April 25, 2003

Joel H. Peck, Clerk
Document Control Center
State Corporation Commission
1300 East Main Street
Richmond, VA 23219

Re: Case No. PUC-2001-00226

Dear Mr. Peck,

Enclosed for filing with the Commission are an original and fifteen copies of the Motion for Leave to File and Response of AT&T Communications of Virginia, LLC in the above referenced case.

Thank you for your attention to this matter.

Sincerely,

Mark A. Keffer

CC: Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND

COMMONWEALTH OF VIRGINIA, ex rel.	)	
STATE CORPORATION COMMISSION	)	
	)	**CASE NO. PUC-2001-00226**
<u>Ex Parte</u>: Establishment of a Performance Assurance Plan For Verizon Virginia Inc.	)	

Motion for Leave to File and Response of
<u>AT&T Communications of Virginia, LLC</u>

AT&T Communications of Virginia, LLC ("AT&T") respectfully requests that it be permitted to file this Response to the Reply Comments of Cavalier Telephone, LLC ("Cavalier") and Verizon Virginia, Inc. ("Verizon"), that were filed on April 23, 2003.

The Commission provided for Comments and Reply Comments on Verizon's March 7, 2003 proposed revisions to the Virginia Performance Assurance Plan ("PAP") to reflect the changes to the New York PAP as adopted by the New York Public Service Commission. Only Verizon and the Staff filed Comments, on April 7, 2003. Verizon's Comments supported its March 7, 2003 filing without any changes. The Staff proposed a limited revision to the Verizon March 7, 2003 proposal, that would reallocate UNE Mode of Entry ("MOE") dollars at risk in a 60/40 percent ratio between UNE-P and UNE-L, in lieu of the 82/18 percent ratio adopted in New York and proposed by Verizon for the Virginia PAP.[1] Cavalier did not file Comments.

Belatedly, however, the Reply Comments of Cavalier and Verizon introduce totally new proposals for the revision of the Virginia PAP. Cavalier now proposes a radical 1.4/98.6 percent ratio between UNE-P and UNE-L dollars at risk, based on obsolete data. Verizon now proposes a 50/50 percent ratio not only for MOE UNEs, but also for Critical Measures UNEs, the latter of which was never even addressed by the Staff. Because these new proposals purport to reply to the limited changes to the Verizon-proposed PAP revisions that were proposed by the Staff in its Comments, rather than to Verizon's original March 7, 2003 proposed revisions to the PAP, AT&T would be deprived of a fair opportunity to respond to these new proposals unless its Motion for leave to file this Response is granted.

AT&T is an interested party because it is a CLEC providing services in Virginia that depend in part on the wholesale services provided by Verizon, services that are measured and remedies provided under the PAP. The revisions to the PAP proposed by Cavalier and Verizon could affect the remedies payments that AT&T would be entitled to under the PAP.

Grant of this limited opportunity to respond to the new matters raised by Cavalier and Verizon on Reply would not unduly delay the Commission's consideration of the

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1 The Staff also raised a question with respect to referring certain statistical issues to the "Carrier Working Group." AT&T agrees that the reference should be to the Performance Standards/Remedies Subcommittee of the Collaborative Committee. These statistical issues are not conducive to resolution in the first instance by the Commission.

issues, because AT&T's Response is being filed only two days after the Reply Comments.

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AT&T has not objected to the Staff's proposal to reallocate UNE MOE dollars at risk 60% to UNE-P and 40% to UNE-L. As the Staff points out, the Virginia PAP contemplates that MOE bill credits should be allocated "in amounts that reflect the importance of that MOE to the local exchange competition."[2] UNE-P is an important and rapidly-growing mode of entry for local exchange services competition in Virginia. The Staff has found that "over time UNE-Platform has been growing as a form of entry in Virginia," and that, although there are currently more UNE-Loops than UNE-Platforms in Virginia, "the recent pace of growth has been significantly greater for UNE-Platform than UNE-Loop."[3] Accordingly, the Staff has recommended that the UNE MOE dollars at risk be allocated 60% to UNE-P and 40% to UNE-L, which would "recognize the growing nature of UNE-Platform as a mode of entry in Virginia."[4]

The rate of growth of the UNE-P mode of entry has in fact been substantial, and is accelerating. Cavalier represents that according to Verizon's data in the Virginia § 271 proceeding, as of December 31, 2001, only 8,200 CLEC access lines in Virginia were served by UNE-P.[5] However this overstates the UNE-P presence at that time, which in

2 Staff Comments at 4.

3 Staff Comments at 5 and footnote 6, respectively.

4 Staff Comments at 5.

5 Cavalier Reply Comments at 3.

actual fact was just 3,828 lines in December 2001.[6] Verizon on the other hand represents that, according to its recent C2C data, as of February, 2003, the number of UNE-P lines in service were 93,961.[7] Thus, in the space of 14 months the number of lines served by UNE-P has grown by 90,133 lines, while the number of lines served by UNE-L has increased by just 22,923 lines.[8] This reflects the substantial acceleration of the UNE-P mode of entry over the last year. Verizon further represents that as of February, 2003, 34% of CLEC lines served using UNEs were served by UNE-P.[9] This growth has occurred in the absence of mass-market entry by AT&T in the residential local exchange marketplace.

Given that the dollars at risk allocations that are determined by the Commission now are likely to prevail for at least a year, and given the steep growth curve of UNE-P services by CLECs and the potential for even steeper growth during the next year, the Staff's 60/40 percent allocation proposal is reasonable and forward-looking. Verizon does not object to the Staff's proposed allocation.[10] Neither does AT&T.

As an alternative, however, Verizon suggests a 50/50 UNE MOE allocation, purportedly justified on the basis of not favoring either UNE mode of entry.[11] But the Virginia PAP explicitly provides that MOE bill credits should be allocated in amounts

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6 Verizon C2C Reports, December 2001 (Metric MR 2.02.3140). Total UNEs were 163,246, of which 3,868 were UNE-P and 159,418 were UNE-L (Metric MR 2.02.3112).

7 Metric MR 2.02.3140, Verizon Reply Comments at 2, footnote 3. At the same time, UNE-L had grown to just 182,341(Metric MR 2.02.3350), *Id*.

8 182,341 - 159,418 = 22,923.

9 *Id.*

10 Verizon Reply Comments at 2.

11 Verizon Reply Comments at 3.

that reflect the importance of that MOE to local exchange competition. It is intended to reflect facts on the ground, and a reasonable estimate of future growth. It is not intended as a piece of social engineering, or to reflect Verizon's view of what is or is not a desirable way for competition to develop in Virginia.[12] Verizon's 50/50 percent proposal may well be outstripped by UNE-P growth over the next Plan year. If the Commission were to adopt the 50/50 proposal for UNE MOE, the PAP may need updating before the one year anniversary of the currently-contemplated revision of the dollars at risk allocation.

Verizon's other proposal, to reallocate the dollars at risk at 50/50 percent for UNE-P and UNE-L in the Critical Measures section of the PAP, is out of place and equally ill-advised. First, it is out of place because it does not address anything that the Staff proposed in its Comments. Rather, it is a suggestion out of the blue and apropos of nothing. As such, it should not even be addressed on the merits by the Commission. If it were to be addressed, then the Commission should solicit the views of all interested parties through another round of comments and reply comments.

Second, even if the Commission were to contemplate Verizon's belated Critical Measures suggestion at this time, it should be rejected. Verizon again purports to engineer the PAP to avoid preferring one category over the other. However, the effect – again -- would be to ignore the demonstrated rapid growth of UNE-P, and the fact that

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12 Furthermore, as discussed *infra*, there is no reason to believe that the FCC's *Triennial Review* Order will be adopted and become effective in time to throw a stick into the UNE-P spokes for mass-market residential service in Virginia anytime over the next PAP plan year.

the growth of UNE-P as a viable entry vehicle for residential and small-business customers in Virginia is likely to accelerate as reasonable UNE rates are established.[13]

Finally, Cavalier's suggested 1.4/98.6 Percent UNE-P/UNE-L allocation of MOE dollars at risk cannot be given any credence, in light of the more recent data that Verizon has provided showing that 93,961 lines were served using UNE-P in February 2003, representing 34% of all CLEC UNE lines in Virginia. Cavalier's position is based on obsolete data (year-end 2001) that quite obviously does not reflect either the current facts on the ground or the accelerating growth rate of UNE-P as an entry vehicle.

Cavalier gains no credence by citing to a *dissenting opinion* by the FCC's Chairman Powell. While the Chairman's views are well known, it is a matter of record that the Chairman did not prevail in the FCC vote on the *Triennial Review* decision. In any event, attempting to scope out the ultimate effect of the *Triennial Review* decision is a fool's errand. All we have to go on is a press release, which in itself raises more questions than it answers. The FCC has been writing the order for two months now, with no clear end in sight. There is no way of knowing at this stage what precisely the FCC will decide with respect to UNE switching or any other UNE component. Moreover, any decision is likely to be the subject of considerable controversy. It will without doubt attract petitions for reconsideration and court review no matter how it comes out. Thus, there is no assurance whatsoever that the FCC's *Triennial Review* decision will be in effect anytime soon. Virginia regulatory policy should not swing on such a slender reed.

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13 If nevertheless the Commission believes that the Critical Measures dollars should be adjusted at this time, then it should follow the 60/40 percent UNE-P/UNE-L allocation proposed by the Staff for the UNE MOE section of the PAP.

CONCLUSION

The Commission should grant AT&T's Motion for leave to file, and should adopt the Staff proposal to reallocate the UNE MOE dollars at risk at 60% for UNE-P and 40% for UNE-L. The Commission should reject the belated proposals for reallocation by Verizon and Cavalier.

Respectfully submitted,

AT&T COMMUNICATIONS
OF VIRGINIA, LLC

By its attorneys

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Dated: April 25, 2003

CERTIFICATE OF SERVICE

Virginia Case No. PUC-2001-00226

I hereby certify that a copy of the Motion for Leave to File and Response of AT&T Communications of Virginia, LLC was sent as stated below on this 25th day of April 2003 to the following:

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State Corporation Commission
Office of the General Counsel
Post Office Box 1197
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(Hand-delivered)

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Performance Standards/Remedy Plans Subcommittee of the Collaborative Committee
(E-Mail)

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Danny W. Long