

Larry D. Callison
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September 15, 2000

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602

00184-AI

RECEIVED

SEP 15 2000

PUBLIC SERVICE
COMMISSION

RE: 252(i) Adoption Letter Between Verizon South and Tempest Communications Company

Dear Mr. Dorman:

Enclosed for joint filing by the parties with the Kentucky Public Service Commission (Commission) are six copies of an executed 252(i) Adoption Letter recently executed between Verizon South (formerly GTE South Incorporated) and Tempest Communications Company ("Tempest"), adopting the terms of the arbitrated Interconnection, Resale, and Unbundling agreement between AT&T Communications of the South Central States, Inc., and Verizon South. That agreement was approved by the Commission in Case Number 96-478.

Also enclosed is an electronic copy of the Adoption Letter in Microsoft Word 97 format on a 3.5 floppy diskette.

Please bring this filing to the attention of the Commission, and if there are any questions, please contact me at your convenience.

Yours truly,

A handwritten signature in black ink that reads "Larry D. Callison".

Larry D. Callison

Enclosures

c: Mr. Sean T. Hamada – Tempest Communications Company

Steven J. Pitterlle
Director - Negotiations
Wholesale Network Services



Wholesale Network Services
600 Hidden Ridge HQE03B67
P.O. Box 152092
Irving, Texas 75038

Phone 972-718-1333
Fax 972-718-1279
steve.pitterlle@verizon.com

August 15, 2000

Sean T. Hamada, Esq.
President
Tempest Communications Company, LLC
4525 Production Drive
Dallas, TX 75235

Dear Mr. Hamada:

Verizon South Inc. f/k/a GTE South Incorporated ("Verizon") has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Tempest Communications Company ("Tempest") wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T Communications of the South Central States, Inc. ("AT&T") and GTE that was approved by the Commission as an effective agreement in the State of Kentucky in Docket No. 96-478 (the "Terms")¹. I understand you have a copy of the Terms. Please note the following with respect to your adoption of the Terms.

1. By your countersignature on this letter, you hereby represent and commit to the following three points:
 - (A) Tempest adopts the Terms of the AT&T arbitrated agreement for interconnection with Verizon and in applying the Terms, agrees that Tempest Communications Company shall be substituted in place of AT&T Communications of the South Central States, Inc. in the Terms wherever appropriate.
 - (B) Tempest requests that notice to Tempest as may be required under the Terms shall be provided as follows:

To: Tempest Communications Company
Attention: Sean T. Hamada, Esq. - President
4525 Production Drive
Dallas, TX 75235
TEL: 214/637-8887
FAX: 214/638-8887

¹ These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect then-effective FCC rules and other applicable law.


- (C) Tempest represents and warrants that it is a certified provider of local telecommunications service in the State of Kentucky, and that its adoption of the Terms will cover services in the State of Kentucky only.
- 2. Tempest's adoption of the AT&T arbitrated Terms shall become effective upon Verizon's filing of this letter with the Kentucky Public Service Commission and remain in effect no longer than the date the AT&T arbitrated Terms are terminated. The AT&T arbitrated agreement is currently scheduled to expire on August 9, 2002.
- 3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of its position as to the illegality or unreasonableness of the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 96-478, or to seek review in any way of any provisions included in these Terms as a result of Tempest's 252(i) election.
- 4. On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by either Verizon or Tempest that any contractual provision required by the Commission in Docket No. 96-478 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both Verizon and Tempest expressly reserve their full right to assert and pursue claims arising from or related to the Terms.
- 5. Verizon reserves the right to deny Tempest's adoption and/or application of the Terms, in whole or in part, at any time:
 - (a) when the costs of providing the Terms to Tempest are greater than the costs of providing it to AT&T;

- (b) if the provision of the Terms to Tempest is not technically feasible; and/or
 - (c) to the extent Tempest already has an existing interconnection agreement (or existing 252(i) adoption) with Verizon and the Terms were approved before the date of approval of the existing interconnection agreement (or the effective date of the existing 252(i) adoption).
6. As noted above, pursuant to Rule 809, the FCC gave ILECs the ability to deny 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. Verizon never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based. With this in mind, Verizon opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Terms that might be interpreted to characterize traffic destined for Internet as local traffic or requiring the payment of reciprocal compensation.
7. Should Tempest attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

Please sign this letter on the space provided below and return it to the undersigned.

Sincerely,

Verizon South Inc. f/k/a GTE South Incorporated



Steven J. Piferle
Director - Negotiations
Wholesale Network Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

Tempest Communications Company


(SIGNATURE)

SEAN T. HAMADA
(PRINT NAME)

c: Nick Schmidt - Verizon