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 RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P.

RESPONSE OF SPRINT COMMUNICATIONS COMPANY L.P. TO VERIZON'S PETITION FOR ARBITRATION

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I. INTRODUCTION

1 In its petition for arbitration ("Petition"), filed on February 26, 2004 in this proceeding, Verizon Northwest, Inc. ("Verizon") requests that the Washington Utilities and Transportation Commission ("Commission") initiate an arbitration proceeding to amend the interconnection agreements between Verizon and each of the competitive local exchange carriers ("CLECs") and, to the extent that their current interconnection agreements provide for access to unbundled network elements ("UNEs"), each of the Commercial Mobile Radio Service ("CMRS") providers in Washington as listed in the attachments to the Petition. On March 19, 2004, Verizon filed an update to its Petition. Verizon purports to file its unprecedented Petition in light of the *Triennial Review Order*.[1] Sprint Communications Company L. P. ("Sprint") hereby responds to Verizon's Petition.

II. STATEMENT OF FACTS

2 On October 2, 2003, Sprint received a proposed amendment from Verizon containing Verizon's modifications to the existing Sprint/Verizon interconnection agreement. On October 29, 2003, Sprint provided via e-mail a counter-proposal to Verizon's suggested amendment.[2]

3 Sprint repeatedly attempted to contact Verizon regarding the proposed amendment. However, Verizon did not reciprocate Sprint's efforts and failed to respond to Sprint's counter-proposal for nearly four months. Moreover, Sprint did not receive any prior notice of Verizon's intent to file the instant Petition.[3] Verizon only

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[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Review of Section 251 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).

[2] See Attachment 1, copy of Affidavit of John S. Weyforth, filed with Sprint's Motion to Dismiss.

[3] Id.

notified Sprint of its intent to file the Petition after Verizon had already filed in some fifteen (15) states. On March 11, 2004, over four months after Sprint made its counter-proposal and two weeks after Verizon filed its Petition, Verizon finally provided Sprint with a response.

4 On March 16, 2004, Sprint filed a Motion to Dismiss the Petition, which the Commission is still reviewing. In the Motion, Sprint asks the Commission to dismiss the Petition, or in the alternative dismiss Sprint from the Petition, and to require Verizon to negotiate in good faith. Sprint asserts that Verizon failed to negotiate in good faith with Sprint, as required by Telecommunications Act of 1996 (the "Act") and The TRO. In addition, Sprint asserts that Verizon's Petition does not meet the requirements set forth in the rules of the Commission, the FCC's rules and orders, and the Act.

5 In its Petition, Verizon notes that "some CLECs have signed Verizon's draft amendment, without substantive changes".[4] Verizon goes on to state that "virtually none provided a timely response" to Verizon's notice and draft amendment. This statement is incorrect with respect to Sprint and illustrates the inadequacy of Verizon's "one-size-fits-all" arbitration petition.

6 Verizon argues that the FCC, in the *Triennial Review Order*, required incumbent carriers and CLECs to use Section 252(b) of the Telecommunications Act of 1996 as a default timetable for modifying interconnection agreements. Verizon misses the intent of the FCC. The FCC imposed this time limit to ensure that carriers would "begin immediately to negotiate in good faith pursuant to section 251(c)(1) of the Act," relying on "state commissions to be vigilant in monitoring compliance."[5] The FCC said that the parties could request arbitration, but only "where a negotiated agreement cannot be

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[4] Petition, at page 3 and 4.

[5] *Triennial Review Order*, at paragraph 703.

reached."[6] The FCC emphasized the requirement to negotiate in good faith, stating:

> Finally, we reiterate that section 251(c) imposes a good faith negotiation requirement that applies to both incumbent LECs and competitive LECs. Based on past history, we understand that parties may disagree significantly on what constitutes a breach of the good faith negotiation requirement. While we realize that whether a carrier violates its section 251(c)(1) is a fact-specific inquiry, we nevertheless admonish all parties to avoid gamesmanship and behavior that may reasonably lead to a finding of bad faith. For example, parties may not refuse to negotiate any subset of the rules we adopt herein. Once the rules established herein are effective, and any applicable change of law process has been triggered, a party's refusal to negotiate (or actions that would otherwise delay unnecessarily the resolution of) any single issue may be deemed a violation of section 251(c)(1).[7]

Verizon's refusal to accept or reject Sprint's proposals in the negotiation process caused significant delays in negotiations which resulted in Verizon filing the Petition.[8]

III. THE BELL ATLANTIC/GTE MERGER CONDITIONS SUPPORT DENIAL OR DISMISSAL OF VERIZON'S PETITION

7 In other state proceedings, parties have raised the issue of Verizon's obligations under the *Merger Conditions*[9] as an additional basis to challenge Verizon's proposed TRO amendment and to support the dismissal of Verizon's Petition. Verizon is obligated to provide services under the *UNE Remand Order*[10] and the *Line Sharing Order*[11]

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[6] Id.

[7] Id., at paragraph 706.

[8] Verizon only responded with a definitive rejection of all of Sprint's proposed changes after it had already filed for arbitration in numerous states. See Attachment 1.

[9] *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee; for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* CC Docket No. 98-184 Memorandum Opinion and Order, 15 FCC Rcd 14032; 2000 FCC LEXIS 5946, (2000) (*"Bell Atlantic/GTE Merger Order"*). The Merger Conditions appear as Appendix D to the Bell Atlantic/GTE Merger Order (*"Merger Conditions"*).

[10] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC

pursuant to Paragraph 39 of the *Merger Conditions*, which states:

> 39. Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNEs and UNE combinations required in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) (UNE Remand Order) and Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. Dec. 9, 1999) (Line Sharing Order) in accordance with those Orders until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.

8 The *Triennial Review* proceeding was an extension and consolidation of the *UNE Remand* proceeding and the *Line Sharing* proceeding. Both the *UNE Remand Order* and the *Line Sharing Order* were appealed to the D.C. Circuit Court and the Court remanded both decisions *to* the FCC in *USTA I*.[12] The FCC then consolidated the remand of those proceedings into the *Triennial Review* proceeding and sought a stay of *USTA I* to allow it

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Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 2 (1999) (*"UNE Remand Order"*), *reversed and remanded in part sub. nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA*), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S.Ct 1571 (2003 Mem.)

[11] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

[12] *United States Telecom Ass'n v. FCC*, 290 F.3rd 415 (D.C. Cir. 2002) (*"USTA I"*).

to address the issues.[13] Thus, there is no final non-appealable order and Verizon is still obligated to offer these services.

9 Verizon has argued in other proceedings that the *Merger Conditions* contain a sunset provision. However, the opening clause in the sunset provision states that "[e]xcept where other termination dates are specifically established herein..."[14] The UNE condition falls within the "except where" proviso and Verizon's obligations in this regard remaining effect.

IV. DISCUSSION OF VERIZON'S PROPOSED AMENDMENTS AND SPRINT'S COUNTER-PROPOSAL

10 Sprint's extensive revision of the Verizon draft was necessary because Verizon did not craft the amendment to reflect the requirements in the *Triennial Review Order*.[15] Sprint's proposal also takes into consideration Verizon's additional obligations imposed under the *Merger Conditions* as discussed above.

11 Sprint does not waive the right to ask the Commission to impose upon Verizon additional unbundling or other requirements that may be revealed through the arbitration process or as a result of further clarification of the parties' obligations under *USTA II*.

12 Last, in some cases the *Triennial Review Order* clarified or modified existing Verizon requirements, rather than creating wholesale changes in the applicable law. For example, Sprint's proposed *Triennial Review Order* amendment reflects clarifications with respect to obligations that already existed. In these cases, Sprint does not mean to

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[13] On September 4, 2002, the D. C. Court stayed the effectiveness of its opinion until January 2, 2003. *See USTA v. FCC*, No. 00-1012, Order (D.C. Cir. Sept. 4, 2002). Then, on December 23, 2002, the D.C. Court granted the consent motion of the Commission and the Bell Operating Companies to extend the stay through February 20, 2003. *See USTA v. FCC*, Nos. 00-1012, 00-1015, Order (D.C. Cir. Dec. 23, 2002).

[14] *Merger Conditions*, at paragraph 64.

[15] See Attachment 2.

suggest by its response that there has been a change in law.

A. Prefatory Provisions

13 **Section 6.** In its proposed amendment Verizon seeks to preserve its rights should there be additional proceedings at the FCC or in court as a result of *USTA II*. Sprint's modifications to this section secures the rights both parties to negotiate and, if necessary, to seek legal remedies.

B. General Conditions (TRO Amendment Section 1)

14 **Section 1.1.** Sprint has inserted a new term in the proposed agreement – "Applicable Law". The definition of this term that Verizon includes in the TRO Glossary section of its proposed amendment does not reference all the rules promulgated by the FCC in the *Triennial Review Order*. Nor does Verizon's proposed amendment reflect the applicability of the *Merger Conditions* as discussed above or the effect of other proceedings. For example, the specifics surrounding conversions of services to UNEs in 47 C.F.R. Section 51.316 are not contained in the amendment. In addition, 47 C.F.R Section 51.319(a)(9), which prohibits ILECs from engineering the network in such a way as to disrupt or degrade CLEC access, is not reflected in Verizon's proposed amendment. While it is not necessary to repeat every rule, in this instance all applicable law and not only that law unilaterally selected by Verizon should be included.

15 **Section 1.2.** The intent of the language added by Sprint is to clarify the scope of the Applicable Law with respect to the use of UNEs. Although Verizon has correctly recognized that the Court in *USTA II* vacated the qualifying service distinction, the consequence of the decision is that, except for the EEL use criteria, a UNE can be used to provide any telecommunications service. This interpretation is entirely consistent with Section 251(c)(3) of the Act, which is the basis for the Court remand. In addition 47 C.F.R. Section 51.100(b) allows CLECs that have gained access to a UNE under Section 251(c)(3) of the Act to offer information services through the same arrangement.

C. TRO Glossary

16 **New Section 2.1.** A new definition was added to clearly articulate the scope of the rules and orders that determine Verizon's obligations under this amendment. As noted previously the *Merger Conditions* impose additional obligations that Verizon did not include in its proposal.

17 **Section 2.3 (former Section 2.2).** Sprint removed the reference to the LERG from the definition because it is not contained in the *Triennial Review Order.*[16] The *Triennial Review Order* also provided that non-ILEC locations entitled reverse collocation as an end point of a valid dedicated transport route.[17] Sprint modified the language to recognize this fact.

18 **New Section 2.4.** This is a new section to add a definition for "Dark Fiber Loop" that is consistent with the definition contained in 47 C.F.R. Section 51.319(a)(6). Sprint is concerned that Verizon's proposal would allow it to use the fiber-to-the-home ("FTTH") language to prohibit access to dark fiber. This is clearly not the FCC's intent. If it were the FCC's intent, the FCC would not have included it under enterprise loops in a separate section of the rules.

19 **Section 2.5. (former Section 2.3).** See the explanation for Section 2.3 above.

20 **Section 2.8. (former Section 2.6).** The definition was changed to be consistent with 47 C.F.R. Section 51.319(a)(4). The term "Transmission Channel," which Sprint deleted, might not be interpreted to apply to a DS1 Loop provisioned over copper facilities utilizing high-bit rate digital subscriber line equipment. Sprint's concern is that Verizon could use this language to refuse to provide DS1 loops over local loop medium where it was technically feasible. The revisions clarify that Verizon will provide the electronics consistent with 47 C.F.R. Section 51.319(a), including the specific reference included in the rules to high-bit rate digital subscriber line equipment

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[16] *Triennial Review Order,* at paragraphs 364-367.

[17] *Triennial Review Order,* at footnote 1126.

(HDSL). HDSL equipment is used to provide DS1 services today, but is also part of the xDSL family, which is generally referred to as advanced services. Sprint's concern is based on denials of service orders by Verizon for DS1 Loops on the basis of "lack of facilities" and Sprint wants to ensure that Verizon is not using this as support for such denials. If any technical references are utilized Sprint prefers that national standards are utilized, rather than company specific standards, which can be changed unilaterally.

21 **Section 2.9 (former Section 2.7).** Similar to section 2.8, Sprint changed Verizon's definition to be consistent with 47 C.F.R. Section 51.319(a)(5). Sprint modified the definition to refer to a DS3 Loop as a local loop and not just a transmission channel. Consistent with the definition for loop in 47 C.F.R. Section 51.319(a), Sprint changed the word "requires" to "includes" to ensure that Verizon will provide the necessary electronics.

22 **New Section 2.10.** Sprint has added a new definition for "EEL" which is the same definition contained in 47 C.F.R. Section 51.5, for clarification to the EEL eligibility criteria contained in Section 3.7.2 of Verizon's proposed amended agreement.

23 **Former Section 2.11.** The definition of "House and Riser Cable" was deleted because it is essentially a subset of Sub-Loop for Multiunit Premises Access and will be included in that definition.

24 **Section 2.12 (former Section 2.9).** Sprint made minor modifications to the definition of "Feeder" for clarification to be more consistent with the loop definition contained in 47 C.F.R. Section 51.319(a).

25 **Section 2.13 (former Section 2.10).** The definition of "FTTH Loop" was not consistent with 47 C.F.R. Section 51.319(a) because it excluded any inside wire owned or controlled by Verizon.

26 **Section 2.16. (former Section 2.13).** Sprint changed the definition of "Line Sharing" to be consistent with 47 C.F.R. Section 51.319(a)(1)(i)(A), to include the reference to inside wire owned and controlled by Verizon.

27 **New Section 2.17.** Verizon's proposed amendment did not include any reference to "Line Splitting". Sprint added a definition of "Line Splitting" and included additional terms and conditions in Section 3.3 of the Agreement to ensure its availability. The definition is consistent with 47 C.F.R. Section 51.319(a)(1)(ii).

28 **New Section 2.18.** Sprint added a definition for "Loop" in the new Section 2.18 for simplification, so that the language in the Agreement does not keep redefining what a loop is. Verizon uses this approach throughout the agreement and Sprint is concerned that it could be used to deny access to inside wire owned or controlled by Verizon. The definition was also modified to assist in understanding and to ensure the fact that all UNE loops include attached electronics, the NID, and any inside wire owned or controlled by Verizon.

29 **Section 2.19 (former Section 2.14).** Sprint changed the definition of "Local Switching" so that it is consistent with 47 C.F.R. Section 51.319(d)(1). The phrase "unbundled from loops and transmission facilities" in Verizon's definition could be interpreted to limit the offering of local switching separately and not in a combination of UNEs. Verizon's definition also limited the features and functions to those which Verizon offers to its own end users and not to those capable of being offered under the current switch technology. Verizon's definition did not list customized routing. Verizon must offer customized routing if it does not want to unbundle operator services.

30 **Section 2.20 (former section 2.15).** The phrase "Applicable Law" was added to clarify Verizon's obligations.

31 **New Section 2.21.** A definition of the "Merger Conditions" was added for clarification.

32 **New Section 2.22.** A definition of "NID", consistent with 47 C.F.R. Section 51.319(c), was added for clarification and to ensure that Sprint is not excluded from accessing certain types of NIDs at multiunit locations.

33 **Section 2.23** (former **Section 2.16).** The phrase "Applicable Law" was added to clarify Verizon's obligations, and to ensure that the meaning of that phrase is consistent throughout the Agreement.

34 **Section 2.24 (former Section 2.17).** The definition was slightly changed to match 47 C.F.R. Section 51.319(a)(2).

35 **New Section 2.26.** Sprint added definition of "Point of Technically Feasible Access" to clarify where sub-loops could be accessed and to simplify subsequent language in the Agreement. Verizon's definition is consistent with 47 C.F.R. Section 51.319(b)(1)(i) and Section 51.319(b)(2)(i). The terms and conditions in Verizon's proposal did not recognize that CLECs have the option of accessing copper sub-loop via a splice near a remote terminal. In addition, the terms and conditions in the agreement did not recognize that ILECs have an obligation to offer access to fiber sub-loop at multiunit premises.

36 **New Section 2.29.** Sprint added a definition of "Reverse Collocation." Sites where ILECs have reverse collocated are considered end points for UNE Dedicated Transport routes.[18]

37 **Section 2.28 (former Section 2.19).** The definition of "Route" was slightly modified to add Reverse Collocation in determining where the end points of UNE Dedicated Transport are (see discussion of section 2.27).

38 **New Section 2.27.** Sprint added a definition of "Service Management Systems." ILECs have an obligation to offer unbundled access to Service Management Systems in conjunction with call-related databases (see 47 C.F.R. Section 51.319(d)(4)). Sprint added the definition and additional language to ensure that Verizon makes the capability available to Sprint.

39 **Section 2.31 (former Section 2.21).** The definition proposed by Verizon is not

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[18] *Triennial Review Order*, at footnote 1126.

consistent with the FCC definition in 47 C.F.R. Section 51.319(b)(2). ILECs must offer "access to multiunit premises wiring on an unbundled basis *regardless of the capacity level or type of loop* that the requesting telecommunications carrier seeks to provision for its customer."[19] Pursuant to the *Triennial Review Order*, multiunit premises are to be treated as enterprise customers, which mean that dark fiber sub-loops should be available.[20] Verizon's reference to FTTH here, and the fact that Verizon did not include Dark Fiber Loops in its amendment, could jeopardize Sprint's lawful access to enterprise Dark Fiber Loops and multiunit sub-loops.

40 **Section 2.32 (former Section 2.22).** The definition that Verizon proposes is not consistent with the FCC definition of copper sub-loop in 47 C.F.R. Section 51.319(b)(1). Verizon's definition limited the point of access by not mentioning the splice near a remote terminal and excluded inside wire. The definition that Sprint proposed ensures an understanding that sub-loops include attached electronic, such as repeaters.

D. UNE TRO Provisions

41 **Section 3.1.1.1.** Sprint added clarifying language from the *Triennial Review Order* to ensure that Verizon cannot deny an order for a DS1 loop based on technology. The language clearly establishes an expectation that Verizon will use any technology, including HDSL, to provision DS1 Loops.[21] For example, the rules prohibit Verizon from denying an order for a DS1 Loop on the basis of "no facilities" when no traditional copper DS1 facilities are in place, but HDSL facilities are.

42 **Section 3.1.1.3.** Sprint deleted he last two words – "and thereafter." The deleted language would prevent a future finding of impairment on DS3 Loops to specific end user locations after a regulatory body makes finding of non-impairment. Sprint does not support this position given the uncertainty in today's regulatory environment.

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[19] Emphasis added.

[20] *Triennial Review Order*, at footnote 624.

[21] *Triennial Review Order*, at footnote 956.

43 **Section 3.1.2.1.** The restriction "or any segment thereof" are not consistent with the rules for fiber Sub-Loop for Multiunit Premises Access. A loop is the complete circuit from the MDF or its equivalent to the end-user customer premises. There is no such restriction on Sub-Loop for Multiunit Premises Access. In fact it is expressly allowed (see discussion of section 2.31). Sprint's concern, given other language proposed by Verizon, is that Sprint will be denied all access to fiber in the Loop. Sprint added the phrase "mass market" to clarify that the FCC rules for FTTH are intended to apply solely to the mass market and not the enterprise market. Had the FCC intended this it would not have included separate rules for Dark Fiber Loop and Sub-Loop for Multiunit Premises Access.

44 **Section 3.1.2.2.** See the discussion for 3.1.2.1. Also, Sprint added references to the inclusion of inside wire as part of the Loop because Verizon's terms and conditions excluded any reference to inside wire. While Sprint does not deny that Verizon has the ability to manage its own facilities and retire copper Loop, it must follow the FCC network change regulations contained in 47 C.F.R. Section 51.325 through Section 51.333, which gives CLECs the opportunity to dispute that retirement. Sprint added language to ensure that the parties had a common understanding of this obligation.

45 **Section 3.1.3.2.** The "Loop" definition added by Sprint delineates the origination and termination of any Loop and clearly stipulates that any attached electronics, the NID, and any inside wire owned and controlled by Verizon are included with any Loop, including a Hybrid Loop. Verizon's language is incomplete, leaving out critical elements, which could lead to disputes, and is not necessary.

46 **Section 3.1.3.3.** If either alternative (copper loop or TDM transmission equipment) is available, it is necessary that Sprint is able to choose the method of provisioning and is willing to pay any difference in cost. A copper facility may provide higher dial-up Internet speeds and can potentially be conditioned in the future to provide advanced services. The language redefining what a Loop is was struck because

it is unnecessary and incomplete.

47 **Section 3.1.4.1.** Sprint added language to clarify that the TDM requirement also applied to IDLC. The *Triennial Review Order* does not limit the IDLC alternatives only to copper and UDLC.[22]

48 **Section 3.1.4.2.** See explanation for 3.1.4.1.

49 **Section 3.1.4.3.** Sprint does not believe that Verizon should be allowed to avoid its obligation to provide unbundled IDLC Hybrid Loops in a timely manner. Verizon should be able to provisioning a loop via an existing copper Loop, an existing Universal Digital Loop Carrier or time division multiplexing facilities within the time frames that it has agreed to as part of its performance measurement plan. Sprint agrees that any loop construction would be outside the normal provisioning intervals.

50 **Section 3.1.5.** Verizon's proposal did not include its obligation to provide access to unbundled Dark Fiber Loops. Sprint's language is consistent with 47 C.F.R. Section 51.319(a)(6) and closely follows language used by Verizon for other network elements.

51 **Section 3.2.1.2.** The "at the same location" language is not included in 47 C.F.R. Section 51.319(a)(1)(i)(A).

52 **New Sections 3.3.-3.3.5.** Verizon's terms and conditions do not contain any reference to Line Splitting even though the *Triennial Review Order* contained explicit directions for Line Splitting. Sprint's language is consistent with 47 C.F.R. Section 51.319(a)(1)(ii). The last term (3.3.5) clarifies that Sprint can provide both voice and data over the same Loop. Sprint added these sections because the FCC definition explicitly refers to two separate carriers. Without this addition, the Agreement could potentially be used to limit Sprint's ability to utilize the full features and functionality of a UNE.

53 **Section 3.4.1.** The subtitle was changed to match the definition at 2.29.

54 **Section 3.4.1.1.** The reference to "House and Riser Cable" was deleted because

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[22] *Triennial Review Order*, at paragraph 297.

Sprint deleted the definition of this term and it is already included in the definition of Inside Wire Sub-Loop. The definition of Inside Wire Sub-loop contained in 47 C.F.R. Section 51.319(a)(2) was added to clarify exactly what facility was at issue. Sprint replaced the "Point of Technically Feasible Access" because it is clearly defined in section 2.26 and continual redefinition is unnecessary and leads to disputes, especially when the redefinition(s) vary throughout the document.

55 **Section 3.4.1.1.1.** Sprint replaced the reference to "House and Riser Cable" with "Inside Wire Sub-Loop". See Section 3.4.1.1.

56 **Section 3.4.1.1.1.1.** Sprint replaced the term "point of interconnection" with the defined term "Point of Technically Feasible Access". Sprint's language is more consistent with the FCC rules and eliminates any confusion. Verizon's language could be interpreted to refer to a separate or different point of access, which it had not defined.

57 **Section 3.4.1.1.1.2.** Sprint replaced the term "point of interconnection" with the defined term "Point of Technically Feasible Access" (see explanation immediately above).

58 **Section 3.4.1.1.1.3.** Verizon's language was deleted because it is inconsistent with 47 C.F.R. Section 51.319(c) regarding the Network Interface Device (NID). According to the rule, a NID is "a standalone network element and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant." Furthermore, the rule states that ILECs must allow CLECs to connect its own facilities to the ILEC NID. The NID is defined as a Point of Technically Feasible Access in 47 C.F.R. Section 51.319(b)(2)(i). Therefore, any language that prohibits this is not consistent with the FCC rules.

59 **Section 3.4.1.1.2.** Sprint replaced the term "House and Riser Cable" with "Inside Wire Sub-Loop". See section 3.4.1.1.

60 **Section 3.4.1.1.3.** Sprint replaced "House and Riser Cable" with "Inside Wire

Sub-Loop", consistent with 3.4.1.1. Sprint added language from 47 C.F.R. Section 51.319(c) to ensure Sprint's right to connect its facilities to Verizon NIDs.

61 **Section 3.4.1.1.5.** Sprint replaced "House and Riser Cable" with "Inside Wire Sub-Loop", consistent with 3.4.1.1.

62 **Section 3.4.1.1.6.** Sprint replaced "House and Riser Cable" with "Inside Wire Sub-Loop", consistent with 3.4.1.1.

63 **Section 3.4.1.2.** Sprint added language from 47 C.F.R. Section 51.319(b)(3) to ensure that the parties understood the process by which disagreements over the technical feasibility of a Point of Technically Feasible Access would be resolved.

64 **Section 3.4.1.3.1.** Sprint replaced "House and Riser Cable" with "Inside Wire Sub-Loop", consistent with 3.4.1.1. Sprint also replaced the phrase "owns and controls" with "owns or controls" to match the FCC language in 47 C.F.R. Section 51.319(b)(2) and Section 51.319(b)(2)(ii). The FCC clearly anticipated situations where an ILEC might have control over inside wire but does not own it. ILECs control access to inside wire through ownership of the NID and defining the terms of that access.

65 **Section 3.4.2.** The title was changed to match the definition in Section 2.26. Sprint used its defined term "Point of Technically Feasible Access" to replace Verizon's proposal, because Verizon's language is redundant and inaccurate. Verizon's proposal does not include the provision in 47 C.F.R. Section 51.319(b)(1)(i) which requires ILECs to allow interconnect at or near a remote terminal by splicing into cable.

66 **Section 3.5.1.** Verizon's disclaimer language at the beginning of the paragraph is overly broad. The language could potentially allow Verizon to deny switching for interconnection purposes. The TRO rules do not modify Verizon's obligations to interconnect under §251(c)(2) of the Act, and Sprint's additions clarifies that fact.

67 **Section 3.5.3.** Sprint references "Service Management System," in accordance with 47 C.F.R. Section 51.319(4)(i)(B)(2), to ensure Sprint's ability to access.

68 **Section 3.6.2.1.** Sprint added language stating that points where Verizon has

Reverse Collocation are valid end points for Verizon Dedicated Transport. This position is consistent with the *Triennial Review Order.*[23] While Sprint agrees that OCn and SONET facilities are not standalone UNEs and cannot be purchased as such, Sprint also understands that DS1 and DS3 facilities, which are UNEs, are provisioned on OCn and SONET facilities at the ILEC's discretion. Sprint added language that prohibits Verizon from denying orders for DS1 and DS3 Dedicated Transport because OCn and SONET facilities would be used. Sprint's concern is based on Verizon's phrasing and the possible interpretations of the words "use" and "interface".

69 **Section 3.6.3.1.** Sprint added language stating that points where Verizon has Reverse Collocation are valid end points for Verizon Dark Fiber Transport, consistent with the *Triennial Review Order.*[24]

70 **Section 3.7.1.** Verizon's language does not include resold services secured under Section 251(c)(4) of the Act as a valid Qualifying Wholesale Service that can be commingled with a UNE, when allowed in the *Triennial Review Order.*[25] Sprint also modified Verizon's performance measures language. While Sprint agrees that the act of commingling the two facilities – Wholesale Service and UNE – will impact performance, the provisioning of the individual pieces should not suffer. It should not take Verizon any longer to install a standalone DS1 UNE Loop terminated in Sprint's collocation than it does to install a DS1 UNE Loop that is to be commingled with special access transport. Sprint is concerned that this language will result in unnecessary and inappropriate delays of commingling requests.

71 **Section 3.7.2.1.** The use criteria contained in 47 C.F.R. Section 51.318, which was upheld by *USTA II,* states that the EEL criteria applies to DS1 equivalent circuits on a DS3 EEL (see 47 C.F.R. §51.318(b)(2) and §51.318(b)(2)(ii)). An EEL by definition is UNE

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[23] *Triennial Review Order,* at footnote 1126.

[24] *Id.*

[25] *Triennial Review Order,* at paragraph 584.

Loop combined with UNE Dedicated Transport, which means that a DS3 EEL is a UNE DS3 Loop combined with UNE DS3 Dedicated Transport. Sprint believes that this distinction is important because it is possible to commingle DS1 UNE Loops on DS3 Special Access Transport, constituting a "commingled EEL". In such cases Sprint agrees that the DS1 UNE Loop must meet the use criteria, but does not agree that any Special Access DS1 equivalent circuits provisioned on the same DS3 must meet the use criteria. Sprint is concerned that Verizon's language could be interpreted that way.

72 **Section 3.7.2.2.** Sprint made Modifications were made this language consistent with 3.7.2.1, stating that the DS1 equivalent circuit criteria only apply to DS3 EELs. In addition, Sprint added language to ensure its ability to secure access to EELs from all of its collocation arrangements.

73 **Section 3.8.1.** Sprint modified Verizon's language to more closely conform to 47 C.F.R. Section 51.319(a)(8) and Section 51.319(e)(5). It is essential that the parties understand that a routine modification is any activity that Verizon normally undertakes, including modifications it makes for special access. The limitation of splicing to "existing splice points" is only valid to the extent Verizon does not do this for its own customers on a routine basis. Because Verizon has not demonstrated this to be true, Sprint removed it.

74 **Section 3.8.2.** Sprint added language to ensure that it receives network modifications on the same timeframes as Verizon's own customers. While Sprint understands that it takes longer to install a facility that requires routine network modifications, it does not believe that Verizon should have the ability to delay the installation indefinitely. The FCC rules (see section 3.8.1) require Verizon to provide routine network modifications in a non-discriminatory fashion, which means that the time that Verizon takes to make a network modification for a CLEC should be at parity with the time that it takes to make network modifications for its own customers, including any affiliate.

75 **Section 3.9.2.** Given the uncertainty of the regulatory environment and the potential for ILEC facilities to be added to or removed from the list of UNEs, Sprint does not believe that Verizon should be able to make a blanket statement that it has notified Sprint with respect to which facilities have become a Nonconforming Facility. Taken with Verizon's other language it would allow Verizon to unilaterally transfer Sprint ordered UNEs to other services or even disconnect the service, without notifying Sprint. It does not give Sprint the opportunity to dispute Verizon's interpretation that a specific facility is a Nonconforming Facility. Sprint therefore deleted the second sentence.

76 Similarly, Sprint does not believe that fixed transition should apply to all facilities that are classified as non-conforming. The *Triennial Review Order* did not specify fixed time frames for these facilities and the existing contract is silent. The transition period is best negotiated between the parties based on a case-by-case basis. It is possible that a transition could involve only a few facilities and could be made relatively easily. On the other hand, it could involve many facilities and be quite complex, requiring a longer timeframe. Sprint's recommended language holds the CLEC accountable to agree to a transition plan, providing the ILEC certainty. It also provides protections to both parties by giving either party the right to exercise the dispute resolution provisions.

E. Other Issues

77 Sprint has not had the opportunity to thoroughly review the pricing proposals contained in Verizon's proposed amendment. In addition, it is likely that discovery will be required before Sprint can formulate any definitive positions with respect to these proposals. As a result, Sprint does not waive the right to file additional comments regarding the pricing proposals set forth by Verizon in its proposed amendment.

78 In addition there are certain matters of disagreement between Verizon and Sprint in the operation of the current interconnection agreement that may be appropriately

addressed in this proceeding. Sprint is entitled under the Act to raise additional issues not raised by Verizon. Because of the vague and generic nature of Verizon's Petition, Sprint does not waive the right to seek resolution of additional issues, should it be necessary later in the proceeding, which are unrelated to the specific issues raised the *Triennial Review Order* and *USTA II*.

V. CONCLUSION

79 Sprint submits that, at best, the Petition is premature because Verizon has failed to engage in any substantive negotiations with to Sprint. The Act does not envision a policy or a process of relying on arbitration to resolve a dispute because it is convenient for the petitioning party to have a uniform amendment to virtually all of its existing interconnection agreements.

80 As the Petitioner in this matter, Verizon has the minimal obligation of framing outstanding issues to be arbitrated so that its counter party may respond in a specific, focused manner. Verizon has not satisfied this standard. Therefore, on March 16, 2004, Sprint asked the Commission to dismiss Verizon's Petition. However, in the event that the Commission decides to proceed now with Verizon's Petition, Sprint respectfully requests that it deny the relief Verizon requests and approve Sprint's proposed amendment to the parties' interconnection agreement.

Respectfully submitted this 13th day of April 2004.

By: _____

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