December 11, 2006

VIA ECFS

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

Re: WC Docket Nos. 06-74, 06-172, 05-281

Dear Ms. Dortch:

On December 8, 2006, Martin W. Clift, Vice President Regulatory Affairs, Cavalier Telephone, LLC, Russell M. Blau of this firm, and the undersigned met with: Scott Deutchman, Office of Commissioner Michael J. Copps; Scott Bergmann, Office of Commissioner Jonathan S. Adelstein; and Ian Dillner, Office of Commissioner Deborah Taylor Tate concerning issues in the above captioned proceedings. We presented the views set forth in the attached document which was provided at the meetings.

Sincerely,

/s/

Patrick J. Donovan
Bingham McCutchen LLP
3000 K Street, NW Suite 300
Washington, DC 20007
(202) 424-7500
Cavalier Telephone & IPTV

Overview

- **Headquarters**: Richmond, VA
- **Full Facilities based CLEC**: Bundled residential and business offerings, including Broadband and IPTV
- **Service Areas**: Mid-Atlantic Areas of VA, MD, PA DE, NJ, and DC
- **Talk America Acquisition**: December 2006, Expanding footprint to Midwest/Southeast U.S.
  - Residential Access Lines – 470,000
  - Business Access Lines – 370,000
  - DSL Access Lines – 65,000
- **Combined Company Revenues**: $770 million
Cavalier IPTV

• Full Fledged Cable TV Offering
  – 150 Video and Audio Channels – Value Package
  – Premium and Specialty Packages Optional
  – Video on Demand
  – Interactive Program Guide
  – On-Screen Caller ID
  – 100% Digital Quality

• Delivery Medium – MPEG 4 over DSL Loops
Competition Leads to Price Savings

Price Comparison

<table>
<thead>
<tr>
<th>Service</th>
<th>Competition</th>
<th>Cavalier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone</td>
<td>$39.45</td>
<td>$39.95</td>
</tr>
<tr>
<td>Cable Broadband</td>
<td>$42.95</td>
<td>$42.95</td>
</tr>
<tr>
<td>Cable Television</td>
<td>$63.64</td>
<td>$59.95</td>
</tr>
<tr>
<td>Total</td>
<td>$146.04</td>
<td>$95.95</td>
</tr>
<tr>
<td>Savings</td>
<td>$50.09</td>
<td>$50.09</td>
</tr>
</tbody>
</table>

Annualized savings of over $600!

*Comcast Digital Classic service, 2 set top boxes (Richmond, VA)
** Verizon Virginia – unlimited local with 3 top calling features
Cavalier IPTV Market Areas

- **Richmond, VA** – July ’06
  - 1400 customers
- **Williamsburg, VA** – October ’06
- **All Other Market Areas** – Within 24 months
Cavalier’s Critical Need

- Continued Availability of Unbundled COPPER Loops
- Overarching Concern Loss of Loops Through
  - Copper Retirements
  - Forbearance
Verizon Forbearance – Consumers At Risk

• Innovative Suppliers Like Cavalier Face Extinction
  – Broadband DSL, IPTV, T1’s, Bundles/Packages, Unlimited LD
  – Lack of market creativity
  – Price increases for basic services

• America’s Copper Telephone Network Will Be Scuttled
Copper Retirements

- **ILEC Notices** - 47 CFR 51.325-335
- **Short Objection Period** - 9 days
- **Deemed Granted within 90 days** – Unless FCC Takes Affirmative Action
- **Hunt and Seek - ILEC Links:**
Report No. NCD-1352

Re: NETWORK CHANGE CERTIFICATION RECEIVED

BellSouth, an incumbent local exchange carrier (LEC), has filed certification that public notice of network change has been provided through its publicly accessible Internet site, as required by section 51.329(a) of the rules of the Federal Communications Commission (FCC). See 47 C.F.R. § 51.329(a). Specific network change information can be obtained on the Internet at: http://interconnection.bellsouth.com/

The incumbent LEC's certification refers to the changes shown below.

<table>
<thead>
<tr>
<th>Number</th>
<th>Type of Change</th>
<th>Location of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>20060159</td>
<td>Replace Copper Facilities with Fiber Optic Cable and Digital Loop Carrier Systems</td>
<td>Greer, SC</td>
</tr>
<tr>
<td>20060160</td>
<td>Replace Copper Facilities with Fiber Optic Cable and Digital Loop Carrier Systems</td>
<td>Clover, SC</td>
</tr>
</tbody>
</table>

The network change identified herein shall not be implemented within six months of the date it was filed with the Commission. See 47 C.F.R. § 51.331.

Incumbent LEC contact:
Steven D. Long
Assistant Manager/Federal Regulatory
BellSouth D.C., Inc.
1133-21st Street, N.W., Suite 900
Washington, DC 20036-3351
Phone: (202) 463-4107

The original filing is available for inspection and copying at the FCC Public Reference Room, Portals II, 445 12th Street, S.W., Suite CY-A257, Washington, DC 20554.
For further information, contact Carnell Weathers, (202) 418-2325 (voice), or carnell.weathers@fcc.gov (email), of the Competition Policy Division, Wireline Competition Bureau. The TTY number is (202) 418-0484.

-FCC-
Public Notice of Network Change Under Rule 51.329(a)

Replacing Copper Feeder Facilities with Fiber Optic Cable
And Digital Loop Carrier Systems in Christiansburg, Virginia

July 24, 2006

Carrier: Verizon Virginia Inc. ("Verizon"), 600 East Main Street, Richmond, VA 23219.

Contact: For additional information on these planned network changes, please contact:

Rosemarie Clayton
Product Manager
Verizon Partner Solutions
1310 N. Court House Road
Arlington, VA 22201
703-974-4605

Implementation Date of the Planned Network Changes: January 24, 2007.

Location at which the Planned Network Changes will occur: Verizon's Central Office (CRBGVACB) and Verizon's Remote Terminal (CRBGVAU0069), both located in Christiansburg, Virginia.

Description of the Planned Network Changes: Verizon will replace copper (metallic) feeder facilities with fiber optic cable and Digital Loop Carrier ("DLC") systems.

Description of Reasonably Foreseeable Impact of the Planned Network Changes: After the planned network changes are implemented, there will be no copper (metallic) loop facilities between Verizon's Christiansburg Central Office and customer premises in the affected area. Copper (metallic) sub-loop facilities will remain in place between Verizon's Remote Terminal and customer premises in the affected area. The attachment to this letter identifies the customer premises affected by the planned network changes.
The following loop types will be transferred to new DLC systems:

- 2-Wire Analog Voice Grade Loop
- 4-Wire Analog Voice Grade Loop
- 2-Wire ISDN Digital Grade Loop
- 4-Wire 56 kbps Loop
- DS1 Loop

The following loop types will no longer be available from Verizon's Christiansburg Central Office to customer premises in the affected area:

- 2-Wire ADSL - Compatible Loop
- 2-Wire HDSL - Compatible Loop
- 4-Wire HDSL - Compatible Loop
- 2-Wire IDSL - Compatible Metallic Loop
- 2-Wire SDSL - Compatible Loop
- 2-Wire Digital Designed Metallic Loop

Any such xDSL or metallic loops that are in service on the Implementation Date will be disconnected by Verizon.

Attachment
Below is a list of addresses at which xDSL and metallic loops will no longer be available after the replacement of copper feeder facilities with fiber optic cable and Digital Loop Carrier systems between Verizon's Christiansburg Central Office (CRBGVACB) and Verizon's Remote Terminal (CRBGVAU0069).

<table>
<thead>
<tr>
<th>STREET</th>
<th>ADDRESS RANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank St NE</td>
<td>530</td>
</tr>
<tr>
<td>Block Ln NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Blossom Rd</td>
<td>Entire street</td>
</tr>
<tr>
<td>Brown St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Cambria St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Central Av NE</td>
<td>100</td>
</tr>
<tr>
<td>Church St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Craig Mountain Rd</td>
<td>450-550</td>
</tr>
<tr>
<td>Cross St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Dabney Rd</td>
<td>Entire street</td>
</tr>
<tr>
<td>Ellett Rd</td>
<td>Entire street</td>
</tr>
<tr>
<td>Ellett Rd NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Fork St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Fralin Aly NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Garnett Dr NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Gobblers Spur NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Hillside Dr</td>
<td>Entire street</td>
</tr>
<tr>
<td>Huckleberry St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Jackson St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>King St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Lee St NE</td>
<td>1590-1610</td>
</tr>
<tr>
<td>Logenberry Ln</td>
<td>921-975</td>
</tr>
<tr>
<td>Lucas St NE</td>
<td>320-360</td>
</tr>
<tr>
<td>Montgomery St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Murray St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>N Franklin St</td>
<td>1601-1695</td>
</tr>
<tr>
<td>Newcomb St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Orchard St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Pickett St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Pike Ln</td>
<td>447-485</td>
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<tr>
<td>Plum St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Pollard Rd</td>
<td>925-1105</td>
</tr>
<tr>
<td>Progress St NE</td>
<td>640-670</td>
</tr>
<tr>
<td>Ridgeway Dr</td>
<td>Entire street</td>
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<tr>
<td>Rigby St NE</td>
<td>Entire street</td>
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<tr>
<td>Sumac Rd</td>
<td>Entire street</td>
</tr>
<tr>
<td>Swallow Ln</td>
<td>670-680</td>
</tr>
<tr>
<td>Talon Ln</td>
<td>Entire street</td>
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<tr>
<td>Thelma Ln NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Trent Dr NE</td>
<td>725-765</td>
</tr>
<tr>
<td>Tyler St NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Wakeman Ct NE</td>
<td>Entire street</td>
</tr>
<tr>
<td>Wilson St NE</td>
<td>940-945</td>
</tr>
<tr>
<td>Woodrow Rd</td>
<td>Entire street</td>
</tr>
<tr>
<td>Yellow Sulphur Rd NE</td>
<td>1700-1705</td>
</tr>
</tbody>
</table>
LETTER TO FCC
Re:  Ex Parte – WC Docket No. 06-74,
In the Matter of AT&T Inc. and
Bell South Corporation
Applications for Transfer of Control

dated November 14, 2006
(attached)
November 14, 2006

VIA ECFS

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

Re: Ex Parte - WC Docket No. 06-74, In the Matter of AT&T Inc. and
Bell South Corporation Applications for Transfer of Control

Dear Ms. Dortch:

Access Point, Inc., ACN Communications Services, Inc., Cavalier Telephone, LLC, DeltaCom, Inc., Florida Digital Network, Inc. d/b/a FDN Communications, Inc., Globalcom Communications, Inc., Lightyear Network Solutions, Inc., McLeodUSA Telecommunications Services, Inc., and Pac-West Telecomm, Inc. (collectively “CLECs”), by their undersigned counsel, urge the Commission to adopt the condition proposed by COMPTEL that would prohibit AT&T and BellSouth from retiring copper loops.1 CLECs support all of the conditions proposed by COMPTEL, but in this letter focus on this proposed condition.

It is not costly or burdensome for ILECs to maintain copper plant. The Commission’s rules specifically provide that ILECs “need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals” prior to receiving a request from a CLEC for unbundled access.2 In fact, it is more expensive for BOCs to take affirmative steps to retire copper than to leave it in place. And, BOCs will be fully compensated for their unused copper if they provide unbundled access to it because prices are cost-based and include a reasonable profit.3 Therefore, the proposed condition would not burden or inconvenience ILECs.

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1 Comments of COMPTEL, WC Docket No. 06-74, filed October 25, 2006, pp 23-25.
2 47 C.F.R. § 51.319(a)(iii)(B).
On the other hand, while not imposing any burdens on BOCs, copper loop retirement is harmful to the public interest. First, legacy copper plant can be a platform for a “third wire” into the home. The Commission has sought to promote facilities-based, robust competition in provision of broadband. A third provider of wired broadband would meet the Commission’s goals by breaking the wired duopoly otherwise possessed by ILECs and cable operators. Ripping out legacy copper would thwart this very beneficial potential competitive development. Second, consumers have already paid for the legacy copper plant. The legacy network is immensely valuable not only in terms of billions of dollars of investment but because it can be used to provide numerous beneficial new services. It would be very harmful and pointless to permit ILECs to destroy this plant for any reason, but in particular just to thwart competition to their own fiber-based network.

Unfortunately, as pointed out by competitive carriers in this proceeding, AT&T and BellSouth have incentives to harm competition by retiring copper loops:

The record demonstrates that the proposed merger [between AT&T and Bell South] poses a substantial risk to competition because ... the Applicants will have an enhanced incentive and ability to discriminate against competitors. This discrimination could take the form of decommissioning the critical copper loop plant that competitive carriers rely upon for “last mile” access to their customers. As Applicants convert their loop plant and install more fiber, the Applicants may decommission or even remove the copper plant. Competition requires that last mile copper be available so that competitors can reach customers and ensure that

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consumers have a selection of competitive wireline providers and services.\(^5\)

There is a very serious risk that ILECs will act on their incentive and ability to harm competition by stepping up the pace of copper retirement. Technical developments are continually improving the utility of copper for provision of advanced services.\(^6\) Far from becoming obsolete, copper loops are a practical and economical way of providing voice, Internet access, and video programming to consumers comparable to what ILECs can provide over fiber.

In fact, CLECs are beginning to use legacy copper to provide advanced broadband services, including video.\(^7\) CLECs using copper loops are able to provide advanced and video services on an economical basis without significant and unnecessary expenditures in FTTH. Even some ILECs are providing the "triple play" over copper.\(^8\)

These developments increase BOC incentives to retire copper. BOCs heavy expenditures on fiber loops enhances their incentives to assure that CLECs cannot provide competing services using legacy copper. Retirement of copper is an effective way for BOCs to thwart intramodal competition.

The Commission’s rules, however, do not currently provide adequate protection against discriminatory retirement of copper loops by ILECs. When an ILEC overbuilds with fiber it is required to maintain the existing copper loop connected to the customer premises and provide nondiscriminatory access to it on an unbundled basis, unless the ILEC retires the copper loop pursuant to the

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\(^8\) SureWest Launches IP-Video Over Copper, Telephony Online, http://telephonyonline.com/broadband/web/telecom_surewest_launches_ipvideo/
Commission’s network disclosure rules. Network disclosure, however, does not necessarily by itself preclude copper loop retirement. The Commission contemplates that “[u]nless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under our rules...” oppositions to the network disclosure will be denied unless the Commission within 90 days determines otherwise. The ILEC must additionally comply with any applicable state requirements, but no state to CLECs’ knowledge has adequate or any rules in place addressing copper loop retirement. In fact, BellSouth files retirement notices on a regular and increasingly frequent basis, particularly concerning the feeder portion of the loop.

At the present time, therefore, AT&T and BellSouth have insufficient constraints on their ability to act on their anticompetitive motivations to engage in the senseless and wasteful retirement of billions of dollars of investment in legacy plant in order to prevent this from becoming a third broadband wired platform into the home. The merger will increase their incentives to do so in particular by permitting BellSouth’s aggressive loop retirement policies to become the norm in the merged company.

A condition that prevents retirement of copper is also fully consistent with the extensive broadband unbundling relief that the Commission has granted to BOCs. The Commission has limited or foreclosed unbundling obligations under both Sections 251 and 271 for broadband network elements. The Commission has already provided BOCs all the broadband relief possibly required in order to provide incentives for them to invest in broadband networks. The Commission

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10 TRO para 282. The revised network disclosure rules adopted in the TRO do not apply to retirement of copper feeder plant. Id. n. 829.
11 47 C.F.R. § 51.319(a)(3)(iv)(A) and (B).
12 See e.g., Revised Notice of Network Change - Vero Beach, Florida Replacing Copper Facilities with Fiber and Digital Loop Carrier Systems, Notification No. ND20060057, November 6, 2006; Notice of Network Change --Oakdale, LA, Replacing Copper Facilities with Fiber and Digital Loop Carrier Systems, Notification No. ND20060162, November 2, 2006.
has even gone so far as to determine that CLECs and ILECs have comparable incentives and face similar barriers in deploying fiber.\textsuperscript{14} Thus, under the “new investment, new rules” mantra of the BOCs, there is no basis for permitting ILECs to foreclose unbundled access to legacy plant through unnecessary copper loop retirement.\textsuperscript{15}

Accordingly, CLECs strongly reiterate that as a condition on any approval of the merger, the Commission should prohibit the merged entity from decommissioning, retiring, or otherwise making copper loops and subloops as defined in the Commission’s rules,\textsuperscript{16} including copper feeder plant, unavailable for unbundled access pursuant to Section 251(c)(3) of the Act. Any such

\begin{footnotes}
\item[14] *TRO*, para. 275.
\item[16] 47 C.F.R. § 51.319(a), 51.319(b)(1).
\end{footnotes}
condition must be enforceable. CLECs strongly support the COMPTEL proposal on this issue.¹⁷ This is an uncomplicated and relatively costless safeguard that would preserve this vital source of competition in the marketplace.

Respectfully submitted,

Andrew D. Lipman
Eric J. Branfman
Patrick J. Donovan
Bingham McCutchen LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
(202) 424-7500

Counsel for
Access Point, Inc.
ACN Communications Services, Inc.
DeltaCom, Inc.
Florida Digital Network, Inc.
    d/b/a FDN Communications
Globalcom Communications, Inc.
Lightyear Network Solutions, Inc.
McLeodUSA Telecommunications Services, Inc.
Pac-West Telecomm, Inc.

cc:    Michelle Carey
      Scott Deutchman
      Scott Bergmann
      Ian Dillner
      Tom Navin

¹⁷ Comments of COMPTEL, WC Docket No. 06-74, filed October 25, 2006, p. 25.
Recommendations

• Rule on the Motions to Dismiss Before Moving Forward in Forbearance Case
• Support for AT&T/Bell South Merger Condition Not to Retire Copper Plant
• Establish a NPRM to Revise Retirement Rules
  – Improve notice process
  – Additional time for objection
  – Not automatic approval, if objected