December 11, 2000

D.T.E. 00-54

Petition of Sprint Communications Company L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Verizon-Massachusetts.

APPEARANCES:

Christopher D. Moore, Esq.
Craig Dingwall, Esq.
Sprint Communications Company L.P.
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
Petitioner

Bruce P. Beausejour, Esq.
Keefe B. Clemons, Esq.
Verizon New England, Inc. d/b/a Verizon-Massachusetts
185 Franklin Street, Room 1403
Boston, MA 02107
Respondent

I. INTRODUCTION

This arbitration proceeding between Sprint Communications, L.P. ("Sprint") and Verizon New England, Inc. d/b/a Verizon-Massachusetts[1] ("Verizon" or "Company") (collectively, "Parties") is held pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252 ("Act").[2] By this Order, the Department of Telecommunications and Energy ("Department") makes findings necessary to finalize an interconnection agreement ("Agreement") between the parties.

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts. Sprint is a competitive local exchange carrier ("CLEC") authorized to provide local exchange service to residential and business customers throughout Massachusetts.

II. PROCEDURAL HISTORY

On June 16, 2000, Sprint filed a Petition for Arbitration of an interconnection agreement with Verizon.[3] Verizon responded to Sprint's Petition on July 11, 2000. ("Petition"). On July 19, 2000, the Department held a procedural conference and technical session. On September 8, 2000, Sprint filed the testimony of Angela L. Oliver, regulatory manager-access planning, and Michael J. Nelson,

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1 Formerly, Bell Atlantic-Massachusetts.

2 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

3 As a result of the resolution of several issues outlined in its petition, Sprint revised the date that it requested the negotiation of the interconnection agreement from January 8, 2000 to February 9, 2000 (Sprint Letter, August 25, 2000). On November 17, 2000, the Parties agreed that the Department would issue its decision on this matter by December 11, 2000 (Sprint/Verizon letters, November 17, 2000).

director-local market development/integration. Also on that date, Verizon filed its Final Position Statement.

On October 6 and 13, 2000, the Parties filed their initial and reply briefs, respectively.

The issues for the Department's consideration are related to: (1) the definition of local traffic; (2) calling party number billing adjustments; (3) use of access trunk facilities for local traffic; (4) access to digital line concentrators, line sharing, and unbundled network elements ("loop query") information; (5) interconnection rates for access to Sprint's facilities; and

(6) resale of vertical features.

III. STANDARD OF REVIEW

47 U.S.C. §252(c) sets out the standards for arbitrations by state commissions. Section 252(c) states, in relevant part, that a state commission shall:

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission ("FCC")] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d).]

Section 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Each ILEC has the duty

> to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in

> accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

IV. UNRESOLVED ISSUES

A. Definition of Local Traffic (Arbitration Issue No. 15)

1. Introduction

The parties disagree on whether Internet service provider ("ISP")-bound traffic should be included in the definition of local traffic.

2. Positions of the Parties

a. Sprint

Sprint states that the issue of whether Internet traffic is local, and thus subject to reciprocal compensation, is unsettled and currently pending at the FCC (Exh. Sprint-2, at 20; Sprint Brief at 28-29; Sprint Reply Brief at 18). Sprint argues that until the FCC defines "local traffic," Verizon's definition of "local" traffic should not be included in the interconnection agreement (Sprint Brief at 28).

Until the time that the FCC issues a decision on reciprocal compensation, Sprint has affirmed its intent to abide by the Department's decisions concerning reciprocal compensation (id. citing Internet Traffic Order; MCI World Technologies, Inc., D.T.E. 97-116-E, at 1 (2000)).

b. Verizon

Verizon states that the Department has found that "local traffic" excludes ISP-bound traffic, and argues that because ISP traffic is non-local, interstate traffic, ISP-bound calls are not subject to reciprocal compensation under § 251(b)(5) of the Act (Verizon Brief at 9, citing Internet Traffic Order; MCI WorldCom Technologies, Inc., D.T.E. 97-116-E, at 1 (2000)). Verizon contends that, given the Department's rulings, traffic to ISPs should be expressly excluded from the definition of "local traffic" as contained in the parties' interconnection agreement (Verizon Brief at 9).

3. Analysis and Finding

The FCC has found that ISP-bound traffic is not local, but interstate, for purposes of the Act's reciprocal compensation provisions. Inter-Carrier Compensation; Internet Traffic Order 99-68, at ¶¶ 12 and 26 n.87. In the MCI WorldCom Order, the Department found, based on the FCC's ruling that ISP traffic is interstate, that no reciprocal compensation need be made for ISP-bound traffic. Internet Traffic Order; MCI WorldCom Order at 13. The Department determined to maintain that status quo pending the remand of the issue to the FCC.

Therefore, the Department finds that the definition of "local traffic" that states that ISP-bound traffic is not local, but interstate, for purposes of the 1996 Act's reciprocal compensation provisions, is reasonable. Accordingly, the Department adopts the language as proposed by Verizon. If the FCC reverses itself on remand, the Department may require modification of this provision in the parties' interconnection agreement.

B. Calling Party Number (Arbitration Issue No. 16)

1. Introduction

The transmission of calling party numbers ("CPN") by the originating carrier to the terminating carrier is necessary for both parties to determine whether the calls should be billed at local, intraLATA, or interLATA rates. This issue concerns the appropriate minimum requirements for the transmission of CPN and the rates to be applied should the originating carrier fail to transmit CPN to the terminating carrier at defined minimum levels.

2. Positions of the Parties

a. Sprint

Sprint proposes that each carrier should be required, under the terms of the Agreement, to transmit CPN for at least 90 percent of its originating calls (Exh. Sprint-2, at 21; Sprint Brief at 31; Sprint Reply Brief at 21). Further, Sprint proposes that failure to meet the 90 percent threshold would require a "true up" of the erroneous invoices that occurred as a result of the originating carrier's failure to transmit the appropriate CPN information (Sprint Reply Brief at 21; Exh. Sprint-2, at 21). Sprint acknowledges that with the automated technology available to both parties, failure to transmit CPN is an unlikely occurrence (Sprint Brief at 30; Sprint Reply Brief at 21). However, it argues that the Agreement must recognize that unintended technology breakdowns do occur and, therefore, its proposed contractual provisions to allow for these infrequent events are necessary (Exh. Sprint-2, at 22).

b. Verizon

In contrast to Sprint's proposed 90 percent minimum requirement for the transmission of CPN, Verizon proposes that both companies be held to a more stringent threshold of providing CPN on no less than 95 percent of the calls they deliver (Verizon Brief at 13). Also contrary to Sprint's proposal, Verizon proposes that if its proposed 95 percent threshold is not met, the terminating carrier would have the option to bill any calls lacking CPN at the interstate switched exchange access rate, regardless of the jurisdictional nature of the calls (id. at 29). Verizon contends that Sprint's proposal is unreasonable as it would force one party to bear the consequences of the other party's system failures (id. at 13). Verizon cites a recent New York Public Service Commission order as support for approval of the Company's position concerning CPN (id. at 13-14 citing Petition of Sprint Communications Company, L.P./Bell Atlantic-New York, Case 99-C-1389, at 15 (January 12, 2000).

3. Analysis and Findings

The resolution of this issue requires a finding on two sub-issues. First, we must determine a threshold for the transfer of CPN information. While Sprint states that it is willing to accept a 90 percent minimum for the transfer of CPN, Verizon proposes a minimum level of 95 percent. However, in other Department proceedings, Verizon stated that interconnection agreements generally require CLECs to provide originating call CPN on 90 percent of their calls, and the Deparmtent found such a threshold was reasonable. See Verizon Tariff No. 17 Order, D.T.E. 98-57-Phase III (September 29, 2000) at 179. Verizon has given no reason for the Department to impose a more stringent requirement on the transfer of CPN. Accordingly, the Department finds that a 90 percent threshold for the transmission of CPN is reasonable, and we accept Sprint's proposal that each party shall be required to provide CPN for at least 90 percent of the calls originating on its network.

The second CPN issue which must be addressed is whether or not the carriers should be allowed to "true up" invoices when local calls are billed at access rates due to one party's failure to transmit CPN information. The Department recognizes Sprint's concern that there may be rare occasions where CPN is not transferred between carriers due to technical failures that are unattributable to either carrier's actions. Given the unlikelihood of these events, the Department finds that requiring either carrier to perform a manual review of alternate calling records when the other carrier fails to meet its CPN requirements is unduly burdensome. Therefore, the Department denies Sprint's proposal to allow for "true up" reconciliation of invoices when a carrier's CPN transmission falls below the 90 percent threshold. If either carrier fails to transmit CPN on less than 90 percent of its originating calls, the other carrier has the right to bill calls without CPN at the interstate switched exchange access rate.

C. <u>Local Calls Over Access Trunks</u> (Arbitration Issue No. 17).

1. <u>Introduction</u>

This issue concerns Sprint's ability to combine local and toll traffic over access trunk facilities. Moreover, if the access trunk facilities can be used for combined traffic, the Department must determine whether local calls carried over access facilities will be subject to reciprocal compensation or interexchange access rates.

2. Positions of the Parties

a. Sprint

Sprint contends that, although it is technically feasible to combine local, intraLATA toll, and interLATA toll traffic on existing access trunk facilities between Sprint's end office and Verizon's tandem offices, Verizon proposes to limit Sprint's use of access trunk facilities to long distance traffic (Exh. Sprint-2, at 4; Sprint Brief at 32). Sprint contends that by sending local calls over otherwise underutilized trunks, Sprint would have lower operating costs, which, in turn, would benefit Massachusetts consumers through lower prices (Exh. Sprint-2, at 4). To alleviate Verizon's concerns of misreported billing information, Sprint states that proper billing of access and reciprocal compensation charges can be accomplished by call recording (e.g., detailed information on the number called, number billed, etc.), the use of Percent Interstate Usage ("PIU") and Percent Local Usage ("PLU") factors,[4] or post-billing adjustments (Sprint Reply Brief at 22).

Further, Sprint contends that it should be allowed to pay reciprocal compensation charges when it transports local calls, rather than the higher interexchange access rates normally applied to toll traffic carried on access trunk facilities (Sprint Brief at 32-33). Sprint argues that transporting local calls on access trunks at reciprocal compensation rates is necessary for its business development plans, which include utilizing existing long distance equipment and circuits to provide local calling (Sprint Reply Brief at 24-25). Specifically, Sprint states that it intends to offer customers the ability to "dial-around

4 The PIU factor is the carrier's estimate of the amount of interstate traffic carried on a given service. Similarly, the PLU factor is the carrier's estimate of the amount of local exchange traffic carried on a given service (Sprint Reply Brief at 22; Exh. Sprint-2, at 3).

Verizon local service and select Sprint to switch and route their local calls on a call-by-call basis via a specified dialing pattern" (id. at 23). Sprint contends that Verizon's proposal acts "to avoid allowing this local service [by] unilaterally classify[ing] these local calls as interexchange service calls" (id. at 25). Sprint argues that subjecting its customers to paying higher access rates for what are, effectively, local calls, would prevent Sprint from offering dial-around local service to its customers (id.). Sprint proposes that it should be responsible for paying only reciprocal compensation charges when it handles these local calls through its dial-around mechanism (id.).

b. Verizon

Verizon argues that it has made no attempts to limit Sprint's ability to combine local, intraLATA toll, and interLATA toll traffic over its access trunk facilities (Verizon Reply Brief at 12; Verizon Final Position at 12). Verizon contends that this issue is limited only to whether reciprocal compensation applies when Sprint routes certain local calls through its access trunks and long distance switches (id.). Verizon further states that this dispute affects only calls placed between two Verizon customers in the same local calling area that are transported over Sprint's access facilities via a dial-around mechanism (Verizon Brief at 14). This dispute does not affect calls placed between a Sprint customer and a Verizon customer located in the same local calling area (id.).

Verizon contends that Sprint's proposal to pay reciprocal compensation charges rather than access charges for calls between two Verizon customers in the same local calling area in which the originating caller uses a dial-around mechanism to access Sprint's facilities does not comply with the existing rules governing reciprocal compensation (Verizon Final Position at 13). Verizon notes that reciprocal compensation rules allow only for the "recovery by each carrier of the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[5] Accordingly, Verizon argues that Sprint is not entitled to pay reciprocal compensation for the type of calls described above "because the call both originated and terminated on Verizon's network" (id.). Rather, Verizon contends that, for such calls, Sprint should be required to pay the applicable access charges (id.).

3. Analysis and Findings

First, the Department finds no basis for Sprint's contention that Verizon refuses to allow Sprint to combine local/intraLATA and interLATA traffic on the same trunk facilities. Verizon has stated affirmatively that it "has not proposed restrictions on the type of traffic that Sprint can place on specific trunk groups" (Verizon Brief at 14), and that "CLECs may combine interLATA toll traffic, intraLATA toll traffic, and local traffic on a single trunk group" (Exh. Sprint IR 3-5). Therefore, the Department finds it unnecessary to rule on whether Sprint should be able to combine local and toll traffic over its existing trunk groups.

Next, we address the issue of whether reciprocal compensation rates should apply when Sprint routes local calls through its long distance facilities. This issue affects a small percentage of calls, specifically those calls in which a Verizon customer uses a Sprint dial-around option to place a call to

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5 Verizon Final Position at 13, citing In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, at ¶ 1034 (Verizon emphasis omitted).

another Verizon customer in the same local calling area.[6] The question, therefore, is whether Sprint should pay reciprocal compensation or exchange access rates when Verizon terminates such calls. The FCC has stated that

> reciprocal compensation for transport and termination of calls is intended for a situation in which in which two carriers collaborate to complete a call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.[7]

It is clear that the situation addressed in this dispute does not fall within the limits of reciprocal compensation as defined by the FCC. Because Sprint is not the originating carrier for calls between two Verizon customers who use a Sprint dial-around mechanism, the Department finds that Sprint is not entitled to pay reciprocal compensation rates. Therefore, the Department agrees with Verizon that Sprint is required to pay applicable access rates when it handles such calls through dial-around methods.

D. Loop Query Information (Arbitration Issues Nos. 11, 12, and 18)

1. Introduction

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6 The issue is limited to this scenario because any call placed between a Verizon customer and a Sprint customer in the same local calling area (except ISP-bound traffic) would be subject automatically to reciprocal compensation regardless of the facilities over which the call is carried (In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, at ¶ 1034). Further, calls between two Sprint customers in the same local calling area over Sprint's network facilities would not be subject to reciprocal compensation (or any type of inter-carrier compensation). Id.

7 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, at ¶ 1034.

The Parties have resolved most issues related to loop query information. The one remaining issue in dispute pertains to digital loop concentrators ("DLC"), which are field-located terminals that concentrate subscriber loops onto a high speed connection to the central office. Sprint proposes contract language that would require Verizon to provide Sprint with parity access to all DLC information.

2. Positions of the Parties

a. Sprint

Sprint contends that it must collocate inside of or adjacent to Verizon's DLC terminals in order to provide high speed xDSL services (Exh. Sprint-2 at 22). Sprint argues that, because most DLCs are not technically capable of carrying high speed xDSL services, it must have detailed information on Verizon's DLCs before it can justify the cost of collocation (id.). Sprint seeks access to detailed information on DLCs, including the technical parameters of the DLC, the technical parameters of the plant, and the potential number of customers that could be offered xDSL services (Sprint Reply Brief at 15). Sprint contends that the UNE Remand Order[8] requires incumbent LECs to provide requesting carriers with information contained in its own databases and internal records, including information on DLCs (Sprint Brief at 26).

8 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. November 5, 1999).

b. Verizon

Verizon argues that the UNE Remand Order does not require Verizon to provide "unfettered" access to all information it may possess concerning digital loop carrier facilities (Verizon Brief at 16). Verizon contends that the UNE Remand Order is concerned with loop qualification information, not information on digital loop carrier facilities, and that Verizon has already agreed to provide Sprint with all of the information needed to use its loops (id. at 16-17). In addition, Verizon argues that Sprint's request for "any and all information" is vague, and does not adequately advise Verizon of its obligations under the interconnection agreement (id. at 19). Verizon asserts that unless Sprint identifies the information it seeks, Verizon cannot determine whether such information is available, how it might be provided, or what the cost of providing the information might be (id.). Verizon contends that Sprint seeks access to DLC information for market analysis, and that the Act does not require Verizon to provide information for that purpose (id.).

3. Analysis and Findings

The Department notes that the issue of parity access to DLC information was not raised by Sprint in its Petition or at the technical session, but was raised for the first time on September 8, 2000, in the testimony of Michael J. Nelson. As a result, the record on this issue is not well developed. Although Sprint argues that it has provided Verizon with a detailed list of the information sought (Sprint Reply Brief at 17), Sprint has not provided this list to the Department. Therefore, the Department is forced to decide this issue based on a limited record.

Verizon is not currently required to maintain detailed information on DLCs (i.e., the technical parameters of the DLC, the technical parameters of the plant, and the potential number of customers) in either the mechanical, manual, or engineering loop query databases. See Tariff No. 17, D.T.E. 98-57-Phase III (September 29, 2000). Sprint states that it requires this information in order to "...evaluate the feasibility of entering new markets within Verizon's territory" (Sprint Brief at 25). Sprint's own witness concedes that the UNE Remand Order "...did not contemplate the importance of the DLC in providing advanced telecommunications services ..." (Exh. Sprint-2 at 23). The UNE Remand Order states in relevant part:

> "...the incumbent LEC must provide to requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location, and type of any electronic or other equipment on the loop, including but not limited to, *digital loop carrier or other remote concentration devices*, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, distributers in the same or adjacent binder groups ..." (Emphasis added)

UNE Remand Order at ¶ 427.

While the FCC explicitly contemplated that CLECs would require some information about DLCs and other remote concentration devices, the FCC appears to have limited access to information concerning the "...existence, location, and type" of remote concentration devices. The Department finds that the information sought by Sprint goes beyond what is required by the UNE Remand Order. Accordingly, the Department will not require Verizon to provide Sprint with additional information. Therefore, the Department directs the parties to strike Sprint's proposed language concerning parity access to DLC information from the interconnection agreement.

E. Interconnection Rates for Access to Sprint's Facilities (Arbitration Issue No. 6)

1. Introduction

This issue concerns the rates that Verizon must pay Sprint to interconnect with Sprint's facilities. The parties' positions on this issue focus on whether: (1) the rates proposed by Sprint are reasonable; (2) the rates should be capped at the level that Verizon charges for the same services; and (3) Sprint should be permitted to unilaterally change the rates during the term of the interconnection agreement.

2. Positions of the Parties

a. Sprint

Sprint argues that the rates proposed in the interconnection agreement are presumed to be competitive because, CLECs, unlike Verizon, have no market power (Sprint Brief at 7). In response to Verizon's statements that Sprint's rates are too high, and should be subject to a rate cap, Sprint is adamant that imposing such a cap would be anti-competitive (Sprint Brief at 8; Sprint Reply Brief at 2-3). Sprint contends that if its rates were capped at the level that Verizon is allowed to charge for similar services, the entire industry would be tied to Verizon's rates, and Sprint would likely be unable to compete in the marketplace (Sprint Reply Brief at 8; Exh. Sprint-2 at 6).

Moreover, Sprint contends that there is no basis on which the Department can impose Verizon's rates on Sprint (Sprint Reply Brief at 8). Specifically, Sprint argues that there have been no cost studies submitted for the Department to review and determine whether Sprint's rates are reasonable (id.).

Finally, Sprint argues that it should be permitted to revise the rates contained in the interconnection agreement through Department-approved tariff changes (Sprint Reply Brief at 4). Sprint contends that Verizon can change the rates contained in the interconnection agreement provided the changes are approved by the Department and that Sprint should have the ability to change rates contained in the interconnection agreement (id.).

b. Verizon

Verizon argues that the rates to purchase or collocate facilities[9] that Sprint proposes to include in the agreement are unreasonable (Verizon Brief at 2). Moreover, Verizon argues that no increase in rates should be permitted during the life of the agreement without advance notice (id. at 3).

Verizon contends that because Sprint's tariffed rates would supersede the rates set forth in the interconnection agreement, the Department should either limit, or cap Sprint's rates to that of Verizon's for similar services, or require Sprint to file the necessary cost justification for its tariff filing (id. at 4).

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[9] Sprint's proposed rates include a monthly recurring charge ("MRC") of $1500 per bay of collocation real estate; an MRC of $275 per facility for DS-1; and an MRC of $450 per facility for DS-3 (Petition, Exh. 1, Schedule 1.3).

3. Analysis and Findings

a. Proposed Rates

The Department rejects Sprint's assertion that CLEC interconnection rates are presumptively reasonable and competitive because CLECs lack market power. Contrary to Sprint's belief, the Act has given CLECs significant leverage because ILECs are required to interconnect with any CLECs that request interconnection (Telecommunciations Act of 1996,
§ 251(c)(2)). Therefore, the Department affords no presumption of reasonableness to Sprint's proposed interconnection rates.[10]

Under the Act and state telecommunications statutes, the Department is required to determine the reasonableness of CLEC interconnection rates as well as the reasonableness of ILEC interconnection rates. 47 U.S.C. §§ 251(a)(1); 252 (d)(1); G.L. c. 159, §§ 12, 14, and 17. Each carrier's rates must either be agreed-to through negotiation, or be cost-justified. Id.; 47 U.S.C. § 252(a)(1). Hence, to avoid a protracted investigation of their costs, most CLECs simply use the Verizon's rates as a proxy (See e.g., Interconnection Agreement between WorldCom and Verizon, Attachment IV, §2.4.4). However, where a CLEC fails to negotiate a rate with Verizon and refuses to use Verizon's rates as a proxy, the Department notes that the CLEC must submit supporting documentation for its rates. See D.P.U. 94-185, at 50 (1996) (Department held that CLECs that

10 In contrast, the Department has found CLECs' retail rates to be presumptively reasonable and competitive, because of the lack of CLEC market power. D.P.U. 94-185, at 49 (1996),

intend to charge higher termination rates than NYNEX must file cost support to demonstrate the reasonableness of those rates).

The Department also rejects Sprint's argument that the proposed rates should be allowed because Verizon has the opportunity to challenge Sprint's rates through a separate tariff complaint proceeding. Sprint does not currently have an interconnection tariff on file with the Department. Instead, the reasonableness of Sprint's interconnection rates was raised in this arbitration and should therefore be resolved in this proceeding. Accordingly, unless Sprint either uses Verizon's rates as a proxy or negotiates with Verizon for other rates, the Department finds that it is necessary to investigate Sprint's proposed interconnection rates, and directs Sprint to file the cost information on which its rates are based within 20 days of this Order. In the meantime, the parties shall include a placeholder in their agreement requiring Sprint to use the same rate as Verizon for any disputed rate, until the Department concludes the investigation of Sprint's cost support.

2. Finality of Proposed Rates

Sprint argues that it should be permitted to alter its interconnection rates during the term of the agreement. However, the Department has previously sustained the finality of interconnection agreements. See Tariff No. 17, D.T.E. 98-57, at 18-19 (March 24, 2000). In that Order, the Department stated that competition cannot flourish in a climate where carriers (CLECs and ILECs alike) are unable to retain the benefits of their bargains. Id. Just as the Department found in D.T.E. 98-57 that CLECs should never have to worry that Verizon would eviscerate their contracts with a tariff filing, so should Verizon not be concerned that CLECs will unilaterally change terms contained in an interconnection agreement.

The Department finds that while the parties remain free to renegotiate the terms of their interconnection agreements at any time, they are not permitted to unilaterally change the terms of an agreement while that agreement is in effect.

F. Resale of Vertical Features

1. Introduction

This issue concerns whether Sprint may purchase vertical features [11] from Verizon at the wholesale avoided-cost discount.

2. Positions of the Parties

a. Sprint

Sprint contends that it is prevented from receiving the wholesale discount rate offered by Verizon for vertical features because Verizon restricts the availability of the discount to those services purchased in conjunction with Verizon's basic local service (Sprint Reply Brief at 5). Sprint argues that, to the extent Verizon does not allow Sprint to purchase or resell vertical features without the local loop, Sprint cannot provide a competitive offering (Sprint Brief at 13). Instead, Sprint argues that Verizon should be required to offer these services on a stand-alone basis as Verizon does with its

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[11] Vertical features, also referred to as "Custom Calling Services" by Verizon, are services that include, among other things, call waiting, call forwarding and three way calling. See DTE MA No. 10, Part A, Section 9, Page 28.

Enhanced Service Providers ("ESPs")[12] (id. 13). According to Sprint, § 251(c)(4) of the Act requires Verizon to make vertical features available to Sprint at wholesale prices without imposing unreasonable or discriminatory conditions or limitations (id. at 14). Moreover, states Sprint, the FCC's First Report and Order found that resale restrictions are presumptively unreasonable given the ILEC's ability to impose resale restrictions and limitations to preserve their market position (id.). Sprint contends that Verizon's bundling provision of local dial tone service with the sale of vertical features, represents a clear attempt by Verizon to preserve its market position in Massachusetts (id.).

Sprint argues that there is no reason that the dial tone and vertical features must be provided by the same carrier, especially since these services are sold, priced, and billed separately (id. at 18). In support of its argument, Sprint contends that there is precedent to allow for the purchase of vertical features on a stand-alone basis at the wholesale discount (Sprint Reply Brief at 12). Specifically, Sprint stated that, in a recent decision, the California Public Service Commission required Pacific Bell to provide Sprint with the option to purchase vertical features at the wholesale discount (Sprint Reply Brief at 12, citing Application 00-05-053, Opinion, October 5, 2000 (California Opinion)). Furthermore, Sprint indicates that other ILECs allow Sprint to purchase unbundled vertical features on a stand-alone basis, at the wholesale discount (Sprint Reply Brief at 13).

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12 An Enhanced Service Provider is a Verizon subscriber whose telecommunications service application involves computer processing that acts on format, code or protocol, provides additional, different or restructured information, or offers end-user interaction with the stored information. DTE MA No. 10, Part A, Section 9, Page 28.

To determine the amount that Sprint should pay Verizon for vertical features, Sprint requests that the Department require Verizon to provide an avoided costs study that would indicate the costs incurred by Verizon to offer vertical features (Sprint Brief at 24). In the interim, Sprint requests that the Department require Verizon to apply the loop discount approved by the Department in Verizon's Tariff No. 14, the Company's resale tariff (id.).

b. Verizon

Verizon argues that its resale tariff provides that vertical services are sold to the Company's end users only in conjunction with the purchase of basic dial tone line service and not on a stand-alone basis (Verizon Brief at 5). The Company indicates that although ESPs may purchase Call Forwarding Busy Line/Don't Answer in order to resell those services to an end user in connection with a service such as voice messaging, Verizon does not offer the feature on a stand-alone basis (id. at 6). Accordingly, Verizon states that, similar to ESPs, Sprint is not entitled to the wholesale discount for the purchase of vertical features (Verizon Reply Brief at 5-6).

Verizon contends that Sprint's reliance on an arbitrator's report from a California proceeding is inappropriate (Verizon Brief at 6-7). First, Verizon states that the arbitrator erroneously concluded that Pacific Bell sold vertical features on a stand-alone basis, at retail (id.). According to Verizon, such sales are not at retail rates, and therefore do not trigger the requirement under the Act that the Company provide telecommunications services at wholesale rates for services that that the Company provides at retail to subscribers (id. at 7). Moreover, Verizon claims that the submission of an avoided cost study for the Department's review is unnecessary because the Company would continue to incur the costs to market and provide the services to retail customers (id.).

3. Analysis and Findings

Verizon is required under the Act to resell its retail telecommunications services to CLECs at the wholesale discount. 47 U.S.C. § 251(c)(4)(A). Verizon does provide Custom Calling Features on a stand-alone basis to its retail customers, but such services are offered only in conjunction with its basic exchange service. See D.T.E. MA No. 10. The Department notes that, based on the information provided to us by the Parties on this issue, Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the FCC's Local Competition rules. Therefore, we find that Verizon is not required to offer vertical features at the wholesale discount rate, on a stand-alone basis.

V. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order; and it is

FURTHER ORDERED: That the parties incorporate these determinations into a final agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act, within 21 days of the date herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner