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January 6, 2003

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
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Tallahassee, FL 32399-0850

VIA HAND DELIVERY

RECEIVED-FPSC
03 JAN -6 PM 4:52
COMMISSION CLERK

Re: Docket No. 000075-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of AT&T Communications of the Southern States, LLC and TCG South Florida ("AT&T") are the original and fifteen copies of AT&T's Response to Verizon Florida, Inc.'s Motion for Reconsideration of Commission Vote for Procedural Impropriety.

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.

Sincerely,

Martin P. McDonnell

Martin P. McDonnell

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Enclosures

cc: All Parties of Record

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DOCUMENT NUMBER-DATE

00151 JAN-6 2

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to) Docket No. 000075-TP (Phase IIA)
compensate carriers for exchange of traffic subject)
to Section 251 of the Telecommunications Act of)
1996) Filed: January 6, 2003
_____)

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC,
AND TCG SOUTH FLORIDA'S RESPONSE TO VERIZON
FLORIDA, INC.'S MOTION FOR
RECONSIDERATION OF COMMISSION
VOTE FOR PROCEDURAL IMPROPRIETY**

Comes now AT&T Communications of the Southern States, LLC and TCG South Florida, (collectively "AT&T"), pursuant to Rule 25-22.060, Florida Administrative Code, by and through undersigned counsel, and hereby files its Response to Verizon Florida, Inc.'s Motion for Reconsideration of Commission Vote for Procedural Impropriety, and as grounds therefor states as follows:

1. On December 30, 2002, Verizon Florida, Inc. ("Verizon") filed a Motion for Reconsideration of Commission Vote for Procedural Impropriety (the "December 30 motion"). Verizon's December 30 motion is a successive motion in that it requests that the Commission reconsider an issue that it has already reconsidered in response to Verizon's previously filed Motion for Reconsideration. As such, pursuant to Rule 25-22.060, F.A.C., Verizon's December 30 motion should be summarily denied.

2. Alternatively, Verizon's December 30 motion should be summarily denied as there were no improprieties, procedural or otherwise, preceding this Commission's ruling at the December 17, 2002 Agenda Conference in the instant docket.

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00151 JAN-6 3

FPSC-COMMISSION CLERK

Verizon's December 30 Motion Should be Summarily Denied as it Requests
Reconsideration of a Ruling that the Commission
Rendered on a Previous Motion for Reconsideration

This Commission previously has disposed of Verizon's Motion for Reconsideration regarding the local calling area issue and thus pursuant to Rule 25-22.060, F.A.C. should not entertain Verizon's duplicative motion filed on December 30, 2002. Verizon's December 30 motion should therefore be denied.

3. Verizon's December 30 motion, on its face, violates Rule 25-22.060, F.A.C. regulating this Commission's authority to address motions for reconsideration. Rule 25-22.060(1), F.A.C. states, in pertinent part, as follows:

[A]ny party to a proceeding who was adversely affected by an order of the Commission may file a motion for reconsideration of that order.

Rule 25-22.060(1)(f), F.A.C. further states:

The Commission will not entertain any motion for reconsideration of any order which disposes of a motion for reconsideration.

4. Verizon previously filed a Motion for Reconsideration in the instant docket on September 25, 2002 (the "September 25 motion"). In Verizon's September 25 motion, Verizon recommended that the Commission reconsider its prior decision that the originating carrier's retail local calling area constitutes the default for determining reciprocal compensation obligations for traffic exchanged between local exchange carriers. In its September 25 motion, Verizon argued that the Commission should reconsider its decision because it is inconsistent with the Commission's ruling regarding "virtual NXX" and that the record does not support the Commission's ruling.

5. In Verizon's December 30 motion, Verizon asserts precisely the same arguments that it asserted in its September 25 motion. In fact, in the first paragraph of its December 30 motion, Verizon again asserts that the Commission should reconsider its ruling because it is inconsistent with the Commission's ruling regarding the 'virtual NXX' issue. And in paragraph 2, Verizon again asserts that "the record is not sufficient to support implementation of the Commission's decision..." Verizon's December 30 motion unabashedly and flagrantly violates Rule 25-22.060(1), F.A.C and should be summarily denied by the Commission. Rule 25-22.060, F.A.C. states that any party to a proceeding who was adversely affected by an order of the Commission "may file a motion for reconsideration of that order." Not only has Verizon previously filed a Motion for Reconsideration of this Commission's Order regarding the local calling area, Verizon, in both motions for reconsideration, asserted the exact same grounds for reconsideration. Rule 25-22.060(1)(f), F.A.C. states that "the Commission will not entertain any motion for reconsideration of an order which disposes of a motion for reconsideration." Verizon's December 30 motion should therefore be denied.

Verizon's Assertion That There was a Procedural
Impropriety Prior to the Commission Vote
at the December 17, 2002 Agenda Conference is
Erroneous and Should be Summarily Rejected

6. In Verizon's December 30 motion, in addition to raising and rearguing the same claims that it raised in its first September 25 motion (which the Commission rejected), Verizon asserts that the Commission erred by entertaining oral argument at the December 17, 2002 Agenda Conference because no party requested oral argument. Verizon thus asks the Commission to

“reconsider its vote on Issue 3 and to cure this procedural impropriety...” (December 30 motion, page 2).

7. The Commission engaged in no impropriety, procedural or otherwise, prior to ruling against Verizon at the agenda conference on December 17, 2002. It is completely and wholly within the Commission’s unbridled discretion to grant oral argument on any motion for reconsideration. In fact, as specifically stated in Rule 25-22.060(1), “oral argument on any pleading filed under this rule shall be granted solely at the discretion of the Commission.” Thus, the Commission has clear authority to entertain oral argument on any motion for reconsideration at its discretion. Verizon’s arguments to the contrary are without merit.

8. Verizon’s assertion in its December 30 motion that the Commission engaged in a “procedural impropriety” by entertaining oral argument on Issue 3 is specious for additional reasons. On November 22, 2002, Commission Staff issued its recommendation and Notice regarding Verizon’s September 25 Motion for Reconsideration of Issue 3. In the Notice, Staff stated:

oral argument has been requested on Issues 1 and 2 only but may be entertained on Issues 1-4 at the Commission’s discretion pursuant to Rule 25-22.060(1)(f), F.A.C.

Although Verizon thus had constructive notice pursuant to Rule 25-22.060(1)(f), F.A.C., and was in fact given actual notice by Commission Staff that oral argument may be entertained on its motion for reconsideration Verizon inexplicably failed to appear at the hearing.¹ Verizon’s unexcused

¹In fact, eleven days before Verizon failed to appear to argue its motion for reconsideration in the instant docket, this Commission noted Verizon’s failure to appear in an unrelated docket. See, Order No. PSC-02-1705-FOF-TP issued December 6, 2002 in Docket No. 021006-TP, “[I]n this docket, Verizon, the moving party on a motion to dismiss, did not find it necessary to have a representative present at the agenda conference to address the Commissioners’ concerns.” (See Palecki dissent, page 8).

absence from the December 17, 2002 agenda conference wherein this Commission considered Verizon's *own* motion for reconsideration should not form the basis for a second Motion for Reconsideration or a second oral argument.

9. In its December 30 motion, Verizon erroneously argues that Rules 25-22.0021 and 25-22.058, F.A.C. preclude this Commission from entertaining oral argument regarding Verizon's September 25 Motion for Reconsideration. As stated above, the Commission's authority to entertain oral argument regarding a motion for reconsideration is specifically granted in Rule 25-22.060(1).

10. Additionally, even if there was a valid procedural rule precluding this Commission from entertaining oral argument regarding a motion for reconsideration, it is axiomatic that the Commission can waive such a procedural rule. It has been the law in Florida for over 25 years that Florida Public Service Commission Orders will not be overturned merely because the Commission failed to comply with its own rules. See, United Telephone Company of Florida v. Mayo, 345 So.2d 648 (Fla. 1977) ("United Telephone").

11. In fact, over 30 years ago, the United States Supreme Court articulated the general rule that administrative agencies may modify their procedural rules:

[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. The action of either in such a case is not reviewable except upon a showing of substantial prejudice to the complaining party.

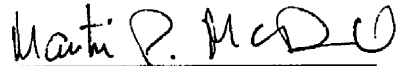
American Farm Lines v. Black Ball Freight, 397 U.S. 532 (1970) ("American Farm Lines"), citing NLRB v. Monsanto Chemical Company, 205 F.2d 763, 764. Pursuant to United Telephone and

American Farm Lines, it is well settled law that the Commission has the authority to waive a procedural rule when it deems appropriate.

CONCLUSION

Based upon the foregoing reasons, AT&T respectfully requests that this Commission deny Verizon's Motion for Reconsideration of Commission Vote for Procedural Impropriety, and reserve jurisdiction of the matter pending the filing of AT&T's request for attorney's fees pursuant to Section 120.569, Florida Statutes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 6 day of January, 2003:

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