

Steven J. Pitterle
Director - Negotiations
Network Services



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June 19, 2001

Mr. Scott Shaefer
Chief Executive Officer
QuantumShift d/b/a MVX.COM Communications, Inc.
101 Rowland Way, Suite 300
Novato, CA 94945

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

Dear Mr. Shaefer:

Verizon South Inc., f/k/a GTE South Incorporated ("Verizon"), has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), QuantumShift d/b/a MVX.COM Communications, Inc. ("MVX.COM") wishes to adopt the terms of the Interconnection Agreement between Empire Telecom Services, Inc. ("Empire") and Verizon that was approved by the Kentucky Public Service Commission (the "Commission") as an effective agreement in the Commonwealth of Kentucky, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand MVX.COM has a copy of the Terms. Please note the following with respect to MVX.COM's adoption of the Terms.

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

To: QuantumShift d/b/a MVX.COM
Communications, Inc.

Attention: Mr. Scott Shaefer
101 Rowland Way, Suite 300
Novato, CA 94945
Telephone number: 415/893-7180
FAX number: 415/893-0569

To Verizon:

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

with a copy to:

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

- (C) MVX.COM represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Kentucky, and that its adoption of the Terms will cover services in the Commonwealth of Kentucky only.
2. MVX.COM's adoption of the Empire Terms shall become effective upon the date of filing of this adoption letter with the Commission (which filing Verizon will promptly make upon receipt of an original of this letter countersigned by MVX.COM) and remain in effect no longer than the date the Empire/Verizon agreement terminates. The Empire/Verizon agreement is currently scheduled to terminate on November 1, 2002. Thus, the Terms adopted by MVX.COM also shall terminate on that date.
 3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of

any provisions included in these Terms as a result of MVX.COM's 252(i) election.

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

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

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

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

7. Should MVX.COM attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

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

³ *See, e.g.*, 47 C.F.R. Section 51.809(c).

Sincerely,

VERIZON SOUTH INC.

Steven J. Pitterle
Director – Negotiations
Network Services

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

QUANTUMSHIFT D/B/A MVX.COM COMMUNICATIONS, INC.

(SIGNATURE)

(PRINT NAME)

c: R. Ragsdale – Verizon