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December 11, 2006

VIA ECFS

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

Bingham McCutchen LLP
Suite 300
3000 K Street NW
Washington, DC
20007-5116

202.424.7500
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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
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Federal Communication Commission Access to Copper Facilities



Martin W. Clift, Jr.
Vice President, Regulatory Affairs
December 8, 2006

PICTURE OFF TIMER STANDBY POWER

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

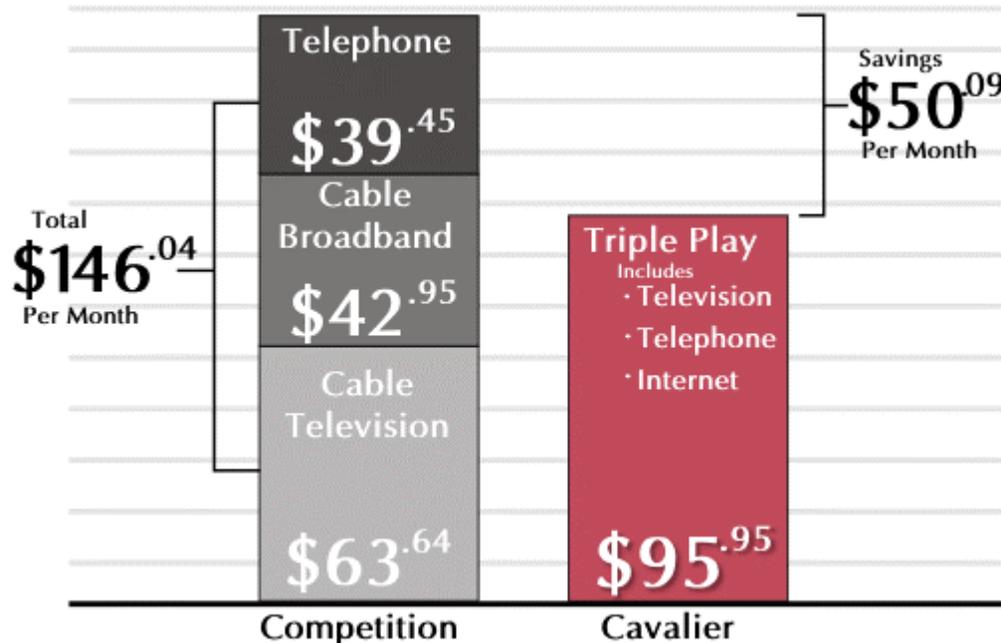
- **Full Fledged Cable TV Offering**
 - 150 Video and Audio Channels – Value Package
 - Premium and Specialty Packages Optional
 - Video on Demand
 - Interactive Program Guide
 - On-Screen Caller ID
 - 100% Digital Quality
- **Delivery Medium – MPEG 4 over DSL Loops**



PICTURE OFF TIMER STANDBY POWER

Competition Leads to Price Savings

Price Comparison



Annualized savings of over \$600!

*Comcast Digital Classic service, 2 set top boxes (Richmond, VA)

** Verizon Virginia – unlimited local with 3 top calling features



PICTURE OFF TUNE STANDBY POWER

Cavalier IPTV Market Areas

- **Richmond, VA** – July '06
– 1400 customers
- **Williamsburg, VA** – October '06
- **All Other Market Areas** – Within 24 months



PICTURE OFF TUNE STANDBY POWER

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:
 - http://www.interconnection.bellsouth.com/alerts_and_notifications/network/network_disclosures/index.html
(Bell South – Report NCD-1352 attached)
 - http://www22.verizon.com/regulatory/reg_ntw_dscl.html
(Verizon – July 24, 2006 Public Notice attached)
 - <http://www.sbc.com/gen/public-affairs?pid=3137> (AT&T)





PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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WIRELINE COMPETITION BUREAU NETWORK CHANGE NOTIFICATION FILED BY BELLSOUTH

Report No. NCD-1352

November 29, 2006

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.

Number	Type of Change	Location of Change
20060159	Replace Copper Facilities with Fiber Optic Cable and Digital Loop Carrier Systems	Greer, SC
20060160	Replace Copper Facilities with Fiber Optic Cable and Digital Loop Carrier Systems	Clover, SC

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 Carmell Weathers, (202) 418-2325 (voice), or carmell.weathers@fcc.gov (email), of the Competition Policy Division, Wireline Competition Bureau. The TTY number is (202) 418-0484.

-FCC-



Verizon
600 Hidden Ridge
Irving, TX 75038-3897

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

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).

STREET	ADDRESS RANGE
Bank St NE	530
Block Ln NE	Entire street
Blossom Rd	Entire street
Brown St NE	Entire street
Cambria St NE	Entire street
Central Av NE	100
Church St NE	Entire street
Craigs Mountain Rd	450-550
Cross St NE	Entire street
Dabney Rd	Entire street
Ellett Rd	Entire street
Ellett Rd NE	Entire street
Fork St NE	Entire street
Fralin Aly NE	Entire street
Garnett Dr NE	Entire street
Gobblers Spur NE	Entire street
Hillside Dr	Entire street
Huckleberry St NE	Entire street
Jackson St NE	Entire street
King St NE	Entire street
Lee St NE	1590-1610
Logenberry Ln	921-975
Lucas St NE	320-360
Montgomery St NE	Entire street
Murray St NE	Entire street
N Franklin St	1601-1695
Newcomb St NE	Entire street
Orchard St NE	Entire street
Pickett St NE	Entire street
Pike Ln	447-485
Plum St NE	Entire street
Pollard Rd	925-1105
Progress St NE	640-670
Ridgeway Dr	Entire street
Rigby St NE	Entire street
Sumac Rd	Entire street
Swallow Ln	670-680
Talon Ln	Entire street
Thelma Ln NE	Entire street
Trent Dr NE	725-765
Tyler St NE	Entire street
Wakeman Ct NE	Entire street
Wilson St NE	940-945
Woodrow Rd	Entire street
Yellow Sulphur Rd NE	1700-1705

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)



PICTURE OFF TIMER STANDBY POWER

November 14, 2006

VIA ECFS

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San Francisco
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Tokyo
Walnut Creek
Washington

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 COMPTTEL that would prohibit AT&T and BellSouth from retiring copper loops.¹ CLECs support all of the conditions proposed by COMPTTEL, 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.

¹ Comments of COMPTTEL, WC Docket No. 06-74, filed October 25, 2006, pp 23-25.

² 47 C.F.R. § 51.319(a)(iii)(B).

³ 47 U.S.C. § 252(d)(1).

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.⁴ 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

⁴ See e.g. *Review of § 251 Unbundling Obligations of Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (“TRO”), paras. 22, 70, 242; *Unbundled Access to Network Elements, Review of the § 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 F.C.C.R. 2533 (2005), *aff’d*, *Covad Commc’ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006) (“TRRO”) ¶¶ 2, 52, 65.

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.

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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

⁵ Comments of Access Point, Inc., ACN Communications Services, Inc., 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., WC Docket No. 06-74, filed October 25, 2006, p. 6.

⁶ *The Story of 10 Gigabit Over Copper*, Network World, <http://www.networkworld.com/newsletters/lans/2006/08211an1.html>

⁷ *Richmond, Virginia To Be the First in the Nation to Receive Revolutionary Broadband Technology*, Cavalier Telephone Press Release, May 22, 2006, http://www.cavtel.com/company/press/2006_5_22.shtml

⁸ *SureWest Launches IP-Video Over Copper*, Telephony Online, http://telephonyonline.com/broadband/web/telecom_surewest_launches_ipvideo/

Commission's network disclosure rules.⁹ 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.¹⁰ The ILEC must additionally comply with any applicable state requirements,¹¹ 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.¹²

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.¹³ 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

⁹ 47 C.F.R. § 51.319(a)(3)(iii)(A).

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.

¹³ See *TRO*; *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; *SBC Communications Inc.'s Petition for forbearance Under 47 U.S.C. § 160(c)*; *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c)*; *BellSouth Petition for Forbearance Under 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21, 496 (2004).

has even gone so far as to determine that CLECs and ILECs have comparable incentives and face similar barriers in deploying fiber.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.¹⁵

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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,¹⁶ including copper feeder plant, unavailable for unbundled access pursuant to Section 251(c)(3) of the Act. Any such

¹⁴ *TRO*, para. 275.

¹⁵ BOCs reneged on their pledge to permit unbundled access to legacy copper if granted broadband relief. *See Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the New York Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Philadelphia Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Pittsburgh Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006).

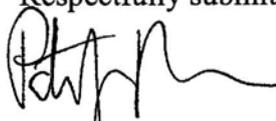
¹⁶ 47 C.F.R. § 51.319(a), 51.319(b)(1).

Ms. Marlene H. Dortch
November 14, 2006
Page 6

condition must be enforceable. CLECs strongly support the COMPTTEL proposal on this issue.¹⁷ This is an uncomplicated and relatively costless safeguard that would preserve this vital source of competition in the marketplace.

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Respectfully submitted,



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Counsel for
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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 COMPTTEL, 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

