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January 17, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: WC Docket No. 02-384, *Application by Verizon Maryland Inc., Verizon Washington D.C. Inc., 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 Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*

Dear Ms. Dortch:

The ex parte letter responds to a request from the Commission's staff for clarification of AT&T's position on the application of Verizon's "no build/no facilities" policy to voice-grade loops. AT&T believes that Verizon applies this policy not only to DS3 and DS1 loops, but also to ordinary DS0 or voice grade loops. See AT&T Comments (Jan. 9, 2003) at 44 n. 61. The statement to the contrary on page 21 of AT&T's comments is erroneous.

The evidence demonstrating the existence of Verizon's anticompetitive strategy against such CLECs consists of Verizon's own admissions. Particularly revealing is an exchange of letters between William Irby, Director of the Division of Communications of the Virginia State Corporation Commission, and Robert W. Woltz, Jr., President of Verizon Virginia Inc., in August and September 2002. By letter dated August 30, 2002, Mr. Irby wrote to Mr. Woltz directing Verizon to provision eleven lines that Verizon had refused to provision to a Richmond subscriber of Cavalier Telephone, a CLEC operating in Virginia, based on Verizon's "no build" policy. By letter dated September 6, 2002, Mr. Woltz replied that Verizon had no intention of complying. The eleven lines that were the subject of Verizon's no-build policy were clearly voice grade loops, not high capacity loops.

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There is nothing on the record to suggest that Verizon's provisioning policy for voice grade loops is any more accommodating in Maryland, West Virginia or the District of Columbia than in Virginia. To the contrary, Verizon has represented to the Commission that its no build/no facilities policy applies to the entire region. See WC Docket No. 02-214, *Application by Verizon for Authorization To Provide In-Region, InterLATA Services in State of Virginia*, Verizon ex parte letter (Oct. 28, 2002) at 6 (describing Verizon's "provisioning policy" as "public" and "industrywide"); *id.*, Verizon ex parte letter (Oct. 16, 2002) at 6 ("at no point in time has Verizon's facilities policy in New York been different from its policy in Virginia").

These facts are not seriously in dispute. While Verizon has vigorously disputed that its no build/no facilities policy is unlawful or at odds with the cost assumptions of its loop prices, Verizon has never disputed that its newly restrictive provisioning policy applies to voice grade loops as well as high capacity loops. Likewise, in the consultative proceeding before the Virginia State Corporation Commission, the hearing examiner specifically found that the "no build/no facilities" policy "has a significant and adverse effect on competition in Virginia," is "at odds with industry accounting rules" and "inconsistent with TELRIC-pricing principles,"¹ and that "the FCC [sic] should analyze and adjust its TELRIC pricing models to be consistent with the implemented 'no facilities' policy."² Although the hearing examiner concluded (erroneously, in AT&T's view) that Verizon's loop provisioning policy could not, as a matter of law, be challenged on review of a 271 application, AT&T believes that his factual findings on this issue are not only correct but indisputable.

AT&T's belief that Verizon's no build/no facilities policy applies to voice grade loops is not based on AT&T's own experience with Verizon's rejection of loop construction requests in Maryland, West Virginia, the District of Columbia, or New York. AT&T has not sought to attract local retail customers whose business would require the construction of additional voice-grade lines by Verizon. For residential customers, AT&T has pursued accounts served by existing Verizon facilities, which could be converted to AT&T UNE service through hot cuts. In markets for business customers, AT&T has focused on end users that are large enough to connect to the AT&T network without routing through the Verizon local network. The competitive harms of Verizon's no build/no facilities policy have fallen on those CLECs which, unlike AT&T, have tried to build a market entry strategy upon Verizon's construction of new loops, whether high capacity or voice grade.

¹ *In the Matter of Verizon Virginia Inc.'s Compliance with the conditions set forth in 47 U.S.C. § 271(c)*, Case No. PUC-2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner at 116 (July 12, 2002).

² *Id.* at 117.

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Please feel free to let us know if Staff has any further questions on this matter. The 20-page limit does not apply.

Very truly yours,

David M. Levy

An Attorney for AT&T Corp.

cc: Gail Cohen
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