

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **MARK G. FELTON**

5
6 **Q. Please state your name and business address.**

7 A. My name is Mark G. Felton. My business address is 7301 College Boulevard,
8 Overland Park, Kansas 66210.

9
10 **Q. By whom are you employed and in what capacity?**

11 A. I am employed by Sprint United Management Company as Manager- Local Market
12 Development. I am testifying on behalf of Sprint Communications Company Limited
13 Partnership ("Sprint").

14
15 **Q. Are you the same Mark G. Felton who filed Direct Testimony in this arbitration**
16 **proceeding?**

17 A. Yes, I am.

18
19 **Q. What is the purpose of your testimony?**

20 A. The purpose of my testimony is to respond to the direct testimony of the Verizon
21 witness, Mr. Terry R. Dye. Specifically, my testimony will deal with contentions
22 made by Mr. Dye with respect to Issue 3, Vertical Features.

23
24 **Q. On page 5, lines 18-19, of his Direct Testimony, Mr. Dye argues that Verizon**
25 **“does not offer custom calling features on a stand-alone basis at retail”. Do you**

1 **agree?**

2 A. No, Mr. Dye is confusing the issue with such a claim. Verizon does in fact offer
3 vertical features on a stand-alone basis at retail to end-users who are not
4 telecommunications carriers. This is evident by the fact that these features are
5 purchased in addition to, but separate from, local dial tone. They are priced
6 separately on the bill, marketed distinctly, and contained in a section of the tariff
7 separate from local dial tone. Mr. Dye is correct that Verizon only sells vertical
8 features to those end-users who have first purchased Verizon's dial-tone service.
9 However, this requirement constitutes a tariff restriction that, while acceptable and
10 even necessary in a retail environment, is expressly prohibited by the FCC in the
11 wholesale environment unless the incumbent LEC can demonstrate that the restriction
12 is reasonable and nondiscriminatory (see ¶ 939 of FCC 96-98 ("Local Competition
13 Order")). Verizon has in no way demonstrated that the restriction that the sale of
14 vertical features must be preceded by the purchase of local dial tone is reasonable in
15 the wholesale environment.

16
17 **Q. Why does Verizon seek to place the restriction in its tariff with respect to the**
18 **purchase of vertical features on Sprint?**

19 A. It is not entirely clear why Verizon seeks to limit the purchase of vertical features to
20 those customers for which Sprint first purchases the local dial-tone from Verizon.
21 However, the FCC states in ¶ 939 of the Local Competition Order that "the ability of
22 incumbent LECs to impose resale restrictions and conditions is likely to be evidence
23 of market power and may reflect an attempt by incumbent LECs to preserve their
24 market positions". Mr. Dye admits on page 3, lines 10-13 of his direct testimony that
25 the issue is not whether Sprint may purchase custom calling features on a stand-alone

1 basis, but rather how much Sprint should pay for such services.

2

3 **Q. On page 5, lines 4-5, Mr. Dye states “indeed, as a practical matter, a customer**
4 **must have basic dial tone service in order to use a custom calling feature”. How**
5 **do you respond?**

6 A. Sprint agrees with Mr. Dye’s statement. Clearly, it is necessary for a customer to first
7 have local dial-tone for a vertical feature to work. Sprint fully intends to sell vertical
8 features on a stand-alone basis only to those customers who first have dial-tone from
9 Verizon – either on a retail or resold basis.

10

11 **Q. On page 6, lines 1-5, Mr. Dye argues that Sprint is essentially asking Verizon to**
12 **disaggregate a retail service into more discreet retail services. Please comment.**

13 A. Mr. Dye misapplies ¶ 877 of the Local Competition Order, which says that a retail
14 service need not be disaggregated into more discreet retail services for purposes of
15 resale. Clearly, the services Sprint seeks to resell are already disaggregated from
16 basic local service. As I made clear in my Direct Testimony, vertical features are
17 marketed, billed and tariffed separately from basic local service. The implication of
18 Mr. Dye’s argument is that vertical features are merely a component of a retail
19 service. However, this Commission unequivocally rejected this logic in Sprint’s
20 arbitration with BellSouth on this very issue (Docket No. 000828-TP). The
21 Commission found “that BellSouth’s reasoning for not offering its Custom Calling
22 Services for resale on a stand-alone basis is flawed, because BellSouth’s condition for
23 purchase is distinct from the product itself.” Verizon’s witness has offered no
24 compelling argument to alter this Commission’s previous determination. Therefore,
25 Mr. Dye’s use of this faulty logic should again be rejected by this Commission.

1

2 **Q. Would it be unfair to Enhanced Service Providers (“ESPs”) to allow Sprint to**
3 **purchase vertical features at the wholesale discount?**

4 A. Verizon attempts to divert the Commission’s attention away from the real issue by
5 alleging that to allow Sprint to purchase vertical features at the wholesale discount
6 would be “unfair” to ESPs. Sprint believes that Verizon’s argument on this point is
7 not with Sprint or this Commission but rather with Congress and the FCC. As I
8 demonstrated in my Direct Testimony, Congress and the FCC promulgated clear
9 requirements regarding the resale of telecommunications services by ILECs. On at
10 least one previous occasion, this Commission was asked to interpret these
11 requirements as they relate to the resale of vertical features on a stand-alone basis and
12 did so consistent with Sprint’s position. Verizon’s concern about the equity of these
13 requirements is more appropriately addressed by the source of the rules rather than
14 this Commission. Certainly, if an ESP met the requirements to be certified as a Local
15 Exchange Carrier then it, too, would be entitled to a discount on the
16 telecommunications services that it purchased from Verizon. If the FCC had intended
17 entities other than CLECs to receive discounts on the services they purchase then one
18 would imagine that the FCC would have issued a rule to that effect. Accordingly,
19 Sprint urges this Commission to not be distracted by Verizon’s professed concern
20 about the equity of Sprint’s request.

21

22 **Q. On page 9-11 of his Direct Testimony, Mr. Dye engages in a lengthy discussion of**
23 **why the wholesale discount rate applicable to retail services could not**
24 **appropriately be applied to vertical features that are made available for resale**
25 **on a stand-alone basis. Please comment?**

1 A. Mr Dye's assertion that the wholesale discount should be different for vertical
2 features resold on a stand-alone basis than for other retail services is certainly
3 debatable. Notwithstanding Mr. Dye's argument to the contrary, it is not clear
4 whether the discount would be higher or lower, if different at all. Nevertheless,
5 Verizon is entitled to file a cost study with this Commission to set its wholesale
6 discount at whatever level may be appropriate. However, this claim by Verizon is
7 irrelevant to the determination of the issue that is presented to this Commission for
8 resolution in this proceeding. CLECs have been granted the authority to resell
9 vertical features on a stand-alone basis by Congress, the FCC and this Commission.
10 Until such time as Verizon files a cost study to support its assertion that a different
11 discount should apply to vertical features, the current discount should apply.

12

13 **Q. Verizon also suggests that Sprint should be required to reimburse Verizon for**
14 **any implementation costs should this Commission determine that Verizon is**
15 **required to offer vertical features on a stand-alone basis to Sprint. Do you**
16 **agree?**

17 A. No, Sprint should not be required to absorb Verizon's costs for its compliance with
18 the law. As demonstrated previously, vertical features are retail telecommunications
19 services and the Act requires ILECs to make retail telecommunications services
20 available to CLECs for resale. This Commission should deny the notion that Verizon
21 is entitled to recoup such costs from Sprint.

22

23 **Q. Does Verizon address the fact that this Commission has previously determined**
24 **in Docket No. 000828-TP that vertical features must be made available for resale**
25 **on a stand-alone basis?**

1 A. No, Verizon does not acknowledge the fact that this Commission has already
2 considered arguments from both sides of this issue in Sprint's arbitration with
3 BellSouth earlier this year. Sprint does not understand why Verizon would take up
4 this Commission's time to reconsider this issue. In any event, Sprint believes that this
5 Commission made a thorough analysis of the issue in its previous arbitration
6 proceeding and reached a reasoned, well-founded conclusion. Sprint expects that the
7 Commission will do likewise in this proceeding.

8

9 **Q. What action does Sprint request this Commission to take on this issue?**

10 A. Sprint requests that this Commission affirm its previous decision in Docket No.
11 000828-TP and direct Verizon to make vertical features available to Sprint on a
12 stand-alone basis at wholesale rates. In addition, Sprint requests that the Commission
13 adopt Sprint's best and final contract language as follows:

14

15 "Resale of Vertical Features. Except as expressly ordered in a resale context by the
16 relevant state Commission in the jurisdiction in which the services are ordered,
17 vertical features shall be available for resale on a stand-alone basis subject to the
18 wholesale discount."

19

20 **Q. Does this conclude your Rebuttal Testimony?**

21 A. Yes, it does.