**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matters of | ) | |
| | ) | |
| Applications of Ameritech Corporation, | ) | |
| Transferor and SBC Communications, Inc., | ) | |
| Transferee, for Consent to Transfer Control of | ) | CC Docket 98-141 |
| Corporations Holding Commission Licenses | ) | |
| and Lines Pursuant to Section 214 and 310(d) | ) | |
| of the Communications Act and Parts 5, 22, | ) | |
| 24, 25, 63, 90, 95 and 101 of the | ) | |
| Commission's Rules | ) | |
| | | |
| Application of GTE Corporation, | ) | |
| Transferor, and Bell Atlantic Corporation, | ) | |
| Transferee, for Consent to Transfer of Control | ) | |
| of Domestic and International Sections 214 | ) | CC Docket 98-184 |
| and 310 Authorizations and Application to | ) | |
| Transfer Control of a Submarine Cable | ) | |
| Landing License | ) | |

**COMMENTS OF VERIZON ON**
**PETITION FOR DECLARATORY RULING**

The Commission should declare that Verizon's obligation, under the *BA/GTE Merger Order*,[1] to provide unbundled network elements in accordance with the terms of the *UNE Remand Order*[2] and *Line Sharing Order*[3] expired on March 24, 2003, the date when the Supreme Court denied CLECs' petition for certiorari challenging the vacatur of those two orders. That

---

[1] Memorandum Opinion and Order, *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations*, 15 FCC Rcd 14032 (2000) ("*BA/GTE Merger Order*").

[2] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 415 (2003).

[3] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), *vacated and remanded, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 415 (2003).

determination is the only interpretation of the merger conditions that is consistent with the plain terms of those conditions and the Commission's prior orders. Moreover, even if the condition in question had not expired on that date, it subsequently expired in July 2003, three years after the merger closed.

### A. The Court's Decision in *USTA I* Terminated Verizon's Obligation Under Paragraph 39

1. Paragraph 39 of the BA/GTE merger conditions provides:

> Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNEs and UNE combinations required in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) (UNE Remand Order) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. Dec. 9, 1999) (Line Sharing Order) in accordance with those Orders **until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area**. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.

15 FCC Rcd at 14316, App. D, ¶ 39 (emphasis added). There can thus be no dispute that, after "a final, non-appealable judicial decision" providing that a particular "UNE or combination of UNEs is not required to be provided," Paragraph 39 imposes no further obligation.

*USTA I*[4] is just such a judicial decision. In that case, the D.C. Circuit vacated both the *UNE Remand Order* and the *Line Sharing Order*. The effect of that vacatur was to eliminate ILECs' obligation to comply with the unbundling rules in the *UNE Remand Order* and their

---

[4] *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003) ("*USTA I*").

obligation to provide access to line sharing. *See Alabama Power Co. v. EPA*, 40 F.3d 450, 456 (D.C. Cir. 1994) ("To 'vacate' . . . means 'to annul; to cancel or rescind; to declare, to make, or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside.'") (citation and internal quotation marks omitted). Accordingly, the decision *was* a determination that those UNEs and UNE combinations are "not required to be provided" anywhere in the country. The Supreme Court's denial of certiorari rendered that determination final and non-appealable. At that point, the Commission could adopt new unbundling rules, but its prior rules, and the obligations they imposed, were eliminated.

The Commission itself has recognized that this was the effect of the D.C. Circuit's decision. In the *Triennial Review Order*,[5] the Commission repeatedly noted that *USTA I vacated* its prior orders. *See, e.g.*, *Triennial Review Order*, 18 FCC Rcd at 17005, ¶ 31 ("the D.C. Circuit *vacated* . . . the portions of the Commission's *UNE Remand Order* that adopted an interpretation of the 'impair' standard and established a list of mandatory UNEs") (emphasis added); *see also id.* at 17406, ¶ 705. Moreover, the Commission specifically acknowledged that the effect of the vacatur was to eliminate ILECs' obligation under the Commission's prior unbundling and line sharing rules. Thus, the Commission has stated that, in light of the order of vacatur, "the legal obligation [to provide access to UNEs and UNE combinations] upon which . . . existing interconnection agreements are based . . . no longer exist[ed]." *Id.*.

Furthermore, the Common Carrier Bureau has already held that the vacatur of the FCC's rules would eliminate Verizon's obligation under Paragraph 39. In a clarification issued shortly after the *BA/GTE Merger Order* was released, the Bureau held that the conditions in the *BA/GTE*

[5] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (subsequent history omitted).

*Merger Order* impose an obligation on Verizon "to comply with certain Commission rules 'until the date of any final and non-appealable judicial decision' concluding the litigation concerning those rules *by invalidating them*."[6] The Bureau noted that "[t]he relevant 'final and non-appealable judicial decision,' for purposes of the obligation to follow the TELRIC pricing rules (as opposed to the obligation to follow the substantive rules in the *[UNE Remand] Order* and the *Line Sharing Order*), would be a final decision of the Supreme Court concluding the TELRIC litigation either by denying certiorari outright or by invalidating given pricing rules."[7] Here, the obligations in question are the substantive rules in the *UNE Remand Order* and *Line Sharing Order*, and the relevant "final and non-appealable decision" is thus the "final decision of the Supreme Court concluding the [*UNE Remand Order* and *Line Sharing Order*] litigation . . . by denying certiorari outright." That decision occurred on March 24, 2003, and it terminated Verizon's obligation under Paragraph 39.[8]

---

[6] Letter from Dorothy T. Attwood, Chief, Common Carrier Bureau, to Michael Glover, Verizon Communications Inc., *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 18327, 18328 (2000) (emphasis added) (quoting *BA/GTE Merger Order*, 15 FCC Rcd at 14180, ¶ 316).

[7] *Id.* (quoting *BA/GTE Merger Order*, 15 FCC Rcd at 14180, ¶ 316).

[8] Another Commission decision likewise lends support to this reading. In *SBC Communications Inc. Apparent Liability for Forfeiture*, 17 FCC Rcd 19923 (2002), the Commission was considering SBC's obligation to offer shared transport under the SBC/Ameritech merger conditions. The obligation in question would expire on "the date of a final, non-appealable judicial decision providing that shared transport is not required to be provided by SBC/Ameritech in the relevant geographic area." *Id.* at 19924, ¶ 2, n.6 (internal quotation marks omitted). The Commission held that the obligation remained in effect because no court had issued a final non-appealable order that "SBC is not required to provide shared transport." *Id.* at 19933, ¶ 19. But the Commission based that conclusion on its stated belief that the D.C. Circuit "did not vacate the *UNE Remand Order*." *Id.* ¶ 19 n.55. In fact, the D.C. Circuit made absolutely clear that it *had* vacated both the *UNE Remand Order* and the *Line Sharing Order*. *See* Order, *United States Telecom Ass'n v. FCC*, No. 00-1012, 2002 WL 31039663, at *1 (D.C. Cir. Sept. 4, 2002) (Exh. A) (staying "vacatur" of both orders). The Commission has subsequently acknowledged this, as noted above in text. The critical point for present purposes, however, is that the Commission's reliance on the (mistaken) notion that the *UNE Remand Order* had not been vacated indicates that vacatur *does* constitute a "final, non-appealable decision providing that [the relevant UNE] is not required to be provided."

The denial of certiorari in *USTA I* terminated Verizon's obligation under Paragraph 39 for an additional reason: the merger condition provides that its provision "shall become null and void and impose no further obligation" after "the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively." There can be no dispute that the *UNE Remand Order* and *Line Sharing Order* are final orders that are now non-appealable. Accordingly, there are, without question, "final and non-appealable Commission orders" in both proceedings, and Paragraph 39 is therefore without further effect.

In accordance with the terms of the *BA/GTE Merger Order*, an independent auditor has verified in its report to the Commission that the obligations imposed under paragraph 39 of the merger conditions expired on March 24, 2003. *See* Letter from Deloitte & Touche LLP to Marlene H. Dortch, FCC, CC Docket 98-184 (FCC filed Oct. 17, 2003) (Exh. B); *see also BA/GTE Merger Order*, 15 FCC Rcd at 14328, App. D, ¶ 56(d) ("The independent auditor may verify [Verizon's] compliance with these Conditions through contacts with the [FCC], state commissions, or [CLECs]."); ¶ 56(e) ("The independent auditor's report shall be made publicly available."); ¶ 56(f). The auditor determined that it should test compliance with the condition in paragraph 39 only until March 24, 2003, after "conult[ation] with the Common Carrier bureau regarding . . . rule interpretation necessary to complete the audit." *Id.* ¶ 56(b). The auditor's conclusion on this score thus provides additional support for the conclusion that Verizon's obligations terminated with the denial of certiorari in *USTA I.*

**2.** In arguing that Paragraph 39 imposes continuing obligations, the CLECs ignore both prior Bureau and Commission precedent and the words of the *BA/GTE Merger Order.* Instead, they simply assert that Paragraph 39 means what it does not say. Thus, they claim that Paragraph 39 would expire as a result of "a final, non-appealable judicial determination that

particular UNE *could not be required under any circumstances consistent with federal law.*" Pet'n at 11 (FCC filed Sept. 9, 2004) (emphasis added). There is no language in Paragraph 39 that supports such a reading, though such a meaning could have been easily expressed. Paragraph 39 instead is triggered by a judicial determination that the UNE "is not required" not that "it could not be required under any circumstances." The two phrases mean something quite different.

Not only is the CLECs' reading inconsistent with the language of Paragraph 39, but it is also inconsistent with the evident purpose of the provision. Paragraph 39 was plainly intended to preserve the obligations imposed by two specific orders – the *UNE Remand Order* and the *Line Sharing Order* – pending conclusion of any litigation concerning the validity of those orders – as the Bureau recognized in the letter cited above. Accordingly, the only sensible reading of the phrase "that the UNE or combination of UNEs is not required to be provided" is to mean a determination that the two orders are invalid and impose no further obligation. *See Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705. The order of *vacatur* in *USTA I* was such a determination, and the denial of certiorari rendered that determination final and non-appealable.

Nor does Paragraph 316 of the *BA/GTE Merger Order* support the CLECs' argument. As an initial matter, it is Paragraph 39 of the conditions, not Paragraph 316 of the order, that contains the binding obligation. Paragraph 316 reflects the FCC's "summar[y] [of] the conditions" and does not set forth the terms of the conditions themselves. *BA/GTE Merger Order*, 15 FCC Rcd at 14145, ¶ 249; *see id.* ¶ 250 n.563 ("The specific conditions that we adopt in th[e] merger proceeding are set forth in Appendix D to this Order."). In analogous circumstances, the FCC has rejected the claim that the FCC's "attempt to describe, in summary fashion, the obligations imposed by the relevant portion of" a condition of a merger "function[s]

as an additional, independent Commission-imposed condition." Order, *Texas Networking, Inc.*, 16 FCC Rcd 17898, 17901, ¶ 7 (2001). Instead, the condition "itself must be looked to when determining its specific content." *Id.*[9]

In any event, the Commission did not there suggest that Paragraph 39 would continue to apply until all litigation concerning any Commission unbundling rules is concluded – a day that may not arrive so long as section 251(c)(3) remains in effect. Rather, the Commission closely paraphrased the requirements of Paragraph 39, noting that Verizon would be required to continue to make UNEs and UNE combinations available as "required under those orders, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory." *BA/GTE Merger Order*, 15 FCC Rcd at 14180, ¶ 316; *compare id.*, at 14316, App. D, ¶ 39 ("until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area").

As for the reference to "subsequent proceedings" in Paragraph 316, that does not in any way modify the type of "judicial decision" that would put an end to Verizon's obligations. Instead, that reference is apparently intended to refer to the maximum potential period of application of the condition – *i.e.*, the period after which the condition will become "null and void" irrespective of whether any judicial decision is issued that eliminates any of the obligations contained in the two orders. That is, the Commission acknowledged that even if the D.C. Circuit

[9] In *Texas Networking*, the FCC rejected the claim that its description of a condition the Federal Trade Commission ("FTC") imposed on the Time Warner-AOL merger expanded on the obligations imposed by the FTC. *See Texas Networking*, 16 FCC Rcd at 17901, ¶ 7. Although the circumstances differ in this regard, the same principle – that the conditions are the binding source of obligations, not any descriptions thereof – applies here.

had never vacated the *UNE Remand Order* and *Line Sharing Order*, a subsequent final and non-appealable *FCC* order on any subject within the scope of Paragraph 39 would put an end to the corresponding obligation under the merger conditions (whether the order eliminated the condition or not).

In fact, the Commission's insertion of the reference to "subsequent proceeding" is inconsistent with the language of the merger conditions themselves. Those conditions refer specifically to "the UNE Remand and Line Sharing proceedings" and *not* to any subsequent proceedings. In all events, the Commission need not address the issue, because the final and non-appealable decision in *USTA I* put an end to any obligation under Paragraph 39, irrespective of whether the condition is "null and void" because of the issuance of a final FCC order.

The CLECs likewise claim support from the Commission's observation that Paragraph 39 "only would have practical effect in the event that our rules adopted in the UNE Remand and Line Sharing proceedings are stayed or vacated." *Id.* at 14180, ¶ 316. But that observation is fully consistent with the plain terms of Paragraph 39: a stay of the Commission's orders would not be a "final and non-appealable judicial decision"; likewise, under Paragraph 39, a court of appeals' order of vacatur would take effect *not* with the issuance of the court's mandate but instead with denial of a petition for certiorari (or affirmance by the Supreme Court) – frequently a difference of several months or more than a year.

By contrast, the CLECs' reading of the merger conditions – which would freeze unbundling rules in place despite a court decision (or repeated such decisions) that they are unlawful and even if the Commission itself had refused to adopt such an unbundling obligation in subsequent orders – expands Paragraph 39 beyond any plausible bounds and tends to undermine the significance of the Commission's unbundling determinations in the *Triennial*

*Review Order*. If the CLECs were correct, then none of the Commission's determinations eliminating unbundling obligations – from line-sharing, to broadband, to enterprise switching – would have any effect in the large areas of the country where telephone companies affiliated with Verizon (and SBC) are the incumbent providers, until the Supreme Court denies the pending petitions for certiorari. Certainly nothing in the *Triennial Review Order* itself reflects any such limitation on the scope of the order; to the contrary any such reading would improperly trivialize the order and undermine the Commission's pro-competitive goals. *Cf. Triennial Review Order*, 18 FCC Rcd at 17388, ¶ 660 (condemning reading of the statute that would render "important market-opening provision of the Act" inapplicable to BOCs as "illogical"). As the Commission recognized, "delay in the implementation of the new rules we adopt in this Order will have an adverse impact on investment and sustainable competition in the telecommunications industry." *Id.* at 17405, ¶ 703. It is inconceivable that the Commission intended for the merger conditions to stand in the way of such competition.

**B. Paragraph 39 Has Sunset**

Even if the Supreme Court's denial of petitions for certiorari with respect to *USTA I* had not terminated the obligations imposed in Paragraph 39, those obligations would have terminated *in any event* a few months later. Like virtually all of the merger conditions, Paragraph 39 was to sunset as of June 30, 2003 – 36 months after the Bell Atlantic-GTE merger closed. The merger conditions contain a generally applicable sunset clause, which provides that, "[e]xcept where other termination *dates* are *specifically established* herein," "*all* Conditions . . . shall cease to be effective and shall no longer bind Bell Atlantic/GTE in any respect 36 months after the Merger Closing Date." *BA/GTE Merger Order*, 15 FCC Rcd at 14331, App. D, ¶ 64 (emphases added). While a handful of the merger conditions contain such "specific[]" sunset dates – for example,

the obligation to provide uniform systems in Pennsylvania and Virginia lasts for "*5 years* after the Merger Closing Date"[10] and the obligation for long-distance retail pricing lasts "36 months after Bell Atlantic *is authorized to provide interLATA services*"[11] – Paragraph 39 does not contain a specific date *after* the general sunset date. Instead, Paragraph 39 makes reference to a specific event that could — and, in fact, did — terminate Verizon's obligations under that paragraph *before* 36 months had elapsed.

In the text of the merger conditions, the Commission noted that "[u]nless specifically stated otherwise, it is intended that each of the Conditions will generate 36 months of benefit." *Id.* Paragraph 36 was intended to ensure that Verizon would continue to provide the UNEs required by the *UNE Remand* and the *Line Sharing* orders if, during the three year period of the conditions, those orders were stayed or vacated, until the judicial decision staying or vacating the rules became final and non-appealable. That 36 months of benefit has been fully realized, and the condition has lapsed.

The CLECs also claim support for their interpretation of Paragraph 39 from an FCC Enforcement Bureau decision involving the merger conditions applicable to *SBC*. The *SBC/Ameritech Merger Order*,[12] like the *BA/GTE Merger Order*, contained a sunset provision providing that nearly all of the merger conditions would sunset three years after the merger closing date (that is, on October 8, 2002). *See* 14 FCC at 15038, App. C, ¶ 74. One month

---

[10] *BA/GTE Merger Order*, 15 FCC Rcd at 14297, App. D, ¶ 19f (emphasis added).

[11] *Id.* at 14321, App. D, ¶ 49b (emphasis added). With the exception of New York, Verizon received authorization to provide long-distance service in every former Bell Atlantic state *after* the Merger Closing Date.

[12] Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, 14 FCC Rcd 14712 (1999), *vacated in part sub nom. Association of Communications Enters. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

before the sunset date, Z-Tel filed a petition seeking an FCC order extending the effective date of *all* of the merger conditions. The Enforcement Bureau *rejected* that request.[13] In a portion of the "Introduction and Background" section, the Bureau noted that "[s]ome of the conditions . . . are not subject to th[e] [sunset] date because the condition itself specifically establishes its own period of applicability." *SBC/Z-Tel Order*, 17 FCC Rcd at 19596, ¶ 3. In a footnote, the Bureau identified a handful of such conditions, including two on which the CLECs here rely: (1) Paragraph 56, which created shared transport obligations that have no analog in the Verizon merger conditions; and (2) Paragraph 53, which is roughly analogous to Paragraph 39 of the Verizon merger conditions. *See id.* ¶ 3 & n.7.

This footnote in the *SBC/Z-Tel Order* does not support the CLECs' claims here. The Bureau's description of these SBC merger conditions – appearing in the background section of the order – is *dicta*. This discussion was unnecessary to the Bureau's decision to *deny* Z-Tel's petition to extend the effective date of all the conditions. Moreover, no party – not Z-Tel, WorldCom, or SBC – briefed the question whether these conditions would remain in effect past the sunset date absent FCC or Bureau action,[14] and the Bureau provided no explanation for its description of the sunset provision. Regardless, they cannot control the specific language here.

---

[13] *See* Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, 17 FCC Rcd 19595, 19597, ¶ 4 (2002) ("*SBC/Z-Tel Order*").

[14] The Bureau, therefore, had no occasion to consider arguments, such as the one set forth above, that the exception to the sunset provision is limited to merger conditions that provide concrete dates after the 36-month sunset date.

## CONCLUSION

The Commission should declare that Verizon has no further obligation to provide access to UNEs under the *BA/GTE Merger Conditions*.

Respectfully submitted,

AARON M. PANNER
SCOTT H. ANGSTREICH
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036
(202) 326-7900

Of Counsel:

MICHAEL E. GLOVER
EDWARD SHAKIN
VERIZON
1515 North Courthouse Road Suite 500
Arlington, VA 22201-2909
(703) 351-3099

October 4, 2004

# EXHIBT A

Briefs and Other Related Documents

Only the Westlaw citation is currently available.

United States Court of Appeals, District of Columbia Circuit.

UNITED STATES TELECOM ASSOCIATION, Petitioner
v.
FEDERAL COMMUNICATIONS COMMISSION and United States of America, Respondents
BELL ATLANTIC TELEPHONE COMPANIES, et al., Intervenors
UNITED STATES TELECOM ASSOCIATION, Petitioner
v.
FEDERAL COMMUNICATIONS COMMISSION and United States of America, Respondents
AT & T CORPORATION, et al., Intervenors

**No. 00-1012.**

Sept. 4, 2002.

Before: EDWARDS and RANDOLPH, Circuit Judges, and WILLIAMS, Senior Circuit Judge.

ORDER

PER CURIAM.

*1 Upon consideration of intervenor WorldCom, Inc.'s, petition for rehearing or, in the alternative, for partial stay of the mandate, and the responses thereto, it is

ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the motion for partial stay of the mandate be granted. The vacatur of the Commission's orders is hereby stayed until January 2, 2003. *See In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Notice of Proposed Rulemaking, 16 F .C.C.R. 22781, 22818 at ¶ 81 (2001) (FCC is currently reviewing rules for triennial review that is to be completed in 2002).

The Clerk is directed to issue a partial mandate in No. 00-1012, et al. and in No. 00-1015, et al. in the normal course.

2002 WL 31039663 (D.C.Cir.)

Briefs and Other Related Documents (Back to top)

- 2004 WL 188752 (Appellate Brief) Corrected Petitioner's Reply Brief (Jan. 22, 2004)

- 2004 WL 121014 (Appellate Brief) Brief for Respondents (Jan. 16, 2004)Original Image of this Document (PDF)

- 2004 WL 121015 (Appellate Brief) Brief for ILEC Petitioners and Supporting Intervenor (Jan. 16, 2004)Original Image of this Document with Appendix (PDF)

- 2004 WL 121016 (Appellate Brief) Reply Brief for ILEC Petitioners and Supporting Intervenor (Jan. 16, 2004)Original Image of this Document (PDF)

- 2004 WL 121017 (Appellate Brief) Brief for ILEC Intervenors and Catena Networks, Inc. in Support of Respondents (Jan. 16, 2004)Original Image of this Document (PDF)

- 2004 WL 121018 (Appellate Brief) Brief of Wireless Intervenors on Behalf of Respondent AT&T Wireless Services, Inc., Nextel Communications, Inc., and T-Mobile USA, Inc. (Jan. 16, 2004)Original Image of this Document (PDF)

- 2004 WL 121019 (Appellate Brief) Opening Brief for State Petitioners and Intervenors (Jan. 16, 2004)Original Image of this Document with Appendix (PDF)

- 2004 WL 121011 (Appellate Brief) Brief for State Intervenors in Support of Respondents (Jan. 15,

Copr. © 2004 West. No Claim to Orig. U.S. Govt. Works.

2004)Original Image of this Document with Appendix (PDF)

• 2004 WL 121012 (Appellate Brief) Reply Brief of CLEC Petitioners and Intervenors in Support (Jan. 15, 2004)Original Image of this Document (PDF)

• 2004 WL 121013 (Appellate Brief) Final Initial Brief of Petitioner National Association of State Utility Consumer Advocates (Jan. 15, 2004)Original Image of this Document (PDF)

• 00-1012 (Docket) (Jan. 18, 2000)

END OF DOCUMENT

Copr. © 2004 West. No Claim to Orig. U.S. Govt. Works.

# EXHIBIT B

Deloitte & Touche LLP
Two World Financial Center
New York, NY 10281-1414

Tel: 212-436-2000
Fax: 212-436-5000
www.us.deloitte.com

Deloitte & Touche

October 17, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington, D.C. 20554

Dear Ms. Dortch:

**Re: Ex Parte:**
**In re: Application of GTE Corp. and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184**

The enclosed materials are being filed pursuant to Verizon Communications Inc.'s ("Verizon") obligations under Appendix D, Section XXII, Paragraph 56(e) of the above referenced docket to obtain independent examinations of its compliance with the merger conditions and its controls over compliance with the merger conditions. The accompanying material includes:

- Independent Accountants' Report on the Effectiveness of Internal Control Over Compliance with the Specified Merger Conditions, as defined
- Report of Management on the Effectiveness of Controls over Compliance with Merger Conditions II, III, VIII, IX, XIII, XIV, XV, and XX
- Independent Accountants' Report on Compliance with Specified Merger Conditions, as defined
- Report of Management on Compliance with Merger Conditions II, III, VIII, IX, XIII, XIV, XV, and XX

Please place a copy of the attached independent accountants' reports in the Ex Parte file of the above referenced proceeding.

Very truly yours,

Deloitte & Touche LLP

Enclosures

cc: Ms. M. Del Duca
Mr. H. Boyle
Mr. P. Young
Mr. J. Ward

Deloitte & Touche LLP
Two World Financial Center
New York, NY 10281-1414

Tel: 212-436-2000
Fax: 212-436-5000
www.us.deloitte.com

Deloitte & Touche

**INDEPENDENT ACCOUNTANTS' REPORT**

To the Board of Directors
Verizon Communications Inc.

We have examined the effectiveness of Verizon Communications Inc.'s (the "Company" or "Verizon") internal control over compliance with the following conditions set forth in Appendix D of the Federal Communications Commission's (the "FCC") Memorandum Opinion and Order in Common Carrier Docket No. 98-184[1] approving the Bell Atlantic/GTE Merger (the "Merger Order"):

> Condition II, *Discount Surrogate Line Sharing Charges*, Condition III, *Loop Conditioning Charges and Cost Studies*, Condition VIII, *Collocation, Unbundled Network Elements, and Line Sharing Compliance*, Condition XX, *NRIC Participation*, all of which terminated on June 30, 2003, except for the requirement to refund the non-recurring charge if Verizon misses the collocation due date by more than 60 calendar days, which terminated on August 30, 2003;
>
> Condition XIII, *Offering of UNEs*, which terminated on March 24, 2003;
>
> Condition XV, *Access to Cabling in Multi-Unit Properties*, which terminated on July 6, 2003; and
>
> Condition IX, *Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements*, and Condition XIV, *Alternative Dispute Resolution through Mediation*, both of which terminated on July 17, 2003

(the "Specified Merger Conditions"), for the period from January 1, 2003 through the respective date of termination referenced above, based on the criteria for effective internal control over compliance established in the Merger Order. We also examined management's assertion included in the accompanying Report of Management on the Effectiveness of Controls Over Compliance with Specified Merger Conditions. Verizon management is responsible for maintaining effective internal control over compliance with the Merger Conditions and its assertion thereon. Our responsibility is to express an opinion of the effectiveness of internal control over compliance with the Specified Merger Conditions based on our examination.

[1] *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000).

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included obtaining an understanding of the internal control over compliance with the Specified Merger Conditions, testing, and evaluating the design and operating effectiveness of the internal control and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

Because of inherent limitations in any internal control, misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the internal control over compliance with the Specified Merger Conditions to future periods are subject to the risk that the internal control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained effective internal control over compliance with the Specified Merger Conditions during the period from January 1, 2003 through the respective termination date for each condition referenced above based on the criteria established in the Merger Order.

This report is intended solely for the information and use of the management of the Company and the FCC and is not intended to be and should not be used by anyone other than these specified parties.

Deloitte & Touche LLP

October 17, 2003

Jeffrey Wm Ward
Senior Vice President
Regulatory Compliance

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
Phone 703.351.3160
Fax 703.351.3673
Jeffrey.W.Ward@verizon.com

**Report of Management on the Effectiveness of Controls over Compliance with Merger Conditions II, III, VIII, IX, XIII, XIV, XV, and XX**
October 17, 2003

Management of Verizon Communications Inc. ("Verizon" or the "Company[1]") is responsible for establishing and maintaining effective internal controls over the Company's compliance with the Conditions set forth in Appendix D (the "Merger Conditions") of the Federal Communications Commission's ("FCC's") Memorandum Opinion and Order in CC Docket No. 98-184 approving the Bell Atlantic/GTE Merger.[2] The internal controls

[1] The word "Company" or "Companies" used throughout this assertion refers to the Verizon telephone companies operating as incumbent local exchange carriers ("ILECs"), collectively as follows: Contel of Minnesota, Inc. d/b/a Verizon Minnesota, Contel of the South, Inc. d/b/a Verizon Mid-States, GTE Arkansas Incorporated d/b/a Verizon Arkansas, 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., provided that, with regard to the Micronesian Telecommunications Corporation, these assertions only apply to Merger Condition IV (see Merger Conditions, n.3). On July 1, 2002, July 31, 2002 and August 31, 2002, the Companies completed the sale of its wireline properties in Alabama, Kentucky and Missouri, respectively, and the Merger Conditions ceased to apply in those states.

[2] *Application GTE Corp, and Bell Atlantic Corp. for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000).

are designed to provide reasonable assurance to the Company's management and Board of Directors that the Company is in compliance with the Merger Conditions.

Management's assertions that follow relate to compliance with the Merger Conditions as follows:

> Condition XIII (Offering of UNEs), which sunset on March 24, 2003;
>
> Condition II (Discounted Surrogate Line Sharing Charges), Condition III (Loop Conditioning Charges and Cost Studies), and Condition XX (NRIC Participation), each of which sunset on June 30, 2003;
>
> Condition VIII (Collocation, Unbundled Network Elements and Line Sharing Compliance), sunset on June 30, 2003, except for the requirement to credit or refund non-recurring costs for collocation if the collocation due date is missed by more than 60 days, unless the Company can demonstrate that the miss was solely caused by equipment vendor delay beyond the Company's control. This requirement to credit or refund sunset August 30, 2003;
>
> Condition XV (Access to Cabling in Multi-Unit Properties), which sunset on July 6, 2003, 36 months after implementation; and,
>
> Condition IX (Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements) and Condition XIV (Alternative Dispute Resolution through Mediation), which sunset on July 17, 2003, 36 months after implementation.

These Conditions are collectively referred to as the "Specified Merger Conditions."

The Company's internal controls have been designed to comply with the Merger Conditions. There are inherent limitations in any control, including the possibility of human error and the circumvention or overriding of the internal controls. Accordingly, even effective internal controls can provide only reasonable assurance with respect to the achievement of the objectives of internal controls. Further, because of changes in conditions, the effectiveness of internal controls may vary over time.

The Company has determined that the objective of the internal controls with respect to compliance with the Specified Merger Conditions is to provide reasonable, but not absolute, assurance that compliance has been achieved.

**Report of Management on the Effectiveness of Controls over Compliance with Merger Conditions II, III, VIII, IX, XIII, XIV, XV, and XX**
October 17, 2003

The Company has assessed its internal controls over compliance with the Specified Merger Conditions. Based on this assessment, the Company asserts that during the period starting January 1, 2003, through the sunset dates as described above, its internal controls over compliance with the Specified Merger Conditions were effective in providing reasonable assurance that the Company has complied with the Specified Merger Conditions.

Verizon Communications Inc.

Jeffrey W. Ward

Senior Vice President Regulatory Compliance
October 17, 2003

Deloitte & Touche LLP
Two World Financial Center
New York, NY 10281-1414

Tel: 212-436-2000
Fax: 212-436-5000
www.us.deloitte.com

Deloitte & Touche

**INDEPENDENT ACCOUNTANTS' REPORT**

To the Board of Directors
Verizon Communications Inc.

We have examined Verizon Communications Inc.'s (the "Company" or "Verizon") compliance, during the period from January 1, 2003 through the respective termination date of each condition referenced below, with the following conditions set forth in Appendix D of the Federal Communications Commission's (the "FCC") Memorandum Opinion and Order in Common Carrier Docket No. 98-184[1] approving the Bell Atlantic/GTE Merger:

[1] Merger Conditions are set forth in Appendix D of the FCC's Order approving the Bell Atlantic/GTE Merger (*Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000). Condition VIII, *Collocation, Unbundled Network Elements, and Line Sharing Compliance*, of the Merger Conditions requires the Company to provide collocation consistent with the FCC's rules as defined in *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, (FCC 96-325) 11 FCC Rcd 15499 (1996) ("Local Competition Order"), *Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147*, First Report and Order (FCC 99-48), 14 FCC Rcd 4761 (1999) ("Advanced Services Order"), as modified by *GTE Services Corporation v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) ("GTE Services Corporation"), and as modified and expanded by *Deployment of Wireline Service Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Order on Reconsideration And Second Further Notice of Proposed Rulemaking in CC Docket 98-147 And Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98 (FCC 00-297), 15 FCC Rcd 17806 (2000), including collocation rules codified in 47 CFR Sections 51.321 and 51.323 as modified by the waiver granted to Verizon Communications Inc. in *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order (DA 00-2528) 16 FCC Rcd 3748 (2000) and as modified and expanded by *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order, (FCC 01-204) 16 FCC Rcd 15435 (2001) and *In the Matter of Verizon Communications Inc., Order and Consent Decree*, (DA 01-2079) 16 FCC Rcd 16270 (2001) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 99-147, (FCC 02-234), 17 FCC Rcd 16960 (2002). Condition VIII also requires the Company to provide unbundled network elements and line sharing consistent with the FCC's rules as defined in the Local Competition Order, *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth

Condition II, *Discount Surrogate Line Sharing Charges*, Condition III, *Loop Conditioning Charges and Cost Studies*, Condition VIII, *Collocation, Unbundled Network Elements, and Line Sharing Compliance*, Condition XX, *NRIC Participation*, all of which terminated on June 30, 2003, except for the requirement to refund the non-recurring charge if Verizon misses the collocation due date by more than 60 calendar days, which terminated on August 30, 2003;

Condition XIII, *Offering of UNEs*, which terminated on March 24, 2003;

Condition XV, *Access to Cabling in Multi-Unit Properties*, which terminated on July 6, 2003; and

Condition IX, *Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements*, and Condition XIV, *Alternative Dispute Resolution through Mediation*, both of which terminated on July 17, 2003, and

Providing the FCC with timely and accurate notices pursuant to specific notification requirements relating to such conditions,

(the "Specified Merger Conditions"). We also examined management's assertion included in the accompanying Report of Management on Compliance with the Specified Merger Conditions. Management is responsible for the Company's compliance with the Merger Conditions and its assertion thereon. Our responsibility is to express an opinion on the Company's compliance with the Specified Merger Conditions based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence about the Company's compliance with the Specified Merger Conditions and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Company's compliance with specified requirements.

In applying the provisions of Condition VIII, it is the Company's understanding that, under Title 47 Parts 51.321(h) of the Code of Federal Regulations, the Company satisfies its obligation by maintaining a publicly available Internet site indicating all central offices that are full. The Company's Internet site does not list other premises as "full" because the Company believes that the FCC has not established

---

Notice of Proposed Rulemaking, CC Docket No. 96-98, (FCC 99-238) 15 FCC Rcd 3696 (1999) ("UNE Remand Order") and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, (FCC 99-355) 14 FCC Rcd 20912 (1999) ("Line Sharing Order"), *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, (FCC 00-183) 15 FCC Rcd 9587 (2000) and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, 16 FCC Rcd 2101 (2001), including unbundled network elements and line sharing rules codified in 47 CFR Sections 51.230; 51.231; 51.232; 51.233; 51.305 (except (a)(4); 51.307; 51.309; 51.311(a)-(b) and (d)-(e); 51.313; 51.315; 51.317; and 51.319. Effective February 27, 2003, the rules adopted in the UNE Remand Order and the Line Sharing Order were vacated by the Court in *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied sub nom. WorldCom, Inc., AT&T Corp., and Covad Communications Company v. United States Telecom Assoc., et al.*, Case No. 02-858, 123 S. Ct. 1571 (Mar. 24, 2003).

minimum space requirements for collocation in premises other than central offices and that it cannot rule out potential means of collocation that are technically feasible in such premises. The FCC staff has been requested to provide their interpretation of this matter in a letter sent by prior independent accountants to the Assistant Chief, Investigations and Hearings Division of the Enforcement Bureau, of the FCC dated August 13, 2002. The Company's compliance with this specific collocation rule is primarily a legal determination, and as discussed above, we are unable to make a legal determination of the Company's compliance with this specific rule.

In applying the provisions of Condition VIII, the Company offers a standard interconnection agreement that contains a clause limiting the requesting carrier to leasing a maximum of 25% of the dark fiber in any given segment of the Company's network during any two-year period. The Company does not require CLECs to accept this clause, and any CLEC can adopt an agreement without such limitation under the "most favored nation" provisions of Merger Condition IX, *Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements.* Verizon has entered into several post-merger agreements that do not contain the 25% dark fiber limitation. The FCC staff has been requested to provide their interpretation of this matter in a letter sent by prior independent accountants to the Assistant Chief, Investigations and Hearings Division of the Enforcement Bureau, of the FCC dated May 9, 2002. The Company's compliance with this specific interconnection rule is primarily a legal determination, and as discussed above, we are unable to make a legal determination of the Company's compliance with this specific rule.

In our opinion, the Company complied, in all material respects, with the Specified Merger Conditions as interpreted above during the period from January 1, 2003 through the respective termination date for each condition referenced above and to provide the FCC with timely and accurate notices pursuant to specific notification requirements relating to the Specified Merger Conditions for such period.

This report is intended solely for the information and use of the management of the Company and the FCC and is not intended to be and should not be used by anyone other than these specified parties.

Deloitte & Touche LLP

October 17, 2003

**Jeffrey Wm Ward**
Senior Vice President
Regulatory Compliance

1515 North Courthouse Road, 3rd
Suite 500
Arlington, VA 22201
Phone 703.351.3160
Fax 703.351.3673
Jeffrey.W.Ward@verizon.com

**Report of Management on Compliance With Merger Conditions**
**II, III, VIII, IX, XIII, XIV, XV, and XX**
October 17, 2003

Management of Verizon Communications Inc. ("Verizon" or the "Company[1]") is responsible for ensuring that Verizon complies with the conditions set forth in Appendix D ("the Merger Conditions") of the Federal Communications Commission's ("FCC's") Memorandum Opinion and Order in CC Docket No. 98-184 approving the Bell Atlantic/GTE Merger.[2] Management's assertions that follow relate to compliance with the following conditions set forth in Appendix D:

Condition II (Discounted Surrogate Line Sharing Charges), Condition III (Loop Conditioning Charges and Cost Studies), Condition VIII (Collocation, Unbundled Network Elements and Line Sharing Compliance), Condition IX (Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements), Condition XIII (Offering of UNEs), Condition XIV (Alternative Dispute Resolution through Mediation), Condition XV (Access to Cabling in Multi-Unit Properties), and Condition XX (NRIC Participation) (the "Specified Merger Conditions".)[3]

---

[1] The word "Company" or "Companies" used throughout this assertion refers to the Verizon telephone companies operating as incumbent local exchange carriers ("ILECs"), collectively as follows: Contel of Minnesota, Inc. d/b/a Verizon Minnesota, Contel of the South, Inc. d/b/a Verizon Mid-States, GTE Arkansas Incorporated d/b/a Verizon Arkansas, 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., provided that, with regard to the Micronesian Telecommunications Corporation, these assertions only apply to Merger Condition IV (see Merger Conditions, n.3). On July 1, 2002, July 31, 2002 and August 31, 2002, the Companies completed the sale of its wireline properties in Alabama, Kentucky and Missouri, respectively, and the Merger Conditions ceased to apply in those states.

[2] *Application of GTE Corp, and Bell Atlantic Corp. for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000).

[3] This report does not address immaterial matters, including any immaterial matters that may be included in Verizon's Annual Compliance Report that will be filed with the FCC on March 15, 2004.

**Report of Management on Compliance With Merger Conditions**
**II, III, VIII, IX, XIII, XIV, XV, and XX**
October 17, 2003

Management has performed an evaluation of Verizon's compliance with the requirements of the Specified Merger Conditions for the time period during 2003 during which these Conditions were operative, as indicated in Management's assertions which follow (the "Evaluation Period"). Based on this evaluation, we assert that, during the Evaluation Period, Verizon has complied with all requirements of the Specified Merger Conditions in all material respects as described below. In addition, Verizon provides the following information regarding compliance with the Merger Conditions.

II. Discounted Surrogate Line Sharing Charges

No implementation was necessary given that the Company continued to offer line sharing in accordance with the FCC's line sharing rules.

This Condition sunset on June 30, 2003, 36 months after the merger close date.[4]

III. Loop Conditioning Charges and Cost Studies

The Company complied with the requirements of this Condition by continuing to make interim loop conditioning rates available in those states where permanent rates had not been approved by a state commission. These rates are subject to true-up once a state has approved the individual state-level cost studies, and true-ups were done as needed. Permanent rates for loop conditioning became effective in Oregon and in the former Bell Atlantic service area in Pennsylvania during the evaluation period. The Company did not charge for conditioning of eligible loops less than 12,000 feet to meet minimum requirements through the removal of load coils, excessive bridged taps or voice grade repeaters, and obtained telecommunication carrier authorization prior to proceeding with any conditioning that would result in charges to the telecommunications carrier.

This Condition sunset on June 30, 2003, 36 months after the merger close date.

VIII. Collocation, Unbundled Network Elements and Line Sharing Compliance

The Company complied with the requirements of this Condition in the following manner:

a. The Company complied with the FCC's Collocation, Unbundled Network Element and Line Sharing rules, and the final rules as amended through appropriate state tariff filings and interconnection agreement amendments.
b. Where applicable, the Company waived, credited or refunded non-recurring costs for collocation if the collocation due date was missed by more than 60 days, unless the Company could demonstrate that the miss was solely caused by equipment vendor delay beyond the Company's control.

[4] The merger close date was June 30, 2000.

c. In limited instances, Verizon's bills for Unbundled Network elements contained nominal errors, which are or will be corrected.

d. In limited instances, Verizon's collocation web site postings contained nominal errors, which have been corrected.

There are two open interpretive issues relative to this Condition, for which the auditor has requested FCC Staff interpretation, as follows:

a. UNE/line sharing – the 2001 PricewaterhouseCoopers audit noted that the Company's standard proposed interconnection agreement contains a clause limiting the requesting carrier to leasing a maximum of 25% of the dark fiber in any given segment of the Company's network during any two-year period. The audit report found that Verizon uses this "model" agreement as the starting point for negotiations, and no CLEC was required to accept it. If Verizon and the CLEC voluntarily agreed to this provision, Section 252(a)(1) allows them to do so notwithstanding the Commission's requirements under Section 251(c). Moreover, any CLEC could adopt an agreement without such a limitation under the "most favored nations" provisions of the Merger Order, as the audit report found that Verizon had voluntarily entered into several post-merger agreements that did not contain this 25% dark fiber limitation. PricewaterhouseCoopers requested the FCC Staff to provide its interpretation on the matter in a letter dated May 9, 2002. No such interpretation has been received as of the date of this report.

b. Collocation – the 2001 PricewaterhouseCoopers audit noted that the Company's publicly available Internet site only lists central offices as "full," but does not list other premises. The Company believes that the FCC has not established minimum space requirements for collocation in premises other than central offices and that it cannot rule out potential means of collocation that are technically feasible in such premises. PricewaterhouseCoopers requested the FCC Staff to provide its interpretation on the matter in a letter dated August 13, 2002. No such interpretation has been received as of the date of this report.

This Condition sunset on June 30, 2003, 36 months after merger close, except for the requirement to credit or refund non-recurring costs for collocation if the collocation due date is missed by more than 60 days, unless the Company can demonstrate that the miss was solely caused by equipment vendor delay beyond the Company's control, which sunset August 30, 2003.

IX. Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements

The Company complied with the requirements of this Condition by making available to requesting telecommunications carriers in the former Bell Atlantic and GTE service areas interconnection arrangements, unbundled network elements or provisions of an

interconnection agreement (including an entire agreement) subject to 47 U.S.C. 251(c) and Paragraph 39 of the Merger Conditions as follows:

a. Out-of-Region – as of July 17, 2003, Verizon had not received any CLEC requests for Verizon affiliate Out-of-Region MFN arrangements. In addition, through July 17, 2003, Verizon, when acting outside its incumbent service area, did not specifically request and obtain any interconnection arrangements or UNEs from an incumbent LEC that were not previously made available by the non-Verizon incumbent.

b. In-region, post merger – subject to the requirements of the Merger Conditions, and as described in paragraph e below, the Company made available any in-region interconnection arrangement or unbundled network element that was voluntarily negotiated by the Company with a requesting telecommunications carrier after the Merger Close Date.

c. In-region, pre-merger – subject to the requirements of the Merger Conditions, the Company made available any in-region interconnection arrangement or unbundled network element that was voluntarily negotiated by Bell Atlantic or GTE with a requesting carrier prior to the merger, but limited to the states within the same pre-merger Bell Atlantic or GTE serving areas, respectively.

   These offers were on the same terms exclusive of price and state-specific performance measures.

   Where a competing carrier seeks to adopt, in an in-region Company service area, any agreements, provisions or unbundled network elements that resulted from an arbitration arising in another Verizon service area after the merger closing date, the Merger Conditions require the Company to allow other parties to submit the arbitrated agreements, provisions or unbundled network elements to immediate arbitration in the "importing" state without waiting for the statutory negotiation period of 135 days to expire, where the state consented to conducting arbitration immediately. During November 2002, two requests were received to obtain immediate arbitration. These requests were withdrawn on June 13, 2003.

d. Each Verizon Out-of-Region local exchange affiliate posted on the Verizon website agreements entered into with non-affiliated incumbent local exchange carriers.

e. In applying the provisions of Condition IX, the FCC found that a CLEC had the right in certain circumstances to adopt in one state an entire interconnection agreement that Verizon had entered into in another state, including a provision governing compensation for Internet-bound traffic (Global NAPs. Inc. v. Verizon Communications et. al, 17 FCC Rcd 4031, ¶ 12 (2002)). The FCC also found that "only the relevant state commission may ultimately decide whether particular terms of the agreement should be adopted in that state, and if so, what those terms mean" (id. at ¶ 19). The FCC decision said it expected Verizon and the CLEC to submit the Rhode Island agreement, including the provision relating to compensation for Internet-bound traffic if the CLEC so chose, to the Virginia and Massachusetts

commissions for approval, pursuant to section 252 (e)(1) of the Act (id at ¶ 20). Pursuant to the FCC's order, Verizon submitted the Rhode Island agreement to the Virginia State Corporation Commission and to the Massachusetts Department of Telecommunications and Energy under cover letters dated April 18, 2002 and March 26, 2002, respectively. The letters also explained that a provision of the agreement concerning compensation for Internet-bound traffic was not consistent with the law and regulatory policies of the respective states. In an order issued on April 18, 2003, the Virginia State Corporation Commission declined to approve the Rhode Island agreement or to interpret it. The Massachusetts Department of Telecommunications and Energy issued a decision on June 24, 2002, approving the Rhode Island agreement, but interpreting it to deny the CLEC compensation for Internet-bound traffic.

This Condition sunset on July 17, 2003, 36 months after implementation.

## XIII. Offering of UNEs

Verizon continued to make available the UNEs and UNE combinations required in the FCC's UNE and line sharing orders as described in Condition VIII (Collocation, Unbundled Networks Elements and Line Sharing Compliance).

The *UNE Remand Order* and *Line Sharing Order* were vacated effective February 27, 2003, when the Court of Appeals issued its mandate. This invoked Verizon's obligation under Condition XIII to continue to make available UNEs and UNE combinations required by those orders until the orders became final and non-appealable. Verizon continued to make available the UNEs and UNE combinations required in the FCC's UNE and line sharing orders as described in Condition VIII (Collocation, Unbundled Networks Elements and Line Sharing Compliance). The orders became final and non-appealable on March 24, 2003, when the Supreme Court denied certiorari. Verizon's obligation to continue to make available UNEs and UNE combinations under Condition XIII terminated on that date.

This Condition sunset on March 24, 2003.

## XIV. Alternative Dispute Resolution through Mediation

The Company complied with the requirements of this Condition by providing, subject to state commission approval and participation, an alternative dispute resolution mediation process to resolve carrier-to-carrier disputes regarding the provision of local services, including disputes relating to interconnection agreements. The Company kept the alternative dispute resolution process posted on its Internet websites. As of July 17, 2003, Verizon received no formal Alternative Dispute Resolution mediation requests.

This Condition sunset on July 17, 2003, 36 months after implementation.

## XV. Access to Cabling in Multi-Unit Properties

The Company complied with the requirements of this Condition in the following manner:

The Company made available the model interconnection agreements that provide CLECs with access to or interconnection with house and riser cabling controlled by Verizon in multi-dwelling units and multi-tenant units through July 6, 2003.

Where appropriate and consistent with state law and regulation, Verizon offered owners and developers of multi-tenant properties, in writing, the option to install a single point of interconnection at a minimum point of entry when the property owner or other party owns or maintains the cabling beyond the single point of interconnection. Verizon installed new cables in a manner to provide telecom carriers a single point of interconnection, where Verizon had the right to do so without consent of another party. Verizon also provided written notice for multi-tenant property owners that Verizon will install and provide new cables that permit a single point of interconnection in states where the demarcation point is not already at a minimum point of entry.

This Condition sunset on July 6, 2003, 36 months after implementation.

## XX. NRIC Participation

The Company complied with requirements of this Condition by continuing to participate in the Network Reliability and Interoperability Council (NRIC) VI meetings.

This Condition sunset on June 30, 2003, 36 months after the merger close date.

Verizon Communications Inc.

Jeffrey W. Ward

Jeffrey W. Ward

Senior Vice President Regulatory Compliance
October 17, 2003