

Before the
Federal Communications Commission
Washington, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Adopted: October 30, 2002

Released: October 30, 2002

By the Commission: Commissioners Copps and Martin approving in part, concurring in part, and
issuing separate statements.

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I. INTRODUCTION

1. On August 1, 2002, Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., collectively, Verizon, filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the state of Virginia.² We grant the application in this Order based on our

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. § 151 *et seq.*

² See *Application By Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc. for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214 (filed Aug. 1, 2002) (Verizon Virginia Application).

conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in Virginia to competition.

2. Grant of this application follows closely behind the Virginia State Corporation Commission's (Virginia Commission's) conclusion of proceedings concerning Verizon's section 271 compliance that were open to participation by all interested parties.³ The Virginia Commission has established a broad range of performance guidelines, in addition to an ongoing industry collaborative to update and change metrics.⁴ In addition, the Virginia Commission has adopted a performance assurance plan to provide competitive local exchange carriers (competitive LECs) with an opportunity to resolve problems with Verizon should they fail to meet the defined performance guidelines.⁵ Moreover, the Virginia Commission participated in the third-party testing of Verizon's Operations Support Systems (OSS) conducted by KPMG Consulting, Inc. (KPMG).⁶ As the Commission has repeatedly recognized, state proceedings demonstrating a commitment to advancing the procompetitive purposes of the Act serve a vitally important role in section 271 proceedings.⁷

3. Verizon stated in its application that competitive LECs served approximately 763,000 lines.⁸ As of June 2002, Verizon asserts that it had provided competing carriers in

³ See generally Verizon Virginia Application, App. C, Vol. 10, Tab 29, Report of Alexander F. Skirpan, Jr, Hearing Examiner Virginia Case No., PUC-2002-00046 (July 12, 2002) (Virginia Hearing Examiner's Report).

⁴ Verizon Virginia Application, App. A, Vol. 3, Tab C, Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito (Verizon Guerard/Canny/DeVito Decl.), para. 14.

⁵ In April 2002, through a collaborative process overseen by the Virginia Commission staff, Verizon and the competitive LECs reached consensus on a Performance Assurance Plan, now known as the Virginia Plan. On July 18, 2002, the Virginia Commission approved the Plan for use in Virginia effective October 1, 2002. Verizon Guerard/Canny/DeVito Decl., para. 27.

⁶ Verizon Virginia Application, App. D, Vol. 2, Tab 5, KPMG Consulting, Verizon Virginia, Inc. OSS Evaluation Project, Final Report, Version 2.0, April 15, 2002 (KPMG Final Report).

⁷ See *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Record 17419, 17421, para. 3 (2001) (*Verizon Pennsylvania Order*); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*) *aff'd sub nom.* WorldCom, Inc. v. Federal Communications Commission, No. 01-1198, 2002 WL 31360443 (D.C. Cir. Oct. 22, 2002).

⁸ Verizon Virginia Application, App. A, Vol. 1, Tab A, Declaration of Paul A. Lacouture and Virginia P. Rueterholz (Verizon Lacouture/Rueterholz Decl.), para. 7.

Virginia with approximately 233,000 interconnection trunks and 198,000 unbundled loops.⁹ Competing carriers in Virginia serve approximately 22% of the total lines in the state.¹⁰ Verizon states that there is proportionately more facilities-based competition in Virginia than in any state that has been granted section 271 authority, at the time those applications were filed.¹¹

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.¹² Under section 271, Congress requires that the Commission review BOC applications to provide such service in consultation with the affected state and the Attorney General.¹³

5. On March 15, 2002, Verizon made a compliance filing for section 271 approval with the Virginia Commission.¹⁴ On July 12, 2002, the Virginia Hearing Examiner issued a report recommending that the Virginia Commission “advise the FCC that this Commission supports granting Verizon authority to provide in-region interLATA services in Virginia.”¹⁵ On August 1, 2002, the Virginia Commission forwarded the Virginia Hearing Examiner’s Report to this Commission, reporting on the Virginia Hearing Examiner’s section 271 proceeding and urging the Commission to consider his recommendations and findings.¹⁶ The Virginia Commission stated that because it will “simply consult” with the Commission on Verizon’s

⁹ Verizon Virginia Application at 8.

¹⁰ Verizon Virginia Application, App. A, Vol. 3, Tab F, Declaration of John A. Torre (Verizon Torre Decl.), Attach. 1, at 2.

¹¹ See Verizon Virginia Application at 89, Attach. A, Ex. 3.

¹² The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹³ The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff’d in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

¹⁴ Verizon Virginia Application, App. C, Vol. 1a-f, Tab 1, Verizon Virginia Inc. Section 271 Filing with the Virginia State Corporation Commission (In the Matter of the Inquiry into Verizon Virginia Inc.’s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)).

¹⁵ Virginia Hearing Examiner’s Report at 1.

¹⁶ See Letter from Clinton Miller, Chairman, Theodore V. Morrison, Jr., Commissioner, and Hullahen Williams Moore, Commissioner, Virginia State Corporation Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 1, 2002) (Virginia Commission Aug. 1 *Ex Parte* Letter).

section 271 application, it would not initiate formal proceedings and did not intend to issue a final order or “make any final finding, decision settling the substantive law, order, or judgment” within the meaning of Virginia law.¹⁷

6. On September 5, 2002, the Department of Justice filed its evaluation. The Department of Justice recommends approval of this application with one qualification regarding Verizon’s compliance with checklist item 8, directory listings. In particular, the Department concludes that:

The record in this matter suggests that Verizon has generally succeeded in opening its local markets in Virginia to competition in most respects. The Department therefore recommends approval of Verizon’s application for Section 271 authority in Virginia, subject to the FCC’s satisfying itself that Verizon is providing sufficiently accurate and reliable white pages directory listings.¹⁸

III. COMPLIANCE WITH SECTION 271(c)(1)(A)

7. As a threshold matter, we address Verizon’s compliance with section 271(c)(1) which requires as a prerequisite for any approval of a BOC’s application to provide in-region, interLATA services, that the BOC demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B).¹⁹ To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of “telephone exchange service . . . to residential and business customers.”²⁰ In addition, the Act states that “such telephone service may be offered . . . either exclusively over [the competitor’s] own telephone exchange service facilities or predominantly over [the competitor’s] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.”²¹ The Commission has concluded that section 271(c)(1)(A) is satisfied if one

¹⁷ Verizon Virginia Application, App. C, Vol. 2, Tab 2, Preliminary Order on Verizon Virginia’s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c) and Order Amending Reporting Requirements on Third-Party Testing of Operations Support Systems, Case Nos. PUC-02-0046 and Case No. PUC-00-0035, Mar. 20, 2002 (Virginia Commission Preliminary Order) at 3-4. The Virginia Commission Preliminary Order established a procedural schedule; set the public evidentiary hearings to begin on June 17, 2002; and appointed and delegated to the Virginia Hearing Examiner “all authority vested in the Commission by the Constitution and Code of Virginia to conduct formal proceedings, including a public hearing, to consider the section 271 filing and all evidence in support and opposition thereto.” *Id.* The Virginia Commission did not require comments or exceptions to the Virginia Hearing Examiner’s Report, but advised interested parties to participate in this Commission’s proceedings. *Id.* at 4.

¹⁸ Department of Justice Virginia Evaluation at 10.

¹⁹ 47 U.S.C. § 271(d)(3)(A).

²⁰ 47 U.S.C. § 271(c)(1)(A).

²¹ *Id.*

or more competing providers collectively serve residential and business subscribers,²² and that the use of unbundled network elements (UNEs) constitute a competing provider's "own telephone exchange service facilities" for purposes of section 271(c)(1)(A).²³ The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"²⁴ which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.²⁵ The Commission has interpreted Track A not to require any particular level of market penetration, however, and the D.C. Circuit has affirmed that the Act "imposes no volume requirements for satisfaction of Track A."²⁶

8. We conclude, as the Virginia Hearing Examiner did,²⁷ that Verizon satisfies the requirements of Track A in Virginia. Verizon relies on interconnection agreements with AT&T, Cox, Comcast, and Cavalier in support of its Track A showing, and we find that each of these carriers serves more than a *de minimis* number of residential and business end users predominantly over its own facilities and represents an "actual commercial alternative" to Verizon in Virginia.²⁸ Specifically, AT&T provides telephone exchange service to both residential and business subscribers in Virginia primarily through UNE loops, UNE-platforms and their own cable facilities.²⁹ Cox and Comcast provide service to both residential and

²² *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20589, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

²³ *Ameritech Michigan Order*, 12 FCC Rcd at 20598, para. 101.

²⁴ *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

²⁵ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; see also *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 78.

²⁶ *Sprint Communications Co. v. FCC*, 274 F.3d at 553-54 (D.C. Cir. 2001); see also *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) ("Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a 'competing' provider.").

²⁷ Virginia Hearing Examiner's Report at 11, 171.

²⁸ Verizon Virginia Application at 6-7; Verizon Torre Decl., Attach. 1, paras. 23-30 (citing confidential portion). According to Verizon, competing LECs now serve approximately 2,200 residential lines through UNE-platform or UNE loops. The numbers of customers attributed to certain competing LECs are available on the record pursuant to the protective order. Verizon also notes that many other competing LECs, such as Cavalier, Cox, and Comcast, serve business customers in Virginia over their own facilities. Verizon Torre Decl., Attach. 1, paras. 4-6 (citing confidential portion); see also *SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

²⁹ Verizon Torre Decl., Attach. 1, paras. 23-24 (citing confidential portion).

business customers in Virginia through UNE loops and their own facilities.³⁰ Cavalier provides service to both residential and business customers primarily through UNE loops.³¹ No commenter disputes Verizon's Track A showing.

IV. PRIMARY ISSUES IN DISPUTE

9. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.³² In this Order, we rely upon the legal and analytical precedent established in those prior orders. Additionally, as we began doing with the *Verizon Connecticut Order*, we include comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.³³ In reviewing this application, we examine performance data as reported in carrier-to-carrier reports reflecting service in the period from April 2002 through July 2002.

10. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing issues concerning the openness and legal validity of the state consultation process and the relevance to our review of checklist compliance of the recent Virginia arbitration decision issued by the Wireline Competition Bureau (Bureau). We then discuss Verizon's compliance with checklist item numbers 2, 4, and 8, which encompass access to UNEs, access to unbundled local loops, and directory listings, respectively. Next, we address checklist item numbers 1, 5, 6, 7, and 11, which cover interconnection, transport, switching, 911/E911 access and directory assistance/operator services, and number portability, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Verizon has satisfied these requirements. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

A. State Consultation

11. AT&T argues that neither the Virginia Hearing Examiner's Report nor the Virginia Commission August 1 *Ex Parte* Letter constitute "lawful pronouncements" of the

³⁰ Verizon Torre Decl., Attach. 1, paras. 27-30 (citing confidential portion).

³¹ Verizon Torre Decl., Attach. 1, paras. 25-26 (citing confidential portion).

³² See *Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11, 21-40, 43-58 (2000) (*SWBT Texas Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, 43-60 (1999) (*Bell Atlantic New York Order*), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); see also Appendix C.

³³ See generally Appendices B and C.

Virginia Commission under Virginia law and therefore may not be given any weight by this Commission.³⁴ AT&T maintains that we must base our decision on a *de novo* analysis of the state record, “with no deference accorded” to the Virginia Hearing Examiner’s Report.³⁵

12. We do not agree with AT&T that the findings in Virginia deserve no weight in our analysis. The pertinent issue for the Commission is whether the Virginia Hearing Examiner’s Report constitutes the Virginia Commission’s consultation pursuant to section 271(d)(2)(B).³⁶ We find that it does. We note, at the outset, that section 271(d)(2)(B) establishes no specific procedural requirements for how a state commission must fulfill its consultative role. Accordingly, we have the discretion to accord such weight to a state’s consultation as we may deem appropriate in a particular case.³⁷ The formal docket in the Virginia Commission’s section 271 compliance proceeding included submission of testimony from interested parties and five days of hearings.³⁸ While parties did not have an opportunity to file comments or take exceptions to the Virginia Hearing Examiner’s Report, parties were provided an opportunity to submit testimony before the Virginia Hearing Examiner. On these facts, we reject the contention that we should give no deference or weight whatsoever to the state’s consultative report. Therefore, we disagree with AT&T’s argument that we must conduct a *de novo* analysis of the record in the state proceeding. Rather, in assessing the weight we give to the Virginia Hearing Examiner’s Report, we factor in the procedures under which it was adopted in determining the proper weight it deserves. In previous section 271 orders, we have noted that the weight we assign to a state’s consultative report is affected by the procedures that the state commission follows to render its report.³⁹ Consistent with that, we will accord some weight to the Virginia Hearing Examiner’s Report, recognizing that it is based in part on an evidentiary procedure

³⁴ AT&T Reply at 16.

³⁵ AT&T Reply at 16.

³⁶ We express no opinion in response to AT&T’s claim that these documents do not qualify as lawful pronouncements of the Virginia Commission under Virginia law. We are not required to reach this question as part of an analysis under section 271. That is a matter of state law interpretation, appropriate for consideration by state authorities.

³⁷ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Ameritech Michigan Order*, 12 FCC Rcd at 20559-60, para. 30. As the D.C. Circuit has held, “[a]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions’ views any particular weight.” *SBC Communications Inc. v. FCC*, 138 F.2d 410, 416 (D.C.Cir. 1998).

³⁸ See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 26, 2002) (Verizon Sept. 26 Virginia Commission Recommendation *Ex Parte* Letter).

³⁹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Ameritech Michigan Order*, 12 FCC Rcd at 20559-60, para. 30.

employed by the Virginia Commission that provided an opportunity for parties to participate in hearings and offer comments.⁴⁰

B. Virginia Arbitration Proceeding

13. AT&T, Cox, and WorldCom originally brought interconnection disputes with Verizon to the Virginia Commission, as envisioned in section 252(b).⁴¹ However, the Virginia Commission declined to arbitrate the terms and conditions of an interconnection agreement under federal standards, as required by section 252(c) of the Act.⁴² The three requesting carriers then petitioned the Commission to preempt the Virginia Commission pursuant to section 252(e)(5).⁴³ The Commission granted those petitions and delegated authority to the Wireline Competition Bureau to conduct the arbitration proceeding.⁴⁴ The *Virginia Arbitration Order*⁴⁵

⁴⁰ Virginia Commission Preliminary Order at 4. We have previously given consideration to state recommendations on section 271 applications where the state commission's proceeding did not culminate with an order. See *Application by Verizon New England 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., for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3304, n.9 (2002) (*Verizon Rhode Island Order*); *Application by Verizon New England 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., for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion & Order, 17 FCC Rcd. 9018, 9022, n.11 (2002) (*Verizon Vermont Order*); *Application by Verizon New England 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 in Maine*, CC Docket No. 02-6, Memorandum Opinion and Order, 17 FCC Rcd 11,659, 11,664, n. 12 (2002) (*Verizon Maine Order*). See also Verizon Sept. 26 Virginia Commission Recommendation *Ex Parte* Letter at 3.

⁴¹ 47 U.S.C. § 252(b).

⁴² 47 U.S.C. § 252(c).

⁴³ *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, (filed Oct. 26, 2000); *Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-249 (filed Dec. 12, 2000); *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251 (filed Dec. 15, 2000).

⁴⁴ *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001); *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, Memorandum Opinion and Order, 16 FCC Rcd 2321 (2001); *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 16 FCC Rcd. 2326 (2001). See also *Procedures for Arbitrations Conducted Pursuant to Section 252(e) (5) of the Communications Act of 1934, as amended*, FCC 01-21 (rel. Jan. 19, 2001).

addresses the non-cost issues presented by the parties for arbitration. The second decision, addressing the cost issues presented, has not yet been adopted.

14. WorldCom makes a detailed challenge to this application based, in large part, on issues arising from the *Virginia Arbitration Order*. WorldCom presents a three-tiered argument suggesting that Verizon is in *per se* non-compliance with section 271 because: (1) Verizon does not have interconnection agreements in Virginia that fully comply with the Act; (2) Verizon's application was not complete when filed because Verizon had not memorialized the agreements required by the *Virginia Arbitration Order* prior to its filing of its section 271 application; and (3) Verizon is not operationally ready to implement the decisions of the *Virginia Arbitration Order*.

15. Verizon maintains that the issues decided in the *Virginia Arbitration Order* that require modifications to its interconnection agreements do not alter its ability to demonstrate present compliance with the checklist.⁴⁶ Verizon also points out that, at the time of its section 271 filing, it had notified competitive carriers in its territory through an industry letter of the availability of service offerings and arrangements found to be required by applicable law in the *Virginia Arbitration Order*.⁴⁷

16. On September 3, 2002, Verizon filed its interconnection agreements with the Bureau.⁴⁸ On October 8, 2002, upon review, the Bureau approved and deemed effective (Continued from previous page) _____

⁴⁵ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, DA 02-1731 (WCB July 17, 2002) (*Virginia Arbitration Order*).

⁴⁶ Verizon Virginia Reply at 6-7. Verizon claims that the new requirements fall into three categories. The first group includes items that are similar or identical to what Verizon already provides in Virginia. As an example, Verizon cites to interconnection trunks with DS-3 interfaces and two-way trunking. The second group includes items that Verizon claims it has already demonstrated it can provide in other states. Verizon cites the provision of dark fiber through intermediate offices as an example. The third group includes items that Verizon claims competing carriers have demonstrated little interest in purchasing in the past, citing tandem switching and customized routing as examples.

⁴⁷ See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Aug. 2, 2002) (Verizon Aug. 2 Industry Letter *Ex Parte* Letter); *Errata* from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Aug. 6, 2002).

⁴⁸ See Verizon Virginia Reply App. B, Vol. 2, Tabs 8 and 9; Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 18, 2002) (Verizon Sept. 18 Cox Agreement *Ex Parte* Letter).

Verizon's interconnection agreements, which contain the specific and concrete legal obligations that memorialize the decisions of the *Virginia Arbitration Order*.⁴⁹ We find that the Bureau approval of these agreements eliminates any question of checklist compliance arising from claims that the agreements were not final. Verizon's actions to implement the *Virginia Arbitration Order* represent a straightforward step that has already been taken, and does not constitute a promise of future action. We therefore find WorldCom's arguments alleging that Verizon did not have interconnection agreements in Virginia that fully comply with the Act and that Verizon's section 271 application was premature until the contracts were finalized to now be moot.

17. In addition, we find unpersuasive WorldCom's argument that Verizon has not demonstrated operational readiness to implement specific offerings in its new interconnection agreement with WorldCom. As discussed more fully below, we conclude that Verizon has adequately addressed its commercial readiness to furnish each of these items in Virginia. Verizon has shown that it is either already furnishing the items in Virginia or is successfully doing so in other states and can bring that experience to bear in Virginia immediately.⁵⁰ We therefore conclude that Verizon has demonstrated its operational readiness to provide the offerings cited by WorldCom.

18. In reaching this conclusion, because the agreements were not effective until October 8, 2002, we waive the complete-as-filed requirement⁵¹ on our own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider Verizon's finalized interconnection agreements in Virginia in the instant decision. We find that the

⁴⁹ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, DA 02-2576 (WCB Oct. 8, 2002) (*Virginia Arbitration Approval Order*).

⁵⁰ See Verizon Virginia Reply at 6-7. See *infra*, paras. 147, 150, 177, 183, 187 and n.659.

⁵¹ The "complete-as-filed" requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21. We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to review the record. See *Ameritech Michigan Order*, 12 FCC Rcd. at 20572-73, para. 52-54. The Commission can waive its procedural rules, however, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

interests our normal procedural requirements are designed to protect, such as deterring incomplete applications and providing sufficient opportunity for interested parties to comment, are not affected by our consideration of these interconnection agreements. We also conclude that consideration of the interconnection agreements at least in this instance will serve the public interest. At the same time, we emphasize that we will continue to enforce our procedural requirements in future section 271 applications, in the absence of such special circumstances, in order to ensure a fair and orderly process for the consideration of section 271 applications within the 90-day statutory deadline.

19. We are concerned that Verizon filed its application prior to implementing interconnection agreements that fully comply with the checklist and the Bureau's arbitration decision. We caution other applicants against premature filings. We now must decide whether to waive the complete-as-filed rule. We conclude that a waiver of the rule in this instance will serve the public interest. There are a number of special circumstances that support grant of this waiver to permit consideration of the interconnection agreements in determining section 271 compliance. First, the finalizing of the interconnection agreements has a limited but positive effect on our consideration of Verizon's section 271 application. We need to rely on these interconnection agreements to confirm compliance with only a limited subset of our rules that are relevant to checklist compliance.⁵² In addition, unlike new performance evidence, all parties have known the contents of the *Virginia Arbitration Order* since July 17, 2002. Since then, the parties only had to memorialize this decision as an actual agreement and receive approval for that agreement. Verizon was simply adhering to the procedures for filing the agreements outlined in the *Virginia Arbitration Order*.⁵³ To the extent that Verizon's previous interconnection agreements in Virginia arguably did not include every offering required by section 251 and the Commission's rules, those omissions have now been rectified by Verizon's new agreements with WorldCom, Cox and AT&T. Thus, it does not appear that there was an attempt to game the process or to delay meeting its obligations under the statute.

20. Finally, we find that there has been adequate opportunity for comment on these new interconnection agreements. Specifically, the *Virginia Arbitration Order* was released on July 17, 2002. The parties to that proceeding have had the opportunity to review the Bureau's decision and to seek reconsideration of any items in dispute.⁵⁴ Interested parties were also able to review the Bureau's decisions and familiarize themselves with the new offerings Verizon was

⁵² See WorldCom Comments at 10-14, listing six specific examples of new offerings that Verizon is required to provide pursuant to the arbitration. They are: customized routing for OS/DA; access to sub-loops without intermediary devices; stand-alone tandem switching; two-way trunking on demand; interconnection of DS-3 trunks where technically feasible; and provisioning of dark fiber through intermediary offices.

⁵³ See *Virginia Arbitration Order*, para. 767.

⁵⁴ See WorldCom Application for Review (filed Aug. 16, 2002); Verizon Petition for Clarification and Reconsideration (filed Aug. 16, 2002); AT&T Petition for Reconsideration (filed Aug. 16, 2002).

required to make available in Virginia.⁵⁵ For these reasons, we find that the circumstances present in this instance warrant waiver of our procedural requirements, and allow consideration of Verizon's finalized interconnection agreements.

C. Checklist Item 2 – Unbundled Network Elements

21. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.⁵⁶ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”⁵⁷

1. OSS

22. Checklist item 2 requires a BOC to demonstrate that competitors have nondiscriminatory access to the various systems, databases, and personnel (collectively referred to as OSS) that a BOC uses in providing service to its customers.⁵⁸ Based on the evidence in the record, including commercial data and third-party testing, we find, as did the Virginia Hearing Examiner, that Verizon provides non-discriminatory access to its OSS in Virginia.⁵⁹

23. Like the Virginia Hearing Examiner, we note that there are substantial similarities between the OSS available to competitors in Virginia and the OSS that we have approved in previous section 271 applications filed by Verizon.⁶⁰ Importantly, however, in Virginia, Verizon

⁵⁵ We note that only one competing carrier has responded to Verizon's August 1 letter. See Verizon Virginia Reply, App. A, Tab A, Reply Declaration of Paul A. Lacouture and Virginia P. Ruesterholz (Verizon Lacouture/Ruesterholz Reply Decl.), para. 113.

⁵⁶ 47 U.S.C. § 271(B)(ii). Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of UNEs “not ordinarily combined in the incumbent LEC's network” and to “combine unbundled network elements with the elements possessed by the requesting telecommunications carrier.” *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999).

⁵⁷ 47 U.S.C. § 251(c)(3).

⁵⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83.

⁵⁹ Virginia Hearing Examiner's Report at 77.

⁶⁰ Virginia Hearing Examiner's Report at 68; see Verizon McLean/Wierzbicki/Webster Decl., paras. 25-26 & Tables 1-2. Specifically, Verizon certifies that the interfaces and gateways to its OSS are common to those serving the rest of the former Bell Atlantic service area. Verizon McLean/Wierzbicki/Webster Decl., para. 25.

uses an integrated service order processor and billing system known as expressTRAK that is not used in any state for which Verizon has previously received section 271 approval.⁶¹ Given the integral role that a service order process plays in the operation of the OSS, we must assure ourselves of the operational readiness of the OSS particular to Virginia.⁶²

24. Consistent with our past practice, we focus our review on those OSS issues in controversy and do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that Verizon meets the nondiscrimination requirements.⁶³ Specifically, our discussion focuses on the sufficiency of third-party testing; the accuracy of Verizon's loop prequalification databases and competing carriers' ability to access them on a nondiscriminatory basis; Verizon's wholesale billing practices; and Verizon's change management processes and procedures. For those areas of Verizon's OSS that have not been raised in contention by commenters or otherwise discussed below, we are satisfied that our review of the record, including our analysis of Verizon's commercial performance data for Verizon's OSS in Virginia, indicates that Verizon is providing OSS to competitors in a nondiscriminatory manner, in compliance with the checklist.⁶⁴

a. Third-Party Testing

25. Although Verizon ultimately relies on a variety of evidence to demonstrate that it is providing nondiscriminatory access to its OSS in Virginia, Verizon partially supports its application with the results of an independent third-party test of the ability of Verizon's OSS to support local market entry by competing carriers in Virginia. Specifically, the Virginia Commission retained KPMG Consulting (KPMG) to perform a military-style test substantially similar to the third-party OSS analysis KPMG conducted in other Verizon states that have received section 271 approval.⁶⁵ KPMG analyzed the five functional OSS domains through 545

⁶¹ Verizon states that it uses expressTRAK throughout its service territories in the states of Virginia, Maryland, West Virginia, and the District of Columbia and that expressTRAK was the system tested by KPMG. Verizon McLean/Wierzbicki/Webster Decl., para. 26. Although Verizon claims that its systems are identical within this region, we do not make a specific determination regarding the sameness of Verizon's OSS between Virginia and Maryland, the District of Columbia, or West Virginia.

⁶² *Verizon New Jersey Order*, 17 FCC Rcd at 12308-09, para. 76 & n.205 (Because Verizon used a unique service order processor in New Jersey not used in any of its section 271-approved states, the Commission undertook a close examination of Verizon's OSS in order "to be confident that [the unique service order processor] ha[d] no material impact on Verizon's performance").

⁶³ *Verizon New Jersey Order*, 17 FCC Rcd at 12309, para. 77.

⁶⁴ In the few instances where Verizon has failed to meet its commercial performance benchmarks or parity standards, we are persuaded that its performance is not competitively significant and conforms to the Commission's precedent. See Appendix B.

⁶⁵ Verizon McLean/Wierzbicki/Webster Decl., paras. 11-22; KPMG Final Report at 9-16.

transactional and operational tests points including volume and stress testing.⁶⁶ Additionally, as discussed more fully below, Verizon engaged PricewaterhouseCoopers (PwC) to conduct an attested review of a newly introduced carrier bill format provided by Verizon.⁶⁷

26. The persuasiveness of a third-party review depends upon the conditions and scope of the review.⁶⁸ Only one competing carrier, Covad, disputes the sufficiency of KPMG's third-party analysis.⁶⁹ Covad asserts that KPMG did not adequately review actual competing carrier interaction with Verizon, especially regarding billing.⁷⁰ Additionally, Covad alleges that, while KPMG tested Verizon's loop prequalification databases for functionality, it did not test the accuracy of the underlying database information.⁷¹

27. We find that Covad's arguments, as a general matter, do not undermine the informative value of KPMG's analysis of Verizon's OSS. As discussed in further detail below, to the extent we find that a test is limited in scope or depth, we rely on other evidence such as commercial performance.⁷² Because we find, based on the record, that KPMG's analysis of Verizon's OSS in Virginia was broad and objective, we find that KPMG's analysis provides meaningful evidence that is relevant to our analysis of Verizon's OSS.

b. Pre-Ordering

28. Based on the evidence in the record, we conclude that Verizon demonstrates that it provides nondiscriminatory access to its OSS pre-ordering functions. Competing carriers in Virginia receive the same pre-ordering information as Verizon retail representatives and use the same three electronic pre-ordering interfaces that Verizon provides in states where it has already received section 271 approval.⁷³ Verizon's pre-ordering interfaces are handling large

⁶⁶ Verizon McLean/Wierzbicki/Webster Decl., paras. 14-22; KPMG Final Report at 12-13, 18-19.

⁶⁷ Verizon McLean/Wierzbicki/Webster Decl., paras. 145-46. This analysis of Verizon's billing system is discussed in greater detail below.

⁶⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20659, para. 216.

⁶⁹ We also note that Cavalier describes KPMG's third-party OSS testing as "abstract," but does not allege any specific failure. Cavalier Comments at 28.

⁷⁰ Covad Comments at 14.

⁷¹ Covad Comments at 8.

⁷² See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9070-71, para. 105 (2002) (*BellSouth Georgia/Louisiana Order*) (stating the same standard).

⁷³ Verizon McLean/Wierzbicki/Webster Decl., paras. 28, 31.

commercial volumes in Virginia and its performance data generally shows that Verizon is providing pre-ordering functions in a nondiscriminatory manner.⁷⁴

29. *Loop Qualification Information.* We find that Verizon provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*.⁷⁵ Specifically, we find that Verizon provides competitors with access to all of the same detailed information about the loop that is available to itself and in the same time frame as Verizon personnel obtain it.⁷⁶

30. Verizon provides competitive carriers with a real time loop qualification tool, LiveWire, and a host of other loop qualification information that is available through batch reports or normal processing.⁷⁷ Two commenters, Covad and NTELOS, express concern over Verizon's prequalification database. Specifically, Covad claims that inaccuracies in Verizon's mechanized prequalification database, LiveWire, discriminate against competitive LECs.⁷⁸ Covad alleges that LiveWire is designed to provide Verizon's affiliate with the information it needs, while competing carriers obtain incorrect information and must go through numerous additional steps, some at significant cost, to obtain complete loop qualification information.⁷⁹

31. In its reply comments, Covad makes additional allegations based on newly-discovered information. Specifically, based on its receipt of a batch loop qualification data extract from Verizon in two formats, Covad claims that Verizon maintains separate and different sets of loop makeup information, one for its retail broadband division (formerly known as

⁷⁴ Verizon McLean/Wierzbicki/Webster Decl., paras. 42-43.

⁷⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3886, para. 429 (1999) (*UNE Remand Order*).

⁷⁶ See Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 1-7.

⁷⁷ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 3-7. If loop qualification information for a customer's address has not been included in LiveWire, or if a competitive carrier fails to pre-qualify a loop through LiveWire, a competitive carrier can request an on-demand loop qualification by using the xDSL Loop Qualification – Extended (LXE) Inquiry transaction. Verizon also provides competitive carriers with electronic access to loop make-up information contained in its back office inventory Loop Facilities Assignment and Control System (LFACS). Finally, a competitive carrier may submit an Engineering Record Request for full loop make-up, including loop length, type of facility, cable gauge for each section of the loop, location of any load coils and location and length of any bridge tap. *Id.*

⁷⁸ Covad Comments at 10. See also NTELOS Comments at 7-8, alleging that Verizon's loop qualification database incorrectly rejected 32% of NTELOS' DSL orders as unqualified.

⁷⁹ Covad Comments at 14. Covad claims that LiveWire falsely reports certain loops as non-qualified for DSL, requiring Covad to either turn away a customer or incur manual loop qualification charges. *Id.* at 6.

VADI), and one for competitors.⁸⁰ Covad also alleges that Verizon maintains address-specific information about the end user loops served by remote terminals, but does not provide this loop makeup information to competitors at the pre-ordering stage, as required by the *UNE Remand Order*.⁸¹ Covad claims that it needs this loop makeup information in order to determine where to invest in central office collocations to make use of Verizon's Packet at Remote Terminal Service (PARTS) network facilities and serve end users over PARTS-equipped remote terminals from a Verizon central office.⁸² Further, Covad maintains that Verizon does not make access to the underlying databases supplying information to the RequestNET system⁸³ available to competitors at all, and only makes filtered information available through RequestNET after the ordering stage.⁸⁴

⁸⁰ Covad Reply at 2-4. Covad refers to these extracts as the "CLEC extract" and the "VADI extract". VADI was the name of Verizon's separate data affiliate that was created pursuant to the conditions established by the Commission in its Bell Atlantic/GTE Merger Order. *Application of GTE Corporation and Bell Atlantic Corporation 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, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*Bell Atlantic/GTE Merger Order*). In its *ASCENT* decision, the D.C. Circuit ruled that this affiliate was a successor or assign of an incumbent LEC under section 251(h). *Assoc. of Communications Enter. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT v. FCC*). Under the terms of the Bell Atlantic/GTE Merger Order, Verizon had the right to reintegrate the affiliate with its operating company if a court issued such a ruling. *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd. at 14,153, para.265. The Commission granted Verizon's request to accelerate Verizon's right under the Bell Atlantic/GTE Merger Order to reintegrate its affiliate with the operating company as a separate division. *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent To Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications To Transfer Control of a Submarine Cable Landing License*, Order, CC Docket No. 98-184, 16 FCC Rcd 16915 (2001). Verizon claims it now provides DSL service through a separate division that uses the same interfaces as competitive LECs for a substantial majority of its orders. *See Verizon Virginia Application at 29 n.28.*

⁸¹ Covad Reply at 4-5. Covad alleges that the information it seeks is maintained in electronic form in Verizon's LFACS database but Verizon forces Covad to obtain this information through a cumbersome paper process associated with a request for remote terminal collocation. *Id.* at 5.

⁸² Covad Reply at 5. According to Verizon, PARTS would give collocated carriers the ability to use the same facilities that Verizon will use to provide digital subscriber line service through remote terminals. *See Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 02-214 (filed Aug. 29, 2002) (Verizon Aug. 29 PARTS Ex Parte Letter), attaching Verizon's Reply in Verizon Telephone Companies, Tariff FCC Nos.1 & 11, Transmittal No. 232, filed Aug. 22, 2002, at 1.*

⁸³ Verizon explains that RequestNET is an internal Verizon work management tool used to manage certain work requests that require people in the provisioning and engineering organizations to perform work steps. The database underlying RequestNET holds work requests formatted in standard electronic forms. Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 25, 2002) (Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter) at 4-5.

⁸⁴ Covad Reply at 5-6.

32. Verizon states that, through the New York DSL collaborative, it has undertaken efforts to ensure that LiveWire contains accurate information.⁸⁵ According to Verizon, 100 percent of the loops in former Bell Atlantic central offices in Virginia have now been tested and categorized.⁸⁶ Verizon argues that its retail operations make use of the same LiveWire database and are equally affected by any remaining inaccuracies. Verizon also maintains that it provides the same pre-order loop qualification information, through the same systems, in Virginia as it does in New York, Connecticut, Massachusetts, Pennsylvania, Rhode Island, Vermont, Maine, and New Jersey, all states where Verizon has received section 271 approval.⁸⁷

33. In response to Covad's new allegations, Verizon states that it makes available to competitors the same batch loop makeup information it makes available to itself.⁸⁸ Verizon explains that Covad incorrectly received from Verizon an extract that had been populated with additional information created by Verizon's broadband division.⁸⁹ Verizon claims that its retail broadband division uses the standard batch loop qualification report provided to all competitive carriers and adds additional information from its own databases concerning its own services that are proprietary to Verizon's broadband division.⁹⁰ Additionally, Verizon states that the extract received by Covad contains information that is not loop qualification information but that is nonetheless available to Covad through existing pre-ordering databases.⁹¹ Verizon also responds that it does make available to competitors address-specific information about the end user loops served by remote terminals and indicates which remote terminals are PARTS-equipped.⁹² Verizon notes that any competitor may receive an extract that is specifically sorted based on PARTS-equipped remote terminals.⁹³ Finally, Verizon explains that, contrary to Covad's

⁸⁵ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 3.

⁸⁶ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 3.

⁸⁷ Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 4.

⁸⁸ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2-3.

⁸⁹ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3. Verizon provides as an attachment to its letter a field-by-field comparison of the bulk extract all competitive carriers receive and the bulk extract with additional information created by its broadband division.

⁹⁰ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2. Verizon states that the majority of data elements in the "VADI file" are obtained from the standard bulk extract and the remainder are the retail broadband division's market codes.

⁹¹ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3. The broadband division obtains from Verizon retail a customer list, allowing it to set the value of the "Reason Not Qualified" field to "NOT_VZ_CUST" on the extract records for customers who do not receive local telephone service from Verizon. Covad claims it is entitled to this information from Verizon. Covad Sept. 26 *Ex Parte* at 3. Verizon maintains that this information is customer proprietary network information (CPNI), not loop qualification information, but that it is available to competing carriers through the pre-ordering functions. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3.

⁹² Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3-4.

assertions, competitors have access to all of the underlying databases that Verizon uses to support RequestNet.⁹⁴

34. We find, based on the evidence in the record, that Verizon is providing loop qualification information in a nondiscriminatory manner. The Commission has never required incumbent LECs to ensure the accuracy of their loop qualification databases.⁹⁵ Instead, the Commission requires that, to the extent the incumbent LEC has compiled loop qualification information for itself, it is obligated to provide competitive LECs with nondiscriminatory access to the same information.⁹⁶ Even if the commenters are correct about the inaccuracies in Verizon's LiveWire database, these errors would affect both Verizon and competitive carriers alike. The Commission has previously held that any inaccuracies or omissions in a BOC's database are not discriminatory, to the extent they are provided in the exact same form to both retail and wholesale customers.⁹⁷

35. We do not find evidence to support the allegation that Verizon's broadband retail division receives different loop qualification information than other competitive carriers.⁹⁸ The record does not demonstrate that the additional information present on the VADI extract is loop qualification information.⁹⁹ We are persuaded that Verizon has one loop qualification database (LiveWire) that both wholesale customers and Verizon's retail broadband division use. We also

(Continued from previous page) _____

⁹³ *Id.* at 4. Verizon notes, however, that PARTS is not available in Virginia. *Id.* at 3.

⁹⁴ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 4-5. Verizon maintains that the people performing work requests access the same databases, LiveWire and Loop Facilities Assignment and Control System (LFACS), through the same pre-order interfaces as are available to competitive carriers. *Id.* Competitive carriers similarly have access to the Mechanized Loop Test (MLT) through the same maintenance and repair interfaces available to Verizon personnel. *Id.*

⁹⁵ See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, WC Docket 02-150, Memorandum Opinion and Order, FCC 02-260, para. 142 (rel. Sept. 18, 2002) (*BellSouth Alabama/Kentucky/Mississippi/North Carolina/South Carolina Order*).

⁹⁶ See *UNE Remand Order*, 15 FCC Rcd at 3886, para. 429.

⁹⁷ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9024, para. 66.

⁹⁸ Because our loop qualification rules require that "an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent," evidence that Verizon's broadband retail division receives different loop qualification information than competitive carriers would represent a violation of our rules. See *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

⁹⁹ Because we do not find evidence that the additional information on the VADI extract is loop qualification information, we need not address Covad's claim that Verizon's broadband division must provide the information subject to Verizon's section 251(c) unbundling obligations, pursuant to *ASCENT v. FCC*.

find that Verizon has demonstrated that information indicating the presence of Verizon's voice service on a loop is available to competitive carriers through pre-ordering processes.¹⁰⁰

36. Additionally, LiveWire is not the only source of loop qualification information available to competitive carriers. The *UNE Remand Order* required incumbent LECs to provide competitors all available information in its databases or internal records, in substantially the same time intervals that it is available to any incumbent LEC personnel.¹⁰¹ The record indicates that, if prequalification information is not found in the LiveWire database or the reason a loop is not qualified is other than loop length, Verizon will perform a manual (on demand) loop qualification either by using the pre-order xDSL Loop Qualification – Extended Inquiry transaction, or by using the local service request for a DSL loop.¹⁰² We find that Verizon provides competitive LECs with access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*.

37. We find that Covad's arguments regarding Verizon's PARTS tariff offering are irrelevant to our assessment of Verizon's checklist compliance. We have previously determined that tariffed interstate access services are not part of the checklist, even if such offerings arguably could be substitutes for unbundled network elements (UNEs).¹⁰³ Moreover, as Verizon points out, PARTS is not even currently available in Virginia.¹⁰⁴ Further, as we discuss below in connection with checklist item 1, Covad and WorldCom filed petitions with the Commission to reject the PARTS tariff and the Bureau's Pricing Policy Division has initiated an investigation into the questions raised by the parties.¹⁰⁵ We believe this is the more appropriate forum to address Covad's concerns with PARTS. We note that, as part of its prequalification database, Verizon provides, upon request, information on all remote terminals served by a central office

¹⁰⁰ For example, Verizon points out that Covad may perform a pre-order Customer Service Record (CSR) inquiry. If the customer is a Verizon customer, the CSR will be returned. If the customer is served by either a facilities-based competitive carrier or by UNE-P, the competitive carrier will receive an error message. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3. Additionally, Covad's sales representatives may ask the customer the name of his or her voice provider during the ordering process. *Id.* In light of this finding, we need not address Covad's argument that this information must be provided pursuant to section 51.307(e) of the Commission's rules, 47 C.F.R. § 51.307(e). We also need not address Covad's challenge to Verizon's characterization of this information as CPNI. Covad may seek a determination as to whether the specific information at issue is properly labeled CPNI by filing a complaint or petition for declaratory ruling.

¹⁰¹ *UNE Remand Order*, 15 FCC Rcd at 3885-86, paras. 427-31.

¹⁰² Verizon McLean/Wierzbicki/Webster Decl., Attach. 2, at 4-6. Verizon also provides competitive carriers with electronic access to the limited loop make-up information contained in its back office inventory system.

¹⁰³ *See Bell Atlantic New York Order*, 15 FCC Rcd at 4128, para. 340.

¹⁰⁴ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3.

¹⁰⁵ *See Verizon Telephone Companies, Tariff FCC Nos. 1 & 11, Transmittal No. 232, Order*, DA 02-2140 (Chief, Pricing Policy Div., Wireline Competition Bureau Sept. 3, 2002).

and the addresses associated with the remote terminals.¹⁰⁶ As part of this database, competing carriers may also determine whether the remote terminals have been equipped with PARTS capability.¹⁰⁷

c. Wholesale Billing

38. As part of its obligation to provide nondiscriminatory access to OSS, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.¹⁰⁸ In particular, BOCs must provide two essential billing functions: (1) complete, accurate, and timely reports on the service usage of competing carriers' customers; and (2) complete, accurate, and timely wholesale bills.¹⁰⁹ Service usage reports, provided by Verizon as Daily Usage Files (DUF), are issued to competitive LECs that purchase unbundled switching and measure the types and amounts of incumbent LEC services that a competitive LEC's end-user customers use, typically measured in minutes of use, for a specific period of time (usually one day).¹¹⁰ An incumbent LEC issues wholesale bills to competitive LECs to collect compensation for the wholesale inputs, such as UNEs, purchased by competitive LECs from the incumbent LEC, to provide service to their end-users.¹¹¹ These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.¹¹²

39. We find, consistent with the Virginia Hearing Examiner, that Verizon complies with its obligation to provide nondiscriminatory access to its billing functions.¹¹³ Verizon uses its expressTRAK and Carrier Access Billing System (CABS) billing systems to provide wholesale carrier bills.¹¹⁴ KPMG evaluated and found satisfactory all 75 test points regarding

¹⁰⁶ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3-4.

¹⁰⁷ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3-4.

¹⁰⁸ See Appendix C, para. 39.

¹⁰⁹ *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

¹¹⁰ Verizon McLean/Wierzbicki/Webster Decl., para. 136; *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

¹¹¹ *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

¹¹² *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

¹¹³ Virginia Hearing Examiner's Report at 74.

¹¹⁴ Verizon primarily uses expressTRAK to provide billing for retail products, resale products, UNE-P, UNE-ports and UNE-loops. Verizon McLean/Wierzbicki/Webster Decl., para. 135. Verizon uses CABS to provide billing for interoffice transport facilities, collocation, access services, carrier settlement, and other UNE products. Verizon McLean/Wierzbicki/Webster Decl., para. 135. KPMG tested the accuracy and timeliness of actual bills generated by the expressTRAK and CABS systems as well as Verizon's procedures including processes for producing, distributing, and disputing bills. Verizon McLean/Wierzbicki/Webster Decl., paras. 143-44. Although Verizon has largely replaced its legacy billing system with expressTRAK, Verizon continues to use its legacy billing system to serve a small and shrinking number of telephone numbers that have not yet been converted to the expressTRAK (continued...)

Verizon's billing systems in Virginia.¹¹⁵ No commenting parties raise any issues with Verizon's provision of service usage data to competitive LECs. Based on the evidence provided by Verizon, we find that its provision of service usage data through the DUF meets its obligations in this regard.¹¹⁶ Additionally, we note that no party challenges the timeliness of Verizon's wholesale bills in Virginia, and based on the record, we find that Verizon demonstrates that it is providing carrier bills in a timely manner.¹¹⁷

40. However, several parties dispute Verizon's ability to provide complete, accurate, and auditable wholesale bills and contest the effectiveness and timeliness of Verizon's billing dispute resolution process. We are keenly attuned to Verizon's billing performance, as it has been an issue in recent Verizon section 271 applications.¹¹⁸ We recognize that Verizon has had a number of problems with its billing systems in the past, a few of which remain to a limited degree. Despite these largely historical problems, however, we find that Verizon demonstrates that its wholesale bills provide competing carriers in Virginia with a meaningful opportunity to compete. First, Verizon presents the evaluations of its billing OSS by third-party reviewers KPMG and PwC which found that Verizon provides complete, accurate, and auditable carrier bills.¹¹⁹ Verizon also asserts that the amount of bills in dispute by competing carriers is decreasing in recent months indicating, as a general matter, a trend of increasing accuracy, and the number of outstanding claims has diminished substantially.¹²⁰ Moreover, many of the competing carrier claims regarding their wholesale bills or their success in resolving billing disputes with Verizon involve historical problems that appear to have been resolved prior to Verizon's present application and do not indicate current systemic or recurring billing problems.¹²¹ As we found in the *Verizon New Jersey Order*, to show checklist noncompliance, a

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system. Verizon McLean/Wierzbicki/Webster Decl., para. 26; *see infra* para. 53 (discussing the impact of customers remaining on the legacy billing system). As discussed below, only a minimal number of customers, both retail and wholesale, continue to be served by Verizon's legacy billing system.

¹¹⁵ Verizon McLean/Wierzbicki/Webster Decl., paras. 143-44; *see also* KPMG Final Report at 18.

¹¹⁶ Verizon McLean/Wierzbicki/Webster Decl., paras. 136-37, 147.

¹¹⁷ *See generally* Appendix B, BI-2-01-2030 (Timeliness of Carrier Bill); *see also Verizon New Jersey Order*, 17 FCC Rcd at 12333-34, para. 122.

¹¹⁸ *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17427, para. 15; *Verizon New Jersey Order*, 17 FCC Rcd at 12333-34, para. 122.

¹¹⁹ Verizon McLean/Wierzbicki/Webster Decl., paras. 143-46; *see* KPMG Final Report at 387-400 (Test PPR14 evaluating Verizon's processes for producing complete, accurate, and timely carrier bills), 409-15 (Test TVV9 functionally evaluating Verizon's ability to deliver timely, complete, and accurate carrier bills).

¹²⁰ Verizon McLean/Wierzbicki/Webster Decl., paras. 152 & Attach. 21; Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 67.

¹²¹ For example, by far the largest claim of a systemic billing error asserted by Z-Tel was corrected by Verizon in May 2002, two months prior to Verizon's filing of the present application. *See infra* para. 45 (discussing inflated usage charges on carrier bills). Additionally, we have reason to believe that Verizon will continue to meet its (continued...)

carrier must demonstrate that Verizon's billing performance is "materially worse than it was in Pennsylvania at the time of Verizon's application in Pennsylvania."¹²² Additionally, the Commission has stated, "we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate."¹²³ While competing carriers advance a number of arguments about Verizon's billing, many of these problems appear to be resolved historical problems and, even in the aggregate, these claims do not overcome Verizon's demonstration of checklist compliance.¹²⁴ We address each claim more fully below.

(i) Complete, Accurate and Auditable Carrier Bills

41. *Auditable Adjustments to Electronic Carrier Bills.* As in Pennsylvania and New Jersey, Verizon provides competing carriers in Virginia with a choice of receiving their carrier bills in a standard retail-formatted bill, or in an industry-standard electronic Billing Output Specification (BOS) Bill Data Tape (BDT) format.¹²⁵ Verizon has allowed competitive LECs to choose the BOS-BDT bill as the official bill-of-record since June 1, 2002.¹²⁶ Verizon acknowledges that in order to ensure the accuracy of the BOS BDT bill, it must reconcile these bills against the retail-formatted bills.¹²⁷ In order to make the BOS BDT bills balance internally and match the retail-formatted bill, Verizon adjusts the BOS BDT bills using a manual

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obligation to redress its past problems. See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 7, 2002) (Verizon Oct. 7 Billing *Ex Parte* Letter) (confirming that Verizon has applied credits to competing carrier bills for improper usage charges); Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 9, 2002) (Verizon Oct. 9 Billing *Ex Parte* Letter) at 1 & Attach. 1-2 (updating the Verizon Oct. 7 *Ex Parte* Letter with specific details regarding the credits applied to Z-Tel's account in Virginia).

¹²² *Verizon New Jersey Order*, 17 FCC Rcd at 12337, para. 127 (finding improper charges that occur on 2-3 percent of a carrier's wholesale bills and that amount to less than 1% of a carrier's overall charges, without further evidence, are insufficient to demonstrate that Verizon does not provide competing carriers a meaningful opportunity to compete).

¹²³ *Verizon New Jersey Order*, 17 FCC Rcd at 12336-37, para. 126.

¹²⁴ We note that Verizon's billing performance in Virginia actually appears to be better than Verizon's billing performance at the time of Verizon's section 271 application for Pennsylvania.

¹²⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 140. Verizon notes that there are now over 40 competing carriers operating in Virginia that receive the BOS BDT carrier bill. *Id.* As the Commission has noted before, the BOS-BDT bill permits competing carriers to more readily audit their bills, especially those carriers providing service in higher volumes. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17428, para. 17; *Verizon New Jersey Order*, 17 FCC Rcd at 12333-34, para. 122 & n.348.

¹²⁶ Verizon McLean/Wierzbicki/Webster Decl., para. 140 & Attach. 17.

¹²⁷ Verizon McLean/Wierzbicki/Webster Decl., para. 141.

process.¹²⁸ Any adjustments are then included in the “Other Charges and Credits (OC&C)” section of the BOS BDT bill.¹²⁹ The adjustments are identified using discrete phrase codes describing the reason for the adjustment.¹³⁰ A number of competitive LECs contend that the BOS BDT bill is not accurate or auditable. Although KPMG conducted a comprehensive test of Verizon’s expressTRAK billing system, due to the recent availability of BOS BDT billing in Virginia, KPMG evaluated only the contents of Verizon’s retail-formatted bill.¹³¹ Therefore, Verizon presents an attested report by PwC as verification that its BOS BDT bills are auditable and comparable to the retail-formatted bill in terms of bill value, detail, and other characteristics.¹³² Based on our review of these third-party tests along with recent commercial performance, we find that Verizon provides wholesale bills, both the retail-formatted and BOS BDT versions, in a manner that offers an efficient competitor a reasonable opportunity to compete.

42. We disagree with allegations by WorldCom, Covad and Z-Tel that the BOS BDT carrier bills are not auditable because the adjustments Verizon makes to their bills, reported in the OC&C section of the bill, are not easily identifiable.¹³³ Because the charges and credits applied to this section of the bill contain only brief descriptive codes, Z-Tel and Covad allege that it is difficult to audit these bills.¹³⁴ Verizon responds that all adjustments are described by

¹²⁸ Verizon McLean/Wierzbicki/Webster Decl., para. 142 & Attach. 18 (describing the adjustment process and noting that it is identical to the process initiated in Pennsylvania).

¹²⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 142.

¹³⁰ Verizon McLean/Wierzbicki/Webster Decl., para. 142.

¹³¹ Verizon McLean/Wierzbicki/Webster Decl., para. 144.

¹³² Verizon McLean/Wierzbicki/Webster Decl., paras. 145-46; Verizon Virginia Application, App. C, Tab 13, Joint Declaration of PwC on Behalf of Verizon Virginia Inc. at paras. 8-13, attached to Letter from Linda Pulley, Verizon, to Joel Peck, Virginia Commission (May 29, 2002) (PwC Attestation). PwC conducted its analysis during 3 different test periods between January and May 2002. Verizon McLean/Wierzbicki/Webster Decl., paras. 145-46. The Commission relied on similar evidence in its section 271 applications for Pennsylvania and New Jersey. See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17430-31, 17440-41, paras. 21, 35-36; *Verizon New Jersey Order*, 17 FCC Rcd at 12335-36, para. 125.

¹³³ Z-Tel Comments Attach. 1, Declaration of Justin T. Laughlin para. 9 (Z-Tel Laughlin Decl.); WorldCom Lichtenberg Decl., paras. 8-11. Covad Reply at 6. To the extent that Covad asserts that products are identified only by USOC code, we note that Verizon makes detailed identification information based on USOC codes readily available to competing carriers. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 66; Covad at 15. Also, we note that WorldCom’s allegations are based on Verizon’s performance in Pennsylvania, not Virginia, and are therefore not directly relevant to this proceeding. WorldCom Comments at 14-15; see *Bell Atlantic New York Order*, 15 FCC Rcd at 4151, paras. 398-99 (claim that Bell Atlantic violated Commission rules in other states was not relevant to the New York section 271 proceeding without evidence that the processes were the same in New York). See Verizon Virginia Reply at 44.

¹³⁴ Z-Tel Laughlin Decl., para. 9; Covad Reply at 6. Although PwC found the amount of adjustments to be minimal, we note that PwC also found that the adjustments Verizon adds to the OC&C section of the BOS BDT bill “do not provide detailed information to allow recalculation of the adjustment.” PwC Attestation paras. 37, 66, 92. (continued...)

phrase codes that are defined in documentation made available to competing carriers.¹³⁵ Verizon also asserts that none of the phrase codes Z-Tel claims to find confusing have been on a Z-Tel bill since December 2001.¹³⁶ Moreover, regarding the OC&C charges for which Covad seeks identifying collocation site information, Verizon demonstrates that the identifying information can be derived from information present on all BOS BDT bills as defined by industry standards.¹³⁷ Also, Verizon states that automatic number identification (ANI) detail is available for most records in the OC&C section of the bill.¹³⁸ In addition, PwC quantified the absolute value of charges and credits used to adjust the BOS BDT carrier bills and found it to be minimal.¹³⁹ In its application, Verizon provides additional data quantifying the level of adjustments made to the BOS BDT bills between April and July 2002.¹⁴⁰ Verizon's data shows that the absolute value of adjusted charges continues to be minimal and appears to be decreasing each month.¹⁴¹ Competing carriers do not dispute PwC's or Verizon's quantification of the size of this problem and do not provide a quantification of the impact this problem has on their individual operations. In light of evidence that actual adjustments to BOS BDT bills are minimal and decreasing, and that information describing the adjustments can be derived from information

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PwC made similar findings in its review of Verizon's BOS BDT bill in Pennsylvania. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17436-37, 17442-43, paras. 29, 38-39 & n.144 (noting that the manual adjustment process to BOS BDT bills does not provide competing carriers with detailed information sufficient to recalculate the adjustments).

¹³⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 142; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 63 & Attach. 11.

¹³⁶ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 61. Specifically, Verizon claims that since December 2001, none of Z-Tel's BOS BDT bills in Virginia have been adjusted in order to balance internally, or to match the paper bill. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 61.

¹³⁷ Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-214 (filed Sept. 20, 2002) (Verizon Sept. 20 Billing *Ex Parte* Letter) at 1-2; Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 1 & Attach. A. Verizon also demonstrates that it notified Covad by letter to expect these charges for one-time changes in collocation rules and that these charges are properly located in the OC&C section of the bill. Verizon Sept. 20 Billing *Ex Parte* Letter at 1-2 & Attachs. 1-2.

¹³⁸ ANI detail is available for every OC&C record except account level changes and claim resolutions which get Summary Bill Master account identification. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 64.

¹³⁹ PwC Attestation para. 45 (finding that for the bill period December 16, 2001 to January 15, 2002, the absolute value of the adjustments made to the BOS BDT bills in order to balance to the retail-formatted bills, expressed as a percentage of the total current charges on the retail-formatted bills was 0.0028%).

¹⁴⁰ The overall percentage of adjustments was 0.51% in April, 0.428% in May, 0.029% in June, and 0.028% in July. Verizon McLean/Wierzbicki/Webster Decl., para. 146 & Attach. 19; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 62 & Attach. 10.

¹⁴¹ *Id.*

on the bill, we do not find commenters have rebutted Verizon's evidence demonstrating checklist compliance.

43. *Improper Tax Charges.* Z-Tel contends that Verizon continues to charge taxes on its bill, despite Z-Tel's tax-exempt status, resulting in a need for additional auditing expenses and interfering with Z-Tel's ability to compete.¹⁴² Based on the record, we find that the amount of taxes Verizon has incorrectly assessed on Z-Tel's bills in Virginia has decreased significantly and, especially in recent months, is not competitively significant.¹⁴³ Moreover, Verizon has credited Z-Tel's accounts for improper tax charges assessed, and has identified Z-Tel's account with a tax-exemption indicator in its billing system since August 2002, apparently fixing the problem.¹⁴⁴

44. *Improper Feature and Service Charges.* We also reject Z-Tel's assertion that Verizon bills are discriminatory because of the inclusion of improper charges on the bill, such as charges for calling features that are included in the cost of the switch port, incorrect billing for alternately billed calls,¹⁴⁵ and charges for inappropriate retail services.¹⁴⁶ While Z-Tel provides no specific data to substantiate its claims, between April and July 2002, Verizon has identified only a few instances of improper feature charges amounting to an insubstantial sum.¹⁴⁷ During

¹⁴² Z-Tel Comments at 5; Z-Tel Laughlin Decl., para. 7 & Attach. A (certificate of tax exemption dated October 3, 2000). Because NTELOS makes only a vague and unsupported allegation about Verizon's billing systems, we do not analyze their claim separately. NTELOS Comments at 6; see Verizon McLean/Wierzbicki/Webster Reply Decl., para. 55.

¹⁴³ Verizon Virginia Reply at 45; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 51. Verizon demonstrates that average absolute value of incorrect taxes on Z-Tel's BOS BDT bills for April through August is less than 0.067% of monthly charges and is steadily falling, amounting only 0.001% in August. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 51 & Attach. 5. Although not necessary to our finding, Verizon presents further evidence of this trend stating that Z-Tel's September bills contain no tax charges. Verizon Sept. 20 Billing *Ex Parte* Letter at 2. We note that in Pennsylvania, Verizon demonstrated that less than 0.1% of current billed charges were for incorrect taxes while in New Jersey, incorrect taxes amounted to 0.17%. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17433-34, para. 26; *Verizon New Jersey Order*, 17 FCC Rcd at 12335-36, para. 125 n.363.

¹⁴⁴ Verizon Virginia Reply at 45; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 51. Verizon asserts that for Z-Tel's main account, a manually populated field was corrected to indicate Z-Tel's tax-exempt status. Verizon Sept. 20 Billing *Ex Parte* Letter at 2. Verizon concedes that the extra Z-Tel account that had been improperly created by Verizon, and has now been eliminated, was not set up to exclude taxes from the bill. Verizon Sept. 20 Billing *Ex Parte* Letter at 2; see discussion *infra para.* 46 (addressing this claim separately). Verizon demonstrated in the state record that it has procedures in place to establish tax exempt status on competing carrier accounts and provide credits for misapplied taxes. Verizon Virginia Application, App. C, Vol. 5, Tab 14, OSS Reply Declaration in Virginia Commission Case No. PUC-2002-0046, para. 150.

¹⁴⁵ Alternately billed calls include, for example, collect calls and operator services calls. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 60.

¹⁴⁶ Z-Tel Comments at 5; Z-Tel Laughlin Decl., paras. 7-8.

¹⁴⁷ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 52.

the same time period, Verizon has identified several occurrences of charges for Lifeline, Guardian, or call waiting, but none in July.¹⁴⁸ Improper feature charges and retail service charges average less than 0.009 percent of Z-Tel's monthly charges between April and July.¹⁴⁹ Thus, it appears that these incidents were isolated and insignificant and do not indicate a systemic problem.¹⁵⁰ Further, while Verizon admits that a problem exists in mapping charges for alternately billed calls to the BOS BDT bill, Verizon proactively credits all competing carrier accounts for these calls through the adjustment process, even though it maintains that the charges are correct.¹⁵¹ Moreover, the record indicates that alternatively billed calls affect only a small portion of bills.¹⁵² Although we need not rely on it to make our finding of checklist compliance, we receive some comfort from the fact that approximately 60 percent of the problem was fixed by September 22, 2002 with the remainder scheduled to be corrected in a system upgrade in December 2002.¹⁵³ Because we are assured that these inaccuracies have only a minor impact and appear to be diminishing, we reject Z-Tel's claims that any remaining inaccuracies in Verizon's wholesale bills are competitively significant.

45. *Inflated Usage Charges.* Z-Tel asserts that Verizon's carrier bills contained inaccurately inflated usage charges.¹⁵⁴ The record indicates that Verizon remedied the underlying system problem in May 2002.¹⁵⁵ Verizon acknowledged that it owed Z-Tel and other carriers credits for the amount over billed and engaged in calculating the appropriate credit by examining its past billing records.¹⁵⁶ Because Verizon's systems were fixed in May 2002 and because Verizon is committed to compensating competing carriers for its system error, we do not find that this issue rises to the level of checklist noncompliance. We nevertheless note that

¹⁴⁸ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 53. These charges combined do not amount to a significant sum. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 53.

¹⁴⁹ See Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 52-53 & Attach 5.

¹⁵⁰ Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 52-53.

¹⁵¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 60. Verizon maintains that the charges are correct, but are mislabeled due to a system error.

¹⁵² Verizon states that adjustments for alternately billed calls represent 0.85% of total billed charges on relevant accounts. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 60.

¹⁵³ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2.

¹⁵⁴ Z-Tel Laughlin Decl., para. 11.

¹⁵⁵ Verizon Virginia Reply at 45; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 56; Z-Tel Laughlin Decl., para. 11 (admitting that the symptoms of the problem disappeared after May 2002).

¹⁵⁶ Verizon Virginia Reply at 45-46; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 56; Verizon Oct. 7 Billing *Ex Parte* Letter at 1 and Attach. 1 (confirming that Verizon has credited Z-Tel's and other affected carriers' accounts for improperly inflated usage charges applied between March 2001 and May 2002); see also Verizon Oct. 9 Billing *Ex Parte* Letter at 1 & Attach. 1-2 (updating the Verizon Oct. 7 *Ex Parte* Letter with specific details regarding the credits applied to Z-Tel's account in Virginia).

Verizon should endeavor to expeditiously provide bill credits in a timely manner when Verizon acknowledges they are due.

46. *Improperly Created Billing Account.* Z-Tel contends that Verizon improperly created an additional Z-Tel billing account which has been plagued with numerous improper charges making auditing its carrier bills difficult for Z-Tel.¹⁵⁷ Verizon recognized its error in creating this account in January 2002 and implemented system safeguards to prevent this error from recurring.¹⁵⁸ Moreover, Verizon has credited this Z-Tel account to balance at zero, has removed this unwanted account, and has recreated Z-Tel's BOS BDT bill for this account for the entire year to date.¹⁵⁹ Based on the record, we believe that this problem has been remedied and that Verizon has implemented systems fixes to prevent it from happening again.

47. *Zero Cost Line Items.* Finally, we disagree with Z-Tel's charge that Verizon improperly includes zero charge line items on its bills for features included in the cost of the switch port without identifying a telephone number.¹⁶⁰ Verizon asserts that these zero charge line items indicate the final billing cycle for disconnected accounts.¹⁶¹ These charges appear to be appropriate and are limited to the increasingly insignificant number of bills generated by Verizon's legacy billing system.¹⁶² Because Verizon demonstrates valid reasons for the manner in which it presents information on carrier bills and demonstrates the minimal impact and occurrence of this information, Z-Tel's claims do not defeat Verizon's evidence demonstrating checklist compliance.

(ii) Double Billing

48. NTELOS contends that Verizon has continued to issue bills to end users even after the end user has been migrated to a competing carrier, resulting in the end user customer being "double billed" for service.¹⁶³ We reject NTELOS' argument that even minimal

¹⁵⁷ Z-Tel Laughlin Decl., para. 17. For instance, Z-Tel claims that, on this extra billing account, the statements of Z-Tel's usage are identified by unusual overlapping time periods. Z-Tel Laughlin Decl., para. 16.

¹⁵⁸ Verizon explains that the additional account was erroneously created by a representative in its National Marketing Center (NMC), but states that, in February 2002, Verizon removed the ability for representatives in the NMC to create such billing accounts. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 76. Now, such changes can be initiated only by a specialized group within Verizon's Wholesale Billing Claim Center. *Id.*

¹⁵⁹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 76. We note that Z-Tel does not dispute that Verizon has fixed the problem.

¹⁶⁰ Z-Tel Laughlin Decl., para. 15.

¹⁶¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 54.

¹⁶² Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 2. See *infra* para. 53 (describing the minimal number of customers receiving legacy system bills)

¹⁶³ NTELOS Comments at 9.

occurrences of double billing demonstrate checklist noncompliance. While NTELOS concedes that Verizon's "Double Billing Team" solution to double billing has improved matters, NTELOS asserts that the problem continues to affect NTELOS and its end-user customers.¹⁶⁴ Verizon explains that most double billing disputes arise when Verizon has provisioned the competing carrier's order and the competing carrier begins providing service to its end-user, but Verizon has not yet updated its billing systems to account for the change.¹⁶⁵ Although normally this billing update takes place very quickly, Verizon asserts that at times it can be delayed if there are inconsistencies between the order and Verizon's billing records, or if the provisioning completes when the carrier's bill has been "frozen" for monthly billing assessment.¹⁶⁶ The record indicates that Verizon's billing system is generally updated in a timely manner and as soon as the billing system is updated, Verizon automatically applies appropriate credits to the end user's bill.¹⁶⁷ Verizon also describes how it engages its Double Billing Team to address cases of double billing.¹⁶⁸ Verizon asserts that the number of double billing complaints in Virginia has fallen dramatically over time. Verizon presents evidence that, in April, May, and July 2002, there were only 18, 20, and 14 instances, respectively, of double billing in Virginia each of which was addressed by the Double Billing Team.¹⁶⁹ Finally, Verizon's commercial performance data demonstrate that provisioned orders are updated to the billing system in a timely manner.¹⁷⁰ Because Verizon demonstrates that instances of double billing appear to be minimal and continue to decrease, and NTELOS provides no data indicating otherwise, we do not find that NTELOS's claims rebut Verizon's evidence demonstrating checklist compliance.

¹⁶⁴ NTELOS Comments at 9-10. Verizon states that its Double Billing Team, established in November 2000, is designed to address double billing complaints. Verizon McLean/Wierzbicki/Webster Decl., para. 155.

¹⁶⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 154.

¹⁶⁶ Verizon McLean/Wierzbicki/Webster Decl., para. 154. An account is "frozen" for a period during which a retail or wholesale account cannot be updated, either for migrations to a new service provider or feature changes to an existing customer's service, in order to allow the system to generate bills based on a static record. *Verizon New Jersey Order*, 17 FCC Rcd at 12328, para. 113; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17446-47, para. 44, n.168.

¹⁶⁷ See Appendix B, OR-4-17 (% Billing Completion Notifiers sent Within 2 Business Days); Verizon McLean/Wierzbicki/ Webster Decl., para. 154.

¹⁶⁸ Verizon McLean/Wierzbicki/Webster Decl., para. 154.

¹⁶⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 155; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 77. Verizon asserts that double billing is appropriate when Verizon legitimately maintains part of a customer's account (in the case of a partial migration of service) or when Verizon continues to provide the end-user with directory advertising. Verizon McLean/Wierzbicki/Webster Decl., para. 155.

¹⁷⁰ Verizon consistently meets benchmark performance levels in OR-4. See Appendix B.

(iii) Billing Dispute Resolution

49. Verizon presents a variety of evidence to show that it has dramatically reduced the number of outstanding billing disputes in Virginia, crediting this improvement to new internal management and an internal task force designed to improve billing claim resolution.¹⁷¹ Nevertheless, several competing carriers allege that Verizon's billing dispute process is inadequate. While several competing carriers express concern over the number of outstanding billing disputes they had and currently have with Verizon in Virginia, we disagree that Verizon's billing dispute resolution process is discriminatory.¹⁷² Consistent with the performance metrics that Verizon agreed to implement during the pendency of their section 271 application for Pennsylvania and that were negotiated through the collaborative process in New York, Verizon demonstrates that it responds to current billing disputes in a timely manner.¹⁷³ Verizon reduced its active monthly billing claims in Virginia from 1700 claims in January 2002 to less than 140 at the end of August.¹⁷⁴ Additionally, Verizon states that its "backlog" of old claims in Virginia has been significantly reduced, stating that only approximately 10% of pending claims are older than 30 days and demonstrates that this number is quickly shrinking.¹⁷⁵ We find that Verizon is generally addressing billing disputes in a timely manner.¹⁷⁶

¹⁷¹ Verizon McLean/Wierzbicki/Webster Decl., paras. 148-52.

¹⁷² Z-Tel Comments at 5-6; Z-Tel Laughlin Decl., paras. 5, 18 & Attach. F; Covad Comments at 16 & App. B. We also note that NTELOS states that it has received a significantly greater amount of credits in 2002 than in received in 2001. NTELOS Comments at 6. While NTELOS asserts that this demonstrates worse performance in 2002, we note that, beginning in January 2002, Verizon substantially increased settlement of older claims, some from 2001. See Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 149-51. Moreover, Verizon argues that it has credited NTELOS "substantially less" than the \$1.2 million dollars claimed by NTELOS to have been credited to it in 2002. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 55.

¹⁷³ Verizon has achieved perfect performance under its recently adopted performance standards. See BI-3-04 (% CLEC Billing Claims Acknowledged Within 2 Business Days) (100% performance in May and June 2002); BI-3-05 (% CLEC Billing Claims Resolved Within 28 Calendar Days After Acknowledgement) (100% performance in May and June 2002). Verizon also conducted a special study of these measures in April and May 2002 showing nearly perfect performance. Verizon McLean/Wierzbicki/Webster Decl., para. 150 & Attach. 20 (BI-3-04 (99% in April and 100% in May 2002) and BI-3-05 (100% in April and May 2002)).

¹⁷⁴ Verizon McLean/Wierzbicki/Webster Decl., para. 151; Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 67. This figure includes current monthly disputes which have consistently been resolved in a timely manner. Similarly, Verizon states that the dollar value of outstanding billing claims in Virginia has dropped from \$7 million to \$260,000 during the same time period. *Id.*

¹⁷⁵ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 67.

¹⁷⁶ We are concerned that Verizon may delay actually issuing credits to competing carriers when it resolves billing disputes in their favor and, if evidence of a systemic problem appears, we are prepared to take appropriate enforcement action.

50. Covad asserts that Verizon improperly back billed it for accrued line sharing charges.¹⁷⁷ In particular, while Covad anticipated that at some point they would be billed for past charges accrued for line sharing, Verizon billed Covad the aggregated charges accrued for the entire Verizon region on a bill normally containing charges associated with UNEs and services purchased for use in the state of New York, and without sufficient supporting detail.¹⁷⁸ Moreover, while this dispute has been closed, Covad argues that the nine months it took for Verizon to resolve this billing trouble ticket is indicative of Verizon's failure to provide timely resolution to billing disputes.¹⁷⁹ We disagree with Covad that Verizon's back billing for line sharing charges denies it a meaningful opportunity to compete. The record indicates that the impact of this dispute in Virginia was minimal.¹⁸⁰ Also, Verizon and Covad agreed at the outset that, while the line sharing UNE would be made available immediately, billing for this product would be delayed until prices were set and the billing system could be programmed.¹⁸¹ Although we are troubled by the manner in which Verizon chose initially to bill for this aggregate charge, this problem is relatively unique, has had a limited impact in Virginia, and further, has been corrected. Therefore, we do not find that Covad presents a sufficient rebuttal to Verizon's showing of checklist compliance.

51. WorldCom argues that Verizon's billing dispute process is "burdensome" because the paperwork required to initiate billing disputes is overly burdensome and Verizon requires that the paperwork be complete with details before Verizon will begin processing the dispute.¹⁸² Verizon first notes that WorldCom has never opened a billing claim in Virginia.¹⁸³ Verizon also asserts that in order to investigate a claim, it must know certain details such as the account number and why certain charges are in dispute.¹⁸⁴ Moreover, Verizon indicates its willingness to address claims of systemic problems affecting a carrier based on a sample of the account, thus limiting the detail required to submit such a claim.¹⁸⁵ Based on the record, we do not find that

¹⁷⁷ Covad Comments at 15-16. Similarly, Covad asserts that Verizon does not update new products into its billing systems in a timely manner, based on Verizon's implementation of line sharing. Covad Comments at 18.

¹⁷⁸ Covad Comments at 16. Furthermore, Covad asserts that 30 percent of the charges were inaccurate. Covad Comments at 16.

¹⁷⁹ Covad Comments at 16.

¹⁸⁰ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 73.

¹⁸¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 72.

¹⁸² WorldCom Comments at 15; WorldCom Lichtenberg Decl., paras. 13-15.

¹⁸³ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 68.

¹⁸⁴ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 68.

¹⁸⁵ For example, Verizon states that a claim does not need to identify every line item for every number that appears to be incorrect due to an alleged systemic error. Rather, the carrier can submit a sample of the problem and identify that the problem occurs on all of its accounts of a certain type. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 68.

WorldCom presents evidence that overcomes Verizon's evidence demonstrating its checklist compliance.

52. Covad claims that Verizon refuses to resolve its outstanding dispute regarding discounts for ISDN loops in accordance with the advanced service loop discount in the Bell Atlantic / GTE merger conditions.¹⁸⁶ Notably, Covad does not allege that Verizon's billing systems are to blame for this dispute. Rather, Covad's allegation is a matter of interpretive dispute regarding the meaning of certain terms in the Commission's merger order.¹⁸⁷ We note that Covad has attempted to raise this issue through Commission's Enforcement Bureau accelerated docket.¹⁸⁸ We believe that this type of dispute is best resolved through an enforcement proceeding.

(iv) Other Billing Issues

53. Verizon primarily uses its expressTRAK billing system to bill both its retail customers as well as competing carriers for resale and a variety of UNE products.¹⁸⁹ However, a small number of retail and wholesale customers have yet to be converted from Verizon's legacy billing system to the expressTRAK system.¹⁹⁰ We find unpersuasive Z-Tel's assertion that, because some of Z-Tel's customers remain on Verizon's legacy billing system for which only separate retail-formatted bills are available, Verizon's billing systems do not provide a meaningful opportunity to compete.¹⁹¹ The record indicates that in July 2002, only 2 percent of billing account numbers in the state of Virginia remained on the legacy system and an equally small percentage of Z-Tel's customers were affected at that time.¹⁹² Additionally, we note that

¹⁸⁶ Covad Comments at 17.

¹⁸⁷ As we have stated in other section 271 orders, new interpretive disputes concerning the precise content of an incumbent LEC's obligations to its competitors and disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding. *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9075, para. 114; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17470, para. 92; *Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10; *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23.

¹⁸⁸ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 75 & Attach. 17 (Letter from Enforcement Bureau, dated June 4, 2001, finding that Covad's loop discount claim against Verizon is not appropriate for the Accelerated Docket, but making no determination on the merits of the claim and advising that the Commission's formal complaint process remains available to resolve this dispute).

¹⁸⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 135; *see supra* note 114 (listing the UNE products billed by expressTRAK).

¹⁹⁰ Verizon McLean/Wierzbicki/Webster Decl., para. 26.

¹⁹¹ Z-Tel alleges that the separate billing requires additional auditing resources because of its separate nature and its lack of BOS BDT functionality. Z-Tel Comments at 5; Z-Tel Laughlin Decl., paras. 12-14.

Verizon converted nearly all of Z-Tel's remaining legacy customers in Virginia to the expressTRAK billing system on September 14, 2002, leaving Z-Tel with only 0.4% of its customers served by the legacy billing system.¹⁹³ We recognize that this separate billing for a few of Z-Tel's customers may be inconvenient. However, because this problem was minimal at the time Verizon filed its application and has now been virtually eliminated, we do not find that this is competitively significant.

54. We also reject Cavalier's contention that Verizon fails this checklist item because when it provides data regarding calls between two competing carriers that route through a Verizon tandem switch, Verizon does not indicate whether the calls are local or toll.¹⁹⁴ Cavalier contends that this inadequacy causes competing carriers to improperly bill one another for access. However, Verizon claims to provide all of the information that Cavalier and other competing carriers need to accurately bill each another for these calls.¹⁹⁵ The Commission consistently has interpreted a BOC's obligation to provide nondiscriminatory billing OSS to mean the provision of DUF information and carrier bills.¹⁹⁶ There is no clear precedent or Commission rule that would require Verizon to serve as a billing intermediary between two other carriers that exchange traffic transiting Verizon's network. We thus find that Cavalier's contention does not show checklist noncompliance. We are, however, encouraged that an industry-sponsored working group is actively working to resolve it.¹⁹⁷

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¹⁹² Verizon McLean/Wierzbicki/Webster Decl., para. 26. Verizon states that over 98% of the amount billed to Z-Tel in Virginia in July was billed using the electronic BOS BDT. Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/ Webster Reply Decl., para. 59 & Attach. 8.

¹⁹³ Verizon Virginia Reply at 48; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 59; Verizon Sept. 20 Billing *Ex Parte* Letter at 2. Verizon also presents evidence that following the September 14 conversion, 99.7% of all competing carrier billing telephone numbers are served by expressTRAK. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 1.

¹⁹⁴ Cavalier Comments at 28-29 & Attachs. OSS-01, OSS-02, OSS-03; Cavalier Reply at 13-14; Letter from Alan M. Shoer, Assistant General Counsel, Cavalier Telephone, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 14, 2002) (Cavalier Oct. 14 Billing *Ex Parte* Letter).

¹⁹⁵ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 58; *see* Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (Verizon Oct. 22 Billing *Ex Parte* Letter). The record indicates that Verizon provides the identification code (either the Carrier Identification Code (CIC) or the Operating Company Number (OCN)) of the originating and terminating carriers, the originating and terminating telephone numbers, and the minutes of use for each call. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 58; Verizon Oct. 22 Billing *Ex Parte* Letter at 1-2.

¹⁹⁶ *See* Appendix C.

¹⁹⁷ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 58 (noting the current discussion of this issue by the industry through the Ordering and Billing Forum (OBF) in the open OBF Issue 2309.

55. Covad claims that Verizon is misapplying a variety of Covad's payments, resulting in overpayments in some accounts and underpayments, as well as late charges and disconnect notices, in other Covad accounts.¹⁹⁸ Verizon contends that the lone example Covad provides in its Reply Comments does not involve any Virginia accounts.¹⁹⁹ Further, Verizon asserts that it has reviewed 1000 wire transfers from Covad to Verizon between February and April 2002 finding 995 to be accurately applied while 5 remain under investigation.²⁰⁰ Without further evidence, Covad's claim appears to be irrelevant to our analysis of Verizon's OSS in Virginia. At any rate, we note that Covad has recently submitted its claim to Verizon's billing dispute resolution process, and thus is able to pursue resolution of this claim in a more appropriate forum.

d. Change Management

56. In order to demonstrate nondiscriminatory access to its OSS, Verizon must provide evidence that it adequately assists competing carriers in the use of its OSS.²⁰¹ Verizon provides evidence of its change management process as well as other support services and training it offers to competing carriers.²⁰²

57. WorldCom argues that Verizon did not adhere to its change management process in a recent system change.²⁰³ Specifically, WorldCom contends that Verizon failed to provide notification under the change management process to competing carriers that it was implementing code into its ordering systems to embargo orders by delinquent competing carriers.²⁰⁴ We disagree with WorldCom's assertion that Verizon must wait to "establish a new track record of compliance with its change management process,"²⁰⁵ given Verizon's long track record of compliance, even regarded by WorldCom as "the best in the country."²⁰⁶ Based on the record, we do not find that this isolated incident undermines Verizon's strong pattern of

¹⁹⁸ Covad Reply at 6-7.

¹⁹⁹ Verizon Sept. 20 Billing *Ex Parte* Letter at 2.

²⁰⁰ Verizon Sept. 20 Billing *Ex Parte* Letter at 2.

²⁰¹ *See* Appendix C, para. 40.

²⁰² Verizon McLean/Wierzbicki/Webster Decl., paras. 159-89.

²⁰³ WorldCom Comments at 15; WorldCom Lichtenberg Decl., paras. 17-19.

²⁰⁴ Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 79-81; WorldCom Lichtenberg Decl., para. 17.

²⁰⁵ WorldCom Comments at 15. In reviewing change management processes, the Commission analyzes the adequacy of a BOC's change management plan and whether the BOC has adhered to that plan over time. *See* Appendix C, para. 40.

²⁰⁶ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 79. WorldCom Lichtenberg Decl., para. 17.

adherence to its change management process and, thus, do not find that this claim rebuts Verizon's demonstration of checklist compliance.

58. Finally, OpenBand argues that Verizon's processes for addressing disputes are unnecessarily onerous and time consuming.²⁰⁷ OpenBand argues that the Commission should require Verizon to adopt a specific dispute resolution process modeled on the system the Maine Commission required Verizon to implement.²⁰⁸ However, OpenBand provides no details beyond its vague allegation. Because Verizon provides the same support systems for competing carriers in Virginia as it provides in states that have received section 271 approval²⁰⁹ and we have no allegation that Verizon has failed to adhere to its documented dispute processes, we do not find that OpenBand surmounts Verizon's demonstration of checklist compliance.

2. UNE Combinations

59. To comply with checklist item 2, a BOC must also demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier.²¹⁰ Based upon the evidence in the record,²¹¹ we conclude, as did the Virginia Hearing Examiner, that Verizon has demonstrated that it provides nondiscriminatory access to network element combinations as required by the Act and our rules.²¹²

60. Some parties argue that Verizon has failed to comply with the Commission's rules regarding UNE combinations. Specifically, OpenBand contends that Verizon utilizes an extended and burdensome bona fide request (BFR) process that violates section 51.315(e) of the Commission's rules.²¹³ OpenBand urges the Commission to ensure that the BFR process is

²⁰⁷ OpenBand Comments at 19-20.

²⁰⁸ OpenBand Comments at 20.

²⁰⁹ Verizon McLean/Wierzbicki/Webster Decl., para. 159.

²¹⁰ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315(b).

²¹¹ *See* Verizon Lacouture/Ruesterholz Decl., paras. 249-58.

²¹² Virginia Hearing Examiner's Report at 77.

²¹³ The BFR process is used when the competitive LEC requests access to a UNE or UNE combination that is not currently offered in an interconnection agreement, SGAT, or tariff, and that Verizon is required to provide under applicable law. Under the BFR process, a preliminary analysis is conducted, including whether the request is a new UNE or UNE combination that is required to be provided under applicable law, an initial assessment of its technical feasibility, general product availability, and expected delivery date. This analysis is normally completed within 30 days. *See* Verizon Lacouture/Ruesterholz Decl., Attach. 16 (*citing* Verizon Wholesale Customer Handbook).

reserved for UNE combinations that are truly extraordinary, not routine or simple.²¹⁴ Verizon explains, however, that under the BFR process, a competitive LEC would not have the burden to establish the technical feasibility of any new combination of network element it seeks, but would be provided with a preliminary assessment of such feasibility within 30 days of its request.²¹⁵ Consequently, we conclude that the burden appropriately remains with Verizon, in its BFR process, to demonstrate technical feasibility and we are not persuaded that OpenBand's concern is sufficient to rebut Verizon's evidence demonstrating checklist compliance.

61. Starpower and US LEC argue that the statute does not support restrictions on the use of enhanced extended links (EELs) that allow the Commission to distinguish between UNE combinations and special access circuits.²¹⁶ According to Starpower, although the Commission ruled in the *UNE Remand Order* that UNEs could not be ordered in combination as a substitute for special access services, the statute does not distinguish between using UNEs for local exchange service and using them for exchange access.²¹⁷ In essence, these parties challenge the reasoning of the *UNE Remand Order*. However, this issue is being addressed in pending rulemaking proceedings, which are more appropriate means of doing so. As the D.C. Circuit has held, allowing such collateral challenges could change the nature of section 271 proceedings from an expedited process focused on an individual applicant's performance into a wide-ranging, industry-wide examination of telecommunications law and policy.²¹⁸

²¹⁴ OpenBand Comments at 17. Section 51.315(e), in relevant part, states that “[a]n incumbent LEC that denies a request to combine elements pursuant to [the Commission’s rules] must prove to the state commission that the requested combination is not technically feasible. 47 C.F.R. § 51.315(e). OpenBand argues that section 51.315(e) of the Commission’s rules provides that an incumbent that denies a competitor’s request for UNE combinations has the obligation of demonstrating to the state commission that the requested combination is not technically feasible. OpenBand Comments at 17.

²¹⁵ See Verizon Virginia Reply at 29, n.27; see also Verizon Lacouture/Ruesterholz Reply Decl., para. 102.

²¹⁶ Starpower/US LEC Comments at 7.

²¹⁷ *Id.*

²¹⁸ See *AT&T v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000). Furthermore, the Commission has an ongoing proceeding regarding the requirements for requesting carriers to use EELs to provide exchange access service. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3913-15, paras. 489, 492-96 (1999); Supplemental Order, 15 FCC Rcd 1760, 1761, para. 4 (1999); *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9592, para. 8 (2000) (*Supplemental Order Clarification*). The Commission presently conditions the use of EELs for exchange access to those carriers that provide a “significant amount” of local exchange service to a particular user. *Supplemental Order Clarification*, 15 FCC Rcd at 9592, para. 8. Verizon is legally obligated to convert special access arrangements to EELs if a competing carrier certifies that it provides a “significant amount” of local exchange service to the particular end user in accordance with the *Supplemental Order Clarification*. The Commission is also currently reconsidering the extent of an incumbent’s obligation to provide access to certain unbundled network elements in its Triennial Review. See *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98; *Deployment of Wireline Services Offering Advanced* (continued...)

3. Pricing of Unbundled Network Elements

62. Checklist item two of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.²¹⁹ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”²²⁰ Section 252(d)(1) provides that a state commission’s determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.²²¹ Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.²²²

63. In applying the Commission’s TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state’s pricing determinations.²²³ We will, however, reject an application if “basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”²²⁴ We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

a. Background

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Telecommunications Capability, CC Docket 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial Review*).

²¹⁹ 47 U.S.C. § 271(c)(2)(B)(ii).

²²⁰ 47 U.S.C. § 251(c)(3).

²²¹ 47 U.S.C. § 252(d)(1).

²²² *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515. The Supreme Court has recently upheld the Commission’s forward-looking pricing methodology in determining the costs of UNEs. *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1679 (2002).

²²³ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted); *see also Sprint v. FCC*, 274 F.3d at 556 (“When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.”).

²²⁴ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted).

64. On November 8, 1996, the Virginia Commission adopted interim rates for UNEs and interconnection in accord with the Commission's pricing rules adopted in the *Local Competition First Report and Order*.²²⁵ Subsequently, on December 20, 1996, Verizon filed a statement of terms and conditions (Statement) generally available to the competitive LECs.²²⁶ On January 14, 1997, the Virginia Commission initiated a proceeding to replace the interim prices with permanent prices.²²⁷ The Virginia Commission requested that interested parties submit proposals for appropriate pricing methodologies and rates and explain the cost studies used to calculate their proposed rates, including any underlying policies or economic studies submitted in support of their cost models and pricing/rate proposals.²²⁸ The Virginia Commission also directed the staff of the Virginia Commission (Staff) to review and evaluate all of the pricing and rate proposals submitted by parties, including the underlying cost models and studies or other analyses, and present its findings, conclusions, and recommendations in a Staff report.²²⁹

65. Pursuant to the *Virginia Initial Pricing Order*, Verizon made significant changes to the models, cost studies, and supporting documentation that it had filed along with its Statement.²³⁰ Two competitive LECs, AT&T and WorldCom, jointly sponsored the only other cost model, known as the Hatfield model (version 3.0), in this proceeding.²³¹ From April through June 1997, Verizon, AT&T, WorldCom, Virginia Cable Television Association (VCTA), and Cox Fiber Commercial Services filed direct and rebuttal testimony.²³² Moreover,

²²⁵ See Verizon Virginia Application, App. F, Vol. 1, Tab 1, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Order (rel. Jan. 14, 1997) (*Virginia Initial Pricing Order*) at 2.

²²⁶ *Virginia Initial Pricing Order* at 2-3.

²²⁷ See generally *Virginia Initial Pricing Order*.

²²⁸ *Id.* at 3, 7.

²²⁹ *Id.* at 10.

²³⁰ See Verizon Virginia Application, App. F, Vol. 1, Tab 9, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Prefiled Staff Report (rel. May 21, 1997) (*Virginia Staff Initial Pricing Report*) at 6 (noting that Verizon made changes to its costs studies on February 14, 1997 and corrected errors and changed prices on April 23, 1997). Verizon used a series of models to conduct these studies and to project costs, including: the Ultimate Allocation Area Analysis (UAAA) model, the Loop Cost Analysis Model (LCAM), the Switching Cost Information System (SCIS), the common channel Switching Cost Information System (CCSIS), and the CapCost+ model. *Id.* at 24.

²³¹ Verizon notes that the Staff did not submit its own cost model. Verizon Virginia Application, App. A, Vol. 3, Tab D, Declaration of Robert W. Woltz, Jr., Patrick A. Garzillo, and Marsha S. Prosinini (Verizon Woltz/Garzillo/Prosinini Decl.), para. 17.

²³² *Id.*, para. 18.

the Staff issued approximately 500 data requests, performed telephone interviews and interrogatories, and participated in four cost model workshops.²³³ The Staff issued its report on May 21, 1997 and recommended that both Verizon's and AT&T/WorldCom's cost models be modified for more accurate means of calculating Verizon's costs.²³⁴ The Staff also reviewed the cost inputs provided by the parties and in a number of cases selected inputs different than those proposed by the parties.²³⁵ When data were available and the cost models allowed it, the Staff proposed specific rates, but in other instances it recommended that the parties re-run their cost models using the Staff's recommended inputs.²³⁶

66. The Virginia Commission conducted evidentiary hearings in June and July 1997 on the inputs and assumptions underlying Verizon's and AT&T/WorldCom's cost studies.²³⁷ After considering the parties' briefs, the *Virginia Staff Initial Pricing Report*, and the record amassed in the proceeding, the Virginia Commission issued an order on May 22, 1998.²³⁸ The *Virginia Interim Pricing Order* set forth the Virginia Commission's conclusions regarding the appropriate economic model for setting UNE rates and inputs to that model.²³⁹ Specifically, the Virginia Commission found that "prices of interconnection and network elements should be based on their total, forward-looking, long-run incremental costs," thereby adopting the Commission's TELRIC methodology to determine rates for UNEs and interconnection in Virginia.²⁴⁰ The Virginia Commission also found that Verizon's cost models relied on data that more closely related to actual operating conditions in Virginia and, therefore, adopted Verizon's models, except for the Network Interface Device (NID), for which the Virginia Commission agreed with the Staff's recommendation that the Hatfield model was more appropriate.²⁴¹

²³³ *Id.*, para. 19.

²³⁴ *Virginia Staff Initial Pricing Report* at 21-22. The Staff concluded that it was not necessary to choose one model over another to establish prices because "there are a relatively small number of critical assumptions that, when made consistent between the models, produce generally equal prices." *Id.* at 22.

²³⁵ *See generally Virginia Staff Initial Pricing Report.*

²³⁶ *Id.* Verizon notes that the Staff specifically requested that it recompute its proposed rates for end office ports, switching usage, tandem switching, signaling, and the daily usage file. *See Verizon Woltz/Garzillo/Prosini Decl.*, para. 19.

²³⁷ Verizon Woltz/Garzillo/Prosini Decl., para. 20.

²³⁸ *See Verizon Virginia Application, App. F, Vol. 10, Tab 26, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Order (rel. May 22, 1998) (Virginia Interim Pricing Order).*

²³⁹ *See generally Virginia Interim Pricing Order.*

²⁴⁰ *Id.* at 5; Verizon Woltz/Garzillo/Prosini Decl., para. 22.

²⁴¹ *Virginia Interim Pricing Order* at 5 n.3; Verizon Woltz/Garzillo/Prosini Decl., para. 22.

67. In the *Virginia Interim Pricing Order*, the Virginia Commission also set forth a number of conclusions and adopted key cost inputs, some of which differed from the parties' proposals. For example, the Virginia Commission determined that the switching equipment price discounts should reflect a mix of 85 percent replacement/new switches and 15 percent add-on/growth switches.²⁴² It also found that the overall, forward-looking cost of capital for Verizon is 10.12 percent, based on a 40/60 percent debt/equity ratio, a cost of debt of 7.6 percent, and a cost of equity of 11.8 percent.²⁴³ Based on the revised cost inputs, the Virginia Commission ordered Verizon to re-run its cost models for all rate elements, with one exception, using the new inputs.²⁴⁴ The one exception was the NID, where the Virginia Commission directed the Staff to determine the price using the cost inputs in the *Virginia Interim Pricing Order*.²⁴⁵ It also ordered the Staff to evaluate and report on the results of Verizon's re-run cost models to determine if Verizon accurately implemented the *Virginia Interim Pricing Order*.²⁴⁶

68. Once Verizon submitted revised cost studies, and parties commented on these revised studies and the *Virginia Interim Pricing Order* in general, the Staff issued its report on August 31, 1998.²⁴⁷ The Staff concluded that Verizon's cost analysis did, for the most part, apply the directives of the *Virginia Interim Pricing Order* accurately and appropriately.²⁴⁸ The Virginia Commission then reviewed the Staff's findings and recommendations, and evaluated, on its own, Verizon's re-run cost studies and interested parties' comments on the *Virginia Interim Pricing Order*, Verizon's re-run cost filing, and the *Virginia Staff Final Pricing*

²⁴² *Virginia Interim Pricing Order* at 11. Initially, Verizon proposed that the switch discount reflect the price it expected to pay, on average, over the next five years for all the replacement and growth switches that it would introduce into its actual network. Based on this theory, Verizon advocated a switching mix of 37% new/replacement and 63% growth/add-on. See *Virginia Staff Initial Pricing Report* at 40, 88; Verizon Woltz/Garzillo/Prosini Decl., para. 61. The Staff found Verizon's method inappropriate for a TELRIC analysis. *Virginia Staff Initial Pricing Report* at 40. AT&T and WorldCom advocated a 100% replacement switch capacity, which the Staff also found inappropriate. *Id.* at 40, 85.

²⁴³ *Virginia Interim Pricing Order* at 6. Verizon proposed a cost of capital of 13.2 percent, based on a 23.8/76.2 debt/equity ratio, a cost of debt of 7.6 percent, and a cost of equity of 14.9 percent. See *Virginia Staff Initial Pricing Report* at 29. AT&T/WorldCom originally proposed a cost of capital of 9.8 percent, based on a 41/59 debt/equity ratio, a cost of debt of 7.4 percent, and a cost of equity of 11.5 percent. *Id.*

²⁴⁴ *Virginia Interim Pricing Order* at 18.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ See Verizon Virginia Application, App. F, Vol. 10, Tab 33, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Report of Division of Communications, Division of Economics and Finance, and Office of General Counsel (rel. Aug. 31, 1998) (*Virginia Staff Final Pricing Report*); Verizon Woltz/Garzillo/Prosini Decl., para. 25.

²⁴⁸ *Virginia Staff Final Pricing Report* at 4; Verizon Woltz/Garzillo/Prosini Decl., para. 25.

Report.²⁴⁹ On November 19, 1998, the Virginia Commission issued a brief order finding that UNE prices could be improved by revising the switching prices to reflect a switch equipment mix of 54 percent new/replacement switches and 46 percent add-on/growth switches.²⁵⁰ Based on this finding, the Virginia Commission ordered Verizon to re-run its cost model changing only the switch equipment mix.²⁵¹

69. After Verizon revised its switching rates based on the revised switching equipment mix, the Staff reviewed the revised rates and informed the Virginia Commission that it found that the new rates properly reflected the Virginia Commission's directives in the *Virginia Pricing Revision Order*.²⁵² The Virginia Commission subsequently issued its final order in the pricing proceeding on April 15, 1999.²⁵³ In this order, the Virginia Commission restated or further explained decisions made in its prior orders, including its adoption of TELRIC and its use of Verizon's cost models with the one exception for the NID.²⁵⁴ Moreover, as it had done in the earlier orders, the Virginia Commission adopted certain key inputs, including a restatement of the switching equipment price discount mix of 54 percent new/replacement and 46 percent add-on/growth.²⁵⁵ Concluding that Verizon's revised costs models and accompanying rates appropriately reflected its earlier directives, the Virginia Commission adopted the updated rate schedule that Verizon submitted pursuant to the *Virginia Pricing Revision Order*, with some exceptions, as the permanent rates that Verizon could charge competitive LECs in Virginia.²⁵⁶

70. Beginning in late 1999, after it adopted the *Virginia Final Pricing Order*, the Virginia Commission issued various orders declining to act pursuant to section 252 of the

²⁴⁹ Verizon Virginia Application, App. F, Vol. 10, Tab 38, Ex Parte: To Determine Prices Bell-Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Order (rel. Nov. 19, 1998) (*Virginia Pricing Revision Order*) at 2; Verizon Woltz/Garzilla/Prosini Decl., para. 27.

²⁵⁰ *Virginia Pricing Revision Order* at 2; Verizon Woltz/Garzilla/Prosini Decl., para. 27.

²⁵¹ *Virginia Pricing Revision Order* at 2; Verizon Woltz/Garzilla/Prosini Decl., para. 27.

²⁵² Verizon Virginia Application, App. F, Vol. 10, Tab 40, Ex Parte: To Determine Prices Bell Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Comments of the Commission Staff (rel. Dec. 21, 1998) at 1. Verizon notes that no other comments were filed. Verizon Woltz/Garzilla/Prosini Decl., para. 28.

²⁵³ Verizon Virginia Application, App. F, Vol. 10, Tab 41, Ex Parte: To Determine Prices Bell Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Final Order (rel. Apr. 15, 1999) (*Virginia Final Pricing Order*).

²⁵⁴ *Virginia Final Pricing Order* at 5-6, 16; Verizon Woltz/Garzilla/Prosini Decl., para. 29.

²⁵⁵ *Virginia Final Pricing Order* at 17; Verizon Woltz/Garzilla/Prosini Decl., para. 61.

²⁵⁶ *Virginia Final Pricing Order* at 25-27; Verizon Woltz/Garzilla/Prosini Decl., para. 29.

Communications Act.²⁵⁷ Specifically, it declined to arbitrate the terms and conditions of interconnection agreements under federal standards, as required by section 252(c).²⁵⁸ The Virginia Commission explained that it had concluded it could not apply federal standards in interconnection arbitrations without potentially waiving its Eleventh Amendment sovereign immunity, which it did not have the authority to do.²⁵⁹ As a result, a number of rates for UNEs that incumbent LECs are required to provide to competitive carriers, including elements that this Commission established in the *UNE Remand Order*, were not established by the Virginia Commission. As described above, this led to an arbitration of Virginia interconnection agreements by this Commission's Wireline Competition Bureau, acting on delegated authority. The cost portion of that arbitration is still pending.

71. Consequently, Verizon needed to establish rates for the UNEs that were not set by the Virginia Commission. These "proxy rates," which became effective on March 22, 2002, were set in one of three ways, all of which, Verizon claims, "produce rates that fall within the range that a reasonable application of TELRIC principles would produce and are consistent with this Commission's precedent."²⁶⁰ Verizon initially determined whether an element involved the same or similar functions and the same or similar work activities as an element for which the Virginia Commission had established a rate.²⁶¹ If Verizon found such a "comparable" element, it would charge the same rate, unless any Virginia competitive LEC was paying less for that

²⁵⁷ 47 U.S.C. § 252.

²⁵⁸ 47 U.S.C. § 252(c). Section 252(c) requires that, in arbitrating an interconnection agreement, a state commission apply the "requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251" and apply the pricing standards of section 252(d). 47 U.S.C. § 252(c)(1) – (2). The Virginia Commission declined to follow section 252(c), offering instead to apply Virginia state law in its disposition of the three requesting carriers' disputes with Verizon. See *Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc., for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225, Order, at 3 (Virginia Commission, Sept. 13, 2000) (*WorldCom Virginia Order*); *Petition of Cox Virginia Telcom, Inc.*, Case No. PUC000212, Order of Dismissal, at 5 (Virginia Commission, Nov. 1, 2000); *Petition for Declaratory Judgment and Application for Arbitration of AT&T Communications of Virginia, Inc., et al.*, Case Nos. PUC000261 and PUC000282, Order, at 3 (Virginia Commission, Nov. 22, 2000).

²⁵⁹ See, e.g., *WorldCom Virginia Order* at 2. Cf. *Petition of Cavalier Telephone, LLC*, Case No. PUC990191, Order, at 3-4 (Virginia Commission, June 15, 2000) ("We have concluded that there is substantial doubt whether we can take action in this matter solely pursuant to the Act, given that we have been advised by the United States District Court for the Eastern District of Virginia that our participation in the federal regulatory scheme constructed by the Act, with regard to the arbitration of interconnection agreements, effects a waiver of the sovereign immunity of the Commonwealth.").

²⁶⁰ Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 35. On March 22, 2002, Verizon sent a letter to competitive LECs operating in Virginia informing them of the availability of these rates. See Verizon Woltz/Garzillo/Prosini Decl., para. 42.

²⁶¹ Verizon Virginia Application at 53-54; Verizon Woltz/Garzillo/Prosini Decl., para. 35.

element under an interconnection agreement at the time Verizon set these rates, in which case Verizon adopted the lower rate state-wide.²⁶²

72. If Verizon did not find a comparable element established by the Virginia Commission, it adopted the rate established for the same or a comparable element in New York, adjusted to reflect the differences in costs between New York and Virginia.²⁶³ Again, if a competitive LEC was paying Verizon a lower rate than the cost-adjusted New York rate under the terms of an existing Virginia interconnection agreement at the time Verizon set the rates, Verizon adopted the lower rate state-wide.²⁶⁴

73. For the few UNE rates for which there was no comparable element rate adopted by the Virginia Commission and for which the Synthesis Model did not provide a comparison of relative cost levels (e.g., non-recurring rates), Verizon adopted the New York rates without any adjustment.²⁶⁵ Verizon states that it adopted these New York non-recurring elements because the non-recurring service order costs in Virginia and New York have the same work activities and virtually identical task times and the underlying non-recurring provisioning activities and processes are virtually the same in both states.²⁶⁶ Also, as with the first two methods, if a competitive LEC was paying Verizon a lower rate than the New York rate under the terms of an existing Virginia interconnection agreement at the time Verizon set the rates, Verizon adopted the lower rate state-wide.²⁶⁷

²⁶² Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 35. For example, Verizon used the service order rate element for a basic loop (which the Virginia Commission had set in the pricing proceeding) for the service order rate element for the distribution two-wire subloop (which the Virginia Commission had not set). Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 35.

²⁶³ Verizon Virginia Application at 54; Verizon Woltz/Garzillo/Prosini Decl., para. 36. Verizon provides the examples of recurring rates for DS3 loops and SMDI ports as rates that were not comparable to any UNEs that were part of the state's pricing proceeding. Verizon Woltz/Garzillo/Prosini Decl., para. 36. Verizon states that it used the New York rates that were approved by the New York Commission on January 28, 2002. *Id.*, para. 38 n. 2 (citing New York PSC, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-1357, Order On Unbundled Network Element Rates (rel. Jan. 28, 2002)). In order to determine the cost adjustment between Virginia and New York, Verizon used the Commission's Synthesis Cost Model (Synthesis Model), which showed relevant loop costs in Virginia to be 35% higher than in New York and relevant port costs in Virginia to be 1% lower than in New York. Verizon Woltz/Garzillo/Prosini Decl., paras. 37-38.

²⁶⁴ Verizon Virginia Application at 54; Verizon Woltz/Garzillo/Prosini Decl., para. 36.

²⁶⁵ Verizon Virginia Application at 56; Verizon Woltz/Garzillo/Prosini Decl., para. 39. The Virginia Hearing Examiner's Report described only the first two methods but not the third method of adopting actual New York rates. *See* Virginia Hearing Examiner Report at 86-87.

²⁶⁶ Verizon Virginia Application at 56; Verizon Woltz/Garzillo/Prosini Decl., para. 39.

²⁶⁷ Verizon Virginia Reply at 52.

b. The Virginia Arbitration

74. AT&T and WorldCom argue that the cost issues pending in the Virginia Arbitration Proceeding²⁶⁸ must be resolved prior to any finding that Verizon's current UNE rates are TELRIC-compliant and request that we consider evidence submitted in that proceeding that, they allege, demonstrates that Verizon's Virginia UNE rates are no longer TELRIC-compliant.²⁶⁹ Both AT&T and WorldCom participated in the cost portion of the Virginia Arbitration Proceeding and submitted extensive evidence concerning cost issues. Specifically, as evidence that Verizon's Virginia UNE rates are above cost, both AT&T and WorldCom point out that they (jointly) proposed lower rates for some UNEs in the Virginia Arbitration Proceeding, as did Verizon itself.²⁷⁰ AT&T claims that the evidence submitted in that proceeding shows that Verizon's Virginia UNE rates are "far in excess of TELRIC-compliant levels."²⁷¹ Like AT&T, WorldCom states that competitive LECs demonstrated to this Commission in the Virginia Arbitration Proceeding that proper UNE rates are less than half of Verizon's current rates.²⁷²

75. In prior section 271 decisions, we have determined that the existence of a new cost proceeding in the applicant state should not affect our review of the currently effective rates submitted with a section 271 application.²⁷³ The situation here is the same, and, thus, we disagree with commenters that the cost issues pending in the Virginia Arbitration Proceeding

²⁶⁸ See generally *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251 (*Virginia Arbitration Proceeding*).

²⁶⁹ See AT&T Comments at 5-7; AT&T Reply at 3-4; WorldCom Comments at 16-17. AT&T claims that this is true for both recurring and nonrecurring costs, and true whether the TELRIC cost estimates are based on AT&T/WorldCom's cost model or Verizon's cost models. AT&T Comments at 6.

²⁷⁰ AT&T Comments at 6, 9; WorldCom Comments at 16. AT&T also argues that proposed rate reductions submitted by Verizon in the Virginia arbitration proceeding are "an eloquent admission" that Verizon's current rates are indefensible. AT&T Comments at 9.

²⁷¹ AT&T Comments at 9. See also AT&T Reply at 3-4 (relying on evidence in the Virginia Arbitration Proceeding to show that Verizon's UNE rates exceed TELRIC-compliant levels).

²⁷² WorldCom Comments at 17, 19. In addition, WorldCom argues that it would be entirely inconsistent with the Act's requirement of cost-based rates to allow a BOC to obtain section 271 authorization where competitive LECs have convincingly shown that current rates are far above cost. *Id.*

²⁷³ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247; *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066, para. 96.

must be resolved prior to any finding that Verizon's current UNE rates are TELRIC-compliant²⁷⁴ and also find that it would be arbitrary and inappropriate to permit AT&T and WorldCom to rely in this proceeding on evidence submitted in what is the equivalent of a new cost proceeding before this Commission.²⁷⁵

76. The existence of a pending proceeding to establish new UNE rates for Virginia interconnection agreements does not, in itself, prove that existing rates are not TELRIC-compliant. The Commission has recognized that rates may well evolve over time to reflect new information on cost study assumptions and changes in technology, engineering practices, or market conditions.²⁷⁶ States review their rates periodically to reflect changes in costs and technology, and the simple fact that a cost factor may change does not invalidate rates that were originally set in accordance with TELRIC principles. As we have stated previously, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself.²⁷⁷ Such a requirement would likely limit the ability of incumbent LECs to file their section 271 applications to specific windows of opportunity immediately after state commissions have approved new rates to ensure approval before the costs of inputs have changed. We doubt that Congress, which directed us to complete our section 271 review process within 90 days, intended to burden the incumbent LECs, the states, or the Commission with the additional delays and uncertainties that would result from such a requirement.

²⁷⁴ For example, AT&T states that, until the Commission resolves the cost issues pending in the Virginia Arbitration Proceeding, there is "no reasoned basis for finding that Verizon's existing rates are TELRIC-compliant." AT&T Comments at 11. Similarly, NTELOS argues that the cost issues in the Virginia Arbitration Proceeding must be settled before Verizon is granted section 271 authority in Virginia. NTELOS Comments at 3. NTELOS maintains that, without "final UNE pricing standards, competitive LECs in Virginia lack a true picture of their costs and cannot effectively create business plans to serve customers in the Commonwealth." *Id.* NTELOS argues that this uncertainty concerning UNE pricing will only increase as more interconnection agreements expire and recommends that the Commission expeditiously complete its deliberations concerning cost issues. *Id.* at 6. We disagree with NTELOS that there are no final UNE pricing standards in Virginia and that the pending arbitration decision on cost issues creates uncertainty for competitive LECs. As discussed above, the Virginia Commission established permanent UNE rates for the vast majority of UNEs and, for other UNEs, Verizon adopted rates that it believes are TELRIC-compliant. *See supra* discussion paras. 64-73. Thus, competitive LECs have pricing standards in place today that can be relied upon until the cost issues in the Virginia Arbitration Proceeding are resolved.

²⁷⁵ Although the Virginia Arbitration Proceeding is technically not a generic cost proceeding, resolution of the cost issues pending there will result in new UNE rates that will be available to other competitive LECs via section 252(i). *See* 47 U.S.C. § 252(i). For this reason, we view the cost portion of the Virginia Arbitration Proceeding as equivalent to a new cost proceeding to establish UNE rates.

²⁷⁶ *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d at 617.

²⁷⁷ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066, para. 96.

77. As the D.C. Circuit stated, “[i]f new [cost] information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change.”²⁷⁸ For this reason, the Commission has consistently held that the existence of a new cost proceeding is insufficient reason to find that a state’s existing rates do not satisfy TELRIC principles.²⁷⁹ We decide the merits of Verizon’s section 271 application based on its present rates, and it would be arbitrary and inappropriate for the Commission to consider other rates that have been proposed in another proceeding.²⁸⁰ The fact that the other proceeding is pending before this Commission instead of the Virginia Commission does not warrant a different result, as the Commission is acting in the Virginia Arbitration Proceeding in lieu of the state commission. Thus, except for specific evidence submitted by the commenters in this proceeding concerning Verizon’s existing Virginia UNE rates, we decline to consider cost evidence or proposed rates submitted in the Virginia Arbitration Proceeding that AT&T and WorldCom attempt to incorporate here by reference.²⁸¹

c. Complete-As-Filed Requirement

78. Before evaluating Verizon’s compliance with the pricing-related requirements of checklist item two, we discuss why we accord evidentiary weight to rate reductions that Verizon filed on October 3, 2002. As discussed previously, the Commission maintains certain procedural requirements governing BOC section 271 applications.²⁸² In particular, the “complete-as-filed” requirement provides that, when an applicant files new information after the deadline for filing comments, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.²⁸³ We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC’s application, to ensure that the Attorney General and the state commission can fulfill their statutory

²⁷⁸ *AT&T v. FCC*, 220 F.3d at 617.

²⁷⁹ See, e.g., *Verizon Rhode Island Order*, 17 FCC Rcd at 3323, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff’d*, *AT&T Corp. v. FCC*, 220 F.3d at 617.

²⁸⁰ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9067, para 97 (concluding that it would be arbitrary and inappropriate for the Commission to consider other rates that had been proposed in a pending state rate proceeding).

²⁸¹ See, e.g., WorldCom Comments at 19 (attempting to incorporate by reference, for all elements, the evidence that WorldCom and AT&T submitted in the Virginia Arbitration Proceeding).

²⁸² See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (*Mar. 23, 2001 Public Notice*); *Verizon Pennsylvania Order*, 16 FCC Rcd 17419, 17472-73, para. 98; *Verizon Connecticut Order*, 16 FCC Rcd 14147, 14163-64, paras. 34-38; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247-50, paras. 20-27; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-69, paras. 32-37; *Ameritech Michigan Order*, 12 FCC Rcd 20543, 20570-76, paras. 49-59.

²⁸³ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

consultative roles, and to afford the Commission adequate time to evaluate the record.²⁸⁴ The Commission may waive its procedural rules, however, “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁸⁵

79. We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission’s rules²⁸⁶ to the extent necessary to consider rate reductions filed by Verizon on day 63 of the 90-day period for Commission review of the Virginia application.²⁸⁷ We conclude that the special circumstances before us here warrant a deviation from the general rules for consideration of late-filed information or developments that take place during the application review period. In particular, as we discuss below, we find that the interests our procedural requirements are designed to protect are not affected by our consideration of these late-filed rate reductions. We also conclude that consideration of the rate reductions will serve the public interest. We will continue to enforce our procedural requirements in future section 271 applications, however, in the absence of such special circumstances, in order to ensure a fair and orderly process for the consideration of section 271 applications within the 90-day statutory review period.

80. There are special circumstances here that satisfy the test for grant of a waiver described above. First, the rate changes at issue are limited. Verizon lowered only its switching rates to meet a non-loop benchmark analysis to New York rates. Verizon has not modified its rate structure, its loop rates, or other rates contained in its original filing. As a result, addressing the effect of this rate reduction placed a limited additional analytical burden on the Commission staff and interested parties. Moreover, Verizon’s rate reductions have already taken effect,²⁸⁸ so there is no concern that the Commission is approving a “promise[] of future performance.”²⁸⁹ Nor is this a situation where the BOC implements measures (such as changes to its OSS) designed to achieve nondiscriminatory performance in the applicant’s provision of service to competitive LECs, the effectiveness of which would be difficult to measure in advance.

81. Second, interested parties have had an opportunity to evaluate the new rates and to comment. Numerous parties had already commented or made *ex parte* filings regarding Verizon’s Virginia switching rates as compared with existing New York rates. Thus, it was not

²⁸⁴ See *Ameritech Michigan Order*, 12 FCC Rcd at 20572-73, paras. 52-54.

²⁸⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

²⁸⁶ 47 C.F.R. § 1.3.

²⁸⁷ See *Comments Requested in Connection with Verizon’s Section 271 Application for Virginia*, Public Notice, WC Docket No. 02-214, DA 02-2525 (rel. Oct. 4, 2002) (attaching *ex parte* submission of Verizon, dated Oct. 3, 2002, proposing significant reductions in Verizon’s Virginia switching rates).

²⁸⁸ *Id.* at 1.

²⁸⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20573, para. 55 (emphasis omitted).

unduly burdensome for commenters to respond to Verizon's rate reduction in a relatively short period of time.²⁹⁰ Moreover, the limited nature of these rate changes and the fact that Verizon has been engaged in efforts to address Commission concerns and clarify the basis for the reductions have permitted the Commission staff to evaluate the change within the 90-day review period.

82. Third, although parties made several general allegations concerning Verizon's Virginia UNE rates, it was only in the reply comment stage of this proceeding that commenters made specific allegations concerning some of the factors and calculations underlying the rates.²⁹¹ Thus, the timing of Verizon's response to these challenges was necessarily late; while Verizon filed its rate reduction in a timely way to address commenters' concerns, because the challenges were raised only in reply comments, or on day 42 of the 90-day process, the reductions were necessarily filed after the reply comments. In filing its reduced switching rates, Verizon explained that, while it considered its original switching rates to be TELRIC-compliant, it was voluntarily reducing its rates "to eliminate any possible argument that these rates exceed the TELRIC range."²⁹² On October 3, 2002, Verizon reduced its per-minute originating unbundled switching rate from \$.004129 to \$.002643, and its per-minute terminating unbundled switching rate from \$.002079 to \$.001331, effective immediately. Verizon states that it also notified all competitive LECs of the new rates.²⁹³

83. We also conclude that grant of this waiver will serve the public interest and thus satisfy the second element of the waiver standard described above. In particular, grant of this waiver permits the Commission to act on this section 271 application quickly and efficiently while allowing Verizon to respond constructively to criticism in the record concerning its rate levels by making pro-competitive rate reductions. Given that interested parties have had an opportunity to comment on these rate reductions and that comments filed by interested parties seem to support a benchmark analysis of Verizon's non-loop UNE rates,²⁹⁴ we do not believe that

²⁹⁰ Indeed, AT&T seems to have anticipated Verizon's reliance on a non-loop benchmark in its initial comments. *See* AT&T Comments at 3-5; AT&T Pitkin Decl., paras. 11-26 (discussing why a switching-only benchmark analysis is appropriate in addition to a non-loop benchmark analysis). We note that only AT&T submitted comments on Verizon's rate reduction. AT&T submitted Supplemental Comments on October 9, 2002.

²⁹¹ Comments on the application focused almost entirely on the age of data underlying the rates; it was only at the reply stage that specific challenges to the rate structure and rate calculation were made. *See, e.g.*, AT&T Reply at 6-8 (addressing, for the first time, the decision by the Virginia Commission to alter the switch discount mix).

²⁹² Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 3, 2002) (Verizon Oct. 3 Pricing *Ex Parte* Letter) at 1.

²⁹³ *Id.* at 2.

²⁹⁴ *See* Comments of AT&T at 3-4 (arguing that a benchmark comparison of loop rates alone is incomplete); WorldCom Comments at 17 (noting that Verizon failed to include, in its application, a benchmark comparison of its non-loop rates).

the public interest would be served in this instance by strict adherence to our procedural rules. Nor do we need to delay the effectiveness of this Order, as we did in the *SWBT Kansas/Oklahoma Order*.²⁹⁵ In contrast to that situation, here the commenters themselves dictated the timing by making the arguments Verizon addresses only at the reply comment stage.²⁹⁶ As we made clear above, however, we do not intend to allow a pattern of late-filed changes to threaten the Commission's ability to maintain a fair and orderly process for consideration of section 271 applications.

84. As discussed below, Verizon's reduced switching rates cause its non-loop rates, which include switching rates, to pass a benchmark comparison to its New York non-loop rates. These reductions address concerns raised in the comments on Verizon's Virginia switching rates, will promote local competition in Virginia, and are in the public interest. Thus, consistent with our prior orders, we will consider these new, lower rates without requiring Verizon to re-file its section 271 application.²⁹⁷

85. Finally, notwithstanding the Commission's decision occasionally to waive its general procedural rules governing section 271 applications, where warranted, we believe that our procedural requirements have led to the filing of applications that contain a tremendous amount of detail and are largely complete. The vast amount of evidence that BOCs submit on the day of filing dwarfs the relatively small amount of subsequent evidence we have considered pursuant to waiver.

d. Recurring Charges

86. Based on the evidence in the record, we find that Verizon's Virginia UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's Virginia UNE rates satisfy checklist item two. As discussed below, substantial questions have been raised in the record about whether Verizon's Virginia UNE rates were adopted through a proceeding which correctly applied TELRIC principles in all instances. In response to these allegations, Verizon voluntarily reduced some of its UNE rates to meet a benchmark comparison to non-loop rates in

²⁹⁵ See *SWBT Kansas/Oklahoma Order*, 16 FCC Red at 6249, para. 26, 6263, para. 52, 6270, para. 72.

²⁹⁶ Both AT&T and WorldCom referred in their Comments to arguments "already before this Commission" in the pending Virginia Arbitration Proceeding; as we explain above, at para. 77 *supra*, that proceeding is separate from the instant section 271 application, and we decline to incorporate the entire arbitration proceeding record into this section 271 record, or to address here arguments raised only in that proceeding. Once Commission Staff informed the commenters of this position, commenters specified arguments they wanted the Commission to consider in this proceeding.

²⁹⁷ See *SWBT Kansas/Oklahoma Order*, 16 FCC Red at 6247-50, paras. 22-27; *Verizon Rhode Island Order*, 17 FCC Red at 3305-10, paras. 7-17.

New York.²⁹⁸ As discussed below, Verizon's Virginia UNE rates pass our benchmark test, and therefore, satisfy the requirements of checklist item two.

87. In their initial comments, AT&T and WorldCom generally allege that Verizon's UNE rates are not TELRIC-compliant due to the age of the data underlying the rates and to alleged TELRIC errors made by the Virginia Commission when it established these rates. Specifically, AT&T argues that rates established by the Virginia Commission in its *Virginia Final Pricing Order* are too old to rely on now, and WorldCom agrees, stating that "[e]ven if the current rates were reasonable at the time they were set . . . they are clearly not within a reasonable range of TELRIC rates today."²⁹⁹ According to AT&T and WorldCom, Verizon's Virginia UNE rates suffer from various TELRIC errors and are far too high to be TELRIC-compliant now.³⁰⁰

88. As discussed above, the Commission has recognized that rates may well evolve over time to reflect new information on cost study inputs and changes in technology, engineering practices, or market conditions.³⁰¹ We find that the evidence of changed circumstances submitted by AT&T and WorldCom fails to demonstrate that the Virginia Commission committed any clear error at the time it adopted Verizon's Virginia UNE rates. The mere fact that a cost factor has changed does not necessarily invalidate rates that were originally set according to a TELRIC

²⁹⁸ See Verizon Oct. 3 Pricing *Ex Parte* Letter at 1-2. Specifically, Verizon reduced its per-minute originating unbundled switching rate from \$.004129 to \$.002643, and its per-minute terminating unbundled switching rate from \$.002079 to \$.001331, effective October 3, 2002. *Id.* at 1. As discussed herein, *see supra* paras. 114-115, Verizon agreed to true-up these switching rates to those switching rates that are adopted in the Virginia Arbitration Proceeding and will apply the arbitrated rates retroactive to August 1, 2002. *Id.*

²⁹⁹ AT&T Comments at 6-9; WorldCom Comments at 17. Both commenters assert that all the rates, both recurring and non-recurring, set by the Virginia Commission in its 1999 *Virginia Final Pricing Order* are too old to rely on here; however, because the specific arguments and discussion regarding the "stale data" issue address only recurring charges, specifically loops and switching, we address them here. AT&T suggests that some of the rates established by the Virginia Commission in its 1999 order were not TELRIC-compliant even then. AT&T Reply at 5; AT&T Baranowski Reply Decl., paras. 9-13; *see* discussion paras. 96-98, *infra*. See also AT&T Supplemental Comments at 8-10 (countering Verizon's responses to, among other things, arguments made concerning the age of the data underlying the switching rates set by the Virginia Commission). AT&T also asserts that some rates (*e.g.*, rates for elements established in the *UNE Remand Order*) were not adjudicated in the Virginia UNE rate case and, as a result, should not be relied upon here. AT&T Comments at 10. These rates are discussed *infra*, paras. 122-31.

³⁰⁰ AT&T Comments at 6-9; AT&T Reply at 3-8; WorldCom Comments at 16-18; WorldCom Reply at 4-6. For instance, WorldCom argues that, although it understands the Commission's principle of deference to reasonable state commission decisions in the section 271 context, this principle simply cannot justify approval of a section 271 application where rates far exceed costs. WorldCom Reply at 6. If a state commission has made a series of "non-basic" TELRIC errors, WorldCom continues, or if costs have dropped significantly since the time of an initial state ratemaking decision, rates can be far in excess of TELRIC when a BOC applies for section 271 authority without the existence of any glaring error. *Id.*

³⁰¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247. See also *AT&T Corp. v. FCC*, 220 F.3d at 617; *see supra* para. 76.

process.³⁰² We further recognize that updated UNE rates will be established in the Virginia Arbitration Proceeding that is currently pending, and we are confident that these rates will comply with TELRIC principles.³⁰³

89. Based on the record in this proceeding and a review of the underlying state proceedings, we have serious concerns as to whether the rates established by the Virginia Commission in its state rate proceeding are TELRIC-compliant. We need not, however, address the merits of these arguments here. In this proceeding, Verizon relies on rates established by the Virginia Commission and also on reduced UNE rates. As discussed below, we conclude that these rates are within the range of rates that a reasonable application of TELRIC principles would produce, and, in particular, that Verizon's loop and non-loop recurring UNE rates pass a benchmark analysis. As this Commission stated in prior section 271 orders, the purpose of our benchmark analysis is to provide confidence that a rate, despite potential TELRIC errors, falls within the range that a reasonable application of TELRIC principles would produce.³⁰⁴ Thus, even if the Virginia Commission failed to apply the proper TELRIC methodology in every respect, the fact that Verizon's Virginia UNE rates pass a benchmark comparison to rates that are TELRIC-compliant provides a basis for our finding that, despite these alleged errors, Verizon's UNE rates fall within the range that a reasonable application of TELRIC principles would produce.

(i) Loop Rates

90. Commenters contend that Verizon's loop rates are too high to be TELRIC-compliant. WorldCom asserts that evidence submitted in the Virginia Arbitration Proceeding, including WorldCom's TELRIC-based calculation of loop rates, demonstrates that Verizon's Virginia loop rates are twice what they should be, but WorldCom does not allege any specific TELRIC error by the Virginia Commission concerning loop rates.³⁰⁵ AT&T, however, argues

³⁰² *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066, para. 96.

³⁰³ AT&T urges the Commission to "decline Verizon's invitation to abdicate its responsibilities under [s]ection 271 by relegating to a separate state proceeding under [s]ection 252 the issue of whether Verizon's current switching prices are TELRIC compliant. The 1996 Act requires the Commission, before granting a [s]ection 271 application, to determine whether the applicant's rates are just and reasonable – not merely that they were just and reasonable at some point years in the past." AT&T Supplemental Comments at 9. Here, we determine that Verizon's current UNE rates fall within the range that a reasonable application of TELRIC principles would produce. Thus, our reference to a future proceeding under section 252 does not in any way abdicate our responsibilities under section 271.

³⁰⁴ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6276, para. 82; *Verizon New Jersey Order*, 17 FCC Rcd at 12295 para. 49 (stating that when a state commission does not apply TELRIC principles or does so improperly, this Commission will look to rates in other section 271-approved states to see if the applicant's rates nonetheless fall within a range that a reasonable TELRIC-based rate proceeding would produce).

³⁰⁵ See WorldCom Comments at 16, 19. For the reasons discussed above, we find that it would be arbitrary and inappropriate to permit AT&T and WorldCom to rely in this proceeding on evidence submitted in the Virginia Arbitration Proceeding. See *supra* discussion paras. 75-76.

that Verizon's Virginia loop rates are not TELRIC-compliant because: (1) the underlying data used to compute loop rates is stale;³⁰⁶ (2) loop costs have decreased on a per-line basis according to ARMIS data;³⁰⁷ and (3) the loop rates do not reflect increased demand and the resulting decreased per-line loop costs.³⁰⁸ All of AT&T's arguments are premised on allegations that the passage of time has rendered Verizon's loop rates non-TELRIC-compliant because costs have decreased since the Virginia Commission gathered the data to complete its rate proceeding. AT&T does not, however, allege any error by the Virginia Commission in its development of Verizon's Virginia loop rates at the time it established those rates. Even assuming *arguendo* that commenters could demonstrate a TELRIC error, however, we find that Verizon's Virginia loop rates fall within the range of rates that a reasonable application of TELRIC principles would produce, as discussed below.

91. States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that correct application of TELRIC principles would produce.³⁰⁹ The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly (e.g., the state commission made a major methodological mistake or used an incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if the rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.³¹⁰ In comparing the rates, the Commission has used its Synthesis Model to take into account the differences in the underlying costs between the applicant state and the comparison state.³¹¹ To determine whether a comparison with a particular state is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.³¹²

³⁰⁶ AT&T Comments at 7; AT&T Pitkin Decl., para. 27.

³⁰⁷ AT&T Pitkin Decl., para. 28.

³⁰⁸ AT&T Pitkin Decl., para. 29; *see also* AT&T Reply at 3-4.

³⁰⁹ *Verizon Rhode Island Order*, 17 FCC Rcd at 3319-20, para. 37.

³¹⁰ *See Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17456-57, para. 63; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

³¹¹ *See Verizon Massachusetts Order*, 16 FCC Rcd at 9000, para. 22; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 57; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 65; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

³¹² *See Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order* 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63; *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

92. In its application, Verizon relies on a benchmark comparison of its loop rates in Virginia to its loop rates in New York to demonstrate that its rates fall within the range that a reasonable application of TELRIC principles would produce.³¹³ We note that, in every other section 271 proceeding where Verizon has relied on a benchmark analysis to demonstrate that its UNE rates fall within the range that a reasonable application of TELRIC principle would produce, we have agreed with Verizon and commenters that New York is an appropriate anchor state for purposes of a benchmark analysis.³¹⁴ Indeed, the benchmark analysis submitted by AT&T in this proceeding uses New York as the anchor state.³¹⁵ We agree with Verizon and AT&T that New York is an appropriate benchmark state,³¹⁶ and, significantly, no commenter contends otherwise. In our *Rhode Island Order*, we commended the New York commission for the thoroughness of its recent rate proceeding and found that New York was an appropriate benchmark state.³¹⁷ In light of that conclusion and the absence of any objection from the parties, we find that it is appropriate to rely on New York for our benchmark comparison.³¹⁸ Having so determined, we compare Verizon's Virginia loop rates to New York loop rates and conclude that Verizon's Virginia loop rates pass our benchmark comparison to New York loop rates.³¹⁹

³¹³ Verizon Virginia Application at 51-52; Verizon Woltz/Garzillo/Prosini Decl., paras. 74-75. Verizon contends that its Virginia loop rates are TELRIC-compliant but also relies on a benchmark analysis to New York rates. Verizon Virginia Application at 48-52; Verizon Woltz/Garzillo/Prosini Decl., paras. 74-75.

³¹⁴ See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64; *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 39; *Verizon Maine Order*, 17 FCC Rcd at 11679, para. 32; *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 50.

³¹⁵ See AT&T Comments at 3; AT&T Pitkin Decl., para. 6;

³¹⁶ We note that, prior to the Bell Atlantic/NYNEX merger, New York and Virginia were part of different BOCs – New York was part of NYNEX and Virginia was part of Bell Atlantic. The Commission has determined previously that such a comparison is appropriate nonetheless. In the *Verizon Pennsylvania Order*, the Commission clarified that “[w]hile a comparison state's rates must have been found reasonable, the remaining criteria previously set forth should be treated as indicia of the reasonableness of the comparison.” *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64. Thus, although the other criteria are useful to assure us that a comparison is meaningful, the absence of any one of them does not render a comparison meaningless. See *id.* There, the Commission permitted a benchmark comparison of Verizon's Pennsylvania rates to its New York rates. *Id.* Pennsylvania, like Virginia, was part of Bell Atlantic.

³¹⁷ *Verizon Rhode Island Order*, 17 FCC Rcd at 3324-27, paras. 48-53.

³¹⁸ See also *id.* at 3326-27, para. 53 (finding that New York is a reasonable benchmark state).

³¹⁹ In taking a weighted average of loop rates in Virginia and New York, we find that Virginia's loop rates are approximately 23 percent higher than New York loop rates. Comparing a weighted average of Virginia and New York loop costs, we find that Virginia loop costs are approximately 36 percent higher than New York loop costs. Because the percentage difference between Verizon's Virginia loop rates and the New York loop rates does not exceed the percentage difference between Verizon's loop costs in Virginia and Verizon's loop costs in New York, we conclude that Verizon's Virginia loop rates satisfy our benchmark analysis.

93. Despite the fact that Verizon's Virginia loop rates pass a benchmark analysis to New York loop rates, WorldCom contends that Verizon's Virginia loop rates are outside any reasonable TELRIC range.³²⁰ Specifically, WorldCom argues that the evidence submitted by it and AT&T in the Virginia Arbitration Proceeding is sufficient to rebut the presumption established by a benchmark analysis.³²¹ WorldCom offers no evidence, however, of any TELRIC violation with respect to loop rates other than to reference generally all evidence submitted in the Virginia Arbitration Proceeding.³²² As we explained above, we find it inappropriate for commenters in this proceeding to rely solely on evidence submitted in a separate pending proceeding. WorldCom has failed to provide any other evidence in this proceeding of an error sufficient to rebut the presumption of TELRIC-compliance established by a benchmark analysis of Verizon's Virginia loop rates.³²³ Accordingly, we find that Verizon's Virginia loop rates fall within a range of rates that a reasonable application of TELRIC principles would produce and, therefore, satisfy the requirements of checklist item two.

94. We also disagree with AT&T that Verizon's current loop provisioning policy in Virginia precludes us from finding that Verizon's Virginia loop rates are TELRIC-compliant based upon a benchmark comparison to its New York loop rates.³²⁴ AT&T argues that a meaningful benchmark comparison must compare "comparable facilities or services" and that Verizon's current "no facilities" policy renders a loop in Virginia less valuable than a corresponding loop in New York.³²⁵ Initially, AT&T argued that the relevant comparison is

³²⁰ WorldCom Comments at 19.

³²¹ *Id.*

³²² *Id.*

³²³ WorldCom does allege one particular TELRIC violation affecting switching rates, but no specific error that would affect Verizon's Virginia loop rates. *See id.* at 18.

³²⁴ Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 7, 2002) (AT&T Oct. 7 Pricing *Ex Parte* Letter) at 3-4; Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (AT&T Oct. 22 Pricing *Ex Parte* Letter) at 5-7. Specifically, AT&T contends that Verizon's current "no facilities" loop provisioning policy in Virginia "precludes the Commission from finding that Verizon's loop rates in Virginia . . . benchmark with Verizon's New York rates . . ." AT&T Oct. 7 Pricing *Ex Parte* Letter at 3; *see also* AT&T Oct. 22 Pricing *Ex Parte* Letter at 5. AT&T also argues that Verizon's loop provisioning policy precludes the Commission from finding that Verizon's Virginia loop rates comply with TELRIC. AT&T Oct. 7 Pricing *Ex Parte* Letter at 4-6; AT&T Oct. 22 Pricing *Ex Parte* Letter at 8-11; *see also* AT&T Comments at 15 (arguing that Verizon's "no facilities" policy is "at odds" with the Commission's TELRIC methodology because it appears to adopt a short-run assumption that no new plant is constructed to meet demand from competitive LECs); AT&T Reply at 12. Because Verizon relies on a benchmark comparison of its Virginia loop rates to its New York loop rates to demonstrate checklist compliance, we need not address whether Verizon's loop provisioning policy precludes the Commission from finding that Verizon's Virginia loop rates comply with TELRIC.

³²⁵ AT&T Oct. 7 Pricing *Ex Parte* Letter at 3-4; AT&T Oct. 22 Pricing *Ex Parte* Letter at 5-6.

between a loop in Virginia and the corresponding loop “that the Commission and the New York Public Service Commission understood Verizon to be providing during the New York [section] 271 proceeding.”³²⁶ AT&T explains that, in the New York proceeding, the purchase of a loop by a competitive LEC was thought to include the implicit right to purchase additional loops at the same price, whereas Verizon’s current provisioning policy in Virginia affords no comparable right.³²⁷ In a later filing, AT&T adds, without further explanation, that “there is nothing in the subsequent Phase II UNE decisions of the New York PSC and its hearing examiner to suggest that the current New York rates reflect any changed understanding of Verizon’s loop provisioning policies.”³²⁸ This indicates that AT&T may now be arguing that Verizon’s loop provisioning policy undermines a benchmark comparison between Verizon’s Virginia and current New York loop rates.

95. We disagree. AT&T alleges that Verizon has enforced its “no facilities” policy since May 2001, which is prior to the time the New York Public Service Commission adopted its current UNE rates.³²⁹ Moreover, Verizon asserts, and AT&T does not dispute, that “at no point in time has Verizon’s facilities policy in New York been different from its policy in Virginia.”³³⁰ Thus, assuming *arguendo* that differences in provisioning practices between two states could undermine a benchmark comparison of those states’ rates, the record in this proceeding does not support a finding that there are in fact any such differences. Moreover, although AT&T claims that Verizon’s “no facilities” policy extends to ordinary voice-grade loops, which are used in the benchmark analysis, it fails to quantify the extent to which competitive LEC orders for these loops are rejected.³³¹ We conclude, therefore, that Verizon’s “no facilities” loop provisioning policy does not preclude a meaningful benchmark comparison of Verizon’s Virginia loop rates to its New York loop rates.

³²⁶ AT&T Oct. 7 Pricing *Ex Parte* Letter at 4; *see also* AT&T Oct. 22 Pricing *Ex Parte* Letter at 7.

³²⁷ AT&T Oct. 7 Pricing *Ex Parte* Letter at 4; AT&T Oct. 22 Pricing *Ex Parte* Letter at 5-6. According to AT&T, the option of supplying additional loops on demand has both a cost to Verizon and a value to competitive LECs. AT&T Oct. 7 Pricing *Ex Parte* Letter at 4; AT&T Oct. 22 Pricing *Ex Parte* Letter at 6.

³²⁸ AT&T Oct. 22 Pricing *Ex Parte* Letter at 7 n.21.

³²⁹ *Id.* at 1. *See also* Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 28, 2002) (Verizon Oct. 28 Pricing *Ex Parte* Letter) at 6 (noting that both AT&T and the New York Public Service Commission were aware of Verizon’s loop provisioning policy before the current New York rates were set).

³³⁰ Verizon Oct. 16 Loop Provisioning *Ex Parte* Letter at 6. *See also* Verizon Oct. 28 Pricing *Ex Parte* Letter at 6 (confirming that its loop provisioning policy applies equally to loops in both states).

³³¹ *See* AT&T Oct. 22 Pricing *Ex Parte* Letter at 2.

(ii) Non-Loop Rates

96. We have carefully considered the comments filed in this proceeding alleging that Verizon's Virginia UNE rates are not TELRIC-compliant. Aside from arguments made concerning the vintage of the cost data underlying Verizon's Virginia UNE rates, the majority of these allegations were made for the first time in reply comments filed by AT&T and WorldCom, and concern Verizon's Virginia switching rates. According to AT&T, the switch discount and switch investment data underlying Verizon's Virginia switching rates are stale and result in unreasonably high rates.³³² AT&T also argues that switch components have continued to evolve, to increase capacity and thus reduce unit costs.³³³ Further, AT&T notes that the mergers with Bell Atlantic and GTE have increased the purchasing power of Verizon, allowing it to negotiate lower switch prices, but that these savings are not reflected in Verizon's rates.³³⁴

97. In addition to these allegations, AT&T and WorldCom challenge the manner in which the current mix of new and growth switching discounts was determined by the Virginia Commission and maintain that the current switching rates reflect an inappropriate mix of replacement and growth discounts.³³⁵ WorldCom states that the switch discount mix was determined by assuming new switches would be purchased to meet demand over the next five years and that additions needed to meet demand growth after that point would come from growth purchases.³³⁶ AT&T supports WorldCom's challenge, and further argues that the Virginia Commission's selection of the 54 percent new and 46 percent growth mix was unexplained, unjustified, and inappropriate.³³⁷

³³² AT&T Comments at 7; AT&T Pitts Decl., paras. 6-7. AT&T notes that most of the cost data underlying Verizon's current rates date from 1997, and that its switching data reflect only such discounts as Verizon was able to achieve in the early- to mid-1990's. AT&T Comments at 7; AT&T Pitts Decl., paras. 6-7.

³³³ AT&T Comments at 8; AT&T Pitts Decl., para. 8.

³³⁴ AT&T Comments at 8; AT&T Pitts Decl., para. 8.

³³⁵ AT&T Reply at 6-8; WorldCom Comments at 18; WorldCom Reply at 5.

³³⁶ WorldCom Comments at 18. WorldCom argues that this approach does not consider whether it is more cost-effective to set the size of the switch to meet some demand level other than that expected over the next five years. *Id.* WorldCom maintains that the result is switching prices far above what could be calculated in keeping with TELRIC. *Id.* at 17.

³³⁷ AT&T Reply at 6-8. *See also* AT&T Supplemental Comments at 4-7; Supplemental Declaration of Michael R. Baranowski (AT&T Baranowski Supp. Decl.), paras. 16-21 (responding to Verizon's defense of the existing mix of new and growth switching discounts). As discussed above, in its *Virginia Interim Pricing Order*, the Virginia Commission determined that switch discounts should reflect a mix of 85 percent new and 15 percent growth purchases, stating that this was "the best available incorporation of the necessary forward-looking technique appropriate for this proceeding." *Virginia Interim Pricing Order* at 11. In its *Virginia Pricing Revision Order*, however, without discussion of the justification or calculations offered in support, the Virginia Commission stated that it had determined that UNE "prices can be improved by revising the switching prices to reflect a switch equipment mix of 54 [percent] new (replacement) and 46 [percent] add-on." *Virginia Pricing Revision Order* at 2. (continued...)

98. AT&T also argues that Verizon's switching cost study modeled outmoded technology³³⁸ and that Verizon's Virginia switching rates result in a substantial over-recovery of switching investment.³³⁹ WorldCom argues that vertical features appear to be a high portion of the total usage-sensitive switching costs,³⁴⁰ and that Verizon fails to provide any cost justification for the vertical features contained in its cost model.³⁴¹ As stated above, we need not address the merits of these arguments here. In this proceeding, Verizon relies on reduced switching rates and demonstrates that these rates pass a benchmark analysis. Thus, even if these allegations regarding Verizon's superseded switching rates have merit, the fact that Verizon's revised Virginia UNE rates pass a benchmark comparison to rates that are TELRIC-compliant provides a basis for our finding that, despite these alleged errors in the rates established by the Virginia

(Continued from previous page) _____

³³⁸ AT&T Reply at 6. AT&T alleges that Verizon's switching cost study models outmoded technology because it assumes that all integrated digital loop carrier lines will be served via TR-008 SLC-96 technology instead of GR-303 technology. AT&T Baranowski Reply Decl., paras. 10-11. According to AT&T, the cost and engineering advantages of GR-303 over TR-008 are "well known and widely accepted in the industry." AT&T Baranowski Reply Decl., para. 10. Verizon maintains that no party suggested the use of any GR-303 technology because that technology was not yet available or known when the cost studies and testimony were presented to the Virginia Commission. See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 26, 2002) (Verizon Sept. 26 Pricing *Ex Parte* Letter) at 13-14.

³³⁹ AT&T Reply at 5-6; AT&T Baranowski Reply Decl., paras. 3-8. AT&T argues that Verizon's recurring rates for switch utilization, if applied to projected utilization over the projected lives of Verizon's switching equipment in Virginia, would allow Verizon to recover more than twice the amount of its investment. AT&T Reply at 5-6; AT&T Baranowski Reply Decl., paras. 3-5. According to AT&T, this "massive over-recovery" is the result of the "bottom-up approach" used by Verizon, which relies on the unit cost outputs of the SCIS/MO model to build up the cost of a minute-of-use. The "bottom-up approach" requires three separate sets of inputs into SCIS that are spread among multiple models to be consistent. AT&T Baranowski Reply Decl., para. 6. AT&T claims that these inputs do not take the same form in each of the models, and inconsistent inputs will produce incorrect results. AT&T Baranowski Reply Decl., para. 6. Verizon claims that the analysis submitted by AT&T is flawed in several respects, but fails to recalculate the analysis with corrections it deems appropriate. Verizon Sept. 26 Pricing *Ex Parte* Letter at 14-18. AT&T challenges Verizon's response and asserts that the reduced switching rates produce a 22.6 percent over-recovery of the forward-looking switch investment determined by the Virginia Commission. See AT&T Supplemental Comments at 3-4; AT&T Baranowski Supp. Decl., paras. 4-15.

³⁴⁰ WorldCom Reply at 5; WorldCom Frentrup Reply Decl., para. 6. WorldCom further questions why Verizon's shared switching costs differ so markedly between originating and terminating minutes-of-use. WorldCom Frentrup Reply Decl., para. 6 n.3. *But see* Verizon Sept. 26 Pricing *Ex Parte* Letter at 5-6 (arguing that this result is a function of cost allocation and the bottom-up approach used to assess costs).

³⁴¹ WorldCom Reply at 5; WorldCom Frentrup Reply Decl., paras. 5-7. Verizon admits that it assumed that the switch would have to include the capability for each competitive LEC to provide each of its customers with access to all 26 basic switching features. See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 20, 2002) (Verizon Sept. 20 Pricing *Ex Parte* Letter) at 1-2. Verizon states that it "modeled feature costs by determining, for each feature, how much processor capacity was required each time the particular feature is used, and multiplying that cost by the average frequency with which customers typically use such features." *Id.* at 2; Verizon Sept. 26 Pricing *Ex Parte* Letter at 8.

Commission, Verizon's current UNE rates fall within the range that a reasonable TELRIC-based rate proceeding would produce.

99. *Non-Loop Benchmark.* In conducting a benchmark analysis, we consider the reasonableness of loop and non-loop rates separately.³⁴² Where the Commission finds that the state commission correctly applied TELRIC principles for one category of rates, it will use a benchmark analysis to evaluate the rates of the other category. If, however, there are problems with the application of TELRIC for both loop and non-loop rates, then the same benchmark state must be used for all rate comparisons to prevent an incumbent LEC from choosing for its comparisons the highest approved rates for both loop and non-loop UNEs.³⁴³

100. As we discussed above, Verizon relies on a benchmark comparison of its UNE rates in Virginia to its UNE rates in New York, and we have determined that New York is an appropriate benchmark state for comparison purposes. In our benchmark analysis of Verizon's non-loop UNE prices, we compare (1) the percentage difference between its Virginia and New York UNE-platform per-line per-month prices for non-loop rate elements collectively, and (2) the percentage difference between Virginia and New York per-line per-month costs for these non-loop elements collectively, based on the Synthesis Model.³⁴⁴ For purposes of this comparison, UNE-platform non-loop rate elements are line port, end office switch usage, common transport (including tandem switching), and signaling.³⁴⁵ We develop per-line per-month prices for these elements for Virginia and New York separately by multiplying the state-approved "rates" by per-line demand estimates. Rates for end office switching and transport are imposed on a minute-of-use ("MOU") basis. We develop the per-line per-month overall demand for these usage-sensitive rate elements for Virginia and New York separately by first dividing total state-specific switched access lines into state-specific total annual MOU, based on dial equipment minutes (DEM), divided by 12 months. We then apply to each of the usage sensitive rate elements a percentage of this overall demand that is based on state-specific traffic assumptions supplied by Verizon regarding originating versus terminating, local intra-switch

³⁴² See, e.g., *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 40; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 67; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27. Loop rates consist of charges for the local loop, and non-loop rates consist of charges for switching, signaling, and transport.

³⁴³ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *SWBT Missouri/Arkansas Order*, 16 FCC Rcd 20747, para. 58.

³⁴⁴ We adjust the costs derived from the Synthesis Model to make them comparable to UNE-platform costs. See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249.

³⁴⁵ We also note that Verizon's New York non-loop rates contain both a digital and an analog port rate. For purposes of our benchmark analysis, we have used Verizon's New York digital port rate of \$2.57, rather than the analog port rate of \$4.22, or any blend of the two rates. The New York rate structure uses the digital port rate of \$2.57 as the rate charged for ports that are purchased as part of the UNE-platform. *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 51 n.134.

versus inter-switch, and tandem-routed versus direct-routed MOU.³⁴⁶ Having determined above that the New York rates are appropriate rates for the benchmark comparison, we compare Verizon's Virginia non-loop rates to the New York non-loop rates and find that Verizon's Virginia non-loop rates satisfy our benchmark analysis.³⁴⁷

101. In addition to a non-loop benchmark analysis, AT&T argues that a switching-only benchmark analysis is appropriate under the circumstances present here.³⁴⁸ According to AT&T, it is appropriate to consider a switching-only benchmark analysis in addition to the usual comparison of non-loop rates when comparing a relatively dense state with a less densely populated state because the Synthesis Model substantially overstates transport costs in less densely populated states relative to more densely populated states.³⁴⁹ AT&T concludes that, as a result, any comparison substantially overstates any such cost justification for non-loop rate differences.³⁵⁰ AT&T also argues that TELRIC rates are calculated on the basis of individual

³⁴⁶ See Verizon Oct. 3 Pricing *Ex Parte* Letter at Confidential Attach. 3. See also Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 7, 2002) (Verizon Oct. 7 Pricing *Ex Parte* Letter) at 1-2.

³⁴⁷ Verizon's Virginia non-loop rates are approximately 7 percent higher than New York non-loop rates. Comparing the weighted average costs, we find that the Virginia non-loop costs are approximately 7 percent higher than the New York non-loop costs. Because the percentage difference between Verizon's Virginia non-loop rates and the New York non-loop rates does not exceed the percentage difference between Verizon's non-loop costs in Virginia and Verizon's non-loop costs in New York, we conclude that Verizon's Virginia non-loop rates satisfy our benchmark analysis. We note that, prior to Verizon's voluntary rate reduction, AT&T argued that Verizon's non-loop rates would fail a benchmark comparison to New York non-loop rates. AT&T Comments at 3; AT&T Pitkin Decl., para. 6. Because Verizon has since lowered its Virginia non-loop rates to meet a benchmark to New York non-loop rates, we need not address this argument. In addition, in an *ex parte* filed on October 22, 2002, Verizon asserts that its reduced switching rates (separate from transport) compare favorably to the corresponding 271-approved switching rates in Texas, Oklahoma, and Louisiana. See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (Verizon Oct. 22 Pricing *Ex Parte* Letter) at 1.

³⁴⁸ AT&T Pitkin Decl., para. 11 (stating that such an analysis should exclude the costs of transport facilities and tandem switches, i.e., interoffice facilities, from the benchmark analysis, and focus on the central switching rate elements, i.e., the switch port, switch usage, switch features and signaling). In supplemental comments, AT&T argues that the Commission should consider a switching-only benchmark comparison as well as an aggregate non-loop analysis or, alternatively, consider whether Verizon's non-transport, non-loop rates were set in compliance with TELRIC. AT&T Supplemental Comments at 14. See also AT&T Supplemental Comments at 13-14 (arguing that it would be arbitrary and capricious for the Commission to apply its non-loop benchmarking approach in lieu of directly scrutinizing the reasonableness of Verizon's switching costs).

³⁴⁹ AT&T Pitkin Decl., paras. 12-13. AT&T further maintains that, because the Synthesis Model overstates transport costs in every state, the model gives disproportionate weight to transport costs in any benchmarking analysis. According to AT&T, the problem is most acute, however, when the anchor benchmark state has significantly higher average line densities than the comparison state. *Id.*, para. 13. See also AT&T Supplemental Comments at 13-14 and Confidential Ex. 2 (attempting to demonstrate that the Synthesis Model tends to overstate transport costs disproportionately as line density declines).

³⁵⁰ *Id.* para. 12.

elements and that Verizon must show that the rates for *each* of its UNEs complies with TELRIC principles.³⁵¹ AT&T contends that proper TELRIC pricing of each element is critical to ensuring that competitive LECs can continue expanding new technologies and new methods of entering local markets with various UNE combinations.³⁵²

102. For the reasons stated below, we do not agree with AT&T that alleged flaws in the Synthesis Model require Verizon to satisfy a switching-only benchmark analysis. AT&T attaches a chart to its Supplemental Comments that purports to demonstrate that the estimates of transport costs generated by the Synthesis Model, while roughly comparable in higher density states to unbundled transport rates set by state commissions, climb above the latter values in the lower density states.³⁵³ AT&T charts how the ratio of transport costs to state-approved transport rates varies with line density, but we are not convinced that this variation demonstrates any bias in the Synthesis Model. The state-approved unbundled transport rates used in AT&T's analysis could fall anywhere within the range of rates that a reasonable application of TELRIC principles would produce; consequently, the ratio of transport costs derived from the Synthesis Model to state-approved transport rates may vary due to this range of rates.³⁵⁴ For example, Virginia transport rates are 63 percent lower than New York transport rates, based on company-specific demand assumptions, while Virginia transport costs are approximately 82 percent higher than New York transport costs, based on the Synthesis Model. High ratios of transport costs to UNE transport rates, rather than demonstrating conclusively the existence of any bias in the Synthesis Model, may simply reflect the fact that some states have set transport rates at the high end of the reasonable range, while other states have set transport rates at the low end. Indeed, AT&T acknowledges that there are "variations among the costing approaches taken by each state commission in setting UNE prices" and that the values used in its analysis are "rough

³⁵¹ AT&T Comments at 4. In support of its argument that the Commission must look at the rates for each individual element, AT&T cites to section 252(d)(1), which states that a BOC's rates for a network element comply with checklist item two only if they are "based on the cost . . . of providing . . . the network element." AT&T Comments at 4 (citing 47 U.S.C. § 252 (d)(1)) (emphasis in AT&T Comments). *See also* AT&T Supplemental Comments at 11-12.

³⁵² AT&T Pitkin Decl., para. 17; *see* AT&T Supplemental Comments at 12 (arguing that the potential for unbundling will not be realized unless each element can be ordered at an appropriate separate price). AT&T also conducted its own switching-only benchmark comparison and concluded that Verizon's Virginia switching rates fail a benchmark comparison to its New York switching rates. AT&T Pitkin Decl., para. 24. In supplemental comments, AT&T argues that Verizon's reduced switching rates still exceed Verizon's switching prices in New York, on a cost-adjusted basis, by a substantial margin. AT&T Supplemental Comments at 14 and Confidential Ex. 1; AT&T Oct. 11 Pricing *Ex Parte* Letter at 1 and Confidential Ex. 1 (attaching a corrected version of Exhibit 1).

³⁵³ *See* AT&T Supplemental Comments at 13-14 and Confidential Ex. 2; Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 11, 2002) (AT&T Oct. 11 Pricing *Ex Parte* Letter) at 1 and Confidential Ex. 2 (attaching a corrected version of Exhibit 2).

³⁵⁴ *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4.

proxies.”³⁵⁵ Moreover, AT&T confines its analysis to eight of the 13 Verizon study areas (not counting Verizon’s two wire centers in Connecticut and the former GTE operations), and excludes completely other BOC study areas. A sample of so few study areas may not produce a reliable measure of the relationship between the ratio of transport costs developed from the Synthesis Model to state-approved transport prices, on the one hand, and line density, on the other. We cannot agree, therefore, that AT&T’s analysis provides a “clear qualitative demonstration” of the inverse relationship between line density and the overstatement of transport costs, as AT&T alleges.³⁵⁶

103. AT&T also points out that the UNE transport costs supported by Verizon in the Virginia Arbitration Proceeding are "only about *one-third* the corresponding estimates generated by the Synthesis Model" and argues that this amounts to a concession by Verizon that the Synthesis Model overstates transport costs.³⁵⁷ AT&T's argument, however, ignores the critical difference between using the Synthesis Model (or any other model) to determine absolute UNE costs, and using it for the limited purpose of comparing relative cost differences between states. In section 271 proceedings, the Commission uses the Synthesis Model only for the latter purpose; we have not used the model to compare UNE rates set by a state commission to costs produced by the model. Indeed, the Commission has cautioned against using the Synthesis Model to set rates.³⁵⁸ Moreover, the rates proposed by Verizon in the Virginia Arbitration proceeding have no bearing on the merits of using the Synthesis Model to compare relative costs. Verizon sponsored its own models for determining UNE loop, switching, and transport rates. The fact that in one instance, transport, Verizon's models produced rates less than those produced by the Synthesis Model is no more (or less) relevant to our use of the Synthesis Model for purposes of cost comparisons than is the fact that in other instances (loops, switching), Verizon's models produced rates that greatly exceed those produced by the Synthesis Model. Finally, we find AT&T's arguments about the unreliability of the Synthesis Model to model transport costs somewhat ironic, as it was AT&T that sponsored a modified version of the Synthesis Model to set transport rates in the Virginia Arbitration proceeding.

104. The Commission developed an extensive record through a rulemaking proceeding over several years to support its conclusion that the Synthesis Model accurately reflects the

³⁵⁵ Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 23, 2002) (AT&T Oct. 23 Pricing *Ex Parte* Letter) at 3. See also *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4 (stating that TELRIC may yield a broad range of rates).

³⁵⁶ AT&T Supplemental Comments at 14 n.14.

³⁵⁷ AT&T Oct. 23 Pricing *Ex Parte* Letter at 10 (emphasis in original); AT&T Supplemental Comments at 17.

³⁵⁸ See *Verizon Maine Order*, 17 FCC Rcd at 11675, para. 28 n.107; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084-85, para. 245; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

relative cost differences between states.³⁵⁹ The differential produced by the cost model reflects variations in forward-looking costs based on objective criteria, such as density zones and geological conditions.³⁶⁰ AT&T was an active participant in that rulemaking. Our Synthesis Model, like any model, may not be perfect.³⁶¹ It is, however, the best tool we have for evaluating cost differences between states.³⁶² In fact, in the context of universal service, AT&T has supported the Synthesis Model before the Commission and before the appellate courts.³⁶³ Moreover, the transport module of the Synthesis Model that AT&T criticizes is supported by AT&T in the Virginia Arbitration Proceeding and is taken directly from the HAI cost model, the cost model that AT&T has championed in numerous states for ratemaking purposes, including Virginia.³⁶⁴

105. A re-examination of the Synthesis Model is an immensely complicated inquiry not suited to the section 271 process.³⁶⁵ We could not consider AT&T's argument in isolation as we would have to consider other arguments concerning the accuracy of the Synthesis Model,

³⁵⁹ See *SWBT Kansas/Oklahoma*, 16 FCC Rcd at 6277, para. 84; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20455-56, paras. 41-42 (1999), *aff'd in part and rev'd in part on other grounds*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). AT&T argues that the "extensive record" developed in the rulemaking proceeding leading to the adoption of the Synthesis Model provides no justification for relying on the model because the rulemaking proceeding concerned universal service subsidy calculations, in which relative differences in transport costs play a relatively small part. AT&T Supplemental Comments at 15-16. The fact that transport costs represent a relatively small part of the universal service subsidy calculation produced by the Synthesis Model does not, by itself, suggest that the model does not accurately reflect transport costs or transport cost differences.

³⁶⁰ See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20170, para. 30 (1999), *aff'd*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

³⁶¹ As the D.C. Circuit has noted "the best must not become the enemy of the good." AT&T Oct. 23 Pricing *Ex Parte* Letter at 9 (quoting *MCI Telecom. v. FCC*, 712 F.2d 517, 535 (D.C. Cir. 1983)).

³⁶² *Verizon New Hampshire/Delaware Order*, para. 47. Although AT&T suggests that the Synthesis Model "is clearly *not* the best available tool in the particular circumstances here," it argues, in that same paragraph, that the Commission should use the Synthesis Model to compare switching-only costs. AT&T Supplemental Comments at 16. Thus, AT&T is content to rely on the Synthesis Model to compare relative costs, it just disagrees with the level of cost aggregation. See *infra* para. 109. See also *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4 (stating that "[t]he FCC need not choose the 'optimal' benchmark, only a reasonable one").

³⁶³ See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 16, 2002) (Verizon Oct. 16 Benchmark *Ex Parte* Letter) at 14. AT&T disputes Verizon's claim that it has somehow "waived" any challenge to the model by supporting adoption of the model in earlier proceedings. AT&T Oct. 23 Pricing *Ex Parte* Letter at 9-11.

³⁶⁴ In the Virginia state rate proceeding, AT&T and WorldCom submitted the Hatfield model (version 3.0), which is a prior version of the HAI cost model.

³⁶⁵ Indeed, AT&T concedes that any attempt to identify and resolve the alleged defect in the transport cost module of the Synthesis Model is beyond the scope of this proceeding. AT&T Supplemental Comments at 14.

including those raised by Verizon that the Synthesis Model understates switching costs in rural states.³⁶⁶ Given its complexity, breadth, and industry-wide significance, such an inquiry is simply not feasible within the 90-day review period required by Congress.³⁶⁷ As the Commission made clear in the *SWBT Texas Order*, Congress designed section 271 proceedings as “highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular [s]tate at a particular time. Such fast-track, narrowly focused adjudications . . . are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability.”³⁶⁸ Clearly, any conclusion concerning the ability of the Synthesis Model accurately to account for cost differences between states would have industry-wide significance, both with respect to local competition and universal service.³⁶⁹ Accordingly, we decline to benchmark Verizon’s Virginia switching rates independently based on a claim that the Synthesis Model fails to accurately reflect costs and, hence, cost differences.

106. Further, although we do not dispute that TELRIC rates are calculated on the basis of individual elements, we find that conducting a benchmark analysis of non-loop elements together, as the Commission has done in all prior section 271 orders relying on a benchmark comparison, is consistent with our obligations under the Act. In adjudicating a section 271 application, the Commission performs a general assessment of compliance with TELRIC principles.³⁷⁰ Our benchmark analysis is a method of making the general assessment as to whether UNE rates fall within the range of rates that a reasonable application of TELRIC principles would produce. We make only a general assessment of UNE rates in the context of a section 271 proceeding, as the Commission could not, as a practical matter, evaluate every single individual UNE rate relied upon in a section 271 proceeding within the 90-day timeframe. AT&T asks us to examine switching rates only, and makes its statutory arguments in

³⁶⁶ See Verizon Oct. 16 Benchmark *Ex Parte* Letter at 13, 17. See also *Verizon New Hampshire/Delaware Order*, para. 49 (discussing Verizon’s claim that the Synthesis Model understates switching costs in some instances).

³⁶⁷ *Verizon New Hampshire/Delaware Order*, para. 49. Indeed, an evaluation of AT&T’s criticisms alone would be a complicated endeavor.

³⁶⁸ *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 25.

³⁶⁹ *Verizon New Hampshire/Delaware Order*, para. 49. We are not persuaded by AT&T’s contention that the relief it seeks would not compromise the ability of the Commission to rely on the Synthesis Model in other contexts. AT&T Supplemental Comments at 17-18. AT&T argues that, to justify consideration of the additional evidence it submitted, the Commission need only find that: “(1) an issue has been raised about [the] accuracy of the Synthesis Model transport cost estimates, and (2) rather than resolve the issue now, the Commission will consider the supplemental evidence tendered by AT&T.” AT&T Supplemental Comments at 18. The relief sought by AT&T would be necessary only upon a finding that the Synthesis Model does not in all instances accurately reflect cost differences. Given that the Synthesis Model is designed to account for relative cost differences between states for the purpose of apportioning universal service support, we are not persuaded by AT&T’s attempt to downplay the potential implications of the conclusion inherent in the relief sought, especially since such a conclusion would have industry-wide significance beyond the section 271 application process.

³⁷⁰ See *Sprint v. FCC*, 274 F.3d at 556; *AT&T Corp. v. FCC*, 220 F.3d at 615.

that limited context. But, under AT&T's interpretation of the statute, the Commission may be required to evaluate individually every UNE rate relied upon in this proceeding. Given the large number of rates at issue in a section 271 proceeding³⁷¹ and the 90-day timeframe, we find that our interpretation of our obligation under the statute is a reasonable one.³⁷²

107. Although AT&T cites to section 252(d)(1) and to section 271(c)(2)(B) in support of its current preferred version of the benchmark test,³⁷³ we note that only section 271(c)(2)(B)(ii) defines our role in this proceeding. Under that subsection, we must decide whether a BOC provides access to network elements "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."³⁷⁴ In so deciding, we must exercise our judgment within the context of the compressed 90-day deadline imposed by section 271.³⁷⁵ Under section 271, our role is to make a generalized decision as to whether network elements are available in accordance with section 252(d)(1). This is not, and cannot be, a *de novo* review of state-rate setting proceedings.³⁷⁶

108. In addition, we do not believe that the statutory language supports AT&T's view that section 252(d)(1) clearly requires us to evaluate individually the checklist compliance of each UNE rate on an element-by-element basis. AT&T argues that, because section 252(d)(1) refers to the term "network element" in the singular, a BOC can comply with checklist item two of section 271 only if it shows "that the rates for each of its network elements comply with TELRIC principles."³⁷⁷ The relevant statutory provisions, however, do not refer to the term "network element" exclusively in the singular and, thus, we do not believe that the statute unambiguously requires this Commission to perform a separate evaluation of the rate for each network element in isolation. Section 252(d)(1) states, in relevant part, that "[d]eterminations by a State commission of ... the just and reasonable rate for *network elements* for purposes of

³⁷¹ For instance, in support of its Virginia section 271 application, Verizon filed 16 pages of rate sheets containing numerous rates on each sheet. *See Verizon Woltz/Garzillo/Prosini Decl.*, Attach. 3.

³⁷² Indeed, some states do not have separate rate elements for some UNEs that other states have. For example, New York has a separate rate element for signaling and end office trunk ports; however, New Jersey and Delaware include these elements in the per-minute switching rate. *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12297, para. 52.

³⁷³ AT&T Comments at 4; AT&T Supplemental Comments at 11-12.

³⁷⁴ 47 U.S.C. § 271(c)(2)(B)(ii).

³⁷⁵ *Cf. AT&T Corp. v. FCC*, 220 F.3d at 621-23; *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4 (recognizing that the time constraints imposed by the 90-day limit preclude a full-scale ratemaking by the Commission).

³⁷⁶ *Sprint v. FCC*, 274 F.3d at 556. Our role is not to set UNE rates but, rather, to make a general assessment as to whether the rates set by the state comply with the statute. *Id.* *See also WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4.

³⁷⁷ AT&T Comments at 4.

[section 251(c)(3)] ... shall be based on the cost ... of providing the ... network element".³⁷⁸ In addition, section 271(c)(2)(B)(ii) requires a BOC to provide "[n]ondiscriminatory access to *network elements* in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."³⁷⁹

109. Notably, AT&T's own proposed method of benchmarking is inconsistent with its argument that the text of the Act *requires* evaluating each element in isolation. Specifically, AT&T argues that the Commission should separately compare three categories of elements: loops, non-loop, and switching.³⁸⁰ Yet these categories — like the Commission's approach -- entail aggregating distinct elements for benchmarking purposes; for example, AT&T's "switching" category includes costs associated with signaling,³⁸¹ and the "non-loop" category includes costs associated with tandem switching and shared transport.³⁸² Thus, AT&T effectively concedes that *some* degree of aggregation is appropriate in conducting a benchmarking analysis; it simply disagrees about the optimum level of aggregation. For the reasons set forth here and in our prior orders, we construe the statute to permit a BOC to show that it complies with checklist item two based on a benchmark analysis of non-loop elements in the aggregate.

110. Our long-standing practice of benchmarking non-loop rates in the aggregate is a reasonable exercise of our judgment in making the general assessment of whether rates fall within the reasonable range that application of TELRIC principles would produce.³⁸³ The benchmark test as presently constituted reflects the practicalities of how UNEs are purchased and used. Because the transport and switching UNEs are, to our knowledge, not purchased separately in the Verizon states, for us to implement a UNE-by-UNE benchmark test for these elements would "promote form over substance, which, given the necessarily imprecise nature of setting TELRIC-based pricing, is wholly unnecessary."³⁸⁴ Our benchmark analysis allows us to conduct a competitively meaningful analysis based on the way UNEs are actually purchased, as discussed below, and we find that this approach is reasonable under the circumstances.³⁸⁵

³⁷⁸ 47 U.S.C. § 252(d)(1) (emphasis added).

³⁷⁹ 47 U.S.C. § 271(c)(2)(B)(ii) (emphasis added).

³⁸⁰ See AT&T Pitkin Decl., paras. 11, 17 (urging the Commission to perform an independent benchmark analysis of only Verizon's Virginia switching rates in addition to the non-loop benchmark analysis).

³⁸¹ AT&T Pitkin Decl., para. 11.

³⁸² See *supra* discussion of "non-loop" elements, para. 100.

³⁸³ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9001, para. 25; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 51.

³⁸⁴ *Sprint v. FCC*, 274 F.3d at 561.

³⁸⁵ AT&T disputes the notion that it and other competitive LECs have "no standing to raise the issue because they do not currently buy unbundled switching separately from unbundled transport and other non-loop elements." AT&T Supplemental Comments at 15. The Commission has not found that AT&T or other competitive LECs lack (continued....)

111. As noted above, as a practical matter, combining unbundled switching and unbundled transport for benchmarking purposes makes sense because competing LECs throughout Verizon's territory invariably purchase them together.³⁸⁶ Indeed, in the *UNE Remand Order*, the Commission acknowledged that "shared transport is technically inseparable from unbundled switching" and, thus, requesting carriers do not have the option of using unbundled shared transport without also taking unbundled switching.³⁸⁷ Although it is theoretically possible to take unbundled switching without taking unbundled transport, it is uncontroverted that competitive LECs have not ordered switching and shared transport independently in Virginia or in any other Verizon state.³⁸⁸ We are not convinced that considering switching in combination with transport ignores the "basic competitive policies that are implicit in any rational economic interpretation of [s]ection 271," as AT&T alleges.³⁸⁹

112. AT&T maintains that proper pricing of each element is critical to ensuring that competitive LECs can continue expanding new technologies and new methods of entering local markets.³⁹⁰ Nevertheless, AT&T failed to provide any evidence that it, or any other competitive LEC, orders switching separate from transport in any state with TELRIC-compliant UNE rates. Thus, we have no evidence that the relief sought by AT&T would effectuate a change in the way competitors purchase non-loop elements. Moreover, in a prior section 271 proceeding, AT&T presented its rate analysis in terms of the cost of "non-loop" elements, a recognition that this is, in fact, how the elements are purchased and, therefore, how they should be reviewed by the Commission.³⁹¹ Furthermore, benchmarking non-loop elements in the aggregate may be useful to help account for rate structure differences between states.³⁹² For these reasons, we decline here to disturb the Commission's well-established precedent of combining non-loop elements for

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standing because of the way UNEs are purchased. Rather, we find it most appropriate to consider the costs of non-loop UNEs in the aggregate because it reflects the commercial reality of how non-loop UNEs are purchased.

³⁸⁶ *Verizon New Hampshire/Delaware Order*, para. 54; Verizon Oct. 16 Benchmark *Ex Parte* Letter at 7.

³⁸⁷ *UNE Remand Order*, 15 FCC Rcd at 3863, para. 371.

³⁸⁸ *Verizon New Hampshire/Delaware Order*, para. 54; Verizon Oct. 16 Benchmark *Ex Parte* Letter at 8.

³⁸⁹ AT&T Pitkin Decl., para. 17.

³⁹⁰ *Id.*; see also AT&T Pitkin Decl., paras. 17-22 (discussing why it is critical to the future path of competition to price these elements individually). According to AT&T, "[t]he competitive potential of unbundling switching and transport will remain stillborn . . . unless each element can be ordered [at] an appropriate separate price." *Id.*, para. 21.

³⁹¹ In the Verizon Massachusetts section 271 proceeding, the first proceeding where the Commission conducted a non-loop benchmark, AT&T presented the non-loop elements in the aggregate for comparison. See *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, AT&T Comments at 20.

³⁹² See *Verizon New Jersey Order*, 17 FCC Rcd at 12297, para. 52.

the purposes of conducting a benchmark comparison. Because we find that using a non-loop benchmark is reasonable, we need not consider whether Verizon passes a stand-alone switching benchmark comparison.

113. Prior to Verizon's reduction of its Virginia switching rates, AT&T also argued that the benchmark analysis contained in Verizon's application is incomplete without a non-loop benchmark analysis.³⁹³ It contended that the Commission should not permit Verizon to limit its benchmark comparison to loop rates alone and that the Commission "has never approved a [s]ection 271 application on the basis of such an incomplete comparison"³⁹⁴ Although Verizon now relies on a non-loop benchmark to demonstrate checklist compliance, we disagree with AT&T that Verizon's benchmark comparison would have been incomplete without a non-loop analysis. In performing a benchmark analysis, we consider the reasonableness of loop and non-loop rates separately, and where the Commission finds that the state commission correctly applied TELRIC for one category of rates, it will only compare the rates of the other category.³⁹⁵ Thus, the Commission has recognized that a benchmark analysis may be used to assess whether loop rates, non-loop rates, or both sets of UNE rates are within a range of rates that reasonable application of TELRIC principles would produce. Indeed, in the *SWBT Kansas/Oklahoma Order*, the Commission approved the application based, in part, on a benchmark of loop rates only.³⁹⁶ Moreover, the Commission has relied on a benchmark comparison of only non-loop rates in other section 271 orders.³⁹⁷ For this reason, we find no merit in AT&T's argument.

³⁹³ AT&T Comments at 3-4 (arguing that the Commission has never approved a section 271 application on the basis of benchmark comparison to loop rates alone). *See also* WorldCom Comments at 17 (stating that Verizon failed to include a benchmark comparison of non-loop rates and does not submit a benchmark comparison of loop and non-loop rates combined).

³⁹⁴ AT&T Comments at 3-4. AT&T also states that "[w]here, as here, the applicant's non-loop rates are higher (on a cost adjusted basis) than those in a valid benchmark state, the applicant must prove – with specific cost evidence – that its non-loop rates are appropriately cost based." AT&T Comments at 5. AT&T has the analysis backwards. As the Commission made clear in numerous section 271 orders, a benchmark analysis is not conducted if there are no basic TELRIC violations or clear errors on substantial factual matters. The benchmark analysis is applied to provide confidence that a rate, despite potential TELRIC errors, falls within a range that a reasonable application of TELRIC principles would produce. *See Verizon New Jersey*, 17 FCC Rcd at 12295, para. 49; *BellSouth Georgia/Louisiana Order*, paras. 24-25; *Verizon Vermont Order*, 15 FCC Rcd at 7639, para. 26.

³⁹⁵ *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 40; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *SWBT Missouri/Arkansas Order*, 16 FCC Rcd at 20747, para. 58.

³⁹⁶ *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6278, para. 87, *aff'd in relevant part*, *Sprint v. FCC*, 274 F.3d at 561.

³⁹⁷ *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12299, para. 55; *Verizon Rhode Island Order*, 17 FCC Rcd at 3327, para. 55.

114. *True-Up.* In its application, Verizon offers to true-up its switching rates to switching rates ultimately adopted in the Virginia Arbitration Proceeding.³⁹⁸ Specifically, Verizon states that it has agreed to make any switching rates set during the Virginia Arbitration Proceeding effective as of August 1, 2002, the date of its Virginia section 271 application.³⁹⁹ Thus, Verizon explains that the rates competitive LECs will pay for switching during the course of this application are the rates that will be established in the Virginia Arbitration proceeding.⁴⁰⁰ The fact that competitive LECs will have the benefit of these updated TELRIC-compliant rates as of August 1, 2002 provides further assurance that the age of Verizon's current switching rates and the data underlying those rates does not require a finding of checklist noncompliance.

115. WorldCom asserts that competitive LECs are entitled to cost-based rates now, not above-cost rates with subsequent refund.⁴⁰¹ Instead of a true-up, WorldCom argues that Verizon should voluntarily reduce its UNE prices prior to Commission approval of the section 271 application.⁴⁰² AT&T maintains that the barrier to competition created by unreasonable UNE prices is not eliminated by the possibility that an unknown number of Verizon's existing UNE rates may be adjusted by unknown amounts at some time in the future.⁴⁰³ AT&T notes that this true-up proposal does not involve a small subset of rates, as has been the case in prior section 271 applications that the Commission has granted, but the entire universe of UNEs.⁴⁰⁴ Because we do not rely on Verizon's promise of a true-up to find checklist compliance and because Verizon voluntarily reduced its Virginia non-loop UNE rates to meet a benchmark to New York rates, we need not address the merits of these arguments.

116. *Switching Rate Structure.* Verizon's switch usage rate includes costs for vertical features.⁴⁰⁵ WorldCom asserts that a majority of the switch usage cost in Verizon's model reflects the cost of switch features alone, and complains that the inclusion of features costs in

³⁹⁸ Verizon Virginia Application at 3, 52; Verizon Woltz/Garzillo/Prosini Decl., paras. 50, 76, 79; Verizon Oct. 3 Pricing *Ex Parte* Letter at 1 (confirming that Verizon will true-up the reduced switching rates to those switching rates adopted in the Virginia Arbitration Proceeding).

³⁹⁹ Verizon Woltz/Garzillo/Prosini Decl., paras. 76. *See also* Verizon Oct. 3 Pricing *Ex Parte* Letter at 1.

⁴⁰⁰ Verizon Virginia Application at 52-53.

⁴⁰¹ WorldCom Comments at 18-19.

⁴⁰² WorldCom Comments at 16. According to WorldCom, Verizon cannot claim that it will incorporate Commission-ordered rates into new interconnection agreements in a matter of weeks because the Commission has not yet issued its pricing decision in the Virginia Arbitration Proceeding. *Id.* WorldCom also points out that Verizon may appeal the arbitration decision, causing further delay. WorldCom Comments at 19.

⁴⁰³ AT&T Supplemental Comments at 10; *see* AT&T Comments at 10. AT&T argues that Verizon has not addressed this point. AT&T Supplemental Comments at 10.

⁴⁰⁴ AT&T Comments at 10-11; AT&T Supplemental Comments at 10.

⁴⁰⁵ Verizon Woltz/Garzillo/Prosini Decl., para. 64; Verizon Sept. 20 Pricing *Ex Parte* Letter at 1.

usage charges is inappropriate.⁴⁰⁶ Specifically, WorldCom challenges the Virginia Commission's requirement that features costs, which primarily reflect the cost of software that enables the features, be recovered through switch usage rates.⁴⁰⁷

117. As we stated in the *Verizon New Jersey Order*, although we have approved section 271 applications in states that allow for recovery of vertical features through the port charges, we have never found that this is the only TELRIC-compliant method for doing so.⁴⁰⁸ The Commission's rules provide that the costs of dedicated facilities shall be recovered through flat-rated charges⁴⁰⁹ and that the costs of shared facilities shall be recovered through either usage-sensitive charges or flat-rated charges "if the state commission finds that such rates reasonably reflect the costs imposed by the various users."⁴¹⁰ In the *Local Competition First Report and Order*, the Commission recognized that it is appropriate to recover the costs of shared facilities from customers sharing the facility through either usage-sensitive or flat-rated charges.⁴¹¹ The Commission's rules also provide that local switching costs shall be recovered through a combination of a flat-rated charge for line ports, which are dedicated facilities, and one or more flat-rated or per-minute usage charges for the switching matrix and trunk port, which are shared facilities.⁴¹²

118. WorldCom does not contend that vertical features are provided over wholly dedicated facilities, nor has it provided evidence that the per-minute charge is inconsistent with the manner in which costs are incurred. Under our rules, the Virginia Commission could have properly directed Verizon to recover the costs of vertical features as part of flat-rated port charges, split the costs between the flat and per-minute switch elements, or recover the costs through the per-minute charge. The Virginia Commission's decision to allow the recovery of such costs in the per-minute switching rate thus complies with our rate structure rules, and we find no TELRIC error on this issue.

⁴⁰⁶ WorldCom Reply Comments at 5; WorldCom Frentrup Reply Decl., para. 4.

⁴⁰⁷ WorldCom Frentrup Reply Decl., paras. 3-4. To the extent that these costs are not already included in the base cost of the switch, WorldCom argues that any feature costs should be recovered in a per line charge such as the port, not the per-minute switch usage rates. *Id.*

⁴⁰⁸ *Verizon New Jersey Order*, 17 FCC Rcd at 12292, para. 41. *See also* Verizon Sept. 26 Pricing *Ex Parte* Letter at 8 (arguing that feature costs are shared costs and are appropriately recovered on a usage-sensitive basis).

⁴⁰⁹ 47 C.F.R. § 51.507(b).

⁴¹⁰ *Id.* § 51.507(c).

⁴¹¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15878-79, paras. 755, 757; 15905, para. 810.

⁴¹² *Id.* at 15878, para. 810; 47 C.F.R. § 51.509(b).

119. Further, AT&T argues that Verizon has improperly allocated the “getting started costs” to the minute-of-use rate and feature rate elements.⁴¹³ According to AT&T, these costs should be assigned to the fixed rate element because the switch processor utilization is such that traffic could continue to grow without exhausting the processor.⁴¹⁴ AT&T claims that this misassignment results in “severe cost over-recovery as minutes grow and Verizon collects increased revenues, but its fixed costs remain static.”⁴¹⁵ Verizon responds that these shared switch resources do vary with usage and that the Commission typically defers to the states on questions of cost allocation.⁴¹⁶

120. We have reviewed AT&T’s claim that the switching cost allocation adopted by the Virginia Commission constitutes a TELRIC violation, and we conclude that the Virginia Commission did not commit any clear error by allowing Verizon to recover its “getting started costs” on an MOU basis. In establishing prices, the state commissions retain the discretion to consider a variety of factors.⁴¹⁷ This issue is not addressed in the Virginia Commission’s proceeding establishing UNE rates and AT&T did not raise this issue with the Virginia Commission.

121. The switch processor is a shared facility and our rules explicitly grant states the discretion to recover the costs of shared facilities on a usage-sensitive basis. As discussed above,⁴¹⁸ the Commission’s rules provide that the costs of dedicated facilities shall be recovered through flat-rated charges⁴¹⁹ and that the costs of shared facilities shall be recovered through either usage-sensitive charges or flat-rated charges “if the state commission finds that such rates reasonably reflect the costs imposed by the various users.”⁴²⁰ This Commission did not prescribe

⁴¹³ AT&T Reply at 6; AT&T Baranowski Reply Decl., para. 9.

⁴¹⁴ AT&T Baranowski Reply Decl., para. 9. AT&T further argues that removing calls or features from the switch will not result in a decline in processing costs. *Id.*

⁴¹⁵ *Id.* AT&T adds: “Verizon acknowledged this in Massachusetts when it determined to exclude getting started costs from the reciprocal compensation rate because additional traffic did not cause any incremental getting started cost.” *Id.* at n. 8.

⁴¹⁶ Verizon Sept. 26 Pricing *Ex Parte* Letter at 8-10. Verizon further notes that the current Virginia rates presume an almost identical proportion, i.e., 66 percent traffic sensitive and 34 percent non-traffic sensitive, than those approved in the *Verizon Maine Order* and *BellSouth Alabama/Kentucky/Mississippi/North Carolina/South Carolina Order*. *Id.* at 9.

⁴¹⁷ *Verizon Maine Order*, 17 FCC Rcd at 11676, para. 29; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para 59, *aff’d*, *Sprint v. FCC*, 274 F.3d at 556; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15559, para. 114.

⁴¹⁸ *See* discussion para. 117, *supra*.

⁴¹⁹ 47 C.F.R. § 51.507(b).

⁴²⁰ *Id.* § 51.507(c).

a specific allocation of switching costs between port charges and per-MOU charges, thus the states retain the flexibility to adopt an allocation within a reasonable range.⁴²¹ Because some portion of switching costs is fixed, an allocation of 100 percent of the switching costs to the MOU element would be unreasonable *per se*; however, based on the record, we find that the Virginia Commission committed no clear error in allocating getting started costs to the MOU rate element. Further, the voluntary rate reduction made by Verizon was only to the per-MOU rate, thereby increasing the percentage of costs recovered through the fixed port rate.

e. Non-Recurring Charges

122. As stated above, the Virginia Commission's pricing proceeding did not establish the rates for all network elements that Verizon is currently required to provide to competitive carriers, including elements this Commission established in the *UNE Remand Order*.⁴²² In lieu of state-established rates, Verizon determined the "proxy rates" by using one of the three methods described above (i.e., comparable Virginia-established UNE rates, cost-adjusted New York rates, or New York rates without any cost-adjustment).⁴²³ If, however, Verizon was charging a lower rate to any competitive carrier that was purchasing the element pursuant to a Virginia interconnection agreement at the time Verizon adopted the proxy rates, Verizon adopted that lower rate.⁴²⁴

123. Some of the commenters argue against Verizon's use of proxy rates generally.⁴²⁵ For example, AT&T contends that the rates for some UNEs, such as those established in the Commission's *UNE Remand Order*, were not adjudicated in the Virginia Commission's pricing proceeding or in any other proceeding since and, therefore, are not valid.⁴²⁶ We reject this threshold challenge because, as Verizon points out, this Commission has, in a number of previous section 271 proceedings, approved rates that had not been reviewed by the state

⁴²¹ *Verizon Maine Order*, 17 FCC Rcd at 11676, para. 29.

⁴²² *See supra* para. 70. Verizon notes the Virginia Commission established UNE rates for 57% of all rate elements, including most of the key rates relating to loops, switching, and transport. Verizon Virginia Reply, App. A, Tab C, Reply Declaration of Robert W. Woltz, Jr., Patrick A. Garzillo, and Marsha S. Prosini (Verizon Woltz/Garzillo/Prosini Reply Decl.), para. 32.

⁴²³ *See supra* paras. 71-73. Verizon notes that, of all the rate elements, 31% were established by comparable state-determined UNE rates, 2% by cost-adjusted New York rates, and 5% by New York rates without cost-adjustment. Verizon Woltz/Garzillo/Prosini Reply Decl., para. 32.

⁴²⁴ *See supra* paras. 71-73. Verizon notes that the remaining 5% of all the rate elements were established by using the lower rates for elements that were being purchased from existing Virginia interconnection agreements. Verizon Woltz/Garzillo/Prosini Reply Decl., para. 32.

⁴²⁵ AT&T Comments at 10; Cavalier Comments at 11; Covad Comments at 20-22.

⁴²⁶ AT&T Comments at 10.

commission in the applicant state.⁴²⁷ Therefore, we reject AT&T's argument that Verizon's use of proxy rates is *per se* invalid.

124. Cavalier also challenges Verizon's use of proxy rates in general because Verizon "simply described how it had set 'proxy prices,' and [did] not show that its prices were TELRIC-compliant."⁴²⁸ As detailed below, we find that Verizon's use of proxy rates produced rates that are within the range that a reasonable application of TELRIC principles would produce, and, therefore, we reject Cavalier's argument.

125. As Verizon noted, the majority of the proxy rates – more than 70 percent – were established by adopting rates that were found to be TELRIC-compliant by the Virginia Commission for elements that involve the same or similar functions and the same or similar activities (i.e., comparable elements).⁴²⁹ Verizon argues that this approach is consistent with the Commission's previous findings that it is appropriate for one state to adopt the rates established in a different state under the same circumstances.⁴³⁰ We conclude that the rates established pursuant to this method are valid for several reasons. First, no commenter challenges the proxy rates established via this method. Rather, commenters focused primarily on the proxy rates based on comparable New York rates. Second, no commenter alleges any TELRIC error with respect to the rates established by the Virginia Commission that Verizon later adopted as proxy rates for elements not addressed in the state pricing proceeding. Third, no party challenges Verizon's assertion that the elements used as proxies involve the same or similar work functions and activities. Therefore, we conclude that the lack of review by this Commission or by the Virginia Commission does not, by itself, render these rates invalid.

⁴²⁷ See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82 (finding that the Oklahoma rates adopted as a whole from Texas were within the reasonable range that application of TELRIC principles would produce); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20751-52, paras. 67-68, 75 (finding that the Arkansas rates adopted as a whole from Kansas were within the reasonable range that application of TELRIC principles would produce); *Verizon Massachusetts Order*, 16 FCC Rcd at 8999-9001, paras. 21-25 (finding that Verizon could rely on New York rates in adopting rates in Massachusetts); *Verizon Rhode Island Order*, 17 FCC Rcd at 3314-15, 3324-27, paras. 26-27, 47-53 (finding the switching rates voluntarily proposed by Verizon based on the latest New York rates were within the reasonable range that application of TELRIC principles would produce); *Verizon New Jersey Order*, 17 FCC Rcd at 12303, para. 65 (finding the hot cut rate voluntarily adopted by Verizon was within the reasonable range that application of TELRIC principles would produce). See also Verizon Virginia Reply at 53 n.42.

⁴²⁸ Cavalier Comments at 11. Specifically, Cavalier challenges the decision by the Virginia Hearing Examiner to dismiss Cavalier's pricing concerns as more appropriately handled in an arbitration or generic pricing case. *Id.* (citing Virginia Hearing Examiner Report at 91).

⁴²⁹ See Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 41.

⁴³⁰ Verizon Virginia Application at 54; Verizon Virginia Reply at 62-63 (citing *SBWT Arkansas/Missouri Order*, 16 FCC Rcd at 20756, para. 75).

126. For the rates for UNEs that did not have comparable Virginia elements, Verizon selected the rates recently adopted in New York, a choice that some commenters challenge as inappropriate surrogates for Virginia rates. Covad makes three arguments against Verizon's use of New York rates. First, Covad objects to Verizon's use of the New York rates that were adopted by the New York Commission on January 28, 2002, which have never been reviewed for TELRIC compliance by this Commission.⁴³¹ Second, Covad argues that the New York rates are not appropriate surrogates for Virginia because the network and back office operations of the old New York Telephone Company are different than those of the old Chesapeake and Potomac Telephone Company (C&P Telephone).⁴³² Instead of using New York, Covad suggests that Verizon should have picked a state, such as Maryland, where Verizon's network evolved from the same C&P Telephone system as an appropriate surrogate for at least some proxy element rates, including loop qualification and conditioning.⁴³³ Third, Covad asserts that Verizon simply "picked New York out of a hat" or chose New York because its rates for some elements are among the highest in the Verizon territory.⁴³⁴

127. We disagree with Covad's argument that Verizon should not have used the latest New York rates because this Commission has not specifically reviewed them for TELRIC compliance. As Verizon noted, the Commission has found that a state commission may, in appropriate circumstances, consider, for comparison purposes, rates in another state that the Commission has previously found to be based on TELRIC principles.⁴³⁵ The Commission has also found, in the context of the New York section 271 proceeding, that New York rates for UNEs were within a range that the reasonable application of TELRIC principles would produce.⁴³⁶ Moreover, the Commission has previously noted, in the context of benchmarking, that the New York Commission has been very thorough in its pricing proceedings and has demonstrated a "commitment to accurate, cost-based rate making."⁴³⁷ We find no reason to believe this is not true for the latest New York rates. Finally, we note that the commenters fail to

⁴³¹ Covad Comments at 21.

⁴³² *Id.*

⁴³³ *Id.* at 22-23.

⁴³⁴ *Id.* at 21.

⁴³⁵ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20751-52, paras. 67-68. In fact, the Commission has even encouraged "states with limited resources to take advantage of the efforts devoted by New York and Texas in establishing TELRIC-compliant prices, by relying where appropriate on the existing work product of those states. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276-77, para. 82 n.244.

⁴³⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 4081-82, 4084-85, paras. 238, 245.

⁴³⁷ Verizon Virginia Reply at 66 (citing *Verizon Rhode Island Order*, 17 FCC Rcd at 3326, para. 52). See also *AT&T Corp. v. FCC*, 220 F.3d at 616 (stating the New York Commission possesses a considerable degree of expertise and has done significant amount of background work in pricing proceeding). Verizon states that competitive LECs have even "championed [New York] as the gold-standard." Verizon Virginia Reply at 66.

offer any evidence that the latest New York rates reflect any TELRIC error or otherwise fall outside a reasonable TELRIC range. From these facts, we conclude that, in the absence of action by the Virginia Commission, it was not inappropriate as a threshold matter for Verizon to adopt rates set by the New York Commission in some instances.

128. We also reject Covad's argument that Verizon should have chosen a state, such as Maryland, where Verizon's network evolved from the same C&P Telephone system as an appropriate surrogate for at least some proxy element rates. Neither Covad nor any other party offered any specific evidence to demonstrate that Verizon's Virginia and New York networks are so different that the elements at issue would not involve similar work functions and work activities.⁴³⁸ Without any specific evidence to the contrary, we reject the claim that New York rates are inappropriate because Verizon's New York network stems from different corporate lineage than Verizon's Virginia network, and that Verizon should have chose a state from the former C&P Telephone system.

129. Finally, we reject Covad's claim that Verizon chose New York rates because they are among the highest in Verizon's territory. In response to this argument, Verizon produced a comparison of rates for the proxy elements adopted from New York and those from the rest of the states in Verizon's territory.⁴³⁹ Verizon maintains that this comparison demonstrates that Verizon could have obtained higher rates by using a state other than New York.⁴⁴⁰ As Verizon itself acknowledges, while some of the New York rates may be higher than those in other Verizon states, many of the rates are lower and, in fact, in a few cases, are significantly lower than in other Verizon states.⁴⁴¹ With regard to Covad's specific claim that Verizon should have adopted certain rates from Maryland rather than New York, we agree with Verizon that the rate comparison demonstrates that Verizon derived no systematic advantage from using New York rates rather than Maryland rates.⁴⁴² In sum, we find no evidence that Verizon intentionally chose New York rates to achieve a competitive advantage. Therefore, based on the evidence in the

⁴³⁸ Moreover, when it was feasible, Verizon adjusted for cost differences between the states. Such a cost-adjustment was not feasible for some non-recurring UNEs because the Synthesis Model does not include non-recurring activities. Verizon Woltz/Garzillo/Prosini Decl., para. 39.

⁴³⁹ Verizon Woltz/Garzillo/Prosini Reply Decl., para. 38 & Att. 2.

⁴⁴⁰ *Id.*

⁴⁴¹ Verizon Virginia Reply at 66; Verizon Woltz/Garzillo/Prosini Reply Decl., para. 38 & Att. 2. For example, the costs of initial and additional provisioning of platform migration are significantly lower in New York than in Maryland (*i.e.*, \$1.18 vs. \$4.26 for initial provisioning, and \$1.13 vs. \$4.09 for additional provisioning). Verizon Woltz/Garzillo/Prosini Reply Decl., Att. 2. Likewise, the initial and additional installation costs for 2- and 4-wire sub-loop migration are lower in New York than Maryland. *Id.*

⁴⁴² Verizon Woltz/Garzillo/Prosini Reply Decl., para. 38. Verizon also asserts that the real reason that Covad urges the Commission to require Verizon to adopt Maryland for proxy rates is because the Maryland PSC has decided to apply a zero rate to loop qualification and loop conditioning, which are of particular concern to DSL providers such as Covad. Verizon Virginia Reply at 66-67.

record and the lack of any specific challenge to a particular rate, we conclude that it was reasonable for Verizon to have selected the latest New York rates in the absence of rates set by the Virginia Commission.

130. In addition to its challenge to Verizon's use of New York rates, Covad opposes the Verizon's "alternative" method of choosing a rate that a competitive LEC was paying at the time the proxy rates were established if it was lower than the proxy rate.⁴⁴³ Covad first urges the Commission to reject negotiated rates as appropriate substitutes for TELRIC-based rates because TELRIC requires rates based on a forward-looking cost methodology using a fully-developed TELRIC cost study.⁴⁴⁴ Verizon counters, and we agree, that because the negotiated rates were only used when those rates were lower than the proxy rate, the lower interconnection rates would, by definition, fall within a reasonable TELRIC range because no commenter asserts that the New York-based proxy rates do not themselves fall within a reasonable TELRIC range.⁴⁴⁵ Thus, we reject Covad's first argument against the "alternative" method of using rates from interconnection agreements.

131. Covad also asserts that several of Verizon's rates reflected in its application, and in Verizon's March 22, 2002 letter to all Virginia competitive LECs, are greater than rates in Covad's current interconnection agreement with Verizon.⁴⁴⁶ Verizon responds that Covad made the same argument in the state proceeding and was rejected by the Virginia Hearing Examiner.⁴⁴⁷ Verizon also explained that it chose the lower interconnection agreement rate as the state-wide rate only if the element was being *purchased* by the competitive LEC at the time the proxy rates were set.⁴⁴⁸ If the competitive LEC was not purchasing the element at that time but had a lower price in its interconnection agreement than the proxy rate, Verizon reiterated that it would honor the lower rate for that carrier.⁴⁴⁹ Therefore, we reject Covad's challenge to Verizon's proxy rates.

⁴⁴³ Covad Comments at 20-21.

⁴⁴⁴ *Id.* at 21.

⁴⁴⁵ Verizon Woltz/Garzillo/Prosini Reply Decl., para. 33.

⁴⁴⁶ Covad Comments at 20. Covad does note that Verizon told Covad that it would honor the rates in Covad's interconnection agreement, but asserts that this policy, nonetheless, violates Verizon's own pricing methodology for the proxy rates. *Id.*

⁴⁴⁷ Verizon Virginia Reply at 67; Verizon Woltz/Garzillo/Prosini Reply Decl., para. 51 (citing the Virginia Hearing Examiner Report at 90).

⁴⁴⁸ Verizon Woltz/Garzillo/Prosini Reply Decl., paras. 51-52.

⁴⁴⁹ *Id.*, paras. 34, 52. Verizon explained that, "in the interest of fairness to itself, [it] did *not* commit itself to charging *all* CLECs a particularly low rate that a lone CLEC had negotiated for an element it was not actually purchasing at the time rates were established, particularly since any such low rate often could be the quid pro quo for a concession to Verizon as part of the negotiation process." *Id.*, para. 34. Moreover, Verizon noted that another (continued...)

f. Entrance Facility Rate

132. Starpower argues that Verizon should be prohibited from charging any entrance facilities rate element that “unjustifiably increases UNE rates in Virginia” before it receives section 271 authority.⁴⁵⁰ Noting that Verizon recently added a new entrance facilities rate for dedicated transport in New York, Starpower asserts that the rate was not the subject of any substantive review by the New York Commission and expresses concern that Verizon’s Virginia rate structure may “similarly include unwarranted entrance facilities charges.”⁴⁵¹ While noting that the Virginia Commission established a separate entrance facilities rate several years ago, Starpower states that “[i]t is not apparent that any substantive analysis of the propriety of an entrance facilities rate element was undertaken by the [Virginia Commission].”⁴⁵² Verizon responds that it is unclear what, if anything, Starpower is alleging is wrong, or why Starpower claims not to know if the Virginia rates include an entrance facility rate approved by the Virginia Commission.⁴⁵³ Verizon points out that Starpower itself acknowledges that the Virginia Commission approved the DS1 and DS3 entrance facility rate elements in its prior proceeding.⁴⁵⁴ Verizon also rejects Starpower’s assertion that the New York Commission did not review or approve the entrance facility rate in New York.⁴⁵⁵

133. As Verizon points out, Starpower acknowledges that the Virginia Commission approved an entrance facility rate in Virginia in the state pricing proceeding.⁴⁵⁶ If Starpower had an objection to the rate, it should have challenged it before the state commission at that time, but it does not appear to have done so. Nor has Starpower alleged in this proceeding any TELRIC error in the entrances facilities rate. Moreover, the record demonstrates that the Virginia Commission defined entrance facilities as a separate rate element, not merely to be consistent with Verizon’s cost studies, but to comply with the requirement that network elements be unbundled at “any technically feasible point.”⁴⁵⁷ Starpower’s challenge to the entrance facility rate set by the New York Commission is beyond the scope of this proceeding. Therefore, in the

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competitive carrier could opt into the interconnection agreement with the lower rate so long as the agreement has not expired. *Id.* See also 47 U.S.C. § 252(i).

⁴⁵⁰ Starpower/US LEC Comments at 17.

⁴⁵¹ *Id.* at 17-18.

⁴⁵² *Id.* at 18. Starpower states that the Virginia Commission determined a separate rate element for entrance facilities to be consistent with Verizon’s cost studies. *Id.*

⁴⁵³ Verizon Woltz/Garzillo/Prosini Reply Decl., para. 27.

⁴⁵⁴ *Id.* (citing Covad Comments at 17 and the *Virginia Interim Pricing Order* at 14).

⁴⁵⁵ *Id.*, para. 28.

⁴⁵⁶ See Starpower/US LEC Comments at 18 (citing *Virginia Interim Pricing Order* at 14).

⁴⁵⁷ *Virginia Interim Pricing Order* at 13-14; 47 U.S.C § 251(c)(3).

absence of evidence that the Virginia Commission clearly erred in adopting the entrance facility rate, we reject Starpower's challenge.

g. Deaveraging Issues

134. Both Cavalier and NTELOS contend that Verizon must reclassify wire centers, i.e., move a wire center from one density zone to another, in order to comply with checklist item two. NTELOS argues that Verizon should be required to reclassify automatically wire centers based on growth.⁴⁵⁸ According to NTELOS, the current classifications pose a hardship for rural competitive LECs and provide a strong disincentive to the development of rural competition.⁴⁵⁹ Cavalier maintains that Verizon's rates for loops served out of one particular central office, the Bethia wire center, are not in compliance with checklist item two because they foreclose competition.⁴⁶⁰ Cavalier states that, at the time permanent loop rates were established in Virginia and considering the age of the data underlying those rates, Bethia might have belonged in density cell three at the time rates were initially deaveraged.⁴⁶¹ It maintains, however, that the current classification of the Bethia wire center is no longer appropriate because of population growth in that wire center.⁴⁶² As discussed below, the Virginia Commission considered whether Verizon is obligated to reclassify a single wire center, and we find no clear error in the Commission's decision.

135. Our regulations provide that "[s]tate commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences."⁴⁶³ The regulations also provide that, "[t]o establish geographically deaveraged rates, state commissions may use existing density-related zone pricing plans . . . or other such cost-related zone plans established pursuant to state law."⁴⁶⁴ In the *Local Competition First Report and Order*, the Commission concluded that "the pricing standard for interconnection and unbundled elements prohibits deaveraging that is not cost based."⁴⁶⁵ The requirement is important because, as we noted in the *CALLS SLC Cap Order*, cost-based deaveraging "promotes competition and efficiency by allowing a LEC to compete for subscribers when it is

⁴⁵⁸ NTELOS Comments at 7.

⁴⁵⁹ *Id.* NTELOS notes that the current classifications are based upon 1996 data. *Id.*

⁴⁶⁰ *See* Cavalier Comments at 14-17.

⁴⁶¹ Cavalier Comments at 15. Specifically, Cavalier states that the loop rates were established in a proceeding that was initiated in 1997 and apparently are based on data from as far back as 1994. *Id.*

⁴⁶² *Id.*

⁴⁶³ 47 C.F.R. § 51.507(f).

⁴⁶⁴ *Id.* § 51.507(f)(1) (emphasis added).

⁴⁶⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 15883, para. 766.

the lowest cost service provider and by removing support flows to the LEC's higher-cost customers.⁴⁶⁶ By contrast, non-cost-based deaveraging "may distort the operation of the markets in high-cost areas because LECs must offer services in those areas at prices substantially lower than their costs of providing service."⁴⁶⁷

136. Consistent with our regulations, in its *Virginia Interim Pricing Order*, the Virginia Commission adopted a deaveraging methodology that was based on costs⁴⁶⁸ and did not specifically consider line density as a factor in determining wire center groupings.⁴⁶⁹ Specifically, the average UNE loop cost was deaveraged into three groups known as density cells one, two and three.⁴⁷⁰ On October 16, 2001, Cavalier applied to the Virginia Commission to reclassify the Bethia wire center from density cell three to density cell one.⁴⁷¹ The Virginia Commission denied Cavalier's application on the basis that Cavalier failed to allege a legal or factual basis upon which the Commission should investigate the UNE loop rates for the Bethia wire center.⁴⁷² On reconsideration, the Virginia Commission expanded its findings and agreed with Verizon that "it would be unfair to reclassify one wire center without, at a minimum, an entire reconfiguration of the density cell structure and a resulting recalculation of rates."⁴⁷³ The

⁴⁶⁶ *In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Order, para. 18 (rel. June 5, 2002) (*CALLS SLC Cap Order*).

⁴⁶⁷ *Id.*

⁴⁶⁸ *Virginia Interim Pricing Order* at 10; see *Application of Cavalier Telephone, LLC to Reclassify the Bethia Wire Center into Density Cell One*, Case No. PUC010213, Final Order at 3 (rel. Jan. 31, 2002) (*Virginia Bethia Order*), *aff'd*, *Application of Cavalier Telephone, LLC to Reclassify the Bethia Wire Center into Density Cell One*, Case No. PUC010213, Order on Reconsideration (rel. Mar. 7, 2002) (*Virginia Bethia Recon. Order*).

⁴⁶⁹ *Virginia Bethia Order* at 3.

⁴⁷⁰ *Id.* at 1 n.1, 3. Density cell three is the highest priced (\$29.40 for a basic loop) and density cell one is the lowest price (\$10.74 for a basic loop). *Id.* at 1 n.1. The Virginia Commission adopted Staff's recommended wire center groupings. *Virginia Interim Pricing Order* at 10. Staff found that approximately 75 percent of the lines in Verizon-Virginia's territory fell within a narrow range of wire center costs. Verizon Virginia Application at App. F, Vol. 2, Tab 10, Ex Parte: To Determine Prices Bell Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Comparative Summary of Pricing Recommendations, at 17 (*Virginia Commission Staff Exhibits*). These wire centers are price group one, and the loop price reflects the line-weighted average of the costs of the wire centers in that group. The remaining, higher cost wire centers were divided into two price groups of approximately the same number of lines, denominated price groups two and three. *Virginia Commission Staff Exhibits* at 17.

⁴⁷¹ *Virginia Bethia Order* at 1; see Cavalier Comments at 16 and n.8. There is nothing in the record indicating that NTELOS has requested similar relief from the Virginia Commission.

⁴⁷² *Virginia Bethia Order* at 5. The Virginia Commission explained that, in its application, Cavalier relied on the incorrect premise that the Virginia Commission's deaveraging methodology was based on line density. *Id.* at 4.

⁴⁷³ *Virginia Bethia Recon. Order* at 2. Cavalier disputes the notion that it is not possible to evaluate the cost structure for one wire center without doing a complete state-wide review. Cavalier Reply at 12. To support its (continued...)

Virginia Commission concluded that it could not undertake such a reconfiguration without, in effect, changing its pricing decisions.⁴⁷⁴ Because the case in which the pricing decisions were issued had been closed, the Virginia Commission determined that it could not, as a procedural matter, consider issues raised in that proceeding.⁴⁷⁵ Further, the Virginia Commission declined to initiate a new generic rate case because it had established prices only a short time ago and because this Commission is currently addressing rates in the pending arbitration.⁴⁷⁶ The Virginia Commission reminded Cavalier, however, that it could pursue changes to the UNE loop rates in the Bethia wire center when it negotiates and/or requests arbitration of a new interconnection agreement with Verizon.⁴⁷⁷

137. We find nothing in the record here that gives us reason to disturb the Virginia Commission's exercise of its expertise and reasoned judgment in this matter. No commenter alleges that the deaveraging methodology adopted by the Virginia Commission is inconsistent with our regulations. Rather, Cavalier and NTELOS request that we find checklist noncompliance based on Verizon's refusal to reclassify particular wire centers.⁴⁷⁸ As explained above, the Virginia Commission concluded that reclassification of one wire center "would potentially impact the classification of other wire centers and the UNE loop rates in all three density cells."⁴⁷⁹ We agree that reclassification of a wire center from, for example, density cell three to density cell one would change the average costs of the wire centers in both groups and the resulting loops rates. For this reason, we find no error in the Virginia Commission's decision not to reclassify a single wire center. Moreover, we note that Cavalier has accepted the Virginia

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position, Cavalier states that the state commission in Delaware ordered Verizon to re-evaluate its density cell classifications every three years, and requests that we advise the Virginia Commission to institute a similar periodic review. *Id.* NTELOS also questions Verizon's claim that it does not have the methodology to alter density zones without a full cost study for all loops in Virginia because, according to NTELOS, Verizon is able to reclassify individual exchanges into higher retail rate groups based on growth. NTELOS Comments at 7.

⁴⁷⁴ *Virginia Bethia Recon. Order* at 3.

⁴⁷⁵ *Id.* at 3. The Virginia Commission noted that Cavalier did not request a new pricing proceeding in its application. *Id.* at n.6.

⁴⁷⁶ *Id.* at 3.

⁴⁷⁷ *Virginia Bethia Order* at 5; *Virginia Bethia Recon. Order* at 3-4.

⁴⁷⁸ Cavalier also argues that, unless the Bethia wire center is reclassified, it will be forced to cease offering service to new customers in the area and withdraw from offering service in the area. Cavalier Comments at 17. Cavalier explains that, at the time it entered the Bethia residential market in March 2001, it paid a reduced loop rate of \$14.40 per loop based on the Commission's decision approving the Bell-Atlantic GTE merger, and Verizon's approved loop rate in density zone 3 is \$29.40. *Id.* at 15. We decline to find checklist noncompliance based upon Cavalier's expectation that the Bethia wire center would be reclassified prior to the expiration of the reduced loop rate. Cavalier admits that it entered this market knowing that the loop rate was subject to a merger discount that would only be available for a limited period of time. *Id.* at 15. Thus, Cavalier entered the Bethia market with full knowledge that loop rate in that market could be \$29.40 and decided to enter the market nonetheless.

⁴⁷⁹ *Virginia Bethia Recon. Order* at 2.

Commission's invitation to seek arbitration of this issue.⁴⁸⁰ Thus, we find that this issue does not warrant a finding of checklist noncompliance.

D. Checklist Item 4 – Unbundled Local Loops

138. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”⁴⁸¹ We conclude, as did the Virginia Hearing Examiner, that Verizon provides unbundled local loops in accordance with the requirements of section 271 and our rules.⁴⁸² Our conclusion is based on our review of Verizon’s performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, high capacity loops, and our review of Verizon’s processes for line sharing and line splitting. As of the end of June 2002, competitors in Virginia have acquired from Verizon and placed into use approximately 205,000 unbundled loops including about 177,000 stand-alone loops (including DSL loops) and about 27,600 loops provided as part of network element platforms that also include switching and transport elements.⁴⁸³

139. Consistent with prior section 271 orders, we do not address every aspect of Verizon’s loop performance where our review of the record satisfies us that Verizon’s performance is in compliance with the relevant performance standards established by the New York PSC.⁴⁸⁴ Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Verizon and its competitors. In making our assessment, we review performance measurements comparable to those we have relied upon in prior section 271 orders, primarily those associated with measuring the timeliness and quality of loop provisioning and loop maintenance and repair.⁴⁸⁵ Parties have generally not raised any issues with respect to any aspect of Verizon’s loop performance and our own review of the record shows that Verizon’s performance has been satisfactory. Thus, we do not engage in a detailed

⁴⁸⁰ On August 14, 2002, Cavalier filed for arbitration on this subject. Cavalier Comments at 16 n.10.

⁴⁸¹ 47 U.S.C. § 271(c)(2)(B)(iv). The Commission has defined the loop as “a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. *Local Competition First Report and Order*, 11 FCC Rcd at 15691.

⁴⁸² See Virginia Hearing Examiner’s Report at 117.

⁴⁸³ See Verizon Lacouture/Ruesterholz Reply Decl., para. 4. As of June 2002, Verizon had in service approximately 160,300 stand-alone competitive LEC POTS loops, 2,200 high capacity DS-1 loops, 16,700 DSL loops, 3,800 2-wire digital loops and 3,200 line sharing arrangements. *Id.*, paras. 4, 22, 42, 55, 63.

⁴⁸⁴ During the first two months of the relevant performance period, April and May 2002, Verizon’s performance in Virginia is reported under essentially the same guidelines that the New York PSC approved in December 2000. See Verizon Lacouture/Ruesterholz Decl., para. 11. The Virginia Commission implemented the guidelines adopted by the New York Commission in October 2001. *Id.* In June 2002, Verizon began reporting its performance under these new guidelines. *Id.*

⁴⁸⁵ See *Verizon New Jersey Order*, 17 FCC Rcd at 12342, para. 137.

discussion of Verizon's loop performance.⁴⁸⁶ Instead, we focus on several broader policy concerns raised by commenters.

140. *High Capacity Loops.* In its application, Verizon demonstrates that it has provisioned 2,200 high capacity unbundled local loops in Virginia as of June 2002.⁴⁸⁷ Verizon's performance data indicate that it provides nondiscriminatory ordering, provisioning, and maintenance services for high capacity unbundled local loops.⁴⁸⁸ AT&T, Allegiance, Covad and other commenters do not contend that Verizon fails to meet established performance standards, or has failed to provision these 2,200 high capacity unbundled local loops in a nondiscriminatory manner.

141. Several commenters argue that Verizon rejects improperly competitive LEC orders for high capacity loops (e.g., DS1 and DS3 loops) under its "no facilities" policy when any necessary facilities are not available and "new construction" is required.⁴⁸⁹ For example, AT&T explains that Verizon will deny a competitive LEC's UNE DS-1 order for "no facilities" even when Verizon must only open a cable sheath to splice a copper loop into an existing apparatus case.⁴⁹⁰ In the Pennsylvania, New Jersey, and New Hampshire/Delaware section 271 proceedings, Verizon described its policy and the Commission concluded, based on the limited evidence in the record, that no party rebutted Verizon's showing or articulated a clear violation of the Commission's rules.⁴⁹¹ As we determined in those prior 271 decisions, we conclude that commenters have not rebutted Verizon's showing that it provides high capacity unbundled local loops in a nondiscriminatory manner. We are prepared, however, to pursue appropriate enforcement action if evidence becomes available that Verizon is not fulfilling its obligations under the Act or the Commission's rules to provide unbundled high capacity local loops on just, reasonable, and nondiscriminatory rates, terms, and conditions.⁴⁹²

⁴⁸⁶ See generally Appendix B.

⁴⁸⁷ See Verizon Lacouture/Ruesterholz Reply Decl., para. 22.

⁴⁸⁸ See Verizon Lacouture/Ruesterholz Reply Decl., paras. 23-28; see also Appendix B.

⁴⁸⁹ See AT&T Comments at 13; Cavalier Comments at 7-10; Covad Comments at 24; Cavalier Reply at 4; US LEC Reply at 10. In addition to these general concerns surrounding Verizon's "no facilities" policy, Cavalier complains that it continually learns of "no facilities" on or near the day of cut-over for a customer. See Cavalier Comments at 13.

⁴⁹⁰ See AT&T Comments at 13; see also Allegiance Comments at 6-7.

⁴⁹¹ See *Verizon New Hampshire/Delaware Order*, paras. 112-14; *Verizon New Jersey Order*, 17 FCC Rcd at 12349-50, para. 151; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17469-70, paras. 91-92.

⁴⁹² Because of the lack of sufficient evidence in the record, we do not address here whether an incumbent LEC's refusal to provide high-capacity loops where certain facilities have not been installed is, or is not, a clear violation of the Act or our rules. Such an issue is not properly before us here. To the extent we have not spoken conclusively on that issue in the context of an enforcement proceeding by the time of the *Triennial Review* order, we will address the issue in that proceeding, as well as whether any rule amendments are necessary or appropriate.

142. In addition to raising concerns about Verizon's "no facilities" policy generally, several commenters raise concerns about its application in Virginia and note that the Virginia Hearing Examiner found Verizon's "no facilities" provisioning policy for high capacity loops to be inconsistent with its policy for other types of loops.⁴⁹³ Commenters argue that Verizon will provision a voice grade loop to a competitive LEC even if it requires adding a new drop to a home, but does not do so for a UNE DS-1 loop.⁴⁹⁴ Verizon states, however, that it will add a drop wire for both residential POTS loops and high capacity loops, even though it is not required to do so.⁴⁹⁵

143. Commenters argue that this policy is also discriminatory because, although Verizon may refuse to build the necessary facilities to provision a competitive LEC's UNE order, Verizon would do so to provision its own customer's order.⁴⁹⁶ Verizon argues that section 251 and the Commission's rules do not require an incumbent LEC to "build" UNEs that do not already exist.⁴⁹⁷ Although we recognize that there is potential tension between an incumbent LEC's nondiscrimination obligation and the limitation of unbundling to already-existing facilities, we cannot find, based on the evidence before us, that Verizon's policy is a facial violation of our existing rules.

144. We decline, therefore, to find that the allegations on this record sufficiently rebut Verizon's evidence demonstrating checklist compliance. As we have stated in prior section 271 orders, new interpretive disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve a *per se* violation of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.⁴⁹⁸

⁴⁹³ See AT&T Comments at 14; Covad Comments at 26; Starpower Comments at 6, 11; NTELOS Comments at 2, 5.

⁴⁹⁴ *Id.* (citing Hearing Examiner's Report at 116).

⁴⁹⁵ See Verizon Lacouture/Ruesterholz Reply Decl., para. 38. We note that during April, May and June 2002, less than one percent of competitive LEC orders were rejected for drop or house and riser reasons. Verizon Lacouture/Ruesterholz Reply Decl., para. 39.

⁴⁹⁶ AT&T Comments at 14; Allegiance Comments at 5; Cavalier Comments at 10; Cavalier Reply at 3.

⁴⁹⁷ See Verizon Lacouture/Ruesterholz Reply Decl., para. 30; see also Letter from Ann D. Berkowitz, Project Manager, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 1, 2002).

⁴⁹⁸ See, e.g., *Verizon New Jersey Order*, 17 FCC Rcd at 12349, para. 151. We disagree with Allegiance that the Bureau's reiteration of Verizon's unbundling obligations in the *Virginia Arbitration Order* with respect to multiplexing issues removes this matter from the realm of "new interpretive disputes" not appropriate for resolution in the section 271 context. See Allegiance Comments at 6. The *Virginia Arbitration Order* simply adopted language to be used in interconnection agreements between Verizon and the arbitration parties. Parties in Virginia may request those service offerings and arrangements, including the installation and adjustment of multiplexing equipment, in interconnection negotiations with Verizon. In the absence of more probative evidence to the contrary, (continued...)

145. *Dark Fiber.*⁴⁹⁹ Under section 271(c)(2)(B)(ii) of the Communications Act, Verizon must demonstrate that it provides nondiscriminatory access to network elements in accordance with the non-discrimination provisions of section 251(c)(3).⁵⁰⁰ Moreover, our rules specifically include dark fiber within the definition of the loop and transport UNEs that incumbents must make available to competitors pursuant to section 251(c)(3) of the Act.⁵⁰¹ Verizon has demonstrated that it offers dark fiber in Virginia in compliance with the checklist pursuant to a variety of interconnection agreements.⁵⁰² Based on the record in this proceeding, we find that Verizon provides dark fiber in Virginia consistent with checklist item 4.⁵⁰³

146. Commenters raise questions concerning three aspects of Verizon's policy on dark fiber: availability, collocation requirements, and location information. Concerning availability, OpenBand argues that Verizon does not provide non-discriminatory access to available in-place, spare fiber facilities that have been left unterminated.⁵⁰⁴ We are unable to find that OpenBand's allegation rebuts Verizon's showing of checklist compliance because the Commission's dark

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commenters do not persuade us that Verizon's policies and practices concerning the provisioning of high capacity loops expressly violate the Commission's unbundling rules.

⁴⁹⁹ Dark fiber is fiber that has not been activated through the connection of the electronics/photonics that generate, transmit, and/or receive light pulses and therefore make it capable of carrying communications services. *See UNE Remand Order*, 15 FCC Rcd at 3776, paras. 325-30.

⁵⁰⁰ 47 U.S.C. § 271(c)(2)(B)(ii); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3791-95, paras. 205, 209-19 (1999); *see also Verizon New Jersey Order*, App. C at C-3 ("to determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist, as developed in the Commission's local competition rules and orders in effect at the time the application is filed").

⁵⁰¹ 47 U.S.C. § 251(c)(3); 47 C.F.R. §§51.319(a)(1) & (d)(1)(ii). Dark fiber is analogous to unused copper loop or transport facilities and is physically connected to the incumbent's network and is easily called into service by the incumbent. *UNE Remand Order*, 15 FCC Rcd at 3776, 3843-46, paras. 174, 325-30 & n.323.

⁵⁰² *See Verizon Lacouture/Ruesterholz Decl.*, Attach. 1. Verizon states that, from July 2001 through July 2002, Verizon has received 61 dark fiber orders in Virginia and has completed all of these orders on time. *See Verizon Lacouture/Ruesterholz Reply Decl.*, para. 106.

⁵⁰³ *See UNE Remand Order*, 15 FCC Rcd at 3776, para. 174. For the reasons discussed in this section, we also find Verizon in compliance with checklist item 5 (Transport). Verizon's policy is the same as its offering in Vermont and Pennsylvania which the Commission found to be section 271-compliant. *See Verizon Pennsylvania Order*, 16 FCC Rcd 17419; *see also Verizon Lacouture/Ruesterholz Reply Decl.*, para. 105. Verizon states that, under Verizon's Virginia dark fiber offering, an unbundled dark fiber network element consists of two spare continuous fiber stands (i.e. one pair) that are within an existing fiber optic cable sheath. These fibers are terminated to an accessible terminal but are not connected to any Verizon equipment used or that can be used to transmit and receive telecommunications traffic. *See Verizon Lacouture/Ruesterholz Reply Decl.*, para. 105. Verizon argues that it is not required to provide access to dark fiber where it is not already terminated at an accessible terminal. *Id.*, para. 107.

⁵⁰⁴ OpenBand Comments at 7; *see also Cavalier Comments* at 18.

fiber rules do not specifically apply to unterminated fiber.⁵⁰⁵ NTELOS complains that Verizon requires that the competitive LEC be collocated before ordering dark fiber and, by the time the collocation request is fulfilled, the dark fiber may no longer exist.⁵⁰⁶ Verizon responds that it is entering into a trial agreement with Cavalier for the “parallel provisioning” of collocation arrangements and unbundled interoffice facility dark fiber in Virginia.⁵⁰⁷ Verizon and Cavalier have agreed to amend their interconnection agreements to reflect the availability of the parallel provisioning option.⁵⁰⁸ The Commission’s rules do not directly address a competing carrier’s ability to demand parallel provisioning of collocation arrangements and unbundled dark fiber. Absent evidence that Verizon has engaged in bad faith in conducting the trial, we find the trial to be a reasonable solution in evaluating Verizon’s compliance with checklist item four.

147. Regarding location information, commenters complain about Verizon’s practice of only informing a competitive LEC whether dark fiber is available between two points on its network if the competitor inquires about a particular point-to-point route regardless of whether an alternative route may be available through intermediate offices.⁵⁰⁹ Specifically, WorldCom asserts that Verizon has to alter its ordering and provisioning procedures to meet its requirement to make dark fiber available when it is routed through intermediate offices, as required by the *Virginia Arbitration Order*.⁵¹⁰ As previously stated, in response to the *Virginia Arbitration Order*, Verizon has included provisions that provide for routing of dark fiber through intermediate offices in the agreements entered into with AT&T and WorldCom.⁵¹¹ Verizon’s arbitrated agreements with WorldCom and AT&T are now effective⁵¹² and, pursuant to those agreements, Verizon will determine if dark fiber is available between particular offices through a

⁵⁰⁵ *UNE Remand Order*, 15 FCC Rcd at 3776, 3843-46, paras. 174, 325-30.

⁵⁰⁶ NTELOS Comments at 8.

⁵⁰⁷ *See* Verizon Lacouture/Ruesterholz Reply Decl., para. 109. The trial, which is nearing completion, is designed to develop new processes, procedures, and system modifications so that, shortly after receipt of a collocation application, Verizon can accept and partially provision an order for unbundled dark fiber. *Id.* Apparently, Cavalier has submitted nearly 130 dark fiber “first step” orders pursuant to this trial and Verizon has already completed about 100 of them. *See* Verizon Lacouture/Ruesterholz Reply Decl., para. 109.

⁵⁰⁸ Verizon Lacouture/Ruesterholz Reply Decl., para. 109. Once the agreements are amended, this new provisioning option will be offered to other carriers through interconnection agreement amendments, as necessary. *Id.*

⁵⁰⁹ OpenBand Comments at 11; Cavalier Comments at 18; Covad Comments at 29; NTELOS Comments at 8.

⁵¹⁰ WorldCom Comments at 14.

⁵¹¹ Verizon Lacouture/Ruesterholz Reply Decl., para. 112.

⁵¹² As discussed above, we find that Verizon satisfies section 271(c)(1)(A) which requires Verizon to have entered into one or more interconnection agreements when its application was filed. Because the interconnection agreement between Verizon and WorldCom is now effective, the issue raised by commenters regarding the lack of dark fiber location information is now moot because that issue was resolved pursuant to the terms of the agreement.

direct route or through intermediate offices.⁵¹³ Verizon notes further that it already has experience in routing dark fiber through intermediate offices in other states, including Maine, Massachusetts, New Hampshire and New Jersey. Verizon states it will be able to implement the same practices in Virginia now that its interconnection agreements are effective.⁵¹⁴ As a result, we find that Verizon is operationally ready in Virginia to make dark fiber available when it is routed through intermediate offices. We also note that while competitive LECs can make a dark fiber inquiry, they also have access to Serving Wire Center fiber layout maps⁵¹⁵ and Field Surveys to locate available dark fiber.⁵¹⁶

148. *Voice Grade Loops.* Cavalier argues that it loses approximately 500-1,000 residential lines per month because it cannot gain unbundled access to loops served by IDLC.⁵¹⁷ Cavalier lacks such access because it is not technically feasible to unbundle an IDLC loop.⁵¹⁸ Nevertheless, Verizon provides unbundled loops where the customer is served by IDLC by using spare copper facilities at the terminal or by performing a line station transfer to make spare copper facilities available.⁵¹⁹ Although this solution is not universally available, Verizon

⁵¹³ Verizon Virginia Reply at 26; AT&T Reply at 23-24. Verizon states that now that these agreements are signed, they will be available for adoption by other competitive LECs in Virginia. See Verizon Lacouture/Ruesterholz Reply Decl., at 112. See also *id.* at 110. At the section 271 hearings before the Virginia Commission, Verizon apparently offered to provide dark fiber maps to any requesting competitive LEC, but refused to provide the maps to Covad arguing that they are proprietary. See Covad Comments at 30. We note that this is the subject of an ongoing dispute between the parties. Verizon indicates, however, that if Covad wants to obtain these Serving Wire Center fiber layout maps, it can negotiate provisions to make them available in the interconnection agreement it is now negotiating with Verizon. See Verizon Lacouture/Ruesterholz Reply Decl., para. 111.

⁵¹⁴ Verizon Lacouture/Ruesterholz Reply Decl., para. 114.

⁵¹⁵ Serving Wire Center fiber layout maps show the streets within the wire center where there are existing fiber cable sheaths. See Verizon Lacouture/Ruesterholz Decl., para. 237. These maps identify all fiber in Verizon's network, however, and do not indicate whether the fiber is lit or dark because that information changes on almost a daily basis. See Verizon Lacouture/Ruesterholz Reply Decl., para. 110-11. If a dark fiber inquiry indicates that dark fiber is available, competitive LECs may order an optional Field Survey prior to submitting an Access Service Request to verify the availability of spare fiber pairs and to ascertain the dark fiber's current transmission characteristics. If a dark fiber inquiry indicates that dark fiber is not available, competitive LECs may order a Field Survey to have Verizon dispatch technicians to verify Verizon's inventory records. See Verizon Lacouture/Ruesterholz Decl., para. 237.

⁵¹⁶ See Verizon Lacouture/Ruesterholz Reply Decl., para. 110.

⁵¹⁷ Cavalier Comments at 13. Verizon argues that the number of rejected orders represents a very small percentage of Cavalier's monthly POTS loop orders. See Verizon Virginia Reply at 19; Verizon Lacouture/Ruesterholz Reply Decl., para. 15. Verizon also states that Cavalier does not lose the opportunity to serve these customers because they could still be served through resale or UNE-P. See Verizon Lacouture/Ruesterholz Reply Decl., para. 15.

⁵¹⁸ Verizon Lacouture/Ruesterholz Reply Decl., para. 12.

⁵¹⁹ See Verizon Lacouture/Ruesterholz Reply Decl., para. 13.

contends that only a small percentage of loops in Virginia, less than 1.5 percent, are served by IDLC facilities where no alternative copper facilities are available.⁵²⁰ Moreover, the scope of the problem will only decrease over time because Verizon provides additional copper facilities and Universal Digital Loop Carrier (UDLC) facilities when it is time to add more facilities to an outside plant terminal that has reached capacity.⁵²¹ In light of the limited scope of this problem, we find that Verizon's procedures to search for spare copper facilities when a customer is served by an IDLC loop are reasonable and the allegations raised do not warrant a finding of checklist noncompliance.

149. *xDSL Loops.* Cavalier complains that Verizon refuses to provide loops over 18,000 feet to competing carriers seeking to offer xDSL service even when competitive LECs' equipment is capable of offering DSL services at those loop lengths.⁵²² Verizon clarifies that it does offer such loops through its loop conditioning offerings.⁵²³ Although DSL-capable loops typically contain load coils that are necessary for the provision of voice service, Verizon states that it will remove those load coils for a competitive LEC pursuant to an interconnection agreement and subject to applicable loop conditioning charges.⁵²⁴ In the absence of additional evidence to the contrary, we find that Verizon's offerings for the provision of DSL-capable loops over 18,000 feet are reasonable, and that Cavalier's allegations are insufficient to rebut Verizon's evidence demonstrating checklist compliance.

150. *Other Loop Issues.* WorldCom asserts that Verizon is not operationally ready to provide access to sub-loops without an intermediary device at the network interface device (NID) and the Feeder Distribution Interface (FDI), as required by the *Virginia Arbitration Order*.⁵²⁵ WorldCom claims that Verizon will have to establish new procedures for competitive carriers to coordinate with Verizon to access the sub-loop and that Verizon will not "instantaneously" be able to provide such access.⁵²⁶ WorldCom claims that Verizon has not asked WorldCom to propose a method for accessing subloops without an intermediary device and that Verizon has not delineated procedures for doing so.⁵²⁷ Verizon states that no competing carrier has sought access to sub-loops in Virginia, either with or without an intermediate device,

⁵²⁰ See Verizon Lacouture/Ruesterholz Reply Decl., para. 14.

⁵²¹ *Id.*

⁵²² Cavalier Comments at 11.

⁵²³ Verizon Virginia Reply at 19, n.17; Verizon Lacouture/Ruesterholz Reply Decl., para. 50.

⁵²⁴ *Id.*

⁵²⁵ WorldCom Comments at 12. This requirement is memorialized in the interconnection agreement between WorldCom and Verizon, approved by the Bureau in the *Virginia Arbitration Approval Order*.

⁵²⁶ *Id.* at 13.

⁵²⁷ WorldCom Oct. 17 *Ex Parte* Letter at 3.

as of October 15, 2002.⁵²⁸ We find that WorldCom's unsubstantiated allegations that Verizon will be unable, if asked, to provide access to sub-loops as required by its interconnection agreements does not warrant a finding of checklist noncompliance.

151. *Line Sharing and Line Splitting.* Covad argues that Verizon discriminates against competitors by refusing to provision UNE line shared loops for customers served by resale voice providers.⁵²⁹ Covad complains that when it submits orders for UNE line shared loops for customers served by resellers of Verizon's voice service, Verizon refuses to provision the line sharing UNE, returning a rejection notice indicating "third party voice."⁵³⁰ We disagree with Covad that Verizon is obligated to provide access to the high frequency portion of the loop when the customer's voice service is being provided by a reseller, and not by Verizon. Our rules do not require incumbent LECs to provide access to the high frequency portion of the loop when the incumbent LEC is not providing voice service over that loop.⁵³¹ We disagree with Covad that Verizon is still considered the voice provider when a reseller is providing resold voice service to an end user customer. We agree, therefore, with Verizon that it is not required to provide access to the high frequency portion of the loop under these circumstances.⁵³² We note that Verizon does permit the resale of its DSL service over resold voice lines so that customers purchasing resold voice are able to obtain DSL services from a provider other than Verizon.⁵³³

E. Checklist item 8 – White Pages

1. Background

⁵²⁸ Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (Verizon Oct. 22 Operational Readiness *Ex Parte* Letter), at 3.

⁵²⁹ Covad Comments at 27.

⁵³⁰ *Id.*

⁵³¹ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*), para. 72; see also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101 (2001) (*Line Sharing Reconsideration Order*), para. 17. The Commission is also currently reconsidering the extent of an incumbent's obligation to provide access to certain unbundled network elements in its *Triennial Review*.

⁵³² Verizon Lacouture/Ruesterholz Reply Decl., para. 71.

⁵³³ See Verizon Lacouture/Ruesterholz Reply Decl., para. 71. Competitive LECs serving their customers through resold voice can also convert their resold lines to UNE-platform and then engage in line splitting with a data competitive LEC. *Id.*

152. Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide “[w]hite page directory listings for customers of the other carrier’s telephone exchange service.”⁵³⁴ The Commission has previously found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provides white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.⁵³⁵

2. Discussion

153. Based on the evidence in the record, we conclude, as did the Virginia Hearing Examiner,⁵³⁶ that Verizon satisfies checklist item 8. A number of parties contend that Verizon does not provide directory listings to competing carriers with the same accuracy and reliability that it provides its own customers.⁵³⁷ Specifically, commenters argue that Verizon processing errors lead to lost and incorrect directory listings and that the listing verification process that Verizon has put in place in Virginia is inconsistent with the demands of section 271.⁵³⁸ Commenters’ concerns are shared, to a limited degree, by the Department of Justice and the Virginia Hearing Examiner, both of which express concern with Verizon’s ability to provide non-discriminatory access to white pages.⁵³⁹ Because white pages listings cannot be changed for an entire year after a directory has been published, we recognize that errors or missing listings can have a significant impact on a carrier’s service relationship with its end user customers.⁵⁴⁰ Nevertheless, we recognize that producing error-free directory listings can be a complex endeavor, especially when the listings involve more customized features or instructions or when the listings are modified multiple times throughout the year leading to publication.⁵⁴¹ We take

⁵³⁴ 47 U.S.C. § 271(c)(2)(B)(viii).

⁵³⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

⁵³⁶ Virginia Hearing Examiner’s Report at 147.

⁵³⁷ Verizon explains that it “provides non-discriminatory appearance and integration of white pages directory listings to customers of CLECs.” Verizon Lacouture/Ruesterholz Decl., para. 318. We have no reason to doubt this contention, especially in light of the fact that no parties challenge Verizon’s claim.

⁵³⁸ *See generally* Cavalier Comments at 21; NTELOS Comments at 10; AT&T Comments at 11.

⁵³⁹ Department of Justice Virginia Evaluation at 7-8; Virginia Hearing Examiner’s Report at 144-46.

⁵⁴⁰ Department of Justice Virginia Evaluation at 9; Virginia Hearing Examiner’s Report at 146.

⁵⁴¹ Verizon states that there are many factors involved in the production of the final directory listing. Simple listings consist of name, address and telephone number only. Other alternatives are available which make the listing more complex, such as business listings with multiple indented layers under a main heading. Additionally there are several types of listings, for example foreign listings, alternate call listings, multiple name listings, as well as many other variations. This directory listing process can be further complicated depending upon the method of entry the competitive LEC is using to provide service. In resale or UNE Platform cases, Verizon supplies the dialtone and therefore is always aware of the telephone number associated with the account. In cases where service is provided (continued...)

these factors into consideration in assessing Verizon's compliance in providing directory listings in a nondiscriminatory manner. As we describe more fully below, we find that Verizon has already implemented numerous system improvements that demonstrate Verizon's ability to provide nondiscriminatory access to directory listings. Although we recognize, as does Verizon, that there have been serious problems in the past, we find that Verizon has taken the necessary steps to mitigate the problems and has demonstrated a commitment to fix any unanticipated future problems that may arise.⁵⁴²

154. In order to better understand this matter, we begin with a brief description of Verizon's process for handling requests for directory listings from competing carriers. Directory listing information⁵⁴³ is submitted to Verizon by competitive LECs on a local service request (LSR) using one of Verizon's application to application interfaces, such as the Electronic Data Interchange (EDI), or Web-based Graphical User Interface (Web GUI).⁵⁴⁴ These applications are the same interfaces used by carriers to submit service orders. The LSR enters through Verizon's gateway systems and the directory listing information is translated, either manually or on a flow-through basis, from the LSR into internal Verizon service orders generated via the service order processor.⁵⁴⁵ Each business day, completed service orders are transmitted from the service order processor to the directory publishing unit, Verizon Information Systems (VIS).⁵⁴⁶ VIS translates that information into a format used by its own internal systems and ultimately used to produce the actual directory listings for publication. Thirty days prior to the closing of a directory, VIS produces and sends listing verification reports (LVRs) to each competitive LEC.⁵⁴⁷ The LVRs

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using unbundled standalone loops, the competitive LEC provides the dial tone and the number out of its own switch. Verizon does not know what the telephone number will be and therefore cannot automatically arrange for the listing. Verizon McLean/Wierzbicki/Webster Decl., paras. 99-101.

⁵⁴² The Department of Justice notes that some of these improvements were too recent for it to determine compliance with section 271. Department of Justice Virginia Evaluation at 9. Should Verizon's performance deteriorate with respect to these improvements, we may take appropriate enforcement action.

⁵⁴³ Verizon provides a basic single line listing in the appropriate Verizon White Pages directory for each customer served by the competitive LEC. These listings include the competitive LEC's customer name, address, and telephone number and are identical to those provided to Verizon's customers. See Lacouture/Ruesterholz Decl., para. 316. Verizon also provides a competitive LEC's business customers with a basic Yellow Page listing, at no charge. Although Cavalier raises concerns regarding its inability to process changes to business customers Yellow Pages directory listings, we note that Yellow Pages are not relevant to our examination of checklist compliance. See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

⁵⁴⁴ Verizon McLean/Wierzbicki/Webster Decl., para. 31.

⁵⁴⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 98.

⁵⁴⁶ Verizon McLean/Wierzbicki/Webster Decl., para. 98.

⁵⁴⁷ Among other things, the reports in the LVR help the competitive LEC to verify the type of listing, name, address, listed number, class of service, directory appearance, and check for typographical errors before the listing is sent to the directory publisher. Verizon McLean/Wierzbicki/Webster Decl., para. 109.

are available in paper format or electronically.⁵⁴⁸ Competitive LECs may review the LVR and compare it against their own internal records to verify accuracy. During the next 30 days, competitive LECs may submit changes to VIS to ensure final accuracy.

a. Processing Errors

155. Competitors contend that Verizon has not taken adequate steps to ensure that the customer information remains accurate as it is transferred internally between various internal Verizon systems prior to reaching VIS.⁵⁴⁹ According to these parties, at some point between the submission of the LSR by the competitive LEC, and Verizon's production of the LVR, records may disappear or be modified in error.⁵⁵⁰ These occurrences can be exacerbated because upon discovery of an omission or error, competitive LECs must re-enter the listing information and generate a new service order, despite earlier confirmation notices sent by Verizon.⁵⁵¹ Competitors contend that this additional step unnecessarily increases costs by requiring competing carriers to invest in extra manpower to perform quality assurance checks on Verizon's product.⁵⁵² Without this re-check, however, competing carriers contend that thousands of customers potentially could be omitted from the directory, or submitted incorrectly.⁵⁵³ In essence, commenters question whether Verizon has implemented proper internal safeguards to prevent processing errors associated with directory listings.

156. As mentioned above, although the record indicates that Verizon has had difficulties in producing accurate and reliable directory listings in the recent past, we find that Verizon has, prior to having filed its application, taken steps necessary to remedy these problems and is currently providing directory listings on a nondiscriminatory basis. Specifically Verizon has: (1) instituted a quality verification check on all LSRs manually adjusted by Verizon; (2) performed several system modifications to improve accuracy and flow-through of directory

⁵⁴⁸ Verizon McLean/Wierzbicki/Webster Decl., para. 109; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 42.

⁵⁴⁹ Cavalier Comments at 21-22; NTELOS Comments at 10; AT&T Comments at 16.

⁵⁵⁰ Cavalier Comments at 25; NTELOS Comments at 11; Letter from Amy Alvarez, District Manager, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 12, 2002)(AT&T Sept. 12 White Pages *Ex Parte* Letter) at 10.

⁵⁵¹ Cavalier Comments at 25; NTELOS Comments at 10.

⁵⁵² Cavalier Comments at 26; AT&T Reply at 15.

⁵⁵³ Potentially, the competitive LEC could lose customers because they perceive the competitive LEC to be fully responsible for their services, regardless of the fact that some errors are the result of Verizon's actions. Cavalier Comments at 26-27. Competitive LECs state that this process is most severe and anti-competitive because the problems cannot be corrected for the period of a year when the next directory listing is produced. AT&T Comments at 16. In addition, Cavalier contends this puts the competitive LEC at a disadvantage, and Verizon may win back the customers thus giving them an unfair advantage and little incentive to provide accurate directory listings. Cavalier Comments at 27. *See generally* Cavalier Sept. 20 *Ex Parte* Letter.

listing LSRs; (3) implemented measure OR 6-04 to measure the accuracy of manual entries performed by Verizon; (4) provided more accurate and accessible LVRs to the competitive LECs; and (5) provided competitive LECs with educational opportunities regarding submission of directory listing LSRs. We discuss each of these measures in more detail below.

157. *Quality Verification Checks.* Over the course of the last year, Verizon has taken several steps to avoid errors associated with manual processing by implementation of a quality verification process for manually processed directory listing orders and additional system modifications.⁵⁵⁴ Since October of 2001, Verizon has implemented an additional check of all “listing affecting” records that are manually entered by the National Market Center to ensure that information obtained in the LSR matches information that was keyed into the service order processor. Specifically, each directory listing request that requires manual processing is given an additional level of review prior to publication to ensure that the information contained in the directory listing order matches the information formatted on the LSR.⁵⁵⁵ Upon review, if discrepancies are detected a Verizon representative corrects the service order prior to sending it to VIS.⁵⁵⁶

158. *System Modifications and Improved Flow-Through.* In addition to the verification process, Verizon has implemented a system fix to reduce the possibility of human error when a competitive LEC is conducting a migration of a Verizon retail end user, resale customer or UNE-Platform customer.⁵⁵⁷ Specifically, in February 2002, Verizon implemented changes to the End User Retail Listing (ERL) field which is designed to prevent errors in the manual modification of a directory listing.⁵⁵⁸ Prior to these system changes, the ERL field could only be used on full migrations where the listing was either to be kept “as is,” to change completely, or to be deleted. The functionality of the ERL field now has been modified to be used on partial migrations in addition to full migrations and to allow competitive LECs to provide further instructions for all listings that are associated with the services to be migrated by making an indication in the ERL field.⁵⁵⁹ This modification expands the functionality of the ERL

⁵⁵⁴ Verizon Virginia Reply at 31-32; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 33.

⁵⁵⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 107.

⁵⁵⁶ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 37.

⁵⁵⁷ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 34.

⁵⁵⁸ The ERL field is designed to ensure that competitive LECs need not restate the entire directory listing information on an LSR. Verizon McLean/Wierzbicki/Webster Decl., para. 98. In the third quarter of 2001, a change request related to listing migration was opened in the Change Management Process. Verizon, together with the competitive LECs collaborated on changes to expand the function of the ERL field and to improve upon the directory listing process. These collaborative changes were implemented in the February 2002 release. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 34.

⁵⁵⁹ Verizon McLean/Wierzbicki/Webster Reply Decl., paras. 33-35. With this field expansion, competitive LECs were given additional options of “positive reporting” of directory listings or “end state reporting.” “Positive (continued....)”

field and allows competitive LECs to have more control over the listings of their customers, as well as ensures that proper instructions are given to Verizon regarding the submission of a directory listing LSR.⁵⁶⁰

159. In addition, since the time of the February 2002 release, flow-through of competitive LEC stand alone directory listings orders from the LSR to the VIS database has increased dramatically. From February to July 2002, flow-through ranged from 75 percent to 90 percent, as compared to the 35 percent flow-through rate in January.⁵⁶¹ As a result of better flow through there has been a significant decrease in pre-production directory errors. In 2001, Cavalier had over 7,000 pre-production listing errors in the Richmond directory. As of September 4, 2002, that figure has dropped to 1,392 for Cavalier customers in the Richmond Directory, and according to Verizon, this figure represents a decrease of nearly 80 percent in the number of pre-production errors as compared to the Cavalier 2001 LVR for Richmond.⁵⁶² Additionally, the South Hampton Roads directory decreased in pre-publication errors as reported by Cavalier from 5,857 in 2001, to 2,967 in 2002, a decrease in the error rate of approximately 50 percent.⁵⁶³ While the ERL field modifications have shown tangible success, Verizon has continued to address specific systems issues as they arise. For example, Verizon recently discovered that incorrect coding in the flow-through programming had caused certain listings to not match what was submitted on the LSR.⁵⁶⁴ On July 24, 2002, Verizon implemented a software fix to correct the problem that affected stand-alone listing LSRs and some directory listings associated with loop accounts.⁵⁶⁵

160. *Measure OR 6-04 and Special Study.* In the same time frame as the ERL field modification, Verizon implemented measure OR 6-04, a Carrier-to-Carrier measure tracking the accuracy of manual entries performed by the National Market Center (NMC).⁵⁶⁶ This measure (Continued from previous page) _____ reporting” verifies the listing in the following ways: move the listing as is, delete, change. “End state reporting” allows competitive LECs to specify how the listing will look after the migration. *Id.* at 35.

⁵⁶⁰ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 33.

⁵⁶¹ Verizon Virginia Reply at 32.

⁵⁶² The Richmond directory closed on September 13. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 40. Verizon states that its directory listings contain more than 300,000 entries for competitive LECs, and over 55,000 entries for resellers. Verizon Aug. 28 OSS/White Pages *Ex Parte* Letter Attach. at 14.

⁵⁶³ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 40.

⁵⁶⁴ Verizon McLean/Wierzbicki/Webster Decl., para. 118.

⁵⁶⁵ Verizon performed an additional software fix on August 1, 2002, when it discovered that listings could potentially be incorrectly filed with disconnect LSRs for UNE loops. Verizon McLean/Wierzbicki/Webster Reply Decl., para. 45. Verizon has identified approximately 300 affected LSRs in Virginia and is working with competitive LECs to ensure that corrective service orders are processed prior to the close of the directory listings. *Id.*

⁵⁶⁶ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 38.

consists of a random sample of LSRs that affect directory listings and makes a comparison between the LSR and the service order.⁵⁶⁷ Although, according to Verizon, there can be valid reasons for discrepancies between the VIS listing and a service order due to subsequent service order activity, or a new listing being added when the previous listing has not yet been removed by the carrier upon disconnection,⁵⁶⁸ Verizon points out that both the rate of discrepancy and the Verizon correction rate are decreasing, thus showing the effect of the improvements to the systems and processes.⁵⁶⁹

161. Verizon acknowledges that measure OR 6-04 only addresses the process from the LSR to the service order and not the service order to the VIS. For this reason, some parties suggest that the Commission should not rely on measure OR 6-04 because it is an incomplete measure.⁵⁷⁰ We note, however, that Verizon instituted a special six month study on the latter half of the directory listing submission process that compared the accuracy between the service order information and the data contained in the VIS systems.⁵⁷¹ Because the information contained in VIS is the same information used to generate the LVR,⁵⁷² Verizon's special study serves as a double check of the LVR. Specifically, the special study followed the randomly selected local service requests through the final process of entry into the VIS database,⁵⁷³ and confirms that the information contained in the VIS database matches the information on the service order

⁵⁶⁷ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 38.

⁵⁶⁸ Verizon McLean/Wierzbicki/Webster Decl., para. 114.

⁵⁶⁹ See Appendix B, OR 6-04-1030 (% Accuracy – Other Directory Listing Orders). Verizon states that upon further review of Cavalier's reported discrepancies in the 2002 LVR, the ratio of discrepancies for the South Hampton Roads directory was 9.96% (3.09% required Verizon corrections); 5.87% for Petersburg (2.48% required Verizon corrections); and 2.89% as of September 4, 2002. McLean/Wierzbicki/Webster Reply Decl., para. 39. See also *Id.* at 40. Verizon reported that it has received a total of 16 post-production complaints for directory listings, 13 from Verizon customers, and 3 from competitive LEC customers. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 9. AT&T contends that Verizon's comparison demonstrates a "large discrepancy" between retail and wholesale post-publication directory listings error rates. Letter from Amy Alvarez, District Manager, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 7, 2002) (AT&T Oct. 7 Loops/White Pages/VA SCC *Ex Parte* Letter) at 6; see also Letter from Alan M. Shoer, Assistant General Counsel, Cavalier Telephone, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 27, 2002). We are unconvinced that the data supplied by Verizon supports such a conclusion. Unlike performance metrics that rely on formal business rules to establish specifically what data points are included and excluded from measurement, the data filed by Verizon comparing retail and wholesale post-publication directory listings errors is informal and difficult to validate. As such, we do not rely on Verizon's comparison of retail and wholesale errors in finding that Verizon complies with checklist item 8.

⁵⁷⁰ See generally Cavalier Reply at 6; AT&T Reply at 15.

⁵⁷¹ Verizon Mclean/Wierzbicki/Webster Decl., para. 114.

⁵⁷² Verizon Mclean/Wierzbicki/Webster Decl., para. 114.

⁵⁷³ Verizon Mclean/Wierzbicki/Webster Reply Decl., para. 38.

submitted by Verizon (which, as discussed above was subject to the quality verification check to ensure it matches the LSR submitted by the competitive LEC).⁵⁷⁴ Using the randomly sampled service orders from the OR 6-04 metric, the results show that the match rate for information contained in the VIS systems was 96 percent in April 2002, 99.5 percent in May 2002, 97.9 percent in June 2002, and 99.26 percent in July 2002.⁵⁷⁵

162. *Listing Verification Process.* In addition to the improvement Verizon has made to ensure accuracy and reliability as directory listing requests make their way through Verizon's internal processes, Verizon provides competitive LECs with an LVR prior to the conclusion of a directory, so that each competitive LEC can conduct a review of its listings and make necessary adjustments prior to the book being published.⁵⁷⁶ Among other things, the reports in the LVR help the competitive LEC to verify the type of listing, name, address, listed number, class of service, directory appearance, and check for typographical errors before the listing is sent to the directory publisher.⁵⁷⁷

163. Prior to August 1, 2002, the LVR was sent in document form to competitive LECs 30 business days prior to the service order close date for information to be included in the print directory.⁵⁷⁸ Competitors complained that it was a cumbersome paper report that required "stare and compare" to review listing accuracy.⁵⁷⁹ In addition, the LVR auditing process was viewed as an unmanageable and manually intensive process.⁵⁸⁰ In response to competitors' concerns, Verizon made available, on August 1, 2002, an electronic form of the LVR which, unlike the old format, can be imported into a database, and is sortable by various fields to ease in reviewing the

⁵⁷⁴ Using the sample of service orders from the OR-6-04 metric, the information from the service orders that were entered into Verizon's service order processor was compared to the information updated in the VIS systems. The VIS system generates both the LVR and the final directory listings for publication. In July, the match rate of the service orders to the information in the VIS database was 99.26 %. Verizon Information Services has resolved the remaining .74 % (3 service orders). Mclean/Wierzbicki/Webster Reply Declaration para. 38.

⁵⁷⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 114; Verizon McLean/Wierzbicki/Webster Reply Decl., para. 38.

⁵⁷⁶ Verizon McLean/Wierzbicki/Webster Decl., para. 109.

⁵⁷⁷ Verizon McLean/Wierzbicki/Webster Decl., para. 109.

⁵⁷⁸ Verizon McLean/Wierzbicki/Webster Decl., para. 109.

⁵⁷⁹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 42.

⁵⁸⁰ Virginia Hearing Examiner's Report at 139; Cavalier Comments at 25; NTELOS Comments at 10.

accuracy of a competitive LECs' listings.⁵⁸¹ At this time, there have been seven requests for electronic LVRs.⁵⁸²

164. *Directory Listings Workshops.* Finally, since January 2001, Verizon has conducted several education workshops and training sessions specifically designed to educate and assist competitive LECs in the submission of accurate directory listing LSRs.⁵⁸³ These workshops presented a variety of topics, including an overview of the directory listing process, as well as special training on caption listings, foreign listings, additional listings and 800 service listings.⁵⁸⁴ Further, on its wholesale website, Verizon provides competitive LECs with extensive directory listing product documentation, as well as procedures for creating customer's directory listings.⁵⁸⁵ In the event that the competitive LECs have experienced problems with submitting directory listing requests, they can contact Verizon's Wholesale Customer Care Center, or the Customer Inquiry Response Team for assistance.⁵⁸⁶

165. We find that the steps taken by Verizon are reasonable actions intended to assure an improvement in the quality of its directory listings. We conclude that Verizon provides sufficient tools and training for competitive LECs to review and correct errors in their directory listings prior to publication. In addition, it appears that the system modifications and processing changes have substantially increased the accuracy of the listings and significantly reduced the number of pre-production errors.⁵⁸⁷ Accordingly we find that Verizon satisfies the requirements of checklist item 8.

166. Finally, we take comfort in the Virginia Commission's active and continued oversight on this issue through a continuing examination of Verizon's directory listings processes as well as the development of additional metrics to better evaluate the provisioning of directory listings.⁵⁸⁸ This process should lead to even further improvements in this area and continue the trend in lowering the directory listing error rate.

⁵⁸¹ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 42.

⁵⁸² Verizon McLean/Wierzbicki/Webster Reply Decl., para. 42. These seven requests represent a region-wide total.

⁵⁸³ Verizon Virginia Application at 62.

⁵⁸⁴ Verizon McLean/Wierzbicki/Webster Decl., para. 111.

⁵⁸⁵ Verizon McLean/Wierzbicki/Webster Decl., para. 110.

⁵⁸⁶ Verizon McLean/Wierzbicki/Webster Decl., para. 110.

⁵⁸⁷ Verizon Mclean/Wierzbicki/Webster Reply Decl., para. 40.

⁵⁸⁸ Virginia Hearing Examiner's Report at 145-47.

b. Use of LVR Process

167. A number of parties also contend that the LVR process is inherently discriminatory. Specifically, Cavalier, NTELOS, and AT&T allege that the LVR is cumbersome, inaccurate, and riddled with problems.⁵⁸⁹ As part of the verification process, if some of a competitive LECs' listings did not make it to the VIS database or were entered incorrectly, the competitor must check Verizon's inputs for accuracy and omissions, then reenter the listing information. Even with this additional level of review, these parties claim that errors still occur in the final published directory.⁵⁹⁰ This process of re-submitting listings requires competitive LECs to dedicate extra staff and resources to resolve problems that are not seen by the competitive LECs as their responsibility.⁵⁹¹ In essence, these parties argue that Verizon has forced them to undergo quality checks that should be performed by Verizon itself.⁵⁹² In particular, AT&T contends that it is Verizon's responsibility as a provider of OSS to ensure that its directory listing offering is a quality product.⁵⁹³

168. We find that Verizon's use of the LVR is reasonable in this context. First, as we described above, Verizon has taken a number of steps to improve its own internal accuracy and reliability issues. Second, we agree with Verizon that directory listings, especially those involving business customers, potentially introduce additional layers of complexity to the process that can impact accuracy and reliability.⁵⁹⁴ We believe the availability of the LVR affords a competitor the opportunity to review its listings before publication, and further improves the accuracy of directory listings. The LVR is only one additional tool that Verizon makes available as an option to competing carriers.⁵⁹⁵ In other words, the creation of the LVR has not been Verizon's only response to the problem. Finally, we note that the Commission does

⁵⁸⁹ Cavalier Comments at 25; NTELOS Comments at 10.

⁵⁹⁰ Cavalier states that in the most recent Richmond directory, there were 34 errors attributable to Verizon in the final book, and 8 errors attributable to Cavalier. Cavalier Comments at 26. Cavalier states that in the current Richmond LVR (which closed September 13, 2002) contains 895 errors so far. Cavalier Comments at 22. NTELOS argues that of its 750 listings in the Staunton LVR, 10% were inaccurate, and "several" NTELOS customers were totally omitted from the directory despite receiving confirmed directory orders. NTELOS Comments at 11.

⁵⁹¹ Cavalier Comments at 26; AT&T Sept. 12 White Pages *Ex Parte* Letter, Attach. at 5.

⁵⁹² AT&T argues that it is Verizon's responsibility as providers of OSS to ensure that their directory listings products are correct. AT&T Reply at 15.

⁵⁹³ AT&T Reply at 15.

⁵⁹⁴ Verizon McLean/Wierzbicki/Webster Decl., paras. 99-101.

⁵⁹⁵ AT&T contends that Verizon does not use the LVR for its retail customers, and therefore AT&T believes that Verizon is discriminatory in its quality control processes. AT&T Oct. 7 Loops/White Pages/VA SCC *Ex Parte* Letter at 7. Because the LVR is only one of many tools employed by Verizon to ensure accuracy and reliability, we find that AT&T's argument alone does not rebut Verizon's showing of checklist compliance.

not assess checklist compliance by examining individual aspects of a BOCs showing in isolation. Rather, it has been the Commission's precedent to review checklist items based on the totality of the circumstances.⁵⁹⁶ In light of the various improvements that Verizon has made to its directory listings process, along with the fact that the LVR is an optional tool, we conclude that Verizon's use of the process is not inherently discriminatory.

c. Other Issues

169. *Alpha/Numeric Listing Identifiers (ALI) Codes.* Verizon uses industry standard ALI codes for the purpose of tracking multiple listings within the same billing account with its own unique identifier for each listing.⁵⁹⁷ Upon request, Verizon provides competitive LECs with a weekly ALI Code Report that contains a list of the competitive LEC's ALI codes for directory listings associated with loop and facilities-based services.⁵⁹⁸ Competitive LECs need correct ALI codes in order to properly submit changes or deletions to Verizon for directory listings.⁵⁹⁹ Cavalier contends that certain modifications cannot be performed because incorrect ALI codes provided by Verizon result in a mismatch between the ALI code/Telephone Number combination on the LSR and data stored in Verizon's database.⁶⁰⁰ Notably, Verizon has demonstrated that this issue is limited to a mere 16 LSRs, each of which were manually processed by Verizon.⁶⁰¹ While, in theory, incorrect ALI codes could prevent Cavalier from making timely changes to the LSR, we note that this issue is isolated and, as such, is not a problem of competitive significance. Notably, Verizon has manually processed the 16 affected LSRs.⁶⁰² We believe that this issue alone does not rebut Verizon's showing that its white pages offering is checklist compliant. Although it is not necessary to make our finding of checklist

⁵⁹⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 45; *Verizon Maine Order*, 17 FCC Rcd 11,660 para. 6.

⁵⁹⁷ The ALI Code is 3-6 characters long and appears with the directory listing on a customer service request (CSR). *Verizon McLean/Wierzbicki/Webster Decl.*, para. 104. If a business has multiple lines or a residential customer wants individual listings for each family member, Verizon assigns a separate ALI code to each listing, rather than just to each account. When a competitive LEC changes or deletes a listing they must supply both the account number and the ALI code for that specific listing, which ensures that the correct listing is processed. *Id.* para. 105.

⁵⁹⁸ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 9.

⁵⁹⁹ Verizon Aug. 28 OSS/White Pages *Ex Parte* Letter Attach. at 7.

⁶⁰⁰ Cavalier Comments n.12; Cavalier Reply at 10; *Verizon McLean/Wierzbicki/Webster Reply Decl.*, para. 46. At the hearing before the Virginia Hearing Examiner, Verizon asserted that Cavalier's errors occurring in 2001 pre-production LVRs were a result of Cavalier not processing the records with the correct ALI code. Cavalier further contends that the ALI code is not provided in "real time" or in a useable format for competitive LECs with large amounts of customer listings. Cavalier Reply at 9.

⁶⁰¹ *Verizon McLean/Wierzbicki/Webster Reply Decl.*, para. 46.

⁶⁰² *Verizon McLean/Wierzbicki/Webster Reply Decl.*, para. 46.

compliance, we also take comfort in the fact that Verizon has implemented a forward-looking repair to avoid the distribution of erroneous ALI codes on September 21, 2002.⁶⁰³

170. We note that, during the pendency of this application, Cavalier claimed that Verizon provided it with an ALI Code Report that contained additional listings for a billing account number (BAN) not associated with Cavalier.⁶⁰⁴ This single incident, however, does not change our conclusion above that Verizon's delivery of ALI codes is consistent with its section 271 obligations. We are reassured by the fact that the incorrect report was caused by events that do not occur in the regular course of business. Verizon explains that the discrepancy was caused during a special project to eliminate duplicate BANs.⁶⁰⁵ Additionally, Verizon has quickly taken steps to address the issue including providing additional training for the sole NMC representative responsible for adding the additional BAN.⁶⁰⁶ Because this incident represents neither a systemic or on-going problem, we find it does not negate Verizon's showing of checklist compliance for directory listings.

171. *Customer Compensation for Omission from Directory Listing.* Cavalier contends that in Richmond 2001 directory, thirty-four final production errors could be attributed to Verizon, and eight errors were attributable to Cavalier.⁶⁰⁷ Cavalier alleges that it takes responsibility for errors it creates, but that Verizon takes no responsibility for its errors.⁶⁰⁸ Furthermore, Cavalier argues that it makes restitution to its omitted customers regardless of whether Cavalier or Verizon was responsible for the error.⁶⁰⁹ Verizon, however, asserts that the parties have specified how liability for directory listing errors will be handled in their interconnection agreement, and that Verizon's tariff similarly addresses Verizon's liability for any directory listing errors.⁶¹⁰ Our rules do not address the assignment of liability and responsibility for restitution in these circumstances. We believe that concerns regarding customer compensation are best handled through interconnection negotiations and associated dispute resolution processes. As such, this issue does not result in a finding of checklist non-compliance.

⁶⁰³ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 46.

⁶⁰⁴ Cavalier Reply at 10-11.

⁶⁰⁵ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 10.

⁶⁰⁶ Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 10.

⁶⁰⁷ Cavalier Comments at 26.

⁶⁰⁸ Cavalier Comments at 26.

⁶⁰⁹ Cavalier Comments at 26.

⁶¹⁰ Verizon McLean/Wierzbicki/Webster Reply Decl., para. 44.

V. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

172. Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252.⁶¹¹ Based on our review of the record, we conclude, as did the Virginia Hearing Examiner,⁶¹² that Verizon is in compliance with the requirements of this checklist item. In reaching this conclusion, we examine, as in prior section 271 orders, Verizon's performance in providing interconnection trunks and collocation to competing carriers. We find that Verizon has consistently met the vast majority of its performance benchmarks or retail comparison standards for this checklist item.⁶¹³ We note that no commenter disputes Verizon's interconnection quality or timeliness, and that the Virginia Hearing Examiner found that Verizon's commercial performance in trunk provisioning and maintenance satisfied the checklist.⁶¹⁴

173. We also find that Verizon provides interconnection in Virginia at any technically feasible point, including a single point of interconnection within the LATA,⁶¹⁵ as we have required in previous section 271 proceedings.⁶¹⁶ Although some parties argue that Verizon's GRIPS policy frustrates the Commission's rule requiring incumbent LECs to offer competing carriers the ability to interconnect at a single point per LATA,⁶¹⁷ we conclude that the evidence presented does not demonstrate a violation of our existing rules. As in previous section 271 orders involving Verizon, we need not find in this application whether GRIPS complies with our rules requiring that Verizon offer competing carriers the ability to interconnect at a single point in a LATA. Verizon has demonstrated that it has entered into at least one interconnection

⁶¹¹ 47 U.S.C. § 271(c)(2)(B)(i).

⁶¹² Virginia Hearing Examiner's Report at 28.

⁶¹³ From April through June, Verizon met its installation appointments for providing interconnection trunks to competitive LECs 100 percent of the time in Virginia. Verizon Lacouture/ Ruesterholz Decl., para. 27.

⁶¹⁴ Virginia Hearing Examiner's Report at 25.

⁶¹⁵ See Verizon Lacouture/Ruesterholz Decl., para. 9.

⁶¹⁶ See *SWBT Texas Order*, 15 FCC Rcd at 18390, para. 78; *Verizon Massachusetts Order*, 16 FCC Rcd at 9092, para. 182.

⁶¹⁷ See Cavalier Comments at 3-6, NTELOS Comments at 9. According to Cavalier, Verizon's Geographically Relevant Interconnection Points (GRIPS) policy creates a distinction between a physical point of interconnection ("POI") and an interconnection point ("IP") that is the demarcation for carriers' financial responsibilities for reciprocal traffic. Cavalier maintains that Verizon's GRIPS policies unfairly shift Verizon's network cost responsibilities to competing carriers in violation of the "equal in quality" requirement of Section 251(c)(2) of the Act and the reciprocal compensation obligations of Section 251(b)(5).

agreement in Virginia that does not follow the GRIPS policy.⁶¹⁸ Thus, GRIPS is not the only form of network interconnection available in Virginia.⁶¹⁹

174. Covad also submits that Verizon's failure to provide adequate notice to competitors of the network changes associated with its Packet at Remote Terminal Service ("PARTS")⁶²⁰ rollout is a violation of the Act and the Commission's rules and requires the Commission to reject Verizon's section 271 application.⁶²¹ Covad claims that Verizon does not offer competitors nondiscriminatory access to information needed to interconnect with Verizon's PARTS network facilities as required by checklist item one. According to Covad, Verizon failed to adequately notify competitive LECs of its PARTS rollout and the associated network changes, as required by section 251(c)(5) of the Act and section 51.325 *et. seq.* of the Commission's rules.⁶²² In response, Verizon argues that its network disclosure for PARTS was fully compliant with the Act and Commission rules.⁶²³

175. As an initial matter, we note that Covad and WorldCom have filed oppositions to Verizon's PARTS tariff transmittal, pursuant to section 204 of the Act,⁶²⁴ on a number of

⁶¹⁸ Verizon Lacouture/Ruesterholz Decl., para. 37. Specifically, Verizon cites to its interconnection agreements with Cox (Verizon Virginia Application, App. O, Vol. 3, Tab 5, Sections 4.1.2 and 4.1.3), Cavalier (Verizon Virginia Application, App. O, Vol. 2, Tab 3, Attachment IV, Section 1.2.2), and WorldCom (Verizon Virginia Application, App. O, Vol. 4, Tab 6, Attachment IV, Section 1.2.2). *Id.* In the *Virginia Arbitration Order*, the Bureau concluded that the interconnection language proposed by competing carriers was more consistent than Verizon's GRIPS language with the right of competitive LECs to interconnect at any technically feasible point. *Virginia Arbitration Order*, para. 53. US LEC maintains that Verizon's recent behavior, including its August 1 industry letter, evidences an intention to disregard the directive of the *Virginia Arbitration Order* with respect to the single point of interconnection language to be included in the interconnection agreements that were the subject of the arbitration. US LEC Reply at 3-9. We find US LEC's evidence unpersuasive. Verizon has demonstrated that it has entered into at least one interconnection agreement in Virginia that allows a competing carrier to interconnect at a single physical point in a LATA already.

⁶¹⁹ For the same reasons, we find that Verizon does not violate its reciprocal compensation obligations under the checklist. See 47 U.S.C. § 271(c)(2)(B)(xiii). See Cavalier Comments at 3-6, NTELOS Comments at 9.

⁶²⁰ PARTS gives collocated carriers the ability to use the same facilities that Verizon will use to provide digital subscriber line service through remote terminals. Verizon Lacouture/Ruesterholz Reply Decl., paras. 51-52. Verizon states that PARTS is not currently available in Virginia. Verizon Sept. 25 OSS/White Pages *Ex Parte* Letter at 3.

⁶²¹ Covad Comments at 3-4. Covad opposed Verizon's PARTS tariff. See Covad Petition to Reject or, Alternatively, Suspend and Investigate, Verizon Transmittal No. 232, filed Aug. 16, 2002.

⁶²² Covad Comments at 3-6. Covad alleges that Verizon's notices provided insufficient information for Covad to make operationally ready its own OSS, provisioning processes, retail processes, and marketing, and failed to provide other information pertinent to competing carriers.

⁶²³ See Verizon Aug. 29 PARTS *Ex Parte* Letter, Attach. at 8-9. See also Verizon Lacouture/Ruesterholz Reply Decl., paras. 51-54.

⁶²⁴ 47 U.S.C. § 204.

grounds including network disclosure violations.⁶²⁵ The Pricing Policy Division of the Wireline Competition Bureau has suspended and set for investigation Verizon's PARTS tariff.⁶²⁶ To the extent the parties dispute Verizon's compliance with the notice requirements required under section 251(c)(5), they could also file complaints under section 208 of the Act. We find, however, as a general matter, that issues arising from Verizon's PARTS offering are not relevant to our review of Verizon's compliance with the checklist. As the Commission has found in previous section 271 orders, the provision of tariffed interstate access services is not within the scope of a BOC's compliance with the checklist.⁶²⁷ Therefore, we do not find that the issues raised by Covad surrounding Verizon's PARTS offering are germane to our review of Verizon's compliance with checklist item one.

176. Covad further alleges that Verizon unilaterally imposes higher charges for certain Virginia UNEs than those agreed to in Covad's interconnection agreement.⁶²⁸ Verizon states in response that Covad has not yet purchased any of the UNEs at issue.⁶²⁹ Verizon acknowledges that it cannot alter an agreed-upon rate in a contract and states that it will honor the lower rates in Covad's contract with respect to any purchases made by Covad.⁶³⁰ We find Verizon's response sufficient. Any remaining disputes over these particular charges would be most appropriately handled in a complaint proceeding since this appears to be a carrier-to-carrier dispute. We have previously stated that such disputes are not generally resolved in our section 271 decisions.

177. WorldCom asserts that Verizon is not operationally ready to interconnect local interconnection trunks using DS-3 interfaces everywhere that is technically feasible, including non-intermediate hub locations, as required by the *Virginia Arbitration Order*.⁶³¹ Verizon's obligation to do so has now been finalized in its interconnection agreement with WorldCom.⁶³² WorldCom alleges that Verizon must show that it has made modifications of its equipment at intermediate hub locations.⁶³³ Verizon states that it is already providing DS-3 interfaces for local

⁶²⁵ See Covad Petition to Reject or, Alternatively, to Suspend and Investigate, Verizon Transmittal No. 232, filed Aug. 16, 2002; WorldCom Petition to Reject or, in the Alternative, Suspend and Investigate, filed Aug. 16, 2002.

⁶²⁶ Verizon Telephone Companies, Tariff FCC Nos. 1 & 11, Transmittal No. 232, *Order*, DA 02-2140 (Chief, Pricing Policy Division, Wireline Competition Bureau Sept. 3, 2002).

⁶²⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 4127-28, para. 340.

⁶²⁸ Covad Comments at 19-20.

⁶²⁹ See Verizon Woltz/Garzillo/Prosini Reply Decl., para. 52.

⁶³⁰ Verizon Woltz/Garzillo/Prosini Decl., para. 87; Verizon Woltz/Garzillo/Prosini Reply Decl., paras. 51-52.

⁶³¹ WorldCom Comments at 13-14.

⁶³² See Verizon Virginia Reply, App. B, Tab 8.

⁶³³ Letter from Keith L. Seat, Senior Counsel, Federal Advocacy, WorldCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 17, 2002) (WorldCom Oct. 17 *Ex Parte*) at 4.

interconnection trunks at certain points in its network in Virginia and that it will use the same procedures to provide DS-3 interfaces at other points in its network where technically feasible.⁶³⁴ The Bureau specifically declined to address the modifications, if any, that Verizon must make to its facilities at non-hub offices during the arbitration proceeding and instructed Verizon and WorldCom to exercise their good faith efforts to resolve the matter.⁶³⁵ If such efforts prove unsuccessful, the Bureau stated that the parties may invoke the dispute resolution process set forth in their interconnection agreement.⁶³⁶ We find that the dispute resolution process memorialized in the interconnection agreement between Verizon and WorldCom is the appropriate procedure for WorldCom to invoke if it cannot resolve the technical problems associated with interconnection at the DS-3 level at a specific Verizon non-hub office. We conclude that Verizon's legal obligation under its interconnection agreement, combined with its operational experience, demonstrate that Verizon is capable of furnishing DS-3 interfaces for local interconnection at other technically feasible points in its network.

178. *Collocation Pricing Issue.* Cavalier raises a concern regarding collocation pricing, noting the duration of a "stalled" state proceeding to examine issues related to this concern.⁶³⁷ Although it acknowledges that it is a party to a collocation settlement agreement between Verizon Virginia and a number of competitive LECs, so that its complaints are moot, Cavalier urges that the concerns it raised are valid and should be addressed, and that an environment "in which pricing and provisioning are determined by the few surviving CLECs being driven into settlement" means that Verizon does not satisfy checklist item 1.⁶³⁸

179. The settlement agreement to which Cavalier refers was approved by the Virginia Commission on June 28, 2002, subsequent to a petition from multiple parties (not including Cavalier) to resolve issues arising from Verizon's proposed amendments to its collocation tariff in Virginia.⁶³⁹ Verizon stated that, upon approval of the agreement by the Virginia Commission,

⁶³⁴ Verizon Virginia Lacouture/Ruesterholz Reply Decl., para. 82. *See also* Verizon Oct. 22 Operational Readiness *Ex Parte* Letter at 3.

⁶³⁵ *Virginia Arbitration Order*, para. 239.

⁶³⁶ *Id.*

⁶³⁷ Cavalier Comments at 6-7. Cavalier says that during the pendency of this case before the Virginia Commission (from Verizon's filing of the tariff revisions in May 1999 until its withdrawal of opposition in June 2002) it raised pricing, provisioning, and other issues with respect to collocation that cast doubt on Verizon's satisfaction of checklist item one. *Id.*

⁶³⁸ Cavalier Comments at 7.

⁶³⁹ Petitioners were Verizon, AT&T, WorldCom, Sprint, NTELOS, and Broadslate. *See* Joint Petition for Approval of Settlement Agreement, PUC990101, filed Feb. 2, 2002. The petition notes the history of the proceeding as follows: Verizon filed revisions to its collocation tariff on May 28, 1999; the new tariff went into effect on an interim basis on June 28, 1999. The Virginia Commission allowed an opportunity for comment, and the Virginia Commission staff and other parties filed comments objecting to the revised tariff. On December 21, 2000, WorldCom, AT&T, Sprint, and Verizon filed a proposed settlement agreement; following objections filed by (continued....)

Verizon would file an amended collocation tariff to be effective on one day's notice, so that all competitive LECs in Virginia would benefit from the new terms and conditions.⁶⁴⁰ In a letter of June 21, 2002, Cavalier withdrew its opposition to the proposed settlement agreement, requested cancellation of its scheduled hearing on the issue, and noted that it and Verizon had "agreed to resolve amicably the remaining differences in their positions in this proceeding."⁶⁴¹ The Virginia Commission, noting this action by Cavalier, issued an order approving the settlement agreement on June 28, 2002, and directing Verizon to file its revised collocation tariff no later than July 15, 2002.⁶⁴²

180. The record indicates that collocation rates were established pursuant to a settlement agreement between Verizon and a number of competitive LECs. The Virginia Commission reviewed and approved the settlement, as did a number of other state commissions.⁶⁴³ Cavalier does not complain in this proceeding about any particular collocation rate element or any specific TELRIC error, and was, in fact, a party to the settlement. On this record, therefore, we find no clear error by the Virginia Commission with respect to collocation rates.

(Continued from previous page) _____

several parties (including Cavalier), the Virginia Commission declined on October 12, 2001 to approve this proposed settlement, and instructed Verizon to invite all competitive LECs registered in Virginia to participate in further settlement negotiations. These negotiations took place in November and December 2001. The resulting settlement agreement, with the petitioners as parties, was developed through that process.

⁶⁴⁰ *Id.* at 2.

⁶⁴¹ Verizon Virginia Application, App. K, Vol. 1, Tab 4, (attaching Letter from Stephen T. Perkins, Cavalier Telephone General Counsel, to Joel H. Peck, Clerk, Virginia State Corporation Commission, PUC990101, filed June 21, 2002).

⁶⁴² Verizon Virginia Application, App. K, Vol. 1, Tab 4, Order Approving Settlement Agreement filed February 1, 2002, PUC990101, Virginia State Corporation Commission, dated June 28, 2002.

⁶⁴³ Substantially similar collocation agreements have been negotiated and approved in Maryland, Pennsylvania, New Jersey, Delaware, and the District of Columbia. See Letter from Ann Berkowitz, Project Manager, Federal Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, October 3, 2002. Verizon states in this ex parte letter that the respective state commissions approved these settlement agreements as follows: Penn. Pub. Util. Comm'n v. Verizon Pennsylvania Inc., Docket No. R-00994697, Opinion and Order (Penn. PUC May 24, 2001) (Pennsylvania Application, App. B, Tab Z); Collocation Tariff Filed Under Transmittal No. 1003 by Bell Atlantic-Maryland, Inc., Order No. 77575 (Maryland PSC Feb. 27, 2002); Application of Bell Atlantic-Delaware Inc. For Approval of CLEC Collocation Interconnection Services, PSC Docket No. 99-251, Order No. 5695 (Del. PSC April 10, 2001) (Delaware Application App. F, Tab 5); Filing by AT&T Communications of NJ, L.P., WorldCom, Sprint Communications Company of New Jersey, and Verizon New Jersey Inc. for Approval of a Revision to Tariff B.P.U.-N.J.-No. 4 as Listed in the Appendix Providing for the Revisions to CLEC Collocated Interconnection Service, Docket No. TT01040215, Telecommunications Order Approving Amended Settlement Agreement, (New Jersey Board of Public Utilities Dec. 19, 2001); Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996; Formal Case No. 962, Order No. 11979 (DC PSC April 20, 2001).

B. Checklist Item 5 – Unbundled Local Transport

181. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”⁶⁴⁴ Based on our review of the record, we conclude, as did the Virginia Hearing Examiner, that Verizon complies with the requirements of this checklist item.⁶⁴⁵ Verizon uses the same processes and procedures in Virginia to provide unbundled dedicated and shared transport as it uses in states where it has already received section 271 approval.⁶⁴⁶ We are persuaded that Verizon is providing shared transport in substantial volumes and on a nondiscriminatory basis.⁶⁴⁷ We also find that Verizon is providing dedicated transport on a timely and nondiscriminatory basis.⁶⁴⁸

182. Verizon offers unbundled “dark fiber” in Virginia, pursuant to interconnection agreements, on a first come first served basis.⁶⁴⁹ Of the 40 dark fiber requests Verizon received from July 2001 through June 2002, Verizon states that it completed all of its orders on time.⁶⁵⁰ We agree with the Virginia Hearing Examiner that Verizon’s dark fiber offerings satisfy the requirements of this checklist item.⁶⁵¹ We note that OpenBand and Cavalier raise issues related to dark fiber under checklist item 5. Our discussion of all issues related to dark fiber has been consolidated into our discussion of checklist item 4 *supra*.

183. WorldCom alleges that Verizon is not operationally ready to provide two-way trunking on demand, as required by the *Virginia Arbitration Order*.⁶⁵² Verizon states that it is already providing two-way trunking in Virginia pursuant to 35 interconnection agreements.⁶⁵³ We find no basis for WorldCom’s unsupported assertions that Verizon is not prepared to provide two-way trunking in Virginia on demand.

⁶⁴⁴ 47 U.S.C. § 271(c)(2)(B)(v).

⁶⁴⁵ Virginia Hearing Examiner’s Report at 124.

⁶⁴⁶ Verizon Lacouture/Ruesterholz Decl., para. 222.

⁶⁴⁷ *See* Verizon Lacouture/Ruesterholz Decl., paras. 232-33.

⁶⁴⁸ From April through June, Verizon filled 65 orders for dedicated transport in Virginia and missed one appointment. *See* PR-4-01-3530 (% missed installation appointments). During the same period, Verizon had no open orders for unbundled dedicated transport in a hold status for more than thirty days in Virginia. *See* PR-8-01-3530 (% open IOF orders on hold more than 30 days).

⁶⁴⁹ Verizon Lacouture/Ruesterholz Decl., paras. 234, 236.

⁶⁵⁰ Verizon Lacouture/Ruesterholz Decl., para.240.

⁶⁵¹ Virginia Hearing Examiner’s Report at 124

⁶⁵² WorldCom Comments at 13; WorldCom Oct. 17 *Ex Parte* at 4.

⁶⁵³ Verizon Virginia Reply at 7-11. *See also* Verizon Oct. 22 Operational Readiness *Ex Parte* Letter at 4.

C. Checklist Item 6 – Unbundled Local Switching

184. Section 271(c)(2)(B)(vi) of the Act requires that a BOC provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.”⁶⁵⁴ To satisfy its obligations under this subsection, an applicant must demonstrate compliance with Commission rules relating to unbundled local switching.⁶⁵⁵ Based on the record in this proceeding, we conclude, as did the Virginia Hearing Examiner, that Verizon satisfies the requirements of this checklist item in Virginia.⁶⁵⁶

185. We note that only one commenter, WorldCom, contends that Verizon’s provisioning of switching is discriminatory.⁶⁵⁷ Although WorldCom alleges that Verizon does not provide customized routing, the dispute more precisely concerns the options that Verizon currently offers WorldCom to carry calls from Verizon’s switch to WorldCom’s Operator Services and Directory Assistance (OS/DA) platform to allow WorldCom to self-provision OS/DA services to its customers.⁶⁵⁸ WorldCom alleges that Verizon has failed to comply with the Commission’s determination in the *Second BellSouth Louisiana Order* that a BOC must provide customized routing over Feature Group D (FGD) trunks, absent technical infeasibility.⁶⁵⁹ WorldCom argues further that Verizon is still not operationally ready to provide customized routing in the manner required by the *Virginia Arbitration Order* and has failed to respond to WorldCom’s request for a trial.⁶⁶⁰

186. Verizon states that it has made available customized routing in Virginia in the same way it has made it available in all other states where it has obtained long distance authority.⁶⁶¹ Verizon further acknowledges that, pursuant to the terms of its interconnection

⁶⁵⁴ 47 U.S.C. § 271(c)(2)(B)(vi).

⁶⁵⁵ See 47 C.F.R. § 51.319(c); see also *SWBT Texas Order*, 15 FCC Rcd at 18520-22, paras. 336-38.

⁶⁵⁶ Virginia Hearing Examiner’s Report at 127.

⁶⁵⁷ WorldCom Comments at 10-12.

⁶⁵⁸ *Id.* at 12.

⁶⁵⁹ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20728-29, para. 221. Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent that will carry certain classes of traffic originating from requesting carriers’ customers. *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9159 n.960. WorldCom also argues that Verizon does not provide tandem switching as a stand-alone network element. WorldCom Comments at 13. However, Verizon states that it provides access to local switching and tandem switching elements as required by law and that no competitive LEC has requested unbundled tandem switching. Verizon Lacouture/Ruesterholz Reply Decl., para. 98.

⁶⁶⁰ WorldCom Comments at 10-12; WorldCom Oct. 17 *Ex Parte* Letter at 1-3.

⁶⁶¹ Verizon Oct. 22 Operational Readiness *Ex Parte* Letter at 1. See Verizon Lacouture/Ruesterholz Reply Decl., para. 93.

agreement with WorldCom in Virginia, it has a legally binding obligation to provide customized routing of OS/DA calls over FGD trunks.⁶⁶² Verizon asserts that it agreed during the arbitration to conduct a trial with WorldCom of customized routing of OS/DA calls with FGD signaling, that it has provided a draft trial agreement to WorldCom, and that the trial can begin shortly.⁶⁶³

187. We reject WorldCom's argument based on our conclusion that Verizon's interconnection agreement with WorldCom is in compliance with the checklist and Commission precedent. In reaching this conclusion, we note that this agreement has been approved by the Bureau pursuant to section 252(e)(6).⁶⁶⁴ As Verizon correctly states, Verizon now has a legal obligation to provide customized routing to WorldCom, pursuant to the terms of the interconnection agreement. During the course of the arbitration, the Bureau found that Verizon had not shown that it was presently able to provide customized routing to FGD trunks using AIN and that there was a possibility that AIN would fail.⁶⁶⁵ For that reason, the *Virginia Arbitration Order* required that the agreement between the parties address what would happen in the event AIN routing fails. Pursuant to the terms of the *Virginia Arbitration Order*, the Verizon-WorldCom agreement requires Verizon to route the OS/DA calls of WorldCom's customers over WorldCom's FGD trunks where Verizon has deployed an AIN capability or where Verizon uses existing switch features and functions and to provide OS/DA services to WorldCom as unbundled network elements in all other circumstances.⁶⁶⁷ Therefore, Verizon's operator services and directory assistance obligations in the event that its AIN architecture does not work as anticipated are clearly set forth in the approved contract language. We note that Verizon and WorldCom are preparing to enter a trial agreement to address the technical feasibility of customized routing using an AIN capability.

188. Furthermore, WorldCom's new agreement with Verizon provides WorldCom with a dispute resolution mechanism should it conclude that Verizon has failed to meet the parties' agreed upon arrangements for customized routing. We also note that Verizon currently provides customized routing with Modified Operator Services Signaling in Virginia.⁶⁶⁸ Therefore, we conclude that that WorldCom has not sufficiently rebutted Verizon's evidence demonstrating checklist compliance.

⁶⁶² Verizon Oct. 22 Operational Readiness *Ex Parte* Letter at 2.

⁶⁶³ Verizon Oct. 22 Operational Readiness *Ex Parte* Letter at 2.

⁶⁶⁴ See *Virginia Arbitration Approval Order*, para. 2 .

⁶⁶⁵ *Virginia Arbitration Order*, para. 539.

⁶⁶⁷ See Verizon Virginia Reply, App. B. , Vol. 2, Tab 8, Agreement between MCIMetro Access Transmission Services of Virginia and Verizon Virginia, Inc., Part C, at 48.

⁶⁶⁸ Verizon Lacouture/Ruesterholz Reply Decl., para. 97.

D. Checklist Item 7 – 911/E911 Access Services

189. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]on-discriminatory access to ... E911 services.”⁶⁶⁹ A BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”⁶⁷⁰ For facilities-based carriers, the BOC must provide “unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier’s switching facilities to the 911 control office at parity with what [the BOC] provides to itself.”⁶⁷¹ Based on the record before us we conclude, as did the Virginia Hearing Examiner, that Verizon has demonstrated that it provides nondiscriminatory access to E911 services and databases using the same checklist-compliant processes and procedures that it uses in its section 271-approved states.⁶⁷²

190. Only one carrier contends that Verizon has not met the requirements of section 271(c)(2)(B)(vii). Among other things, Cavalier contends that Verizon improperly bills certain municipalities for Automatic Number Identification and selective routing despite the fact that it is Cavalier that is providing the E911 lines to the municipalities.⁶⁷³ As a result, Cavalier contends that Chesterfield County, Henrico County, and the City of Richmond, Virginia have stopped paying Cavalier for legitimate charges for its tariffed E911 services.⁶⁷⁴ As Verizon has correctly noted, section 271(c)(2)(B) “deals exclusively with ‘[a]ccess or interconnection provided or generally offered by a Bell operating company to *other telecommunications carriers*.’”⁶⁷⁵ Because Cavalier’s claim is over which carrier, Verizon or Cavalier, is the appropriate carrier to be billing various Virginia counties for E911 services and not related to E911 services provided to competing telecommunications carriers, they are outside the scope of

⁶⁶⁹ 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and non-discriminatory access to 911/E911 services so that these carriers’ customers are able to reach emergency assistance.

⁶⁷⁰ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

⁶⁷¹ *Id.*

⁶⁷² Virginia Hearing Examiner’s Report at 135; Verizon Lacouture/Ruesterholz Decl., para. 278.

⁶⁷³ Cavalier Comments at 19.

⁶⁷⁴ *Id.* at 19-20.

⁶⁷⁵ Verizon Virginia Reply at 36 (citing 47 U.S.C. § 271(c)(2)(B) (emphasis added)).

section 271 review.⁶⁷⁶ We note that this matter is currently pending before the Virginia Commission.⁶⁷⁷

E. Checklist Item 11 – Number Portability

191. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.⁶⁷⁸ Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”⁶⁷⁹ Based on the evidence in the record, we conclude, as did the Virginia Hearing Examiner,⁶⁸⁰ that Verizon complies with the requirements of checklist item 11.⁶⁸¹

192. Starpower LLC and US LEC Corp. contend that Verizon fails to comply with checklist item 11, alleging that Verizon “seems incapable of handling changes to cut-over requests,” that Verizon “routinely fails to suspend the [number] porting request and disconnects the line from the Verizon facilities,” resulting in complete loss of service to the customer that could have been avoided by better cooperation from Verizon.⁶⁸² These parties have provided no factual information to show how common this situation might be, nor do they even provide anecdotal evidence of specific incidents. As a result, that evidence is insufficient to show systemic or intentional discrimination on Verizon’s part. Moreover, responding fully to these allegations, Verizon has provided data showing that it is consistently exceeding the standard for providing local number portability orders on time for competitive LECs as a whole as well as for Starpower and US LEC in particular.⁶⁸³ Therefore, we find that these allegations do not refute Verizon’s demonstration of checklist compliance.

⁶⁷⁶ While Cavalier’s claim is arguably related to our analysis of billing under checklist item 2, Cavalier provided no details were provided to support such a claim. We note that the municipalities involved do not raise these claims.

⁶⁷⁷ Verizon Lacouture/Ruesterholz Reply Decl., para. 118.

⁶⁷⁸ 47 U.S.C. § 271(c)(2)(B)(xii).

⁶⁷⁹ 47 U.S.C. § 251(b)(2).

⁶⁸⁰ Virginia Hearing Examiner’s Report at 153.

⁶⁸¹ Verizon Lacouture/Ruesterholz Decl., paras. 354-59. Specifically, Verizon provides local number portability in Virginia using essentially the same procedures and processes as it does in states where it has received section 271 authority. *Id.*, para. 354.

⁶⁸² Starpower/US LEC Comments at 19.

⁶⁸³ During May, June, July and August 2002, Verizon completed on time more than 98.59% of number portability requests on both stand-alone and hot cut bases. From April through July 2002, Verizon received only one call from US LEC and none from Starpower on a phone line provided for prompt resolution of number portability problems. Verizon Lacouture/Ruesterholz Reply Decl., paras. 119-21.

F. Remaining Checklist Items (3, 9, 10, 12, 13 and 14)

193. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),⁶⁸⁴ item 9 (numbering administration),⁶⁸⁵ item 10 (databases and associated signaling),⁶⁸⁶ item 12 (local dialing parity),⁶⁸⁷ item 13 (reciprocal compensation),⁶⁸⁸ and item 14 (resale).⁶⁸⁹ Based on the evidence in the record, we conclude, as did the Virginia Hearing Examiner, that Verizon demonstrates that it is in compliance with checklist items 3, 9, 10, 12, 13, and 14, in Virginia.⁶⁹⁰ We note that no parties objected to Verizon's compliance with these checklist items.

VI. SECTION 272 COMPLIANCE

194. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."⁶⁹¹ Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Virginia as it does in New Jersey, Connecticut, Maine, Pennsylvania, Rhode Island, Vermont, New York, Connecticut, and Massachusetts – where Verizon has already received section 271 authority.⁶⁹² The only party to raise a concern that touches on Verizon's compliance with 271(d)(3)(B) is AT&T, which claims that Verizon's admitted premature marketing of long distance services in Virginia violate Section 272(g)(2).⁶⁹³ As we explained in

⁶⁸⁴ 47 U.S.C. § 271(c)(2)(B)(iii).

⁶⁸⁵ 47 U.S.C. § 271(c)(2)(B)(ix).

⁶⁸⁶ 47 U.S.C. § 271(c)(2)(B)(x).

⁶⁸⁷ 47 U.S.C. § 271(c)(2)(B)(xii).

⁶⁸⁸ 47 U.S.C. § 271(c)(2)(B)(xiii).

⁶⁸⁹ 47 U.S.C. § 271(c)(2)(B)(xiv).

⁶⁹⁰ See Verizon Virginia Application at 56-57 (checklist item 3), 62-63 (checklist item 9), 63-64 (checklist item 10), 65-66 (checklist item 12), 66 (checklist item 13), 66-68 (checklist item 14); see also Virginia Hearing Examiner's Report at 97 (checklist item 3), 148 (checklist item 9), 150 (checklist item 10), 155 (checklist item 12), 158 (checklist item 13), 161 (checklist item 14).

⁶⁹¹ 47 U.S.C. § 271(d)(3)(B).

⁶⁹² See Verizon Virginia, Application App. A, Vol. 3, Tab E, Declaration of Susan C. Browning (Verizon Browning Decl.) para. 4. See also *Verizon Pennsylvania Order*, 16 FCC Rcd at 17486, para. 124; *Verizon Connecticut Order*, 16 FCC Rcd at 14178-79, para. 73; *Verizon Massachusetts Order*, 16 FCC Rcd at 9114-17, paras. 226-31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4152-61, paras. 401-21; *Verizon New Jersey Order*, 17 FCC Rcd at 12357, para. 165.

⁶⁹³ AT&T Comments at 25.

the *Verizon New Hampshire/Delaware Order*, we conclude that this matter would be more appropriately addressed in an enforcement proceeding.⁶⁹⁴ Moreover, this issue is comprehensively addressed in our Public Interest analysis in the following section of this Order. Based on the record before us, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.

VII. PUBLIC INTEREST ANALYSIS

A. Public Interest Test

195. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.⁶⁹⁵ At the same time, section 271(d)(4) of the Act states that “[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).”⁶⁹⁶ Accordingly, although the Commission must make a separate determination that approval of a section 271 application is “consistent with the public interest, convenience, and necessity,” it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B).⁶⁹⁷ Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

196. We conclude, as did the Virginia Hearing Examiner, that approval of this application is consistent with the public interest.⁶⁹⁸ From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in Virginia’s local exchange market have been removed,

⁶⁹⁴ See *Application of 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. for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, CC Docket No. 02-157, Memorandum Opinion and Order, FCC 02-262, para. 168 (rel. Sept. 25, 2002) (*Verizon New Hampshire/Delaware Order*).

⁶⁹⁵ 47 U.S.C. § 271(d)(3)(C).

⁶⁹⁶ 47 U.S.C. § 271(d)(4).

⁶⁹⁷ Accordingly, we decline to address in this section issues related to particular checklist items. See WorldCom Comments at 6-7, 14 (contending that Verizon lacks sufficient interconnection agreements, and therefore, its application violates the public interest); Allegiance Comments at 9 (asserting that Verizon’s “no facilities” policy violates the public interest). The issues raised by WorldCom and Allegiance were discussed *supra* in our discussion of checklist item 1 and checklist item 4, interconnection and loops, respectively.

⁶⁹⁸ See Virginia Hearing Examiner’s Report at 170.

and that the local exchange market is open to competition. We further find that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.⁶⁹⁹

197. We disagree with commenters that assert that we must, under our public interest standard, consider a variety of other factors such as the economy, levels of competitive LEC market share, or the financing difficulties of competitive LECs.⁷⁰⁰ Given the affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of the competitive LEC community do not undermine that showing.⁷⁰¹ Thus, we have consistently declined to use factors beyond the control of the applicant BOC to deny an application.⁷⁰² We note that the D.C. Circuit confirmed in *Sprint v. FCC* that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.⁷⁰³

B. Assurance of Future Performance

198. We find that the performance assurance plan (Virginia Plan) in Virginia provides further assurance that the local markets in Virginia will remain open after Verizon receives

⁶⁹⁹ See *SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 419; see also APT Comments at 1-5; National Grange Comments at 1-2 (asserting that section 271 approval will encourage deployment of broadband); CAP Comments at 1-2 (contending that section 271 approval will result in lower long distance rates); but see, e.g., AT&T Comments at 19 n.19 (claiming that BOC entry into the long distance market in Texas lead to higher local and long distance rates).

⁷⁰⁰ See AT&T Comments at 11 (arguing that competitive LEC bankruptcies and other financial difficulties prevent competitive LECs from investing in capital investments in areas where future rate reductions are speculative); AT&T Comments at 17-23 (contending that a lack of local competition, and UNE-based competition in particular, in Virginia warrants a rejection of the Verizon's application in light of difficulties competitive LECs are experiencing in the market); AT&T Reply Comments at 25 (claiming that there is an absence of competition in rural areas of Virginia); Cavalier Comments at 30-31 (asserting that the level of local competition is on the decline in Virginia); Sprint Comments at 7 (contending that the public interest test should include factors outside the applicant's control, including levels of competitive LEC presence in the local market); Starpower/US LEC Comments at 24-25 (stating that an application must be reviewed within the context of the local market and that a lack of BOC entry into new local markets demonstrates that the markets are not irreversibly open to competition).

⁷⁰¹ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9177-78, para. 282; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

⁷⁰² See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9177-78, para. 282; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

⁷⁰³ *Sprint Communications Co. v. FCC*, 274 F.3d at 553-54 (D.C. Cir. 2001); see also *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

section 271 authorization.⁷⁰⁴ Although it is not a requirement for section 271 approval that a BOC be subject to such post-entry performance assurance mechanisms, the Commission has previously stated that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations.⁷⁰⁵ Verizon states that the Virginia Plan is substantially the same as the plans in effect when the Commission approved Verizon's section 271 application in New York, Massachusetts, Rhode Island, Vermont, Maine, and Connecticut.⁷⁰⁶ Specifically, Verizon explains that the key difference between the Virginia Plan and the New York Plan involves the benchmark for the special provision related to UNE flow through.⁷⁰⁷ We find this difference to be inconsequential for the purposes of our review. Thus, we find that the Virginia Plan is reasonable to ensure an open local market in Virginia. We conclude that the Virginia Plan, in concert with the Virginia State Corporation Commission's active participation in implementing modifications to promote the oversight of Verizon's performance, provides sufficient assurance that Verizon will have a compelling incentive to maintain post-entry checklist compliance.⁷⁰⁸ We also note that no party challenged the effectiveness of the plan.

C. Premature Marketing

199. Finally, we note that during the pendency of its New Jersey application, Verizon voluntarily disclosed that it sent direct mail and bill insert advertising to New Jersey customers.⁷⁰⁹ While reviewing its long distance marketing programs in connection with the New Jersey incidents, the company discovered that Verizon representatives had prematurely marketed services in Virginia by mailing "winback letters" to certain customers.⁷¹⁰ Verizon subsequently discovered that certain calling card calls were incorrectly branded as Verizon calls. In addition, Verizon acknowledged that it prematurely ran television advertisements that listed long distance service as an option to customers without a proper disclaimer. Finally,

⁷⁰⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98. In all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long distance market.

⁷⁰⁵ *See Verizon New Jersey Order*, 17 FCC Rcd at 12362, para. 176; *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98.

⁷⁰⁶ Verizon Virginia Application at 98.

⁷⁰⁷ Verizon Guerard/Canny/DeVito Decl., para. 27.

⁷⁰⁸ *See id.*, paras. 23-29; *see also Verizon New Jersey Order*, 17 FCC Rcd at 12362, para. 176.

⁷⁰⁹ *Verizon New Jersey Order*, 17 FCC Rcd at 12367, para. 188.

⁷¹⁰ *See Letter from Marie T. Breslin, Director, Federal Regulatory, Verizon to Marlene H. Dortch, Secretary, Federal Communication Commission, WC Docket No. 02-214 et al.* (filed Aug. 12, 2002) (Verizon Aug. 12 Public Interest *Ex Parte* Letter).

Verizon notes that service representatives incorrectly solicited and accepted customer orders for long distance service.

1. Mail Solicitations

200. Verizon recently disclosed that it had engaged in two incidents of premature mail solicitations offering long distance service in Virginia. In February 2002, Verizon sent marketing materials advertising long distance service to approximately 2,000 customers in the former GTE territories in Virginia.⁷¹¹ Approximately 45 customers in Virginia responded to Verizon's solicitations. AT&T argues that the Commission should reject Verizon's application based on these two incidents of premature mail solicitations offering long distance service in Virginia.⁷¹² Verizon states that, upon discovering the error, it contacted each of these customers by telephone to explain that the mailing was sent in error and that Verizon was not authorized to provide long distance service in Virginia.⁷¹³ According to Verizon, none of the solicited customers actually received long distance service.⁷¹⁴

201. On August 12, 2002, Verizon voluntarily disclosed that during the months of March, May, and June 2002, approximately 1,500 "winback" letters were erroneously sent out to customers in Virginia inviting carriers to subscribe to Verizon's long distance service without a proper disclaimer explaining that the carrier had not yet been granted authority in Virginia.⁷¹⁵

202. Upon learning of the mailings, Verizon began developing additional internal safeguards to prevent incidents of this nature from occurring in the future.⁷¹⁶ Verizon maintains that it is no longer printing direct mail that refers to long distance service for distribution in a particular state until after section 271 authority is effective in such state. Verizon is also making a number of improvements to their internal procedures and processes to ensure that long distance marketing materials are only distributed in states with section 271 approval.⁷¹⁷ Furthermore, Verizon contends that, even if a customer were to call to request long distance service in Virginia, its customer service representatives have been trained to respond that

⁷¹¹ Verizon Virginia Application at 86 n.67; Verizon Virginia Reply at 71.

⁷¹² AT&T Comments at 26.

⁷¹³ See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 at 1 (filed Oct. 2, 2002) (Verizon Oct. 2 Public Interest *Ex Parte* Letter).

⁷¹⁴ Verizon Oct. 2 Public Interest *Ex Parte* Letter at 2.

⁷¹⁵ See *id.* Verizon states that because several months lapsed between the time of the "winback" letters were mailed and the time that Verizon discovered that the mailing lacked a proper disclaimer, that Verizon did not send corrective letter to the recipients of these solicitations. *Id.*

⁷¹⁶ See Verizon Oct. 2 Public Interest *Ex Parte* Letter at 2.

⁷¹⁷ *Id.* at 2-3.

Verizon is not authorized to provide such service.⁷¹⁸ In addition, Verizon claims – and AT&T has not disputed – that, if a customer service representative were to submit an order to provide Verizon long distance service in Virginia prior to Commission approval of this application, any long distance calls placed by the customer would be blocked and would not go through because the long distance affiliate’s switching equipment has not been modified to allow such calls to be completed.⁷¹⁹

2. Calling Cards

203. Verizon has also disclosed that approximately 4,000 calling card calls in Virginia were misbranded as Verizon calls during a ten-day period in March and April 2002 due to an error by WorldCom in updating its routing table.⁷²⁰ Furthermore, Verizon explains that since June 2000, approximately 250 additional calling card calls originating in Virginia were misbranded as Verizon calls.⁷²¹ Verizon acknowledges that these calls should have been branded as unaffiliated long distance carrier’s calls,⁷²² however, Verizon contends that the majority of these calls were misbranded as a result of the errors in the underlying long distance transport vendor’s routing software and programming errors.⁷²³ Notably, none of these calling card calls were billed to customers.⁷²⁴

3. Television Advertisements

204. During a five week period in February and March 2002, Verizon ran a television advertisement on several channels in the Washington, D.C. metropolitan area.⁷²⁵ Verizon explains that the phrase “Long Distance Savings” appeared in the advertisements for several seconds, along with other services to business customers provided by Verizon, without its standard disclaimer.⁷²⁶ Verizon notes that the advertisements did not include long distance

⁷¹⁸ *Id.* at 6.

⁷¹⁹ *Id.* at 2-3.

⁷²⁰ Letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 *et al.* (filed Sept. 13, 2002) (Verizon Sept. 13 Public Interest *Ex Parte* Letter).

⁷²¹ *See* Verizon Oct. 2 Public Interest *Ex Parte* Letter at 3.

⁷²² Verizon Sept. 13 Public Interest *Ex Parte* Letter at 2.

⁷²³ *See* Verizon Oct. 2 Public Interest *Ex Parte* Letter at 4; Verizon Sept. 13 Public Interest *Ex Parte* Letter at 2.

⁷²⁴ Verizon Sept. 13 Public Interest *Ex Parte* Letter at 2.

⁷²⁵ *See* Verizon Oct. 2 Public Interest *Ex Parte* Letter at 5.

⁷²⁶ *Id.*

pricing information, nor did it include an audible mention of long distance services.⁷²⁷ Since this incident, it has implemented additional controls to ensure that such advertising includes the appropriate disclaimers in the future, including an enhanced Business Advertising Quality Assurance process.⁷²⁸ According to Verizon, before any advertising may be completed, all versions of all advertising programs must now pass an eighteen point checklist that includes a review of whether the market is section 271 approved, whether the advertisement mentions long distance service, and if so, whether the advertisement contains the appropriate disclaimer.⁷²⁹

4. Other Incidents

205. Verizon acknowledges that it recently discovered that a total of two toll-free calls were erroneously terminated in Virginia and one misdirected operator call was terminated in Virginia.⁷³⁰ Verizon also notes that on or about June 20, 2002, a single call from Virginia to South Carolina was misdirected to a Verizon trunk, due to an error on the part of the transport provider.⁷³¹ According to Verizon, these errors were caused by Verizon's transport providers. Verizon states that between January 1, 2001 and June 30, 2002, sales representatives mistakenly accepted approximately 65 orders for toll-free numbers that terminated in Virginia.⁷³² In response to these errors, Verizon has taken steps to ensure that internal sales representatives only accept orders for long distance service in section 271 authorized states. Specifically, Verizon states that its corrective measures even went as far as temporarily stopping all outbound telemarketing by vendors until Verizon could confirm that each of its vendors' practices were consistent with Verizon policy.⁷³³ Furthermore, Verizon maintains that in each of these instances, it did not bill the customers for these calls.⁷³⁴

206. Finally, Verizon acknowledges that one of its international affiliates provided Internet service to a business customer in Virginia from October 12, 2001 until June 15, 2002,

⁷²⁷ *Id.*

⁷²⁸ *Id.*

⁷²⁹ See Verizon Oct. 2 Public Interest *Ex Parte* Letter at 5. Verizon maintains that the checklist must be verified by a senior person at the advertising agency, a director or higher in Verizon's Marketing Department, and a director or higher in Verizon's Marketing Communications Department. *Id.*

⁷³⁰ See Verizon Oct. 2 Public Interest *Ex Parte* Letter at 4-5.

⁷³¹ *Id.*

⁷³² *Id.* at 5.

⁷³³ *Id.* at 6.

⁷³⁴ See Verizon Oct. 2 Public Interest *Ex Parte* Letter at 4-5. Verizon acknowledges that a representative processed one order for long distance service in Virginia in August 2002, however, the customer was contacted the next day and no long distance service was actually provisioned. *Id.* at 6.

through an entity it acquired in connection with a bankruptcy proceeding.⁷³⁵ Verizon maintains that at the time of the acquisition, it received assurance from that entity that it did not provide services in the United States.⁷³⁶ Verizon explains that at the time the affiliate became aware of the arrangement, it began to take steps to arrange for the customer to obtain service from an alternative provider, however, because of the bankruptcy proceedings, it had to negotiate the termination of service.⁷³⁷

5. Discussion

207. As we noted in prior orders, potential violations of federal telecommunications law could be relevant to the section 271 inquiry.⁷³⁸ In the *Verizon New Jersey Order*, we examined evidence of premature marketing to more than a half-million customers, resulting from conduct that occurred at approximately the same time as the conduct disclosed in this proceeding. Moreover, in that order and in the *Verizon New Hampshire/Delaware Order*, we concluded that we should not deny or delay the applications under the public interest standard. Given the facts presented here, because the allegations do not relate to the openness of the local telecommunications markets to competition, we reject AT&T's argument that we should deny or delay this application under the public interest standard.⁷³⁹ As we stated in the *Verizon New Hampshire/Delaware Order*, we conclude that these claims of premature solicitation of long distance services would be more appropriately addressed in an enforcement proceeding.⁷⁴⁰ Thus, we take no position in this proceeding on whether Verizon's actions violate section 272(g)(2) of the Act. Instead, we refer this matter to the Enforcement Bureau. Regardless of what enforcement action we may take in the future, we remind Verizon and all BOCs that they should not market long distance services in an in-region state prior to receiving section 271 approval from the Commission for that particular state. Thus, we find it necessary to emphasize, once again, that carriers must exercise extreme caution.

⁷³⁵ See Verizon Oct. 2 Public Interest *Ex Parte* Letter at 6.

⁷³⁶ *Id.*

⁷³⁷ *Id.*

⁷³⁸ See *Verizon New Hampshire/Delaware Order*, para. 168; *Verizon New Jersey Order*, 17 FCC Rcd at 12368, para. 190; *Ameritech Michigan Order*, 12 FCC Rcd at 20749-50, para. 397 ("Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.").

⁷³⁹ See *Verizon New Hampshire/Delaware Order*, para. 168; *Verizon Massachusetts Order*, 16 FCC Rcd at 9107, para. 211; *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340.

⁷⁴⁰ See *Verizon New Hampshire/Delaware Order*, para. 168.

VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

208. Section 271(d)(6) of the Act requires Verizon to continue to satisfy the “conditions required for . . . approval” of its section 271 application after the Commission approves its application.⁷⁴¹ Thus, the Commission has a responsibility not only to ensure that Verizon is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.⁷⁴²

209. Working with the Virginia Commission, we intend to closely monitor Verizon’s post-approval compliance for Virginia to ensure that Verizon does not “cease[] to meet any of the conditions required for [section 271] approval.”⁷⁴³ We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances if evidence shows market opening conditions have not been sustained.

210. In the course of this proceeding, we have given close scrutiny to Verizon’s provision of UNEs, access to unbundled local loops, and directory listings, as have the Virginia Hearing Examiner, the Department of Justice, and other commenters.⁷⁴⁴ We will closely monitor Verizon’s performance in Virginia following section 271 approval, as we are doing in New Jersey.⁷⁴⁵ If evidence shows that recent improvements in Verizon’s OSS performance have not been maintained, we are prepared to use our authority under section 271(d)(6) to enforce compliance.

211. Consistent with prior section 271 orders, we require Verizon to report to the Commission all Virginia carrier-to-carrier performance metrics results and Incentive Plan monthly reports, beginning with the first full month after the effective date of this Order, and for each month thereafter for one year, unless extended by the Commission. These results and reports will allow us to review Verizon’s performance on an ongoing basis to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Verizon’s entry into the Virginia long distance market.

⁷⁴¹ 47 U.S.C. § 271(d)(6).

⁷⁴² See, *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53; see also Appendix C.

⁷⁴³ 47 U.S.C. § 271(d)(6)(A).

⁷⁴⁴ See generally Virginia Hearing Examiner’s Report; Department of Justice Virginia Evaluation at 7-10; Cavalier Comments at 7-30; AT&T Comments at 11-17; NTELOS Comments at 4-12; Z-Tel Comments at 2-7.

⁷⁴⁵ *Verizon New Jersey Order*, 17 FCC Rcd at 12368, para. 192.

IX. CONCLUSION

212. For the reasons discussed above, we grant Verizon's application for authorization under section 271 of the Act to provide in-region, interLATA services in the Commonwealth of Virginia.

X. ORDERING CLAUSES

213. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, Verizon's application to provide in-region, interLATA service in the state of Virginia, filed on August 1, 2002, IS GRANTED.

214. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE November 8, 2002.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A
Commenters in CC Docket No. 02-214

<u>Commenters</u>	<u>Abbreviation</u>
Allegiance Telecom of Virginia, Inc.	Allegiance
Alliance for Public Technology	Alliance
AT&T Corp	AT&T
Association of Development Organizations	ADO
Cavalier Telephone, LLC	Cavalier
Starpower Communications, LLC and US LEC Corp.	Starpower / US LEC
Community Action Partnership	CAP
Covad Communications Company	Covad
National Grange of the Order of Patrons of Husbandry	National Grange
NTELOS Network Inc. and R&B Network Inc.	NTELOS
OpenBand of Virginia, LLC	OpenBand
Sprint Communications Company L.P.	Sprint
WorldCom, Inc	WorldCom
Z-Tel Communications, Inc.	Z-Tel

<u>Reply Commenters</u>	<u>Abbreviation</u>
AT&T Corp.	AT&T
Cavalier Telephone, LLC	Cavalier
Covad Communications Company	Covad
US LEC Corp.	US LEC
WorldCom, Inc	WorldCom
Verizon Virginia	Verizon Virginia

Appendix B

Virginia Performance Metrics

All data included here are taken from the Virginia Carrier-to-Carrier Reports. This table is provided as a reference tool for the convenience of the reader. No conclusions are to be drawn from the raw data contained in this table. Our analysis is based on the totality of the circumstances, such that we may use non-metric evidence, and may rely more heavily on some metrics more than others, in making our determination. The inclusion of these particular metrics in this table does not necessarily mean that we relied on all of these metrics nor that other metrics may not also be important in our analysis. Some metrics that we have relied on in the past and may rely on for a future application were not included here because there was no data provided for them (usually either because there was no activity, or because the metrics are still under development). Metrics with no retail analog provided are usually compared with a benchmark. Note that for some metrics during the period provided, there may be changes in the metric definition, or changes in the retail analog applied, making it difficult to compare the data over time.

Federal Communications Commission
PERFORMANCE METRICS CATAGORIES

FCC 02-297

Metric Number	Metric Name
<i>Preorder and OSS Availability:</i>	
OR-1-02	% On Time LSRC – Flow Through
OR-1-04	% On Time LSRC No Facility Check
OR-1-06	% On Time LSRC/ASRC Facility Check
OR-1-07	Average ASRC Time No Facility Check
OR-1-08	% On Time ASRC No Facility Check
OR-1-10	% On Time ASRC Facility Check
OR-1-11	Av. FOC Time
OR-1-12	% On Time FOC
OR-1-13	% On Time Design Layout Record (DLR)
OR-1-19	% On Time Resp. - Request for Inbound Augment Trunks
PO-1-01	Customer Service Record
PO-1-02	Due Date Availability
PO-1-03	Address Validation
PO-1-04	Product & Service Availability
PO-1-05	Telephone Number Availability & Reservation
PO-1-06	Average Response Time - Mechanized Loop Qualification - DSL
PO-1-07	Rejected Query
PO-1-09	Parsed CSR
PO-2-01	OSS Interf. Avail. – Total
PO-2-02	OSS Interf. Avail. – Prime Time
PO-2-03	OSS Interf. Avail. – Non-Prime
PO-4-01	% Notices Sent on Time
PO-4-02	Change Mgmt. Notice - Delay 1-7 Days
PO-4-03	Change Mgmt. Notice - Delay 8+ Days
PO-8-01	% On Time - Manual Loop Qualification
PO-8-02	% On Time - Engineering Record Request
MR-1-01	Create Trouble

Metric Number	Metric Name
<i>Change Management, Billing, OS/DA, Interconnection and Collocation:</i>	
BI-1-02	% DUF in 4 Business Days
BI-2-01	Timeliness of Carrier Bill
BI-3-01	% Billing Adjustments - Dollars Adjusted
BI-3-02	% Billing Adjustments - Number of Adjustments
BI-3-04	% CLEC Billing Claims Acknowledged Within Two Business Days
BI-3-05	% CLEC Billing Claims Resolved Within 28 Calendar Days After Acknowledgement
NP-1-01	% Final Trunk Groups Exceeding Blocking Standard
NP-1-02	% FTG Exceeding Blocking Std. –(No Exceptions)
NP-2-01	% On Time Response to Request for Physical Collocation
NP-2-02	% On Time Response to Request for Virtual Collocation
NP-2-03	Average Interval – Physical Collocation
NP-2-04	Average Interval – Virtual Collocation
NP-2-05	% On Time – Physical Collocation
NP-2-06	% On Time – Virtual Collocation
NP-2-07	Average Delay Days – Physical Collocation
NP-2-08	Average Delay Days – Virtual Collocation
<i>Ordering:</i>	
OR-2-02	% On Time LSR Reject – Flow Through
OR-2-04	% On Time LSR Reject < 6 Lines - Electronic - No Flow-Through
OR-2-06	% On Time LSR Reject >= 6 Lines - Electronic - No Flow-Through
OR-2-08	% On Time LSR Reject < 6 Lines - Fax
OR-2-10	% On Time ASR Reject Facility Check
OR-2-11	Average Trunk ASR Reject Time (<= 192 Forecasted Trunks)
OR-2-12	% On Time Trunk ASR Reject (<= 192 Forecasted Trunks)
OR-3-01	% Rejects
OR-4-02	Completion Notice (BCN) – % On Time
OR-4-05	Work Completion Notice (PCN) – % On Time

Federal Communications Commission
PERFORMANCE METRICS CATAGORIES

FCC 02-297

Metric Number	Metric Name
OR-4-12	% Due Date to PCN within 2 Business Days
OR-4-14	% Due Date to BCN within 4 Business Days
OR-4-17	% Billing Completion Notifier sent within two Business Days
PR-5-03	% Orders Held for Facilities > 60 Days
OR-5-01	% Flow Through - Total
OR-5-02	% Flow Through - Simple
OR-5-03	% Flow Through Achieved
OR-6-01	% Accuracy - Orders
OR-6-02	% Accuracy – Opportunities
OR-6-03	% Accuracy – LSRC
OR-7-01	% Order Confirmation/Rejects sent within 3 Business Days
Provisioning:	
PR-1-09	Av. Interval Offered – Total
PR-2-01	Average Interval Completed – Total No Dispatch
PR-2-02	Average Interval Completed – Total Dispatch
PR-2-03	Average Interval Completed – Dispatch (1-5 Lines)
PR-2-04	Average Interval Completed - Dispatch (6-9 Lines)
PR-2-05	Average Interval Completed - Dispatch (>= 10 Lines)
PR-2-06	Average Interval Completed – DS0
PR-2-07	Average Interval Completed – DS1
PR-2-08	Average Interval Completed – DS3
PR-2-09	Av. Interval Completed – Total
PR-2-18	Average Interval Completed – Disconnects
PR-4-01	% Missed Appointment – Verizon
PR-4-02	Average Delay Days – Total
PR-4-03	% Missed Appointment – Customer
PR-4-04	% Missed Appointment – Verizon – Dispatch
PR-4-05	% Missed Appointment – Verizon – No Dispatch
PR-4-07	% On Time Performance – LNP Only
PR-4-08	% Missed Appt. – Customer – Late Order Conf.
PR-4-14	% Completed On Time [With Serial Number]
PR-4-15	% Completed On Time -DD-2 Test Total

Metric Number	Metric Name
PR-5-01	% Missed Appointment – Verizon – Facilities
PR-5-02	% Orders Held for Facilities > 15 Days
MR-4-10	Mean Time To Repair - Double Dispatch
MR-5-01	% Repeat Reports within 30 Days
PR-6-01	% Installation Troubles reported within 30 Days
PR-6-02	% Installation Troubles reported within 7 Days
PR-6-03	% Inst. Troubles reported w/ in 30 Days - FOK/TOK/CPE
PR-8-01	Open Orders in a Hold Status > 30 Days
PR-8-02	Open Orders in a Hold Status > 90 Days
PR-9-01	% On Time Performance – Hot Cut
PR-9-02	% Early Cuts - Lines
PR-9-08	Average Duration of Service Interruption
Maintenance and Repair:	
MR-2-01	Network Trouble Report Rate
MR-2-02	Network Trouble Report Rate
MR-2-03	Network Trouble Report Rate – Central Office
MR-2-04	% Subsequent Reports
MR-2-05	% CPE/TOK/FOK Trouble Report Rate
MR-3-01	% Missed Repair Appointment – Loop
MR-3-02	% Missed Repair Appointment – Central Office
MR-3-03	% CPE/TOK/FOK - Missed Appointment
MR-3-04	% Missed Repair Appointment - No Double Dispatch
MR-3-05	% Missed Repair Appointment - Double Dispatch
MR-4-01	Mean Time To Repair
MR-4-02	Mean Time To Repair – Loop Trouble
MR-4-03	Mean Time To Repair – Central Office Trouble
MR-4-04	% Cleared (all troubles) within 24 Hours
MR-4-05	% Out of Service > 2 Hours
MR-4-06	% Out of Service > 4 Hours
MR-4-07	% Out of Service > 12 Hours
MR-4-08	% Out of Service > 24 Hours
MR-4-09	Mean Time To Repair - No Double Dispatch

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OSS & BILLING (Pre-Ordering) - POTS/Special Services										
PRE-ORDERING										
PO-1 - Response Time OSS Pre-Ordering Interface										
PO-1-01-6020	Customer Service Record - EDI	0.21	2.7	0.23	2.79	0.24	3.16	0.21	2.87	4
PO-1-01-6030	Customer Service Record - CORBA	0.21	0.86	0.23	0.85	0.24	0.77	0.21	0.87	
PO-1-01-6050	Customer Service Record -Web GUI	0.21	2.42	0.23	3.07	0.24	2.46	0.21	2.86	
PO-1-02-6020	Due Date Availability - EDI	0.97	NA	0.99	NA	1.31	NA	1.31	NA	
PO-1-02-6030	Due Date Availability - CORBA	0.97	1.59	0.99	1.45	1.31	2.02	1.31	NA	1,2
PO-1-02-6050	Due Date Availability - Web GUI	0.97	3.44	0.99	4.25	1.31	3.77	1.31	4.36	
PO-1-03-6020	Address Validation - EDI	4.23	6.16	4.13	6.06	4.3	6.4	4.44	7.48	
PO-1-03-6030	Address Validation - CORBA	4.23	3.14	4.13	3.16	4.3	3.57	4.44	4.04	
PO-1-03-6050	Address Validation - Web GUI	4.23	5.28	4.13	5.91	4.3	5.82	4.44	6.26	
PO-1-04-6020	Product & Service Availability - EDI	9.16	NA	8.94	NA	9.62	NA	9.97	NA	
PO-1-04-6030	Product & Service Availability - CORBA	9.16	NA	8.94	NA	9.62	NA	9.97	NA	
PO-1-04-6050	Product & Service Availability - Web GUI	9.16	13.76	8.94	14.71	9.62	13.71	9.97	14.12	
PO-1-05-6020	Telephone Number Availability & Reservation - EDI	5.05	NA	4.99	NA	5.3	NA	5.57	NA	
PO-1-05-6030	Telephone Number Availability & Reservation - CORBA	5.05	5.16	4.99	5.39	5.3	5.82	5.57	NA	2,3
PO-1-05-6050	Telephone Number Availability & Reservation - Web GUI	5.05	6.57	4.99	7.15	5.3	7.26	5.57	8.13	
PO-1-06-6020	Average Response Time - Mechanized Loop Qualification - DSL - EDI	17.56	4.49	15.63	4.34	13.73	4.76	14.07	5.28	
PO-1-06-6030	Average Response Time - Mechanized Loop Qualification - DSL - CORBA	17.56	NA	15.63	NA	13.73	NA	14.07	NA	
PO-1-06-6050	Average Response Time - Mechanized Loop Qualification - DSL - Web GUI	17.56	4.39	15.63	4.97	13.73	4.74	14.07	5.07	
PO-1-07-6020	Rejected Query - EDI	0.16	2.91	0.16	2.87	0.16	2.99	0.16	2.85	
PO-1-07-6030	Rejected Query - CORBA	0.16	0.8	0.16	0.77	0.16	0.74	0.16	0.8	
PO-1-07-6050	Rejected Query - Web GUI	0.16	3.16	0.16	3.36	0.16	2.81	0.16	2.85	
PO-1-09-6020	Parsed CSR - EDI	0.21	1.72	0.23	1.86	0.24	2.06	0.21	2.04	
PO-1-09-6030	Parsed CSR - CORBA	0.21	0.3	0.23	0.31	0.24	0.32	0.21	0.34	
PO-2 - OSS Interface Availability										

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PO-2-01-6020	OSS Interf. Avail. – Total - EDI		99.86		100					1
PO-2-01-6030	OSS Interf. Avail. – Total - CORBA		99.97		100					
PO-2-01-6060	OSS Interf. Avail. - Total - Electronic Bonding		100		100					
PO-2-02-6020	OSS Interf. Avail. – Prime Time – EDI		99.79		100		100		100	1
PO-2-02-6030	OSS Interf. Avail. – Prime Time – CORBA		99.96		100		100		100	
PO-2-02-6050	OSS Interface Avail. - Prime Time - Maint. Web GUI/Pre-Ordering/Ordering Web GUI		99.83		100					1
PO-2-02-6060	OSS Interf. Avail. – Prime Time – Electronic Bonding		100		100		100		100	
PO-2-03-6020	OSS Interf. Avail. – Non-Prime – EDI		100		100		99.85		99.98	3
PO-2-03-6030	OSS Interf. Avail. – Non-Prime – CORBA		100		100		100		100	
PO-2-03-6050	OSS Interface Avail. - Non Prime - Maint. Web GUI/Pre-Ordering/Ordering Web GUI		97.97		100					1
PO-2-03-6060	OSS Interf. Avail – Non-Prime – Electronic Bonding		100		100		100		100	
PO-2-03-6080	OSS Interf. Avail. – Non-Prime – Maint Web GUI / Pre Order/Ordering Web GUI						99.93		99.82	4
PO-8 - Manual Loop Qualification										
PO-8-01-2000	% On Time - Manual Loop Qualification		17.42		14.53		100		100	1,2,3,4
PO-8-02-2000	% On Time - Engineering Record Request		NA		NA		NA		NA	
Change Notification										
PO-4 - Timeliness of Change Management Notice										
PO-4-01-6611	% Notices Sent on Time - Emergency Maint.		100		100					1
PO-4-01-6621	% Notices Sent on Time - Regulatory		100		NA					
PO-4-01-6631	% Notices Sent on Time - Industry Standard		100		NA					1
PO-4-01-6641	% Notices Sent on Time - Verizon Orig.		100		NA					1
PO-4-01-6651	% Notices Sent on Time - TC Orig.		100		NA					1
PO-4-01-6660	% Notices Sent on Time - Industry Standard, Verizon Orig. & CLEC Orig.						100		NA	3
PO-4-01-6671	% Notices Sent on Time - Emergency Maint. & Regulatory						100		100	3
PO-4-02-6611	Change Mgmt. Notice - Delay 1-7 Days - Emergency Maint.		NA		NA					

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VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PO-4-02-6621	Change Mgmt. Notice - Delay 1-7 Days - Regulatory		NA		NA					
PO-4-02-6631	Change Mgmt. Notice - Delay 1-7 Days - Ind. Std.		NA		NA					
PO-4-02-6641	Change Mgmt. Notice - Delay 1-7 Days - Verizon Orig.		NA		NA					
PO-4-02-6651	Change Mgmt. Notice - Delay 1-7 Days - TC Orig.		NA		NA					
PO-4-02-6660	Change Mgmt. Notice - Delay 1-7 Days - Ind. Std., Verizon Orig. & CLEC Orig.						NA		NA	
PO-4-02-6671	Change Mgmt. Notice - Delay 1-7 Days - Emergency Maint. & Regulatory						NA		NA	
PO-4-03-6611	Change Mgmt. Notice - Delay 8+ Days - Emergency Maint.		NA		NA					
PO-4-03-6621	Change Mgmt. Notice - Delay 8+ Days - Regulatory		NA		NA					
PO-4-03-6631	Change Mgmt. Notice - Delay 8+ Days - Ind. Std.		NA		NA					
PO-4-03-6641	Change Mgmt. Notice - Delay 8+ Days - Verizon Orig.		NA		NA					
PO-4-03-6651	Change Mgmt. Notice - Delay 8+ Days - TC Orig.		NA		NA					
PO-4-03-6660	Change Mgmt. Notice - Delay 8+ Days - Ind. Std., Verizon Orig. & CLEC Orig.						NA		NA	
PO-4-03-6671	Change Mgmt. Notice - Delay 8+ Days - Emergency Maint. & Regulatory						NA		NA	
Change Confirmation										
PO-4 - Timeliness of Change Management Notice										
PO-4-01-6622	% Notices Sent on Time - Regulatory		NA		100		100		NA	3
PO-4-01-6632	% Notices Sent on Time - Ind. Std.		NA		100					2
PO-4-01-6642	% Notices Sent on Time - Verizon Orig.		NA		100					2
PO-4-01-6652	% Notices Sent on Time - TC Orig.		NA		100					2
PO-4-01-6662	% Notices Sent on Time - Ind. Std., Verizon Orig. & CLEC Orig.						NA		100	4
PO-4-02-6622	Change Mgmt. Notice - Delay 1-7 Days - Regulatory		NA		NA		NA		NA	
PO-4-02-6632	Change Mgmt. Notice - Delay 1-7 Days - Ind. Std.		NA		NA					
PO-4-02-6642	Change Mgmt. Notice - Delay 1-7 Days - Verizon Orig.		NA		NA					
PO-4-02-6652	Change Mgmt. Notice - Delay 1-7 Days - TC Orig.		NA		NA					
PO-4-02-6662	Change Mgmt. Notice - Delay 1-7 Days - Ind. Std., Verizon Orig. & CLEC Orig.						NA		NA	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PO-4-03-6622	Change Mgmt. Notice - Delay 8+ Days - Regulatory		NA		NA		NA		NA	
PO-4-03-6632	Change Mgmt. Notice - Delay 8+ Days - Ind. Std.		NA		NA					
PO-4-03-6642	Change Mgmt. Notice - Delay 8+ Days - Verizon Orig.		NA		NA					
PO-4-03-6652	Change Mgmt. Notice - Delay 8+ Days - TC Orig.		NA		NA					
PO-4-03-6662	Change Mgmt. Notice - Delay 8+ Days - Ind. Std., Verizon Orig. & CLEC Orig.						NA		NA	
TROUBLE REPORTING (OSS)										
MR-1 - Response Time OSS Maintenance Interface										
MR-1-01-2000	Create Trouble	9.21	4.3	9.01	5.23	8.88	4.21	10.12	3.83	
BILLING										
BI-1 - Timeliness of Daily Usage Feed										
BI-1-02-2030	% DUF in 4 Business Days		99.04		98.64		99.43		99.57	
BI-2 - Timeliness of Carrier Bill										
BI-2-01-2030	Timeliness of Carrier Bill		100		100		100		100	
BI-3 - Billing Accuracy										
BI-3-01-2030	% Billing Adjustments - Dollars Adjusted	1.37	4.74	2.6	6.22					
BI-3-02-2030	% Billing Adjustments - Number of Adjustments	5.19	0.42	4.83	0.42					
BI-3 - Billing Accuracy & Claims Processing										
BI-3-04-2030	% CLEC Billing Claims Acknowledged Within Two Business Days						100		100	
BI-3-05-2030	% CLEC Billing Claims Resolved Within 28 Calendar Days After Acknowledgement						100		100	
Resale (Ordering) - POTS/Special Services										
RESALE Ordering										
OR-7 - Order Completeness										
OR-7-01-2000	% Order Confirmation/Rejects sent within 3 Business Days		99.72		99.94		99.85		99.86	
POTS & Pre-qualified Complex - Electronically Submitted										
OR-1 - Order Confirmation Timeliness										
OR-1-02-2320	% On Time LSRC – Flow Through		100		99.99		98.14		98.57	
OR-1-04-2100	% On Time LSRC No Facility Check		96.55		96.41		96.12		96.81	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OR-1-06-2320	% On Time LSRC/ASRC Facility Check		99.04		98.89		100		97.4	
OR-2 - Reject Timeliness										
OR-2-02-2320	% On Time LSR Reject – Flow Through		99.93		99.89		99.94		99.66	
OR-2-04-2320	% On Time LSR Reject No Facility Check		99.12		99.67		97.4		99.59	
OR-2-06-2320	% On Time LSR/ASR Reject Facility Check		100		100		100		97.56	
2 Wire Digital Services										
OR-1 - Order Confirmation Timeliness - Requiring Loop Qualification										
OR-1-04-2341	% On Time LSRC No Facility Check		93.75		100		100		100	4
OR-1-06-2341	% On Time LSRC/ASRC Facility Check		100		100		100		100	2,3,4
OR-2 - Reject Timeliness - Requiring Loop Qualification										
OR-2-04-2341	% On Time LSR Reject No Facility Check		100		100		100		100	2
OR-2-06-2341	% On Time LSR/ASR Reject Facility Check		100		100		NA		NA	2
POTS / Special Services - Aggregate										
OR-3 - Percent Rejects										
OR-3-01-2000	% Rejects		21.61		25.97		21.99		21.36	
OR-4 - Timeliness of Completion Notification										
OR-4-02-2000	Completion Notice (BCN) – % On Time		97.29		97.98					
OR-4-05-2000	Work Completion Notice (PCN) – % On Time		100		100					
OR-4-12-2000	% Due Date to PCN within 3 Business Days		98.33		98.93					
OR-5 - Percent Flow-Through										
OR-5-01-2000	% Flow Through - Total		81.76		90.84		83.57		81.93	
OR-5-03-2000	% Flow Through Achieved		93.05		97.26		94.46		96.52	
OR-6 - Order Accuracy										
OR-6-01-2000	% Service Order Accuracy – Orders		84.25		89.72		93.78		93.65	
OR-6-02-2000	% Accuracy – Opportunities		97.55		98.57					
OR-6-03-2000	% Accuracy – LSRC		0.09		0		0.05		0.09	
OR-7 - Order Completeness										
OR-7-01-2000	% Order Confirmation/Rejects sent within 3 Business Days		99.72		99.94		99.85		99.86	
Special Services - Electronically Submitted										
OR-1 - Order Confirmation Timeliness										

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OR-1-04-2210	% On Time LSRC No Facility Check DS0		NA		NA		NA		NA	
OR-1-04-2211	% On Time LSRC No Facility Check DS1		NA		NA		NA		NA	
OR-1-04-2213	% On Time LSRC No Facility Check DS3		NA		NA		NA		NA	
OR-1-04-2214	% On Time LSRC No Facility Check (Non DS0, DS1, & DS3)		96.55		87.5		86.67		100	2,4
OR-1-06-2210	% On Time LSRC/ASRC Facility Check DS0		NA		NA		NA		NA	
OR-1-06-2211	% On Time LSRC/ASRC Facility Check DS1		NA		NA		100		NA	3
OR-1-06-2213	% On Time LSRC/ASRC Facility Check DS3		NA		NA		NA		NA	
OR-1-06-2214	% On Time LSRC/ASRC Facility Check (Non DS0, DS1, & DS3)		100		100		100		0	1,2,3,4
OR-2 - Reject Timeliness										
OR-2-04-2200	% On Time LSR Reject No Facility Check		100		100		95.24		100	
OR-2-06-2200	% On Time LSR/ASR Reject Facility Check		NA		NA		100		100	3,4
Resale (Provisioning) - POTS/Special Services										
POTS - Provisioning - Total										
PR-2 - Average Completed Interval										
PR-2-04-2100	Average Interval Completed - Dispatch (6-9 Lines)	6.73	3	8.18	3					1,2
PR-2-05-2100	Average Interval Completed - Dispatch (>= 10 Lines)	7.63	6	10.32	NA					1
PR-4 - Missed Appointments										
PR-4-02-2100	Average Delay Days – Total	4.11	2.5	3.28	5.32	3.05	7.18	2.77	2.36	
PR-4-03-2100	% Missed Appointment – Customer	1.65	1.12	1.74	0.61		1.24		1.58	
PR-4-04-2100	% Missed Appointment – Verizon – Dispatch	7.4	1.21	8.06	1.13	9.36	1.76	13.48	2.1	
PR-4-05-2100	% Missed Appointment – Verizon – No Dispatch	0.84	0.04	0.87	0.08	0.9	0.16	1.03	0.08	
PR-4-08-2100	% Missed Appt. – Customer – Due to Late Order Confirmation		0		0.04					
PR-6 - Installation Quality										
PR-6-01-2100	% Installation Troubles reported within 30 Days	3.6	3.26	3.63	1.83	4.3	4.69	3.89	4.83	
PR-6-02-2100	% Installation Troubles reported within 7 Days	2.2	2.14	2.25	1.06					
PR-6-03-2100	% Inst. Troubles reported w/ in 30 Days - FOK/TOK/CPE	3.12	2.64	3.21	1.61		3.77		3.77	
PR-8 - Open Orders in a Hold Status										
PR-8-01-2100	Open Orders in a Hold Status > 30 Days	0.05	0.01	0.05	0.01	0.05	0	0.03	0	
PR-8-02-2100	Open Orders in a Hold Status > 90 Days	0.03	0	0.03	0	0.03	0	0.02	0	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
POTS - Business										
PR-2 - Average Completed Interval										
PR-2-01-2110	Average Interval Completed – Total No Dispatch	1.42	0.9	1.21	1.33					
PR-2-03-2110	Average Interval Completed – Dispatch (1-5 Lines)	4.61	2.75	4.64	4.96					
POTS - Residence										
PR-2 - Average Completed Interval										
PR-2-01-2120	Average Interval Completed – Total No Dispatch	0.95	1.04	0.95	0.58					
PR-2-03-2120	Average Interval Completed – Dispatch (1-5 Lines)	3.3	2.46	3.4	2.63					
POTS & Complex Aggregate										
PR-2 - Average Completed Interval										
PR-2-18-2103	Average Interval Completed – Disconnects	3.66	1.19	3.84	0.91					
2-Wire Digital Services										
PR-2 - Average Completed Interval										
PR-2-01-2341	Average Interval Completed – Total No Dispatch	1.47	3.29	1.43	7.4					1,2
PR-2-02-2341	Average Interval Completed – Total Dispatch	4.23	5	3.91	NA					1
PR-4 - Missed Appointments										
PR-4-02-2341	Average Delay Days – Total	6.23	9	4.26	NA	13.51	NA	32.37	NA	1
PR-4-03-2341	% Missed Appointment – Customer	8.18	10	6.9	9.09		50		0	3,4
PR-4-04-2341	% Missed Appointment – Verizon – Dispatch	9.09	0	5.92	0	6.74	NA	7.2	NA	1,2
PR-4-05-2341	% Missed Appointment – Verizon – No Dispatch	1.04	11.11	1.13	0	2.61	0	1.23	0	3,4
PR-4-08-2341	% Missed Appt. – Customer – Late Order Conf.		0		0		0		0	3,4
PR-6 - Installation Quality										
PR-6-01-2341	% Install. Troubles Reported within 30 Days	6.9	NA	3.07	14.29	3.45	NA	6.02	NA	2
PR-6-03-2341	% Install. Troubles Reported w/in 30 Days - FOK/TOK/CPE	6.68	NA	7.78	28.57		NA		NA	2
PR-8 - Open Orders in a Hold Status										
PR-8-01-2341	Open Orders in a Hold Status > 30 Days	0	0	0.1	0	0.17	0	0	0	3,4
PR-8-02-2341	Open Orders in a Hold Status > 90 Days	0	0	0	0	0	0	0	0	3,4
PR-2 - Average Completed Interval										
PR-2-01-2200	Average Interval Completed – Total No Dispatch	6.07	5.61	15.74	5.15					
PR-2-02-2200	Average Interval Completed – Total Dispatch	8.46	23.29	13.28	5.5					1,2

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2-06-2200	Average Interval Completed – DS0	7.38	5.88	7.57	2.5					2
PR-2-07-2200	Average Interval Completed – DS1	8.3	39.5	22.51	7.75					1,2
PR-2-08-2200	Average Interval Completed – DS3	NA	NA	NA	NA					
PR-2-18-2200	Average Interval Completed – Disconnects	6.08	5.83	6.66	5.27					
PR-4 - Missed Appointments										
PR-4-01-2210	% Missed Appointment – Verizon – DS0	9.19	13.64	12.07	0	5.88	0	7.59	0	
PR-4-01-2211	% Missed Appointment – Verizon – DS1	12.04	20	21.43	0	9.85	0	6.74	0	1,4
PR-4-01-2213	% Missed Appointment – Verizon – DS3	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-01-2214	% Missed Appointment – Verizon – Special Other	8.77	0	7.5	0	3.13	0	5.68	0	1,2,3,4
PR-4-02-2200	Average Delay Days – Total	11.7	32	11.49	NA	11.83	NA	8.62	NA	1
PR-4-03-2200	% Missed Appointment – Customer	24.66	12.5	18.35	16		41.18		22.73	
PR-4-08-2200	% Missed Appt. – Customer – Due to Late Order Conf.		3.13		4		0		0	
PR-6- Installation Quality										
PR-6-01-2200	% Installation Troubles reported within 30 Days	0.67	0	0.76	0	0.63	0	0.42	2.9	
PR-6-03-2200	% Inst. Troubles reported w/ in 30 Days - FOK/TOK/CPE	0.14	0	0.19	0		0		1.45	
PR-8 - Open Orders in a Hold Status										
PR-8-01-2200	Open Orders in a Hold Status > 30 Days	0.5	0	0.55	4	6.46	2.94	0.43	0	
PR-8-02-2200	Open Orders in a Hold Status > 90 Days	0.37	0	0.44	0	0.44	0	0.09	0	
Resale (Maintenance) - POTS/Special Services										
POTS - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-02-2100	Network Trouble Report Rate – Loop	0.95	0.45	1.01	0.42	1.07	0.34	1.26	0.49	
MR-2-03-2100	Network Trouble Report Rate – Central Office	0.09	0.03	0.08	0.02	0.06	0.03	0.07	0.04	
MR-2-04-2100	% Subsequent Reports	2.99	2.05	2.96	1.27		1.73		1.11	
MR-2-05-2100	% CPE/TOK/FOK Trouble Report Rate	0.78	0.43	0.81	0.38		0.32		0.38	
MR-3 - Missed Repair Appointments										
MR-3-01-2110	% Missed Repair Appointment – Loop Bus.	19.08	16.99	19.5	15.07	24.94	23.97	25.22	18.35	
MR-3-01-2120	% Missed Repair Appointment – Loop Res.	13.31	5.66	13.69	4.88	18.19	8.45	16.29	8.53	
MR-3-02-2110	% Missed Repair Appointment – Central Office Bus.	12.97	20	10.82	33.33	11.9	4.55	9.77	3.85	
MR-3-02-2120	% Missed Repair Appointment – Central Office Res.	9.18	17.65	10.71	5.56	12.61	6.67	10.6	15.79	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-3-03-2100	% CPE/TOK/FOK - Missed Appointment	8.05	4.86	8.4	4.25		5.13		5.96	
MR-3-04-2100	% Missed Repair Appointment - No Double Dispatch	9.17	5.2	9.93	4.5					
MR-3-05-2100	% Missed Repair Appointment - Double Dispatch	40.97	33.33	41.51	36.07					
MR-4 - Trouble Duration Intervals										
MR-4-01-2100	Mean Time To Repair – Total	16.97	11.92	18.91	13.59	23.05	16.18	24.4	16.82	
MR-4-02-2110	Mean Time To Repair – Loop Trouble - Bus.	12.54	12.16	13.73	11.73	14.09	14.48	13.81	13.64	
MR-4-02-2120	Mean Time To Repair – Loop Trouble - Res.	18.35	11.52	20.26	14.5	24.8	17.58	26.32	18.56	
MR-4-03-2110	Mean Time To Repair – Central Office Trouble - Bus.	7.23	16.23	8.69	10.97	8.55	9.45	7.76	7.9	
MR-4-03-2120	Mean Time To Repair – Central Office Trouble - Res.	10.41	15.06	11.67	11.77	14.24	12.2	15.26	16.93	
MR-4-04-2100	% Cleared (all troubles) within 24 Hours	80.58	90.24	76	86.42	67.7	79.52	67.85	77.6	
MR-4-06-2100	% Out of Service > 4 Hours	70.97	50.23	71.36	56.78	79.59	58.96	79.12	61.99	
MR-4-07-2100	% Out of Service > 12 Hours	53.93	38.81	55.25	45.48	60.86	46.53	59.28	49.59	
MR-5 - Repeat Trouble Reports										
MR-5-01-2100	% Repeat Reports within 30 Days	13.36	11.5	13.25	8.81	12.99	7.05	14.16	12.64	
2-Wire Digital Services - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-02-2341	Network Trouble Report Rate – Loop	0.3	0.14	0.25	0.55	0.24	0	0.27	0.23	
MR-2-03-2341	Network Trouble Report Rate – Central Office	0.27	0.14	0.22	0	0.22	0	0.29	0	
MR-2-04-2341	% Subsequent Reports	4.55	0	8.4	0		NA		0	4
MR-2-05-2341	% CPE/TOK/FOK Trouble Report Rate	1.18	1.38	1.26	0.95		0.14		0.46	
MR-3 - Missed Repair Appointments										
MR-3-01-2341	% Missed Repair Appointment – Loop	43.75	0	46.72	50	45.61	NA	45.14	50	1,2,4
MR-3-02-2341	% Missed Repair Appointment – Central Office	27.91	0	15.89	NA	25.23	NA	24.67	NA	1
MR-3-03-2341	% CPE/TOK/FOK - Missed Appointment	22.46	10	21.29	0		0		25	2,3,4
MR-3-04-2341	% Missed Repair Appointment - No Double Dispatch	20.39	0	19.08	0					1,2
MR-3-05-2341	% Missed Repair Appointment - Double Dispatch	58.04	NA	45.56	66.67					2
MR-4 - Trouble Duration Intervals										
MR-4-01-2341	Mean Time To Repair – Total	16.22	2.68	16.49	9.7	18.29	NA	22.94	43.73	1,2,4
MR-4-02-2341	Mean Time To Repair – Loop Trouble	21.83	4.52	20.1	9.7	22.87	NA	29.16	43.73	1,2,4
MR-4-03-2341	Mean Time To Repair – Central Office Trouble	9.95	0.85	12.37	NA	13.41	NA	16.97	NA	1

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-4-04-2341	% Cleared (all troubles) within 24 Hours	80.22	100	80.35	100	77.38	NA	73.81	50	1,2,4
MR-4-07-2341	% Out of Service > 12 Hours	49.51	0	55.56	0	46.15	NA	47.27	100	1,2,4
MR-4-08-2341	% Out of Service > 24 Hours	19.42	0	17.28	0	21.98	NA	28.48	50	1,2,4
MR-5 - Repeat Trouble Reports										
MR-5-01-2341	% Repeat Reports within 30 Days	15.02	0	19.21	0	21.27	NA	17.35	0	1,2,4
Special Services - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-01-2200	Network Trouble Report Rate	0.21	0.11	0.23	0.19	0.27	0.37	0.31	0.28	
MR-2-05-2200	% CPE/TOK/FOK Trouble Report Rate	0.33	0.17	0.32	0.35		0.37		0.57	
MR-4 - Trouble Duration Intervals										
MR-4-01-2200	Mean Time To Repair – Total	5.3	4.48	4.7	4.41					1
MR-4-01-2216	Mean Time To Repair – Total - Non DS0 & DS0					6.78	3.63	5.51	2.84	4
MR-4-01-2217	Mean Time To Repair – Total - DS1 & DS3					6.75	5.92	5.64	2.58	3
MR-4-04-2200	% Cleared (all troubles) within 24 Hours	99.41	100	99.22	100					1
MR-4-04-2216	% Cleared (all troubles) within 24 Hours - Non DS0 & DS0					96.25	100	99.22	100	4
MR-4-04-2217	% Cleared (all troubles) within 24 Hours - DS1 & DS3					96	100	99.39	100	3
MR-4-06-2200	% Out of Service > 4 Hours	53.37	50	48.19	25					1,2
MR-4-06-2216	% Out of Service > 4 Hours - Non DS0 & DS0					53.25	28.57	53.63	25	4
MR-4-06-2217	% Out of Service > 4 Hours - DS1 & DS3					36	100	50	22.22	3
MR-4-08-2200	% Out of Service > 24 Hours	0.59	0	0.78	0					1,2
MR-4-08-2216	% Out of Service > 24 Hours - Non DS0 & DS0					3.75	0	0.78	0	4
MR-4-08-2217	% Out of Service > 24 Hours - DS1 & DS3					4	0	0.61	0	3
MR-5 - Repeat Trouble Reports										
MR-5-01-2200	% Repeat Reports within 30 Days	10.85	33.33	11.14	11.11	10.44	17.65	14.73	14.29	1
UNE (Ordering) - POTS/Special Services										
Platform										
OR-1 - Order Confirmation Timeliness										
OR-1-02-3143	% On Time LSRC – Flow Through		100		99.95		97.85		97.83	
OR-1-04-3143	% On Time LSRC - No Facility Check		98.39		99.15		98.66		98.89	
OR-1-06-3143	% On Time LSRC/ASRC Facility Check		99.29		100		100		100	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OR-2-02-3143	% On Time LSR Reject – Flow Through		99.54		99.66		99.86		99.87	
OR-2-04-3143	% On Time LSR Reject No Facility Check		97.97		99.08		99.59		99.87	
OR-2-06-3143	% On Time LSR/ASR Reject Facility Check		100		100		100		100	
OR-6 - Order Accuracy										
OR-6-01-3143	% Service Order Accuracy - Orders		90.72		87.63		93.21		92.67	
OR-6-02-3143	% Accuracy – Opportunities		98.85		98.38					
OR-6-03-3143	% Accuracy – LSRC		0		0		0		0	
OR-7 - Order Completeness										
OR-7-01-3143	% Order Confirmation/Rejects sent within 3 Business Days		99.71		99.97		99.81		99.78	
Loop/Pre-qualified Complex/LNP										
OR-1 - Order Confirmation Timeliness										
OR-1-02-3331	% On Time LSRC – Flow Through		99.96		99.95		99.83		99.5	
OR-1-04-3331	% On Time LSRC - No Facility Check		96.63		97.6		98.08		97.39	
OR-1-06-3331	% On Time LSRC/ASRC Facility Check		97.5		99.11		98.11		98.27	
OR-2 - Reject Timeliness										
OR-2-02-3331	% On Time LSR Reject – Flow Through		99.85		99.32		97.39		99.97	
OR-2-04-3331	% On Time LSR Reject No Facility Check		99.21		99.53		98.96		98.86	
OR-2-06-3331	% On Time LSR/ASR Reject Facility Check		99.41		100		99.63		99.7	
OR-6 - Order Accuracy										
OR-6-01-3331	% Service Order Accuracy - Orders		98.75		97.14		97.7		96.55	
OR-6-02-3331	% Accuracy – Opportunities		99.83		99.77					
OR-6-03-3331	% Accuracy – LSRC		0.03		0.01		0.04		0.02	
OR-7 - Order Completeness										
OR-7-01-3331	% Order Confirmation/Rejects sent within 3 Business Days		99.7		99.78		99.68		99.84	
2 Wire Digital Services										
OR-1 - Order Confirmation Timeliness- Requiring Loop Qualification										
OR-1-04-3341	% On Time LSRC - No Facility Check		98.92		99.5		99.26		98.67	
OR-1-06-3341	% On Time LSRC/ASRC Facility Check		NA		NA		NA		NA	
OR-2 - Reject Timeliness - Requiring Loop Qualification										
OR-2-04-3341	% On Time LSR Reject No Facility Check		100		100		100		100	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OR-2-06-3341	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
2 Wire xDSL Loops										
OR-1 - Order Confirmation Timeliness - Requiring Loop Qualification										
OR-1-04-3342	% On Time LSRC - No Facility Check		97.98		98.98		100		100	
OR-1-06-3342	% On Time LSRC/ASRC - Facility Check		NA		NA		NA		NA	
OR-2 - Reject Timeliness - Requiring Loop Qualification										
OR-2-04-3342	% On Time LSR Reject- No Facility Check		100		100		100		100	
OR-2-06-3342	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
2 Wire xDSL Line Sharing										
OR-1 - Order Confirmation Timeliness - Requiring Loop Qualification										
OR-1-04-3343	% On Time LSRC/ASRC- No Facility Check		100		98.55					
OR-1-06-3343	% On Time LSRC/ASRC - Facility Check		NA		NA					
OR-2 - Reject Timeliness - Requiring Loop Qualification										
OR-2-04-3343	% On Time LSR/ASR Reject- No Facility Check		100		100					
OR-2-06-3343	% On Time LSR/ASR Reject Facility Check		NA		NA					
2 Wire xDSL Line Sharing & Line Splitting										
OR-1 - Order Confirmation Timeliness - Requiring Loop Qualification										
OR-1-04-3340	% On Time LSRC - No Facility Check						100		100	
OR-1-06-3340	% On Time LSRC/ASRC - Facility Check						NA		NA	
OR-2 - Reject Timeliness - Requiring Loop Qualification										
OR-2-04-3340	% On Time LSR Reject- No Facility Check						100		100	
OR-2-06-3340	% On Time LSR/ASR Reject Facility Check						NA		NA	
POTS / Special Services - Aggregate										
OR-3 - Percent Rejects (ASRs + LSRs)										
OR-3-01-3000	% Rejects (ASRs + LSRs)		22.93		22.93		20.58		18.67	
OR-4 - Timeliness of Completion Notification										
OR-4-02-3000	Completion Notice (BCN) – % On Time		95.15		96.57					
OR-4-05-3000	Work Completion Notice (PCN) – % On Time		100		100					
OR-4-12-3000	% Due Date to PCN within 2 Business Days		97.94		98.08					
OR-4-14-3000	% Due Date to BCN within 4 Business Days		96.78		98.18					

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OR-4-17-3000	% Billing Completion Notifiers sent Within Two (2) Business Days						UD		99.08	
OR-5 - Percent Flow-Through										
OR-5-01-3000	% Flow Through - Total		62.01		69.61		72.22		76.11	
OR-5-02-3000	% Flow Through - Simple		62.46		70.86					
OR-5-03-3000	% Flow Through Achieved						92.21		92.83	
OR-5-03-3112	% Flow Through Achieved		82.71		89.45					
Special Services - Electronically Submitted										
OR-1 - Order Confirmation Timeliness (ASRs + LSRs)										
OR-1-04-3210	% On Time LSRC - No Facility Check DS0		NA		NA		NA		NA	
OR-1-04-3211	% On Time LSRC/ASRC No Facility Check DS1		100		74.42					
OR-1-04-3213	% On Time LSRC/ASRC No Facility Check DS3		100		NA					1
OR-1-04-3214	% On Time LSRC/ASRC No Facility Check (Non DS0, DS1, & DS3)		100		100					1,2
OR-1-06-3210	% On Time LSRC/ASRC Facility Check DS0		NA		NA		NA		NA	
OR-1-06-3211	% On Time LSRC/ASRC Facility Check DS1		74.86		37.68		44.54		87.21	
OR-1-06-3213	% On Time LSRC/ASRC Facility Check DS3		92		72.73		0		100	3,4
OR-1-06-3214	% On Time LSRC/ASRC Facility Check (Non DS0, Non DS1 & Non DS3)		NA		50		100		NA	2,3
OR-1-08-3210	% On Time LSRC < 6 Lines -DS0 - Fax		NA		NA		NA		NA	
OR-1-08-3211	% On Time LSRC < 6 Lines -DS1 - Fax		100		100					
OR-1-08-3213	% On Time LSRC < 6 Lines -DS3 - Fax		NA		NA					
OR-1-08-3214	% On Time LSRC < 6 Lines - Non DS0, DS1, DS3 - Fax		NA		NA					
OR-1-10-3210	% On Time LSRC >= 6 Lines -DS0 - Fax		NA		NA		NA		NA	
OR-1-10-3211	% On Time LSRC >= 6 Lines -DS1 - Fax		NA		NA		NA		NA	
OR-1-10-3213	% On Time LSRC >= 6 Lines -DS3 - Fax		NA		NA		NA		NA	
OR-1-10-3214	% On Time LSRC >= 6 Lines - Non DS0, DS1, DS3 - Fax		NA		NA		NA		NA	
OR-2 - Reject Timeliness (ASRs + LSRs)										
OR-2-04-3200	% On Time LSR Reject No Facility Check		NA		85.71		60		71.43	2,3,4
OR-2-06-3200	% On Time LSR/ASR Reject Facility Check		98.31		75.71		82.5		85	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
OR-2-08-3200	% On Time LSR Reject < 6 Lines - Fax		NA		100		100		100	2,3,4
OR-2-10-3200	% On Time LSR Reject >=6 Lines - Fax		NA		NA		NA		NA	
Special Services - FAX/MAIL Submitted										
OR-1 - Order Confirmation Timeliness										
OR-1-07-3210	Average LSRC Time < 6 Lines -DS0 - Fax		NA		NA					
OR-1-07-3211	Average LSRC Time < 6 Lines -DS1 - Fax		7.59		21.77					
OR-1-07-3213	Average LSRC Time < 6 Lines -DS3 - Fax		NA		NA					
OR-1-08-3210	% On Time LSRC < 6 Lines -DS0 - Fax		NA		NA		NA		NA	
OR-1-08-3211	% On Time LSRC < 6 Lines -DS1 - Fax		100		100					
OR-1-08-3213	% On Time LSRC < 6 Lines -DS3 - Fax		NA		NA					
OR-1-08-3214	% On Time LSRC < 6 Lines - Non DS0, DS1, DS3 - Fax		NA		NA					
OR-1-10-3210	% On Time LSRC >= 6 Lines -DS0 - Fax		NA		NA		NA		NA	
OR-1-10-3211	% On Time LSRC >= 6 Lines -DS1 - Fax		NA		NA		NA		NA	
OR-1-10-3213	% On Time LSRC >= 6 Lines -DS3 - Fax		NA		NA		NA		NA	
OR-1-10-3214	% On Time LSRC >= 6 Lines - Non DS0, DS1, DS3 - Fax		NA		NA		NA		NA	
OR-2 - Reject Timeliness										
OR-2-08-3200	% On Time LSR Reject < 6 Lines - Fax		NA		100		100		100	2,3,4
OR-2-10-3200	% On Time LSR Reject >=6 Lines - Fax		NA		NA		NA		NA	
UNE (Provisioning) - POTS/Special Services										
POTS - Provisioning										
PR-2 - Average Completed Interval										
PR-2-01-3111	Av. Completed Interval - Total No Dispatch – Hot Cut Loop		4.86		4.98					
PR-2-01-3122	Av. Completed Interval - Total No Dispatch - Other (UNE Switch & INP)	1.42	4	1.21	2					1,2
PR-2-01-3140	Av. Completed Interval - Total No Dispatch - Platform	1.42	1.51	1.21	1.41					
PR-2-03-3112	Av. Completed Interval - Dispatch (1-5 Lines) – Loop	4.61	4.68	4.64	5.28					
PR-2-03-3140	Av. Completed Interval - Dispatch (1-5 Lines) - Platform	4.61	3.07	4.64	1.96					
PR-2-04-3112	Av. Completed Interval - Dispatch (6-9 Lines) – Loop	6.73	5.47	8.18	5.55					
PR-2-04-3140	Av. Completed Interval - Dispatch (6-9 Lines) - Platform	6.73	2.83	8.18	2.67					1,2
PR-2-05-3112	Av. Completed Interval - Dispatch (>= 10 Lines) – Loop	7.63	8.38	10.32	9.57					1,2

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2-05-3140	Av. Completed Interval - Dispatch (>= 10 Lines) - Platform	7.63	NA	10.32	3					2
PR-4 - Missed Appointments										
PR-4-02-3100	Average Delay Days – Total	4.11	4.58	3.28	1.69	3.05	4.75	2.77	2.42	
PR-4-03-3100	% Missed Appt. – Customer	1.65	5.54	1.74	3.94		3.98		6.01	
PR-4-04-3113	% Missed Appt. – Verizon – Dispatch - Loop New	7.4	0.54	8.06	0.45	9.36	1	13.48	0.36	
PR-4-04-3140	% Missed Appt. – Verizon – Dispatch - Platform	7.4	0	8.06	0.78	9.36	2.82	13.48	1.37	
PR-4-04-3520	% Missed Appt. – Verizon – Dispatch - Hot Cut Loop	7.4	0.34	8.06	0.44					
PR-4-05-3111	% Missed Appt. – Verizon – No Dispatch - Hot Cut Loop	0.84	0.13	0.87	0.09					
PR-4-05-3121	% Missed Appt. – Verizon – No Dispatch – Other	0.84	0	0.87	0					1,2
PR-4-05-3140	% Missed Appt. – Verizon – No Dispatch - Platform	0.84	0.11	0.87	0.03	0.9	0.08	1.03	0.1	
PR-4-07-3540	% On Time Performance – LNP Only		99.16		99.13		99.23		99.26	
PR-6 - Installation Quality										
PR-6-01-3112	% Installation Troubles reported within 30 Days - Loop	3.6	3.61	3.63	2.61	4.3	3.13	3.89	3.19	
PR-6-01-3121	% Installation Troubles reported within 30 Days - Platform	3.6	0.98	3.63	0.51	4.3	0.96	3.89	0.64	
PR-6-02-3112	% Installation Troubles reported within 7 Days - Loop	2.2	2.35	2.25	1.55					
PR-6-02-3121	% Installation Troubles reported within 7 Days - Platform	2.2	0.46	2.25	0.16					
PR-6-02-3520	% Installation Troubles reported within 7 Days - Hot Cut Loop		0		0.66		0.9		0.61	
PR-6-03-3112	% Installation Troubles reported within 30 Days - FOK/TOK/CPE – Loop	3.12	3.88	3.21	3.58		3.1		4.29	
PR-6-03-3121	% Inst. Troubles reported within 30 Days - FOK/TOK/CPE – Platform	3.12	0.92	3.21	0.86		1.39		0.91	
PR-8 - Open Orders in a Hold Status										
PR-8-01-3100	Open Orders in a Hold Status > 30 Days	0.05	0.02	0.05	0.01	0.05	0.02	0.03	0	
PR-8-02-3100	Open Orders in a Hold Status > 90 Days	0.03	0.02	0.03	0.01	0.03	0.02	0.02	0	
Hot Cuts										
PR-9 - Hot Cut Loops										
PR-9-01-3520	% On Time Performance – Hot Cut Loop		98.62		99.14		98.58		98.59	
PR-9-02-3520	% Early Cuts - Lines		0.28		0.66		0.5		0.04	
PR-9-08-3520	Average Duration of Service Interruption		NA		11.73		10.23		18.6	
2-Wire Digital Services										

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2 - Average Completed Interval										
PR-2-01-3341	Av. Interval Completed – Total No Dispatch	1.47	1	1.43	4					1,2
PR-2-02-3341	Av. Interval Completed – Total Dispatch	4.23	4.81	3.91	5.42					
PR-4 - Missed Appointments										
PR-4-02-3341	Average Delay Days – Total	6.23	1.5	4.26	3.63	13.51	1.25	32.37	2.45	1,2,3
PR-4-03-3341	% Missed Appointment – Customer	8.18	6.06	6.9	5.97		3.77		9.09	
PR-4-04-3341	% Missed Appointment – Verizon – Dispatch	9.09	1.57	5.92	4.07	6.74	1	7.2	2.7	
PR-4-05-3341	% Missed Appointment – Verizon – No Dispatch	1.04	0	1.13	25	2.61	0	1.23	12.5	1,2,3,4
PR-6 - Installation Quality										
PR-6-01-3341	% Install. Troubles Reported within 30 Days	6.9	8.09	3.07	6.57	6.12	2.7	6.28	2.96	
PR-6-03-3341	% Install. Troubles Reported within 30 Days - FOK/TOK/CPE	6.68	8.82	7.78	5.84		5.41		8.15	
PR-8 - Open Orders in a Hold Status										
PR-8-01-3341	Open Orders in a Hold Status > 30 Days	0	0	0.1	0	0.17	0	0	0	
PR-8-02-3341	Open Orders in a Hold Status > 90 Days	0	0	0	0	0	0	0	0	
2-Wire xDSL Loops										
PR-2 - Average Completed Interval										
PR-2-01-3342	Av. Interval Completed – Total No Dispatch		6.64		5.42					
PR-2-02-3342	Av. Interval Completed – Total Dispatch		5.36		5.99					
PR-4 - Missed Appointments										
PR-4-02-3342	Average Delay Days – Total	10.55	3.17	8.88	2.56	15	2.43	8.58	2	1,3,4
PR-4-03-3342	% Missed Appointment – Customer	0.86	7.48	0.52	5.93		6.22		6.25	
PR-4-04-3342	% Missed Appointment – Verizon – Dispatch		0		0.8		0.56		1.39	
PR-4-14-3342	% Completed On Time [With Serial Number]		NA		NA		99.09		98.31	
PR-6 - Installation Quality										
PR-6-01-3342	% Install. Troubles Reported within 30 Days	7.43	7.07	5.18	2.22	6.12	5.18	6.28	5.45	
PR-6-03-3342	% Install. Troubles Reported within 30 Days - FOK/TOK/CPE	3.12	7.27	3.21	8.37		6.99		6.23	
PR-8 - Open Orders in a Hold Status										
PR-8-01-3342	Open Orders in a Hold Status > 30 Days	0.54	0	0.65	0	6.97	0	0.33	0	
PR-8-02-3342	Open Orders in a Hold Status > 90 Days	0.36	0	0.43	0	0.31	0	0	0	
2-Wire xDSL Line Sharing										

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2 - Average Completed Interval										
PR-2-01-3343	Av. Interval Completed – Total No Dispatch	3.04	2.53	3	3.02					
PR-2-02-3343	Av. Interval Completed – Total Dispatch	2.84	2.85	2.98	2.91					
PR-4 - Missed Appointments										
PR-4-02-3343	Average Delay Days – Total	2.41	4	1.29	2	1.5	2	1.14	7.13	1,2,3,4
PR-4-03-3343	% Missed Appointment – Customer	0.86	3.92	0.52	1.71		2.05		3.52	
PR-4-04-3343	% Missed Appointment – Verizon – Dispatch	0.86	0	0.85	0	1.37	7.32	1.62	1.75	
PR-4-05-3343	% Missed Appointment – Verizon – No Dispatch	1.03	0.93	1	0.47	0.52	1.01	0.52	0.99	
PR-6 - Installation Quality										
PR-6-01-3343	% Install. Troubles Reported within 30 Days	0.65	0.65	0.77	2.05	0.77	0.82	1.05	1.9	
PR-6-03-3343	% Install. Troubles Reported within 30 Days - FOK/TOK/CPE	4.26	3.92	5.53	5.12		5.74		3.79	
PR-8 - Open Orders in a Hold Status										
PR-8-01-3343	Open Orders in a Hold Status > 30 Days	0	0	0	0	0	0	0	0	
PR-8-02-3343	Open Orders in a Hold Status > 90 Days	0	0	0	0	0	0	0	0	
2-Wire xDSL Line Splitting										
PR-4 - Missed Appointments										
PR-4-03-3345	% Missed Appointment – Customer						NA		NA	
PR-4-04-3345	% Missed Appointment – Verizon – Dispatch					1.37	NA	1.62	NA	
PR-4-05-3345	% Missed Appointment – Verizon – No Dispatch					0.52	NA	0.52	NA	
PR-5 - Facility Missed Orders										
PR-5-01-3345	% Missed Appointment - Verizon Facilities					2.11	NA	1.37	NA	
PR-5-02-3345	% Orders Held for Facilities > 15 Days					0	NA	0	NA	
PR-6 - Installation Quality										
PR-6-01-3345	% Install. Troubles Reported within 30 Days					0.77	NA	1.05	NA	
PR-6-03-3345	% Install. Troubles Reported within 30 Days - FOK/TOK/CPE						NA		NA	
Special Services - Provisioning										
PR-2 - Average Completed Interval										
PR-2-01-3200	Av. Interval Completed – Total No Dispatch	6.07	7.91	15.74	6.9					
PR-2-02-3200	Av. Interval Completed – Total Dispatch	8.46	14	13.28	11.93					
PR-2-06-3200	Av. Interval Completed – DS0	7.38	10	7.57	NA					1

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2-07-3200	Av. Interval Completed – DS1	8.3	14.18	22.51	12.17					
PR-2-08-3200	Av. Interval Completed – DS3	NA	NA	NA	NA					
PR-2-09-3511	Av. Interval Completed – Total - EEL - Backbone		NA		NA					
PR-2-09-3512	Av. Interval Completed – Total - EEL – Loop		NA		NA					
PR-4 - Missed Appointments										
PR-4-01-3210	% Missed Appointment – Verizon – DS0	9.19	NA	12.07	NA	5.88	NA	7.59	NA	
PR-4-01-3211	% Missed Appointment – Verizon – DS1	12.04	6.27	21.43	4.11	6.36	4.26	7.02	5.06	
PR-4-01-3213	% Missed Appointment – Verizon – DS3	NA	NA	NA	0	NA	NA	NA	NA	2
PR-4-01-3214	% Missed Appointment – Verizon – Special Other					3.13	NA	5.68	NA	
PR-4-01-3215	% Missed Appointment – Verizon –Special Other	8.77	NA	7.5	NA					
PR-4-01-3510	% Missed Appointment – Verizon – Total - EEL	12.04	NA	21.43	NA	6.36	NA	7.02	NA	
PR-4-01-3530	% Missed Appointment – Verizon – Total- IOF	NA	0	NA	0	NA	20	NA	33.33	3,4
PR-4-02-3200	Average Delay Days – Total	11.7	3.96	11.49	1.83	11.83	2.25	8.62	2.63	2,3,4
PR-4-02-3510	Average Delay Days – Total - EEL	15.04	NA	13.53	NA	7.36	NA	11.92	NA	
PR-4-02-3530	Average Delay Days – Total - IOF	NA	NA	NA	NA	NA	1	NA	7	3,4
PR-4-03-3200	% Missed Appointment – Customer	24.66	2.51	18.35	2.2		6.91		3.05	
PR-4-03-3510	% Missed Appointment – Customer - EEL	20.42	NA	7.64	NA		NA		0	4
PR-4-03-3530	% Missed Appointment – Customer - IOF						0		0	3,4
PR-4-07-3540	% On Time Performance – LNP Only		99.16		99.13		99.23		99.26	
PR-4-08-3200	% Missed Appt. – Customer – Late Order Conf.		2.01		0		4.32		1.57	
PR-6 - Installation Quality										
PR-6-01-3200	% Installation Troubles reported within 30 Days	0.67	3.15	0.76	11.22	0.63	5.28	0.42	5.59	
PR-6-03-3200	% Inst. Troubles reported w/ in 30 Days - FOK/TOK/CPE	0.14	0.35	0.19	0.51		0		6.13	
PR-8 - Open Orders in a Hold Status										
PR-8-01-3200	Open Orders in a Hold Status > 30 Days	0.5	0	0.55	0	6.46	0	0.43	0.02	
PR-8-02-3200	Open Orders in a Hold Status > 90 Days	0.37	0	0.44	0	0.44	0	0.09	0.02	
UNE (Maintenance) - POTS/Special Services										
Maintenance - POTS Loop										
MR-2 - Trouble Report Rate										
MR-2-02-3550	Network Trouble Report Rate – Loop	0.95	0.65	1.01	0.61	1.07	0.52	1.26	0.58	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-2-03-3550	Network Trouble Report Rate – Central Office	0.09	0.06	0.08	0.05	0.06	0.03	0.07	0.05	
MR-2-05-3550	% CPE/TOK/FOK Trouble Report Rate	0.78	0.69	0.81	0.73		0.57		0.62	
MR-3 - Missed Repair Appointments										
MR-3-01-3550	% Missed Repair Appointment – Loop	14.04	3.25	14.42	1.85	18.97	3.08	17.29	6.66	
MR-3-02-3550	% Missed Repair Appointment – Central Office	10.27	4.9	10.77	4.88	12.38	9.09	10.42	11.63	
MR-3-03-3550	% CPE/TOK/FOK - Missed Appointment	8.05	2.15	8.4	2.31		2.42		4.23	
MR-3-04-3550	% Missed Repair Appointment - No Double Dispatch	9.17	1.5	9.93	1.02					
MR-3-05-3550	% Missed Repair Appointment - Double Dispatch	40.97	12	41.51	10.37					
MR-4 - Trouble Duration Intervals										
MR-4-01-3550	Mean Time To Repair – Total	16.97	13.18	18.91	12.16	23.05	12.23	24.4	14.89	
MR-4-02-3550	Mean Time To Repair – Loop Trouble	17.72	13.21	19.54	12.31	23.65	12.17	25	14.92	
MR-4-03-3550	Mean Time To Repair – Central Office Trouble	9.56	12.82	10.83	10.07	12.71	10.22	13.59	14.57	
MR-4-04-3550	% Cleared (all troubles) within 24 Hours	80.58	91.98	76	92.27	67.7	92.04	67.85	87.9	
MR-4-07-3550	% Out of Service > 12 Hours	53.93	49.13	55.25	48.18	60.86	47.5	59.28	49.42	
MR-4-08-3550	% Out of Service > 24 Hours	18.5	8.95	22.15	7.39	29.76	8.27	29.11	12.21	
MR-4-09-3550	Mean Time To Repair - No Double Dispatch	15.41	11.52	17.59	11.27					
MR-4-10-3550	Mean Time To Repair - Double Dispatch	29.47	21.59	31.64	21.73					
MR-5 - Repeat Trouble Reports										
MR-5-01-3550	% Repeat Reports within 30 Days	13.36	16.04	13.25	18.71	12.99	11.64	14.16	14.3	
Maintenance - POTS Platform										
MR-2 - Trouble Report Rate										
MR-2-02-3140	Network Trouble Report Rate – Platform	0.95	0.71	1.01	0.6	1.07	0.62	1.26	0.78	
MR-2-03-3140	Network Trouble Report Rate – Central Office	0.09	0.13	0.08	0.1	0.06	0.11	0.07	0.08	
MR-2-04-3140	% Subsequent Reports	2.99	3.7	2.96	5.07		3.75		0.49	
MR-2-05-3140	% CPE/TOK/FOK Trouble Report Rate	0.78	0.92	0.81	0.75		0.89		1	
MR-3 - Missed Repair Appointments										
MR-3-01-3144	% Missed Repair Appointment – Platform Bus.	19.08	15.63	19.5	8.62	24.94	18.97	25.22	16.28	
MR-3-01-3145	% Missed Repair Appointment – Platform Res.	13.31	4.17	13.69	3.7	18.19	16.44	16.29	8.25	
MR-3-02-3144	% Missed Repair Appointment – Central Office Bus.	12.97	30.77	10.82	0	11.9	16.67	9.77	0	2
MR-3-02-3145	% Missed Repair Appointment – Central Office Res.	9.18	0	10.71	8.33	12.61	27.27	10.6	0	1,4

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-3-03-3140	% CPE/TOK/FOK - Missed Appointment - Platform	8.05	11.4	8.4	7.86		13.37		12.77	
MR-3-04-3140	% Missed Repair Appointment - No Double Dispatch	9.17	12.22	9.93	2.83					
MR-4 - Trouble Duration Intervals										
MR-4-01-3140	Mean Time To Repair – Total	16.97	12.03	18.91	14.83	23.05	21.03	24.4	17.22	
MR-4-04-3140	% Cleared (all troubles) within 24 Hours	80.58	91.35	76	84.73	67.7	72.73	67.85	82.18	
MR-4-06-3140	% Out of Service > 4 Hours	70.97	56.45	71.36	58.33	79.59	73.08	79.12	65.22	
MR-4-07-3140	% Out of Service > 12 Hours	53.93	48.39	55.25	43.06	60.86	58.65	59.28	47.83	
MR-4-08-3144	% Out of Service > 24 Hours - Bus.	10.1	7.5	11.88	5.56	14.61	5	13.22	6.67	
MR-4-08-3145	% Out of Service > 24 Hours - Res.	19.68	9.09	23.58	19.44	31.67	39.06	31.01	19.23	
MR-5 - Repeat Trouble Reports										
MR-5-01-3140	% Repeat Reports within 30 Days	13.36	8.65	13.25	12.98	12.99	9.74	14.16	12.87	
2-Wire Digital Services - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-02-3341	Network Trouble Report Rate - Loop	0.3	0.9	0.25	0.66	1.06	0.7	1.23	0.51	
MR-2-03-3341	Network Trouble Report Rate - Central Office	0.27	0.05	0.22	0.09	0.06	0.07	0.07	0.13	
MR-2-04-3341	% Subsequent Reports	4.55	0	8.4	0		0		0	
MR-3 - Missed Repair Appointments										
MR-3-01-3341	% Missed Repair Appointment – Loop	43.75	5.88	46.72	13.89	19.06	5.26	17.4	10.71	
MR-3-02-3341	% Missed Repair Appointment – Central Office	27.91	0	15.89	0	13.05	25	11.37	0	1,2,3,4
MR-4 - Trouble Duration Intervals										
MR-4-01-3341	Mean Time To Repair - Total	16.22	22.19	16.49	19.97	23.02	15.62	24.39	15.75	
MR-4-02-3341	Mean Time To Repair - Loop Trouble	21.83	23.1	20.1	21.38	23.65	15.82	25.02	17.08	
MR-4-03-3341	Mean Time To Repair - Central Office Trouble	9.95	6.74	12.37	9.84	12.74	13.72	13.81	10.44	1,2,3,4
MR-4-07-3341	% Out of Service > 12 Hours	49.51	68.75	55.56	70	60.8	57.14	59.2	44.44	
MR-4-08-3341	% Out of Service > 24 Hours	19.42	25	17.28	23.33	29.73	14.29	29.1	18.52	
MR-4-09-3341	Mean Time To Repair - No Double Dispatch	10.47	18.13	11.3	18.62					
MR-5 - Repeat Trouble Reports										
MR-5-01-3341	% Repeat Reports within 30 Days	15.02	18.52	19.21	12.2	13.04	21.43	14.18	25.71	
2-Wire xDSL Loops - Maintenance										
MR-2 - Trouble Report Rate										

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-2-02-3342	Network Trouble Report Rate - Loop	0.12	0.31	0.13	0.3	1.06	0.33	1.23	0.38	
MR-2-03-3342	Network Trouble Report Rate - Central Office	0.03	0.03	0.04	0.06	0.06	0.03	0.07	0.01	
MR-3 - Missed Repair Appointments										
MR-3-01-3342	% Missed Repair Appointment – Loop	18.97	4.08	24.64	2.35	19.06	1.12	17.4	6.93	
MR-3-02-3342	% Missed Repair Appointment – Central Office	7.69	0	19.51	5.26	13.05	0	11.37	0	4
MR-4 - Trouble Duration Intervals										
MR-4-02-3342	Mean Time To Repair - Loop Trouble	27.67	16.68	28.77	14.33	23.65	11.82	25.02	16.34	
MR-4-03-3342	Mean Time To Repair - Central Office Trouble	14.29	5.16	22.56	6.88	12.74	2.18	13.81	5.05	4
MR-4-07-3342	% Out of Service > 12 Hours	74.71	39.08	83.18	42.86	60.8	42.11	59.2	53.57	
MR-4-08-3342	% Out of Service > 24 Hours	27.59	18.39	38.32	10.39	29.73	2.63	29.1	21.43	
MR-5 - Repeat Trouble Reports										
MR-5-01-3342	% Repeat Reports within 30 Days	48.45	21.43	46.36	17.31	13.04	21.43	14.18	19.44	
2-Wire xDSL Line Sharing - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-02-3343	Network Trouble Report Rate - Loop	0.12	0	0.13	0.08	0.22	0.16	0.23	0.22	
MR-2-03-3343	Network Trouble Report Rate - Central Office	0.03	0	0.04	0	0.04	0.08	0.05	0.04	
MR-3 - Missed Repair Appointments										
MR-3-01-3343	% Missed Repair Appointment – Loop	18.97	0	24.64	0	29.17	25	40.65	40	1,2,3
MR-3-02-3343	% Missed Repair Appointment – Central Office	7.69	0	19.51	0	13.79	0	11.11	0	1,2,3,4
MR-4 - Trouble Duration Intervals										
MR-4-02-3343	Mean Time To Repair - Loop Trouble	27.67	8.15	28.77	18.54	31.35	20.4	46.81	25.91	1,2,3
MR-4-03-3343	Mean Time To Repair - Central Office Trouble	14.29	1.75	22.56	14.02	15.15	4.28	18.36	2.58	1,2,3,4
MR-4-04-3343	% Cleared (all troubles) within 24 Hours	69.07	100	60.91	75	59.06	87.5	44.51	50	1,2,3
MR-4-07-3343	% Out of Service > 12 Hours	74.71	0	83.18	66.67	78.36	42.86	82.58	63.64	1,2,3
MR-4-08-3343	% Out of Service > 24 Hours	27.59	0	38.32	16.67	39.55	14.29	56.13	63.64	1,2,3
MR-5 - Repeat Trouble Reports										
MR-5-01-3343	% Repeat Reports within 30 Days	48.45	0	46.36	25	34.9	50	36.81	14.29	1,2,3
2-Wire xDSL Line Splitting - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-02-3345	Network Trouble Report Rate - Loop					0.22	NA	0.23	NA	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-2-03-3345	Network Trouble Report Rate - Central Office					0.04	NA	0.05	NA	
MR-2-04-3345	% Subsequent Reports					0	NA	0	NA	
MR-2-05-3345	% CPE/TOK/FOK Trouble Report Rate					NA	NA	NA	NA	
MR-3 - Missed Repair Appointments										
MR-3-01-3345	% Missed Repair Appointment – Loop					29.17	NA	40.65	NA	
MR-3-02-3345	% Missed Repair Appointment – Central Office					13.79	NA	11.11	NA	
MR-3-03-3345	%CPE/TOK/FOK - Missed Appointment						NA		NA	
MR-4 - Trouble Duration Intervals										
MR-4-02-3345	Mean Time To Repair - Loop Trouble					31.35	NA	46.81	NA	
MR-4-03-3345	Mean Time To Repair - Central Office Trouble					15.15	NA	18.36	NA	
MR-4-04-3345	% Cleared (all troubles) within 24 Hours					59.06	NA	44.51	NA	
MR-4-07-3345	% Out of Service > 12 Hours					78.36	NA	82.58	NA	
MR-4-08-3345	% Out of Service > 24 Hours					39.55	NA	56.13	NA	
MR-5 - Repeat Trouble Reports										
MR-5-01-3345	% Repeat Reports within 30 Days					34.9	NA	36.81	NA	
Special Services - Maintenance										
MR-2 - Trouble Report Rate										
MR-2-01-3200	Network Trouble Report Rate	0.21	2.68	0.23	2.71	0.27	2.11	0.31	2.1	
MR-2-05-3200	% CPE/TOK/FOK Trouble Report Rate	0.33	3.27	0.32	1.98		1.75		1.55	
MR-4 - Trouble Duration Intervals										
MR-4-01-3200	Mean Time To Repair – Total	5.3	6.67	4.7	6.7					
MR-4-04-3200	% Cleared (all troubles) within 24 Hours	99.41	97.1	99.22	98.67					
MR-4-04-3216	% Cleared (all troubles) within 24 Hours - Non DS0 & DS0					96.25	NA	99.22	NA	
MR-4-04-3217	% Cleared (all troubles) within 24 Hours - DS1 & DS3					96	98.44	99.39	97.26	
MR-4-06-3200	% Out of Service > 4 Hours	53.37	59.32	48.19	66.67					
MR-4-06-3216	% Out of Service > 4 Hours - Non DS0 & DS0					53.25	NA	53.63	NA	
MR-4-06-3217	% Out of Service > 4 Hours - DS1 & DS3					36	52.63	50	43.75	
MR-4-08-3200	% Out of Service > 24 Hours	0.59	3.39	0.78	1.45					
MR-4-08-3216	% Out of Service > 24 Hours - Non DS0 & DS0					3.75	NA	0.78	NA	
MR-4-08-3217	% Out of Service > 24 Hours - DS1 & DS3					4	1.75	0.61	3.13	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-5 - Repeat Trouble Reports										
MR-5-01-3200	% Repeat Reports within 30 Days	10.85	13.04	11.14	18.67	10.44	15.63	14.73	19.18	
Trunks (Aggregate) - POTS/Special Services										
ORDERING										
OR 1 - Order Confirmation Timeliness										
OR-1-11-5020	Av. FOC Time (<= 192 Forecasted Trunks)		4.04		11					
OR-1-11-5030	Av. FOC Time (> 192 and Unforecasted Trunks)		5.42		4.26					
OR-1-12-5020	% On Time FOC (<= 192 Forecasted Trunks)		100		75		100		100	2,3
OR-1-12-5030	% On Time FOC (> 192 and Unforecasted Trunks and Projects)		84.62		95.56		98.48		77.78	
OR-1-13-5020	% On Time Design Layout Record (DLR)		100		97.96		100		100	
OR-1-19-5020	% On Time Resp. - Request for Inbound Augment Trunks (<= 192 Forecasted Trunks)		100		NA		NA		NA	1
OR-1-19-5030	% On Time Resp. - Request for Inbound Augment Trunks (> 192 Forecasted Trunks)		NA		NA		NA		NA	
OR-2 - Reject Timeliness										
OR-2-11-5000	Average Trunk ASR Reject Time (<= 192 Forecasted Trunks)		NA		2					
OR-2-12-5000	% On Time Trunk ASR Reject (<= 192 Forecasted Trunks)		NA		100		NA		100	2,4
PROVISIONING										
PR-1 - Average Interval Offered										
PR-1-09-5020	Av. Interval Offered – Total (<= 192 Forecasted Trunks)	10.22	6.5	13.11	NA	14.94	NA	11.89	NA	1
PR-1-09-5030	Av. Interval Offered – Total (> 192 & Unforecasted Trunks)	11.24	12.79	12.32	14.76	11.75	11.54	10.7	10.81	
PR-2 - Average Interval Completed										
PR-2-09-5020	Av. Interval Completed – Total (<= 192 Forecasted Trunks)	8.67	6.5	12.57	NA					1
PR-2-09-5030	Av. Interval Completed – Total (> 192 Forecasted Trunks)	11.4	8.33	15.04	13.57					1
PR-4 - Missed Appointment										
PR-4-01-5000	% Missed Appointment – Verizon – Total	0	0	0	0	2.32	0	0.12	0	
PR-4-02-5000	Average Delay Days - Total	NA	NA	NA	NA	1	NA	9	NA	
PR-4-03-5000	% Missed Appointment – Customer	29	40.07	41.18	21.91		68.09		44.15	
PR-4-15-5000	% On Time Provisioning - Trunks						NA		NA	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-5 - Facility Missed Orders										
PR-5-01-5000	% Missed Appointment – Verizon – Facilities	0	0	0	0	1.93	0	0.12	0	
PR-5-02-5000	% Orders Held for Facilities > 15 Days	0	0	0	0	0	0	0	0	
PR-5-03-5000	% Orders Held for Facilities > 60 Days	0	0	0	0	0	0	0	0	
PR-6 - Installation Quality										
PR-6-01-5000	% Installation Troubles reported within 30 Days	0	0	0	0	0.03	0.16	0.09	0.03	
PR-6-03-5000	% Inst. Troubles reported within 30 Days - FOK/TOK/CPE	0	0	0	0		0		0.19	
PR-8 - Open Orders in a Hold Status										
PR-8-01-5000	Open Orders in a Hold Status > 30 Days	0	0	0.09	0	0.06	0	1.44	0	
PR-8-02-5000	Open Orders in a Hold Status > 90 Days	0	0	0	0	0	0	0	0	
MAINTENANCE										
MR-2 - Trouble Report Rate										
MR-2-01-5000	Network Trouble Report Rate	0.02	0.01	0.03	0	0.02	0.01	0.03	0.01	
MR-4 - Trouble Duration Intervals										
MR-4-01-5000	Mean Time To Repair – Total	1.79	1.67	4.13	6.29	2.84	2.28	2.11	5.8	
MR-4-04-5000	% Cleared (all troubles) within 24 Hours	100	100	98.63	100	100	100	100	95.24	
MR-4-05-5000	% Out of Service > 2 Hours	29.51	36.36	47.95	88.89	41.18	61.54	18.64	42.86	
MR-4-06-5000	% Out of Service > 4 Hours	6.56	9.09	27.4	44.44	13.73	7.69	11.86	38.1	
MR-4-07-5000	% Out of Service > 12 Hours	1.64	0	5.48	22.22	3.92	0	5.08	19.05	
MR-4-08-5000	% Out of Service > 24 Hours	0	0	1.37	0	0	0	0	4.76	
MR-5 - Repeat Trouble Report Rates										
MR-5-01-5000	% Repeat Reports within 30 Days	8.2	0	8.22	11.11	19.61	0	25.42	9.52	
NETWORK PERFORMANCE										
NP-1 - Percent Final Trunk Group Blockage										
NP-1-01-5000	% Final Trunk Groups Exceeding Blocking Standard	0.97	1.08	0.94	2.22	1.88	2.15	1.87	2.13	
NP-1-02-5000	% FTG Exceeding Blocking Std. –(No Exceptions)	0.97	9.68	0.94	10	1.88	12.9	1.87	5.32	
NP-2 - Collocation Performance - New										
NP-2-01-6701	% On Time Response to Request for Physical Collocation		100		100		NA		NA	1,2
NP-2-02-6701	% On Time Response to Request for Virtual Collocation		NA		NA		NA		100	4
NP-2-03-6701	Average Interval – Physical Collocation		75.67		75.75		NA		64.5	

VIRGINIA PERFORMANCE METRIC DATA

Metric Number	Metric Name	April		May		June		July		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
NP-2-04-6701	Average Interval – Virtual Collocation		NA		NA		NA		NA	
NP-2-05-6701	% On Time – Physical Collocation		100		100		NA		100	2,4
NP-2-06-6701	% On Time – Virtual Collocation		NA		NA		NA		NA	
NP-2-07-6701	Average Delay Days – Physical Collocation		NA		NA		NA		NA	
NP-2-08-6701	Average Delay Days – Virtual Collocation		NA		NA		NA		NA	
NP-2 - Collocation Performance - Augment										
NP-2-01-6702	% On Time Response to Request for Physical Collocation		100		100		NA		100	1,2
NP-2-02-6702	% On Time Response to Request for Virtual Collocation		100		NA		NA		100	1,4
NP-2-03-6702	Average Interval – Physical Collocation - 76 days		68.18		74.57		NA		70.44	
NP-2-03-6712	Average Interval – Physical Collocation - 45 days						NA		NA	
NP-2-04-6702	Average Interval – Virtual Collocation		55.5		NA		NA		38	
NP-2-05-6702	% On Time – Physical Collocation - 76 days		100		100		NA		100	
NP-2-05-6712	% On Time – Physical Collocation - 45 days						NA		NA	
NP-2-06-6702	% On Time – Virtual Collocation		100		NA		NA		100	1,4
NP-2-07-6702	Average Delay Days – Physical Collocation		NA		NA		NA		NA	
NP-2-08-6702	Average Delay Days – Virtual Collocation		NA		NA		NA		NA	

Abbreviations: NA = No Activity.

UD = Under Development.

blank cell = No data provided.

VZ = Verizon retail analog. If no data was provided, the metric may have a benchmark.

Notes:

1 = Sample Size under 10 for April.

2 = Sample Size under 10 for May.

3 = Sample Size under 10 for June.

4 = Sample Size under 10 for July.

Appendix C Statutory Requirements

I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the market for provision of in-region interLATA services on compliance with certain provisions of section 271.¹ BOCs must apply to the Federal Communications Commission (Commission or FCC) for authorization to provide interLATA services originating in any in-region state.² The Commission must issue a written determination on each application no later than 90 days after receiving such application.³ Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application “using any standard the Attorney General considers appropriate,” and the Commission is required to “give substantial weight to the Attorney General’s evaluation.”⁴

2. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the “competitive checklist.”⁵ Because the Act does not prescribe any standard for the consideration of a state commission’s verification under section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to

¹ For purposes of section 271 proceedings, the Commission uses the definition of the term “Bell Operating Company” contained in 47 U.S.C. § 153(4).

² 47 U.S.C. § 271(d)(1). For purposes of section 271 proceedings, the Commission utilizes the definition of the term “in-region state” that is contained in 47 U.S.C. § 271(i)(1). Section 271(j) provides that a BOC’s in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines “interLATA services” as “telecommunications between a point located in a local access and transport area and a point located outside such area.” *Id.* § 153(21). Under the 1996 Act, a “local access and transport area” (LATA) is “a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission.” *Id.* § 153(25). LATAs were created as part of the Modification of Final Judgment’s (MFJ) “plan of reorganization.” *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff’d sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, “all [BOC] territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest.” *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (D.D.C. 1983).

³ 47 U.S.C. § 271(d)(3).

⁴ *Id.* § 271(d)(2)(A).

⁵ *Id.* § 271(d)(2)(B).

determine the amount of weight to accord the state commission's verification.⁶ The Commission has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.⁷

3. Section 271 requires the Commission to make various findings before approving BOC entry. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).⁸ In order to obtain authorization under section 271, the BOC must also show that: (1) it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B);⁹ (2) the requested authorization will be carried out in accordance with the requirements of section 272;¹⁰ and (3) the BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity."¹¹ The statute specifies that, unless the Commission finds that these criteria have been satisfied, the Commission "shall not approve" the requested authorization.¹²

⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[a]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions' views any particular weight." *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998).

⁷ *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

⁸ 47 U.S.C. § 271(d)(3)(A). See Section III, *infra*, for a complete discussion of Track A and Track B requirements.

⁹ *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

¹⁰ *Id.* § 272; see *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom.*, *Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review denied sub nom. Bell Atlantic Telephone Companies v. FCC*, 113 F.3d 1044 (D.C. Cir. 1997); *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

¹¹ 47 U.S.C. § 271(d)(3)(C).

¹² *Id.* § 271(d)(3); see *SBC Communications, Inc. v. FCC*, 138 F.3d at 416.

II. PROCEDURAL AND ANALYTICAL FRAMEWORK

4. To determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist, as developed in the FCC's local competition rules and orders in effect at the time the application was filed. Despite the comprehensiveness of these rules, there will inevitably be, in any section 271 proceeding, disputes over an incumbent LEC's precise obligations to its competitors that FCC rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application.¹³ In the context of section 271's adjudicatory framework, the Commission has established certain procedural rules governing BOC section 271 applications.¹⁴ The Commission has explained in prior orders the procedural rules it has developed to facilitate the review process.¹⁵ Here we describe how the Commission considers the evidence of compliance that the BOC presents in its application.

5. As part of the determination that a BOC has satisfied the requirements of section 271, the Commission considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B). The BOC at all times bears the burden of proof of compliance with section 271, even if no party challenges its compliance with a particular requirement.¹⁶ In demonstrating its compliance, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.¹⁷ In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a

¹³ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19; see also *American Tel. & Tel. Co. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000).

¹⁴ See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (1996); *Revised Comment Schedule For Ameritech Michigan Application, as amended, for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Michigan*, Public Notice, DA 97-127 (rel. Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 99-1994 (rel. Sept. 28, 1999); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (collectively "271 Procedural Public Notices").

¹⁵ See, e.g., *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6247-50, paras. 21-27; *SWBT Texas Order*, 15 FCC Rcd at 18370-73, paras. 34-42; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-71, paras. 32-42.

¹⁶ See *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

¹⁷ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

nondiscriminatory basis.¹⁸ Previous Commission orders addressing section 271 applications have elaborated on this statutory standard.¹⁹ First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself.²⁰ Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.²¹ For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a “meaningful opportunity to compete.”²²

6. The determination of whether the statutory standard is met is ultimately a judgment the Commission must make based on its expertise in promoting competition in local markets and in telecommunications regulation generally.²³ The Commission has not established, nor does it believe it appropriate to establish, specific objective criteria for what constitutes “substantially the same time and manner” or a “meaningful opportunity to compete.”²⁴ Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances. Therefore, the Commission looks at each application on a case-by-case basis and considers the totality of the circumstances, including the origin and quality of the information in the record, to determine whether the nondiscrimination requirements of the Act are met.

A. Performance Data

7. As established in prior section 271 orders, the Commission has found that performance measurements provide valuable evidence regarding a BOC’s compliance or noncompliance with individual checklist items. The Commission expects that, in its *prima facie* case in the initial application, a BOC relying on performance data will:

¹⁸ See 47 U.S.C. § 271(c)(2)(B)(i), (ii).

¹⁹ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6250-51, paras. 28-29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

²⁰ *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

²¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

²² *Id.*

²³ *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

²⁴ *Id.*

- a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;
- b) identify the facial disparities between the applicant's performance for itself and its performance for competitors;
- c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers; and
- d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

8. The Commission has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.²⁵ Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually done. Otherwise, the Commission will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met.²⁶ Thus, the Commission will examine the explanations that a BOC and others provide about whether these data accurately depict the quality of the BOC's performance. The Commission also may examine how many months a variation in performance has existed and what the recent trend has been. The Commission may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.

9. Where there are multiple performance measures associated with a particular checklist item, the Commission would consider the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself,

²⁵ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15 FCC Rcd at 18377, para. 55 & n.102.

²⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3970, para. 59.

may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data are affected by factors beyond a BOC's control, a finding that would make it less likely to hold the BOC wholly accountable for the disparity. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

10. In sum, the Commission does not use performance measurements as a substitute for the 14-point competitive checklist. Rather, it uses performance measurements as valuable evidence with which to inform the judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist.

B. Relevance of Previous Section 271 Approvals

11. In some section 271 applications, the volumes of the BOC's commercial orders may be significantly lower than they were in prior proceedings. In certain instances, volumes may be so low as to render the performance data inconsistent and inconclusive.²⁷ Performance data based on low volumes of orders or other transactions are not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data are based on a low number of observations, small variations in performance may produce wide swings in the reported performance data. It is thus not possible to place the same evidentiary weight upon – and to draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity.

12. In such cases, findings in prior, related section 271 proceedings may be a relevant factor in the Commission's analysis. Where a BOC provides evidence that a particular system reviewed and approved in a prior section 271 proceeding is also used in the proceeding at hand, the Commission's review of the same system in the current proceeding will be informed by the findings in the prior one. Indeed, to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues. Appropriately employed, such a practice can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties

²⁷ The Commission has never required, however, an applicant to demonstrate that it processes and provisions a substantial commercial volume of orders, or has achieved a specific market share in its service area, as a prerequisite for satisfying the competitive checklist. See *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77 (explaining that Congress had considered and rejected language that would have imposed a "market share" requirement in section 271(c)(1)(A)).

involved in the section 271 process, the delay and expense associated with redundant and unnecessary proceedings and submissions.

13. However, the statute requires the Commission to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the Commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states, the Department of Justice. However, the Commission has always held that an applicant's performance towards competing carriers in an actual commercial environment is the best evidence of nondiscriminatory access to OSS and other network elements.²⁸ Thus, the BOC's actual performance in the applicant state may be relevant to the analysis and determinations with respect to the 14 checklist items. Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.

14. Moreover, because the Commission's review of a section 271 application must be based on a snapshot of a BOC's recent performance at the time an application is filed, the Commission cannot simply rely on findings relating to an applicant's performance in an anchor state at the time it issued the determination for that state. The performance in that state could change due to a multitude of factors, such as increased order volumes or shifts in the mix of the types of services or UNEs requested by competing carriers. Thus, even when the applicant makes a convincing showing of the relevance of anchor state data, the Commission must examine how recent performance in that state compares to performance at the time it approved that state's section 271 application, in order to determine if the systems and processes continue to perform at acceptable levels.

III. COMPLIANCE WITH ENTRY REQUIREMENTS – SECTIONS 271(c)(1)(A) & 271(c)(1)(B)

15. As noted above, in order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).²⁹ To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."³⁰ The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services

²⁸ See *SWBT Texas Order*, 15 FCC Rcd at 18376, para. 53; *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53.

²⁹ See 47 U.S.C. § 271(d)(3)(A).

³⁰ *Id.*

of another carrier.”³¹ The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.³²

16. As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under section 271(d)(3)(A)(ii), the Commission shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, “with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist.”³³ Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.³⁴

IV. COMPLIANCE WITH THE COMPETITIVE CHECKLIST – SECTION 271(c)(2)(B)

A. Checklist Item 1 – Interconnection

17. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”³⁵ Section 251(c)(2) imposes a duty on incumbent LECs “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access.”³⁶ In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred “only to the physical linking of two networks for the

³¹ *Id.*

³² See *Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20633-35, paras. 46-48.

³³ 47 U.S.C. § 271(d)(3)(A)(ii).

³⁴ See *Ameritech Michigan Order*, 12 FCC Rcd at 20561-62, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. See 47 U.S.C. § 271(c)(1)(B); see also *Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.

³⁵ 47 U.S.C. § 271(c)(2)(B)(i); see *Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662, para. 222.

³⁶ 47 U.S.C. § 251(c)(2)(A).

mutual exchange of traffic.”³⁷ Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection “at any technically feasible point within the carrier’s network.”³⁸ Second, an incumbent LEC must provide interconnection that is “at least equal in quality to that provided by the local exchange carrier to itself.”³⁹ Finally, the incumbent LEC must provide interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252.”⁴⁰

18. To implement the equal-in-quality requirement in section 251, the Commission’s rules require an incumbent LEC to design and operate its interconnection facilities to meet “the same technical criteria and service standards” that are used for the interoffice trunks within the incumbent LEC’s network.⁴¹ In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC’s technical criteria and service standards.⁴² In prior section 271 applications, the Commission concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.⁴³

19. In the *Local Competition First Report and Order*, the Commission concluded that the requirement to provide interconnection on terms and conditions that are “just, reasonable, and nondiscriminatory” means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the

³⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*). Transport and termination of traffic are therefore excluded from the Commission’s definition of interconnection. *See id.*

³⁸ 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the Commission identified a minimum set of technically feasible points of interconnection. *See Local Competition First Report and Order*, 11 FCC Rcd at 15607-09, paras. 204-11.

³⁹ 47 U.S.C. § 251(c)(2)(C).

⁴⁰ *Id.* § 251(c)(2)(D).

⁴¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15613-15, paras. 221-225; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20641-42, paras. 63-64.

⁴² *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25.

⁴³ *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-50, paras. 74-77; *Ameritech Michigan Order*, 12 FCC Rcd at 20671-74, paras. 240-45. The Commission has relied on trunk blockage data to evaluate a BOC’s interconnection performance. Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer’s perception of a competitive LEC’s service quality.

comparable function to its own retail operations.⁴⁴ The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service⁴⁵ and its provisioning of two-way trunking arrangements.⁴⁶ Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.⁴⁷

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.⁴⁸ Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.⁴⁹ The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.⁵⁰ In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.⁵¹ In response to a remand from the D.C. Circuit, the Commission adopted the *Collocation Remand Order*, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between

⁴⁴ *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

⁴⁵ 47 C.F.R. § 51.305(a)(5).

⁴⁶ The Commission's rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); see also *Bell Atlantic New York Order*, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-20.

⁴⁷ 47 C.F.R. § 51.305(a)(5).

⁴⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50; see *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

⁴⁹ 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

⁵⁰ 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

⁵¹ *Deployment of Wireline Services offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4784-86, paras. 41-43 (1999), *aff'd in part and vacated and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), *on recon., Collocation Reconsideration Order*, 15 FCC Rcd 17806 (2000); *on remand, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435 (2001) (*Collocation Remand Order*), *petition for recon. pending*.

collocated carriers, and establishing principles for physical collocation space and configuration.⁵² To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and the FCC’s implementing rules.⁵³ Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, help the Commission evaluate a BOC’s compliance with its collocation obligations.⁵⁴

21. As stated above, checklist item 1 requires a BOC to provide “interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”⁵⁵ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.⁵⁶ The Commission’s pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.⁵⁷

22. To the extent pricing disputes arise, the Commission will not duplicate the work of the state commissions. As noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.⁵⁸ Although the Commission has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the Commission’s pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.⁵⁹

⁵² See *Collocation Remand Order*, 16 FCC Rcd at 15441-42, para. 12.

⁵³ *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20643, para. 66; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

⁵⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

⁵⁵ 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

⁵⁶ *Id.* § 252(d)(1).

⁵⁷ See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

⁵⁸ See *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; see also 47 U.S.C. §§ 252(c), (e)(6); *American Tel. & Tel Co. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*).

⁵⁹ *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-86.

23. Consistent with the Commission's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as: (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.⁶⁰ In addition, the Commission has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.⁶¹

24. Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.⁶² At some point, states will have had sufficient time to complete these proceedings. The Commission will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

B. Checklist Item 2 – Unbundled Network Elements⁶³

1. Access to Operations Support Systems

25. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.⁶⁴ The Commission consistently has

⁶⁰ *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258 (explaining the Commission's case-by-case review of interim prices).

⁶¹ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359-60, para. 239.

⁶² *See Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 260.

⁶³ We note that the United States Court of Appeals for the District of Columbia Circuit recently opined in two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*Local Competition Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002), *petition for rehearing and suggestion for rehearing en banc denied Sept. 4, 2002*. The court's decision addressed both our UNE rules and our line sharing rules. The Commission is currently reviewing its UNE rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781 (2001) (*Triennial Review Notice*). Further, the court stated that "the *Line Sharing Order* must be vacated and remanded." *USTA v. FCC*, 290 F.3d at 429. The court also stated that it "grant[ed] the petitions for review[] and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id.* at 430. On September 4, 2002, the D.C. Circuit denied petitions for rehearing filed by the Commission and others. *See Order*, Nos. 00-1012 and 00-1015 (D.C. Circuit, filed Sept. 4, 2002).

⁶⁴ *Id.* at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.⁶⁵ For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.⁶⁶ The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.⁶⁷

26. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."⁶⁸ The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.⁶⁹ The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).⁷⁰ In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.⁷¹ Consistent with prior orders, the Commission examines a BOC's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.⁷²

27. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, UNEs, and resale.⁷³

⁶⁵ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.

⁶⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

⁶⁷ *Id.*

⁶⁸ 47 U.S.C. § 271(c)(2)(B)(ii).

⁶⁹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

⁷⁰ *Id.*

⁷¹ *Id.* As part of a BOC's demonstration that it is "providing" a checklist item (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service. An examination of a BOC's OSS performance is therefore integral to the determination of whether a BOC is offering all of the items contained in the competitive checklist. *Id.*

⁷² *Id.* at 3990-91, para. 84.

⁷³ *Id.* at 3991, para. 85.

For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.⁷⁴ The BOC must provide access that permits competing carriers to perform these functions in “substantially the same time and manner” as the BOC.⁷⁵ The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.⁷⁶

28. For OSS functions that have no retail analogue, the BOC must offer access “sufficient to allow an efficient competitor a meaningful opportunity to compete.”⁷⁷ In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the Commission will examine, in the first instance, whether specific performance standards exist for those functions.⁷⁸ In particular, the Commission will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.⁷⁹ If such performance standards exist, the Commission will evaluate whether the BOC’s performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.⁸⁰

29. The Commission analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the Commission determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to

⁷⁴ *Id.*

⁷⁵ *Id.* For example, the Commission would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

⁷⁶ *See id.*

⁷⁷ *Id.* at 3991, para. 86.

⁷⁸ *Id.*

⁷⁹ *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *Id.* at 20619-20.

⁸⁰ *See id.* at 3991-92, para. 86.

them.”⁸¹ The Commission next assesses “whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”⁸²

30. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.⁸³ For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC’s systems and any relevant interfaces.⁸⁴ In addition, a BOC must disclose to competing carriers any internal business rules⁸⁵ and other formatting information necessary to ensure that a carrier’s requests and orders are processed efficiently.⁸⁶ Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers’ access to OSS functions.⁸⁷ Although not a prerequisite, the Commission continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.⁸⁸

31. Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC’s OSS is handling

⁸¹ *Id.* at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, the Commission “consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions,” including the interface (or gateway) that connects the competing carrier’s own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC’s OSS (including all necessary back office systems and personnel); and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. *Ameritech Michigan Order*, 12 FCC Rcd at 20615; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

⁸² *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

⁸³ *Id.* at 3992, para. 87; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (The Commission determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”). For example, a BOC must provide competing carriers the specifications necessary to design their systems interfaces and business rules necessary to format orders, and demonstrate that systems are scalable to handle current and projected demand. *Id.*

⁸⁴ *Id.*

⁸⁵ Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders and include information concerning ordering codes such as universal service ordering codes (USOCs) and field identifiers (FIDs). *Id.*; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.335.

⁸⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

⁸⁷ *Id.*

⁸⁸ *See id.*

current demand and will be able to handle reasonably foreseeable future volumes.⁸⁹ The most probative evidence that OSS functions are operationally ready is actual commercial usage.⁹⁰ Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.⁹¹ Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.⁹² If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight. As noted above, to the extent the Commission reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations.⁹³ Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

a. Relevance of a BOC's Prior Section 271 Orders

32. The *SWBT Kansas/Oklahoma Order* specifically outlined a non-exhaustive evidentiary showing that must be made in the initial application when a BOC seeks to rely on evidence presented in another application.⁹⁴ First, a BOC's application must explain the extent to which the OSS are "the same" – that is, whether it employs the shared use of a single OSS, or the use of systems that are identical, but separate.⁹⁵ To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces,

⁸⁹ *Id.* at 3993, para. 89.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *See id.*; *Ameritech Michigan Order*, 12 FCC Rcd at 20659 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

⁹³ *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6301-02, para. 138.

⁹⁴ *See id.* at 6286-91, paras. 107-18

⁹⁵ *See id.* at 6288, para. 111.

systems and, in many instances, even personnel.⁹⁶ The Commission will also carefully examine third party reports that demonstrate that the BOC's OSS are the same in each of the relevant states.⁹⁷ Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.⁹⁸ Second, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, an applicant must submit evidence relating to *all* aspects of its OSS, including those OSS functions performed by BOC personnel.

b. Pre-Ordering

33. A BOC must demonstrate that: (i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces;⁹⁹ and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.¹⁰⁰

34. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.¹⁰¹ Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is

⁹⁶ The Commission has consistently held that a BOC's OSS includes both mechanized systems and manual processes, and thus the OSS functions performed by BOC personnel have been part of the FCC's OSS functionality and commercial readiness reviews.

⁹⁷ See *SWBT Kansas/Oklahoma Order*, *id.* at 6287, para. 108.

⁹⁸ See *id.* at 6288, para. 111.

⁹⁹ In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC. *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148.

¹⁰⁰ The Commission has held previously that an interface that provides responses in a prompt timeframe and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as a BOC serves its own customers. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029, paras. 145 and 154.

¹⁰¹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94 (referring to "pre-ordering and ordering" collectively as "the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof"). In prior orders, the Commission has identified the following five pre-order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4015, para. 132; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd at 619, para. 147.

critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.¹⁰² Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, a BOC must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.¹⁰³ For those pre-ordering functions that lack a retail analogue, a BOC must provide access that affords an efficient competitor a meaningful opportunity to compete.¹⁰⁴ In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.¹⁰⁵

(i) Access to Loop Qualification Information

35. In accordance with the *UNE Remand Order*,¹⁰⁶ the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,¹⁰⁷ and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.¹⁰⁸ Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in

¹⁰² *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

¹⁰³ *Id.*; see also *BellSouth South Carolina Order*, 13 FCC Rcd at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

¹⁰⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

¹⁰⁵ See *id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

¹⁰⁶ *UNE Remand Order*, 15 FCC Rcd at 3885, para. 426 (determining “that the pre-ordering function includes access to loop qualification information”).

¹⁰⁷ See *id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

¹⁰⁸ As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to “pre-qualify” a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. See *id.*, 15 FCC Rcd at 4021, para. 140.

a BOC's back office and can be accessed by any of a BOC's personnel.¹⁰⁹ Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.¹¹⁰ A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.¹¹¹ As the Commission determined in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."¹¹²

c. Ordering

36. Consistent with section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.¹¹³

¹⁰⁹ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

¹¹⁰ *See SWBT Kansas Oklahoma Order*, 16 FCC Rcd at 6292-93, para. 121.

¹¹¹ *Id.*

¹¹² *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-31.

¹¹³ *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, paras. 163-66. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the "same time and manner" standard. The Commission examines order confirmation notices and order rejection notices using the "meaningful opportunity to compete" standard.

d. Provisioning

37. A BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.¹¹⁴ Consistent with the approach in prior section 271 orders, the Commission examines a BOC's provisioning processes, as well as its performance with respect to provisioning timeliness (i.e., missed due dates and average installation intervals) and provisioning quality (i.e., service problems experienced at the provisioning stage).¹¹⁵

e. Maintenance and Repair

38. A competing carrier that provides service through resale or UNEs remains dependent upon the incumbent LEC for maintenance and repair. Thus, as part of its obligation to provide nondiscriminatory access to OSS functions, a BOC must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.¹¹⁶ To the extent a BOC performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions "in substantially the same time and manner" as a BOC provides its retail customers.¹¹⁷ Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to BOC personnel.¹¹⁸ Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.¹¹⁹

f. Billing

39. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.¹²⁰ In making this determination, the Commission assesses a BOC's billing processes and systems,

¹¹⁴ See *Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, the Commission looks to missed due dates and average installation intervals; for provisioning quality, the Commission looks to service problems experienced at the provisioning stage.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

¹¹⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

¹¹⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196.

¹¹⁹ *Id.*

¹²⁰ See *SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

and its performance data. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.¹²¹

g. Change Management Process

40. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.¹²² Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."¹²³ By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete.¹²⁴ As part of this demonstration, the Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.¹²⁵

41. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS.¹²⁶ Such changes may include updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.¹²⁷ Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely

¹²¹ See *id.*; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, at para. 163.

¹²² *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd at 19742.

¹²³ *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

¹²⁴ *Id.* at 3999-4000, para. 102.

¹²⁵ *Id.* at 4000, para. 102.

¹²⁶ *Id.* at 4000, para. 103.

¹²⁷ *Id.*

notice and documentation of the changes.¹²⁸ Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).¹²⁹

42. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the Commission first assesses whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;¹³⁰ (2) that competing carriers had substantial input in the design and continued operation of the change management process;¹³¹ (3) that the change management plan defines a procedure for the timely resolution of change management disputes;¹³² (4) the availability of a stable testing environment that mirrors production;¹³³ and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.¹³⁴ After determining whether the BOC's change management plan is adequate, the Commission evaluates whether the BOC has demonstrated a pattern of compliance with this plan.¹³⁵

2. UNE Combinations

43. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3)."¹³⁶ Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory."¹³⁷ Section 251(c)(3) of the Act also requires incumbent

¹²⁸ *Id.* at 4000, para. 103.

¹²⁹ *Id.*

¹³⁰ *Id.* at 4002, para. 107.

¹³¹ *Id.* at 4000, para. 104.

¹³² *Id.* at 4002, para. 108.

¹³³ *Id.* at 4002-03, paras. 109-10.

¹³⁴ *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, the Commission used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. The Commission left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

¹³⁵ *Id.* at 3999, para. 101, 4004-05, para. 112.

¹³⁶ 47 U.S.C. § 271(c)(2)(B)(ii).

¹³⁷ *Id.* § 251(c)(3).

LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.¹³⁸

44. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.¹³⁹ Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.¹⁴⁰ Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.¹⁴¹ Because the use of combinations of UNEs is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the Commission examines section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.¹⁴²

3. Pricing of Network Elements

45. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.¹⁴³ Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."¹⁴⁴ Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be

¹³⁸ *Id.*

¹³⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

¹⁴⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 646; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

¹⁴¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4077-78, para. 230.

¹⁴² *Id.* In *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000), the Eighth Circuit had vacated the Commission's "additional combinations" rules (47 C.F.R. Sections 51-315(c)-(f)). However, on May 13, 2002, the Supreme Court reversed the Eighth Circuit with respect to those rules and remanded the case to the court of appeals "for further proceedings consistent with this opinion." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1687. *See also id.* at 1683-87. In response, the Eighth Circuit, on August 21, 2002, vacated its prior opinion insofar as it had vacated the pertinent combinations rules and denied the petitions for review with respect to those rules. *Iowa Utilities Board v. FCC*, 8th Circuit Nos. 96-3321, *et al.*, Judgment, filed August 21, 2002.).

¹⁴³ 47 U.S.C. § 271(c)(2)(B)(ii).

¹⁴⁴ *Id.* § 251(c)(3).

nondiscriminatory, and may include a reasonable profit.¹⁴⁵ Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.¹⁴⁶ The Commission also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.¹⁴⁷ The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."¹⁴⁸

46. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996,¹⁴⁹ the Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.¹⁵⁰ On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission's pricing rules were contrary to Congressional intent.¹⁵¹ The Eighth Circuit stayed the issuance of its mandate pending review by the Supreme Court.¹⁵² The

¹⁴⁵ 47 U.S.C. § 252(d)(1).

¹⁴⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-79; 47 C.F.R. §§ 51.501 *et seq.*; see also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 (*Line Sharing Order*) (concluding that states should set the prices for line sharing as a new network element in the same manner as the state sets prices for other UNEs).

¹⁴⁷ See 47 C.F.R. § 51.315(b).

¹⁴⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59.

¹⁴⁹ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997).

¹⁵⁰ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The Court also held that the pricing provisions implemented under the Commission's rulemaking authority do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id.*

¹⁵¹ *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. granted sub nom. Verizon Communications v. FCC*, 121 S. Ct. 877 (2001).

¹⁵² *Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.* (8th Cir. Sept. 25, 2000).

Supreme Court, on May 13, 2002, upheld the Commission's forward-looking pricing methodology in determining costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act."¹⁵³ Accordingly, the Commission's pricing rules remain in effect.

C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

47. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."¹⁵⁴ Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."¹⁵⁵ Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."¹⁵⁶ Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."¹⁵⁷ Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."¹⁵⁸ Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to

¹⁵³ *Verizon v. FCC*, 122 S.Ct. at 1679. On August 21, 2002, the Eighth Circuit implemented the Supreme Court's mandate with respect to the Commission's TELRIC pricing rule by vacating its prior opinion insofar as it had invalidated that rule and by denying the petitions for review of that rule. *Iowa Utilities Board v. FCC*, 8th Circuit Nos. 96-3321, et al., Judgment, filed August 21, 2002.

¹⁵⁴ 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, n.574.

¹⁵⁵ 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines "utility" to include any entity, including a LEC, that controls "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

¹⁵⁶ 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

¹⁵⁷ Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

¹⁵⁸ 47 U.S.C. § 224(b)(1).

apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State.”¹⁵⁹ As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.¹⁶⁰

D. Checklist Item 4 – Unbundled Local Loops

48. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”¹⁶¹ The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.¹⁶²

49. In order to establish that it is “providing” unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.¹⁶³ Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide

¹⁵⁹ *Id.* § 224(c)(1). The 1996 Act extended the Commission’s authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

¹⁶⁰ *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

¹⁶¹ 47 U.S.C. § 271(c)(2)(B)(iv).

¹⁶² *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

¹⁶³ *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

50. On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL).¹⁶⁴ HFPL is defined as “the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions.” This definition applies whether a BOC’s voice customers are served by copper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal. However, the HFPL network element is *only* available on a copper loop facility.¹⁶⁵

51. To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*. Specifically, a successful BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases.

52. Section 271(c)(2)(B)(iv) also requires that a BOC demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.¹⁶⁶ In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer. To make such a showing, a BOC must show that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable

¹⁶⁴ See *Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27; see also n.63 at C-12 *supra*.

¹⁶⁵ See *Deployment of Wireline Services offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, 2106-07, para. 10 (2001).

¹⁶⁶ See generally *SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. § 51.703(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers “to provide any telecommunications service that can be offered by means of that network element”).

loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.¹⁶⁷

E. Checklist Item 5 – Unbundled Local Transport

53. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”¹⁶⁸ The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.¹⁶⁹ Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.¹⁷⁰ Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC’s network.¹⁷¹

F. Checklist Item 6 – Unbundled Local Switching

54. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.”¹⁷² In the *Second*

¹⁶⁷ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

¹⁶⁸ 47 U.S.C. § 271(c)(2)(B)(v).

¹⁶⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

¹⁷⁰ *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

¹⁷¹ *Id.* at 20719, n.650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC’s switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

¹⁷² 47 U.S.C. § 271(c)(2)(B)(vi); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to (continued....)

BellSouth Louisiana Order, the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.¹⁷³ The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.¹⁷⁴ Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.¹⁷⁵

55. Moreover, in the *Second BellSouth Louisiana Order*, the Commission required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.¹⁷⁶ The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.¹⁷⁷ Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.¹⁷⁸ Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.¹⁷⁹

56. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.¹⁸⁰ In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.¹⁸¹

(Continued from previous page) _____

another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

¹⁷³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 20722-23, para. 207.

¹⁷⁶ *Id.* at 20723, para. 208.

¹⁷⁷ *Id.* at 20723, para. 208 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

¹⁸¹ *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

57. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]ondiscriminatory access to – (I) 911 and E911 services.”¹⁸² In the *Ameritech Michigan Order*, the Commission found that “section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity.”¹⁸³ Specifically, the Commission found that a BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”¹⁸⁴ For facilities-based carriers, the BOC must provide “unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier’s switching facilities to the 911 control office at parity with what [the BOC] provides to itself.”¹⁸⁵ Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to “directory assistance services to allow the other carrier’s customers to obtain telephone numbers” and “operator call completion services,” respectively.¹⁸⁶ Section 251(b)(3) of the Act imposes on each LEC “the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”¹⁸⁷ The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).¹⁸⁸ In the *Local Competition Second Report and Order*, the Commission

¹⁸² 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers’ customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

¹⁸³ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

¹⁸⁷ *Id.* § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part sub nom. *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); see also *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

¹⁸⁸ While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to “directory assistance,” section 251(b)(3) refers to nondiscriminatory access to “operator services,” while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to “operator call completion services.” 47 U.S.C. (continued....)

held that the phrase “nondiscriminatory access to directory assistance and directory listings” means that “the customers of all telecommunications service providers should be able to access each LEC’s directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.”¹⁸⁹ The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.¹⁹⁰ The Commission specifically held that the phrase “nondiscriminatory access to operator services” means that “a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.”¹⁹¹

58. Competing carriers may provide operator services and directory assistance by reselling the BOC’s services, outsourcing service provision to a third-party provider, or using their own personnel and facilities. The Commission’s rules require BOCs to permit competitive

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§§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term “operator call completion services” is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term “operator services” was defined as meaning “any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.” *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of “operator services,” because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, the Commission concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, “operator call completion services” is a subset of or equivalent to “operator service.” *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. As a result, the Commission uses the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

¹⁸⁹ 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order*’s interpretation of section 251(b)(3) is limited “to access to each LEC’s directory assistance service.” *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC’s systems but requires “nondiscriminatory access to . . . directory assistance to allow the other carrier’s customers to obtain telephone numbers.” 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission’s conclusion that “incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible,” *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)’s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer’s local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. See *Directory Listings Information NPRM*.

¹⁹⁰ *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

¹⁹¹ *Id.* at 19464, para. 151.

LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.¹⁹² Competing carriers wishing to provide operator services or directory assistance using their own or a third party provider's facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.¹⁹³ Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required UNEs in the *UNE Remand Order*.¹⁹⁴ Checklist item obligations that do not fall within a BOC's obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs.¹⁹⁵ Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.¹⁹⁶

H. Checklist Item 8 – White Pages Directory Listings

59. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."¹⁹⁷ Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of

¹⁹² 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as "thank you for using XYZ Telephone Company." Competing carriers may use the BOC's brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

¹⁹³ 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, 15630-31, paras. 152-54 (1999); *Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, First Report and Order, 16 FCC Rcd 2736, 2743-51 (2001).

¹⁹⁴ *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

¹⁹⁵ *UNE Remand Order*, 15 FCC Rcd at 3905, para. 470; *see generally* 47 U.S.C. §§ 251-52; *see also* 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element").

¹⁹⁶ *UNE Remand Order*, 15 FCC Rcd at 3905-06, paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

¹⁹⁷ 47 U.S.C. § 271(c)(2)(B)(viii).

telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing.¹⁹⁸

60. In the *Second BellSouth Louisiana Order*, the Commission concluded that, “consistent with the Commission’s interpretation of ‘directory listing’ as used in section 251(b)(3), the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider.”¹⁹⁹ The Commission further concluded, “the term ‘directory listing,’ as used in this section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”²⁰⁰ The Commission’s *Second BellSouth Louisiana Order* also held that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provided white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.²⁰¹

I. Checklist Item 9 – Numbering Administration

61. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide “nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers,” until “the date by which telecommunications numbering administration, guidelines, plan, or rules are established.”²⁰² The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.²⁰³ A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules.²⁰⁴

¹⁹⁸ *Id.* § 251(b)(3).

¹⁹⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

²⁰⁰ *Id.* In the *Second BellSouth Louisiana Order*, the Commission stated that the definition of “directory listing” was synonymous with the definition of “subscriber list information.” *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the Commission’s decision in a later proceeding obviates this comparison, and supports the definition of directory listing delineated above. See *Implementation of the Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

²⁰¹ *Id.*

²⁰² 47 U.S.C. § 271(c)(2)(B)(ix).

²⁰³ *Id.*

²⁰⁴ See *Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; see also *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource* (continued....)

J. Checklist Item 10 – Databases and Associated Signaling

62. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”²⁰⁵ In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS).”²⁰⁶ The Commission also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).²⁰⁷ In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.²⁰⁸ At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.²⁰⁹ In the *UNE Remand Order*, the Commission clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”²¹⁰

K. Checklist Item 11 – Number Portability

63. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.²¹¹ Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in

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Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 (rel. Dec. 28, 2001).

²⁰⁵ 47 U.S.C. § 271(c)(2)(B)(x).

²⁰⁶ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

²⁰⁷ *Id.* at 20755-56, para. 272.

²⁰⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

²⁰⁹ *Id.* at 15741-42, para. 484.

²¹⁰ *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

²¹¹ 47 U.S.C. § 271(c)(2)(B)(xii).

accordance with requirements prescribed by the Commission.”²¹² The 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”²¹³ In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”²¹⁴ Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability “to the extent technically feasible.”²¹⁵ The Commission also requires LECs to gradually replace interim number portability with permanent number portability.²¹⁶ The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,²¹⁷ and created a competitively neutral cost-recovery mechanism for long-term number portability.²¹⁸

L. Checklist Item 12 – Local Dialing Parity

64. Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”²¹⁹ Section

²¹² *Id.* at § 251(b)(2).

²¹³ *Id.* at § 153(30).

²¹⁴ *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16459, 16460, 16462-65, paras. 1, 6-9 (1999) (*Fourth Number Portability Order*).

²¹⁵ *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

²¹⁶ *See* 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

²¹⁷ *See* 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

²¹⁸ *See* 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

²¹⁹ Based on the Commission’s view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers* (continued....)

251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”²²⁰ Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation.²²¹

65. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.²²² Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.²²³

M. Checklist Item 13 – Reciprocal Compensation

66. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”²²⁴ In turn, pursuant to section 252(d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”²²⁵

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and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

²²⁰ 47 U.S.C. § 251(b)(3).

²²¹ *Id.* § 153(15).

²²² 47 C.F.R. §§ 51.205, 51.207.

²²³ *See* 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

²²⁴ 47 U.S.C. § 271(c)(2)(B)(xiii).

²²⁵ *Id.* § 252(d)(2)(A).

N. Checklist Item 14 – Resale

67. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”²²⁶ Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”²²⁷ Section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”²²⁸ Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under section 251(c)(4)(A).²²⁹ Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory.²³⁰ If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.²³¹ If a state creates such a limitation, it must do so consistent with requirements established by the Federal Communications Commission.²³² In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail

²²⁶ *Id.* § 271(c)(2)(B)(xiv).

²²⁷ *Id.* § 251(c)(4)(A).

²²⁸ *Id.* § 252(d)(3).

²²⁹ *Id.* § 251(c)(4)(B).

²³⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission’s authority to promulgate such rules, and specifically upheld the sections of the Commission’s rules concerning resale of promotions and discounts in *Iowa Utilities Board v. FCC*, 120 F.3d at 818-19, *aff’d in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also* 47 C.F.R. §§ 51.613-51.617.

²³¹ 47 U.S.C. § 251(c)(4)(B).

²³² *Id.*

telecommunications services.²³³ The obligations of section 251(c)(4) apply to the retail telecommunications services offered by a BOC's advanced services affiliate.²³⁴

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

68. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."²³⁵ The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.²³⁶ Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.²³⁷ In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.²³⁸

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.²³⁹ The Commission's findings regarding section 272 compliance constitute

²³³ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

²³⁴ See *Verizon Connecticut Order*, 16 FCC Rcd 14147, 14160-63, paras. 27-33 (2001); *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

²³⁵ 47 U.S.C. § 271(d)(3)(B).

²³⁶ See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order on Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), aff'd sub nom. *Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

²³⁷ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

²³⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

²³⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

independent grounds for denying an application.²⁴⁰ Past and present behavior of the BOC applicant provides “the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272.”²⁴¹

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.²⁴² Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission’s many years of experience with the consumer benefits that flow from competition in telecommunications markets.

71. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.²⁴³ Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.²⁴⁴ Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission’s analysis of checklist compliance, that markets are open to competition.

²⁴⁰ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

²⁴¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

²⁴² 47 U.S.C. § 271(d)(3)(C).

²⁴³ In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

²⁴⁴ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of “whether approval . . . will foster competition in all relevant telecommunications markets”).

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, CONCURRING IN PART**

Re: Application by Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks, Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region InterLATA Services in Virginia

I commend Verizon for the steps it has taken to open its local markets to competition in my home state of Virginia. My neighbors will now have the opportunity to benefit from the expanded competition envisioned by Congress in the Telecommunications Act of 1996.

I concur in part rather than approve this decision for the same reasons laid out in my statement in the recent *New Hampshire/Delaware 271 Order*. As in that order, the majority concludes that the statute permits Bell companies in all instances to demonstrate compliance with the checklist by aggregating the rates for non-loop elements. I disagree with the majority's analysis. I believe the better reading of the statute is that the rate for each network element must comport with Congress' pricing directive. We are faced with an analogous situation in Virginia. In addition, in this instance, although not a basis for our decision, I note that Verizon will true up the switching rates in Virginia to the date it filed its application once this agency issues its arbitration decision on the pricing issues. To be effective, however, we must complete that arbitration as expeditiously as possible.

Finally, I would reemphasize the need to institute better follow-up on what happens in a state following a successful application. Verizon was the first Bell company to receive long-distance authorization almost three years ago. Yet even today, our data on whether competition is taking hold is sketchy and non-integrated. In the next few months, we will be evaluating a number of applications and completing decisions on network elements and on whether to allow the sunset of the separate affiliate requirements for Verizon. These data are important for judging the 271 process and evaluating the options in these other proceedings. In addition, we have a statutory duty to ensure that carriers continue to comply with their obligations after the grant of a 271 application. It is only with good data and continued vigilance that we can ensure that consumers reap the benefits of competition.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN,
APPROVING IN PART AND CONCURRING IN PART**

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

Today we grant Verizon authority to provide in-region, interLATA service originating in the State of Virginia. I support this Order and commend the Virginia State Corporation Commission for their hard work.

Nevertheless, I concur in this Order because of concerns with two issues: (i) the statutory analysis on the standard for reviewing the pricing of individual unbundled network elements (“UNEs”) in Section 271 applications and (ii) the application of our complete-as-filed requirement.

In today’s action, the Commission finds that the statute does not require it to evaluate individually the checklist compliance of UNE TELRIC rates on an element-by-element basis. The Commission concludes that because the statute uses the plural term “elements,” it has the discretion to ignore subsequent reference to prices for a particular “element” in the singular. As I have stated in the past, I disagree.¹

Bell operating companies seeking to enter the long distance market must meet the requirements of the fourteen point checklist contained in section 271 of the Act.² The 271 process requires that the Commission ensure that the applicants comply with all of these checklist requirements. One of the items on the checklist requires that the Commission: (i) verify that the Bell operating company provides nondiscriminatory access to network elements; and (ii) ensure that rates are

¹ See Statement of Commissioner Kevin J. Martin, *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 Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware (WC Docket No. 02-157)*, October 3, 2002 (*Approving in Part and Concurring in Part*).

² See 47 U.S.C. 271.

just and reasonable based on the cost of providing “the network element,”³ in accordance with section 251(c)(3) of the Act.⁴

The pricing standard for network elements analyzed during the 271 checklist review process resides in Section 252. Under this section, states must set unbundled network element rates that are just and reasonable and “based on the cost of providing the network element.”⁵ The clearest reading of this section would seem to require that the Commission ensure that the rates charged for any particular element is based on that element’s cost. Previously, the Commission has determined that this requirement is satisfied by compliance with TELRIC principles for pricing. Thus the most straightforward reading of our statutory obligation is to make sure that the price of every element—and particularly the price of any element that someone specifically alleges is not based on cost—is actually based on cost.

In defense of its statutory interpretation, the Commission argues that because the general statutory provisions refer to the term network elements in the plural, the Commission is not required “to perform a separate evaluation of the rate for each network element in isolation.”⁶

Typical statutory construction requires specific directions in a statute take precedent over any general admonitions. Contrary to such accepted principles of statutory construction, the order suggests that general language referring to the network elements (in the plural form) in sections 252 and 271 trumps the language addressing the specific pricing standard in section 252 that requires a determination on the cost of providing the network element. In my view, such an interpretation runs contrary to those principles.

The decision attempts to find additional support for its statutory interpretation by noting that the only party that raised this legal issue on the record also takes the position that some degree of aggregation is appropriate in conducting a benchmark analysis. First, I am not sure that an outside party’s inconsistency could absolve the Commission of its obligation under the Act--in this case-- to evaluate individually the checklist compliance of UNE TELRIC rates on an element-by-element basis.⁷

³ See 47 U.S.C. 271(c)(2)(B)(ii) and 47 U.S.C. 252(d)(1).

⁴ See 47 U.S.C. 251(c)(3). Requires that incumbent local exchange carriers provide “...nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory...”

⁵ Section 252(d)(1) states that in relevant part, that “[d]eterminations by a state commission of... the just and reasonable rate for network elements for purposes of [section 251(c)(3)]...shall be based on the cost...of providing the...network element (*emphasis added*).

⁶ Section 271(c)(2)(B)(ii) requires that the Commission determine whether an applicant is providing “[n]ondiscriminatory access to network elements in accordance with the requirements of ...” the pricing standard enunciated in section 252(d)(1).

⁷ Despite references in the decision to the Commission’s long-standing practice of benchmarking and statements regarding rationale provided in prior orders to support the Commission’s statutory interpretation - - this is the (continued...)

Moreover, it is the Commission's failure to respond to specific allegations and facts regarding an individual element that fails to meet the statute's requirements. I appreciate that the Commission may be able to base an initial conclusion on the apparent compliance with its rules at a general level. When specific allegations to the contrary are presented, however, I believe the Commission has an obligation to do more than merely rely on those generalized findings. Rather it must respond to the specific facts raised.

I do not believe the Commission can meet its statutory duty—to make an affirmative finding that the rates are in compliance with Section 252—by merely relying again on generalized findings in the face of specific allegations to the contrary.

In circumstances where a party challenges the pricing of an individual element within an aggregated rate benchmark containing several elements, I do not believe that it would be overly burdensome for the Commission to review the compliance of those elements on an individual basis.

In my view, Section 252(d)(1) sets forth the pricing standard used for determining compliance in Section 271 applications. That standard explicitly requires that we examine UNE rates by each individual “network element.” I believe we should not ignore such an explicit Congressional mandate.

The complete-as-filed requirement provides that “when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight.”⁸ Here, we waive the complete-as-filed requirement twice and rely on data filed by the applicant well after the comment date.

We first waive the complete-as-filed requirement on our motion in response to comments that contend that Verizon's application was not complete when filed because Verizon had not memorialized its Interconnection Agreements--as required by the Wireline Competition Bureau's *Virginia Arbitration Order*--prior to its filing of its section 271 application.

On August 1, 2002, Verizon filed its 271 application for Virginia. On September 3, 2002, Verizon filed its interconnection agreements with the Bureau. On October 8, 2002, the Bureau approved and deemed effective Verizon's interconnection agreements.

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second time that the Commission has addressed whether it has the authority, under 252(d)(1) and 271, to permit rate benchmarking of nonloop prices in the aggregate rather than on an individual element-by-element basis.

⁸ *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6247 (2001) *aff'd in part, remanded in part sub nom.* Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001).

I support our decision to waive the complete-as-filed requirement and rely on these interconnection agreements filed by the applicant after the comment date because of unique circumstances. In this case, a contributing factor to Verizon's failure to file its interconnection agreement in conjunction with its 271 application was the Commission's own failure to resolve outstanding interconnection arbitration issues on a timely basis.

Under Section 252(b)(4)(C) state commissions must conclude the resolution of any unresolved arbitration issues "not later than 9 months" after a local exchange carrier receives a request for negotiation of interconnection agreement.⁹ Under this process, parties are permitted to seek arbitration "during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation..."¹⁰ Depending on the timing of the arbitration request, State commissions are essentially required to arbitrate and "conclude the resolution of any unresolved issues" within a 4 to 5 month window.¹¹ If, however, a state commission fails to carry out its arbitration responsibilities the Commission must "issue an order preempting the State commission's jurisdiction...within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission" and act for the State commission.¹²

On January 19, 2001, the Commission granted the petition to take over the Virginia arbitration and also issued an order delegating to the Wireline Competition Bureau ("Bureau") the authority to serve as the Arbitrator.¹³ The Bureau, acting through authority expressly delegated from the Commission, stood in the shoes of the Virginia State Corporation Commission to address separate petitions for arbitration filed by AT&T, Cox, and Worldcom.¹⁴ At this point in the process, State commissions are required to complete the arbitration within 4 to 5 months. It took the Wireline Competition Bureau, however, nearly 18 months to reach a partial decision in

⁹ See 47 U.S.C. 252(b)(4)(C).

¹⁰ See 47 U.S.C. 252(b)(1).

¹¹ See 47 U.S.C. 252(b)(4)(C).

¹² See 47 U.S.C. 252(e)(5).

¹³ *Petition of Worldcom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.* CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001); *Arbitration Procedures Order*, 16 FCC Rcd 6233 (2001). At the time of the *Arbitration Procedures Order*, the Commission delegated its authority to the Chief of the Common Carrier Bureau. Since then, the Bureau has been renamed the Wireline Competition Bureau. See *In the Matter of Establishment of the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau*, Order 17 FCC Rcd 4672 (2002).

¹⁴ *Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and Worldcom*, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-271 (rel. Feb. 1, 2001)

response to the parties request for arbitration.¹⁵ Thus it took this agency nearly triple the amount of time to reach a partial decision, in comparison to the timeframe for completed state arbitration decisions. I am disappointed with the inordinate delay that the Bureau has had in resolving these issues. As a result of this delay, consideration of the interconnection agreements in this instance will serve the public interest.¹⁶

I wish to emphasize again that, absent the kind of extremely unique circumstances at issue here, the Commission should avoid relying on late-filed information. We have continued to take such information into account with greater frequency, and I fear that we may be moving in the wrong direction. In particular, I am concerned that relying on this information may burden commenters—particularly those opposing an application. Commenters need adequate time to evaluate and analyze new information, especially if it affects significant aspects of an application. When we accept late-filed information, we create additional burdens for them.

As I have noted previously, we would be better served by emphasizing the importance of having all of an applicant's supporting information in the record when the application is filed rather than granting the waivers that have become more routine. While I acknowledge that any rule will probably necessitate some exceptions, we appear to be failing to make any significant improvements in this area.

For these reasons, I concur in this Order.

¹⁵ See In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket Nos. 00-218, 00-249, 00251, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002). As of this date, the Bureau has only resolved issues that do not relate to the rates that Verizon may charge for the services and network elements that it will provide to the requesting carriers under the interconnection agreements at issue.

¹⁶ Based on special circumstances, today's decision also waives the complete-as-filed requirement to consider rate reductions filed by Verizon on day 63 of our review. The special circumstances at issue arise because commenters only made specific allegations concerning some of the factors and calculations underlying Verizon's rates in reply comments on day 42 of our review. Verizon's submission was thus necessarily filed late. Verizon submitted new switching rates in order to meet a non-loop benchmark analysis to New York rates. Commenters were then given an opportunity –albeit a brief one – to comment on Verizon's limited rate changes, which were consistent with what many of them advocated.