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October 27, 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 triennial UNE Review: Local Circuit Switching for Mass Market  
Customers

Dear Ms. Bayo:

During the Commission's October 23, 2003 issues identification conference, AT&T indicated that it intended to file a revised proposed list of issues regarding the definition of the geographic market for the Commission's impairment analysis for unbundled switching for mass market customers. Please consider this letter the response of Verizon Florida Inc. ("Verizon") to AT&T's revised submission.

As Verizon stated at the issues identification conference, the Federal Communications Commission ("FCC") has set forth the specific issues that a state commission should consider when it defines the geographic market for purposes of evaluating the question of impairment for unbundled switching. These factors are: (1) the locations of customers being served by competitors; (2) the variation in factors affecting competitors' ability to serve each group of customers; and (3) competitors' ability to target and serve specific markets economically and efficiently using current available technologies. *Triennial Review Order* ¶ 495. These factors are intended to aid state commissions in determining "the contours of each market." *Id.* A defined geographic market may not be so large as to encompass the entire state, and may not be so small that a competitor serving the geographic market alone "would not be able to take advantage of available scale and scope economies from serving a wider market." *Id.*

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The FCC's specific market-defining factors are intended to aid this Commission as it determines whether pre-existing geographic market definitions should be used in the Commission's switching impairment analysis. The FCC expressly pointed to the "varied administrative tools" that state commissions "have implemented" in order "to distinguish among certain markets within a state on a geographic basis for other purposes including retail ratemaking, the establishment of UNE loop rate zones, and the development of intrastate universal service mechanisms." *Id.* ¶ 496. And "[i]f a state determines, after considering the factors just described, that these already-defined markets would be appropriate to use in this context [defining the geographic market for an the impairment analysis] as well, it may choose to use these market definitions." *Id.* ¶ 496 (emphasis added). In fact, in making impairment determinations itself, the FCC has relied on prior geographic designations. See, e.g. *id.* ¶ 497 (relying on density zones and MSAs in determining "cross over" point for multi-line customers).

The Commission Staff quite correctly has recommended that the factors enumerated by the FCC – and only those factors – are the issues relevant for defining the geographic market. For this reason, Verizon did not object to the Staff's proposed list of issues for defining the geographic market.

AT&T, on the other hand, stated at the issues identification conference that the factors proposed by Staff – factors taken verbatim from the relevant portion of the *Triennial Review Order* – are "too spartan." Instead, AT&T insists that the Commission must also consider detailed economic and operational criteria. But AT&T's attempt to convert the definition of the relevant geographic market into an extensive, theoretical economic modeling exercise was expressly rejected by the FCC, and must therefore be rejected by this Commission.

This Commission's impairment analysis for unbundled switching will be a "two-step process." *Id.* ¶ 494. "In the first step, states will apply self-provisioning and wholesale triggers to a particular market to determine if the marketplace evidence of deployment of circuit switches serving the mass market requires a finding of no impairment." *Id.* As part of this trigger analysis, the Commission must define the relevant geographic market, and "the market definitions used for analysis of the triggers must also be used for the second step of the analysis, if the triggers are not satisfied." *Id.* ¶ 495, n. 1540. The "second step" of the Commission's impairment analysis, which addresses factors that are to be considered only if the triggers are not satisfied and the ILEC in question indicates that it wishes to make this second showing, requires the Commission to analyze whether a particular geographic market "is suitable for 'multiple, competitive supply.'" *Id.* ¶ 506. The detailed operational and economic factors that AT&T seeks to inject into the market definition analysis are relevant only for this "second step" of the impairment analysis, when the Commission may be asked to consider the question of potential deployment of competitive switching. See *id.* ¶¶ 511-520.

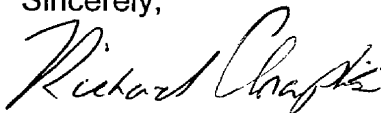
The FCC was quite explicit on this last point. See, e.g. *id.* ¶ 425, n. 1300 (“states must first employ triggers that examine actual deployment; only if the triggers are not met must states apply criteria to assess whether entry is uneconomic”); *id.* ¶ 494 (“If the [switching] triggers are not satisfied, the state commission shall proceed to the second step of the analysis, in which it must evaluate certain operational and economic criteria to determine whether conditions in the market are actually conducive to competitive entry . . .”). In fact, the position that AT&T advocates is the very outcome that Chairman Powell warned would come to pass – that the “laundry list” of factors set forth by the FCC as part of any potential deployment case would somehow bleed into the trigger analysis. *Chairman Powell Statement* at 7. However, the FCC majority forcefully asserted that Chairman Powell’s concern “fundamentally misunderstands the impairment inquiry,” in large part because these factors “come into play only if our deployment triggers are not met.” *Triennial Review Order* ¶ 459, n. 1405.

AT&T’s attempt to laden the Commission’s geographic market review with irrelevant factors is nothing more than an attempt to obscure the Commission’s entire trigger determination. As it has at every opportunity, at the issues identification conference AT&T again contended that the Commission’s trigger analysis is not simple, but convoluted, knotty, and complex. But AT&T’s stubborn insistence on this point does not change the fact that applying the triggers really is “a question of counting to three.” As the FCC recently told the United States Court of Appeals for the District of Columbia Circuit, “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, either through traditional circuit switches or intermodal alternatives such as cable or packet switches.” *Opposition of Respondents to Petitions for a Writ of Mandamus at 2, United States Telecom Association v. FCC*, Nos. 00-1012, 00-1015 *et al.* (D.C. Cir.) (Filed with the Court on October 9, 2003) (emphasis added).

The Commission should reject AT&T’s request to add additional factors to the geographic market determination, and instead consider the express terms – and only the express terms – set out by the FCC.

Thank you for your consideration.

Sincerely,



Richard A. Chapkis

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c: Parties of Record (via electronic mail and overnight delivery)