brief

Verizon New York Inc.
1095 Avenue of the Americas
Room 3745
New York, NY 10036
Tel 212 395-6515
Fax 212 768-7568

Sandra Dilorio Thorn
Vice President & General Counsel, NY & CT

verizon

ORIG FILES
C 01-C-1787
24 COPIES DIST
PER LIST

May 24, 2002

BY HAND

Honorable Janet Hand Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 01-C-1787

Dear Secretary Deixler:

Enclosed please find an original and twenty-five (25) copies of Verizon New York Inc.'s Initial Brief.

Respectfully submitted,

Sandra Dilorio Thorn

Enclosure

cc: Honorable William Bouteiller (By E-Mail and Hand)
Keith Roland, Esq. (By E-Mail and Overnight Delivery)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Interactive Information Network, Inc. for Arbitration of Interconnection Terms and Conditions and Related Arrangements with Verizon New York Inc.	:	Case 01-C-1787

VERIZON NEW YORK INC.'S INTIAL BRIEF

Sandra DiIorio Thorn
1095 Avenue of the Americas
New York, New York 10036
(212) 395-6515

Leigh A. Hyer
1515 N. Courthouse Road
Arlington, VA 22201
(703) 351-3064

Attorneys for
Verizon New York Inc.

Dated: May 24, 2002

TABLE OF CONTENTS

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Interactive Information Network, Inc. for Arbitration of Interconnection Terms and Conditions and Related Arrangements with Verizon New York Inc.	:	**Case 01-C-1787**

VERIZON NEW YORK INC.'S INITIAL BRIEF

Verizon New York Inc. ("Verizon") hereby submits its Initial Brief in the arbitration between Verizon and Interactive Information Network, Inc. ("iiNET").

I. INTRODUCTION

Verizon continues to have serious concerns regarding the procedural and substantive posture of this arbitration. In contrast to any arbitration in which Verizon has been a party, there currently is ***no*** interconnection agreement language that has been agreed to by both parties. During the negotiations leading up to the filing of the Petition, all negotiations between iiNET and Verizon were based on Verizon's standard template agreement as updated from time to time. iiNET did not dispute the vast majority of that agreement, and proffered alternative contract language only with respect to those sections that govern information services traffic. In its Petition, however, iiNET claimed for the first time that it wished to adopt the existing interconnection agreement between Sprint Communications Company LP ("Sprint") and Verizon (the "Sprint Agreement") pursuant to section 252(i) of the Telecommunication Act of 1996 (the "Act"). In doing so, however, iiNET claimed that it simultaneously had the right to arbitrate modifications to that adopted agreement under section 252(b) of the Act. This, however, is impermissible

as a matter of law. iiNET may either adopt the Sprint Agreement under section 252(i) of the Act, in which case there is no opportunity to arbitrate different terms and conditions, or it may arbitrate any issues with the language in the template agreement that it properly raised in its Petition.

In its testimony, however, iiNET now claims that it wants to do ***neither*** – declining to exercise its section 252(i) opt-in rights, while rejecting the template agreement completely, even with respect to terms and conditions that it has never before disputed.[1] This declaration has left Verizon and the Commission in an awkward position – even if the Commission resolves the discrete issues raised by iiNET in its Petition, there is no agreed-upon "base agreement" into which conforming language may be inserted.

Therefore, Verizon respectfully requests that, as a threshold matter, the Commission rule that, unless iiNET adopts the Sprint Agreement pursuant to section 252(i) and the FCC's opt-in rules, the Verizon template interconnection agreement is the only "base agreement" for any arbitrated terms and conditions. Only then can the Commission resolve the remaining disputed issues raised by iiNET in the arbitration.

II. ISSUES PRESENTED

Pursuant to agreement with Verizon, on October 4, 2001, iiNET reestablished its negotiation start date to June 12, 2001, thereby extending the statutory arbitration window to November 19, 2001 (the 160th day). iiNET submitted its Petition on November 16, 2001, three days before the window closed. In its Petition, iiNET raised four, and *only* four, discrete issues for resolution by the Commission:

[1] Weiss Pre-Filed Testimony at 51-52.

(1) Whether Verizon should be required to deliver calls from its end-user customers to information provider ("IP") customers of iiNET (mandatory delivery of traffic);

(2) Whether Verizon should be required to port existing telephone numbers used by IPs to iiNET after the end of the Transition Period on March 23, 2004 (number porting);

(3) Whether iiNET is entitled to "reciprocal pricing and billing for exchange of information services" through adoption of the Sprint Agreement under section 252(i) of the Act (billing and collections); and

(4) The type of interconnection trunking that will be used to deliver information services traffic from Verizon end-user customers to iiNET (interconnection trunking for information services traffic).

After the statutory window closed, however, iiNET raised three new issues that do not fall within the scope of the four disputed issues listed in the Petition.

(5) Whether iiNET must comply with the provisions in Verizon's template interconnection agreement concerning "geographically relevant interconnection points," or "GRIPs," which apply to the exchange of local interconnection traffic;

(6) Whether Verizon should be required to pay iiNET reciprocal compensation for information services traffic originating with Verizon's end-user customers and terminating to iiNET's information provider customers; and

(7) Whether iiNET is entitled to a longer contract duration than that provided either under Verizon's template interconnection agreement, or under the Sprint Agreement.

As Verizon explained in its April 25, 2002 Motion to Strike,[2] the Commission does not have the statutory authority to resolve these new issues in this arbitration. Section 252(b) of the Act is crystal clear that the Commission must limit its consideration of any petition for arbitration to issues that are set forth in the petition and in the response.[3] In particular, the Act requires that iiNET must raise any issues that it wishes

[2] Verizon incorporates all of the arguments in its Motion to Strike as if fully set forth herein.

[3] 47 U.S.C. § 252(b)(4)(A).

to arbitrate – both explicitly and in detail – no later than the 160th day after negotiations between the parties commenced.[4] This statutory requirement makes good sense. Given the short time frame for concluding arbitration proceedings, it is critical that the parties identify all issues that they wish to arbitrate at the outset of the proceeding so that both the Commission and the respondent know what issues are truly at play. iiNET should not be permitted to ignore the strict pleading requirements of the Act and inject a flurry of new issues after expiration of the statutory arbitration window that it never identified in its Petition.

Nevertheless, in ruling on the Motion to Strike, the Administrative Law Judge ("ALJ") permitted iiNET to present testimony and argument on Issues 5 through 7, and therefore Verizon will address them in this brief. Verizon does so, however, without waiver of its argument that these issues are not properly before the Commission in this arbitration.

In addition, as explained above, there is an additional threshold issue that this Commission must resolve: whether iiNET may use the Sprint Agreement as the "starting point" for negotiations (as opposed to a straight opt-in under section 252(i)), or whether Verizon's standard template agreement is the only available "base agreement" for arbitrating disputed issues in this proceeding. Although the scope of iiNET's opt-in rights was not identified by iiNET as a separate and distinct issue in its Petition or in its testimony, a determination on this question is necessary for resolution of each of the open issues in this arbitration. Therefore, Verizon addresses iiNET's right to adopt the Sprint

[4] 47 U.S.C. § 252(b)(1) & (2)(A).

Agreement separately before arguing the merits on the remaining open issues raised by iiNET.

III. STATUS OF OPEN ISSUES

As a result of the ALJ's ruling on Verizon's Motion to Strike, two of the issues in this arbitration have been significantly narrowed and/or eliminated from the scope of this arbitration. In addition, based on the parties' testimony, it appears that some of the other issues in the arbitration are no longer in dispute. Therefore, Verizon provides the following summary concerning the status of the issues raised in the arbitration by iiNET:

ISSUE 1: Mandatory Delivery of Traffic

As set forth in Verizon's Panel Testimony, Verizon has agreed that, for any ***new*** interconnection agreement between Verizon and iiNET, Verizon will deliver information services traffic to iiNET using the same network architecture that it uses to deliver local interconnection traffic, subject only to customer-specific blocking (at the request of the end-user customer originating the call) and to iiNET's payment of tariffed charges for origination and transport of the calls (as described in Issues 4 and 6).[5] Therefore, there no longer appears to be any outstanding issue with respect to Issue 1 for the purposes of this arbitration. Verizon reserves its right to respond to any arguments to the contrary raised by iiNET in its initial brief.

ISSUE 2: Number Porting

As the ALJ recognized at the hearing, there no longer appears to be any dispute between the parties concerning Verizon's willingness to port information services

[5] Panel Testimony at 17-18, 21-22.

numbers to CLECs prior to March 23, 2004, the end of the Transition Period.[6] Moreover, after March 23, 2004, Verizon will no longer provide InfoFone® service in New York and will return the information services NXX codes it no longer needs to Neustar. It will then be up to Neustar and the FCC – not Verizon – to decide which CLEC will be the new "host for the codes, taking the interests of *all* carriers and their customers into consideration.[7] That determination should not be part of the Interconnection Agreement, nor is it subject to arbitration in this proceeding, a point which iiNET concedes.[8] Therefore, there no longer appears to be any dispute between the parties relating to number porting for the purposes of this arbitration.[9] Verizon reserves its right to respond to any arguments to the contrary raised by iiNET in its initial brief.

ISSUE 3: Billing and Collections

At the hearing, the ALJ granted Verizon's motion to strike iiNET's testimony concerning terms and conditions for billing and collections ("B&C") for information

---

[6] The "Transition Period" refers to the five-year period approved by the Commission in Case No. 78-C-1079, after which Verizon would discontinue its tariffed InfoFone® service in New York. *See Proceeding on Motion of the Commission to Investigate New York Telephone Company's Proposal to Discontinue Offering Information Services,* Case 98-C-1079, Opinion and Order Establishing Terms and Conditions of Service to Information Providers, Opinion No. 99-5, issued March 25, 1999. As set forth in Verizon's Panel Testimony, if an IP served by Verizon's InfoFone® service switches to iiNET as its local exchange carrier prior to March 23, 2004, Verizon would, within six months of such request, provide number portability (with the exception of 900 numbers and Verizon's Time and Weather numbers) to allow the same number used by that IP to be used by iiNET to serve that customer until the end of the Transition Period. (Panel Testimony at 12-15:)

[7] Panel Testimony at 16; *see also* NXX Guidelines § 8.2.1 (providing that codes may be returned to the NANPA if they are "[a]ssigned, but no longer in use by the assignee(s)" or if they are "[a]ssigned to a service no longer offered"). Verizon takes no position on the ultimate assignment of the information services NXX codes.

[8] Weiss Pre-Filed Testimony at 11 ("We realize this needs to be coordinated between iiNET and any other interested CLECs, the Commission and NANPA. To facilitate a smooth transition, this process needs to commence as soon as feasibly possible."); Tr. at 235-36.

[9] Tr. at 244.

services traffic as outside the proper scope of this arbitration proceeding.[10] Therefore, to the extent that iiNET is seeking to include terms for billing and collections for information services traffic in a new interconnection agreement with Verizon, that issue is no longer before the Commission. The ALJ, however, carved out a narrow exception, permitting iiNET to present testimony concerning the billing and collections provisions in the Sprint Agreement, and whether iiNET may adopt those terms to govern the type of information services traffic at issue in this arbitration.[11] Accordingly, Verizon will limit its discussion of billing and collections to this narrow issue.[12]

ISSUE 4: Routing of Traffic

Verizon is willing – as iiNET requested at the February 26, 2002 pre-hearing conference – to route information access traffic over the same interconnection trunks that iiNET uses for the exchange of local interconnection traffic under section 251(b)(5), subject to tariffed per-minute information access charges for origination and transport of such calls, as described in section V below. Under this proposal, iiNET would use the same network architecture that other CLECs use to interconnect with Verizon for the exchange of local interconnection traffic rather than establishing a separate set of information services access trunks to receive incoming information access traffic. The

[10] *Id.* at 245-46.

[11] *Id.* at 246.

[12] At the hearing, iiNET also claimed that it should be permitted to submit testimony and evidence concerning "CMDS" – a clearinghouse mechanism operated by Telcordia – which iiNET erroneously claims is a "billing-collections service" that Verizon provides to other carriers. (Tr. at 232.) Although Judge Bouteiller denied iiNET's request to submit additional testimony concerning CMDS, he left the door open for iiNET to file affidavits on this issue with its brief. In light of the ruling on the Motion to Strike, however, any factual evidence that iiNET may provide concerning CMDS clearly falls outside the scope of this proceeding, since the only purpose of the evidence is to try to claim a right to a similar billing and collection arrangement under state law, *not* under section 251 or 252 of the Act. Accordingly, Verizon reserves its right to respond to and dispute both the relevancy and accuracy of iiNET's arguments concerning CMDS – if any – and to submit responsive affidavits with its reply brief.

terms and conditions that would govern the routing of such traffic are set forth in Verizon's template agreement, and are the same terms and conditions that Verizon currently offers to CLECs in New York for the exchange of local interconnection traffic.[13] Therefore, Verizon does not believe that there is any issue between the parties on the routing of information services traffic. Verizon reserves its right to respond to any arguments to the contrary raised by iiNET in its initial brief.

ISSUE 5: GRIPs

In its testimony, iiNET for the first time raised issues concerning the provisions in Verizon's template interconnection agreement concerning "geographically relevant interconnection points," or "GRIPs," which apply to the exchange of voice local interconnection traffic. As set forth in the Motion to Strike, iiNET did not raise *any* issue concerning the GRIPs language in Verizon's template agreement either in negotiations or in its Petition. Therefore, this Commission does not have the statutory authority to address that issue in this arbitration under section 252(b)(4)(A). Nevertheless, in accordance with the ALJ's ruling on the Motion to Strike at the hearing, Verizon addresses iiNET's arguments concerning Verizon's GRIPs proposal below as an open issue in the arbitration.

ISSUE 6: Reciprocal Compensation

As set forth in the Motion to Strike, iiNET failed properly to address the issue of reciprocal compensation for information services in its Petition, and therefore this Commission does not have the statutory authority to address that issue in this arbitration under section 252(b)(4)(A). Nevertheless, in accordance with the ALJ's ruling on the

[13] Panel Testimony at 17.

Motion to Strike at the hearing, Verizon addresses iiNET's arguments concerning iiNET's demand for reciprocal compensation for information services traffic below as an open issue in the arbitration.

ISSUE 7: Duration of Contract

As set forth in the Motion to Strike, iiNET failed properly to dispute the two-year contract term offered by Verizon for a new interconnection agreement with iiNET, or to claim a right to seek a longer contract duration than set forth in the Sprint Agreement if it adopts that agreement. Therefore, this Commission does not have the statutory authority to address either issue in this arbitration under section 252(b)(4)(A). Nevertheless, in accordance with the ALJ's ruling on the Motion to Strike at the hearing, Verizon addresses iiNET's arguments concerning the duration of the parties' contract below as an open issue in the arbitration.

IV. ADOPTION OF THE SPRINT AGREEMENT

As set forth above, an overarching issue in this arbitration is whether, and to what extent, iiNET may adopt the terms of the Sprint Agreement under section 252(i) of the Act. During the negotiations leading up to the filing of the Petition, all negotiations between iiNET and Verizon were based on Verizon's standard template agreement as updated from time to time. In its Petition, however, iiNET for the first time claimed that, for "basic local exchange dial tone service to end users . . . iiNET is willing to accept and incorporate the terms of the Interconnection Agreement between [Sprint] and [Verizon]."[14] iiNET further stated that it wished to adopt portions of the Sprint

[14] Petition at 3.

Agreement concerning information services, while "chang[ing them] in other respects."[15] iiNET claimed that "Verizon's refusal [to permit it to do so] violates § 252(i)."[16]

As an initial matter, Verizon does not dispute iiNET's right to adopt the Sprint Agreement – verbatim – under section 252(i) of the Act. Indeed, Verizon has informed iiNET that it may opt into the Sprint Agreement for a reasonable time, but that it may not alter the terms of the Sprint Agreement in the guise of a section 252(i) adoption.[17] The law is clear that, when adopting an existing agreement under section 252(i), a CLEC must accept "the *same* rates, terms, and conditions as those provided in the agreement" it wishes to adopt.[18] Nor has Verizon ever "refused" to permit iiNET to "pick and choose" portions of another available agreement. However, although iiNET may "pick and choose" sections of an interconnection agreement, it must accept all terms and conditions that are legitimately related to the terms that it wishes to adopt.[19]

In an attempt to avoid this limitation, however, iiNET now claims that "[r]ather than simply 'opting into' the Sprint Agreement, which Verizon insists would require the iiNET/Verizon Agreement to expire in June of 2003, iiNET proposes that all the terms of

---

[15] *Id.*

[16] *Id.* at 13.

[17] *Id.* at 9.

[18] 47 C.F.R. § 51.809(a) (emphasis added); s*ee also* 47 U.S.C. § 252(i) ("A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier *upon the same terms and conditions as those provided in the agreement*.") (emphasis added).

[19] A CLEC seeking to opt into one set of provisions of an interconnection agreement under section 252(i) of the Act must also accept all other terms that are legitimately related to the desired provisions. *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, rel. August 19, 1996, at ¶ 1315 ("Local Competition Order"); *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999) (upholding the FCC's "pick and choose" rules).

the existing Sprint Agreement be ***lifted*** and put into a separate and distinct iiNET/Verizon Agreement, subject to modifications with respect to the areas identified by iiNET . . . which need to be changed."[20] iiNET, however, cannot evade the requirements of the Act and the FCC's rules by playing this game of semantics. Regardless of whether iiNET calls it an "adoption" or an "opt in" or a "lifting" of terms, federal law clearly prohibits the type of "hybrid" procedure proposed by iiNET in this proceeding.[21]

Indeed, the FCC clearly recognized in the First Report and Order that interconnection agreements are time-sensitive documents that have a limited useful life. Thus, it would be unfair to extend the terms of an existing agreement beyond the time frame agreed upon by the original parties by using those terms as a "starting point" for a supposedly "new" interconnection agreement.[22] The Sprint Agreement is entering its third, and final, year and does not reflect the current regulatory environment – including Verizon's withdrawal from the information services market in New York. These stale

---

[20] Weiss Pre-Filed Testimony at 51-52 (emphasis added).

[21] For example, in *Bell Atlantic-Delaware, Inc. v. Global NAPS South, Inc.*, the Delaware Public Service Commission permitted Global NAPs to opt into an existing agreement between Bell Atlantic-Delaware Inc. and MFS Intelenet of Delaware, Inc. (the "MFS Agreement"). In doing so, however, the Delaware PSC approved an arbitration award that extended the expiration date of the MFS Agreement beyond its original term. On appeal, the United States District Court for the District of Delaware overturned the arbitration award on the ground that, under section 252(i), "a carrier opting into an existing agreement takes *all the terms and conditions of that agreement 'including its original expiration date.'*" *Bell Atlantic-Delaware, Inc. v. Global NAPs South*, 77 F. Supp. 2d 492, 503 (D. Del. 1999) (citing *In the Matter of Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc.*, 14 FCC Rcd. 12530, ¶ 8 n.25 (1999)). In other words, the district court squarely held that Global NAPs could *not* alter the terms of an adopted agreement through section 252(b) arbitration. This holding applies with equal force to iiNET's Petition – iiNET cannot adopt portions of the Sprint Agreement, while simultaneously changing the terms of the Sprint Agreement and extending them beyond their original term.

[22] *See* Local Competition Order at ¶ 1319 (1996).

terms simply are inappropriate for use as the basis for a new interconnection agreement with iiNET that would extend beyond the end of the Transition Period.[23]

Therefore, as set forth in Verizon's Panel Testimony, unless iiNET adopts the Sprint Agreement (or another available agreement) under section 252(i) (including its expiration date and all legitimately related terms and conditions), Verizon's current, updated template agreement is the only appropriate "starting point" for negotiations between iiNET and Verizon.[24] iiNET may take that template agreement "as is," or it may arbitrate any issues with the language in the template agreement that it properly raised in its Petition.[25] What it may not do, however, is simply "lift" portions of the Sprint Agreement and insert them into a new agreement without reference to the requirements of section 252(i) of the Act.

[23] Panel Testimony at 36.

[24] Adoptions under section 252(i) are separate and apart from arbitrations under section 252(b). Therefore, to the extent that iiNET adopts the Sprint Agreement under section 252(i), its Petition for Arbitration is moot. If iiNET decides to pick and choose only certain portions of the Sprint Agreement, it may do so as long as it takes all legitimately related terms and conditions, including the expiration date associated with those provisions. The Petition would then be moot insofar as it addresses issues covered by the adopted portions of the Agreement. For example, if iiNET adopts the sections of the Sprint Agreement that apply to local interconnection traffic, it may not arbitrate different or additional terms and conditions for the adopted sections (such as a new expiration date or different requirements for POIs or interconnection points), even though it might still be entitled to arbitrate terms that would govern other, unrelated sections on the agreement (such as the UNE or resale sections).

[25] Panel Testimony at 37.

V. ARGUMENT ON OPEN ISSUES

ISSUE 3:

The Sprint Agreement Does Not Contain Specific Terms and Conditions That Would Apply to Billing and Collections for Information Services Traffic Originated by Verizon's End Users and Delivered to iiNET's Information Services Platform.

As explained above, iiNET may exercise whatever rights it has to adopt the terms and conditions of the Sprint Agreement for a reasonable time under section 252(i). This, however, is clearly *not* what iiNET is requesting in this arbitration. Indeed, the Sprint Agreement does not contain specific terms and conditions for billing and collections for information services traffic originated by Verizon's end users and delivered to Sprint's information services platform. Rather, that agreement merely provides that "[a]t such time as SPRINT connects information services platforms to its network, the Parties shall agree upon a comparable arrangement for [Verizon]-originated Information Services Traffic."[26] Verizon and Sprint have never negotiated such a "comparable" arrangement, and therefore there are no specific terms in the Sprint Agreement that govern information services traffic from Verizon end users to Sprint's IP customers. Therefore, there is nothing for iiNET to "adopt" under section 252(i).

Of course, iiNET would obtain the right to *negotiate* a "comparable" arrangement by adopting the information services sections of the Sprint Agreement under section 252(i). However, such a "comparable" arrangement would not apply to information services traffic from Verizon's end-user customers to iiNET's IP customers after the Transition Period, which ends March 23, 2004. The Sprint Agreement expires on June 23, 2003, almost a year before the end of the Transition Period, and thus any

[26] Sprint Agreement at § 4.1.

"comparable" terms and conditions negotiated thereunder would also expire on that date. Obviously, the Sprint Agreement was never intended to apply to the exchange of information services after Verizon exits the market in New York in March 2004, since the agreement would have expired and there would be no "comparable" terms and conditions that could possibly apply.

Furthermore, if (as iiNET contends) a "comparable" arrangement for delivery of information services traffic from Verizon to iiNET must be "reciprocal," it would necessarily have to include all other terms and conditions that apply to the delivery of information services traffic from Sprint to Verizon.[27] This includes Sprint's option not to deliver information services traffic to Verizon at all. As explained above, iiNET cannot have it both ways by forcing a supposedly "reciprocal" agreement with respect to terms and conditions that it likes (such as the B&C rates), while ignoring those that it dislikes (such as the option to block the traffic altogether).

At any rate, the terms and conditions of such a "comparable" arrangement are not properly subject to arbitration in this proceeding at all.[28] iiNET has no right to negotiate an arrangement for B&C for information services traffic that is "comparable" to the

[27] Of course, the Sprint Agreement does not provide for a "reciprocal" arrangement – it only requires a "comparable" one, which may take the unique circumstances of the parties into consideration. If the parties had intended a completely reciprocal arrangement, there would have been no need to negotiate anything new – "comparable" or otherwise.

[28] Terms and conditions for billing and collection need not be included in an interconnection agreement at all, since B&C services are not UNEs that fall within the scope of Verizon's obligations under sections 251 and 252 of the Act. The "comparable" arrangement contemplated in the Sprint Agreement would not have been subject to sections 251 and 252 of the Act, and therefore would not have been submitted to the Commission for approval thereunder. Indeed, the Commission long ago held that non-bottleneck components of B&C are competitive and detariffed them. Therefore, the specific terms of an agreement for B&C services are not subject to the scrutiny of the Commission as long as they are offered on a nondiscriminatory basis under state law. *See Proceeding on Motion of the Commission to Review Telecommunications Industry Provision of Billing and Collection Services to Third Parties; Proceeding on Motion of the Commission to Review Proposed Restrictions on the Use of Interactive Network Services*

arrangement for information services traffic in the Sprint Agreement unless and until it adopts the information services sections of the Sprint Agreement – including the expiration date that applies to those terms – pursuant to section 252(i) of the Act. iiNET, however, has not done so and, in fact, has indicated that it does not wish to exercise its section 252(i) rights at all.[29] Therefore, iiNET has no legal basis on which to demand an arrangement "comparable" to the arrangement in the Sprint Agreement in the first place. iiNET's arguments concerning the meaning and import of the provisions of the Sprint Agreement are legally irrelevant and should be ignored.

ISSUE 5:

The GRIPs Provisions in Verizon's Template Are a Just and Reasonable Means of Allocating the Costs of Transporting Calls Fairly Between Verizon and iiNET, and Should Be Adopted by the Commission for the Parties' Interconnection Agreement.

As set forth above, Verizon is willing – as iiNET requested at the February 26, 2002 pre-hearing conference – to route information access traffic over the same interconnection trunks that iiNET uses for the exchange of local interconnection traffic under section 251(b)(5), subject to tariffed per-minute information access charges for origination and transport of such calls, as described in Verizon's Panel Testimony.[30] Under this proposal, iiNET would use the same network architecture that other CLECs use to interconnect with Verizon for the exchange of local interconnection traffic rather than establishing a separate set of information services access trunks to receive incoming information access traffic. The terms and conditions that would govern the routing of

---

and Billing Name and Address Service, Cases 89-C-191 and 90-C-0165, Opinion No. 90-33, issued December 28, 1990 ("Billing and Collections Order").

[29] Weiss Pre-Filed Testimony at 51-52.

[30] Panel Testimony at 17.

such traffic are set forth in Verizon's template agreement, and are the same terms and conditions that Verizon currently offers to all CLECs in New York.

iiNET, however, now claims that it should not be required to accept certain provisions in the template agreement concerning geographically relevant interconnection points, or "GRIPs." Rather, iiNET wants to take advantage of the provisions in the Sprint Agreement relating to local interconnection traffic, which do not include terms and conditions for GRIPs. As Verizon has repeatedly indicated, however, iiNET is free to adopt the Sprint Agreement under section 252(i) and the FCC's adoption rules, as long as it accepts all legitimately related terms and conditions (including the expiration date). If it chooses to do so, no GRIPs provisions would apply for the remainder of the Sprint term. If, however, iiNET does not exercise its section 252(i) opt-in rights, the terms of the Sprint Agreement are not otherwise available to iiNET, either in whole or in part. In such case, the only other language that has been proffered by either party in this arbitration is set forth in Verizon's template agreement, which *does* include GRIPs provisions. As set forth in Verizon's Motion to Strike, iiNET did not raise *any* issue concerning the GRIPs language in Verizon's template agreement either in negotiations or in its Petition, and thus it failed to preserve this issue for purposes of the arbitration. More fundamentally, however, the GRIPs provisions in Verizon's template agreement – far from being "one-sided" or "overreaching," as iiNET claims[31] – are an important means of allocating the costs of transporting calls fairly between Verizon and iiNET, and should be adopted by the Commission for the parties' interconnection agreement.

[31] Weiss Pre-Filed Testimony at 51.

As explained in Verizon's Panel Testimony, an "interconnection point" is different than a "point of interconnection," or "POI," as those terms are used in Verizon's template interconnection agreement.[32] A POI is the physical location at which the ILEC and CLEC interconnect their respective networks. An interconnection point, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an interconnection point *may* be at the same place, but they do not have to be. Even though traffic is physically on one party's network, the second party may still bear financial responsibility for the traffic over that segment by purchasing transport from the first party. In such a case, the POI and the interconnection point are at different points. Pursuant to Verizon's proposal, Verizon is financially responsible for delivering its traffic to the CLEC's interconnection point. Once Verizon delivers traffic originating on its network to the CLEC's interconnection point, then the CLEC is financially responsible for transporting the traffic to its customer.[33]

Therefore, GRIPs is merely a means of allocating fairly the transport costs between Verizon and CLECs when Verizon delivers originating traffic from a local calling area to a CLEC POI that is located outside of that local calling area.[34] As the Verizon Panel explained, iiNET wants Verizon to bear the full transport cost when Verizon delivers originating traffic from a local calling area to a distant iiNET POI (*i.e.*, physical point of interconnection) located within the LATA but outside of that local

---

[32] Panel Testimony at 18. An "interconnection point" is commonly referred to as an "IP." However, because an "information provider" is also referred to as an "IP," Verizon will not abbreviate "interconnection point" in this brief.

[33] *Id.* at 18-19.

[34] *Id.* at 19.

calling area. Verizon's position is that the interconnection point, or location where financial responsibility shifts from Verizon to a CLEC, should be located at a much more reasonable location so that the transport costs are fairly allocated between the carriers.[35]

The GRIPs issue is *not* whether a CLEC has the right to choose the location of its POI within Verizon's network. It unquestionably does. Rather, the issue is whether a CLEC should be financially responsible for its POI location decision.[36] If there is no financial accountability for a CLEC when it comes to the location of its physical POI, then the transport costs associated with hauling local calls outside of the local calling area to the distant CLEC POI are unfairly shifted entirely to Verizon. This encourages inefficient behavior by CLECs and is fundamentally unfair to Verizon. As the Verizon Panel testified, this inequity is magnified in iiNET's case because it appears that iiNET has no desire to deploy its own network facilities, or to establish multiple locations to serve customers in New York, but is simply looking to Verizon and the rest of the world to transport all traffic to its door – just like iiNET currently does when it uses Verizon's retail InfoFone® services as an IP customer.[37] This Commission has expressly recognized that, in these circumstances, Verizon's GRIPs proposal "enjoys a *prima facie* appearance of fairness."[38]

iiNET's arguments against Verizon's GRIPs proposal at the hearing demonstrate that it fundamentally misunderstands the difference between the physical location at

---

[35] *Id.*

[36] *Id.*

[37] *Id.* at 17-18.

[38] *Proceeding on Motion of the Commission to Examine New York Telephone's Rates for Unbundled Network Elements*, Case 98-C-1357, Recommended Decision on Module 3 Issues, issued May 16, 2001, at 211-12.

which the parties interconnect (the POI) and the location at which they hand off financial responsibility for the traffic (the interconnection point). At the hearing, counsel for iiNET argued that Verizon's GRIPs proposal would impose "huge trunking costs, huge co-location costs" on iiNET.[39] He further questioned the Verizon Panel concerning the number of interconnection points iiNET would be required to establish and whether Verizon's GRIPs proposal would "require a carrier to collocate [at] the Verizon facility" at each interconnection point.[40] However, Verizon's witness, Pete D'Amico, explained that Verizon's GRIPs proposal *does not* necessarily require collocation – nor could it, since (as the Panel Testimony makes clear) CLECs are not required to establish new physical POIs at each geographically relevant interconnection point.[41] Indeed, it is quite possible to have a single POI and multiple IPs. As Mr. D'Amico testified, Verizon's GRIPs proposal is flexible enough to accommodate the specific circumstances of the parties' interconnection, and is not intended to impose undue burdens on the CLEC. Rather, it is intended *only* "to address specific scenarios where Verizon is hauling calls large distances or relatively large distances and yet they're being treated as a local call."[42] Therefore, iiNET's claim that it would incur inappropriate trunking and collocation costs as a result of Verizon's GRIPs proposal has no support whatsoever in the record.

[39] Tr. at 221.

[40] *Id.* at 295.

[41] *Id.* at 295; Panel Testimony at 18.

[42] Tr. at 294-95.

ISSUE 6:

Verizon Should Not Pay Reciprocal Compensation to iiNET for Delivery of Pay-Per-Call Information Services Calls to iiNET's IP Customers.

In its recent ISP Remand Order, the FCC held that information services traffic is not subject to reciprocal compensation under the Act. In that Order, the FCC determined that the reciprocal compensation obligation under section 251(b)(5) does not apply to "exchange access, ***information access***, and exchange services for such access."[43] The FCC further held that, for purposes of its rules, "information access" would "incorporate the meaning of the phrase 'information access' as used in the AT&T Consent Decree" set forth in *United States v. AT&T*.[44] The Consent Decree defined "information access" as "the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."[45] This definition includes origination, termination, transmission, switching, forwarding and routing of the type of intrastate information services at issue in this arbitration.

iiNET, however, claims that the FCC's definition of "information services" only includes "internet related" calls, not "voice calls similar to calls completed to telephone

---

[43] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, rel. April 27, 2001, at ¶ 34 (emphasis added) ("ISP Remand Order"), *remanded but not vacated, WorldCom, Inc. v. FCC*, __ F.3d __, Nos. 01-1218 *et al.* (D.C. Cir. May 3, 2002).

[44] *See* ISP Remand Order at ¶ 44 (citing *United States v. AT&T*, 552 F. Supp. 131, 196, 229 (D.D.C. 1982)).

[45] *Id.*

answering services and voice mail platforms."[46] This is simply not the case. Although the FCC's Order focused on calls to Internet Service Providers ("ISPs"), the FCC did not state that ISP-bound calls are the ***only*** type of calls that fall within the category of "information services" under the Consent Decree. To the contrary, the FCC held that "this definition of 'information access' was meant to include all access traffic that was routed by a LEC 'to or from' providers of information services, of which ISPs are a ***subset***."[47] In fact, "information services" as defined in the Consent Decree includes far more than just "Internet-related" calls, as iiNET contends – the term is broadly defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing. . . ."[48] These are precisely the services that iiNET and other information providers currently provide using Verizon's tariffed information access services.[49] Accordingly, the transport and termination of such traffic is included within the definition of "information access" under the Act.[50]

---

[46] *See* February 5, 2002 Letter from Keith J. Roland to Janet H. Deixler, at 2. Contrary to iiNET's claim, "information services" in the Consent Decree include not only internet-related or other data calls, but also audio services "includ[ing] information retrieval, automatic telephone answering services, and electronic publishing." *AT&T*, 552 F. Supp. at 141, n.40.

[47] *See* ISP Remand Order at ¶ 44.

[48] *AT&T*, 552 F. Supp. at 179; 47 U.S.C. § 3(20).

[49] These access services, offered under the brand name of "InfoFone®," are offered directly to information providers under Verizon PSC NY No. 1 Tariff, Section 2 and Section 13.

[50] Soon after the hearings in this arbitration the United States District Court for the District of Columbia remanded the *ISP Remand Order* to the FCC for clarification of its reasoning. *WorldCom, Inc. v. FCC*, __ F.3d __, Nos. 01-1218 *et al.* (D.C. Cir. May 3, 2002). In so doing, however, the court explicitly declined to vacate the order. Slip op. at 9. Therefore, the court left the *Remand Order* in place and "simply remand[ed] the case to the Commission for further proceedings." *Id.* The D.C. Circuit's refusal to vacate the *Remand Order* means that the order – including its holding that information access traffic is not subject to the reciprocal compensation requirement in section 251(b)(5) and its regulations implementing that holding – is still valid and legally binding. *See, e.g., National Lime Ass'n v. EPA*, 233 F.3d 625, 635 (D.C. Cir. 2000) (regulations that are remanded but not vacated are "le[ft] . . . in place

Although the specific compensation regime adopted by the FCC applies only to ISP-bound traffic, the same policy rationales that led the FCC to eliminate the traditional "calling-party-network-pays" regime for ISP-bound traffic are equally applicable to the intrastate information services traffic at issue in this arbitration.[51] Like ISP-bound traffic, information services traffic is exclusively one-way, and the same opportunity for regulatory arbitrage described by the FCC in its ISP Remand Order exists when carriers recoup the cost of terminating traffic from originating carriers rather than from their own IP customers.[52] Moreover, providers of pay-per-call information services using the 976, 550, 540, 970, or similar exchanges recover fees from Verizon's end-user customers.[53] The fees that the IP assesses for the call should include the CLEC's costs of terminating the call. There is no reason why Verizon and its subscribers should have to *subsidize* those callers who use information services by paying those costs.[54] Therefore, this Commission should not impose reciprocal compensation charges for transport and termination of intrastate information services calls.

---

during remand"); *Sierra Club v. EPA*, 167 F.3d 658, 664 (D.C. Cir. 1999) (same). Therefore, the FCC's *ISP Remand Order* remains binding federal law and continues to govern the issue here.

[51] Although the FCC adopted an interim regime to gradually phase out intercarrier compensation for ISP-bound traffic, this regime does not apply to new carriers entering the market, such as iiNET. New carriers receive no intercarrier compensation for ISP-bound traffic. ISP Remand Order at ¶ 81.

[52] *See* ISP Remand Order at ¶ 68 (describing the inaccurate price signals inherent in a "calling party network pays" regime, giving carriers "the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic").

[53] Indeed, some of these fees are as high as $15 or more. *See* Tr. at 354.

[54] The FCC expressly denounced the uneconomic signals that result from such carrier subsidization. The FCC noted that moving away from a "calling-party-network-pays" regime for ISP-bound traffic "may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery. As a result, the rates paid by ISPs and, consequently, their customers should better reflect the costs of services to which they subscribe. Potential subscribers should receive more accurate price signals, and the market should reward efficient providers." ISP Remand Order at ¶ 74.

In fact, if anything, it is *Verizon* who should be compensated for providing access to its network for delivery of pay-per-call information services traffic to a CLEC's IP customers – just as it is compensated by its own IP customers for the use of its network today. Indeed, calls from Verizon's end-user customers to pay-per-call information services providers have never been treated as local calls, and are not included in the basic charge for telephone exchange service. Instead, these calls are handled on a "called party pays" basis – *i.e.*, Verizon recovers a fee for the use of its network from the IP subscriber receiving the call (either directly from the IP, or by billing its end-user customer pursuant to billing and collections arrangements with the IP). This charge currently is reflected as a "network usage" or "call origination and transport" charge in Verizon's PSC NY No. 1 tariff for both 976 MAS service and variable rate information services.[55]

Of course, after March 23, 2004, Verizon will no longer offer these tariffed information access services directly to IPs. However, IPs that subscribe to a CLEC's information services platform must still obtain access to Verizon's network if they wish to receive calls from Verizon end users. Verizon is still entitled to compensation for the use of its network for originating and transporting these calls. The only difference from a compensation perspective is that the IP is now a CLEC subscriber with no direct contractual relationship with Verizon. Therefore, Verizon must obtain compensation for the use of its network either from the interconnecting CLEC or from its end-user subscriber who originates the call.

Verizon originally indicated during negotiations with iiNET that it would amend its retail tariff to charge its end-user customer on a per-minute basis for information

[55] *See* PSC NY No. 1 Tariff § 2(N)(2)(d), § 13(A)(6)(b).

services calls to dedicated information services NXX codes, using call data to separately identify information services traffic by NXX code.[56] After further consideration, however, Verizon determined that such a charge – in addition to separately billed charges assessed by the CLEC's IP customer – might be confusing to the end-user customer, creating an impression of double-billing (although no "double-billing" would actually occur).[57] Therefore, Verizon instead will assess tariffed per-minute charges to the carrier – through an amendment to its intrastate tariff, NY PSC No. 8 – for origination and transport of intrastate information services traffic from Verizon end users to the carrier whose information provider customer has its information services platform connected, and using dedicated pay-per-call information services NXX codes. These charges would be assessed to the carrier in lieu of charging the originating end user the appropriate local or toll charges.[58] The CLEC may then pass those charges through to its own information provider customer, thus ensuring that the price of pay-per-call information services offered by the information provider accurately reflects the cost of providing those services and are not subsidized by Verizon and its subscribers.

This tariff amendment would apply equally to all carriers, and would be incorporated by reference into the Interconnection Agreement between Verizon and iiNET. However, the generally applicable rates, terms, and conditions for this

[56] Unlike calls to Internet Service Providers (which are not associated with unique NXX codes), these calls can be separately identified by NXX code and segregated from section 251(b)(5) reciprocal compensation traffic. Therefore, there is no need to apply presumptions based on traffic ratios for intercarrier compensation purposes. The proposed arrangement would not just apply to the existing NXX codes used for providing pay-per-call information services; iiNET will be required to inform Verizon if it obtains new NXX codes for pay-per-call information services so they can be properly rated and so that Verizon can offer its customers the ability to block the calls.

[57] Tr. at 152.

[58] Panel Testimony at 17.

information access service offering are not properly subject to arbitration in this bilateral arbitration proceeding. Rather, to the extent that iiNET wishes to dispute the terms of Verizon's proposed tariff, it must do so as a separate challenge, the same as any other interested party.[59]

ISSUE 7:

If iiNET Adopts the Sprint Agreement in Whole or in Part, It Is Bound by the Expiration Date of That Agreement, And If It Negotiates From the Verizon Template Agreement, It Should Be Bound by the Two-Year Term Offered by Verizon During Negotiations.

As set forth above in section III, if iiNET adopts the terms of the Sprint Agreement, either in whole or in part, it is bound by the expiration date of those terms – June 23, 2003. The duration of those contract terms is not subject to arbitration under section 252(b). If, however, iiNET chooses to negotiate an agreement based on Verizon's standard template, Verizon still should not be required to offer a three-year term to iiNET, rather than the two-year term that it presently offers other CLECs for new agreements. As explained in Verizon's Panel Testimony, the telecommunications industry and the regulations governing telecommunications change at a rapid pace. Interconnection terms and conditions become stale quite quickly, no longer conforming to technical and regulatory developments, and thus shorter contract terms are desirable for *both* parties.[60] Moreover, iiNET's claims that it will be unable to raise the necessary investment without the certainty of a three-year agreement are speculative at best. iiNET certainly has other options for obtaining interconnection from Verizon – for example, it

[59] *Id.* at 17-18.

[60] *Id.* at 38. Although in some circumstances, the contract duration may be negotiable, Verizon will not voluntarily agree to a longer contract term where, as here, iiNET is overreaching in its requests, such as demanding that Verizon provide below-market billing and collections services for information services traffic as part its interconnection agreement.

may elect to purchase interconnection arrangements or UNEs out of Verizon's tariffs, if not otherwise prohibited under its interconnection agreement. This includes interconnection for the routing of information services traffic pursuant to Verizon's proposed tariff amendment.[61] Therefore, the Commission should order that, if iiNET adopts the Sprint Agreement, it is bound by its expiration date as well, or if it chooses to negotiate an agreement based on Verizon's standard template, that new agreement should have a term of two years from the effective date.

VI. CONCLUSION

For the foregoing reasons, the Commission should rule that iiNET may not opt into the Sprint Agreement – in whole or in part – unless it accepts all terms and conditions that are legitimately related to the terms it wishes to adopt, including the June 23, 2003 expiration date. Similarly, the Commission should order that, unless iiNET exercises its section 252(i) opt-in rights, the Verizon template agreement should serve as the base agreement for any arbitrated provisions. In addition, the Commission should adopt Verizon's position concerning Issue 3, the only issue raised by iiNET in its Petition that is still in dispute between the parties. Finally, the Commission should

[61] *Id.* at 37.

decline to consider Issues 5 through 7, since they were not properly raised by iiNET in its Petition, and thus are not properly before this Commission under section 252(b)(4)(A) of the Act. In the alternative, the Commission should adopt Verizon's positions on Issues 5 through 7, for the reasons set forth above.

Respectfully submitted,

Sandra DiIorio Thorn
1095 Avenue of the Americas
New York, New York 10036
(212) 395-6515

Leigh A. Hyer
1515 N. Courthouse Road
Arlington, VA 22201
(703) 351-3064

Attorneys for
Verizon New York Inc.

Dated: May 24, 2002