BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.	DOCKET NO. 040156-TP ORDER NO. PSC-04-1053-PCO-TP ISSUED: October 27, 2004

ORDER ON PETITION FOR INTERVENTION

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order (TRO), promulgating various rules governing the scope of incumbent telecommunications service providers' obligations to provide competitors access to unbundled network elements (UNEs). Verizon Florida, Inc. (Verizon) stated that on October 2, 2003, it sent a letter to each competitive local exchange carrier (CLEC), initiating negotiations on a proposed draft amendment to implement the provisions of the FCC's TRO.

On February 20, 2004, Verizon filed its Petition for Arbitration of Amendment to Interconnection Agreements with Certain CLECs and Commercial Mobile Radio Service Providers (CMRS) in Florida. On March 19, 2004, Verizon filed its Update to Petition for Arbitration. Seven motions to dismiss were filed in the proceeding by various carriers challenging the Petition for Arbitration and the Update to the Petition for Arbitration.

Of the approximately 110 companies identified by Verizon in its Certificate of Service, 18 filed a response of some type. Some indicated their readiness to proceed with the arbitration. Others, however, objected to the Petition on a variety of grounds. Among those objecting, seven requested either dismissal or some similar alternative relief. Parties seeking dismissal included Sprint, Eagle/Myatel, Competitive Carrier Coalition, Z-Tel, Time Warner, and AT&T.

On March 2, 2004, the D.C. Circuit Court of Appeals vacated and remanded certain provisions of the TRO. The Court's mandate was issued on June 16, 2004. In response, the FCC released an Order and Notice of Proposed Rulemaking (NPRM) on August 20, 2004 that, among other things, seeks comment on alternative unbundling rules that will respond to D.C. Circuit Court of Appeals' decision. On August 23, 2004, certain ILECs filed a Mandamus Petition with the D.C. Circuit Court of Appeals in response to the FCC's Order and NPRM. On October 6, 2004, the D.C. Circuit Court ordered that the Mandamus Petition be held in abeyance pending further order of the court. Motions to govern further proceedings are required to be filed by January 4, 2005.

On July 12, 2004, Order No. PSC-04-0671-FOF-TP was issued, granting Sprint's motions to dismiss, without prejudice. In that order, Verizon was granted leave to refile a corrected petition within 60 days. Verizon's Motion for a 10-day extension of that time frame

was granted by Order No. PSC-04-0910-PCO-TP, and on September 9, 2004, Verizon filed its new Petition for Arbitration. In that Petition, Verizon named 18 CLECs as parties to the arbitration. Of those 18 named CLECs, nine filed a response to the Petition within the allotted timeframe. Sprint was not named as a party in the new Petition.

On September 29, 2004, Sprint Communications Company Limited Partnership (Sprint) filed its Petition for Intervention in this Docket. Sprint urges in its Petition that:

A. Under the terms of its interconnection agreement, Verizon may not unilaterally cease providing UNEs.

B. Its interests in the outcome of this proceeding are as compelling as any of the named parties.

C. No other party will adequately represent Sprint's rights and interests in this matter.

D. A separate action between Sprint and Verizon would be more time-consuming and costly than allowing Sprint's intervention in the present Docket.

On October 11, 2004, Verizon filed its Opposition to Sprint's Petition for Intervention. As reasons for that opposition, Verizon urges that:

A. This Commission does not permit intervention in Section 252 arbitrations.

B. Ruling on Sprint's Petition would require an interpretation of the current Sprint-Verizon Interconnection Agreement.

C. It is permitted to discontinue providing UNEs to Sprint under Section 251(c)(3) and 47 C.F.R. Part 51.

D. Verizon is not seeking arbitration with Sprint at this time.

Accordingly, urges Verizon, Sprint's Petition should be denied.

Upon consideration of the arguments presented, Verizon is correct that this Commission has, in the past, declined to allow intervention in two party arbitrations. However, this appears to be a unique situation in which Verizon is seeking arbitration with a number of other carriers. Nothing in the federal Act or in state law appears to preclude intervention by another party in this type of proceeding, and judicial economy would seem to advocate that Sprint be allowed to intervene. Thus, the question of whether Sprint should be allowed to intervene in this proceeding seems to hinge almost entirely on the interpretation of the language in Sprint's interconnection agreement with Verizon. While intepretation of current contract language is usually best left for resolution in a separate complaint proceeding, in this case, in the interest of

administrative efficiency and judicial economy, it is appropriate to consider the contract dispute in this Docket, so that an expeditious determination can be made as to whether and to what extent Sprint should be allowed to intervene to arbitrate an amendment to its interconnection agreement with Verizon.

Because this appears to be a legal question and unlikely to call into question any disputed facts, the question of the disputed contract language shall be set for expedited resolution pursuant to Section 120.57(2), Florida Statutes. As such, Sprint and Verizon shall file, within 15 days of the issuance of this Order, briefs addressing the question of the appropriate interpretation of the parties' interconnection agreement, as set forth in the following issues:

1. Does the current Sprint/Verizon interconnection agreement allow Verizon to unilaterally cease providing de-listed UNEs without implementation of an amendment to the parties' current interconnection agreement?

2. Does the current Sprint/Verizon interconnection agreement otherwise preclude Sprint from participation in this Docket for arbitration of an amendment to reflect the decisions in the TRO?

I note that while Verizon has raised a limited number of issues in its Petition, the CLECs that have responded to the Petition have raised quite a few additional issues. Pursuant to Section 252(b)(4) of the Act, this Commission is to address the issues raised in both the Petition and in the responses. Thus, to the extent that the additional issues to be included in this proceeding have any impact on either party's interpretation of the extent, if any, to which Sprint should be allowed to participate in this arbitration, the parties should clearly address this question in their briefs. Furthermore, this matter will not be automatically set for oral argument. However, should either party wish to present oral argument, a request filed in accordance with Rule 25-22.058, Florida Administrative Code, will be given expeditious consideration.

In the interest of maintaining the movement of this Docket in a timely manner, pending the ultimate finding on the question of intervention, Sprint will be allowed to participate in any noticed issue identification conferences.

It is therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the findings set forth in the body of this Order shall govern the procedure for disposition of Sprint's Petition for Intervention.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 27th day of October, 2004.

CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

LF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.