BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint Seeking Order Requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to Continue to Honor Existing Interconnection Obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs)	)))))))	**Docket No. 040489-TP Filed: June 10, 2004**

VERIZON FLORIDA INC.'S REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER

Under Commission Rule 25-22.006, F.A.C., Verizon Florida Inc. (Verizon) seeks confidential classification and a protective order for certain information contained in the Company's Motion to Dismiss and Supporting Memorandum filed on June 10, 2004 in this proceeding.

All of the information for which Verizon seeks confidential treatment falls within Florida Statutes section 364.183(3), which defines "proprietary confidential business information" as:

> Information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Florida Statutes section 364.183(3)(a) expressly provide that "trade secrets" fall within the definition of "proprietary confidential business information." Florida Statutes section 364.183(3)(e), further provides that "proprietary confidential business information" includes "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information."

If competitors were able to acquire this detailed and sensitive information regarding Verizon, they could more easily develop entry and marketing strategies to

ensure success in competing with Verizon. This would afford them an unfair advantage while severely jeopardizing Verizon's competitive position. In a competitive business, any knowledge obtained about a competitor can be used to the detriment of the entity to which it pertains, often in ways that cannot be fully anticipated. This unfair advantage skews the operation of the market, to the ultimate detriment of the telecommunications consumer. Accordingly, Verizon respectfully requests that the Commission classify the identified information as confidential and enter an appropriate protective order.

While a ruling on this request is pending, Verizon understands that the information at issue is exempt from Florida Statutes section 119.07(1) and Staff will accord it the stringent protection from disclosure required by Rule 25-22.006(3)(d).

One highlighted copy of the confidential information (pages 3 and 8 of the Motion to Dismiss) is attached to the original of this Request as Exhibit A. Two redacted copies are attached as Exhibit B. A detailed justification of the confidentiality of the information at issue is attached as Exhibit C.

Respectfully submitted on June 10, 2004.

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customers. To the contrary, the Joint CLECs buy from Verizon ** ** UNE-P ** other UNEs that would be affected by the issuance of the D.C. Circuit's mandate. In any event, Verizon will not disconnect any CLEC's services as a result of issuance of the D.C. Circuit's mandate, unless, of course, the CLEC chooses that option.

4. *Third,* this Commission has no authority—under federal or state law—to modify the terms of binding agreements that allow Verizon to cease providing access to UNEs once its legal obligation to do so has been eliminated. Nor can the Commission purport to do so under the guise of "interpreting" the agreements.

5. *Fourth*, the Commission has no authority —under federal or state law — to require unbundling in the absence of a valid finding of impairment by the FCC that is consistent with federal law. **Unless and until the FCC makes such a finding,** Commission decision requiring unbundling let alone re-imposing the statewide unbundling requirements that the D.C. Circuit vacated would be contrary to federal law and preempted. The CLECs' baseless, alarmist claims that "the ILECs' intent to disrupt service is imminent" provide no justification for interfering with the orderly implementation of the *USTA II* mandate. The Commission should dismiss the Complaint (and refuse to consider it on an expedited basis).

II. THE COMPLAINT MUST BE DISMISSED BECAUSE IT DOES NOT ALLEGE ANY LEGAL VIOLATIONS AND IS BASED SOLELY ON UNFOUNDED SPECULATION.

6. The Joint CLECs state that their Complaint is filed pursuant to rules 25-22.036 and 28-106.201, Florida Administrative Code.[4] The Complaint, however, does not meet the requirements necessary to initiate an action under either provision (or, for

[4] Joint CLEC Complaint at 1

15. *Third*, the CLECs retain the option of increasing the extent to which they rely on their own or third-party facilities, instead of building their business cases solely on the repackaging of Verizon services.

16. Thus, any customers receiving service using the UNEs affected by the issuance of the D.C. Circuit's mandate could easily be transitioned to alternative, lawful arrangements, and any conceivable impact on the Joint CLECs' business would be *de minimis*. Indeed, it is demonstrably false that elimination of the affected UNEs will have "a devastating impact" on the Joint CLECs. ** ** purchases ** ** from Verizon today. In fact, the *only* UNEs XO takes from Verizon are ** **. And Allegiance serves customers mainly through ** ** which will not be affected by the issuance of the D.C. Circuit's mandate.

17. In sum, the service alternatives Verizon is making available, along with the generous notice periods, will ensure uninterrupted service to CLECs and their customers. *There is no emergency and no risk of imminent disruption* to any CLEC's customers when the mandate issues,[13] and the CLECs have not, in any event, alleged that Verizon is violating any interconnection agreements, laws, or regulations. The

[13] In any event, the CLECs should have planned for the eventuality that certain UNEs would be eliminated since the FCC first announced its Triennial Review decision over a year ago. The changes to the FCC's unbundling scheme were addressed in the February 2003 FCC press releases regarding its *Triennial Review Order*, and then made law when the Order was released on August 21, 2003. In addition, the D.C. Circuit's *USTA II* decision vacating the *TRO*'s requirements to unbundle mass-market switching and high capacity facilities was released three *months* ago, so parties that have declined to use the intervening stay to develop processes consistent with that decision have done so at their own peril. This is patently so, given that the *USTA II* holding, whose result was widely predicted even by lay analysts, *e.g.*, *"Court Should Clear UNE-P Mess, Favor RBOCs,"* Lehman Brothers Telecom Services Wireline Industry Update (January 12, 2004), was the third time federal appellate courts have rejected the FCC's UNE rules as inconsistent with the Act and unlawful.

EXHIBIT C

DOCUMENT	LINE(S)/COLUMN(S)	REASON
Verizon Florida Inc.'s Motion to Dismiss and Supporting Memorandum filed June 10, 2004	All highlighted text on pages 3 and 8	This is competitively sensitive, confidential and proprietary business information that has been confidentially maintained by Verizon. Disclosure of this information could harm the relevant CLECs by giving their competitors an unfair advantage in developing their own competitive strategies. It would be particularly unfair to disclose this information because similar information about competitive carriers is not made available to the public.