Gordon R. Evans
Vice President
Federal Regulatory

verizon

1300 I Street, NW
Suite 400 West
Washington, DC 20005

Phone 202 515-2527
Fax 202 336-7922
gordon.r.evans@verizon.com

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

EX PARTE

Re: Merger Conditions, *Bell Atlantic/GTE Merger Order*, CC Docket No. 98-184

Dear Ms. Dortch:

As you requested, this letter reiterates certain facts previously communicated to you about Verizon's investment in out-of-region networks in the Seattle, Dallas, and Los Angeles areas, which should be credited toward Verizon's out-of-region spending obligations under the Merger Conditions.[1]

As described in more detail below, Verizon has invested in facilities designed to service the out-of-franchise data transport needs of large business and carrier customers. For the purposes of this filing, only certain out-of-region capital investments made during the period of July 1, 2000, through October 31, 2001, in the Dallas, Los Angeles, and Seattle areas have been identified at this time. The total amount of the data transport investment addressed in this filing is $18.2 million. In addition, $2.1 million of local switched voice services investments serving out-of-region locations in the Seattle and Los Angeles areas were included in this request.

All of the investments described in this letter were designed to provide local telecommunications services to out-of-region locations. Specifically, the majority of the dollars described below consist of Verizon's investment in networks designed to supply local high-speed

[1] *See Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control*, 15 FCC Rcd 14032, App. D, ¶¶ 35-38, 43-48 (2000) ("*Merger Conditions*").

data telecommunications services interconnecting customers with out-of-region customer-designated sites. These investments include the installation of fiber, fiber rings, nodes, and state-of-the-art switching equipment, including dense wave division multiplexing (DWDM) and synchronous optical network (SONET) devices.

More detailed descriptions of the out-of-region capital expenditures in these regions, including summaries and samples of detailed work orders describing the work performed, were previously presented to the Commission in a confidential filing.[2] In addition, Verizon provided the Commission with confidential copies of concept diagrams that reflect the general outline of the networks. As demonstrated in those diagrams, the fiber rings, nodes, and points of presence ("POPs") in each city span locations that are physically located both in-region and out-of-region.[3] While customers using these networks have locations both in-region and out-of-region, the networks are only designed to (and are being used for) connecting customers to out-of-region locations. In other words, the networks were not built to connect in-region customer locations to other in-region locations, and are not being used for that purpose.

The Commission has asked Verizon to provide information regarding the physical location of the facilities that make up this investment. We emphasize that, for this investment, the physical location of facilities should not be necessary – or even relevant – to the Commission's determination of whether Verizon has satisfied the Merger Conditions' requirement for out-of-region investment. The Merger Conditions require Verizon to spend money "to provide services, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange carriers . . . outside the Bell Atlantic and GTE Service Areas ('Out-of-Region Markets'), within the United States." *Merger Conditions*, App. D, ¶ 43 (footnote omitted). A "Facilities Expenditure" is money "used to construct, acquire, lease, use, obtain, or provide facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets." *Id.*, App. D, ¶ 44. In both cases, the test is not whether the *facilities* are themselves located out-of-region, but whether they are used to compete with *services* that are out-of-region.[4]

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2 *See* letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon, to William Caton, Acting Secretary, FCC (Feb. 7, 2002); letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Feb. 7, 2002) (confidential filing).

3 *See* letter from Jason L. Groves, Director, Federal Regulatory, Verizon, to William Caton, Acting Secretary, FCC (March 25, 2002) (confidential filing).

4 For Verizon's purchase of OnePoint Communications Corp., Verizon used the physical location of facilities as an allocator to determine the portion of the investment that should be considered out-of-region. *See* letter from Patricia E. Koch, Assistant Vice President, Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, at 2-3 (May 17, 2001) (confidential filing). However, in that case, an allocator was necessary because Verizon's investment was in the total company, and the company provided both in-region and out-of-region services. *Id.*, at 1-3. The same methodology would not be appropriate here because, as stated above, 100% of the investment is being used for out-of-region services.

As we have discussed, 100% of the expenditures for the Dallas, Los Angeles, and Seattle areas that are outlined in this filing were for the purpose of expanding Verizon's network to serve out-of-region locations. None of these investments would have been made if Verizon had not been expanding to out-of-region areas. Verizon already had the capability to transport data traffic from in-region customer locations to interconnection points where other carriers would serve out-of-region locations. The new investment (including the portion physically located in-region) was put in place to allow Verizon to expand its service to out-of-region customer-designated locations, and to allow full connectivity for such out-of-region locations to other points on Verizon's network. Pursuant to the plain language of the Merger Conditions, these investments were designed to offer competition for services offered by ILECs outside of Verizon's traditional franchise area. Where the facilities are physically located should not be determinative.

Nevertheless, pursuant to the Commission's request, the following is a breakdown of investments that ties each investment to the physical location of the facilities. By looking at the work orders, which track expenditures by location, Verizon has been able to determine that $11.85 million of the data transport expenditures were for facilities that are physically located out-of-region. An additional $6.342 million was spent for facilities that are physically located in-region, but are used to serve customers' needs in out-of-region territories. Both of these figures are in addition to the $2.1 million invested in local switched voice services facilities that are physically located out of region.

Please let me know if you need any additional information.

Sincerely,

cc: A. Dale
M. Stone