Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Application by Verizon New England Inc., Verizon Delaware 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 New Hampshire and Delaware	)	WC Docket No. 02-157

SUPPLEMENTAL COMMENTS OF AT&T CORP.
ON RECENT CHANGES IN VERIZON UNE PRICES IN DELAWARE

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September 10, 2002

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Pursuant to the Commission's public notice in this case on September 4, 2002, AT&T Corp. ("AT&T") respectfully submits these supplemental comments on the reductions of 31 percent proposed by Verizon on August 30 for the price of unbundled switching in Delaware.

Notwithstanding Verizon's predictable disclaimers, its "voluntary" rate reductions prove what AT&T has asserted all along: that many of Verizon's existing UNE rates are not remotely compliant with TELRIC. When a 31 percent disparity exists between two successive rates for the same service, one (or both) of those rates must violate TELRIC; otherwise the standard of TELRIC compliance would be so elastic as to be meaningless. It is obvious that Verizon's earlier rates were *not* TELRIC compliant; and the Commission should keep in mind Verizon's repeated representations to the contrary when assessing the credibility of Verizon's remaining claims.

Verizon's 11th-hour price reductions also underscore the soundness of the Commission's "as filed" requirement for Section 271 applications, which directs that the "application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its determination."[1] In the limited time remaining in this proceeding, there is simply no basis for the Commission to determine whether Verizon's belated rate filing has cured any of the problems in Verizon's original 271 application; and it is clear that several basic flaws remain.

First, it is uncertain when—or, indeed, whether—the rate reductions will take effect. By Memorandum dated September 5, 2002, Gary Myers, Deputy Attorney General of Delaware, advised the Commission of his conclusion that these proposed rate reductions would require Commission approval, and advised that the Commission "defer consideration of these new switching rates," until after FCC action on Verizon's 271 application and, thereafter suggested that the Commission direct Verizon to make "formal application" to amend its rates.[2]

While Verizon has argued that the rate reductions are essentially self-executing, the Delaware PSC has both the independent state jurisdiction and the obligation to oversee the justness and reasonableness of a utility's rates.[3] Indeed, it has jurisdiction over rate changes effected by any public utility.[4] That jurisdiction undoubtedly extends to switching rates, inasmuch as switching is a basic service required to be offered to

[1] September 4 Commission Public Notice at 1-2 & n.3 (citing Commission precedent establishing "as filed" rule).

[2] A copy of Mr. Meyers' memorandum is attached as Attachment 1 hereto.

[3] *See* 26 Del. Code § 303.

[4] *See* 26 Del. Code §§ 303, 304 and 305.

competitive carriers under Delaware law.[5] Moreover, under Section 252 of the Telecommunications Act and 26 Del. Code §304, all rate changes require advance notice, publication and potentially a hearing either on the Delaware PSC's initiative or upon application of a party. The failure to require such a process constitutes error.

Second, the 11th-hour filing has not cured the Delaware PSC's failure to set TELRIC-based prices for unbundled switching. Verizon has provided no cost support or other justification for its newly proposed switching rates, either to this Commission or to the Delaware PSC. Available evidence suggests that the reduced rates are still not TELRIC-compliant, particularly in light of the massive reductions in the net cost of switching equipment in recent years. In New Jersey, for example, Verizon's switch usage rates are now $0.001203 for originating minutes and $0.001171 for terminating minutes (NJ BPU Case No. TO00060356). As a result of those lower switching rates and other price reductions, AT&T has now entered the New Jersey residential local exchange market. Verizon, of course, makes no attempt to explain here why its Delaware rates should be so much higher than New Jersey rates that helped facilitate the development of meaningful local exchange competition.

Third, Verizon's proposed UNE rates in Delaware would still create a discriminatory "price squeeze" in violation of checklist item 2. AT&T showed in its initial comments that Verizon's UNE rates in Delaware, in conjunction with Verizon's retail rate in the same state, effect a price squeeze against new entrants, thereby violating the antidiscrimination standard incorporated in Section 271.[6] The reduced rates still produce a price squeeze.

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[5] *See*, *e.g.*, 26 Del. Code § 707; §704(3). See also *In the Matter of the Development of Regulations for the Implementation of the Telecommunications Technology Investment Act*, Delaware PSC Docket No. 41.

[6] AT&T Comments at 34-36.

As explained in the supplemental declaration of Michael Lieberman attached hereto ("Lieberman Supp. Decl."), the state-wide average *gross* margin in Delaware (not accounting for entrants' internal costs) will still cover only a fraction of the internal costs of entry of an efficient carrier—more than $10.00 in Delaware—even if Verizon's 11th hour price reductions take effect.[7]

Verizon's nonrecurring charges in Delaware are an important contributing factor to this negative net margin. Those charges equal *540 percent* of the corresponding nonrecurring charges established by Verizon in New York. There is no conceivable cost justification for this enormous disparity: labor costs in New York, among the highest in the country, are at least as high as in Delaware.[8]

The enormous net negative contribution generated by Verizon's UNE prices cannot be dismissed on the theory that AT&T's margin analysis has omitted legitimate sources of potential revenue.[9] This large negative margin results even after including a realistic allowance for vertical features, access revenues for long distance calls, and intraLATA and interLATA toll contributions.[10]

Nor is there merit to Verizon's claim that the margins available from entering the local residential market must be computed by including the contributions available from entering the local business market.[11] Residential and business service are separate product markets, and the decision for a CLEC to enter the residential market is a separate

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[7] *See* Lieberman Supp. Decl. (attached hereto); Lieberman Decl. (filed July 17, 2002) ¶¶ 42-46; Bickley Decl. (filed July 17, 2002) ¶¶ 2-11.

[8] *See* Lieberman Supp. Decl. ¶ 10 and Exh. B thereto.

[9] *See* Verizon Reply Comments at 42-44.

[10] *See* Lieberman Decl. (filed July 17, 2002) ¶¶ 36-41.

[11] See Verizon Reply Comments at 45 (asserting that AT&T has erred in limiting its margin analysis to only a "residential entry strategy").

decision from entering the business market. When considering UNE-P entry, CLECs perform separate, stand-alone analyses to evaluate entering the business market versus the residential market. It would be utterly irrational for a CLEC seeking to provide competitive (and potentially profitable) business service to enter the residential market as long as the latter remains unprofitable.

There is likewise no basis for Verizon's claim that AT&T and other intervenors have ignored the revenues potentially available from bundling local service with other retail services such as "DSL and wireless." DSL and wireless telephone services are separate product markets from wireline narrowband service, with different cost and demand characteristics and requiring separate facilities and investments. Requiring potential entrants to enter both the DSL and wireless markets simultaneously with wireline would create an additional entry barrier. Indeed, the attempt by a firm with market power to tie purchases in separate markets in this fashion is considered an antitrust violation for precisely this reason.[12]

Verizon's contention that AT&T's margin analysis suffers from "fatal error" because it "fails to consider serving residential customers using [AT&T's] own switches together with unbundled loops" (Verizon Reply Comments at 45) is equally without merit. The costs and administrative difficulties of UNE-loop entry make it economically infeasible for new entrants pursuing typical residential customers. In its *UNE Remand Order* (¶¶ 254-258),[13] the Commission itself recognized that entrants could not rationally invest in switches until they have used UNE-P to build up a customer base. As discussed

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[12] *See generally Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984); *Eastman Kodak Co. v. Image Technical Service, Inc.*, 112 S.Ct. 2072 (1992).

[13] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, 15 FCC Rcd. 3696, ¶ 260 (1999); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Comments of AT&T Corp., Affidavit of C. Michael Pfau, ¶¶ 11-23 CC Docket No. 96-98 (filed May 1999).

above, potential entrants in Delaware cannot build up such a customer base because Verizon's UNE prices in Delaware preclude profitable UNE-platform entry.

CONCLUSION

For the foregoing reasons, and those stated in AT&T's previous comments, Verizon's application for authorization to provide in-region, interLATA services in Delaware and New Hampshire should be denied.

Respectfully submitted,

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September 10, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments of AT&T Corp. was served, by the noted methods, the 12th day of August, 2002, on the following:

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