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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYMagalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by Verizon New York, Inc. for Authorization to Provide In-Region, InterLATA Services in the State of Connecticut, Docket No. 01-100; Request by Verizon New York for Permanent Waiver of Merger Conditions

Dear Ms. Salas:

Pursuant to the Commission's Public Notice,¹ AT&T Corp. ("AT&T") hereby responds to Verizon's *ex parte* dated July 6, 2001,² in which Verizon informed the Commission that its affiliate, Verizon Advanced Data Inc. ("VADI"), would "voluntarily make available" a digital subscriber line ("DSL") service for resale in Connecticut, but only to carriers that also resell Verizon's voice service on the same line. At the same time, however, Verizon continues to claim that its affiliate, VADI, "does not have an obligation to make its DSL service available for resale where other carriers are providing the voice service on the line." *Id.* Verizon is apparently asking the Commission to find that its limited "voluntary" DSL resale service -- one that would take effect four days before the close of the 90-day statutory review process -- satisfies the resale requirement of checklist item 14 to make telecommunications services "available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." 47 U.S.C. § 271(c)(2)(B)(xiv). Verizon's eleventh-hour offer is insufficient to meet its obligations to provide requesting carriers the ability to resell its DSL services.

Verizon's offer does not fully implement its checklist obligations with respect to advanced services. First, Verizon fails to recognize that it and its affiliate VADI are presently obliged to make resold DSL services available regardless of whether Verizon or another carrier is providing voice services over the customer's line. Verizon's refusal to acknowledge this legal requirement cannot be countenanced. Second, Verizon's offer is unreasonably limited to

¹ Public Notice, DA 01-1609, released July 6, 2001.

² *Ex parte* letter from Dec May (Verizon) to Ms. Dorothy Attwood, Chief, Common Carrier Bureau, CC Docket Nos. 01-100, dated July 6, 2001 ("July 6 *ex parte*").

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instances in which the requesting carrier provides voice service using resale, but no other service option, even when it is technically and practically feasible to do so. Third, Verizon's "offer" is conditioned upon a vague and ill-explained request for a waiver of its current Merger Conditions, which cannot be granted without further inquiry. Accordingly, Verizon's last-minute offer cannot satisfy its obligations here.

1. Verizon's Legal Claims are Meritless

Verizon cannot legitimately claim that it is not obliged to make its DSL services available for resale unless the customer uses Verizon as its voice carrier, and its section 271 application should not be granted as long as Verizon insists on such an untenable reading of the Act. Checklist item 14 requires that Verizon fully implement the resale obligations of Section 251(c)(4), which extend to the resale of advanced services. Those obligations are: (1) "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers"; and (2) "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service." 47 U.S.C. § 251(c)(4). In interpreting Section 251(c)(4), the Commission has concluded that "resale restrictions are presumptively unreasonable" and that an incumbent local exchange carrier ("ILEC") can rebut this presumption "only if the restrictions are narrowly tailored."³

Last January, the U.S. Court of Appeals held that data affiliates of ILECs are subject to all of the obligations of Section 251(c) of the 1996 Act, including the resale obligations set forth in Section 251(c)(4):

As the Commission concedes, Congress did not treat advanced services differently from other telecommunications services. It did not limit the regulation of telecommunications services to those that rely on the local loop. For that reason, *the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services.*⁴

Thus, the court vacated the portion of the *SBC/Ameritech Merger Order* that had exempted the advanced services provided by SBC's advanced services affiliate from the requirements of Section 251(c). *ASCENT*, 235 F.3d at 663, 668.

Under *ASCENT*, those requirements are now binding on Verizon, since the Commission's *Bell Atlantic/GTE Merger Order* created an exemption for Verizon's advanced services affiliate, VADI that was identical to the exemption set aside by the D.C. Circuit. The Commission so held

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, ¶ 939 (1996) ("*Local Competition Order*") (subsequent history omitted).

⁴ See *Association of Communications Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001) ("*ASCENT*") (emphasis added) (footnote omitted).

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in its order approving Verizon's Section 271 application for Massachusetts, declining to apply *ASCENT* only because Verizon filed that application before the court issued its decision.⁵ Indeed, the Commission has stated that it expects Bell Operating Companies "to act promptly to come into compliance with section 251(c)(4) in accordance with the terms of the [*ASCENT*] decision."⁶

Verizon, however, has not done so. Indeed, Verizon's argument that it is now in compliance with *ASCENT* and its resale obligations is difficult to fathom.⁷ The claim appears to be based on VADI's operations, including VADI's practice of procuring DSL through a line-sharing arrangement with Verizon, VADI's allegedly limited retail sales to customers, and the restrictions imposed by the Bell Atlantic/GTE merger conditions. But these arguments are beside the point. The reality is that Verizon offers DSL service directly to end-users. As a result, to demonstrate compliance with the competitive checklist, Verizon must make DSL service available to competitive local exchange carriers ("CLECs") at an avoided cost discount without unreasonable restrictions or conditions. It has not done so, and so its application to provide in-region, interLATA service in Connecticut must be denied.

Verizon's June 27 *ex parte* submission to this Commission regarding this application confirms that Verizon is offering DSL as a separate stand-alone service to retail customers. Verizon states that "Verizon and VADI do not in fact bundle voice and xDSL services for their end users Here, . . . the voice services and DSL services *are offered, ordered, and priced separately.*" June 27 *ex parte*, Att. at 8-9 (emphasis added).

Verizon's offer of DSL service has succeeded in the marketplace. Verizon's press release describing its financial results for the first quarter of 2001 states that during the first quarter Verizon added "180,000 new DSL (digital subscriber line) customers for [a] total of 720,000."⁸ This is hardly the report of a modest wholesaler of DSL service to ISPs, but instead reflects the activities of a mass-marketer of DSL service.

Because Verizon offers DSL service at retail to end-users, under Section 251(c)(4) and the Commission's *Second Advanced Services Order*, Verizon must offer DSL as a stand-alone service for resale at a wholesale discount and on terms that are neither unreasonable nor

⁵ See *Application of Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order ¶ 219 & n.705 (rel. April 16, 2001) ("*Massachusetts 271 Order*").

⁶ *Joint Application by SBC Communications, et al., for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, ¶ 252 n.768 (rel. Jan 22, 2001) ("*KS/OK 271 Order*").

⁷ See *ex parte* letter from Dee May (Verizon) to Magalie Roman Salas in CC Docket Nos. 01-100, *et al.*, dated June 27, 2001, Att. at 6-9 ("*June 27 ex parte*").

⁸ "Verizon Communications Posts Strong First Quarter," Verizon press release dated April 24, 2001 (found at <http://investor.verizon.com/news/VZ/2001-04-24X470100.html>).

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discriminatory.⁹ It has not done so, and its current offer does not fully comply with its obligations.

Verizon's legal position is that it only needs to make DSL available for resale as long as Verizon continues to provide the voice service.¹⁰ Thus, Verizon asserts that it may refuse to make DSL available for resale to a given customer if a CLEC also wishes to provide voice service to that customer through resale of Verizon's voice service. In addition, a CLEC would also be unable to provide resold DSL service if it provides voice service to that customer using a UNE-P or UNE-Loop arrangement.¹¹

Verizon is wrong. These restrictions are each unreasonable and discriminatory conditions and limitations on the resale of telecommunications services that violate Section 251(c)(4). By refusing to make DSL available for resale unless Verizon remains the voice provider, Verizon is denying CLECs the same ability that it has to provide customers with all of the services that they desire. Although Verizon provides both DSL and voice service to its own retail customers, under Verizon's legal view CLECs could be precluded from providing DSL through resale if they provide voice service – and they cannot provide voice service at all if they obtain DSL from Verizon through resale. This would put CLECs at an enormous competitive disadvantage. Demand for DSL continues to increase dramatically (as evidenced by the 33 percent increase in Verizon's DSL customers during the first quarter of 2001 alone). Given the widespread consumer desire for one-stop shopping, customers are likely to obtain voice and DSL service from the same provider, wherever possible.¹² Unless CLECs have the same ability as Verizon to provide both voice and DSL service, Verizon's DSL customers will effectively be quarantined from voice competition by CLECs, and CLECs will be severely hindered in their market entry.

Verizon's restrictions are also unreasonable because Verizon has no legitimate basis for imposing them, other than to suppress competition. From an economic standpoint, Verizon

⁹ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, 14 FCC Rcd. 19237 (1999) (“*Second Advanced Services Order*”), ¶ 3 (“advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service”), *petition for review denied sub nom. Association of Communications Enterprises v. FCC*, No. 00-1144 (D.C. Cir.), slip opinion issued June 26, 2001.

¹⁰ See July 6 *ex parte* at 1.

¹¹ See Transcript of Pennsylvania En Banc Hearing held April 26, 2001, *supra*, at 264-265, 274-275 (Verizon Pennsylvania 271 Application, App. B, Vol. 16, Sub-Tab 27). Moreover, even when Verizon makes DSL available for resale because the customer is retaining Verizon as its voice provider, Verizon will disconnect the CLEC's resold DSL if the customer subsequently elects to switch to a different carrier for voice service. *Id.* at 276-277, 281.

¹² Verizon's President and Co-Chief Executive Officer, Ivan Seidenberg, recognized this point in a presentation that he made in March 2001 to Credit Suisse First Boston. Mr. Seidenberg stated: “Our strategy in the consumer market is to achieve more wallet share. With a single brand and an ability to focus on customer segmentation strategies, we can provide customers with all sizes of bundles and packages that give them the services they need.” (Available at C:\WINDOWS\TEMP\CSFB Telecom – Verizon Full Presentation.html).

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would logically be expected to *welcome* the opportunity to resell DSL to CLECs providing voice service through the UNE platform (or through UNE loops) in areas where Verizon is providing DSL service. In such cases, by reselling the DSL service at the avoided cost discount, Verizon would be receiving the same profit from that service as it would receive from a direct sale to a retail customer, without being required to pay for the avoided costs. Indeed, to the extent that Verizon includes any part of the cost of the loop as a cost of the DSL service, it would receive a “double benefit” from resale of DSL to a UNE-P or UNE-L voice provider, because the CLEC is also paying the full price for the loop. The restrictions that Verizon imposes on DSL are thus illogical and clearly contrary to Verizon’s economic self-interest – unless Verizon’s purpose is to suppress competition by denying competitors its own ability to offer DSL service, which is clearly contrary to the pro-competitive objectives of the 1996 Act and the express requirements of Section 251(c)(4).

None of Verizon’s arguments to the contrary has merit. Verizon’s principal argument is that Verizon is exempt from the wholesale obligations of Section 251(c)(4) because it is VADI, and not Verizon, that offers DSL to the public.¹³ Under *ASCENT*, however, it is immaterial whether the party officially offering DSL to retail end-users is Verizon or VADI; in either event, the provision of DSL at retail creates a resale obligation for Verizon. Verizon’s formalistic reliance on corporate structure is precisely what *ASCENT* prohibits. Under the court’s decision, an ILEC’s corporate structure cannot serve to immunize the ILEC from the requirements of Section 251(c). *ASCENT*, 235 F.3d at 668. For purposes of compliance with that statute’s requirements, Verizon and VADI must be viewed together as one and the same entity, not as separate companies.

Verizon’s remaining attempts to justify its disregard of its resale obligations do not withstand scrutiny. First, Verizon asserts that it is not required by Section 251(c)(4) to resell DSL where the CLEC is the voice provider, because: (1) VADI provides DSL under a line sharing arrangement with Verizon; (2) under the Commission’s orders, Verizon is required to provide -- and is providing -- line sharing only when Verizon is the voice provider; (3) thus, when Verizon does not provide voice service, VADI cannot and does not provide DSL service, either at retail or for resale; and (4) under Section 251(c)(4)(A), VADI is required to resell only those “service[s]” that it currently “provides.” See June 27 *ex parte* at 1-2.

Verizon’s reasoning is flatly contrary to the *ASCENT* decision, because it relies on its corporate structure as a shield to avoid the obligations of Section 251(c) – which, under *ASCENT*, it cannot do. The “line sharing” arrangements between VADI and Verizon exist *only because VADI is an affiliate of Verizon*. Absent the existence of VADI, Verizon itself would be providing both voice and DSL service – and no line sharing would occur at all.¹⁴ *ASCENT*

¹³See June 27 *ex parte* at 1 (“VADI offers xDSL service to end users by purchasing the same line-sharing services from Verizon as other xDSL providers”).

¹⁴As the term notes, “line sharing” is a bilateral arrangement between the CLEC and ILEC whereby the CLEC provides data service, and the ILEC provides voice service, on the same loop. *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC

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makes clear that mechanisms based on the "separate" corporate identity of the data affiliate, such as line sharing arrangements, are to be disregarded in determining whether the requirements of the statute have been satisfied.¹⁵ For purposes of Section 251(c), the sole relevant fact here is that Verizon – whether itself or (officially) through VADI – provides voice service and DSL at retail-to-retail customers. The nondiscrimination and reasonableness obligations of Section 251(c)(4) therefore require that Verizon make *both* services available for resale, in order to give CLECs the same ability to provide these services to their customers. Verizon cannot lawfully restrict the availability of DSL to situations where Verizon on the basis of what "VADI" purportedly can or cannot do provides the voice service.

Verizon's reliance on VADI's provision of DSL through line sharing arrangements is further undermined by its recent request that the Commission eliminate "immediately" the requirement of a separate data affiliate in the *Bell Atlantic/GTE Merger Order*, and that Verizon be permitted to provide advanced services -- including DSL -- directly to its retail customers.¹⁶ Verizon argued that the structural separation requirement should be eliminated because, *inter alia*, it "results in additional unnecessary duplication and expense."¹⁷ Furthermore, Verizon rationalized that the separate affiliate requirement "will automatically terminate no later than nine months after the D.C. Circuit's decision in *ASCENT*."¹⁸ Verizon's cynical advocacy to this Commission – requesting immediate elimination of the structural separation requirement while relying on that separation in an attempt to avoid its obligations under Section 251(c)(4) – is nothing less than a shell game that this Commission should not tolerate.¹⁹ Verizon's own request that the corporate separation be eliminated is all the more reason why VADI and Verizon should be treated as the same for purposes of Section 251(c)(4).²⁰

Docket No. 96-98, ¶ 13 (1999) ("*Line Sharing Order*"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, ¶ 5 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

¹⁵ See *ASCENT*, 235 F.3d at 666 ("to allow an ILEC to side slip § 251(c)'s requirements by simply offering telecommunications services through a wholly owned affiliate seems to us a circumvention of the statutory scheme"); *id.* at 668 ("the Commission may not permit an ILEC to avoid § 251(c) obligations by setting up a wholly-owned affiliate to provide those services").

¹⁶ See Letter from Gordon E. Evans (Verizon) to Dorothy Attwood (FCC), dated April 26, 2000, at 1 ("Verizon April 26 Letter") (attached to Letter from Gordon E. Evans to Magalie Roman Salas, dated May 1, 2001); Public Notice (DA 01-1325) issued May 31, 2001 in CC Docket No. 98-184.

¹⁷ Verizon April 26 Letter at 4.

¹⁸ *Id.* at 1.

¹⁹ Notably, although AT&T and other commenters requested that the Commission require Verizon to provide information on how it intended to comply with its obligations to provide, *inter alia*, information on how it proposed to comply with its DSL resale obligations under section 251(c)(4) before it is permitted to re-integrate VADI, Verizon declined to do so, stating only that it "obviously fully intends to comply with its legal and regulatory obligations." Reply of Verizon filed June 28, 2001, in CC Docket No. 98-184, at 5.

²⁰ Verizon's attempt to use the Commission's line sharing rules to avoid its obligation to resell DSL under Section 251(c)(4), and thereby impede competition, is clearly contrary to the pro-competitive intent of those rules. See *Line Sharing Order*, ¶¶ 4, 54-55. Indeed, the Commission has also required ILECs to give CLECs the ability to engage

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Verizon also bases its legal position that it is entitled to refuse to resell DSL when it is not the voice provider on certain Commission orders under which, it alleges, "Verizon and other ILECs are *entitled* to place that limitation on their line sharing services." June 27 *ex parte*, Att. at 2-3 (emphasis in original). Verizon misses the point. The three orders cited by Verizon hold only that an ILEC is not required, *as part of its obligation to provide line sharing*, to make the high-frequency portion of the loop available to CLECs or to provide DSL service directly to a customer when a CLEC is providing voice service to that customer, because "line sharing contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on higher frequencies."²¹

The issue here, however, is not whether CLECs wish to be provided DSL as part of a line sharing arrangement. Indeed, the issue here does not involve a CLEC's request for line sharing at all, which is a UNE unbundling issue pursuant to Section 251(c)(3). Rather, the question here is whether CLECs who wish to provide *both* voice and DSL service directly to the customer (and thus *avoid* line sharing) can obtain DSL service from Verizon through resale – and whether Verizon's refusal to resell DSL in such circumstances constitutes an unreasonable and discriminatory restriction on resale under Section 251(c)(4), in view of its own ability to provide both voice and DSL service at retail. None of the Commission orders cited by Verizon address the resale issue at all. The *Line Sharing Order* only addresses the question of whether, after a line sharing arrangement has been established, the ILEC must continue to make the high-frequency portion of the loop network element available as a UNE if the customer terminates the ILEC's voice service. The *Texas 271 Order* and *Line Sharing Reconsideration Order* address only the issue of whether the incumbent must continue to provide DSL service *directly to an end user* when a CLEC provides the customer's voice service using UNE-P. Thus, those decisions are inapposite here.

Second, Verizon is wrong that "the Bell Atlantic/GTE Merger Conditions affirmatively limit VADI to obtaining from Verizon only those services that also are available to other CLECs, which means that VADI may not consistent with its legal obligations provide DSL through line sharing to customers other than Verizon voice customers."²² Indeed, the Commission emphasized in that order itself that the merger conditions are "merger-specific and not determinative of the obligations imposed by the Act or our rules on Bell Atlantic, GTE, or any other telecommunications carrier." *Bell Atlantic/GTE Merger Order*, ¶ 253. The Commission expressly stated that the conditions were not "to be considered as an interpretation of sections of

in line *splitting* arrangements, in order to increase the ability of CLECs to provide both voice and DSL service in competition with ILECs. See *Line Sharing Reconsideration Order*, ¶¶ 17-25.

²¹ See *Line Sharing Order*, ¶ 72; *Joint Application by SBC Communications, et al., for Authorization to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, Memorandum Opinion and Order, ¶ 330 (2000) ("*Texas 271 Order*"); *Line Sharing Reconsideration Order*, ¶ 26. The Commission has determined that the ILEC is required to provide line sharing as part of its obligation to provide nondiscriminatory access to unbundled network elements under Section 251(c)(3) and (d)(2) the Act. See *Line Sharing Order*, ¶¶ 6, 16.

²² See *Verizon Application for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, at 55 (filed June 21, 2001) (footnote omitted); see also June 27 *ex parte* at 8.

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the Communications Act, *especially sections 251, 252, 271 and 272.*" *Id.* (emphasis added).²³ These explicit Commission's statements rebut any notion that the purported limitation on VADI in the merger condition Verizon cites does not obviate the need for Verizon to demonstrate, on an independent basis, that its selective provision of DSL at resale meets the requirements of Section 251(c)(4) and Section 271.

Third, Verizon suggests that requiring it to resell DSL to a CLEC providing voice service to the customer would present "significant systems and operational issues" that would require a "collaborative industry effort" before such a product could be offered. *See June 27 ex parte* at 4-5. Verizon's argument is meritless. It is clearly technically feasible to provide resold DSL service over a UNE loop. A CLEC that used UNE-P, for example, would access Verizon's advanced service in the same way that Verizon provides line sharing today in conjunction with VADI. Indeed, the physical facilities used to provide the voice and DSL services are identical, with Verizon's circuit switch providing voice service and its advanced services network providing the resold DSL service.

The "profound operational issues" described by Verizon (*June 27 ex parte* at 4) are similarly without merit. These issues are based on Verizon's assumption that the resale of DSL would result in a "three-carrier (or in four-carrier) sharing arrangement." *Id.* In reality, however, it is likely that only two carriers would be involved – Verizon and a single CLEC seeking to provide both voice and DSL service. In any event, as the Commission has effectively recognized by requiring ILECs to provide (or facilitate) line sharing and line splitting arrangements, the ILEC's obligations do not depend on the total number of carriers that may be involved.²⁴ Moreover, although many of the "operationally complex questions" described by Verizon exist in identical or similar form in line sharing and line splitting arrangements,²⁵ the Commission has properly recognized that those issues do not relieve the ILECs of their obligations to support such arrangements.²⁶

²³The Commission reiterated these points in the appendix to its order setting forth the specific merger conditions. The Commission stated, for example, that "these conditions shall have no precedential effect in any forum," and that "To the extent that these Conditions impose fewer or less stringent obligations on Bell Atlantic/GTE than the requirements of any past or future Commission decisions or any provisions of the 1996 Act, . . . nothing in these Conditions shall relieve Bell Atlantic/GTE from the requirements of that Act" or from "Commission or state decisions implementing the 1996 Act or any other pro-competitive statutes or policies." *Bell Atlantic/ GTE Merger Order*, App. D at 1, n.2.

²⁴The Commission has stated, for example, that an ILEC's obligation to give CLECs the ability to engage in line splitting arrangements "extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting." *Line Sharing Reconsideration Order*, ¶ 18 (emphasis added).

²⁵ *See June 27 ex parte* at 4-5.

²⁶The other policy arguments advanced by Verizon to justify its restriction on resale of DSL are similarly without merit. Although Verizon asserts that a collaborative industry effort would be necessary to implement a requirement to resell DSL to all CLECs (*June 27 ex parte* at 5), such an effort is precisely the approach that the Commission encouraged and anticipated when it required ILECs to facilitate the analogous practice of line splitting. *See Line Sharing Reconsideration Order*, ¶ 21. Verizon's predictions that resale of DSL to a CLEC providing voice service would result in a "dramatic and very costly revision of the methods and procedures currently deployed for ILEC-

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In sum, Verizon should not be permitted to hide behind any of its faulty legal arguments to support a claim that it is not legally required to make resold DSL services available to requesting carriers who provide voice service to a customer over the same loop.

2. Verizon's Offer is Patently Discriminatory and Insufficient

Verizon's last-minute offer is insufficient to meet its statutory obligations and must be rejected. VADI's proposed illustrative tariff for its "voluntary" DSL resale service offering makes clear that Verizon intends to limit any availability of resold DSL in a manner that constitutes a violation of Section 251(c)(4). For example, Section 5.2 of Verizon's "illustrative tariff" provides that its resold DSL offering "is available only to carriers that have an existing voice line and seek to engage in the resale of voice and data on a combined basis pursuant to" Section 251(c)(4). Moreover, Section 5.2.1.A. of the illustrative tariff provides that it is limited to service provided over "copper facilities." Notwithstanding the fact that both tariff provisions are impermissibly vague, these limitations are not supported by fact or law and are patently unreasonable and discriminatory. Thus, even assuming that Verizon had demonstrated that it is actually able to implement the proposed service option, Verizon's proposal is insufficient, because section 251(c)(4) does not permit Verizon to place such limitations on resold services.

First, the requirement that a requesting carrier have an "existing voice line" could be misconstrued by Verizon to require that the DSL offer could not be obtained for a new CLEC customer who wishes to obtain both voice and data service from AT&T or another CLEC.²⁷ More important, however, is the fact that *only* resellers of Verizon's voice service will be permitted to obtain Verizon's DSL service for resale and such resale is only available for services provided over "copper facilities." There is no technical or legal basis to support these limitations.

Verizon's belated offer is an obvious attempt to discriminate against CLECs that use either UNE-P or the UNE-Loop service configuration by precluding them from obtaining access to Verizon's DSL service for resale. As noted above, as with resale, no central office wiring changes are needed to enable Verizon to provide resold DSL service on a line that uses UNE-P to provide voice service. Therefore, there is no technical basis for Verizon to argue that it would

based line sharing" (June 27 *ex parte* at 5-6) is baseless, given that (as described above) CLECs using UNE-P can access DSL in the same way that Verizon provides line sharing today for VADI. Finally, Verizon cannot reasonably argue that it relied on prior Commission rulings for its refusal to resell DSL to CLECs providing voice service. See June 27 *ex parte* at 6. Those decisions involved Verizon's line *sharing* obligations to CLECs – a situation not presented here, since line sharing is not being requested. Moreover, Verizon has undoubtedly been aware of the *ASCENT* decision since it was issued in early January. As the party with sole control over the timing of its application, Verizon could have deferred its filing until it fully complied with the court's decision, rather than file an application before such compliance had been achieved – as the Commission expected would be the case after its *KS/OK 271* decision.

²⁷ AT&T assumes that the requirement in Section 5.2 includes cases where a carrier submits an initial service order for a customer that wishes to obtain both voice and data service from AT&T (or another CLEC). However, Verizon should not be permitted to take advantage of any such ambiguity.

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be reasonable and nondiscriminatory to erect a limitation on resale that precludes UNE-P carriers from purchasing Verizon's DSL service, and Verizon offers none. Similarly, the technical arrangements needed to support DSL resale for a CLEC that uses the UNE-Loop service configuration for its voice service are virtually the same as those that Verizon uses to provide both voice and data services to an end user. In such cases, the customer's loop is extended to a splitter that divides the loop's low frequency signals so they can be forwarded to the appropriate switch. In the UNE-Loop arrangement, the CLEC will be providing the voice service. Thus, all that needs to be done in such cases is for Verizon (at an appropriate cost-based charge) to run a cross-connect from the CLEC's collocation to the Verizon data network. Accordingly, there is no basis to permit Verizon to discriminate against UNE-P and UNE-Loop carriers by imposing the "voice resale" condition on its resold DSL service.

Further, Verizon's proposal would limit the DSL resale option to services provided over a "copper facility," regardless of whether Verizon itself uses a combined copper-fiber facility to serve the customer. This again would give Verizon an unfair and unwarranted advantage in such situations and cannot withstand scrutiny. Accordingly, Verizon's refusal to resell DSL services in such situations constitutes a blatantly unreasonable restriction on resale in violation of section 251(c)(4).

3. Verizon's Offer Is Deficient for Several Additional Reasons

Verizon's offer is deficient for several additional reasons. First, Verizon's offer constitutes a blatant violation of the Commission's complete-when filed rule. Second, and not surprisingly, in light of the eleventh hour nature of the offer, Verizon has not shown that it can actually provision the DSL resale service in a commercially reasonable and nondiscriminatory manner. Third, its offer is expressly conditioned upon receipt of an ill-defined waiver of its current Merger Conditions that is too vague to be deciphered or granted at this time.

The Commission's procedural rules are clear. A BOC's section 271 application must be "complete when filed." *Michigan 271 Order Part IV.B.*²⁸ In particular, a BOC may not supplement the record with new facts, let alone with new promises, after the date reply comments are due. *Michigan 271 Order* ¶ 51. Such late supplementation is to be accorded "no weight." *Id.*

Verizon's offer – submitted more than 75 days into the Commission's 90-day review process, clearly violates this rule. Moreover, in light of Verizon's prior position and the eleventh

²⁸ See *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997) ("*Michigan 271 Order*"). See also *Public Notice Comments Requested on the Application by SBC Communications, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Kansas and Oklahoma*, CC Docket No. 00-217 (Oct. 26, 2000) (adopting the "general procedural requirements of Public Notice, *Updated Filing Requirements For Bell Operating Company Applications Under Section 271 Of The Communications Act*, DA-99-1994, at 3 (Sep. 28, 1999)).

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hour nature of the offer, it cannot demonstrate present compliance with the checklist. Indeed, Verizon's Permanent Waiver Request Letter²⁹ states that "[i]n order to provision a reseller's order to resell VADI's DSL over the same line on which the reseller currently resells Verizon's voice services, VADI and Verizon will need access to each other's systems and data and, in order to coordinate the provision of voice service and DSL for resale over the same line, will need to interact in ways that arguably are prohibited by the Merger Conditions." Thus, assuming that Verizon and VADI have previously complied with the Merger Conditions, it would appear that *neither Verizon nor VADI has ever provided* a requesting carrier with the ability to resell DSL in such a manner.

Thus, Verizon's filing has no probative value in "demonstrating its *present* compliance with the requirements of section 271" and, therefore, may not be relied upon for checklist compliance. *See, e.g., Texas 271 Order* ¶ 38 (emphasis in original). As noted above, Verizon's section 251(c)(4) obligation to resell DSL service applies to Verizon (and VADI) given the *ASCENT* Court's express holding that such obligation cannot be avoided by the offering of such service through an affiliate.

At most, Verizon is making a conditional, future promise to make that capability available. Given the new ordering procedures that CLECs would have to use to order the DSL service (July 6 *ex parte* at 1) – and which they have never had to use before -- CLECs and their customers have no assurance that they will actually be able to obtain the DSL services that they order for resale. In any event, Verizon's offer is nothing more than a promise to comply with its resale obligations in the future – a promise which, under the Commission's precedents, should be given no weight in determining Verizon's present compliance. *Ameritech Michigan Order*, ¶¶ 55, 179.

Finally, Verizon's request for a permanent waiver is too poorly defined to be granted on such an expedited basis. For purposes of this proceeding, Verizon cannot even demonstrate that its waiver request can be carried out in accordance with the requirements of section 272 (or found consistent with the public interest, convenience, and necessity). Specifically, the Permanent Waiver Request asks that Verizon and VADI be allowed authority "immediately to take any and all steps as may be necessary in order to successfully provision the resale of VADI's DSL service on a line on which a reseller is currently reselling Verizon's voice service." Verizon has not even attempted to identify the merger conditions for which it seeks a permanent waiver -- let alone articulate the extent to which its merger conditions are implicated -- in connection with VADI's "voluntary offer" to provide resold DSL services. Aside from the unreasonable scope of the request, Verizon provides not a shred of information on: (i) the systems that would need to be coordinated; (ii) how such systems would work; and (iii) how it will assure the Commission and other parties that it is engaging in the minimum coordinated

²⁹ *See ex parte* letter from Dee May (Verizon) to Ms. Dorothy Attwood in CC Docket No. 98-184, dated July 6, 2001 ("Permanent Waiver Request Letter").

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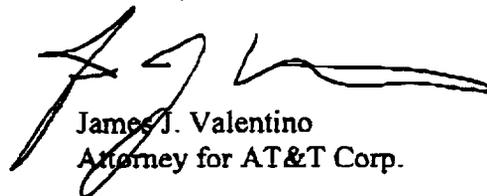
activity necessary to support the waiver.³⁰ There is simply not enough time to review and resolve such questions before the Commission must act on Verizon's application.

The potential anticompetitive consequences of granting Verizon's Permanent Waiver Request in the timetable requested by Verizon are considerable. In approving Verizon's application under section 271 to provide in-region, interLATA services in New York, the Commission found that Verizon's commitment to create a separate affiliate provided "further assurance that competing carriers will have nondiscriminatory access to xDSL-capable loops in the future." Yet, Verizon's Permanent Waiver Request threatens to eliminate the very protections and procompetitive benefits of the separate affiliate structure the Commission required to offset the anticompetitive aspects of the Bell Atlantic/GTE merger. At a minimum, the Commission must ensure that the protections in the *Bell Atlantic/GTE Merger Order* will be replaced by a clear delineation of Verizon's and VADI's statutory obligations with respect to the provision of resold DSL services, and an equally clear understanding that the "permanent waiver" of the Merger Conditions will not have adverse section 272 or public interest implications. Verizon, however, has provided the Commission and interested parties with no information from which to make these determinations.

* * * * *

Verizon's belated offer is, as usual too little and too late. The Commission should not allow Verizon to skirt its DSL resale obligations in the manner it has proposed. In all events, the Commission should, at a minimum, not allow this last-minute action in what is otherwise a "me too" application for two small towns in Connecticut to set a precedent for other states, especially since a virtually identical issue is part of the record in Verizon's pending Pennsylvania application.

Sincerely,



James J. Valentino
Attorney for AT&T Corp.

cc: Attached Service List

³⁰ Such paucity of information is consistent with Verizon's prior attempts to keep from the Commission and interested parties exactly how it intends to operate when VADI's operations and facilities are reintegrated into Verizon. See n.19 above.

Certificate of Service

I, James Valentino, hereby certify that on this 10th day of July, 2001, I caused true and correct copies of the foregoing to be hand-delivered (*) or mailed to the following persons:

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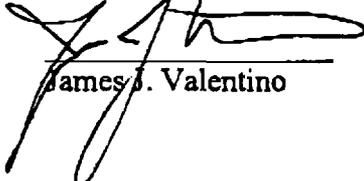
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