COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND

IN THE MATTER OF

Verizon Virginia Inc.'s compliance with the conditions set forth in 47 U.S.C. § 271(c)	**CASE NO. PUC-2002-00046**

DECLARATION OF
ROBERT J. KIRCHBERGER
ON BEHALF OF
AT&T CORP.

I, Robert J. Kirchberger, of lawful age, declare and say as follows:

1. My name is Robert J. Kirchberger. I am I am employed by AT&T Corp. as a Director of Government Affairs in the Law and State Government Affairs Division. I am responsible for presenting AT&T's regulatory advocacy on a broad range of issues in regulatory states across AT&T's eastern region, including Virginia. Recently I have also directed AT&T's participation in various industry collaborative work groups addressing Verizon's UNEs, OSS and performance measures and remedies. I have actively participated in state commission-sponsored oversight of the testing of Verizon's OSS in Virginia, Pennsylvania, and New Jersey. I have testified and/or participated in developing written comments and testimony for AT&T filed in Virginia, West Virginia,

Maryland, the District of Columbia, Delaware, Pennsylvania and New Jersey. I have also participated on AT&T's behalf in the negotiation and arbitration of the interconnection agreements with Verizon's predecessor, Bell Atlantic, in 1996 and 1997, and participated as a witness on AT&T's behalf in the FCC arbitration to establish interconnection rates, terms and conditions for Virginia.

2. I have 32 years experience in the telecommunications industry -- 10 years with New Jersey Bell and more than 22 years with AT&T. Over that span I have held positions of increasing responsibility in a number of areas, including management of local repair service centers and local switching offices, development of technical and tariff support for pricing and marketing of both New Jersey Bell's and AT&T's services, and management of customized offerings.

3. One purpose of my declaration is to discuss the status of telecommunications competition in Virginia, both for local exchange services and for long distance service. Whatever initial optimism residents and CLECs may have felt about the prospects for local telephone competition in Virginia following enactment of the federal Telecommunications Act of 1996 has now faded and, without prompt corrective action, will disappear entirely. Verizon Virginia's existing UNE prices are too high to support competitive entry. Its OSS are not yet performing as they should. While it has agreed to implement a Performance Assurance Plan that ultimately will help guard against Verizon providing shoddy and discriminatory wholesale service to its competitors, it is unwilling to implement the plan until ***after*** it enters the long distance market, a fact which does nothing to remedy poor wholesale performance ***now.*** Equally problematic, Verizon has requested until year end 2002 a lowering of the "flow through" thresholds – measures of

whether CLEC orders pass through Verizon's OSS electronically so as to speed the processing of CLEC orders and minimize the potential for human error – which proves that Verizon's OSS are not yet capable of providing nondiscriminatory performance to CLECs. So long as Verizon needs to "ramp up" its flow through performance, this Commission should not endorse Verizon's 271 application. The information I present below, together with the testimony of other AT&T witnesses, proves that these problems, and others, are hindering the development of local competition in Virginia such that Verizon is not yet ready for 271 relief.

4. Another purpose of my declaration is to explain why this Commission should not endorse Verizon's 271 application unless and until Verizon demonstrates that it has taken the same steps to open its former GTE territory to competition that it is required to take for its former Bell Atlantic territory. As explained below, Congress inadvertently left a huge hole in the language of the Telecommunications Act that renders the FCC powerless to review Verizon's progress – or lack of progress – in opening the former GTE territory to competition. That leaves the task to this Commission, acting under its broad powers extended to it under Virginia law.

5. Finally, my declaration, as well as that of Dr. Selwyn, will discuss the status of long distance competition, both nationally and here in Virginia. Today consumers have a wide range of choices for long distance service, and the vibrant competition in that market has given them lower prices and higher quality service. If Verizon Virginia is allowed into the long distance market prematurely – that is, before is has completed the steps necessary under the Act to open Virginia's local markets to competition – there is a heightened risk that the now-vibrant competition in Virginia's long distance markets will

wane, inasmuch as Verizon would be able to leverage is monopoly control over "last mile" local exchange connections to re-monopolize long distance service, both in its "Bell Atlantic" and its "GTE" territories. Such an outcome would not serve the interests of Virginia consumers.

Local Competion Has Not Yet Developed in Virginia, Particularly in the Rural Portions of Verizon's Service Territory

6. Verizon declarant Woltz makes much of the fact that "more than 200" CLECs have been authorized to provide service in Virginia (Woltz at 2), but then quickly concedes that, even by Verizon's "estimates," only about 60 of them are active. (*Id.*) Even that data may be stale and misleading, however, given the painful shakeout that has been occurring in the CLEC industry as a large and ever-growing numbers of carriers, including ones in Virginia, have shuttered their operations or scaled them back. Data posted on the Commission's own web site shows that so far some 85 CLECs have abandoned, withdrawn or cancelled their certificates, closed their operations, or had their certificates revoked or dismissed. It is telling that in his "Attachment 101" Mr. Woltz lists only 12 CLECs as "major" facilities-based carriers, and even more telling that by the time Verizon added his summary declaration that list had dwindled to just 8 CLECs. Some of those – most notably WorldCom, Adelphia and XO Communications have been experiencing well publicized financial problems of their own that could jeopardize their ability to expand, or even continue, their CLEC operations. On WorldCom, the *New York Times* speculated on May 1, 2002, that it will take much more than the departure of Bernie Ebbers to calm worries about WorldCom's ability to pay back $28 billion in debt. The company has slashed its revenue and earnings forecasts for 2002 and its stock, as of 10:00 AM on May 3, 2002, was trading at less than $2.00 per share,

down over 90% from $60+ per share in mid-1999. With regard to Adelphia, the April 17, 2002, *Wall Street Journal* reported that Adelphia Communications, parent of Adelphia Business Solutions, missed, for the second time, its deadline for filing its annual report with the SEC as it continues "to review the accounting treatments for $2.3 billion in loans to closely held partnerships . . " For XO Communications, the April 7, 2002, *Washington Post* reported, in a discussion about XO's long-anticipated bankruptcy filing, that "XO owes about $1 billion to a group of banks and has borrowed another $4.1 billion by issuing bonds. The company is not making enough money to pay its bills. The shortfall was $932 million in the fiscal year ended June 30." These are but examples of the substantial financial problems CLECs are experiencing that call into question Verizon's claims about the degree to which competition has developed in Virginia, and whether that competitive presence is expanding or shrinking. Verizon's focus on a small handful of CLECs only serves to emphasize the severity of problems in the CLEC sector. It is fair to presume that if any of the other 60 "active" CLECs Mr. Woltz mentions had any appreciable competitive presence Verizon would have highlighted them in the Woltz affidavit as well.

7. It is also fair to say that what little competition there is has developed in spite of Verizon, not because of it. The Telecommunications Act provides for three modes of entry, and the FCC has said that it does not favor any one over the other.[1] Two of the

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[1] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, August 8, 1996, at ¶ 12:

> The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as

three -- resale and UNEs – require Verizon to provide wholesale services to its CLEC competitors. Verizon's own numbers show that it is not doing so very often. These two entry modes account for a scant 15% of CLEC presence in Virginia. Attachment 101 at ¶ 5. This means, obviously, that 85% of CLECs' presence is occurring from facilities-based competition, where Verizon's only obligation is to interconnect and port numbers. Weighed against these numbers, Verizon's showing here can hardly be considered conclusive proof that it has met its obligations under the Act to make resale and UNEs readily available to its CLEC competitors. Comparisons to other states bear this out. While Verizon Virginia's numbers show a paltry 8200 UNE-Platform arrangements in Virginia at the end of 2001 (Woltz at 3), Verizon NY was providing well over a million UNE-P arrangements, and by now is probably approaching 2 million.

8. Mr. Woltz argues (at 4) that competitors are "geographically dispersed" across Virginia, but the data Verizon has provided to date suggests otherwise. For one thing, Verizon's data show that there are absolutely ***no*** CLECs collocated in nearly 70% of Verizon's central offices. VZ-VA response to AT&T-3-19. Even where there are

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market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities. This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. Others may use a combination of entry strategies simultaneously -- whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other new entrants may pursue a single entry strategy that does not vary by geographic region or over time. Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.

collocations, Verizon provides no information or insights into what those collocations are being used for, or whether they are being used at all. Some carriers may be using collocation arrangements to aggregate long distance traffic or data networks, not to provide competitive local exchange services. Many of the data LECs, or "DLECs," including COVAD, Northpoint and Rhythms, at one time intended to use collocation exclusively for data services, but those plans now have been dashed. Rhythms and Northpoint have gone into bankruptcy and COVAD has scaled back it operations. DLECs are not the only carriers scaling back collocation arrangements. Some carriers, including AT&T I'm sorry to say, have been eliminating collocation arrangements rather than adding them as their business plans change and the market deteriorates. In any event, Verizon has been compelled to disclose additional data that will indicate where competition is occurring in Virginia – or not – and I will supplement my testimony as necessary to reflect that information.

9. Much of Mr. Woltz's other information about the level of local exchange competition is simply irrelevant or misleading. For example, he indicates that a number of CLECs have entered into interconnection agreements with Verizon (Woltz at 2), but that does not mean the CLECs are actually providing competitive services. In many instances, CLECs have simply opted in to some other CLEC's agreement and are not yet providing service (and may never do so). Mr. Woltz also argues that the fact that CLECs have some 5.6 million telephone numbers "on the shelf" for possible future use (Attachment 101 at 5) is evidence of competition, but in reality that fact proves nothing. Holding numbers in reserve is certainly not the same thing as having them in service, and Verizon's own data underscores that point. Verizon, for its part, has about 3.5 million

switched access lines in service in Virginia but has over 11 million numbers available to it. (VZ-VA response to AT&T 3-58). As further evidence of competitive entry, Verizon claims to have exchanged over 14 billion minutes with CLECs (Attachment 101 at 4), but does not indicate how many of those minutes were calls from Verizon customers to Internet Service Providers for which Verizon refuses to pay reciprocal compensation.

10. One might expect that the widespread CLEC entry Mr. Woltz describes would have a negative impact on Verizon's business, but the reality is that CLEC entry has been too sparse to cause any harm to Verizon. From 1995, the year before the Act became law, until 2000, Verizon's ARMIS reports to the FCC show that its residential access line count grow from 1.90 million to 2.27 million, a growth of nearly 20%. Comparing Verizon's 370,000 line growth in residential access lines to the 211,000 that Verizon claims CLECs are serving (Attachment 101 at ¶ 5) makes it painfully clear – and I refer to CLEC pain here -- that even with "competition" Verizon has been able to add access lines at a rate that eclipses all of the CLECs combined. And while Verizon's ARMIS data shows that Verizon lost some residential access lines in 2001, that probably had little to do with CLECs and more to do with the general downturn in the economy – what Verizon's 2001 Annual Report termed a "slow economy and an unsettled climate for investment" – as well as consumers' increased propensity to replace traditional wired service with wireless (including Verizon's, which, according to its Annual Report, now has nearly 30 million wireless customers and an "unrivaled subscriber base, market coverage and network quality").. In any event, questions about whether competition is growing will become clearer once Verizon responds to AT&T's discovery.

11. The same pattern is true with regard to Verizon' business services, except that Verizon's growth in business lines has been even more impressive. From 1995 to 2000 Verizon's business lines grew from 1.11 million to 1.49 million, a growth of nearly 35%. And while Verizon lost about 100,000 business lines during the 2001 economic downturn, they of course still fared better than the CLECs that exited the market.

Verizon Has Made No Showing That It Has Opened Its Former GTE Territory To Competition

12. If and when Verizon obtains 271 authority from the FCC, Verizon will then be permitted to market long distance services throughout the Commonwealth -- not only in its former Bell Atlantic territory, but also in its former GTE territory as well. Verizon, however, apparently has no intention of demonstrating to any regulatory agency, be it this Commission or the FCC, that it has taken any steps to open its former GTE territory to competition. All of its arguments are focused 100% on its former Bell Atlantic operations.

13. In taking this stance, Verizon is trying to take advantage of a gaping hole in the fabric of the Telecommunications Act. The FCC found, in processing Verizon's 271 application for Pennsylvania – the only other state where both Bell Atlantic and GTE had pre-merger operations – that the awkward wording of the Act gave it no authority to investigate whether Verizon has met the 14 point checklist for the GTE territory when reviewing Verizon's application for its former Bell Atlantic territory. As the FCC read the Act, it only has authority to examine whether a "Regional Bell Operating Company" complies with the checklist and, if so, the "Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in" the state. 47 U.S.C. § 271(b)(1). What this means, in plain terms, is that for Pennsylvania and

Virginia the FCC believes itself powerless to ensure that Verizon has taken the same market-opening steps for its former GTE territory that it must meet for its former Bell Atlantic territory.

14. The ramifications for Virginia are both important and straightforward. It is this Commission -- and only this Commission -- that can ensure that the interests of all Virginia consumers are well served, including consumers in the ex-GTE territory. Only this Commission has the authority to ensure that Verizon opens its former GTE territory to competition as a pre-condition to Verizon being permitted to provide interLATA long distance services.

15. There are particularly compelling reasons for this Commission to examine whether Verizon has opened its GTE territory to competition. By and large, the ex-GTE territory is more rural and less densely populated than Verizon's former Bell Atlantic territory. In those localities, Verizon has less incentive to invest in broadband facilities and network upgrades. Absent any competitive pressures, Verizon will have little or no incentive to extend advanced services into those areas.

16. Even in the portions of the ex-GTE territory that would be attractive to competitors – such as the Manassas and Dulles Airport areas – there is little prospect for such competition to develop if Verizon has no incentives to take the requisite steps to open those areas as the Act requires.

17. Fortunately, the solution to this dilemma is equally straightforward. This Commission should not endorse Verizon's 271 application unless and until Verizon can prove to the Commission's satisfaction that it offers in its ex-GTE territory (a) UNEs and interconnection at appropriate rates (and there is no reason those rates should vary from

what Verizon charges for comparable services in the ex-Bell Atlantic territory), (b) the exact same OSS interfaces that it provides in its ex-Bell Atlantic territory (something Verizon is supposed to have accomplished, but has yet to prove), and (c) Verizon is subjected in its ex-GTE territory to the same measurements of OSS performance and the same remedies for non-performance that apply in its ex-Bell Atlantic territory.

18. In many respects, these actions are a logical by-product of the merger. If Bell Atlantic and GTE were allowed to merge in order to benefit customers, then the list of customers reaping those benefits should include wholesale customers as well. Unless and until Verizon can demonstrate that its ex-GTE territory is as open to competition as its ex-Bell Atlantic one, and that Verizon's service and treatment of CLECs is the same for both, this Commission should not endorse Verizon's 271 application with the FCC.

19. While I will leave the law to the lawyers, it is apparent that the General Assembly favors the development of telecommunications competition, and understands that "competition in the market place is or can be and effective regulator. . . ".[2] Application of this principle, of course, is not confined to Verizon's ex-Bell Atlantic territory.

The Long Distance Market is Already Fully Competitive, and Verizon's Presence Would Not Give Virginia Consumers Anything New.

20. Verizon wants this Commission to focus on the alleged "benefits" it claims it will bring to the long distance market. As Verizon noted in its March 15, 2002 press release coinciding with its application in this proceeding, "Virginians should be able to realize the same savings that consumers in New York, Pennsylvania, Massachusetts, Connecticut and Rhode Island now enjoy." This, of course, is akin to Microsoft touting its

contributions to the saturated video game software market as a means of persuading the Justice Department to ignore the market dominance of its Windows operating system.

21. There is already substantial competition in the long distance market. Nationally, the FCC reports show that there are literally hundreds of long distance companies offering retail services to customers, no single one of which currently controls more than 35% of the residential long distance market. AT&T, WorldCom and Sprint have a combined long distance market share of 69.5%, or about 65% when the market shares of Verizon and SBC Communications, Inc. are factored in. Verizon and SBC undoubtedly have made further market share inroads since the FCC's 2001 data on which those percentages are based.[3]

22. Here in Virginia, the toll market is equally competitive, and consumers have been the beneficiaries of that competition. In the years from 1993 through 2000, for example, AT&T's average consumer prices for Virginia in-state calling have dropped by nearly 40%, a savings of over 8 cents per minute. This occurred as AT&T reduced it prices and introduced attractive new plans, such as AT&T's new Unlimited calling plan. Virginia consumers are benefiting from vigorous long distance competition, both for their interstate and their intrastate calling.

23. Verizon has been claiming that the long distance market is not competitive, but the facts prove otherwise. Dr. Selwyn recently refuted two misinformed "studies" prepared on behalf of the Bell operating companies ("BOCs"), including Verizon, by Dr. Jerry Hausman of the Massachusetts Institute of Technology and others. In his

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[2] See, *Ex Parte: In the matter of investigating telephone regulatory methods pursuant to Virginia Code § 56-235.5, etc.*, Case No. PUC930036, Final Order (Oct. 18, 1994).

[3] FCC Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, August 2001, at Tables 10.8 and 10.9.

declaration, which is also being presented in this proceeding, Dr. Selwyn calculates the price benefits that competition brought to long distance customers between 1984 and 2000 and the absence of such price benefits to local service customers due to the lack of competition in the local exchange market over the same period. Specifically, he notes that FCC-mandated access charge reductions, technological innovations, and vigorous competition have ". . .pushed down the *real* (inflation-adjusted) price of long distance service by *nearly 80%* since 1983 – the last year before the 1984 Bell System break-up and the introduction of access charges – *without BOC entry into the long distance business*. By contrast, the inflation-adjusted prices of *monopoly* local phone service have remained largely unchanged over that same period."[4]

24. Verizon has also made claims that AT&T and other long distance carriers are engaging in price discrimination against the poor and less educated, but the facts prove otherwise. A RBOC funded study by economists Jerry A. Hausman, Gregory K. Leonard and J. Gregory Sidak found "statistically significant evidence that BOC entry enabled the average customer to reap a 9-percent savings on her monthly interLATA bill in New York and a 23-percent savings in Texas." But, and as discussed in Dr. Selwyn's affidavit, the Hausman/Leonard/Sidak study contains numerous flaws, chief among them that the study: (i) entirely ignored the effects of access rate reductions, which Dr. Selwyn concludes is the variable that is most highly correlated with long distance price reductions; (ii) utilized, without explanation, control states of Pennsylvania and California that suggested a positive impact on price competition by BOC entry, whereas had it utilized Florida, Kentucky, Missouri or Wisconsin (and perhaps others) as the

[4] Selwyn Decl. at 37 (emphasis in original).

control states, they would have suggested the exact opposite impact; (iii) examined measurement periods that ended just before SBC imposed a sizeable long distance rate hike of between one and two cents per minute in Texas. Also, as Dr. Selwyn discusses in his affidavit, he also has significant concerns with the way in which Hausman, Leonard and Sidak selected their data.

25. Verizon also has issued a number of press releases, including its March 15, 2002, release announcing the filing of this application, touting the conclusions of the Telecommunications Research Action Center ("TRAC") that consumers in any given state will experience millions of dollars of benefit in the first year after a BOC gains Section 271 approval. The TRAC studies, however, are highly suspect, not only because the methodology used was flawed,[5] but also in large part because of TRAC's close affiliation with another consulting firm which works for Verizon and the other RBOCs. Indeed, New Hampshire Consumer Advocate Michael Holmes called TRAC's studies "horse feathers" when, in the February 1, 2002 edition of the Concord, New Hampshire, *Concord Monitor* Mr. Holmes described the studies as

> . . .biased because TRAC Chairman Samuel Simon founded another organization that has performed consulting work for Verizon and other telecommunications companies. "Sam Simon works for Verizon through a couple of organizations," he said. The primary group in question is Issues Dynamic Inc., a Washington firm that specializes in public relations and management services. The consulting firm claims that in 1993 it launched the Internet's first corporate affairs Web site; that

[5] The TRAC studies appear to compare *specific* Verizon prices to what TRAC claims are *averages* of other long distance carriers' prices.

> corporation was Bell Atlantic, which later merged with GTE to form Verizon."

Dr. Selwyn will respond more fully to the problems associated with the TRAC study.

26. One does not need to analyze the TRAC study in any detail, however, or review any other study for that matter, to understand that the Verizon/TRAC claims about consumer savings are misleading. Rather, all one needs to do is compare Verizon's long distance pricing plans for the states where it is allowed to offer long distance to the various plans AT&T offers. That comparison shows that Verizon's long distance plans – in New York, Massachusetts, Pennsylvania and Rhode Island -- are remarkably similar to, and certainly not substantially better than, those offered by AT&T. Both companies currently offer similarly priced plans that hold rates constant seven days a week/24 hours a day. Both currently offer similarly priced plans with one rate for weekdays and a lower weekend rate. Both currently offer similarly priced buckets of minutes for a flat rate with additional minutes at a higher per minute rate. And both currently offer plans that contain a monthly recurring charge with more heavily discounted per minute rates. A comparison of the Verizon and AT&T long distance plans appears at Attachment A. Even a cursory review of that Attachment underscores the point that Verizon is not offering significantly lower long distance prices that could generate the savings projected by either the Hausman/Leonard/Sidak or the TRAC study. Nor has it developed an offer with a novel pricing structure that, when utilized efficiently by subscribers, might be expected to yield such savings.

27. In many cases, Verizon offers nothing that competes with some of AT&T's best plans. For example, Verizon has not attempted to rival the new AT&T Unlimited offer,

which gives consumers an unlimited number of calls, for an unlimited amount of time, to any other AT&T residential customer, for a flat monthly recurring charge of $19.95. This groundbreaking plan makes AT&T, rather than Verizon, the company taking innovative steps to give real long distance savings for its customers. AT&T decided to offer this new plan not as a result of Verizon entry into long distance or even as a result of the threat of BOC entry in Virginia and elsewhere, but in response to the pervasive pressures of the highly competitive long distance market. That market now includes, it must be noted, wireless carriers such as Verizon's own affiliate, Verizon Wireless.

CONCLUSION

28. Verizon is wrong in its assertions that local exchange competition is a reality in Virginia. Verizon is equally wrong that its entry into the long distance market will provide any discernable benefits to Virginia consumers beyond those already available to them from the long list of interexchange carriers, including AT&T, that already serve Virginia consumers. This Commission should not endorse Verizon's 271 application with the FCC unless and until Verizon demonstrates that it has opened its local exchange markets to competition, including its former GTE territory.

29. This concludes my declaration.