STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Complaint of Sprint Communications Company L.P. against Verizon New York Inc. for Modification of Verizon New York Tariff PSC NY No. 8 to Establish Just and Reasonable Terms for Transit Record Processing Charges and for Refund of Charges Improperly Collected	Case No. 08-C-0673

PHASE I BRIEF OF SPRINT COMMUNICATIONS COMPANY, L.P.

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November 17, 2011

[*Re-submitted October 19, 2012, with supplemental citations to Discovery Appendix*]

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PHASE I BRIEF OF SPRINT COMMUNICATIONS COMPANY, L.P.

Pursuant to the schedule established in this case, Sprint Communications Company, L.P. ("Sprint") respectfully submits this brief to address the "Phase I" issues. As demonstrated herein, there are multiple reasons why the Commission should find that Verizon New York Inc.'s ("Verizon") attempts to levy a Record Processing Charge ("RPC") on Sprint are inappropriate and unsupportable. These reasons are summarized as follows:

(1) The terms of the Sprint-Verizon Interconnection Agreement do not permit Verizon to charge the RPC to Sprint;

(2) The terms of Verizon's tariff do not permit Verizon to charge the RPC for Sprint-originating traffic that terminated to a CMRS (wireless) carrier;

(3) Verizon is prohibited from charging or collecting the RPC in the instances where Verizon admittedly has not provided any associated records to the terminating carrier; and

(4) Verizon is prohibited from charging or collecting the RPC because it is unjust, unreasonable, and anti-competitive.

Since Verizon's assessment of the RPC to Sprint is unauthorized, Verizon is therefore liable to Sprint for credits and refunds corresponding to the amounts improperly charged and in some instances paid.

INTRODUCTION/BACKGROUND

Verizon is the former monopoly provider of telecommunications for most of New York State, and as such has a nearly ubiquitous network for the exchange of traffic with every other carrier – including, *inter alia*, independent telephone companies (ITCs), competitive local exchange carriers (CLECs), and commercial mobile radio service (CMRS) carriers. To enable the efficient interconnection and exchange of traffic between and among these many carriers, Verizon is generally required to provide tandem transit service.

For each call transited through Verizon for termination to another carrier, Verizon imposes a per-minute charge for the transit service provided. In addition, Verizon attempts to impose a separate and additional charge, the $0.0102 per-call RPC that bears no relation to the actual transiting of the call. Rather, the RPC is a charge imposed by Verizon ostensibly to produce a call record, which is purportedly for the benefit of the terminating carrier; however, Verizon assesses the RPC on the originating carrier rather than the terminating carrier. In actuality, the production of call records primarily benefits Verizon. As the originating carrier, Sprint does not see these records or have an opportunity to review any records that are provided to the terminating carrier. Furthermore, in many instances Sprint has bill-and-keep arrangements in place with other carriers in New York,[1] in which case the terminating carrier has no use for the records.

Sprint has been charged millions of dollars by Verizon for records Verizon never provided to Sprint, that Sprint never reviewed, and in many cases that Verizon never even provided to the terminating carriers. Sprint has disputed more than **[BEGIN**

[1] Under such bill-and-keep arrangements, Sprint and the other carriers do not charge each other for the termination of each other's calls.

CONFIDENTIAL] [END CONFIDENTIAL] of Verizon RPC charges that are not authorized under the parties' interconnection agreement.[2] Most of these RPC charges billed to Sprint are attributable to traffic terminating to CMRS carriers, or to records never provided to the terminating carrier, or both. Indeed, the amount of RPC charges billed to Sprint for calls transited to CMRS providers from September 2006 through April 2011 is **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[3] Likewise, Verizon has charged Sprint over the same time period **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** for records Verizon never provided to the terminating carrier.[4]

As to the CMRS-related RPCs levied by Verizon on Sprint, it is dispositive that Verizon has fully credited other carriers for RPCs levied upon them for traffic terminating to CMRS carriers. Verizon is thus required to do the same here.

Notably, the "records" for which Verizon attempts to levy the RPC are not necessary, as each carrier is itself required to provide call information to the terminating carrier, and Verizon

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[2] Verizon and Sprint have reconciled this disputed amount. The improperly billed RPCs actually date back to 2002. Sprint is entitled to refunds or credits for the entirety of the RPC amounts improperly billed.

[3] Verizon Response to Sprint Interrogatory 15(b), dated May 20, 2011 and Verizon Third Supplemental Response to Sprint's Second Set of Discovery Requests dated July 12, 2011. (Discovery Appendix to Sprint Initial Brief, at 259-262, 283-311 and 185, 189, respectively) In light of the process employed in this proceeding, under which an evidentiary hearing was not held, the record consists largely of discovery produced by Verizon. Verizon produced responses, supplemental responses, additional supplemental responses, and corrected responses, seriatim, throughout the past several months. To provide this information to the Commission, Sprint will be providing to the Commission a Discovery Appendix. References in this brief to documents comprising Verizon discovery responses will be contained within that Discovery Appendix.

[4] Verizon Response to Sprint Interrogatory 22, dated May 20, 2011, (Discovery Appendix to Sprint Initial Brief, at 266, 313) Verizon Third Supplemental Response to Sprint's Second Set of Discovery Requests dated July 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 187, 191), and Verizon Further Supplemental Response to Sprint's Discovery Requests dated July 21, 2011 (Discovery Appendix to Sprint Initial Brief, at 170-171, 174-175). According to Verizon, many of the carriers who requested that call records not be provided are CMRS providers. Verizon Response to Sprint Interrogatory 10, dated December 14, 2009 and Verizon Further Supplemental Response to Sprint's Discovery Requests dated July 21, 2011 (Discovery Appendix to Sprint Initial Brief, at 331 and 169-170 respectively).

as the intermediate carrier is required to pass along such information. Moreover, Verizon incurs no added cost to record this information, as Verizon independently collects the same information for its own billing and liability-avoidance purposes, and also uses that same information to charge carriers for a variety of other products and services. The RPC is thus simply a non-cost based adder that Verizon is attempting to collect as a windfall on top of the per-minute rate Verizon is already charging for its tandem transit service.

In sum, as discussed further below, Verizon has improperly charged the RPC to Sprint in violation of the terms of the Sprint/Verizon ICA and has unlawfully applied its Tariff No. 8 to Sprint-originated traffic. Accordingly, Sprint is entitled to credits and/or refunds for all RPCs that Verizon has improperly billed to Sprint.

DISCUSSION

I. VERIZON'S ATTEMPT TO ASSESS AN RPC IS NOT AUTHORIZED BY THE INTERCONNECTION AGREEMENT UNDER WHICH SPRINT ORDERED AND VERIZON PROVIDED TANDEM TRANSIT SERVICE.

The Verizon Record Processing Charge relates to a product distinct from Tandem Transit Service ("TTS"). In fact, Verizon provided TTS for many years without any assessment of an RPC, and in most instances provides Tandem Transit Service independent of the RPC - providing no records whatsoever. Moreover, while the transiting of traffic provides a service to the originating carrier, Record Processing is beneficial primarily to Verizon and in some cases the terminating carrier. It is dispositive that, in its interconnection agreement with Verizon, Sprint required that Verizon provide Tandem Transit Service; Sprint did not request, and Verizon did not require, any Record Processing product.

The interconnection relationship between Sprint and Verizon, which encompasses the transiting of traffic to third party carriers, is governed by the terms of the parties' interconnection agreement that took effect June 23, 2000.[5] The ICA defines Tandem Transit Traffic or Transit Traffic as traffic that originates on Sprint's network, goes through a Verizon tandem, and terminates at the central office of a LEC, ITC, or CMRS carrier.[6] The ICA requires Verizon to provide Tandem Transit Service for Sprint's Transit Traffic. The ICA states that the rate for TTS will be the rate stated in the Verizon NY PSC No. 914 Tariff (predecessor to Tariff No. 8).[7]

Critically, the Sprint/Verizon ICA contains no reference to any record processing activities or charges. In fact, at the time of the ICA, and for several years thereafter, Verizon did not even assess a Record Processing Charge. The terms of the ICA simply do not permit Verizon to levy any such charge. Verizon admits it has not billed RPCs due to the provisions of a carrier's interconnection agreement.[8]

Pursuant to the federal Communications Act, the New York State Public Service Commission has the power to review and approve interconnection agreements[9] as well as "to interpret and enforce [interconnection agreements] in the first instance."[10] The New York

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[5] *See* Appendix A, Sprint/Verizon ICA, at A-1.

[6] Appendix A, Sprint/Verizon ICA at Attachment 1, Definitions, at A-1.

[7]The Sprint/Verizon ICA provides that "Sprint shall pay BA for *Transit Service* that Sprint originates at the rate specified in Part IV," plus of course any termination or access charges the actual terminating carrier incorrectly invoices to Verizon. (Appendix A, Sprint/Verizon ICA, § 4.2.4., at A-1) (*emphasis added*). The ICA, Part IV, Pricing Schedule, provides simply that "the rates for Tandem Transit Service are as set forth in NYPSC No. 914 Tariff, as amended from." (Appendix A, Sprint/Verizon ICA, Pricing Schedule, at A-1).

[8] Verizon Response to Interrogatory No. 23, dated May 20, 2011. (Discovery Appendix to Sprint Initial Brief, at 267)

[9] 47 U.S.C. 252(e)(1).

[10] *BellSouth Telecomm., Inc. v. MCImetro Access Transmission Serv., Inc.*, 317 F.3d 1270, 1277 (11th Cir. 2003); Case 06-C-1217, *Nextel Partners of Upstate New York, Inc. against Frontier Telephone of*

Commission looks to the "plain language of the Agreement, while viewing the agreement in light of New York law concerning interpretation of contracts, as well as applicable federal law."[11]

Interconnection agreements are given deference both in New York courts and at the New York State Public Service Commission. In *Nextel Partners against Frontier Telephone*, the Commission considered whether compensation arrangements for transit traffic were included within the applicable interconnection agreement.[12] Nextel asserted that the agreement's silence regarding certain charges for transit service did not "allow the application of contrary and superseding tariff obligations,"[13] and the Commission held that the Agreement provided the sole basis for any charges for the services at issue.[14]

In *Nextel/Frontier*, the Commission noted that New York law requires contracts to be construed according to parties' reasonable intentions at the time they drafted their agreement.[15] In accordance with the exclusion principle,[16] the Commission held "the specifics of the charging arrangement set forth in the agreement's Transit Service section must be read as implicitly prohibiting all other charges with respect to transit traffic."[17] Although the agreement required

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Rochester, Inc. Concerning Transit Charges, Order Resolving Complaint (issued and effective December 13, 2006) at p. 6. (hereinafter "*Nextel/Frontier Order*").

[11] *Nextel/Frontier Order* at p. 6. Such state commission decisions are reviewed in federal court to ensure that agreements are enforced in accordance with the Act. *See* 47 U.S.C. § 252(e)(6); *Verizon Maryland, Inc. v. Public Serv. Comm'n of Maryland*, 535 U.S. 635 (2002) (finding that federal courts have subject matter jurisdiction to review a state public utility commission order interpreting or enforcing an interconnection agreement to ensure that the order is consistent with federal law).

[12] *Nextel/Frontier Order* at p. 6.

[13] *Id.*

[14] *Id.* at 7.

[15] *Nextel/Frontier Order at* 8; *Rosenthal Jewelry v. St. Paul Fire Ins.*, 21 A.D.2d 160, 167 (1st Dep't 1964).

[16] *Nextel/Frontier Order at* 7; *Two Guys v. S.F.R. Realty Assoc.,* 63 N.Y.2d 396, 403-04 (1984).

[17] *Nextel/Frontier Order at* 7.

the parties to pay various charges set forth both in the agreement and the applicable tariff, the tariff incorporation clause did not extend the scope of the services provided.[18] Significantly, the Commission concluded that to allow one party to "take advantage of a tariff which is inconsistent with the agreement would 'unfairly deny [the other party] the presumed quid pro quo for some other term of the agreement.'"[19]

Like the agreement in *Nextel/Frontier*, the Sprint/Verizon ICA delineates the services each party must provide and creates an obligation for each party to perform the duties outlined in the agreement. With respect to the provision of transit service, the ICA obligates Verizon to transport traffic that Sprint delivers to Verizon's tandem and to deliver that traffic to CLECs, ITCs, and wireless providers that subtend Verizon's tandem. The ICA contains no request by Sprint for a record processing product and creates no obligation for Verizon to provide one.

The pricing for the specific service that Sprint requested, Transit Service, is established by reference to Verizon's No. 8 Tariff (successor to No. 914 Tariff). Consistent with the NY PSC's decision in the *Nextel/Frontier* case described above, the ICA provides the sole basis for charges for the services at issue. Accordingly, the incorporation of Tariff No. 8 to determine the rate for Transit Service does not expand the scope of the services provided under the ICA to include any records processing product. Because the tariff charges apply only to the specific services set forth in the ICA, the tariff rate simply provides the rate for the Transit Service itself as defined in and required by the ICA. As a result, Verizon is not authorized under the ICA to

[18] *Nextel/Frontier Order at* 10.

[19] *Nextel/Frontier Order* at 12. *See also,* Case 01-C-0864, *Choice One Communications of New York, Inc.- Interconnection Agreement Arbitration*, Order on Petitions for Rehearing and Clarification (issued March 7, 2002) at p. 12.

charge the RPC for any Sprint-originated traffic, including traffic destined for both wireline and wireless carriers.

The fact that Verizon's record processing product is in no way integral to the provision of Transit Service provides factual support for this legal holding. Indeed, Verizon acknowledges that it provides TTS to some carriers without assessing the RPC to those carriers.[20] Verizon similarly acknowledges that it provides TTS to carriers but does not deliver RPC records for their traffic to dozens of terminating carriers.[21]

The record processing function does nothing to enable or enhance the TTS functionality: the transport of traffic through the Verizon tandem. Indeed, Verizon itself acknowledged to NY PSC staff that Verizon's primary justification for creating and delivering RPC records to the terminating carrier is to protect Verizon from potential liability from third parties who may seek to impose termination charges on Verizon.

Finally, Verizon provides TTS in every other state outside of New York without charging an RPC. In fact, Verizon has acknowledged that no Verizon ILEC affiliate "operating in any other state has a separately identified charge for the record processing function in connection with Tandem Transit Service."[22]

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[20] Verizon Response to Sprint Document Request No. 7, dated December 14, 2009, Verizon Response to Sprint's June 27, 2011 Discovery Requests, and Supplemental Responses to Previous Requests dated July 7, 2011. (Discovery Appendix to Sprint Initial Brief, at 327 and 218, respectively).

[21] Verizon Response to Sprint Document Request No. 6 and Interrogatory No. 10, dated December 14, 2009, (Discovery Appendix to Sprint Initial Brief, at 326 and 331, respectively); Verizon Response to Sprint Interrogatory No. 22, dated May 20, 2011 (Discovery Appendix to Sprint Initial Brief, at 266 and 313); Verizon Supplemental Response to Interrogatory No. 22, dated July 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 187, 191), and Verizon Further Supplemental Response to Sprint Document Request No. 1 and Interrogatory Nos. 10 and 22, dated July 21, 2011 (Discovery Appendix to Sprint Initial Brief, at 169-175).

[22] Verizon Response to Sprint Interrogatory No. 11, dated December 14, 2009 (Discovery Appendix to Sprint Initial Brief, at 331).

Commission staff have joined Sprint in questioning why the charge exists in New York but in no other Verizon ILEC state. In an email to Verizon dated January 25, 2010, NY PSC staff questioned why Verizon did not impose the same charge in any other state. Staff quoted Verizon's previous explanation from 2008 that "providing call records to the terminating carrier helps to prevent the situations in which [that] carrier. . . seeks to impose termination charges on Verizon. But Verizon, as a service provider, appropriately seeks protection from potential third-party liabilities and disputes that may be associated with the provision of a service. It is therefore just and reasonable to include such protections as a built-in feature of the service."[23] Staff noted that, "[p]resumably this would hold true for Verizon in other states as well," and that staff "was asked to investigate why other states don't have this same charge, as Verizon must be maintaining these records to insure the same protections as with NY."[24]

In a later email dated April 30, 2010, a member of NY PSC staff again questioned Verizon about the purpose of the RPC, noting that he had "looked at Verizon's tariffs for other states but I didn't come up with anything using that specific phrase. . . "[25] Finally, in an email to Verizon dated May 3, 2010, a member of NY PSC staff referenced the Massachusetts tariff, noting that it "seems the most similar to NY's," and querying, "[b]asically we are trying to figure out, when one considers the total rate structure of this type call, how does NY compare to other states."[26] Verizon did not provide copies of any subsequent communications with NY PSC staff on this inquiry.

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[23] Verizon Response to Sprint Document Request No. 12, dated July 7, 2011 (Discovery Appendix to Sprint Initial Brief, at 201-203, 246).

[24] *Id*.

[25] *Id*.

[26] *Id*. at 201-203, 248.

Clearly, Verizon charges the RPC in New York, and only in New York, not because the records processing service is in any way integral to the provision of TTS but rather because Verizon seeks to employ its considerable market power to gouge other carriers who have limited or no alternatives for transit service in certain areas of New York. Because the records processing service is unrelated to the functional provision of TTS, and by Verizon's own admission exists primarily to protect Verizon from potential financial complications involving third parties,[27] the Commission must find that Verizon's assessment of the RPC to Sprint is improper and unauthorized, and subject to refunds and credits.

II. VERIZON'S CLAIM THAT THE RPC APPLIES PURSUANT TO TARIFF ELIMINATES VERIZON'S RPC CLAIM FOR ALL TRAFFIC TERMINATING TO CMRS CARRIERS.

As previously explained, the Sprint/Verizon ICA does not authorize the assessment of the RPC on any Sprint-originated traffic, including traffic terminating to both wireline and wireless providers. Regardless, Verizon's own argument that the RPC applies pursuant to its tariff defeats its claim for all traffic terminating to wireless providers.

Prior to January 3, 2011, Verizon's Tariff No. 8 provided at Section 6.3.3(B) that TTS encompassed only calls "terminated to the NXX of another CLEC, or an ITC," as to which Verizon would "record and transmit call details to the terminating CLEC or ITC" and "provide tandem switching and transport of those calls."[28] Verizon subsequently modified its Tariff No. 8 effective January 3, 2011, modifying among other things Section 6.3.3(B) to encompass calls

[27] Sprint believes this justification is illusory with respect to Sprint-originated traffic because the Sprint/Verizon interconnection agreement requires Sprint to pay Verizon for any additional charges or costs imposed on Verizon by a terminating CLEC, ITC, CMRS carrier, or other LEC. (*See* Appendix A, Sprint/Verizon ICA §4.2.4., at A-1)

[28] Appendix A, Verizon PSC Tariff No. 8, § 6.3.3(B), at A-2.

"terminated to the NXX of another CLEC, or an ITC ***or wireless provider***," and indicating that Verizon "will record and transmit call details to the terminating CLEC or ITC ***or wireless provider***." (*emphasis added*) Verizon is well aware that its own tariff expressly excluded traffic terminated to CMRS providers from the scope of TTS, as demonstrated by Verizon's own prior filings to the Commission as well as the fact that Verizon modified its tariff to add wireless carriers earlier this year. Yet, Verizon charged Sprint RPCs for calls terminated to CMRS carriers for several years prior to the time Verizon changed the tariff to add CMRS-terminating traffic to the types of traffic subject to that charge.

Verizon's present claim is directly at odds with Verizon's previous position. Verizon stated in no uncertain terms, in a filing with the NY PSC, that "Verizon's tariffed tandem transit service does not encompass traffic delivered by Verizon to CMRS providers."[29] "Traffic terminating to a CMRS provider is not tandem transit traffic within the meaning of the Tariff."[30] Accordingly, Verizon's assessment of the RPC for calls terminated to CMRS providers exceeded the scope and terms of Verizon's own tariff for the period in question.

Verizon's attempt to circumvent its own admission that CMRS-bound traffic is not TTS traffic under Verizon's tariff relies on a convoluted argument that would require the plain language of both the ICA and the tariff to be disregarded. The ICA makes clear that both Verizon and Sprint are required to transit each other's CMRS-bound traffic:

> "Tandem Transit Traffic" or "Transit Traffic" means Telephone Exchange Service traffic that originates on Sprint's network, and is transported through a BA Tandem to the Central Office of a CLEC, ITC, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant BA Tandem to which Sprint delivers such traffic. Pursuant to Section 4 of Part V, Transit Traffic may also mean Telephone Exchange

[29] Case No, 09-C-0370, *Petition of XChange Telecom Corp. for a Declaratory Ruling*, letter filing of Verizon Deputy General Counsel-New York Joseph Post, dated May 20, 2009 at 3 (*emphasis added*).

[30] *Id.*

> Service Traffic that originates on BA's network, and is transported through a Sprint Tandem to the Central Office of a CLEC, ITC, CMRS carrier, or other LEC, that subtends the relevant Sprint Tandem to which BA delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide "LERG."[31]

The ICA delineates the services that each party wants the other to provide, and creates an obligation for each party to perform the duties outlined in the agreement. Specifically, this ICA provision obligates Verizon to transport traffic that Sprint delivers to Verizon's tandem and deliver that traffic to CLECs, ITCs, and wireless providers that subtend Verizon's tandem. The ICA does not indicate that Sprint wants Verizon to perform records processing service, and does not create an obligation for Verizon to perform it. There is likewise no reciprocal request by Verizon to Sprint, nor any analogous Sprint obligation.

The definition of Tandem Transit Service under Verizon's Tariff No. 8 during the period in question is narrower in scope and expressly limited to traffic terminated to CLECs and ITCs:

> A. TTS provides for the exchange of intraLATA traffic between two CLECs where the two CLECs purchase a MPB arrangement for the same Telephone Company access tandem switch. TTS also provides for the delivery of intraLATA traffic between an originating CLEC and a terminating ITC where the CLEC purchases a MPB arrangement under this tariff and the ITC is also connected to the same Telephone Company access tandem switch. TTS is not offered for 500, 700, 900, N11, operator and directory assistance traffic.[32]

Verizon itself has acknowledged that the definition of transit service in the ICA is not identical to the definition in the tariff.[33] Verizon therefore attempts to rationalize that the ICA transforms the definition of TTS to include traffic that is expressly excluded from the tariff, and once transformed attempts to make such traffic subject to the separate RPC. This is both faulty and circular logic.

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[31] Appendix A, Sprint/Verizon ICA at Attachment 1, Definitions, at A-1.

[32] Appendix A, Verizon PSC NY Tariff No. 8, § 6.3.3(A) at A-2.

[33] Verizon Response to Complaint, July 21, 2008, at 4-5.

When the ICA and Tariff No. 8 are read together, the ICA creates a duty for Verizon to transport and deliver CMRS-bound traffic that Sprint delivers to Verizon's tandem, and the tariff provides the rate for this specific service.[34] The document to which reference is made, in this case Tariff No. 914 (predecessor to Tariff No. 8), contains the rate for the transiting of traffic delivered to Verizon's tandem, as a plain reading of the ICA dictates. The RPC, or anything similar to it, is not included or described in the ICA.

Verizon, on the other hand, essentially argues that the ICA changes the meaning of the tariff by expanding the definition of TTS, while the tariff simultaneously changes the meaning of the ICA by incorporating an additional rate element neither described nor contemplated in the ICA. Not only is this convoluted interpretation antagonistic to the plain language of both the ICA and the tariff, it is the epitome of circular logic. On the contrary, since the tariff terms did not include CMRS traffic, there was no requisite CMRS-related RPC for Verizon to claim to be incorporated by reference. Accordingly, Verizon's reliance on the tariff to justify imposition of the RPC on CMRS-terminated traffic must fail.

Verizon is presumed to know the terms of its tariffs, and had it wanted to apply the RPC to CMRS-terminated traffic, Verizon could have addressed the application of that rate in the tariff terms.[35] Despite many amendments to its own tariff in the past 15 years, Verizon did not include CMRS-terminated traffic as TTS traffic until its January 3, 2011 tariff revision.[36] This is

[34] Appendix A, Part IV, Pricing Schedule, at A-1 ("The rates for Tandem Transit Service are as set forth in NYPSC No. 914 Tariff, as amended from time to time.")

[35] Verizon likewise had ample opportunity to include or at least reference an RPC in the parties' ICA, but did not.

[36] Because this brief is limited to Phase I issues, Sprint will not discuss the validity of the January 3, 2011 tariff amendment or whether Verizon is attempting to circumvent the FCC's *T-Mobile* Order by imposing a charge on the originating carrier that it would otherwise be prohibited from charging the terminating wireless carrier. Sprint reserves the right to address this issue in Phase II.

inconsistent with Verizon's treatment of CMRS-terminated traffic in other states such as Massachusetts where, for example, Verizon did include rates for CMRS-terminated traffic in its tariffs. Verizon New England Tariff No. 17 in Massachusetts contains a definition of TTS that includes CMRS-terminated traffic; however, the Massachusetts tariff specifies only a minute of use rate ($0.000951) and does not have any separate charge for the creation or delivery of transit records.[37]

Given that Verizon was not authorized under its tariff to assess the RPC for calls terminating to CMRS carriers, the filed rate doctrine prevents any such charges to Sprint. One of the earliest applications of the filed rate doctrine was in 1922 by Supreme court Justice Brandeis, in *Keogh v. Chicago Northwestern Ry Co.*, establishing the principle that "rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."[38] Accordingly, Verizon's argument that the ICA overrides the tariff is a legal impossibility. Further, New York Public Service Law, Section 92 provides in relevant part that "[n]o utility shall charge, demand, collect or receive a different compensation for any service rendered or to be rendered than the charge applicable as specified in its schedule on file and in effect."[39] Verizon's tariff expressly excludes CMRS-terminated traffic from the definition of TTS; accordingly, Verizon may not rely on its tariff to assess the RPC on CMRS-terminated traffic under applicable New York law.

It is likewise dispositive that Verizon has already credited other carriers for RPCs levied upon them for traffic terminating to CMRS carriers. In 2009, Verizon issued credits on two separate occasions to **[BEGIN CONFIDENTIAL]** **[END**

[37] Verizon New England Tariff No. 17, Part C, Section 1.3.3; Part M, Section 3.1.2.

[38] 260 U.S. 156, 163; 43 S.Ct. 47, 49.

[39] N.Y. Pub. Serv. Law §92(d).

CONFIDENTIAL] to negate Verizon RPCs that Verizon had assessed on transit traffic terminating to CMRS carriers.

In its dispute correspondence, this carrier noted that **[BEGIN ATTYS-EYES-ONLY]**

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Certainly, the fact that Verizon has already conceded the issue, and has already credited out RPCs for CMRS-terminated traffic, resolves a large portion of the instant matter. It is nearly inconceivable that Verizon might now stand before the Commission and assert that Sprint should pay RPCs for CMRS traffic while negating those same RPCs for other carriers.

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[40] Verizon Additional Supplemental Response to Sprint Document Request No. 5, dated October 14, 2011 (Discovery Appendix to Sprint Initial Brief, at 11, 21). It is noteworthy that Verizon failed to provide any Verizon internal emails or analysis concerning this dispute and settlement.

[41] Verizon Additional Supplemental Response to Sprint Document Request No. 5, dated October 14, 2011 (Discovery Appendix to Sprint Initial Brief, at 11, 13). **[BEGIN ATTORNEYS-EYES-ONLY]**

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[42] *Id.* (Discovery Appendix to Sprint Initial Brief, at 11 and 32-33). Though no RPCs were identified, the **[BEGIN ATTORNEYS-EYES-ONLY]** **[END ATTORNEYS-EYES-ONLY]** Settlement Agreement was produced by Verizon as being responsive to the discovery requests issued by Sprint in this proceeding.

Finally, even with legal and policy issues aside, the factual basis for Verizon's RPCs relating to CMRS-terminated traffic is also lacking. Most CMRS carriers do not need RPC records, as Verizon is well aware. In fact, Verizon admits that nearly every CMRS carrier has told Verizon that it does not want these RPC records. **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] are just some of the CMRS carriers who do not receive RPC records of Tandem Transit calls.[43]

In nearly every instance, "Verizon cannot identify the specific terminating carrier" for transit traffic terminating to a CMRS carrier.[44] As a result, Verizon populates relevant data fields with Verizon's own end office or tandem switch code.[45] Although it was thus impossible for Verizon to even deliver RPC records to these carriers, Verizon still charged Sprint for such records.

In sum, since Verizon's tariff did not encompass transit calls to CMRS carriers, any RPC that Verizon has attempted to charge in connection with such calls is void *ab initio*. That Verizon did not in fact deliver RPC records confirms this conclusion. All Verizon RPCs for traffic terminating to CMRS carriers must be credited to Sprint and any such charges paid must be promptly returned.

[43] This being the case, the justification for Verizon's January 2011 tariff amendment to include traffic terminating to such carriers as being subject to the RPC should be seriously questioned.

[44] Verizon Response to Sprint Interrogatory No. 15, dated May 20, 2011 (Discovery Appendix to Sprint Initial Brief, at 260-262).

[45] *Id.*

III. VERIZON IS PROHIBITED FROM CHARGING SPRINT FOR SERVICES VERIZON DOES NOT PROVIDE.

It is axiomatic that a carrier, such as Verizon, is prohibited from charging for a service that it does not provide. Indeed, as a matter of both contract and tariff law, where a company – such as Verizon here – undertakes to perform a service in exchange for payment, the company has a legal right to such payment only where the service is actually performed.

This principle is firmly established in Commission precedent. In fact, earlier this year, the Commission reinforced this rule in Case No. 10-C-0650 when considering a similar attempt by Windstream (which like Verizon is an incumbent local exchange carrier in New York) to collect for services not provided.[46]

In the Windstream case, the incumbent carrier had implemented a "policy of not providing a refund or bill credit to customers when they terminate service in the beginning or middle of the month and do not receive a full month of telephone service."[47] Reviewing this policy under the Public Service Law's just and reasonable standard, the Commission held that such policy failed to meet the governing statutory requirements.[48] Specifically, the Commission found that "*Windstream's policy is unfair, given that it does not refund money for service that it does not provide to its customers.*"[49] The Commission further determined that Windstream's policy results in "unreasonably excessive rates" because Windstream is charging customers *"for*

[46] Case No. 10-C-0650, *Proceeding on Motion of the Commission to Consider the Reasonableness of Windstream New York, Inc.'s Policy on Proration*, Order Directing Tariff Amendment (issued May 19, 2011).

[47] *Id.* at 2.

[48] *Id.* at 2-3, 7-10.

[49] *Id*. at 9.

a service that they are not receiving."[50] Windstream was therefore required to issue prorated bills so that it would charge and collect only for services *actually provided*.[51]

The Commission has also had occasion to examine a similar issue in the wholesale telecommunications services context, rejecting a similar attempt by Verizon to collect for services not provided. In the Unbundled Network Elements ("UNE") proceeding (Case No. 98-C-1357), the Commission had authorized Verizon to collect a higher rate for certain services when provided on an expedited basis.[52] Verizon thereafter argued (on a motion for reconsideration) that Verizon should somehow be able to collect the higher rate where it undertook to provide expedited service, but "due to unforeseen circumstances" was unable to actually delivery within the expedited timeframe.[53] The Commission wholly rejected Verizon's argument:

> The underlying purpose of the expedited charge is to permit a CLEC to receive service in a shorter period of time provided the CLEC is willing to pay the higher charge for the service. To permit Verizon to retain the expedited charge in those instances when it did not provide the service within the shorter interval would vitiate the purpose of the charge: a CLEC would be paying a higher charge and would not be receiving expedited service.[54]

The Commission thus prohibited Verizon from charging for a service that it did not provide.

As in that case, Verizon is here attempting to levy and collect millions of dollars from Sprint for a service that Verizon admittedly did not provide. While Verizon argues that its tariff applies, Verizon's own tariff requires Verizon to "*record and transmit* call details to the

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[50] *Id*.

[51] *Id*. at 9-10.

[52] Case No. 98-C-1357, *Proceeding on Motion of the Commission to Examine New York Telephone Rates for Unbundled Network Elements*, Order Denying Rehearing Petitions, at 7-10 (issued Feb. 6, 2003).

[53] *Id*. at 8.

[54] *Id*. at 9.

terminating [carrier]" in order to charge the RPC.[55] Yet, Verizon openly admits that Sprint has been charged RPCs in millions of instances in which Verizon did not transmit the associated call record to the terminating carrier.[56] Verizon has thus not even provided the service defined in the tariff to which the RPC applies.

The Commission is not faced here with a few instances of records not being provided. Rather, the surprising fact is that Verizon has delivered the call record for just one out of every four calls on which Verizon has levied the Record Processing Charge. For the other 75% of the RPCs, Verizon levied the charge without delivering the product.[57]

In response to a discovery request, Verizon asserts that "the provision of records to terminating carriers is an integral part of that [tandem transit] service."[58] Thereafter, upon recognition of (a) the fact Verizon does not deliver records for three out of every four transit calls, and (b) the inability to collect for a product not delivered, Verizon then attempted to revise the purported justification for its charges, by claiming that "the *offering* of records to terminating carriers is an integral part of that service."[59] This assertion of being able to charge for a product not provided, simply by virtue of "offering" the product, is patently absurd.

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[55] Appendix A, Verizon PSC Tariff No. 8--Communications, § 6.3.3(B), at A-2. (*emphasis added*)

[56] Verizon Response to Sprint Interrogatory No. 22, dated May 20, 2011 and Third Supplemental Response of Verizon to Sprint's Second Set of Discovery Requests, dated July 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 266, 313, and 187, 191, respectively).

[57] These figures derive from data produced by Verizon during discovery, noted above, which reveal that during the parties' period September, 2006 through April, 2011, of the approximately **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL].

[58] Verizon Response to Sprint Request to Admit No. 3, dated July 7, 2011 (Discovery Appendix to Sprint Initial Brief, at 200) (*emphasis added*).

[59] Verizon Additional Supplemental Response to Sprint Request to Admit No. 3, dated October 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 44) (*emphasis supplied by Verizon*).

Since Verizon is not delivering the records for the great majority of the calls, Verizon is apparently claiming that just the recording of the call info somehow justifies its assessment of the full RPC. This claim likewise suffers from numerous defects.

Foremost is the fact that Verizon records call information for its own benefit. Verizon, not wishing to be billed as the call originator, has a real incentive to ensure originating call information is preserved. Verizon has made that clear in correspondence to the Commission, noted above. Should a terminating carrier attempt to bill Verizon as the originator, as opposed to the transit provider, Verizon can produce the transit call record in defense of that invoice. Verizon recordation of the call information is thus self-serving.

Verizon is already, aside from the RPC, charging each carrier for transiting the traffic on a per-minute basis. The robust per-minute charge is ostensibly assessed to cover, *inter alia*, the switching cost – which likewise also encompasses the recordation capability.

Verizon also records call information for many other purposes – including Verizon's own billing. "The records that are delivered on request to terminating carriers are copied from transit records generated for internal billing use by Verizon."[60]

The recordation function also underlies several different, overlapping charges. Verizon has stated that "each of the following services provide — or may in some applications provide — usage records to terminating carriers":

- Tandem Subtending Arrangements (offered under Verizon Tariff PSC No. 8, §§ 7.1.7 and 35.7.2)
- Daily Usage Feeds (provided as described in Verizon Tariff P.S.C. No. 10, §§ 5.6.1.5, 5.6.1.7(I))

[60] Verizon Response to Sprint Interrogatory No. 49, dated October 24, 2011 (Discovery Appendix to Sprint Initial Brief, at 5-6) (*emphasis added*).

- Billing and Collection Recording Service (offered under Verizon Tariff PSC No. 11, §§ 8.1 and 30.8.1)
- 800 Call Record Processing (offered under Tariff PSC No. 8, §§ 9 and 35.9.1)[61]

It is thus established that Verizon is not recording call information for the transit calls solely for its record processing product. Rather, the same information is being recorded by Verizon independent of the RPC, and Verizon is charging for that same recordation several times over.

Furthermore, Verizon's processes and procedures for tracking terminating carriers' record delivery preferences are sporadic and unreliable. According to Verizon, each carrier to whom Verizon delivers transit traffic indicates on its customer profile form, among other things, whether or not it wishes to receive call termination records from Verizon, including the mode of delivery desired and details such as delivery frequency.[62] However, those options are not clearly specified on the Verizon profile form.

Despite requests, Verizon did not provide Sprint with copies of these customer profile forms for terminating carrier, but produced instead lists of carriers wish to receive records and

[61] Verizon Supplemental Response to Sprint's June 27, 2011 Discovery Requests, Interrogatory No. 42, dated July 14, 2011 (Discovery Appendix to Sprint Initial Brief, at 179-180). Verizon also notes, in that same response, that Verizon entities operating under the Verizon Business name offer various services "that entail delivery of calls to other carriers" that, in providing these services, Verizon Business "generally provides usage records to the carrier to which it hands off the traffic, and these records generally identify the originating carrier" and that Verizon Business "does not impose a separate charge for providing such records."

[62] Verizon Response to Sprint Document Request No. 1, dated December 14, 2009 (Discovery Appendix to Sprint Initial Brief, at 322-323).

those carriers that do not.[63] Verizon needed to correct the information initially produced, to identify various carriers as actually "receiving records" and "not receiving records."[64]

Verizon also stated that carriers may change their preferences over time via a process "other than a formal submission of a profile (for example, through a separate request),"[65] and that "in general, wireless carriers receive records (if and when they want them) solely through separate requests."[66] In recognition of the deficiencies underlying its processes, Verizon admits that "it is possible that in some cases carrier's instructions concerning records have changed from time to time."[67]

While several carriers apparently changed their preferences via a "separate request" in the past few years, Verizon failed to produce any documents evidencing any such requests.[68] Verizon simply does not maintain this information in a reliable fashion, leading no doubt to errors in processing and in the assessment of resultant charges.

In addition, not only has Verizon charged Sprint for records Verizon did not provide to carriers who did not want them, but also charged Sprint for records that Verizon failed to provide to carriers who did want them. **[BEGIN CONFIDENTIAL]**

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[63] Verizon Response to Sprint Interrogatory No. 10, dated December 14, 2009, and Verizon Further Supplemental Response to Sprint's Discovery Requests, dated July 21, 2011 (Discovery Appendix to Sprint Initial Brief, at 331, 334-339, and 168-172, respectively).

[64] Verizon Further Supplemental Response to Sprint Interrogatory No. 10, dated July 21, 2011 (Discovery Appendix to Sprint Initial Brief, at 169-172).

[65] Verizon Additional Supplemental Response to Sprint Document Request No. 1, dated September 27, 2011 (Discovery Appendix to Sprint Initial Brief, at 50-51).

[66] *Id.,* and Verizon Further Supplemental Response to Sprint Document Request No. 1, dated July 21, 2011 (Discovery Appendix to Sprint Initial Brief, at 168-169).

[67] *Id*.

[68] *Id*.

[END CONFIDENTIAL] Clearly, Verizon's processes and procedures for tracking terminating carriers' record delivery preferences are haphazard and no doubt fraught with inaccuracies. Apparently, however, these inaccuracies don't stand in the way of Verizon billing Sprint and other carriers the RPC indiscriminately for every call, whether or not the product was actually provided.

Thus, in short, Verizon has improperly charged millions of dollars to Sprint for a service that Verizon has not provided. This is the exact same conduct that the Commission has determined to be unjust and unreasonable, because it is – in the Commission's own words – "unfair" for a carrier to recover for a service that the carrier (Verizon) does not provide and the customer (Sprint) does not receive. The Commission should therefore find at a minimum that Verizon is liable to Sprint for credits and/or refunds for all RPCs that Verizon has billed to Sprint in instances where no records were provided to the terminating carrier.

[69] Verizon Supplemental Response to Sprint Document Request No. 5, dated September 7, 2011 (Discovery Appendix to Sprint Initial Brief, at 155-156, 159).

[70] *Id*.

IV. VERIZON MAY NOT CHARGE THE RPC BECAUSE IT IS UNJUST, UNREASONABLE, DISCRIMINATORY AND ANTI-COMPETITIVE

As a telephone company subject to New York law and Commission regulation, Verizon may only levy and collect charges that are in all respects lawful. As a matter of law and sound public policy, Verizon is likewise prohibited from charging rates and engaging in conduct that is anti-competitive, or in any way discriminatory. Verizon's attempts to charge and collect the RPC fail on all these counts.

New York Public Service Law Section 91(1) requires that every telephone company service "be adequate and in all respects be just and reasonable."[71] Further, the statute provides that "[e]very unjust or unreasonable charge made or demanded for any such service . . . is prohibited and declared to be unlawful." While Verizon in its tariff asserts that the RPC and rate were "issued in compliance with" the Commission's order in Case 98-C-1357, there is simply no analysis in the Commission's Order justifying either (a) Verizon's assessment of the RPC, or (b) the excessively high rate of $0.0102 for the RPC. Indeed, it appears that Verizon was itself concerned about the legality and/or propriety of the charge and rate level, for Verizon did not assess the charge for several years after it appeared in Verizon's old 914 tariff.

Verizon's attempt to charge a carrier for a product not specifically requested (nor even identified) in the carrier's interconnection agreement is not just and reasonable. Verizon's attempt to charge for that unidentified product a rate set forth in Verizon's tariff never referenced nor incorporated is likewise unjust and unreasonable. As discussed above in Section I, the

[71] Every telegraph corporation and every telephone corporation shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. § 91(1). The FCC has similarly determined that whether a tariff is just and reasonable includes the ability to review the terms of the tariff, not just the rates set forth therein. *In the Matter of Sprint v Northern Valley,* FCC File No. EB-11-MD-003, Memorandum Opinion and Order, rel. July 18, 2011.

parties' ICA requires Verizon to provide a specific transit service, on terms distinct from Verizon's tariffed transit service, and simply utilizes the same per-minute rate for the transit service. Verizon and Sprint did not agree, and their ICA thus does not identify, that any "records fee" would be assessed by either carrier for the provision of any records to a terminating carrier. Verizon's attempt to now bootstrap through a tariff an additional charge never agreed to by the parties is an unjust and unreasonable practice.

Comparing Verizon's practices with those of other ILECs provides another benchmark of whether Verizon's Records Processing Charge is just and reasonable. Though the vast majority of ILECs do not charge any such fee, one ILEC that does have a fee for records is Qwest.

The Qwest/Sprint Interconnection Agreement is instructive, providing excellent guidance as to (a) the ability of the ILEC to charge the fee, and (b) assessment of the record fee to the terminating carrier rather than the originating carrier. Specifically, in section 7.5 of the Qwest/Sprint Interconnection Agreement, the parties agree that there will be a recordation fee, and that the tandem transit provider will charge it to the terminating carrier.[72]

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[72] Section 7.6 (Transit Records) of the Qwest/Sprint Interconnection Agreement states, in relevant part, the following:

> 7.6.1: Qwest and Sprint will exchange wireline network usage data originated by a wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC Switch, transits Qwest's network, and terminates to Sprint's network. Each Party agrees to provide to the other this wireline network usage data when Qwest or Sprint acts as a transit provider currently or in the future. The Parties understand that this information is Carrier protected information under §222 of the Communications Act and shall be used solely for the purposes of Billing the wireline LEC. Sprint will provide to Qwest information to be able to provide transit records on a mechanized basis when Technically Feasible. This includes, but is not limited to: service center information, Operating Company Number, and state jurisdiction. Qwest and Sprint agree to exchange wireline network usage data as Category 11-01-xx." Additionally, under subsection 7.6.3, it states: "A charge will apply for Category 11-01XX and 11-50-XX records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the Originating Carrier for transit when Technically Feasible. The charge is for each record is listed in Exhibit A of this Agreement." *See also supra* note 9 (listing out Qwest's rates for the recordation fee in each of its ILEC territories).

Given the fact that it is the terminating carrier receiving such call records who benefits from them, by facilitating billings to the originating carrier, the terminating carrier is the only party that should logically be charged for any cost to produce such records. In its dispute with Verizon, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** argues that the RPC is "not only excessive, but unnecessary and assessed against the wrong party in a typical transit call flow."[73] "Because of Verizon's convoluted tariff arrangement, the terminating carrier gets an economic benefit of having the record of the call for which it did not pay … and the originating carrier is paying for records that it does not receive or can use."[74]

Indeed, when terminating carriers face this payment responsibility, many decline such billing records by Verizon, because they have either deployed switching and signaling networks that capture appropriate data or do not generally bill for traffic termination. Thus, to place the proper costs and economic incentives where they belong, the just and reasonable practice for Verizon would be to provide such billing records only to terminating carriers who request them, and recover the cost of providing them from those carriers – not from originating carriers who have no use whatsoever for the billing records. In addition, as discussed above, even looking at Verizon's practices in other states – where Verizon admits it does not assess any similar charges – demonstrates that the practices in New York are not just and reasonable.

As more fully discussed above in Section III, Verizon's practice of billing Sprint for a product that Verizon by its own admission does not provide is perhaps the epitome of an unjust and unreasonable practice. Each subsequent charge and demand is plainly unlawful, as section

[73] Official Dispute Notice dated September 8, 2009, produced by Verizon as Supplemental Production to Document Request No. 5, dated September 7, 2011 (Discovery Appendix to Sprint Initial Brief, at 155-156, 162).

[74] *Id.* at 162-163.

91(1) of the Public Service Law explicitly provides that "[e]very unjust or unreasonable charge made or demanded for any such service . . . is prohibited and declared to be unlawful." Charges and demands for phantom service qualify squarely within this prohibition.

The number, size and nature of the disputes between a variety of carriers and Verizon concerning the RPC reflects the impropriety of the charge. Competitive voice providers, data-centric carriers, ILEC-affiliates, and even competitive tandem providers have all disputed Verizon's RPC. These disputes, which involve millions of dollars and cite a variety of bases, all point to the single inescapable conclusion that the RPC is baseless, unjust and unreasonable.[75]

Verizon has entered into settlements with some of these carriers, writing off the RPCs assessed. In one recent settlement, noted above in Section II, Verizon credited all amounts charged for calls terminating to CMRS providers – though Verizon steadfastly refuses to do the same concerning those same charges to Sprint. Notably, the RPC amounts billed to Sprint for CMRS-bound traffic are exponentially greater. As various provisions of the Public Service Law prohibit discriminatory or disparate treatment from one carrier to another, Verizon has no basis to pursue these RPCs from Sprint.[76]

In addition to having fully credited out equivalent charges to some carriers, Verizon has permitted other carriers to dispute and withhold payment without any action to collect those

[75] One such carrier, having millions of dollars in dispute, has recently advised Verizon that Verizon is seriously understating the amount in dispute between them. Verizon Additional Supplemental Response to Document Request No. 5, dated Sept. 27, 2011 (Discovery Appendix to Sprint Initial Brief, at 51-52, 58).

[76] *See, e.g.,* NY PSL §§ 91, 97. As to another carrier, Verizon has stated that a settlement agreement has been entered into, including terms for assessing RPCs on a going-forward basis, though Verizon has yet to produce that settlement agreement. Verizon Additional Supplemental Response to Document Request No. 5, dated October 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 43-45).

charges. In Verizon's vernacular, each carrier is disputing and "not paying those charges."[77] Verizon's singular insistence that Sprint pay the disputed amounts in full is thus anti-competitive and discriminatory as against Sprint, as these other CLECs against whom Sprint is competing obtain a defacto RPC rate of $0.00. For example, **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] are withholding payment on amounts invoiced for RPC, yet Verizon has not taken any action against these carriers to collect unpaid amounts.[78]

These carriers are making the same argument as Sprint, that Verizon is not permitted to assess the RPC on traffic terminated to wireless carriers and that a reference to the tariff to determine the rate for TTS does not incorporate a rate for an ancillary service, that is records processing and the RPC. Further, Verizon admits that for some carriers it provides TTS but yet does not bill the RPC.[79] These Verizon practices are unjust and unreasonable, and violative of, *inter alia*, PSL § 91(2)(a).[80]

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[77] Verizon Additional Supplemental Response to Document Request No. 5, dated October 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 43-45).

[78] Verizon Additional Supplemental Response to Document Request No. 5, dated September 27, 2011, and Additional Supplemental Response to Document Request No. 5, dated October 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 51-52 and 58-81, and 43-45, respectively). One of these carriers, against which Verizon is already claiming millions of dollars, recently advised Verizon "there still exists a large number of disputes in the categories presented and far in excess monetarily than presented" by Verizon. Correspondence from **[Begin Confidential] [End Confidential]** to Joseph Post, Verizon, dated Sept. 14, 2011, produced with Verizon Additional Supplemental Response to Document Request No. 5, dated October 12, 2011 (Discovery Appendix to Sprint Initial Brief, at 51-52, 58).

[79] Verizon Response to Request to Admit No. 5 and Verizon Response to Interrogatory No. 29, dated July 7, 2011 (Discovery Appendix to Sprint Initial Brief, at 201, and 207, 220-245, respectively).

[80] No telegraph corporation or telephone corporation shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telegraph or telephone or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telegraph or telephone under the same or substantially the same circumstances and conditions.

CONCLUSION

The Commission should find that the attempts by Verizon to levy a Record Processing Charge on Sprint are inappropriate and unsupportable under applicable law and the facts as now established. The Commission has several different grounds to support its finding:

(1) The terms of the Sprint-Verizon Interconnection Agreement do not permit Verizon to charge the RPC to Sprint;

(2) The terms of Verizon's tariff do not permit Verizon to charge the RPC for Sprint-originating traffic that terminated to a CMRS (wireless) carrier;

(3) Verizon is prohibited from charging or collecting the RPC in the instances where Verizon has not provided any associated records to the terminating carrier, and

(4) Verizon is prohibited from charging or collecting the RPC because it is unjust, unreasonable, discriminatory and anti-competitive.

Since Verizon's assessment of the RPC to Sprint is unauthorized and unlawful, Verizon must be ordered to provide to Sprint credits and refunds corresponding to the amounts improperly charged and in some instances already paid.

Dated: November 17, 2011

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Appendix A

Provisions from Interconnection Agreement between Sprint and New York Telephone Company d/b/a Bell Atlantic-New York, approved by the NY PSC in Case No. 99-01389, effective June 23, 2000[81] (the "Sprint/Verizon ICA," or the "ICA"):

Attachment 1, Definitions:

> "Tandem Transit Traffic" or "Transit Traffic" means Telephone Exchange Service traffic that originates on Sprint's network, and is transported through a BA Tandem to the Central Office of a CLEC, ITC, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant BA Tandem to which Sprint delivers such traffic. Pursuant to Section 4 of Part V, Transit Traffic may also mean Telephone Exchange Service Traffic that originates on BA's network, and is transported through a Sprint Tandem to the Central Office of a CLEC, ITC, CMRS carrier, or other LEC, that subtends the relevant Sprint Tandem to which BA delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide "LERG."

Section 4.2, Tandem Traffic Transit Service ("Transit Service"):

4.2.4 Sprint shall pay BA for Transit Service that Sprint originates at the rate specified in Part IV, plus any additional charges or costs the terminating CLEC, ITC, CMRS carriers, or other LEC, imposes or levies on BA for the delivery or termination of such traffic, including any Switched Exchange Access Service charges.

Pricing Schedule, Part IV:

> IV. Tandem Transit Service
>
> The rates for Tandem Transit Service are as set forth in NYPSC No. 914 Tariff, as amended from time to time.

[81] Sprint's Complaint in this matter inadvertently made reference to the prior interconnection agreement between the parties, dated November 15, 1999, rather than the currently effective interconnection agreement referenced herein.

Provisions from PSC NY Tariff No. 8 ("Tariff No. 8"):[82]

6.3.3. Tandem Transit Service (TTS)

A. TTS provides for the exchange of intraLATA traffic between two CLECs where the two CLECs purchase a MPB arrangement for the same Telephone Company access tandem switch. TTS also provides for the delivery of intraLATA traffic between an originating CLEC and a terminating ITC where the CLEC purchases a MPB arrangement under this tariff and the ITC is also connected to the same Telephone Company access tandem switch. TTS is not offered for 500, 700, 900, N11, operator and directory assistance traffic.

B. Where such calls are terminated to the NXX of another CLEC, or an ITC, the Telephone Company will record and transmit call details to the terminating CLEC, or ITC, and will provide tandem switching and transport on these calls.

C. Except as otherwise specified in Section 6.3.3.D, payment of terminating access charges and associated record processing charges for TTS calls will be the responsibility of the originating CLEC. The Telephone Company and the terminating CLEC, or ITC will each bill their appropriate charges to the originating CLEC.

D. The Telephone Company will carry intraLATA local traffic between the Telephone Company's meet point with an ITC and the Telephone Company's point of interconnection with a CLEC (Shared Transport – Independent CLEC (STIC)). These calls will be carried, using shared transport, only when the total monthly call volume does not exceed one DS1 level of capacity on that trunk group or 180,000 minutes of use per month. The CLEC will be charged for completing these calls (refer to PSC No. 918, Section 30.6.1(B)(1), (2) and (3).)

Section 35.6 CLEC Switched Service:

35.6.2 Minutes of Use (MOU) Schedule				
ID	**Service Category**	**Rate Element**	**Rate**	**USOC**
	Meet Point B	Tandem Transit Service (TTS) – Record processing – per record processed	0.0102	
		Tandem Transit Service (TTS) – Shared Transport – Independent/CLEC (STIC) Note: Refer to PSC NY No. 11, Section 30.6.1.(B)(1), (2) and (3)	See Note	

[82] Verizon's Tariff No. 8 was amended effective January 3, 2011 to include wireless/CMRS providers in Section 6.3.3. At the time Sprint's complaint was filed in 2008 and at all times prior to January 3, 2011, CMRS providers were omitted from this provision.