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

In the Matter of	)	
	)	
Application by Verizon New England	)	
Inc., Verizon Delaware Inc., Bell	)	
Atlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX	)	
Long Distance Company (d/b/a Verizon	)	WC Docket No. 02-157
Enterprise Solutions), Verizon Global	)	
Verizon Networks Inc., and Verizon Select	)	
Services Inc., for Authorization to Provide	)	
In-Region, InterLATA Services in	)	
New Hampshire and Delaware	)	

EVALUATION OF THE UNITED STATES DEPARTMENT OF JUSTICE

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Verizon Guerard/Canny/Abesamis/ DeVito Decl.	Joint Declaration of Elaine M. Guerard, Julie A. Canny, Beth A. Abesamis, and Marilyn C. DeVito, *attached to* Verizon Br. App. A as Tab E.
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Verizon Martin/Garzillo/Sanford Decl.	Joint Declaration of Joshua W. Martin III, Patrick A. Garzillo, and Gary Sanford, *attached to* Verizon Br. App. A as Tab G.
Verizon McLean/Wierzbicki/Webster DE Decl.	Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster Regarding Delaware, *attached* to Verizon Br. App. A as Tab D.
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AT&T Pitts/Baranowski Decl.	Joint Declaration of Catherine E. Pitts and Michael R. Baranowski, *attached to* AT&T Comments as Tab 3.
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WorldCom Frentrup Decl.	Declaration of Chris Frentrup on Behalf of WorldCom , Inc., *attached to* WorldCom Comments.

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Application by Verizon New England	)	
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Verizon Long Distance), NYNEX	)	
Long Distance Company (d/b/a Verizon	)	WC Docket No. 02-157
Enterprise Solutions), Verizon Global	)	
Verizon Networks Inc., and Verizon Select	)	
Services Inc., for Authorization to Provide	)	
In-Region, InterLATA Services in	)	
New Hampshire and Delaware	)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice ("Department"), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996[1] ("1996 Act"), submits this evaluation of the joint application filed on June 27, 2002 by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions),Verizon Global Networks Inc., and Verizon Select Services Inc. to provide in-region, interLATA services in Delaware and New Hampshire.

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

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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.).

New England region, as well as successful applications for New Jersey, Pennsylvania, Connecticut, and New York.[2] The Department concludes that Verizon has generally succeeded in opening its local markets in Delaware and New Hampshire to competition and recommends that the Commission approve Verizon's application for Section 271 authority in Delaware and New Hampshire, subject to satisfying itself as to the pricing issues mentioned below.

I. State Commission Proceedings

A. Delaware

The Delaware Public Service Commission ("Delaware PSC") has facilitated the development of competition in the local telecommunications markets by establishing carrier-to-carrier wholesale performance measurements[3]; conducting extensive pricing proceedings that established wholesale rates for unbundled network elements ("UNEs")[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]

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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] Delaware PSC Comments at 3-4 (approving use of New York performance measures in Delaware); *see also* Verizon Br. at 125-26 (stating Verizon expects to report performance pursuant to measures "essentially" to those used in New York and Massachusetts beginning July 2002). Verizon had been reporting performance in Delaware pursuant to measures "essentially the same" as those used in Pennsylvania when the FCC approved that application. Verizon Br. at 125. Verizon subsequently adapted the New York measures for use in Pennsylvania, pursuant to a condition imposed by the Pennsylvania PUC for a recommendation of approval to the FCC. *FCC Pennsylvania Order* ¶ 131 & n.451.

[4] Delaware PSC Comments at 10-11; Delaware PSC Pricing Order I at 50-59 (establishing UNE and interconnection rates); Delaware PSC Pricing Order II at 39-42 (approving rates for new UNEs and revising non-recurring charge rates); *see also* Verizon Br. at 64-74.

[5] Delaware PSC Comments at 4-5; Delaware PSC PAP Order at 1-3 (approving Delaware PAP, effective on earlier of Nov. 1, 2002 or first day of month following month in which application is approved by FCC); *see also* Verizon Guerard/Canny/Abesamis/DeVito Decl. ¶¶ 32-33 (explaining Delaware PAP is based on that adopted in Virginia, which is based on the New York PAP); Verizon Br. at 126-27 (noting Delaware and New Hampshire plans "parallel the plans in effect in New York, Massachusetts, Rhode Island, Vermont, Maine, and Connecticut" in terms of amount, structure, and allocation of annual remedy payments at risk).

The Delaware PSC's review of Verizon's state Section 271 filing included an independent third-party test by PricewaterhouseCoopers ("PwC") designed to determine whether the operations support systems ("OSS") that Verizon uses in Delaware are the same as those it uses in Pennsylvania.[6] PwC concluded that Verizon's assertions regarding the sameness of its "Delaware and Pennsylvania Operational Support Systems (specifically the pre-order, order, provisioning, maintenance & repair, relationship management infrastructure, and billing domains) and Performance Measures Calculations Process" are "fairly stated, in all material respects."[7]

The Delaware PSC has recommended that the FCC approve Verizon's Section 271 application.[8]

B. New Hampshire

The New Hampshire Public Utilities Commission ("New Hampshire PUC") has facilitated the development of competition in the local telecommunications markets by establishing carrier-to-carrier wholesale performance measurements, which incorporate improvements from New York and several other states[9]; conducting extensive pricing proceedings that established wholesale rates for UNEs[10]; and adopting a Performance

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[6] Verizon McLean/Wierzbicki/Webster DE Decl. ¶ 11; *see also FCC Pennsylvania Order* ¶¶ 12-52 (concluding Verizon provides CLECs non-discriminatory access to its OSS in Pennsylvania).

[7] PwC Sapienza/Cobourn Decl. ¶¶ 9-13.

[8] Delaware PSC Comments at 31-32.

[9] New Hampshire PUC Comments at 6; Verizon Br. at 125 (noting Verizon New Hampshire performance measures are "virtually identical" to the latest version of those developed in the New York PSC's collaborative carrier working group process and employed in New York, Massachusetts, Connecticut, Rhode Island, Maine, and Vermont).

[10] New Hampshire PUC Comments at 13-17; New Hampshire PUC Pricing Order I at 170-75 (establishing UNE rates); New Hampshire PUC Pricing Order II at 55-59 (revising rates in compliance with FCC orders in UNE Remand and Advanced Services proceedings); New Hampshire PUC Section 271 Compliance Letter at 3-4 (revising analog loop, switching and transport, DS-1 loop, and DUF rates); Verizon Section 271 NH Compliance Letter II at 1-3 & Attach. 1 (confirming revised rates); *see also* New Hampshire PUC Pricing Order of Notice at 2-5 (opening proceeding to reexamine pricing inputs).

Assessment Plan intended to ensure that an appropriate level of wholesale performance is maintained once Verizon's Section 271 application is approved.[11] In addition, the New Hampshire Commission is establishing a Rapid Response Process, modeled on that created by the Maine PUC, in order to resolve certain disputes between Verizon and CLECs more quickly than traditional dispute resolution processes would allow.[12]

The New Hampshire PUC's review of Verizon's state Section 271 filing included an independent third-party test by PricewaterhouseCoopers ("PwC") designed to determine whether the operations support systems ("OSS") that Verizon uses in New Hampshire are the same as those it uses in Massachusetts.[13] PwC concluded that Verizon's assertions regarding the "sameness" of its "New England Region Operational Support Systems (specifically the pre-order, order, provisioning, maintenance & repair, relationship management infrastructure, and billing domains) and Performance Metrics Reporting" are "fairly stated, in all material respects."[14]

The New Hampshire PUC has recommended that the FCC approve Verizon's Section 271 application.[15]

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[11] New Hampshire PUC Comments at 6, 18-20; New Hampshire PUC PAP Order I at 84-88 (approving PAP filed by Verizon on condition of certain modifications); New Hampshire PUC PAP Order II at 16-17 (approving PAP filed by Verizon as modified in accord with prior order); *see also* Verizon Guerard/Canny/Abesamis/DeVito Decl. ¶ 30 (noting submission of PAP in accord with PUC conditions).

[12] Verizon Section 271 NH Compliance Letter II at 3 ("The process will be tested for six months, and Verizon NH and Staff will report to the Commission proposed revisions, if any, based on actual experience."); *cf.* DOJ Maine Evaluation at 2-3 n.6 (describing Rapid Response Process established in Maine).

[13] Verizon McLean/Wierzbicki/Webster NH/DE Decl. ¶ 11; *see also FCC Massachusetts Order* ¶¶ 43-181 (concluding that Verizon provides CLECs non-discriminatory access to its OSS, including unbundled loops, in Massachusetts).

[14] PwC Sapienza/Bluvol Decl. ¶¶ 12-16.

[15] New Hampshire PUC Comments at 2 (approval recommended subject to conditions listed); *see also generally* New Hampshire PUC Section 271 Compliance Letter .

II. The Department's Evaluation

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.[16] But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements ("UNEs"), and resale -- are open or closed on the basis of an aggregate level of entry alone.[17]

A. Delaware

Together, according to Verizon's data, Verizon and CLECs serve a total of approximately 636,000 lines in Verizon's Delaware service area as of March 2002.[18] Of the total lines in Verizon's service area in Delaware, 38.6 percent, or approximately 246,000 serve businesses, and 61.4 percent, or approximately 390,000 serve residential customers.[19] For business and residential customers combined, Verizon estimates that CLECs using all modes of entry serve approximately 49,000 lines, or approximately 7.7 percent of all lines in Verizon's service area in the state.[20]

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[16] *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.)).

[17] *See, e.g.*, DOJ Georgia/Louisiana Evaluation I at 7 ("Although the Department presumes that fully facilities-based competition is not hindered in a competitively significant manner based on the entry recorded in Georgia, the amount of entry does not justify extending such a presumption to other modes of entry in Georgia."); DOJ Missouri I Evaluation at 6-7 ("The Department presumes that opportunities to serve business customers by fully facilities-based carriers and resellers are available in Missouri, based on the entry efforts reflected in SBC's application. There is significantly less competition to serve residential customers. There also is less competition by firms seeking to use UNEs, including the UNE-platform, and there are some indications that a failure by SBC to satisfy all of its obligations may have constrained this type of competition." (Footnotes omitted.)).

[18] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1. Delaware has several incumbent local exchange carriers other than Verizon.

[19] *See id.*

[20] *See id.*

Competitors have made some progress in penetrating the business market in Delaware. CLECs serve approximately 15.2 percent of all business lines in Verizon's Delaware's service area.[21] CLECs serve approximately 10.3 percent of all business lines using their own facilities that are either connected directly to the customer premises or connected through loops leased from Verizon.[22] CLECs resell Verizon's services to serve approximately 3.5 percent of all business lines.[23] CLECs use the UNE-platform (a combination of loop, switch, and transport elements) to serve 1.3 percent of such lines.[24]

By contrast, CLECs serve approximately 3.1 percent of all residential lines in Verizon's Delaware service area.[25] CLECs serve approximately 1.9 percent of all residential lines using facilities that are either connected directly to the customer premises or connected through loops leased from Verizon.[26] CLECs serve approximately 1.2 percent of all residential lines through resale, and less than one-one-hundredth of 1 percent of such lines by means of the UNE-platform.[27]

The amount of entry by competitive facilities-based carriers serving business customers in Delaware and the absence of complaints regarding Verizon's fulfillment of its obligations to

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[21] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (CLECs serve approximately 37,300 business lines).

[22] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (CLECs serve approximately 25,400 business lines using at least some of their own facilities).

[23] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (CLECs serve approximately 8,700 business lines via resale).

[24] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (CLECs serve approximately 3,200 business lines through the UNE-platform).

[25] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (CLECs serve approximately 12,000 residential lines).

[26] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (exact number of residential facilities-based lines filed as confidential business information).

[27] *See* Verizon Martin/Garzillo/Sanford Decl. ¶ 46; Verizon Torre Decl. Attach. 2 at 3 tbl. 1 (CLECs serve approximately 4,700 residential lines via resale and 40 residential lines through the UNE-platform).

open its markets to that mode of entry lead the Department to conclude that opportunities to serve business customers via facilities are available there. The absence of complaints regarding the resale mode of entry indicates that opportunities to serve both business and residential customers through that mode are likewise available. Although there is significantly less competition to serve residential customers via facilities and to serve both business and residential customers via the UNE-platform, the Department does not believe that there remain any material non-price obstacles to competition in Delaware created by Verizon. Verizon has submitted evidence to show that its OSS in Delaware are the same as those that the Commission found satisfactory in Pennsylvania.[28] Moreover, there have been few complaints regarding Verizon's Delaware OSS in this proceeding.

The low levels of CLEC penetration of residential markets in Delaware and, in particular, the lack of entry by means of the UNE-platform, may reflect the higher UNE pricing that was in effect for most of the period preceding this application as opposed to the UNE prices on which the application is based. The Delaware PSC issued a pricing order that reduced certain UNE rates three weeks before Verizon filed this application.[29]

The Department notes, however, complaints filed by commenters regarding UNE rates in Delaware,[30] and urges the Commission to examine these comments carefully in determining whether Verizon's prices are cost-based.[31] As the Department has stated previously, "[b]ecause

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[28] *See supra* notes 6-7 and accompanying text.

[29] *See supra* note 4 and accompanying text. The Delaware PSC required Verizon to recalculate certain rates using revised input assumptions. Delaware PSC Pricing Order II at 39-41.

[30] AT&T Comments at 4-6, 8-12; AT&T Pitts/Baranowski Decl. ¶¶ 6-14; WorldCom Comments at 1-4; WorldCom Frentrup Decl. ¶¶ 2-8.

[31] The Department notes once more that "[p]ricing based on forward-looking costs 'simulates the prices for network elements that would result if there were a competitive market for the provision of such elements to other carriers' and 'will result in the creation of the "right" investment incentives for competitive facilities-based entry, rather than distorting the entrant's "make or buy" decision with respect to the network element.'" DOJ Arkansas/Missouri Evaluation at 6 n.19 (quoting DOJ Local Competition Comments at 28-29)). "Prices that are set

of the Commission's experience and expertise in rate-making issues . . . the Department will not attempt to make its own independent determination whether prices are appropriately cost-based."[32]

B. New Hampshire

Together, according to Verizon's data, Verizon and CLECs serve a total of approximately 893,000 lines in Verizon's New Hampshire service area as of March 2002.[33] Of the total lines in Verizon's service area in New Hampshire, 35.5 percent, or approximately 317,000 serve businesses, and 64.5 percent, or approximately 576,000 serve residential customers.[34] For business and residential customers combined, Verizon estimates that CLECs using all modes of entry serve approximately 145,000 lines, or approximately 16.2 percent of all lines in Verizon's service area in the state.[35]

Competitors have made significant progress in penetrating the business market in New Hampshire. CLECs serve approximately 33.8 percent of all business lines in Verizon's New Hampshire service area.[36] CLECs serve approximately 21.5 percent of all business lines using facilities that are either connected directly to the customer premises or connected through loops leased from Verizon.[37] CLECs resell Verizon's services to serve approximately 10.4 percent of

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either above or below the element's true economic cost can distort entry decisions and may impede the development of competition on the merits." *Id.* (citing DOJ Local Competition Comments at 29).

[32] DOJ Rhode Island Evaluation at 6; DOJ Missouri I Evaluation at 1-2; DOJ Kansas/Oklahoma Evaluation at 11.

[33] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1. New Hampshire has several incumbent local exchange carriers other than Verizon.

[34] *See id.*

[35] *See id.*

[36] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 107,000 business lines).

[37] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 68,000 business lines using at least some of their own facilities).

all business lines.[38] CLECs use the UNE-platform (a combination of loop, switch, and transport elements) to serve 1.9 percent of such lines.[39]

CLECs serve approximately 6.6 percent of all residential lines in Verizon's New Hampshire service area.[40] Facilities-based carriers serve approximately 6.3 percent of all residential lines.[41] Indeed, most CLEC service to residential customers in New Hampshire is facilities-based, including that provided over the cable television facilities of AT&T Broadband.[42] CLECs serve approximately two-tenths of 1 percent all residential lines through resale, and less than one-tenth of 1 percent of such lines by means of the UNE-platform.[43]

The amount of entry by competitive facilities-based and resale carriers serving business customers in New Hampshire and the absence of complaints regarding Verizon's fulfillment of its obligations to open its markets to these modes of entry, lead the Department to conclude that opportunities to serve business customers via the facilities-based and resale modes of entry are available there. Although there is significantly less competition to serve residential customers through all modes of entry and to serve business customers via the UNE-platform, the Department does not believe that there remain any material non-price obstacles to competition in New Hampshire created by Verizon. Verizon has submitted evidence to show that its OSS in New Hampshire are the same as those that the Commission found satisfactory in

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[38] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 33,000 business lines via resale).

[39] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 6,100 business lines through the UNE-platform).

[40] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 38,000 residential lines).

[41] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 36,000 residential lines using at least some of their own facilities).

[42] Verizon Torre Decl. Attach 1 at 7.

[43] *See* Verizon Hickey/Garzillo/Anglin Decl. ¶ 38; Verizon Torre Decl. Attach. 1 at 3 tbl. 1 (CLECs serve approximately 1,100 residential lines via resale and 430 residential lines through the UNE-platform).

Massachusetts.[44] Moreover, there have been few complaints regarding Verizon's New Hampshire OSS in this proceeding.

The low levels of CLEC penetration of residential markets in New Hampshire and, in particular, the lack of entry by means of the UNE-platform, may reflect the higher UNE pricing that was in effect for most of the period preceding this application as opposed to the UNE prices on which the application is based. The New Hampshire PUC issued orders that reduced certain UNE rates within weeks of Verizon's filing of this application.[45]

The Department notes, however, complaints from commenters regarding the resulting UNE rates in New Hampshire,[46] and urges the Commission to look carefully at these comments in determining whether Verizon's prices are cost-based.[47] As the Department has stated previously, "[b]ecause of the Commission's experience and expertise in rate-making issues . . . the Department will not attempt to make its own independent determination whether prices are appropriately cost-based."[48]

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[44] *See supra* notes 13-14 and accompanying text.

[45] *See supra* note 10 and accompanying text.

[46] AT&T Comments at 6-21; AT&T Pitts/Baranowski Decl. ¶¶ 15-23; BayRing Comments at 11-24.

[47] The Department notes once more that "[p]ricing based on forward-looking costs 'simulates the prices for network elements that would result if there were a competitive market for the provision of such elements to other carriers' and 'will result in the creation of the "right" investment incentives for competitive facilities-based entry, rather than distorting the entrant's "make or buy" decision with respect to the network element.'" DOJ Arkansas/Missouri Evaluation at 6 n.19 (quoting DOJ Local Competition Comments at 28-29)). "Prices that are set either above or below the element's true economic cost can distort entry decisions and may impede the development of competition on the merits." *Id.* (citing DOJ Local Competition Comments at 29).

[48] DOJ Rhode Island Evaluation at 6; DOJ Missouri I Evaluation at 1-2; DOJ Kansas/Oklahoma Evaluation at 11.

III. Conclusion

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's satisfying itself as to the pricing issues mentioned above.

Respectfully submitted,

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August 1, 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 August 1, 2002.

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