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VIA E-MAIL AND FEDERAL EXPRESS

July 29, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
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Re: D.T.E. 03-60

Dear Ms. Cottrell:

Pursuant to the procedural schedule noted in the June 15, 2004 Memorandum to the CLEC General Distribution List in this proceeding, Sprint Communications Company L.P. ("Sprint) respectfully files the original and eight (8) copies of its responses to the Department's briefing questions.

Very truly yours,

Craig D. Dingwall

Very truly yours,

Craig D. Dingwall /MKS

Craig D. Dingwall

cc: Tina W. Chin, Hearing Officer
D.T.E. 04-33 CLEC General Distribution List via e-mail

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers	D.T.E. 03-60

SPRINT'S RESPONSE TO THE DEPARTMENT'S BRIEFING QUESTIONS

Sprint Communications Company L.P. ("Sprint") respectfully submits this response to the Department's briefing questions that were attached to the Department's letter order ("Order") dated June 15, 2004.[1]

Introduction and Summary

Sprint applauds the Department for maintaining the *status quo* for 90 days (from June 15, 2004) to allow all parties to focus on continued negotiations.[2] If, at the end of the status quo maintenance period the parties have not reached a negotiated settlement or new rules are not yet in place, an extension of the status quo may be necessary to avoid any disruption to competition or CLECs' customers. It is especially important that Verizon maintain the UNE *status quo* with respect to high capacity loops, including loops at the DS1 and above levels.

[1] Letter from the Commission to all Massachusetts telecommunications carriers and the D.T.E. 03-60 service list, dated June 15, 2004.

[2] Sprint interprets the Order as granting the request by several competitive local exchange carriers ("CLECs") to require Verizon to continue to provide unbundled network elements ("UNEs") at current rates, terms and conditions until modifications are made to existing interconnection agreements and Verizon's wholesale tariff.

Discussion

In response to the Department's questions, Sprint responds as follows:

1. When the vacatur takes effect, what are Verizon's obligations with respect to mass market switching, UNE-P, high capacity loops, and dedicated transport under applicable federal law, giving effect to any change of law provisions in carriers' interconnection agreements? What is the appropriate role for the Department, if any, under federal law when the vacatur takes effect?

Verizon's obligations with respect to mass market switching, UNE-P, high capacity loops, and dedicated transport under applicable federal law, subject to any change of law provisions in carriers' interconnection agreements, remain in effect subject to the terms of existing interconnection agreements. The Department has an important role to ensure that Verizon continues to honor its existing obligations by maintaining the *status quo* now that the vacatur has expired. If Verizon and CLECs have not negotiated new terms, as required under their existing interconnection contracts or new rules are not yet in effect when the current status quo period expires, the Department may need to extend the *status quo* period. Further background on Verizon's existing interconnection obligations under federal law is provided below.

The D.C. Circuit's decision in *USTA II* determined that the FCC's sub-delegation of authority to state regulatory commissions to make impairment determinations as to specific unbundled elements was unlawful. Consequently, the Court vacated certain portions of the FCC's TRO, and the associated rules, that addressed the unbundling of mass market switching and dedicated transport, specifically, DS1, DS3, and dark fiber transport, and interoffice

transport for CMRS providers.[3] Notably, the *USTA II* decision did not vacate those rules pertaining to the unbundling of high capacity loops. In vacating the FCC's determinations that incumbent LECs must make mass market switching and dedicated transport available to CLECs as UNEs, the court remanded these issues to the FCC for re-examination of its implementation scheme.

It is important to note, however, that the *USTA II* decision had no impact on the underlying right the 1996 Telecom Act conferred on CLECs to access UNEs at TELRIC prices. *USTA II* did not expressly find that any particular network element could not be unbundled nor did it invalidate existing interconnection agreements. The *vacatur*, in itself, does not remove Verizon's present obligation to provide UNEs. All that the *USTA II* decision does is vacate some of the FCC's unbundling rules and remand those issues to the FCC for further consideration. Verizon would still be required to continue to provide all UNEs pursuant to the terms of its existing interconnection agreements until the parties negotiated such amendments pursuant to the change of law provision in those agreements.

In short, the *USTA II* mandate has no immediate impact on Verizon's statutory and contractual duties to provide UNEs at TELRIC-based prices to CLECs. Accordingly, the Department should continue to prevent Verizon from unilaterally discontinuing the provision of UNEs, such as high capacity loops, at existing rates until new ICAs have been negotiated pursuant to existing ICAs or the FCC issues new rules. If, at the end of the *status quo* maintenance period the parties have not reached a negotiated settlement or new rules are not yet

[3] *USTA II*, 359 F.3d at 568-71, 573-574, *see infra* n.8.

in place, the Department should extend the *status quo* until the Department directs otherwise to avoid any disruption to competition or CLEC's customers.

Several state commissions have issued similar orders. For example, The District of Columbia Public Service Commission ruled that "[t]he interconnection agreements signed by Verizon Washington DC, Inc. ("Verizon DC") and the competitive local exchange carriers ("CLECs") shall remain in effect until the unbundled network element ("UNE") issues raised by the expiration of the stay of the decision in *USTA II* [citation omitted] have been negotiated or arbitrated by Verizon DC and the CLECs or until the Commission orders otherwise."[4] Similarly, the Rhode Island PUC committed to maintain the status quo in Rhode Island regarding UNEs," and ruled that Verizon "is required to continue to provision Rhode Island's existing UNEs currently priced at existing TELRIC rates until it receives permission to terminate this obligation for a specific network element from this Commission."[5] The state commissions in Connecticut[6] and Washington[7] ordered similar relief. The Department should not hesitate to maintain the UNE *status quo* at TELRIC rates for as long as it takes to preserve competition in the Commonwealth of Massachusetts.

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[4] Formal Case No. 1029, *In the Matter of the Effect of the USTA II Decision on the Local Telecommunications Marketplace in the District of Columbia*, Order No. 13222, June 15, 2004 at 1.

[5] *In re Implementation of the FCC's Triennial Review Order and Review of Verizon Rhode Island's TELRIC Filings*, Docket Nos. 3550 and 2681, Order No. 17990 (Rhode Island Public Utilities Commission, March 26, 2004) at 7-8.

[6] *DPUC Investigation Into The Southern New England Telephone Company Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996 – Reopener*, Docket No. 96-09-22, *et. al.*, Draft Decision (Connecticut Department of Public Utility Control, May 20, 2004).

[7] *Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc.*, Docket No. UT-043013, Order No. 4 (Wash. Util. and Transp. Comm., May 21, 2004).

2. In the absence of effective federal unbundling regulations under Section 251 applicable to mass market switching, UNE-P, high capacity loops, and dedicated transport:

- What are Verizon's obligations to provide such UNEs under Massachusetts law?

As noted above, the federal unbundling regulations under Section 251 remain in effect until new interconnection terms are negotiated pursuant to applicable change of law provisions. Sprint has no comments at this time on Verizon's obligations to provide UNEs under Massachusetts law.

- Do Verizon's obligations as carrier of last resort require it to offer UNEs? See Intra-LATA Competition, D.P.U. 1731, at 76 (1985).

Sprint has no comments at this time on this issue.

- Do the terms of Verizon's Alternative Regulation Plan indirectly require it to continue providing mass market switching, UNE-P, dedicated transport, and high-capacity loops at TELRIC rates, and if so, what would be the consequences should Verizon discontinue providing any of the above TELRIC-based rates?

Sprint has no comments on this issue at this time.

- If carriers reach agreement on terms for mass market circuit switching, may or must those agreements be filed with the Department as interconnection agreements for approval under 47 U.S.C. § 252? May or must those agreements be filed with the Department for approval as customer specific arrangements? See AT&T Communications of New England, Inc., D.P.U. 90-24 (1990). Would such terms be subject to the federal pick and choose rule? 47 U.S.C. § 252(i).

Sprint offers no comments at this time as to whether such agreements must be filed pursuant to Section 252 of the Act, or whether they are subject to the federal pick and choose rule. Independent of Sections 251 and 252 of the Act, however, the Department has the necessary authority to require Verizon to file such agreements with the Department for approval. In the

TRO,[8] the FCC held that Section 271 creates an obligation for the Regional Bell Operating Companies, entirely independent of Section 251 obligations, to continue to provide unbundled network elements.[9] The RBOCs' Section 271 UNE obligations are subject to the nondiscrimination and reasonable pricing requirements of Sections 201 and 202 and therefore must be made public and subject to review.

•Should the Department establish a transition plan to replace TELRIC-based rates for mass market circuit switching, UNE-P, high capacity loops, and dedicated transport with just and reasonable market-based rates, as has been proposed in other states, such as New York, and if so, what should be the parameters of such a plan? See, e.g., In the Matter of Telecommunications Competition in New York Post USTA II Including Commitments Made in Case 97-C-0271, N.Y.P.S.C. Case 04-C-0420. What authority would the Department have to do so?

TELRIC-based UNE rates are critical to competition, and subject to the terms of existing ICAs. Rather than imposing a transition plan to replace UNE TELRIC rates, Sprint recommends maintaining the current UNE status quo subject to the terms of existing ICAs until the FCC issues new UNE rules. It makes no sense for the Department to spend time and resources developing transitional UNE rates for Massachusetts, given the FCC's plans to issue new UNE rules.

• Should the Department proceed with a separate hot cuts investigation under state law? If so, may the record already compiled in D. T. E. 03-60 be incorporated into such a proceeding? Would the scope of such an investigation and standard of review of proposed hot cut processes be different from the investigation in D.T.E. 03-60?

Sprint has no comments on this issue at this time.

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[8] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003) ("TRO"), *affirmed in part and vacated and remanded* in part by *USTA v. FCC*, D.C. Cir. No. 00-1012 (Mar. 2, 2004) ("*USTA II*").

[9] TRO, ¶¶653-667.

- What are Verizon's obligations pursuant to its wholesale tariff?

In addition to Verizon's obligations under federal law as noted above, Verizon is also subject to the terms of its wholesale tariff and it must offer those terms on a nondiscriminatory basis as also noted above. Verizon may not change the terms of its wholesale tariff without Department approval.

3. What steps, if any, should the Department take to encourage carriers to enter voluntarily into agreements with respect to mass market circuit switching, UNE-P, high capacity loops, and dedicated transport that promote efficiency, fairness, rate continuity, and earnings stability for all parties?

If parties are unable to voluntarily enter into agreements with respect to mass market circuit switching, UNE-P, high capacity loops, and dedicated transport, they should pursue mediation and/or arbitration under Section 252 of the Act.

4. Should the Department seek a declaratory ruling from the FCC as to whether the BA/GTE Merger Order requires Verizon to continue to provide mass market switching, UNE-P, dedicated transport, and high capacity loops at TELRIC?

No. Such a declaratory ruling from the FCC is not necessary. Verizon clearly remains obligated to provide UNEs, including unbundled switching and dedicated transport, pursuant to the terms of the Bell Atlantic/GTE Merger Order.[10] Specifically, Verizon agreed that:

> [f]rom now until the date on which the [FCC]'s orders in [the UNE Remand and Line Sharing proceedings], and any subsequent proceedings, becomes final and non-appealable [Verizon would] continue to make available to telecommunications carriers each UNE that is required under those orders.[11]

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[10] *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control,* CC Docket No. 98-184, Memorandum Opinion and Order, No. FCC 00-221, 15 FCC Rcd 14032 (rel. June 16, 2000) ("Bell Atlantic/GTE Merger Order").

[11] *Bell Atlantic/GTE Merger Order* ¶ 316.

The *Triennial Review* proceeding was an extension and consolidation of the *UNE Remand* proceeding and the *Line Sharing* proceeding. Both the *UNE Remand Order* and the *Line Sharing Order* were appealed to the D.C. Circuit Court and the Court remanded both decisions to the FCC in *USTA I*.[12] The FCC then consolidated the remand of those proceedings into the *Triennial Review* proceeding and sought a stay of *USTA I* to effectuate its ability to address those issues in the *Triennial Review* proceeding.[13] *USTA II* was subject to a vacatur and remand to the FCC for further deliberations. Thus, there has been no final and non-appealable order concerning Verizon's unbundling obligations and Verizon is still obligated to offer these UNEs.

Verizon has argued that the Merger Conditions contain a sunset provision. However, the opening clause in the sunset provision states that "[e]xcept where other termination dates are specifically established herein . . ."[14] The relevant section of the Merger Conditions applicable to Verizon's UNE obligation sets forth a specific provision for termination of this unique obligation as follows:[15]

> . . . until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE

[12] *United States Telecom Ass'n v. FCC,* 290 F.3d 415 (D.C. Cir. 2002) ("*USTA* I').

[13] On September 4, 2003, the D.C. Circuit stayed the effectiveness of its opinion until January 2, 2003. *See USTA v. FCC*, No. 00-1012, Order (D.C. Cir. Sept. 4, 2002). Then, on December 23, 2003, the D.C. Circuit granted the consent motion of the Commission and the Bell Operating Companies to extend the stay through February 20, 2003. *See USTA v. FCC*, Nos. 00-1012, 00-1015, order (D.C. Cir., Dec. 23, 2002).

[14] Merger Conditions, ¶ 64.

[15] Merger Conditions, ¶ 39.

after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.

This UNE condition falls within the "except where" proviso and Verizon's obligations in this regard remain in effect.

5. Is the D.C. Circuit Court's decision in *USTA II* a "change of law" affecting carriers' existing interconnection agreements?

Yes. *See* Sprint's response to Question 1 above.

6. Does § 271 of the Telecom Act require Verizon either directly or indirectly, by virtue of the trade-offs under the Act, to continue to provide de-listed UNEs at TELRIC?

The pricing standard for the RBOCs under Section 271 for UNE obligations must meet the just and reasonable requirement of Section 271. The Department endorsed Verizon's application to enter the long distance market pursuant to section 271 of the 1996 Act after conducting a detailed evidentiary examination over a period of several months.[16] Additionally, Verizon's provisioning of UNE-P was a significant factor in the favorable disposition it received from the FCC in granting its section 271 application. Verizon's commitment to provision the UNEs at issue in the USTA II decision, particularly UNE-P, formed the basis for the competitive showing necessary to gain section 271 approval. Verizon's attempt to escape the UNE obligations it agreed to as part of its compliance with the section 271 conditions undermines the rationale behind the grant of its section 271 application. The Department would be justified

[16] D.T.E. 99-271.

requiring Verizon to adhere to the commitments it made, and the conditions it agreed to comply with, as part of its section 271 approval process at the state and federal levels.

Conclusion

Sprint applauds the Department for maintaining the *status quo* for 90 days (from June 15, 2004) to allow all parties to focus on continued negotiations. If, at the end of the status quo maintenance period the parties have not reached a negotiated settlement or new rules are not yet in place, the Department should extend the UNE status quo until the Department rules otherwise or until new interim FCC UNE rules are implemented and effective. It is especially important that Verizon maintain the UNE *status quo* with respect to high capacity loops, including loops at the DS1 and above levels until the Department rules otherwise.

Respectfully submitted,

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Its Attorney

July 29, 2004

CERTIFICATE OF SERVICE
D.T.E. 03-60

I, Mable L. Semple, certify that I served a true copy of Sprint Communications Company L.P.'s Responses to the Department's June 15, 2004, briefing questions in D.T.E. 03-60 upon the following parties of record by first class mail, postage prepaid, or Federal Express Overnight Delivery.

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