region interLATA (local access and transport area) service in the Garden State under section 271 of the federal Telecommunications Act of 1996. The board voted 2-0 to back the bid.

Verizon filed its New Jersey application in late December before getting an official nod from the BPU that the company had complied with the market-opening prerequisites for entering the interLATA market. Under the Act, the FCC must confer with the appropriate state regulatory agency and the U.S. Department of Justice before rendering a decision on a Bell operating company's section 271 application. The DOJ report is due Jan. 28. The FCC decision is due by March 20.

"Today's action by the BPU is good news for New Jersey consumers," said Dennis Bone, president-Verizon New Jersey. He pointed to a recent study by the Telecommunications Research Action Center that predicted customers in New Jersey could save up to $18.44 per month if Verizon gained long-distance approval. "It's time for Verizon long distance in New Jersey," he said.

But the state ratepayer advocate said currently there was no local competition in the state and disputed the BPU's determination that competition would develop if the application was approved. "Our concern is that if the FCC grants Verizon long-distance authority based on the Board's recommendation, competition may not get a chance to emerge in New Jersey, and consumers will not get the opportunity to enjoy the benefits of choice," said Blossom A. Peretz, the N.J. ratepayer advocate.

"Verizon has been rewarded for ignoring rules and procedures that all parties have followed," said a spokeswoman for AT&T Corp. "No Bell company has directly submitted an application to the FCC before input from the state regulators. We are astonished that Verizon was rewarded for their behavior." -- Ed Rovetto, erovetto@tr.com; Victoria Curtis, vcurtis@tr.com

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DOJ SEEKS TO 'UNTANGLE' FACTORS
IMPACTING LOCAL COMPETITION

The Justice Department's Antitrust Division wants to gather further data from telecom sector participants in an effort to "untangle" the complex set of factors used in analyzing potential mergers or assessing telecom competition in local markets, said Michael L. Katz, the division's deputy assistant attorney general for economic analysis.

Those factors include outside events like the economic downturn, state regulatory impacts such as retail price regulation including explicit and implicit subsidies, incumbent local exchange carrier issues such as provisioning of CLEC requests or providing operation support systems, and CLEC factors including strategies and business plans for providing service, Mr. Katz said.

"Help us untangle these different factors," Mr. Katz requested today at a brown bag lunch sponsored by the Federal Communications Bar Association. He used the section 271 process as an example where these factors intertwine. "When a section 271 application is filed, one group says the local market is incredibly open to competition, and another group says there is no competition because it can't make a profit. What do we make of it?"

On both ends of such a debate, neither side provides sufficient

insight into the meaning of the data to provide a real gauge of local competition, Mr. Katz said. One such example he noted involves data on to what extent mergers provide greater economies of scale. Companies should "develop a track record on cost savings after a merger so it can submit the evidence and show the benefits of the merger," he said.

Mr. Katz said his division is seeking better data through an informal fact-finding process, rather than a formal FCC or DOJ proceeding. The fruits of such an effort are hoped to include carrier submissions, independent studies of markets, or analyses from academics or financial analysts that will help the agency in its work.

"We are going to ask for systematic empirical data on CLEC entry to find out what is driving CLEC access," said Mr. Katz. The division is considering an open-ended workshop in late March or April for input from anyone who can supply concrete numbers to tough competition questions. But, he noted, companies might be reluctant to file competitive information.

For example, Mr. Katz said his office would be happy with a look at retail telephone pricing across all states to gauge impact on CLEC entry. Business plan models that the division could use run numbers on pricing impact on CLEC entry would also be useful, he added. The division could even look at CLEC and ILEC customer behavior to see if there is any difference. "Is competition representative of consumer behavior?" he mused, noting that some customers will never change local service.

Other questions to consider might include the effect of CLEC entry on service quality or whether section 271 approvals spark interexchange competition, he said. As for whether to review a merger based on a rule-based or case-by-case basis, Mr. Katz said he preferred the case-by-case analysis because circumstances vary in each application. -- Ed Rovetto, erovetto@tr.com

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ABERNATHY: ELECTRONIC DEVICES
STRAIN PART 15 SPECTRUM LIMITS

The explosive growth of electronic devices operating on an unlicensed basis under part 15 of the FCC's rules is putting a strain on limited spectrum, Commissioner Kathleen Q. Abernathy said today. But she said she doesn't have a solution to the problem. "What the answer is at this point I don't know," she told TRDaily.

Commissioner Abernathy commented after attending the Consumer Electronics Show in Las Vegas for two days. She called the huge number of new products "mind-boggling" and said the trip gave her a glimpse of "where we're headed in the technology arena."

But she expressed concern that new part 15 devices designed for consumer use in the home could cause interference to traditional unlicensed devices such as cordless phones, garage door openers, and baby monitors, as well as licensed spectrum users. -- Paul Kirby, pkirby@tr.com

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FCC DENIES Net2000 COMPLAINT
AGAINST VERIZON ON 'EEL' CONVERSIONS

No: Entry will deter local competition

By SUSAN NESS

THE TELECOMMUNICATIONS ACT of 1996 was landmark legislation. Its main goals were to end the local telephone monopoly and bring American consumers more competition, more choice, more innovation, and lower prices. Six years later, too many consumers are still waiting.

The bargain the act struck was simple: the Bell companies (like Verizon) may not offer long distance in their service areas until they *first* open their local markets to competition. The question today is whether New Jersey will honor that bargain.

Review of a Bell company's application for authority to offer long distance in a local market is a one-time event, tackled state by state. If the evaluation shows that the local market truly is open, then consumers will benefit – both through increased local competition and investment (by new entrants) and by a powerful new competitor in long distance (the Bell company).

Investment goes where it is welcome. The effect is robust competition throughout the telecom marketplace. This is what has happened in New York.

Conversely, granting a Bell company entry into long distance *before* its has opened its market to competition will reinforce the Bell company monopoly by creating a stronger, vertically integrated company that can slam the door shut on competition in the local and long distance market. Thus, the evaluation is critical – if it goes wrong, a state's consumers may lose the lower prices, increased investment, innovation, and other benefits of competition – forever.

Ultimately, the decision to grant or deny a Bell company petition to provide long distance services rests with the FCC, but state regulators play a crucial role in the process. Indeed, successful applications – those where the markets were found to be truly open and long distance entry appropriately granted – have come from states where local regulators thoroughly evaluated compliance with the act and the market demonstrated corresponding signs of robust competition.

Indeed, the best test whether a Bell company has met the act's requirements to open the local market is this: do consumers have a real choice of local service providers? Especially now, six years after the act was passed, one would expect that if the local market were truly open we would see high levels of actual competition in the residential market by service providers using a variety of forms of market entry.

As a New Jersey native and former FCC commissioner who worked for years to implement the act, I am watching with interest as New Jersey regulators prepare to vote on Verizon's application to provide long distance service – and I am concerned.

Verizon's own statistics show a surprising lack of residential competition in New Jersey – an affluent state with a high population density. The number of residential consumers being served by new entrants is vastly smaller than it was when Verizon filed its applications for New York, Pennsylvania, Massachusetts, and even Rhode Island. The disparity is particularly acute for consumers served by facilities-based competitors (those doing more than just reselling Verizon's services), which numbered in the tens and hundreds of thousands in the other states at the time of application, but number only in the hundreds in New Jersey.

I also fear that Verizon may be trying to curtail the state's ability to give deliberate review to Verizon's petition by filing its long-distance application with the FCC before the state has finished its own review. This will force the state to rush to issue a conclusion, rendering its views less credible and undermining New Jersey's voice at the FCC.

Rather, state officials should pace their review, study the record with care, and recommend approval of Verizon's application only after they are confident that all of Congress's market-opening requirements have been fully implemented.

Whether to declare the local market irreversibly open to competition is a momentous decision, with far-reaching consequences. Whether the New Jersey regulators vote to approve Verizon's bid for long-distance authority isn't just about abstract theories of competition, or arcane statutory language, but about safeguarding the interests of New Jersey telephone consumers. There is no second opportunity to get this right.

Susan Ness was an FCC commissioner from 1994 to 2001. She is currently distinguished professor of communications at the Annenberg School for Communication, University of Pennsylvania.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Application by Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in New Jersey	**CC Docket No. 01-347**

Declaration

of

LEE L. SELWYN

on behalf of the

State of New Jersey
Division of the Ratepayer Advocate

January 14, 2002

DECLARATION OF LEE L. SELWYN

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Application by Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in New Jersey	**CC Docket No. 01-347**

DECLARATION OF LEE L. SELWYN

Introduction and Summary

Lee L. Selwyn, of lawful age, declares and says as follows:

1. My name is Lee L. Selwyn; I am President of Economics and Technology, Inc. ("ETI"), Two Center Plaza, Suite 400, Boston, Massachusetts 02108. ETI is a research and consulting firm specializing in telecommunications and public utility regulation and public policy. My Statement of Qualifications is annexed hereto as Attachment 1 and is made a part hereof.

2. I have participated in proceedings before the Federal Communications Commission ("FCC" or "Commission") dating back to 1967 and have appeared as an expert witness in hundreds of state proceedings before more than forty state public utility commissions. I have submitted testimony in several Section 271 consultative proceedings, including those in Pennsylvania, California and Minnesota, as well as in the New Jersey state proceeding.

3. With respect to the New Jersey state proceeding, I was asked by the State of New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") to examine the testimony and other evidence being proffered by Verizon New Jersey ("VNJ" or "Company") in support of its Application for authority, pursuant to Section 271 of the *Telecommunications Act of 1996* ("TA96" or "Act"), to enter the in-region long distance market; to provide an assessment of the Company's claims as to the current state of competition in the New Jersey local telecommunications market; to provide an analysis of the potential impact upon competition in New Jersey's interLATA long distance market that would result from Verizon New Jersey's entry into the long distance market while the Company continues to maintain overwhelming dominance of the local telephone service market in the state; and to provide an opinion as to whether "the requested authorization is consistent with the public interest, convenience, and necessity."

4. On October 22, 2001, I filed a Declaration on behalf of the Ratepayer Advocate before the New Jersey Board of Public Utilities ("Board" or "NJBPU") in BPU Docket No. TO01090541, *In the Matter of the Application of Verizon New Jersey, Inc. for FCC*

Authorization to Provide In-Region, InterLATA Service in New Jersey ("state proceeding"). A copy of that Declaration and the attachments thereto is annexed hereto as Attachment 3 and is made a part hereof.[1]

5. In this Declaration, I respond specifically to the evidence and arguments offered by Verizon Declarant William E. Taylor with respect to the current level of local competition in the New Jersey residential exchange service market and his "explanations" for the lack thereof. I also update certain information that was included in the October 22, 2001 submission before the NJBPU. As in my October 22, 2001 Declaration, I conclude here that despite long-standing legislative and regulatory efforts at both the federal and state levels to facilitate and encourage the development of effective competition in the local telecommunications market, New Jersey's dominant incumbent local exchange carrier, Verizon New Jersey, persists in maintaining overwhelming dominance of both the residential and business segments. Specifically, I first show that Verizon New Jersey has failed to satisfy the "Track A" requirement that it demonstrate the presence of "one or more unaffiliated competing providers of telephone exchange service ... to residential ... subscribers."

6. In my October 22, 2001 Declaration, I examined the impact upon competition in the New Jersey interLATA long distance market in the event that Verizon New Jersey is permit-

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1. On November 17, 2001 and subsequent to the date at which my Declaration in the state proceeding was filed, the NJBPU announced that it would be issuing an order in Docket TO00060356 reducing rates for key unbundled network elements ("UNEs"). The summary order was issued by the Board on December 17, 2001, the final order has not been issued as of the filing date of this Declaration.

1 ted to offer this service while still maintaining its current level of overwhelming dominance in
2 the local service market, and demonstrated that unless a serious and substantial change in the
3 competitive local services landscape were to emerge quickly and irreversibly, Verizon New
4 Jersey will soon come to dominate and ultimately monopolize the adjacent, currently highly
5 competitive, long distance market as well. This analysis was based upon a model that I
6 developed to project BOC long distance market penetration levels based upon the BOC's
7 share of the *local* residential exchange service market coupled with the BOC's ability, under
8 Section 272(g) of the 1996 *Act*, to engage in "joint marketing" of its local and long distance
9 services to so-called "in-bound" customers who initiate a contact with the BOC for the
10 specific purpose of ordering *local* service. Based upon Verizon New Jersey's current 98.6%
11 share of the New Jersey residential exchange service market, the model projects that at the
12 end of five years following its receipt of Section 271 in-region interLATA authority,
13 Verizon's share of the New Jersey residential long distance market will approach 71%. In
14 this supplemental Declaration, I have compared the projections made by the model with
15 actual data on residential long distance market penetration as reported by Verizon for New
16 York and Massachusetts and by Southwestern Bell for Texas, and show that *in each and all*
17 *of these cases* the model has actually *under-projected* the achieved BOC market penetration
18 levels. Accordingly, the predictive power of the model is shown to be *conservative* and in
19 any event is fully borne out by actual empirical experience in states in which Section 271
20 authority has been granted. Once Verizon New Jersey has attained its sought-after interLATA
21 entry, the Company's incentive to comply on an ongoing basis with the "competitive
22 checklist" will rapidly dissipate, threatening the sustainability of the small amount of

competition that has developed thus far. And as long as Verizon New Jersey continues to control the overwhelming share of the local exchange service market, its ability to engage in "joint marketing" of local and long distance service — particularly in the residential segment — will enable Verizon New Jersey to rapidly remonopolize the long distance market in New Jersey, resulting in higher prices in the future for what is today a highly competitive service. For all of these reasons, approval of Verizon New Jersey's Section 271 Application is not in the public interest, and Verizon's Application should thus be rejected.

Verizon New Jersey has failed to make a *prima facie* showing that there is residential facilities-based competition in New Jersey, as required by Section 271(c)(1)(A).

7. In its Application,[2] Verizon New Jersey seeks to reduce the arguments and evidence that have been offered by the Ratepayer Advocate and others to mere critiques of the "level of competition" made with the primary purpose of "generat[ing] delay in order to maintain a competitive advantage."[3] However, such a characterization serves only to diminish the significance of the utter lack of local competition in New Jersey. Congress has clearly recognized that mere satisfaction of the Section 271(c)(2)(B) checklist does not transform the

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2. Verizon Brief, at 3.

3. It is, of course, not at all clear exactly what "competitive advantage" Verizon NJ ascribes to the Ratepayer Advocate, who in no sense "competes" with Verizon NJ nor derives any "competitive advantage" from any "delay" in 271 approval that might result from its comments herein. Indeed, *premature* entry by Verizon NJ into the interLATA services market, in the absence of competition in the New Jersey *local* telecommunications market, may delay the *benefits* of effective competition for New Jersey consumers and lead to diminished competition in the long distance market as well.

highly concentrated local service market into one subject to effective competition, nor does it immediately or even *necessarily* lead to a diminution or elimination of the incumbent BOC's market power. And for so long as the BOC continues to dominate and exercise market power in the local exchange market, it has the potential to extend that dominance and market power into the adjacent long distance market. Allowing in-region interLATA entry under such conditions will serve only to enfeeble such competition as presently exists, will further discourage capital investment in CLEC ventures and thereby serve to diminish competition overall, and as such does *not* serve the public interest, convenience and necessity.

8. The FCC has defined "facilities-based carriers" as embracing those that utilize BOC-provided unbundled network elements, UNE platforms, as well as those that own their own network assets.[4] The *Act* requires that there must be competing providers serving subscribers using those facilities as a threshold condition for a "Track A" application. The FCC has interpreted the "providing" requirement to mean that the competing carrier must be "in the market and operational (i.e., accepting requests for service and providing such service for a fee)."[5] Yet even this minimal requirement is not satisfied in New Jersey.

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4. *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, ("Michigan 271 Order") at para. 101; *Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, 16 FCC Rcd 6237, ("Kansas/Oklahoma 271 Order") at para. 41-42.

5. *Michigan 271 Order* at para. 75; *Application of Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum

(continued...)

9. Verizon clearly understands and recognizes the enormous attractiveness of the New Jersey local service market to competitors. As Verizon's Declarant William E. Taylor observes, "[a]s of 1999, New Jersey had the second highest per capita income in the U.S,"[6] and "is also the most densely populated state in the country."[7] However, despite the fundamental attractiveness of the New Jersey local telecommunications market to competitors, there is no evidence of even one operational company providing *facilities-based residential service to subscribers for a fee*, the minimal requirement for a "Track A" Application.

10. As both the Department of Justice and this Commission[8] have recognized, granting 271 authority under those circumstances creates significant competitive concerns. The Department of Justice has previously outlined those concerns in the affidavit of Dr. Marius Schwartz:

> BOC entry [into in-region interLATA long distance], however, also raises potential concerns. The principal risk of authorizing premature BOC entry is that doing so will result in significantly less BOC cooperation, than could be induced by an appropriate entry standard, in providing good access at cost-based prices to the various functions and services of a BOC's local

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5. (...continued)
Opinion and Order, CC Docket No. 01-9, 16 FCC Rcd 8988, ("Massachusetts 271 Order") at para. 225.

6. Taylor, at para. 36.

7. *Id.*, at para. 37.

8. *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* First Report and Order, 11 FCC Rcd 21905 ("*Non-Accounting Safeguards Order*"), at para. 11.

> networks needed by entrants wishing to offer local or integrated services. These requisite "wholesale local services" include interconnection, unbundled network elements, and discounted local service for resale. Securing efficient access to these services of the BOC's ubiquitous networks would be critical for some time to the development of competition in local and integrated services. A BOC's monopolistic withholding of such access cooperation would be a potent and destructive form of rivalry: it would raise competitors' costs, degrade their quality, and deny consumers the benefit of new products. And if facilities-based local competition fails to develop, BOC entry could pose a growing threat to long-distance competition, since today's established access arrangements will increasingly require changes over time.
>
> Authorizing premature BOC entry would prematurely reduce a BOC's cooperation incentives for two main reasons: (a) the BOC stands to gain if it can leverage its local market power into the newly opened markets for long-distance and integrated services; and (b) the BOC is emboldened to stiffen its resistance to local competition having secured its coveted long-distance authority.[9]

Schwartz cites two main incentives for Verizon New Jersey to engage in anticompetitive behavior, leveraging local market power into long distance and integrated market power and the removal of the incentive to open their networks.

11. These incentives remain as long as there is no viable facilities based residential competition in New Jersey. Any claimed amount of competition in the *business* segment

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9. Affidavit of Marius Schwartz, *Competitive Implications of Bell Operating Company Entry Into Long_Distance Telecommunications Services*, May 14, 1997, Attached at Tab C to Evaluation of the United States Department of Justice, *Application of SBC Communications Inc. et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region, InterLATA Services in the State of Oklahoma*, CC Docket No. 97-121, FCC filed May 16, 1997, at para. 8-9.

would have no effect upon the market power of Verizon New Jersey in the *residential* market or on the ability of Verizon New Jersey to extend that market power into the adjacent long distance market. The *Act* specifically and expressly establishes "Track A" requirements with respect to both residential and business facilities-based entry, *and does not permit Verizon to infer the presence of residential facilities-based entry from the fact of business facilities based entry.* Nor does it permit Verizon to escape this requirement by offering *excuses* for the lack of entry into the residential segment, excuses that are themselves premised upon speculative theories and erroneous facts and assessments regarding pricing policies that Verizon alleges have been imposed *upon it* by the New Jersey BPU. The close-to-imperceptible quantity of facilities-based residential lines purportedly being served by CLECs in New Jersey provides compelling evidence of Verizon New Jersey's success in resisting competition in the local residential market.[10]

12. In its *1997 Oklahoma Order*, the Commission found that, "the term 'subscribers' suggests that persons receiving the service pay a fee."[11] Yet in his December 20, 2001 Declaration, Dr. Taylor never even addresses the issue of whether the cited CLEC residential facilities-based lines represent *subscribers* as the FCC has defined the term. In fact, Dr.

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10. In fact, this Commission has found that, without residential competition, any determination with respect to *business* service is unnecessary. *Application of SBC Communications Inc. et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, ("1997 Oklahoma 271 Order"), at para. 13.

11. 1997 Oklahoma 271 Order, at para. 14.

Taylor avoids the term *subscribers* altogether when referring to residential access *lines* counted by Verizon as CLEC residential customers.[12] There may be good reason for this. According to Verizon's own overstated figures,[13] the number of residential customers currently being served over CLEC-owned facilities or UNE-P constitutes 0.0196% — i.e., *less than two one-hundredths of one percent* — of the total New Jersey residential market.[14] This astoundingly small percentage of customers being served over UNE-P or CLEC-owned facilities is consistent with the provision by some CLECs of residential service without charge to their employees and/or to users on a trial basis by CLECs that may be in the process of examining the potential for entry into the New Jersey local residential service market. And although Verizon New Jersey proffers even this minuscule facilities-based CLEC residential market share as "satisfying" Track A, it has provided no bills or other evidence that the 850 or so residential lines it ascribes to facilities-based CLECs are being provided by those CLECs *for a fee.*

13. Moreover, even the extraordinarily minute quantities being claimed by Verizon as "facilities-based CLEC residential lines" appear to have been on the decline. In the state proceeding, Verizon New Jersey President Dennis Bone testified that there were 280

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12. By estimating "lines," Verizon attempts to count the number of end user dial tone connections, as opposed to "subscribers," which indicates a customer receiving service *for a fee.*

13. See my October 22, 2001 Declaration at paras. 33-35 for an examination of the veracity of methods used by Verizon NJ to estimate competitor's access lines.

14. Verizon Brief, at 8.

residential lines being served via CLEC-owned facilities.[15] However, that quantity now appears to have decreased to about 50.[16]

14. In addition, the Commission has defined the term "competing providers" to include only carriers that constitute an

> actual commercial alternative to the BOC. Consistent with this interpretation, we note that the Joint Explanatory Statement states that '[t]he requirement that the BOC 'is providing access and interconnection' means that the competitor has implemented the agreement and the competitor is operational.'[17]

Despite Verizon's assertion that "each [purported residential CLEC] appears to be actively offering service to substantial numbers of residential customers in New Jersey today,"[18] Verizon fails to demonstrate that these CLECs are actually providing facilities-based services

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15. Declaration of Dennis M. Bone on behalf of Verizon New Jersey, State Proceeding, Attachment 101, Table 1.

16. In its Brief herein at pp. 7-8 and citing the Taylor Declaration at paras. 24-27, Verizon cites four carriers that it claims served "approximately 850 residential lines over their own facilities (including platforms)." Yet at Table 1 of Attachment 1 to the Taylor declaration, Dr. Taylor puts the number of UNE-P lines (i.e., excluding the true *facilities-based* CLEC lines) at 800. Using high school algebra-level mathematics, one can calculate the redacted value for lines using CLEC-owned facilities at approximately 50. [i.e., 850 owned and platform lines minus 800 platform-only lines). While there has apparently been a small increase in the use of UNE platform lines since the filing of Verizon's Application with the New Jersey BPU last Fall, the total of 850 (Track A) facilities-based lines represents slightly less than two one-hundredths (2/100ths) of one percent (0.0196%) of the 4.34-million residential lines currently being served by Verizon New Jersey.

17. *1997 Oklahoma 271 Order*, at para. 14

18. Verizon Brief, at 12.

for a fee to residential customers. First, no evidence has been presented, nor has the assertion been made, that any of the purported "residential facilities-based CLEC providers" are currently *enrolling customers*. Without this, and as Verizon itself noted, the relevant question under Track A of whether there is a carrier "in the market and operational (i.e., accepting requests for service and providing such service for a fee)" has not even been addressed by the Verizon filing.[19] Second, as the Ratepayer Advocate discovered in the New Jersey state proceeding, many of the collocation arrangements cited by Verizon New Jersey as evidence of facilities-based competition were, in fact, in the process of being disconnected.[20] Under those circumstances, such collocation data cannot be used as evidence of "operational" competition, since they cannot be considered "operational."

Verizon seeks to obliterate evidence of its own anticompetitive and discriminatory behavior by its attempts to assert both the presence of residential facilities-based local competition while simultaneously ascribing to the New Jersey Board of Public Utilities responsibility for alleged barriers preventing local competition from developing.

15. In the state proceeding, Verizon had sought to attribute the lack of residential competition to "strategic planning" on the part of CLECs who, Verizon claimed, were deliberately slow-rolling their local entry so as to buttress their opposition to Verizon's

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19. Verizon Brief at 13, citing the *Michigan 271 Order* at para. 75 and the *Massachusetts 271 Order* at para. 225.

20. Declaration of Lee L. Selwyn, October 22, 2001, Attachment 2: Verizon New Jersey response to RPA Data Request #27.

1 interLATA authority.[21] Of course, that theory would not explain why CLECs that are *not*
2 also interexchange carriers (such as cable television operators) are staying out of the New
3 Jersey residential market, since they would have no direct interest in forestalling Verizon's
4 interLATA entry (and might even support it if in fact it would have the effect of incenting
5 Verizon to actually open its network to competition). So in the current filing with the
6 Commission, Verizon's theory *du jour* is that the lack of residential competition is due to
7 what it characterizes as "low residential basic exchange rates" that Dr. Taylor claims "have
8 been a cornerstone of the Board's telecommunications policy in New Jersey since
9 divestiture."[22] Dr. Taylor argues that the low residential basic line charge in New Jersey
10 discourages CLEC entry. In support of that contention, he provides factually erroneous and
11 misleading data about New Jersey residential prices and price levels. First, he asserts that
12 "Verizon New Jersey's *flat rate* service, including local usage, is priced at only $8.19 per
13 month, and adding the FCC subscriber line charge brings total recurring charges to about
14 $12.50 per month in New Jersey."[23] The actual Verizon New Jersey residential SLC is
15 $5.00 per month ($6.21 for additional lines),[24] making the correct rate, including the SLC,
16 $13.19 (and $14.40 for additional lines). Virtually all Verizon New Jersey residential
17 customers also subscribe to touch tone service, which adds another $1.00 to their monthly
18 bill, bringing the "basic" monthly rate to $14.19 ($15.40 for additional lines). Then, although

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19 21. Dr. Taylor reiterates this same notion in his Declaration herein, at para. 19.

20 22. Taylor, at para. 23.

21 23. *Id.*, emphasis in original.

22 24. Verizon FCC Tariff No. 1, Section 4.1.7.4.

1 conceding that the FCC's USF Cost Model "is not necessarily an accurate measure of true
2 costs," Dr. Taylor compares a $17.00 cost result from that Model to the "about $12.50"
3 monthly rate as the basis for his theory regarding the unattractiveness of the New Jersey
4 residential market.
5
6 16. Of course, few if any customers actually pay *only* the $13.19 basic monthly rate;
7 most place at least some toll calls, subscribe to optional calling plans like Verizon New
8 Jersey's Selective Calling Service, order touch tone and vertical features, or utilize switched
9 access services when placing *or receiving* calls that are carried by IXCs (including calls to
10 toll-free numbers). A competitor considering entry into the New Jersey residential market
11 would be far more interested in the *overall* revenue that he can expect to obtain from New
12 Jersey customers rather than how *individual rate elements* have been defined by Verizon. Dr.
13 Taylor addresses this point, although somewhat backhandedly, by referring to (but not
14 actually providing) an analysis that he alleges was undertaken by his firm, NERA, that found
15 that, for vertical services and toll, "over 45 percent of residential customers have monthly
16 bills of $15.00 or less."[25] Dr. Taylor provides no details as to the nature of the
17 "representative sample" of Verizon New Jersey bills from which this data was allegedly
18 extracted; more significantly, however, he never actually adds these toll and vertical services
19 expenditures to the $8.19 basic monthly charge and the $5.00 Subscriber Line Charge. Dr.
20 Taylor's "45% less than $15" factoid thus more accurately translates into "45% less than
21 $28.19." Moreover, from Dr. Taylor's own description of his study's results, we learn

22 25. Taylor, at fn. 30.

(inferentially) that fully 55 percent of the residential customers in New Jersey have monthly telephone bills *above* that same $28.19 level, making New Jersey quite an attractive market for competition even with the "low" "basic line charge."

17. At para. 25, Taylor claims that "competitors run a higher risk of capturing unprofitable, low-revenue customers — despite efforts to attract the most profitable customers — when they compete for residence [sic] than for business customers." Inasmuch as Dr. Taylor and Verizon have long advanced arguments suggesting that competitors engage in "cream-skimming" and even in the cited text Dr. Taylor persists in contending that competitors will expend their "efforts to attract the most profitable customers," the "risk" to which he refers is obviously overblown. Even accepting Dr. Taylor's citation to a likely overstated $17 *cost* that Verizon ostensibly incurs in providing residential service in New Jersey, it is difficult to understand why competitors would not be attracted to a market in which *at least 55%* of customers spend in excess of $28.19.

18. In his further efforts to divert the blame for the present dearth of residential competition away from Verizon, Dr. Taylor now suggests — possibly for the first time — that yet another explanation for the low level of competitive activity in the residential *local* market in New Jersey is due to the small size of New Jersey's local calling areas and the correspondingly large amount of intraLATA toll calling. Incredibly and without any support whatsoever, Dr. Taylor then goes on to attribute the small local calling areas to the same

"regulatory decision [of the New Jersey Board] to establish very low basic rates."[26] This patently untrue claim is belied by Verizon New Jersey's persistent *resistance* to efforts by the Ratepayer Advocate to enlarge the size of New Jersey local calling areas and to eliminate toll routes that are, in some cases, as short as just a few miles.

19. While obviously aware of the interaction between the small local calling areas and the low *basic* exchange service rate, Dr. Taylor fails entirely to recognize this interaction when undertaking to "compare" New Jersey residential exchange service rates with those in other states. He asserts (at para. 23) that "New Jersey's retail residential exchange rate is the lowest in the nation" but also admits (at para. 27) that "New Jersey had the fourth largest intraLATA toll market in absolute terms." He notes that Verizon's *overall* share of the intraLATA toll market fell to about 62 percent by the end of 2000,"[27] but doesn't even provide the *residential-only* intraLATA toll IXC penetration rate, which is the only relevant issue for the discussion in which he is engaging.[28] More significantly, Dr. Taylor seems to be suggesting that if a CLEC were to provide residential exchange service, it could only expect to provide intraLATA toll to 62% of its residential customers. In fact, CLECs are likely to be the PIC for the overwhelming majority of their residential customers, such that the toll revenues generated by those customers would typically flow to the CLEC as well.

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26. *Id.*, at para. 27.

27. *Id.*, para. 29, emphasis supplied.

28. It is likely that the share loss for Verizon is far greater in the business segment than in the residential segment due to the incorporation of both interLATA and intraLATA toll into many business volume-based pricing plans.

20. Finally, Dr. Taylor's analysis of residential revenues is seriously flawed, since it excludes all customers whose "local bills do not show line-item detail."[29] The "study" upon which Dr. Taylor and Verizon rely is not being provided with Verizon's Application, and there is thus no basis for the Commission to determine whether this "exclusion" produces a systematic bias in the results that are being alleged. For example, Dr. Taylor's study may thus be excluding all customers purchasing vertical services as part of a service package, a popular residential option,[30] and as such would be significantly understating average residential revenue.

21. The contention being made by Verizon New Jersey in its brief — that New Jersey is not an attractive market for CLECs based on demographic data — would be almost laughable if the consequences of this misrepresentation were not so serious. Verizon contends that "[t]he fact that New Jersey lacks a significant major urban population therefore means that it is inherently less likely than other, more urban States to attract competitive local carriers."[31] From this assertion, one might be led to conclude that the authors of Verizon's Brief have never even been to New Jersey. According to data from the US Census Bureau, in 1990, the

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29. Taylor, at fn. 30.

30. In fact, examination of the local service packages being offered by Verizon in New Jersey indicate that Verizon New Jersey feels no competitive threat at all. The "Call Manager" package of vertical services, which retails in Massachusetts for $13.91 with no set-up charge, is priced at $16.99 with a $10 set up fee in New Jersey. This evidence itself is sufficient to indicate that there is sufficient demand for vertical features even when the price point is significantly above cost.

31. Verizon Brief, at 78.

1 New Jersey population was 89.4% urban, a percentage exceeded only by California.[32] New
2 Jersey is one large, continuous urban area, making the size of individual municipalities
3 irrelevant. In addition, the State's location in the midst of the New York Megalopolis makes
4 it a natural place for CLECs operating in either the New York City or Philadelphia
5 metropolitan areas to expand into New Jersey, especially since many New Jersey customers
6 could be served by switches already installed in either of those two markets. The decidedly
7 upscale bedroom communities and the densely-populated counties[33] in northern New Jersey
8 as well as in the Philadelphia area would clearly support competitive entry in the residential
9 market, if such entry were not being so effectively blocked by Verizon. The utter lack of
10 competitive entry in New Jersey — and in the residential market in particular — cannot be
11 "blamed" on the Board's policies, on New Jersey's geography, or on its demographics. The
12 Commission must not permit Verizon to succeed in shirking its own critical role in creating
13 the present anticompetitive climate and passing the "blame" to others and to other factors.
14

15 32. http://www.census.gov/population/censusdata/urpop0090.txt

16 33. For example, the population density of Hudson County, directly across the Hudson
17 River from Manhattan, is 12,956 persons per square mile, US Census Bureau, 2000.
18 http://quickfacts.census.gov/qfd/states/34/34017.html

Empirical evidence supports the contention that premature BOC entry would significantly harm the long distance market, and the Commission should delay Verizon New Jersey's entry into the interLATA market until there is viable local residential competition.

22. At paragraphs 79-90 of my October 22, 2001 Declaration submitted in the state proceeding, I discussed the model that I had developed of Verizon market share growth in the New Jersey residential long distance market following its receipt of interLATA authority. I noted, by virtue of the joint marketing opportunity permitted by Section 272(g) and its resulting ability to preferentially and preemptively "recommend" ("sell") Verizon Long Distance service to in-bound customers contacting Verizon New Jersey to order *local* telephone service, that after five years and as long as Verizon New Jersey continues to overwhelmingly dominate the New Jersey local residential market, Verizon Long Distance will have captured some 71% of New Jersey residential customers.

23. The market share projections contained in the model can now be compared with actual BOC market penetration results as reported by BOCs in states where in-region interLATA entry has been authorized. On the basis of these empirical results, my model's projections are actually proving to be *conservative*, since the BOCs have in each case achieved *even greater residential long distance PIC penetration* than the model had projected. Verizon Corporation press releases dated from February 2001 and October 2001 provide information on Verizon's experience in providing long distance service in New York and Massachusetts.[34] Approximately 12 months after receiving Section 271 authority in New

34. Copies of these Verizon Press Releases are provided in Attachment 2 hereto.