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

In the Matter of	)	
	)	
Application of Verizon New York Inc.,	)	
Verizon Long Distance, Verizon Enterprise	)	CC Docket No. 01-100
Solutions, Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for Authorization	)	
to Provide In-Region, InterLATA Services in	)	
Connecticut	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2001 **Released: July 20, 2001**

By the Commission: Commissioner Abernathy not participating; Commissioner Copps issuing a statement.

I. INTRODUCTION

1. On April 23, 2001, Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. (Verizon) filed this 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 Connecticut. We grant the application in this Order based on our conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in Connecticut to competition.

2. This application differs from others considered by the Commission because Verizon serves only two small communities in Connecticut with a total of approximately 60,000 lines, representing approximately two percent of the access lines in the state.[2] Verizon serves Byram, Connecticut out of its Port Chester, New York central office and serves Greenwich, Connecticut through its single central office located in Connecticut.[3] Verizon states that the systems and processes that it uses to serve these two communities "are the New York systems and processes."[4] Two competitors[5] in Verizon's Connecticut service area have approved interconnection agreements and are providing telephone exchange service over their own

[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act.

[2] Verizon Application at 1 and 4.

[3] *Id.*

[4] *Id.*

[5] Network Plus Corp. (Network Plus) and Cablevision Lightpath – CT, Inc. (Lightpath).

facilities.[6] There are also four competitive local exchange carriers (competitive LECs) providing xDSL services using unbundled loops in Verizon's service area in Connecticut.[7]

3. In granting this application, we wish to recognize the hard work of the Connecticut Department of Public Utility Control (Connecticut Department) in laying the foundation for approval of this application. We particularly commend the Connecticut Department for devoting substantial resources to consideration of Verizon's section 271 application even though Verizon serves only a very small portion of the lines in the state. The Connecticut Department has conducted proceedings concerning Verizon's section 271 compliance open to participation by all interested parties. In addition, the Connecticut Department has adopted a broad range of performance measures and standards as well as a Performance Assurance Plan designed to create a financial incentive for post-entry compliance with section 271. As the Commission has recognized previously, state proceedings such as these serve a vitally important role in the section 271 process.

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. Congress provided for Commission review of BOC applications to provide such service in consultation with the affected state and the Attorney General.[8]

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[6] Verizon Application at 4-5; Verizon Application App. A, Vol. 3, Declaration of William E. Taylor (Verizon Taylor Decl.), Attach A at paras. 1, 6-7 (Network Plus serves both residential and business customers while Lightpath serves only business customers, although it has stated that it plans to serve residential customers in the future).

[7] These include Covad Communications Company (Covad), DSL.net, Inc. (DSLnet); Network Access Solutions Corporation (Network Access Solutions) and Rhythms Netconnections, Inc. (Rhythms). Verizon Application at 8; Verizon Taylor Decl. Attach. A at para. 11 and Exhibit 2.

[8] 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*, Memorandum Opinion and Order, FCC 01-29, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*); *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*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (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*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*).

5. On September 5, 2000, the Connecticut Department requested comments from interested parties concerning Verizon's compliance with the section 271 checklist requirements.[9] Shortly thereafter, the Department approved Verizon's Statement of Generally Accepted Terms (SGAT) subject to further investigation.[10] On April 11, 2000, the Connecticut Department ruled "that Verizon has demonstrated full compliance with the [14 point] competitive checklist,"[11] adding that "[Verizon] may proceed under Track A to gain approval to provide in-region interLATA services in Connecticut."[12] Verizon filed its application for section 271 authority in Connecticut with this Commission on April 23, 2001.[13] Comments concerning the application were filed on May 14, 2001, and replies were filed on June 7, 2001.[14] Supplemental comments were filed on July 13, 2001.[15]

6. The Connecticut Department fully supports Verizon's application to provide in-region, interLATA long distance service originating in Connecticut. In concluding that Verizon is in compliance with the section 271 checklist requirements, the Connecticut Department states that it has relied to a significant extent on New York Public Service Commission (New York

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[9] *Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996*, Notice of Request for Written Comments, Docket No. 97-01-23 (Conn. Dept. Sept. 5, 2000). Verizon New York Inc., AT&T Communications of New England, MCI WorldCom, Inc., Lightpath and Sprint Communications Company LP filed written comments in that proceeding. *Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996*, Decision at 2, Docket No. 97-01-23 (Conn. Dept. April 11, 2001).

[10] *Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996*, Decision, Docket No. 97-01-23 (Conn. Dept. Sept. 6, 2000).

[11] *Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996*, Decision at 1, Docket No. 97-01-23 (Conn. Dept. rel. April 11, 2001). At the same time, the Connecticut Department ordered Verizon to make a number of changes to its SGAT, directed Verizon to submit certain performance data, and ruled that the Connecticut Performance Assurance Plan would be identical to that in New York except for the monetary penalties, which would be reduced from the levels in New York to reflect the relatively small number of lines Verizon serves in Connecticut. *Id.* at 15.

[12] *Id*. Verizon had originally sought to proceed in Connecticut under Track B of section 271, 47 U.S.C. § 271(c)(1)(B), which permits a BOC to seek section 271 approval for a state under certain circumstances even if no competitors have requested access and interconnection. *Id.* at 1. The Connecticut Department stated that Track B was foreclosed to Verizon in light of the Department's March 21, 2001 approval of an interconnection agreement between Verizon and Network Plus. *Id*.

[13] On April 23, 2001, the Commission released a Public Notice establishing a schedule for filings in this proceeding, and addressing certain other procedural matters. *See Comments Requested on The Application By Verizon New York, Inc. for Authorization Under Section 271 of the Communications Act To Provide In-Region, Interlata Service in The State of Connecticut*, Public Notice, DA 01-1063 (CCB rel. Apr. 23, 2001).

[14] A complete list of commenters in this proceeding is contained in Appendix A.

[15] *Comments Requested in Connection with Verizon's Section 271 Application for Connecticut*, Public Notice, DA 01-1609 (CCB rel. Jul. 6, 2001).

Commission) proceedings concerning section 271 since "Verizon conducts its Connecticut operations out of New York using the same systems and processes and providing wholesale products and services at New York rates."[16] The Connecticut Department also notes that it has required Verizon to implement in Connecticut future changes related to its unbundled network elements (UNEs) rates and collocation tariffs adopted by the New York Commission.[17]

7. The Department of Justice does not oppose Verizon's section 271 application for Connecticut in light of the "unique circumstances" involved.[18] In this regard, the Department of Justice cites the extremely limited extent of Verizon's Connecticut service area and the fact that Verizon serves competitive LECs in Connecticut through the same New York-based systems and operations reviewed by the Commission in Verizon's successful New York section 271 application. The Department of Justice also relies on the fact that Verizon and the Connecticut Department "have agreed to implement in Connecticut the outcomes of many continuing and future competition proceedings pertaining to Verizon's operations in New York."[19]

III. CHECKLIST COMPLIANCE

A. Primary Issues In Dispute

8. In a number of prior orders, the Commission organized the discussion of the section 271 requirements sequentially, following the order of the statutory provisions. In so doing, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.[20] In this Order, we rely upon the legal and analytical precedent established in those prior orders. Additionally, we include a comprehensive appendix containing performance data.[21]

9. As in our two most recent orders on section 271 applications, we focus in this Order on the issues in controversy in the record.[22] Accordingly, we begin by addressing checklist

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[16] Connecticut Department Comments at 12. The Connecticut Department also states that it relied on a number of its own decisions and Federal Communications Commission orders. *Id*. at 5.

[17] *Id*. at 12-13.

[18] United States Department of Justice Evaluation at 1.

[19] *Id.*

[20] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, and 43-60; *SWBT Texas Order*, 15 FCC Rcd at 18359-61, 18365-72, 18373-78, paras. 8-11, 21-40, and 43-58; *see also* Appendix D.

[21] *See generally* Appendices B and C.

[22] *See SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6255-56, para. 39; *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,* (continued….)

item numbers 4, 5 and 14, which encompass access to unbundled local loops, access to unbundled local transport, and resale of Verizon's service offerings, respectively. Next, we address checklist item numbers 1 and 2, which cover interconnection and collocation issues, and access to unbundled network elements, respectively. The remaining checklist requirements are then discussed briefly, since 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. We then consider whether Verizon has satisfied the requirements for Track A in Connecticut. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

1. Checklist Item 4 – Unbundled Local Loops

10. 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."[23] Based on the record before us, we conclude that Verizon has adequately demonstrated that it provides unbundled local loops as required by section 271 and our rules. We focus our analysis in this section on the four loop types which present issues in controversy under this checklist item, beginning with the ordering, provisioning, and maintenance and repair of stand-alone xDSL-capable loops and digital loops. We also address line sharing and high capacity loops. For all other types of unbundled loops and categories of performance not specifically mentioned in the discussion below, we conclude, based on our review of the record, that Verizon has met the requirements of section 271.[24]

11. Upon review, we find that Verizon provides nondiscriminatory access to stand-alone xDSL-capable loops and digital loops. We also find that Verizon has demonstrated that it has a line-sharing provisioning process that affords competitors nondiscriminatory access to these facilities, and that its performance for high capacity loops does not result in a finding of noncompliance. As described below, we also find that Verizon provides access to loop make-up information in compliance with the *UNE Remand Order*.[25]

(Continued from previous page)
InterLATA Services in Massachusetts, CC Docket 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8996, at para. 15 (2001) (*Verizon Massachusetts Order*).

[23] 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 demarcation point at the customer premises. *See Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, at 3772-73, paras. 166-167, n.301 (*UNE Remand Order*) (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). *See* Appendix D at D–25-27, paras. 49-53, regarding requirements under checklist item 4.

[24] *See generally* Appendix B (New York performance data).

[25] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, 3885-87, paras. 427-431 (*UNE Remand Order*).

12. In analyzing Verizon's compliance with this checklist item, we note first that order volumes for unbundled loops in Connecticut are extremely low. As of April, competitors' orders were comprised mainly of three categories of loops in Connecticut: hot cut loops, xDSL stand-alone loops, and digital loops.[26] In addition, there is only one line-sharing arrangement in place in Verizon's Connecticut territory at present, and competitive LECs have ordered no high capacity loops at all. Given these low volumes, Verizon relies mainly on New York performance data to support its application in Connecticut, and our analysis is based primarily on that data. In the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied new entrants a meaningful opportunity to compete.[27] Isolated cases of performance disparity, especially when the margin of disparity or the number of instances measured is small, will generally not result in a finding of checklist noncompliance.

13. When New York data for hot cuts, stand-alone xDSL loops, and digital loops are considered, we conclude that Verizon shows that it performs at an acceptable level, generally meeting the parity standards in the four-month period leading up to its application. We find that Verizon's overall performance meets the checklist requirements. We reach this conclusion and note that the Connecticut Department reached the same conclusion,[28] even though some performance measurements for particular categories of loops indicate isolated and marginal problems. As described below, we believe that the marginal disparities in some measurements are not competitively significant and do not indicate systemic discrimination.

a. xDSL Stand-Alone Loops

14. We find that Verizon demonstrates that it is providing xDSL-capable loops in accordance with the requirements of checklist item 4. Verizon makes available unbundled xDSL stand-alone loops (including all technically feasible features, functions and capabilities) in Connecticut through interconnection agreements and pursuant to tariffs approved by the Connecticut Department.[29] In analyzing Verizon's showing, we refer for comparison to the performance measures relied on in prior section 271 orders.[30]

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[26] Competitive LECs had a total of 339 hot cuts, 334 stand-alone xDSL loops, and 22 digital loops in place in Connecticut as of April. Competitors ordered a total of 29 hot cut loops, 78 stand-alone xDSL loops, one line-shared DSL loop, and three digital loops in Connecticut between January and April 2001.

[27] *See Updated Filling Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734, (rel. March 23, 2001) at 6 (encouraging BOC-applicants to explain why factual anomalies may have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers).

[28] *See* Connecticut Department Comments at 7.

[29] *See* Verizon Lacouture/Ruesterholz Decl. at para. 122 and Attach. A.

[30] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9056, 9059, paras. 123 and 130; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6326-27, paras. 181-182.

15. We base our finding of compliance on our review of the New York performance data for Verizon's stand-alone xDSL loop order processing timeliness, the timeliness of Verizon's stand-alone xDSL loop installation and percentage of Verizon-caused missed installation appointments, the quality of the stand-alone xDSL loops Verizon installs, and the timeliness and quality of the maintenance and repair functions Verizon provides to competing carriers that have purchased stand-alone xDSL loops. In reaching this conclusion, however, we do not rely on data reflecting Verizon's provision of xDSL loops to its separate affiliate because Verizon demonstrates checklist compliance with an evidentiary showing of performance to its wholesale xDSL customers.[31] The data reflect that Verizon provides responses to competing carrier requests for loop information in substantially the same time and manner as for itself, and that it consistently provides timely confirmation notices to competing LECs for unbundled xDSL loop orders.[32]

16. We also find that Verizon demonstrates that it provisions stand-alone xDSL loops in substantially the same time and manner that it installs such loops for its own retail operations. The New York data show that Verizon has generally met the benchmark for missed dispatch installation appointments for each month from February through April, and that its average performance during the period from January through April on the missed appointment, non-dispatch measure is close to parity.[33] Although Verizon's provisioning quality for stand-alone xDSL loops is slightly out of parity, the performance differences are relatively small.[34] The data for provisioning quality also shows improvement each month from January through April, and exceeds parity in April.[35] In addition, Connecticut performance data shows that Verizon's performance exceeds parity for this measure in March and April.[36]

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[31] Verizon's separate affiliate has not been purchasing the same inputs to provide advanced services as unaffiliated competing carriers. Specifically, Verizon's separate affiliate purchases line sharing to provide ADSL service, while competing carriers in Connecticut and New York continue to purchase stand-alone, xDSL-capable loops and have only recently begun purchasing line sharing. As a result, a comparison with Verizon's advanced services separate affiliate is not useful in determining whether Verizon is performing in a nondiscriminatory manner.

[32] *See* PO 1-06 (Facility Availability, Loop Qualification); OR 1-04 (Order Confirmation timeliness). Verizon has exceeded the benchmark for each month reported on loop qualification and order confirmation timeliness. *See* Appendix B at B–4, B–11.

[33] *See* PR 4-04 (Percent Missed Dispatch Appointments), Appendix B at B–13. Verizon's average performance for competitors on PR 4-05 (Percent Missed Appointments, Non-Dispatch) from January through April is 2.1%, and 0.6% for retail.

[34] The January-April average for PR 6-01(Percent Installation Troubles within 30 days) is 6.0% for competitive LECs, as compared to 4.4% for Verizon retail customers. *See* Appendix B at B–13.

[35] *See* PR 6-01 (Percent Installation Troubles Within 30 Days), Appendix B at B–13.

[36] *See* PR 6-01 (Percent Installation Troubles Within 30 Days), Appendix C at C–13.

17. New York maintenance and repair performance data for xDSL loops also show comparable performance for competitors and Verizon retail customers. Both the mean time to repair and the repeat trouble report rate are generally lower for competitive LECs than for Verizon's retail customers, and Verizon missed fewer repair appointments for competitors than for its own retail customers for every month reported.[37] Verizon also emphasizes that an average of 98 percent of xDSL loops experience no trouble in a given month in Connecticut.[38]

18. We reject Covad's contention that Verizon's New York performance data demonstrate discriminatory performance for competitive LECs. Covad points to the measures for on-time xDSL loop provisioning, claiming that Verizon takes about ten days to complete loop delivery to competitive LECs,[39] and that the New York data also show that competitive LECs suffer twice as many loop outages as do Verizon's retail customers.[40] As noted above, while there are some minor disparities in Verizon's provisioning performance, the data reflect that Verizon provisions stand-alone xDSL loops in substantially the same time and manner that it installs such loops for its own retail operations.[41] Furthermore, Verizon's provisioning for competitive LECs has improved over recent months, and is in any event comparable to Verizon's retail performance.[42] Thus, the record shows that whatever performance disparities may have existed in the past have been narrowed to a small margin.

19. Although Covad urges us to rely on the "held orders" measure in analyzing Verizon's xDSL loop performance,[43] we need not do so in this case. Verizon has demonstrated compliance with this aspect of our loops analysis on the basis of the measures the Commission has relied upon in previous section 271 orders. We decline to rely upon the held orders measure because the record presents conflicting information on the reliability of this measure, and we do

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[37] *See, e.g.*, MR 3-01/02 (Missed Appointment Rate) and MR 4-02/03(Mean Time to Repair), Appendix B at B–15.

[38] Verizon Application at 35; Verizon Lacouture/Ruesterholz Decl. at para. 186.

[39] Covad Comments at 9, citing PR 2-01/02 (Average Completed Interval). Beginning in January 2001, the Carrier-to-Carrier Guidelines eliminated the parity with retail standard for this measure for xDSL stand-alone loops, and did not establish a new standard. Instead, the data refers to the published interval for this measure, which is six business days for orders of 5 lines or less.

[40] *Id.*, citing PR 6-01 (Percent Installation Troubles Within 30 Days).

[41] *See* ns.33-34, *supra*.

[42] *See* ns.34-35, *supra*.

[43] Covad argues that the measures rating Verizon's on-time performance are misleading, because loop orders that are late and have not been completed are not reflected in Verizon's performance metrics. Covad contends that the New York Commission adopted a "held orders" metric – which shows the number of orders submitted but not fulfilled – to address this flaw in the performance measures. Covad points to the February data, which shows only 0.15 percent of Verizon retail orders still open after 30 days, while 4.07% of competitors' orders remain open after 30 days. Covad Comments at 10.

not have enough data or experience with it for determining a BOC's compliance with section 271.[44] Moreover, Covad has offered no persuasive reason to depart from Commission practice of placing primary reliance upon the percent missed appointment or the average completion interval measures. Accordingly, we view the held orders measures as additional diagnostic data to evaluate Verizon's contention that it provides stand-alone xDSL loops in a timely manner.[45]

20. Finally, although Covad questions the number of observations cited, we are satisfied that Verizon has accurately presented the data for trouble reports within thirty days for xDSL loops.[46] Verizon states that there is a large difference in the number of observations for competitors and retail customers on this measure because the retail analogue during the relevant time period was all POTS lines with order activity. Verizon notes that new business rules recently agreed to by the New York Carrier-to-Carrier Working Group will adjust the retail analogue for this measure to reflect only POTS lines requiring a dispatch.[47] We find that this is a reasonable explanation of the large number of Verizon retail observations for this measure.

b. Digital Loops

21. As of April, Verizon had provisioned only 22 digital loops to competitive LECs in Connecticut, with only two new digital loop orders placed between January and April 2001. We therefore look at New York data, which show that Verizon's performance on digital loops meets the requirements of checklist item 4. As with stand-alone xDSL loops, the data demonstrate that Verizon's performance for digital loop ordering is at parity. Also, Verizon's provisioning

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[44] Verizon notes that the Commission has never relied on the "held orders" data in analyzing compliance with checklist item 4, and contends that this measure is significantly flawed because it includes orders that could not be provisioned due to a lack of facilities. Verizon claims that 73.5 percent of the open orders reported in New York in March and April could not be provisioned due to a lack of facilities. Verizon Reply at 12-13, citing to the *Verizon Massachusetts Order*, 16 FCC Rcd at 9062, para. 136 ("we continue to rely primarily upon … missed installation appointments and average completion intervals").

[45] We note that Verizon's performance on this measure improved significantly in March and April over the February data cited by Covad, even as the volume of competitors' orders increased. The data also indicate that, for January through April, an average of fewer than three percent of competitors' orders were outstanding after 30 days. *See* PR 8-01 (Provisioning, DSL Loops - Open Orders on Hold over 30 days), Appendix B at B–13.

[46] Covad states that the February data for PR 6-01 shows 1,379 observations for Verizon retail in the two Connecticut central offices, but only 13 observations for competitive LECs in those offices. Covad Comments at 8.

[47] Verizon Reply at 14, n.11 (citing to Verizon Lacouture/Ruesterholz Reply Decl. at para. 59). Covad also claims that Verizon does not report its retail performance for comparison to its wholesale performance, claiming that Verizon only reports its own performance for comparison on the measure for PR 6-01 (Percent Trouble Reports Within 30 Days) in February. *See* Covad Comments at 8. However, Verizon responds that its application includes retail performance for every performance measure for which a retail analogue exists in the Carrier-to-Carrier Guidelines. *See* Verizon Reply at 11, n.7 (citing to Verizon Canny/Abesamis Decl., Attach. C). We find no reason to question this statement.

performance exceeds parity on the Missed Appointments measure.[48] However, the measure for Installation Troubles is out of parity for all months reported by Verizon. The data shows a slight improvement in April over the figures for February and March.[49] Similarly, the Repeat Trouble Reports measure shows Verizon's performance to be out of parity for each month reported, though there is a slight improvement from March to April.[50] Verizon's performance for other maintenance and repair functions for digital loops is comparable for Verizon retail customers and competitive LECs.[51]

22. Based on the totality of the circumstances, we find that these performance disparities are not competitively significant. Commenters in this proceeding do not specifically criticize Verizon's performance with regard to digital loops, and the volume of loops provisioned in Connecticut to date is very low.[52] Given Verizon's generally acceptable performance for other categories of loops, we do not believe that the disparities in performance for the few maintenance and repair measures for digital loops discussed above merit a finding of checklist noncompliance.

c. Other Unbundled Loops

23. *Line Sharing*. We find that Verizon demonstrates that it provides nondiscriminatory access to the high-frequency portion of the loop. Verizon offers line sharing in Connecticut under its interconnection agreements and the terms of its tariff, in accordance with the requirements of the *Line Sharing Order* and *Line Sharing Reconsideration Order*.[53] There is

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[48] *See* PR 4-04 (Provisioning, Percent Missed Appointments, Dispatch), Appendix B at B–13. Verizon's performance for timeliness of order confirmation notices also exceeds the benchmark each month from February through April. *See* OR 1-04 (Ordering, UNE POTS/Special Services, 2-wire Digital Services, Order Confirmation Timeliness), Appendix B at B–10, B–11.

[49] *See* PR 6-01 (Percent Installation Troubles Within 30 days), Appendix B at B–12, B–14.. The January-April average for this measure is 11.3% for competitive LECs and 4.2% for Verizon retail.

[50] The January-April average for this measure is 37.6% for competitive LECs and 20.4% for Verizon retail.

[51] For example, from January through April, the Mean Time to Repair for digital loops averaged 27.1 hours for Verizon retail customers' troubles, compared to 27.5 hours for competitive LECs during the same period. *See* MR 4-01 (Maintenance, UNE POTS/Special Services, 2-wire Digital Services, Mean Time to Repair, Total), Appendix B at B–15, B–16. Also, between January and April, Network Trouble reports for competitive LECs were reported slightly more often than for Verizon's retail customers, but still less than three percent of the time. *See* MR 2-02/03 (Maintenance, UNE POTS/Special Services, 2-wire Digital Services, percent Network Trouble Report Rate), Appendix B at B–14, B–15. The January through April average for MR 2-02/03 was 2.52% for competitive LECs and 0.70% for Verizon retail.

[52] As noted above, competitive LECs had a total of 22 digital loops in place in Connecticut as of April, and ordered a total of three digital loops in Connecticut between January and April 2001. *See* n.26, *supra*.

[53] *See* Verizon Lacouture/Ruesterholz Decl. at para. 191; *Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of1996*, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*) (*pet. for rehearing pending sub nom. USTA v.* (continued….)

currently only one line-sharing arrangement in Verizon's Connecticut territory, and the Connecticut performance data shows no competitive LEC activity for line shared DSL services in March and April.[54] Although there has been very little ordering activity in Connecticut for line sharing for the months reported, Verizon's New York performance data demonstrate that it is provisioning line shared DSL loops to competitors at parity with its own retail provisioning, and that its maintenance and repair performance is also acceptable.[55]

24. Two commenters raised issues concerning Verizon's compliance with its line sharing obligations, neither of which demonstrate that Verizon presently fails to comply with the requirements of checklist item 4. Covad contends that Verizon did not make line-sharing arrangements available in Connecticut within the timeframe established by the Commission;[56] however, it also acknowledges that line sharing is currently available, and that Covad has a line-sharing arrangement in place in Connecticut.[57] In response, Verizon states that it did not receive Covad's completed application for line sharing until January 10, 2001, and that Verizon completed the necessary work for the arrangement on May 15, 2001, which was within the requisite 76 business day interval.[58]

25. In addition, Sprint argues that the Connecticut Department did not investigate whether Verizon's line sharing offerings comply with the obligations established in the *Line Sharing Reconsideration Order*, and contends that the Department should re-open the evidentiary record on Verizon's line sharing provisioning, as it has done for the Southern New England Telephone Company (SNET).[59] However, our role in this proceeding is to determine whether the

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FCC, DC Cir. No. 00-102 (filed Jan. 18, 2000));*Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Order on Reconsideration, CC Docket No. 98-147; Fourth Report and Order on Reconsideration, CC Docket No. 96-98; Third Further Notice of Proposed Rulemaking; CC Docket No. 98-147; Sixth Further Notice of Proposed Rulemaking; CC Docket No. 96-98, 16 FCC Rcd 2101 (2001) (*Line Sharing Reconsideration Order*).

[54] *See* n.26, *supra*; Appendix C at C–13.

[55] For example, for PR 4-04 (Provisioning, UNE POTS/Special Services, 2-wire xDSL Line Sharing, Percent Missed Appointments - Dispatch), Verizon's New York performance is at parity for dispatch from January through April, and better than parity for non-dispatch (PR 4-05) in March. The January-April average for non-dispatch missed appointments is 1.6% for competitive LECs and 0.6% for Verizon retail. *See* Appendix B at B–13. *See also* Appendix B at B–15-16 (maintenance performance).

[56] The implementation deadline for line-sharing was June 6, 2000. *See Line Sharing Order*, 14 FCC Rcd at 20982, para. 160.

[57] Covad Comments at 3-4.

[58] Verizon Lacouture/Ruesterholz Reply Decl. at para. 83. Verizon also claims that a Covad technician tested the arrangement on May 15 and certified that all work was complete and accurate. *Id.*

[59] Sprint Comments, Attach. at 3-4 and n.11. SNET is the incumbent LEC in Connecticut serving the area outside of Verizon's territory. The Connecticut Department issued a notice re-opening the evidentiary record and (continued….)

factual record before us supports the conclusion that the particular requirements of section 271 have been met.[60] Neither Sprint nor any other commenter has offered specific evidence that Verizon is not complying with its line sharing obligations. To the contrary, the Connecticut Department has found Verizon to be in full compliance with the provisions of the *Line Sharing Order*, and notes that Verizon has agreed to apply decisions made in the New York line sharing collaborative in Connecticut, unless the Connecticut Department establishes alternative requirements.[61]

26. *High Capacity Loops*. Given the totality of the evidence, we find that Verizon's performance for high capacity loops complies with checklist item 4. Verizon's New York performance data for its maintenance and repair functions for high capacity loops are comparable for Verizon retail customers and competitors.[62] We recognize that Verizon's performance on other measures with respect to provisioning high capacity loops has been poor in New York.[63] However, high capacity loops represent only approximately 0.05 percent of all unbundled loops provisioned to competitors in New York, no high capacity loops have been requested at all by competitors in Verizon's Connecticut territory,[64] and none of the commenting parties raised concerns about high capacity loops.[65] As discussed above, in terms of total loop performance, Verizon performs in a nondiscriminatory manner. Given the complete lack of orders for high capacity loops in Connecticut and the extremely small percentage of such orders in New York, we cannot find that Verizon's performance for high capacity loops should result in a finding of noncompliance for checklist item 4.[66]

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seeking comments on the impact of the *Line Sharing Reconsideration Order* on SNET's provisioning of line sharing in Connecticut on March 28, 2001.

60 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3962-63, para. 20.

61 Connecticut Department Comments at 6.

62 For example, for the period January through April, the Mean Time to Repair measure shows that Verizon retail customers' troubles are resolved in 6.1 hours on average, compared to 6.7 hours for competitive LECs during the same period. *See* MR 4-01 (Maintenance, UNE POTS, Special Services, Mean Time to Repair, Total), Appendix B at B–14, B–16. Fewer than three percent of competitive LECs experienced network troubles with high capacity loops in each month reported. *See* MR 2-02/03 (Network Trouble Report Rate), Appendix B at B–14; Lacouture/Ruesterholz Reply Decl. at para. 33. In addition, competitive LECs experience fewer repeat troubles than Verizon's retail customers. *See* MR 5-01 (Maintenance, UNE POTS, Special Services, Percent Repeat Reports within 30 days), Appendix B at B–14, B–16.

63 *See, e.g.*, OR 1-10 (Special Services – Ordering, percent On Time FOC); PR 6-01 (Special Services – Provisioning, Percent Installation Troubles reported within 30 Days), in Appendix B at B–11, B–14.

64 Verizon Application at 26-27; Verizon Lacouture/Ruesterholz Decl. at paras. 117-121.

65 While both Covad and Sprint challenged Verizon's loop performance in their comments, neither of these commenters specifically addressed high capacity loops.

66 Although we recognize specific performance problems in New York for high capacity loops, we do not find that these disparities in and of themselves are enough to render a finding of checklist noncompliance because of the (continued….)

2. Checklist Item 14 – Resale

27. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)."[67] Based on the record in this proceeding, we conclude that Verizon demonstrates that it satisfies the requirements of this checklist item in Connecticut. In addressing Verizon's compliance with checklist item 14, we waive our section 271 procedural "freeze frame" requirements to the extent necessary to allow us to consider Verizon's expanded resale offering of DSL services through its advanced services affiliate, Verizon Advanced Data, Inc. (VADI). In the discussion below, we set forth the legal requirements pertaining to Verizon in view of the *ASCENT* order,[68] apply our waiver standard to the facts at hand, and then discuss our findings of checklist compliance.

28. *Legal Requirements.* In January 2001, the United States Court of Appeals for the District of Columbia Circuit held, in *ASCENT v. FCC*, that data affiliates of incumbent LECs are subject to all obligations of section 251(c) of the Act.[69] In this proceeding, we require that Verizon demonstrate for the first time that VADI provides DSL and other advanced services in accordance with the decision in *ASCENT*.[70] As discussed below, we conclude that, pursuant to the decision in *ASCENT*, Verizon is required to allow a competitive LEC to resell DSL service over lines on which the competitive LEC resells Verizon's voice service even though the DSL service is provided exclusively by Verizon's advanced services affiliate. This conclusion addresses many

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small numbers of DS-1 and DS-3 loops requested by competing carriers. We stress, however, that we will be actively monitoring Verizon's performance in this area, and we will take swift and appropriate enforcement action in the event that Verizon's provisioning performance for high capacity loops deteriorates.

67 47 U.S.C. § 271(c)(2)(B)(xiv). *See* Appendix D at D–36, para. 68.

68 *Association of Communications Enterprises* v. *FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT*).

69 The court stated that, "the Act's structure renders implausible the notion that a wholly owned affiliate providing services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent." *ASCENT*, 235 F.3d at 668.

70 Specifically, the *ASCENT* decision overturned the Commission's determination in the *SBC/Ameritech Order* that, because the separate advanced services affiliate was not a successor or assign of the BOC, the separate advanced services affiliate was not subject to the resale obligations of section 251(c)(4). *See Application of Ameritech Corp. and SBC Communications, Inc. for Transfer of Control of Corporations Holding Commission Licenses and Lines*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999). Because the Commission incorporated by reference the successor or assign analysis of the *SBC/Ameritech Order* into the *Bell Atlantic/GTE Order*, the D.C. Circuit's decision also impacts the Commission's conclusion in the *Bell Atlantic/GTE Order*. *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000); *Verizon Massachusetts Order*, 16 FCC Rcd at 9111, n.705. The Commission did not address the *ASCENT* decision in the *Verizon Massachusetts Order* because the court's mandate had not issued when Verizon filed that application. *Id.* 16 FCC Rcd at 9111, para. 219.

of the concerns raised by commenting parties challenging Verizon's continued claim that it is not legally required to expand its offering of DSL for resale.[71]

29. In an *ex parte* letter dated July 6, 2001, Verizon stated that VADI would expand its DSL resale offering in Connecticut, allowing a competitive LEC to resell DSL service over a line on which the competitive carrier resells Verizon's voice service.[72] At the same time, Verizon maintains that VADI "does not have an obligation to make its DSL service available for resale where other carriers are providing the voice service on the line."[73] Verizon's July 6 *ex parte* letter also contains illustrative tariff pages for its expanded resale offering of DSL. VADI implemented these changes through revisions to its F.C.C. Tariff No. 1, which became effective on July 20, 2001.[74]

30. In light of the *ASCENT* decision, we cannot accept Verizon's contention that it is not required to offer resale of DSL unless Verizon provides voice service on the line involved.[75] As an initial matter, we reject this argument based on the plain language of section 251(c)(4). Section 251(c)(4) states that incumbent LECs must "offer for resale at wholesale rates any telecommunications service that [they] provide[] at retail . . . ."[76] Verizon and VADI, which are subject to the same resale obligations, currently provide local exchange and DSL services to retail customers over the same line. Therefore, we find that, because Verizon and VADI offer these services on a retail basis, these services are eligible for a wholesale discount under section 251(c)(4). Accordingly, we conclude that Verizon must make available to resellers, at a wholesale discount, the same package of voice and DSL services that it provides to its own retail end-user customers.

31. We also reject Verizon's position on the resale of DSL on two additional grounds. First, Verizon argues that it currently provides DSL services through its affiliate VADI, and VADI provides such services exclusively through a line sharing arrangement with Verizon.

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71 *See* AT&T Supplemental Comments at 2-3; ASCENT Supplemental Comments at 4; Advanced Telecom Group, Inc. (ATG) Supplemental Comments at 2-3.

72 Letter from Dee May, Executive Director – Federal Regulatory, Verizon, to Dorothy T. Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 01-100 at 1 (filed July 6, 2001) (Verizon July 6 *Ex Parte* Letter). Previously, Verizon's separate advanced services affiliate offered for resale, at a wholesale discount, its DSL services only to end users of Verizon's voice services.

73 *Id*.

74 Letter from Jane Jackson, Chief, Competitive Pricing Division, Federal Communications Commission, to Donald R. Fowler, Director – Tariffs, Verizon Advanced Services Inc. (July 19, 2001) (Special Permission Letter) (granting VADI's application and assigning Special Permission No. 01-064 and waiving 47 C.F.R. §§ 61.38 and 61.58.

75 Verizon July 6 *Ex Parte* Letter at 1.

76 47 U.S.C. § 251(c)(4).

Therefore, according to Verizon, the only DSL services that VADI must make available for resale are those provided to Verizon voice customers because, under the Commission's rules, an incumbent LEC is only required to provide line sharing, or access to the high frequency portion of the loop, when the incumbent provides the underlying voice service. Thus, Verizon takes the position that there is no DSL service for VADI to resell when a competitive LEC provides voice service over the line involved.[77] Verizon's position is the same regardless of whether the competitive LEC is reselling voice service or providing voice service over a UNE loop or UNE-platform (UNE-P). We find that Verizon's position is based on a misapplication of this Commission's line sharing rules. Line sharing is not a retail service; it is a UNE provided under section 251(c)(3). Therefore, the restriction on the line sharing UNE is inapplicable to Verizon's obligations relating to retail services. Resellers purchase retail services at a wholesale discount, they do not purchase UNEs.

32. Second, Verizon's argument rests on precisely the conduct ruled unlawful by the court – the use of an affiliate to avoid section 251(c) resale obligations. The *ASCENT* decision made clear that Verizon's resale obligations extend to VADI, whether it continues to exist as a separate entity or whether it is integrated into Verizon, and regardless of the way Verizon structures VADI's access to the high frequency portion of the loop.[78] Accordingly, we conclude that to the extent Verizon's attempt to justify a restriction on resale of DSL turns on the existence of VADI as a separate corporate entity (or even a separate division), it is not consistent with the *ASCENT* decision. We also emphasize that Verizon's policy of limiting resale of DSL services to situations where Verizon is the voice provider severely hinders the ability of other carriers to compete. Specifically, Verizon's policy prevents competitive resellers from providing both DSL and voice services to their customers, while Verizon is able to offer both together to its customers. This result is clearly contrary to the pro-competitive Congressional intent underlying section 251(c)(4).

33. We conclude, in light of the *ASCENT* decision, that VADI must permit resale of DSL by a competitive LEC over lines on which the competitive LEC provides voice service through resale of Verizon service. A number of commenting parties argue that we should also require that Verizon permit resale of DSL over lines on which a competitive LEC provides voice service using a UNE loop or UNE-P.[79] We conclude, however, that resale of DSL service in conjunction with voice service provided using the UNE loop or UNE-P raises significant

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[77] Verizon Lacouture/Ruesterholz Reply Affidavit at para. 108. Verizon states "VADI does not provide DSL service to customers where voice service is provided by other carriers. Because VADI does not provide DSL at all on these lines (whether wholesale or retail), there is no DSL service to resell." *Id*.

[78] Verizon argues that its position would be the same whether the DSL services were offered by a separate affiliate or on an integrated basis. If the services were offered on an integrated basis, however, there would be no line sharing; Verizon would simply be providing both voice and DSL services over a single loop. Verizon would thus still have an obligation under the Act to make each service available for resale at wholesale rates.

[79] *See* AT&T Supplemental Comments at 9; ASCENT Supplemental Comments at 13; ATG Supplemental Comments at 3-5.

additional issues concerning the precise extent of an incumbent LEC's resale obligations under the Act and the *ASCENT* decision that we do not reach in this proceeding.

34. *Waiver of Procedural Requirements.* We waive the Commission's general procedures restricting the submission of late filed information by section 271 applicants on our own motion pursuant to section 1.3 of the Commission's rules,[80] to the extent necessary to consider the additional information and tariff changes discussed above. The Commission's procedural rules governing section 271 applications provide that when an applicant files new information after the comment date, the Commission retains discretion to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.[81] There is an exception to this approach for new information that is directly responsive to allegations raised in the comments, however. The Commission has also strictly limited the consideration of other developments that occur after the date for filing comments.

35. "[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[82] We conclude that a deviation from the general procedures concerning consideration of late-filed information or new developments is warranted in this proceeding and will serve the public interest by allowing consideration of VADI's tariff filing to allow expanded resale of DSL. We emphasize, however, that in the absence of special circumstances, we will adhere to our general procedures designed to ensure a fair and orderly process for the consideration of section 271 applications.

36. There are a number of special circumstances that support grant of this waiver to permit consideration of these tariff revisions in determining section 271 compliance, and thus satisfy the first element of the test for grant of the waiver described above. This is the first time that the Commission has applied the *ASCENT* decision. Thus, it is understandable that Verizon would need to make late filed changes to this application to ensure compliance with that decision. The changes at issue are also relatively limited in scope. VADI is simply making tariff changes that expand its offering of DSL resale and implementing interim changes in its internal procedures in order to process orders for its expanded DSL resale offering. As a result, these changes place only a limited additional analytical burden on the Commission staff and commenting parties. This situation does not involve consideration of promises of future action, which may or may not actually take place, since the tariff revisions have become effective. The new internal procedures for order processing are also in effect. Given the extremely limited number of orders we expect for this offering in Verizon's Connecticut service area, any potential element of uncertainty

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[80] 47 C.F.R. § 1.3.

[81] *See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 14 FCC Rcd 16128, 16130 (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).

[82] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 at 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

concerning the interim ordering process does not warrant withholding this procedural waiver.[83] In light of the relatively limited scope of these changes, interested parties have had a reasonable opportunity to evaluate them and comment in a meaningful manner.[84] The limited scope of these changes has also permitted the Commission staff an adequate opportunity to evaluate them. In addition, this is a situation in which Verizon has responded positively to criticism in the record by taking action that will clearly foster the development of competition.[85] Finally, this is otherwise a generally persuasive application for a very limited service area and demonstrates a commitment by Verizon to opening local markets to competition.

37. 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 within the original timeframe without the procedural delays inherent in restarting the 90-day clock. Considerations of administrative efficiency are particularly important in the case of this application which covers an extremely limited local service area. Grant of this waiver also represents a positive response to Verizon's decision to make pro-competitive tariff changes in response to the comments in this proceeding. Given that interested parties have had a meaningful opportunity to comment, we do not believe that the public interest would be served by refusing to waive the Commission's procedural rules in this instance.

38. Although we waive our section 271 procedural requirements to a limited extent here, 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. Thus, we continue to expect applicants to make every effort to ensure that section 271 applications are complete when filed. Indeed, we believe it will be rare for future applicants to satisfy the high bar for waiver of these procedural requirements. We see no reason to delay, however, the effective date of this section 271 authorization for 60 days or to approve this application on a "conditional basis" as proposed by ASCENT.[86] While we recognize that the Commission delayed the effectiveness of SBC's authorization in the *SWBT Kansas/Oklahoma Order*, we believe the circumstances here do not warrant such a delay.

39. *Checklist Compliance – Non-pricing Issues*. Based on the evidence in the record, including the tariff revisions discussed above, we conclude that Verizon demonstrates that it makes telecommunications services available for resale in Connecticut in accordance with sections

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[83] ATG Supplemental Comments at 4.

[84] *Comments Requested In Connection with Verizon's Section 271 Application For Connecticut*, Public Notice, DA 01-1609 (CCB rel. Jul. 6, 2001).

[85] This is very different from an instance in which late-filed material provided by the applicant consists of additional arguments or information intended to demonstrate that its current performance or pricing satisfies the requirements of section 271.

[86] *See* ASCENT Supplemental Comments at 12-13.

251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. Verizon has a concrete and specific legal obligation in its interconnection agreements and tariffs to making its retail services available to competing carriers at wholesale rates.[87] In addition, the revisions to VADI's federal tariff, which are currently effective, and the associated changes in Verizon's and VADI's internal processes now permit a competitive LEC to resell DSL over a line on which the competitive LEC provides voice service to the end user through resale of Verizon service.[88] We conclude that these changes are sufficient to satisfy existing resale requirements for DSL and bring Verizon into present compliance with the requirements of checklist item 14. Given the fact that Verizon has an effective tariff as well as a manual order processing system in place to immediately begin taking orders, we cannot accept the contentions by certain commenting parties that this amounts to no more than a promise of future compliance.[89]

40. We recognize that commenting parties are correct in pointing out that Verizon has little, if any, operational experience with the interim manual order processing procedures for its expanded DSL resale offering.[90] In view of the unique circumstances of this application, which involves a service area of only approximately 60,000 access lines, we conclude that this does not justify a finding of checklist noncompliance. The volume of orders for the expanded DSL resale offering in Connecticut is likely to be very small and Verizon will be able to process orders within a reasonable period of time using the interim manual process. In the unlikely event that serious problems were to develop with the interim manual ordering process, Verizon would, of course, be subject to enforcement action under section 271(d)(6).

41. We are not persuaded that the interim manual ordering process for Verizon's expanded DSL resale offering constitutes an unreasonable restriction on resale as argued by ATG.[91] We recognize that competitive LECs will have to place separate orders with Verizon for voice service and with VADI for DSL service. However, in light of the fact that the Commission required Verizon to provide advanced services through a separate affiliate under the *GTE/Bell Atlantic Merger Conditions Order*,[92] and that we are interpreting Verizon's resale obligations under the *ASCENT* order for the first time, we believe that the approach Verizon is taking in the interim in Connecticut is reasonable. We also note Verizon and VADI also have to place separate orders to provision service to the end user.

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87 Verizon Application at 54; Verizon Lacouture/Ruesterholz Decl. at para. 388.

88 Verizon July 6 *Ex Parte* Letter; Tariff Revision filed by VADI under Transmittal Number 16, Dated July 19, 2001. The new tariff became effective July 20, 2001.

89 *See* AT&T Supplemental Comments at 11; ASCENT Supplemental Comments at 9.

90 *See* AT&T Supplemental Comments at 10-11; ASCENT Supplemental Comments at 11; ATG Supplemental Comments at 4-5.

91 *See* ATG Supplemental Comments at 4-5.

92 *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, 15 FCC Rcd 14032, App. D, para. 1 (2000).

42. There are several other aspects of the expanded DSL resale offering and the revised internal order processing procedures that are acceptable on an interim basis, but which we expect Verizon to revise as it develops permanent order processing procedures. In particular, we expect permanent order processing procedures will eliminate Verizon's requirement that the reseller must already be the voice provider on the line involved before Verizon can process orders for DSL resale. We also expect permanent ordering procedures will eliminate Verizon's requirement that it disconnect resold DSL service if the customer switches from the reseller back to Verizon as the underlying voice provider. In addition, we expect that Verizon's performance in providing this expanded resale offering will ultimately be reflected in its performance data pursuant to procedures developed in coordination with the Connecticut Department. Contrary to ATG's assertions we see no need to reflect information on the use of this interim process in performance data before Verizon and its competitors have had an opportunity to address this at the state level. Moreover, if VADI's retail DSL offering were expanded to be available over non-copper facilities, we would expect Verizon to mirror this change in its DSL resale offering.[93]

43. *Checklist Compliance – Pricing.* In concluding that Verizon demonstrates that it is in compliance with the requirements of checklist item 14, we rely on the resale discount and rates in the currently effective tariff. Contrary to ASCENT's argument,[94] we do not believe that the mere possibility that Verizon will seek an increase in these non-recurring charges creates a sufficient level of uncertainty to warrant a finding of checklist noncompliance. However, we note that any modification of the tariff to increase these non-recurring charges would necessitate a reevaluation of Verizon's compliance with section 271.

44. We also note that Verizon has stated in this proceeding that it will modify wholesale and resale rates in Connecticut "'contemporaneously' with the modification of these rates in New York."[95] This addresses the concerns raised by AT&T concerning whether Verizon would continue to mirror these rates.[96] We understand this to be part of Verizon's overall commitment to continue to mirror New York wholesale rates, as required by the Connecticut Department.[97]

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[93] We are not persuaded by ATG's argument that Verizon should make its bundled offerings that include deregulated CPE and internet access available for resale. The resale obligation clearly extends only to telecommunications services offered at retail. *See* 47 C.F.R. § 51.605 (requiring an incumbent LEC to offer, on a wholesale basis, any telecommunications service that it offers to retail customers).

[94] ASCENT Supplementary Comments at 11.

[95] *See* Reply Comments of Verizon New York at 5 n.2 (referencing Connecticut Department Comments at 13: "Of course, Verizon will, as the DPUC [Connecticut Department] 'fully expects,' 'uphold its commitment' to ensure that any changes in its New York operations be 'directly reflected in its Connecticut operations.'").

[96] As noted above, AT&T in its comments did not oppose Verizon's section 271 application.

[97] *See* Reply Comments of Verizon New York at 4 ("The DPUC also confirms that, just as Verizon's wholesale products and rates in Connecticut are the same as they are in New York today, they will continue to be the same in (continued….)

B. Other Issues

1. Checklist Item 1 – Interconnection and Collocation

a. Interconnection and Collocation

45. Section 271(c)(2)(B)(i) of the competitive checklist requires that the BOCs 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.[98] Based on the present record, we conclude that Verizon demonstrates that it is in compliance with the requirements of this checklist item.[99] Among other things, we conclude that Verizon provides interconnection at all technically feasible points, including a single point of interconnection. In reaching this conclusion, we note that Verizon has eliminated the Geographically Relevant Points of Interconnection Proposal (GRIPS) from its SGAT as directed by the Connecticut Department to ensure that the SGAT terms in Connecticut are fully consistent with those in New York.[100] We note that this eliminates the issues that such a provision would raise.[101]

b. Collocation Pricing

46. Based on the evidence in the record, we find that Verizon offers collocation[102] arrangements at just, reasonable and nondiscriminatory rates in accordance with section 251(c)(6)[103] of the Act, in compliance with checklist item 1.

47. The Connecticut Department approved Verizon's Collocation Tariff for the state on February 23, 2000.[104] Rates for collocation in Connecticut are the same as those in New

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the future"). While the Connecticut Department has chosen to track New York pricing, we recognize that there are other means of demonstrating checklist compliance.

98 *See* Appendix D at D–8-12, paras. 17-25.

99 Verizon Application at 17-19; Verizon Lacouture/Ruesterholz Decl. at paras. 21-32, 39.

100 Verizon Reply Comments at n.24; Verizon Lacouture/Ruesterholz Reply Declaration at Attachment 45.

101 In prior section 271 orders, the Commission has found that a BOC must permit interconnection at a single point. *Verizon Massachusetts Order*, 16 FCC Rcd at 8990, para. 3.

102 Collocation generally is a method whereby requesting carriers may obtain interconnection and access to unbundled network elements from incumbent local exchange carriers. *See Local Competition First Report and Order*, 11 FCC Rcd at 15816, para. 629, and App. B-10.

103 47 U.S.C. § 251(c)(6).

104 *See* Verizon Connecticut Application, App. B, Vol. 1, Tab 3, Sub-Tab A, State of Connecticut Department of Public Utility Control, Application of New York Telephone to Introduce Rates and Charges for Collocation for Certified Local Exchange Carriers: Decision, Docket No. 99-05-30 (February 23, 2000) (*Connecticut DPUC Collocation Order); see also* Verizon Connecticut Application App. B, Tab 14, Sub-Tab F, *State of Connecticut No. 11-Telephone Tariff Network Interconnection Services.*

York,[105] which were found by the Commission to be in compliance with sections 251 and 271 of the Act in the *Bell Atlantic New York Order*.[106] Before that, the New York Commission also concluded that Verizon provided collocation agreements and tariffs that were consistent with its own and this Commission's orders and in compliance with checklist item 1.[107]

48. We agree with the Connecticut Department that it is reasonable under the circumstances for Connecticut to mirror New York's collocation rates in satisfaction of section 251 and 271 requirements.[108] Indeed, under the unique circumstances of this application, we would expect collocation rates for these areas – which are contiguous to New York – to be extremely close to those of New York. Verizon is the incumbent local exchange company in only two Connecticut communities, Greenwich and Byram, which adjoin Verizon's service area in New York as part of the New York City metropolitan area. Verizon primarily uses its operations, procedures and employees based in New York to serve this limited area in Connecticut.[109] Verizon uses these New York processes and procedures to provide collocation to competitors in Connecticut in exactly the same way it does in New York.[110] In adopting collocation rates for Connecticut that mirror New York's rates, the Connecticut Department found that Verizon's cost studies in New York followed Connecticut and Commission guidelines and employed a long run cost approach that complied with the Act. The Connecticut Department concluded that Verizon's

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[105] *See* Verizon Application at 20.

[106] 15 FCC Rcd at 3987, para. 78.

[107] *See id.*

[108] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276-77, para. 82 n.244. The Commission has 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. In utilizing the New York Public Service Commission's expertise, the Connecticut Department noted that "NYPSC's comprehensive investigation was conducted in a manner that is consistent with CTDPUC [Connecticut Department] and FCC standards," and that the Commission granted Verizon's section 271 application in New York. *See* Connecticut Department Comments at 4-5. The Connecticut Department believes it is reasonable for Verizon to have consistency between its Connecticut and New York operations, and in the past has permitted Verizon to offer various services in Connecticut at rates that mirror those approved in New York. *See Connecticut DPUC Collocation Order* at 3. Verizon also asserts that in recognition of using its New York based operations for service provisioning in Connecticut, the Connecticut Department "typically requires Verizon to mirror New York wholesale tariffs and rates in Connecticut." *See* Verizon Lacouture/Ruesterholz Decl. Attach. C, para. 13.

[109] *See* Verizon Application at 10-11. Thirteen Verizon employees are stationed in Connecticut and work in the Greenwich switching office, reporting to managers in New York. The central office serving Byram is located in Port Chester, NY, where Verizon has two service garages for operations, installation and maintenance for customers in Greenwich, Byram and throughout Westchester County, NY. Verizon asserts that it uses the same New York-based wholesale operations and systems for serving competitive LECs in Greenwich and Byram as it does for serving competitive LECs in New York. *See* Letter from Dee May, Verizon Executive Director – Federal Regulatory, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket. No. 01-100, at 1-2 (June 8, 2001) (Verizon June 8 *Ex Parte* Letter); *see also* Connecticut Department Comments.

[110] *See* Verizon Application at 19.

New York cost studies could, therefore, be relied upon to develop reasonable rates that supported Verizon's collocation tariff in Connecticut.[111]

49. In light of the unique circumstances of this application, we do not have the same concerns here as might arise in other situations in which a BOC bases its section 271 application in one state on the adoption of another state's rates. Furthermore, the Connecticut Department also requires Verizon to continue to mirror New York's rates in the future; any New York collocation changes are to be filed in Connecticut's tariffs within 10 days of New York's approval.[112] We note that the Connecticut Department's policy in this regard is a consistent and reasonable approach to safeguard ongoing pricing compliance with the Act.[113]

50. In addition, we find that the single collocation issue raised by a commenter is not germane to this application. Covad's objection to Verizon's proposed collocation price increase made "in a recent FCC filing" is not relevant to this section 271 proceeding because it does not address collocation in this checklist item.[114] Covad refers to Verizon's filing of collocation rates in the expanded interconnection tariff that is part of Verizon's interstate access service offering under section 201 of the Act.[115] As the Commission pointed out in the *Bell Atlantic New York Order*, however, the provision of interstate access services is not a checklist compliance item.[116]

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111 *See Connecticut DPUC Collocation Order* at 2-3.

112 *See* Connecticut Department Comments at 12-13.

113 *See* Letter from Sandra Dilorio Thorn, Vice President & General Counsel, NY & CT, Verizon New York Inc., to Ms. Louise Rickard, Acting Executive Secretary, Connecticut Department of Public Utility Control, *Compliance Tariff Revision for Connecticut No. 11–Telephone Tariff* (April 3, 2001) (submitting revisions to its Connecticut tariff that mirrored a change to how DC power charges are applied in New York). Of course, the Connecticut Department is free to adopt other means of ensuring ongoing compliance with the Act. If it does so, it need not continue to mirror New York rates.

114 *See* Covad Comments at 7-8.

115 *See* 47 U.S.C. § 201; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15808, para. 610 (distinguishing collocation subject to expanded interconnection rules from that subject to section 251 and 252 checklist requirements, stating that "…section 251(I) expressly provides that '[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201, which provided the statutory basis for our *Expanded Interconnection* rules.").

116 *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340 ("We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some of the same physical facilities as a checklist item. We have never considered the provision of interstate access services in the context of checklist compliance before."). Moreover, the Commission has previously stated that "the process of negotiating agreements for access to unbundled elements pursuant to sections 251 and 252 and the process of taking expanded interconnection service pursuant to tariffs filed under section 201 exist as two separate options for an interconnector. If an interconnector chooses to take service pursuant to an interstate expanded interconnection tariff, the interconnector's collocation arrangement is governed by the standards of the section 201 tariffing process, and not by the standards of section 251." *See New York Telephone Company and New England Telephone and Telegraph Company Petition for Extension of Waiver, Memorandum* (continued….)

Accordingly, the collocation matter that Covad raises related to Verizon's interstate access tariff filing is not properly considered here. We note, however, that this matter was brought before this Commission and is the subject of an ongoing tariff investigation.

2. Checklist Item 2 – Unbundled Network Elements

51. Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act.[117] Based on the record, we conclude that Verizon demonstrates compliance with this checklist item. In reaching this conclusion, we note that the Connecticut Department also concludes that Verizon has satisfied the requirements of checklist item 2.[118] Also, with limited exceptions discussed below, the commenting parties do not challenge Verizon's compliance with checklist item 2. We address the three areas where commenters challenge Verizon's compliance: (1) provision of UNE combinations; (2) Operations Support Systems (OSS); and (3) UNE pricing.

a. Provision of UNE Combinations

52. As previously discussed, Verizon uses its New York systems and processes to serve its Connecticut subscribers,[119] and the Connecticut Department has ordered Verizon to continue to make available to competitive LECs in Connecticut all UNE combinations Verizon offers in New York.[120] Verizon has also verified that it will continue to comply with the Connecticut Department's order on these issues.[121] We conclude that Verizon has adequately addressed AT&T's concern that it will continue to provide in Connecticut all UNE combinations it currently provides in New York.[122] We note that the approach taken by the Connecticut Department is one reasonable way to safeguard future compliance.

b. OSS

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Opinion and Order, 12 FCC Rcd 20954, 20961-62, para. 16 (1997), citing the *Local Competition First Report and Order*, 11 FCC Rcd at 15808.

[117] 47 U.S.C. § 271(B)(ii).

[118] *See* Connecticut Department Comments at 6.

[119] *See* Sec. I, *supra*; Verizon Application at 9-14; Department of Justice Evaluation at 1-2.

[120] Connecticut Department Comments at 12-13.

[121] *See* Verizon Reply at 4-5 and n.2.

[122] AT&T Comments at 2.

53. The Commission has consistently found that nondiscriminatory provision of access to OSS[123] is a prerequisite to the development of meaningful local competition and required that section 271 applicants demonstrate that they provide such access to OSS as a UNE.[124] We find that Verizon demonstrates that it provides nondiscriminatory access to its OSS based on the present record.[125]

54. We do not agree with Covad's claims that Verizon provides competitive LECs with inadequate access to loop make-up information.[126] As Covad acknowledges, in approving Verizon's Massachusetts section 271 application, the Commission rejected identical arguments concerning the same interim processes for access to loop make-up information through Verizon's LFACs database.[127] In that proceeding, the Commission found that Verizon's process for providing competitive LECs access to loop make-up information complies with our requirements.[128] In the *Verizon Massachusetts Order*, the Commission accepted Verizon's statement that it will implement a permanent process for access to loop qualification information by October 2001, and found that the interim process in place was providing useful, detailed information to competing carriers concerning the ability of loops to support xDSL services, within reasonable time frames.[129] Covad has not presented any new arguments or information that would cause us to reach a different conclusion here.

55. We also conclude that Covad's claims concerning order flow-through do not warrant a finding of checklist noncompliance. In particular, Covad claims that Verizon's flow-through data suggest it is not flowing through the vast majority of Covad's orders, while Verizon's own retail orders flow-through "with near precision."[130] Verizon's flow-through rates vary widely for different competitive LECs during the period from January through April 2001.[131] Although Verizon's commercial data show low *average* resale total flow-through rates, the

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[123] The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers. *See Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83*; Bell South South Carolina Order*, 13 FCC Rcd at 588; *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

[124] *See* Appendix D at D–12-15, paras. 26-32.

[125] *See generally* Appendix B.

[126] Covad Comments at 4-5.

[127] Covad Comments at 1-2.

[128] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9021-22, 9024-25, paras. 61-62, 67.

[129] *Id*.

[130] Covad Comments at 6.

[131] *See* Verizon McLean/Wierzbicki Declaration at paras. 45-47 and Attach. H.

average UNE total flow-through rates are significantly better.[132] Given that some competing carriers are achieving much higher flow-through rates than others, we conclude that Verizon's OSS is *capable* of flowing through competing carriers' orders in substantially the same time and manner as Verizon's own orders.[133] While Covad may have experienced problems with order flow through in Connecticut, other competing carriers have been able to achieve relatively high flow through rates.[134]

56. Because all competing carriers interface with the same Verizon system, we find, on this record, that it would not be appropriate to attribute this wide range of results entirely to Verizon. The Commission has consistently stated that a BOC is not accountable for orders that fail to flow-through due to competing carrier-caused errors.[135] We expect that Verizon's flow-through rates will improve over time as individual carriers gain experience with the OSS and as Verizon conducts monthly workshops for competing carriers to help them improve their order submissions.[136] Based on this record, we conclude that the flow-through problems experienced by Covad are an isolated problem that does not demonstrate discrimination.[137]

c. UNE Pricing

57. Based on the evidence in the record, we find that Verizon's charges for UNEs made available in Connecticut to other telecommunications carriers are just, reasonable, and nondiscriminatory, and in compliance with checklist item 2.[138]

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[132] *See* OR 5-01 (Percent Flow-Through Total), Appendix B at B–6, B–10. Verizon's average total flow through in New York ranges from about 43 to 55 percent for resale orders and 81 to 84 percent for UNE orders from December through April.

[133] For example, between December 2000 and February 2001, flow-through rates for competitive LECs with at least 100 orders in a month range from under 20% to 80% for resale; from under 10% to more than 90% for UNE orders other than platform; and from under 10% to over 93% for UNE platform orders. *See* Verizon McLean/Wierzbicki Declaration at paras. 45-47 and Attach. H.

[134] *See* Verizon Reply at 10, n.6; Verizon McLean/Wierzbicki Decl. at para. 45; Verizon Lacouture/Ruesterholz Reply Decl. at para. 42.

[135] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4039-40, para. 167, 4049, para. 181; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20674, para. 111.

[136] *See* Verizon McLean/Wierzbicki Decl. at paras. 48-50.

[137] We stress, however, that we will continue to monitor Verizon's performance in this area, and we will take swift and appropriate enforcement action in the event that Verizon's flow-through rates deteriorate.

[138] Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act. Section 251(c)(3) requires 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. . . ." 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 nondiscriminatory, and may include a (continued….)

58. The Connecticut Department concluded that Verizon has satisfied the requirements of this checklist item. The Department established its current prices for UNEs[139] and UNE combinations[140] in separate decisions on May 17, 2000. Rates for Verizon's UNEs and UNE combinations for Byram and Greenwich in Connecticut were adopted from the New York rates,[141] which the Commission found to be TELRIC-based and in compliance with section 271 requirements in the New York section 271 proceeding.[142] The Connecticut Department also requires any New York rate changes to be filed by Verizon in Verizon's Connecticut's tariffs within 10 days of the effective date in New York, and the rates are effective automatically on 21 days notice.[143]

59. We agree with the Connecticut Department that it is reasonable under the circumstances for it to rely on New York's UNE rates. The same general analysis of the special circumstances surrounding the manner in which Verizon provides service in Connecticut in the context of collocation pricing also applies here. This includes Verizon's use of its New York-based operations and systems to serve a limited area in Connecticut, and the resulting approach to mirror New York's rates for this area. Verizon states that its costs in its Connecticut service area are the same or higher than its costs in New York on the basis of a line density comparison,[144] as

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reasonable profit. The Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements. Although related pricing issues are pending review by the Supreme Court, the Commission's rules remain in effect for this application.

[139] *See* Verizon Application, App. B, Vol. 1, Tab 7, Sub-Tab D, DPUC Investigation into the Unbundling of the New York Telephone Company's Local Telecommunications Network: [Connecticut] DPUC's Decision Approving BA-NY's Tariff No. 12, Docket No. 94-11-03 (May 17, 2000) *(Connecticut DPUC UNE Tariff Order*).

[140] *See* Verizon Application, App. B, Vol. 1, Tab 8, Sub-Tab C, Application of Bell Atlantic – Proposed Tariff for Unbundled Network Elements – Rebundled Service: [Connecticut] DPUC's Decision Approving BA-NY's Tariff for UNEs-Rebundled Service, Docket No. 99-03-21 (May 17, 2000) *(Connecticut DPUC UNE Combinations Tariff Order*).

[141] *See* Verizon Application at 12; *see also Connecticut DPUC UNE Tariff Order* at 10 ("BA-NY's proposed Connecticut tariff essentially mirrors its UNE Tariff in New York (916 Tariff).")

[142] See *Bell Atlantic New York Order,* 15 FCC Rcd at 4081-82, para. 238; Verizon Lacouture/Ruesterholz Decl. Attach. C, para. 15; *see also* Verizon Application App. B, Vol. 3a-b, Tab 14, Sub-Tabs C and D, Connecticut No. 10 –Telephone Network Combinations and State of Connecticut No. 12 – Telephone Network Elements [Tariff].

[143] *See Connecticut DPUC UNE Tariff Order* at 10-11 ("as committed to by BA-NY…the Department will require BA-NY to file identical amendments to the Connecticut UNE Tariff to the extent that modifications are made to the New York 916 Tariff. Specifically, BA-NY must implement all revisions within 10 business days of filing the amendment in New York.) and 12-13; *see also Connecticut DPUC UNE Combinations Tariff Order* at 15 (stating that BA-NY has committed to revising its Connecticut UNE combinations tariff to reflect New York changes to be filed within 10 business days after they are effective in New York.).

[144] *See* Verizon June 8 *Ex Parte* Letter at 1-2; *see also SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6276-77, para. 82 n.244 and *Verizon Massachusetts Order* 16 FCC Rcd at 9000, 9002, paras. 22 and 28 (stating that one state's UNE rates could be adopted from another state with a presumption of compliance with pricing rules if (continued….)

one would expect given the contiguous and limited geographic area at issue here. Also, the Connecticut Department found that compatibility between Connecticut and New York will provide consistency for competitive LECs which serve both areas and order UNEs from Verizon.[145] Furthermore, this consistency will be provided for in the future, because both the Connecticut Department and Verizon are committed to keeping Connecticut's rates the same as those in New York on a going-forward basis.

60. As we noted above, in light of these unique circumstances, we do not have to conduct the same analysis as we would in other situations in which a Bell Operating Company bases its section 271 application in one state on the adoption of another state's rate. We conclude the Connecticut Department's approach to relying on New York's rates is a reasonable one.

61. We note that AT&T, while not opposing Verizon's Connecticut 271 Application, asserts that Verizon should continue to keep UNE rates in Connecticut identical to those in New York.[146] The evidence submitted shows that AT&T's concerns have been addressed. The Connecticut Department has ordered Verizon to implement any New York UNE rate changes in Connecticut.[147] Verizon has also verified that it will continue to comply with the Connecticut Department's order on these issues.[148] We are satisfied that the requirements set out by the Connecticut Department and the commitment made by Verizon to timely mirror any changes to its New York UNE rates in Connecticut remove any doubt of Verizon's continuing obligation in this regard. We note that the approach taken by the Connecticut Department is one reasonable way to safeguard future compliance.

3. Checklist Item 5 – Transport

62. 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."[149] We conclude, based upon the evidence in the record, including the unique circumstances presented by Verizon's extremely limited operations in Connecticut, that Verizon demonstrates that it provides both shared and dedicated transport in compliance with the requirements of checklist item 5.[150] We note that the Connecticut Department concludes that

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certain conditions are met and if costs are demonstrated to be at or above the costs in the state whose rates were adopted.).

[145] Connecticut DPUC UNE Tariff Order at 10.

[146] *See* AT&T Comments.

[147] Connecticut Department Comments at 12-13.

[148] *See* Verizon Reply at 4-5 and n.2.

[149] 47 U.S.C. § 271(c)(2)(B). *See also* Appendix D.

[150] Verizon Application at 44-45, Verizon Lacouture/Ruesterholz Decl. at paras. 260-268.

Verizon satisfies the requirements of this checklist item,[151] and no commenter raises concerns with Verizon's performance relating to checklist item 5.

63. In prior section 271 applications, the Commission has reviewed the missed appointment rates for the provision of interoffice facilities to competitive LECs to determine whether the applicant was provisioning transport in a nondiscriminatory manner.[152] However, due to the unique nature of Verizon's limited operations in Connecticut, there is no data on missed appointment rates, and there is likely to be little data on transport in Connecticut in the future. Specifically, Verizon provides local exchange service in Connecticut through only two central offices. Only one of the central offices is actually located in Connecticut; the other office serving Connecticut customers is located in New York. Given this network configuration, Verizon does not provide local (interoffice) transport between two wire centers/switches within the State of Connecticut. In addition, Verizon does not operate a tandem switch in Connecticut, but competitive LECs may obtain shared transport from Verizon by using Verizon's tandem switching and trunking arrangements in New York.[153]

64. As a result, there is and will be very little competitive LEC demand for interoffice local transport facilities in Connecticut.[154] There are no reported orders for interoffice transport facilities in Connecticut during the four-month period from January through April 2001.[155] And, as of February 2001, Verizon has provisioned a total of only four interoffice transport facilities in Connecticut.[156] When there are low volumes of orders in the applicant state, we typically begin our analysis of compliance by reviewing performance in the "anchor" state[157] with higher volumes because that performance may be relevant to our determination on checklist compliance. We need not do so in regard to this particular checklist item, however, because looking to Verizon's performance in New York will not inform our judgment on compliance in Connecticut.[158] Our

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[151] Connecticut Department Comments at 7.

[152] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4126; para 339; *SWBT Texas Order*, 15 FCC Rcd at 1851, para. 333; *Verizon Massachusetts Order*, 15 FCC Rcd at 9105-104 para. 209.

[153] Verizon Lacouture/Ruesterholz Decl. at para. 265.

[154] We believe that the small size of Verizon's Connecticut service area has a greater impact on the demand for transport facilities than it does on demand for services and facilities covered by other checklist items since demand for transport is a function of the number of offices that can be connected by interoffice transport facilities.

[155] *See* Appendix C at C–14.

[156] Verizon Lacouture/Ruesterholz Decl. at para. 262.

[157] An "anchor" state is a state where the applicant has had prior successful section 271 application. *See, e.g., SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 36.

[158] The carrier-to-carrier missed appointment rates for New York during the period from January through April 2001, appear to depict a significant difference in the provision of interoffice facilities for competitive LECs compared to the retail analogue that is indicative of Verizon's performance to itself. *See* PR 4-01 (Percent Missed Appointments Total IOF), Appendix B at B–14. Whether this performance raises enforcement issues in New York (continued….)

finding that Verizon satisfies this checklist item is a contextual decision based on the totality of the unique circumstances in Connecticut.[159]

65. In particular, we conclude that the extremely limited extent of Verizon's service area in Connecticut renders the provision of interoffice transport of relatively limited significance for purposes of determining whether Verizon's Connecticut local exchange market is open to competition. As detailed above, there is very little competitive LEC demand for interoffice local transport facilities in Connecticut, and this limited demand will continue in the future because Verizon only has one central office in Connecticut.

66. We also find that Verizon has a specific and concrete legal obligation to provide transport under its tariffs, interconnection agreements and SGAT in Connecticut. We find significant the Connecticut Department's finding that Verizon has satisfied the requirements of this checklist item. Moreover, as stated above, none of the commenting parties challenge Verizon's transport performance. Given the totality of the circumstances, therefore, we do not find the performance disparity in New York to be competitively significant in Connecticut, nor do we find it to be indicative of noncompliance when weighed against the other evidence.[160]

4. Checklist Item 13 – Reciprocal Compensation

67. 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)."[161] In turn, section 252(d)(2)(A) specifies when a state commission may consider the terms and conditions for reciprocal compensation to be just and reasonable.[162] Based on the record, we conclude that Verizon demonstrates that it provides reciprocal compensation as required by checklist item 13. The Connecticut Department also concludes that Verizon complies with the requirements of checklist item 13.[163] With the exception of one very limited issue raised by Sprint concerning reciprocal compensation, commenters do not question Verizon's compliance with this checklist item. Sprint, however, appears to be concerned with ensuring that Verizon has amended its

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is a separate issue more appropriate for the Commission to resolve in an enforcement proceeding, and does not, in and of itself, warrant a finding of noncompliance in Connecticut for the reasons stated in this section.

[159] We emphasize that our analysis here is limited to the special circumstances of Verizon's operations in Connecticut, which render the performance in New York on transport of little relevance. We find the network size and configuration and consequent lack of demand for transport in Connecticut is distinguishable from situations in prior section 271 applications where states had very low volumes of orders under certain checklist items.

[160] In addition, we find further assurance in the fact that the performance in New York improved in May 2001. Compare PR 4-01 (Percent Missed Appointments) May 2001 with PR 4-01 with January – April 2001.

[161] 47 U.S.C. § 271(c)(2)(B)(xiii).

[162] 47 U.S.C. § 252(d)(2)(A). *See* Appendix D at D–35, para. 67.

[163] Connecticut Department Comments at 10-11.

Connecticut SGAT to include Internet traffic in its reciprocal compensation payments, as Verizon was ordered to do by the Connecticut Department.[164] While we note that both the Connecticut Department and Verizon state that the SGAT has been modified as ordered by the Department,[165] the Commission has found that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2); therefore, whether Verizon modified its SGAT to apply reciprocal compensation to Internet traffic is not relevant to compliance with checklist item 13.[166] Based on the record, we find Verizon to be in compliance with checklist item 13.

C. Remaining Checklist Items (3, 6-12)

68. 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),[167] item 6 (unbundled local switching),[168] item 7 (911/E911 access and directory assistance/operator services),[169] item 8 (white page directory listings),[170] item 9 (numbering administration),[171] item 10 (databases and associated signaling),[172] item 11 (number portability),[173] and item 12 (local dialing parity).[174] Based on the evidence in the record, we conclude that Verizon demonstrates that it is in compliance with these checklist items in Connecticut.[175] We also note that the Connecticut Department concludes that Verizon complies

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[164] *See* Sprint Comments at 2, and Attach. at 3.

[165] *See* Connecticut Department Comments at 10-11; Verizon Lacouture/Ruseterholz Decl. at para. 17.

[166] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001).

[167] 47 U.S.C. § 271(c)(2)(B)(iii).

[168] *Id*. § 271(c)(2)(B)(vi).

[169] *Id.* § 271(c)(2)(B)(vii).

[170] *Id.* § 271(c)(2)(B)(viii).

[171] *Id.* § 271(c)(2)(B)(ix).

[172] *Id.* § 271(c)(2)(B)(x).

[173] *Id.* § 271(c)(2)(B)(xi).

[174] *Id.* § 271(c)(2)(B)(xii).

[175] *See* Verizon Application at 47-48 (checklist item 3), 45-46 (checklist item 6), 48-51 (checklist item 7), 51 (checklist item 8), 51-52 (checklist item 9), 52-53 (checklist item 10), and 53 (checklist items 11 and 12); Lacouture/Ruesterholz Decl. at paras. 288-292 (checklist item 3), 247-49 (checklist item 6), 305-330 (checklist item 7), 332-348 (checklist item 8), 349-352 (checklist item 9), 353-76 (checklist item 10), 379-382 (checklist item 11), and 383-86 (checklist item 12); Verizon Lacouture/Ruesterholz Reply Decl. at paras. 96-97 (checklist item 6). *See also* Appendices B and C.

with the requirements of each of these checklist items.[176] None of the commenting parties challenge Verizon's compliance with these checklist items.

IV. COMPLIANCE WITH SECTION 271(C)(1)(A)

69. 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).[177] 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."[178]

70. We conclude that Verizon demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with Network Plus and Lightpath in Connecticut.[179] Specifically, Verizon states that Network Plus provides telephone exchange service predominantly over its own facilities to residential and business subscribers. Verizon also states that Lightpath provides local exchange service to business subscribers exclusively over its own facilities . . . in the Verizon Connecticut service area."[180] The Connecticut Department "fully supports Verizon's application,"[181] and none of the commenting parties directly challenge the statements by Verizon concerning compliance with Track A.

71. Based on the existing record, we conclude that a sufficient number of residential customers are being served by competing LECs through the use of their own facilities to demonstrate that there is an actual commercial alternative to Verizon in its very limited service area in Connecticut. Our comparison of the record in the Kansas/Oklahoma application and the record in this proceeding indicates that residential customers served by competitive LECs on a facilities basis represents a somewhat greater proportion of all Verizon access lines in Connecticut than was the case for Southwestern Bell in Kansas.

72. We do not accept Sprint's arguments questioning Verizon's compliance with Track A based solely on alleged shortcomings in the underlying proceedings conducted by the

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176 *See* Connecticut Department Comments at 7 (checklist item 3), 8 (checklist items 6 and 7), 8-9 (checklist item 8), 9 (checklist items 9 and 10), and 10 (checklist items 11and 12).

177 47 U.S.C. § 271(d)(3)(A).

178 *Id.*

179 Verizon Application at 4-5.

180 *Id.*

181 Connecticut Department Comments at 3.

Connecticut Department.[182] Although we consult with state commissions when conducting our section 271 proceedings, the statute directs this Commission to determine independently whether an applicant has complied with section 271.[183] As noted in the preceding paragraph, the record before this Commission demonstrates compliance. Accordingly, any shortcomings in the Connecticut Department's 271 proceedings would not be grounds for withholding section 271 approval when the record before this Commission demonstrates compliance.

V. SECTION 272 COMPLIANCE

73. 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."[184] Based on the record, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.[185] Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Connecticut as it does in New York and Massachusetts, states in which Verizon has already received section 271 authority.[186] No party challenges Verizon's section 272 showing.[187]

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[182] Sprint argues that there was no evidence in the record before the Connecticut Department to demonstrate the existence of facilities-based competition at the time it certified that Verizon could proceed with its section 271 application under Track A. Sprint Comments, Attach. at 2-3.

[183] Section 271 requires that we consult with state commissions to verify BOC compliance with the requirements of subsection 271(c). 47 U.S.C. § 271(d)(2)(B). The Commission has previously stated that the purpose of consulting with the state commission regarding Track A is "to verify that the BOC has one or more state approved interconnection agreements with a facilities-based competitor," and that it is the Commission's "role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met." *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20.

[184] 47 U.S.C. § 271(d)(3)(B). *See* Appendix D at D–37, paras. 69-70.

[185] *See* Verizon Application at 66-70; Verizon Application App. A, Vol. 3, Tab 5, Declaration of Susan C. Browning at para. 4 (Verizon Browning Decl.); Verizon Application App. A, Vol. 3, Tab 6, Declaration of Paul M. Fuglie (Verizon Fuglie Decl.).

[186] *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 Application at 66-70; Verizon Browning Decl. at paras. 4-15; Verizon Fuglie Decl. at paras. 3-21.

[187] We recognize that the first independent audit of Verizon's section 272 compliance conducted pursuant to section 53.209 of the Commission's rules is now complete. *See* Letter from PriceWaterhousCoopers LLP to Magalie Roman Salas, Secretary, Federal Communications Commission (June 11, 2001) (transmitting audit report). While the audit raises issues that may require further investigation, the audit results are not a legal determination of Verizon's section 272 compliance. Parties have yet to comment on the audit report and the Commission has not completed its own review of the audit results. *See* 47 C.F.R. § 53.213(d) (establishing 60-day comment period after audit report is made public). Based on the information we have to date, we are not persuaded that the issues raised in the audit warrant a finding that Verizon will not comply with the requirements of section 272.

VI. PUBLIC INTEREST ANALYSIS

74. 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.[188] We conclude that approval of this application is consistent with the public interest.[189] In particular, we find that barriers to competitive entry in the local markets have been removed and that the local exchange markets in Connecticut are now open to competition.[190]

75. We find that Verizon's Connecticut market is open to competition and that Verizon's entry into long distance in Connecticut will benefit customers. One commenter, Lightpath, argues that approval of this application is not in the public interest on the grounds that Verizon stalled interconnection agreement negotiations with Lightpath in Connecticut and forced Lightpath to arbitrate its interconnection agreement.[191] Lightpath asks that we establish a presumption that prior interconnection agreements are reasonable and that it is unreasonable for Verizon to start with the prior agreement's terms.[192] We find that Verizon adequately responds to Lightpath's allegations. Specifically, Verizon denies any unfair dealing or discrimination in its negotiations with Lightpath.[193] Verizon further states that, in any case, Lightpath's prior interconnection agreement stayed in effect until the new agreement took effect.[194] As the Commission has stated in prior orders, "we will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act."[195] Nothing else in the record indicates a pattern of conduct that would undermine our confidence that the Connecticut market is open to competition.[196] Instead, the record confirms our view, expressed in prior section 271 orders, that BOC entry into the long distance market will benefit customers and

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188 *See* 47 U.S.C. § 271(d)(3)(C). *See* Appendix D at D–38-39, paras. 71-73.

189 *See* Verizon Application at 2-3, 71-82; Verizon Canny/Abesamis Decl.; Verizon Application App. A, Vol. 3, Tab 8, Declaration of William E. Taylor (Verizon Taylor Decl.); Verizon Reply at 20-25.

190 *See* Verizon Application at paras. 72-75 (describing number of competitive LEC-controlled lines and modes of entry in Connecticut); Verizon Reply at 20-21.

191 Lightpath Comments at 2.

192 *Id*.

193 Verizon Reply at 25.

194 *Id*.

195 *SWBT Texas Order*, 15 FCC Rcd at 18565, para. 431 (*citing Ameritech Michigan Order*, 12 FCC Rcd at 20749, para. 396); *see also* Verizon Reply at 23-25.

196 *See id*. We emphasize that in granting this application, we do not reach any conclusion relating to the merits of Lightpath's allegations.

competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[197]

76. We find that Verizon's Performance Assurance Plan (or PAP) for Connecticut provides additional assurance that the local market will remain open after Verizon receives section 271 authorization.[198] Significantly, Verizon's Connecticut PAP is essentially the same as the New York PAP we reviewed as part of Verizon's New York section 271 application,[199] except for penalty caps, which have been reduced proportionately to reflect the much smaller number of lines served by Verizon in Connecticut.[200] The Connecticut PAP will also be updated automatically whenever the New York PAP is modified.[201] We note that the approach taken by the Connecticut Department is one reasonable way to safeguard future compliance.

77. We cannot agree with Lightpath's contention that the caps on damages in the Connecticut PAP are too low and seriously undermine the PAP's effectiveness as an anti-backsliding tool. Lightpath contends that "CLEC-specific, incident-based remedies" should be added to the existing remedies to address "the direct consequences of poor service quality."[202] Specifically, Lightpath points to two other states' plans in which competitive LECs are compensated each time Verizon's performance in individual instances is below the performance standard.[203] The Connecticut PAP, in contrast, generally obligates Verizon to pay remedies when its performance to competitive LECs in the aggregate is below the performance standard.[204] As

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197 *See* Verizon Application at 79-82; Verizon Reply at 21; *Verizon Massachusetts Order*, 16 FCC Rcd at 9118, para. 233.

198 *See, e.g.*, *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806, paras. 363-64; *see Ameritech Michigan Order*, 12 FCC Rcd at 20747, para. 390.

199 *See* Verizon Application at 75, 78; Verizon Canny/Abesamis Decl. at 52, para. 116; *Bell Atlantic New York Order*, 15 FCC Rcd at 4164-73, paras. 429-43; *Verizon Massachusetts Order*, 16 FCC Rcd at 9120, paras. 237-48.

200 *See* Verizon Application at 78; Verizon Canny/Abesamis Decl. at 52, para. 116.

201 *See* Verizon Application at 77-78; Verizon Canny/Abesamis Decl. at 7, paras. 15, 51-52, 116.

202 Lightpath Comments at 3-4; s*ee also* Letter from Cherie Kiser, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, Counsel for Lightpath, to Magalie Roman Salas, Secretary, Federal Communications Commission (July 3, 2001).

203 *See, e.g., id*. n.11 (citing *Establishment of a Collaborative Committee to Investigate Market Opening Measures*, Va. SCC Collaborative Committee Case No. PUC000026, Proposed Verizon Performance Plan for the State of Virginia, at 1 (filed Aug. 2, 2000).

204 *See* Verizon Canny/Abesamis Decl. at 59-65, paras. 133-54; Letter from Sandra Thorn, Vice President and General Counsel, New York and Connecticut, Verizon New York Inc., to Louise Rickard, Acting Executive Secretary, Connecticut Department of Public Utility Control, at 7-15, Verizon Application at App. F, Vol. 1, Tab 3 (Apr. 20, 2001) (transmitting Verizon Connecticut PAP). For one component of the Connecticut PAP, i.e., Critical Measures, Verizon must pay if it fails to the meet the performance standard in individual cases. This is called the "individual rule." *See id*. at 11.

the Commission has recognized, individual state PAPs may vary, and our task is to determine whether the PAP at hand falls within a zone of reasonableness and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance."[205] We find that the caps in the Connecticut plan are directly proportionate to those we approved in the New York plan and that the payment triggers, along with other procedural aspects, are the same.[206] There is nothing in the record to indicate that higher penalty amounts or different payment triggers are necessary in Connecticut to create a proper incentive for post-entry compliance. We also agree with the Department of Justice's conclusion that the way in which Verizon has extended the New York Change Control Assurance Plan (CCAP) to cover Connecticut is acceptable in the present circumstances.[207] The CCAP requires Verizon to provide competitive LECs with bill credits "if Verizon does not provide satisfactory service pursuant to the standards established for measurements associated with the Change Management Process."[208]

78. We recognize, as did the Department of Justice, that "it may be more difficult to make statistically significant determinations that Verizon's performance in Connecticut is out of parity because of the small number of competitive LEC orders there."[209] The Department of Justice does not advocate changes to the Connecticut PAP in light of this, however. The low volumes of competitive LEC orders are not a factor within Verizon's control and we do not believe that it is necessary to require changes to the Connecticut PAP in order to ensure adequate incentives for post-entry compliance. Further, based on the Connecticut Department's comprehensive review, we are comfortable that the PAP is sufficient to deter backsliding given current volumes of commercial activity.[210]

79. Finally, we are aware of the recent independent auditor's report on Verizon's compliance with the conditions of the Bell Atlantic/GTE merger regarding its Genuity spin-off, which were designed to ensure that the merger would not result in a violation of section 271.[211]

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[205] *Bell Atlantic New York Order*, 15 FCC Rcd at 4166, para. 433.

[206] *See* Verizon Application at 78; Verizon Canny/Abesamis Decl. at 52, para. 116; Verizon Reply at 22-23; *Bell Atlantic New York Order*, 15 FCC Rcd at 4167-68, para. 435.

[207] Department of Justice Evaluation at 5 n.18. Verizon Canny/Abesamis Decl. at 70, para. 162. The Department of Justice points out that competitive LECs operating in both New York and Verizon's Connecticut service area will not be compensated for Verizon's poor performance in Connecticut. As the Department of Justice notes, any competitive impact is *de minimis* in Connecticut, but might raise a larger concern in states with volumes greater than Connecticut. *See* Department of Justice Evaluation at 5 n.18.

[208] Verizon Canny/Abesamis Decl. at 70, para. 162.

[209] Department of Justice Evaluation at 5 n.18.

[210] *See* Connecticut DPUC, Docket No. 97-01-23, Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996 (Apr. 11 2001), Verizon Application at App. B, Vol. 1, Tab 1, Sub-Tab G, 14-15.

[211] *See* Letter from Susan Browning, Executive Director, Regulatory Compliance, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission (June 1, 2001) (transmitting audit report).

Although we are concerned about the results of the Genuity audit, we believe that these issues will be appropriately addressed in the Commission's detailed review of the audit findings. Based on the information that we have to date, we are not persuaded that the audit findings warrant a conclusion of checklist non-compliance. Moreover, no commenter has raised Verizon's compliance with the Genuity conditions as an issue in this proceeding.

VII. SECTION 271(D)(6) ENFORCEMENT AUTHORITY

80. 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.[212] 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.[213]

81. Working in concert with the Connecticut Department, we intend to closely monitor Verizon's post-approval compliance for Connecticut to ensure that Verizon does not "cease [] to meet any of the conditions required for [section 271] approval."[214] We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Connecticut. In this regard, the Commission will pay particular attention to Verizon's performance for loops and transport performance as well as section 272 compliance.

82. Consistent with prior section 271 orders, we require Verizon to report to the Commission all Connecticut carrier-to-carrier performance metrics results and Performance Assurance 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 or Chief of the Enforcement Bureau. These results and reports will allow us to review, on an ongoing basis, Verizon's performance 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 Connecticut long distance market.[215]

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[212] 47 U.S.C. § 271(d)(6).

[213] *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *SWBT Kansas/Oklahoma* 16 FCC Rcd at 6382-84, paras. 283-85. *See* Appendix C.

[214] 47 U.S.C. § 271(d)(6)(A).

[215] *See, e.g., Bell Atlantic-New York, Authorization Under Section 271of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Order, 15 FCC Rcd 5413 (2000) (adopting consent decree between the Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of $3,000,000 to the United States Treasury, with additional payments if Bell Atlantic (continued….)

VIII. CONCLUSION

83. 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 state of Connecticut.

IX. ORDERING CLAUSES

84. 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 Connecticut, filed on April 23, 2001, IS GRANTED.

85. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE July 30, 2001.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

(Continued from previous page)
failed to meet specified performance standards and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).

Appendix A

Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc.,
271 Application to Provide In-Region, InterLATA Services in Connecticut
CC Docket 01-100

COMMENTS

Commenters	Abbreviation
Association of Communications Enterprises	ASCENT
AT&T	AT&T
Cablevision Lightpath – CT, Inc.	Lightpath
Connecticut Department of Public Utility Control	Connecticut Department
Covad Communications Company	Covad
Department of Justice	
Sprint Communications Company L.P.	Sprint

Reply Commenters	
Verizon New York Inc., et al.	Verizon

Supplemental Commenters	
Advanced Telcom Group, Inc.	Advanced Telcom
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
Verizon New York Inc., et al.	Verizon

Appendix B
New York Performance Metrics

Appendix C
Connecticut Performance Metrics

Appendix D
Statutory Requirements

I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the 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

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[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).

section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to 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]

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

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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 v. FCC*, 138 F.3d at 416.

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.* §§ 271(d)(3)(B), 272.

11 47 U.S.C. § 271(d)(3)(C).

12 *Id.* § 271(d)(3); *see SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413, 416 (D.C. Cir. 1998).

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 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

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[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 (Dec. 6, 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 (Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (Sept. 19, 1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA-99-1994 (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.

[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.

same time and manner" as it provides such access 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:

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

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[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.*

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 consider the degree and duration of the performance disparity, and whether the performance is part of an improving or deteriorating trend. 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 considers the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data is affected by factors beyond a BOC's control, a finding that would make the Commission 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.

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[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 3976, para. 59.

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 a 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 section 271 applications, 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 is not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data is 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 section 271 proceedings for other states served by the same BOC 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 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

[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)).

best evidence of nondiscriminatory access to OSS and other network elements.[28] Even where an applicant seeks to rely on findings made in a prior, successful section 271 application (the "anchor" state), then, our analysis will always start with actual performance towards competitors in the applicant state. 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 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]

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[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.* § 271(c)(1)(A).

[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.

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 has requested the access and interconnection arrangements described in subparagraph A. In order for a BOC to qualify under Track B, the State must also have approved an SGAT that satisfies the competitive checklist. 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.[33]

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)."[34] 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."[35] In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred "only to the physical linking of two networks for the mutual exchange of traffic."[36] 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."[37] Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."[38] Finally, the incumbent LEC

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[33] *See Ameritech Michigan Order*, 12 FCC Rcd at 20561-2, 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.

[34] 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.

[35] 47 U.S.C. § 251(c)(2)(A).

[36] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n. v. FCC*, 117 F.3d 1068 (8th Cir. 1997) *and Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). Transport and termination of traffic are therefore excluded from the Commission's definition of interconnection. *See id.*

[37] 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 15606-09, paras. 204-211.

[38] 47 U.S.C. § 251(c)(2)(C).

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."[39]

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.[40] 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.[41] 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.[42]

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 comparable function to its own retail operations.[43] The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service[44] and its provisioning of two-way trunking arrangements.[45] Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection

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[39] *Id*. § 251(c)(2)(D).

[40] *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.

[41] *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25.

[42] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64*; Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-51, 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.

[43] *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; *see also Bell Atlantic New York* Order, 15 FCC Rcd at 3978-79, para. 65*; Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

[44] 47 C.F.R. § 51.305(a)(5).

[45] 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. 219-220.

service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.[46]

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.[47] 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.[48]

21. The provision of collocation is also an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.[49] 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.[50] 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.[51] Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, helps the Commission evaluate a BOC's compliance with its collocation obligations.[52]

22. 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)."[53] 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.[54]

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[46] 47 C.F.R. § 51.305(a)(5).

[47] *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.

[48] 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.

[49] 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.

[50] *Advanced Services First Report and Order*, 14 FCC Rcd at 4784-86, paras. 41-43.

[51] *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61-62; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

[52] *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.

[53] 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

[54] *Id.* § 252(d)(1).

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.[55]

23. 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.[56] 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.[57]

24. 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.[58] In addition, the Commission has determined that rates contained within an approved 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.[59]

25. 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.[60] 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 Elements

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[55] *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.

[56] *See SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also* 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*).

[57] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 385 .

[58] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4090-91, para. 258 (explaining the Commission's case-by-case review of interim prices).

[59] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359-60, para 239.

[60] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 260.

1. Access to Operations Support Systems

26. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.[61] The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[62] 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.[63] 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.[64]

27. 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)."[65] 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 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.[66] The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).[67] 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.[68] Consistent with

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61 *Id.* at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

62 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585, paras. 15, 82; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653-54, paras. 83-84.

63 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

64 *Id.*

65 47 U.S.C. § 271(c)(2)(B)(ii).

66 *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

67 *Id.*

68 *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.*

prior orders, the Commission examines a BOC's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.[69]

28. 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, unbundled network elements, and resale.[70] 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.[71] The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.[72] 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.[73]

29. For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[74] 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.[75] 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.[76] If such performance standards exist, the Commission will evaluate whether the

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[69] *Id.* at 3990-91, para. 84.

[70] *Id.* at 3991, para. 85.

[71] *Id.*

[72] *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.

[73] *See id.*; *Bell South South Carolina Order*, 13 FCC Rcd at 594 n.292; *Ameritech Michigan Order*, 12 FCC Rcd at 20619 n.345.

[74] *Bell Atlantic New York Order*, 15 FCC Rcd at 3991, para. 86.

[75] *Id.*

[76] *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. *See Ameritech Michigan Order*, 12 FCC Rcd at 20619-20, para. 141.

BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.[77]

30. 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 them."[78] The Commission next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[79]

31. 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.[80] 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.[81] In addition, a BOC must disclose to competing carriers any internal business rules[82] and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[83] Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS

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[77] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3991-92, para. 86.

[78] *Id.* at 3992, para. 87; s*ee also Ameritech Michigan Order*, 12 FCC Rcd at 20616; *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; s*ee also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

[79] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 87.

[80] *Id.* at 3992, para. 88; *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.").

[81] *See Ameritech Michigan Order*, 12 FCC Rcd at 20616-18, para. 137.

[82] 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). *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88 n.216*; see also Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.335.

[83] *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

functions.[84] 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.[85]

32. Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.[86] The most probative evidence that OSS functions are operationally ready is actual commercial usage.[87] 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.[88] Although the Commission does not require OSS testing, a persuasive test will provide the Commission 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.[89] 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.[90] 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.

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84 *Id.*

85 *See id.*

86 *Id.* at 3993, para. 89.

87 *Id.*

88 *Id.*

89 *See id.; Ameritech Michigan Order*, 12 FCC Rcd at 20658-59, para. 216 (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).

90 *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6301-02, para 138.

a. Relevance of a BOC's Prior 271 Orders

33. The *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.[91] 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.[92] To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces, systems and, in many instances, even personnel.[93] 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.[94] Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.[95] 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

34. 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;[96] 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.[97]

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91 *See id*. at 6286-91, paras. 106-118

92 *See id*. at 6288, para. 111.

93 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.

94 *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6287, para. 108.

95 *See id*. at 6288, para. 111.

96 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 18426-27, para. 148.

97 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 4029-30, paras. 145 and 154.

35. 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.[98] Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.[99] 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.[100] 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.[101] 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.[102]

(i) Access to Loop Qualification Information

36. In accordance with the *UNE Remand Order*,[103] 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,[104] and in the same time frame, so that a

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[98] *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 4015-16, para. 132; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd at 619, para. 147.

[99] *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

[100] *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).

[101] *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

[102] *See id.* at para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105. *See also supra* n.96.

[103] *UNE Remand Order*, 15 FCC Rcd 3696, 3884-85, para. 426 (determining "that the pre-ordering function includes access to loop qualification information.").

[104] *See id* at para. 427. 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 (continued….)

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.[105] 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 a BOC's back office and can be accessed by any BOC personnel.[106] 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.[107] 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.[108] 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."[109]

c. Ordering

37. 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 systems 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

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(5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

[105] *See id*. 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 Bell Atlantic New York Order*, 15 FCC Rcd at 4021, para. 140.

[106] *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31 (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.").

[107] *See SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6293, para. 121.

[108] *Id.*

[109] *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31.

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.[110]

d. Provisioning

38. 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.[111] 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).[112]

e. Maintenance and Repair

39. A competing carrier that provides service through resale or unbundled network elements 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.[113] 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.[114] 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.[115] Without equivalent access, a competing carrier would be placed at a significant

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[110] *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-4039, paras. 163-166. 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. *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170.

[111] *See Bell Atlantic New York Order*, 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.

[112] *Id.*

[113] *Id.* at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

[114] *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

[115] *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212.

competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.[116]

f. Billing

40. 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.[117] In making this determination, the Commission assesses a BOC's billing processes and systems, 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.[118]

g. Change Management Process

41. 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.[119] 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."[120] 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.[121] 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.[122]

42. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and

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116 *Id.*

117 *See SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

118 *See id.*; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, at para 163.

119 *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.

120 *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

121 *Id.*

122 *Id.*

changes in, the BOC's OSS system.[123] 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.[124] 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 notice and documentation of the changes.[125] 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).[126]

43. 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;[127] (2) that competing carriers had substantial input in the design and continued operation of the change management process;[128] (3) that the change management plan defines a procedure for the timely resolution of change management disputes;[129] (4) the availability of a stable testing environment that mirrors production;[130] and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.[131] 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.[132]

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123 *Id.* at 4000, para. 103.

124 *Id.*

125 *Id.*

126 *Id.*

127 *Id.* at 4002, para. 107.

128 *Id.* at 4000, para. 104.

129 *Id.* at 4002, para. 108.

130 *Id.* at 4002-03, paras. 109-10.

131 *Id.* at 4002 and 4003-04, paras. 107 and 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.*

132 *Id.* at 3999, para. 101, 4004-05, para. 112.

2. UNE Combinations

44. 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) . . . ."[133] 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 . . . ."[134] Section 251(c)(3) of the Act also requires incumbent LECs to provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.[135] 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.[136]

45. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.[137] Using combinations of unbundled network elements 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.[138] Moreover, combining the incumbent's unbundled network elements with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.[139] Because the use of combinations of unbundled network elements 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.[140]

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[133] 47 U.S.C. § 271(c)(2)(B)(ii).

[134] *Id.* § 251(c)(3).

[135] *Id.*

[136] *See* 47 C.F.R. § 51.315(b).

[137] *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19, para. 332. *See also BellSouth South Carolina Order*, 13 FCC Rcd at 646-47, para. 195.

[138] *BellSouth South Carolina Order*, 13 FCC Rcd at 647, para. 195. *See also Local Competition First Report and Order*, 11 FCC Rcd at 15667-68, paras. 332-33.

[139] *Bell Atlantic New York Order*, 15 FCC Rcd at 4077-78, para. 230.

[140] *Id.*

3. Pricing of Network Elements

46. Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act.[141] 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."[142] 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 nondiscriminatory, and may include a reasonable profit.[143] Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.[144] 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."[145]

47. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1997,[146] 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.[147] On remand from the Supreme Court, the Eighth Circuit concluded that

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[141] 47 U.S.C. § 271(c)(2)(B)(ii).

[142] *Id.* § 251(c)(3).

[143] 47 U.S.C. § 252(d)(1).

[144] *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-679; 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).

[145] *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59.

[146] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997).

[147] *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 (continued….)

while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission's pricing rules were contrary to Congressional intent.[148] The Eighth Circuit has stayed the issuance of its mandate pending review by the Supreme Court.[149] Accordingly, the Commission's pricing rules remain in effect.

C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

48. 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."[150] 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."[151] 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."[152] Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[153] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to

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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.*

[148] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. filed sub nom. Verizon Communications v. FCC*, 69 U.S.L.W. 3269 (U.S. Oct. 4, 2000) (No. 00-511).

[149] *Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.* (8th Cir. Sept. 25, 2000).

[150] 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.

[151] 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).

[152] 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.

[153] 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).

ensure that they are "just and reasonable."[154] Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to 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."[155] As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.[156]

D. Checklist Item 4 – Unbundled Local Loops

49. 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."[157] 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.[158]

50. 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.[159] Specifically, the BOC must provide access to any functionality of

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[154] 47 U.S.C. § 224(b)(1).

[155] *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.

[156] *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

[157] 47 U.S.C. § 271(c)(2)(B)(iv).

[158] *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, 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).

[159] *SWBT Texas Order*, 15 FCC Rcd at 18480-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20712, para. 185.

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 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.

51. 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 the local loop (HFPL).[160] The HFPL is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions."[161] In the *Line Sharing Reconsideration Order*, however, the Commission clarified "that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop, e.g., where the loop is served by a remote terminal).".[162]

52. A successful BOC applicant must have a specific and concrete legal obligation to provide line sharing. Moreover, it 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. To determine whether a BOC makes line sharing available consistent with Commission rules, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*. Specifically, a 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.

53. To satisfy checklist item 4, a BOC must also demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.[163] Specifically, a BOC must provide access to the network elements

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[160] *See Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27.

[161] 47 C.F.R. § 51.319(h)(1).

[162] *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2106-07, para. 10. The Commission subsequently clarified that the *Line Sharing Reconsideration Order* in no way modified the Commission's packet switching rules, which describe the limited set of circumstances under which an incumbent LEC is required to provide non-discriminatory access to unbundled switching capability. *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Order Clarification, 16 FCC Rcd 4628 (2001).

[163] *See generally SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-29 (describing line splitting); 47 C.F.R. §51.307(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a (continued….)

necessary for competing carriers to line-split services. As part of this obligation, a BOC must also demonstrate that a competing 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 in conjunction with another carrier. To make such a showing, a BOC must show that it has a concrete and specific legal obligation to provide line splitting, and offer competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment.[164]

E. Checklist Item 5 – Unbundled Local Transport

54. 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."[165] The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.[166] 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.[167] 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.[168]

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manner that allows competing carriers "to provide any telecommunications service that can be offered by means of that network element.").

[164] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9088, para. 174; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

[165] 47 U.S.C. § 271(c)(2)(B)(v).

[166] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

[167] *Id.* at 20719, n.649. 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, n.651.

[168] *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 (continued….)

F. Checklist Item 6 – Unbundled Local Switching

55. 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."[169] In the *Second 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.[170] 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.[171] Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.[172]

56. Moreover, in the *Second BellSouth Louisiana Order,* the Commission required BellSouth to permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.[173] 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.[174] 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.[175] Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.[176]

57. 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

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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.

[169] 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722-23, para. 207. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to 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.

[170] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

[171] *Id.*

[172] *Id.* at 20722-23, para. 207.

[173] *Id.* at 20723, para. 208.

[174] *Id.* at 20723, para. 208 (citing the *Ameritech Michigan Order,* 12 FCC Rcd at 20619, 20717-18, paras. 140, 330-31).

[175] *Id.*

[176] *Id.*

necessary to provide access to shared transport functionality.[177] 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.[178]

G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

58. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."[179] 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."[180] 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."[181] 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."[182] 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.[183] 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."[184] The Commission concluded in the *Second BellSouth*

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[177] *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

[178] *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

[179] 47 U.S.C. § 271(c)(2)(B)(vii)(I). 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.

[180] *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

[181] *Id.*

[182] *Id.*

[183] 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

[184] *Id.* § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*, 11 FCC Rcd 15499. 47 C.F.R. § 51.217; *In re 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, 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* (continued….)

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).[185] In the *Local Competition Second Report and Order*, the Commission 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."[186] 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.[187] The Commission specifically held that the phrase "nondiscriminatory access to

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the Telecommunications Act of 1934, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

[185] 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. §§ 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.

[186] 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.

[187] *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

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."[188]

59. Competing carriers may provide operator services and directory assistance by either reselling the BOC's services or by using their own personnel and facilities to provide these services. The Commission's rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.[189] Competing carriers wishing to provide operator services or directory assistance using their own 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.[190] 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 unbundled network elements in the *Local Competition Third Report and Order*.[191] Checklist item obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the requirements of sections 251 and 252, including the requirement that rates be based on forward-looking economic costs.[192] 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.[193]

H. Checklist Item 8 – White Pages Directory Listings

60. 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."[194]

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188 *Id*. at 19499, para. 112.

189 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).

190 47 C.F.R. § 51.217(c)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44.

191 *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

192 *Id.* 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").

193 *UNE Remand Order* at 3905-06, paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

194 47 U.S.C. § 271(c)(2)(B)(viii).

Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.[195]

61. 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."[196] 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."[197] The Commission's *Second BellSouth Louisiana Order* also held 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.[198]

I. Checklist Item 9 – Numbering Administration

62. 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."[199] The checklist mandates compliance with "such guidelines, plan, or rules" after they have been established.[200] A BOC must

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195 *Id.* § 251(b)(3).

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

197 *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, para. 252 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59, para. 137). However, the Commission's decision in a recent 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, 14 FCC Rcd 15550, para. 160 (1999).

198 *Id.* at 20747-48, para. 253.

199 47 U.S.C. § 271(c)(2)(B)(ix).

200 *Id.*

demonstrate that it adheres to industry numbering administration guidelines and Commission rules.[201]

J. Checklist Item 10 – Databases and Associated Signaling

63. 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."[202] 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)."[203] 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).[204] 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.[205] 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.[206] 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."[207]

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[201] *See Second Bell South Louisiana Order*, 13 FCC Rcd at 20751-52, paras. 262-65*; see also Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource 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, 16 FCC Rcd 306 (2000).

[202] 47 U.S.C. § 271(c)(2)(B)(x).

[203] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

[204] *Id.* at 20755-56, para. 272.

[205] *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

[206] *Local Competition First Report and Order*, 11 FCC Rcd at 15741-42, paras. 484-86.

[207] *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

K. Checklist Item 11 – Number Portability

64. 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.[208] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[209] 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."[210] 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."[211] Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability "to the extent technically feasible."[212] The Commission also requires LECs to gradually replace interim number portability with permanent number portability.[213] The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,[214] and created a competitively neural cost-recovery mechanism for long-term number portability.[215]

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[208] 47 U.S.C. § 271(c)(2)(B)(xi).

[209] *Id.* at § 251(b)(2).

[210] *Id.* at § 153(30).

[211] *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, CC Docket No. 95-116, at paras. 1, 6-9 (Jun. 23, 1999) (*Fourth Number Portability Order*).

[212] *Fourth Number Portability Order* at para. 10; *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-116 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

[213] *See* 47 C.F.R. § 52.27; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355 and 8399-8406, paras. 3 and 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

[214] *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. 127-140.

[215] *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 para. 9.

L. Checklist Item 12 – Local Dialing Parity

65. 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)."[216] Section 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."[217] 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 . . .[218]

66. 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.[219] Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.[220]

M. Checklist Item 13 – Reciprocal Compensation

67. 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)."[221] 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

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[216] 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 and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

[217] 47 U.S.C. § 251(b)(3).

[218] *Id.* at § 153(15).

[219] 47 C.F.R §§ 51.205, 51.207.

[220] *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.

[221] 47 U.S.C. § 271(c)(2)(B)(xiii).

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."[222]

N. Checklist Item 14 – Resale

68. 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)."[223] 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."[224] 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."[225] Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A).[226] 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 non-discriminatory.[227] 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.[228] If a state creates such a limitation, it must do so consistent with requirements established by the Commission.[229] In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate

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[222] *Id.* § 252(d)(2)(A).

[223] *Id.* § 271(c)(2)(B)(xiv).

[224] *Id.* § 251(c)(4)(A).

[225] *Id.* § 252(d)(3).

[226] *Id.* § 251(c)(4)(B).

[227] *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. Iowa Utils. Bd. 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.

[228] 47 U.S.C. § 251(c)(4)(B).

[229] *Id.*

that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.[230]

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

69. 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."[231] The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.[232] Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.[233] In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.[234]

70. 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.[235] The Commission's findings regarding section 272 compliance constitute independent grounds for denying an application.[236] Past and present behavior of the BOC applicant provides "the best

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230 *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).

231 47 U.S.C. § 271(d)(3)(B).

232 *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*); 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*).

233 *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, para. 15; *Accounting Safeguards Order*, 11 FCC Rcd at 17550, para. 25; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

234 *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, at paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

235 *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

236 *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86 at para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81.

indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272."[237]

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

71. 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.[238] 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.

72. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.[239] 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.[240] 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.

73. The Commission previously has explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue to satisfy the requirements of section 271 after entering the long distance market.[241] Although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section

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[237] *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81.

[238] 47 U.S.C. § 271(d)(3)(C).

[239] 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).

[240] *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").

[241] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6376, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806; *see Ameritech Michigan Order*, 12 FCC Rcd at 20747.

271 approval.[242] The Commission has stated that the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.[243]

[242] These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6). Moreover, in this instance, we find that the collaborative process by which these mechanisms were developed in Texas and then adapted and modified in both Kansas and Oklahoma for particular circumstances in each of these states, has itself helped to bring SWBT into checklist compliance.

[243] *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL COPPS

Re: Application by 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)

With today's grant of Verizon's application to provide long-distance services, consumers in Connecticut will now benefit from the expanded competition envisioned by the Telecommunications Act of 1996. The core of the congressional framework to promote competition in all telecommunications markets is the requirement that Bell companies open their local markets as a condition for entering the long-distance market.

With six applications granted by this Commission, we can see the wisdom of Congress' "carrot and stick" approach. There is ample evidence that when barriers are eliminated, competitors will enter a market. Congress' plan is a win-win for Bell companies and competitors alike. But even more importantly, it is a win for consumers who are the true beneficiaries of competition, enjoying greater choice, better services, and lower prices.

We must be ever mindful, however, that although the conditions for competition exist in Connecticut today, the grant of an application is not the end of the road. Our expectation is that Bell companies and competitors will work cooperatively through their business-to-business relationships to resolve any issues that develop. To the extent that backsliding occurs, this Commission and our state colleagues have a shared obligation to address any problems.

We also must not ignore our duty to ensure that independent incumbent carriers meet their statutory market-opening responsibilities, notwithstanding that they need not seek authorization prior to providing long-distance services. Verizon's territory includes only two percent of Connecticut consumers. Other Connecticut consumers are entitled to reap the same benefits of competition that their neighbors enjoy.

I take these enforcement duties with the utmost seriousness. Only with continued vigilance can we ensure that enduring competition thrives, that Congress' vision of competitive and deregulated telecommunications markets is realized, and that the public interest is thereby served.