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June 17, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040520-TP
Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.

Dear Ms. Bayó:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Response in Opposition to Emergency Petition for filing in the above matter. Also enclosed are an original and 15 copies of a Request for Confidential Classification and Motion for Protective Order regarding certain information contained in the Response.

Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

Richard A. Chapkis RW

Richard A. Chapkis

RAC:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response in Opposition to Emergency Petition and Request for Confidential Classification and Motion for Protective Order in Docket No. 040520-TP were sent via U.S. mail on June 17, 2004 to the parties on the attached list.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint Seeking Order Requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to Continue to Honor Existing Interconnection Obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.	)	**Docket No. 040520-TP** **Filed: June 17, 2004**

VERIZON FLORIDA INC.'S RESPONSE
IN OPPOSITION TO EMERGENCY PETITION

Verizon Florida Inc. (Verizon) files this response in opposition to the "emergency" Petition of AT&T Communications of the South States, LLC (AT&T), MCImetro Access Transmission Services, LLC (MCImetro) and MCI WORLDCOM Communications, Inc. (MCI WORLDCOM) (collectively, MCI), and the Florida Competitive Carriers Association (FCCA).[1]

I. INTRODUCTION

The sky is not falling. The Commission should reject the attempts of AT&T, MCI, and FCCA (collectively, the Joint CLECs) to persuade the Commission to act precipitously and unlawfully. Contrary to the Joint CLECs' inflammatory claims, Verizon has not disconnected, and will not disconnect, any CLEC's services as a result of the issuance of the D.C. Circuit's mandate in *USTA II* (unless, of course, the CLEC chooses that option). Nor did Verizon raise its rates when the mandate issued on June 16, 2004.

[1] The members of FCCA include Access Integrated Networks, Inc., AT&T, ICG Communications, Inc. (ICG), IDS Telecom LLC, ITC DeltaCom, Inc. (ITC DeltaCom), KMC Telecom (KMC), MCI, Network Telephone Corporation, NewSouth Communications, Inc. (NewSouth), Supra Telecommunications and Information Systems, Inc. and Z-Tel Communications, Inc. (Z-Tel).

Verizon will provide CLECs with at least 90 days' notice — a period of time that exceeds the requirements of many of its interconnection agreements — before taking any action pursuant to applicable law and its interconnection agreements. During that notice period, Verizon will continue to provide the unbundled network elements (UNEs) at issue in *USTA II* at TELRIC rates and to accept new orders for those UNEs. Moreover, Verizon has committed not to unilaterally increase the wholesale price it charges for UNE-P arrangements that are used to serve mass market consumers (those with fewer than 4 lines) for 5 months.[2] Simply put, ***there is no emergency and there is no risk of imminent disruption to customers now that the mandate has issued.***

1. Not only is there no reason for "emergency relief," the Petition must be denied for several important reasons.

2. *First*, in Verizon's consolidated arbitration proceeding, this Commission has already denied the *same* request from many of the *same* carriers, because Verizon has made clear that it will comply with its interconnection agreements.[3] Nothing has changed since denial of the "standstill" request there, so the Commission should make the same ruling here. Other state commissions, including North Carolina, New Hampshire, New York, Vermont, Massachusetts, Oregon, and Texas, have, likewise, ruled that the emergency relief the CLECs seek is unjustified.

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[2] *See* letter from Ivan G. Seidenberg to Michael K. Powell, dated June 11, 2004. A copy of that letter is attached as Exhibit A.

[3] *In re: Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.*, Order on Motion to Hold Proceeding in Abeyance, No. PSC-04-0578-PCO-TP (June 8, 2004).

3. *Second*, the Joint CLECs have not alleged that Verizon has violated its interconnection agreements or any provision of law; they have merely alleged that Verizon *might* not honor its obligations under its agreements and section 251 of the Act after issuance of the D.C. Circuit's mandate. Verizon could just as readily speculate that the Joint CLECs will violate their interconnection agreements by not conforming to the provisions that allow implementation of the results of *USTA II.* But that would not state a current controversy between the parties. Similarly, the Joint CLECs' speculation presents no actual controversy that is ripe for consideration, let alone on an "emergency" basis, and therefore their Petition should be denied.

4. *Third,* although the Joint CLECs claim that they are merely asking the Commission to maintain "the status quo," they are actually trying to *change* the status quo by asking this Commission to override the terms of the interconnection agreements that CLECs in Florida have signed and this Commission has approved. In most, if not all instances, Verizon's interconnection agreements give it the contractual right to cease providing UNEs under federal rules that were struck down by the *USTA II* court, and therefore this Commission cannot lawfully issue a generic ruling depriving Verizon of those contractual rights. Accordingly, the Commission should deny the Joint CLECs' Petition.

5. *Fourth*, the Commission has no authority — under federal or state law — to require unbundling in the absence of a valid finding of impairment by the FCC that is consistent with federal law. Unless and until the FCC makes such a finding, any Commission decision requiring unbundling — let alone re-imposing the statewide unbundling requirements that the D.C. Circuit vacated — would be contrary to federal

law and preempted. Accordingly, the Commission cannot lawfully grant the relief requested by the Joint CLECs.

II. BACKGROUND

6. Since the Act was passed in 1996, the FCC has — *on three separate occasions* — failed to promulgate lawful unbundling rules under section 251. The United States Supreme Court overturned the FCC's first attempt because, in ordering blanket access to the ILECs' networks, the FCC misapplied the "necessary and impair" standards under section 251(d)(2) of the 1996 Act. In that decision, the Supreme Court emphasized that the 1996 Act placed "clear limits" on the FCC's authority to force ILECs such as Verizon to provide UNEs.[4]

7. On remand from the Supreme Court, the FCC attempted once again to identify the network elements that had to be unbundled under section 251(b)(2), but the United States Court of Appeals for the District of Columbia Circuit, in *USTA I*, vacated the FCC's unbundling rules because the FCC had *again* failed properly to apply the impairment standards in section 251(d)(2) in establishing its rules. In doing so, the D.C. Circuit in *USTA I* rejected the FCC's belief that "more unbundling is better," pointing out that "Congress did not authorize so open-ended a judgment."[5]

8. On remand from the D.C. Circuit, the FCC issued its *Triennial Review Order* ("*TRO*"), effective October 2, 2003 — its third attempt to establish unbundling rules that conform to federal law. The *TRO*, among other things, eliminated certain UNEs on a national basis (*e.g.*, OCn transport facilities). For other UNEs (*e.g.*, mass

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[4] *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397 (1999).

[5] *United States Telecom Assoc. v. FCC*, 290 F.3d 415, 426-27 (D.C. Cir. 2002) ("*USTA I*"), *cert. denied*, 123 S. Ct. 1571 (2003).

market switching, high capacity loops, dedicated transport), the *TRO* provided for state review on a more granular basis to determine impairment under section 251(d)(2), to be completed within nine months of the effective date of the order. In addition, the *TRO* imposed new legal obligations on incumbents such as Verizon (*e.g.*, network modifications, commingling of UNEs with wholesale services, and conversion of special access to EELs).

9. On March 2, 2004, the D.C. Circuit affirmed in part and vacated in part the FCC's rules in the TRO.[6] In particular, the D.C. Circuit held that the FCC's delegation of authority to state commissions to make impairment findings under section 251(d)(2) was unlawful, and further found that the FCC's national findings of impairment for unbundled local switching and dedicated interoffice and loop transport, including dark fiber, were improper and could not stand on their own. Specifically, the D.C. Circuit observed that it "doubt[ed] that the record supports a national impairment finding for mass market switches."[7] Likewise, for dedicated interoffice or loop transport, the D.C. Circuit pointed out that "as with mass market switching, the [TRO] itself suggests that the [FCC] doubts a national impairment finding is justified on this record."[8] Therefore, the court vacated the FCC's rules requiring unbundled access to mass market switching and high capacity dedicated interoffice and loop transport.[9]

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[6] *United States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

[7] *USTA II*, 359 F.3d at 569.

[8] *Id.* at 574.

[9] The D.C. Circuit was clear that it was vacating *all* of the FCC's attempts to delegate impairment determinations to the states, *see USTA II*, 359 F.3d at 568, and the FCC had attempted that delegation for high-capacity loops and interoffice dedicated transport, *see TRO* ¶¶ 328, 394. The D.C. Circuit also made clear that it was using the term "transport" to refer to

10. The D.C. Circuit stayed the vacatur of those rules for 60 days and later extended that stay for another 45 days. *See USTA II*, 359 F.3d at 595; Order, *USTA II*, Nos. 00-1012 *et al.* (D.C. Cir. June 4, 2004). The mandate issued, as scheduled, on June 16, after the D.C. Circuit and the Supreme Court both denied CLEC and NARUC petitions for further stay of the mandate. The United States and the FCC have announced that they will not seek Supreme Court review of the D.C. Circuit's decision.

11. The FCC's request to extend the stay of the mandate to June 16 was expressly based on the Commissioners' joint request that the industry engage in business-to-business negotiations for commercially acceptable arrangements to replace the vacated UNEs. In response to that request, Verizon has made clear that it is willing to negotiate with its wholesale customers for services to replace the UNEs affected by *USTA II*. On April 21, 2004, Verizon announced a proposed framework for commercial agreements with those wholesale customers, known as "Wholesale Advantage," that would allow customers using Verizon unbundled network element platform (UNE-P) to continue to receive all the services and capabilities that they receive today, using their current ordering systems, at modest increases over TELRIC rates.[10] Across Verizon's footprint, the Wholesale Advantage rates are usually lower than the rates that carriers

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"transmission facilities dedicated to a single customer," that is, what the FCC defines as "loops" — as well as to facilities dedicated to a "carrier." *USTA II*, 359 F.3d at 573; 47 C.F.R. § 51.319(a) (defining "loop"). In addition, the two fatal defects the D.C. Circuit identified with respect to the FCC's analysis of high-capacity facilities — considering impairment on a route-specific basis and the failure to consider the availability of special access, *see USTA II*, 359 F.3d at 575, 577 — apply to the FCC's determinations as to both loops and transport, *see TRO* ¶¶ 102, 332, 341, 401, 407.

[10] A more detailed description of Verizon's post-mandate plans is set forth in the Declaration of Virginia P. Ruesterholz, which was attached to the Joint Opposition of ILECs to Motions to Stay the Mandate Pending the Filing of Petitions for a Writ of Certiorari, filed with the D.C. Circuit on June 1, 2004. A copy of that Declaration is attached as Exhibit B.

would pay for equivalent resale services under section 251(c)(4) of the 1996 Act and their existing interconnection agreements. The Wholesale Advantage framework also allows carriers to negotiate terms to obtain additional services that are not available to them as part of unbundled network element arrangements, such as DSL, voice mail, and inside wire service.

12. As a result of the announcement of its "Wholesale Advantage" offering, Verizon has been negotiating wholesale arrangements — negotiations that are outside of the scope of the 1996 Act — with approximately 50 wholesale customers across Verizon's footprint, and has signed non-disclosure agreements with many others. Commercial agreements negotiated between carriers are a superior alternative to government-mandated requirements that have the obvious effect of eliminating CLEC incentives to negotiate reasonable, market-driven agreements.[11]

13. In addition to commercial agreements, CLECs can continue providing end-to-end service to their customers on a *resale* basis under section 251(c)(4) of the 1996 Act, or on a commercially negotiated basis under the Wholesale Advantage framework. High-capacity transport and loop services will also continue to be available through comparable access services under existing special access tariffs or pursuant to agreements negotiated on a commercial basis. If CLECs decide not to enter into commercially-negotiated arrangements, Verizon will give them ample notice before it begins providing them service at resale rates (or for high capacity transport and loops,

[11] Those discussions, and any agreements that flow from them, are outside the scope of section 252 of the 1996 Act, because they involve service arrangements and network elements that, after the D.C. Circuit's mandate issues, will not be subject to the unbundling regime in section 251 of the 1996 Act.

at special access rates), rather than TELRIC rates.[12] During the notice period, Verizon will continue to provide the UNEs that are no longer required as a matter of federal law at TELRIC rates and to accept new orders for those UNEs. Verizon will also continue to offer Wholesale Advantage and to negotiate terms with CLECs during this period, and thereafter. The alternatives to UNEs that Verizon is making available, along with the generous notice periods and Verizon's commitment not to raise mass-market UNE-P rates for five months, will ensure that there is no market disruption. Therefore, if customer disruptions or marketplace confusion occur, as the Joint CLECs hypothesize, it will be because the CLECs have chosen this path to enhance their litigation posture.

14. In sum, there is no emergency and no risk of imminent disruption to CLEC customers now that the mandate has issued. The Joint CLECs' baseless and alarmist claims about what *might* happen *several months from now* are no justification for the Commission to interfere with the orderly implementation of the *USTA II* mandate in accordance with effective, binding interconnection agreements.

III. THIS COMMISSION SHOULD NOT DEVIATE FROM PRIOR ORDERS DENYING CLEC STANDSTILL REQUESTS.

15. The Commission should deny the Joint CLECs' standstill request, because it has already denied the very *same* request from many of the same carriers in

[12] Because the FCC's attempts to expand unbundling beyond the reach of the statute have now been struck down by the federal courts three times, there have ***never*** been lawful section 251 unbundling rules binding the ILECs and obligating them to provide local mass market switching, high capacity loops and interoffice transport, and dark fiber as UNEs. Accordingly, upon issuance of the mandate, there will not be a "change of law" to eliminate previously lawful rules requiring provision of UNEs, but merely an affirmation that there have never been lawful UNE rules to change. Verizon does not waive this argument where it chooses to follow the administrative processes set forth in its interconnection agreement that apply to actual changes in law.

Verizon's consolidated arbitration proceeding.[13] In that proceeding, AT&T, MCI and several members of FCCA (ICG, ITC DeltaCom, KMC, NewSouth and Z-Tel) were among 27 CLECs that asked the Commission to maintain the availability of all existing UNE arrangements for an indefinite period,[14] just as they do here. That request was denied, based on the finding that Verizon intended to comply with its existing interconnection agreements. Nothing has changed since that Order was issued last week — Verizon will still adhere to its contracts, and there is still no lawful basis for the Commission to override those contracts — so there is no reason for the Commission to consider the same request again.

16. Other state Commissions have also reached the conclusion that there is no need for the standstill order the CLECs request. Most recently, on June 15, 2004, the Massachusetts Commission determined that no emergency relief was justified, based on Verizon's commitment to provide at least 90 days' notice before discontinuing any UNEs.[15] On June 11, both the North Carolina and Oregon Commissions held that relief analogous to that requested here was not necessary.[16] That same day, the New

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[13] *In re: Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.*, Order on Motion to Hold Proceeding in Abeyance, No. PSC-04-0578-PCO-TP (June 8, 2004).

[14] ITC DeltaCom, KMC, and NewSouth filed their requests as members of the Competitive Carrier Group; ICG filed its request as a member of the Competitive Carrier Coalition; and AT&T, MCI, and Z-Tel independently filed their requests.

[15] June 15, 2004 letter from the Mass. D.T.E. to the service list in Docket D.T.E. 03-60.

[16] Order Denying Emergency Relief, *Request of the Competitive Carriers of the South, Inc., for an Emergency Declaratory Ruling*, Docket No. P-100, Sub. 133t, at 2 (NC Util. Comm'n, June 11, 2004); *Investigation to Determine, Pursuant to Order of the F.C.C., Whether Impairment Exists in Particular Markets if Local Circuit Switching for Mass Market Customers Is No Longer Available as an Unbundled Network Element*, Ruling Denying Motion, Docket No. UM 1100 (Or. Pub. Util. Comm'n June 11, 2004).

Hampshire Commission "determined it need not make an expedited ruling on the CLEC Petition," based on representations from Verizon New Hampshire like those Verizon Florida has made here.[17] The Texas Commission, addressing the issue on a stand-alone basis (rather than in the context of CLEC-demanded conditions for abeyance), likewise, declined to grant interim relief, based on Verizon's commitment to honor its interconnection agreements.[18] Two days before, the New York Commission reached the same result, holding that the CLECs' "fears" about "a potential interruption in service from Verizon once the vacatur goes into effect" "are unfounded."[19] The Vermont Board also held that it is not "necessary" to "adopt specific conditions limiting Verizon at this time."[20]

17. Given that Verizon will comply with the provisions of its interconnection agreements, this Commission should — for the *second* time — reject the Joint CLECs' standstill request for the same reason as it did the first time.

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[17] *In re: Petition for Expedited Order of A.R.C. Networks, et al.,* Docket No. DT 04-107, letter dated June 11, 2004.

[18] *Competitive Carrier Coalition Petition for Post-Interconnection Dispute Resolution and Request for an Interim Ruling that SBC Texas and Verizon Southwest Remain Required to Provision Unbundled Network Elements on Existing Rates and Terms Pending the Effective Date of Amendments to the Parties' Interconnection Agreement,* Docket No. 29829, et al., issued June 11, 2004, at 6.

[19] Ruling Granting Motions for Consolidation and to Hold Proceeding in Abeyance, Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order, Case 04-C-0314, at 7-8 (NY PSC June 9, 2004).

[20] Order re: Motion to Hold Proceeding in Abeyance Until June 15, 2004, Petition of Verizon New England, Inc. for Arbitration of an Amendment to Interconnection Agreements with CLECs and CMRS Providers in Vermont, Docket No. 6932, at 3-4 (Vt. PSB May 26, 2004).

IV. THE PETITION MUST BE DISMISSED BECAUSE IT DOES NOT ALLEGE ANY LEGAL VIOLATIONS AND IS BASED SOLELY ON UNFOUNDED SPECULATION.

18. The Joint CLECs state that their Petition is filed pursuant to rules 25-22.036 and 28-106.201, Florida Administrative Code.[21] The Petition, however, does not meet the requirements necessary to initiate an action under either provision (or, for that matter, any other Commission rule), let alone provide any basis for "emergency" action.

19. Under section 25-22.036, a complaint is only appropriate "when a person complains of an act or omission by a person subject to the Commission's jurisdiction which affects the complainant's substantial interests and which is a violation of a statute enforced by the Commission, or of any Commission rule or order." Section 28-106.201, which is used only to initiate evidentiary proceedings, likewise, requires the petitioning party to state the "specific rules or statutes" at issue, as well as the "disputed issues of material fact."

20. The Joint CLECs have not met any of these requirements. They have not alleged that Verizon has violated any statute, Commission rule or order, or even their interconnection agreements. They allege only that Verizon *might* not comply with its agreements when the D.C. Circuit's mandate issues. They have not cited any disputed issues of material fact; despite pleading under section 28-106.201, they do not appear to be seeking an evidentiary hearing, but rather, summary action without regard to any particular contract provisions.

21. The Joint CLECs' unfounded speculation about what might happen after the mandate issues is not sufficient to initiate any proceeding under the Commission's

[21] Joint CLEC Petition at 1.

rules, let alone to obtain what amounts to injunctive relief. As the Joint CLECs know, Verizon has, in fact, consistently represented that it will continue to honor its obligations to provide access to UNEs under section 251 and its interconnection agreements. Indeed, as explained above, Verizon's statement that it intends to continue to comply with its interconnection agreements was the basis for the Order denying the standstill order that many of the CLECs to this proceeding requested in Verizon's consolidated arbitration. Moreover, Verizon need not amend its interconnection agreements to eliminate switching, transport, and high capacity loop UNEs after June 15, 2004, as the Joint CLECs seem to believe, because those agreements (in most if not all cases) permit Verizon to cease providing UNEs once its legal obligation to do so has ended.[22]

22. That does *not* mean, however, that Verizon will immediately discontinue any CLEC's service as a result of the mandate, as the Joint CLECs speculate. Now that the mandate has issued, Verizon's wholesale customers will have several options available to them. As explained above, Verizon intends to give at least 90 days' notice that the UNEs at issue will be replaced with resale or tariffed arrangements, in the absence of a commercial agreement with the CLEC. Verizon will continue accepting orders during the notice period, and, as noted has committed not to unilaterally increase mass-market UNE-P prices for five months. In addition, the Joint CLECs will retain the option of increasing the extent to which they rely on their own or third-party facilities, instead of building their business cases solely on the repackaging of Verizon services.

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[22] The consolidated arbitration the Joint CLECs reference (Docket No. 040156-TP) does not and cannot affect Verizon's rights under its *existing* interconnection agreements, including, as explained, the right to cease providing certain UNEs when the mandate issues. The arbitration proceeding is, instead, necessary to *amend* agreements to reflect the rulings in the *Triennial Review Order* that were not self-effectuating.

Accordingly, there is no merit to the Joint CLECs' claims that end users will experience service disruptions.

23. Moreover, it is demonstrably false that elimination of the affected UNEs will have a **significant impact on the Joint CLECs.** ** ** of the Joint CLECs — and, in fact, ** ** purchases ** ** DS1 UNE-P, UNE DS3 loops, dark fiber loops, or dark fiber transport from Verizon today; thus, they provide service to ** ** **end-user customers using such UNEs. Only** ** ** of the 12 Joint CLECs **purchase any UNE-P, and** ** ** **Only** ** ** of the Joint CLECs **purchase any UNE DS3 transport, for a total of just** ** ** **facilities. Only** ** ** of them purchases any UNE DS1 transport, and takes only ** ** facilities. Likewise, only ** ** of the Joint CLECs purchase a total of just ** ** UNE DS1 loops. In contrast, the Joint CLECs together take ** ** DS1 special access loops, which will not be affected by issuance of the D.C. Circuit's mandate. In short, a number of the Joint CLECs have ** ** or ** ** customers using the UNEs affected by the issuance of the D.C. Circuit's mandate; any such customers receiving service using these UNEs could easily be moved to alternative, lawful arrangements such as special access, and any conceivable impact on their business would be *de minimis*. Indeed, many of Verizon's carrier customers already purchase some special access services from Verizon, and then use those services, either alone or in combination with their own facilities, to compete successfully with Verizon to serve end-user customers. Verizon's wholesale customers typically purchase these services under volume and term discount plans, either directly form Verizon's tariffs or under contract arrangements that Verizon

is permitted to enter in areas where the FCC has determined that the special access business is sufficiently competitive to grant it pricing flexibility for these services. The typical discount that Verizon's wholesale customers receive under these plans is in the range of approximately 35 to 40 percent off the basic monthly rates for these services.

24. In sum, the Commission should deny the Joint CLECs' Petition because it is not ripe for review, and because there has been and will not be any service disruption to the CLECs or their customers in the wake of the mandate.[23]

V. THE COMMISSION HAS NO AUTHORITY TO MODIFY THE TERMS OF BINDING AGREEMENTS THROUGH A GENERIC PROCEEDING.

25. Although the Joint CLECs claim to be asking the Commission to maintain the "status quo," they are actually trying to *change* the status quo by asking the Commission to override the terms of their interconnection agreements that they signed and this Commission approved. The Commission has no authority under federal or state law to do so.

26. The Joint CLECs offer only the unsupported assertion that Verizon remains obligated to provide UNEs at TELRIC prices, despite the *USTA II* mandate, because of terms in the interconnection agreements. In particular, the Joint CLECs assert that, under the terms of those agreements, Verizon cannot discontinue providing

[23] In any event, the CLECs should have planned for the eventuality that certain UNEs would be eliminated since the FCC first announced its Triennial Review decision over a year ago. The changes to the FCC's unbundling scheme were addressed in the February 2003 FCC press releases regarding its *Triennial Review Order,* and then made law when the Order was released on August 21, 2003. In addition, the D.C. Circuit's *USTA II* decision vacating the *TRO*'s requirements to unbundle mass-market switching and high capacity facilities was released three *months* ago, so parties that have declined to use the intervening stay to develop processes consistent with that decision have done so at their own peril. This is patently so, given that the *USTA II* holding, whose result was widely predicted even by lay analysts, *e.g., "Court Should Clear UNE-P Mess, Favor RBOCs,"* Lehman Brothers Telecom Services Wireline Industry Update (January 12, 2004), was the third time federal appellate courts have rejected the FCC's UNE rules as inconsistent with the Act and unlawful.

unbundled network elements at TELRIC prices without first amending its interconnection agreements. But while the Joint CLECs ask the Commission to make a generic ruling on the proper construction of the many interconnection agreements between Verizon and CLECs, and for the extraordinary relief of an anticipatory injunction, it does not even identify, let alone discuss, the applicable terms of those agreements. Indeed, two of the Joint CLECs (Access Integrated Networks and IDS) do not even have interconnection agreements with Verizon Florida, so their claims of imminent service disruption are necessarily false and their request for relief against Verizon is an abuse of the Commission's process.

Verizon's interconnection agreements with the other Joint CLECs generally permit it to stop providing unbundled network elements when they are no longer required by federal law. In relevant part, these provisions state:

- AT&T, NewSouth, and Supra[24] (Section 3.3): "In the event . . . a final order [of a court] allows but does not require discontinuance [of a UNE], [Verizon] shall make a proposal for [CLEC's] approval . . . . [Verizon] will not discontinue any Local Service or Combination of Local Services without providing 45 days advance written notice to [CLEC]."[25]

[24] MCI WORLDCOM and MCImetro both adopted the AT&T agreement in February 2004. In light of the October 2, 2004 effective date of the Triennial Review Order, the reasonable period of time for adopting provisions imposing an unbundling obligation on Verizon that no longer applies under the Triennial Review Order had, at the of MCI WORLDCOM's and MCImetro's adoptions, expired under the FCC's rules implementing section 252(i) of the Act (*see, e.g.*, 47 CFR Section 51.809(c)). Accordingly, MCI WORLDCOM's and MCImetro's adoption of the AT&T agreement does not include adoption of any such provisions. See Adoption Letters dated April 30, 2004 from J. Ross of Verizon to D. Canzano McNulty, Esq. on behalf of MCI WORLDCOM and MCImetro, with copies to, *inter alia*, Ms. Blanca Bayo, Director, Office of the Commission Clerk and Administrative Services, Florida Public Service Commission.

[25] AT&T, NewSouth, and Supra Agreements § 3.3. The notice of at least 90 days that Verizon will provide constitutes compliance with this condition. But again, by choosing to take action that complies with § 3.3, Verizon does not waive any argument that compliance is not required for the reasons stated in footnote 14, *supra*. See also the Agreements' Dark Fiber Amendment § 1.5 ("Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of [dark fiber], if Verizon provides [dark fiber]

- ICG (General Terms and Conditions Section 50.1): Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Verizon may terminate its offering and/or provision of any Service under this Agreement upon ninety (90) days prior written notice to ICG.[26]

- ITC DeltaCom and KMC (Article II, Section 1.2): The terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time this Agreement was produced, and shall be subject to any and all . . . judicial decisions . . . that subsequently may be prescribed by any federal . . . authority having appropriate jurisdiction. Except as otherwise expressly provided herein, such subsequently prescribed . . . judicial decisions . . . will be deemed to *automatically supersede* any conflicting terms and conditions of this Agreement. (Emphasis added).

- Network Telephone (Amendment No. 2, UNE Attachment Section 1.5): Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to NETWORKTEL, and . . . a court . . . determines or has determined that Verizon is not required by Applicable Law to provide such UNEs or Combination, Verizon may terminate its provision of such UNE or Combination to NETWORKTEL.

- Z-Tel (General Terms and Conditions Section 4.7): "Notwithstanding anything in this Agreement to the contrary, if, as a result of any . . . judicial . . . decision . . . a Party is not required by Applicable Law to provide any Service . . . otherwise required to be provided to the other Party hereunder, then the affected Party may discontinue the provision of any such Service . . . Verizon will provide thirty (30) days prior written notice to [Z-TEL] of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service, in which event such specified period and/or conditions shall apply."[27]

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to [CLEC], and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such [dark fiber], Verizon may terminate its provision of such [dark fiber] to [CLEC].").

[26] See also General Terms and Conditions § 4.7; Network Elements Attachment § 1.5.

[27] See also Network Elements Attachment, § 1.5 ("Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to [Z-Tel], and . . .a court . . . determines or has determined that Verizon is not required by Applicable Law to provide such

27. These provisions expressly permit Verizon to cease providing unbundled access to the network elements affected by the D.C. Circuit's decision. Although the Joint CLECs may now wish they had not voluntarily agreed to these provisions, their current dissatisfaction with their interconnection agreements provides no basis for overriding those agreements.

28. Under federal law, the terms of an interconnection agreement, once approved by a state commission, are "binding" on the parties. 47 U.S.C. § 252(a) ("an incumbent local exchange carrier may enter into a "binding" agreement with the requesting telecommunications carrier"). If Verizon has a contractual right to stop providing UNEs at TELRIC prices when no longer required to do so by federal law, the Commission cannot void that contractual right by forcing Verizon to continue to provide those services to all CLECs, regardless of the terms of their individual agreements. A state commission decision that, under the guise of interpreting an agreement "effectively changes [its] terms," "contravenes the Act's mandate that interconnection agreements have the binding force of law." *Pacific Bell v. Pac West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9th Cir. 2003). Thus, this Commission cannot, despite the Joint CLECs' request, issue a generic standstill order that Verizon must continue to provide UNEs at TELRIC rates after the issuance of the D.C. Circuit's mandate.

29. Similarly, the Commission may not lawfully issue a generic decision without considering the specific terms of the interconnection agreements between Verizon and the CLECs. Indeed, the Ninth Circuit directly rejected that proposition,

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UNE or Combination, Verizon may terminate its provision of such UNE or Combination to [Z-TEL]").

holding that a state commission that "promulgat[es] a generic order binding on existing interconnection agreements without reference to a specific agreement or agreements," "act[s] contrary to the [1996] Act's requirement that interconnection agreements are binding on the parties." *Id.* As the court explained, "[t]o suggest that [a state commission] could interpret an agreement without reference to the agreement at issue is inconsistent with [its] weighty responsibilities of contract interpretation under § 252." *Id.* at 1128.

30. In sum, this Commission may not, consistent with federal law, order Verizon to continue to provide unbundled network elements that Verizon is not required to provide under the terms of its interconnection agreements.

VI. THE COMMISSION HAS NO AUTHORITY TO RE-IMPOSE THE VACATED UNBUNDLING OBLIGATIONS.

31. The Joint CLECs contend that the Commission can require Verizon continue to provide mass market circuit switching, high-capacity loops and transport, and dark fiber as UNEs after issuance of the D.C. Circuit's mandate, because *USTA II* does not invalidate the unbundling requirements in the Telecommunications Act of 1996, and does it affect the Commission's authority to supervise the implementation of interconnection agreements or its authority to act pursuant to federal or Florida law to preserve competition.[28] Contrary to the CLECs' contentions, neither federal nor state law permits the Commission to re-impose these vacated unbundling requirements that the D.C. Circuit has eliminated. Any such authority has been preempted by federal law and, in particular, by the D.C. Circuit's decision in *USTA II*.

[28] Joint CLECs Petition at 16.

32. As an initial matter, courts of appeals have repeatedly found that the 1996 Act preempts state commission attempts to impose unbundling obligations outside of the section 252 process that Congress established. *See, e.g., Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 443 (7th Cir. 2003); *Pac West*, 325 F.3d at 1126-27; *Verizon North Inc. v. Strand*, 309 F.3d 935, 940 (6th Cir. 2002). In the face of existing, binding agreements that affirmatively eliminate certain unbundling obligations once the *USTA II* mandate issues, the Commission could not re-impose those unbundling requirements consistent with the section 252 process. And the Joint CLECs, in any event, provide no indication they are willing to follow that process — instead, they seek an immediate order requiring unbundling *before* the FCC has issued an order finding that unbundling is required consistent with binding judicial interpretations of the 1996 Act.

33. Such an order would violate not only the procedural requirements of the 1996 Act, but also its substantive standards. As both the Supreme Court and the D.C. Circuit made clear in vacating the FCC's first two attempts to issue UNE rules, Congress did not require "blanket access to incumbents' networks" or determine that "more unbundling is better." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 390 (1999); *USTA I*, 290 F.3d at 429. Instead, those cases make clear that "'impairment' [is] the touchstone" to any requirement of unbundling. *USTA I*, 290 F.3d at 429. Therefore, under federal law, there must be a valid finding of impairment under section 251(d)(2) *before* an incumbent may be ordered to provide access to a network element as a UNE, at TELRIC rates. And in *USTA II*, the D.C. Circuit held that this impairment determination must be made *by the FCC* and that the authority cannot be exercised by state commissions. *See* 345 F.3d at 565-68. Accordingly, in the absence of a lawful

FCC finding of impairment, any state commission order requiring unbundling would be fundamentally *inconsistent* with federal law by requiring unbundling where the 1996 Act, by its terms, does not.

34. In light of the foregoing, the Commission should deny the relief requested by the Joint CLECs because it cannot — under federal or state law — re-impose the vacated unbundling obligations on Verizon.

VII. CONCLUSION

35. For the foregoing reasons, the Commission should deny the Joint CLECs' Petition.

Respectfully submitted,

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June 17, 2004

EXHIBIT A

Ivan Seidenberg
Chairman & CEO

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June 11, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

The decisions of the Solicitor General and the FCC not to appeal the *USTA II* decision pave the way for a new telecommunications policy that reflects the market facts of today -- facts that have changed dramatically even since the last order. A new market-oriented policy will promote investment in new technologies and services, and provide enormous benefits to consumers.

Some carriers nevertheless claim that these decisions will produce immediate and drastic price increases for consumers. Their claims are misplaced.

First, their claims are out of touch with the business realities we have to contend with every day. The simple fact is that retail pricing strategies are determined by competition among wireline carriers, wireless carriers, cable providers and VOIP. This competition is here to stay.

Second, for our part, we will continue to provide wholesale access to our narrowband network after the rules are vacated, and will continue to make every effort to negotiate commercial agreements with wholesale customers. As we have consistently emphasized, negotiated commercial arrangements, rather than continued litigation and regulation, will provide certainty for all concerned, promote investment and help bring an end to the regulatory food fights that have plagued the industry.

Third, we also are committed to not unilaterally increase the wholesale price we charge for UNE-P arrangements that are used to serve mass market consumers (those with fewer than 4 lines) for 5 months, and we plan to give our wholesale customers at least 90 days notice of any future change. We will, of course, continue to pursue efforts to correct the wholesale prices that have been set by the states.

Fourth, we will continue to invest in new broadband technologies such as fiber optics and packet switching that will allow us to provide exciting new services to our customers. We have announced the initial sites where we are deploying these new technologies, and more will follow. The Commission's decision that these new technologies are not subject to unbundling helped pave the way for these investments, but more remains to be done to clarify the scope of that ruling and to adopt a clear and comprehensive national broadband policy. I urge you to promptly address these matters to facilitate the widespread broadband investment that you and the administration have wisely encouraged.

Sincerely,

Ivan G. Seidenberg

Cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein

EXHIBIT B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 00-1012 *et al.*

UNITED STATES TELECOM ASSOCIATION, *et al.*,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

DECLARATION OF VIRGINIA P. RUESTERHOLZ

1 My name is Virginia P. Ruesterholz. My business address is 1095 Avenue of the Americas, 40th Floor, New York, New York. I am President – Wholesale Markets for Verizon Services Group. In that capacity, I am responsible among other things for wholesale sales, marketing and account management; CLEC ordering, provisioning, systems and support; special services ordering and installation; and for special access services provided to our wholesale carrier customers.

2. I have more than 20 years of experience in the telecommunications industry, in a variety of engineering and operations positions working for NYNEX, Bell Atlantic and now Verizon. My education background includes a B.S. in Chemical Engineering received in 1984 and a M.S. in Telecommunications Management received in 1991

3. The purpose of this declaration is to describe the actions that Verizon intends to take once the D.C. Circuit's mandate in *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), issues on June 15, 2004.

4. Any claim that Verizon intends to "throw competitors off its network" once the FCC's current unbundling rules are vacated is not correct. There will be no immediate impact on existing service arrangements from the issuance of the Court's mandate. To the contrary, Verizon's goal is to have service to our wholesale customers remain uninterrupted even though the rules that required Verizon to provide certain elements are vacated.

5. Verizon has made clear that it is willing to negotiate with our wholesale customers after the rules are vacated. At this time, we are negotiating with approximately 50 wholesale customers, and have signed non-disclosure agreements with and provided information to many more.

6. In addition, Verizon announced on April 21 a proposed framework for commercial agreements with our wholesale customers, which we refer to as "Wholesale Advantage." The framework we proposed would allow our wholesale customers that currently use unbundled switching as part of the so-called UNE-platform to continue to receive all the services and capabilities that they receive today, as well as to continue to use their current ordering systems. The rates for these services would increase modestly from current TELRIC rates over a three year period. For example, a widely accepted independent analyst calculation of the average UNE-P rate in Verizon service areas is approximately $18.50 per line per month. Under the Wholesale Advantage framework, the corresponding rate in the first year of an agreement would generally range from $20 to $24 per line per month in the urban and suburban markets where most of the UNE-P lines are purchased. These rates generally are substantially lower than the rates carriers would pay if these services were purchased on a wholesale basis for resale under 47 U.S.C. § 251(c)(4). In addition, under Wholesale Advantage, wholesale customers can negotiate terms to obtain additional services that they have requested but that are not currently available to

them as part of their UNE-P arrangements, such as Verizon's high speed digital subscriber line service ("DSL") and voice mail and inside wire. Wholesale Advantage will remain available after the unbundling requirements are vacated.

7. Once the unbundling rules are vacated, Verizon plans to follow a process similar to what we have done for other elements that no longer have to be provided. For example, under the FCC's rules, we no longer are required to provide unbundled switching used to serve certain larger business or "enterprise" customers. Verizon has notified our wholesale customers of how we plan to give effect to that determination. While Verizon's interconnection agreements typically provide for notice to our wholesale customers in the event we plan to cease providing a particular network element under 47 U.S.C. § 251(c)(3), the length of the required notice varies by agreement and is as short as 30 days in many cases. With respect to enterprise switching, Verizon provided 90 days' notice even if our agreements permitted less. If a wholesale customer believes its contract requires more, we invited it to notify us of that fact. In addition, we notified our wholesale customers that we would not terminate service after the 90 day period, but instead would continue to provide service at the rate that would apply to the analogous service offering purchased on a wholesale basis for resale under 47 U.S.C. § 251(c)(4). And we made it clear that Verizon is prepared to enter into negotiations over wholesale arrangements to serve enterprise customers at mutually agreeable commercial rates. Indeed, we already have agreed to commercial terms with two carriers that previously used unbundled switching to serve enterprise customers.

8. We plan to follow a similar process in the event the requirement to provide mass market switching and therefore the UNE-platform is vacated. Specifically, we plan to provide our wholesale customers with 90 days' notice that mass market switching, and UNE-platform

arrangements that include this element, no longer will be available as an unbundled network element under 47 U.S.C. § 251(c)(3), again with an invitation to contact us if a carrier feels its agreement requires more. We also will notify our wholesale customers that we will not terminate service at the end of the 90 day notice period, but instead will continue to make the arrangements available at a different rate, and we will reiterate to our wholesale customers that we remain willing to negotiate mutually agreeable commercial terms. At the end of the 90 day period, in the absence of a commercial agreement, we would apply a rate that is generally lower than the rate the carriers would pay if the services were purchased on a wholesale basis for resale, but above the current UNE-P rates. And, of course, our Wholesale Advantage framework will remain available past the 90 day period for any wholesale customer that wants to negotiate a customized arrangement under that framework.

9. Likewise, with respect to high capacity loop and transport facilities, we also plan to provide 90 days' notice, and to make clear that existing service arrangements will continue at the end of that notice period but at a different rate. Indeed, the same high capacity facilities that wholesale carriers purchase as unbundled elements already can be purchased under tariff or pursuant to special contracts as wholesale special access services. Virtually all of our wholesale carriers already purchase some special access services from Verizon, and then use those services, either alone or in combination with their own facilities, to compete successfully with Verizon to serve end user customers. Our wholesale customers typically purchase these services under volume and term discount plans, either directly out of our tariffs or under contract arrangements that we are permitted to enter into in areas where the FCC has determined that the special access business is sufficiently competitive to grant us pricing flexibility for these services. The typical

discount that our wholesale customers receive under these plans is in the range of approximately 35 to 40 percent off the basic monthly rates for these services.

10. To put the wholesale rates that we have proposed in some context, it is useful to compare the current rates that carriers pay for the UNE-platform with the prices they charge their own customers. The attached table provides such a comparison. It sets out on a state-by-state basis the prices that AT&T, which is the largest user of UNE-platform arrangements, charges it own customers for the bundled service offering it markets using the UNE-platform. These prices were taken from AT&T's Web site. The table compares these rates to the average UNE-platform rate on a state-by-state basis. These rates are based on a widely used report compiled by the West Virginia consumer advocate, and have been computed with two different minute of use assumptions used by the author of the report (which is necessary because the rate for unbundled switching is normally set on a per minute of use basis). The first minute of use assumption is 1,000 minutes per month; the second minute of use assumption is 2,000 minutes per month, which is comparable to the figure the FCC previously has used to compare unbundled switching rates. The actual rate that a carrier would pay for the UNE-platform would be somewhat less than the average in urban and suburban areas where UNE-platform is used most heavily and somewhat higher in more rural areas.

11. This comparison shows two things that are relevant here. First, the gross margin between the current UNE-platform rates and the prices that AT&T charges to its own customers is substantial, typically in the range of $35 to $40 per line. To be sure, AT&T will incur marketing and other internal costs that would have to be deducted to determine the net margin for its retail services. AT&T has stated in public filings that its internal costs are on the order of $10 per line, but even if they were 50 to 100 percent higher, so that its internal costs were as

much as $20, AT&T would earn substantial net margins on these services. And that would still be true if the wholesale rates AT&T currently pays for the UNE-platform were subject to modest increases of the magnitude that we have proposed under the public offers described above.

12. Second, while AT&T charges its end user customers different rates in different parts of the country, those prices do not necessarily vary in with the wholesale rate that AT&T pays for the underlying UNE-P arrangement. For example, AT&T appears to charge its customers essentially the same rate in Washington and Wyoming, despite a difference of roughly $10 in the average UNE-P rates in those states ($17.90 compared to $27.87 in Washington and Wyoming respectively, each computed at 2,000 minutes of use).

I hereby declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Virginia P. Ruesterholz

Dated: June 1, 2004

ATTACHMENT 1

AT&T's One Rate USA℠ Plan Availability

Includes unlimited local and long distance calling, choice of 4 calling features at one flat monthly rate.

(Grouped by Monthly Rate.)

	State	One Rate USA℠ Monthly Rate[A]	Monthly FCC Line Charge (1/04))[B]	Monthly Rate + Line Charge	UNE-P @1,000 MOU[C]	Margin (Rate-UNE-P @1000)	UNE-P @2,000 MOU[C]	Margin (Rate UNE-P @ 2000)	Margin Difference b/w 2000 and 1000 MOU
1	Kentucky	$ 59.95	$ 6.50	$ 66.45	$ 19.61	$ 46.84	$ 20.81	$ 45.64	$ (1.20)
2	Mississippi	$ 59.95	$ 6.50	$ 66.45	$ 24.63	$ 41.82	$ 25.66	$ 40.79	$ (1.03)
3	Montana	$ 59.95	$ 6.50	$ 66.45	$ 26.87	$ 39.58	$ 28.44	$ 38.01	$ (1.57)
4	South Carolina	$ 59.95	$ 6.50	$ 66.45	$ 18.69	$ 47.76	$ 19.74	$ 46.71	$ (1.05)
5	Alabama	$ 54.95	$ 6.50	$ 61.45	$ 18.51	$ 42.94	$ 19.21	$ 42.24	$ (0.70)
6	Delaware	$ 54.95	$ 6.48	$ 61.43	$ 16.18	$ 45.25	$ 18.10	$ 43.33	$ (1.92)
7	Florida	$ 54.95	$ 6.50	$ 61.45	$ 15.89	$ 45.56	$ 16.66	$ 44.79	$ (0.77)
8	Louisiana	$ 54.95	$ 6.50	$ 61.45	$ 19.47	$ 41.98	$ 21.34	$ 40.11	$ (1.87)
9	Maine	$ 54.95	$ 6.45	$ 61.40	$ 18.81	$ 42.59	$ 20.49	$ 40.91	$ (1.68)
10	New Hampshire	$ 54.95	$ 6.45	$ 61.40	$ 19.36	$ 42.04	$ 21.80	$ 39.60	$ (2.44)
11	New York	$ 54.95	$ 6.45	$ 61.40	$ 15.19	$ 46.21	$ 16.32	$ 45.08	$ (1.13)
12	North Carolina	$ 54.95	$ 6.50	$ 61.45	$ 17.96	$ 43.49	$ 19.86	$ 41.59	$ (1.90)
13	Northern Nevada	$ 54.95	$ 5.39	$ 60.34	$ 23.07	$ 37.27	$ 24.68	$ 35.66	$ (1.61)
14	Rhode Island	$ 54.95	$ 6.45	$ 61.40	$ 17.07	$ 44.33	$ 18.35	$ 43.05	$ (1.28)
15	Tennessee	$ 54.95	$ 6.50	$ 61.45	$ 16.62	$ 44.83	$ 17.42	$ 44.03	$ (0.80)
16	Vermont	$ 54.95	$ 6.45	$ 61.40	$ 19.44	$ 41.96	$ 23.44	$ 37.96	$ (4.00)
17	West Virginia	$ 54.95	$ 6.50	$ 61.45	$ 24.56	$ 36.89	$ 27.11	$ 34.34	$ (2.55)
18	North Dakota	$ 53.95	$ 6.50	$ 60.45	$ 19.03	$ 41.42	$ 20.51	$ 39.94	$ (1.48)
19	Georgia	$ 49.95	$ 6.50	$ 56.45	$ 14.33	$ 42.12	$ 14.94	$ 41.51	$ (0.61)
20	Idaho	$ 49.95	$ 6.50	$ 56.45	$ 22.89	$ 33.56	$ 24.23	$ 32.22	$ (1.34)
21	Iowa	$ 49.95	$ 4.92	$ 54.87	$ 18.65	$ 36.22	$ 20.21	$ 34.66	$ (1.56)
22	Maryland	$ 49.95	$ 5.77	$ 55.72	$ 13.75	$ 41.97	$ 14.92	$ 40.80	$ (1.17)
23	Massachusetts	$ 49.95	$ 6.45	$ 56.40	$ 16.92	$ 39.48	$ 17.69	$ 38.71	$ (0.77)
24	Missouri	$ 49.95	$ 5.27	$ 55.22	$ 19.27	$ 35.95	$ 21.46	$ 33.76	$ (2.19)
25	Nebraska	$ 49.95	$ 5.07	$ 55.02	$ 17.77	$ 37.25	$ 27.25	$ 27.77	$ (9.48)
26	New Jersey	$ 49.95	$ 6.31	$ 56.26	$ 12.61	$ 43.65	$ 13.79	$ 42.47	$ (1.18)
27	New Mexico	$ 49.95	$ 6.50	$ 56.45	$ 21.01	$ 35.44	$ 25.44	$ 31.01	$ (4.43)
28	Oregon	$ 49.95	$ 6.50	$ 56.45	$ 17.47	$ 38.98	$ 18.80	$ 37.65	$ (1.33)
29	Pennsylvania	$ 49.95	$ 6.10	$ 56.05	$ 18.19	$ 37.86	$ 19.90	$ 36.15	$ (1.71)
30	South Dakota	$ 49.95	$ 6.50	$ 56.45	$ 21.38	$ 35.07	$ 22.08	$ 34.37	$ (0.70)
31	Utah	$ 49.95	$ 6.50	$ 56.45	$ 15.58	$ 40.87	$ 17.21	$ 39.24	$ (1.63)
32	Virginia	$ 49.95	$ 6.37	$ 56.32	$ 17.26	$ 39.06	$ 17.26	$ 39.06	$ -
33	Washington	$ 49.95	$ 6.10	$ 56.05	$ 16.72	$ 39.33	$ 17.90	$ 38.15	$ (1.18)
34	Wyoming	$ 49.95	$ 6.50	$ 56.45	$ 26.95	$ 29.50	$ 27.87	$ 28.58	$ (0.92)
35	Arkansas	$ 48.95	$ 5.27	$ 54.22	$ 16.54	$ 37.68	$ 18.38	$ 35.84	$ (1.84)
36	Illinois	$ 48.95	$ 4.50	$ 53.45	$ 11.99	$ 41.46	$ 11.99	$ 41.46	$ -
37	Indiana	$ 48.95	$ 5.53	$ 54.48	$ 15.10	$ 39.38	$ 15.10	$ 39.38	$ -
38	Kansas	$ 48.95	$ 5.27	$ 54.22	$ 17.49	$ 36.73	$ 19.33	$ 34.89	$ (1.84)
9	Michigan	$ 48.95	$ 5.35	$ 54.30	$ 13.36	$ 40.94	$ 13.88	$ 40.42	$ (0.52)
40	Ohio	$ 48.95	$ 5.39	$ 54.34	$ 12.46	$ 41.88	$ 13.30	$ 41.04	$ (0.84)
41	Oklahoma	$ 48.95	$ 5.27	$ 54.22	$ 19.35	$ 34.87	$ 21.61	$ 32.61	$ (2.26)
42	Texas	$ 48.95	$ 5.27	$ 54.22	$ 18.63	$ 35.59	$ 20.21	$ 34.01	$ (1.58)
43	Wisconsin	$ 48.95	$ 5.07	$ 54.02	$ 13.01	$ 41.01	$ 13.01	$ 41.01	$ -
44	Arizona	$ 43.95	$ 6.50	$ 50.45	$ 15.53	$ 34.92	$ 16.50	$ 33.95	$ (0.97)
45	Minnesota	$ 43.95	$ 5.05	$ 49.00	$ 15.98	$ 33.02	$ 15.98	$ 33.02	$ -
46	California	$ 41.95	$ 4.49	$ 46.44	$ 11.39	$ 35.05	$ 12.13	$ 34.31	$ (0.74)
47	Alaska[D]		$ 6.50		$ 25.79				
48	Colorado		$ 6.50		$ 18.61		$ 20.22		
49	Connecticut		$ 5.78		$ 19.38		$ 22.96		
50	DC		$ 3.87		$ 13.04		$ 16.04		
51	Hawaii[E]		$ 6.50						

A) Source: AT&T website. Updated rates as of 3/10/04

B) Source: B.J. Gregg Analysis, Appendix 2, January 2004

C) Source: B.J. Gregg Analysis, Appendix 3, page 1, as of January 2004.

D) B.J. Gregg analysis includes only 1000 mou.

E) No state wide average provided for Hawaii, only individual rates on three islands included

NOTE: Includes 11 additional states entered by AT&T as well as updated rate changes to One Rate USA

Revised 3-12-04