

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

**COMMENTS OF VERIZON<sup>1</sup>**

In its Petition, BellSouth seeks a waiver of its obligation to provision EELs for requesting carriers pursuant to the eligibility criteria established in the *Triennial Review Order* until the responsible state commissions have completed proceedings to determine the specific routes where high-capacity loops and transport must be made available. BellSouth's petition made good sense when filed, and recent events make that all the more true, not just for BellSouth, but for all local exchange carriers. The D.C. Circuit has now vacated both the Commission's provisional determination that requesting carriers are impaired without access to high capacity dedicated facilities and the Commission's delegation of authority to state commissions to determine which high-capacity dedicated facilities must be unbundled under federal law. Moreover, the Court remanded back to the Commission the issue of making an impairment determination associated specifically with EELs. Under these circumstances, the significant concerns of cost and administrability that BellSouth identifies justify waiving the LECs'

---

<sup>1</sup> The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

obligation to provision EELs pursuant to the new criteria at least until the necessary impairment evaluations have been completed.

## DISCUSSION

In *USTA II*, the D.C. Circuit affirmed the new EELs eligibility criteria that the Commission established in the *Triennial Review Order*. *See United States Telecom Ass’n v. FCC*, 2004 WL 374262, \*38 (D.C. Cir. Mar. 2, 2004). This does *not* mean, however, that uncertainty about requesting carriers’ ability to convert special access circuits to UNEs or to order new circuits at UNE rates has been laid to rest. To the contrary, an EEL is simply a combination of a high-capacity loop and high-capacity dedicated transport, and the D.C. Circuit has vacated the rules that required ILECs to unbundle high-capacity dedicated facilities. *See id.* at \*17-\*18. Specifically, the D.C. Circuit vacated not only the FCC’s provisional finding of impairment with respect to high-capacity facilities, but also the FCC’s subdelegation of authority to state public utility commissions to make final impairment determinations. Whether and where ILECs will have any obligation to provision EELs once the Commission adopts new unbundling rules – particularly in light of the D.C. Circuit’s holding that the Commission must take the availability of tariffed special access service into account in conducting its impairment inquiry (*see id.* at \*21) – is very much in doubt.

That doubt is compounded because the Court also remanded the EELs issue to the Commission in order to make an impairment determination both with respect to EELs generally and with respect to specific uses to which EELs might be put. For example, the Court specifically noted that the “CLECs have pointed to no evidence suggesting that they are impaired with respect to the provision of long distance services.” *USTA II* at \*37. Indeed, as the Court recognized, at least where other providers already are competing successfully in the relevant end-

user market, “competitors cannot generally be said to be impaired by having to purchase special access services from ILECs, rather than leasing the necessary facilities at UNE rates.” *Id.* Here, other providers unquestionably are competing successfully to provide high capacity dedicated services to end users – indeed, they have won a third of the special access market<sup>2</sup> and “do not deny that they have been able to purchase use of EELs as ‘special access.’” *USTA II* at \*37. Moreover, as in the wireless market (*see USTA II* at \*19), there is no question that other providers are competing successfully to provide long distance services, and there is no plausible argument that they need access to high capacity dedicated facilities at UNE rates to do so.

BellSouth’s waiver request – which is keyed to states’ completion of proceedings required under now-vacated rules from the *Triennial Review Order* – is now all the more pertinent in light of recent events which provide still further support for the finding that the new eligibility criteria should not be applied until the required impairment analysis has been completed with respect to both the individual elements that make up EELs and the EELs themselves. The Commission therefore should waive the ILECs’ obligation to provision EELs pursuant to the eligibility criteria established in the *Triennial Review Order* until such impairment analysis has been completed. At that time, either ILECs’ obligations to price EELs at UNE rates will be eliminated entirely, or the Commission will have taken action to deal with the rules that were vacated and/or remanded by the D.C. Circuit. Until then, requiring the implementation of new procedures to reflect the new EELs eligibility criteria would result in significant waste of resources; accordingly, there is good cause to grant a waiver to avoid that result. *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

---

<sup>2</sup> *See* UNE Fact Report 2002 at Appendix L, filed as Attachment B to Comments of Verizon, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (filed Apr. 5, 2002).

The practical problems associated with implementing the new criteria while the unbundling rules are in doubt are not unique to BellSouth. All ILECs face the same types of concerns. As BellSouth correctly notes, the process of converting special access service to EELs and then converting them back to special access services is difficult and likely to result in billing and ordering disputes. The Commission should not require the carriers to undertake these actions before unbundling obligations with respect to high-capacity facilities are firmly established.

Accordingly, the Commission should declare the ILECs have no obligation to provision new EELs pursuant to the eligibility criteria established in the *Triennial Review Order* until the necessary impairment evaluations have been completed.

Of Counsel  
Michael E. Glover  
Edward Shakin

Respectfully submitted,

By:   
Joseph DiBella  
1515 North Court House Road  
Suite 500  
Arlington, VA 22201-2909  
(703) 351-3037  
joseph.dibella@verizon.com

Attorney for the Verizon  
telephone companies

Dated: March 19, 2004

## THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.