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June 20, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: In the Matter of Application by Verizon New Jersey Inc. for Authorization To Provide In-Region, InterLATA Services in New Jersey WC Docket No. 02-67

Dear Secretary Dortch:

This letter responds to AT&T's *ex parte* filings made on April 30, 2002, on May 22, 2002, and on June 18, 2002 (collectively "AT&T Filing") concerning switching rates and whether such rates are forward looking and otherwise consistent with the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology.[1] In addition, this letter supplements our prior comments to the FCC as they relate to checklist Item 2 in response to the just issued Memorandum Opinion and Order approving long distance authority for BellSouth Corporation and its affiliates in the States of Georgia and Louisiana.[2]

[1] The Supreme Court on May 20, 2002 affirmed the Federal Communications Commission's ("FCC's") TELRIC standard and the rules implementing it in *Verizon Communications, Inc. v. FCC*, 535 __ U.S. (2002) (2002 WL 1008485).

[2] See *I/M/O Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. For Provision of In-Region, InterLATA Services in Georgia and Louisiana*, Memorandum Opinion and Order (FCC 02-147) (released May 15, 2002) (referred to as "*Georgia/Louisiana Order*").

The Division of the Ratepayer Advocate ("Ratepayer Advocate") in its comments on April 8, 2002 and its reply comments on April 19, 2002 raised several concerns over whether the local switching rates, and the non-recurring rates were (1) set properly by the New Jersey Board of Public Utilities ("Board") and otherwise comply with TELRIC and (2) fall within a range that a correct application of TELRIC would produce.[3]

Section 252(d)(1) of the Telecommunications Act of 1996[4] requires that state determinations regarding the rates, terms, and conditions for UNEs be cost-based and nondiscriminatory, and allow the carrier to earn a reasonable profit. The Commission's pricing rules require, among other things, that an incumbent LEC provide UNEs based on the TELRIC pricing methodology.[5] In order to approve Verizon-NJ Section 271 application, the FCC must conclude that Verizon-NJ's UNE rates fall within the reasonable range that correct application of TELRIC principles would produce. The FCC lacks an adequate record to make this determination when a state commission does not apply TELRIC principles or does so improperly (*i.e.,* the state commission made a major methodological mistake or used an incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit).[6]

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[3] See Comment dated April 8, 2002 at 4-7 and see Reply Comments dated April 19, 2002 at 11-18.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the Act," and all citations to sections of the Act will be to the Act as it is codified in the United States Code.

[5] *Rhode Island Order* at para. 20.

[6] *Rhode Island Order* at para. 38.

At this time, AT&T's Filing has not been adequately refuted by Verizon New Jersey, Inc. ("Verizon-NJ").[7] As a result, the Ratepayer Advocate submits that Verizon-NJ has failed it meet its burden of proof with respect to checklist Item 2. As pointed out by AT&T, serious TELRIC errors were committed in deriving the switching rates established by the Board. In particular, AT&T demonstrated that Verizon-NJ's switching rates are "inflated by other TELRIC errors including, understated use of integrated digital loop carrier ("IDLC") equipment and double counting of certain costs.[8] The Ratepayer Advocate also raised serious concerns with the busy hour input to derive the switching rates.[9]

The Ratepayer Advocate also raised concerns over the non-recurring rates which were set as **permanent rates** after the Board had rejected the work times proposed by Verizon-NJ as being "biased, arbitrary, and unreliable."[10] When the FCC has been faced with errors in the application of TELRIC, the FCC has approved applications so long as the rates were interim and subject to true-up. See *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., For Authorization To Provide In-Region , InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, FCC 02-118 at ¶ 23 of Appendix D (rel. April 17, 2002) (*Vermont Order*).

In the *Georgia/Louisiana Order*, the FCC approved the applications even though questions were raised concerning whether certain rates were TELRIC compliant. Specifically, the FCC concluded that DUF rates and collocation rates were TELRIC compliant because the rates were interim and subject to true-up.[11]

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[7] Verizon-NJ filed a response on June 7, 2002 with the FCC. However, that response is not supported by any expert testimony or other evidence. See AT&T's June 18, 2002 submission at 1. As such, there is no evidentiary basis for Verizon-NJ's assertions.

[8] See AT&T's April 30, 2002 filing at page 2 and supported by the Supplemental Declaration of Michael R. Baranowski.

[9] See Ratepayer Advocate's comments dated April 8, 2002 at 6-7 where we questioned the busy hour input and see our Reply Comments dated April 19, 2002 at 11-13 where we further questioned the input.

[10] See Ratepayer Advocate's comment dated April 8, 2002 at 5-6; and Reply Comment at 15-22.

[11] See *Georgia/Louisiana Order* at ¶¶ 90 and 216.

In response to an attack by AT&T on the DUF rates in Georgia, the FCC held the dispute is best handled by the Georgia Commission for three reasons: (1) AT&T challenges to the reasonableness of the DUF cost study were not made in the original cost proceeding; (2) the rates in effect are interim subject to true-up with the rates that will be adopted in the ongoing cost proceeding; and (3) the Georgia Commission has demonstrated a continuing commitment to implementing TELRIC principles. See *Georgia/Louisiana Order* at paragraph 90. More importantly, in response to various questions over whether collocation rates were properly set, the FCC found 271 compliance based upon the fact that in Georgia, BellSouth's application was based upon revised interim collocation rates which were subject to true-up. See *Georgia/Louisiana Order* at paragraph 216.

With respect to the non-recurring rates in New Jersey, the Ratepayer Advocate has asserted that (1) the Board made errors that violate basic TELRIC principles and those challenges were made in the UNE proceeding which Verizon-NJ relies upon to show compliance with checklist item 2, (2) the non-recurring rates objected to are permanent and not interim and not subject to true-up and were based upon work times found by the Board to be "biased arbitrary, and unreliable" and (3) the Board has made errors in implementing TELRIC in the past. As a result the FCC, consistent with its precedent including the *Georgia/Louisiana Order*, should not grant this application at this time.

The Ratepayer Advocate knows what effects the setting of improper TELRIC rates have; such rates are barriers to entry and frustrate the purposes of the Telecommunications Act of 1996. Such barriers preclude a finding that checklist item 2 is satisfied. Competition has been non-existent in the residential market in New Jersey between the time the Board set permanent rates in 1997 and the time they issued a UNE Final Order on March 6, 2002. After challenging those rates in Federal District Court (a proceeding that took over two and one-half years) and obtaining a remand, another one and three quarter years elapsed before the UNE Final Order was issued. Barriers will continue to exist in New Jersey until rates are properly set in accordance with TELRIC. The Board could have alleviated these concerns by establishing interim rates for a portion of the UNE rates (i.e., local switching and non-recurring rates) in lieu of setting permanent rates for all UNEs in New Jersey. With interim rates, the barriers to entry are lessened and competitors have a more favorable environment to enter the marketplace.

In view of the foregoing, the Ratepayer Advocate submits that unless the Board revises it UNE Final Order to make switching rates and the non-recurring rates interim and subject to true-up, Verizon-NJ's application should not be granted.

Respectfully submitted,

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Acting Director and Ratepayer Advocate

By: /s/ Lawanda R. Gilbert

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