

**Before The  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Application by Verizon Maryland Inc.,	)	
Verizon Washington, D.C. Inc., Verizon	)	
West Virginia, Inc., Bell Atlantic	)	
Communications, Inc. (d/b/a Verizon	)	WC Docket No. 02-384
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 Maryland,	)	
Washington, D.C., and West Virginia	)	

**COMMENTS OF THE MARYLAND OFFICE OF PEOPLE’S COUNSEL  
REGARDING THE APPLICATION BY VERIZON MARYLAND FOR  
AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA  
SERVICES IN MARYLAND**

**I. INTRODUCTION**

On December 19, 2002, Verizon-Maryland, Inc., Verizon-Washington, D.C., Verizon-West Virginia, 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 Service, Inc. (collectively referred to as Verizon) filed an Application for Authorization to provide in-region, interLATA service in the state of Maryland and West Virginia, and the District of Columbia, pursuant to Section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §271. Also on December 19, 2002, the Federal Communications Commission (FCC) issued a public notice requesting comments on the above-referenced application.

(DA02-3511). The FCC public notice required that initial comments be filed by January 9, 2003.

Pursuant to that Public Notice, the Maryland Office of People's Counsel (OPC or People's Counsel) offers these comments regarding the Application by Verizon-Maryland, Inc. for authority to provide in-region interLATA services in Maryland. Pursuant to Maryland statute, the Office of People's Counsel is empowered to represent the interests of residential and non-commercial users of telephone services for the State of Maryland.<sup>1</sup> In furtherance of those duties, the Maryland Office of People's Counsel was an active participant in the Maryland Public Service Commission's review into Verizon-Maryland, Inc.'s compliance with the conditions of 47 U.S.C. Section 271(c) (Case No. 8921). That proceeding by the Maryland Public Service Commission resulted in a letter by the Commission to Verizon-Maryland, Inc.'s, President, Mr. William Roberts, which while stating the Commission's misgivings about the state of competition in the Maryland local telephone service market, nonetheless found that subject to Verizon complying with 10 conditions, the Commission could find that Verizon was technically in compliance with the Section 271 checklist as defined by the FCC.

People's Counsel's testimony before the Maryland Public Service Commission focused on the dismal state of local telecommunications competition in Maryland- especially for residential customers, and on Verizon's failure to meaningfully comply with the Section 272 separate affiliate requirements. In People's Counsel's view, the dismal state of local competition in Maryland provided sufficient evidence for the

---

<sup>1</sup> See Md. Ann. Code, Public Utility Companies Article, Section 2-201 through 2-205.

Commission to decide that Verizon's Section 271 Application was not in the public interest.<sup>2</sup> An abbreviated discussion of the Public Interest analysis follows. Additionally, People's Counsel will provide comments below regarding additional areas of concern.

## **II. VERIZON'S APPLICATION IS NOT IN THE PUBLIC INTEREST (Application, Section IV, p. 98).**

The comprehensive review conducted by the Maryland Public Service Commission regarding Verizon's compliance with Section 271(c) of the Telecommunications Act conclusively shows that the state of local competition in Maryland -- especially for residential customers -- is dismal. In the Maryland proceeding, parties were able to conclusively show that Verizon's representations regarding the actual level of competition in the Maryland local service market were significantly inflated because they were based on a flawed analysis of the E911 data base and a flawed measurement of the number of completed collocation arrangements. Additionally, the evidence put forward by Verizon failed to take into account that opportunities for further CLEC competition had been substantially constricted due to a number of CLEC bankruptcies and a bad economic situation.

Indeed, in its letter to Verizon's President Roberts, the Maryland Public Service Commission expressed deep concern about the State of Maryland's "inability to build upon the initial gains achieved in opening the local market to competition and the apparent sluggish nature of local competition growth." In fact, the Commission noted

---

<sup>2</sup> A copy of the Office of People's Counsel's Brief on these issues is attached to these comments as Appendix 1.

that the level of competition in Maryland had actually declined, and that Maryland ranked near the bottom of all states, with South Carolina and Mississippi, in the level of local competition.<sup>3</sup>

People's Counsel views this dismal level of local competition as being inconsistent with the public interest, convenience and necessity required by Section 271 (d)(3)(c) of the Act. If Verizon is allowed to offer in-region interLATA service while still maintaining what is effectively a monopoly in the local market (and especially in the residential market) such authorization is clearly not consistent with the public interest convenience and necessity as required by the Act.

The record in the proceeding before the Maryland Commission is replete with information establishing that there are few competitive choices available to all consumers in all parties of the State of Maryland. Publicly available information reported by the FCC in its local telephone competition reports indicates that Verizon's competitors in Maryland serve only 4.2% of the total market (well below the 10.2% national average). Even more disturbing is evidence showing that CLEC market share for residential and small business customers is "at a miniscule 1.6%-down from 2.1% from the period ending June 30, 2001."<sup>4</sup>

Verizon argues that approval of its application will increase long-distance competition.<sup>5</sup> Verizon points to "consumer groups" that have documented the benefits to consumers, relying particularly upon "consumer groups" who have estimated that

---

<sup>3</sup> See Maryland Public Service Commission Letter to Mr. William R. Roberts dated December 16, 2002, p. 2. (Attached as Appendix 2).

<sup>4</sup> See Appendix 1, p. 8.

Verizon's entry into the long-distance market in Maryland will save consumers up to \$72 million each year on their long-distance bills. The "consumer group" study that Verizon relies upon is a study conducted by the Telecommunications Research and Action Center (TRAC) which purports to project residential savings in Maryland's telephone market.<sup>6</sup> People's Counsel's witness Dr. Selwyn was able to show in the proceeding before the Maryland Public Service Commission that the TRAC study, as well as other studies that were available in Maryland, "grossly exaggerates the savings consumers might plausibly obtain from RBOCs long-distance entry."<sup>7</sup> Additionally, Dr. Selwyn discovered, using publicly available information, that TRAC is not the independent advocate group it portrays itself as but rather is closely associated with a Washington, D.C. public relations firm whose clients include Verizon, Qwest, SBC, Bell South and the United States Telephone Association.<sup>8</sup>

The TRAC study is further flawed because it compares *specific* Verizon long-distance pricing plans with *averages* of prices being offered by other nonBOC carriers. Had a proper comparison been performed by TRAC, such a comparison would have shown that Verizon's pricing plans, "when appropriately applied to consumers based upon their actual calling requirements and assuming reasonable, rational and informed customer behavior, indicate that Verizon's entrance into the long-distance market provides consumers with no competitive gain whatsoever."<sup>9</sup> What is even more

---

<sup>5</sup> See Verizon Application, p. 108.

<sup>6</sup> See Verizon Application, p. 109; App. Q-MD, tab 24.

<sup>7</sup> Appendix 1, p. 16.

<sup>8</sup> Appendix 1, p. 16.

<sup>9</sup> *Id.* at 17.

compelling evidence of the worthlessness of the TRAC propaganda piece is that the Maryland Commission completely ignores it.

As noted previously, in the proceeding before the Maryland Public Service Commission, the Commission decided that the record showed “the obvious need to improve the local competitive environment in Maryland.”<sup>10</sup> In order to insure that local competition became viable, the Commission directed Verizon to implement certain requirements discussed below. Furthermore, the Commission noted a number of concerns that needed to be addressed before the Commission could say that Verizon’s entry into the Maryland long-distance market was in the public interest.

The Commission’s conditions related to the following: Verizon’s “No Build” policy, dark fiber, Geographically Relevant Interconnection Points (GRIPS), billing, entrance facilities, Enhanced Extended Loops (EELs), line sharing, metrics replication, directory listing and related charges, and Unbundled Network Element (UNE) pricing. The Commission’s conditions for each of those ten items are explained in its letter to Verizon’s president, Mr. Roberts. Additionally, the Commission expressed concerns pertaining to the lack of competition within the State of Maryland. First, the Commission expressed concern about the FCC’s consideration of modifications to the list of unbundled network elements and the availability of UNE platforms (UNE-P). The Commission was of the opinion that without UNE-P, competition in Maryland would not continue to grow.

---

<sup>10</sup> See Commission Letter to William Roberts, p. 3 (Appendix 2).

The Commission also expressed concerns that Verizon's interactions with its affiliates must be closely monitored to avoid local exchange customers subsidizing long-distance customers. The Commission promised to participate in the Section 272 biennial proceedings conducted by the FCC and indicated a desire to institute its own proceeding if necessary. Finally, the Commission admonished Verizon about the use of E911 data base as a mechanism to attempt to show the level of local exchange competition in Maryland. The Commission encouraged Verizon to develop a more "transparent and verifiable source of statistics" to estimate the level of competition.

People's Counsel believes that the conditions identified by the Maryland Public Service Commission are a necessary, but not necessarily sufficient, mechanism to spur the development of telecommunications competition in Maryland. As noted previously, the evidence provided shows that the local exchange market in Maryland is far from open and that this particularly holds true for the residential market. Additionally, it is debatable whether the miniscule level of local competition that currently exists can be sustained over the long run. In Maryland, this is a major concern because the Maryland Public Service Commission has not yet set final unbundled network element rates for Verizon's facilities. In People's Counsel's view, it is impossible to know what level of local phone competition will develop for residential customers until those final rates are set and some experience in the market is gained with competitors making offers to residential customers.

People's Counsel agrees with one of the Commission's concerns related to the continued availability of the unbundled network element platform (UNE-P). People's

Counsel believes that UNE-P is an important, and possibly essential, element which must remain available in Maryland until Verizon's competitors are able to obtain a large enough customer base to support those companies expending capital on their own facilities.

The Maryland Public Service Commission also directed that Verizon enter into discussions with its competitors regarding line sharing for DSL service. As the Commission put it, "where an end user formally was provided voice and data services by Verizon, and chooses to receive its voice service from a CLEC, the end-user will lose its data or DSL services from Verizon. The Commission is extremely concerned about this potential side effect on a customer's decision to engage in choice-that is that the customers has to weigh its desire to maintain its DSL service against its decision to select a competitive local exchange provider."<sup>11</sup> People's Counsel is concerned that the Commission's requirement that Verizon enter into technical and business discussion with its competitors to address these arrangements does not go far enough. In People's Counsel view, the competitive environment is harmed unless either the Maryland Public Service Commission or the FCC requires Verizon to commit to continuing to sell DSL services to a customer who leaves Verizon to buy voice services from another company, but who wishes to keep his DSL service with Verizon.<sup>12</sup>

---

<sup>11</sup> Commission letter to William Roberts, p. 7 (Appendix 2).

<sup>12</sup> The Louisiana Public Service Commission recently ordered BellSouth Telecommunications to continue to provide DSL service over the same loop being used by a CLEC to provide voice service. "WorldCom Says Louisiana PSC Vote Will Bolster Local Competition," PRNewsWire, December 18, 2002.

**III. VERIZON'S COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272 IS INSUFFICIENT TO ENSURE THAT VERIZON WILL NOT ENGAGE IN DISCRIMINATORY AND ANTI-COMPETITIVE CONDUCT**

Verizon argues that it is fully in compliance with the requirement of Section 272 because it will provide all services that are subject to the requirements of Section 272 through one or more separate affiliate that comply fully with the requirements of that Section and the Commission's rules.<sup>13</sup> Even if Verizon is complying with the exact terms of Section 272, in People's Counsel's view, such compliance is insufficient to forestall the potential for discriminatory and anti-competitive conduct that could arise out of Verizon's ability to extend its market power in the local telecommunications market into the adjacent long-distance market. There is evidence from other states that have already given Verizon Section 271 approval that, as currently applied, Section 272 fails to prevent discrimination and anti-competitive conduct by the BOC on behalf of its long-distance affiliate. For example, in New York it has become apparent that the interactions between Verizon and its long-distance affiliates raise serious questions as to the actual separation between these corporate entities. The first Section 272 audit report in New York points to a significant number of instances of joint marketing, joint account administration, and combined billing of Verizon's local and long-distance services.<sup>14</sup>

It could likewise be expected that Verizon-Maryland will also want to use its existing customer relationship with virtually every residential customer in Maryland to sell those customers long-distance services. Verizon has a potential unfair advantage in

---

<sup>13</sup> Verizon Application, p. 97.

<sup>14</sup> See Appendix 1, p. 23.

the competitive market because of this pre-existing relationship that exists solely because Verizon was the *only* local phone company that consumers could select. Verizon will likewise enjoy a significant marketing advantage over its competitors because it can use its in-bound channel to sell its affiliated long-distance service to its local service customers. To the extent Verizon long-distance benefits from this relationship, it should be required to pay market based rates to the Verizon local company for advertising and customer acquisition costs. Otherwise Verizon's costs will be a few dollars per customer as compared to CLEC costs of hundreds of dollars.<sup>15</sup>

In order to prevent any possible abuse, People's Counsel had recommended that the Maryland Public Service Commission require Verizon-Maryland to conform to certain Section 272 practices. These include:

- The Commission should prohibit improper self-dealing by requiring that Verizon Maryland file with the Commission and make available for public inspection all fair market value studies undertaken, including a study estimating the fair market value of joint marketing and customer acquisition services, and the complete process and data used to determine the fully distributed cost for services priced under either of these two methods. If Verizon fails to make such a filing, it should not be permitted to provide the service in question. In addition, the Commission should direct the auditor, during the joint federal-state biennial Section

---

<sup>15</sup> Appendix 1, pp. 23-24.

272 audit proceeding, to examine all of these filings, not just a random sample.

- The Commission should apply non-solicitation rules to the transferring or movement of employees from Verizon Maryland to Verizon Long Distance. While employed at Verizon, no employee of any Verizon entity should request or solicit an employee of Verizon Maryland, or cause another employee of Verizon Maryland to be solicited, to transfer or move employment from Verizon Maryland to Verizon Long Distance. Verizon should not post in Verizon Maryland Offices or on Verizon electronic medium, or allow Verizon Long Distance to post in Verizon offices or on Verizon intranets or other electronic media, advertisements for or notices of availability of Verizon Long Distance positions.
- The Commission should find that, as long as Verizon Maryland has market power in the local market, it is able to artificially inflate the “Prevailing Market Price” of billing and collection services offered to competing IXCs. The Commission should require that Verizon Maryland price billing and collection services provided to Verizon Long Distance at the lesser of fully distributed cost or fair market value, and made available to competitors at the same price.
- The Commission should strengthen the affiliate transaction rules by directing the affiliates to operate such that the management of each entity (Verizon Maryland and Verizon Long Distance) each make all affiliate

transaction, service offering, and pricing decision only with respect to the bottom line of each respective entity. For example, Verizon Long Distance should not be permitted to ignore the per-account billing fees it pays to Verizon Maryland when offering service plans that do not include fixed or minimum monthly charges. Such plans, if offered by Verizon, would effectively negate the “arm’s length” relationship by substituting the actual out-of-pocket costs to the parent Verizon Corporation for the incremental long distance billing (which are minimal) for the “payments” that Verizon Long Distance is nominally required to make to Verizon Maryland for the billing services. Where the parent corporation balance sheet is the only consideration, Verizon Maryland and Verizon Long Distance will continue to cost-shift wherever possible so as to establish false competitive prices or prevent Verizon Maryland from earning income from affiliate transactions so that Verizon Maryland will ultimately be able to seek rate increases for its regulated monopoly services either by revising its price cap structure or by some other “extraordinary” form of “relief.”

People’s Counsel requests that the FCC establish rules such as these to prevent any potential affiliate abuse before granting Verizon §271 approval.

Continued for signatures:

Respectfully submitted,

---

Michael J. Travieso  
People's Counsel

---

Theresa V. Czarski  
Assistant People's Counsel

Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, Maryland 21202

(410) 787-8150