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VIA E-MAIL AND FEDERAL EXPRESS

August 13, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Fl. 2
Boston, Massachusetts 02110

Re: DTE 03-60

Dear Ms. Cottrell:

Sprint Communications Company L.P. ("Sprint") respectfully submits an original and fourteen (14) copies of this letter in response to other parties'¹ responses to the Department's briefing questions.

Sprint provides competitive local exchange, wireless and long distance services in Massachusetts. Sprint also provides local exchange service as an incumbent local

¹ Sprint received comments from Verizon Massachusetts, Conversent Communications, ACN Communication Services, *et. al.* (collectively "ACN"), The Commonwealth of Massachusetts Office of the Attorney General, A.R.C. Networks Inc. d/b/a InfoHighway Communications, *et. al.* (collectively "InfoHighway"), Covad Communications Company, AT&T Communications of New England ("AT&T"), and MCI, Inc.

exchange company in eighteen (18) other states. Sprint is therefore uniquely qualified to address the importance of the availability of unbundled network elements ("UNEs").

Virtually all parties except Verizon that submitted responses to the Department's briefing questions recommend either maintaining the *status quo* or a transition plan to avoid adverse competitive impacts and disruption of service from any unilateral Verizon action to discontinue its provision of UNEs ostensibly in response to *USTA II*.² It makes sense to preserve the *status quo* until the FCC's new interim rules are effective. Moreover, the Department should strictly enforce its authority over Verizon's tariffs and interconnection agreements ("ICAs") that obligate Verizon to provide unbundled network elements, especially high capacity loops, and oppose any attempt by Verizon to unilaterally change the terms of such agreements or tariffs. In this regard, Sprint applauds the Department's decision to suspend Verizon's proposed Tariff 17 changes regarding enterprise switching,³ and encourages the Department to be vigilant in guarding against similar Verizon attempts to prematurely change its UNE unbundling obligations until parties have negotiated mutually acceptable changes to their interconnection agreements or commercial agreements, or until the FCC issues new rules.

Predictably, Verizon continues to argue that *USTA II* eliminated its "unbundling obligations under section 251 of the Act for mass-market switching, high capacity loops and dedicated transport."⁴ As Sprint and other competitive local exchange carriers ("CLECs") noted in their responses, Verizon has a continuing obligation to provide UNEs pursuant to federal law, including Sections 251 and 271 of the Act as well as the Bell Atlantic/GTE merger conditions.

Sprint requires access to Verizon's high capacity loops to provide competitive local exchange service in Massachusetts and other states. If Verizon unilaterally discontinues providing such high capacity loops at TELRIC, this will cause an unnecessary disruption of service for Sprint's customers. Sprint concurs with Conversent that the *USTA II* Court did not address the impairment triggers for high-capacity loops, and that Verizon's

² *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir., March 2, 2004) ("*USTA II*").

³ D.T.E. 04-73, Commonwealth of Massachusetts Department of Telecommunications and Energy, Order dated July 22, 2004.

⁴ Verizon Responses to Briefing Questions at 7.

obligation to unbundled DS1 and DS3 loops at TELRIC prices continues.⁵ *USTA II* addressed “mass market switching and certain dedicated transport elements (DS1, DS3 and dark fiber) . . . also . . . the Commission’s nationwide impairment determinations with respect to these elements.”⁶ The *USTA II* Court also vacated and remanded “the decision that wireless carriers are impaired without unbundled access to ILEC dedicated transport.”⁷ High capacity loops are unaffected by the Court’s decision in *USTA II*. It simply did not address high capacity loops. If the Court had wanted to vacate high-capacity loops in *USTA II*, it would have done so. Moreover, as AT&T and other CLECs pointed out, Verizon explicitly recognized that a *vacatur* does not, by itself, relieve it of its current obligations to provision UNEs.⁸

Verizon’s reliance⁹ on states that it claims have declined CLECs’ requests to issue blanket “standstill” orders ignores the many states that have issued such orders as noted in Sprint’s and other parties responses.¹⁰ Moreover, many of the decisions that Verizon cited support CLECs’ arguments that Verizon cannot unilaterally change existing ICAs. For example, the California, Ohio and Virginia Commissions declined to issue standstill orders because of the potential impact on existing ICAs. Verizon’s unilateral discontinuance of UNEs, especially high capacity loops, at TELRIC would unilaterally impact existing ICAs.

Verizon also misses the mark by arguing that the Department cannot impose *new* unbundling obligations.¹¹ The issue isn’t whether the Department can impose new obligations, but whether Verizon has a continuing obligation to provide UNEs and whether the Department can enforce Verizon’s *existing* obligations. Sprint concurs with other CLECs that the Department has ample authority to enforce Verizon’s existing obligations.

Given the FCC’s pending interim rules, it is important for the Department to preserve the UNE *status quo* at existing rates per applicable interconnection contracts, until the

⁵ Conversent’s Comments in Response to June 15 Order at 4.

⁶ *USTA II*, 359 F.3d at 594.

⁷ *Id.*

⁸ AT&T Responses at 3.

⁹ Verizon Response at 9.

¹⁰ See Sprint’s Response to the Department’s Briefing Questions at 4.

¹¹ Verizon Massachusetts Reply to Briefing Questions at 12.

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Department expressly rules otherwise or at least until the FCC's new rules become effective. In particular, this Department should preserve the availability of high capacity loops, including, but not limited to DS1s, at existing rates given that the D.C. Circuit did not address high capacity loops in its holding in *USTA II*.

Thank you for your consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Craig D. Dingwall", with a stylized flourish at the end.

Craig D. Dingwall

cc: Parties of Record (via e-mail, and U.S. mail upon request)

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 reply letter dated August 13, 2004, Reply Comments in D.T.E. 03-60 upon the following parties of record electronically or upon request by first class mail, postage prepaid.

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