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November 11, 2003

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

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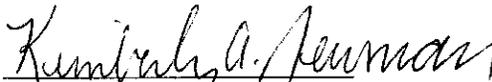
WRITER'S E-MAIL ADDRESS
knewman@omm.com

Re: WC Docket No. 02-359

Dear Ms. Dortch:

Enclosed for filing are the originals and four copies of Transcripts from hearings held on October 16-17, 2003 in the above referenced docket. In addition, we are enclosing eight copies for the arbitrator. Thank you.

Sincerely,


Kimberly A. Newman
of O'Melveny & Myers LLP

cc: Stephen T. Perkins
Martin W. Clift, Jr.
Richard U. Stubbs
Ms. Terri Natoli
Mr. Jeremy Miller
Mr. Brad Koerner
Mr. Marcus Maher
Mr. Richard Lerner
Mr. John Adams
Ms. Margaret Dailey
Ms. Deena Shetler

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of: :
Petition of Cavalier Telephone, LLC :
Pursuant to Section 252(e)(5) of the :WC Dkt No.
Communications Act for Preemption :02-359
of the Jurisdiction of the Virginia State:
Corporation Commission Regarding :
Interconnection Disputes with Verizon :
Virginia, Inc., and for Arbitration :

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ARBITRATION HEARING

Washington, DC
Thursday, October 16, 2003

REPORTED BY:
CARMEN SMITH

1 Arbitration Hearing, on Thursday, October 16,
2 2003, in Washington, DC, at the Federal
3 Communications Commission, 445 12th Street SW, at
4 9:14 a.m., before CARMEN SMITH, a Notary Public
5 within and for the District of Columbia, when were
6 present on behalf of the respective parties:

7

8 On Behalf of the Federal Communications Commission:

9 RICHARD LERNER

10 DEENA SHETLER

11 MARGARET DAILEY

12 JOHN ADAMS

13 JEREMY MILLER

14 TERRI NATOLI

15 BRAD KOERNER

16 MARCUS MAYER

17

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--continued--

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1 APPEARANCES (CONTINUED) :

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On behalf of Cavalier

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On behalf of Verizon

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APPEARANCES (CONTINUED):

KIMBERLY A. NEWMAN, ESQ.

MICHAEL WALSH, ESQ.

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On behalf of Verizon

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P R O C E E D I N G S

MR. LERNER: For the record, we are commencing the arbitration hearing between Cavalier Telephone LLC and Verizon Virginia, Inc., in WCB Docket Number 02-359, related to disputes between the parties arising out of negotiations of interconnection agreement, for the commonwealth of Virginia.

Good morning and welcome. I'm Rich Lerner, I'll be the presiding arbitrator for this hearing, assisted by able Commission Staff members here at the table with me. For the record, I will ask each staff member to please identify themselves and their division.

MS. SHETLER: Deena Shetler, pricing policy division.

MS. DAILEY: Margaret Dailey, pricing policy division.

MR. MILLER: Jeremy Miller, competition policy division.

MS. NATOLI: Terri Natoli, competition policy division.

1 MR. KOERNER: Brad Koerner, competition
2 policy division.

3 MR. MAHER: Marcus Maher, competition
4 policy division.

5 MR. ADAMS: John Adams, competition policy
6 division.

7 MR. LERNER: We have a lot to accomplish
8 in the next few days, but we're optimistic that we
9 will do so with the time set aside. We do have a
10 few housekeeping matters to address before we have
11 counsel identify themselves. For those housekeeping
12 matters I will turn it over to Ms. Natoli.

13 MS. NATOLI: If everybody -- or anybody
14 hasn't turned off their cell phone or put it on
15 silent, please do so so it doesn't disrupt the
16 proceedings.

17 We have established a schedule, although
18 we didn't build in specific times for breaks and
19 lunch, because we thought it would be better for the
20 flow of the things to sort of wait and take an
21 appropriate break time. But I assure you, we will
22 try not to go over a maximum of two hours this

1 morning. In fact, I know we won't go past 11:00
2 before we have a break. And we'll probably try to
3 break for lunch sometime between 12:30 and 1:00, and
4 then commence again an hour later, it would be a
5 very short hour break. And then we'll have another
6 break sometime this afternoon for 10 minutes.

7 So just so people are trying to keep that
8 in mind for scheduling.

9 With respect to the cross-examination,
10 when an issue is called, witnesses for both sides
11 will come up to the chairs there. Cavalier's
12 witnesses will sit over here, Verizon's witnesses
13 will sit over here. We will alternate counsel for
14 each party having the opportunity to do
15 cross-examination first. Cavalier will take the
16 first issue and then it will alternate, Verizon will
17 then take the next issue.

18 If there are two or more witnesses per
19 issue and counsel addresses the question to the
20 witnesses for that party in general and doesn't
21 specifically name a particular witness, whichever
22 one of the witnesses is the first to respond,

1 please -- the subsequent witnesses that wants to add
2 something, wait until they're finished, and then add
3 what you're going to say. Don't interrupt in the
4 middle. It makes it difficult for the court
5 reporter, and it makes it difficult for the first
6 witness to continue -- to remember what they were
7 trying to say.

8 Counsel will have generally 20 minutes,
9 unless they request leave to extend a little bit.
10 And depending on the schedule, we will try to
11 accommodate that.

12 FCC staff, which will be up here, will
13 have the opportunity to ask questions at any point
14 during the cross-examination. We will try to limit
15 our questions until after cross-examination has
16 occurred, unless it's for purposes of clarifying
17 something that's important to clarify at the
18 particular time the witness is explaining its
19 answer.

20 And please, witnesses, speak loudly and
21 try to refrain from using acronyms. Our telecom
22 jargon is difficult for a court reporter who doesn't

1 know that, so if you're going to use an acronym,
2 explain it, explain what it stands for first, and
3 then you're free to use it afterwards. But I think
4 that that will make it easier.

5 Does anybody have any questions about
6 anything like that? Let me add another -- Steve,
7 sorry.

8 MR. PERKINS: One quick one. We had
9 discussed having the testimony marked as exhibits.
10 Do we want to do that at the outset of questioning
11 or at the close of it?

12 MS. NATOLI: I think we should do it at
13 the outset. I thought you were -- did it already
14 get -- did it already get marked before you came
15 here? I mean, you already have it marked like that?

16 MS. NEWMAN: Actually we didn't, because
17 we didn't know who was going first in terms of
18 putting them in, but we can quickly mark on the
19 exhibit.

20 MR. LERNER: Mark it as we go.

21 MS. NATOLI: We can do it as it's
22 necessary. Is that okay? Does that work?

1 One other thing I forgot to mention,
2 because of the security issues in this building, and
3 I think most of you already know, you can leave, but
4 you can't get back in with your badge. So if anyone
5 really needs to leave without -- before the break,
6 just somehow please signal or send a note to me or
7 I'll try to look around or something, and I'll make
8 it possible for you to go, if there's any reason
9 that you have to leave before we take the break,
10 okay? Sorry about that, but we can't really help
11 that.

12 All right. Thank you, Rich. We'll turn
13 it over to you and you can deal with the objections.

14 MR. LERNER: Yes, one final matter to be
15 addressed before we begin involves objections raised
16 by each party to witnesses and evidence proffered by
17 the opposing party. For the record, we deny all
18 objections raised in the parties' October 14, 2003
19 objections to evidence and witness designations.

20 With respect to a request from Verizon to
21 permit limited surrebuttal for issue C14 and
22 Cavalier's request to allow limited surrebuttal for

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1 issue C3 and C27, we will allow written surrebuttal
2 testimony to be submitted by 5:30 p.m. on Monday,
3 October 20, 2003, and a limited response to such
4 surrebuttal from the opposing party by 5:30 p.m. on
5 Wednesday, October 22, 2003.

6 With that, we're ready to start with issue
7 C2. Question?

8 MS. NEWMAN: I'm sorry, it's actually C16
9 surrebuttal, it wasn't C14. Just for the record.

10 MR. LERNER: Let the record so reflect.

11 Now that we've cleared that up, let's
12 begin with issue C2 and have the witnesses for both
13 Cavalier and Verizon please come forward. Before we
14 start with the witnesses, if counsel for both sides
15 could identify themselves for the record and for the
16 court reporter, please. Start with Cavalier.

17 MR. PERKINS: For Petitioner Cavalier,
18 Stephen T. Perkins.

19 MR. STUBBS: Richard Stubbs, also for
20 Cavalier.

21 MS. NEWMAN: For Verizon, Kimberly Newman.

22 MS. GRILLO: Kathleen Grillo, Verizon.

1 MR. WALSH: Michael Walsh, Verizon outside
2 counsel.

3 MR. LERNER: Will the witnesses now please
4 identify themselves. We'll start on my left.

5 MR. CLIFT: Martin Clift, Cavalier
6 Telephone.

7 MR. COLE: Walt Cole, Cavalier Telephone.

8 MR. D'AMICO: Pete D'Amico, Verizon.

9 MR. ALBERT: My name is Don Albert with
10 Verizon.

11 Whereupon,

12 MARTIN CLIFT,
13 WALT COLE,
14 PETER D'AMICO, and
15 DONALD ALBERT

16 were called as witnesses and, having first been duly
17 sworn, were examined and testified as follows:

18 MR. LERNER: Mr. Perkins, you may begin.

19 MR. PERKINS: Mr. Arbitrator, will we
20 begin with cross-examination or --

21 MR. LERNER: Yes, with your
22 cross-examination of the Verizon witnesses.

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CROSS-EXAMINATION

BY MR. PERKINS:

Q Good morning, gentlemen.

Mr. D'Amico, could I please point you to page 5, lines 9 through 12, of your direct testimony.

A (Mr. D'Amico) Page 5, lines 9 through 12.

Q Yes, sir, where -- where you state that Verizon's long-standing arrangement with all CLEC is that each carrier bears the cost associated with such network rearrangements.

A (Mr. D'Amico) Yes.

Q Is that statement also true with respect to all independent telephone companies?

A (Mr. D'Amico) I don't specifically handle independent telephone companies, but it's my understanding that that is the practice as well.

A (Mr. Albert) And maybe I can add to that question. Is that procedurally how we're doing things?

Q Yes, we are. I think you are certainly entitled to do that.

1 A (Mr. Albert) Okay, yeah. I can address
2 what we have done with independents in Virginia,
3 from the early 1990s. That's based on conversations
4 I had with George Bader, who is our director of
5 Verizon, independent telephone company relations.
6 As we were preparing our testimony, I specifically
7 asked him if we had had any circumstances, either
8 for network changes or network rearrangements, where
9 in Virginia we had ever paid an independent
10 telephone company any of their costs.

11 And his response is that has not occurred.
12 We have not -- Verizon, or previously Bell Atlantic,
13 or previously C&P Telephone, back through the early
14 '90s, we have not paid one nickel to any independent
15 telephone company associated with network
16 rearrangements.

17 In addition to that, he said we've never
18 had either an independent -- and I can add to that a
19 CLEC or wireless carrier request that we pay any of
20 their costs associated with a network rearrangement.

21 Although I'm using "network
22 rearrangement," which is a pretty broad term which

1 can encompass a wide variety of different
2 activities, the focus of the testimony primarily of
3 which I have responded to seems to deal with what's
4 required when a new tandem switch is added to the
5 network.

6 So the context of most of my discussion
7 will relate to that specific activity of a new
8 tandem, as opposed to a much more broader,
9 all-encompassing network rearrangement.

10 MR. PERKINS: Cavalier objects to the
11 description of Mr. Bader's statements as hearsay,
12 for the record.

13 MS. NEWMAN: Do you want to hear our
14 response to that objection? Or are you going to
15 deny it?

16 MR. LERNER: It's in for -- goes to the
17 weight.

18 MR. ALBERT: I can also add the basis. I
19 was Verizon Virginia's director of network
20 engineering from 1993 through a portion of 1996. In
21 that job I was responsible for our network
22 engineering associated with independent telephone

1 companies. I also had the expense responsibility
2 for right-to-use fees, to payments for outside
3 vendors, to payments for other carriers.

4 I myself during that time frame never had
5 an occurrence of us paying a nickel to either an
6 independent or a wireless or an IXC as part of a new
7 tandem going into -- or as a network rearrangement
8 in Verizon Virginia, or at the time, Bell Atlantic
9 Virginia's network. That's also the basis of my
10 comments, that I have personal 3-1/2 year
11 experience.

12 BY MR. PERKINS:

13 Q Let me ask you one very brief follow-up to
14 that, Mr. Albert, and that is, when you say not
15 "paying a nickel," does that include not absorbing
16 any costs for another carrier or just out-of-pocket
17 payments?

18 A (Mr. Albert) Can you help me with what
19 you mean by absorbing other costs?

20 Q Performing work on behalf of other
21 carrier, for instance, as opposed to paying them out
22 of pocket an amount of money.

1 A (Mr. Albert) My response was relative to
2 us not paying cash.

3 Q Okay, thank you.

4 Mr. D'Amico, I can direct you to specific
5 portions of your testimony, if you like, but I
6 believe in both your direct and your rebuttal
7 testimony, you state that all carriers benefit when
8 Verizon creates a new tandem, adding capacity. Is
9 that generally correct?

10 A (Mr. D'Amico) Correct.

11 Q Do you know if that benefit always exceeds
12 the cost for each carrier involved with such a
13 tandem rehomming?

14 A (Mr. D'Amico) Well, if you're trying to
15 put numbers to each carrier's cost versus the
16 benefit, I don't have any analysis for that. What
17 the statement was trying to get across was that
18 Verizon's network interconnects with a lot of other
19 different networks, and by adding that capacity,
20 which is required, in order for the network to
21 interconnect, all the parties that interconnect not
22 only with Verizon but with other interconnecting

1 parties benefit from that Verizon capacity.

2 A (Mr. Albert) Now, I can address that also
3 from the engineering perspective. Basically, CLECs
4 save a pile of money by connecting with other
5 carriers through Verizon's tandem switches, so if a
6 CLEC will, instead of connecting directly with a
7 number of other CLECs, with a number of other
8 wireless carriers and with a number of IXCs, it is
9 much cheaper for the CLEC to make all those
10 connections through our tandem as opposed to them
11 physically building the facilities and the direct
12 connections to a large, large number of other
13 carriers.

14 So there is a big benefit to CLECs and
15 that's why we have so many CLECs that do use transit
16 service through our tandems, that it saves a bunch
17 of money from their perspective.

18 Q Can you say that the benefits of that
19 tandem and capacity expansion outweigh the cost,
20 out-of-pocket costs, to every particular CLEC
21 involved?

22 A (Mr. D'Amico) I wouldn't be able to

1 address the CLEC's cost trade-off, what the CLEC's
2 specific costs are. But from what actually occurs,
3 the fact that there are so many CLECs that are
4 sending so much traffic through us to make those
5 connections to other carriers, I would assume
6 they're doing it because it does benefit them. And
7 if you just look at the dollars and cents of
8 building the network, that seems to fit. It's much
9 cheaper to send those calls through us, rather than
10 building their networks physically directly
11 connected to all those other carriers.

12 Q Now, Mr. D'Amico, you referred to an
13 expansion of tandem capacity I believe; is that
14 correct?

15 A (Mr. D'Amico) Yes.

16 Q Isn't it also possible instead of rehoming
17 to a new tandem to add capacity to an existing
18 tandem?

19 A (Mr. D'Amico) That is possible. That's
20 more of a kind of engineering decision as far as how
21 they add capacity.

22 Q I'm just asking you if it's possible.

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1 A (Mr. Albert) Until they poop out. You
2 hit a point where --

3 MR. LERNER: Is that a technical term?

4 (Laughter.)

5 MR. ALBERT: Yeah. With our tandem
6 switches, there is a magic limit of how much trunks,
7 how much traffic, how much calls they can carry.
8 When they poop out, when they reach that magic
9 limit, we do have to add new ones. That, in fact,
10 is what has happened in Virginia, as we've added new
11 tandems to the Washington met area, to Richmond and
12 to Tidewater. And as we will in the near future add
13 them to some other LATAs.

14 BY MR. PERKINS:

15 Q Mr. D'Amico, let me refer you to page 3 of
16 your testimony.

17 MS. NEWMAN: Would that be direct or --

18 BY MR. PERKINS:

19 Q I'm sorry, page 2 of your rebuttal, lines
20 22 and 23, where you say "the possibility of delays
21 on a particular tandem rehomeing project does not
22 justify a conclusion that Verizon should pay all of

1 Cavalier's expenses for any Verizon network
2 rearrangement," continuing on to page 3.

3 You say the possibility of delay does not
4 justify payment. Does actual delay justify payment?

5 A (Mr. D'Amico) No.

6 Q On page 3 of your rebuttal testimony,
7 lines 18 through 19, you say "no carrier other than
8 Cavalier has asked Verizon to pay its costs
9 associated with Verizon's necessary network
10 rearrangements."

11 Is it true that no other carrier has
12 disputed Verizon's request to make arrangements to
13 the CLEC's network to accommodate Verizon's
14 necessary network rearrangements?

15 A (Mr. D'Amico) I'm not sure I understand
16 the question. Could you --

17 Q Okay. You say no other CLEC has asked
18 Verizon to pay its costs.

19 A (Mr. D'Amico) Correct.

20 Q Is it also true that no other CLEC has
21 disputed moving, undertaking the effort to move or
22 rearrange its facilities, to respond to a Verizon

1 network rearrangement?

2 A (Mr. D'Amico) I'm not aware of any CLEC
3 that -- you're basically asking if they came to us
4 and said you're adding a tandem, we're disputing the
5 fact that you're adding a tandem?

6 Q Well, they get the industry letter, they
7 say we don't want to do this, we don't think it's
8 necessary or justified. Has that occurred?

9 A (Mr. D'Amico) I'm not aware of any, but I
10 am not directly in the mix. I'm in product
11 management so --

12 Q Mr. Albert is raising his hand. Perhaps
13 he can address it --

14 A (Mr. Albert) Yes, I'm aware of one that
15 we've had in the Washington met area, who we've been
16 in a -- I don't know, a dispute with relative to
17 them establishing connections to the new tandem in
18 Arlington.

19 Q Is that Comcast business communications?

20 A (Mr. Albert) Yes, it is.

21 Q What was Comcast's dispute as you
22 understand it, Mr. Albert?

1 A (Mr. Albert) My understanding is that
2 they believe their interconnection agreement doesn't
3 require them to connect to the new tandem. We had a
4 situation in the Washington met area where we have a
5 tandem in Bethesda that handles the Maryland
6 suburbs, we had a tandem in D.C. that handled both
7 Northern Virginia and D.C. We established recently
8 a new tandem in Arlington.

9 And the access as well as the local
10 traffic for Northern Virginia is now handled by the
11 new access tandem that we've put into Arlington.

12 Comcast, I guess they believe that their
13 interconnection agreement doesn't require them to
14 connect to the Arlington tandem. From my personal
15 involvement in that, I think they are wrong in that
16 belief. They are required to -- by their
17 interconnection agreement to route traffic according
18 to the LERG, local exchange routing guide. They
19 also are required -- I believe their interpretation
20 was that by putting in a new tandem, we were forcing
21 them to establish a new physical point of
22 interconnection.

1 That is not true. Although those two
2 topics, a point of interconnection and tandem, can
3 be related, they are two very separate and different
4 things. Just because there is a new tandem going
5 into the network, that doesn't mean that the point
6 of interconnection, where the wires of the two
7 companies physically meet each other -- a new tandem
8 does not mean that you have to add a new place where
9 the wires meet.

10 You do have to have trunks that connect to
11 the new tandem, but those trunks can traverse the
12 existing locations where the wires of the two
13 carriers meet each other. So although Comcast
14 appears to believe that they're not required to by
15 their interconnection agreement, my personal opinion
16 is we've got good rationale from our perspective on
17 why they do have to route according to the LERG and
18 why we're not requiring them to establish a new
19 physical point of where their wires and our wires
20 connect.

21 Q Isn't it true, Mr. Albert, then, that your
22 understanding is that Comcast believes they have a