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**Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**RE: Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of Local Competition Provision of 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:

Today, I provided to Mr. C. Libertelli, Chairman Powell's office, examples of state action in which they have assumed authority and are making decisions on matters that are clearly the responsibility of the FCC. (See attachment.) Specifically, these decisions claim that the states have authority to impose non-Section 251 unbundling obligations under Section 271. Also included, are examples of the arguments being made by certain CLECs in those state proceedings in which they incorrectly urge the states to perpetuate non-Section 251 obligations despite FCC orders to the contrary. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Attachment

cc: S. Bergmann  
M. Brill  
M. Carey  
J. Carlisle  
D. Gonzalez  
C. Libertelli  
T. Navin  
J. Rosenworcel  
B. Tramont

## Examples of State Commission Decisions Claiming Authority to Impose Non-Section 251 Unbundling Obligations Under Section 271

**Pennsylvania:** *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Docket No. I-00030100, Reconsideration Order dated May 27, 2004.

- “We continue to believe ... Verizon has a separate and continuing additional unbundling obligation under the *Global Order* to provide unbundled switching and UNE-P to enterprise customers ... Furthermore, even if the *Global Order* requirements are deemed to be preempted ... there is support for finding a continuing access obligation in § 271's requirement that Verizon provide access to its local switching.” *Id.* at 12. State commission ordered Verizon to continue to provide access at existing TELRIC rates. *See id.* at 17.

*Covad Communications Company v. Verizon Pennsylvania, Inc.*, Dkt. No. R-00038871C0001, Interlocutory Order entered July 8, 2004.

- “Section 271 ... provides an independent source of authority by which Verizon may still be under a requirement to provide non-discriminatory access to the HFPL (High Frequency Portion of the Loop).” *Id.* at 16. Commission ordered Verizon to maintain existing state tariffed offering. *See id.* at 20.

**Tennessee:** *In re Petition for Arbitration of ITC Deltacom Communications, Inc. With Bell South Telecommunications, Inc.*, Docket No. 03-00119, June 21, 2004.

- Tennessee Regulatory Authority voted to adopt rate for unbundled switching under § 271, *Transcript of Proceeding* at 6, and to “open a generic docket to adopt a rate for switching outside 251 requirements.” *Transcript of Proceeding* at 8.

**Maine:** *Verizon Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*, Docket No. 2002-682, Examiner's Report, dated July 23, 2004.

- “[W]e will exercise our authority to require Verizon to file [rates for elements provided pursuant to section 271 but not section 251] with us in its wholesale tariff. Indeed, before Verizon may begin charging any CLEC 271 UNE rates which are higher than its current TELRIC rates, Verizon must first obtain the FCC's approval for the specific rates (in whatever form necessary) and then must file the rates here pursuant to our usual tariffing process.” *Id.* at 22-23.

**Examples of CLEC Comments Urging State Commissions to Perpetuate  
Non-Section 251 Unbundling Obligations Under Section 271**

AT&T

- “Verizon is subject to separate unbundling obligations under Section 271 of the federal Act, which provides additional . . . [D.C. Public Service] Commission authority to require unbundling ‘at cost-based prices . . . .’”

Response of AT&T Communications of Washington, D.C., LLC and Teleport Communications-Washington, D.C., LLC to the Petition for Reconsideration Filed by Verizon Washington DC Inc., *In re the Effect of the USTA II Decision on the Local Telecommunications Marketplace in the District of Columbia*, Formal Case No. 1029, at 15 n.21 (D.C. PSC filed June 24, 2004).

Covad Communications

- “Even though the FCC in the Triennial Review Order removed line sharing from the list of UNEs under section 251, Verizon remains subject to an undisputed continuing obligation to provide unbundled access to the high frequency portion of the loop under section 271”; “D.C. should . . . require Verizon to continue to offer line sharing pursuant to section 271 at existing UNE rates, terms, and conditions.”

Comments of Covad Communications Company, *In re the Effect of the USTA II Decision on the Local Telecommunications Marketplace in the District of Columbia*, at 9-10 (D.C. PSC filed July 6, 2004).

Competitive Carrier Coalition (including ACN, Telecove, Allegiance, ATX, Capital Telecommunications, CTC Communications, DSLnet, Focal, ICG, Level 3, Lightwave, PAETEC, and Starpower)

- “The [D.C. Public Service] Commission should . . . preclude Verizon from refusing to provide UNEs that are required by other provisions of applicable law, such as § 271 of the Telecom Act . . . and not limit UNE terms and conditions to only those established by the FCC in the implementation of Section 251(c)(3).”

Competitive Carrier Coalition’s Motion to Dismiss and Response to Verizon Washington, DC, Inc.’s Petition for Arbitration, *In re Petition of Verizon Washington, DC Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington, D.C. Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, Docket No. TAC-19, at 15 (D.C. PSC filed Mar. 16, 2004).

Comparable statements in other state proceedings.

## Sprint

- “Verizon’s provisioning of UNE-P was a significant factor in the favorable disposition it received from the FCC in granting its section 271 application . . . . The [D.C. Public Service] Commission is justified in requiring Verizon to adhere to the commitments it made, and the conditions it agreed to comply with, as part of its section 271 approval process at the state and federal levels.”

Comments of Sprint Communications Company, L.P., *In re the Effect of the USTA II Decision on the Local Telecommunications Marketplace in the District of Columbia*, Formal Case No. 1029, at 6 (D.C. PSC filed June 25, 2004).

## New Frontiers Telecommunications

- “[R]egardless of the FCC’s unbundling decisions under Section 251, CLEC access is still mandated under Section 271 to some network elements (local loop transmission, local transport and local switching) and the rates, terms and conditions are subject to state jurisdiction.”

Response of New Frontiers Telecommunications Inc. to the Petition for Arbitration of Verizon Maryland Inc., *Verizon Maryland Inc.'s Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Maryland Pursuant to Section 252 of the Communications Act, as Amended, and Triennial Review Order*, Case No. 8983, at 9 (Maryland PSC filed March 15, 2004).

## BridgeCom International

- “Section 271(c)(2)(B) implicates legal obligations of Verizon enforceable by the [New York State Public Service] Commission, subject only to the limitation that the Commission apply the ‘just and reasonable’ standard adopted by the FCC.”

Response of Bridgecom International, Inc., *Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order*, Case No. 04-C-0314, at 17-18 (NYS PSC Filed Apr. 13, 2004).

Anonymous

- Urging state commissions to “[i]mplement loop, switching and transport requirements for the section 271 ‘checklist’ through section 252 agreements and SGATs.”

NARUC Handout (attached).

# *Chairman Powell Reacts to Vacatur of FCC Telephone Competition Rules*

"I am committed to developing competition rules that comply with the court's mandate . . . Our top priority is to ensure that consumers do not experience any disruption in service."

June 14, 2004



"Doesn't matter. I don't care how [the rules] come out; it's too late. This country is wasting too much time on this problem."

June 15, 2004

Statement of FCC Chairman Michael K. Powell, June 14, 2004 [hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-248393A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-248393A1.doc).  
FCC Chairman Michael K. Powell Gartner Fellows Interview, June 15, 2004, [www4.gartner.com/research/fellows/asset\\_91308\\_1176.jsp](http://www4.gartner.com/research/fellows/asset_91308_1176.jsp).

## *Telephone Competition – It's Up To You!*

- Keep competition going by enforcing current Interconnection Agreements
- Implement loop, switching and transport requirements of the section 271 "checklist" through section 252 agreements and SGATs (just as 47 U.S.C. 271(c)(2)(A) says)
- Arbitrate Bell company wholesale rates under section 252 and state law
- Tell the FCC the facts about local competition in your state! File the data you compiled in the *Triennial Review* impairment proceedings –  
**Don't throw it away!**