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February 13, 2002

Via UPS – Next Day

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 010795-TP
Petition by Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. Pursuant to Section 251/252 of the Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of the Post-Hearing Brief of Verizon Florida Inc. and the accompanying Appendix of Arbitration Orders in the above matter. Also enclosed is a diskette with a copy of the Brief in Word 97 format. Service has been made as indicated on the Certificate of Service. If there are any questions concerning this filing, please contact me at (804) 788-7334.

Sincerely,

Kelly L. Faglioni

Kelly L. Faglioni

Enclosures

cc: Kimberly Caswell, Esq.
Susan S. Masterton, Esq.
Joseph P. Cowin, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. f/k/a GTE Florida, Incorporated, Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No.: 010795-TP Filed: February 14, 2002

POST-HEARING BRIEF OF VERIZON FLORIDA INC.

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Verizon Florida Inc. ("Verizon"), by counsel, submits this Post-Hearing Brief.

I. INTRODUCTION

The Florida Public Service Commission ("Commission") must resolve five open issues in this arbitration of the new interconnection agreement between Verizon and Sprint Communications L.P. ("Sprint"). Verizon's proposed contract language should be adopted because it complies with applicable law. Sprint's proposed contract language, by contrast, runs counter to, and attempts to improperly expand, applicable law, including rules adopted by the Federal Communications Commission ("FCC"). These proposals should be rejected.

Specifically, Verizon asks that this Commission to:

- Reject Sprint's proposed definition of "local traffic," because it includes 00-/VAD calls, making them subject to reciprocal compensation in violation of FCC Rule 51.701(e);
- Reject Sprint's request to create new "multi-jurisdictional" trunks by renaming certain access calls – its 00-/VAD calls – as "local;"
- Reject Sprint's attempt to obtain a wholesale discount on stand-alone vertical features, because Verizon does not offer vertical features on a stand-alone basis at retail;
- Reject Sprint's attempt to secure future arbitrage opportunities by refusing to include a reference to tariff revisions in the interconnection agreement; and
- Reject Sprint's attempt to force Verizon to interconnect with Sprint by purchasing transport from Sprint rather than also giving Verizon an option to collocate at Sprint's facilities.

A. Background

On June 1, 2001, Sprint filed its Petition for Arbitration with Verizon ("Petition"), pursuant to § 252 of the Telecommunications Act of 1996 (the "Act"), for arbitration of unresolved issues relating to a new interconnection agreement.

Sprint identified fifteen unresolved issues in its Petition. In Verizon's Response to the Petition, Verizon identified one supplemental issue for Commission resolution.

Prior to the hearing in this matter, the parties reached several stipulations. As a result of stipulations filed on October 23, 2001 and January 14, 2002, only the following issues remain for Commission resolution:

Issue No. 1(a)	Compensation for 00-/VAD traffic;
Issue No. 2	Whether Sprint should be permitted to create "multi-jurisdictional" trunk groups;
Issue No. 3	Whether Verizon should be required to give an avoided cost discount when Sprint resells vertical features to customers who are not telecommunications carriers;
Issue No. 12	Whether future collocation tariff revisions should be incorporated into the interconnection agreement; and,
Issue No. 15	Whether Sprint is obligated to permit Verizon to collocate as a means of interconnection.

As a result of a January 14 stipulation, Hearing Exhibit 1, the parties stipulated to the admission of (i) each party's pre-filed testimony to the extent that it pertained to an unresolved issue, (ii) the transcript of, and exhibits for, the recent hearing on Issues 1(a) and 2 before the Public Utility Commission of Texas, with corresponding Florida discovery responses and tariff references, and (iii) the transcripts of the Commission staff's January 15, 2002 depositions of Sprint witness Michael Hunsucker and Verizon witness William Munsell.

At the January 17, 2002 hearing, the Commission admitted into the record both parties' pre-filed written testimony to the extent that it pertained to an unresolved issue, as well as additional exhibits:

EXHIBIT	HEARING TRANS. PAGE/EXHIBIT NO.
Prefiled Direct Testimony of Sprint Witness Michael R. Hunsucker	Hearing Transcript, Page 7

Prefiled Rebuttal Testimony of Sprint Witness Michael R. Hunsucker	Hearing Transcript, Page 24
Prefiled Rebuttal Testimony of Verizon Witness William Munsell	Hearing Transcript, Page 29
Prefiled Direct Testimony of Verizon Witness William Munsell	Hearing Transcript, Page 42
Prefiled Direct Testimony of Verizon Witness Terry R. Dye	Hearing Transcript, Page 60
Prefiled Rebuttal Testimony of Verizon Witness Terry R. Dye	Hearing Transcript, Page 72
Prefiled Direct Testimony of Sprint Witness Mark G. Felton	Hearing Transcript, Page 84
Prefiled Rebuttal Testimony of Sprint Witness Mark G. Felton	Hearing Transcript, Page 97
Prefiled Direct Testimony of Verizon Witness John Ries	Hearing Transcript, Page 103
Stipulation Agreement dated January 14, 2002	Hearing Exhibit 1
Exhibit 1 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 2
Exhibit 2 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 3
Exhibit 3 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 4
Exhibit 4 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 5
Exhibit 5 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 6
Exhibit 6 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 7
Exhibit 7 to Munsell's Prefiled Direct Testimony	Hearing Exhibit 8
Exhibit 1 to Hunsucker's Prefiled Rebuttal Testimony	Hearing Exhibit 9
Commission Staff's Stipulated Exhibit 1 - Selected Verizon Discovery Responses	Hearing Exhibit 10
Commission Staff's Stipulated Exhibit 2 - Selected Sprint Discovery Responses	Hearing Exhibit 11
Commission Staff's Stipulated Exhibit 3 - Transcript of January 15, 2002 Deposition of Michael Hunsucker	Hearing Exhibit 12
Commission Staff's Stipulated Exhibit 4 - Transcript of January 15, 2002 Deposition of William Munsell	Hearing Exhibit 13
Transcript – Texas Verizon-Sprint Arbitration	Hearing Exhibit 14A

Texas Discovery Responses	Hearing Exhibit 14B
Texas Tariff References	Hearing Exhibit 14C

B. Standard for Resolving Open Issues

The Commission must resolve the open issues regarding the new interconnection agreement in accordance with § 251 of the Act (regarding interconnection standards), including the regulations promulgated by the FCC pursuant to § 251 of the Act, and the standards set forth in § 252(d) of the Act (regarding pricing standards).[1] The Commission's rulings and the resulting interconnection agreement should also comply with Florida law to the extent that it is consistent with the Act.

II. COMPENSATION FOR 00-/VAD TRAFFIC[2]
(Issue No. 1(a))

* * *

The agreement's definition of local traffic describes the traffic to which reciprocal compensation applies. Because Sprint's 00-/VAD calls are not subject to reciprocal compensation under the FCC rules, but rather are subject to access charges, the agreement's definition of local traffic should not include 00-/VAD calls.

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[1] *See* 47 U.S.C. § 252(e)(2)(B).

[2] Prior to the second stipulation filed by the parties on January 14, 2002, this issue would have also addressed the appropriate language to give effect to the FCC's *ISP Remand Order*-Issue 1(b). However, as a result of that stipulation, the parties agreed to incorporate the language regarding the *ISP Remand Order* that Verizon initially proposed in its response to Sprint's Petition. In addition, the parties agreed to continue to negotiate later Verizon-proposed language that is not currently before this Commission. This language, among other things, includes a replacement for the definition of local traffic that is consistent with the *ISP Remand Order* and the resulting amendments to regulations. The definition included in Verizon's later-proposed language is more appropriate than the definition of local traffic before the Commission in this Issue 1(a), but the Verizon-proposed definition before this Commission is far more appropriate than the Sprint-proposed definition. Accordingly, for purposes of this arbitration proceeding, Verizon presents the argument herein without waiving any future position it may take regarding its later-proposed language.

Sprint proposes to include 00- voice-activated dialing calls (00-/VAD calls) within the agreement's definition of local traffic. Because the definition of local traffic identifies traffic to which reciprocal compensation applies, Sprint's proposed contract language would subject 00-/VAD calls to reciprocal compensation.[3] Even Sprint recognizes, however, that these calls are not subject to reciprocal compensation under the FCC's rules,[4] so it proposes a third compensation regime in testimony.[5] This recommendation is contrary to FCC Rules, Sprint's own admissions, other states' decisions,[6] and existing treatment of 00-/VAD calls as access traffic.

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[3] The FCC's *ISP Remand Order, In the Matter of the Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), was released late in the parties' negotiations. In that order, the FCC deleted all references to "local" traffic from its rules consistent with its new analysis. Those changes became effective after Sprint filed its Petition. Due to the status of negotiations and this arbitration, the parties retained references to "local traffic" in the proposed new interconnection agreement, notwithstanding the FCC's amended rules, and attempted to alter those definitions to comply with the FCC's new analysis. However, *see infra*, note 2.

[4] *See* Exhibit 14A at 39-40 (bates numbered p. 11) and Exhibit 12 at 15 (admitting that reciprocal compensation does not apply to 00-/VAD calls); Direct Testimony of Michael Hunsucker (hereinafter "Hunsucker Dir. at ___") at 15-16 (Hearing Transcript at 21), Exhibit 12 at 18-20 and Exhibit 11 at 15 (describing Sprint's proposed compensation scheme for 00-/VAD calls that is neither reciprocal compensation nor access).

[5] Sprint has never provided Verizon with the contract language to embody its proposal.

[6] *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of an Interconnection Agreement Between Sprint and Verizon-Massachusetts*, D.T.E. 00-54, Decision (2000) ("*Massachusetts Arbitration Order*"); *In the Matter of the Petition of Sprint Communications Co., L.P., for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Verizon California, dba GTE California Inc.*, Dec. No. 01-03-044 (2001) ("*California Arbitration Order*"); *Petition of Sprint Communication Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements With Verizon Pennsylvania, Inc.*, Case No. A-310183F002, Opinion and Order (2001) ("*Pennsylvania Arbitration Order*"); *In the Matter of the Arbitration of Sprint Communications Company, L.P. vs. Verizon Maryland Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 8887, Order No. 77320 (2001) ("*Maryland Arbitration Order*"); *see also Petition of Sprint Communications Company L.P. d/b/a Sprint for Arbitration with Verizon Southwest Incorporated (f/k/a/ GTE Southwest Incorporated) d/b/a Verizon Southwest and Verizon Advanced Data Inc. Under the Telecommunications Act of 1996 for Rates, Terms and Conditions and Related Arrangements for Interconnection*, Docket No. 24306, Arbitration Award ("*Texas Arbitration Award*") (The Texas Arbitration Award is not the final decision of the Public Utility Commission of Texas, but is the recommendation of the arbitrators regarding the issues in dispute in that arbitration. The Texas Commission has not yet issued

(continued...)

Only one of two categories of compensation applies to each type of traffic that Sprint and Verizon exchange: either reciprocal compensation or access charges.[7] The FCC rules govern traffic subject to reciprocal compensation under § 251(b)(5) of the Act.[8] Traffic not subject to reciprocal compensation is subject to access charges. As the FCC held in the *ISP Remand Order*, § 251(g) of the Act excludes access traffic from reciprocal compensation under § 251(b)(5) of the Act.[9] The Commission should reject Sprint's invitation to rewrite the FCC rules to create a new compensation scheme that has no basis in the law. Rather, the Commission should adopt Verizon's proposed language, which parallels the FCC regulation regarding reciprocal compensation, 47 C.F.R. § 51.701(e) ("FCC Rule 51.701(e)").

A. 00-/VAD Traffic *Is Not* Subject to Reciprocal Compensation.

Under the FCC's rules, in order to be eligible for reciprocal compensation under § 251(b)(5) of the Act, traffic must meet two requirements. First, it must originate on the network of one carrier and terminate on the network of another carrier. Specifically, reciprocal compensation is payable only "for the transport and termination on each carrier's network facilities of telecommunications traffic ***that originates on the network***

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its decision.). Copies of these and other arbitration decisions can be found in Verizon's Appendix of Arbitration Decisions, filed simultaneously herewith, in alphabetical order by state of origin. In addition, Sprint recently withdrew a complaint proceeding in New York regarding this issue prior to any decision.

[7] The Texas arbitrators recognized this fact. *See* Exhibit 14A at 171 (bates numbered p. 44) ("The second thing I want to ask is -- in the ISP remand order, we basically now have a world of recip comp and access charges, and we have to come up with some sort of compensation mechanism under one of those two regimes.")

[8] 47 U.S.C. § 251(b)(5).

[9] *ISP Remand Order*, ¶¶ 34, 36, 39, 42, 43.

facilities of the other carrier."[10] Second, the traffic must be "telecommunications traffic,"[11] as that term is defined for purposes of reciprocal compensation:

> Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see, FCC 01-131, paras. 34, 36, 39, 42-43).[12]

Verizon's proposed definition captures these two requirements.

Sprint's proposed definition violates the Act and the FCC's rules governing reciprocal compensation. Sprint's 00-/VAD traffic does not originate on the network of one carrier and terminate on the network of another, as required by FCC Rule 51.701(e). It originates and terminates on the same carrier's network – Verizon's. This fact is undisputed.[13]

As such, Sprint was constrained to admit at the Texas hearing and again here in the deposition of Sprint witness Hunsucker that its 00-/VAD traffic does not satisfy a "literal" reading of the reciprocal compensation regulation.[14] The five other states considering the issue agree that 00-/VAD traffic does not come within the FCC's rules and have accordingly denied reciprocal compensation for such traffic. Because 00-/VAD traffic does not fit the criteria for assessment of reciprocal compensation under

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[10] 47 U.S.C. § 51.701(e) (emphasis added).

[11] The FCC deleted from its rules the term "local."

[12] 47 C.F.R. § 51.701(b)(1).

[13] *See* Exhibit 12 at 17.

[14] *See* Exhibit 14A at 36-37 (bates numbered pp. 10-11); Exhibit 12 at 15-16.

§ 251(b)(5) of the Act[15] and the FCC's implementing Rule 51.701(b)(1), it cannot be "local traffic" within the parties' interconnection agreement. 00-/VAD calls are, instead, access traffic.

B. 00-/VAD Traffic *Is* Subject to the Access Regime.

1. *"00-" Traffic Has Always Been Subject to Access Charges.*

"00-" traffic is not new. Sprint has historically offered 00- service to end users who are presubscribed to Sprint long distance and Sprint has paid access charges on such traffic.[16] Here, however, Sprint contends that the introduction of a voice-activated dialing platform into the longstanding 00- call processing scenario justifies reclassifying this access call as a local call for intercarrier compensation purposes in some circumstances – thus allowing Sprint to avoid paying the access charges it has always paid on "00-" access traffic.

Sprint will offer 00-/VAD service ***only*** to customers *who are presubscribed to Sprint's long distance service.*[17] 00-/VAD traffic (i) originates from a Verizon customer (who is presubscribed to Sprint long distance), (ii) is routed over access facilities through the operator services platform of the Sprint interexchange carrier (IXC) (by dialing the access code "00-"),[18] and (iii) is routed back into the same local calling area

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[15] *See* 47. U.S.C. § 251(g). *See also, ISP Remand Order*, ¶¶ 34, 36, 39, 42, 43.

[16] *See* Exhibit 14A at 19 (bates numbered p. 6).

[17] *See* Exhibit 14A at 25 (bates numbered p. 8) (emphasis added) ("The product itself would be offered to our long distance customers . . . because only our [long distance] customers can access us using the 00- dialing code."); *see also* Exhibit 12 at 13.

[18] *See* Exhibit 14A at 17-19 (bates numbered p. 6) (admitting that 00- is "just a way of getting access to the operator service platform of the interexchange carrier" and that the Sprint DMS 250 switches through which all 00- traffic passes to reach the operator service platform were owned solely by (continued...)

of the originating Verizon customer to another Verizon customer. Sprint admits that traffic routed to the operator services platform of the Sprint IXC and no farther is access traffic.[19] Routing the call elsewhere after that does not somehow transform it into something other than access traffic for intercarrier compensation purposes. Indeed, when the end user dials "00-," he deliberately chooses to utilize the services of his presubscribed IXC and not his local service provider; he cannot reasonably expect "00-" calls to be included in the monthly fee for basic local service.[20]

As the FCC has observed, Congress did not intend for the Act to disrupt the pre-existing treatment of exchange access services.[21] The Texas Arbitrators thus found that "Sprint's 00-/VAD call, in 1996, would likely have been compensated under the access regime,"[22] so "the call should retain what would have been its traditional compensation mechanism at this time."[23] This Commission should draw the same conclusion.

Sprint the IXC before Sprint was certified as an ALEC); *see also* Exhibit 11 at 28a (responding that Sprint's long distance operation owns all DMS 250 switches).

[19] *See* Exhibit 14A at 21 (bates numbered p. 7); *see also* Exhibit 11 at 12.

[20] In Texas, the arbitrators considered this same issue and concluded that the 00-/VAD calls are not subject to reciprocal compensation. The Texas arbitrators, however, concluded that the traffic at issue is "telecommunications traffic." In doing so, the Texas arbitrators failed to focus on the intercarrier perspective that demonstrates this to be an access call. Moreover, the arbitrators limited their focus to the customer's perspective on the end points of the call, failing to consider the customer's decision to utilize the services of its presubscribed long distance carrier. *See Texas Arbitration Award* at 28-37.

[21] *ISP Remand Order* at ¶¶ 37, 39.

[22] *See Texas Arbitration Award* at 36 (citing the Texas Direct Testimony of William Munsell; the Texas Direct Testimony of Michael Hunsucker, and the *Pennsylvania Arbitration Order*).

[23] *See Texas Arbitration Award* at 36.

2. *Characteristics and Routing of 00-/VAD Calls Are Identical to Those of Other Access Calls.*

As the Texas Arbitrators recognized, the routing and other characteristics of 00-/VAD calls are identical to those of other access calls, and are distinguishable from calls subject to reciprocal compensation.

As explained above, reciprocal compensation applies to calls originated on the network of one local service provider and terminated on the network of another local service provider within the same local calling area. For example, if a Verizon customer in Clearwater calls a Time Warner Telecom customer in the St. Petersburg exchange, Verizon owes reciprocal compensation to Time Warner Telecom for transporting and terminating this local call.[24] Verizon bears the cost of originating the call.[25] Verizon's proposed definition of local traffic ensures that rates are charged in accordance with the FCC's reciprocal compensation rules.

In contrast, when a Verizon customer in Clearwater, who is presubscribed to the Sprint IXC for long distance service, places a call to someone in the Orlando area, the customer is connected through an originating switched access service known as Feature Group D (FGD) from the calling customer's premises, through a Verizon end office switch pursuant to an access tariff, to Sprint's point of presence (POP) over switched access trunks provided to Sprint by Verizon. This same routing occurs on ***all*** "00-" dialed calls made by a presubscribed interLATA Sprint IXC customer, regardless

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[24] *See* Rebuttal Testimony of William Munsell (hereinafter "Munsell Reb. at ___") at 4-5 (Hearing Transcript at 32-33). *See also* 47 C.F.R. § 51.701.

[25] *See* Munsell Reb. at 5 (Hearing Transcript at 33).

of whether the customer uses a voice dialing arrangement and regardless of whether the Sprint operator services platform is even equipped with speech recognition software. Indeed, at the Texas hearing, Sprint's witness admitted this fact:

> Q. So you would agree with me that for the "00" call that was placed prior to the time that Sprint was a CLEC and the "00" call that's placed after Sprint is a CLEC, whether it's a long distance call or what you call a "local [00-/VAD] call," from Verizon's perspective, that call looks exactly the same up until the time it reaches either the VAD platform or the operator services platform?
>
> A. The call itself will look exactly the same.[26]

Compensation for this call is not governed by an interconnection agreement between Verizon and Sprint, but by the Florida Facilities for Intrastate Access Tariff.[27] Application of that tariff to the Clearwater to Orlando call requires Sprint to compensate Verizon for the specific access charges associated with the elements used, including end office switching, which applies for each call, and transport elements, which apply depending on the routing of the call to Sprint (*e.g.*, direct trunk transport or tandem switch transport). Sprint bears the cost of carrying the call after delivery to its POP, and Sprint is not entitled to any compensation from Verizon.[28] Verizon's proposed definition of local traffic maintains this access compensation regime.

Introduction of a voice-activated dialing platform does not remove 00-/VAD calls from the existing access regime. And these calls are still governed by the access tariff

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[26] Exhibit 14A at 32 (bates numbered p. 9).

[27] *See* Munsell Reb. at 6 (Hearing Transcript at 34). *See also* Exhibit 14A at 19 (bates numbered p. 6).

[28] *See* Munsell Reb. at 6 (Hearing Transcript at 34).

whether or not they ultimately terminate on Verizon's network in the same calling area as the originating caller. The Verizon facilities Sprint uses for these 00-/VAD calls are the same as the Verizon facilities used to route the call from Verizon to the Sprint POP in the Clearwater to Orlando call example.[29]

Sprint's Exhibit J to the Texas Hearing Transcript illustrates this fact. 00-/VAD calls travel over access facilities Sprint the IXC leases pursuant to an access tariff[30] to carry long distance traffic to Sprint's POP, out to Sprint's operator service platform or voice-activated dialing platform, then back into the local calling area from which they came over access facilities. The FGD provisions of Verizon's intrastate access tariff apply equally whether the presubscribed Sprint customer's calls terminate in the local service area in which they originate, in a different local service area in the same LATA, or in a totally different LATA. If the call traverses a state boundary, then the associated access service would be governed by Verizon's interstate access tariff (rather than the Florida access tariff).[31]

Because Sprint's 00-/VAD calls share the routing and other characteristics of other access traffic, they are subject to the access compensation regime defined in Verizon's access tariff.

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[29] *See id.* at 7-8 (Hearing Transcript at 35-36); s*ee also* Exhibit 14A at 33-34 (bates numbered p. 10).

[30] Sprint admits that it could use a seven-digit number to provide its VAD service, but brushes that alternative aside because it would require Sprint to build its own local facilities instead of access facilities leased from Verizon. *See* Exhibit 14A at 61, 63 (bates numbered p. 17).

[31] *See* Munsell Reb. at 7-9 (Hearing Transcript at 35-36).

C. The Commission Should Reject Sprint's Novel Compensation Proposal for 00-/VAD Calls.

Sprint admits that its 00-/VAD traffic does not fit within the Act's reciprocal compensation scheme, even though that is what its proposed contract language contemplates.[32] Nevertheless, Sprint persists in its attempt to avoid applicable access charges by proposing a third compensation scheme. Sprint's proposed compensation for 00-/VAD calls, which is neither reciprocal compensation nor access, should be rejected because it violates the law governing both.

1. *Sprint's Proposed Compensation for 00-/VAD Violates Reciprocal Compensation Regulations.*

Sprint has proposed a new compensation regime for its 00-/VAD calls that *does not appear in any of its proposed contract language*[33] and that has no basis in any law. While Sprint seeks to define its 00-/VAD calls as local traffic, it does not propose compensation in accordance with the FCC's reciprocal compensation scheme. Instead, Sprint proposes to compensate Verizon "for transport on the originating side of the [00-/VAD] call and for all appropriate network elements (tandem switching, transport and

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[32] *See* Exhibit 14A at 36-37 (bates numbered p. 10-11); *see* Draft Interconnection Agreement attached to Sprint's Petition, proposed § 2.5.2 (". . .Sprint shall only be required to compensate Verizon for the delivery of such Local Traffic terminated to Verizon's network pursuant to the reciprocal compensation provisions of this Agreement") and proposed definition of "Local Traffic," which was specifically crafted to include 00-/VAD calls. *See* Exhibit 14A at 43-44 (bates numbered p. 12).

[33] *See* Hunsucker Dir. at 15-16 (Hearing Transcript at 21-22); Exhibit 14A at 29 (bates numbered p. 9); Exhibit 12 at 18. Sprint's proposed contract language conflicts with Sprint's new compensation proposal. Specifically, the contract language proposed by Sprint only requires Sprint to compensate Verizon "for the delivery of such Local Traffic *terminated* on the Verizon network pursuant to the reciprocal compensation provisions of this Agreement." *See* § 2.5.2 of Interconnection Attachment to the Draft Interconnection Agreement attached to Sprint's Petition (emphasis added). Contrary to Sprint's new proposal, the contract language proposed by Sprint in § 2.5 of the Interconnection Attachment does not specify that Verizon can bill Sprint for any portion of the costs Verizon incurs in switching and transporting these (originating) calls to Sprint's POP. In fact, that section does not preclude Sprint from billing Verizon for delivery of these calls to the Sprint POP.

end office switching) on the terminating side of the [00-/VAD] call at TELRIC-based rates."[34]

This TELRIC-based compensation scheme conflicts with FCC Rule 51.7601(e) by imposing reciprocal compensation obligations on calls that do not originate on the network of one LEC and terminate on the network of the other. Additionally, under the reciprocal compensation regime, the originating carrier bears the cost of originating the call and pays the terminating carrier for transport and termination of the call. Indeed, compensation for origination of a call subject to reciprocal compensation is expressly prohibited.[35] Sprint's proposal would compensate Verizon for both originating and for terminating the call, in conflict with this rule. At the Texas hearing, Sprint's witness admitted that Sprint's proposal would violate the prohibition on an originating carrier charging originating costs, but indicated that he believed Sprint and Verizon could contractually agree to violate the FCC rule.[36] Verizon has no intention of entering an agreement to assist Sprint in avoiding the FCC's reciprocal compensation regulations or applicable access regimes.

2. *The Commission Should Reject Sprint's Invitation to Conduct Access Reform.*

Sprint admits that it has historically paid access charges for all "00-" calls.[37] Introduction of a voice-activated dialing platform provides no basis for altering the

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[34] Hunsucker Dir. at 15 (Hearing Transcript at 21).

[35] *See* 47 U.S.C. § 51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network").

[36] *See* Exhibit 14A at 66-67 (bates numbered p. 18).

[37] *See* Exhibit 14A at 19 (bates numbered p. 6).

existing access charge scheme. Sprint's proposal would substitute TELRIC-based rates for access rates, thereby impermissibly altering the existing access regime in violation of § 251(g) of the Act. This kind of sweeping policy change is beyond the scope of this § 252 arbitration proceeding.

The existing access regime was expressly excepted from the scope of the Act:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier...shall provide exchange access...in accordance with the same...obligations (including the receipt of compensation) that apply...on the date immediately preceding the date of enactment of the Telecommunication Act of 1996...until such restrictions and obligations are explicitly superseded by regulations prescribed by the [FCC] after such date of enactment.[38]

Neither the FCC nor the Commission has explicitly superseded the access charge regimes. Interstate switched access is regulated pursuant to the "CALLS" access reform plan,[39] a five-year transitional plan that that resolves industry access charge issues in an integrated and cohesive way. The FCC has made certain aspects of the CALLS plan mandatory for all LECs subject to federal price cap regulation, and today, all price cap LECs participate in the CALLS plan. The plan provides for rate level as well as rate structure changes. Sprint's compensation proposal would allow it to impermissibly evade interstate switched access charges – and thus the federal access reform scheme – through its interconnection agreement with Verizon.

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[38] 47 U.S.C. § 251(g).

[39] "CALLS" stands for "Coalition for Affordable Local and Long Distance Service." This coalition consists of major industry ILECs and CLECs; Sprint is a party to the Coalition.

Sprint's proposal would, likewise, undermine the state access scheme. When this Commission established the intrastate access regime in 1983, its "overriding goal was to implement access charges that maintain the financial viability of the LECs while maintaining universal service."[40] The Commission continues to recognize that toll revenues have historically been used to hold down the price of basic local service.[41] Plainly, an arbitration between two parties is not a proper forum to consider tampering with the longstanding, carefully maintained state access regime and the social policy underlying that regime. The Commission should thus reject Sprint's proposal to move away from the access charges that properly apply to 00-/VAD services.

3. *Decisions in Massachusetts, California, Pennsylvania, Maryland and Texas Properly Apply Access Charges to 00-/VAD Calls.*

In the five states where the 00-/VAD compensation issue was considered in a Sprint/Verizon arbitration, the result was the same: 00-/VAD calls are subject to access charges and not reciprocal compensation or any new compensation scheme.[42] As the Texas Arbitrators observed, "The fact that Sprint would have to create an additional compensation arrangement suggests that access charge compensation is the best alternative at this time."[43]

The Massachusetts Department of Telecommunications' rationale applies equally here:

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[40] *Intrastate Tel. Access charges for Toll Use of Local Exchange Services*, Order No. 12765, at 7 (1983).

[41] *See* FPSC, "Universal Service and Lifeline Funding Issues," Feb. 1999, at 22.

[42] *See* arbitration decisions cited *supra* at note 6.

[43] *Texas Arbitration Award* at 36.

> Next, we address the issue of whether reciprocal compensation rates should apply when Sprint routes local calls through its long distance facilities. This issue affects a small percentage of calls, specifically those calls in which a Verizon customer uses a Sprint dial-around option to place a call to another Verizon customer in the same local calling area. The question, therefore, is whether Sprint should pay reciprocal compensation or exchange access rates when Verizon terminates such calls . . . .***It is clear that the situation addressed in this dispute does not fall within the limits of reciprocal compensation as defined by the FCC. Because Sprint is not the originating carrier for calls between two Verizon customers who use a Sprint dial-around mechanism, the Department finds that Sprint is not entitled to pay reciprocal compensation rates. Therefore, the Department agrees with Verizon that Sprint is required to pay applicable access rates when it handles such calls through dial-around methods.***[44]

Likewise, the Public Utilities Commission of California found that Sprint's 00-/VAD service involves access traffic. In that case, the Commission considered a compensation proposal by Sprint similar to the late-made proposal by Sprint in this proceeding:

> The first issue, known as the "local over access" issue, arises because of Sprint's desire to implement a "new" service, and disputes how it should compensate Verizon for using Verizon's network to facilitate that service. Sprint contends that the service should be compensated as local traffic pursuant to the reciprocal compensation scheme, while Verizon contends that since the service would use access lines Sprint leases from Verizon, the calling should be compensated at higher access charge rates. ***The Arbitrator agreed with Verizon that Sprint should pay Verizon access charge rates.***
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[44] *Massachusetts Arbitration Order* at 13-14 (emphasis added) (footnotes omitted).

> The FAR [Final Arbitrator's Report] found that Verizon should prevail on this issue. We will not repeat the Arbitrator's reasoning in detail here, but rather incorporate the FAR by reference as if fully set forth here. Briefly, the Arbitrator found that it made no sense for Verizon to receive no compensation for Sprint's extra use of its network. ***Indeed, the Arbitrator found that Sprint's offer during the hearing to pay Verizon certain out-of-the-ordinary compensation -- for "incremental switching charges["] -- constituted a concession that the ordinary reciprocal compensation scheme was inadequate. The Arbitrator also found that the "Call Mom" [00-minus] calling scheme was not functionally different from other calling patterns in which Sprint compensates Verizon for use of its network through access charges. Finally, the Arbitrator noted that Sprint has agreements in other states in which its position is inconsistent with its proposal for California. We agree with the Arbitrator's reasoning and conclusion on the local over access issue, and adopt the same for purposes of this decision.***[45]

As each of the commissions considering this issue has found, there is no basis on which to conclude that Sprint's proposed 00-/VAD calls are subject to any form of reciprocal compensation. Rather, they are subject to access charges. There is no other conclusion consistent with the law. Thus, the Commission should reject Sprint's inclusion of 00-/VAD calls in the agreement's "local traffic" definition, as well as Sprint's novel compensation for such calls.

III. MULTI-JURISDICTIONAL TRUNKS

(Issue No. 2)

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> The Commission should reject Sprint's proposed language regarding multi-jurisdictional trunks, because Sprint (i) cannot accurately bill the appropriate party for each jurisdiction of traffic routed over such trunks, (ii)

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[45] *California Arbitration Order* at 6-8 (emphasis added) (footnotes omitted).

would interfere with Verizon's contracts with other carriers, and (iii) would be inconsistent with how Sprint's ILEC treats its own ALEC and other ALECs.

* * *

This issue is linked to Sprint's attempt to include 00-/VAD calls in the agreement's local traffic definition. Sprint is interested in "creating" multi-jurisdictional trunks in order to (i) re-classify a subset of its 00-/VAD calls as "local" (to shield them from access charges),[46] but (ii) continue to route those calls over access trunks.[47] Sprint's proposal to allow multi-jurisdictional trunks should be rejected along with its local traffic definition. It is generally accepted that there are five (domestic) jurisdictions of traffic: (i) local (traffic subject to reciprocal compensation); (ii) intrastate intraLATA; (iii) intrastate interLATA; (iv) interstate intraLATA; and (v) interstate interLATA. InterLATA and interstate interLATA traffic is reserved for IXCs, while intrastate intraLATA traffic may be carried by a customer's local exchange company (LEC) or by an IXC. Traffic routed by a LEC to an IXC, or from an IXC to a LEC, is generically called "exchange access."[48]

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[46] Exhibit 14A at 43-44 (bates numbered p. 12) ("[T]hat's exactly what we structured – we structured this language the way we [did] so that the definition of "local traffic" would capture 00-").

[47] *See* Hunsucker Dir. at 7-17 (Hearing Transcript at 13-23) (this portion of Sprint witness Hunsucker's direct testimony is purportedly regarding Sprint's position on Issue No. 2, but these pages ***only*** address Issue No. 2 as it relates to Sprint's 00-/VAD calls) and Rebuttal Testimony of Michael Hunsucker (hereinafter "Hunsucker Reb. at ___") (also ***only*** addressing Issue No. 2 as it relates to Sprint's 00-/VAD calls). *But see* Exhibit 14A at 47 (bates numbered p. 13). In contrast to his pre-filed testimony, which only addresses the multi-jurisdictional trunks issue as it relates to 00-/VAD calls, at the Texas hearing, Mr. Hunsucker stated that Sprint would still be interested in multi-jurisdictional trunks even if it's 00-/VAD call argument is rejected because there "may be" other products that Sprint will develop "downstream" for which Sprint may want to combine traffic over the same trunk group. *Id.*

[48] *See* Direct Testimony of William Munsell (hereinafter "Munsell Dir. at ___") at 4-5 (Hearing Transcript at 45-46).

As reflected in Sprint's proposed language,[49] Sprint wants the ability to use the same trunks for traffic between Sprint local end users and any IXCs also connected at the Verizon tandem and for traffic exchanged between each party's local end users, even though that is not Sprint's current practice.[50] That is, Sprint wants to mix different types of traffic over the same trunk group. Verizon's proposed language does not permit such multi-jurisdictional trunks, because (i) the traffic cannot be measured and billed with any level of accuracy, (ii) Sprint's proposal would cause Verizon to violate trunking requirements in agreements with other ALECs, and (iii) Verizon's position is consistent with that of Sprint's own ILEC.[51]

A. Sprint Cannot Address the Inevitable Billing Problems that Will Arise if Multi-Jurisdictional Trunks Are Permitted.

If Sprint's proposal is adopted, correct billing between Sprint and Verizon will be impossible. Per the industry standard guidelines for the meet point billing of switched access to IXCs, as defined in the Multiple Exchange Carrier Access Billing ("MECAB") guidelines, and under which Sprint and Verizon have agreed to operate, terminating access records on tandem-routed traffic are created by the tandem company (Verizon) and forwarded to the end office company (Sprint). If the parties utilize a single trunk

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[49] *See* §§ 1.1.1 through 1.1.4 of the interconnection attachment of the Draft Interconnection Agreement attached to Sprint's Petition.

[50] Munsell Dir. at 5 (Hearing Transcript at 46), 9 (Hearing Transcript at 50).

[51] Verizon's position also is consistent with the decision of this Commission in *In re MCImetro Access Transmission Services*, 2001 WL 460666, Florida Public Service Commission (March 30, 2001). The Florida PSC prohibited WorldCom from combining access traffic and local traffic over local interconnection trunk groups because (i) BellSouth would not be able to properly bill for this traffic, even with PIU and PLU factors, (ii) WorldCom's proposal would interfere with the proper billing and routing for other carriers' who also subtend BellSouth's access tandems, and (iii) WorldCom's proposal would allow WorldCom to disguise switched access traffic as § 251(b)(5) traffic and, thus, avoid paying access charges. *Id.* at 58-59.

group for exchange access, intraLATA toll, and "local traffic," Sprint will create terminating records at its switch for ***all*** such traffic, including terminating exchange access, for which Verizon will pass Sprint terminating access records per the MECAB guidelines.[52] As Sprint admits, this situation will result in the creation of duplicate records.[53] Sprint has no ability to identify and delete these duplicate records created on multi-jurisdictional trunks,[54] and thus no ability to safeguard against billing Verizon reciprocal compensation and access charges for multi-jurisdictional traffic.[55]

Sprint witness Hunsucker discussed a potential solution under development at Sprint, but this hypothetical solution provides no basis to conclude that the undisputed operational problems with multi-jurisdictional trunking will be solved. Sprint plans to utilize the originating and terminating telephone number of the calls routed over its proposed multi-jurisdictional trunks to "jurisdictionalize" the calls and to bill them.[56] Even if this system were functioning today, it would not solve the duplicate records problem; in order to accurately bill for calls over the proposed multi-jurisdictional trunks,

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[52] *See* Munsell Dir. at 6-7 (Hearing Transcript at 47-48).

[53] *See id.* at 7 (Hearing Transcript at 48) and Exhibit 1 thereto (Hearing Exhibit 2).

[54] *See id.*

[55] *See e.g., In re BellSouth Telecommunications, Inc., Order Establishing Procedure*, 2001 WL 1083687, Florida Public Service Commission (rel. Aug. 28, 2001) (BellSouth's pending complaint against Thrifty Call, Inc. alleges intentional and unlawful reporting of erroneous PIU factors to BellSouth in violation of BellSouth's Intrastate Access Tariff and the rules and regulations established by the Florida PSC. BellSouth asserts that Thrifty Call's erroneous PIU factors resulted in the under reporting of intrastate access terminating minutes to BellSouth.); *Complaint of BellSouth Telecommunications, Inc., Regarding the Practice of Global Crossing Telecommunication, Inc., in Reporting of Percent Interstate Usage for Compensation for Jurisdictional Access Services*, Docket No. 14587, Georgia Public Service Commission (filed Oct. 19, 2001) (BellSouth's pending complaint against Global Crossing alleges that Global Crossing misreported PIU factors to BellSouth. As a result, BellSouth asserted that Global Crossing owes BellSouth lost access revenue from 1994 to 2000.).

[56] Exhibit 14A at 49 (bates numbered p. 14).

the identity of the *service provider* for toll traffic and the identity of the *service provider* for "local traffic" are the key pieces of information – not the *jurisdiction* of the call.

A review of current trunking requirements – which Verizon proposes to keep in place – helps illustrate the problems with Sprint's multi-jurisdictional trunk proposal. Currently, separate trunk groups are used for (i) "local traffic" and intraLATA toll traffic where either LEC is the intraLATA toll provider (the "Local Interconnection Trunk Group"); and (ii) intraLATA toll traffic (when the intraLATA toll provider is an IXC) and interLATA (interstate and intrastate-interLATA) toll traffic (the "Access Trunk Group").[57]

Sprint records the originating and terminating telephone numbers to bill for traffic routed over the Local Interconnection Trunk Group. This approach allows for correct billing[58] because the terminating LEC can determine from the originating telephone number which LEC is the service provider for the call. But Sprint does not create *any* records for traffic routed to it over the Access Trunk Group. Instead, as explained above, pursuant to MECAB, Verizon (the access tandem provider) creates the terminating access records and forwards them to Sprint. Those records identify the *toll service provider* for each call routed through Verizon's access tandem and thus the carrier to which Sprint will bill terminating access charges.

In short, as it stands now, Sprint creates *no records* for terminating Access Trunk Group traffic and *records only originating and terminating telephone numbers* for all

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[57] *See* Verizon's proposed § 2.4.1. of the Draft Interconnection Agreement attached to Verizon's Response to Sprint's Petition. The separate trunking requirement that Verizon proposes for this interconnection agreement was present in the previous interconnection agreement between Verizon and Sprint, which remains in effect until the new interconnection agreement is executed.

[58] There are problems with this approach only when the end user customer is served by UNE-P; however, such problems are unrelated to the issues in dispute regarding multi-jurisdictional trunks.

calls that travel over the Local Interconnection Trunk Group. Under the current trunking requirements, ***all*** 00- traffic is routed over the Access Trunk Group.

Under Sprint's multi-jurisdictional trunking proposal, Sprint would combine traffic from the Local Interconnection and Access Trunk Groups and record the originating and terminating telephone numbers for *all* calls routed on that combined trunk group. When it does so, it cannot determine from those records *who* should be billed access charges or reciprocal compensation charges, as the case may be.

Consider the following example. A Verizon end user whose intraLATA toll provider is AT&T makes an intraLATA toll call to a Sprint end user. That call travels from the Verizon end user, through Verizon's end office, then is handed off to AT&T at its POP (and Verizon will bill AT&T originating access charges). In the multi-jurisdictional trunk group scenario, when AT&T sends that call to Sprint via the Verizon access tandem for termination to Sprint's end user, Sprint will create a record for this call (for purposes of service provider identification) that contains the originating and terminating telephone numbers only. Pursuant to MECAB, Verizon will *also* create a record on this call. The record Verizon will provide to Sprint identifies AT&T as the IXC which owes Sprint access charges for that call. Sprint's own record tells Sprint that it terminated an intraLATA toll call originated by a Verizon end user, but it does not identify AT&T as the service provider for that call.[59] Thus, Sprint cannot match its

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[59] Verizon investigated whether Sprint's proposed system would alleviate the duplicate records problem through discovery, and Sprint's answers indicate that it will not. Specifically, in response to Verizon's Interrogatory No. 5, Sprint responded that it would identify the service provider by the carrier identification code (CIC) code which, according to Sprint, would "follow[] the call all the way through call termination." Exhibit 11 at 5. However, after additional interrogatories relating to whether CIC codes do in fact follow calls in the manner asserted by Sprint, Sprint amended its response to Interrogatory No. 5,
(continued...)

record with Verizon's record. It is thus very likely that Sprint will bill Verizon (based on the record created by Sprint) **and** AT&T (based on the record created by Verizon and forwarded to Sprint pursuant to MECAB). Under the current system, when Sprint creates a record of originating and terminating telephone numbers, it knows the call came from the Verizon Local Interconnection Trunk Group and, based on the originating number, Sprint can determine that Verizon was the intraLATA toll provider for that call. Allowing multi-jurisdictional trunks removes Sprint's ability to identify the intraLATA toll provider. Again, the ability to determine the jurisdiction of the call does not solve the undisputed duplicate record problem that Sprint's multi-jurisdictional trunks will create.[60]

Without knowing the amount of traffic (local, intraLATA toll and exchange access) that Sprint would terminate over its proposed multi-jurisdictional trunks, it is impossible to quantify exactly the financial magnitude of this problem. But because reciprocal compensation rates are lower than access charges by a factor of 4.6,[61] traffic misreporting would be a significant concern. In addition, the duplication of records for terminating exchange access would no doubt increase the potential for future disputes

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admitting that CIC codes do not in fact follow such calls all the way through to termination. Exhibit 11 at 31. Accordingly, Sprint, as the terminating carrier, will not have access to the CIC code (and thus, the identity) of the service provider for such calls.

[60] In the Texas proceeding, the arbitrators acknowledged the absence of a solution supported in the record. *See Texas Arbitration Award* at 19. However, they mistakenly concluded that the use of a PLU/PIU factor would suffice for billing purposes. *See id.* The PLU/PIU factors that Sprint claims it can create would necessarily be derived from data regarding the traffic that travels over the multi-jurisdictional trunks that Sprint admits it cannot accurately identify. In other words, the duplicate records that will make accurate billing impossible on the proposed multi-jurisdictional trunks will also make it impossible for Sprint to derive accurate PLU/PIU factors. Thus, contrary to the Texas arbitrators' finding, the use of PLU/PIU factors will not "solve" the duplicate records problem.

[61] *Compare* the reciprocal compensation rate for end office call termination (.0040852), at page 59 of the Draft Interconnection Agreement attached to Sprint's Petition, and the access rate for end office switching - bundled (.0089000) at § 6.6.3(B) of the Florida Facilities for Intrastate Access Tariff.

between Verizon and Sprint, which would likely come before this Commission. These problems will not arise if the existing practice of separate trunk groups is maintained.[62]

B. Multi-Jurisdictional Trunks Will Result in Verizon's Failure to Comply with Separate Trunking Requirements in Its Interconnection Agreements with Other Carriers in Florida.

All of Verizon's interconnection agreements with facilities-based ALECs require exchange access traffic to be routed between Verizon and the ALEC on trunks that are distinct from trunks that carry local traffic between the two entities. If the Commission accepts Sprint's position on this issue, then Sprint will have the ability to route both exchange access and local traffic to a Verizon tandem switch on the same trunk group. Some of this traffic will be destined for other ALECs that are also interconnected at the Verizon tandem switch. In such cases, Verizon will not be able to "separate" the exchange access traffic destined for a third-party ALEC from the local traffic also destined for that third-party ALEC. This situation will cause Verizon to be out of compliance with its contracts with every facilities-based ALEC and will create billing disputes between Verizon and the third-party ALECs.[63]

Sprint argues that the only relevant contractual obligations would be between it and the terminating ALEC, not Verizon and the ALEC, even though the Sprint traffic routed to that ALEC would necessarily travel though the Verizon tandem[64] thereby implicating the interconnection agreement between Verizon and the terminating ALEC. Even though there may be relevant contractual obligations between Sprint and that

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[62] *See* Munsell Dir. at 8 (Hearing Transcript at 49).

[63] *See id.*

[64] *See* Exhibit 14A at 140-144 (bates numbered p. 36-37).

ALEC for the same traffic, the fact remains that Verizon's contracts with the ALECs all include the separate trunking requirement. It would be irresponsible, from a policy perspective, to disregard the effect of Sprint's position on Verizon's obligations under all of these other contracts.

C. Sprint's Request to Create Multi-Jurisdictional Trunk is Inconsistent with Sprint's Treatment of Its Own and Other ALECs.

Verizon's position is consistent with sprint's own ILEC's treatment of ALECs. For example, the interconnection agreement between United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company d/b/a Sprint ("Sprint the ILEC") and the ALEC Ernest Communications, Inc., requires the separation of access traffic onto its own trunk group.[65] The interconnection agreement between Sprint the ILEC and Sprint the ALEC in Florida, Sprint Communications Company L.P. (the same Sprint entity that initiated this arbitration), likewise, requires separate trunks for separate jurisdictions of traffic.[66] Verizon's position is thus consistent with both industry standards and Sprint's own local exchange company's position vis-à-vis other carriers.

For all the reasons discussed in this section, the Commission should reject Sprint's multi-jurisdictional trunk proposal and instead order Verizon's proposed language on this issue to be incorporated into the final interconnection agreement.

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[65] *See* Munsell Dir. at 9 (Hearing Transcript at 50) and Exhibit 2 thereto (Hearing Exhibit 3).

[66] *See id.* and Exhibit 3 thereto (Hearing Exhibit 4).

IV. RESALE OF VERTICAL FEATURES

(Issue No. 3)

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The Commission should not require Verizon to give a § 251(d)(3) avoided cost discount when Sprint resells vertical features to customers who are not telecommunications carriers. Verizon does not offer these stand-alone features at retail and would not avoid the costs contemplated by the § 251(d)(3) avoided cost calculation.

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The Act requires Verizon to apply a wholesale discount to services Verizon provides at retail to subscribers who are not telecommunications carriers. Verizon does not offer vertical features on a stand-alone basis at retail. Thus, Sprint is not entitled to the wholesale discount when it resells these features to Verizon customers. Sprint may instead purchase vertical features for resale on a stand-alone basis on the same terms and conditions as Verizon currently offers to enhanced service providers (ESPs), *i.e.*, at the tariff rate with no wholesale discount. Accordingly, the Commission should reject Sprint's proposed language for section 1 of the Resale Attachment that purports to require Verizon to apply an avoided cost discount to stand-alone vertical features.

A. Sprint's Language Conflicts with Verizon's Resale Obligations Under the Act.

Section 251(c)(4)(A) of the Act requires ILECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[67] Under Verizon's tariff, Verizon provides

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[67] 47 U.S.C. § 251(c)(4)(A). *See also* 47 C.F.R. § 51.605(a). The wholesale rates at which services subject to resale under § 251(c)(4) of the Act must be offered are set pursuant to § 252(d)(3) of the Act, which states: "For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding that portion thereof attributable to any marketing, billing, collection and other costs (continued...)

vertical (or custom calling) features only in conjunction with basic dial tone service, and not on a stand-alone basis.[68] Indeed, vertical features will not work unless the customer also orders the dial tone line.[69] Because Verizon does not provide stand-alone vertical features to its retail customers who are not telecommunications carriers, it has no obligation to apply a wholesale discount to these features for Sprint to resell on a stand-alone basis. As the FCC has observed, the "Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent does not offer to retail customers," nor does it require the LEC "to disaggregate a retail service into more discrete retail services."[70]

B. Sprint May Purchase Vertical Features on a Stand-Alone Basis, but It Is Not Entitled to the Wholesale Discount.

Sprint tries to support its position by pointing out that Verizon offers vertical features and direct billing to ESPs. Verizon does not dispute that ESPs are permitted to purchase some vertical features on a stand-alone basis for resale to end users. Such services are provided to ESPs under the FCC's Open Network Architecture ("ONA") rules, but a wholesale discount does not apply. In those situations, Verizon continues to

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that will be avoided by the local exchange carrier." 47 U.S.C. § 252(d)(3). When Verizon uses the term "wholesale discount," it refers to the discount that is calculated by excluding the "avoided" costs from the "retail rates charged to subscribers." Application of the "wholesale discount" to "retail rates charged to subscribers" results in "wholesale rates."

[68] *See* Verizon's General Services Tariff, Section A13, Page 10 (stating that vertical features such as Call Waiting, Call Forwarding, Call Forwarding/Busy Line/Don't Answer and Ultra Forward "are furnished in connection with individual line service exclusive of semi-public telephone service, CENTREX, CentraNet, and PBX trunk lines.")

[69] Direct Testimony of Terry Dye (hereinafter, "Dye Direct at ___") at page 5 (Hearing Transcript at 64).

[70] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 872 and 877 (1996) ("*Local Competition Order*").

provide the dial tone line, and the ESPs may purchase a vertical feature to resell to a Verizon end user in connection with a service such as voice messaging. In that case, however, Verizon is **not** offering vertical features on a stand-alone basis **at retail**. ESPs are purchasing the features for resale to end users and are therefore operating as wholesalers. Thus, the only situation in which Verizon provides vertical features on a stand-alone basis is at wholesale, not at retail, and neither the ESPs nor Sprint are entitled to the wholesale discount. Indeed, extending Sprint a wholesale discount on these services would give it an unfair advantage over ESPs and potentially impair competition in the voice messaging market.

In a similar situation, the FCC has held that "while an incumbent LEC DSL offering to residential and business end users is clearly a retail offering designed for and sold to the ultimate end user, an incumbent LEC offering of DSL services to Internet Service Providers as an input component to the Internet Service Provider's high-speed Internet service offering **is not a retail offering**."[71] The FCC also amended its rules "to clarify that advanced services sold to Internet Service Providers as an input component to the Internet Service Provider's own retail Internet service offering **are not subject to the discounted resale obligations of section 251(c)(4)**."[72] The D.C. Circuit recently upheld the FCC's holding on this issue.[73] The same logic applies here. ESPs, in their capacities as wholesale customers, purchase vertical features as input components to a

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[71] *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999) (emphasis added).

[72] *Id.* at ¶ 22 (emphasis added).

[73] *See Ass'n of Communications Enters. v. FCC*, 253 F.3d 29 (D.C. Cir. 2001).

broader retail service ultimately offered to an end user; they are not obtaining the vertical feature at retail.

Sprint admits that ESPs are not entitled to the Act's resale discount,[74] but fails to acknowledge that it plans to use the vertical features in exactly the same way as ESPs do.[75] Sprint's Unified Communications platform allows an end user to retrieve his voice mail messages from various devices, which is the same way ESPs utilize the vertical features they purchase from Verizon.[76]

To the extent Sprint seeks to obtain vertical features to be used exclusively in conjunction with its information services, Sprint must purchase these services without a wholesale discount, just as other ESPs do.

C. Verizon's Tariff Makes Clear That Vertical Features Are Not Offered on a Stand-Alone Basis at Retail to Subscribers Who Are Not Telecommunications Carriers.

In an arbitration between Sprint and BellSouth Telecommunications Inc. (BellSouth), the Commission concluded that Sprint could purchase vertical features from BellSouth on a stand-alone basis at a wholesale rate because the record in that proceeding did not include adequate evidence that the proposed "resale restriction" was not "presumptively unreasonable," was "narrowly tailored," and would not have "anticompetitive results or otherwise be reasonable."[77] Moreover, the Commission was

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[74] *See* Rebuttal Testimony of Mark G. Felton (hereinafter, "Felton Reb. at ___") at 4 (Hearing Transcript at 100).

[75] *See* Direct Testimony of Mark G. Felton (hereinafter, "Felton Dir. at ___") at 8-9 (Hearing Transcript at 91-92).

[76] *See* Dye Dir. at 8-9 (Hearing Transcript at 67-68).

[77] *In re Petition of Sprint Communications Company Limited Partnership For Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement* (continued...)

unconvinced by BellSouth's argument that the resale obligation does not apply to vertical features because they are "optional" rather than "basic."[78]

In this case, the record contains just the evidence the Commission found lacking in the BellSouth arbitration. That is, as Verizon's tariff makes clear, vertical features are not offered on a stand-alone basis at retail to subscribers who are not telecommunications carriers. Thus, declining to provide them on a stand-alone basis at the wholesale rate may not, as a matter of law, constitute an unreasonable restriction on resale.

In determining Verizon's obligations under § 251(c)(4) of the Act, neither Sprint nor this Commission may disregard the terms and conditions under which Verizon offers certain vertical features to customers who are not telecommunications carriers. Although Verizon may price vertical features separately, the tariff requires subscribers to purchase dial tone service in order to obtain vertical features. Without dial-tone service, there would be no line on which to place the vertical feature. Several state commissions, including Maryland, Massachusetts, New York, and Kentucky have considered the same issue Sprint raises here and found that an ALEC has no right to purchase stand-alone vertical features at a wholesale discount.[79]

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with BellSouth Telecommunications, Inc. Order No. PSC-01-1095-FOF-TP, in Docket No. 000818-T (May 8, 2001).

[78] *Id.*

[79] *Maryland Arbitration Order* at 10-11, 27 ("Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the Commission's *Local Competition* rules."); *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues at 20 (2001) ("We will not require that vertical features be made available on a stand-alone basis."). *See also, In the Matter of Sprint Communications Company, L.P. for Arbitration*

(continued...)

D. Verizon Would Avoid Little or No Costs in Selling Vertical Features on a Stand-Alone Basis, so No Wholesale Discount Is Warranted, in Any Event.

Even if the Act required Verizon to offer stand-alone vertical features at a wholesale discount (which it does not), there would be no avoided cost discount to apply to stand-alone vertical features. The wholesale discount is intended to reflect the costs that Verizon would avoid if it were not providing *any* services at retail.[80] If Sprint were only reselling a single vertical feature, however, and Verizon were continuing to provide the basic dial tone service (and other vertical features), Verizon would avoid few, if any, costs. Verizon, would, for example, continue to incur the costs of taking retail customer orders; it would continue to incur the costs of billing and collection; and it would avoid few, if any, of the costs it incurs in marketing its services to end users.[81] Thus, no avoided cost discount is justified, in any event.[82]

V. INCORPORATION OF COLLOCATION TARIFF
(Issue No. 12)

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Verizon's proposed language incorporating future revisions to Commission-approved collocation tariffs will ensure consistency for ALECs and prevent arbitrage opportunities that would arise as Verizon's tariffs change from time to time. Sprint may challenge proposed changes to Verizon's tariffs.

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with BellSouth Telecommunications Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Order in Case No. 2000-480 at 3-4 (Pub. Serv. Comm. of Ky. 2001).

[80] 47 U.S.C. § 252(d)(3). *See also* note 67 and accompanying text.

[81] *See* Dye Dir. at 9-11 (Hearing Transcript at 68-70).

[82] Additionally, reselling vertical features on a stand-alone basis would require modifications to Verizon's provisioning and billing systems. *See* Dye Dir. at 11 (Hearing Transcript at 70). If such modifications must be made, Verizon is entitled to recover those additional costs from the cost causer and therefore reserves the right to request recovery of any additional costs it is ordered to incur.

Verizon's proposed section 1 of the Collocation Attachment establishes a collocation tariff as the first source for applicable collocation rates. This approach ensures that Verizon's collocation rates are updated in a manner that is efficient, consistent, fair, and non-discriminatory for all ALECs. It also eliminates the arbitrage opportunity Sprint seeks if it could lock Verizon into contractual collocation rates, but still remain free to purchase from a revised collocation tariff should the tariff rates prove more favorable.

As an initial matter, § 1.5 of Article II of the draft interconnection agreement attached to Sprint's Petition – to which Sprint has agreed, and has not placed at issue in this arbitration – is dispositive of Sprint's argument regarding incorporation of future tariff revisions. This provision explicitly recognizes that certain services under the agreement are governed by tariffs which may change from time to time:

> Some of the services and facilities to be provided to SPRINT by VERIZON, or to VERIZON by Sprint, in satisfaction of this Agreement may be provided, in whole or part, pursuant to existing VERIZON, or Sprint, tariffs. VERIZON and Sprint shall each have the right to modify its tariffs subsequent to the Effective Date of this Agreement, and upon written notice to SPRINT or VERIZON, such modifications shall automatically apply to such services and facilities. The Parties shall cooperate with one another for the purpose of incorporating such modifications into this Agreement to the extent reasonably necessary or appropriate. Notwithstanding the foregoing, except as otherwise specifically provided herein: (a) VERIZON and Sprint shall not have the right to file tariffs for services and facilities that supersede the terms and conditions of this Agreement if the services and/or facilities were not previously provided pursuant to tariff hereunder; unless otherwise ordered by the Commission (pursuant to Applicable Law and not at the request of either Party) and (b) the Parties shall have the right to modify the terms of such VERIZON and Sprint tariffs as applied to this Agreement, as reasonably necessary or appropriate to fulfill their obligations under the Act or applicable rules and regulations in connection with the implementation of this Agreement. This section shall apply only to VERIZON and SPRINT and shall not be

construed as applying to any non-parties.

When new services are offered pursuant to tariff, or existing tariffed services are modified, the Party which is introducing or modifying the tariffed service will notify the other Party at the same time it notifies the Commission via the tariff filing of proposed new or modified Services, or as required under applicable Commission rules.

Despite Sprint's agreement to this contract language, Sprint complains that referencing the collocation tariff as it may change from time to time is an effort to avoid the obligations of an interconnection agreement and that this approach would deny it the "opportunity to review and challenge the changes."[83] Both claims are unfounded.

Any party, including Sprint, has the opportunity to challenge any proposed Verizon tariff when it is filed. In fact, the above-quoted language from section 1.5 of Article 2 requires the parties to notify each other of proposed tariffs when they are filed at the Commission.

Updating the contract along with the tariffs will in no way allow Verizon to avoid interconnection obligations. On the contrary, it will ensure Verizon's interconnection obligations are administered fairly for all ALECs. Because ALECs can pick and choose from, or opt into, each others' interconnection agreements, Verizon must ensure that it remains consistent and uniform in its provision of products and services. Referencing future changes to Verizon's tariffs efficiently makes such changes immediately applicable through the various interconnection agreements, thereby ensuring

[83] Sprint's Petition at 43 (Sprint did not file any testimony on this issue).

nondiscriminatory treatment of ALECs and avoiding potential litigation.[84] Indeed, in this Commission's generic collocation proceeding in 2000, Sprint joined the other ALECs and Verizon in supporting the concept of collocation tariffs for the uniformity and consistency they bring to the collocation process.[85]

What Sprint seeks is to preserve a "best of both worlds" arrangement so that it can always choose the more favorable collocation rates of (i) the rates applicable at the time of the interconnection agreement or (ii) any future collocation tariff revisions on a case by case basis. While Sprint attempts to lock Verizon into it current collocation rates by contract, Sprint would not likewise be bound by the same rates. If rates decrease, Sprint would receive the benefit of the lower tariffed rate because Verizon cannot keep Sprint from purchasing out of a Commission-approved tariff, even if Sprint agreed to lock into the current, higher rate in its interconnection agreement. If the rates increased, however, Verizon would be bound to the rates in effect at the time of the interconnection agreement. Verizon's proposal prevents Sprint from creating for itself alone this collocation price arbitrage opportunity, which no other carrier would have (unless it adopted Sprint's agreement with Verizon). Whenever Verizon modifies its tariffs to reflect its costs or changes in the law, Sprint would have an unfair competitive advantage over those carriers that must purchase from the tariff.[86]

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[84] *See* Direct Testimony of John Ries (hereinafter "Ries Dir. at ___") at 3-4 (Hearing Transcript at 105-106).

[85] *See Petition of Competitive Carriers for Commission Action to Support Local Competition in Bellsouth Telecomm. Inc.'s Service Territory*, etc., Order No. PSC-00-0941-FOF-TP, at 11-12 (2000).

[86] *See* Ries Dir. at 3-4 (Hearing Transcript at 105-106).

Moreover, Sprint's proposal would effectively give it a right to veto any future collocation tariff revision, and if other carriers opt into Sprint's agreement, then the tariff process could be rendered moot. Each carrier who opts into Sprint's agreement would be given the same right to veto Verizon's tariff revisions. Under Sprint's proposal, even if Sprint or other carriers participate in Verizon's tariff revision, they could circumvent the official tariff process.

The New York Public Service Commission rejected a similar argument by AT&T on a related issue.[87] It observed that "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship . . . we will conform the new agreement to Verizon's tariff where it is possible to do so."[88] Verizon asks this Commission to do the same by adopting Verizon's proposed section 1 of the Collocation Attachment.

VI. SPRINT'S COLLOCATION OBLIGATION (Issue No. 15)

* * *

The Commission should give Verizon the option to collocate as a reasonable means to comply with its obligation to interconnect with Sprint. Verizon seeks the same options to establish interconnection as it affords Sprint, including the opportunity to self-provision UNEs in an efficient and cost-effective manner.

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[87] *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues at 2-6 (2001).

[88] *Id.* at 4.

This issue involves whether Sprint should provide Verizon with the option to collocate on nondiscriminatory terms as a means of meeting its obligation to interconnect with Sprint. Section 251(a) of the Act imposes a duty on all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[89] Under this section, Verizon has a duty to interconnect with Sprint at any technically feasible point.[90] Verizon is seeking collocation as a reasonable means to achieve such interconnection.[91] That is, Verizon is simply trying to use its own infrastructure to interconnect with Sprint. Without this option, which Sprint refuses to provide, Verizon is forced to purchase transport in order to deliver traffic to Sprint's interconnection points, wherever they may be. Purchasing this transport may not be an efficient interconnection option for Verizon, but there may not be an alternative if Verizon does not have the option to collocate at Sprint's facilities.

For purposes of Verizon's obligation to interconnect, Sprint is, in effect, a monopoly provider of access to its network.[92] As such, Verizon should have the same options to establish interconnection points as it affords to Sprint. While Sprint is not required by the Act to allow other carriers to collocate, permitting Verizon to self-provision its infrastructure to Sprint's premises is both reasonable and equitable, especially given Verizon's duty to interconnect with Sprint at Sprint's choice of location. Indeed, if permitted the option to collocate, Verizon can make an economic and efficient

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[89] 47 U.S.C. § 251(a).

[90] 47 U.S.C. § 251(c)(2).

[91] *See* Ries Dir. at 5 (Hearing Transcript at 107).

[92] *See id.*

choice between collocating or purchasing transport. Otherwise, not only could Sprint force Verizon to haul local traffic over great distances to a distant point of interconnection, but it could also force Verizon to hire Sprint as Verizon's transport vendor.[93] Thus, Verizon would be subsidizing Sprint's interconnection costs while providing Sprint with a windfall if Verizon uses Sprint as its transport vendor. This would be an unfair and inequitable result, and one that Verizon's proposal seeks to avoid.

VII. CONCLUSION

For the reasons stated herein, Verizon respectfully requests that the Commission adopt Verizon's proposed contract language because it complies with applicable law and reject Sprint's proposed contract language, which, by contrast, (i) runs counter to applicable law, including rules adopted by the FCC, and (ii) demands terms and conditions for which there is no legal basis.

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[93] *See id.*

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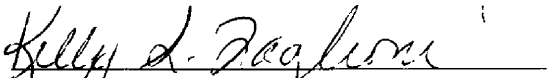
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of Verizon Florida Inc.'s Post-Hearing Brief in Docket No. 010795 were sent via UPS Next Day Air delivery on February 13, 2002 to:

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