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VIA OVERNIGHT MAIL

March 16, 2004

Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-8002

RECEIVED
RECORDS MANAGEMENT
04 MAR 17 AM 9:30
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Washington Docket No. UT-043013

Dear Ms. Washburn:

Enclosed, please find Motion to Dismiss of Sprint in the above referenced docket.

If you have any questions, please do not hesitate to contact me at 541.387.9439.

Sincerely,

William E. Hendricks, III

WEH/sm
Enclosure
c. service list

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for
Arbitration of an Amendment to
Interconnection Agreements of

VERIZON NORTHWEST INC.

with

COMPETITIVE LOCAL EXCHANGE
CARRIERS AND COMMERCIAL
MOBILE RADIO SERVICE PROVIDERS
IN WASHINGTON

Pursuant to 47 U.S.C. Section 252(b), and
the *Triennial Review Order*.

DOCKET NO. UT-043013

MOTION TO DISMISS OF
SPRINT COMMUNICATIONS
COMPANY L.P.

RECEIVED
RECORDS MANAGEMENT UNIT
04 MAR 17 AM 9:30
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

MOTION TO DISMISS OF
SPRINT COMMUNICATIONS COMPANY L.P.

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March 16, 2004

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I. REQUEST FOR RELIEF

1 Sprint Communications Company L.P. ("Sprint") hereby files this motion to dismiss the Petition of Verizon Northwest Inc. ("Verizon") for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers ("Petition"). Verizon has failed to negotiate in good faith with Sprint, as required by Telecommunications Act of 1996 (the "Act"). In addition, Verizon's Petition does not meet the requirements set forth in the rules of Washington Utilities and Transportation Commission ("Commission"), the FCC's rules and orders, and the Act. Sprint therefore asks the Commission to dismiss the Petition and order Verizon to negotiate with Sprint in good faith toward a mutually acceptable amendment to the existing interconnection agreement.

II. INTRODUCTION

2 Verizon's Petition asks the Commission to initiate an unprecedented consolidated arbitration proceeding, in which Verizon would have the Commission generically amend interconnection agreements between Verizon and a litany of competitive local exchange carriers ("CLECs") and, to the extent that their current interconnection agreements provide for access to unbundled network elements ("UNEs"), certain Commercial Mobile Radio Service ("CMRS") providers in Washington. Verizon erroneously relies on the *Triennial Review Order*¹ and the Act to support its unprecedented, unlawful and procedurally defective Petition.

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section, 751 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), *reversed in part and remanded, United States Telecom Ass'n v. FCC*, Nos. 00-1012, 00-1015, 03-1310 *et al.* (D.C. Cir).

III. STATEMENT OF FACTS

3 On October 2, 2003, Sprint received e-mail notification directing it to Verizon's website, where Sprint found Verizon's proposed TRO amendment.² In less than one month, on October 29, 2003, Sprint responded to Verizon's proposal by e-mail,³ in which Sprint provided a redlined counter-proposal to Verizon's draft.⁴ Verizon, however, failed to reciprocate Sprint's prompt response. In fact, throughout the course of the negotiation time frame Verizon exhibited little if any interest in engaging in meaningful, good faith negotiations. Rather, Verizon gave every indication that it wished to delay individual negotiations so that it could, in one fell swoop, obtain amendments to all of its agreements with CLECs through the arbitration process. Verizon has yet to accept or reject any of the changes Sprint proposed in its October 29 e-mail.

4 Likewise, Sprint did not receive prior notice of Verizon's intent to file this Petition.⁵ This is contrary to Sprint's prior experience negotiating interconnection agreements with other ILECs. In fact, Verizon notified Sprint of its intent to file the Petition *after* it was filed in this and fourteen (14) other states.⁶ This appears to be nothing more than an attempt by Verizon to impose its interconnection terms on all CLECs without engaging in meaningful negotiations.

² See Attachment 2, Affidavit of John S. Weyforth, at ¶ 4. Mr. Weyforth's affidavit also sets forth the chronology of the responses from Verizon in attempting to negotiate issues, up to the point that Verizon filed the Petition. The Affidavit evidences that Verizon purposefully avoided any meaningful discussion with Sprint to resolve the outstanding issues.

³ Attachment 2, at p. 5.

⁴ See Exhibit 1 to Attachment 2. Sprint sent by e-mail a redlined version of the draft amendment from Ms. Shelley Jones, a Sprint employee, to Mr. Stephen Hughes at Verizon.⁴ Mr. Hughes was one of the Verizon designated negotiators. This email and the redlined draft set forth Sprint's proposed changes to the draft agreement. It also sets forth Sprint's desire to resolve in an expeditious fashion the outstanding issues that Sprint addressed in its response to Verizon's TRO amendment.

⁵ Id.

⁶ Id., at pp. 4-5.

5 Moreover, Verizon inappropriately seeks to join all CLECs in the same arbitration proceedings, even though the facts underlying each case differ. Verizon notes that “some CLECs have signed Verizon’s draft amendment, without substantive changes”.⁷ Verizon goes on to assert that “virtually none provided a timely response” to Verizon’s notice and draft amendment. This statement is not accurate. Sprint did provide a timely response to Verizon which Verizon chose to ignore. In addition to misstating the facts, these statements lead to the logical conclusion that the only amendments Verizon considered were those “without substantive changes.”

6 Verizon notified Sprint that it will be filing similar petitions in all of the jurisdictions in which it serves, which will potentially result in thirty-two (32) total arbitrations in thirty (30) states.⁸ Although Verizon may have sufficient resources to undertake simultaneous arbitrations in thirty (30) jurisdictions, it is shocking that Verizon has failed to reach an agreement with virtually every CLEC and in every state in which it conducts business. This result, which the Act clearly seeks to avoid, will be a burden on the resources of CLECs, including Sprint.

7 Because Sprint did not anticipate the filing of this Petition, Sprint will likely need additional time to thoroughly respond to the contract provisions and terms proposed by Verizon in its TRO amendment. Sprint also will require additional time to respond to the substance of the justification set forth by Verizon in the body of the Petition in support of its proposed amendment. Further, deficiencies in Verizon’s Petition, which are addressed later in this Motion, make it difficult for Sprint to respond to the Petition as if it were properly filed. Therefore, if the Commission decides to grant Verizon’s

⁷ Petition, at pp. 3-4.

⁸ Id. Verizon provides service in thirty (30) states but the former GTE properties overlap the former Bell Atlantic properties in two states.

unprecedented request, Sprint does not waive the right to amend this Motion or file additional comments.⁹

IV. ARGUMENT

A. VERIZON HAS FAILED TO NEGOTIATE IN GOOD FAITH AND ITS PETITION SHOULD BE DISMISSED WITH RESPECT TO SPRINT

8 The Act requires parties to negotiate in good faith.¹⁰ Section 51.301(c)(7) of the FCC's rules provides that it is a breach of the good faith requirement to refuse "throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues."¹¹ Likewise, the Commission has interpreted "47 USC §§ 252(c)(1) and 252(b)(5) as creating a general duty to negotiate in good faith which applies during the negotiation, mediation, arbitration and approval processes discussed in this statement."¹²

9 In addition, the Commission has specifically held that a failure to respond to attempted negotiations constitutes a failure to negotiate in good faith, pursuant to the Act.¹³ In a complaint before the Commission by WorldCom against Verizon (then known as GTE), Verizon filed a counterclaim which alleged that WorldCom had failed to negotiate in good faith by not providing requested draft issues and by providing an inadequate response to a Verizon inquiry about the status of the negotiations.¹⁴ The

⁹ Sprint's comments likewise do not address the effects of the decision by the United States Court of Appeals for the District of Columbia in *United States Telecom Ass'n v. FCC*, Nos. 00-1012, 00-1015, 03-1310 *et al.*, which was issued on March 2, 2004. In the limited time Sprint has had to respond, and because of the complexity of the issues involved it was not possible to provide a thorough review the Court's decision.

¹⁰ 47 U.S.C. § 252(b)(5).

¹¹ 47 C.F.R. § 51.301(c)(7).

¹² *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Interpretive and Policy Statement, Docket No. UT-960269.

¹³ *WorldCom, Inc., f/k/a MFS Intelenet of Washington, Inc. v. GTE Northwest Inc.*, Third Supplemental Order, Docket No. UT-980338 (May 12, 1999).

¹⁴ *Id.*, at p. 24.

Commission found that both parties' lack of diligence in the negotiations constituted a violation of their duty to negotiate in good faith. While this decision was not in the context of a motion to dismiss, it demonstrates that the Commission has refused to tolerate negotiation tactics that delay or impede interconnection negotiations.

10 In this case, Sprint promptly contacted Verizon to discuss changes to the draft amendment.¹⁵ Contrary to Verizon's assertion in the Petition, Sprint made substantial, one-sided efforts to negotiate with Verizon. Thus, Verizon's statements that "virtually none [of the CLECs] provided a timely response to Verizon's October 2, 2003 notice and draft amendment" and that it "received the majority of the substantive responses to the draft amendment within the past four weeks . . ." is wholly inaccurate in the case of Sprint.¹⁶

11 Verizon has yet to specifically accept or reject any proposal Sprint has offered in discussions between the parties. This refusal to accept or reject Sprint's proposals in the negotiation process caused significant delays that resulted in Verizon filing its Petition. In addition, Verizon failed to designate during the negotiations a representative authorized to negotiate, in violation of Section 51.301(c)(7).¹⁷

12 The fact that Verizon has so utterly failed to reach negotiated solutions with so many CLECs in every state where it serves is in-and-of-itself evidence of its failure to conduct meaningful, good faith negotiations. And in the case of Sprint, Verizon repeatedly and consistently failed to respond in any meaningful way to Sprint's many inquiries and proposals. Furthermore, Verizon failed to designate a representative authorized to negotiate. Considering the complete lack of substantive feedback that

¹⁵ See Attachment 2, setting forth in detail the efforts Sprint undertook to attempt to negotiate a TRO amendment based on the Verizon proposal it received..

¹⁶ Petition, at pp. 3-4.

¹⁷ Rather responding substantively to Sprint's requests, Verizon stated that it would have to go back to "higher attorneys," again stalling, but in this instance at a critical time within two weeks of its filing for arbitration. Attachment 2, at p. 4-5, (2/12/04 conference call).

Verizon provided to Sprint, it is difficult to draw any conclusion other than that Verizon did not negotiate at all, much less in good faith. These facts, taken together, show that Verizon failed to negotiate in good faith pursuant to the Act, the FCC's rules, and the Commission's policies. The Commission should therefore dismiss Verizon's Petition and order it to immediately commence good faith negotiations with Sprint.

B. THE COMMISSION SHOULD DISMISS VERIZON'S PETITION BECAUSE IT IS PROCEDURALLY DEFECTIVE

13 In addition to Verizon's refusal to negotiate the amendment in good faith, the Petition does not comply with the procedures set forth in the Act. Section 252(b)(2) of the Act provides in pertinent part:

(2) Duty of petitioner.--

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

The Commission's rules similarly require a petition to include a "brief statement of each unresolved issue and a summary of each party's position with respect to each issue."¹⁸

Verizon has failed to comply with these requirements.

14 Verizon has not stated in its Petition any of the issues that Sprint attempted to negotiate with Verizon. Sprint expressed agreement to a number of provisions in Verizon's proposal. Sprint also took a great deal of time to try to focus the discussion to a narrow list of disputed issues, but even this was ignored by Verizon.¹⁹ Verizon's Petition does not contain a discussion of the positions of the parties as required by

¹⁸ WAC 480-07-630(5).

¹⁹ See Exhibit 1 to Attachment 2.

Section 252(b)(2) and the Commission's rules. Nor does it identify which issues have been negotiated between the parties, Sprint's position (or that of the numerous other CLECs and CMRS providers, for that matter), or which issues remain unresolved. The form of the Petition clearly fails to meet the requirements under the Act and the Commission's rules.

C. VERIZON HAS FAILED TO FOLLOW EFFECTIVE CHANGE OF LAW PROVISIONS IN THE EXISTING SPRINT-VERIZON INTERCONNECTION AGREEMENT

15 Verizon states that it filed this Petition pursuant to the arbitration window (February 14, 2004 to March 1, 2004) established by 47 U.S.C. § 252(b)(1) and the FCC's *Triennial Review Order*²⁰. Verizon's interpretation of Paragraph 703 of the *Triennial Review Order* is flawed. Paragraph 703 states, "[f]irst, we require incumbent and competitive LECs to use section 252(b) as a default timetable for modification of interconnection agreements *that are silent concerning change of law and/or transition timing*. (Emphasis added).

16 The interconnection agreement between Sprint and Verizon contains change in law provisions that Verizon is bound to follow if it wants to amend the Sprint-Verizon interconnection agreement to reflect any change of law in the *Triennial Review Order*. The interconnection agreement that Sprint and Verizon have adopted in Washington²¹ provides in Section 1.2 that "[s]hould the Parties fail to agree on appropriate modification arising out of a change in law, within sixty (60) calendar days of such

²⁰ *Triennial Review Order* at paragraph 703.

²¹ *In the Matter of the Request for Approval of Negotiated Interconnection Agreement Under the Telecommunications Act of 1996 Between Sprint Communications Co. L.P. and Verizon Northwest, Inc.*, Order Approving Negotiated Agreement for Interconnection and Resale of Services, Docket No. UT-013083 (November 29, 2001) (the Commission treated the request to adopt Verizon's California interconnection agreement as a negotiated agreement).

change in law the dispute shall be governed by Section 3 of Article II.” Section 3 contains dispute resolution provisions.

17 Verizon has made no attempt to discuss with Sprint the implications of the change in law provision relative to the *Triennial Review Order*, nor utilized the dispute resolution procedures set forth in the interconnection agreement. Verizon should be required to comply with the change of law and dispute resolution procedures in the agreement before filing a petition for arbitration.

D. OTHER STATE COMMISSIONS HAVE ALREADY FOUND THAT VERIZON’S PETITION IS INAPPROPRIATE AND PREMATURE

18 The Commission should also note that the North Carolina Utilities Commission has already issued an order continuing the petition Verizon filed in North Carolina indefinitely, a petition that was substantively identical to the one that Verizon filed in this state.²² The North Carolina Utilities Commission found the petition filed by Verizon in North Carolina to be duplicative of state TRO proceedings, procedurally defective, and a “waste of every body’s time” considering the numerous challenges to the FCC’s new rules.

19 Similarly, the Maryland commission has determined, in light of the D.C. Circuit court’s decision in *USTA II*, that “Verizon’s Petition for Arbitration is premature, as the status of the law it seeks to use as a trigger for its change of law provision is unclear.”²³ Because of this uncertainty, the Maryland commission rejected Verizon’s petition, without prejudice, and found it unnecessary to grant Verizon’s request for an extension, which Verizon also filed in Washington.

²² See Attachment 1, *In the Matter of Interconnection Agreements with CLECs and CMRS Providers*, Order Continuing Proceeding Indefinitely, Docket No. P-19, SUB 477 (March 3, 2004).

²³ *Id.*, *Re Verizon Maryland Petition for Arbitration of an Amendment to Interconnection Agreements with CLECs and CMRS Providers in Maryland Pursuant to Section 252 of the Communications Act, as amended, and the Triennial Review Order* (March 15, 2004).

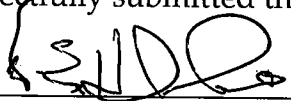
V. CONCLUSION

20 As noted above, on March 2, 2004 the U.S. Court of Appeals for the District of Columbia Circuit vacated in part and reversed in part the *Triennial Review Order* in *USTA II*. The implications of this decision are unclear at this time. Verizon has reserved the right to modify its positions and draft amendment should such a decision be forthcoming.²⁴

21 Verizon has made no effort to negotiate in good faith with Sprint to modify the existing interconnection agreement in order to implement the provisions of the *Triennial Review Order*, its Petition is procedurally defective, and it has failed to follow the change of law provisions in the Sprint-Verizon interconnection agreement. Therefore, Sprint respectfully requests that the Commission dismiss Verizon's Petition, or in the alternative, dismiss it with respect to Sprint. Sprint also asks the Commission to order Verizon to conduct good faith interconnection negotiations with Sprint and to file modifications to its Petition before any party is required to respond.

Respectfully submitted this 16th day of March 2004.

By: _____


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Attorney for Sprint

²⁴ Petition, at pp. 4-5. Verizon also recently filed a letter asking the Commission to allow the parties additional time to respond to its Petition.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-19, SUB 477

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

<p style="text-align:center">In the Matter of</p> <p>Interconnection Agreements with Competitive) Local Exchange Carriers and Commercial) Mobile Radio Service Providers)</p>	<p>)))</p>	<p>ORDER CONTINUING PROCEEDING INDEFINITELY</p>
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BY THE COMMISSION: On February 20, 2004, Verizon South, Inc. filed for arbitration "of an Amendment to Interconnection Agreements with Competing Local Providers [CLPs] and Commercial Mobile Radio Service Providers [CMRS providers] in North Carolina" pursuant to Section 252 of the Telecommunications Act and the *Triennial Review Order* (TRO). As such, this consolidated arbitration petition involves nearly 70 CLPs and CMRS providers. Verizon is proposing an amendment to its interconnection agreements implementing changes in its network unbundling obligations pursuant to the TRO. More particularly, the petition was filed pursuant to the transition process that the FCC established in the TRO in Paragraphs 700 through 706. For the purposes herein, the term "CLPs" refers to both CLPs and CMRS providers.

Verizon explained that the FCC had provided that incumbent local exchange companies (ILECs) and CLPs must use the Section 252(b) "timetable for modification" of agreements; and, for the purposes of the negotiation and arbitration timetable, "negotiations [are] deemed to commence on the effective date" of the TRO, which was October 2, 2003. Verizon said the negotiations between itself and the CLPs in fact commenced on that date, because on October 2, 2003, Verizon sent a letter to each CLP initiating negotiations and proposing a draft amendment to implement the FCC's rules. This means that the window for requests for arbitration is from February 14, 2004, to March 11, 2004. A ruling would need to be made by the Commission on or about July 2, 2004.

Verizon reported that, since the October 2, 2003 notice, some CLPs have signed Verizon's draft amendment, without substantive changes; but, of the remaining CLPs in North Carolina, virtually none provided a timely response to Verizon. The majority of substantive responses have come in only lately. Some responses constitute a virtual wholesale rejection of the amendment.

Verizon, of course, noted the pendency of appeals before the D.C. Circuit and the other filings for reconsideration pending before the FCC. Verizon is filing this petition now, based on current federal law.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to continue this proceeding indefinitely pending further order and advise Verizon that it may avail itself of the provisions of Section 252(e)(5), wherein the arbitration may be referred to the FCC.

The reasons for these recommendations are several-fold:

First, the changes sought by Verizon appear to be of similar subject matter to those which are subject to the Commission's TRO proceeding. As such, this "consolidated arbitration" approximates a parallel TRO proceeding. This is a waste of everybody's time. It is especially so since Verizon informed this Commission on Halloween Day, 2003 that it would not actively participate in the TRO dockets, while reserving "its right to challenge these determinations at a later time." It also stated its belief that the FCC's TRO rules were "in direct conflict with the 1996 Telecommunications Act." This is strange considering that Verizon purports to desire the swift implementation of the FCC's rules in the context of its arbitration petition. The Commission does not have the resources or the inclination to conduct *two* TRO proceedings simultaneously.

Second, as alluded to by Verizon in its filing, the FCC rules are under challenge on many fronts. It makes no sense to begin an arbitration where the underlying rules may be changed in midstream.

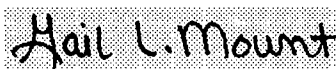
Third, Verizon did not comply with the Commission's arbitration procedural rules. It did not include prefiled testimony or seek waiver of same. It included no matrix summary. The petition did not appear to be signed by North Carolina counsel as required by our rules.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of March, 2004.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk

COMMISSIONERS

STATE OF MARYLAND



SUSAN S. MILLER
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PUBLIC SERVICE COMMISSION

March 15, 2004

David A. Hill, Esquire
Vice President & General Counsel
1 East Pratt Street, 8E/MS06
Baltimore, Maryland 21202

Re: Verizon Maryland Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Maryland Pursuant to Section 252 of the Communications Act, as Amended, and the Triennial Review Order

Dear Mr. Hill:

On February 20, 2004, Verizon Maryland Inc. ("Verizon") filed the above-referenced Petition requesting that the Commission initiate a consolidated arbitration proceeding to amend the interconnection agreements between Verizon and each of the Competitive Local Exchange Carrier ("CLECs") and applicable Commercial Mobile Radio Service ("CMRS") providers in Maryland, in light of the Federal Communications Commission's ("FCC's") changes to its network unbundling rules in its *Triennial Review Order* ("TRO")¹. In accordance with the Telecommunications Act of 1996² ("the Act"), responses to Verizon's Petition are to be filed with the Commission by March 16, 2004. On March 11, 2004, Verizon requested that the Commission hold the Petition for Arbitration in abeyance until March 19, 2004.

Since Verizon's initial filing on February 20, 2004, the status of the *TRO* has been cast into a state of flux. On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued an Opinion³ pertaining to the *Triennial Review Order*. In its Opinion, the Court vacated and/or remanded various portions of the *TRO*. As a result of the Court's action, the Commission believes that Verizon's Petition for Arbitration is premature, as the status of the law it seeks to use as a trigger for its change of law provision is unclear. Based upon this procedural uncertainty, the Commission hereby rejects Verizon's Petition, without prejudice.

¹ *In the Matters of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advances Telecommunications Capability*, Report and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36 (rel. Aug. 21, 2003). ("TRO").

² 47 U.S.C. 251 et seq.

³ *United States Telecom Association v. FCC*, No. 00-1012, 2004 U.S. App. LEXIS 3960 (D.C. Cir. Mar. 2, 2004)

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Mr. David A. Hill, Esquire
March 15, 2004
Page 2

Additionally, in light of the Commission's rejection of Verizon's Petition, it is unnecessary to grant the extension requested by Verizon on March 11, 2004.

By Direction of the Commission,

Felecia L. Greer
Executive Secretary

cc: Verizon Exhibit 1 - Service List

FLG:lvs

ATTACHMENT 2

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

Petition of Verizon Northwest Inc. for
Arbitration of an Amendment to Interconnection
Agreements with Competitive Local Exchange
Carriers and Commercial Mobile Radio Service
Providers in Washington Pursuant to Section 252
of the Communications Act of 1934, as
Amended, and the *Triennial Review Order*

DOCKET NO. UT-043013

AFFIDAVIT OF JOHN S.
WEYFORTH IN SUPPORT OF
SPRINT'S MOTION TO DISMISS

AFFIDAVIT OF JOHN S. WEYFORTH

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

I, John S. Weyforth, being duly sworn depose and state:

1. I am a full time employee of Sprint/United Management Services Company performing services on behalf of Sprint Communications Company L.P. ("Sprint"). My position is Manager Wholesale and Interconnection Management.
2. As part of my responsibilities I act as the primary interface for Sprint regarding interconnection negotiations with the Verizon Incumbent Local Exchange Companies ("Verizon") under the Telecommunications Act of 1934, as amended ("Act").
3. On August 21, 2003 the Federal Communications Commission issued its *Triennial Review Order*¹. The TRO became effective on October 2, 2003. Since that time Sprint has attempted to negotiate a mutually acceptable TRO amendment to all of

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section, 751 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "TRO"), *reversed in part and remanded, United States Telecom Ass'n v. FCC*, Nos. 00-1012, 00-1015, 03-1310 *et al.* (D.C. Cir).

its interconnection agreements with Verizon. Despite many attempts to negotiate, Verizon has not responded in any meaningful manner to Sprint's attempts to reach resolution on specific issues.

4. On October 2, 2003, Sprint located Verizon's proposed TRO amendment on the Verizon wholesale website. Sprint provided a detailed redlined response to the proposed TRO amendment to Verizon on October 29, 2003 ("Sprint October Response") via email from Shelley Jones, a Sprint employee working under my supervision. A copy of the email and the Sprint October Response are attached to this affidavit as Exhibit 1.
5. Despite repeated efforts by Sprint to resolve outstanding issues, Verizon has not provided substantive feedback on the positions Sprint has offered for modification to the draft Verizon proposed amendment. Verizon has neither accepted nor rejected Sprint proposed modifications as set forth in the Sprint October Response despite repeated requests from Sprint for Verizon's position on these issues.
6. Below is the chronology of calls, emails, letters and conference calls that detail Sprint's efforts to negotiate a TRO amendment and the frustrating results that have materially affected Sprint's business from October 2, 2003 until present. Mr. Gary Librizzi and Mr. Stephen Hughes represented Verizon as negotiators in the negotiation process. Mr. Paul Rich represented Verizon as its attorney. Mr. Joseph Cowin represented Sprint as its attorney. I have indicated below the individuals involved in the particular contacts and who they represented with a "V" for Verizon or a "S" for Sprint.

<u>Date</u>	<u>Party Initiating Contacts</u>	<u>Contact type</u>
10/02/03	From Verizon	E-Mail

Sprint received an email notification that an Industry Letter was available for viewing on Verizon's wholesale website. Sprint found on the website a Verizon TRO Amendment in .pdf format. Sprint immediately began the process of converting the document into a working copy to which changes could be made and began to prepare a response to Verizon's proposal.

10/02/03	From Verizon	U.S. Mail
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Sprint began to receive multiple letters from various Verizon entities with a 30 day notice that detailed all of the services that it would no longer provide. The letters also stated that Verizon was prepared to comply with all other provisions of the TRO subject to negotiation and execution of an appropriate amendment to the interconnection agreement. The letter also stated Verizon's negotiation timeline.

10/07/03 From Jones (S) to Hughes (V), Librizzi (V) E-Mail

Ms. Jones informed Verizon that Sprint was reviewing the Verizon TRO amendment and asked if it was Verizon's intention to hold up other interconnection agreement amendments for line-splitting and EELs that had been requested by Sprint in August 2003 because of the TRO amendment. She received no response from Verizon.

10/10/03 From Hughes (V) to Jones (S) Voice Message

Mr. Hughes informed Ms. Jones that the TRO amendment must be signed before Verizon would agree to the EELs language requested in August 2003.

10/14/03 From Jones (S) to Librizzi (V) Voice Message

Ms. Jones requested a conference call to discuss the Verizon TRO amendment.

10/15, 16, 17/03 From Jones (S) to Hughes (V), Librizzi (V) E-Mail

Ms. Jones sent Verizon a series of emails to schedule a conference call to review the Verizon TRO amendment and to express Sprint's concerns with the proposed draft TRO amendment. She received no response.

10/21/03 Hughes, Librizzi (V) Conf. call
Weyforth, Cowin, Jones (S)

Sprint reviewed the Verizon TRO amendment and detailed its concerns and questions to Verizon. There were no definitive responses from Verizon, merely an occasional "we'll look at that".

10/27/03 From Hughes (V) to Jones, Weyforth (S) Call

Verizon finally sent line splitting amendments to Sprint but not before raising a possible roadblock that they could decide to change the amendments if they felt the amendments did not conform to the TRO. These are the amendments that were requested in August of 2003.

10/29/03 From Jones (S) to Hughes, Librizzi (V) E-Mail

Ms. Jones sent to Verizon Sprint's redlined version of the proposed Verizon TRO amendment marked for Sprint proposed changes ("Sprint October Response"). This was Sprint's initial written formal response to Verizon's TRO amendment. Sprint did not receive any response to this email.

11/05/03 From Jones (S) to Hughes, Librizzi (V) E-Mail

Ms. Jones inquired of Verizon about the status of Sprint's October Response. She stated that Verizon should be able to provide a quick response because the changes that Sprint requested did not materially affect the integrity of the Verizon document. She also requested a meeting with Verizon, because Verizon had asserted that the Verizon TRO amendment was required before Verizon would permit Sprint to launch any services that require combinations or EELs in several Verizon states. Sprint has not received a response from Verizon to these inquiries.

11/10/03 From Jones (S) to Hughes (V) Call

Ms. Jones discussed the status of the August 2003 line splitting amendments and the adoption of the ATT interconnection agreement in Virginia. Mr. Hughes had no news or status when asked about Verizon's review of the Sprint October Response to Verizon's TRO amendment.

11/12/03 From Weyforth (S) to Librizzi (V) Call

I informed Mr. Librizzi how unhappy Sprint was with the length of time it was taking for Verizon to review the August 2003 line splitting amendments and the adoption of the ATT interconnection agreement in Virginia. I then asked when Sprint could expect to see Verizon's response to the Sprint October Response. Mr. Librizzi told me Verizon was working on it and it should be coming shortly, however, Mr. Librizzi could not provide a specific date or commitment for a response.

11/21/03 Weyforth (S) to Librizzi (V) Call

I again inquired about when Verizon would respond to the Sprint October Response. Mr. Librizzi was unable to provide any estimate of when Verizon would respond.

12/09/03 Shelley Jones (S) to Hughes, Librizzi (V) E-Mail

Ms. Jones inquired regarding the status of Verizon's response to the Sprint October Response to Verizon's TRO amendment. Ms. Jones expressed her concern that Verizon would hold up Sprint's business plans and requested a written statement that Verizon would allow Sprint to order EELs stating that Sprint had complied in a timely manner in everything including its submission of Sprint's redlined TRO amendment but Verizon was not responding. Sprint again received no response.

2/12/04 Weyforth, Cowin, Jones (S) Conf. call
Hughes, Librizzi, Rich (V)

Sprint reviewed the Verizon TRO amendment and the Sprint October Response with the Verizon team, including its attorney. Sprint answered questions about the Sprint October Response. Verizon did not at any time make a counter-offer or agree to any of Sprint's

proposals. Nor did they specifically reject any Sprint proposed change. The Verizon representative told Sprint that they would have to go back to “higher attorneys” before committing to or rejecting any specific proposal. We remarked that such a position was not negotiating in good faith as required under the law. Sprint received no response from Verizon and no commitment on when it would respond to the Sprint October Response.

2/13/04 Shelley Jones (S) to Hughes (V) E-Mail

Ms. Jones expressed her complete dissatisfaction concerning the conference call on February 12th indicating that it was a rehash of a previous call, no negotiations took place, and that Verizon did not address any of our proposals set forth in the Sprint October Response. Nor did Verizon make any commitment to when Sprint would see a response so that negotiations could move forward. No response.

2/19/04 Weyforth (S) Librizzi (V) Call

I called to discuss why Verizon was refusing to provision UNE Loop orders in Texas. Verizon stated that because Sprint had not signed Verizon’s TRO Amendment, Verizon would not provision the requested services. I then asked about when Sprint could expect to see the response to the Sprint October Response. I was told that I would receive an answer on Friday the 20th. No other response was provided.

2/20/04 Hughes (V) to Weyforth (S) Call

Mr. Librizzi informed me that Verizon could not provide me the information which I was promised would be delivered on Friday, February 20, but that it would be delivered the following Monday. Sprint did not receive any response from Verizon regarding these inquiries.

2/24/04 Weyforth (S) to/from Hughes (V) Call

I called Mr. Hughes and left him a voice mail in which I inquired about the TRO amendment and Verizon’s refusal to provision UNE loop orders in Texas without a signed TRO Amendment. Mr. Hughes returned the call and informed me that Verizon had filed on the 20th of February, in 15 jurisdictions, a consolidated arbitration petition and that Sprint was named as a respondent. I again requested the status of Verizon’s response to the Sprint October Response. Again, Verizon provided no response.

2/26/04 Librizzi (V) to Weyforth (S) Call

Mr. Librizzi returned my call to Mr. Hughes and discussed the issues that I had spoken to Mr. Hughes about. He told me that Verizon was working on the Texas orders, the TRO amendment and some other issues, and would get back to me at the end of the week. However, Verizon did not provide an estimated date or commitment for a response to the Sprint October Response.

2/27/04 Hughes (V) to Weyforth (S) Call

Mr. Hughes called to tell me that Mr. Librizzi would not be able to get me the information on the refused Texas orders, the TRO redline or another dispute.

3/01/04 Hughes (V) to Weyforth (S) Call

Mr. Hughes called to tell me that Mr. Librizzi would soon answer why Verizon refused to provision the Texas orders. I asked again about when Verizon would reply to the Sprint October Response, but was not provided a response.

3/02/04 Weyforth (S) to Hughes, Librizzi (V) E-Mail

I sent an email to Mr. Hughes and Mr. Librizzi requesting a complete list of where consolidated arbitrations had been filed and copies of those documents since Sprint had never been provided any notice of Verizon's actions. I brought up the fact that we would be answering the filing to show Verizon's complete lack of good faith negotiations. No response.

3/02/04 Hughes (V) to Weyforth (S) Call
Weyforth(S) to Librizzi (V)

Mr. Hughes called to arrange a call between Mr. Librizzi and myself to receive Verizon's answer to its refusal to provision UNE loop orders in Texas. Verizon's answer was that because Sprint had not signed the TRO amendment Verizon would not provision the orders. I asked if Verizon planned to respond to the Sprint October Response, as the refusal to provide service was based on Sprint not having executed Verizon's TRO amendment. I did not receive any firm response to my inquiries. I stated that it was unconscionable for Verizon to refuse orders based on the lack of a TRO amendment agreement since Verizon would not negotiate. No response.

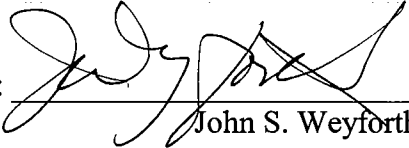
3/09/04 Librizzi (V) to Weyforth (S) E-Mail

I received an e-mail from Mr. Librizzi indicating that it was Verizon's "intent to provide a response to Sprint's proposed changes to the TRO Amendment". Mr. Librizzi also indicated that "it is Verizon's intention to provide, as part of its response to Sprint's redline, changes that have occurred to the proposed TRO Amendment since Sprint's initial download from Verizon.com of the version it redlined." Despite these statements and similar statements made by Verizon since October of 2003, Verizon has not provided a response to the Sprint October Response.

7. I was only notified of Verizon's intent to file its petition for arbitration as set forth in the above captioned matter ("Petition") on Tuesday February 24, 2004. It is my understanding that this may have been after the Petition in this proceeding had already been filed. At no time prior to this did Verizon give any indication to me of its intent to file the Petition or any urgency in finalizing negotiations.

8. On February 24th Verizon informed Sprint that it had already filed petitions in fifteen (15) states and intended to file shortly covering all thirty (30) states in which it serves.
9. To date Verizon has not accepted or rejected any of the recommended changes Sprint proposed in the Sprint October Response to Verizon's TRO amendment.

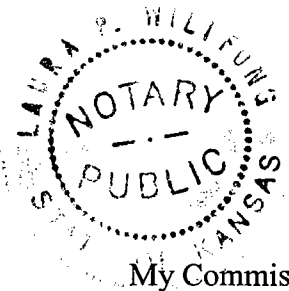
I certify that the foregoing is true and accurate to the best of my recollection and belief.

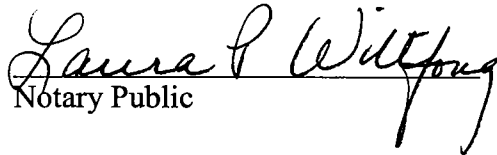
Signed: 
John S. Weyforth

Dated: March 9, 2004

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

Subscribed and sworn to before me, a Notary Public, this 12th day of March, 2004.




Notary Public

My Commission Expires:

January 23, 2007

EXHIBIT 1

-----Original Message-----

From: Jones, Shelley E [CC]
Sent: Wednesday, October 29, 2003 3:24 PM
To: stephen.c.hughes@verizon.com
Cc: gary.r.librizzi@verizon.com; Weyforth, Jack S [CC]; Cowin, Joseph P [CC]; Ross, Ken S [CC]
Subject: VZ TRO Amendment Redline

Stephen,

Attached is the Sprint redline version of Verizon's draft TRO amendment. Please review and let me know as soon as possible when we can schedule a call to discuss.

There are several references to the applications of rates and charges, however those rates were not available for review nor is it apparent how those rates will be developed and approved. Exhibit A is referenced in the amendment but it was not part of the document found on Verizon's website. If you have that Exhibit (price list) now, could you please send it to me, Jack and Joe?

Thanks,



VZ TRO Redline
10-27-03.doc

Shelley Jones
Sprint - Carrier & Interconnection Management KSOPHN0214
913-315-9388
913-315-0752 fax

AMENDMENT NO.

to the

INTERCONNECTION AGREEMENT

Between

[VERIZON LEGAL ENTITY]

and

Sprint Communications Company L.P.

This Amendment [NUMBER] (the "Amendment") is made by and between Verizon [LEGAL ENTITY] ("Verizon"), a [STATE OF INCORPORATION] corporation with offices at [VERIZON STATE ADDRESS], and Sprint Communications Company L.P., a [CORPORATION/PARTNERSHIP] with offices at [CLEC ADDRESS] Sprint, and shall be deemed effective [FOR CALIFORNIA] upon Commission approval pursuant to Section 252 of the Act (the "Amendment Effective Date"). [FOR ALL OTHER STATES: on (the "Amendment Effective Date").] Verizon and Sprint are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in Verizon's service territory in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME OF AGREEMENT] (the "State"/"Commonwealth").

WITNESSETH:

NOTE: DELETE THE FOLLOWING WHEREAS SECTION ONLY IF CLEC's AGREEMENT HAS USED AN ADOPTION LETTER:

[WHEREAS, Verizon and Sprint are Parties to an Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 dated [INSERT DATE] (the " Agreement"); and]

NOTE: INSERT THE FOLLOWING WHEREAS SECTION ONLY IF CLEC's AGREEMENT USED AN ADOPTION LETTER:

[WHEREAS, pursuant to an adoption letter dated [INSERT DATE OF ACTUAL ADOPTION LETTER] (the "Adoption Letter"), Sprint adopted in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME], the interconnection agreement between [NAME OF UNDERLYING CLEC AGREEMENT] and VERIZON (such Adoption Letter and underlying adopted interconnection agreement referred to herein collectively as the "Agreement"); and]

WHEREAS, the Federal Communications Commission (the "FCC") released an order on August 21, 2003 in CC Docket Nos. 01-338, 96-98, and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO; and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree that the Agreement should be amended by the addition of the rates, terms and conditions set forth in the TRO Attachment and the Pricing Appendix to the TRO Attachment attached hereto. The TRO Attachment and the Pricing Appendix to the TRO Attachment shall apply notwithstanding any other provision of the Agreement or a Verizon tariff or a Verizon Statement of Generally Available Terms and Conditions ("SGAT").
2. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this

Amendment and the terms and provisions of the Agreement this Amendment shall govern, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
5. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Section 1 of this Amendment. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement". Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
6. Stay or Reversal of the TRO. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, nothing contained in the Agreement, this Amendment, or any Verizon tariff or SGAT shall limit either Party's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the [***State Commission TXT***], the FCC, any court or any other governmental authority related to, concerning or that may affect either Party's obligations under the Agreement, this Amendment, any Verizon tariff or SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit. Notwithstanding any other change of law provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted. Should the D.C. Circuit or the United States Supreme Court reverse any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed provisions shall be voidable at the election of either Party.
7. Joint Work Product. This Amendment is a joint work product, and any ambiguities in this Amendment shall not be construed by operation of law against either Party.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the Amendment Effective Date.

***CLEC Full Name TXT~*

VERIZON***IF Verizon Company Full Name 2 TXT

By: _____

By: _____

Printed: Rich Morris _____

Printed: _____

Title: Vice-President State External Affairs

Title: _____

TRO Attachment

1. General Conditions

- 1.1 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT: (a) Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements ("Combinations"), or UNEs commingled with wholesale services ("Commingling"), to Sprint under the terms of this Amended Agreement only to the extent required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and, (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to Sprint to the extent that provision of access to such UNEs, Combinations, or Commingling is not required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.
- 1.2 Sprint may use a UNE, a Combination, or Commingling only for those purposes for which Verizon is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide such UNE, Combination, or Commingling to ***CLEC Acronym TAT**.
- 1.3 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent Verizon is required by a change in Applicable Law to provide to Sprint pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 a UNE, a Combination, or Commingling that is not offered under the Amended Agreement to Sprint as of the Amendment Effective Date, the rates, terms, conditions for such UNE, Combination, or Commingling shall be as provided in an applicable Verizon tariff, or, in the absence of an applicable Verizon tariff, as mutually agreed in writing by the Parties.
- 1.4 Verizon reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3), (b) is not a Network Element Verizon is required by 47 U.S.C. § 251(c)(3) to provide to Sprint or (c) is an item that Verizon is not required to offer to Sprint at the rates set forth in the Amended Agreement.

2. TRO Glossary

Notwithstanding any other provision in the Agreement or any Verizon tariff or SGAT, the following terms, as used in the Amended Agreement, shall have the meanings set forth below:

- 2.1 Call-Related Databases.
Databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases.
- 2.2 Dark Fiber Transport.
An unactivated optical transmission facility within a LATA, without attached multiplexing, aggregation or other electronics, between Verizon switches or wire centers, that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.
- 2.3 Dedicated Transport.
A DS1 or DS3 transmission facility between Verizon switches (as identified in the LERG) or wire centers, within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

Transmission facilities or services provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of Sprint or a third party are not Dedicated Transport.

2.4 DS1 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 1.544 Mbps.

2.5 DS3 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 44.736 Mbps.

2.6 DS1 Loop.

A digital transmission channel suitable for the transport of 1.544 Mbps digital signals that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. This loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-1 Loop requires the electronics necessary to provide the DS-1 transmission rate.

2.7 DS3 Loop.

A digital transmission channel suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS-1 channels) that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. This Loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-3 Loop requires the electronics necessary to provide the DS-3 transmission rate.

2.8 Enterprise Switching.

Local Switching or Tandem Switching that, if provided to Sprint would be used for the purpose of serving Sprint's customers using DS 1 or above capacity Loops.

2.9 Feeder.

The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving wire center and a remote terminal or feeder/distribution interface.

2.10 FTTH Loop.

A Loop consisting entirely of fiber optic cable, whether dark or lit, between the main distribution frame (or its equivalent) in an end user's serving wire center and the demarcation point at the end user's customer premises.

2.11 House and Riser Cable.

A distribution facility in Verizon's network, other than in a FTTH Loop, between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the Demarcation Point for such facility, that is owned and controlled by Verizon.

2.12 Hvbrid Loop.

A local Loop composed of both fiber optic cable and copper wire or cable.

2.13 Line Sharing.

The process by which Sprint provides xDSL service over the same copper Loop that Verizon uses to provide voice service by utilizing the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions (the High Frequency Portion of the Loop, or "HFPL"). The HFPL includes the features, functions, and capabilities of the copper Loop that are used to establish a complete transmission path between Verizon's distribution frame (or its equivalent) in its Wire Center and the demarcation point at the end user's customer premises, and includes the high frequency portion of any inside wire (including any House and Riser Cable) owned and controlled by Verizon.

2.14 Local Switching.

The line-side, and trunk-side facilities associated with the line-side port, on a Verizon switch (as identified in the LERG) that provides local circuit switching in Verizon's network (as identified in the LERG), plus the features, functions, and capabilities of that switch, unbundled from loops and transmission facilities, including: (a) the line-side Port (including the capability to connect a Loop termination and a switch line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription, and access to 911); (b) line and line group features (including all vertical features and line blocking options the switch and its associated deployed switch software are capable of providing that are provided to Verizon's local exchange service Customers served by that switch); (c) usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks); and (d) trunk features (including the connection between the trunk termination and a trunk card).

2.15 Mass Market Switching.

Local Switching or Tandem Switching that Verizon offers on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and that is provided to Sprint to serve Sprint's end user customers over DSO Loops.

2.16 Nonconforming Facility.

Any facility that Verizon was providing to Sprint on an unbundled basis pursuant to the Agreement or a Verizon tariff or SGAT prior to October 2, 2003, but which Verizon is no longer obligated to provide on an unbundled basis under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, by operation of either the TRO or a subsequent nonimpairment finding issued by the [***State Commission TXT***] or the FCC. By way of example and not by way limitation, Nonconforming Facilities may include any of the following: (a) any unbundled dedicated transport or dark fiber facility that is no longer encompassed within the amended terms applicable to DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport; (b) DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport on a Route or Routes as to which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, finds telecommunications carriers to be nonimpaired without access to such facilities; (c) Enterprise Switching; (d) Mass Market Switching in any market in which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, finds telecommunications carriers to be nonimpaired without access to such facilities; (e) Local Switching subject to the [***State Commission TXT***] established multiline end user loop maximum. ~~FCC's four line carve out rule, as described in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No 96-98, 15 FCC Red 3822-31 (1999) (the "Four-Line Carve-Out Rule");~~ (f) OCn Loops and OCn Dedicated Transport; ~~(g) the Feeder portion of a Loop;~~ (h) Line Sharing; (i) an EEL That does not meet the service eligibility criteria established in the TRO; (j) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with Sprint's ~~purchase of use of Verizon's -UNE Mass Market~~ Switching; (k) Signaling that is not provisioned in connection with Sprint's ~~purchase of use of Verizon's UNE Mass Market~~ Switching; (l) FTTH Loops (lit or unlit) in a new build environment; (m) FTTH Loops (lit or unlit) in an overbuild environment, subject to the limited exceptions set forth herein; or (n) any facility or class of facilities as to which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, makes a general finding of nonimpairment.

2.17 Packet Switching.

The routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, or the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customers copper Loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the Loops; and the

ability to combine data units from multiple Loops onto one or more trunks connecting to a packet switch or packet switches.

2.18 Qualifying Service.

A telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of the incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone services, and access services, such as digital subscriber line services and high-capacity circuits. Once a UNE has been provided subject to the provision of a qualifying service it is permissible to provide a non-qualifying service over the same facility pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

2.19 Route.

A transmission path between one of Verizon's wire centers or switches and another of Verizon's wire centers or switches within a LATA. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more Verizon intermediate wire centers or switches (e.g., Verizon wire center or switch "X"). Transmission paths between identical end points (e.g., Verizon wire center or switch "A" and Verizon wire center or switch "Z") are the same "route", irrespective of whether they pass through the same intermediate Verizon wire centers or switches, if any.

2.20 Service Management Systems

Service management systems are defined as computer databases or systems not part of the public switched network that interconnect to the service control point and send to the service control point information and call processing instructions needed for a network switch to process and complete a telephone call, and provide a telecommunications carrier with the capability of entering and storing data regarding the processing and completing of a telephone call.

2.20 Signaling Networks.

Signaling Networks includes, but are not limited to, signaling links and signaling transfer points.

2.21 Sub-Loop for Multiunit Premises Access.

Any portion of a Loop, other than a FTTH Loop, that is technically feasible to access at a terminal in Verizon's outside plant at or near a multiunit premises. It is not technically feasible to access a portion of a Loop at a terminal in Verizon's outside plant at or near a multiunit premises if a technician must access the facility by removing a splice case to reach the wiring within the cable.

2.22 Sub-Loop Distribution Facility.

The copper portion of a Loop in Verizon's network that is between the minimum point of entry ("MPOE") at an end user customer premises and Verizon's feeder/distribution interface.

2.23 Tandem Switching.

The trunk-connect facilities on a Verizon circuit switch that functions as a tandem switch, plus the functions that are centralized in that switch, including the basic switching function of connecting trunks to trunks, unbundled from and not contiguous with loops and transmission facilities. Tandem Switching creates a temporary transmission path between interoffice trunks that are interconnected at a Verizon tandem switch for the purpose of routing a call. A tandem switch does not provide basic functions such as dial tone service.

3. **UNE TRO Provisions**

3.1 Loops.

3.1.1 Hi-Cap Loops. Notwithstanding any other provision of the Agreement or a Verizon tariff or SGAT, as of October 2, 2003:

3.1.1.1 DS1 Loops. Upon Sprint's written request, Verizon shall provide Sprint with nondiscriminatory access to a DS1 Loop on an unbundled basis under the Amended Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

3.1.1.2 DS3 Loops. Upon Sprint's written request, Verizon shall provide Sprint with nondiscriminatory access to a DS3 Loop on an unbundled basis under the Amended Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

3.1.1.2.1 Cap on DS3 Loops. Sprint may obtain on an unbundled basis a maximum of two (2) DS-3 Loops (or two (2) DS-3 equivalents) at any single end user location. Any Loop previously made available to Sprint at said end user location above the two (2) Loop cap shall be considered a Nonconforming Facility.

3.1.1.3 Nonimpairment. Without limiting any other rights Verizon may have under the Amended Agreement or under Applicable Law, subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing Sprint with nondiscriminatory access to DS-1 Loops or DS3 Loops under the Amended Agreement at a specific end user location if the [***State Commission TXT***] or the FCC finds that Sprint or CLECs generally are not impaired without access to such DS1 Loops or DS3 Loops at such end user location (or class of locations). Any DS1 Loops or DS3 Loops previously made available to Sprint at the subject end user location shall be considered Nonconforming Facilities immediately on the effective date of the nonimpairment finding or at the end of any transition period set forth in the finding and thereafter.

3.1.2 FTTH Loops

3.1.2.1 New Builds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, Sprint shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed such a Loop to an end user's customer premises that previously was not served by any Verizon Loop.

3.1.2.2 Overbuilds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, Sprint shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed the subject Loop parallel to, or in replacement of, an existing copper Loop; *provided*, however, that if such a Loop replaces a copper Loop that Verizon has retired, and there are no other available copper Loops or Hybrid Loops, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide Sprint with nondiscriminatory access on an unbundled basis to a transmission path from Verizon's serving wire center to the demarcation point at the end user's customer premises capable of voice grade service.

3.1.3 Hybrid Loops Generally.

3.1.3.1 Packet Switching. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, Sprint shall not be entitled to obtain access to the Packet Switching Capability of any Hybrid Loop on an unbundled basis.

3.1.3.2 Broadband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, when Sprint

seeks access to a Hybrid Loop for the provision of "broadband services," as such term is defined by the FCC, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide Sprint with access under the Amended Agreement to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (but only where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.3.3 Narrowband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, when Sprint seeks access to a Hybrid Loop for the provision to its customer of "narrowband services," as such term is defined by the FCC, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall either (a) provide access under the Amended Agreement to a spare home-run copper Loop serving that customer on an unbundled basis, or in Verizon's sole discretion, (b) provide access under the Amended Agreement, on an unbundled basis, to a voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises, using time division multiplexing technology.

3.1.3.4 Feeder. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, Sprint shall not be entitled to obtain access to the Feeder portion of a Loop on an unbundled, standalone basis.

3.1.4 IDLC Hybrid Loops.

Notwithstanding any other provision of the Agreement, Section 3.1.3 above, or any Verizon tariff or SGAT, if [Sprint] requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), Verizon shall, as and to the extent required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, provide [Sprint] unbundled access to a Loop capable of voice-grade service to the end user customer served by the Hybrid Loop.

3.1.4.1 Verizon will endeavor to provide [Sprint] with an existing copper Loop or a Loop served by existing Universal Digital Loop Carrier ("UDLC"). Standard recurring and non-recurring Loop charges will apply. In addition, a non-recurring charge will apply whenever a line and station transfer is performed.

3.1.4.2 If neither a copper Loop nor a Loop served by UDLC is available, Verizon shall, upon request of Sprint, construct the necessary copper Loop or UDLC facilities. In addition to the rates and charges payable in connection with any unbundled Loop so provisioned by Verizon, Sprint shall be responsible for the following charges: (a) an engineering query charge for preparation of a price quote; (b) upon Sprint's submission of a firm construction order, an engineering work order nonrecurring charge; and (c) construction charges, as set forth in the price quote. If the order is cancelled by Sprint after construction work has started, Sprint shall be responsible for cancellation charges and a pro-rated charge for construction work performed prior to the cancellation.

3.1.4.3 Verizon's performance in connection with providing unbundled Loops pursuant to this Section 3.1 shall not be subject to standard provisioning intervals or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.

3.2 Line Sharing.

Notwithstanding any other provision in the Agreement or any Verizon tariff or SGAT, as of October 2, 2003:

3.2.1 Line Sharing.

3.2.1.1 New Line Sharing. Verizon shall be under no obligation to provision new Line Sharing arrangements under the Agreement or this Amendment; *provided*, however, that as and to the extent required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide new Line Sharing arrangements on a transitional basis pursuant to rates, terms, and conditions offered by Verizon in a separate agreement that shall be subject to FCC-prescribed pricing rules.

3.2.1.2 Grandfathered Line Sharing. Any existing Line Sharing arrangement over a copper Loop or Sub-Loop in place with an end user customer of Sprint will be grandfathered at existing rates, provided Sprint began providing xDSL service to that end user customer using Line Sharing over that Loop or Sub-Loop prior to October 2, 2003, and only so long as Sprint has not ceased providing xDSL service to that end user customer at the same location over that Loop or Sub-Loop.

3.3 Sub-Loop.

3.3.1 Sub-Loop for Access to Multiunit Premises. As of October 2, 2003, all provisions in the Agreement governing Sprint access to Inside Wire, House and Riser or House and Riser Cable are hereby deleted and replaced with this Section 3.3.1, which shall supersede any other provision in the Agreement or in any Verizon tariff or SGAT in effect prior to October 2, 2003. Upon request by Sprint, Verizon shall provide to Sprint access to the Sub-Loop for Multiunit.

3.3.1.1 Inside Wire Sub-Loop. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, upon request by Sprint, Verizon shall provide to Sprint access to a House and Riser Cable pursuant to this Section 3.3.1.1 at the rates and charges provided in the Agreement. Verizon shall not reserve a House and Riser Cable for Sprint. Sprint may access a House and Riser Cable only between the MPOE for such cable and the demarcation point at a technically feasible access point. It is not technically feasible to access inside wire sub-loop if a technician must access the facility by removing a splice case to reach the wiring within the cable.

~~3.3.1.1.1 Sprint must satisfy the following conditions before ordering access to a House and Riser Cable from Verizon:~~

~~3.3.1.1.1.1 Sprint shall locate its facilities within cross-connect distance of the point of interconnection on such cable. Facilities are within cross connect distance of a point of interconnection if they are located in the same room (not including a hallway) or within twelve (12) feet of such point of interconnection.~~

~~3.3.1.1.1.2 If suitable space is available, Sprint shall install its facilities no closer than fourteen (14) inches of the point of interconnection for such cable, unless otherwise agreed by the Parties.~~

~~3.3.1.1.1.3 Sprint's facilities cannot be attached, otherwise affixed or adjacent to Verizon's facilities or equipment, cannot pass through or otherwise penetrate Verizon's facilities or equipment and cannot be installed so that Sprint's facilities or~~

~~equipment are located in a space where Verizon plans to locate its facilities or equipment.~~

3.3.1.1.1.4 Sprint shall identify its facilities as those of Sprint.

3.3.1.1.2 To provide Sprint with access to a House and Riser Cable, Verizon shall not be obligated to (a) move any Verizon equipment, (b) secure any right of way for Sprint, (c) secure space for Sprint in any building, (d) secure access to any portion of a building for Sprint or (e) reserve space in any building for Sprint.

3.3.1.1.3 Verizon shall perform cutover of a Customer to Sprint service by means of a House and Riser Cable subject to a negotiated interval. Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to Sprint's facilities, and Verizon shall determine how to perform such installation. Sprint shall coordinate with Verizon to ensure that House and Riser Cable facilities are converted to Sprint in accordance with Sprint's order for such services.

3.3.1.1.4 If proper Sprint facilities are not available at the time of installation, Verizon shall bill Sprint, and Sprint shall pay to Verizon, the Not Ready Charge set forth in the Agreement and the Parties shall establish a new cutover date.

3.3.1.1.5 Verizon shall perform all installation work on Verizon equipment in connection with Sprint's use of Verizon's House and Riser Cable. All Sprint equipment connected to a House and Riser Cable shall comply with applicable industry standards.

3.3.1.1.6 Verizon shall repair and maintain a House and Riser Cable at the request of Sprint. Sprint shall be solely responsible for investigating and determining the source of all troubles and for providing Verizon with appropriate dispatch information based on its test results. Verizon shall repair a trouble only when the cause of the trouble is a Verizon House and Riser Cable. If (a) Sprint reports to Verizon a Customer trouble, (b) Sprint requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by a Verizon House and Riser Cable in whole or in part, then Sprint shall pay Verizon the charge set forth in the Agreement for time associated with said dispatch. In addition, this charge also applies when the Customer contact as designated by Sprint is not available at the appointed time. If as the result of Sprint instructions, Verizon is erroneously requested to dispatch to a site on Verizon company premises ("dispatch in"), a charge set forth in the Agreement will be assessed per occurrence to Sprint by Verizon. If as the result of Sprint instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), a charge set forth in the Agreement will be assessed per occurrence to Sprint by Verizon.

3.3.1.2 Single Point of Interconnection. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, upon request by Sprint and provided that the conditions set forth in Subsections 3.3.1.2.1 and 3.3.1.2.2 are satisfied, the Parties shall negotiate in good faith an amendment to the Amended Agreement memorializing the terms, conditions and rates under which Verizon will provide a single point of interconnection at a multiunit premises suitable for use by multiple carriers:

3.3.1.2.1 Verizon has distribution facilities to the multiunit premises, and either owns and controls, or leases, the House and Riser Cable at the multiunit premises; and

3.3.1.2.2 Sprint certifies that it will place an order for access to an unbundled Sub-Loop network element under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 via the newly provided single point of interconnection.

3.3.2 Distribution Sub-Loop Facility. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, upon site specific request, Sprint may obtain access to the Distribution Sub-Loop Facility at a technically feasible access point located near a Verizon remote terminal equipment enclosure at the rates and charges provided for Unbundled Sub-Loop Arrangements (or the Distribution Sub-Loop) in the Agreement. It is not technically feasible to access the sub-loop distribution facility if a technician must access the facility by removing a splice case to reach the wiring within the cable.

3.4 Unbundled Local Circuit Switching.

3.4.1 General Requirements. Verizon shall provide Mass Market Switching to Sprint under the Amended Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, as of October 2, 2003, with the exception of the foregoing obligation to provide Mass Market Switching, Verizon shall have no other obligation to provide any other form of Local Switching or Tandem Switching (such as Enterprise Switching) to Sprint, and any Local Switching or Tandem Switching previously made available to Sprint shall be considered a Nonconforming Facility that shall be subject to the transition provisions of Section 3.8 below. For the avoidance of doubt: (a) Enterprise Switching is a Nonconforming Facility as of October 2, 2003; and (b) Local Switching subject to the FCC's Four-Line Carve Out Rule is a Nonconforming Facility by operation of law in effect prior to the Amendment Effective Date, subject to the [***State Commission TXT***] established multiline end user loop maximum.

3.4.2 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to continue to provide Sprint with nondiscriminatory access to Mass Market Switching on an unbundled basis under the Amended Agreement upon a finding by the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to Mass Market Switching in a particular market, or where the [***State Commission TXT***] has found that all impairment would be cured by implementation of a transition plan for unbundled circuit switching in a particular market.

3.4.3 Signaling and Call-Related Databases. Verizon shall provide access to Signaling, and Call-related Databases and Service Managemenet Systems under the Amended Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Specifically, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, Verizon shall provide Signaling and Call-Related Databases only in conjunction the provision of Local Switching or Tandem Switching that Verizon is otherwise obligated to make available to Sprint under the Amended Agreement; provided, however, that Verizon shall continue to provide nondiscriminatory access to the 911 and E911 Call-Related Databases in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Where Local Switching or Tandem Switching associated with a particular Signaling facility or Call-Related Database is or becomes a Nonconforming Facility, the associated Signaling facility or Call-Related Database associated with that Local Switching or Tandem Switching facility shall also be subject to the same transitional provisions in Section 3.8 (except for the 911 and E911 Call-Related Databases, as noted above).

3.5 Unbundled Interoffice Facilities.

3.5.1 General Requirements. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003: (a) Verizon shall provide Dedicated Transport and Dark Fiber Transport under the Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51; and (b) Verizon shall provide Dedicated Transport and Dark Fiber Transport to Sprint only if Sprint obtains access to the subject facility in order to provide a "Qualifying Service" on a common carrier basis.

3.5.2 Dedicated Transport. On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51:

3.5.2.1 Upon Sprint's written request, Verizon shall provide Sprint with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt: (a) a transmission facility or service between a Verizon switch or wire center and a switch or wire center of Sprint or a third party is not Dedicated Transport; and (b) a transmission facility or service that uses an OCn interface or a SONET interface is not Dedicated Transport. Subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue providing the Nonconforming Facilities described in clauses (a) and (b) above under the Agreement or the Amended Agreement.

3.5.2.2 Cap on Dedicated Transport. Sprint may obtain on an unbundled basis a maximum of twelve (12) DS3 Dedicated Transport circuits (or twelve (12) DS3-equivalents, e.g. 336 DS1s) on any single Route on which unbundled transport is otherwise available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a Nonconforming Facility.

3.5.2.3 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing Sprint with nondiscriminatory access to DS1 Dedicated Transport or DS3 Dedicated Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding by the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to DS1 Dedicated Transport or DS3 Dedicated Transport, respectively, on the subject Route(s) or on all Routes. Any DS1 Dedicated Transport or DS3 Dedicated Transport previously made available to Sprint the subject Route(s) shall be considered Nonconforming Facilities immediately on the effective date of the nonimpairment finding or at the end of any transition period set forth in the finding and thereafter.

3.5.3 Dark Fiber Transport. On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51:

3.5.3.1 Upon Sprint's written request, Verizon shall provide Sprint with nondiscriminatory access to Dark Fiber Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt, Dark Fiber Transport does not include a dark fiber facility between (a) a Verizon switch or wire center and (b) a switch or wire center of Sprint or any third party, and subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue providing such Nonconforming Facility under the Amended Agreement.

3.5.3.2 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing Sprint with nondiscriminatory access to Dark Fiber Transport on an unbundled basis under the Agreement or the Amended Agreement on a particular Route upon a finding by

the [***State Commission TXT***] or the FCC that requesting telecommunications carriers are not impaired without access to unbundled Dark Fiber Transport on the subject Route(s) or on all Routes. Any Dark Fiber Transport previously made available to Sprint on the subject Route(s) shall be considered a Nonconforming Facility as of the effective date of the nonimpairment finding or at the end of any transition period set forth in the finding.

3.6 Commingling and Combinations.

3.6.1 Commingling. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, but subject to the conditions set forth in the following section, Verizon will not prohibit the commingling of an unbundled Network Element or a combination of unbundled Network Elements obtained under the Agreement or Amended Agreement pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or under an Verizon LINE tariff ("Qualifying UNEs"), with wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement ("Qualifying Wholesale Services"), but only to the extent and so long as commingling restrictions are prohibited by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Moreover, to the extent and so long as required by 47 U.S.C. § 251(c)(3) and 47 U.S.C. Part 51, Verizon shall, upon request of Sprint, perform the functions necessary to commingle Qualifying UNEs with Qualifying Wholesale Services. The rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the Qualifying Wholesale Services, and the rates, terms and conditions of the Amended Agreement or the Verizon UNE tariff, as applicable, will apply to the Qualifying UNEs; ~~provided, however, that a nonrecurring charge will apply for each LINE circuit that is part of a commingled arrangement, as set forth in the Pricing Attachment to this Amendment. [This charge is intended to offset Verizon's costs of implementing and managing commingled arrangements.]~~ "Ratcheting," as that term is defined by the FCC, shall not be required. Qualifying UNEs that are commingled with Qualifying Wholesale Services are not included in the shared use provisions of the applicable tariff. Verizon's performance in connection with the provisioning of commingled facilities and services shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere, but Verizon's performance will conform at parity with how it provisions like services to its own customers, itself, and to its affiliates.

3.6.2 Service Eligibility Criteria for Certain Combinations and Commingled Facilities and Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT to the contrary:

3.6.2.1 Verizon shall not be obligated to provide:

3.6.2.1.1 an unbundled DS1 Loop in combination with unbundled DS1 or DS3 Dedicated Transport, or commingled with DS1 or DS3 access services;

3.6.2.1.2 an unbundled DS3 Loop in combination with unbundled DS3 Dedicated Transport, or commingled with DS3 access services;

3.6.2.1.3 unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;

3.6.2.1.4 unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service; or

3.6.2.1.5 unbundled DS3 Dedicated Transport commingled with DS3 channel termination service, unless and until Sprint: (a) certifies in writing to Verizon for each DS1 circuit or DS1 equivalent circuit that it is in compliance with each of the service eligibility criteria set forth in 47 C.F.R. § 51.318. Sprint must remain in compliance with said service eligibility

criteria for so long as Sprint continues to receive the aforementioned combined or commingled facilities and/or services from Verizon. The service eligibility criteria shall be applied to each DS1 circuit or DS1 equivalent circuit. If the circuit is, becomes, or is subsequently determined to be, noncompliant, the noncompliant circuit will be treated as a Nonconforming Facility subject to the provisions of Section 3.8 below. The foregoing shall apply whether the circuits in question are being provisioned to establish a new circuit or to convert an existing wholesale service, or any part thereof, to unbundled network elements. For existing circuits, the CLEC must re-certify in writing for each DS1 circuit or DS1 equivalent within 30 days of the Amendment Effective Date. Circuits not re-certified shall be Nonconforming Circuits.

3.6.2.2 Each written certification to be provided by Sprint pursuant to Section 3.6.2.1 above must contain the following information for each DS1 circuit or DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was established in the 911IE911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff; (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There must be one such identification number per every 24 DS1 circuits; and (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.

3.6.2.3 The charges for conversions are as specified in the Pricing Attachment to this Amendment and apply for each circuit converted.

3.6.2.4 Until such time as Verizon implements its ASR-driven conversion process in the East, conversion of access circuits to unbundled Network Elements will be performed manually pursuant to Verizon's conversion guidelines. The effective bill date for conversions is the first of the month following Verizon's receipt of an accurate and complete ASR or electronic request for conversion pursuant to Verizon's conversion guidelines.

3.6.2.5 All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. If such change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as specified in the pricing attachment.

3.6.2.6 All requests for conversions will be handled as a project and will be excluded from all ordering and provisioning metrics.

3.6.2.7 Once per calendar year, Verizon may obtain and pay for an independent auditor to audit Sprint's compliance in all material respects with the service eligibility criteria applicable to EELs. Any such audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants, and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment. To the extent the independent auditor's report concludes that Sprint failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then Sprint must convert all noncompliant circuits to the appropriate service, true up any difference in payments, make the correct payments on a going-forward basis, reimburse Verizon for the entire cost of the audit within thirty (30) days after receiving a statement of such costs from Verizon. Should the independent auditor confirm Sprint's compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit, then Sprint shall provide to the independent auditor for its verification a statement of Sprint's out-of-pocket costs of complying with any

requests of the independent auditor, and Verizon shall then reimburse sprint for its out-of-pocket costs within thirty (30) days of the auditor's verification of the same. sprint shall maintain records adequate to support its compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit for at least eighteen (18) months after the service arrangement in question is terminated.

3.7 Routine Network Modifications.

3.7.1 General Conditions. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall make all such routine network modifications, at the rates and charges set forth in the Pricing Attachment to this Amendment, ~~as are necessary to permit access by Sprint to the Loop, Dedicated Transport, and Dark Fiber Transport facilities available under the Amended Agreement, including DS1 Loops and DS1 Dedicated Transport, and DS3 Loops and DS3 Dedicated Transport. Where facilities are unavailable, Verizon will not perform trenching, pull cable, construct new Loops or Transport or install new aerial, buried, or underground cable to provision an order of Sprint.~~ Routine network modifications applicable to Loops or Transport may include, but are not limited to: rearranging or splicing of ~~in-place cable at existing splice points~~; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; deploying a new multiplexer or reconfiguring an existing multiplexer; accessing manholes; and deploying bucket trucks to reach aerial cable. Routine network modifications applicable to Dark Fiber Transport may include, but are not limited to, splicing of ~~in-place dark fiber at existing splice points~~; accessing manholes; deploying bucket trucks to reach aerial cable; and routine activities, if any, needed to enable Sprint to light a Dark Fiber Transport facility, ~~that it has obtained from Verizon under the Amended Agreement.~~ Routine network modifications do not include the construction of a new loop or the installation of new aerial or buried cable for a requesting telecommunications carrier, or the placement of new cable.

3.7.2 Performance Plans. Verizon's performance in connection with the provisioning of Loops or Transport (including Dark Fiber Transport) for which routine network modifications are necessary shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere but Verizon's performance will conform at parity with how it provisions like services to its own customers, itself, and to its affiliates.

3.8 Transitional Provisions for Nonconforming Facilities.

3.8.1 Nonconforming Facilities- Switching. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon and Sprint will abide by the following transitional procedures with respect to Mass Market Switching and Enterprise Switching:

3.8.1.1 Mass Market Switching. Upon a finding by the [***State Commission TXT***] that no impairment exists in a particular market with respect to Mass Market Switching, Verizon will continue accepting orders under the Amended Agreement for Mass Market Switching for a transitional period of five (5) months. Thereafter, Verizon shall be under no obligation to accept new orders for Mass Market Switching. Counting from the date of the [***State Commission TXT***]'s order finding no impairment in a particular market or markets, Sprint shall submit orders to Verizon to migrate the embedded base of its end user customers in the subject market off of Verizon's Mass Market Switching product to any other switching service or product made available by Verizon under separate agreement, or to Sprint's own or a third party's facilities, in accordance with the following schedule: (a) during month 13, Sprint must submit orders to migrate one-third of its embedded base of end user customers; (b) during month 20, Sprint must submit orders to migrate one-half of the remaining embedded base of end user

customers; and (c) during month 27, Sprint must submit orders to migrate the remainder of its embedded base of end user customers. For purposes of the foregoing schedule, customers already in a "rolling" transition plan established by the [***State Commission TXT***] shall not be included in the embedded base.

3.8.1.2 Enterprise Switching. Verizon will provide Sprint with at least thirty (30) days advance written notice of the date on which Verizon will cease provisioning Enterprise Switching to Sprint. Verizon agrees to continue provisioning Enterprise Switching to Sprint under the terms of the Agreement during a transitional period, which transitional period shall end on the date set forth in the notice. Beginning January 1, 2004, Sprint shall have ninety (90) days in which to submit orders to Verizon to migrate its embedded base of end user customers served by Verizon's Enterprise Switching product to any other switching service or product made available by Verizon under separate agreement, or to Sprint's own or a third party's facilities.

3.8.2 Other Nonconforming Facilities. With respect to any Nonconforming Facility not addressed in Section 3.8.1 above, Verizon will notify Sprint in writing as to any particular unbundled facility previously made available to Sprint that is or becomes a Nonconforming Facility, as defined herein. The Parties acknowledge that such notice was issued prior to the execution of this Amendment with respect to certain Nonconforming Facilities. During a transitional period of thirty (30) days from the date of such notice, Verizon agrees to continue providing the Nonconforming Facilities addressed in the subject notice(s) to Sprint under the terms of the Agreement. At the end of that thirty (30) day period, unless Sprint has submitted an LSR or ASR, as appropriate, to Verizon requesting disconnection of the Nonconforming Facility, Verizon shall convert the subject Nonconforming Facilities to an analogous access service, if available, or if no analogous access service is available, to such other service arrangement as Verizon and Sprint may agree upon (e.g., a separate agreement at market-based rates or resale); provided, however, that where there is no analogous access service, if Sprint and Verizon have failed to reach agreement as to a substitute service within such thirty (30) day period, then Verizon may disconnect the Nonconforming Facilities; and *provided*, further, that with respect to any dark fiber facility that, pursuant to the terms of this Amendment, is (or becomes) a Nonconforming Facility, the transition period shall be ninety (90) days from the date of the aforementioned notice; and provided further, that unless the parties have been able to negotiate a suitable transitional services agreement for such dark fiber facilities within that ninety (90) day period, Verizon shall no longer be obligated to provide the Nonconforming Facility in question to Sprint. Where the Nonconforming Facilities are converted to an analogous access service, Verizon shall provide such access services at the month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the thirty (30) day notice period. Sprint shall pay all applicable termination charges, if any, for any Nonconforming Facilities that Sprint requests Verizon to disconnect, or that Verizon disconnects as a result of the Parties' failure to reach agreement on a substitute service.

Pricing Attachment to the TRO Amendment

1. General

- 1.1 As used in this Attachment:
 - 1.1.1 "Services" means and includes any Network Element or other service, facility, equipment or arrangement, provided pursuant to this Amendment; and,
 - 1.1.2 "Charges" means the rates, fees, charges and prices for a Service.
- 1.2 Charges for Services provided under the Amended Agreement shall be those set forth in Appendix A of this Pricing Attachment and in the Amended Agreement (including any cross

references therein to applicable tariffs). For rate elements provided in Appendix A of this Pricing Attachment that do not include a Charge, if any, whether marked as "TBD" or otherwise, Verizon is developing such Charges and has not finished developing such Charges as of the Amendment Effective Date. When Verizon finishes developing such a Charge, Verizon shall notify Sprint in writing of such Charge in accordance with, and subject to, the notices provisions of the Amended Agreement and thereafter shall bill Sprint, and Sprint shall pay to Verizon, for Services provided pursuant to this Amendment on the Amendment Effective Date and thereafter in accordance with such Charge. Any Charges set out in a notice provided by Verizon to Sprint pursuant to this Section 1.2 shall be deemed to be a part of Appendix A of this Pricing Attachment immediately after Verizon sends such notice to Sprint and thereafter.

- 1.3 In the absence of Charges for a Service established pursuant to Section 1.2 of this Attachment, the Charges for the Service shall be the Charges required, approved, or otherwise allowed to go into effect, by the [***State Commission TXT***] or the FCC (including, but not limited to, in a tariff that has been filed with the [***State Commission TXT***] or the FCC), provided such Charges are not subject to a stay issued by any court of competent jurisdiction.
- 1.4 In the absence of Charges for a Service established pursuant to Sections 1.2 through 1.3 of this Attachment, the Charges for the Service shall be mutually agreed to by the Parties in writing.

Exhibit A

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION
DOCKET NO UT 043013
CERTIFICATE OF SERVICE**

I certify that true and correct copies of Motion to Dismiss of Sprint were sent via overnight mail on March 16, 2004 to:

Ms Carole Washburn
Executive Secretary
Washington Utilities & Transportation
Commission
1300 S. Evergreen Park Drive SW
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And true and correct copies by U.S. Mail, postage prepaid, on March 16, 2004 to the parties on the attached service list



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