

BEFORE THE
PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA

CASE NO. 02-0809-T-P

VERIZON WEST VIRGINIA, INC.
In the Matter of the Inquiry Into
Verizon West Virginia, Inc.'s
Compliance with the Conditions Set
Forth in 47 U.S.C. §271(c)

**INITIAL BRIEF OF
NORTH COUNTY COMMUNICATIONS CORP.
IN SUPPORT OF PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

I. INTRODUCTION

Now comes North County Communications Corp., by counsel, and submits this brief in support of the attached proposed findings of fact and conclusions of law.

North County Communications Corp. ("NCC") filed a similar initial brief in the related complaint proceeding, North County Communications Corp. v. Verizon West Virginia, Inc., Case No. 02-0254-T-C, on November 25, 2002. The issues in that complaint proceeding overlap the issues developed by NCC in the above referenced matter to a large extent. Rather than restating it in full, NCC incorporates by reference that initial brief into this brief. However, a different legal standard is applicable to this case, and NCC has accordingly attached hereto a distinct set of proposed findings of fact and conclusions of law.

This initial brief and the attached proposed findings of fact and conclusions of law are focused upon the two issues in the 14 point checklist which NCC developed through

its participation in this matter. Specifically, this brief deals with interconnection and access to numbers, checklist items (i) and (ix) respectively. NCC believes that Stratuswave, FiberNet, and AT&T have developed abundant evidence of Verizon's violations of other checklist items. NCC will rely upon those parties to demonstrate Verizon's violations of other checklist items.

II. LEGAL STANDARD

In its testimony at hearing, the Staff of the Commission insinuated that the Commission could grant Verizon the 47 U.S.C. Section 271 authority which it seeks even though Staff was uncertain, based upon the conflicting evidence, whether Verizon is in compliance with the 14 point checklist or not. Sec. 271 Hearing, Transcript, vol. II, 270-272. While Staff may throw up its hands in confusion, this Commission can not. It must make a determination, affirmative or negative, on Verizon's compliance with the 14 point checklist. The plain language of the 1996 Telecommunications Act ("TCA) and Federal Communications Commission ("FCC") orders interpreting that Act require the Commission to make an affirmative determination that Verizon is in compliance with each and every one of the 14 checklist items before recommending Section 271 approval to the FCC. The 1996 TCA provides a single, exclusive sanction for non-compliance – denial of inter-LATA authority. A checklist violation is not remediable under the 1996 TCA by any other measure. While a post-section 271 authorization performance appraisal plan ("PAP") may offer some benefits, there is no legal basis whatsoever for a PAP to serve as a substitute for the up or down determination which this Commission must first make on the 14 point

checklist. Verizon can not violate the 14 point checklist but gain Section 271 authorization by promising to do better in the future.

Prior to the passage of the 1996 TCA, the Bell Operating Companies (BOCs) were prohibited from entering certain lines of business, including interexchange service. This restriction was based upon the theory that, if the BOCs were allowed to enter the long distance market, they could use their bottleneck control in the local and exchange access markets to obtain an unfair advantage in the long distance market. In enacting the Telecommunications Act of 1996, Congress established a new statutory framework designed to benefit all Americans by opening all telecommunications markets to competition.

It is important throughout this analysis to keep in mind that the paramount purpose of the 1996 TCA was to introduce competition, which, in order to occur, had to be implemented through the BOCs. In order to gain the assistance and cooperation of the BOCs in the introduction of competition, the BOCs were provided with an incentive in the form of the prospect of being able to offer inter-LATA service. Inter-LATA authorization was established as a reward for good behavior in implementing competition, as measured by the 14 point checklist, not an entitlement for the BOCs just for being BOCs. With inter-LATA service, the BOCs could become true full service providers in the telecom industry, something they hadn't been allowed to do since the 1984 AT&T break-up.

Central to the new statutory scheme of the 1996 TCA are provisions designed to open the local services market to competition and ultimately to permit all carriers, including

those that previously enjoyed a monopoly or competitive advantage in a particular market, to provide a variety of telecommunications offerings. Due to the continued and extensive market dominance of the BOCs in their regions, Congress chose to maintain certain restrictions on the BOCs, until the BOCs opened their local markets to competition as provided in Sec. 271 of the Act. One such restriction is incorporated in Sec. 271, which prohibits the BOCs from entering the in-region, interLATA market immediately. Congress recognized that, because it would not be in the BOCs' immediate self-interest to open their local markets, it would be highly unlikely that competition would develop expeditiously in the local exchange and exchange access markets. Thus, Congress used the promise of long distance entry as an incentive to prompt the BOCs to open their local markets to competition.

Congress further recognized that, until the BOCs open their local markets, there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market. Accordingly, Sec. 271 allows a BOC to enter the in-region, inter-LATA market, and thereby offer a comprehensive package of telecommunications services, **only** after it demonstrates compliance with the interconnection, unbundling, access to numbers, resale and other obligations comprising the 14 point checklist that are designed to facilitate competition in the local market. Congress has directed state utility commissions and the FCC to determine whether the BOCs have met these criteria. Congress took no steps to create a "Performance Appraisal Plan" exception under the section 271 guidelines, and neither the FCC nor this Commission may lower the section 271 bar or create a "work

around" for any of the checklist points that a BOC has failed to satisfy. What Congress has created, let no Commission set asunder.

The FCC has required BOCs to demonstrate compliance with the 14 point checklist. On October 13, 1998, the FCC issued an opinion denying BellSouth permission to carry long-distance service in Louisiana, because BellSouth had not complied with the 14-point checklist. In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region Interlata Services in Louisiana (October 13, 1998) 13 FCCR 20599, 13 FCC Rcd. 20599. The FCC further said that BellSouth may re-apply after it has fixed its problems, and not before. The FCC stated that any attempt by BellSouth to "jump the gun", by re-applying before it has its house in order, would be met with summary denial.

Likewise in this case, Verizon is not in compliance with numerous checklist items and, consistent with the 1996 TCA, this Commission's only remedy is to deny Verizon the interLATA certification which it seeks.

INTERCONNECTION

Checklist item (i), Interconnection, is without a doubt one of the most important, if not **the** most important item with respect to the issue of opening the local markets to real competition. This Commission has before it in the NCC complaint case clear, convincing and compelling evidence of a policy, practice and procedure (whatever one wants to call it) that by its very nature acts as an artificial and wholly unsupportable or justifiable barrier to entry. It **is** not just a policy that was practiced against a single CLEC or that was

practiced, in isolation, in West Virginia. It is a policy that was articulated, implemented and effectively enforced by Verizon's nationwide organization explicitly authorized to handle all CLECs' interconnection needs "coast to coast". It is a policy that was conveyed to NCC during its efforts to establish interconnection in West Virginia, Illinois and New York, and to Core Communications in Maryland. The evidence overwhelmingly establishes that NCC's experience in West Virginia is NOT "anecdotal" as suggested by Verizon, but a policy that has its roots at the core of the very organization entrusted with the responsibility of coordinating interconnection requests from CLECS. **As** a consequence, with respect to this checklist item, Verizon can only be viewed as having failed miserably. Based solely on this fact, the 271 application, according to the authorities cited above, must be denied.

In NCC's complaint, Dannie Walker of the Staff of the Commission summarized his assessment of Verizon's interconnection policy on page 11 of his rebuttal testimony with this scathing assessment of Verizon's conduct:

It appears to Staff that Verizon-WV, consciously or unconsciously, used its monopoly position in the local marketplace in West Virginia to obstruct and delay a potential competitor's entry into that marketplace. In addition, Staff is troubled by Verizon WV's unilateral adoption of apparently unwritten policies, such as the one involved in this proceeding, i.e., the refusal to interconnect with CLECs at end user facilities where sufficient capacity exists.

This is not, as Verizon would have you believe, an "old problem" that has some how gone away recently. Verizon is still defending its position in the *Core Communications* case in Maryland, and as pointed out in footnote 10 of NCC's brief in the complaint case, as

recently as February of this year, Verizon refused to abandon its policy in exchange for a dismissal of NCC's complaint. Far from being an old problem, the abuse continues.

ACCESS TO NUMBERS

Under checklist item (ix), Verizon is required to demonstrate that it provides "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers." As with interconnection, Verizon maintains a policy with respect to access to numbers which squarely conflicts with its obligations under Section 271. In light of that policy, Verizon's request for Section 271 authorization must be denied.

Verizon offers what they refer to as "Advanced ISDN-PRI Hubbing Service" using the 555 prefix. Direct Testimony of Douglas A. Dawson, 31. An entity wishing to provide 555 service, such as an internet service provider ("ISP"), would order this service from Verizon, paying the appropriate charges. Someone calling from anywhere within the LATA to a 555 number held by a Verizon customer would not be subject to toll charges, id., but would be subject to local message units. Dawson, 31. This is an attractive service to ISPs because with one number local access service can be provided throughout a LATA, eliminating the need to obtain a prefix in each local dialing area in which customers are located. An ISP could provide internet service throughout West Virginia, without subjecting any of its customers to any toll charges no matter where in West Virginia they lived, by obtaining just three 555 numbers, one each in the Charleston, Clarksburg, and Hagerstown LATAs. The ability to offer 555 service, especially in a state as rural as West Virginia, will

be critical to the ability of CLECs to compete for service to ISPs. As the Commission well knows, ISP traffic and compensation for that traffic is an important issue to both CLECs and Verizon. Verizon has not permitted NCC to offer 555 service on the same basis as Verizon offers it to its customers, and it is apparent that Verizon also intends to prohibit other CLECs from competing with it in this critical field.

When NCC sought to implement its customer's wish to utilize a 555 number, Verizon refused to make modifications to its network which would permit calls to this 555 number to be completed, in violation of industry guidelines. Dawson, 27-28. Verizon steadfastly refused to make such modifications, resulting in NCC's customer abandoning its request for 555 service from NCC. Dawson, 29. Verizon would make those modifications to route a 555 number used by one of its customers. Dawson, 33. Nothing could be more discriminatory than for a BOC to offer a service and effectively prohibit CLECs from offering the same service. This is discrimination not in how the service is provided, but in whether it is provided at all.

Verizon is also discriminating in how it is willing to provide the service. In the U.S. telecommunications industry, all calls either subject the caller to local message units ("local calls") or the carrier to access charges ("access calls," such as 800 numbers). Verizon is proposing to subject 555 numbers held by customers of CLECs to both. This is unprecedented in the U.S. telecommunications industry, and provides no possibility for CLECs to offer a competing service. Dawson, 32.

As with interconnection, Verizon maintains a policy with respect to access to numbers that is squarely at odds with the explicit policy expressed in a checklist item. Standing alone, this is a separate checklist violation which bars Verizon from receiving an affirmative section 271 determination from this Commission.

III. CONCLUSION

For the reasons stated herein, in the initial brief of North County Communications Corp. in the related complaint proceeding, Case No. 02-0254-T-C, plus the reasons asserted in the brief and proposed findings of fact and conclusions of law of AT&T, FiberNet, and Stratuswave, the Commission should deny Verizon's request for Section 271 authority based upon Verizon's failure to comply with the 14 point checklist of the 1996 Telecommunications Act. With respect to the standard of law governing the Commission's evaluation of this application, and Verizon's noncompliance with items 1 and 9 of the checklist, the Commission should adopt the attached proposed findings of fact and conclusions of law.

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EXHIBIT E

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**VERIZON WEST VIRGINIA, INC.
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**NORTH COUNTY COMMUNICATIONS CORP.'S
PROPOSED FINDINGS OF FACT
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FINDINGS OF FACT

INTERCONNECTION

1. North County Communications Corporation (“NCC”) is duly certificated as a competitive local exchange carrier (“CLEC”) pursuant to an order of this Commission in Case No. 00-0502-T-CN (July 21, 2000 Recommended Decision, Final August 10, 2000).

2. Verizon West Virginia, Inc. is the incumbent local exchange carrier (“ILEC”) for most of West Virginia. Verizon Services Corporation provides interconnection services to various regional Bell operating companies in the Verizon territory throughout the United States, including Verizon West Virginia, Inc. (Unless otherwise specified, Verizon West Virginia, Inc. and Verizon Services Corporation shall be referred to collectively as “Verizon.”)

3. On April 4, 2000, NCC contacted Verizon by telecopier to begin the interconnection process. NCC received no response. North County Communications Corp. v. Verizon West Virginia, Inc., Case No. 02-0254-T-C (“NCC Complaint”), NCC Ex. 3-A, April 4, 2000 letter; NCC Complaint, Tr., Vol. I, 44-45.

4. On July 5, 2000, NCC again contacted Verizon by telecopier to begin the interconnection process. Specifically, NCC chose to opt into an existing Commission-approved agreement between Verizon and MCI Metro. NCC Complaint, NCC Ex. 3-A, July 5, 2000 letter. Again, NCC received no response. At hearing in Case No. 02-0254-T-C, Verizon alleged for the first time that it delayed responding because it claimed to be investigating NCC’s operations in California concerning a “chat-line” issue. NCC Complaint, Tr., Vol. I, 39-40, Vol. II, 91-94. No sufficient evidence was presented to justify the alleged investigation and the corresponding delay it caused in having the interconnection agreement (“ICA) approved.

5. On August 18, 2000, NCC provided Verizon with a completed Information Request Form and Customer Profile Form for the State of West Virginia. NCC Complaint, NCC Ex. 3-A, August 18, 2000 letter. NCC re-sent this information on a number of occasions thereafter, as well. NCC Complaint, Tr.. Vol. I, 51.

6. Sometime on or before September 6, 2000, Verizon concluded its alleged investigation into the chat-line issue and submitted to NCC by regular mail an adoption letter for NCC’s execution. NCC Complaint, NCC **Ex. 3-B, September 6, 2000 letter**. Tr., Vol. II, 72. NCC returned the duly executed letter to Verizon by Federal Express on September 22, 2000, along with instructions to file the ICA with the Commission as soon as possible. NCC Complaint, NCC Ex. 3-B, September 22, 2000 letter.

7. Verizon did not file the ICA promptly. Verizon conceded it had no explanation for no less than two months of inactivity which followed. Verizon did not file the petition with the Commission for approval until January 19, 2001. NCC Complaint, Tr., Vol.II, 73: NCC Complaint, Staff Ex.1, p. 11; Case No. 01-0167-T-PC.

8. NCC had been an existing customer of Verizon in New York where NCC was a long-distance carrier since 1991. NCC Complaint, Tr., Vol. I, 76. Despite the fact that NCC was an existing customer of Verizon, no one from Verizon contacted NCC until December 20, 2000, more than eight months after NCC began the interconnection process. NCC Complaint, NCC Ex. 1, p. 6.

9. Verizon Services Corporation employs Dianne McKernan as an Account Manager. NCC Complaint, Verizon Ex. 2, p. 1. On January 17, 2001, Ms. McKernan informed Mr. Lesser that she would be his account manager for all his Verizon needs, "coast to coast." NCC Complaint, NCC Ex. 3-C-002. The president of Verizon West Virginia acknowledged that Ms. McKernan has the authority to bind Verizon West Virginia in her capacity as account manager and that it would be reasonable for NCC to rely upon Ms. McKernan's representations to him. NCC Complaint, Tr., Vol. II, 112-115.

10. Ms. McKernan had no prior experience in working with CLECs seeking interconnection before she began on the NCC project and had only three days of training which she described as "quite overwhelming." NCC Complaint, Tr., Vol. II, 208-09, 270, 272, 284.

11. Prior to the initial interconnection conference calls held in January of 2001, NCC attempted to order two T1 trunks for interconnection at 405 Capitol Street in Charleston via e-mail to serve its sole customer in West Virginia, Kanawha Valley Internet ("KVI"), which, at that time was receiving service from Verizon. NCC Complaint, Tr., Vol. I, 57-58; NCC Ex. 3-E. Two T1 constitutes a small initial order necessary for NCC to commence service in West Virginia. KVI was receiving service through an OC-3 multiplexer or "mux", a relatively large mux which can hold up to three DS-3s. A DS-3 in turn can hold 28 T1s. In January of 2001 through the date of hearing, this OC-3 had one full DS-3 of spare capacity available, and one DS-3 has only been partially used. NCC Complaint, NCC Ex. 1, p. 13; NCC Ex. 5, pp 12-13; Tr., Vol. III, 153-155.

12. At the time of the initial interconnection meetings between the parties, NCC had requested two T1s initially so that it could commence service as a CLEC, to be followed as soon as practical by 33 T1s. NCC Complaint, Tr., Vol. I, 56-58. Verizon refused to permit NCC to use any of the spare capacity available on *the existing* OC-3 at 405 Capitol Street within a reasonable time frame because Verizon determined that

NCC "needed to build an Entrance Facility because [NCC] could not use a non-wholesale market entrance." NCC Complaint, NCC Ex. 3-C-009.

13. Verizon consistently expressed a policy to NCC during the interconnection process that it will not use end-user loop facilities to interconnect with carriers, such as NCC, instead requiring that all carriers interconnect with Verizon at specially-constructed, dedicated interoffice facilities ("IOF"). Direct Testimony of Doug Dawson, 9. This policy was recently defended by Verizon in the sister-state proceeding before the Maryland Public Service Commission, styled *Core Communications v. Verizon Maryland*, Case No. 8881. *Id.*, at 11-12. This policy was not unique to NCC, but rather was applicable to all CLECs.

14. It is technically feasible for an ILEC to interconnect with CLECs on shared loop facilities, and in fact it is more economical to do so. *Id.*, at 12-13.

15. Verizon does not contend that the interconnection NCC sought was technically infeasible. NCC Complaint, Tr., Vol. III, 82. Verizon asserted that it declined to serve NCC in early 2001 based upon network reliability concerns. Verizon apparently does not have such network reliability concerns when its own customers seek to add interconnection capacity, as evidenced by its willingness to promptly add capacity for KVI had KVI remained a Verizon customer. NCC Complaint, Tr., Vol. III, 151-52, 155-57.

16. Verizon can not require a network reliability study to be completed prior to interconnecting a CLEC if it does not impose a similar requirement when provisioning orders from its own customers. Verizon is required to demonstrate to this Commission by clear and convincing evidence that the interconnection sought by NCC would result in significant and specific network reliability impacts. Verizon has failed to carry its burden of proof on this issue, as well, as shown by the fact that it presented no evidence of any network downtime related to the NCC interconnection at the loop facility located at Capitol Street since the interconnection went into effect on July 31, 2001. NCC Complaint, Tr., Vol. III, 191.

17. Interconnection actually did take place at the facility initially requested by NCC, albeit six months after NCC's initial request for two T-1s. NCC Complaint, Staff Ex. 1, at 6.

18. At the time Verizon informed NCC of its policy, it had little or no information regarding the amount of traffic NCC expected to carry which would justify requiring separate IOF facilities. NCC Complaint, Verizon **Ex. 2, pp. 3-4.**

19. The premise behind Verizon's policy of requiring IOF facilities for all CLEC interconnections, that carriers carry large amounts of traffic, is faulty. Many CLECs may require facilities that carry smaller volumes of traffic than those carried on large end user loop facilities. Some CLECs serve a small number of customers and the facilities needed to carry their traffic should be expected to be smaller than the facilities serving large business customers in West Virginia. NCC Complaint, Staff Ex. 1, 7-8.

20. The cost associated with build outs of new IOF facilities in response to every CLEC request for interconnect is unnecessary, and a more cost effective - and certainly less time-consuming - alternative is to allow CLECs to interconnect at end user loop facilities on a share basis where sufficient capacity exists. This would hold true even if Verizon WV had to modify the end user facilities in order to accommodate the CLEC's forecasted traffic. NCC Complaint, Staff Ex. 1, p. 9.

21. Verizon has not provided interconnection to NCC that is equal in quality to that which it provides to itself or any other party on terms and conditions that are just, reasonable, and nondiscriminatory. The construction of a separate IOF does not satisfy an ILEC's obligation to design interconnection facilities to meet the same technical criteria and service standards that are used within the ILEC's network. In addition, the inherent delay associated with such construction does not satisfy Verizon's obligation to provide terms and conditions which are no less favorable than the ILEC provides itself, including, but not limited to, the time within which the ILEC provides such interconnection.

22. In particular, the delays which NCC experienced in this case demonstrate Verizon's failure to comply with paragraph 4.3.3 of Attachment IV of the ICA, which provides that the standard interval to provision interconnection trunk groups for orders of less than 4 T1s in 10 days. NCC initially only ordered two T1s which were not provisioned for approximately six months. NCC Complaint, NCC Ex. 3-E; NCC Complaint, Staff Ex. 1, at 6.

23. Verizon also failed to comply with section 4.1.1 of the ICA, which provides that "[t]he Parties shall work toward the development of their forecasting responsibilities for traffic utilization over trunk groups. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment are available. Parties shall make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available.

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24. It appears from post-hearing submissions of evidence by Verizon in response to in-hearing requests in the NCC Complaint, that if a carrier is at risk for losing its NXX codes due to the delays associated with construction of an IOF, Verizon may consider making an "interim services" arrangement with a CLEC that allows for a

temporary interconnection at an end-user loop facility pending completion of the IOF. Response of Verizon West Virginia, Inc. to Record Data Request, Attachment A-2 and D-2, dated November 4, 2002. The Commission finds no reason why Verizon cannot offer the same arrangement to CLECs at the outset of the parties relationship in order to facilitate the CLECs market entry a primary goal of the TCA. It is evident that Verizon never offered NCC such an option.

25. Verizon wrongfully refused to interconnect with NCC on the existing OC-3 at 405 Capitol Street when requested by NCC. Verizon should have provisioned NCC's order as it acknowledged it would have provisioned a similar order from KVI had KVI remained a Verizon customer. That is, Verizon should have provided NCC with *two* T-1s within 15 days, and one full DS-3 within 30 days. Verizon should then have worked to build whatever additional facilities were necessary to fulfill NCC's requests for interconnection capacity. NCC Complaint, Tr., Vol. III, 151-52, 155-57; NCC Ex. 5, pp 16-17; NCC Complaint, Staff Ex. 1, p. 6.

26. At hearing in the NCC Complaint case, Verizon denied the existence of the aforementioned interconnection policy. NCC Complaint, Tr., Vol. II, 119, 223, 241. The Commission finds Verizon's denial, put forth through Ms. McKernan, as simply not plausible. The overwhelming evidence shows that such a policy does, in fact, exist. The Commission finds that Verizon has gone to great lengths in attempting to cover up the existence of this policy, instead choosing to advance a new theory, namely, the "case-by-case practice" advocated by Donald Albert, Verizon's Director of Network Engineering. It is apparent that Verizon never offered NCC the option of the "case-by-case practice" throughout the interconnection process.

555 SERVICE

27. A customer of NCC with a 555 number approached NCC about getting service for his number. When NCC contacted Verizon, Verizon initially agreed to transport the calls and route them to NCC; but the next day reneged, claiming it was technically infeasible due to translation problems with the routing of the calls. In addition, Verizon informed NCC of a policy that it had which treated all 555 traffic as access call, for which NCC would have to pay access fees to get the calls routed to it. NCC Complaint, NCC Ex. 1, pp 14-16; NCC Ex. 3-C-032; NCC Ex. 5, p. 21.

28. The ATIS guidelines indicate that 555 numbers may be treated as local calls or access calls. The choice in this matter resides with this Commission. NCC Complaint, NCC Ex. 3-N.

29. Verizon advertises an "Enhanced ISDN-PRI Hubbing Service" on its web site. Direct Testimony of Doug Dawson. 29. With this service, Verizon can offer one

LATA-wide number to Internet service providers using 555 numbers. Callers will only be charged for local calls. Since Verizon is attempting to sell a retail service using 555 numbers it cannot deny an equivalent use for competing 555 numbers provided by CLECs.

30. By refusing to route 555 calls as local calls to CLECs and forcing CLECs to pay access if they want their customers to receive these calls, Verizon is provisioning this service in a discriminatory fashion. Id.

31. If CLECs are compelled to pay access, it will be impossible for them be competitive with Verizon on the same service. Id., at 30.

32. When Verizon defined the service as local, they effectively defined it as local for all competitors. Id., at 31. All carriers should be permitted to provide this service as local service, or Verizon should be prohibited from charging message units, as access services cannot charge message units. This is the only way to ensure nondiscriminatory treatment. Verizon's offer to allow CLECs to "purchase" the service from Verizon and re-sell it is not a real option, as in such a circumstance, a CLEC would have no chance of competing on an equal footing.

33. If the Commission found 555 service was access, this would compel CLECs to obtain NXX codes in every central office. It is most unlikely that any individual CLEC would succeed in such a venture, because numbers are assigned by lottery and no CLEC can guarantee that it will receive the necessary codes. Id., at 32-33. If CLECs can not provide this service in the same manner as Verizon, Verizon effectively has a monopoly with respect to such service, and local competition, the preeminent goal of the 1996 TCA, is not served. Even if a CLEC were successful, the eventual result would be an area code split, a result undesirable to all, most of all to West Virginia consumers. Finally, this would be of no use to ISP customers who want to use a single number throughout the LATA. Id.

34. The MCIMetro interconnection agreement, which has been opted into by many CLECs, appears to be silent on the particular question of 555 numbers but it does define what non-geographic means:

"... typically associated with a specialized communications service which may be provided across multiple geographic NPA areas; 500, 800, 900, 700, and 888 are examples of non-geographic NPAs."

35. The Commission finds no mention is made of 555 being non-geographic and thus elects to treat 555 calls as local calls subject to the ICA.

36. In addition, treating 555 numbers as local calls would give consumers 7-digit dialing which typically they prefer.

37. With NCC, Verizon attributed delays to the alleged investigation of non-issues; failed to have plausible explanations, or any explanations at all, for large blocks of time, delayed filing the ICA with no plausible explanation; produced witnesses who were unfamiliar with the transaction or the appropriate expertise; failed to provide witnesses with personal knowledge of the facts; developed a policy which violated the Telecommunications Act, the interconnection agreement, FCC regulations and long-standing FCC orders, Commission Rules, and ultimately § 24-2-7 of the West Virginia Code; attributed its position to large volumes of CLEC traffic when it did not have the information to support such a conclusion; waited until NCC was on the verge of losing its NXX codes before offering an alternative arrangement; and never informed NCC of the "alternative arrangement exception to the policy or the existence of the alleged case-by case policy.

CONCLUSIONS OF LAW

1. This proceeding has been conducted pursuant to 47 U.S.C. § 271(d)(2)(B) for the Public Service Commission to determine whether or not it can issue a verification to the Federal Communications Commission (FCC) that Verizon West Virginia, Inc. is in compliance with the 14 point competitive checklist specified at 47 **U.S.C** § 271(c)(2)(B). That verification, if issued, would permit Verizon to seek approval from the FCC to provide interLATA, aka long distance, service.

2 One of the principal purposes of the 1996 Telecommunications Act, of which § 271 is a part, was to introduce competition into the local telecommunications services market. At the date of enactment of the 1996 Telecommunications Act, Incumbent Local Exchange Carriers (ILECs) controlled 100% of the market for local telecommunications services within their respective jurisdictions. In order to induce ILECs to cooperate with the introduction of competition into the local telecommunication services market, Congress offered ILECs the possibility of obtaining long distance authority if they demonstrated that they had in fact so cooperated. The specific means of measuring cooperation is the 14 point checklist.

3. In order to issue the verification described in 47 U.S.C. § 271(d)(2)(B), the Public Service Commission must determine that the access provided by Verizon to other telecommunications carriers complies with each of the 14 point competitive checklist items under 47 U.S.C. § 271 (c)(2)(B).

4. If the access being provided by Verizon to telecommunications carriers fails to meet one or more of the 14 point competitive checklist items, then this Commission can not issue an affirmative § 271(d)(2)(B) verification.

5. The fourteen competitive checklist items under 47 U.S.C. § 271(c)(2)(B) are the following:

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of this title.

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of this title.

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224 of this title.

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

(vii) Nondiscriminatory access to - (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

(xi) Until the date by which the Commission issues regulations pursuant to section 251 of this title to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of this title.

(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of this title.

(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of this title.

6. With respect to checklist item(i), 47 U.S.C. § 251(c)(2) requires ILECs to "interconnect at any technically feasible point within the carrier's network" in a manner "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(B-C).

7. Federal Regulations have defined the interconnection obligations of the incumbent local exchange carrier (ILEC) to include interconnection "at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party," on "terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection." 47 CFR 51.305(a)(3, 5).

8. An ILEC is also required by Federal Regulations "to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network, however, an ILEC is not prohibited from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier." 47 CFR 51.305(a)(3, 4).

9. An ILEC which refuses to interconnect at a point requested by a Competitive Local Exchange Carrier (CLEC) has the burden of demonstrating that

interconnection at that point is not technically feasible by clear and convincing evidence. 47 CFR 51.305(e).

10. Verizon's policy and practice of only interconnecting with CLECs at separate dedicated Inter Office Facilities, as described in Findings of Fact No. 13, violates checklist item one in the following respects: (1) it is "technically feasible" for Verizon to interconnect on shared loop facilities; (2) application of Verizon's policy results in interconnections which are not "equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection" in that it results in the "time within which the incumbent LEC provides such interconnection" being considerably greater for CLECs and their customers than it is for Verizon and its customers. 47 C.F.R. 51.305(a)(3,5).

11. In the complaint case involving NCC.. Verizon was unable to carry its burden of demonstrating that interconnection at the point requested by NCC was not technically feasible. Findings of Fact Nos. 12-18, 21-25..

12. Moreover, North County demonstrated that its experience with Verizon in seeking interconnection was not a mere anecdote from an individual CLEC with respect to an isolated instance of noncompliance with checklist item one, but rather was a manifestation of a Verizon practice and policy which to date has been applied uniformly to CLECs operating in West Virginia and which to its core is fundamentally inconsistent with the interconnection requirements of the 1996 Telecommunications Act.

13. Verizon has not acknowledged to this Commission that it has in the past maintained a policy and practice of requiring separate dedicated IOF facilities for CLECs. Findings of Fact No. 26. Verizon's representations to this Commission that it did not have such a policy or practice, in light of the overwhelming evidence to the contrary presented by NCC. which was only buttressed by Verizon's far less than credible denials of such a policy or practice, is profoundly troubling to this Commission in terms of what it portends for Verizon's future conduct toward CLECs and toward this tribunal. While a finding by this Commission that Verizon maintained a policy and practice inimical to the interconnection requirements of the Telecommunications Act would, standing alone, require this Commission to deny Verizon's request for a verification of compliance, the Commission was under no inclination to overlook such a violation given Verizon's lack of candor toward this tribunal. It is expected that parties appearing before the Commission will provide characterizations and explanations of facts which are consistent with the interest of the party making such representations, however the Commission expects and demands that such attempts at spinning the facts will stop short of fabrications and *post hoc* creation of facts.

14. With respect to checklist item (ix), Federal regulations have defined "nondiscriminatory access" as "access to telephone numbers, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to: (i) Nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; and (ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC." 47 CFR 51.217(a)(2).

15. With respect to nondiscriminatory access to telephone numbers, the ILEC is required to "permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides to itself." 47 CFR 51.217(c)(1).

16. Verizon has and is violating checklist item (ix) by refusing to permit CLECs to offer a 555 service on the same "rates, terms, and conditions" as Verizon offers its 555 in that Verizon: (1) did not and has not developed a plan to reconfigure the routing of 555 calls to permit such calls to be routed to CLECs, thereby effectively refusing to route such calls to CLECs; (2) insists on charging callers to a CLEC customer's 555 number message units, whereas callers to a Verizon customer's 555 number would not be subject to local message units; (3) insists on treating calls to a CLEC customer's 555 number as toll calls, whereas calls to a Verizon customer's 555 number would be local; (4) refuses to route calls over the interconnection trunk from CLEC customers to 555 numbers. Findings of Fact Nos. 27, 29-30.

17. In light of Verizon's noncompliance with checklist items (i), (ix) and others, this Commission declines to provide the verification to the FCC contemplated under 47 U.S.C. § 271(d)(2)(B) at this time. Verizon is free to seek such verification again from this Commission when it deems fit; however, the Commission cautions Verizon that it would be prudent to wait to refile until it has developed policies, practices and procedures to address the checklist item violations noted herein, and such policies, practices and procedures have been in effect for a sufficient time such that the Commission can evaluate whether such policies, practices, and procedures have been effective in remedying the noted violations.



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EXHIBIT F
