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 SPRINT'S RESPONSE TO VERIZON'S IDENTIFICATION OF SPECIFIED INTERCONNECTION AGREEMENTS AND WITHDRAWAL OF ARBITRATION AS TO THOSE PARTIES

1 Sprint Communications Company L.P. ("Sprint") submits this Response to Verizon Northwest Inc.'s ("Verizon") September 15, 2004 Identification of Specified Agreements and Withdrawal of Arbitration as to Those Parties ("Withdrawal Filing"). Verizon named 77 CLECs as respondents when it filed its Petition for Arbitration in Washington. It did so regardless of the fact that, at least in the case of Sprint, it had not engaged in meaningful negotiations. Now, after dragging the CLECs through an expensive and laborious process, which has consumed over six months, it is attempting to circumvent this Commission's order maintaining the status quo[1] by seeking to withdraw its petition as to a majority of the named respondents.

[1] *Order Granting Interlocutory Review of Order No. 05; Denying in Part Verizon's Petition for Review*, Order No. 8, Docket No. UT-043013 (August 13, 2004)("*Status Quo Order*").

2 Sprint's interconnection agreement with Verizon requires that Verizon engage in dispute resolution with Sprint, either by dispute resolution procedures set forth in the Agreement or by arbitration before the Commission, to resolve the disputed issues that are the subject of this arbitration. A written amendment is necessary because eliminating the availability of UNEs or providing the same functions at different prices, as Verizon threatens to do, would substantially change terms and conditions of the Agreement. If an agreement cannot be reached, as in this case, either Party may seek redress before the Commission. Because the Parties disputes remain unresolved and are now properly before the Commission in this Arbitration, Verizon's withdrawal request should be denied, at least as to Sprint.

3 In addition, the issues in this proceeding are one and the same as the issues disputed between Verizon and Sprint. In fact, one major issue is whether and to what extent the FCC's *Triennial Review Order* ("TRO") and the D.C. Circuit Court of Appeal's decision in *USTA II*[2] constitute a change in law. The interconnection agreement and the Commission's arbitration policies dictate that Sprint have an opportunity in this Arbitration to address the disputes between Sprint and Verizon.

4 Last, the Commission is well within its jurisdiction to order the parties to abide by their existing interconnection agreements until it resolves the disputed issues, including whether and to what extent a change in law has occurred. Sprint therefore asks the Commission to deny Verizon's request to withdraw its Petition as to Sprint.

[2] *United States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*hereinafter "USTA II"*).

I. The Change in Law Provisions of the Agreement Require Verizon and Sprint to Negotiate Written Changes, and if Negotiations Fail to Produce a Written Modification the Parties are Entitled to Submit the Dispute to the Commission

5 Verizon inappropriately seeks to withdraw its arbitration petition as to CLECs identified in Exhibit A to its Withdrawal Filing, including Sprint. Verizon's attempt to withdraw its Petition is clearly an effort to circumvent the *Status Quo Order* and to unilaterally deny CLECs access to certain UNEs. Verizon mistakenly argues that the parties to the Exhibit A agreements do not need to amend those agreements in order for Verizon to cease providing UNEs, which it purports it may discontinue under the TRO and *USTA II*.

6 The current interconnection agreement between Sprint and Verizon ("Agreement") in Washington contains several provisions that govern changes in law. Article II, section 1.2 of the of the Agreement provides:

> 1.2 Applicable Law/Changes in Law.
>
> Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. The terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time this Agreement was produced, and shall be subject to any and all applicable statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings that subsequently may be prescribed by any federal, state or local governmental authority having appropriate jurisdiction. Except as otherwise expressly provided herein, such subsequently prescribed statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings will be deemed to automatically supersede any conflicting terms and conditions of this Agreement. In addition, subject to the requirements and limitations set forth in Section 1.3, to the extent required or reasonably necessary, the Parties shall modify,

in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such statute, regulation, rule, ordinance, judicial decision or administrative ruling. Should the Parties fail to agree on appropriate modification arising out of a change in law, within sixty (60) calendar days of such change in law the dispute shall be governed by Section 3 of Article II. Should the Parties fail to agree on appropriate modification arising out of a change in law, within sixty (60) calendar days of such change in law the dispute shall be governed by Section 3 of Article II.

Thus, the Agreement requires that when there is a change in law and when it is reasonably necessary, the parties must modify in writing the affected terms and conditions. The change in law that Verizon asserts has occurred reasonably requires a change in the terms and conditions of the Agreement. Unfortunately, despite Sprint's substantial efforts, it has not been able to resolve the disputes in this Arbitration.

7 As a result of the Parties' inability to agree to written changes to the Agreement, the dispute resolution provisions of the Agreement apply. Section 3 provides in pertinent part:

3 Dispute Resolution.

3.1 Alternative to Litigation.

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, the Parties may agree to use the following alternative dispute resolution procedures with respect to any action, dispute, controversy or claim arising out of or relating to this Agreement or its breach, except with respect to the following:

3.1.1 An action seeking a temporary restraining order or an injunction related to the purposes of this Agreement;

3.1.2 A dispute, controversy or claim relating to or arising out of a change in law or reservation of rights under the provisions of Article II, Section 1; and

3.1.3 A suit to compel compliance with this dispute resolution process.

Any such actions, disputes, controversies or claims may be pursued by either Party before any court, commission or agency of competent jurisdiction. Notwithstanding the foregoing, and subject to Section 3.2, nothing herein shall be construed as limiting a Party's right to seek resolution of such disputes before the Commission or any other available forum.

3.2 Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

3.3 Arbitration.

If the dispute is not resolved within sixty (60) days of the initial written request, the dispute, upon mutual agreement of the Parties, may be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement . . .

3.5 Litigation.

If the dispute is not resolved within thirty (30) days of the initial written request, and the Parties do not agree to submit the dispute to arbitration, either Party may submit the dispute to the Commission or any other available forum for resolution.

3.7 Continuous Service.

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations, including making payments in accordance with Article I, Section 4.3 of this Agreement.

Under this section, if the Parties fail to agree to written modifications, within sixty (60) calendar days of a purported change in law, the dispute is governed by Section 3 of Article II, and either party may seek redress from the Commission. In addition, Section 5.19 of Article II states:

5.19 Amendments.

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

Therefore, according to the Agreement, Verizon cannot unilaterally modify the UNE and pricing terms of the Agreement without a negotiated or arbitrated written amendment to the Agreement, nor can it withdraw its Petition, at least as to Sprint.

II. Sprint is Entitled Under the Agreement and the Commission's Arbitration Standards to an Opportunity to Address the Disputed Issues Before the Commission in this Arbitration

8 As previously explained, the Agreement requires that if Sprint and Verizon cannot agree to a written change to the Agreement that may be reasonably necessary as result of a change in law, the parties must follow the Section 3.2 dispute resolution provisions. That section requires that the parties negotiate their dispute and are entitled to bring any remaining issues to the Commission for resolution.

9 Furthermore, according to the Commission's *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act Of 1996*,[3] parties to the negotiation of an interconnection agreement are entitled to participate, and even non-parties may participate if it serves the public interest:

> The Commission interprets the Act as contemplating that arbitrations involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest.

In this case, Sprint has made numerous attempts, as reflected in the record for this proceeding, to negotiate and resolve its disputes with Verizon. Because those attempts have not been fruitful, Sprint is entitled to have its disputes resolved in this Arbitration.

10 In addition, allowing Verizon to withdraw its Petition as to Sprint, and the other parties, would require Sprint and the other CLECs to initiate additional duplicative

[3] In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996, Docket No. UT-960269, (1996)("*Arbitration Interpretive and Policy Statement*").

proceedings in order to resolve their disputes with Verizon. The issues in this proceeding are one and the same as the issues disputed between Verizon and Sprint. In fact, one major issue is whether and to what extent the FCC's Triennial Review Order ("TRO") and the D.C. Circuit Court of Appeal's decision in *USTA II*[4] constitute a change in law. Therefore, it would be inefficient and contrary to the public interest to allow Verizon to withdraw its Petition as to Sprint.[5]

11 It would also be contrary to the Commission's practice in this Arbitration to allow Verizon to withdraw its Petition as to Sprint. The Commission has granted great leeway to Verizon in this case and should grant similar latitude to Sprint and the other CLECs in order to provide the most fair and expeditious forum in which to resolve the CLECs' disputes with Verizon.[6] Therefore, Sprint's disputes with Verizon should be heard by the Commission in this Arbitration.

III. The Commission has Jurisdiction to Address the Disputes between Sprint and Verizon in this Arbitration, Including Whether and to What Extent a Change in Law has Occurred

12 According to the Act, the Commission "shall resolve each issue set forth in the petition and response, if any, by imposing appropriate conditions as required to

[4] *United States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*hereinafter "USTA II"*).
[5] The Commission notes in the *Arbitration Interpretive and Policy Statement* that arbitrations are "designed to resolve the dispute in an efficient and economical manner." *Id.*
[6] The Commission has acknowledged that Verizon's Petition was deficient, but nevertheless allowed it to continue with its case without amending or refiling the Petition and has granted a number of procedural delays to allow Verizon to prepare its case. In fact, the most recent delay for Verizon to file its revised issues listed resulted in the *Withdrawal Filing*.

implement subsection (c) upon the parties to the agreement, . . ." [7] Whether and to what extent the TRO and *USTA II* constitute a change in law is an issue in this proceeding brought before the Commission by Sprint, Verizon, and other CLECs. If the Commission allows Verizon to determine this issue outside of this proceeding, when it has been properly brought before it in the Arbitration, the Commission would effectively allow Verizon to exercise those statutory powers. Therefore, Sprint urges the Commission not to do what Verizon asks, which is to punt the issue so that Verizon can impose its own one-sided interpretation of the TRO and *USTA II* on Sprint.

IV. Conclusion

13 For the foregoing reasons, Sprint asks that the Commission reject Verizon's attempt to circumscribe Sprint's rights under prevailing law and the Parties interconnection agreement and reject Verizon's attempt to withdraw its Petition as to Sprint.

Respectfully submitted this 30th day of September 2004.

By: _____

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[7] 47 U.S.C. § 252(b)(4)(C).