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April 21, 2004

Ex Parte

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

Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

Yesterday, Gary Librizzi, Greg Ramano, Scott Randolph, Joe Dibella and the undersigned met with Jon Minkoff and Christi Shewman from the Policy Division to discuss the attached presentation.

If you have any questions regarding this matter, please call me at (202) 515-2535.

Sincerely,

A handwritten signature in cursive script that reads "Clint E. Odom".

Attachment

cc: Jon Minkoff
Christi Shewman



Elimination of the Pick and Choose Rule Under Section 252(i)

April 20, 2004

Elimination Of The The Pick-and-Choose Rule Would Enhance ILEC/CLEC Negotiations



Eliminating the pick and choose rule is a key step in the promotion of more meaningful negotiations that Congress intended to occur.

The rule has discouraged the type of give-and-take negotiations that would produce benefits for both the CLEC and the ILEC.

The Commission has the authority to do away with the rule and it should do so now.

Elimination Of The Pick-and-Choose Rule Would Enhance ILEC/CLEC Negotiations



In the negotiation process, Verizon has to be mindful of the fact that CLECs often take a much more limited view as to what constitute “reasonably” or “legitimately” related terms and conditions in interconnection agreements.

For example, in the cases where Verizon may be willing to offer something in one part of an interconnection agreement in exchange for a concession by the CLEC in another part of the agreement, Verizon must consider that other CLECs will likely view the exchanged provisions as unrelated for purposes of a “pick and choose” adoption and will challenge attempts by Verizon to require adoption of both provisions.

Allowing CLECs to adopt piece parts of different agreements makes the negotiation process unwieldy and potentially sets up conflicting provisions in agreements, thereby increasing the likelihood for disputes.

Elimination Of The Pick-and-Choose Rule Would Enhance ILEC/CLEC Negotiations



The CLEC's claim that the pick-and-choose rule has enabled CLECs to craft customized agreements is contradicted by marketplace evidence.

In fact, pick and choose has rarely been used:

Of 3687 active agreements across the VZ footprint, 1504, or 41% are adoptions.

Of these 1504 adoptions, only 73, or 1.9% of active agreements involve pick and choose adoptions.

Nevertheless, the mere existence of the rule increases the risks faced by ILECs in considering whether to make concessions during the negotiation process.

The Rule Is Not Necessary To Guard Against Potential Discrimination



251(b)(1) and 251(c)(4) -- cannot impose discriminatory conditions on resale

251(b)(3) - must provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings

251(c)(2)(D) -- must provide interconnection on rates, terms and conditions that are nondiscriminatory

251(c)(3) -- must provide UNEs on rates, terms and conditions that are nondiscriminatory

251(c)(6) -- must provide collocation on rates, terms and conditions that are nondiscriminatory

252(e)(2)(A)(i) -- state commission review of negotiated or arbitrated interconnection agreements includes whether the agreement discriminates against a telecommunications carrier not a party to the agreement



Adoption Should Be Allowed On an All or Nothing Basis

The Commission should eliminate the pick and choose rule and allow CLECs to opt into agreements on an all-or-nothing basis.

Elimination of the rule should not be conditioned on the availability of an SGAT.

Verizon maintains an up-to-date nationwide model interconnection agreement that provides an effective starting point for meaningful negotiations.

Verizon has SGATs in only four of twenty-eight states and they are administratively cumbersome to keep updated.

There are a large number of approved interconnection agreements, representing a variety of different terms and conditions, available for adoption.

Any requirement that forces Verizon to first seek state commission approval of a specific “pick and chooseable” agreement would negate any benefits of eliminating the rule itself.



The Commission Has The Authority To Eliminate The Pick and Choose Rule

The current pick-and-choose rule is a permissible interpretation of Section 252(i), but it is not the *only* permissible interpretation.

The requirement of Section 252(i) that CLECs be allowed to adopt the “same terms and conditions” of other agreements can refer to *all* the terms and conditions in the underlying agreement.

The re-instatement of the rule by the Supreme Court does not constrain the Commission’s authority to interpret Section 252(i) in a different manner today, as long as it explains its reasons for doing so.

After more than seven years’ experience with the pick-and-choose rule, the Commission’s expertise entitles (indeed, compels) it to change the rule to better reflect current market conditions.