

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Verizon North Inc., Verizon South Inc. And)	
CommPartners, LLC)	
)	
Joint Petition for Adoption of an)	06-0725
Interconnection Agreement Pursuant to)	
47 U.S.C. § 252.)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION’S MOTION TO STRIKE

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code 763 hereby moves for the Administrative Law Judge to strike from the record the COMMPARTNERS ADOPTION LETTER (“ADOPTION LETTER”), filed on e-docket in connection with this proceeding. The subject ADOPTION LETTER is not part of the adopted negotiated agreement to be approved in this docket and is therefore confusing (because it appears to be amending the terms of said negotiated agreement), irrelevant, administratively burdensome, may be discriminatory based on the standards enunciated in Section 252 of the Telecommunications Act of 1996, and its inclusion in to the record is not in the public interest. In support thereof, Staff states as follows:

1. On November 15,2006, Verizon North Inc., Verizon South Inc.

(hereinafter “Verizon”) filed in this proceeding the following documents on e-docket :

- 1) COMMPARTNERS JOINT PETITION;
- 2) COMMPARTNERS ADOPTION LETTER;
- 3) COMMPARTNERS STATEMENT IN SUPPORT;
- 4) COMMPARTNERS ADOPTED AGREEMENT;
- 5) COMMPARTNERS ADOPTED AMENDMENT 1;
- 6) COMMPARTNERS ADOPTED AMENDMENT 2;

- 7) COMMPARTNERS VERIFICATION; and
- 8) VERIZON VERIFICATION.

2. An initial hearing was scheduled for December 12, 2006 by the Administrative Law Judge (“ALJ”) in the above captioned proceeding.

3. On December 8, 2006, notice was sent to the Parties and Staff that the initial hearing was continued until December 19, 2006.

4. On December 15, 2006, attorneys for Staff and Verizon discussed the ADOPTION LETTER and Staff was informed by Verizon’s attorney that the ADOPTION LETTER was not an amendment to the adopted negotiated agreement and was for information purposes only.

5. The subject ADOPTION LETTER has all of the elements of an agreement between the Parties relating to the provisioning of Illinois telecommunication services, including those services that are to be provisioned under the adopted negotiated agreement, and contains terms and conditions, an Appendix with pricing, and a fully executed signature page. Furthermore, even taking into account certain disclaimer language within the ADOPTION LETTER, the ADOPTION LETTER appears to amend or define certain rates and other terms set forth in the adopted negotiated agreement. For example, Section 1(F) of the ADOPTION LETTER states in relevant part:

CP [CLEC] should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort expedite the adoption process, Verizon has not deleted such

rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms. ADOPTION LETTER at 3.

5. The purpose of the ADOPTION LETTER is unclear from either the document or the record and its filing in the record is confusing as information because by its terms it appears to be an amendment of the adopted negotiated agreement. Based on the Joint Petition and Staff's discussions with Verizon's counsel, the ADOPTION LETTER is not part of the AT&T agreement being adopted is not intended to be an agreement of the parties relating to the provisioning of Illinois telecommunication services and is not an amendment of the adopted negotiated agreement and the parties are not requesting the Commission to approve the ADOPTION LETTER under Section 252 of the Telecommunications Act of 1996 or otherwise. Nevertheless, by including the ADOPTION LETTER as an exhibit in the Joint Petition and by the terms within the ADOPTION LETTER, the said document appears to be either an amendment of the adopted negotiated agreement or an agreement to be approved by the Commission under Section 252 of the Telecommunications Act of 1996. Therefore, it is confusing and should be stricken.

6. The terms of the ADOPTION LETTER are themselves confusing even on an informational basis in that it is unclear when and how the specified rates apply, how

certain rates are determined, who determines whether the rates in the ADOPTION LETTER are controlling or are legally binding upon the parties. See, ADOPTION LETTER at 3.

7. Furthermore, if the ADOPTION LETTER is not an amendment of the adopted negotiated agreement or an agreement to be approved by the Commission under Section 252 of the Telecommunications Act of 1996, as counsel for Verizon indicates, it is irrelevant to this proceeding and on that basis alone should be stricken. Informational filings, especially confusing ones, are not in the public interest when the said filing has not been apart of the agreement between the parties.

8. Staff opines that if the ADOPTION LETTER is meant to be an agreement or an amendment, then it should be labeled as such and referred to in such manner. If not, then it is irrelevant, confusing, and administratively burdensome for Staff and non-parties to attempt to decipher the meaning of such a document that has no relevance to the record whatsoever.

9. Staff further states that the ADOPTION LETTER confuses the record because of its description as an exhibit to the Joint Petition. The Joint Petition states, “Verizon and CP signed letters relating to CP’s adoption of the terms of the Agreement. A copy of this letter is attached as Exhibit 2.” [Joint Petition, Page 2]. This language in the Joint Petition describing “letters relating to [the] adoption of terms of the Agreement” gives no indication of the significance of the ADOPTION LETTER. Section 252(e)(2)(A) of the 1996 Telecommunications Act states that:

The State commission may only reject an agreement (or any portion thereof) adopted by negotiation under subsection (a)

if it finds that: the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

Accordingly, Staff believes if the Parties either want Commission approval of this agreement or can demonstrate why it is relevant to this proceeding then it should be properly identified.

10. Furthermore, leaving the ADOPTION LETTER in the record as it stands now, may discriminate against non-parties if the ADOPTION LETTER indeed amends the adopted negotiated agreement but is not clearly made a part of the adopted agreement.

11. For all the reasons stated above,, the ADOPTION LETTER is not in the public interest, convenience, and necessity and Staff's Motion to Strike should be granted..

WHEREFORE, Staff requests that the ALJ enter an order to strike from the record the COMMPARTNERS ADOPTION LETTER and that the Petitioners be ordered to modify the Joint Petition accordingly.

Respectfully submitted,

JAMES E. WEGING
MICHAEL R. BOROVIK

Counsel for the Staff of the Illinois
Commerce Commission

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JAMES E. WEGING
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-8182
Fax: (312) 793-1556
jweging@icc.illinois.gov

MICHAEL R. BOROVIK
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 814-2908
Fax: (312) 793-1556
mborovik@icc.illinois.gov