Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia	)))))))))	WC Docket No. 02-214

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice ("the Department"), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996[1] ("the 1996 Act"), submits this evaluation of the application filed on August 1, 2002, by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc. to provide in-region, interLATA services in Virginia.

This application to the Federal Communications Commission ("FCC" or "Commission") is Verizon's first for the state of Virginia, and follows its successful applications for long distance entry in Massachusetts, Rhode Island, Vermont, and Maine, in its New England region,

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

as well as successful applications for New Jersey, Pennsylvania, Connecticut, and New York.[2] The Department also has recommended that the FCC approve Verizon's recently filed joint application for Section 271 authority in Delaware and New Hampshire, subject to the Commission's determining that UNE prices in those states are TELRIC-compliant.[3] The Department concludes that Verizon has generally succeeded in opening its local markets in Virginia and recommends that the Commission approve Verizon's application for Section 271 authority there, subject to the FCC's satisfying itself that Verizon is providing sufficiently accurate and reliable white pages directory listings.

I. State Commission Proceedings

The Virginia State Corporation Commission ("Virginia SCC") has facilitated the development of competition in the local telecommunications markets by establishing carrier-to-carrier wholesale performance measurements[4] and adopting a Performance Assurance Plan intended to ensure that an appropriate level of wholesale performance is maintained once Verizon's Section 271 application is approved.[5] The Virginia SCC also conducted extensive pricing proceedings that established wholesale rates for the majority of types of UNEs in Virginia.[6] These and all other UNE rates in Virginia are being reviewed by the FCC through

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[2] *See generally FCC New Jersey Order; FCC Maine Order; FCC Vermont Order; FCC Rhode Island Order; FCC Pennsylvania Order; FCC Connecticut Order; FCC Massachusetts Order*; *FCC New York Order.*

[3] *See* DOJ Delaware/New Hampshire Evaluation at 11 ("The record in this matter suggests that Verizon has succeeded in opening its local markets in Delaware and New Hampshire to competition in most respects. The Department therefore recommends approval of Verizon's application for Section 271 authority in Delaware and New Hampshire, subject to the Commission satisfying itself as to the pricing issues mentioned [herein]."). The FCC is due to issue an order addressing Verizon's Delaware/New Hampshire application by September 25, 2002.

[4] Verizon Guerard/Canny/DeVito Decl. ¶¶ 14-25; Virginia SCC Hearing Examiner's Report at 70.

[5] Verizon Guerard/Canny/DeVito Decl. ¶¶ 26-30; Virginia SCC Hearing Examiner's Report at 4.

[6] *See* Virginia SCC Pricing Order at 1-5, 26-27; Verizon Br. at 44-53. The Virginia SCC has not reviewed the pricing of several UNEs that were subsequently established. *See* Verizon Br. at 53.

arbitration proceedings regarding interconnection and pricing disputes between Verizon and three CLECs operating in Virginia.[7]

The Virginia SCC's review of Verizon's state Section 271 filing included an independent third-party test by KPMG of the operations support systems ("OSS") used in Virginia.[8] KPMG reported that Verizon had satisfied over 99 percent of the 542 rated test points.[9]

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7 Verizon Woltz/Garzillo/Prosini Decl. ¶¶ 31-33. For purposes of its Section 271 application, Verizon relies on those rates established in the Virginia SCC Pricing Order for the UNEs addressed therein. *See id.* ¶ 34. For UNEs not included in that order, Verizon relies on rates from that order for comparable UNEs or the lower of (1) an adjusted New York rate or (2) a rate included in one of the Virginia interconnection agreements. *See id.* ¶¶ 35-37. "Verizon is making these UNEs available at these rates until the FCC establishes its own Virginia UNE rates" in the pending arbitration proceedings. *Id.* ¶ 42. The arbitration proceedings arose from CLEC requests for the Virginia SCC to arbitrate various pricing and non-pricing terms and conditions of interconnection agreements. *Id.* ¶¶ 30-31. Fearing that conducting the requested arbitrations would constitute a waiver of Virginia's immunities under the Eleventh Amendment to the U.S. Constitution, the Virginia SCC declined to arbitrate and directed the CLECs to request that the FCC arbitrate the disputes. *Id.*; Virginia SCC Hearing Examiner's Report at 4. On July 17, 2002, the FCC adopted an order addressing the non-pricing issues in the arbitrations. *FCC Non-Pricing Arbitration Order* ¶ 5. As of the date of this Evaluation, the FCC had not issued an order addressing the pricing issues.

8 Verizon McLean/Wierzbicki/Webster Decl. ¶¶ 11-13 (noting that the Virginia OSS test was "modeled after KPMG tests in New York, Massachusetts, Pennsylvania, and New Jersey, but the scope of the test was expanded 'in response to evolution in the industry, experience gained in preceding state tests or regulatory emphasis by the DOJ and FCC'").

9 *See id.* ¶ 22.

On July 12, 2002, the state hearing examiner issued a report recommending that the Virginia SCC support approval of Verizon's Section 271 application.[10] The Virginia SCC filed that report as its consultative report with the FCC on August 1, 2002.[11]

II. Entry into the Local Telecommunications Markets

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.[12] But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network

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10 *See* Virginia SCC Hearing Examiner's Report at 171. Although the hearing examiner found that Verizon "currently complies with each of the fourteen Checklist Items," he recommended that the Virginia SCC advise the FCC that Verizon's "no construction" policy regarding DS-1 loop installations "has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with the pricing of unbundled network elements." *Id.* While acknowledging that Verizon's DS-1 policy in Virginia is the same as the one the FCC found satisfactory in New Jersey, the hearing examiner noted that in Virginia, DS-1 activity is a substantial portion of CLEC activity and CLECs demonstrated that "denied access to UNE DS-1s hurt their ability to compete as this increases both the time and cost to provide service." *See id.* at 116. A substantial number of Virginia CLECs have raised this concern through comments at the federal level. *See* Allegiance Comments at 3-13; Allegiance Best Aff. ¶¶ 2-12; AT&T Comments at 13-16; Cavalier Comments at 7-10; Covad Comments at 23-27; NTELOS Comments at 4-5; Starpower Comments at 4-13. Some commenters acknowledge the *FCC Pennsylvania Order*, in which the FCC found that Verizon's DS-1 policy is an interpretive dispute not appropriately dealt with in the context of a Section 271 proceeding. *See, e.g.*, Allegiance Comments at 6 (citing *FCC Pennsylvania Order* ¶ 92). Nonetheless, they offer arguments as to why this issue might appropriately be dealt with in the Virginia Section 271 proceeding. Allegiance Comments at 6 (arguing that the FCC's "reiteration of Verizon's unbundling obligations in the Virginia Arbitration Order unquestionably removes this matter from the realm of 'new interpretive disputes' not appropriate for resolution in the 271 context"); AT&T Comments at 15-16 (arguing that this proceeding is the proper forum because the record established in Virginia indicates that the "practical effect" of Verizon's DS-1 policy "constitutes a substantial roadblock to competition"); Cavalier Comments at 9-10 (arguing that as applied in Virginia, Verizon's policy is "manifestly unfair and improper"). The Department defers to the Commission as to the appropriate forum for resolution of this issue.

In addition to commenting on Verizon's DS-1 policy as applied in Virginia, the Hearing Examiner also noted his support of CLEC-requested improvements to Verizon's white pages directory listings processes. *See* Virginia SCC Hearing Examiner's Report at 146-47, 171. *See infra* text Section III (stating the Department's concerns relating to directory listings).

11 Virginia SCC Notification Letter at 1-2; *see generally* Virginia SCC Hearing Examiner's Report.

12 *See* DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state." (Footnote omitted.)).

elements ("UNEs"), and resale -- are open or closed on the basis of an aggregate level of entry alone.[13]

According to Verizon's data, Verizon and CLECs serve a total of approximately 4,190,000 lines in Verizon's Virginia service area as of May 2002.[14] Of the total lines in Verizon's service area in Virginia, 44.2 percent, or approximately 1,851,000 serve businesses, and 55.8 percent, or approximately 2,339,000 serve residential customers.[15] For business and residential customers combined, Verizon estimates that CLECs using all modes of entry serve approximately 763,000 lines, or approximately 18.2 percent of all lines in Verizon's service area in the state.[16]

Competitors have made significant progress in penetrating the business market in Virginia. CLECs serve approximately 28.9 percent of all business lines in Verizon's Virginia service area.[17] CLECs serve approximately 25 percent of all business lines using primarily their own networks that are either connected directly to the customer premises or connected through loops leased from Verizon.[18] CLECs resell Verizon's services to serve approximately 3.1 percent of all business lines.[19] CLECs use the UNE-platform (a combination of loop, switch, and transport elements) to serve fewer than 1 percent of such lines.[20]

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[13] *See, e.g.*, DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

[14] *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (line counts as of May 2002); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49. Virginia has several incumbent local exchange carriers other than Verizon.

[15] *See id.*

[16] *See id.*

[17] *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 535,000 business lines); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

[18] *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 463,000 business lines using at least some of their own facilities); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

[19] *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 57,000 business lines via resale); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

[20] *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 14,000 business lines through the UNE-platform); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

CLECs serve approximately 9.7 percent of all residential lines in Verizon's Virginia service area.[21] Facilities-based carriers serve approximately 8.2 percent of all residential lines using primarily their own networks that are either connected directly to the customer premises or connected through loops leased from Verizon.[22] Indeed, most CLEC service to residential customers in Virginia is facilities-based, including that provided over the cable television facilities of AT&T Broadband and Cox Communications.[23] CLECs serve approximately 1.3 percent of all residential lines through resale, and less than one-half of one percent of such lines by means of the UNE-platform.[24]

The amount of entry by competitive facilities-based carriers serving both business and residential customers in Virginia leads the Department to conclude that opportunities to serve customers via facilities are available there. The Department also concludes, due largely to the absence of CLEC complaints regarding resale, that Verizon has fulfilled its obligations to open the resale mode of entry to competition for both residential and business customers in Virginia.

Although there is significantly less competition to serve both business and residential customers through the UNE-platform, the lower levels of penetration may reflect a degree of uncertainty as to the UNE rates currently under review by the FCC.[25]

Although the record on entry appears encouraging, several CLECs have raised concerns, including the directory listings issue discussed below.

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21 *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 228,000 residential lines); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

22 *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 192,000 residential lines using at least some of their own facilities); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

23 Verizon Torre Decl. Attach. 1 at 7-8, 9-10.

24 *See* Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 29,000 residential lines via resale and 6,600 residential lines through the UNE-platform); Verizon Woltz/Garzillo/Prosini Decl. ¶ 49.

25 *Cf.* DOJ New Jersey II Evaluation at 4 n.12 (noting that with respect to UNE rates, "some degree of certainty is required to support competitive entry").

III. White Pages Directory Listings

CLECs complain about inaccurate and omitted directory listings,[26] and appear to attribute the problems to flaws in Verizon's processes and procedures.[27] Commenters claim that inaccuracies and omissions are encountered at various points of the directory listing production process even after Verizon issues a confirmation that appears to be accurate or a CLEC initiates a correction.[28] Although Verizon appears to meet or exceed the standard for Virginia's directory listings accuracy metric,[29] this metric measures only one part of the upstream process of creating a directory listing.[30] Currently, no metric in Virginia measures accuracy at the subsequent production phases for which CLECs are complaining about errors.[31]

RBOC-caused inaccuracies in directory listings can result in substantial competitive harm. The FCC has explained that "irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes."[32] The Department also has recognized the importance of

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[26] *See* Cavalier Comments at 22 (claiming to have found 2,967 errors during creation of South Hampton Roads Directory, 135 during creation of Petersburg Directory, and 895 so far during creation of Richmond directory); NTELOS Comments at 11 (noting that "several NTELOS business customers were totally omitted from the Staunton telephone directory, despite the fact that [NTELOS] had received 'confirmed' directory orders"); AT&T Comments at 16 (noting "substantial inaccuracies" in directory listings).

[27] *See, e.g.*, Cavalier Comments at 25 (noting that sometimes listings which were accurately submitted by Cavalier and confirmed by Verizon as accurately submitted, do not appear in the directory database); NTELOS Comments at 10 (noting that the Listings Verification Report "routinely contains errors and, even when attempts to correct it are made, the directory listing itself may still be inaccurate").

[28] *See id.*

[29] *See* Verizon Carrier-to-Carrier Performance Reports at 54 (PM OR 6-04-1030 (% Accuracy-Other Directory Listing Orders)).

[30] *See* Verizon McLean/Wierzbicki/Webster Decl. ¶ 113 (noting that PM OR 6-04 compares directory listing information on a random sample of local service requests with information on their corresponding service orders); Virginia SCC Hearing Examiner's Report at 142.

[31] *See* Virginia Carrier-to-Carrier Performance Standards at 40-41 (defining PM OR 6-04).

[32] *FCC Texas Order* ¶ 358 (noting that "a systemic problem involving a significant number of listings . . . would warrant a finding of noncompliance").

nondiscriminatory access to white pages directory listings.[33] The significance of inaccurate listings is heightened by the fact that errors and omissions in the directory normally cannot be corrected for an entire year.[34] Moreover, not only the CLEC, but also the CLEC customer, is directly affected.[35] Once CLEC customers discover that they will be omitted or incorrectly listed for an entire year, they sometimes seek financial restitution from the CLEC.[36] Not wanting to lose those customers, the CLEC incurs the cost of compensating them.[37] In addition, CLECs incur extra costs in terms of work-hours spent attempting to minimize the occurrence of errors.[38]

During the state proceedings, CLECs complained about Verizon's directory listings processes and procedures despite Verizon's implementation of a quality verification process for manually processed directory listings orders in Fall 2001.[39] In addition, the Virginia SCC opened a still-ongoing examination of Verizon's directory listings processes and directed its metrics collaborative to explore the development of additional metrics to document directory errors.[40] As part of the state proceedings, Verizon committed to further improvements to its

[33] *See* DOJ Texas I Evaluation at 29, 42 (noting that dropped directory listings can be a negative consequence of loop provisioning failures).

[34] *See* AT&T Comments at 16 (noting that directory listings problems "are particularly severe and anticompetitive, because they typically cannot be corrected until the next set of white pages is issued a year later").

[35] *See* NTELOS Comments at 11 ("Inaccurate listings are devastating to the success of the small businesses that make up the bulk of NTELOS' CLEC customer base").

[36] *See* Cavalier Comments at 26 ("When a business customer is omitted from the directory, that customer is understandably concerned. The customer calls Cavalier seeking some form of restitution.").

[37] *See id.* ("Cavalier feels obliged to address the customer[ ] concerns, and therefore typically issues service credits to try to accommodate the customer.").

[38] *See id.* ("To implement this cumbersome process, Cavalier must employ a dedicated staff of six full-time employees who devote all of their time to checking Verizon's work.").

[39] *See* Virginia SCC Hearing Examiner's Report at 137-41, 146 (summarizing directory listings complaints by Cavalier, Cox, AT&T, and NTELOS and disagreeing with Verizon's submissions that attempted to minimize the level of directory problems that have been experienced in Virginia); Verizon McLean/Wierzbicki/Webster Decl. ¶¶ 107, 112, 115.

[40] *See* Virginia SCC Hearing Examiner's Report at 145-46.

directory listings processes.[41] The hearing examiner viewed these additional efforts as "positive developments," but noted that "because directories are on annual cycles, improvements . . . may not be realized fully during the current directory cycle."[42]

The Department recognizes Verizon's recent attempt to improve its directory listings processes by developing a sortable, electronic Listings Verification Report ("LVR"). However, an insufficient amount of time has passed to determine the effectiveness of that effort. According to Verizon, the sortable, electronic LVR has been available only since August 1, 2002, the day Verizon filed its application with the FCC.[43] Because directories are on annual cycles, it appears that the CLECs have not yet had the opportunity to test the new LVR with an actual, upcoming directory.[44] The Department recognizes that the Commission may receive additional information during its consideration of Verizon's application, and therefore be able to assess more completely the effectiveness of Verizon's recent improvements. Thus, the Department does not foreclose the possibility that the Commission could find Verizon to be in compliance with this checklist item.

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[41] *See id.* at 146 (noting that Verizon committed to make available a sortable, electronic version of the Listings Verification Report ("LVR") and volunteered to provide the Virginia SCC with six months of reports based on a special study of Verizon's to measure a part of its downstream directory listings process); Verizon McLean/Wierzbicki/Webster Decl. ¶ 116 (noting that the sortable, electronic LVR is available as of August 1, 2002).

[42] Virginia SCC Hearing Examiner's Report at 146. Accordingly, the hearing examiner found that, based on Verizon's recent efforts, it meets the requirements for Checklist Item 8, but recommended that the Virginia SCC continue its examination of Verizon's directory listings processes and take any appropriate future actions. *Id.* at 147.

[43] Verizon McLean/Wierzbicki/Webster Decl. ¶ 116.

[44] For example, the Petersburg directory, which closed on June 14, 2002, is the most recently cited directory. *See* Cavalier Comments at 22; *see also* AT&T Comments at 16-17 ("It is too early to determine . . . whether Verizon's promises and 'improvements' will actually result in improved accuracy of listings.").

IV. Conclusion

The record in this matter suggests that Verizon has generally succeeded in opening its local markets in Virginia to competition in most respects. The Department therefore recommends approval of Verizon's application for Section 271 authority in Virginia, subject to the FCC's satisfying itself that Verizon is providing sufficiently accurate and reliable white pages directory listings.

Respectfully submitted,

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September 5, 2002

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I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on September 5, 2002.

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