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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

**OPPOSITION OF AT&T CORP.
TO VERIZON PETITION FOR CONDITIONAL WAIVER**

Pursuant to the Commission's Public Notice, dated October 19, 2000, AT&T Corp. ("AT&T") submits this opposition to the Verizon Petition for Conditional Waiver ("Pet."), filed October 11, 2000, in the above-captioned proceeding.

In its recent *Collocation Order*, the Commission adopted a national default rule that incumbent LECs must provide collocation within 90 calendar days of receiving an acceptable collocation application, except where a state commission establishes different intervals. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration, ¶ 27 (rel. Aug. 10, 2000) ("*Collocation Order*"). The *Collocation Order* also provides that, if an incumbent LEC has already established provisioning intervals in a state tariff or Statement of Generally Available Terms and Conditions ("SGAT"), "within 30 days after the effective date of this *Order*, the incumbent LEC must file with the state commission any amendments necessary to bring a tariff or SGAT into compliance with the national standards." *Id.* ¶ 36. The Commission stated that "[a]t the time [an incumbent LEC] files these amendments, it also must file its request, if any, that the state set intervals longer than the national standards as well as all supporting information." *Id.* Thus, incumbent LECs must immediately bring their tariffs and SGATs into compliance with the national default

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rule, but they may simultaneously request longer intervals which, if ultimately adopted by the state commission, would displace the national standards.

Verizon seeks a “conditional waiver” of the requirement that it immediately file tariffs implementing the national default rule of 90-calendar-day provisioning intervals. Instead, it asks the Commission to permit it to implement immediately throughout its region the longer intervals adopted by the New York Public Service Commission – *i.e.*, approximately 105 calendar days (76 business days) for “standard” collocations, and longer intervals in other circumstances. Verizon contends that it will seek to persuade all of the states in its region to adopt the New York standards, but that a waiver is necessary because (a) in the meantime Verizon cannot consistently meet the national default standard of 90 days (Pet. 2-3) and (b) if it files a tariff implementing the 90-day standard and simultaneously asks for longer intervals, the state commissions will be “confused” and may treat the national default rule as having “preemptive effect” (Pet. 4-5).

The petition should be denied for several reasons. First, Verizon has not remotely satisfied the Commission’s stringent standards for a waiver. The applicant has the burden of showing “good cause” for a waiver (47 C.F.R. § 1.3) and “faces a high hurdle even at the starting gate.”¹ Good cause is demonstrated only where “special circumstances” warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule.²

¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

² *See FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964) (an agency must adhere strictly to its rules unless an applicant demonstrates “reasons why in the public interest the rule should be waived”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[t]he agency must

Verizon has not even attempted the necessary showings. In particular, Verizon has made no attempt to demonstrate that there are any “special circumstances” in its region that would warrant a deviation from the general rule. In the declarations Verizon has attached to its waiver request, its declarants simply describe the processes that incumbent LECs generally follow in provisioning collocation requests. *See* Declaration of Karen Maguire, ¶¶ 10-29; Declaration of Ralph Carey, ¶¶ 8-19. The Commission has already found, on a full record, that incumbent LECs generally can complete those processes within 90 days. *Collocation Order* ¶¶ 27-28. For that reason alone, Verizon’s petition should be denied.

In all events, as AT&T will show in more detail in its opposition to the petitions for reconsideration, Verizon’s claim that the FCC’s 90-day interval is unreasonable is incorrect. The Commission has found that “a maximum of 90 calendar day interval will give an incumbent LEC ample time to provision most, if not all, physical collocation arrangements.” *Collocation Order* ¶ 28. As the Commission notes in the *Collocation Order*, other state commissions have mandated similar provisioning intervals, including Pennsylvania in Verizon’s region. *Id.* ¶ 18; *see also id.* ¶ 17 (Texas).

Verizon nonetheless asserts (at 2) that a standard collocation “normally take[s] at least 76 business days to complete.” These claims cannot be taken seriously given that installation of the cage does not even *begin* under Verizon’s schedule until Day 53. *See* Maguire Declaration ¶ 23. Verizon has allotted far too much time to the initial stages of “processing” the application. Moreover, after years of real world experience, collocation installation is a relatively straightforward procedure, involving the use of basic fencing and posts to construct a

explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its

wire cage, a task that does not take 21 business days. Verizon's claimed need for time for the contractor to obtain "inventory" is also puzzling given that it is the new entrants that generally provide the equipment. In short, although the Commission fully recognized that it selected a provisioning interval that was "somewhat tighter than those that certain state commissions have set," and that some incumbent LECs would therefore have to "improve their collocation provisioning performance," Verizon has not shown that the 90-day interval cannot be met. *See Collocation Order* ¶¶ 27-28.

Nor is it necessary to scrap the 90-day default interval to accommodate requests for collocation that involve unconditioned space or special construction. In AT&T's experience, very few collocation requests involve unconditioned space or new construction, and therefore Verizon's reliance on such relatively rare occurrences cannot form the basis for an across-the-board waiver. In all events, Verizon's claims are clearly overblown. Special construction, for example, typically requires merely knocking down walls in space that was previously used as offices by administrative personnel, and such work is not complicated and can be completed quite quickly. The Commission specifically found that, "based on the record before us," longer intervals for unconditioned space and special construction "would not generally result in competitive LECs receiving access to space within incumbent LEC premises within reasonable time frames," and Verizon has not shown to the contrary.

Finally, Verizon's claims that state commissions will be confused by Verizon's state filings are nonsense. *See* Pet. 4-5. Verizon is surely underestimating the ability of state commissions to comprehend Verizon's position and to "evaluate what an appropriate interval should be." *See* Pet. 5. To the contrary, if Verizon could show that the 90-day interval is

operation"); *WAIT Radio*, 418 F.2d 1153; *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983).

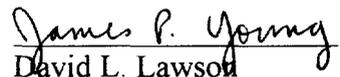
generally unattainable (as it cannot), Verizon should have little difficulty persuading state commissions to adopt the New York standards. Indeed, the ability of state commissions to override the FCC's national default rule gives Verizon a complete remedy, and makes a waiver completely unnecessary and inappropriate. Granting the waiver request, in contrast, would remove Verizon's incentives to make the necessary showings (and state commissions' incentives to rule on them) in a timely manner.

CONCLUSION

For the foregoing reasons, the Verizon Petition for Conditional Waiver should be denied.

Respectfully submitted,

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October 23, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of October, 2000 a true and correct copy of the foregoing Opposition of AT&T Corp. to Verizon Petition for Conditional Waiver was mailed first class, postage pre-paid to the following:

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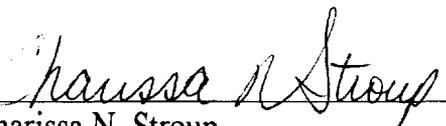
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