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September 12, 2002

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th H Street, SW, Portals
Washington, DC 20554

Re: Joint Application by Verizon for Authorization To Provide In-Region, InterLATA Services in States of Delaware and New Hampshire, Docket No. 02-157

Dear Ms. Dortch:

At the request of staff, Verizon provides this further information on Verizon's dark fiber practices in New Hampshire.

The New Hampshire Public Utility Commission ("New Hampshire PUC") has not imposed a specific limit on the number of dark fiber strands that a CLEC may lease from Verizon. The New Hampshire PUC has, however, approved limitations on the ability of CLECs to warehouse dark fiber. *See* Order No. 22,942 in Docket DE 97-229, *Arbitration Regarding Request for Recognition of Dark Fiber as an Unbundled Network Element*, dated May 19, 1998, at 9 (Appendix H-NH, Vol.1 Tab 1 at 9). These limitations are reflected in Section 5.16.5 H of Verizon's Statement of Generally Available Terms ("SGAT").

The [CLEC] shall commence the intended use of the requested dark fiber within a reasonably prompt period of time from the date of its receipt as an unbundled network element. Commencement of intended use means completion of all preparations rendering the dark fiber capable of providing the planned service offering to customers. If the [CLEC] does not commence the intended use of the requested dark fiber within a reasonably prompt period, any carrier may petition the Commission to consider whether the [CLEC] is reserving dark fiber that is not demonstrably necessary to meet its short-term service needs.

In addition, Verizon's national Model Interconnection Agreement includes limitations on the ability of CLECs to warehouse dark fiber. Section 8.2.14 of the Network Elements Attachment

says: "Verizon will limit [CLEC] to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network." App. N-NH, Tab 2 at 107.

The New Hampshire PUC has not set any limits on the number of fiber strands that Verizon may use or assign for use. It is Verizon's practice to assign available fibers to its own lit fiber optic systems and to construct fiber cables where they are needed for Verizon's fiber optic systems. Verizon deploys lit fiber optic systems to provide capacity for the overall network growth of many services, for modernization of existing older transport technology (such as DS-1 circuits currently served on copper facilities), or for specific customer retail or wholesale orders, including other types of transport ordered by CLECs. Typically, Verizon assigns available fibers to its own lit fiber optic systems at the beginning of the engineering design work to implement a specific new lit fiber optic system.

It is also Verizon's practice to assign maintenance fibers to itself so that it can provide rapid emergency service restoration of "lit" (high capacity) fiber optic systems that fail when a fiber optic cable or strand is damaged or broken. These Verizon practices were explained in Verizon's ex parte letter dated September 5, 2002.

In its comments, BayRing claims that there is a "rejection rate of 84% of dark fiber inquiries experienced by CLECs in New Hampshire." BayRing Comments at 30. BayRing is not referring to orders for dark fiber that are rejected. It is actually referring to queries on the availability of dark fiber "because prior to placing an order, a CLEC must first inquire whether there is fiber available" BayRing Comments at 29. BayRing's comments are based on data from 2001. More recently, of the 27 dark fiber inquiries Verizon received in New Hampshire between January and June 2002, Verizon indicated that dark fiber was available for nine of them (33 percent) and that dark fiber was not available for the remaining 18 dark fiber inquiries (66 percent). None of these more recent dark fiber inquiries were submitted by BayRing.

As Verizon explained in its August 23, 2002 ex parte, the percentage of dark fiber inquiry responses that indicate the requested dark fiber is not available does not provide any meaningful measure of Verizon's checklist performance. It simply shows that Verizon does not have spare dark fiber on the routes where CLECs would like to lease it. In fact, during proceedings before the New Hampshire PUC, Verizon provided evidence that in New Hampshire, nearly 60 percent of the approximately 180 interoffice fiber optic facilities spans have four or fewer spare fibers available for use by either Verizon or the CLECs. App. B-NH, Tab 13 at 144-45.

During proceedings before the New Hampshire PUC, the staff verified that Verizon accurately responds to dark fiber inquiries when it indicates the dark fiber is not available. On December 13, 2001, the staff submitted three inquiries for dark fiber loops and three inquiries for dark fiber interoffice facilities. The Staff investigated Verizon's responses in detail and found that "Verizon's cable documentation appears to be complete, and consistent between and among the various records." See App. B-NH, Tab 19 at 2. The staff then concluded that its "review of the

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availability of dark fiber did not result in a finding that dark fiber is more available than the record would indicate.” *Id.*

Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 02-1497.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Bell". The signature is written in a cursive style with a large, stylized initial "R".

cc: H. Thaggert
V. Schlesinger
G. Remondino
T. Wilson