

II. VERIZON SATISFIES THE PUBLIC INTEREST TEST.

Verizon demonstrated in its Application that there is significant local competition in Virginia; that Verizon's local markets will remain open after Verizon obtains section 271 approval; and that permitting Verizon to provide interLATA service in Virginia will vastly enhance consumer welfare by increasing both local and long distance competition. See Application at 87-103. The Virginia SCC has agreed. See SCC Letter at 1-2; Hearing Examiner's Report at 167-70. A handful of CLECs quibble with a few of these findings, but their arguments are unavailing.

Local Competition. Verizon demonstrated in its Application that, in Virginia, there are proportionately more facilities-based CLEC lines — and proportionately more facilities-based *residential* CLEC lines — than in *any* other state that has been granted section 271 authority, at the time applications were filed in those states. See Application at 1, Att. A, Exs. 3 & 4. A few parties nonetheless argue that approving Verizon's Application is not in the public interest because the substantial and growing residential competition in these states is somehow too little.⁵⁵ But the Commission has repeatedly rejected this very claim.⁵⁶ And while AT&T claims (at 20) that there has “been almost no UNE-based entry” in the state, the facts show otherwise. For example, Verizon demonstrated in its Application that CLECs in Virginia were using approximately

⁵⁵ See, e.g., AT&T at 20-23; Sprint at 9-11.

⁵⁶ See, e.g., Pennsylvania Order ¶ 126 (“Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not undermine that showing.”); Vermont Order ¶ 63; Maine Order ¶ 59; New Jersey Order ¶ 168; AT&T at 20-23; Sprint at 9-12. The Commission also has repeatedly rejected Sprint's claim (at 4-6, 11) that Verizon's Application should be denied because of the supposed “crisis” in the CLEC industry and the alleged failure of Bell companies to compete with each other. See, e.g., Rhode Island Order ¶ 106; Vermont Order ¶ 64; Maine Order ¶ 60; New Jersey Order ¶ 168 & n.516.

150,000 voice-grade stand-alone loops, approximately 14,000 UNE business platforms, and approximately 6,600 residential UNE platforms. See Application at 22, 90-91; Torre Decl. Att. 1 ¶¶ 5, 20. And WorldCom has begun using the UNE-P to provide its The Neighborhood service throughout Virginia — a development that WorldCom’s own website declares is an indication that local markets in Virginia are “opened . . . to competition.”⁵⁷

In contrast to AT&T’s rhetoric, DOJ has confirmed that the opportunities to serve residential customers in Virginia are the same as the opportunities to serve business customers in Virginia. See DOJ Eval. at 5-6; see also Maine Order ¶ 59; Vermont Order ¶ 63. And DOJ also found that business competition in the Commonwealth is extensive. See DOJ Eval. at 5; see also Application at 88-89; Torre Decl. Att. 1 ¶ 5. In addition, Verizon has demonstrated that it has taken the same steps to open its markets in Virginia as it has taken in other 271-approved states. See Application at 8-9; Lacouture/Ruesterholz Decl. ¶¶ 8-9; McLean/Wierzbicki/Webster Decl. ¶¶ 8-10. Thus, there is no conceivable reason to believe that the level of residential competition in Virginia — which is high in any case — has anything to do with Verizon’s efforts to open its local markets. The facts instead show that “factors beyond the control of the BOC, such as individual competitive LEC entry strategies,” are responsible. New Jersey Order ¶ 168; see Georgia/Louisiana Order ¶ 282.

Cavalier nonetheless claims (at 30-31) that “recent experience” demonstrates that “local markets in Virginia are closing, rather than opening . . . to local competition.” But Cavalier bases this claim solely on the fact that Cavalier’s own net customer installations

⁵⁷ MCI, The Neighborhood, Help & FAQs, at http://www.theneighborhood.com/res_local_service/jsp/help.jsp?subpartner=FREEMONTH.

have recently declined, which is simply not representative of local competition in Virginia as a whole. For example, in the last six months, competitors in Virginia have added more than 114,000 new lines, including 16,000 residential lines.⁵⁸ Moreover, Cavalier's claims here are flatly inconsistent with other recent statements that Cavalier has made.⁵⁹

Allegiance argues (at 9-13) that Verizon's no-facilities policy with respect to high-capacity loops, even if consistent with the checklist, "has the effect of frustrating congressional intent" to open local markets to competition, and therefore should be rejected on public interest grounds. But, as the Commission has recognized, such an approach is exactly the opposite of what Congress intended in the Act. Applying "normal canons of statutory construction," the Act makes clear that "the public interest analysis is an independent element," of section 271 and necessarily involves a determination that is "independent" from the one the Commission must conduct under the checklist. New York Order ¶ 423. Moreover, Congress made clear that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the

⁵⁸ In the last month for which data are available — June 2002 — competitors in Virginia added more than 25,000 new lines, including 9,300 residential lines.

⁵⁹ See, e.g., Cavalier Press Release, Cavalier Telephone Revenues Soar; Operational Earnings Turn Positive; Monthly Revenue Exceeds \$16M (July 11, 2002) (Cavalier has "achieved a financial milestone in May 2002, posting positive monthly earnings," which "sets Cavalier on a different level from other competitors"); id. ("during the last three months [April, May, and June 2002], Cavalier completed sales of 41,841 lines; and installed 39,806 new lines," within the five Verizon states that it serves," and is now "beginning to reach economies of scale"); id. ("The negative economic climate has proved to be a windfall for Cavalier," because "[c]ustomers from several distressed competitors have switched to Cavalier"); Cavalier Press Release, Cavalier Telephone Expands Capacity (July 9, 2002) (the failure of other CLECs "has placed a significant rush on the facilities of Cavalier" and caused Cavalier to "double[] its switching and network capacity throughout its footprint to accommodate widespread requests by current and new customers").

competitive checklist.” 47 U.S.C. § 271(d)(4). And, as the Commission has recognized, this language means that the Commission “may neither limit nor extend the terms of competitive checklist” in the context of its public interest inquiry. Georgia/Louisiana Order ¶ 280. Allegiance’s claim is therefore nothing more than an improper attempt to get a second bite of the apple.

Long Distance Marketing. Verizon explained in its Application that, in connection with Verizon’s Application to provide long distance service in New Jersey, Verizon voluntarily disclosed to the Commission that, in February 2002, it inadvertently had sent marketing materials advertising long distance service to a number of customers, including approximately 2,000 customers in the former GTE territories in Virginia. See Application at 86 n.67. As Verizon explained, upon discovering the error, Verizon sent each of those customers a corrective letter informing them that Verizon is not yet authorized to provide long distance service in Virginia. See id.; Ex Parte Letter from Michael Glover, Verizon, to Marlene Dortch, FCC, CC Docket No. 02-67 (June 17, 2002). Verizon also has disclosed to the Commission that, in March, May, and June 2002, it mailed approximately 15,000 “winback” letters — including some to customers in Virginia — that invited former Verizon customers to again choose Verizon’s local service, but that also mentioned Verizon long distance service and inadvertently failed to include the standard disclaimer stating that not all services were available in all areas. See Ex Parte letter from Marie Breslin, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 02-61, 02-157, 02-214, and 02-7 (Aug. 12, 2002).

AT&T argues (at 24-25) that these incidents constitute a violation of the Act that provides an independent ground for rejecting Verizon’s Application. But as the

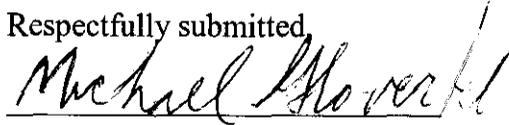
Commission has already found, there is no merit to AT&T's claim. In the New Jersey Order, the Commission considered — and rejected — claims identical to those AT&T raises here. And the incidents in this case involve substantially fewer customers than the incidents at issue in the New Jersey Order.

Moreover, the key facts on which the Commission relied in reaching its previous decision are present here. First, Verizon has begun “developing additional internal safeguards to prevent incidents of this nature from occurring in the future” in Virginia and in other states. New Jersey Order ¶ 189. Second, as in New Jersey, even assuming that AT&T is correct that Verizon's conduct constitutes a violation of the Act, “the allegations do not relate to the openness of the local telecommunications markets to competition,” and the Commission must therefore “reject AT&T's argument that we should deny or delay this application under the public interest standard” and “not make any further determination here.” Id. ¶ 190. As the Commission held, this issue is appropriately addressed, if at all, through other means. See id.

CONCLUSION

Verizon's Application to provide interLATA service originating in Virginia
should be granted.

Respectfully submitted,



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GLOSSARY OF 271 ORDERS

- Arkansas/Missouri Order Joint Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001), appeal pending, AT&T Corp. v. FCC, No. 01-1511 (D.C. Cir.)
- Connecticut Order Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order, 16 FCC Rcd 14147 (2001)
- Georgia/Louisiana Order Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana, Memorandum Opinion and Order, 17 FCC Rcd 9018 (2002)
- Kansas/Oklahoma Order Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001), aff'd in part and remanded, Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001)
- First Louisiana Order Application by BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245 (1998)
- Second Louisiana Order Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20599 (1998)
- Maine Order Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Maine, Memorandum Opinion and Order, CC Docket No. 02-61, FCC 02-187 (rel. June 19, 2002)

Massachusetts Order Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001), appeal pending, WorldCom, Inc. v. FCC, No. 01-1198 (and consolidated cases) (D.C. Cir.)

Michigan Order Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997)

New Jersey Order Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey, Memorandum Opinion and Order, WC Docket No. 02-67, FCC 02-189 (rel. June 24, 2002)

New York Order Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000)

Pennsylvania Order Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001), appeal pending, Z-Tel Communications, Inc. v. FCC, No. 01-1461 (D.C. Cir.)

Rhode Island Order Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, Memorandum Opinion and Order, 17 FCC Rcd 3300 (2002)

Texas Order Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000)

Vermont Order

Application by Verizon New England Inc., et al., for
Authorization To Provide In-Region, InterLATA
Services in Vermont, Memorandum Opinion and
Order, 17 FCC Rcd 7625 (2002), appeal pending,
AT&T Corp. v. FCC, No. 02-1152 (D.C. Cir.)

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