been argued and rejected by the Commission earlier in these proceedings and need not be readdressed here."[9]

In accordance with these rulings, the Commission adopted *TRO* Amendment language specifying that *Verizon*, not the CLEC, must initiate any dispute resolution proceeding, by challenging a *specific* CLEC certification of entitlement to *particular* facilities: "*If Verizon wishes to challenge* [CLEC]'s right to obtain unbundled access to the subject element pursuant to 47 U.S.C. § 251(c)(3), Verizon must provision the subject element as a UNE and then seek resolution of the dispute by the Commission or the FCC, or through any dispute resolution process set forth in the Agreement that *Verizon elects to invoke* in the alternative." *Conforming Language Order*, Att. A, § 3.6.2.1 (emphasis added); *see also* XO/Verizon Amendment 2, § 3.6.2.1.

XO's Complaint must be dismissed because the wire center review it seeks is contrary to the terms of the parties' *TRO* Amendment, as well as Commission's repeated, unambiguous rulings that a CLEC cannot force an ILEC into a generic proceeding to investigate its non-impairment designations. Verizon will, in the manner required by the parties' Agreement, seek resolution of its disputes with XO about XO's

[8] XO Motion for Reconsideration and Clarification, Docket No. 040156-TP, at 3-5 (filed Dec. 20, 2005).

[9] Order Denying Motions for Reconsideration and Granting Clarification of Certain Portions of Order No. PSC-05-1200-FOF-TP, *Petition for Arbitration of Amendment to Interconnection Agreements by Verizon Florida Inc.*, Order No. PSC-06-0078, Docket No. 040156-TP, at 13 (Feb. 3, 2006).

specific orders of high-capacity facilities out of wire centers on Verizon's non-impaired list.

III. The Commission Has Already Interpreted the *TRRO* Paragraph 234 Procedures, as Reflected in Section 3.6 of the Amendment.

Paragraph 234 of the *TRRO* states that "to submit an order to obtain" high-capacity facilities, a CLEC "must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that...its request is consistent with the [TRRO's] requirements" for obtaining the facility. Upon receiving the CLEC's properly certified "request for access" to the facility, the ILEC "must immediately process the request." If the ILEC seeks to challenge the CLEC's certification of entitlement to the facility, it must do so "through the dispute resolution procedures provided for in its interconnection agreements. In other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority." *TRRO* ¶ 234 (footnotes omitted).

XO claims that Verizon has "mis-applied ¶ 234 by applying its certification and dispute process to only new orders." *See* Complaint at 5-7. Under XO's interpretation of ¶ 234, that process applies to XO's embedded base, as well. XO, therefore, contends that it certified its eligibility for its embedded high-capacity transport facilities just by having ordered them in the past,[10] so Verizon must keep providing such facilities indefinitely out of wire centers that are on Verizon's non-impaired list.

Again, XO ignores the definitive fact that the Commission already determined what ¶ 234 means and has approved specific terms reflecting the certification and

[10] See Complaint at 6 ("The orders for the existing circuits have already been submitted. Consequently, these circuits were appropriately self-certified via letter.")

dispute process in the contract. Those terms, in section 3.6 of the parties' *TRO* Amendment ("TRRO Certification and Dispute Process for High Capacity Loops and Transport") apply the FCC's certification and dispute process to only new orders for high-capacity facilities, not to already existing facilities in the embedded base. Section 3.6.1.1, for example, states that "*[b]efore* requesting unbundled access" to high-capacity loops or transport, a CLEC must "undertake a reasonably diligent inquiry and, *based on that inquiry*, certify that, to the best of its knowledge, [CLEC]'s request is consistent with the requirements of the TRRO." Section 3.6.1.3 recognizes that Verizon has modified its "electronic *ordering* system" to permit the certification required in section 3.6.1.1. Section 3.6.2.1 states that "[u]pon receiving a *request*" for unbundled access to high-capacity facilities, Verizon "shall not *delay processing*" because the facilities have been ordered out of offices on Verizon's non-impaired list. Rather, Verizon must "*provision* the subject element as a UNE and then seek resolution of the dispute." Section 3.6.2.3, however, allows Verizon to "*reject* a [CLEC]'s *order*" without first seeking dispute resolution if the "[CLEC's] *order*" conflicts with a non-impaired wire center designation confirmed by the Commission or the FCC.

These provisions clearly apply only to new orders, not to the embedded base. A CLEC cannot satisfy the reasonably diligent inquiry pre-condition *after* it has already obtained a facility; it cannot have certified its eligibility for UNEs under the *TRRO* before the *TRRO* even existed; it cannot "order" or "request" unbundled access to a facility it already has; and it would be impossible for an ILEC to "delay processing" of an existing facility.

In fact, section 3.6 of the approved Amendment explicitly provides that the certification and dispute provisions do *not* apply to embedded facilities. Sections 3.6.3.1 and 3.6.3.2 address potential additions to Verizon's non-impaired wire center list in the future. Section 3.6.3.2 specifies that "[f]or the avoidance of any doubt," the certification and provision-then-dispute obligations in the Amendment "shall apply as to any *new* requests" for high-capacity facilities affected by the additions to the wire center list. (Emphasis added.) In other words, even when embedded facilities are newly de-listed through additions to Verizon's non-impaired wire center list, the Amendment's certification and dispute obligations apply only to *new* requests for facilities out of those wire centers—and expressly *not* to the embedded base of facilities already provided out of the de-listed wire centers. The Amendment thus leaves no room for XO's theory that there is some constructive certification requirement that applies retroactively. If XO believes otherwise, then its recourse is a dispute resolution proceeding to enforce section 3.6 of the Amendment—not a complaint proceeding trying to bypass section 3.6 and re-litigate the meaning of *TRRO* paragraph 234.

XO cannot fool the Commission into believing that Verizon has adopted some renegade interpretation of paragraph 234 and unilaterally imposed it upon XO. Verizon is, instead, applying the certification and dispute provisions of the *TRRO* just as the Commission ordered it to, and just as the parties' *TRO* Amendment requires. *XO does not claim otherwise*. Indeed, XO is effectively accusing Verizon of complying with the certification and dispute terms in the parties' Amendment. Obviously, this is not a legitimate basis for a complaint.

XO had a full and fair opportunity to present its interpretation of paragraph 234 in Verizon's consolidated *TRO* arbitration and to propose Amendment language embodying that interpretation. It is too late now, after the parties have signed a *TRO* Amendment conforming to the Commission's Orders, to raise new theories to try to avoid the application of federal law.

XO's attempt to re-litigate the meaning of paragraph 234 is, in any event, pointless. The Commission need not accept XO's novel interpretation of paragraph 234 for Verizon to "continue to provide the embedded base at UNE rates pending resolution of any dispute Verizon may have" regarding the impairment status of particular wire centers, as XO requests. Complaint at 6-7. The Amendment already requires Verizon to continue providing embedded high-capacity facilities pending the resolution of disputes a CLEC raised about Verizon's non-impairment classifications of specific wire centers before the March 11, 2006 transition. This provision, however, is *not* part of the Amendment's section implementing the *TRRO*'s certification and dispute process. It appears instead in section 3.9, "Discontinuance of TRRO Embedded Base at the Close of Transition Period." Specifically, subsection 3.9.2.1 states that "if [CLEC] challenges Verizon's designation that certain loop and/or transport facilities are Discontinued Facilities, Verizon shall continue to provision the subject elements as UNEs, and then seek resolution of the dispute by the Commission or the FCC, or through any dispute resolution process set forth in the Agreement that Verizon elects to invoke in the alternative."

XO never mentions this provision, probably because it recognizes that *Verizon*, not the CLEC, must initiate dispute resolution and that *Verizon* has the right to choose

the forum. As noted, Verizon is preparing to initiate dispute resolution in accordance with the parties' contract, and will comply with section 3.9.2.1 to the extent XO disputed particular Verizon non-impairment designations before the transition deadline.

IV. XO's Claim that Verizon Misinterpreted the FCC's "Fiber-based Collocator" Definition Cannot Sustain Its Complaint.

XO recites the FCC's definition of "fiber-based collocator" and alleges that Verizon incorrectly interpreted and/or applied it in a way that led to over-counting of such collocators for purposes of applying the FCC's non-impairment tests. This is not a proper basis for a complaint.

XO again ignores the fact that the Commission ordered the parties to include a fiber-based collocator definition in their *TRO* Amendment—specifically, section 4.7.17. To the extent XO wishes to dispute Verizon's interpretation of that term, then it must file for dispute resolution using the procedures in the parties' interconnection agreement. Those procedures, which the parties agreed to use "as their sole remedy with respect to any controversy or claim arising out of or relating to the interpretation of this Agreement," prescribe commercial arbitration, not a Commission complaint.[11]

As noted, although XO's mis-counting allegations are incorrect, a factual rebuttal is beyond the scope of a motion to dismiss. Verizon will prove that its accounting of fiber-based collocators was correct when it initiates a proceeding to resolve its disputes with XO about particular wire center designations.

[11] *See* XO/Verizon Interconnection Agreement, § 14. 1.

V. XO Is Improperly Asking the Commission for Relief Contrary to the Contract Terms the Commission Ordered.

XO complains that Verizon's alleged refusal to give it identifying information about other CLEC collocators in a wire center prevents it from performing the reasonably diligent inquiry necessary to certify eligibility for high-capacity facilities: "If the data is not available because Verizon masks it on the grounds that it is confidential, a CLEC's ability to undertake a reasonably diligent inquiry is severely hampered." Complaint at 12. It asks the Commission to require Verizon to turn over all of its backup data, "which would include the names of each fiber-based collocators [sic] it has identified." Complaint at 19.

XO does not allege that Verizon's masking the identity of other fiber-based collocators violates any Commission rule, order, or statute. Nor could it make any such claim because Verizon is doing exactly what it is required to do under the parties' *TRO* Amendment. Section 3.6.1.2 of the Amendment, which XO ignores, states:

> The back-up data that Verizon provides to [CLEC] under a non-disclosure agreement pursuant to Section 3.6.1.1 above may include data regarding the number of Business Lines and fiber-based collocators at non-impaired Wire Centers; provided, however, that ***Verizon may mask the identity of fiber-based collocators*** in order to prevent disclosure to [CLEC] of other carriers' confidential or proprietary network information. Verizon will provide [CLEC] with a translation code in order for [CLEC] to identify its fiber-based collocation locations.
>
> (Emphasis added.)

The fact that a CLEC has installed fiber facilities at a particular wire center, of course, is proprietary to each CLEC, and each CLEC has been permitted to verify Verizon's counting of that CLEC at each wire center.

Again, XO is effectively accusing Verizon of complying with its contract, which is obviously not a basis for complaint. XO cannot challenge, by means of a complaint against Verizon, the Commission's decision not to require Verizon to disclose to XO the identity of other CLECs that operate fiber facilities at particular wire centers. Because the Commission has explicitly *permitted* Verizon to do the very thing XO is complaining about, XO's Complaint must be dismissed.

The Commission correctly found that there was no need to order Verizon to make its back-up information available, because it had already made such information available to CLECs who signed an appropriate non-disclosure agreement. *Arbitration Issues Order* at 35. But to the extent XO continues to claim the information Verizon has provided is insufficient, the Commission has already told XO what to do: "If, going forward, there are issues with information availability, the parties should follow *the dispute resolution provisions* in their agreements to resolve these issues." *Id.* at 35-36 (emphasis added). Indeed, XO's own Amendment and its testimony in Verizon's *TRO* arbitration recognized that dispute resolution in accordance with the parties' ICAs was the appropriate means of addressing disputes about Verizon's data supporting its non-impairment claims, specifically including disputes about Verizon's count of fiber-based collocators.[12] A Complaint—let alone a complaint that doesn't allege violation of anything--is not an appropriate procedural vehicle.

[12] *See* Direct Panel Testimony of the Competitive Carrier Group, Docket No. 040156-TP, at 17 (filed Feb. 25, 2005); CCG proposed Amendment, § 3.10.2, attached to CCG Panel Rebuttal Testimony (filed March 25, 2005)("CLEC may dispute Verizon's count of Business Lines or Fiber-based Collocators according to the dispute resolution procedures of [reference to ICA dispute resolution section].").

Verizon will, in any event, submit its back-up information when it files for dispute resolution, so the Commission will be able to verify that Verizon correctly applied the FCC's non-impairment criteria memorialized in the Amendment.

VI. A Complaint Is Not the Proper Means to Challenge Compliance with the Amendment Terms.

After ignoring directly relevant *TRO* Amendment terms for most of its Complaint, XO alleges in the last section that Verizon "failed to properly implement the self-certification process" in section 3.6.2 of the Amendment. Complaint at 15. As discussed earlier, XO is now claiming that the *TRRO*'s paragraph 234 certification and dispute process, reflected in Amendment section 3.6, applies to the embedded base, as well as to new orders. XO argues that Verizon is not complying with the requirement in section 3.6.2.1, which states that "[i]f Verizon wishes to challenge [XO's] right to obtain unbundled access to the subject element pursuant to 47 U.S.C., Verizon must provision the subject element as a UNE and then seek resolution of the dispute."[13] Complaint at 15. XO asks the Commission to "[r]equire Verizon to fully implement the provisions of Section 3.6.2.1 of the parties' amended interconnection agreement by bringing disputes regarding XO's self-certification in Florida wire centers to the Florida PSC's or FCC's immediate attention." Complaint at 19.

As Verizon explained, XO and Verizon differ as to the interpretation of section 3.6.2.1, because XO claims its certification and provision-then-dispute process applies

[13] Complaint at 15. XO claims that Verizon "is not providing UNEs in wire centers where XO has self-certified." Complaint at 15. This statement is false and XO should retract it. As XO knows, Verizon has not discontinued UNE pricing for any of XO's high-capacity facilities out of wire centers where XO has disputed Verizon's designation. Even if XO's false statement were true, however, it is not relevant to the Commission's disposition of this Motion to Dismiss.

to the embedded base. XO ignores the provision that *does* apply to the embedded base—that is, the above-discussed section 3.9.2.1, which requires Verizon to seek resolution of disputes about whether particular high-capacity loops and transport are "Discontinued Facilities" that must be converted to non-UNE alternatives.

In any event, if XO wishes to initiate a proceeding based on any alleged violation of section 3.6.2.1, it cannot do so by means of its Complaint. It must instead pursue a contract enforcement claim under the dispute resolution procedures in the parties' Agreement.[14] XO's Complaint must, therefore, be dismissed.

As Verizon has explained, it will file for resolution of its wire center disputes with XO under the appropriate provisions of the Amendment. Although these provisions prescribe no timeframe for filing such disputes, Verizon has every motivation to seek their prompt resolution, so that it may discontinue UNE pricing for XO's facilities that are no longer UNEs.

* * *

[14] If XO were to pursue such a claim in commercial arbitration, Verizon reserves any rights and arguments it may have as to whether XO's claim attempts improperly usurp Verizon's right to invoke the forum of its choice to resolve disputes regarding its non-impairment designations.

For all these reasons discussed in this Motion, Verizon asks the Commission to dismiss XO's Complaint.

Respectfully submitted on May 22, 2006.

By: s/ Leigh A. Hyer

Leigh A. Hyer
P. O. Box 110, FLTC0717
Tampa, FL 33601
(813) 483-1256
(813) 204-8870 (fax)

Attorney for Verizon Florida Inc.