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November 20, 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 the originals and 15 copies of the Rebuttal Testimonies
of Terry R. Dye, Susan Fox and William Munsell on behalf of Verizon Florida Inc. in
the above matter. Service has been made as indicated on the Certificate of Service.
If there are any questions concerning this filing, please contact me at (813) 483-2617.

Sincerely,

14775-01 thru 14777-01

Kimberly Caswell

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition by Sprint Communications)
Company Limited Partnership for)
Arbitration with Verizon Florida Inc.)
Pursuant to Section 251/252 of the)
Telecommunications Act of 1996.)

DOCKET NO. 010795-TP

**REBUTTAL TESTIMONY OF
TERRY R. DYE
ON BEHALF OF
VERIZON FLORIDA INC.**

SUBJECT: ISSUE NO. 3

NOVEMBER 20, 2001

DOCUMENT NUMBER-DATE

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REBUTTAL TESTIMONY OF TERRY R. DYE

I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Terry R. Dye. My business address is 600 Hidden Ridge, Irving, Texas, 75038.

Q. ARE YOU THE SAME TERRY DYE WHO FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My testimony responds to the testimony of Mark G. Felton concerning Sprint's attempt to obtain custom calling features at the wholesale rates set pursuant to § 252(d)(3) of the Telecommunications Act of 1996 (the "Act") when Sprint does not concurrently order Verizon's dial tone service. In short, Mr. Felton both (i) misses the point when he focuses on technical feasibility and (ii) incorrectly concludes that the resale of vertical features separate and apart from the dial tone service is always "technically feasible." The wholesale discount is applied to Verizon's retail offerings purchased by non-telecommunications carriers. That wholesale discount is not intended or appropriate for application outside the context of Verizon's retail offerings.

1 because an end-user can, but need not, purchase such additional
2 services. However, as I also explained in my Direct Testimony, the
3 custom calling services are never "*purchased* separately from the
4 basic local service" by Verizon's retail end-users who are not
5 telecommunications carriers. Rather, the custom calling services are
6 only purchased by retail end-users who are not telecommunications
7 carriers with the *concurrent* purchase of Verizon's dial tone service.

8

9 **Q. WHY IS MR. FELTON'S FOCUS ON TECHNICAL FEASIBILITY**
10 **MISPLACED?**

11 A. The issue is not *whether* Sprint can purchase custom calling features
12 for resale without purchasing Verizon's dial tone service or whether it
13 is technically feasible for Verizon to provide custom calling features on
14 a stand-alone basis: it can and it often is. The issue is how much
15 Sprint must pay for those services when it purchases them on what is
16 known as a "stand-alone" basis -- that is, without concurrently
17 purchasing Verizon's dial tone service. Because Verizon only offers its
18 custom calling features *at retail* to non-telecommunications carriers
19 who concurrently purchase Verizon's dial tone service, Verizon has no
20 obligation under § 251(c)(4) to provide Sprint with those features on a
21 stand-alone basis at the § 252(d)(3) wholesale discount rate. Rather,
22 Sprint may purchase and resell custom-calling features on a stand-
23 alone basis on the same terms and conditions as Verizon currently
24 offers to Enhanced Service Providers ("ESPs").

25

1 Q. MR. FELTON DISCUSSES VERIZON'S PROVISIONING OF
2 CERTAIN CALL-FORWARDING FEATURES TO ESPS. COULD YOU
3 DISCUSS THE CIRCUMSTANCES UNDER WHICH VERIZON
4 PROVIDES THESE SERVICES TO THE ESPS?

5 A. Yes. On page 8 of his testimony, Mr. Felton correctly points out that
6 Verizon sells various call-forwarding features to ESPs, or information
7 service providers ("ISPs"), on a stand-alone basis without also selling
8 the underlying local dial tone lines. ESPs, however, are not entitled to
9 the resale discount provided in the Act. That is, ISPs are not
10 telecommunications carriers. When Sprint seeks to obtain vertical
11 services to be used exclusively in conjunction with its "information
12 services" offering described at page 9 of his testimony, Sprint is not
13 engaged in providing telecommunications services, but is acting as an
14 ISP. The Act's definitions support this characterization, highlighting the
15 distinction between information services and ISPs on the one hand,
16 who are not entitled to the wholesale discount, and telecommunications
17 and telecommunications carriers on the other, who are:

18 Information service. -- The term "information service"
19 means the offering of a capability for generating,
20 acquiring, storing, transforming, processing, retrieving,
21 utilizing, or making available information via
22 telecommunications, and includes electronic publishing,
23 but does not include any use of any such capability for
24 the management, control, or operation of a
25 telecommunications system or the management of a

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telecommunications service. (Emphasis added)

Telecommunications. -- The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications carrier. -- The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). ***A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services,*** except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. (Emphasis added)

Telecommunications service. -- The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

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ISPs are entities offering end-users information services as defined above. The “Unified Communications” product, which “allows messages to be retrieved from various electronic devices...” described in Mr. Felton’s testimony, on pages 8 and 9, falls within the above definition of information service.

A telecommunications carrier is engaged in providing telecommunications services if it is providing the end-user local exchange service. If a telecommunications carrier is *only* offering the end-user information services and is not engaged in providing telecommunications services, then it should not be treated as a common carrier under the Act and should not be eligible to receive the wholesale discount on those services as outlined in § 252(d)(3).

To the extent Sprint seeks to obtain vertical services to be used exclusively in conjunction with its “information services,” Sprint should purchase these services under Verizon’s Florida General Services Tariff, Section A13 just as other ISPs do.

Q. EVEN IF TECHNICAL FEASIBILITY IS NOT THE DECIDING FACTOR, IS IT ALWAYS TECHNICALLY FEASIBLE FOR DIFFERENT CARRIERS TO PROVISION THE DIAL TONE SERVICE AND THE CUSTOM CALLING FEATURES?

A. No. Setting aside the pricing issue, Mr. Felton correctly points out, as

1 have I, that there are instances in which Verizon can provide custom
2 calling features to a telecommunications carrier for resale separate
3 and apart from the dial tone service. However, it is not always the
4 case that Verizon may provide vertical features to Sprint over its
5 facilities. Different CLECs may provide the basic dial tone service
6 through resale, unbundled network elements (“UNEs”), their own
7 facilities, or some combinations of their own facilities and UNEs. On
8 page 11 of his testimony, Mr. Felton incorrectly concludes that “the fact
9 that another CLEC provides a customer’s basic service should not
10 preclude Sprint (or any other CLEC) from providing optional services to
11 that same customer.”

12
13 For example, if a different CLEC provides basic local service through
14 the use of UNEs to a customer to whom Sprint was reselling stand-
15 alone vertical features, Verizon would be in no position to continue to
16 offer Sprint vertical features for resale. Verizon would be providing the
17 CLEC with the network functionality of offering vertical features, and
18 the CLEC would have the sole right to provide the vertical features to
19 the customer. The purchaser of UNEs effectively becomes the
20 “owner” of the network elements and is entitled to the exclusive use of
21 all of the features and functions associated with it. In such a case, the
22 CLEC would not be required under the Act to offer vertical features for
23 resale at wholesale rates to any other CLEC, such as Sprint.

24
25 Moreover, no matter which carrier is providing the dial tone service --

1 but especially when a carrier other than Verizon is providing the dial
2 tone service -- Verizon's ordering and billing systems for CLECs are
3 not currently designed to process and bill orders for stand-alone
4 vertical features from CLECs.

5

6 **Q. MR. FELTON SPENDS A GREAT DEAL OF TIME DISCUSSING**
7 **WHETHER IT IS A "REASONABLE RESTRICTION" TO OFFER**
8 **VERTICAL FEATURES AT THE WHOLESALE RATE PROVIDED IN**
9 **THE ACT ONLY WHEN THE TELECOMMUNICATIONS CARRIER**
10 **ALSO OFFERS LOCAL SERVICE THROUGH THE SAME PORT.**
11 **FIRST, IS IT FAIR TO CHARACTERIZE THIS REQUIREMENT AS A**
12 **"RESTRICTION"?**

13 **A.** It is fair to characterize it as a *retail* restriction, but it is not a *resale*
14 restriction. As I have pointed out, Verizon requires any retail end-user
15 that is not a telecommunications carrier to first purchase dial tone prior
16 to exercising an option to purchase additional custom calling features.
17 As Mr. Felton recognizes at page 5, "The restriction on the end-user
18 customer of not being able to order Smart Callsm Services without first
19 having local service in place is a *reasonable restriction*." (emphasis
20 added).

21

22 Again, Mr. Felton misses the mark when he discusses whether
23 Verizon's *retail* restriction is now *reasonable* in a *wholesale*
24 environment. That is not the decisive inquiry. It is undisputed that the
25 Act requires Verizon to offer at the wholesale discount only those

1 telecommunications services it offers at retail to non-
2 telecommunications carriers. It is undisputed that Verizon does not
3 offer at retail a "stand-alone" custom-calling feature. And it is
4 undisputed that Verizon's requirements for its retail offering are
5 reasonable. Accordingly, Sprint's request for stand-alone vertical
6 features -- a product not offered by Verizon at retail -- *at a wholesale*
7 *discount* must be rejected.

8

9 **Q. EVEN IF NOT THE DECISIVE INQUIRY, IS IT REASONABLE TO**
10 **RECOGNIZE THAT DIAL TONE SERVICE BE PURCHASED IN**
11 **CONJUNCTION WITH CUSTOM CALLING FEATURES IN A §**
12 **251(c)(4) WHOLESALE ENVIRONMENT IN ORDER TO OBTAIN**
13 **THE § 252(d)(3) WHOLESALE DISCOUNT?**

14 **A.** Yes. For all the reasons I have discussed in my Direct Testimony and
15 herein, providing discounted custom calling features under the resale
16 provisions of the Act only when a CLEC, acting as a
17 telecommunications carrier, provides the associated local exchange
18 service is narrowly tailored and reasonable.

19

20 To review, if Sprint wishes to purchase custom calling features at a §
21 252(d)(3) discount for resale, it must do so on the same terms and
22 conditions that Verizon provides the relevant services to its retail
23 customers. If Sprint wishes to purchase custom calling features on
24 different terms and conditions, it cannot require Verizon to sell them at
25 a § 252(d)(3) discount. It is Verizon's *retail* pricing scheme against

1 which the § 252(d)(3) wholesale discount is to be applied. The §
2 252(d)(3) wholesale discount is developed through an avoided cost
3 analysis that considers what costs Verizon will avoid should it cease to
4 provide retail dial tone service. It would be unfair and inconsistent with
5 the avoided cost analysis used to calculate the § 252(d)(3) wholesale
6 discount if that discount is applied in a context in which Verizon
7 continues to provide the retail dial tone service. Verizon's retail and §
8 252(d)(3) wholesale rates are developed based on how Verizon offers
9 its services at retail. Consistently, § 252(c)(4) only requires Verizon to
10 offer for resale at § 252(d)(3) discounted rates the telecommunications
11 services consistent with Verizon's offering of those services at retail.
12 To allow Sprint to "disaggregate" Verizon's retail offerings and yet to
13 get a discount calculated based on Verizon's retail service is simply
14 unfair and inconsistent with the requirements of the Act. To allow it to
15 do so when it is effectively functioning as an information service
16 provider without also offering local service over the same facilities
17 further distorts the requirements of the Act.

18
19 Moreover, the proposal to "disaggregate" Verizon's retail offerings
20 does raise technical feasibility issues when viewed against (i) the
21 possibility that other CLECs can and will be competing to provide the
22 dial tone service via resale, UNEs, or their own facilities, and (ii)
23 Verizon's ordering and billing capabilities.

24
25 Finally, when feasible, Sprint can provide the services it requests by

1 reselling custom calling features without the concurrent purchase and
2 resale of basic service through Verizon's Florida General Services
3 Tariff, Section A13. Sprint's complaints about the alleged "restriction"
4 must always be viewed in light of the real dispute on this issue. That
5 is, the issue is the price Sprint must pay and, except for the instances
6 in which a carrier other than Verizon is providing the dial tone service,
7 not whether Sprint is technically able to put together a package of
8 services that include resale of Verizon's custom calling features.

9

10 **Q. MR. FELTON URGES THE COMMISSION TO "AFFIRM" ITS PRIOR**
11 **DECISION IN AN ARBITRATION BETWEEN SPRINT AND**
12 **BELLSOUTH ON THIS ISSUE. WHAT IS DIFFERENT ABOUT THE**
13 **FACTS IN THIS ARBITRATION?**

14 A. The Commission's analysis and decision in its Order No. PSC-01-
15 1095-FOF-TP, in *In re: Petition of Sprint Communications Company*
16 *Limited Partnership for Arbitration of Certain Unresolved Terms and*
17 *Conditions of a Proposed Renewal of Current Interconnection*
18 *Agreement with BellSouth Telecommunications, Inc.* indicates that the
19 record in that case did not include all of the facts in the record in this
20 case, including facts regarding Sprint's proposed use of the stand-
21 alone custom calling features it seeks. As previously discussed, Sprint
22 seeks these features on stand-alone basis in order to provide
23 information services. That is, Sprint seeks stand-alone vertical
24 features to act as an ISP and to provide the same services as, and to
25 compete with, other ISPs. However, Sprint seeks access to the

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wholesale discount reserved for telecommunications carriers that provide telecommunications services, which ISPs do not receive. In short, permitting Sprint to obtain a wholesale discount to provide the same services as ISPs, which must obtain the same input stand-alone custom calling features to provide their products, will give Sprint an unfair advantage *in the information services market*. It appears that these facts were not brought to the Commission's attention for consideration in the context of this issue. Instead of relying on the record and decision in the case Sprint cites, the Commission must consider the full record in this case, including the facts that expose Sprint's plan to gain an unfair competitive advantage vis-à-vis other ISPs, *i.e., non-telecommunications carriers*, by using its status as a telecommunications carrier to claim entitlement to a wholesale discount.

Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.