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VIA HAND DELIVERY

July 30, 2001

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

Re: Docket No. 010795-TP Sprint's Reply to Verizon's Response to Sprint's Petition for Arbitration

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies of Sprint's Reply to Verizon's Response to Sprint's Petition for Arbitration. Copies of this have been served pursuant to the attached Certificate of Service.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

Susan S. Masterton

Susan S. Masterton

Enclosure

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida, Inc. f/k/a GTE Florida, Incorporated, Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 010795-TP
	)	Filed: July 30, 2001

SPRINT'S REPLY TO VERIZON'S RESPONSE TO SPRINT'S PETITION FOR ARBITRATION

Sprint Communications Company Limited Partnership ("Sprint") hereby files its Reply to the Response of Verizon Florida Inc. ("Verizon") to the Petition for Arbitration of Sprint Communications Company Limited Partnership filed by Verizon on July 3, 2001.

I. INTRODUCTION

In its Response to Arbitration Issue 5, Verizon raised a jurisdictional issue regarding it's obligations under the Act to provide advanced services and the role of Verizon Advanced Data Inc. ("VADI") in meeting those obligations. Verizon asserts that Verizon itself does not provide advanced services, but that these services are provided by VADI. Verizon Response at page 22. Verizon suggests that Sprint must negotiate a separate interconnection agreement with VADI to obtain the advanced services that Sprint believes an ILEC is required to provide pursuant to the Telecommunications Act and the FCC rules. Id.

The issue of how VADI affects Verizon's obligations under the Act is a legal issue in the nature of an affirmative defense and Sprint files this Reply accordingly. This issue affects the identification of the appropriate parties to the arbitration, as well as the timing and presentation of evidence and the ability of Sprint to engage in meaningful

discovery. In this Reply Sprint does not address Verizon's responses to the remaining issues presented for arbitration, as these issues are substantive issues relating to the merits of the positions taken in the arbitration that will be fully developed and addressed through the hearing process.

II. VADI

Verizon claims that VADI – not Verizon the ILEC – owns the packet switching assets to which Sprint seeks access on an unbundled basis. Verizon Response at page 22. Verizon maintains that Sprint must separately seek to negotiate and arbitrate with VADI regarding this issue. VADI was created as a result of the FCC's approval of the Verizon/GTE merger.[1]

Sprint disputes Verizon's stance that the FCC's merger conditions protect Verizon and VADI and the packet switching assets at issue from arbitration. In response Sprint submits that Verizon and VADI are not separate for purposes of gaining interconnection arrangements pursuant to Section 251 and 252 of the Telecommunications Act of 1996. Sprint maintains that Verizon cannot avoid its obligation to negotiate and arbitrate by hiding behind VADI.

The FCC's merger conditions should not be utilized by VADI as a shield to effectively block competitors' access to RBOC remote terminals, creating a new bottleneck at the remote terminal with effect of impeding competitors' efforts in the provisioning of services like DSL services. Incredibly, Verizon is using the separate advanced services affiliate requirement for its own benefit. A tool intended to protect

[1] Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, Order, 15 FCC Rcd 14032 (2000) ("*BA/GTE Merger Order*") at App. D, Condition 11c.

CLECs in the non-discriminatory provision of advanced services is instead hindering them. The CLEC's shield has actually become Verizon's shield.

First, Section 252 of the Act provides that only an "incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier . . . " 47 U.S.C. § 252(a).[2] VADI is not certified as an "incumbent" local exchange carrier in Florida. VADI was granted an ALEC certificate by the Commission in Order No. PSC-00-1761-PAA-TX issued on September 27, 2000. As stated in the Order, VADI applied for and was granted certification as an ALEC pursuant to s. 364.337, Florida Statutes.

Sprint asserts that the effect of VADI's current certification in Florida hinders Sprint in pursuing interconnection with VADI, in determining what VADI's obligations are and how VADI is to be treated for purpose of interconnection as an incumbent local exchange carrier.[3] As such, Sprint cannot seek to trigger Verizon's duty to negotiate and enter into an interconnection arrangement on packet switching with Sprint the CLEC by going through VADI – another ALEC/reseller under its certification in Florida.

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[2] Sprint is unaware of any CLEC to CLEC arbitrations that have occurred in Florida.

[3] Nevertheless, recently, in an *Ex Parte* filing at the FCC dated June 27, 2001 by Dee May, in Application by Verizon New York Inc. for Authorization To Provide In-Region, InterLATA Services in State of Connecticut, Docket No. 01-100: Application of Ameritech and SBC Communications For Consent to Transfer Control, CC Docket No. 98-141and 98-184; Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, Verizon/VADI appears to have conceded VADI's standing as an ILEC where it states at page 7:

> Of course, in this case, that conclusion is only reinforced by (but not dependent upon) the technical limitations and regulatory requirements that VADI labors under as a separate affiliate. Here, VADI is "the carrier" that provides xDSL services; because it is deemed to be a "successor or assign" of an ILEC, therefore, VADI itself is treated as an ILEC (see 252(h)(I)(B)(ii) and must make the services that it provides available for resale to the same extent as any other incumbent. And here, VADI does not (and cannot) provide service where another carrier provides voice service on the line. Consequently, there is no service to resell. (A copy of this filing is attached hereto as Attachment 1.)

Second, Sprint asserts that Verizon has not acted in good faith regarding its negotiations with Sprint regarding packet switching. VADI was certificated in Florida on September 27, 2000. Yet, Verizon never informed Sprint of its position that it did not provide advanced services and that Sprint must initiate negotiations with VADI to obtain those services. Sprint did not learn of Verizon's position until its response to Sprint's arbitration Petition in Pennsylvania[4], too late for Sprint to initiate negotiations with VADI in a timely manner coincident with the time frame for its negotiations with Verizon. Moreover, upon receipt of Sprint's numerous Section 251(c) negotiation requests, Verizon made no effort to distinguish VADI so as to indicate that Verizon the ILEC was excluding that entity from interconnection agreement negotiations. Thus, the request for negotiation, and subsequent agreements to rescind and refile as agreed to by Verizon and Sprint, govern VADI as well.

Third, Verizon cannot avoid its statutory obligations by claiming VADI's "separate entity" status. The Ascent Decision[5] eviscerated the separate advanced services structure. The D.C. Court's opinion supported both arguments that (i) the creation of an advanced services affiliate not subject to the obligations of §251(c) represented an improper forbearance of ILEC obligations in violation of §160(d) of the Act,[6] and (ii) the affiliate was a successor or assign of the ILEC and therefore subject to the ILEC's obligations. In light of this decision, Verizon should be prevented from playing corporate shell games.

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[4] See, *Petition of Sprint Communications, L.P., Docket No. A-310183F0002,* Pennsylvania Public Utility Commission, Verizon Answer to Sprint Arbitration (June 11, 2001) at 34 where Verizon states that if Sprint feels VADI has an obligation to provide access to packet switching, it must contract with VADI.

[5] Association of Communication Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001) ("Ascent Decision").

[6] 47 U.S.C. §160(d)

The Court in the Ascent Decision determined that an ILEC cannot escape its 251 obligations by setting up a separate subsidiary at page 668:

> In short, the Act's structure renders implausible the notion that a wholly owned affiliate providing telecommunications services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent.
>
> . . . . .
>
> But whether or not SBC's premise is economically sound, it is unfortunately not Congress' premise. As the Commission concedes, Congress did not treat advanced services differently from other telecommunications services. *See* Deployment Order P 11. It did not limit the regulation of telecommunications services to those services that rely on the local loop. For that reason the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services. Whether one concludes that the Commission has actually forborne or whether its interpretation of "successor or assign" is unreasonable, the conclusion is the same: The Commission's interpretation of the Act's structure is unreasonable.

The Court is clearly indicating that the affiliate has the same obligations as the ILEC. In this case, VADI has the same obligations as Verizon. If the ILEC (Verizon) can escape any obligations through the affiliate (VADI) the Court found this in conflict with the Act.

Fourth, if Verizon is correct and Sprint must separately negotiate with VADI relative to Issue 5, then the necessary consequences of that result are: (a) Sprint must negotiate with VADI, a CLEC; (b) a CLEC must conduct two negotiations/arbitrations against two entities in order to achieve the benefits of competition envisioned under the Act in Verizon's territory. What happens if Verizon decides to move all of its loops into yet a third separate affiliate? Does the process start over again? How can Sprint

effectively compete when they do not have both/all ILEC entities obligated under the same agreement?[7]

Fifth, Verizon recently requested that the FCC expedite the sunset of the merger conditions giving rise to VADI.[8] In its FCC filing Verizon clearly articulates its position that the Ascent Decision effectively started the clock toward sunsetting the affiliate requirement under the *BA/GTE Merger Order*. That is, the *BA/GTE Merger Order* provides that the requirement to maintain the affiliate would sunset nine months after a final and non-appealable judicial decision determining that the affiliate is a successor or assign of the ILEC. In the Ascent Decision, on January 9, 2001, the United States Court of Appeals for the D.C. Circuit confirmed that the Commission's approval of a separate advanced services affiliate in connection with the SBC-Ameritech merger was an improper forbearance of an ILEC's requirements under §251(c) of the Act, and that such affiliate was a successor or assign of the ILEC and thus assumed the ILEC's obligations under §251(c). The salient point relevant to this arbitration proceeding is that if Verizon has its way, VADI may not be in existence by the time that Sprint seeks negotiation and arbitration from VADI.

Therefore, VADI's ownership of the packet switching assets and its claimed status as a "separate entity" is not material or relevant for the application of Verizon's statutory duties – *i.e.*, to negotiate and interconnect under Section 252 of the Act and ultimately to offer unbundled access to ILEC facilities on a nondiscriminatory basis under Section 251(c). Under these circumstances it is Verizon who is responsible to

[7] Although Sprint disputes Verizon's assertion that Sprint must separately negotiate with VADI, in an abundance of caution Sprint sent a letter initiating interconnection negotiations with VADI on July 20, 2001, pending a determination of this issue by the Commission.

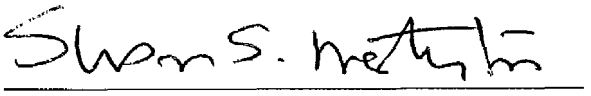
[8] A copy of Verizon's filing before the FCC is attached heretoas Attachment 2.

ensure that the Section 252 request is honored. The Act simply does not require that the Sprint send a Section 252 request to VADI. It is Sprint's position that under the express provisions of the Act any request to negotiate and/or arbitrate made of Verizon constitutes a request/notice made of VADI, even if a separate entity. Acknowledgement of this fact is the relief requested by Sprint from the Florida Commission.

III. CONCLUSION

In sum, Verizon improperly attempts to characterize and elevate the "separate entity" status of VADI to force negotiation and arbitration on two fronts to obtain a complete set of services. The fiction that Verizon perpetuates must be dismissed as contrary to the express provisions of the Act and the pro-competition goals that this Commission has attempted to implement. VADI and Verizon are one and the same for a CLEC seeking unbundled packet switching at Verizon's remote terminals and central offices.

Respectfully submitted,



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Ex Parte

June 27, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

Application by Verizon New York Inc. for Authorization To Provide In-Region, InterLATA Services in State of Connecticut, Docket No. 01-100; Application of Ameritech and SBC Communications For Consent to Transfer Control, CC Docket No. 98-141and 98-184; Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98

Dear Ms. Magalie,

At the request of Ms. Dorothy Attwood, Chief of the Common Carrier Bureau, we are providing the attached paper in the above proceedings. The twenty page limit associated with CC Docket No. 01-100 does not apply.

Please feel free to contact me with any questions.

Sincerely,

Dee May

Attachment

cc: D. Attwood
K. Farroba
C. Libertelli
M. Carey
B. Olson
G. Reynolds
C. Pabo
A. Johns
S. Pie

Attachment

The following question has arisen in the wake of the D.C. Circuit's decision in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) ("*ASCENT*"): Does anything in that decision alter the preexisting rule that an ILEC has no obligation to provide line-sharing services to other carriers (including its own advanced services affiliate), and no obligation to provide its own xDSL services at retail or wholesale, in circumstances where it does not provide voice services to end users? The answer is no.

I. The 1996 Act And FCC Orders Confirm That An ILEC Has No Obligation To Provide Line-Sharing Services Or xDSL Services Where It Does Not Provide Voice Services To End Users

a. The Telecommunications Act of 1996 requires an ILEC (and any successor or assign) to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail" to end users (*i.e.*, "subscribers who are not telecommunications carriers"). 47 U.S.C. § 251(c)(4)(A). The issue here concerns the resale obligations of ILECs, such as Verizon, and their advanced services affiliates, such as Verizon Advanced Data Inc. ("VADI"). VADI offers xDSL services to end users by purchasing the same line-sharing service from Verizon as other xDSL providers. Like a number of other ILECs, Verizon makes its line-sharing service available *only* where it provides retail voice services for particular end users. Where Verizon does not provide those voice services, its line-sharing service is unavailable, and VADI cannot and does not provide xDSL services, either at retail or for resale.

That arrangement is entirely consistent both with section 251(c)(4) itself and with the Commission's own rulings on the scope of an ILEC's line-sharing obligations. First, section 251(c)(4) limits an ILEC's resale obligations to services that the carrier in fact

"provides" to end users. VADI does not and (as discussed below) cannot "provide" xDSL services to end users for whom a CLEC is the voice carrier, because Verizon offers line-sharing services to VADI and other data carriers only where it remains the voice provider for the relevant end users.

The Commission's orders make abundantly clear that Verizon and other ILECs are *entitled* to place that limitation on their line-sharing services. First, in the 1999 *Line Sharing Order* itself, the Commission exempted any ILEC from the obligation to provide line-sharing services where a CLEC has replaced the ILEC as an end user's voice provider. Third Report and Order and Fourth Report and Order, *Deployment of Wireline Servs. Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999), at ¶ 72. The Commission explained that, "in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service." *Id.* That determination is controlling here: once an end user has terminated voice service with the ILEC "for whatever reason," the ILEC is relieved of any line-sharing obligation whatsoever.

The Commission's *Texas 271 Order* both reaffirms that conclusion and takes it one step further, clarifying that an ILEC may sever an end-user's xDSL service once the ILEC loses that end user as a retail customer of its voice services. In that proceeding, AT&T had complained that "when a SWBT customer who had been using SWBT's local voice service and xDSL service combined over a single copper loop chose to switch voice service to AT&T, SWBT informed the customer that its xDSL service would be disconnected unless the customer switched voice service back to SWBT." Mem. Opinion

and Order, *Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354 (2000), at ¶ 330 n.917. Specifically, AT&T had claimed that SWBT's practice of not providing its xDSL service to customers who received voice service from another carrier was unreasonable, and amounted to the equivalent of an "unreasonable restriction on resale." *See* Comments of AT&T Corp. in Opposition, CC Docket 00-4 (filed Jan. 31, 2000). The FCC disagreed, however. Citing the *Line-Sharing Order*, the Commission found that, in disconnecting the customer's xDSL service, SWBT had acted well within its rights under the 1996 Act, because nothing in the Commission's orders "obligate[s] incumbent LECs to provide xDSL service under the circumstances AT&T describes." *Id.* at ¶ 330.

The Commission reaffirmed each of these conclusions in its recent *Line Splitting Order*. *See* Third Report and Order on Reconsideration in CC Dkt No. 98-147, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC No. 01-26 (Jan. 19, 2001). There the Commission required ILECs "to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier *purchases the entire loop* [as a UNE] and provides its own splitter." *Id.*, at ¶ 19 (emphasis added). But it confirmed, once more, that an ILEC is obligated to provide line-sharing services *only* where it "provide[s] voice service to an end user." *Id.*, at ¶ 17. And, as in the *Texas 271 Order*, the Commission determined that nothing in its prior orders requires ILECs "to provide xDSL service when they are no[] longer the voice provider" for particular end users. *Id.*, at ¶ 26.

b. In sum, both the statutory language and the Commission's consistent orders on this subject are unambiguous in preserving both an ILEC's right to condition the provision of line-sharing services on the ILEC's retention of those end users as retail voice customers. Moreover, the Commission's position on that issue makes abundant policy sense whether the relevant CLEC voice provider serves the end user through network elements or through resale. As the Commission observed in the *Line Sharing Order*, "the complexities involved with implementing line sharing dramatically increase where more than two service providers share a single loop." *Line Sharing Order*, at ¶ 74. Requiring an ILEC to provide line-sharing when a reseller provides the voice service would place at least three carriers -- the reseller, the ILEC, and the data carrier (including any advanced services affiliate) -- all on a single line. Any such requirement would raise the same types of profound operational issues that the industry has only recently begun to confront in the context of ILEC-facilitated line splitting (and that the Commission itself recognized may take some significant amount of time to resolve through industry collaborative efforts).

In the ordinary line-sharing context, the ILEC maintains a retail business relationship with the end user; on resold lines, by contrast, that relationship would be severed, and the ILEC would serve as a wholesale provider to both the reseller or resellers and the xDSL provider. That three-carrier (and in some cases four-carrier) sharing arrangement would confront the industry with such operationally complex questions as these:

- What business and OSS relationships need to be established between the reseller and the data carrier to coordinate service with the end user customer and the ILEC?
- What carrier is entitled to access the end user's customer records, how does that change if there are two different resellers providing voice and data respectively, and who pre-qualifies the line?
- Under what circumstances can the data carrier place an order with the ILEC to add xDSL service to a line where the voice service is provided by a reseller?
- Which carrier would have primary responsibility for coordinating end user trouble reports (related to voice and/or data) and other maintenance problems that affect the common loop facility?
- How does this change if there are two different resellers providing voice and data service respectively over a line?
- How would end user and carrier requests for service changes that affect the loop facility be handled, and which carrier would be responsible for coordinating the change?
- How should disconnection of an end user's resale voice service affect the data provider's data service?

Reconciling the individual business agendas and relationships among these multiple carriers can not take place in a vacuum and would require a collaborative industry effort to define the precise nature of the business relationships among the various carriers on the line. Once those business relationships are defined, Verizon would have to undertake a

dramatic and very costly revision of the methods and procedures currently deployed for ILEC-based line sharing.

More generally, in designing those existing methods and procedures, ILECs throughout the United States have relied extensively on the Commission's current position that an ILEC has no obligation to provide line-sharing where it is not an end user's voice provider. A policy reversal by the Commission on that issue now, quite apart from questions about its legal merits, would require ILECs to invest tens of millions of dollars (and perhaps more) to reconfigure their operations to meet these sudden new obligations. That is reason enough for the FCC to stand by its previous, and entirely correct, position.

II. The *ASCENT* Decision Has No Bearing On The Line-Sharing And Resale Obligations At Issue Here.

The *Line Sharing Order*, the *Texas 271 Order*, and the *Line Splitting Order* confirm that an ILEC as such has neither a line-sharing obligation nor an obligation to provide its own xDSL service where it loses an end user as a voice customer; in none of those orders did the Commission's treatment of the relevant issues turn on whether the ILEC had created a separate affiliate to provide advanced services to the ILEC's end users (even though the ILEC at issue in the *Texas 271 Order* had in fact created such an affiliate). For that reason and others, the D.C. Circuit's recent decision in *ASCENT* leaves the Commission's position on these issues wholly undisturbed.

ASCENT holds that an ILEC's advanced services affiliate, if it qualifies as a successor or assign of an ILEC, is subject to the normal obligations that apply to an ILEC under section 251(c). *See ASCENT*, 235 F.3d at 666-68. *ASCENT* does not subject such an affiliate, much less the ILEC itself, to obligations *beyond* those that are applicable to

ILECs that themselves provide advanced services without creating a separate affiliate. Put another way, after *ASCENT*, the use of a separate advanced services affiliate may provide fewer regulatory benefits to an ILEC, but it obviously does not *enlarge* the set of substantive regulatory burdens under section 251(c). Thus, because an ILEC that *itself* provides xDSL services need not provide either line-sharing or its own xDSL service where it is no longer the voice provider, the creation of a separate affiliate to provide xDSL services does not suddenly obligate the ILEC (or its corporate family) to provide line-sharing in those same circumstances.

Of course, in this case, that conclusion is only reinforced by (but not dependent upon) the technical limitations and regulatory requirements that VADI labors under as a separate affiliate. Here, VADI is "the carrier" that provides xDSL services; because it is deemed to be a "successor or assign" of an ILEC, therefore, VADI itself is treated as an ILEC (*see* 252(h)(1)(B)(ii)) and must make the services that *it* provides available for resale to the same extent as any other incumbent. And here, VADI does not (and cannot) provide service where another carrier provides voice service on the line. Consequently, there is no service to resell.

Indeed, that conclusion, at least with respect to Verizon, follows *a fortiori* from the reasoning of the *Line Sharing*, *Line Splitting*, and *Texas 271 Orders*. On their face, those *Orders* confirm that, under the FCC's existing rules, once an end user chooses a CLEC as its voice provider, an ILEC is generally free to disconnect that end user's xDSL service even when it *could* continue providing that service. *See, e.g., Texas 271 Order*, at ¶ 330 n.917; *Line Splitting Order*, at ¶ 26. Here, in contrast, Verizon does not offer xDSL services at all, and VADI *cannot* obtain line-sharing, and therefore cannot provide

xDSL services, where another carrier is the voice provider, because Verizon follows the voice-carrier limitation endorsed in the *Line-Sharing Order*. Moreover, the Bell Atlantic/GTE Merger Conditions affirmatively limit VADI to obtaining from Verizon only those line-sharing services that also are available to other CLECs. *See* Mem. Op. And Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control*, 15 FCC Rcd 14032, App. D ¶ 4(f) (2000) (Verizon must "permit unaffiliated telecommunications carriers to order such facilities and services under the same rates, terms, and conditions, and to utilize the same interfaces, processes, and procedures as are made available to the separate Advanced Services affiliate"). Here, Verizon's line-sharing services are not available to *any* carrier in circumstances where Verizon is not the voice provider, and the Merger Conditions' nondiscrimination requirement plainly does not permit an exception to be made for VADI alone.

Finally, for several independent reasons, it is inconsequential that in other contexts the Commission has found that section 251(c)(4) "requires that the incumbent LEC make available at wholesale rates retail services that are actually composed of other retail services, *i.e.*, bundled service offerings." *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15,499 (1996), at ¶ 877. *First*, Verizon and VADI do not in fact bundle voice and xDSL services for their end users. The Commission has consistently defined "bundling as the offering of two or more products or services at a single price, typically less than the sum of the separate prices." *1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules, etc.*, CC Docket Nos. 96-61 and 98-183, & 15 (rel. Mar. 30, 2001). The Commission also has explained that bundling "is

different from 'one-stop' shopping arrangements in which customers may purchase the components of a bundle, priced separately, from a single supplier." *Id.* Here, however, the voice services and DSL services are offered, ordered and priced separately, and the obligation to provide the separate components of "bundled service offerings" is thus wholly inapposite. *Second*, that obligation is particularly irrelevant here given the Commission's repeated and highly specific determinations that ILECs may deny line-sharing to CLECs -- and may generally disconnect an end user's xDSL services altogether -- where the ILEC loses the end user as a retail voice customer. *Finally*, it would be especially inappropriate to apply that obligation where, as here, compliance would place an ILEC or its affiliate in direct violation of an independent legal prohibition imposed by the Commission itself.

EX PARTE OR LATE FILED

ORIGINAL

Gordon R. Evans
Vice President
Federal Regulatory

verizon

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May 1, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

EX PARTE

RE: Bell Atlantic/GTE Merger Order
(CC Docket No. 98-184)

Dear Ms. Salas:

The attached letter and declaration should be placed in the record of the above captioned proceeding.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceeding indicated above.

If there are any questions regarding this matter, please call me at 202 515-2527.

Sincerely,

Gordon R. Evans

Attachment

Gordon R. Evans
Vice President
Federal Regulatory

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2527
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April 26, 2001

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th St., S.W.
Room 5-C450
Washington, D.C. 20554

Dear Ms. Attwood:

I am writing to seek the Commission's concurrence to accelerate the Verizon incumbent telephone companies' right to provide advanced services directly, without using the separate advanced services affiliate that was required by the Bell Atlantic-GTE merger order.[1] The separate affiliate requirement will automatically terminate no later than nine months after the D.C. Circuit's decision in *ASCENT v. FCC*, and it is consistent with the public interest to lift this restriction immediately.

The merger conditions themselves already specify the requirements that will apply upon the termination of the separate affiliate requirement, and eliminating the separate affiliate requirement now will serve the public interest by allowing Verizon to bring these services to the public more quickly and without the additional costs that a separate affiliate necessarily entails. Moreover, because the conditions themselves already specify the requirements that apply upon the termination of the separate affiliate requirement, no competitor will be harmed by allowing Verizon to provide these services free of this requirement now.

First, if the Commission does not act, Verizon will be required to start to turn away new customers in New Jersey before the end of the automatic sunset period. The New Jersey Board of Public Utilities has not approved Verizon New Jersey's application to transfer advanced services assets to the separate affiliate. Now that the separate affiliate requirement will terminate, there would seem to be no reason for the Board to divert resources from other pressing matters to approve that transfer. Thus, Verizon New Jersey is continuing to provide advanced services (as permitted), but it may not purchase any new advanced services equipment under the terms of the Merger Conditions. As a result, it is already out of capacity

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[1] *GTE Corp.*, 15 FCC Rcd 14032, App. D (2000) ("Merger Conditions").

in two central offices, and expects to be out of capacity — and unable to fill customer orders — in 70 more in the coming months.[2]

Second, the separate affiliate requirement is hindering Verizon's deployment of new technologies and next generation networks. As I indicated in my April 9 letter to you, Verizon is installing more fiber-fed DLC equipment in its local feeder plant and is considering deployment of DSL capabilities on that architecture in certain locations where it is upgrading existing remote terminals. Verizon could utilize this architecture to offer a wholesale DSL packet transport service to other carriers, as well as to provide retail DSL service to consumers.

To do this, Verizon must procure, install and test advanced services equipment (such as OCDs for our central offices and integrated DSL-capable cards for remote terminals), which could not be done by a Verizon local exchange carrier under the Merger Conditions.[3]

Verizon has discussed this wholesale DSL packet transport offering with other carriers at a number of industry meetings. One issue of particular concern to many of the carriers is timing — when would Verizon commit to providing the service and how long would it take from that commitment for the service to be widely available. If the separate affiliate requirement is determined to remain in effect until the date by which it automatically terminates, installation of this equipment and the services they can provide will be delayed. Allowing Verizon to install and to begin the testing process would significantly reduce the time it would take Verizon to bring such a service on line.

Third, the separate affiliate requirement is making doing business more complicated for large business customers with sophisticated networks and complicated advanced services needs for products such as ATM and Frame Relay. For customers like this, it is important that Verizon be able to provide an integrated solution over a network that it controls just as our competitors already are able to do.[4] For instance, large customers want a single point of

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[2] Dowell Dec. ¶¶ 3-7 .

[3] Merger Conditions § I.3.d.

[4] It is well recognized that there are pro-competitive benefits to serving customers using a carriers own integrated facilities. For example, the Commission has cited the enhanced ability of parties to serve "multi-location customers over their own networks," enabling "such customers to receive higher quality and more reliable services." *Application of WorldCom, Inc and MCI Communications Corp. For Transfer of Control,* 13 FCC Rcd 18025, ¶ 199 (1998). Indeed, competitors have cited these benefits as advantages of their own offerings. In WorldCom's words, "only one company" has a seamless global "wholly owned" network that provides a fully-integrated bundle of services. MCI WorldCom two-page advertisement, Wall St. J., Nov. 5, 1998, at B19-19. Similarly, AT&T touts its data network with its own local ports "all over the world," which is "a big plus in attracting the large corporate customers that are the grand prize for telecommunications companies." Seth Schiesel, *AT&T Buying I.B.M. Network,* N.Y. Times, Dec. 9, 1998 at C1.

contact for all of their voice and data needs. This single point of contact needs the ability to not only take and process orders, but also to process trouble reports, test circuits and answer billing questions. These customer requirements are either prohibited or greatly hampered by the separate affiliate regime, which adds an additional layer of complexity to the already complicated service arrangements that big business customers demand. And it is a layer of complexity that our competitors do not have, since these kinds of complex arrangements for big business customers typically are provided by competitors using their own network facilities.

The fourth reason is that structural separation increases costs. The additional tax burden that results from the structural separation requirement alone amounts to tens of millions of dollars. The reason is that, in several states, Verizon will be unable to take advantage of the losses of its start-up advanced services business when figuring its state income taxes. The maintenance of a separate affiliate adds costs to Verizon's advanced services in other ways as well, as the separate affiliate requirement results in additional unnecessary duplication and expense. Even by a conservative estimate, the structural separation requirement increases tax and operational expense by an estimated $48 million per year (in addition to literally hundreds of million more in costs that already have been incurred).[5] These extra tax and operational costs that are either passed on to consumers or siphon away funds that could be used to more broadly and more quickly deploy these services.

Of course, as required by the merger conditions, Verizon advanced services operation would continue to use the same standard wholesale interfaces, processes and procedures that are available to other CLECs.[6] Therefore, the merger conditions already specify the requirements that apply, and there are no adverse effects of terminating the structural separation requirement now rather than in nine months.

Prompt elimination of the structural separation requirement will, therefore, permit Verizon to bring more services to more consumers more quickly and more economically. Verizon's advanced services operation will use the same ordering interfaces when dealing with its telephone companies as other advanced services providers, so there is no possible anti-competitive effect.

Thank you for your consideration of this matter. If you have any questions, please give me a call.

Very truly yours,

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5 Dowell Dec. ¶ 8.

6 Merger Conditions § 12; Dowell Dec ¶ 9.

Attachments

cc: Carol Mattey
Michelle Carey
Glenn Reynolds

DECLARATION OF GEORGE DOWELL

1. My name is George Dowell. I am the Vice President for Strategic Planning and Implementation of Verizon Advanced Data Inc. ("VADI"), Verizon's separate data affiliate. My responsibilities currently include directing the program teams that develop and implement all of the operating support systems, processes, and work centers necessary for VADI to provision and maintain DSL and other advanced services throughout the areas in which Verizon's local telephone operating companies provide local exchange service. I have more than 18 years experience in the telecommunications industry, in a variety of engineering and operations positions working for NYNEX, Bell Atlantic, and now VADI. Prior to assuming my current responsibilities, I was Vice President for Operations Excellence for Bell Atlantic.

2. The purpose of this declaration is to explain that how eliminating the nine-month transition period contained in paragraph 11 of Section I of the Bell Atlantic/GTE merger conditions will benefit consumers. Eliminating this waiting period will allow Verizon to continue to deploy advanced services in New Jersey and will allow Verizon to avoid significant costs caused by the separate affiliate requirement.

3. Continuation of service in New Jersey. The Merger Conditions required that Verizon New Jersey (as well as the other Verizon incumbent local exchange carriers) provide interstate and intrastate advanced data services such as ADSL, ATM and Frame Relay through a structurally separate affiliate on or before December 27, 2000.

4. Verizon New Jersey filed a petition with the New Jersey Board of Public Utilities ("Board") on August 7, 2000 for approval to transfer to VADI assets owned by Verizon New Jersey and used exclusively to provide advanced services. *Verizon New*

Jersey Inc.'s Transfer of Advanced Data Services Assets to Verizon Advanced Data Inc., Docket No. TM00080538 (August 7, 2000). Because this petition had not been approved, Verizon New Jersey filed a petition with the Commission on December 18, 2000, seeking a waiver of the advanced services affiliate requirement pending Board approval of the asset transfer. Pursuant to the Merger Conditions, Verizon is permiteed to operate as it had, as if the transition period had not expired.[1] The Commission has not done so to date.

5. Accordingly, at the present time Verizon New Jersey continues to provide advanced services in New Jersey. VADI does not provide any advanced services in New Jersey nor has it filed tariffs for those services. It has no customers in New Jersey.

6. Although Verizon New Jersey continues to offer ADSL and other advanced services in New Jersey, the Merger Conditions bar it from purchasing any new advanced services equipment. Rather, the Merger Conditions state that VADI must own all advanced services equipment purchased after September 27, 2000.[2]

7. In connection with discussions concerning the pending transfer, Verizon New Jersey has described to VADI capacity problems in the Verizon New Jersey network. In order to continue to meet customer demand throughout New Jersey, Verizon New Jersey needs to obtain additional plug-in cards for central office equipment and other advanced services equipment. Two Verizon New Jersey central offices have run out of capacity already and are now closed to new orders due to unavailability of equipment. If Verizon New Jersey is not allowed to purchase new equipment, it will run out of capacity in more than seventy central offices and will be unable to fill new customer orders for ADSL

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[1] Merger Conditions ¶ I.6(f).

within the next four months. Several of these offices will be out of capacity in the next two weeks. Also, ten central offices will be out of capacity for ATM or frame relay service within three months. ATM service is used for backbone transport of ADSL. Therefore, unless relief is obtained, Verizon New Jersey will soon be forced to stop deploying ADSL in most of the State.

8. Elimination of costs. Accelerating the sunset of the separate affiliate merger conditions also will reduce the added costs that are inherent in separation and ultimately are borne by consumers. At that time, Verizon could share resources between its advanced services and other operations that it currently cannot share. For example, Verizon would not be required to have duplicate engineering personnel or to store customer records on duplicate systems. Rather, it would share these and other resources just as its competitors may do today. Of course, under the terms of the Conditions, Verizon's advanced services unit would still have to submit orders using the same interfaces, processes and procedures as CLECs use, and any additional costs incurred by the need to do so would not be avoided. In addition, in several states, Verizon will be unable to take advantage of the losses of its advanced services affiliate when figuring its state income taxes as it otherwise would be able to do. I estimate that these cost savings would exceed $48 million annually. Eliminating these costs would give Verizon more flexibility in pricing these competitive services.

9. Ordering processes. As provided for in the merger Conditions, Verizon's advances services business would continue to use the wholesale ordering process for line sharing and other components of advanced services even after the end of the separate

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[2] *Id* ¶ I.3(d).

affiliate requirement. For example, when VADI receives an order today, it uses the CORBA interface (one of the pre-ordering interfaces Verizon offers to all CLECs) to obtain pre-ordering information. VADI has elected to obtain a limited extract file of the loop qualification data for working telephone numbers from the LiveWire database that Verizon has made available to CLECs. VADI downloads a copy of the loop extract file electronically from the Verizon local telephone operating companies in the same manner as the file is made available to CLECs. This extract is currently provided in the former Bell Atlantic serving territories and will be available in the former GTE serving territories effective May 15, 2001. Once VADI determines that an end user's loop is qualified for DSL service, its employees and sales agents enter the ordering information into VADI's internal ordering system. VADI then submits the wholesale orders to the Verizon local telephone operating companies using the same interfaces as are available to other CLECs. VADI submits its orders to the Verizon local telephone operating companies over the EDI interface, although at times it uses the Web GUI interface. Both the EDI and Web GUI interfaces are available to all CLECs. After VADI submits the order to the ILEC, VADI will receive a firm order confirmation or a reject from the Verizon local telephone operating companies through these same interfaces. Likewise, once the separate affiliate requirement terminates, Verizon's advanced services business will continue to use the interfaces and processes available to CLECs as required by the terms of the Merger Condition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April __, 2001

George Dowell

CERTIFICATE OF SERVICE
DOCKET NO. 010795-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 30th day of July, 2001 to the following:

Verizon Florida, Inc.
Kimberly Caswell
Post Office Box 110
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Tampa, Florida 33601-0110

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Division of Legal Services
Florida Public Service Commission
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Tallahassee, Florida 32399-0850

Susan S. Masterton