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

In The Matter of	)	
	)	
Application by Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization To Provide In-Region, InterLATA Services in Connecticut	)	**CC Docket No. 01-100**

OPPOSITION
OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

ASSOCIATION OF COMMUNICATIONS ENTERPRISES
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May 14, 2001 **Its Attorneys**

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SUMMARY

The Association of Communications Enterprises ("ASCENT"), a national trade association representing more than 800 entities engaged in, or providing products and services in support of, the competitive provision of telecommunications and information services, hereby urges the Commission to deny the Application of Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services Inc. (collectively "Verizon") for authority to provide in-region, interLATA service in the State of Connecticut, pursuant to Section 271 of the Communications Act of 1934, as amended, 47 U.S.C. § 271. As ASCENT will demonstrate herein, Verizon has not fully satisfied competitive checklist item number fourteen and, accordingly, may not be granted authority to provide in-region, interLATA service originating in the State of Connecticut.

While Verizon has belatedly and grudgingly acknowledged the applicability of Section 251(c)(4) to its xDSL-based advanced services offerings, the restrictions it has imposed on the resale of the xDSL-based advanced services it offers exclusively through its affiliate Verizon Advanced Data Inc. ("VADI") have eviscerated the competitive value of the resale offering. VADI will allow the resale of its xDSL-based advanced services only to consumers who take voice service from Verizon. As a result, competitive providers are not allowed to provide Section 251(c)(4) resold xDSL-based advanced services to their current voice customers or to offer prospective customers a range of services equivalent to those Verizon can offer in conjunction with VADI. As the Commission has acknowledged providing resale carriers with the ability " to acquire advanced services sold by incumbent LECs to residential and business end users at wholesale rates," is

necessary to ensure that such providers are "able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs."

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OPPOSITION OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises (ASCENT"),[1] through undersigned counsel and pursuant to Public Notice, DA 01-1063 (released April 23, 2001), hereby opposes the application ("Application") filed by Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. (collectively "Verizon") for authority to provide in-region, interLATA service originating in the State of Connecticut pursuant to Section 271 of the Communications Act of 1934, as amended (the "Act"),

[1] Formerly the Telecommunications Resellers Association ("TRA"), ASCENT is a national trade association comprised of more than 800 entities engaged in, or providing products and/or services in support of, the competitive provision of telecommunications and information services. ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

47 U.S.C. § 271. As ASCENT will demonstrate herein, Verizon has not fully satisfied competitive checklist item number fourteen and, accordingly, may not be granted authority to provide in-region, interLATA service originating in the State of Connecticut.

1. Verizon Imposes Unreasonable Restrictions on The Resale of xDSL-based Advanced Services

The mandate of Section 271(d)(3) of the Communications Act of 1934 (the "Communications Act"), as amended by the Telecommunications Act of 1996 (the "Telecommunications Act") is unequivocal: "[t]he Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that . . . the petitioning Bell operating company has . . . fully implemented the competitive checklist."[2] And "full implementation of the competitive checklist" requires that each of the fourteen checklist items be fully satisfied:

> In demonstrating its compliance, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in

[2] 47 U.S.C. § 271(d)(3).

quantities that competitors may reasonably demand and at an acceptable level of quality.[3]

[3] 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 (Memorandum Opinion and Order), CC Docket No. 01-9, FCC Docket No. 01-130, ¶ 11(April 16, 2001) (*subsequent history omitted*).

As the Commission has recognized, an applying carrier's failure to "satisf[y] an individual checklist item of the competitive checklist constitutes independent grounds for denying . . . [its] application."[4] More specifically, the Commission has confirmed that failure to satisfy checklist item fourteen "renders . . . [an] application deficient."[5]

Competitive checklist item number fourteen requires the applying carrier to demonstrate that "[t]elecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[6] Section 251(c)(4), in turn, not only requires incumbent local exchange carriers ("LECs") "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not

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[4] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 20599, ¶ 50 (1998) (*subsequent history omitted*)

[5] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended , to Provide In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245, ¶ 63 fn. 225 (1998) (*subsequent history omitted*)

[6] 47 U.S.C. § 271(c)(2)(B).

telecommunications carriers," but prohibits incumbent LECs from "impos[ing] unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service."[7] In implementing Section 251(c)(4)(A), the Commission declared that all services included in an incumbent LEC's retail tariffs must be made available to requesting carriers at wholesale rates for resale.[8] And subsequently, the Commission confirmed that xDSL-based advanced services were included in the universe of services that must be so offered.[9]

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[7] 47 U.S.C. § 251(c)(4).

[8] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 872 (1996) (*subsequent history omitted*).

[9] Deployment of Wireline Services Offering Advanced Telecommunications Capability (Memorandum Opinion and Order), 13 FCC Rcd. 24011, ¶ 22 (1999) (*subsequent history omitted*).

Under Section 251(c)(4)(B), the Commission held that restrictions imposed by incumbent LECs on the resale of telecommunications services will be deemed to be "presumptively unreasonable."[10] As explained by the Commission, "the ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position."[11] Hence, the Commission continued, "[g]iven the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and

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[10] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 939; 47 C.F.R. §§ 51.603 & 605. While this presumption may be overcome, the restriction must either involve cross-class selling or short-term promotional pricing (47 C.F.R. § 51.613(a)), or the incumbent LEC must have demonstrated to the pertinent state commission that the restiction is reasonable and nondiscriminatory. 47 C.F.R. § 51.613. Only restrictions which are "narrowly tailored" can be approved by a state commission. Id. at ¶ 939.

[11] Id.

conditions to be unreasonable and therefore in violation of section 251(c)(4)."[12]

[12] Id.

The Commission has applied the principles so articulated consistently throughout its Section 271 review process. Thus, in denying BellSouth Corporation ("BellSouth") authority to provide in-region, interLATA authority in both the States of Louisiana and South Carolina, the Commission cited as an independent ground for rejecting the applications the restrictions imposed by the carrier on the resale of contract service arrangements ("CSAs").[13] As explained by the Commission, "BellSouth's failure to offer contract service arrangements for resale at a discount . . . impedes competition for its large-volume customers and thus impairs the use of resale as a vehicle for competitors to enter BellSouth's market."[14] Moreover, the Commission expressed concern regarding seeming efforts by BellSouth "to avoid its statutory resale obligation" through use of resale restrictions.[15]

Verizon currently offers xDSL-based advanced services exclusively through an affiliate -- Verizon Advanced Data Inc. ("VADI"). Until recently, VADI had simply refused to offer xDSL-based advanced services at wholesale rates for resale in reliance upon merger conditions adopted by the Commission in approving Bell Atlantic Corporation's ("Bell Atlantic") merger with GTE Corporation ("GTE"),[16] the Commission having acquiesced in Bell Atlantic's and GTE's erroneous

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[13] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended , to Provide In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245 at ¶¶ 59 - 69; Application of Bell South Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended , to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), 13 FCC Rcd. 539, ¶¶ 215 - 24 (1997) (*subsequent history omitted*).

[14] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended , to Provide In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245 at ¶ 68.

[15] Id.

[16] Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International 214 and 310 Authorizations and Application to

view that the 251(c) obligations of the incumbents did not extend to VADI. In *Association of Communications Enterprises v. FCC*, the U.S. Court of Appeals for the District of Columbia Circuit held otherwise,[17] and VADI belatedly and grudgingly acknowledged the applicability of Section 251(c)(4) to its xDSL-based advanced services offerings.[18] The restrictions

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Transfer Control of a Submarine Cable Landing License (Memorandum Opinion and Order), 15 FCC Rcd. 14032, Appendix D, Section I (2000) (*subsequent history omitted*)

[17] 235 F.3d 662 (D.C. Cir. 2001).

[18] *See, e.g.*, Verizon FCC Tariff No. 1, pg. 600.

VADI has imposed on the resale of its xDSL-based advanced services, however, have eviscerated the value of the resale offerings and hence are wholly inconsistent with Section 251(c)(4).

VADI will allow the resale of its xDSL-based advanced services, but only to consumers who take voice service from Verizon.[19] Competitive providers are thus not allowed to provide Section 251(c)(4) resold xDSL-based advanced services to their current voice customers or to offer prospective customers a range of services equivalent to those Verizon can offer in

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[19] *See* Transcript of *en banc* hearing before the Public Utility Commission of the Commonwealth of Pennsylvania conduct April 26, 2001 in Consultive Report on Application of Verizon Pennsylvania Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylavia (pg. 274):

> Mr. Barber (on behalf of AT&T Communications of Pennsylvania, Inc.):
>
> Now, in terms of the colloquy you were having with Judge Schnierle in terms of the caveats and conditions in terms of how someone would obtain resale service, the resold DSL service, as I understood it, the customer in question, in order to obtain that resold service, would have to be a Verizon Pennsylvania customer for purposes of basic local exchange services?
>
> Mr. Cullina (on behalf of Verizon Pennsylvania, Inc.):
>
> That's correct.

Attached hereto as Appendix A are pertinent pages of the afore-referenced transcript.

conjunction with VADI. This restriction holds true whether the competitive provider is reselling Verizon voice service or using unbundled network elements to provide voice service.

As best ASCENT can fathom, Verizon's rationale for this restriction is that VADI is engaging in line sharing with Verizon and hence, the limitation that an incumbent LEC need only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which access is sought, according to Verizon, applies to xDSL-based services

resold by VADI.[20] In so asserting, Verizon is engaging in precisely the conduct the U.S. Court of

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[20] Id. at pp. 264 - 65:

Judge Schnierle:
So today if MCI were to cll on behalf of a customer to which MCI was rendering voice service under UNE-P and say we's like to purchase VADI DSL service for resale to that customer, assuming the customer was capable of receiving DSL service from Verizon, that transaction could take place?

Mr. Cullina:

We do not currently have a line splitting arrangement with that CLEC.

Judge Schnierle:

Why would your need a line splitting arrangement if it's a resale transaction?

Mr. Cullina:

Well, in that example with UNE-P, my understanding is that would require line splitting.

Judge Schnierle:

All right. Well, let me amend that then. If they were taking the customer as a resale customer, they could also get the DSL as a resale service.

Mr. Cullina:

My understanding is, Judge, that line sharing as it's provided is only available where Verizon Pennsylvania provides retail voice service. So the situation where we would resell the service to MCI would be where Verizon Pennsylvania provides retail voice service. So the situation where we would resell the service to MCI would be where Verizon Pennsylvania provides the local voice service and MCI in your example would provide the resold DSL service. line splitting.

Judge Schnierle:

On that one I'm not going to pursue it any further, but I suspect the CLECs might want to.

Thank you.

Appeals for the District of Columbia Circuit ruled unlawful in *Association of Communications Enterprises v. FCC – i.e.*, utilizing an affiliate to avoid its Section 251(c) obligations. If Verizon were providing both the voice and the data services directly, it would obviously be obliged to make xDSL-based advanced services available for Section 251(c)(4) resale. Simply inserting an affiliate into the mix does not change this result. As the D.C. Circuit has made clear, an incumbent LEC may not "sideslip § 251(c)'s requirements" through the artifice of an affiliate relationship.[21]

Moreover, Verizon's machinations make a mockery of the Commission's pro-competitive line-sharing requirements, twisting obligations which were intended to further competition so as to create a further barrier to competitive entry. Initially, line-sharing obligations do not come into play when Verizon voice service is being resold. In such a circumstance, the competitive provider would simply be acquiring two services from Verizon for resale; Verizon would retain physical control of the entire loop, including both the voiceband and the high frequency spectrum. And when the voice service is being provided via unbundled network elements, an incumbent LEC's line-splitting obligations would come into play. As the Commission has recently confirmed, incumbent LECs must allow, indeed, must facilitate efforts by, "competing carriers to offer both voice and data service over a single unbundled loop."[22] No where did the Commission limit the manner in which that combined service might be provided pursuant to a line-splitting

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[21] Association of Communications Enterprises v. FCC, 235 F.3d 662 at 666.

[22] Deployment of Wireline Services Offering Advanced Telecommunications Capability (Third Report and Order on Reconsideration), CC Docket No. 98-147, FCC 01-26, ¶¶ 17 - 25 (2001) (*subsequent history omitted*).

arrangement.

As the Commission has acknowledged, providing resale carriers with the ability " to acquire advanced services sold by incumbent LECs to residential and business end users at wholesale rates," is necessary to ensure that such providers are "able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs."[23] And has the Commission has repeatedly noted, "[t]o compete effectively in the local exchange market, new entrants must be able to provide service to their customers at a quality level that matches the service provided by the incumbent LEC."[24]

Accordingly, the Commission may not, and should not, grant Verizon authority to provide in-region, interLATA service originating in the State of Connecticut. As noted previously, Section 271(d)(3) does not permit the Commission to approve Verizon's application until such time as it has "fully implemented the competitive checklist," including item number fourteen. Moreover, ASCENT submits that the Commission should, to borrow a phrase from Commissioner Tristani, reestablish "the rigor of its 271 process" by denying the authority Verizon seeks until such time as the carrier finally offers xDSL-based advanced services for resale in full compliance with Section 251(c)(4) of the Communications Act.

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[23] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Services (Second Report and Order), 14 FCC Rcd. 19237, ¶ 20 (1999) (*subsequent history omitted*).

[24] Application of BellSouth Corporation, *et al.* Pursuant to Section 271of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), 13 FCC Rcd. 539 at ¶ 82.

2. Conclusion

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to deny as premature the application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for authority to provide in-region, interLATA service in the State of Connecticut.

Respectfully submitted,

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May 14, 2001

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APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

- x

Consultative report on Application of Verizon Pennsylvania Inc. for FCC authorization to provide In-Region, InterLATA Service in Pennsylvania. : Docket No. M-00001435

Further En Banc Hearing

- x

Pages 182 through 457

Hearing Room 1
Commonwealth Keystone Building
Harrisburg, Pennsylvania

Thursday, April 26, 2001

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

JOHN M. QUAIN, Chairman
ROBERT K. BLOOM, Vice Chairman
NORA MEAD BROWNELL, Commissioner
AARON WILSON, JR., Commissioner
TERRANCE J. FITZPATRICK, Commissioner

WAYNE L. WEISMANDEL, Administrative Law Judge
MICHAEL C. SCHNIERLE, Administrative Law Judge

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1 P R O C E E D I N G S

2 ADMINISTRATIVE LAW JUDGE WAYNE L. WEISMANDEL: This
3 is the date, time and place set for a further en banc
4 hearing in the matter of the Consultative Report on the
5 Application of Verizon Pennsylvania, Inc. for FCC
6 authorization to provide In-Region, interLATA service in
7 Pennsylvania, Pennsylvania Public Utility Commission Docket
8 No. M-00001435. I am Administrative Law Judge Wayne L.
9 Weismandel, along with Administrative Law Judge Michael C.
10 Schnierle. The en banc proceeding is being presided over by
11 Commission Chairman John Quain, Vice Chairman Robert Bloom,
12 Commissioners Nora Mead Brownell, Terrence Fitzpatrick and
13 Aaron Wilson, Jr.

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15 The next subject is Checklist Item 14, resale, if the
16 appropriate witnesses would exchange places with these folks
17 and counsel do likewise.

18 CHAIRMAN QUAIN: While we're getting the next set of
19 witnesses, I'm assuming, because no one has tried to move
20 these exhibits, these charts, they're not in the record, and
21 I think that's wise.
22 MR. SMITH: Mr. Chairman, that's correct. We were
23 just using them for illustration.
24 CHAIRMAN QUAIN: I'd make a statement further. I
25 find it incredible that I have to do it, but let's be clear

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1 that I don't think we want anything passed out to the
2 Commissioners that have not first been passed out to
3 opposing counsel by anybody in this room. It is just
4 fundamentally unfair, and we don't care to see it if your
5 opposing counsels haven't seen it first and understand what
6 is in it, whether you intend to move it as an exhibit or
7 not.
8 JUDGE WEISMANDEL: It is my understanding that Mr.
9 Cullina is here on behalf and authorized to testify on
10 behalf of VADI. Is that correct, sir?
11 MR. CULLINA: That's correct.
12 JUDGE WEISMANDEL: You are then functioning as a VADI
13 witness; is that correct?
14 MR. CULLINA: I'm functioning as counsel, not as a
15 fact witness, but I can do my best to respond to factual
16 questions.

17 JUDGE WEISMANDEL: I just wanted to be sure we were
18 clear on the record in what capacity you were appearing.
19 Thank you.
20 Ms. Daviston, you're going to do the staff
21 presentation this morning; correct?
22 MS. DAVISTON: Yes, that is correct. Good morning.
23 My name is Rhonda Daviston and I'm part of the Law Bureau
24 staff. The next issue scheduled for your consideration is
25 whether Verizon has met its burden in complying with the

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1 resale obligations of Checklist Item No. 14. Section
2 251(c)(4) of the Telecommunications Act of 1996 imposes on
3 ILECs the duty to offer for resale any telecommunications
4 services that the carrier provides retail to subscribers who
5 are not telecommunications carriers. In essence, the Act
6 requires an ILEC to make telecommunications services
7 available for resale.
8 Also to be considered in this proceeding is whether,
9 according to the Act, an ILEC has demonstrated that it
10 provides nondiscriminatory access to operation support
11 systems for the resale of its retail telecommunications
12 services. To make a prima facie case that Verizon is
13 meeting the resale checklist requirements, Verizon must
14 demonstrate that it is meeting its legal obligation to

15 furnish resale services upon request pursuant to state-
16 approved interconnection agreements that set forth prices
17 and other terms and that it is currently furnishing or is
18 ready to furnish resale services in quantities that
19 competitors may reasonably demand and at an acceptable level
20 of quality.
21 The interested parties for this issue are Verizon,
22 Arc, OTS, Sprint and Assent. The positions of the parties
23 are as follows.
24 Verizon states that it has complied with Checklist
25 Item No. 14, and in support of its compliance, Verizon

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1 states the following. It offers for resale at wholesale
2 rates established by the Commission all telecommunications
3 services that it provides at retail to subscribers who are
4 not telecommunications carriers. Verizon also states that
5 it provides reseller support with automated access to its
6 OSS for pre-ordering and ordering activities for resold
7 services. It also argues that its provisioning and
8 maintenance repair performance for resale is at parity or
9 exceeds the standards for retail. Verizon argues that
10 notwithstanding the Assent decision, VADI should be
11 permitted to avoid the wholesale discount under
12 circumstances similar to an ILEC where under the FCC
13 advanced services order it was concluded that sale of DSL to

14 ISPs who use it as an input component with their own
15 Internet service is not a service provided at retail.
16 The other participants have told us that Verizon does
17 not comply with the checklist because it fails to make its
18 DSL services available for resale. They state that Verizon
19 does not provide wholesale rates for the same service it
20 provides to its retail customers and that CLECs are not
21 permitted to use the same wholesale interfaces that they are
22 already using for other services. In addition, they state
23 Verizon's new policies impinge on the ability of CLECs to
24 provide broadband services. They also argue that the
25 transfer of advanced services capability to VADI has

1 resulted in nondiscriminatory access problems. Lastly, they
2 argue that VADI imposes burdensome and unreasonable
3 conditions on competitive advanced services products.
4 That concludes staff's presentation. Thank you.
5 JUDGE WEISMANDEL: Thank you, Ms. Daviston.
6 Would the witnesses who are going to testify on this
7 issue please stand and raise their right hand?
8 Whereupon,
9 MARILYN DeVITO
10 CARL HUSTER
11 KATHLEEN McLEAN

CLAIRE BETH NOGAY
MAUREEN P. DAVIS
E. CHRISTOPHER NURSE
were duly sworn.

JUDGE WEISMANDEL: Let the record reflect that all witnesses answered in the affirmative.

Ms. Martin.

MS. MARTIN: Thank you, Judge. When a Pennsylvania customer calls Verizon's, quote, "retail organization," end quote, to purchase DSL service, are they calling a Verizon entity that is subject to regulation by this Commission; and, if so, please identify that regulated entity?

MS. CONOVER: If I could interject here, these are employees that are wholesale oriented employees. So with

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that, caveat, if someone could answer that question.

MS. MARTIN: I'd be happy to have Verizon's counsel or VADI's counsel, whoever might be here, to answer the question.

MR. CULLINA: I'd be happy to answer that. It is John Cullina for Verizon. When a customer in Pennsylvania calls for DSL, they would either call the Verizon Pennsylvania business office or an organization we have in Virginia which handles all the DSL orders for the east coast.

MS. MARTIN: Could you specifically answer the question, though, which was when the Pennsylvania customer calls to purchase the DSL services, are they calling a Verizon entity that is subject to regulation by this Commission?

MR. CULLINA: In some cases, yes. In the case where they call Verizon Pennsylvania, they would be regulated by this Commission. In some cases, the customer would call an 800 number which would go down to a non-regulated affiliate in Norfolk, Virginia.

MS. MARTIN: Could you identify the circumstances when they would be calling the regulated entity I guess for the products they would be ordering when they call the entity versus the products that they would be ordering when they call the 800 number in Virginia? If I understand your

answer, you're saying that there are a range of DSL service products offered at retail and --

MR. CULLINA: No, no. What would happen is if a customer called into the local business office and expressed an interest in DSL, the local business office would perform a pre-qualification, and if that pre-qualification was positive, the request would be referred to the Virginia center for taking the order. In no cases is the actual order taken by Verizon Pennsylvania.

MS. MARTIN: Is the order taken by an entity regulated by this Commission?

MR. CULLINA: No.

MS. MARTIN: Thank you. At this point, staff has no further questions. I mean, I think that there is a lot of material here. We wanted to open it up to CLECs and Verizon to have the time, but if you don't have any questions, I'd be happy to ask a few more.

JUDGE WEISMANDEL: I believe Judge Schnierle has a question.

JUDGE SCHNIERLE: Yes. I'd like to ask a couple of questions I hope will shorten this thing significantly. It is my understanding that in the past, Verizon has taken the position that because VADI is rendering the DSL service, it does not have to be resold because VADI is not an ILEC. Is that -- that has been the position in the past. Is that

correct?

MR. CULLINA: No, that's not correct, Judge. We have always offered DSL for resale.

JUDGE SCHNIERLE: At wholesale rates.

MR. CULLINA: Right. Until the Assent decision became effective, it was our position that VADI was not subject to the resale discounting obligation. Since that decision became effective, we have amended our federal and

9 state tariffs to indicate that we would offer the discount.
10 JUDGE SCHNIERLE: Is the OSS capable of taking orders
11 for that service now?
12 MR. CULLINA: For DSL, VADI has, in accordance with
13 the FCC merger conditions, separate operation support
14 systems to take orders for DSL.
15 JUDGE SCHNIERLE: From a CLEC seeking to purchase at
16 wholesale for resale?
17 MR. CULLINA: Yes.
18 MS. MARTIN: Could I interject here, because I --
19 JUDGE SCHNIERLE: May I?
20 MS. MARTIN: I need clarification, though, because,
21 as I understood the answer, he was saying that VADI, which
22 is an entity regulated by Pennsylvania, is not offering --
23 that the retail services are not being offered by an entity
24 regulated by us, but now I hear you saying that, yes, VADI
25 does offer at retail, and, certainly, I know VADI is

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1 regulated by us.
2 MR. CULLINA: I may have been confused by the
3 question. I thought your question was who was taking the
4 order rather than who was provisioning the service.
5 JUDGE SCHNIERLE: I think I've got about one more
6 question.
7 So today if MCI were to call on behalf of a customer

to which MCI was rendering voice service under UNE-P and say we'd like to purchase VADI DSL service for resale to that customer, assuming the customer was capable of receiving DSL service from Verizon, that transaction could take place?

MR. CULLINA: We do not currently have a line splitting arrangement with that CLEC.

JUDGE SCHNIERLE: Why would you need a line splitting arrangement if it's a resale transaction?

MR. CULLINA: Well, in that example with UNE-P, my understanding is that would require line splitting.

JUDGE SCHNIERLE: All right. Well, let me amend that then. If they were taking the customer as a resale customer, they could also get the DSL as a resale service.

MR. CULLINA: My understanding is, Judge, that line sharing as it's currently provided is only available where Verizon Pennsylvania provides retail voice service. So the situation where we would resell the service to MCI would be where Verizon Pennsylvania provides the local voice service

and MCI in your example would provide the resold DSL service.

JUDGE SCHNIERLE: On that one I'm not going to pursue it any further, but I suspect the CLECs might want to.

Thank you.

JUDGE WEISMANDEL: Thank you, Judge Schnierle.

Do the Commissioners have any questions at this point?

CHAIRMAN QUAIN: Yeah. I'm confused. Somebody has to make it a little simpler for me, I think. I mean, I'm not even sure what we're trying to get at here. What I heard in the interchange between the questions being asked and the answers being given, people were talking right past each other. Someone explain to me what the heck is going on. What's the issue? What's the problem?

JUDGE SCHNIERLE: Commissioner, what has me baffled also is that the resale -- it sounds like Verizon is now saying we will now resell VADI service at wholesale rates, but there's some restriction, and I understand the restriction on the UNE-P, but I'm not exactly clear how that becomes a restriction if the customer is a resale voice customer of the CLEC. I understand the UNE-P business to some extent, the line splitting. I don't necessarily agree with the various parties' views of that, but I understand where they're coming from.

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MR. HUSTER: This is Carl Huster. I may be able to -- I'm a Director, Local Services Product Management, for Verizon. I may be able to shed some light on that.

CHAIRMAN QUAIN: Please do.

MR. HUSTER: The FCC order that required us to do

6 line share at that time didn't require resale to be done;
7 however, we are in discussions in the New York collaborative
8 to provide a line splitting/line share type hybrid on resale
9 and have circulated a draft product description in the
10 collaborative. So it's not available now, but we expect
11 once we get the issues ironed out in the collaborative that
12 it would be available on a resold line.
13 CHAIRMAN QUAIN: In Pennsylvania as well as New York,
14 I take it?
15 MR. HUSTER: Pardon? I didn't hear that.
16 CHAIRMAN QUAIN: In Pennsylvania as well as New York?
17 MR. HUSTER: Yes. We will start in New York and we
18 will roll it out across the footprint.
19 CHAIRMAN QUAIN: With that statement, with the
20 statement of the witness with regard to VADI now making a
21 commitment to resale, is there an issue left here that --
22 MR. BARBER: I think we still need to flesh out --
23 it's Bob Barber from AT&T, Mr. Chairman.
24 CHAIRMAN QUAIN: Go ahead.
25 MR. BARBER: I think we still need to flesh out to

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1 some extent the relationship of VADI here, to the extent the
2 commitment -- we obviously jumped over a couple legal
3 issues. There was some assumed knowledge about the Assent
4 decision. I'm not sure how familiar the Commission may be

5 with what was going on there. I think Mr. Cullina's
6 statement has raised some issues about even to what extent
7 they're making this resale available, at what rates, et
8 cetera.
9 CHAIRMAN QUAIN: Are you in a position and prepared
10 to flesh that out for us?
11 MR. BARBER: I'm hopeful.
12 CHAIRMAN QUAIN: So am I.
13 MR. BARBER: Should I start?
14 CHAIRMAN QUAIN: Sure.
15 MR. BARBER: Mr. Cullina and I have a long history of
16 engaging in these kinds of conversations back maybe --
17 CHAIRMAN QUAIN: Mr. Barber, I bet you have a long
18 history with just about everybody in this room.
19 (Laughter.)
20 MR. BARBER: There might be somebody here I haven't
21 cross-examined once upon a time.
22 CHAIRMAN QUAIN: Including most of the people sitting
23 up here. But go ahead.
24 MR. BARBER: Just by way of background, Mr. Chairman,
25 the Assent decision that everyone is referring to is a

1 decision in front of the D.C. Circuit Court of Appeals that
2 involved a challenge to one of the merger issues in the
3 SBC/Ameritech merger, which was a question of whether in

4 fact, by the establishment of a separate advanced services
5 data affiliate, the incumbent local exchange company could
6 therefore avoid the Section 251(c)(4) resale obligations of
7 the Act.
8 CHAIRMAN QUAIN: Right.
9 MR. BARBER: The D.C. Circuit determined that it in
10 fact could not do so, that in fact such a separate affiliate
11 would be subject -- or at least the ILEC could not avoid the
12 resale at wholesale discount obligations of the Act. That
13 clearly had ramifications also for the Bell Atlantic/GTE
14 merger commitment, which had, of course, the same separate
15 data affiliate involved. The initial indication was that
16 Verizon was still studying that. In the Massachusetts FCC
17 Section 271 decision, the FCC determined that because that
18 application had been filed before the mandate had issued in
19 the Assent decision, they weren't going to examine whether
20 in fact Verizon was in compliance. I think at that time
21 Verizon still was not indicating one way or the other
22 whether VADI was going to make itself subject to the retail
23 discount, the wholesale discount in terms of the resale of
24 wholesale services.
25 I guess what I'm hearing from Mr. Cullina now, when

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1 did this tariff -- when did VADI file its tariff to make the
2 wholesale discount available on DSL services?
3 MR. CULLINA: It's John Cullina.

The Assent decision became non-appealable in early April. We filed the federal tariff I think on April 14.

MR. BARBER: And when will that tariff become effective?

MR. CULLINA: It's effective now.

MR. BARBER: And at what discount is VADI offering DSL service? Is this a state filing and a federal filing?

MR. CULLINA: It's a federal only. We don't have a DSL product at the state level. But it would be the discount that was formerly applicable when DSL was offered out of Verizon Pennsylvania.

MR. BARBER: So it would be the discount established by this Commission applicable to all Verizon PA retail services?

MR. CULLINA: Correct.

MR. BARBER: Now, I think it's probably important to try and flesh out a little bit the relationship between VADI and Verizon PA here. I know Ms. Martin started with a discussion about how someone would go about -- I guess VADI first went into effect here in Pennsylvania on December 9, 2000; is that correct?

MR. CULLINA: That's right.

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MR. BARBER: And as I understand, what VADI went into operation with on December 9 were the advanced services assets and customers that Verizon Pennsylvania was serving

at that time, as of December 9; would that be correct?

MR. CULLINA: Correct.

MR. BARBER: And the compensation for that asset transfer, as I understood it, included some stock that passed back to Verizon Pennsylvania; is that correct?

MR. CULLINA: That's correct.

MR. BARBER: So as you sit here today, Verizon Advanced Data is owned I think -- at least 25 or 26 percent of VADI is in fact owned by Verizon Pennsylvania; is that correct?

MR. CULLINA: That's approximately correct, I believe.

MR. BARBER: Okay. Now, Ms. Martin asked some questions about how people order services relative to VADI. As I understand it, a Pennsylvania customer seeing James Earl Jones pitching Verizon's Infospeed or Verizon's advanced services would pick up the phone and call the local business office at Verizon Pennsylvania; correct? I mean, they could call a 1-800 number, but let's say they call the Verizon Pennsylvania customer service center.

MR. CULLINA: Right. They could do that.

MR. BARBER: And the representative at the Verizon --

and there is also a joint marketing agreement between Verizon Pennsylvania and VADI; correct?

MR. CULLINA: That's correct.

MR. BARBER: There is also a joint marketing agreement between Verizon Pennsylvania -- and I believe this is an exclusive joint marketing agreement -- between Verizon Pennsylvania and Verizon Online, which is Verizon's internet service provider affiliate; correct?

MR. CULLINA: Correct.

MR. BARBER: So Chairman Quain calls up, he wants DSL service, and he calls the local service rep for Verizon Pennsylvania. That service rep would then do a loop qualification on the Chairman's line to determine whether in fact he was capable of receiving DSL services; correct?

MR. CULLINA: Correct.

MR. BARBER: Does Verizon Pennsylvania perform that task on behalf of any other DLEC or CLEC in Pennsylvania other than VADI or Verizon Online?

MR. CULLINA: Well, in terms of marketing, the answer would be no. In terms of loop qualification, I believe that's made available on a non-discriminatory basis.

MR. BARBER: But the CLECs in fact perform their own loop qualification, Verizon Pennsylvania's service rep does not perform the loop qualification for them; correct?

MR. CULLINA: Well, that's correct, although the

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service representative for Verizon is going through Verizon Advanced Data systems. It goes through the same systems as any other CLEC would go through.

MR. BARBER: So the service rep determines in fact that the Chairman is capable of receiving that advanced service over that line. He or she would then hot transfer, I think is the term, that customer, the Chairman, over to Verizon Online; correct?

MR. CULLINA: Correct.

MR. BARBER: And Verizon Online would then process the order for advanced services; correct?

MR. CULLINA: Correct.

MR. BARBER: And as I understand it, Verizon Online obtains its wholesale DSL services exclusively from VADI; correct?

MR. CULLINA: In Pennsylvania that would be correct.

MR. BARBER: And it's also fair to say that the bulk of Verizon Online's active lines in Pennsylvania in terms of wholesale DSL provisioning are in fact provisioned to Verizon Online; would that be correct?

MR. CULLINA: The bulk, the majority of the lines would be; correct.

MR. BARBER: Say probably somewhere 75, 80 percent?

MR. CULLINA: I would guess so, yeah.

MR. BARBER: Now, circling back to the Assent

decision, as I remember from some of our discussions during the technical conferences, one of the terms in the Bell/GTE merger agreement is an issue relative to if in fact there

was a resolution of whether VADI was subject to the 251(c), the ILEC resale and unbundling obligations of the Act, that there was some provision in that merger agreement that would entitle Verizon to bring VADI back into the fold, so to speak, fold VADI back into the ILEC, Verizon Pennsylvania; is that correct?

MR. CULLINA: The merger conditions allow a sunset of the separate affiliate requirement by the end of the year, but require --

MR. BARBER: End of 2001?

MR. CULLINA: End of 2001.

-- but require, however the service is offered, that it be offered through the same interfaces and using the same processes as other CLECs use. In addition, I understand the recent order from this Commission would require the separate affiliate irrespective of the FCC merger order.

MR. BARBER: I guess that's where I was heading with that question. Has Verizon decided to attempt to activate the sunset provisions of the merger agreement in order to bring VADI back into Verizon Pennsylvania?

MR. CULLINA: I can't speak for Verizon Pennsylvania, but I don't think the merger order would impact any

commitments made to this Commission.

JUDGE SCHNIERLE: Just by clarification, the order is the structural separation order that was recently issued?

MR. BARBER: Precisely.

MS. CONOVER: Yes. I was going to make sure that that was clear. In connection with the structural separation order, one of the conditions was the establishment of VADI, which had already been established consistent with the FCC merger commitments, and also a requirement essentially that we would come back to this Commission if we wanted to modify that and return VADI to the ILEC. I'm paraphrasing, but I believe the Commission is familiar with that.

MR. BARBER: So as we sit here today, no decision has been made about folding VADI back in as a result of the Assent decision?

MR. CULLINA: No.

MR. BARBER: Now, in terms of the colloquy you were having with Judge Schnierle in terms of the caveats and conditions in terms of how someone would obtain resale service, the resold DSL service, as I understood it, the customer in question, in order to obtain that resold service, would have to be a Verizon Pennsylvania customer for purposes of basic local exchange services?

MR. CULLINA: That's correct.

MR. BARBER: So if in fact, in Judge Schnierle's hypothetical, if MCI is offering service to a customer through the unbundled network elements platform and wishes

to add DSL to that platform via resold services, they could not in fact do it, they would have to either do it through a separate line or some form or fashion?

MR. CULLINA: Well, maybe to add a little, hopefully, clarity to this. VADI procures access to the end user through line sharing. Line sharing is currently available only where v Pennsylvania provides retail voice service. So what we offer for resale is the same thing we offer at retail, which is what we're required to do. Whether or not Verizon Pennsylvania will develop different forms of access to the customer, whether it be line partitioning or line splitting, is not in my control.

MR. BARBER: I guess the basic point that's being made there, though, is that Verizon Advanced Data is only going to be offering DSL services to a customer that in fact has Verizon local exchange services, because again, as you're saying, that's line sharing; line sharing is Verizon local exchange services and a DSL service on top of that. It would not be offering that resold service to the customer of another local exchange provider.

MR. CULLINA: If another CLEC wanted to enter into a line splitting arrangement, we would pursue that. To date,

no one has requested that. In terms of resale and line partitioning, that product is not currently available. When it is available, we would participate in that as well.

JUDGE SCHNIERLE: I'd like to ask a question. If VADI is line sharing with Verizon and Verizon is providing the voice, VADI is providing the data, as I understand it, VADI pays Verizon nothing for use of the line. Is that correct?

MR. CULLINA: There are non-recurring charges associated with the --

JUDGE SCHNIERLE: To hook it up.

MR. CULLINA: Right.

JUDGE SCHNIERLE: But on a month-to-month basis, there's no charge --

MR. CULLINA: Right.

JUDGE SCHNIERLE: -- for the line itself.

MR. CULLINA: Right. I believe under the economic theory that the cost of the loop is recovered through the local exchange revenue.

JUDGE SCHNIERLE: Right. How would VADI know if Verizon resold the voice -- how would VADI know, unless it was told by Verizon, that Verizon had transferred the voice service to a CLEC for resale?

MR. CULLINA: I don't know for sure. I believe that the DSL would be disconnected.

JUDGE SCHNIERLE: Pardon me?

MR. CULLINA: I believe that the DSL service would be disconnected, so we --

JUDGE SCHNIERLE: But how would you know to do that unless Verizon told you?

MR. CULLINA: Well, VADI would not do anything. The line sharing would be terminated and the --

JUDGE SCHNIERLE: But how would VADI know to terminate the line sharing unless Verizon told it that, "Hey, we just transferred this service to ABC CLEC and they're going to resell it"? How would VADI know that unless Verizon told them?

MR. CULLINA: I'd like to defer to -- if any of the witnesses might know.

MS. STERN: This is Amy Stern.

A couple of things. Verizon would notify VADI, as we'd notify any other CLEC, or would need to notify VADI if the customer was changing, whether the customer is changing voice carrier or data carrier. If there was a change, there would need to be a notification, and that's one of the items in the collaboratives that are ongoing in New York. There are next steps, such as migrations from carrier to carrier, that we are starting to look at and work on.

And just to clarify a point in one of the earlier questions, Verizon does bill VADI for non-recurring charges

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for every line share line that they utilize. There are also some recurring charges for --

JUDGE SCHNIERLE: For test equipment.

MR. CULLINA: For test equipment.

JUDGE SCHNIERLE: Not for the line itself.

MS. STERN: For the line itself there would be some small recurring charges for the cross-connections to the collocation arrangements, and Verizon does bill VADI for those.

MR. BARBER: But there's no charge for the loop.

MS. STERN: For the use of the underlying loop itself, that's correct, there's no charge to VADI or to any other CLEC.

JUDGE SCHNIERLE: And there doesn't have to be any physical change to any of that if Verizon simply transfers the voice service to another carrier for resale; is that correct?

(No response.)

JUDGE SCHNIERLE: You don't have to remove the cross-connects, you don't have to do anything for the simple transfer of the voice service unless you also want to disconnect the data.

MS. STERN: I think that depends on the business arrangement amongst the carriers, and that's an industry kind of issue that -- there are scenarios where the customer

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could change the voice provider and no physical rewiring would be required. There might be other scenarios where rewiring is required. It depends on the business

4 relationship and the physical configuration of the old
5 carriers involved and the new carriers the customer is
6 moving to. That's the sort of thing we try to work out in
7 the industry collaboratives because it does affect all the
8 members of the industry.
9 JUDGE SCHNIERLE: Would a fair interpretation of
10 Verizon's answer be that it can't be done right now, but
11 we're talking with the other carriers about doing it? Right
12 now what we do is we still disconnect the data service if
13 the voice service is resold or taken by UNE-P.
14 MS. STERN: Yes.
15 MS. MARTIN: May I summarize a little bit to make
16 sure that -- maybe to clarify some? And if I can stand up.
17 This is taken from the newspaper. It's a full-page
18 ad that Verizon ran advertising Verizon Online DSL services
19 in the Harrisburg area. As I understand it, what we heard
20 this morning is that these services which are offered for
21 $39.95 per month, that those services will now be available
22 to CLECs in Pennsylvania at the wholesale discount rate
23 established by this Commission per a tariff filing made
24 April 14 by VADI with the Federal Communications Commission.
25 MR. CULLINA: That's correct.

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1 MS. MARTIN: And that the wholesale discount rate
2 that would apply would be the one -- since there are two --
3 would be the rate that applies when operator services are
4 not requested, or would there also be a situation somehow

where operator services could also be requested?

MR. CULLINA: I can't think of any where that would apply.

MS. MARTIN: So it would be without operator services and subject to some new development?

MR. CULLINA: Correct.

MS. MARTIN: Are there any sort of generally known other DSL type services that might be available for resale now through VADI?

MR. CULLINA: VADI also offers packet data services such as ATM and frame relay. Those services are also available at a 251(c)(4) discount.

MS. MARTIN: And those type of services would be generally purchased by a business; is that correct?

MR. CULLINA: That's correct.

MS. MARTIN: Now, with respect to this advertisement, it mentions that the residential customer that signs up for the online DSL service, that they have a 30-day trial period to try it, and then if they want to sign up, that they have to sign up for a year subject to an early termination penalty. In the exchange of questions that you had with

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Judge Schnierle, I understood that if a Pennsylvania customer decides that they want to take -- they're currently a Verizon dial tone customer, they have their basic service from Verizon, but if they get a call from a Pennsylvania

CLEC and that CLEC wins their voice service, that if they happen to also have ordered DSL service from Verizon, that that DSL service is going to be disconnected. Is that correct?

MR. CULLINA: That's right.

MS. MARTIN: Now, when that service would be disconnected because they choose to go to the CLEC voice provider, are the early termination charges going to be applied?

MR. CULLINA: I do not believe they would be. If it's an action by Verizon to disconnect the service, there would be no assessment of early termination charges.

MS. MARTIN: Thank you.

MR. BARBER: Just one quick follow-up, Mr. Chairman, Your Honor.

The hot transfers we were talking before between Verizon Pennsylvania and Verizon Online, does Verizon Pennsylvania, to your knowledge, perform that hot transfer on behalf of any other CLEC or DLEC?

MR. CULLINA: No.

JUDGE WEISMANDEL: Mr. Chairman, we've sort of

altered things a little here. I don't know if you want the Commissioners' opportunity now or Ms. Conover's opportunity.

CHAIRMAN QUAIN: Do any of the Commissioners have questions?

(No response.)

CHAIRMAN QUAIN: Go ahead.

JUDGE WEISMANDEL: Ms. Conover.

MS. CONOVER: I'm somewhat unaccustomed to asking questions of my colleague, Mr. Cullina, but I will do so here.

Mr. Cullina, the joint marketing arrangement that you discussed earlier, is that included within the merger conditions that were approved by the FCC as part of the merger approval?

MR. CULLINA: Yes, it is.

MS. CONOVER: That's my only question. I would note that we do have operations people to talk about the metrics, to answer any questions you might have generally about our resale performance, but I really have no questions of them at this time.

JUDGE WEISMANDEL: Thank you, Ms. Conover.

Any of the Commissioners have any further questions?

(No response.)

JUDGE WEISMANDEL: Thank you all.

(Pause.)

CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that a true and correct copy of the foregoing document was served by First Class Mail, postage prepaid, on the individuals list below, on this 14th day of May, 2001:

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