

Steven J. Pitterle  
Director - Negotiations  
Network Services



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August 10, 2001

Mr. Rich Van Leeuwen  
Senior Vice President  
Sphera Optical Networks N. A., Inc.  
666 Third Avenue 2<sup>nd</sup> Floor  
New York, New York 10013

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Leeuwen:

Verizon New England Inc., d/b/a Verizon Massachusetts, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Verizon"), has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Sphera Optical Networks N.A., Inc. ("Sphera") wishes to adopt the terms of the Interconnection Agreement between Level 3 Communications, LLC ("Level 3") and Verizon that was approved by the Massachusetts Department of Telecommunications and Energy (the "Commission") as an effective agreement in the Commonwealth of Massachusetts, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Sphera has a copy of the Terms. Please note the following with respect to Sphera's adoption of the Terms.

1. By Sphera's countersignature on this letter, Sphera hereby represents and agrees to the following three points:
  - (A) Sphera adopts (and agrees to be bound by) the Terms of the Level 3/Verizon agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that Sphera shall be substituted in place of Level 3 Communications, LLC and Level 3 in the Terms wherever appropriate.
  - (B) Notice to Sphera and Verizon as may be required under the Terms shall be provided as follows:

To: Sphera Optical Networks N.A., Inc.  
Attention: General Counsel  
666 Third Avenue 2<sup>nd</sup> Floor

New York, New York 10013  
Telephone number: 646-205-4799  
FAX number: 646-487-1960

with a copy to:

CT Corporation System  
Attention: Sphera Optical Networks N.A., Inc.  
101 Federal Street  
Boston, Massachusetts 02110

To Verizon:

Director-Contract Performance & Administration  
Verizon Wholesale Markets  
600 Hidden Ridge  
HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972-718-5988  
Facsimile Number: 972-719-1519  
Internet Address: [wmnotices@verizon.com](mailto:wmnotices@verizon.com)

with a copy to:

Vice President and Associate General Counsel  
Verizon Wholesale Markets  
1320 N. Court House Road  
8th Floor  
Arlington, VA 22201  
Facsimile: 703/974-0744

- (C) Sphera represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Massachusetts, and that its adoption of the Terms will cover services in the Commonwealth of Massachusetts only.
2. Sphera's adoption of the Level 3 Terms shall become effective on August 24, 2001. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by an authorized officer of Sphera. The Level 3 agreement is currently scheduled to terminate on September 30, 2002.
  3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and

remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of Sphera's 252(i) election.

4. On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' decision in Docket No. 96-3321 regarding the FCC's pricing rules, and the current appeal before the U.S. Supreme Court regarding the FCC's new UNE rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny Sphera's adoption and/or application of the Terms, in whole or in part, at any time:
  - (a) when the costs of providing the Terms to Sphera are greater than the costs of providing them to Level 3;
  - (b) if the provision of the Terms to Sphera is not technically feasible; and/or
  - (c) to the extent that Verizon otherwise is not required to make the Terms available to Sphera under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Remand Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.<sup>1</sup> Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Remand Order*, not pursuant to adoption of the Terms.<sup>2</sup> Moreover, in light of the *FCC Remand Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time

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<sup>1</sup> Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ¶44.

<sup>2</sup> For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Remand Order* can be viewed at Verizon's Customer Support Website at URL [www.verizon.com/wise](http://www.verizon.com/wise) (select Verizon East Customer Support, Resources, Industry Letters, CLEC).

permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.<sup>3</sup>

7. Should Sphera attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.
8. In the event that a voluntary or involuntary petition has been or is in the future filed against Sphera under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Sphera's adoption of the Verizon Massachusetts Terms shall in no way impair such rights of Verizon; and (ii) all rights of Sphera resulting from Sphera's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

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<sup>3</sup> See, e.g., 47 C.F.R. Section 51.809(c).

Please arrange for a duly authorized representative of Sphera to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

VERIZON NEW ENGLAND INC., D/B/A VERIZON MASSACHUSETTS

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Steven J. Pitterle  
Director – Negotiations  
Network Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

SPHERA OPTICAL NETWORKS N.A., INC.

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(SIGNATURE)

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(PRINT NAME)

c: R. Ragsdale – Verizon

\*Sphera does not necessarily agree with the introduction paragraph or paragraphs 3-8 above. Should Verizon attempt to apply this letter agreement in a manner that conflicts with the Terms, Sphera reserves its rights to seek appropriate legal and/or equitable relief.