ORIGINAL

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Subject: E-filing - Docket No. 041269-TP

Attachments: Request for Official Recognition 9-26-05.pdf

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Docket No and title: In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law
Docket 041269-TP

Filed on behalf of: DIECA Communications, Inc. d/b/a Covad Communications Company

Number of pages: 13

Document attached: Request for Official Recognition

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ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:	)	
Petition to Establish Generic Docket to Consider	)	Docket No. 041269-TP
Amendments to Interconnection	)	Filed: September 26, 2005
Agreements Resulting from Changes of Law	)	
	)	

REQUEST FOR OFFICIAL RECOGNITION

DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), through its undersigned counsel, pursuant to rule 90.202, Florida Rules of Evidence, and section 120.569(2)(i), Florida Statutes, requests Official Recognition of the attached excerpt from the *Order* of the Maine Public Utilities Commission, in VERIZON-MAINE, Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21) in Docket No. 2002-682, issued on September 13, 2005, finding that "line sharing continues to be a Section 271 Checklist Item No. 4 requirement." Covad also requests official recognition of the attached FCC *Order* in In the Matter of SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of Section 271, issued on November 5, 2004 in WC Docket No. 03-235 to which the Maine order refers.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE
Docket No. 041269-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Official Recognition was served by electronic mail and U.S. Mail this 26th day of September, 2005, to the following:

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s/Vicki Gordon Kaufman
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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)

September 13, 2005

ORDER

ADAMS, Chairman; DIAMOND and REISHUS, Commissioners

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FCC's transition rules.[17] The parties also do not contest that UNE-Ps are not required under Section 271 because the FCC has found that Section 271 does not require combinations of UNEs.[18] Accordingly, pursuant to the FCC's rules, Verizon does not need to provide any new UNE-Ps after March 11, 2005, but must continue the provisioning of existing arrangements until March 11, 2006. During the interim period, the price of existing UNE-Ps will be the price as of June 15, 2004, plus one dollar.

3. Line sharing

Line sharing allows a CLEC to use the high frequency part of a loop to provide xDSL service (broadband) while Verizon uses the low frequency portion of the loop to provide voice service to the same end user. The parties agree that, subject to a 3-year transition mechanism, the FCC eliminated line sharing as a UNE under Section 251. The parties vigorously disagree as to whether line sharing is required pursuant to Section 271, Checklist Item No. 4 – access to unbundled loops.

a. Verizon

Verizon, both in its Briefs and its Exceptions, contends that Section 271, Checklist Item No. 4, requires only that it to provide access to a loop unbundled from switching and not to any portion or capacity of a loop. Verizon argues that unbundling line sharing requires unbundling beyond the "stand-alone local loop required by checklist item 4." Verizon points to what it characterizes as the "more expansive" language of Section 251(c)(3) which includes the "features, functions, and capabilities" of the network element and contrasts it with the language of Section 271 which requires only "local loop transmission from the central office to the customer's premises, unbundled from switching or other services." Verizon cites the FCC's orders approving Verizon's Section 271 applications for Massachusetts and Virginia as supporting its contention that line sharing is a checklist item only to the extent that it must be made available as a UNE under Section 251(c)(3). Finally, Verizon contends that even if line sharing is a Section 271 requirement, it has met its obligation by offering line sharing to CLECs under its VISTA agreements[19] which it characterizes as "arms-length agreements."

b. CLECs

The CLECs argue that line sharing clearly falls under Section 271's requirements. SegTel points to a recent decision by the New Hampshire Public Utilities Commission (NHPUC) which found that line sharing must continue to be

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[17] *See TRRO* at ¶ 199.

[18] *See TRO* at ¶ 655, fn 1990.

[19] Verizon offers CLECs access to line sharing through commercial agreements it refers to as "VISTA agreements."

provided pursuant to Section 271.[20] The NHPUC relied upon the statutory appendix to the FCC's *New Hampshire 271 Order*.[21] In that appendix, the FCC specifically addressed how an ILEC could establish compliance with Checklist Item No. 4. The FCC stated that the ILEC "must provide access to any functionality of a loop requested by competing carrier unless it is not technically feasible to condition a loop facility to support the particular functionality requested."[22] The NHPUC found that the high frequency portion of the loop used to provide DSL service was "a functionality of the loop" and therefore must be provided pursuant to Section 271, Checklist Item No. 4.[23] SegTel points out that the FCC's *Maine 271 Order*[24] contained the same language about the necessity of providing access to the functionality local loop cited by the NH PUC.

c. Decision

We find, based upon our review of FCC orders, including the *Maine 271 Order*, *Massachusetts 271 Order*,[25] and the *Broadband 271 Forbearance Order*, that line sharing continues to be a Section 271 Checklist Item No. 4 requirement. First, as segTel points out, the Statutory Appendix to the *Maine 271 Order* specifically

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[20] Proposed Revisions to Tariff NHPUC No. 84 - (Statement of Generally Available Terms and Conditions) - Petition for Declaratory Order re Line Sharing - Order Following Briefing, No. 24,442, DT 03-201 and DT-176 (March 11, 2005) (*NHPUC SGAT Revision Order*).

[21] *Application by Verizon New England Inc., and Verizon-Delaware, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization To Provide In-Region, InterLATA Services in the States of New Hampshire and Delaware*, CC Docket No. 02-157, Order, (September 25, 2002) (*NH 271 Order*).

[22] *NH 271 Order* at ¶ 49.

[23] *NHPUC SGAT Revision Order* at 46-47 citing *U.S. Telecomm. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004)(*USTA II*).

[24] *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization To Provide In-Region, InterLATA Services in the State of Maine*, CC Docket No. 02-61, Order, 17 FCC Rcd 11676 (June 19, 2002) (*Maine 271 Order*).

[25] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Order, 16 FCC Rcd 8988 (April 16, 2001) (*Massachusetts 271 Order*).

states that any functionality of the loop must be unbundled. Second, we disagree with Verizon's interpretation and reliance upon paragraph 164 of the FCC's *Massachussetts 271 Order*. We find nothing in that paragraph which supports Verizon's position, i.e. that Checklist Item No. 4 is limited to full loops. However, in the paragraph immediately preceding that cited by Verizon, the FCC clearly states that line sharing must be provided pursuant to Section 271 under both Checklist Item No. 2 and Checklist Item No. 4.[26]

As we explained in our September 3, 2004 Order in this docket, Checklist Item No. 2 requires "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252 (d)(1)." Section 251(c)(3) requires ILECs to provide access to their network, i.e. UNEs, while Section 252(d)(1) sets the pricing standard for those UNEs, i.e., TELRIC pricing. Section 251(c)(3) also requires compliance with section 251(d)(2) which limits access to UNEs at TELRIC pricing to only those meeting the "necessary and impair" standard. Thus, Checklist Item No. 2 requires an ILEC to meet all of the 251 and 252 unbundling and pricing standards set forth in the *TRO* and *TRRO*.

Checklist Items Nos. 4, 5, 6, and 10 require ILECs to provide unbundled access to loops, transport, switching and signaling. The FCC has explicitly found that, despite elimination of a number of UNEs under Section 251, ILECs must continue to provide access to those UNEs under Section 271.[27] However, unlike Checklist Item No. 2, none of these other checklist items, cross-reference sections 251(c)(3) and 252(d)(1). The UNEs unbundled under Checklist Items Nos. 4, 5, 6 and 9 must only meet the "just and reasonable" pricing standard of 47 U.S.C. §§ 201-202 and not the TELRIC standard required under section 251.[28]

Consequently, the FCC's holding in the *Massachusetts 271 Order* –that line sharing is required under both Checklist Item No. 2 and No. 4 – is more significant now than it was at the time, i.e. when the ILECs' Checklist Item No. 2 requirements encompassed all of the other Checklist UNEs. Now that the ILECs' Checklist Item No. 2 requirements have been narrowed by the *TRO* and the *TRRO*, i.e. now that the FCC has found that Section 251 does not require the unbundling of certain UNEs such as line sharing, the fact that the FCC stated that the eliminated UNE also must be provided pursuant to Checklist Item No. 4 means that ILECs have a continuing obligation to unbundle that UNE today.

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[26] *Massachusetts 271 Order* at ¶ 163 ("On December 9, 1999 the Commission released the *Line Sharing Order* that, among other things, defined the high-frequency portion of local loops as a UNE that must be provided to requesting carriers on a nondiscriminatory basis pursuant to section 251(c)(3) of the Act and, thus, checklist items 2 and 4 of section 271").

[27] *TRO* at ¶ 653.

[28] *TRO* at ¶ 656.

The FCC's position on line sharing under Section 271 was confirmed in the aftermath of the FCC's *Broadband 271 Forbearance Order* in the statements made by then Chairman Powell and then Commissioner, now Chairman, Martin accompanying the FCC 's *Broadband 271 Forbearance Order*. Chairman Powell stated that he did not believe the *Broadband 271 Forbearance Order* addressed line sharing or that the FCC was forbearing from application of Section 271 to line sharing.[29] Chairman Martin stated that he believed the *Broadband 271 Forbearance Order* did address line sharing and, that if it did not do so explicitly, it would do so by operation of law because both SBC and Quest had amended their forbearance petitions to include line sharing.[30]

Subsequently, the FCC issued its *Order Extending Deadline* explicitly stating that the earlier *Broadband 271 Forbearance Order* only covered Fiber to the Home (FTTH), Fiber to the Curb (FTTC), hybrid loops and packet switching and that the petitions of SBC and Quest remained pending as to any other UNEs not required under Section 251, e.g., line sharing.[31] The *Order Extending Deadline* further stated that unless the FCC took action within 90 days, the requests would be deemed granted by operation of law. On January 11, 2005, SBC withdrew its petition for forbearance and on January 13, 2005, Quest withdrew its petition, thereby foreclosing the FCC's consideration of the issue.

Clearly both former Chairman Powell and current Chairman Martin believe that line sharing continues to be a Section 271 requirement unless, and until, the FCC determines that it will forbear from enforcing the requirement. As described above, the FCC never reached that decision because SBC and Quest withdrew their petitions.[32]

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[29] "By removing 271 unbundling obligations for fiber-based technologies - and not copper based technologies such as line sharing - today's decision holds great promise for consumers, the telecommunications sector and the American economy." *Broadband 271 Forbearance Order* at Chairman Powell's Separate Statement.

[30] "Regardless of whether it was affirmatively granted, because the Commission's decision fails to deny the requested forbearance relief with respect to line sharing, it is therefore deemed granted by default under the statute." *Broadband 271 Forbearance Order* at Chairman Martin's Separate Statement.

[31] *In the Matter of SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of Section 271*, Order Extending Deadline, WC Docket No. 03-235 (Nov. 4, 2004).

[32] We note that the FCC's recent *BellSouth Line Sharing Order*, which addresses state commission authority to order line sharing pursuant to state law, is inapplicable to the question before us because we are finding that line sharing is required under federal law, not state law. *Bellsouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive*

Accordingly, Verizon must continue to provision line sharing as a UNE and include it in its wholesale tariff. As stated earlier, the FCC has determined that the appropriate pricing standard for Section 271 UNEs is " just and reasonable" and we have determined that until Verizon files prices for our approval or submits FCC-approved rates, Verizon must continue to provision all Section 271 UNEs at TELRIC prices. Verizon alleges in its Brief that it meets the FCC's just and reasonable standard through its offering of line sharing under the VISTA agreements. We do not have sufficient information before us at this time to reach a final determination on Verizon's claim. Before we could reach such a determination, we would need a more detailed filing by Verizon comparing its line sharing pricing structure (all recurring and non-recurring costs associated with ordering wholesale line sharing) under TELRIC to the pricing structure under VISTA. Thus, until Verizon submits such a filing and we make a final determination on Verizon's claim, Verizon must continue to offer line sharing at TELRIC rates.

4. Hybrid Loops

The term hybrid loops describes loops which contain both a copper portion and a fiber portion. Previously, carriers served each customer with all copper wires running from the central office to the end user. More recently, ILECs have configured their networks by using fiber feeder cables running from their central office to a remote terminal and then copper distribution wires running from the remote terminal to the end user's premises. This enables ILECs to more efficiently carry the traffic between the remote terminal and the central office.

a. Section 251 Access

The parties generally agree, and we concur, that Verizon must unbundle hybrid loops pursuant to Section 251 in accordance with the limitations imposed by the FCC in paragraphs 285-297 of the *TRO*. Specifically, the FCC has held that ILECs must provide access to the TDM (time division multiplexing) features, functions, and capabilities of hybrid loops, including DS1s, DS3s, and voice-grade narrowband connections. The parties also agree that the appropriate pricing standard for such access pursuant to Section 251 is TELRIC pricing.

While the parties also agree, and we concur, that Verizon does not have to provide unbundled access to the packet switching features, functions, and capabilities of hybrid loops,[33] there is some disagreement concerning whether Verizon must provide unbundled access to broadband capabilities where the CLEC has installed its own packetized switching capabilities. GWI contends, both in its briefs and

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LEC UNE Voice Customers, WC 03-251, Memory and the Opinion and Order and Notice of Inquiry, FCC 05-75, rel. March 25, 2005 (*BellSouth Line Sharing Order*).

[33] *See TRO* at ¶ 288.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of Section 271	)	WC Docket No. 03-235
	)	
	)	

ORDER

Adopted: November 5, 2004 **Released:** November 5, 2004

By the Chief, Wireline Competition Bureau:

1. In this Order, pursuant to section 10(c) of the Communications Act of 1934, as amended (the Act),[1] we extend by 90 days the date by which the petition requesting forbearance filed by SBC Communications Inc. (SBC) shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standards for forbearance under section 10(a) of the Act.[2]

2. On November 6, 2003, SBC filed a petition requesting that the Commission forbear from applying the requirements of section 271(c)(2)(B)[3] to the extent, if any, that those provisions impose unbundling obligations on SBC that this Commission has determined should not be imposed on incumbent local exchange carriers pursuant to section 251(c)(3).[4] On October 27, 2004, the Commission released an order granting SBC's petition to the extent that it requested forbearance with respect to broadband network elements, specifically fiber-to-the-home loops, fiber-to-the-curb loops, the packetized functionality of hybrid loops, and packet switching.[5] SBC's petition remains pending to the extent that it requests forbearance from the requirements of section 271(c)(2)(B) with respect to other network elements. Section 10(c) of the Act states that a petition for forbearance shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by

[1] 47 U.S.C. § 160(c).

[2] 47 U.S.C. § 160(a).

[3] 47 U.S.C. § 271(c)(2)(B).

[4] *SBC Communications, Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 03-235 (filed Nov. 6, 2003).

[5] *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C.§ 160(c)*, WC Docket No. 01-338, *SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C.§ 160(c)*, WC Docket No. 03-235, *Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C.§ 160(c)*, WC Docket No. 03-260, *BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C.§ 160(c)*, WC Docket No. 04-48, Memorandum Opinion and Order, FCC 04-254 (rel. Oct. 27, 2004).

the Commission.[6] The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection 10(a).[7]

3. The portion of the petition still under review raises significant questions regarding whether forbearance from applying section 271 to network elements that need not be unbundled under section 251(c)(3) meets the statutory requirements set forth in section 10(a). The Bureau thus finds that a 90-day extension is warranted under section 10(c).

4. Accordingly, IT IS ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the date on which the petition seeking forbearance filed by SBC shall be deemed granted, in the absence of a Commission denial of the petition for failure to meet the statutory standards for forbearance, is extended to February 3, 2005.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

[6] 47 U.S.C. § 160(c).

[7] *See, e.g., Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, As Amended*, CC Docket No. 98-65, Order, 14 FCC Rcd 6415 (Com. Car. Bur. 1999).