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Law/External Affairs

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September 29, 2004

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

Re: Docket No. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Communications Limited Partnership is Sprint's Petition to Intervene with attachments A and B.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

A handwritten signature in black ink that reads "Susan S. Masterton".

Susan S. Masterton

Enclosure

**CERTIFICATE OF SERVICE
DOCKET NO. 040156-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 29th day of September, 2004 to the following:

Felicia Banks/Carris (Lee) Fordham
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Kellogg Huber Law Firm
Aaron Panner/Scott Angstreich
1615 M Street, N.W., Suite 400
Washington, DC 20036

Verizon Florida Inc.
Mr. Richard Chapkis
201 N. Franklin Street, FLTC0007
Tampa, FL 33602

AT&T
Tracy Hatch
101 North Monroe Street, Suite 700
Tallahassee, FL 32301-1549

McWhirter Law Firm
Vicki Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301

LecStar Telecom, Inc.
Mr. Michael Britt
4500 Circle 75 Parkway
Suite D-4200
Atlanta, GA 30339-3025

MCI WorldCom Communications, Inc.
(GA)
Dulaney O'Roark, III
6 Concourse Parkway, Suite 600
Atlanta, GA 30328

Verizon Wireless
c/o Wiggins Law Firm
Patrick Wiggins
P.O. Drawer 1657
Tallahassee, FL 32302

Supra Telecommunications and
Information Systems, Inc.
2620 NE 162nd St.
N. Miami Beach, FL 33162

USA Telephone, Inc.
d/b/a CHOICE ONE Telecom
1510 NE 162nd St.
N. Miami Beach, FL 33162

Local Line America, Inc.
c/o CT Corporation
1200 S. Pine Island Rd.
Plantation, FL 33324

ALEC, Inc.
3640 Valley Hill Rd.
Kennesaw, GA 30152-3238

Stephen D. Klein, President
Ganoco, Inc.
1017 Wyndham Way
Safety Harbor, FL 34695

Director-Interconnection Services
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021-8869

Eric Larsen
Tallahassee Telephone Exchange, Inc.
1367 Mahan Dr.
Tallahassee, FL 32308

Mario J. Yerak, President
Saluda Networks Incorporated
782 NW 42nd Ave., Ste 210
Miami, FL 33126

Lisa Sapper
TCG South Florida
1200 Peachtree St. NE Ste. 8100
Atlanta, GA 30809-3579

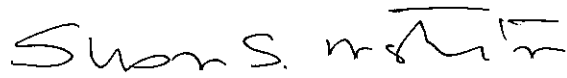
NewSouth Comm. Corp.
c/o Jon C. Moyle, Jr.
Moyle, Flanigan, Katz, Raymond &
Sheehan, P.A.
118 N. Gadsden St.
Tallahassee, FL 32301

The Ultimate Connection L.C.
d/b/a DayStar Comm.
18215 Paulson Dr.
Port Charlotte, FL 33954

James C. Falvey
Xspedius Management Co.
7125 Columbia Gateway Dr.
Ste. 200
Columbia, MD 21046

The Ultimate Connection
c/o Andrew M. Klein
Kelley Drye & Warren LLP
1200 19th St. NW 5th Floor

Norman Horton/Floyd Self
Messer, Caparello & Self
215 S. Monroe Street Ste. 701
Tallahassee, FL 32302



Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Docket No. 040156-TP
Of Northeast Florida Telephone)
Company d/b/a NEFCOM for)
Suspension or Modification of)
Section 251(b)(2) of the) Filed: September 29, 2004
Communications Act of 1934 as)
Amended.)
_____)

PETITION TO INTERVENE

Pursuant to Rules 28-106.205 and 25-22.039, Florida Administrative Code, Sprint Communications Company Limited Partnership (hereinafter "Sprint") respectfully requests the Commission to allow it to intervene in this proceeding. In support thereof Sprint states as follows:

1. Petitioners' name and address are:

Sprint Communications Company Limited Partnership
6500 Sprint Parkway
Overland Park, KS 66251-5777

2. All notices, pleadings, orders and documents in this proceeding should be provided to:

Susan S. Masterton, Esq.
Sprint
1313 Blair Stone Road
P.O. Box 2214
Tallahassee, FL 32316-2214
(850) 599-1560 (phone)
(850) 878-0777 (fax)
susan.masterton@mail.sprint.com

3. Sprint is a certificated competitive local exchange telecommunications company in Florida and has a current interconnection agreement with Verizon, approved by the Commission in Order No. PSC-03-0952-FOF-TP.
4. The instant proceeding involves Verizon's Petition for Arbitration of the terms of an amendment to its interconnection agreements to implement the orders of the Federal Communications Commission (FCC), as modified by court decisions, regarding ILECs' requirements to provide access to certain unbundled network elements (UNEs) pursuant to sections 251 and 252 of the Telecommunications Act.
5. Sprint was named as a party to the arbitration petition that Verizon filed in Florida on February 20, 2004 and updated on March 19, 2004 ("Original Arbitration Petition"). The Commission granted Sprint's Motion to Dismiss Verizon's Original Arbitration Petition based on procedural deficiencies, with leave for Verizon to refile its Petition, including specified information concerning the parties, the issues in dispute and the relevant portion of the parties' interconnection agreements. Sprint is not identified as a party in Verizon's latest filing. Verizon, despite the terms of its interconnection agreement with Sprint and Verizon's own actions, now asserts it can unilaterally cease providing certain UNEs to Sprint that that it maintains are no longer subject to the unbundling obligations under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. (See Verizon Petition at page) Verizon is incorrect.
6. The current Florida interconnection agreement between Sprint and Verizon contains several provisions that relate to changes in applicable law. The specific change of law provisions contained in Article II of this interconnection agreement state as follows:

1.2 Applicable Law/Changes in Law.

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. The terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time this Agreement was produced, and shall be subject to any and all applicable statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings that subsequently may be prescribed by any federal, state or local governmental authority having appropriate jurisdiction. Except as otherwise expressly provided herein, such subsequently prescribed statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings will be deemed to automatically supersede any conflicting terms and conditions of this Agreement. In addition, subject to the requirements and limitations set forth in Section 1.3, to the extent required or reasonably necessary, the Parties shall modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such statute, regulation, rule, ordinance, judicial decision or administrative ruling. Should the Parties fail to agree on appropriate modification arising out of a change in law, within sixty (60) calendar days of such change in law the dispute shall be governed by Section 3 of Article II. (Emphasis supplied.)

In addition, Section 3 provides in pertinent part:

3 Dispute Resolution.

3.1 Alternative to Litigation.

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, the Parties may agree to use the following alternative dispute resolution procedures with respect to any action, dispute, controversy or claim arising out of or relating to this Agreement or its breach, except with respect to the following:

3.1.1 An action seeking a temporary restraining order or an injunction related to the purposes of this Agreement;

3.1.2 A dispute, controversy or claim relating to or arising out of a change in law or reservation of rights under the provisions of Article II, Section 1; and

3.1.3 A suit to compel compliance with this dispute resolution process.

Any such actions, disputes, controversies or claims may be pursued by either Party before any court, commission or agency of competent jurisdiction. Notwithstanding the foregoing, and subject to Section 3.2, nothing herein shall be construed as limiting a Party's right to seek resolution of such disputes before the Commission or any other available forum. (Emphasis supplied.)

3.2 Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

3.5 Litigation

If the dispute is not resolved within thirty (30) days of the initial written request, and the Parties do not agree to submit the dispute to arbitration, either Party may submit the dispute to the Commission or any other available forum for resolution. (Emphasis supplied)

7. The Sprint/Verizon interconnection agreement expressly provides that to the extent required or reasonably necessary, the Parties shall modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with any subsequent statute, regulation, rule, ordinance, judicial decision or

administrative ruling. Should the Parties fail to agree on appropriate modification arising out of a change in law, within sixty (60) calendar days of such change in law the dispute shall be governed by Section 3 of Article II whereby either party may seek Commission resolution. Clearly Verizon cannot unilaterally modify the UNE and pricing terms of the Sprint/Verizon interconnection agreement, which is exactly what Verizon is proposing to do by excluding Sprint from this arbitration.

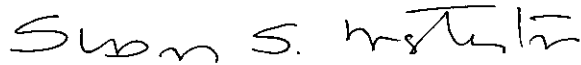
8. Indeed, Verizon's own actions demonstrate that it may not unilaterally cease providing UNEs. Verizon has provided to Sprint proposed language to incorporate the provisions of the *TRO* and *USTA II* decisions into the interconnection agreement. (See Attachment A.) Sprint has responded to Verizon's proposed language and has had discussions with Verizon to amend the interconnection agreement in light of the FCC's *TRO* and the *USTA II* decisions. (See Attachment B.) To date, these discussions have not been successful. Sprint, however, stands ready and willing to continue to negotiate with Verizon to address the issues affected by the *TRO* and the *USTA II* decisions, as is contemplated by the change of law provisions of the Sprint/Verizon interconnection agreement.
9. Sprint will be substantially affected by the Commission's decision on the issues in this docket because they affect how Verizon will implement the *TRO* and *USTA II* decision in its interconnection agreements. While Sprint recognizes that it is entitled to file a separate action against Verizon to resolve these issues as between Sprint and Verizon pursuant to their interconnection agreement, Sprint believes that the filing, litigation and Commission review of numerous individual arbitrations for interconnection would be more time-consuming and costly than conducting the

necessary review and determination of the arbitration issues in one single proceeding. Consequently, reasonable efficiency demands that the parties seeking TRO and USTA II related amendments to interconnection agreements with Verizon in Florida be included in the pending arbitration proceeding.

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

Wherefore, Sprint respectfully requests that the Commission grant this Petition and allow Sprint to become a full party of record in this docket.

Respectfully submitted this 29th day of September 2004.



Susan S. Masterton
1313 Blair Stone Road
P.O. Box 2214
Tallahassee, FL 32316-2214
850-599-1560 (voice)
850-878-0777 (fax)
susan.masterton@mail.sprint.com

ATTORNEY FOR SPRINT

Jeffrey A. Masoner
 Vice President
 Interconnection Services Policy and Planning
 Wholesale Marketing



600 Hidden Ridge
 HQEWMNOTICES
 Irving, TX 75038

wmnotices@verizon.com

September 9, 2004

«Contact_Name»
 «Contact_Title»
 «Contact_Company»
 «Carrier»
 «Contact_Address_Line_1» «Contact_Address_Line_2»
 «Contact_City», «Contact_State» «Contact_ZIP»

Subject: Prompt Action Required in Triennial Review Order Arbitrations

This notice is in regard to the consolidated arbitration proceedings that Verizon has initiated at various State Commissions with respect to the FCC's Triennial Review Order (Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36, 18 FCC Rcd 16978, released on August 21, 2003 ("TRO")) and related legal developments. **Verizon requests that you review this notice and, as discussed further below, respond by September 17, 2004 to indicate whether your company wishes to negotiate with respect to a revised TRO amendment that Verizon has made available.**

Verizon has filed in certain states, and intends to file soon in other states, notices withdrawing its Petition for Arbitration with respect to carriers whose interconnection agreements ("ICAs") clearly permit Verizon to cease providing UNEs that Verizon is not required to provide under 47 U.S.C. § 251(c)(3). Verizon, out of an abundance of caution and without waiving any rights it may have, intends to proceed with arbitration as to certain carriers whose ICA in particular state(s) could be misconstrued to require an amendment in order for Verizon to cease providing UNEs identified in the ICA.¹ Verizon, in a notice it has filed or intends to file in the arbitration proceeding in the «State_Of» has named or intends to name your company as a party with whom Verizon will proceed to arbitrate in the «State_Of».

Verizon first made a TRO amendment available to all carriers with ICAs on October 2, 2003. Many carriers have executed that amendment or an updated version of it during the period since October 2, 2003. In order to conclude this matter as to your company, Verizon has made

¹ To the extent Verizon has named, or may name in any forthcoming filing, your company as a party with which Verizon will proceed with arbitration, Verizon: 1) does not waive any right with respect to termination of the subject interconnection agreement(s), 2) does not concede that the issuance of the mandate in *USTA II* constituted a "change of law" that requires renegotiation under the terms of any agreements, and 3) does not waive its claim that it cannot be required under any interconnection agreement to provide UNEs eliminated by the *Triennial Review Order* or the Court's decision in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004).

<http://www22.verizon.com/wholesale/business/local/establish/home/1,24223,,00.html>

«Contract_Number»

available for your company's consideration an updated draft amendment reflecting Verizon's right to cease providing any UNEs that it has no legal obligation to provide. To the extent your company has previously engaged in TRO amendment negotiations with Verizon, this draft should not present substantial new issues. This draft amendment reflects updates including terms to account for the FCC's recent *Interim Order*, which "expressly preserve[d]" Verizon's right "to initiate change of law proceedings" to ensure a "speedy transition" to any permanent rules definitively eliminating unbundling requirements for mass-market switching, high-capacity loops, and dedicated transport.² The amendment is available, in both Adobe Acrobat and Microsoft Word formats, on Verizon's Wholesale Web Site which can be accessed via the electronic link at the bottom of this letter.³

Verizon requests that your company take the following action: 1) review the draft amendment, and 2) respond, no later than September 17, 2004, to indicate your assent to the terms of the amendment or to provide a redlined document showing any changes that you believe in good faith are necessary under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. If you propose any changes to the amendment, then please include in your response proposed dates on which you or your company's representative are available for a conference call to discuss the changes with representatives of Verizon. In accordance with Commission procedural orders and/or Verizon's commitments to particular Commissions, the parties must conclude any further negotiations required for this draft of the amendment within thirty (30) days from the date of this notice, so that the applicable Commission(s) may proceed to arbitrate any issues on which the parties disagree.

If your company does not respond to this notice by September 17, 2004 as requested above, Verizon may request that the applicable Commission enter an appropriate order that may affect your company, including, but not limited to, an order requiring your company to execute Verizon's amendment with no negotiated changes.

Please respond to this notice by contacting the Verizon Negotiator listed below:

«Negotiator_Name»

«Negotiator_number»

«Negotiator_email»

Finally, Verizon, in numerous previous industry notices, has invited carriers to engage in commercial negotiations for services to replace UNEs that Verizon is no longer required to provide under 47 U.S.C. § 251(c)(3). As a further reminder, if your company has not already engaged in commercial negotiations with Verizon and wishes to do so, please contact the following Verizon representative to commence such negotiations:

Mr. Michael D. Tinyk
Verizon Services Corp.
Suite 500
1515 North Courthouse Road

² Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, FCC 04-179, ¶ 22 (rel. Aug. 20, 2004) ("*Interim Order*"). The *Interim Order* is scheduled to become effective upon publication in the Federal Register, which may have occurred by the time you receive this notice.

³ Verizon reserves the right to revise and update the draft amendment at its discretion. For CLECs that are interested, Verizon will also make available, but is not proposing to arbitrate in the pending arbitration proceedings, a separate amendment implementing certain requirements established under the TRO, such as those relating to commingling and routine network modifications, subject to the terms of the *Interim Order*.

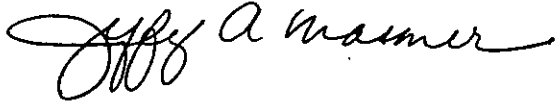
<http://www22.verizon.com/wholesale/business/local/establish/home/1,24223,,00.html>

«Contract_Number»

Arlington, VA 22201
Phone: 703-351-3159
Fax: 703-351-3664
Email: michael.d.tinyk@Verizon.com

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Masoner". The signature is fluid and cursive, with the first name "Jeffrey" being more prominent and stylized.

Jeffrey A. Masoner
Vice President – Interconnection Services Policy & Planning



Jack Weyforth
Manager
Wholesale and Interconnection
Management
Carrier Markets

Sprint Business Solutions
6450 Sprint Parkway
Overland Park, KS 66251
Mailstop: KSOPHN0116-1B422
Voice 913 315 9591
Fax 913 315 0759
jack.s.weyforth@mail.sprint.com

September 16, 2004

Mr. Jeffrey A. Masoner
Vice President
Verizon
Interconnection Services Policy and Planning
Wholesale Marketing
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038

Subject: Prompt Action Required in Triennial Review Order Arbitrations

Dear Jeff:

This letter is in response to your notice regarding the consolidated arbitration proceedings that Verizon has initiated at various State Commissions with respect to the FCC's Triennial Review Order (*Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36, 18 FCC Rcd 16978, released on August 21, 2003 ("TRO")) and related legal developments. You have requested that Sprint review your notice and respond by September 17, 2004 to indicate whether Sprint wishes to negotiate with respect to a revised TRO amendment that Verizon has made available. Be assured that Sprint is currently and has always been ready and willing to negotiate with Verizon on the issues surrounding the TRO and related legal matters.

In this regard I believe it is necessary to bring to your attention certain prior activity. As you observe in your notice, Verizon first made a TRO amendment available to all carriers with ICAs on October 2, 2003. On October 2, 2003, Sprint received a proposed amendment from Verizon containing Verizon's sought-after modifications to the existing Sprint/Verizon interconnection agreement. On October 29, 2003, Sprint provided via e-mail a redlined response to Verizon's suggested amendment.

Despite repeated efforts by Sprint to contact Verizon regarding its proposed amendment, Verizon failed to follow-up with Sprint in response to Sprint's suggested edits. In fact, while Sprint and Verizon negotiators did discuss Sprint's redline, Sprint did not receive any response prior to Verizon filing for arbitration in numerous states. This is not the practice Sprint has experienced with other ILECs in the negotiation of interconnection agreements. This is obviously a heavy-handed attempt by Verizon to impose its views on other carriers.

More recently Sprint and Verizon held negotiations for over seven hours in May to consider Sprint's redline to Verizon's proposed amendment and Verizon's responses to that redline. Verizon, as the company in control of the document, was to provide to Sprint an updated document to show the status of outstanding issues and the issues that had been resolved, including a review of several alternative language proposals. Verizon did not provide the promised document. Since Verizon had not fulfilled its commitment to provide an update to the amendment based on the negotiations, Sprint provided an updated document on July, 2004 setting forth the positions of the parties and the areas where agreement had been reached. To date, no communication has been received from Verizon to let Sprint know whether Sprint's description of the status of the negotiations was correct or not. It is very difficult to attempt to move forward without that kind of feedback

On August 6, 2004 Verizon provided two new amendments to cover the TRO and related issues. Thus without ever responding to the status of the issues contained in the draft provided by Sprint, Verizon chose instead to disregard that effort and introduce a completely new document without showing how this new document related to the previous discussions. Verizon continues to refuse to address Sprint's redlines in a timely fashion, if at all. Sprint has provided timely responses to Verizon--which Verizon has either ignored or chosen to respond to slowly.

The only possible conclusion that Sprint can reach is that Verizon wants to continue to arbitrate a one sided process where Verizon can stop providing UNEs and ignore any current obligations it may have under existing agreements and current law. It is obvious that the only amendments Verizon would consider are those amendments "without substantive changes" and no others. This does not meet Verizon's duty to engage in meaningful negotiations.

As you note, Verizon has attempted to remove Sprint from the consolidated arbitrations. Sprint submits that this is only further evidence that Verizon only wishes to prolong any negotiations with Sprint and to avoid its legal obligations. Verizon has not and does not engage in give and take negotiations but rather, as evidenced by your September 9, 2004 notice, would rather continue to attempt to force its positions on Sprint and other CLECs. Verizon has shown absolutely no inclination that it can or will negotiate an agreement. It only wants to force Sprint and others to accept Verizon's amendment(s) as is or have to expend enormous resources to arbitrate state by state to get what the law allows.

Sprint does not accept Verizon's self imposed 30 day deadline to attempt to unilaterally impose its amendment on Sprint and others. Sprint also does not accept Verizon's unwillingness in these negotiations to include all of the TRO issues that present a current obligation of Verizon, including commingling and routine network modifications. Commingling and routine network modifications are current lawful obligations of Verizon and have been so for nearly a year since the TRO became effective. I would also note that the amendment needs to address the order released by the

Letter to Jeffrey A. Masoner
Verizon
September 16, 2004
Page 3 of 3

FCC on August 20, 2004 in Docket No. 01-338 (FCC 04-179), *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* ("Interim Rules"), which is also now effective. The Interim Rules provide for a twelve month plan for transition from UNEs that is critical to any negotiation process. Verizon's proposed amendments do not address these critical issues.

Sprint has enclosed a document reflecting these critical issues in an attempt to accomplish meaningful discussions. This document is the combination of the documents received from Verizon on August 6, 2004 and September 10, 2004 with Sprint redlines to incorporate the requested modifications Sprint has previously provided to Verizon on several occasions. Sprint has also enclosed a list of dates and times that Sprint is available to hold negotiations sessions with Verizon.

I reiterate that Sprint is ready and willing to engage in meaningful and substantive negotiations with Verizon to reach agreement on an amendment to the interconnection agreements. The amendment must reflect all obligations of both parties with regard to the TRO / USTA II and the Interim Rules. It is Sprint's hope that Verizon will come to the table with the same open spirit and resolve as Sprint to reach agreement.

Yours Truly,

Jack Weyforth

cc Gary Librizzi
Steve Hughes
Joe Cowin