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November 5, 2003

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Docket No. 030851-TP, Implementation of requirements arising from Federal Communications Commission's UNE review: Local Circuit Switching for Mass Market Customers

Dear Ms Bayo:

This is to provide a brief response to Verizon-Florida's October 27, 2003 letter, which mischaracterized AT&T's position regarding the Commission's obligations under the TRO to determine the relevant geographic market and in conducting its trigger analysis. With respect to the Commission's analysis and determination of the relevant geographic market, Verizon complains that "AT&T insists that the Commission must consider detailed economic and operational criteria" and that this is somehow an attempt to "convert the definition of the relevant geographic market into an extensive, theoretical economic modeling exercise". However, Verizon's own letter admits that the various complex economic and operational criteria cited in Par. 495 of the TRO, including consideration of the scale and scope economies available to competitors, must be considered in any determination of the relevant geographic market. Since the Commission's determination of the relevant geographic market is a predicate for its trigger analysis, those factors are also necessarily relevant to its review of the triggers.

With respect to the trigger analysis, AT&T has in fact challenged Verizon's characterization of the trigger analysis as simply a "question of counting to three." AT&T does not suggest, however, that the Commission's trigger analysis is or should be "convoluted, knotty and complex." However, the trigger analysis must include both a quantitative and a qualitative analysis of the services that the firms alleged to be providing "mass market" services are in fact providing. This is fully consistent with the direction given by the FCC. In the TRO, the FCC

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expressly rejected the argument by Verizon and others that “that evidence of facilities deployment by competitive LECs [is] conclusive or presumptive of a particular outcome without additional information or analysis.” In deciding what weight to give such evidence of facilities deployment, the FCC determined that it must consider “how extensively carriers have been able to deploy facilities, to serve what extent of the market, and how mature and stable that market is.” (Par. 94).

In the TRO, the FCC provided a product and customer definition of the “mass market” and the telecommunications services that mass market customers purchase. Critically, “mass market” customers include *both* residential and business customers who do not require broadband/digital connectivity and who tend to be smaller, lower revenue accounts that are serviced on a month to month basis and not pursuant to term contracts. (Par 459, footnote 1402) Mass market customers are also characterized by low margins and can only be served economically via analog loops. (Pars. 474, 459). In addition, such customers generally demand reliable, easy to operate service and trouble free installation (Par 467), move freely from carrier to carrier and have come to expect the ability to change local service providers in a seamless and rapid manner (Par 474). The mass market, as described and defined by the TRO, stands in contra distinction to the market for enterprise customers who demand broadband/digital connectivity; offer increased revenue opportunities and are more willing to enter into long term contracts (Par. 420) and are less concerned about provisioning delays.

On the basis of the substantial evidence submitted to the FCC in the TRO proceeding, the FCC made a national finding “that competing carriers are impaired without access to unbundled local switching for mass market customers.” (Par 459). In order to determine whether this national finding of impairment in this defined customer and product market should be overturned in a particular geographic market, the FCC determined that the state Commissions were better positioned to “gather and assess the necessary information” (Par. 188) and to apply their “careful judgment” (Par 189) to this task.

In its assessment of the actual competition taking place in the mass market, the Commission must, under the TRO, determine whether the firms proffered as trigger candidates are “actively” engaged in marketing analog voice POTS services to the class of customers defined as mass market customers (*i.e.*, both residential and business analog POTS customers who must be able to move freely from carrier to carrier and have come to expect they can change local service providers in a seamless and rapid manner). Moreover, “[t]he key consideration to be examined by state commissions is whether the providers are currently offering and able to provide service [to the mass market] and are likely to continue to do so.” (Par. 500). This necessarily involves a qualitative analysis of the firms proffered as trigger candidates to determine whether the firm is in fact offering a competitive choice to Florida customers that fit the mass market POTS profile. Simply counting the number of CLECs who may have in the past purchased unbundled analog loops to serve a small customer base or whose tariff may include a basic analog POTS service is not sufficient to determine if mass market POTS customers in Florida would continue to have competitive choices if access to unbundled local switching were eliminated. Such a qualitative analysis must consider, among other things, the current extent of a trigger candidate’s mass market service offerings (both geographically and in terms of the

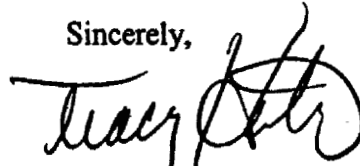
number residential and business analog POTS customers served); whether each candidate is “actively” marketing such analog POTS services; the maturity of the competition in the market; and whether the trigger candidates will continue to provide such mass market services in the future. Establishment of these criteria is necessary to assure that the Commission has made an “economically rational” decision that “new entrants, as a practical matter, have surmounted barriers to entry in the relevant market.” (Pars. 78 & 99)

Verizon notes in its October 27, 2003 letter to the Commission that the FCC’s October 9, 2003 filing with the DC Circuit Court of Appeals in the USTA mandamus proceeding stated, “as for switching for mass market customers, the [Triennial Review] Order requires *automatic elimination* of unbundling in any market where three competitors have deployed switching ...”. (emphasis added by Verizon). To the extent that Verizon proffers this statement to the Commission as supporting their position that the trigger analysis is a simple “count to 3” exercise, they are flat wrong, and as demonstrated in its own arguments in that proceeding, Verizon does not read the TRO as not permitting such a strictly qualitative analysis.

The “automatic” effect of the trigger analysis is that it limits state commissions’ discretion under federal law to substitute a higher threshold for finding a lack of impairment. Thus, for example, even though the TRO recognizes that the thresholds established under the trigger analysis are “relatively low” (TRO footnote 1365), a state commission is not authorized to use a higher one. However, this does not affect the state commission’s obligation to conduct a qualitative analysis of the trigger candidates. Furthermore, Verizon fails to point out that the Reply Brief it and other ILECs filed in that same proceeding recognizes that the TRO requires exactly the type of qualitative analysis discussed above – and indeed faults the FCC for including such a requirement. Specifically, Verizon and the other ILECs state “The *existence of mature competition* – while more than sufficient – cannot be necessary for a demonstration of non-impairment. Thus ...it is wrong to require fashion (sic) triggers that gauge only whether a market is already fully competitive before providing relief as the FCC’s [TRO] ... unquestionably does.” Reply Brief in Support of Petitions for a Writ of Mandamus to Enforce the Mandate of the Court at 11, *United States Telecom Association v. FCC*, Nos 00-1012, 00-1015 *et al.* (D.C. Cir.) (Filed with the Court on October 16, 2003) (emphasis added).

Finally, as this Commission’s draft Annual Report to the Legislature on the Status of Telecommunications Competition notes, “UNE-P is the “platform of choice” for CLECs serving the mass market in Florida (Report p. 15) and as of June 2003, over 686,000 mass market customers in Florida have made a choice of competitive carriers for their POTS service (Report pg. 16). In its qualitative analysis of the proffered trigger candidates in this proceeding, the Commission must insure that these customers, as well as other Florida consumers, will continue to have a choice of POTS providers from competitive firms. Therefore, the Commission’s Issues list in Docket 030851-TP must permit the parties to present the qualitative evidence necessary for the Commission to carefully assess the actual marketplace competition for mass market customers who desire only analog POTS services and the competitive firms who are purported to offer these services.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Hatch", written in a cursive style.

Tracy Hatch

cc: Parties of Record (via electronic mail and U.S. Mail)