

W. Scott Randolph
Director – Regulatory Affairs



January 14, 2003

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers – CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability – CC Docket No. 98-147

Dear Ms. Dortch:

In response to a Commission staff request on February 13, 2002, Verizon provides this interpretation of and preliminary reaction to the recent Qwest EEL safe harbor proposal initially filed on February 6, 2003 and the revised filing on February 13, 2003. As an initial matter, as Verizon has previously explained, the existing safe harbors associated with loop-transport combinations provide an appropriate screen to require only loop-transport combinations that include significant local services to be offered as an unbundled element. Verizon has also proposed changes that address specific concerns raised with the existing safe harbors.¹ If the Commission believes additional modifications are needed, it should make specific proposals that may be evaluated through public comment. In no event, however, should the Commission make the fundamental alterations in the safe harbor proposed by any party – including those made by Qwest on the last day the record was open -- without giving all carriers an opportunity to fully evaluate the impact and provide comment to the Commission. Absent such review, there remains a probability for significant and unintended consequences that could cause major disruption to the functioning of the competitive market for special access services.

Given the flurry of last minute proposals on potential safe harbor alternatives, Verizon has not had the opportunity to provide the required level of scrutiny necessary for a full evaluation. However, Verizon does offer the following comments on Qwest's revised proposal:

¹ For example, if there are concerns about the ability of CLECs to extend the reach of their switches for mass-market voice service, the Commission could adopt a narrow exception to the commingling prohibition to allow CLECs to connect voice grade loops to special access transport. With respect to audits, the Commission can directly address the specific auditing practices that some carriers may use that cause concern. The Commission could also apply the existing safe harbors over a longer period of time, such as a week or month, to address concerns that new "bandwidth on demand" services may not meet the local usage criteria at a snapshot in time.

Local Usage

Any enhancement to the existing safe harbors must contain a local traffic requirement. While Verizon is not sure that the proposed 51% is adequate to ensure the unintended undermining of the competitive special access market, any elimination of the local traffic requirement would disconnect the proposal from its intended goal of requiring the loop-transport combination itself include a significant amount of local traffic.

Collocation Requirements

While a collocation requirement is useful as a component of a safe harbor, as Verizon has explained previously, collocation alone does not provide a meaningful safeguard against the wholesale conversion of special access. See Letter from William Barr to Chairman Powell (Jan. 30, 2003). Roughly half of Verizon's special access revenue is associated with circuits that already terminate in collocation arrangements today and the remaining special access can be easily rolled over to collocation.

Relationship of EELs and LISs

As revised, the proposal provides a clearer relationship between the CLEC's need to invest in the capabilities to handle local traffic and its desire to obtain EELs in a particular wire center. However, this parameter may be overcome and therefore, without modification, does not provide a reasonable safeguard. For instance, without establishing some relationship between the number of local interconnection trunks and the number of EELs nothing precludes a CLEC from manipulating the system by establishing an insignificant number of trunks (e.g., one) in order to qualify for EELs in a particular wire center. There is currently no assurance that the trunk(s) is actually carrying local traffic or that the number of trunks established are sufficient to carry the local traffic on the total number of EELs obtained in that wire center. While establishing a reasonable ratio of trunks to EELs (e.g. 4 to 1) or allowing some traffic measure qualification on the trunks may help shore up this loophole, such a requirement isn't currently contained in the proposal.

Assignment of PSTN Numbers and 911 Capabilities

While these two requirements are helpful if there continues to be some required percentage of local traffic, without a local usage requirement they remain mere window dressing and are easily overcome. For instance, a local number could be assigned to each EEL and on a programmed basis test calls could be run to establish a record of local calling. Absent a minimum local use requirement the only alternative would be to invoke audit rights to address non-compliance. The result would be an endless debate on whether or not the EEL was truly being used for local traffic.

Commingling

The DC Circuit specifically upheld the existing commingling restriction as a reasonable safeguard. Verizon has agreed that a limited modification to allow commingling of voice-grade loops may be appropriate. But a further modification without a showing as to a specific need to do so in order to transport *local traffic* is without merit.

Audits

Verizon views the proposed audit conditions as an essential component of this proposal. While Verizon has not taken advantage of its audit rights under the existing safe harbors, the proposed changes, with their reliance on CLEC network configurations that do not have to be proven in advance, make these audit rights an essential means of assuring that CLECs are complying with the proposed modified conditions.

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Verizon remains open to a fuller evaluation of this or any other proposal that may attempt to accommodate new services, but still attempts to fairly capture whether or not a service includes significant local traffic.

Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Scott Randolph". The signature is fluid and cursive, with the first name "W." and last name "Randolph" clearly visible.

W. Scott Randolph

cc: William Maher
Michelle Carey
Tom Navin
Jeremy Miller
Christopher Libertelli
Daniel Gonzalez
Matthew Brill
Jordan Goldstein
Lisa Zaina