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September 11, 2001

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

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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 Verizon Florida Inc.'s
Opposition to Sprint's Motion to Join Verizon Advanced Data, Inc. and To Amend
Tentative Issues List in the above matter. Service has been made as indicated on the
Certificate of Service. If there are any questions regarding this information, please
contact me at (813) 483-2617.

Sincerely,

Kimberly Caswell

KC:tas

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Sprint Communications) Docket No. 010795-TP
Company Limited Partnership for arbitration) Filed: September 11, 2001
with Verizon Florida Inc. pursuant to Section)
251/252 of the Telecommunications Act of 1996))
_____)

**VERIZON FLORIDA INC.'S OPPOSITION TO SPRINT'S
MOTION TO JOIN VERIZON ADVANCED DATA, INC.
AND TO AMEND TENTATIVE ISSUES LIST**

Verizon Florida, Inc. ("Verizon Florida" or "Verizon"), pursuant to Rule 28-106.204 of the Florida Administrative Code, hereby opposes the motion of Sprint Communications Company Limited Partnership ("Sprint") to join Verizon Advanced Data, Inc. ("VADI") as a party to this arbitration proceeding and to amend the tentative issues list ("Sprint's Motion").

VADI should not be joined as a party to this arbitration proceeding, because

- Sprint has not complied with Section 252(b)(1) of the Telecommunications Act of 1996 ("Act"), the requirements of which govern jurisdiction to arbitrate an interconnection agreement pursuant to the Act;
- Verizon has not yet been relieved from the *Bell Atlantic/GTE Merger Order's*¹ requirement that advanced services be offered through a separate subsidiary; and
- Neither negotiations regarding packet switching between Verizon and Sprint, nor the timing thereof, provide a basis for adding VADI as a party.

In its Motion, Sprint also asks this Commission to add an issue it failed to raise in its Petition for Arbitration ("Petition"): "Should Sprint's notice to and negotiations with Verizon require that VADI be required to be made a party to the interconnection

¹ *In re Application of 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*, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000).

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agreement and be bound by the outcome of this arbitration.”² The Commission’s decision on Sprint’s request to add VADI will necessarily resolve that issue and render moot Sprint’s request to add a new issue. Whether styled as a motion to add VADI or to add a new issue, Sprint’s request should be denied.

A. SPRINT HAS NOT TRIGGERED THIS COMMISSION’S JURISDICTION PURSUANT TO SECTION 252(B)(1) OF THE ACT WITH RESPECT TO ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH VADI.

Verizon Southwest and VADI are separate legal entities, as Sprint admits.³ Section 252(b)(1) of the Act does not permit a requesting party to seek arbitration until 135 days after the date its request for negotiations was received. It is unclear from Sprint’s Motion whether and when it requested negotiations with VADI in Florida. If Sprint did request negotiations with VADI in Florida, it has only recently done so,⁴ and the 135-day time period has not yet run. Because Verizon and VADI are separate legal entities, Sprint’s negotiations and petition for arbitration with Verizon does not equate to negotiations or a petition for arbitration with VADI as Sprint asserts.

Pursuant to a condition of the *Bell Atlantic/GTE Merger Order*, the entity now known as Verizon is required to have a separate data affiliate.⁵ That separate data affiliate is VADI. Under the terms of the *Bell Atlantic/GTE Merger Order*, VADI must be “distinct” and “have separate officers, directors, and employees, as well as the requirements to operate independently and to deal at arm’s length.”⁶ In light of the

² Sprint’s Motion at 1.

³ Sprint’s Motion at 10.

⁴ Sprint’s Motion at 9.

⁵ *Bell Atlantic/GTE Merger Order* at ¶ 260.

⁶ *Id.* at ¶¶ 260, n.579, 263.

currently effective terms and conditions of the *Bell Atlantic/GTE Merger Order*, neither Verizon, VADI, Sprint, nor the Commission is free to disregard the status of VADI as a separate corporate entity and ignore Section 252(b)(1) of the Act, the requirements of which govern jurisdiction to arbitrate an interconnection agreement pursuant to the Act. Accordingly, in the context of a *Verizon* interconnection agreement, Verizon cannot be placed in a position of advocating VADI's obligations or lack thereof, and there currently is no jurisdiction to arbitrate the terms and conditions of an interconnection agreement between Sprint and VADI.

B. VERIZON HAS NOT YET BEEN RELIEVED FROM THE *BELL ATLANTIC/GTE MERGER ORDER'S* REQUIREMENT THAT ADVANCED SERVICES BE OFFERED THROUGH A SEPARATE SUBSIDIARY.

Sprint correctly notes that Verizon is currently pursuing relief from the requirement that it maintain a separate data affiliate, but Verizon's request highlights why VADI cannot be made party to this proceeding. In CC Docket 98-184, Verizon has requested that the FCC accelerate Verizon incumbent telephone companies' right to provide advanced services directly, without using the separate advanced services affiliate as required by the *Bell Atlantic/GTE Merger Order*. On May 31, 2001, a Public Notice was released establishing the comment and reply comment cycle. Comments were filed June 14, 2001 and reply comments were filed on June 28, 2001. Verizon's request for relief has not been granted and it would be premature to speculate as to the outcome of its request.

At the same time, Verizon's request has not been dismissed as moot. The fact that Verizon had to make this request, that it has not been dismissed, and that it has yet to be granted demonstrates that Verizon has not yet been relieved from the *Bell Atlantic/GTE Merger Order's* requirement that advanced services be offered through a

separate subsidiary. It further demonstrates that Sprint misreads the Ascent decision⁷ when it claims the Ascent decision “eviscerated the separate advanced services structure.”⁸ If Sprint were correct about the legal effect of the Ascent decision, Verizon would not need to seek the FCC’s permission to accelerate the sunset period for the separate data affiliate requirement.

According to Sprint, the Ascent decision holds that Verizon and VADI are “not separate” for purposes of entering into interconnection arrangements with ALECs under Sections 251 and 252 of the Act. However, rather than “eviscerate” the separate advanced services structure, the Ascent court rejected the FCC’s presumption that the affiliate was not a “successor or assign” of the ILEC. Specifically, the court’s ordering clause vacates the FCC’s merger order “only insofar as the Order authorizes exemption of advanced services provided through the Order’s prescribed affiliate structure from the obligations imposed on [ILECs] by [Section] 251(c).”⁹ Although the separate data affiliate may not be able to avoid ILEC obligations, the Ascent decision does nothing to alter the status as a *separate* data affiliate. It simply means that VADI is a successor or assign of Verizon, and is therefore subject to Verizon’s obligations under Section 251(c).

Sprint also argues that VADI is an ALEC under Florida law and therefore Sprint cannot pursue negotiations or arbitrations with VADI under the Act or under state law.¹⁰ Sprint is wrong. Having mischaracterized the appropriate conclusion supported by the

⁷ Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001) (“the Ascent decision”).

⁸ Sprint’s Motion at 6, 10.

⁹ Ascent, 235 F.3d at 668 (emphasis added).

Ascent decision, Sprint then ignores the clear message of the Ascent decision. That is, pursuant to Ascent, VADI is presumed to be a “successor or assign” of Verizon Southwest, and Section 251(h) of the Act defines ILEC to include successors and assigns. Accordingly, Ascent makes clear that Sprint can pursue interconnection, including negotiations or arbitrations, with VADI.

C. NEITHER THE NEGOTIATIONS BETWEEN VERIZON AND SPRINT, NOR THE TIMING THEREOF, JUSTIFY ADDING VADI AS A PARTY TO THIS ACTION.

Sprint argues that VADI should be a party to this proceeding because (a) Sprint began negotiations with Verizon in March 2000, (b) VADI did not exist until mid-2000, and therefore (c) Sprint did not know (and could not have known) that it needed to negotiate with VADI for access to its equipment that might be necessary to provide packet switching functionality. Despite Sprint’s arguments, neither the negotiations nor the timing thereof, justify adding VADI as a party to this action.

As an initial matter, Sprint’s claims about the negotiations and the parties’ respectively proposed contract language must be viewed in light of the parties’ disagreement over what applicable law requires. Contrary to Sprint’s argument now, the FCC’s *UNE Remand Order*,¹¹ released in November 1999, did not require ILECs to provide packet switching as a UNE. To the contrary, the FCC *expressly declined* to require ILECs to unbundle the packet switching functionality, except in one limited circumstance.¹² Specifically, the *UNE Remand Order* identifies four conditions that an

¹⁰ Sprint’s Motion at 8.

¹¹ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”).

¹² *Id.* at ¶ 303. (This holding was codified as 47 C.F.R. § 51.319(c)(5).)

ILEC must meet before it can be required to provide packet switching as a UNE. This fundamental disagreement came to light when Sprint proposed contract language for the first time in April or May of 2001 that would require Verizon to make packet switching available now -- that is, without regard to the analysis set forth in the FCC's *UNE Remand Order*.¹³

After the release of the FCC's *UNE Remand Order*, Verizon proposed language clarifying that it would provide packet switching on an unbundled basis only when the four conditions were met.¹⁴ Verizon's proposed language does not provide that Verizon "assumes the responsibility" to provide packet switching as a UNE to Sprint, nor does it "indicate that [Verizon] is apparently able to provide packet switching under the FCC's current rules and offers this to Sprint."¹⁵ That is, Verizon did not promise or agree to provide packet switching, nor did Sprint request Verizon to do so. In fact, after proposing this contract language, the *Bell Atlantic/GTE Merger Order* took Verizon a step *further* from meeting the four conditions by prohibiting Verizon from owning certain

¹³ Sprint proposes the following contract provision:

VERIZON shall make available to Sprint the unbundled Packet Switching Network Element at any technically feasible point, including Verizon's Remote Terminals and Central Offices. If VERIZON's Tariff does not contain rates, terms and conditions for the Packet Switching Network Element, the rates, terms and conditions in accordance with which VERIZON will make available the Packet Switching Capability network element shall be negotiated in good faith by the Parties.

¹⁴ Verizon proposes the following contract provision:

The Packet Switching UNE is defined as the basic packet switching function of routing or forwarding packets, frames, cells or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the DSLAM. VERIZON reserves the right to provide packet switching as an UNE only under the circumstances described in Rule 51.319(c)(5).

equipment necessary for providing advanced services. VADI was created at that time to provide advanced services to Verizon's retail end-users.

It was not until April or May 2001 -- long after the *UNE Remand Order*, the *Bell Atlantic/GTE Merger Order*, and the creation of VADI -- that Sprint suggested for the first time that Verizon should be required to provide packet switching as a UNE regardless of the four conditions.¹⁶ By that time, Sprint cannot credibly deny awareness of the *Bell Atlantic/GTE Merger Order*, including its separate data affiliate requirement. Until this time, Verizon Florida had no reason to believe that packet switching was a disputed issue or that Sprint intended to seek packet switching from Verizon above and beyond the FCC's *UNE Remand Order* and related rule. Thus, contrary to Sprint's argument now that VADI should be added as a party to this proceeding, there is nothing about the parties' negotiations or the creation of VADI that (i) relieves Sprint from the requirements of Section 252(b)(1) of the Act, or (ii) relieves Verizon, VADI, Sprint or the Commission from the current requirements of the FCC's *Bell Atlantic/GTE Merger Order*.

Sprint's request for access to unbundled packet switching from Verizon is a last-minute request in the context of its negotiations with Verizon in Florida. Having placed the issue of unbundled packet switching on the table just prior to initiating arbitration, it cannot now reach back to the beginning of the parties' negotiations to claim that its request for interconnection and petition for arbitration is timely as to VADI.

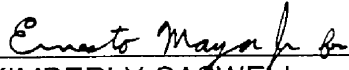
¹⁵ See Sprint's Motion at 2-3.

¹⁶ To this day, Sprint has failed to assert in its pleadings that Verizon actually meets the four conditions.

D. RESOLUTION OF SPRINT'S MOTION REGARDING VADI WILL RENDER MOOT ITS REQUEST TO AMEND THE TENTATIVE ISSUES LIST.

Sprint's Motion requests that the Commission amend the tentative issues list developed by the parties at the issue identification conference and attached to the August 28, 2001 *Order Establishing Procedure* by adding the following issue related to Issue No. 5 (packet switching): "Should Sprint's notice and negotiations with Verizon require that VADI be required to be made a party to the interconnection agreement and be bound by the outcome of this arbitration." Sprint seeks Commission resolution of that very issue in the context of its request to add VADI as a party to this arbitration proceeding. In other words, the Commission must determine the precise issue stated by Sprint in order to grant or deny Sprint's request to add VADI as a party. Accordingly, resolution of Sprint's Motion as to VADI's status as a party will render moot its request to add the "VADI issue" to the tentative issues list. That is, regardless of the decision of the Commission on whether or not VADI should be made a party to this proceeding, it will have resolved in full the issue Sprint seeks to add. Thus, the issues list need not be amended, and Sprint's request to do so should be denied.

Respectfully submitted on September 11, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to Sprint's Motion to Join Verizon Advanced Data, Inc. and To Amend Tentative Issues List in Docket No. 010795-TP were sent via overnight mail(*) on September 10, 2001 and via facsimile and U.S. mail(**) on September 11, 2001 to:

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