Federal Communications Commission
Washington, D.C. 20554

Adopted: November 14, 2003
Released: November 14, 2003

Ms. Dee May
Executive Director
Federal Regulatory
1300 I Street, NW, Suite 400 West
Washington, DC 20005

RE: *Bell Atlantic/GTE Merger Order*, CC Docket No. 98-184

Dear Ms. May:

This letter addresses Verizon Communications, Inc.'s (Verizon) August 11, 2003 request[1] (Verizon 2003 Letter) not to implement four recently-adopted changes by the California Public Utilities Commission (California Commission) to the California Performance Plan (California Plan) in the federal Carrier-to-Carrier Performance Plan (Plan) required by the *Bell Atlantic/GTE Merger Order*.[2] As explained below, I approve one of Verizon's requested exceptions and deny the other three requested exceptions.

On April 23, 2002, the Commission released the *Consent Decree* modifying the Merger Conditions adopted in the *Bell Atlantic/GTE Merger Order* to provide that changes in the California Plan adopted by the California Commission may be implemented in the federal Carrier-to-Carrier Performance Plan without need for further action by the Commission unless, within 10 business days, the Chief of the Wirelines Competition Bureau (Bureau) notifies Verizon not to adopt the modifications.[3] The *Consent Decree* also stipulates that the Chief of the Bureau shall determine whether any other changes proposed by Verizon shall be implemented.[4] In its request, Verizon notified the Commission that on July 10, 2003 the California Commission adopted changes to the California Plan. Verizon recommended incorporating these changes to the Plan with four exceptions.

First, Verizon requests that the Commission not implement as part of the federal Plan certain further disaggregations in the Ordering, Provisioning and Maintenance categories that were adopted by the California Commission.[5] Verizon argues that these further disaggregations are unnecessary and could

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[1] Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 98-184 (filed Aug. 11, 2003) (Verizon Aug. 11 *Ex Parte* Letter).

[2] *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*Bell Atlantic/GTE Merger Order*).

[3] *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order, 17 FCC Rcd 7773 (2002) (*Consent Decree*).

[4] *Id.* at 7778, App. 1.

[5] Verizon Aug. 11 *Ex Parte* Letter at 2.

produce small sample sizes in a number of states.[6] I grant this request based on the Bureau's preference for meaningful sample sizes, which may not be available in other Verizon territories that receive substantially fewer requests from competitive LECs than in California.

Second, Verizon requests that the Commission not implement changes to the standards for the measures for timeliness of order confirmations and rejects (OR-1 and OR-2).[7] The California Commission modified its standard for these measures from a standard based on average performance for the relevant transactions to a benchmark of 95% on time for the category transactions.[8] Verizon argues that because federal performance measures have always been structured as 95% on time for the category transactions within a given period of time, no changes are needed to the Plan.[9] However, under the California-adopted changes, Verizon is required to provide notices in a substantially shorter period of time for certain product offerings.[10] Because Verizon's request would maintain standards that are less stringent than those adopted in California, and there is no evidence in the record demonstrating that the California-adopted standard is technically infeasible, I deny its request to refrain from utilizing the California Commission standard for the purposes of calculating payments under the federal Plan.

Third, Verizon seeks an exception for California Commission-adopted changes to the performance standard for the flow through metric.[11] Although Verizon recommended adopting California Commission changes to the definition and exclusions for flow through, Verizon contends that the Commission should not rule on the California Commission-adopted standard for flow through until it has addressed Verizon's previous request for reporting flow through.[12] In that proposal, Verizon sought several modifications to the Plan. Specifically, Verizon sought to measure separately for resale, unbundled loops and UNE platform[13] and proposed to apply different standards to Verizon East and Verizon West territories[14] based on the types of service predominantly provided in those territories and the number of access lines served by Verizon in each state.[15] However, the Merger Conditions already contemplate that different standards may be appropriate for the former Bell Atlantic states and the former GTE states, and granting Verizon's request would unnecessarily circumvent California and New York state proceedings. Because improvements in equipment, programming, training and operational efficiency over time improve a Bell Operating Company's ability to flow through competitive LEC orders with increased accuracy at an accelerated rate, I deny Verizon's prior request to adopt new standards for reporting flow through.

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6 *Id*.

7 *Id*. at 1.

8 *Id*.

9 *Id.*

10 *Compare, e.g.,* Resale POTS/UNE (non-designed) $\geq$=10 lines within 48 clock hours under the California Plan, but within 72 hours under the Plan.

11 Verizon Aug. 11 *Ex Parte* Letter at 2.

12 Letter from Dee May, Executive Director , Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed April 4, 2001) (Verizon 2001 Letter).

13 Verizon 2001 Letter at 1.

14 *Id*.

15 *Id.* at 2.

Similarly, I deny Verizon's prior proposal to alter the payment plan to make payments on flow through measures only where Verizon also failed to meet the 95% on time standard for returning confirmation notices and reject notices for manually handled local service requests.[16] Verizon argues that as long as it returns order confirmation and reject notices to competitive LECs on manually handled orders on time, any shortfall of flow through performance does not deny competitors an opportunity to compete, and therefore, no payment penalty should apply.[17] Although Verizon is correct in that returning confirmations and reject notices in a timely manner is important to providing competitive LECs an opportunity to compete, flowing through competitive LEC LSRs is by itself an important aspect of Verizon's wholesale offerings because it ensures that competitive LECs will continue to receive notices as fast as it is technically feasible for Verizon to provide them. Verizon's two-step proposal would defeat the purpose of having a stand-alone flow through measurement, as adopted in the *Bell Atlantic/GTE Merger Order*.[18] Therefore, I reject Verizon's requests to alter the standards and payment plan for flow through performance, and I adopt the California Commission standard for the federal Plan.

Finally, Verizon requests that the Commission maintain the current standard for coordinated conversions and coordinated hot cuts (PR-9) (90% on time), rather than adopting a more stringent standard adopted by the California Commission (95% on time).[19] Based on the determination of the California Commission that a 95% standard is an appropriate and reasonable standard for Verizon's systems, and a lack of record evidence demonstrating that the 95% on time standard is infeasible, I deny Verizon's request.

If Verizon disagrees with any of this letter's guidance, it may file an application for review with the Commission pursuant to section 1.115 of the Commission's rules.[20]

Please do not hesitate to contact me if I can be of further assistance. In addition, you may contact Bill Dever, Assistant Division Chief, Competition Policy Division in the Wireline Competition Bureau at (202) 418-1578.

Sincerely,

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau

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16 *Id.* at 2.

17 *Id*.

18 *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14032 at App. D, Attach. A.

19 Verizon Aug. 11 *Ex Parte* Letter at 1-2.

20 47 C.F.R. § 1.115.