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REDACTED (PUBLIC) VERSION

February 27, 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:

This ex parte letter responds to the request of the Commission's staff for an estimate of the dollar impact of the choice between the 30-year asset life specified by Verizon's tariffs for computing refunds for return of collocation space, and the 12-year life that Verizon has recently begun using instead. AT&T's responds in two ways. First, we demonstrate the magnitude of the dollar impact for an individual collocation space with several illustrative examples. Second, we estimate the aggregate impact of the issue.

In providing this information, however, AT&T does not concede its necessity in this proceeding. Section 251(c)(2)(D) of the 1996 Act requires that interconnection be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." The calculation of refunds or credits for returned collocation space that fails to credit CLECs for the remaining economic life of the space they have surrendered is facially unjust, unreasonable and discriminatory. Moreover, because it is contrary to Verizon's own tariffs, it is also facially illegal. Nothing in Section 251, or any other provision of the Act, exempts Verizon from these requirements on the ground that the dollar effect of the violation falls below some arbitrary

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dollar threshold, or because the parties injured by Verizon's unlawful conduct have failed to conduct an appropriately refined econometric study of the resulting damages within the limited period allotted in a 271 proceeding.

ILLUSTRATIVE EXAMPLES

First, consider a 300-foot collocation arrangement, a common AT&T configuration. The Space and Facilities NRC specified by the federal tariff for this space (FCC No. 1 § 19.7.4 (I)) is \$93,372.¹ The corresponding NRC charge specified by the state tariffs in Verizon's regional footprint is \$96,792. *See e.g.*, Maryland PSC No. 218 §2.J.1.d. These figures are derived as follows:

- *Federally Tariffed Rate.* The federally tariffed space-and-facilities NRC rate is \$46,686 for the first 100 feet, or \$467 per foot. Contiguous, additional space is half that rate, \$233.43 per additional foot. (FCC No. 1 § 19.7.4 (I)). Thus, the federal NRC for the 200 additional feet would be 200 x \$233.43, or \$46,686. This would be added to the rate of \$46,686 for the first 100 feet, for a total federal space-and-facilities NRC of \$93,372.
- *State Tariffed Rate.* The state space-and-facilities tariffed rate is \$32,263.92 per 100 feet, \$323 per foot, including contiguous additional footage. Thus the state NRC for the 300-foot collocation is simply 3 x \$32,263.92, or \$96,792. The differing rate designs for the federal and state tariffs converge near the 300-foot size. (For simplicity we'll use a \$96,000 NRC for demonstration.) The three "states" in the instant docket, as well as Virginia, Pennsylvania, New Jersey and Delaware, have identical state collocation rates reflecting the Verizon-South region-wide collocation settlement agreement between Verizon and AT&T/Worldcom/Sprint et al.

We now apply these values in two examples, one involving space returned after twelve years, and the other involving space returned after six years:

Space Returned after Twelve Years: Assume that the initial CLEC tenant of Verizon collocation space vacated the space after 12 years, and that Verizon immediately reused the space for its own purposes. Under a 12-year depreciation schedule, Verizon would owe the initial CLEC no refund credit at all, and would receive the remaining useful life of the space as a free good. This result would also hold for any combination of initial CLEC occupancy and interim vacancy that summed to 12 years.

¹ The value of \$95,372 stated in footnote 8 of AT&T's February 11 ex parte filing reflects a typographical error. The correct figure is \$93,372.

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By contrast, under the 30-year depreciation period, Verizon would owe the initial CLEC a credit of \$57,600 for returned space under the same scenario. That is, after 12 years, Verizon owes 18 remaining years out of the 30: 18/30ths is 60%, and 60% of \$96,000 is \$57,600. The difference between a refund of 0 percent and 60 percent is, of course, \$57,600—obviously a significant and material amount.

Space Returned after Six Years: With a 12-year asset life, collocation space that was reused by Verizon or a successor tenant after a total period of 6 years of use by the initial CLEC tenant or vacancy would entitle the initial tenant to a \$48,000 refund. That is, after half the time, after 6 of 12 years, half of the initial \$96,000 NRC would be refunded, or \$48,000.

Upon reuse after 6 years, under the 30-year depreciation period, Verizon would owe the initial CLEC a \$76,800 refund. That is, after one-fifth of the time period, four-fifths, or 80% would remain to be refunded. Eighty percent of \$96,000 is \$76,800. Plainly the difference between a refund of 50% (\$48,000) and 80% (\$76,800) is material and adverse. The properly calculated refund would be 60% higher, or \$28,800 higher, in this illustrative example.

THE OVERALL MAGNITUDE OF THE PROBLEM

The overall dollar impact of the dispute obviously depends on the total amount of space returned, the length of the holding period by the initial period, and the intervening period of vacancy before the property is leased to a successor CLEC tenant or placed into service by Verizon itself. Only Verizon has the precise data for all of these values. Nevertheless, data submitted by Verizon in recent 271 proceedings permits a reasonable estimate. The record evidence is that CLECs have returned at least 727 collocation arrangements out of more than 1343 collocation arrangements in the three states, as of the time of the respective state 271 hearings. In Maryland alone, these returned arrangements represented well over 18,000 square feet of collocation space not including the “hundreds of collocation bays” returned.²

² In Maryland, “of the over 1,000 collocation arrangements provisioned by Verizon, according to Verizon’s own records CLECs have returned 566 arrangements.” AT&T Maryland Brief at 16 *citing* Maryland PSC 271 Tr. 561 (Maguire). In the District, “of the 264 collocation arrangements provisioned by Verizon, according to Verizon’s own records CLECs have returned [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] separate arrangements.” AT&T DC Br. at 12 *citing* AT&T Exh. (Nurse/Kirchberger) at 2 1. In West Virginia, “[o]f the 79 collocation arrangements provisioned by Verizon West Virginia through July 2002, CLECs have returned 35 arrangements.” AT&T West Virginia Br. at 24 *citing* AT&T Exh. 1A (Kirchberger/Nurse), Attachment 2; Verizon Exh. 8B at 135. Updated numbers are likely higher still.

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These statements can be used to develop an estimate of the amount of collocation space returned by the industry, and thus the size of the initial space-and-facilities NRC paid by CLECs for these collocation arrangements. Two additional variables must be estimated: (1) the number of collocation (SCOPE or Cageless) bays returned, and (2) the applicable, average state/FCC NRC per foot for the collocation arrangements. We discuss each in turn.

The Number of Bays Returned. Because Ms. McGuire stated that “hundreds” of bays had been returned, it is reasonable to assume that the number of bays returned exceeded two hundred (because “hundreds” is a plural noun). On the high side, we have conservatively assumed that the number of bays returned did not exceed 500. This value represents 28 percent of the total space being represented by bays, i.e., SCOPE and CCOE.

The average NRC cost per foot. This value depends on the jurisdiction of the collocation. For FCC-tariffed collocations the cost is a function of the average size of the space. For state tariffed cages, the average cost is simply a linear function of \$323 per foot. For the federal cages, the average rate for the 100 foot cage was used, that is \$467 per foot.

These ranges of values produce, at their extreme, the following scenarios:

- If only 200 collocation bays (or 20,800 feet of total space) are returned in Maryland, under the state NRC tariff rate of \$323 per foot.
- If 500 collocations bays (or 25,000 feet of total space) are returned in Maryland, under the state NRC tariff rate of \$323 per foot.
- If 200 collocation bays (or 20,800 feet of total space) are returned in Maryland, under the FCC tariff rate of \$467 per foot.
- If 500 collocation bays (or 25,000 feet of total space) are returned in Maryland, under the FCC tariff rate of \$467 per foot.

Based on the low and high estimate of the total square feet of collocation space returned (including bays), and the number of collocation arrangements returned in Maryland, the corresponding low and high estimate of the Average Footage per Collocation Arrangement Returned may be calculated as a low of 36.7 and a high of 44.2 feet per returned arrangement in Maryland. One may then multiply these values by the number of returned collocation arrangements to and the estimated applicable tariff rate to develop the total NRC charge at issue. For the 3-jurisdiction Maryland/West Virginia/DC region, these calculations produce total NRC charges associated with returned collocation space in the range of \$8.6 million to \$15 million.

AT&T estimates that its returned collocation space amounts to be approximately **[BEGIN AT&T PROPRIETARY]** % **[END AT&T PROPRIETARY]** of the aggregate

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amount of initial NRC associated with collocation space returned by all CLECs in the three-jurisdiction region. Thus, AT&T's share of the initial NRC ranges from **[BEGIN AT&T PROPRIETARY]** **[END AT&T PROPRIETARY]**. AT&T also estimates that the average vintage of its returned collocation space after AT&T's surrender of the space plus any intervening vacancy before reuse is approximately six years. Hence, as calculated above, a 12-year asset life would entitle AT&T to a refund of only 50 percent of the NRC (6/12ths); a 30-year life would entitle AT&T to a refund of 80 percent (24/30ths or 288/360ths). Applying these refunds against the AT&T range of **[BEGIN AT&T PROPRIETARY]** **[END AT&T PROPRIETARY]** discussed above, a 12-year life implies that AT&T is entitled to refunds in the range of **[BEGIN AT&T PROPRIETARY]** **[END AT&T PROPRIETARY]**; a 30-year life implied that AT&T is entitled to refunds in the range of **[BEGIN AT&T PROPRIETARY]** **[END AT&T PROPRIETARY]**. Hence, the amount at stake in the dispute over the appropriate asset life is approximately **[BEGIN AT&T PROPRIETARY]** **[END AT&T PROPRIETARY]** for AT&T alone.

For CLECs in the aggregate, the stakes are considerably higher. Assume the CLEC aggregate value of \$8.6 million to \$15 million discussed above, and likewise an average six-year vintage of the collocation space at the time of reuse, a twelve-year asset life would entitle CLECs to a 50 percent refund of the collocation space NRC, or \$4.3 million to \$7.5 million. An asset life of 30 years would entitle CLECs to refund of 80 percent of the initial charge, or \$6.88 million to \$12 million. The net difference at issue is between \$2.58 million and \$4.5 million in Maryland, DC, and West Virginia. For the three more populous Verizon states affected by this dispute—New Jersey, Pennsylvania and Virginia—the dollar stakes are proportionately larger.

Please feel free to let us know if Staff has any further questions on this matter. This filing is exempt from the 20-page limit on ex parte submissions.

Very truly yours,

David M. Levy

Counsel for AT&T Corp.