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

In the Matter of	)	
	)	
Application of Verizon Pennsylvania Inc.,	)	
Verizon Long Distance, Verizon Enterprise	)	CC Docket No. 01-138
Solutions, Verizon Global Networks Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services in	)	
Pennsylvania	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 19, 2001 **Released: September 19, 2001**

By the Commission: Commissioner Copps dissenting and issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. On June 21, 2001, Verizon Pennsylvania 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 Pennsylvania. 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 Pennsylvania to competition.

2. According to Verizon, competing carriers in Pennsylvania serve approximately one million lines, one-third of which are residential, using all three entry paths available under the Act.[2] Across the state, competitors serve more than 600,000 lines solely over their own facilities; more than 385,000 lines through unbundled network elements; and more than 160,000 lines through resale. In addition, Verizon asserts that competitors exchange approximately two billion minutes of traffic each month with Verizon over local interconnection facilities that are more than three-fourths the size of Verizon's own local interoffice network. Verizon also states that competitors have access to more than 90 percent of Verizon's access lines in Pennsylvania through approximately 2,000 collocation arrangements.[3]

3. In granting this application, we recognize the hard work of the Pennsylvania Public Utility Commission (Pennsylvania Commission) in laying the foundation for approval of this application. The Pennsylvania Commission conducted extensive proceedings concerning Verizon's section 271 compliance, which were open to participation by all interested parties. In addition, the Pennsylvania Commission adopted a broad range of performance measures and standards as well as a Performance Assurance Plan (PAP) designed to create a financial incentive

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

[2] Verizon Application at 1.

[3] *Id.* at 2.

for post-entry compliance with section 271.[4] Moreover, the Pennsylvania Commission will continue its oversight of Verizon's performance through ongoing state proceedings.[5] As the Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the Act serve a vitally important role in the section 271 process.[6]

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

5. On January 8, 2001, Verizon filed a preliminary application for section 271 approval with the Pennsylvania Commission (the Compliance Filing).[9] A majority of the Pennsylvania Commission conditionally approved Verizon's Compliance Filing on June 6, 2001.[10] Specifically, the Pennsylvania Commission found that Verizon demonstrated compliance with the

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4 *See* Pennsylvania Commission Comments at 1-4.

5 *See* Pennsylvania Commission Reply at 6-10.

6 *See, e.g., Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, at para. 2 (*Verizon Massachusetts Order*).

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

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, 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*), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

9 Thirty-six parties participated in the Pennsylvania Commission proceeding, with 17 parties filing final comments or briefs on Verizon's Compliance Filing. *See* Pennsylvania Commission Comments at 14-16.

10 Dissenting statements were issued by Commissioners Nora Mead Brownell and Terrance J. Fitzpatrick. *Id*. at 16.

statutory requirements of section 271 in most respects, but that further action would be necessary to demonstrate that the local exchange and access markets in Pennsylvania were fully and irreversibly open to competition.[11] Verizon filed a letter with the Pennsylvania Commission on June 7, 2001 accepting the terms of the June 6, 2001 conditional approval.[12] Verizon thereafter filed its application for section 271 authority in Pennsylvania with this Commission on June 21, 2001.[13] Comments concerning the instant application were filed on July 11, 2001, and reply comments were filed on August 6, 2001.[14] The Pennsylvania Commission filed both comments and a reply in this proceeding, supporting Verizon's application in both instances.[15]

6. The Department of Justice does not oppose Verizon's section 271 application for Pennsylvania, but states that it is unable fully to endorse it due to concerns about Verizon's wholesale billing systems.[16] The Department of Justice also states, however, that local markets in Pennsylvania show a substantial amount of competitive entry, and does not foreclose the possibility that this Commission may be able to approve Verizon's application.[17] The evaluation explains that, due to the timing of the application, "Verizon has not been able to demonstrate that its billing system modifications have fully resolved its billing problems in actual commercial operations."[18] The Department of Justice recognizes that the Commission may gather additional information on this issue during the pendency of this proceeding, and "may therefore be able to assure itself that Verizon's billing problems have been resolved."[19] As discussed below, in reviewing this application, we do consider additional information regarding Verizon's billing

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[11] The conditional approval of Verizon's application (1) required Verizon to withdraw an appeal challenging the Pennsylvania Commission's authority to impose self-executing remedies; (2) established voluntary, self-executing remedies of $25,000 for certain metrics missed beyond ninety days; and (3) imposed a rebuttable presumption that features of the New York remedies plan (*e.g.*, weighting of metrics, liability cap, etc.) should be adopted and made applicable in Pennsylvania. There is an ongoing proceeding concerning the Pennsylvania PAP, which is expected to be completed in December. *Id.*; Pennsylvania Commission Reply at 8.

[12] Pennsylvania Commission Comments at 17.

[13] On June 21, 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 Pennsylvania, Inc. for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in The State of Pennsylvania*, Public Notice, DA 01-1486 (CCB rel. June 21, 2001).

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

[15] *See* Pennsylvania Commission Comments at 1-4; Pennsylvania Commission Reply at 1.

[16] Department of Justice Evaluation at 3. Specifically, the Department of Justice states that "Verizon filed its Pennsylvania application with the FCC without sufficient evidence to show that numerous problems with its wholesale billing systems have been corrected" and that "insufficient time has elapsed to determine whether Verizon's proposed fixes to its billing problems will be effective." *Id.*

[17] *Id.* at 2-3.

[18] *Id.* at 17.

[19] *Id.* at 17-18.

performance that was not available to the Department of Justice at the time it prepared its evaluation.

7. In reviewing this application, which was filed on June 21, 2001, we examine performance data as reported in carrier-to-carrier reports reflecting service in the period from February through June 2001. We examine Verizon's June performance data for the purpose of confirming acceptable performance or a trend of improvement shown in earlier months' data. We also examine data reflecting Verizon's June billing performance to verify that the billing system fixes implemented by Verizon in June were effective. Although as a general rule we do not rely on factual evidence that post-dates the application in assessing checklist compliance,[20] the Commission has previously considered performance that covered a time period slightly beyond the comment filing date,[21] and we believe it is appropriate to do so here. Verizon's application was submitted a few days after Verizon implemented changes to its billing process to address problems with electronic bills. Neither the June carrier-to-carrier performance data nor the data reflecting Verizon's June billing performance, however, could be generated until the end of the calendar month. We believe it is reasonable, therefore, to consider both Verizon's June carrier-to-carrier and billing data and do not believe that any party to this proceeding is prejudiced by such consideration.

8. We also note that the Act does not require Verizon to make a showing of checklist compliance with respect to the former GTE operating company it acquired in Pennsylvania in order to obtain section 271 authorization for this state.[22] Section 271(c) establishes the checklist requirements that a BOC must meet in order to provide in-region interLATA services.[23] Section 271(c) applies only to BOCs themselves, and not to BOC affiliates.[24] The Act defines "Bell

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[20] *See, e.g.*, *SWBT Texas Order*, 15 FCC Rcd at 18371-72, para. 38; *Bell Atlantic New York Order*, 15 FCC Rcd at 3969, para. 37. We disagree with Z-Tel that analyzing June data in this application would be inconsistent with our procedural rules governing section 271 applications. *See* Z-Tel Reply at 2-4. The Commission has held that an "applicant may submit new evidence after filing solely to rebut arguments made or facts submitted by other commenters," provided that the new evidence covers "only the period placed in dispute by commenters." *See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 at 4 (CCB rel. Mar. 23, 2001) (citations omitted) (Mar. 23 Section 271 Procedural Notice). Here, the evidence we rely on was submitted by Verizon to rebut competitors' assertions and pertains only to the May and June billing cycles. To the extent that Verizon has submitted information concerning subsequent billing cycles, we do not rely on that information as a basis for granting the application. However, information about subsequent billing cycles does provide additional confirmation of Verizon's satisfaction of its obligations under section 271(c).

[21] *SWBT Texas Order*, 15 FCC Rcd at 18372, paras. 39-40.

[22] *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*GTE/Bell Atlantic Merger Order*).

[23] 47 U.S.C. § 271(c).

[24] *See, e.g.*, 47 U.S.C. § 271(c)(2)(B) ("[a]ccess or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following . . .[setting forth the checklist requirements].").

operating company" to include 20 companies specifically named in the statute, and "any successor or assign of such company that provides wireline telephone exchange service," but expressly excludes "an affiliate of such company" other than one of the specifically named companies or their successors or assigns.[25] Although the former GTE operating company became an affiliate of Verizon as a result of the parent company merger, it is neither a BOC nor a successor or assign of Verizon. Thus, we find that Verizon is not required to show checklist compliance for GTE North, the former GTE LEC, to receive section 271 authorization for the state of Pennsylvania.

III. CHECKLIST COMPLIANCE

A. Primary Issues In Dispute

9. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.[26] In this Order, we rely upon the legal and analytical precedent established in those prior orders. Additionally, as in the *Verizon Connecticut Order*, we include comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.[27]

10. As in our most recent orders on section 271 applications, we focus in this Order on the issues in controversy in the record.[28] Accordingly, we begin by addressing checklist item numbers 2, 4, and 14, which encompass access to unbundled network elements, access to unbundled local loops, and resale of Verizon's service offerings, respectively. Next, we address checklist item numbers 1, 5, 8, and 13, which cover interconnection and collocation issues, access to unbundled transport, directory listings, and reciprocal compensation, respectively. The remaining checklist requirements are then discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Verizon has satisfied these requirements. We then consider whether Verizon has satisfied the requirements for Track A in Pennsylvania. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

1. Checklist Item 2 – Unbundled Network Elements

11. 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

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[25] 47 U.S.C. § 153(4).

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

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

[28] *See Verizon Connecticut Order*, 16 FCC Rcd at 14151-52, para. 9; *Verizon Massachusetts Order*, 16 FCC Rcd at 8996, para. 15; *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6255-56, para. 39.

251(c)(3) and 252(d)(1)" of the Act.[29] Based on the record, we agree with the conclusions of the Pennsylvania Commission and find that Verizon has satisfied the requirements of checklist item 2.[30] In this section, we address those aspects of this checklist item that raised significant issues concerning whether Verizon's performance demonstrated compliance with the Act: (1) Operations Support Systems (OSS), particularly billing; (2) UNE pricing; and (3) provisioning of UNE combinations.

a. OSS

12. Under checklist item 2, a BOC must demonstrate that it provides non-discriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.[31] In addition, a BOC must show that it has an adequate change management process in place to accommodate changes made to its systems.[32] We find that Verizon provides non-discriminatory access to its OSS. Consistent with prior Commission orders, we do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that Verizon meets the nondiscrimination requirements.[33] Rather, we focus our discussion on those issues in controversy, which, in this instance, primarily involve certain elements of Verizon's billing systems. We also specifically address issues related to loop qualification and flow-through.

(i) Billing

13. In previous section 271 decisions, the Commission has held that, pursuant to checklist item 2, BOCs must provide competitive LECs with two essential billing functions: (i) complete, accurate and timely reports on the service usage of competing carriers' customers and (ii) complete, accurate and timely wholesale bills.[34] Service-usage reports and wholesale bills are issued by incumbent LECs to competitive LECs for two different purposes. Service-usage reports generally are issued to competitive LECs that purchase unbundled switching and measure the types and amounts of incumbent LEC services that a competitive LEC's end-users use for a limited period of time, usually one day. In contrast, wholesale bills are issued by incumbent LECs

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29 47 U.S.C. § 271(c)(2)(B)(ii).

30 *See* Pennsylvania Commission Comments at 49-104.

31 *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers. *See SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83*; Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 585, para. 82 (*BellSouth South Carolina Order*).

32 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102 and n.277 (citations omitted).

33 *See Verizon Connecticut Order*, 16 FCC Rcd at 14151, para. 8.

34 *See* Appendix C at para. 40 (citations omitted).

to competitive LECs to collect compensation for the wholesale inputs, such as unbundled elements, used by competitive LECs to provide service to their end users. Generally, wholesale bills are issued on a monthly basis.[35] Service-usage reports are essential because they allow competitors to track and bill the types and amounts of services their customers use.[36] Wholesale bills are essential because competitive LECs must monitor the costs they incur in providing services to their customers.[37] We discuss both elements of billing below.

(a) Service Usage

14. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete, accurate and timely reports on the service usage of their customers in substantially the same time and manner that a BOC provides such information to itself.[38] We find that Verizon provides timely and accurate service usage data to competitive LECs. Specifically, Verizon provides competitive LECs with a cumulative record of their customers' usage called the Daily Usage File (DUF).[39] Competitive LECs then are able to reconcile Verizon's DUF with their own usage records to ensure Verizon only charges them for their customers' usage.[40] If the Verizon DUF and the competitive LEC's internal usage records adequately match, the competitive LEC may use the DUF as one means of calculating its own end-user bills by multiplying its customers' total daily usage against the rates it charges end users for service.[41] Verizon generally delivers the DUF to competitive LECs in a timely and accurate

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[35] Although the process of calculating a bill is complex due to multiple service offerings, variable rates and usage-sensitive charges, an incumbent LEC essentially calculates the wholesale bill by multiplying the types and amounts of services the competitive LEC uses by the rates established for those services.

[36] *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4075, para. 226.

[37] *See, e.g., SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6237, 6316-17, para. 163; Department of Justice Evaluation at 11-14 (inaccurate bills prevent competitive LECs from "determining whether Verizon is charging them correctly for services they have ordered," increase competitive LECs' "costs of doing business in Pennsylvania," and "impedes not only efficient provisioning of new services, but also the raising of capital"); Pennsylvania Commission Comments at 102 ("Verizon PA needs to issue timely, accurate, auditable bills . . . to give its [competitive] LEC customers a meaningful and realistic opportunity to accurately assess their operational costs.").

[38] *See, e.g., SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, para 163; *SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210; *Bell Atlantic New York Order*, 15 FCC Rcd at 4075, para. 226.

[39] Verizon Reply App. A, Vol. 1, Tab B, Joint Reply Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster (Operations Support Systems) at para. 8 (Verizon McLean/Wierzbicki/Webster Reply Decl.).

[40] *Id.* at para. 10. Reconciling a usage file or billing account is the process of checking one file against another to ensure that the file is accurate and complete. *Id.*

[41] *Id.* Multiplying the usage on the DUF by the competitive LEC's stated rates is not the only means of calculating a competitive LEC's end-user bills. A competitive LEC might use other, equally legitimate methods to develop end-user bills, such as charging its customers a retail rate that is some percentage higher than the wholesale bill, or using other sources to ensure accuracy. *See, e.g.*, Letter from Jonathan D. Lee, Vice President for Regulatory Affairs, CompTel, to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 8 (filed Sept. 7, 2001) (CompTel Sept. 7 *Ex Parte* Letter) (asserting that because usage (continued….)

manner.[42] Few competitive LECs dispute that Verizon consistently provides accurate and timely DUF information to its wholesale customers.[43] Finally, an independent, third-party test that KPMG performed for the Pennsylvania Commission provides additional assurance that Verizon's DUF is delivered in a timely and accurate manner.[44] Based on the evidence in the record, we conclude that Verizon provides its competitors with non-discriminatory access to service usage data.

(b) Wholesale Bills

15. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[45] In this case, despite some historical problems in producing a readable, auditable and accurate wholesale bill, we find that Verizon now provides a wholesale bill that gives competitive LECs a meaningful opportunity to compete.[46] Although as an evidentiary matter this finding is a close call, we believe that Verizon ultimately satisfies its evidentiary burden for wholesale billing and, in combination with its strong DUF performance, complies with the OSS billing requirements under checklist item 2.

(Continued from previous page)
records and billing completion letter notices are inaccurate, "MetTel finds that it must have an accurate wholesale bill so that it can have a third method for determining proper end-user charges."). Thus, contrary to Verizon's suggestion, the provision of an accurate and timely DUF does not necessarily mean that competing carriers can collect revenues from their end users. *See, e.g.*, Verizon Reply at 7.

[42] *See, e.g.*, BI-1-02 (Percentage DUF in 4 Business Days) (all months but May score of 89.74 percent are better than the standard of 95 percent of DUF within 4 business days); BI-4-01 (Percentage Usage Accuracy) (every month shows 100 percent DUF accuracy against a standard of 95 percent). The dip in May DUF timeliness performance reflects Verizon's retention of certain DUF files while Verizon worked to correct an error that directed usage to the wrong competitive LEC accounts. *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 12. As of the end of May, the existing accounts had been corrected and Verizon released the corrected information to competitive LECs on a slightly delayed basis. In June, the DUF Timeliness metric again surpassed 95 percent. *Id.*

[43] Verizon Reply at 7. A few commenters claim to have received inaccurate usage information in the past: *see* Capsule Joint Comments at 17, CompTel Comments at 15-17 (alleging that Verizon's DUFs are often inaccurate, unreliable or unavailable). Verizon identified errors on the DUF and implemented a series of fixes in March, April and May to respond to these problems. Verizon McLean/Wierzbicki/Webster Decl. at para. 130; Verizon Application App. A, Vol. 2, Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster (Operations Support Systems) at para. 12 (Verizon McLean/Wierzbicki/Webster Decl.). Although CompTel also raises claims of inaccurate usage files, these claims appear more directly related to billing completion notice errors than errors with usage files. CompTel Sept. 7 *Ex Parte* Letter at 7; *see infra* at paras. 43-44.

[44] *See* Verizon Application App. B, Tab F, Sub-Tab 2 (December 22, 2000 Final Report for Verizon Pennsylvania Inc. OSS Evaluation Project, KPMG Consulting, at 517-532 (KPMG Final Report)).

[45] Appendix C at para. 39.

[46] *Id.*

16. We begin our analysis with an overview of Verizon's wholesale billing systems and summarize the various steps Verizon has taken to provide a BOS BDT wholesale bill. Next, we describe the commercial performance of Verizon's wholesale billing systems. We then analyze the results of third-party reviews of Verizon's billing systems. We also discuss the sufficiency of the evidence presented to demonstrate that Verizon provides complete, accurate and timely wholesale bills. Finally, we discuss various measures that Verizon has undertaken to ensure that Verizon's wholesale billing practices will not deteriorate in the future.

17. Background. In Pennsylvania, Verizon uses one of two systems to generate monthly wholesale bills for competitors, depending upon the type of service the competitive LEC uses. Verizon relies on the Customer Record Information System (CRIS) to generate bills for some UNEs, UNE-P and resale offerings.[47] Verizon relies on the Carrier Access Billing System (CABS) to generate bills for access services, collocation, and the remaining UNEs, such as interoffice facilities and switching.[48] Once Verizon generates a competitive LEC's wholesale bills using the CRIS or CABS systems, Verizon can provide a competitive LEC with its bill in two formats: a "retail-formatted" bill or a "BOS BDT" bill.[49] A retail-formatted bill appears in the same type of end-user format that a Verizon retail customer would receive.[50] Although Verizon can transmit a retail-formatted bill to competitive LECs in a variety of mediums, such as CD-ROM or magnetic tape, Verizon usually prints its retail-formatted wholesale bills on paper.[51] A BOS BDT bill, by contrast, appears in the industry-standard Billing Output Specification (BOS) Bill Data Tape (BDT) format that allows a wholesale carrier to use computer software to readily audit the data.[52] As with the retail-formatted bills, Verizon can transmit a BOS BDT bill to competitive LECs across various mediums, including Verizon's "Connect:Direct" electronic transmission system, but Verizon usually provides BOS BDT bills on magnetic tape.[53]

18. Since the introduction of local competition in Pennsylvania, Verizon has offered retail-formatted bills to competitive LECs. In December 2000, KPMG issued a report that found that the retail-formatted bills KPMG received from Verizon during the course of its testing were accurate.[54] Despite KPMG's findings, competitive LECs contested the accuracy of the retail-

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47 Verizon McLean/Wierzbicki/Webster Decl. at para. 128.

48 *Id.*

49 Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 14, 18.

50 *Id.* at para. 14.

51 Regardless of the medium, the distinguishing feature of Verizon's retail-formatted bill is that it cannot be easily transferred into a computer spreadsheet or other electronic system that allows for computer auditing.

52 Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 14.

53 *Id.* at para. 18.

54 KPMG Final Report at 565-572.

formatted bills before and after KPMG's tests.[55] Common errors included charges for lines and services not provided, misrated charges for services received, double billing for services which were incorporated in other charges, assessments of taxes when Verizon is not the remitting carrier or on accounts on which no taxes are due, subtotaled charges that could not be reconciled with totaled charges, and miscrediting or unidentifiable crediting of earlier billing errors.[56] Over time, Verizon has taken a number of steps to eliminate the inaccuracies contained in the retail-formatted bills.[57]

19. Verizon first offered BOS BDT bills in January 2000 as a supplement to its retail-formatted bills.[58] Verizon, however, experienced problems with its BOS BDT bills and suspended BOS BDT billing after four months to allow for system corrections.[59] When Verizon reintroduced BOS BDT billing in October 2000, Verizon and various competitive LECs identified a number of problems that required correction.[60] In response, Verizon began modifying its BOS BDT billing system to correct these problems and at least one competitive LEC has acknowledged that Verizon's BOS BDT billing performance improved, albeit unevenly, over the next several months.[61]

20. In April 2001, Verizon implemented a process, which it continues to rely on at least on an interim basis, to manually review and adjust the BOS BDT bills to match them to the

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[55] *See, e.g.*, CompTel Comments at 4; Covad Comments at 20-21; Curry Comments at 5; Z-Tel Comments at 6; CompTel Comments, Attach. 1, Declaration of Frank Lazzara at para 6b (CompTel Lazzara Decl.). According to competitive LECs, these billing problems are "substantially different and far greater than any billing issues that were present in" Massachusetts or New York. CompTel Comments at 5; *accord* Z-Tel Comments, Attach. 1, Declaration of Margaret D. Rubino at para. 8 (Z-Tel Rubino Decl.) ("Z-Tel continues dispute a far greater portion of its Pennsylvania than it does for New York, Massachusetts, and Texas"); Letter from Michael B. Hazzard, Counsel for Z-Tel Communications, Inc., to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 3 (filed Aug. 17, 2001) (Z-Tel Aug. 17 *Ex Parte* Letter) ("Z-Tel spends a disproportionate share of its billing verification personnel dealing with its Verizon Pennsylvania bills than in other states, including New York and Massachusetts.").

[56] *See, e.g.*, ASCENT Comments at 16; CompTel Comments at 4-5, 8-9; Curry Comments App. I, Ex. D (Complaint filed in *Curry Communications, Inc. v. Verizon Pennsylvania Inc.*, Pennsylvania Public Utility Commission, Docket No. C-00015458 (filed July 3, 2001)).

[57] Verizon McLean/Wierzbicki/Webster Decl. at paras. 158-161 (describing the measures Verizon took to correct inaccurate charges on the retail-formatted wholesale bills that resulted from systemic problems KPMG identified); Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 31-44 (same).

[58] Department of Justice Evaluation at 8 and n.28.

[59] *Id.* at 8 and n.30.

[60] Verizon McLean/Wierzbicki/Webster Decl. at para. 133.

[61] *See, e.g.*, WorldCom Comments at 3-4; WorldCom Comments Tab A, Declaration of Sherry Lichtenberg (Operation Support Systems) at paras. 24-29 (WorldCom Lichtenberg Decl.); Letter from Keith L. Seat, WorldCom, to Magalie R. Salas, Federal Communications Commission, CC Docket No. 01-138, at 1 (filed Aug. 17, 2001) (WorldCom Aug. 17 *Ex Parte* Letter). *But see, e.g.*, Z-Tel Reply at 5.

retail-formatted bills and to reconcile internal inconsistencies.[62] During the manual review process, a "BDT Quality Team" comprised of Verizon employees uses computer software to determine whether the BDT balances internally and to flag any inconsistencies.[63] A "Validation Group" comprised of Verizon employees then investigates and resolves any errors that the BDT Quality Team finds.[64] Once the Validation Group enters the manual adjustments necessary to balance the retail-formatted bill and the BOS BDT bill, the BDT Quality Team then re-examines the BOS BDT bill to ensure that the Validation Group's adjustments correct the imbalance.[65] In addition, a "Wholesale Billing Services Group" (WBSG) comprised of Verizon employees runs its own independent computer program on the BOS BDT bill to provide additional verification of the Validation Group's work.[66] If the WBSG finds errors, it can return the BOS BDT bill to the Validation Group for further review.[67]

21. After adopting the manual review process, Verizon then contracted with PriceWaterhouseCoopers (PWC) to review whether Verizon's BOS BDT bills were comparable to its retail-formatted bills and to test the readability and auditability of the BOS BDT bill.[68] With a few noted exceptions, PWC concluded that the BOS BDT bill matches the retail-formatted bill for key billing elements and summarization points; that the dollar amounts charged on the BOS BDT bill for those billing elements and summarization points match the retail-formatted bill; that the BOS BDT bill contains enough information for a third party to recalculate the charges; and that the BOS BDT bill is in balance.[69] Verizon did not ask PWC to test the completeness or accuracy of the billing information on the BOS BDT bill because KPMG had already done so for the retail-formatted bill.[70] After the PWC test ended, Verizon announced that competitive LECs could elect to treat either the retail-formatted bill or the BOS BDT bill as the "bill of record"

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62 Verizon McLean/Wierzbicki/Webster Decl. at para. 135.

63 *Id*. at para. 136. A bill that "balances" internally is one in which the sum of every charge or credit results in the stated total at the next highest level of detail. *See* Letter from Dee May, Executive Director, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, Attach. 1 at 3 (filed Aug. 1, 2001) (Verizon Aug. 1 *Ex Parte* Letter).

64 Verizon McLean/Wierzbicki/Webster Decl. at para. 136. The Validation Group examines the data from the BOS BDT bill and compares this data to the retail-formatted bill. In most cases, Verizon has previously identified the source of the problem and has already begun to develop a fix; in "a smaller number of cases," Verizon cannot identify the source of the problem and the Validation Group investigates these cases to ascertain the reason for the imbalance. *Id*. at paras. 137-38.

65 *Id.* at paras. 138-39.

66 *Id.* at para. 140.

67 *Id.* at para. 141.

68 *Id.* at para. 143; Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 24.

69 Verizon McLean/Wierzbicki/Webster Decl. at para. 143; Verizon Application App. A, Vol. 2, Tab C, Joint Declaration of Catherine Bluvol and Sameer Kumar at paras. 23-48 (Verizon Bluvol/Kumar Decl.).

70 Verizon McLean/Wierzbicki/Webster Decl. at para. 143; Verizon Bluvol/Kumar Decl. at para. 17.

beginning on May 22, 2001.[71] Verizon continued to make additional software modifications to the BOS BDT billing system after the PWC review, including modifications in March, April, May and June that, according to Verizon, resolved all but a handful of minor issues with the BOS BDT bill.[72]

22. Discussion. Based on the record, there appear to be a number of issues related to the quality of Verizon's wholesale bills, particularly the BOS BDT bill generated by Verizon's CRIS system. As an initial matter, we note that, while we agree with Verizon that the appropriate standard to apply to the wholesale billing function is the "meaningful opportunity to compete" standard, we disagree with Verizon's assertion that we should dismiss any problems that competitive LECs experience with their wholesale bills because the wholesale bill does not directly affect a competitive LEC's ability to bill its end-user customers.[73] Rather, we agree with the competitive LECs that the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2.[74]

23. Inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways.[75] First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections.[76] Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which

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[71] Verizon McLean/Wierzbicki/Webster Decl. at para. 134. Treating the BOS BDT bill as an official bill of record allowed competitive LECs to file billing disputes with Verizon based exclusively on information contained on the BOS BDT bill, rather than the information contained on the retail-formatted bill. *See id.*; Verizon Application at 66.

[72] Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 19-20; Letter from Dee May, Executive Director Federal Regulatory, Verizon to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 6 (filed Aug. 17, 2001) (Verizon Aug. 17 *Ex Parte* Letter).

[73] Verizon Reply at 7-8; Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 31; Verizon Aug. 17 *Ex Parte* Letter at 2.

[74] *See, e.g.*, AT&T Reply at 26-27; Z-Tel Aug. 17 *Ex Parte* Letter at 2.

[75] The effect of untimely or inaccurate wholesale bills can prove especially acute for many competitors because wholesale inputs purchased from incumbent LECs often comprise the single largest cost element of providing service to their end users. *See, e.g.*, WorldCom Comments at 1-2; AT&T Comments Exhibit C, Joint Declaration of Mason Fawzi and Robert J. Kirchberger, at 39 (AT&T Fawzi/Kirchberger Decl.); AT&T Reply at 26; Z-Tel Aug. 17 *Ex Parte* Letter at 1-2.

[76] *See, e.g.*, Curry Comments App. I at 5-6 (estimating labor costs expended to correct Verizon billing errors); Z-Tel Rubino Decl. at para. 8 ("Z-Tel estimates that it dedicates one full time equivalent week per month to the reconciliation of the Pennsylvania bill. For New York, Massachusetts and Texas, one full time equivalent spends no more than two days per month per state on bill reconciliation, even though Z-Tel's customer base in New York dwarfs that in Pennsylvania."); AT&T Reply at 27 (A competitive LEC's "attempt to verify Verizon's charges . . . requires a substantial dedication of time and administrative costs.") (citations omitted).

can jeopardize its ability to attract investment capital.[77] Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition.[78] Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC.[79] Accurate and timely wholesale bills in both retail and BOS BDT formats thus represent a crucial component of OSS.[80]

24. In past section 271 orders, the Commission has determined checklist compliance for OSS functions primarily by relying on performance data that reflects actual commercial usage.[81] Although the Commission has never required applicants to provide particular forms of evidence to demonstrate checklist compliance, it has consistently held that commercial performance data is the most persuasive form of evidence.[82] In this case, however, we cannot rely exclusively on past commercial performance data because, among other things, Verizon has made significant changes to its wholesale billing systems in the most recent months leading up to this application.[83] Therefore, although we are able to rely on some evidence reflecting commercial usage from Verizon's most recent billing cycles, we must supplement our analysis by relying on

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[77] *See, e.g.*, CompTel Lazzara Decl. at para. 9 ("MetTel is negatively impacted by billing errors generated by Verizon in most aspects of its business, not the least of which are the problems that these errors create in MetTel's interaction with its current and potential investors."); Z-Tel Aug. 17 *Ex Parte* Letter at 2 ("even if Z-Tel believes the bill is 20 percent inaccurate, independent financial auditors will still review the total amount invoiced and may require Z-Tel to 'carry' a portion of the disputed amount as a Cost of Goods Sold.") (emphasis omitted); *id.* at 3 ("whether Z-Tel pays Verizon or withholds from Verizon disputed amounts is immaterial from an accounting perspective.").

[78] *See, e.g.*, CompTel Lazzara Decl. at para. 9 ("MetTel is unable to evaluate the success of its business from a profitability margin perspective."); Z-Tel Aug. 17 *Ex Parte* Letter at 1 ("[t]o stay in business, every company . . . must be able to reliably predict its revenues and expenses").

[79] *See, e.g.*, CompTel Lazzara Decl. at paras. 3-4 ("Due to the inadequacies of Verizon's billing systems and Verizon's lack of attention to concerns repeatedly raised . . . , MetTel continually experiences customer loss and corporate credit damage.").

[80] As a practical matter, the sheer number of billing records generated for competitors that rely heavily on incumbent LEC inputs can effectively render a retail-formatted bill unusable. *See, e.g.*, ASCENT Comments at 15-16; CompTel Comments at 4, 8; Covad Comments at 21; CWA Comments at 4; WorldCom Comments at 2; AT&T Fawzi/Kirchberger Decl. at 38-39; WorldCom Lichtenberg Decl. at para. 11. Thus, offering BOS BDT bills is important to offering competitors a meaningful opportunity to compete. *See* Pennsylvania Commission Comments at 102 ("It is undisputed that electronic [BOS BDT] billing is a component of the billing process . . . .").

[81] Appendix C at para. 7.

[82] *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, 20618, para. 138 (1997) (*Ameritech Michigan Order*); *Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20655, para. 86 (1998) (*BellSouth Louisiana Order II*).

[83] *See infra* para. 41 and n.157.

third-party testing to find that Verizon's current systems provide competitors with a meaningful opportunity to compete. Despite the historical problems that competitors have experienced with Verizon's billing system, we find that Verizon has satisfied the wholesale billing component of checklist item 2.

25. *Commercial Usage.* A number of commenters challenge the commercial reliability of Verizon's wholesale bill. Competitors contend that Verizon has not clearly demonstrated its ability to deliver a BOS BDT bill that is readable, accurate and auditable. These commenters recount Verizon's history of billing inaccuracies in 2000 and 2001.[84]

26. While Verizon concedes past problems, particularly with its BOS BDT bill, Verizon contends that recent data show significantly improved performance.[85] Verizon notes that it allowed competitors to designate the BOS BDT bill as the bill of record in May and implemented a series of software fixes, including changes in March, April, May and June of this year.[86] Verizon also implemented a series of system fixes, including changes in March, April, May and June of this year that addressed major systemic problems.[87] As evidence that these fixes have improved its performance, Verizon notes that the total dollar amounts in dispute in Pennsylvania for each month from January through June 2001 show a steady positive trend: from 26.59 percent of total charges in February, to 13.08 percent of total charges in March, to 9.47 percent of total charges in April, to 2.36 percent of total charges in May, to 2.21 percent of total charges in June.[88] Moreover, for Verizon's historic problem areas, such as the appearance of incorrect tax charges, the creation of improper stand-alone bills and the inclusion of improper directory advertising charges, the error rate has dropped steadily to the point where, as of June, the

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[84] *See, e.g.*, ASCENT Comments at 16; CompTel Comments at 4-5, 8-9; WorldCom Comments at 5-6; Z-Tel Comments at 7; AT&T Fawzi/Kirchberger Decl. at 51; Curry Comments App. I, Ex. D; WorldCom Lichtenberg Decl. at para. 15. These errors appear to be most pronounced in the BOS BDT bill that Verizon provides to UNE-P subscribers, such as WorldCom, Z-Tel and MetTel. *See, e.g.*, CompTel Comments at 8-9. WorldCom alleges that Verizon's BOS BDT bill is so poorly formatted that WorldCom cannot perform the most basic function of loading Verizon's BOS BDT bill into WorldCom's auditing software. WorldCom Lichtenberg Decl. at paras. 19-26 (describing billing errors and providing sample trouble ticket numbers for UNE-P billing errors over the last six months). Verizon states that it "will work with WorldCom" to assess WorldCom's problem in loading the BOS BDT bill, but adds that "Verizon does not understand the difficulty WorldCom is having," particularly since PWC and at least one competitive LEC have proved able to review and analyze the BOS BDT bill. Verizon Aug. 17 *Ex Parte* Letter at 7.

[85] *See, e.g.*, Verizon McLean/Wierzbicki/Webster Decl. at para. 135 ("in many cases the BOS BDT did not match the [retail-formatted] paper bill because of differences in the timing of posting usage charges to the [retail-formatted] paper bill and the BDT," but "Verizon implemented a system change on April 23 to synchronize the cut-off dates."). In analyzing recent performance data for wholesale billing accuracy, we do not rely on the performance metrics that Verizon currently follows in Pennsylvania. *See infra* at para. 41 and n.157.

[86] Verizon McLean/Wierzbicki/Webster Decl. at paras. 134-135; Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 20-21.

[87] Verizon scheduled more fixes for August. *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 34.

[88] Verizon Aug. 17 *Ex Parte* Letter at 5.

amounts under dispute are relatively nominal both in dollar value and as a percentage of current charges billed.[89] Specifically, the value of incorrect taxes on both retail-formatted and BOS BDT bills now represents less than one tenth of one percent of current billed charges;[90] the number of new improperly issued stand-alone bills now measures less than one-hundredth of one percent of the number of component accounts;[91] and the improper assessment of inter-exchange carrier directory advertising charges now constitutes well under one tenth of one percent of current charges.[92] In short, recent commercial data demonstrates that Verizon has steadily improved its wholesale billing systems to the point where error rates no longer differ materially from wholesale billing data for those states in which BOCs have already received section 271 authority.[93]

27. One competitive LEC concedes that Verizon's fixes have resulted in a marked improvement in recent bills and another LEC reports receiving bills with few, if any, errors.[94] In

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[89] *Id.* at 4-5.

[90] Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 33-35. The occurrence of incorrect charges for taxes has steadily declined from 1.06 percent of the competitive LECs' February bills, to 0.54 percent of the March bills, to 0.03 percent of the April and May bills to 0.04 percent of the June bills. *See* Verizon Aug. 17 *Ex Parte* Letter at 4.

[91] Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 36-37. A competitive LEC's bill is comprised of many individual end-user accounts, which are called the competitive LEC's "component accounts." *Id.* at para. 36. To allow for auditing, billing systems link the competitive LEC's component accounts to a Summary Bill Master. *Id.* In some cases, however, KPMG found that Verizon might send a competitive LEC a "stand-alone bill" where some of the competitive LEC's component accounts arrive separately from the associated Summary Bill Master. *Id.* Specifically, KPMG issued an exception report on October 27, 1999, which stated that Verizon's "procedures do not adequately ensure that component invoices are associated with master accounts for billing purposes." *See* Verizon Application at App. B, Tab. G, Vol. 19, Sub-Tab 4. KPMG found that, "[f]rom the standpoint of a CLEC, routinely identifying and resolving stand-alone bills would require significant effort." *Id.* After Verizon implemented a series of software modifications, however, KPMG performed additional tests and concluded on September 14, 2000 that this exception could be closed. *Id.*

[92] Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 38-40; Verizon Aug. 17 *Ex Parte* Letter at 4 (reporting the percent of disputed directory advertising charges as 0.51 percent for February, 1.09 percent for March, 0.09 percent for April, 0.17 percent for May and 0.08 percent for June).

[93] As Z-Tel acknowledges in its comments, some nominal level of dispute over wholesale billing is to be expected in any large-volume, carrier-to-carrier relationship. *See* Z-Tel Comments at 11 (Z-Tel disputes two-to-three percent of its bill in states such as Massachusetts, New York and Texas); *see also* Verizon Aug. 17 *Ex Parte* Letter at 5 (noting that disputes expressed as a percentage of current bill charges in New York ranged from 9.31 to 5.17 percent from February to June 2001). While we lack sufficient record evidence to determine what an industry-average dispute rate might be, we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate.

[94] *See* Conestoga Comments at 2 ("Conestoga's [retail-formatted] resale bills . . . are presented in a form that allows Conestoga to understand the products and services for which it is being billed and the amounts charged. Our staff is able to audit the bills, verify the charges presented, and identify any potential inaccuracies within a reasonable period of time."); Z-Tel Reply at Attach. A, Supplemental Declaration of Margaret D. Rubino on Behalf of Z-Tel Communications, Inc. at paras. 3, 6 (Z-Tel Reply Rubino Decl.) (noting that Z-Tel's June 28 wholesale bill reflected "[s]ome [i]mprovement [o]ver [p]ast [m]onths" and that Z-Tel "is encouraged by the attention has now devoted to fixing the problems in its wholesale bill").

addition, Z-Tel, which continues to dispute a higher proportion of its monthly bills from Verizon Pennsylvania than it does in other Verizon states, such as New York and Massachusetts, acknowledges that, once cumulative disputes are accounted for, the percentage of the bill under dispute diminishes greatly. Although Z-Tel initially stated that various billing problems have not been fixed,[95] it later clarified that much of its current billing disputes with Verizon are cumulative and span multiple billing periods other than the month in which Z-Tel filed the dispute.[96] Thus, while Z-Tel reports disputing 36.51 percent of its total June bill from Verizon, it acknowledges that only 11.33 percent of its total June bill arose from errors that actually appeared on the June bill.[97]

28. To the extent that other competitive LECs report errors, these errors do not appear to reflect systemic wholesale billing problems that are likely to recur. WorldCom, for example, attributes the majority of its total billing disputes with Verizon for May and June to just two items: erroneous port-charge rates and questionable late fees.[98] Verizon acknowledges that the erroneous port-charge rates result from its failure to enter a state-mandated additional port charge into its billing systems.[99] Verizon asserts that it has corrected this problem and its billing system now contains the two port-charge rates available in Pennsylvania.[100] Although Verizon

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95 Z-Tel Reply at 5.

96 *See, e.g.*, Letter from Michael B. Hazzard, Counsel to Z-Tel Communications, Inc., to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, Attach. 1 (Aug. 10, 2001) (Z-Tel Aug. 10 *Ex Parte* Letter).

97 *See, e.g.*, Z-Tel Aug. 10 *Ex Parte* Letter at Attach. 1. Although even an 11.33 percent dispute rate might ordinarily be a source of concern, the percentage that Z-Tel provides only reflects amounts that Z-Tel disputes, not amounts Verizon has credited, and as discussed above, Verizon has identified the cause for the vast majority of these possible billing errors, and, in many cases, has already implemented software fixes. *See supra* para. 27.

98 *See* Letter from Keith L. Seat, WorldCom, to Magalie R. Salas, Federal Communications Commission 2-3 (Aug. 17, 2001) (WorldCom Aug. 17 *Ex Parte* Letter).

99 Verizon Aug. 17 *Ex Parte* Letter at 10. The Pennsylvania Commission directed Verizon to tariff two port charges – one that includes all vertical features at a price of $2.67 per month and another that includes all but four vertical features at a price of $1.90 per month. Verizon, however, tariffed only the more expensive port charge for UNE-P orders and, after WorldCom complained, Verizon agreed to credit WorldCom the seventy-seven cent difference and to correct its OSS to permit competitive LECs to order both the expensive and less expensive ports. WorldCom Comments at 6; Verizon Sept. 10 *Ex Parte* Letter at 2.

100 Verizon Aug. 17 *Ex Parte* Letter at 10. According to WorldCom, Verizon has compensated WorldCom only for two of the thousands of erroneously billed switch ports that it ordered in 2000 and refused to explain its billing practices for 2001. WorldCom Comments at 6. Verizon, however, asserts that when it reviewed port orders to provide competitive LECs with credits for ordering the less expensive port, it found that some competitive LECs requested features only available in the more expensive port. Verizon Aug. 17 *Ex Parte* Letter at 10. As a result, those competitive LECs "had to make an account by account determination of which port type and features they wanted." *Id.* Verizon asserts that "[u]ntil that reconciliation was complete, Verizon could not change the port type" and credit the competitive LEC accounts. *Id.* Verizon adds that, contrary to WorldCom's claims, it has provided competitive LECs with the ability to order the lower-priced port charge electronically. *Compare* World Com Reply Tab A, Reply Declaration of Sherry Lichtenberg (Operations Support Systems) at para. 27 (WorldCom Lichtenberg Reply Decl.), *with* Verizon Aug. 17 *Ex Parte* Letter at 10, *and* Verizon Sept. 10 *Ex Parte* Letter at 2-3.

acknowledges that it owes WorldCom for past improperly billed port charges, WorldCom and Verizon continue to disagree about whether WorldCom is entitled to a credit based on the relatively small number of ports that Verizon actually billed to WorldCom or on the much larger number of ports that WorldCom ordered from Verizon.[101] Similarly, WorldCom's late-fee dispute originally arose from WorldCom's decision to withhold payment for bills issued in the winter and early spring.[102] As with the port-charge issue, the late-fee dispute does not stem from any systemic flaws in Verizon's billing systems or processes, but rather from a still-unsettled disagreement between WorldCom and Verizon about whether WorldCom could rightfully withhold payment on its bills when it was experiencing its most acute problems with Verizon's bills.[103] While these disputes reflect past performance problems with Verizon's billing system, they do not demonstrate that Verizon's current wholesale billing systems are flawed today or were flawed at the time Verizon filed its application.

29. As described above, moreover, improper retail charges have declined to extremely low levels.[104] Verizon also claims that many of the remaining charges listed as "resale" or "retail" on a wholesale bill may actually represent properly billed charges.[105] For instance, Verizon may have properly applied charges to a UNE-P account, but incorrectly listed those charges as "resale" items when Verizon produced the BOS BDT bill.[106] Although Verizon acknowledges that it continues to improperly assess a small number of retail charges on UNE-P bills, it has scheduled system corrections to fix this problem for August and, in the meantime, has initiated a new policy of not requiring competitive LECs to pay these charges from their BOS BDT bills while Verizon investigates the improper resale charges.[107] In any case, Verizon seems to exercise

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[101] Verizon Aug. 17 *Ex Parte* Letter at 9-10.

[102] *Id.* at 9.

[103] *See* WorldCom Aug. 17 *Ex Parte* Letter at 2 ("Verizon has sometimes erroneously reported WorldCom payments as late until WorldCom provided check numbers and showed Verizon that it had received (and cashed) the checks on time"); Verizon Aug. 17 *Ex Parte* Letter at 9 ("contrary to WorldCom's claim, it does owe late fees"); *see also* Verizon Sept. 10 *Ex Parte* Letter at 3 ("WorldCom has not paid its bills.").

[104] *See supra* para. 26.

[105] Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 42.

[106] *Id*.

[107] *Id.* at paras. 41-44. We reject Verizon's assertion that *no* harm to competitive LECs occurs from the improper assessment of retail or resale charges on a wholesale bill under the theory that competitive LECs are not required to pay disputed charges. *See* Verizon McLean/Wierzbicki/Webster Decl. at para. 152. Rather, we agree with Z-Tel and other competitive LECs that the assessment of retail or resale charges on wholesale bills prevents competitive LECs from understanding the ultimate cost of goods sold and injects uncertainty into the business process. *See, e.g.*, Z-Tel Rubino Decl. at para. 7; Z-Tel Aug. 17 *Ex Parte* Letter at 1-2. While Verizon's remedial actions do not represent a complete solution to the improper assessment of retail or resale charges on wholesale bills, Verizon's actions – in the context of low absolute levels of improper charges, a trend toward increasing accuracy and a practice of reasonably timely crediting of improper charges – may help mitigate some of the harm that occurs.

reasonable diligence in crediting improper resale charges.[108] Thus, while the BOS BDT bills do not precisely balance and mirror the retail-formatted bills,[109] we find that the minor remaining differences between the retail-formatted and BOS BDT bills are nominal, credited in a reasonable time frame and, thus, not competitively significant.

30. In addition to the extensive comments regarding Verizon's wholesale billing accuracy, a few parties have commented on the timeliness of Verizon's wholesale bills.[110] Indeed, some competitive LECs claim that these temporary delays constitute an independent basis to find Verizon does not comply with checklist item 2.[111] For its part, Verizon notes that some of the solutions it implemented to correct wholesale billing issues temporarily created a backlog of BOS BDT bills, which decreased BOS BDT bill timeliness for a discrete and isolated time period.[112] Verizon, however, states that "[a]s of June 20, Verizon has cleared virtually the entire backlog" and can deliver a large volume of electronic [BOS BDT] bills, which require a certain amount of manual processing, on time.[113] Performance data indicate that any delay associated with BOS BDT bills was temporary, associated with on-going improvements to the billing process and not indicative of a larger, systemic problem with delivering timely bills.[114]

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[108] Verizon Aug. 17 *Ex Parte* Letter at 8. Verizon states that it investigated Z-Tel's claim of inappropriate charges for "retail features" or "end user features" on Z-Tel's June bill. According to Verizon, many retail charges improperly appeared on Z-Tel's June bill. However, Verizon found that credits had been made for 13,000 of the approximately 15,000 charges that it investigated. Some of these credits appeared on the same June bill for which Z-Tel had submitted a claim, while the remainder appeared on Z-Tel's July bill. *Id.* at 8-9.

[109] AT&T Fawzi/Kirchberger Decl. at para. 81 and n.65 (citing Verizon Bluvol/Kumar Decl. at 3 (noting that despite similar key summarization and billing points, discrepancies remain for other summarization and billing points)).

[110] *See, e.g.*, Curry Comments at 5; WorldCom Comments at 4; WorldCom Lichtenberg Decl. at paras. 18-20, 47-49; Z-Tel Rubino Decl. at para. 5; WorldCom Lichtenberg Reply Decl. at para. 28.

[111] *See, e.g.,* ASCENT Comments at 19; WorldCom Lichtenberg Decl. at paras. 47-49.

[112] Verizon McLean/Wierzbicki/Webster Decl. at para. 156; *see also* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 30; Verizon Aug. 17 *Ex Parte* Letter at 7-8. For retail-formatted bills, such as those that Curry Communications identified as late, Verizon points to data showing that it sent bills to Curry Communications well within ten business days of the bill dates, as required by the Pennsylvania Carrier-to-Carrier guidelines. *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 29 and Attach. 6. Curry has not offered a response to this data.

[113] Verizon McLean/Wierzbicki/Webster Decl. at para. 156. Contrary to AT&T's argument, moreover, the series of fixes to Verizon's wholesale billing system prior to its application does not demonstrate that Verizon's wholesale billing system was inadequate at the time it filed its application. *See* AT&T Reply at 28.

[114] Verizon McLean/Wierzbicki/Webster Decl. at para. 156. In some cases, Verizon and the competitive LECs disagree about certain aspects of Verizon's timeliness in wholesale billing. *Compare* WorldCom Lichtenberg Reply Decl. at para. 28 (stating July 1 bill had not arrived as of August 6, 2001), *with* Verizon Aug. 17 *Ex Parte* at 8 (stating Verizon sent the July 1 bill on July 13). In other cases, Verizon and the competitive LECs seem to agree that a single human error by Verizon can delay the arrival of a wholesale bill. *Compare* Letter from Andrew M. Klein, Counsel for the Competitive Telecom. Ass'n to Magalie R. Salas, Secretary, Federal Communications (continued….)

31. *Third-Party Testing*. Third-party studies of Verizon's billing systems, processes and performance bolster Verizon's recent commercial data. For Verizon's retail-formatted bills, KPMG issued a report in December 2000 that found that the retail-formatted bills KPMG received from Verizon during the course of its testing were accurate and timely.[115] During the test period, KPMG issued 67 observations and exceptions concerning Verizon's retail-formatted bill and Verizon implemented the necessary fixes for all competitive LEC accounts.[116] Using military-style testing techniques, KPMG then re-tested Verizon's billing system after Verizon modified its system and found in its final December 2000 report that Verizon had satisfied all test points.[117]

32. For Verizon's BOS BDT bills, PWC, with a few exceptions, concluded that the BOS BDT bill matches the retail-formatted bill for key billing elements and summarization points, that the dollar amounts charged on the BOS BDT bill for those billing elements and summarization points match the retail-formatted bill, that the BOS BDT bill contains enough information for a third party to recalculate the charges, and that the BOS BDT bill is in balance.[118] PWC also determined that the absolute value of the manual adjustments needed to match the BOS BDT bill to the retail-formatted bill decreased by more than half from the April-May billing cycle to the May-June billing cycle.[119]

33. Several competitive LECs, however, assert that we should not rely on the KPMG and PWC studies in assessing Verizon's wholesale billing performance.[120] We do not find these arguments persuasive. Although we acknowledge, consistent with prior section 271 orders, that third-party studies are not the most probative evidence of a BOC's compliance with section 271[121]

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Commission 2 (Aug. 15, 2001) (CompTel Aug. 15 *Ex Parte* Letter) (noting that MetTel received another competitive LEC's billing tape in its July billing envelope), *with* Verizon Aug. 17 *Ex Parte* at 11 (conceding that human error led Verizon to place the wrong billing tape into MetTel's July billing envelopes, but noting that it recreated and resent the bill to MetTel upon learning of the error). In any case, these types of discrete, limited delays and errors generally appear to indicate minor differences capable of being handled under Verizon's dispute-resolution process, rather than systemic failures in Verizon's billing systems significant enough to warrant a finding of non-compliance with checklist item 2.

[115] KPMG Final Report at 565-572.

[116] Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 17.

[117] KPMG Final Report at 14, 501-572.

[118] Verizon McLean/Wierzbicki/Webster Decl. at para. 143; Verizon Bluvol/Kumar Decl. at paras. 23-48.

[119] Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 24; *see* Letter from Clint E. Odom, Verizon, to Magalie R. Salas, Federal Communications Commission, at 1 and Attach. 1 (July 3, 2001) (Verizon July 3 *Ex Parte* Letter) (PWC performed the same calculation it performed initially for the period after the May fixes – May 20 through June 13 – and found that the percentage of manual adjustments had dropped to 0.89 percent, a 50 percent reduction).

[120] *See, e.g.*, WorldCom Comments at 5; Z-Tel Comments at 6-7.

[121] *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53 ("the most probative evidence that a BOC is providing non-discriminatory access is evidence of actual commercial usage"); *Ameritech Michigan Order*, 12 (continued….)

and that a third-party test alone cannot outweigh reliable commercial data,[122] the Commission has held that third-party studies nevertheless can provide valuable, relevant evidence of OSS performance.[123] In this case, both KPMG's and PWC's studies provide relevant evidence of Verizon's billing performance that supplement the commercial performance data that Verizon has presented in this proceeding.

34. We also reject arguments that the KPMG study is flawed. KPMG used a "military-style" test in which it tested various billing functions, identified exceptions and re-tested until Verizon had eliminated the exceptions.[124] While some of the wholesale billing errors that KPMG identified continued to occur for a time after the KPMG study ended, we find that the recurrence of some errors does not diminish the value of the KPMG study.[125] Verizon made three types of software changes in response to KPMG's study: (i) changes affecting bill calculation input; (ii) changes affecting the bill calculation logic; and (iii) changes affecting bill output (i.e., formatting).[126] Verizon could make relatively straightforward software changes to implement changes to the bill calculation logic and the bill output. For these problems, one software change would correct the errors for all competitive LECs. Verizon could not make simple software changes to correct errors in bill calculation input, however, because the errors vary by individual competitive LEC account. For these problems, Verizon had to address each existing competitive LEC account individually. According to Verizon, many of the wholesale billing problems competitive LECs have experienced – improper resale charges, inappropriate stand-alone bills and improper tax charges – stemmed from errors embedded in competitive LECs' existing accounts.[127]

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FCC Rcd at 20618, para. 138 ("We agree with the Department of Justice that the most probative evidence that OSS functions are operationally ready is actual commercial usage.").

[122] WorldCom Comments at 5; Z-Tel Comments at 6-7.

[123] *See, e.g., Ameritech Michigan Order*, 12 FCC Rcd at 20618, para. 138 ("Carrier-to-carrier testing, independent third-party testing, and internal testing also can provide valuable evidence pertaining to operational readiness, but are less reliable indicators of actual performance than commercial usage."). Contrary to AT&T's assertion, moreover, the repeated need for Verizon to correct its billing system during KPMG's testing does not diminish Verizon's credibility, but rather helps demonstrate Verizon's commitment to correcting systemic problems in its billing system. *See* AT&T Fawzi/Kirchberger Decl. at paras. 88-89; *see also* WorldCom Lichtenberg Decl. at para. 35.

[124] KPMG Final Report at 14. The Commission placed significant reliance on this type of military-style testing in approving Verizon's New York application. *See Bell Atlantic New York Order*, 15 FCC Rcd at 3998, para. 98.

[125] *See* WorldCom Comments at 5 ("KPMG did not . . . evaluate whether there were similar problems on the [retail-formatted] paper bill" after more competition emerged in the Pennsylvania market"); Department of Justice Evaluation at 8 n.26 ("It is not clear why the test did not capture the billing accuracy issues raised by [competitive LECs]."). The Department of Justice notes that KPMG relied on the bills submitted to it as a test competitive LEC, not the bills of actual competitive LECs in Pennsylvania. *See* Department of Justice Evaluation at 8 n.26 (citation omitted).

[126] Verizon Aug. 17 *Ex Parte* Letter at 5-6.

[127] *Id.* at 6-7.

Verizon asserts that such embedded errors in existing accounts now have been repaired.[128] In any case, as explained above, remaining errors as of the date of filing were at *de minimis* levels.

35. PWC's two reports also provide additional assurance that the BOS BDT bill is largely comparable to the retail-formatted bill and that the BOS BDT bill was readable and auditable. Although we agree with the Department of Justice and several commenters that PWC's reports should carry less weight than the KPMG study that the Pennsylvania Commission oversaw and in which the competitive LECs could participate,[129] we do not discredit PWC's reports in their entirety because the authors qualified some of their results,[130] conducted their studies at different times from KPMG, [131] or could have conducted a more comprehensive study of Verizon's BOS BDT billing.[132] As the commenters observe, PWC's first report did not "test the completeness or accuracy of the billing information on the BDT."[133] Rather, PWC's first report determined whether Verizon's BOS BDT bills were comparable to Verizon's retail-formatted bills, which KPMG's nineteen-month study had already established as accurate.[134]

36. PWC's second report establishes that a competitive LEC could use commercially available software to read and audit the vast majority of charges on the BOS BDT bill.[135] Given

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[128] *Id.*

[129] *See* Department of Justice Evaluation at 10.

[130] *See, e.g.*, AT&T Fawzi/Kirchberger Decl. at para. 86 (PWC's qualifications underscore the "fundamental inaccuracy and unreliability problems that have permeated the [BOS] BDT bills since Verizon first tried to roll them out in Pennsylvania"); *see also* WorldCom Lichtenberg Decl. at para. 42 (describing various exceptions from the PWC study).

[131] *See, e.g.*, WorldCom Comments at 5 (noting that KPMG's study occurred prior to PWC's study and prior to the time when "commercial data revealed problems with the electronic [BOS BDT] bills."). In any case, PWC's primary test period for the BOS BDT bill follows the KPMG study by only five months. *See* Verizon Bluvol/Kumar Decl. at para. 9 (noting that the test period for four of the five assertions ran from April to May, 2001).

[132] *See, e.g.*, AT&T Fawzi/Kirchberger Decl. at para. 92 ("the PWC review apparently did not evaluate [Universal Service Order Code]-level detail – a critically important requirement of electronic [BOS BDT] billing"); Z-Tel Comments at 9 (noting that PWC does not appear to have reviewed account-level or USOC-level detail, where many errors have occurred); WorldCom Lichtenberg Decl. at para. 41 ("it simply makes no sense to assess the accuracy of the electronic [BOS BDT] bill through a third party comparison with the [retail-formatted] paper bill when direct commercial evidence of the accuracy of the electronic bill exists."). A "Universal Service Order Code" (USOC) is an alphanumeric code used to identify a product service order. *See* KPMG Final report at 696.

[133] WorldCom Comments at 5 (citing Verizon McLean/Wierzbicki/Webster Decl. at para. 143); AT&T Comments at 53; Covad Comments at 21.

[134] WorldCom Comments at 5 (citing Verizon McLean/Wierzbicki/Webster Decl. at para. 143); AT&T Comments at 53.

[135] Verizon Reply App. A, Vol. 1, Joint Reply Declaration of Catherine Bluvol and Sameer Kumar (Operations Support Systems) at paras. 7-8 (Verizon Bluvol/Kumar Reply Decl.). Although the records inserted into the BOS BDT bill as part of the Manual Adjustment process generally cannot be validated, PWC noted that the Manual (continued….)

that the commercial experience on this point appears to be mixed,[136] we rely on the PWC report to confirm that Verizon's BOS BDT bills appear to conform to the industry standard and can be loaded, read and audited electronically. PWC's second report also found that the absolute value of manual adjustments made to the BOS BDT bills have declined by about half following certain improvements to Verizon's BOS BDT billing systems.[137] WorldCom asserts that a reduction in the level of manual adjustments might just as likely result from Verizon employees under-reporting billing errors in Verizon's wholesale bills, which would artificially reduce the absolute value of manual adjustments.[138] We disagree with WorldCom's assertion. First, increased error seems unlikely to account for a full fifty-percent reduction in the absolute value of manual adjustments, particularly in light of the well-defined procedure that Verizon has established to correct errors and issue manual adjustments.[139] Second, the record contains no evidence of accidental or intentional under-reporting from any party. Third, Verizon's June commercial performance data is consistent with the PWC results.[140] Thus, despite their limited scope, the two PWC reports add to the record of Verizon's BOS BDT billing performance.

37. *Sufficiency of Evidence.* Ultimately, the competitive LECs challenging Verizon's wholesale billing performance contend that, despite improved performance in billing accuracy, Verizon's recent improvements to its BOS BDT billing system have not been sufficiently commercially tested.[141] According to these parties, we should insist on reviewing several months

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Adjustments on the BOS BDT bill were on average, less than one percent of the Current Charges on the bills with bill dates during the May 20 to June 13, 2001 time period, concurrent with the PWC study. *Id.* at para. 7. Z-Tel also states that it can load, read and audit Verizon's BOS BDT bill. *See* Z-Tel Aug. 17 *Ex Parte* Letter at 4 (using Monarch-brand software, "Z-Tel has been able to read and process the electronic [BOS BDT] bill received from Verizon").

[136] *Compare* CompTel Comments at 6-7, *and* CompTel Lazzara Decl. at para. 6c, *and* WorldCom Comments at 2-4, *with* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 26. Although Verizon's BOS BDT bill departs from the standard format, Verizon states that certain departures from the standard form are allowed, provided that the issuer documents these alterations. *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 26. Verizon also states that it has documented the changes it has made to the industry-standard BOS BDT bill format. *Id.*

[137] Verizon July 3 *Ex Parte* Letter at 1.

[138] *See* WorldCom Lichtenberg Decl. at para. 35.

[139] *See* Verizon McLean/Wierzbicki/Webster Decl. at para. 138-141; Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 22 and Attach. 2.

[140] *Compare* Verizon Bluvol/Kumar Decl. at Attach. 1 and Verizon July 3 *Ex Parte* Letter at Attach. 1 *with* Verizon Aug. 17 *Ex Parte* Letter at 5.

[141] ASCENT Comments at 17; AT&T Comments at 51-52; CompTel Comments at 14; WorldCom Comments at 8; Z-Tel Comments at 9; WorldCom Lichtenberg Decl. at para. 16; ASCENT Reply at 9-10; AT&T Reply at 28. Many commenters claim that, because Verizon implemented software changes to correct errors in its billing system just a few days prior to filing with the Commission for Section 271 authority, neither Verizon nor the competitive LECs have had an opportunity to test, much less commercially use, the corrected billing system. CWA Comments at 4; *see also* ASCENT Comments at 17-18; AT&T Comments at 52; CompTel Comments at 14; WorldCom Comments at 8-9; WorldCom Lichtenberg Decl. at para. 16. WorldCom observes that, of the eighty-one problems with its billing systems that Verizon acknowledged, the fixes for thirty of these issues were not implemented prior (continued….)

of commercial performance evidence to determine whether Verizon's latest modifications have sufficiently improved the manner in which Verizon bills its wholesale customers.[142] As stated above, although we acknowledge that the evidentiary showing that Verizon relies on makes this issue a close call, we find the evidence minimally sufficient, especially in light of the showing it has made for billing as a whole.

38. Rather than wait for several months of commercial data, Verizon sought to bolster its limited commercial showing in two ways. First, as discussed above, Verizon engaged PWC to examine the comparability of the BOS BDT bill to the retail-formatted bill, both with respect to the amount of detail provided on the BOS BDT bill and with respect to the actual dollar amounts charged to the competitive LECs at each level of detail. Although the PWC study is not dispositive, we find that it provides valuable evidence that helps bolster Verizon's limited commercial performance data since the results from the study and the data from Verizon's commercial performance are consistent. Second, as explained above, while Verizon was implementing its software fixes, it began a manual review and balancing process for the BOS BDT bills to ensure that the BOS BDT bill balances internally and that it matches the retail-formatted bill.[143]

39. Competitive LECs assert that, as a result of these manual adjustments, they can no longer audit Verizon's BOS BDT bill by tallying the detailed credits and debits on Verizon's bill, reaching a total and comparing that total with the total that Verizon provides.[144] While we agree

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to April 21, 2001 and thus the fixes would have been reflected in the May bill at the earliest. In addition, ten problems were not fixed until June and thus the fixes would have been reflected in the June or the July bill at the earliest. *See* WorldCom Comments at 8 (citing Verizon McLean/Wierzbicki/Webster Decl. at Attach. 28). Some commenters also note that Verizon's own billing expert testified before the Pennsylvania Commission that no conclusive judgments on whether the system changes were successful could be made until the completion of several billing cycles under the new procedures. *See* Verizon Application App. B, Tab C, Sub-Tab 26 (Pennsylvania Commission *en banc* 271 hearing, April 25, 2001, Geller testimony, transcript at 134) (Verizon's billing expert explained that "[i]t's not unreasonable for [competitive LECs] to say 'prove it'" in response to its claim that it would fix the problems with the BOS BDT bills.); *id.* at 146 ("[w]hat we'd like to be able to do at that point in time [June 16, when the fixes are complete] is, to insure that all parties have an opportunity to review it, Verizon included, is to run several cycles, in other words additional bill cycles, and at that point in time Verizon would make its final decision as to whether or not BOS-BDT could become the official bill and replace paper [retail-formatted bills]."); *see generally* WorldCom Comments at 8; WorldCom Lichtenberg Decl. at para. 34; AT&T Comments at 52. Finally, these parties point out that two Pennsylvania commissioners dissented from the recommendation to support section 271 authorization precisely on this point, noting that "Verizon must . . . successfully complete at least two billing cycles" before section 271 authorization is warranted. *See* Pennsylvania Commission Comments App. I at 6, 10 (Dissenting Statement of Commissioner Brownell at 1; Dissenting Statement of Commissioner Fitzpatrick at 2); CompTel Comments at 15. The Department of Justice voices similar concerns. *See* Department of Justice Evaluation at 10-11.

[142] *See, e.g.*, Z-Tel Comments at 9; WorldCom Comments at 8; WorldCom Lichtenberg Decl. at para. 16; ASCENT Comments at 17; CompTel Comments at 14; AT&T Comments at 51-52.

[143] Verizon McLean/Wierzbicki/Webster Decl. at para 135-141.

[144] *See, e.g.*, AT&T Comments at 53. In other words, the process of making "manual adjustments" on Verizon's BOS BDT bill so that it will match Verizon's retail-formatted bill causes the sum of all of the detailed charges to (continued….)

that the manual adjustments prevent a precise accounting for all possible charges, we reject competitive LEC requests that we find the manual adjustment process results in an inadequately accurate wholesale bill. First, the overall amounts involved in Verizon's manual adjustment process are nominal and have been consistently decreasing over time.[145] Second, Verizon continues to implement software fixes to its BOS BDT billing system that ultimately should eliminate the need for the manual adjustment process.[146] Third, despite the manual nature of this workaround process for reducing errors in Verizon's wholesale BOS BDT bills, Verizon claims, and PWC affirms, that Verizon could handle many more BOS BDT bills than the current demand of approximately 110 BOS BDT bills per month.[147] As a result, we do not find competitive LEC criticisms of the manual-adjustment process persuasive. Under these particular circumstances, we agree with the Pennsylvania Commission that delaying our decision on Verizon's application for several additional months to obtain new wholesale billing data is unnecessary.[148]

40. In addition to the evidence Verizon has advanced in this record to prove the efficacy of its billing systems, Verizon has made several clarifications on the record to explain the existing procedures it follows to resolve billing disputes. These clarifications give us assurance that any remaining issues with Verizon's BOS BDT bills will be handled in a manner that reduces the burden on competitive LECs to initiate and resolve disputes. First, Verizon states that competitive LECs do not need to submit end-user-level detail to file disputes they believe to be of a systemic nature. Instead, competitive LECs only need to provide "an indication of why the [competitive LEC] is questioning the charge" and some minimal amount of information to allow Verizon to investigate the issue, such as a single billing account number.[149] Second, Verizon does not require competitive LECs to pay disputed amounts until the dispute is settled.[150] Third, if

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no longer equal the relevant sub-total or total. *See id.*; WorldCom Lichtenberg Decl. at para. 37 (citing Verizon McLean/Wierzbicki/Webster Decl. at para 146) (noting that Verizon's experts testified that the manual adjustment process "does not provide [competitive LECs] detailed information to allow recalculation of the adjustment").

[145] Verizon July 3 *Ex Parte* Letter at 1andAttach. 1; Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 24-25; *see also* Verizon McLean/Wierzbicki/Webster Decl. at para. 144. We also received information on Purchase Order Numbers (PONs) and Billing Telephone Numbers (BTNs) from WorldCom on the eve of making our decision. Letter from Robert C. Lopardo, Director, Federal Advocacy, WorldCom, to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 1-3 (filed September 17, 2001) (WorldCom Sept. 17 *Ex Parte* Letter). Although WorldCom suggests problems exist with missing PONs and BTNs, we exercise our discretion to give only minimal weight due to its lateness. Moreover, based on our limited review, even assuming WorldCom's claims were valid, this information would do nothing to undermine our decision here.

[146] Verizon McLean/Wierzbicki/Webster Decl. at para. 142. Verizon states that it will retain the manual review and adjustment procedures "until it has confirmed that the software fixes are effective in producing balanced BOS BDTs for" competitive LECs. *Id.*

[147] *Id.*

[148] Pennsylvania Commission Reply at 3.

[149] Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 46.

[150] *Id.* at para. 47.

Verizon does not render a bill to a competitive LEC within the ten business days provided for in the Pennsylvania Carrier-to-Carrier guidelines, Verizon will automatically extend the payment period in which the competitive LEC can pay the bill by the number of days the bill arrives late.[151] We fully expect Verizon to closely adhere to its official policies so that its dispute-resolution procedures are clearly articulated and consistently applied to all parties.

41. Finally, while Verizon has maintained its position that its wholesale billing systems comply with checklist item 2, we take additional comfort that Verizon has responded to the concerns raised in the record by voluntarily committing to a series of undertakings aimed at ensuring continued acceptable performance and curing past deficiencies. Although we do not rely on these undertakings in finding that Verizon provides non-discriminatory access to its OSS billing functions, they give us additional confidence that Verizon will continue to deliver timely and accurate wholesale bills and endeavor to remedy past wholesale billing problems expeditiously. First, Verizon has engaged PWC again to conduct an additional test of its BOS BDT billing system without the exclusions that commenters found objectionable in the April-May study.[152] Second, Verizon has made significant resources immediately available for additional competitive LEC training on using the BOS BDT bill effectively.[153] To the extent competitive LECs continue to experience problems loading and using the BOS BDT bill, Verizon also has offered to send technical teams to certain competitive LEC sites on request.[154] Third, Verizon has adopted a policy of proactively forgiving certain late fees and other mischarges that competitive LECs may have incurred during the period in which the BOS BDT bill underwent significant modifications.[155] Fourth, Verizon will work with competitive LECs that did not receive the BOS BDT bill prior to May 22, 2001 to help them analyze their bills and to provide information in a file format that could be used with a standard spreadsheet program.[156] Finally, Verizon has voluntarily offered to allow competitors to opt into the latest performance metrics for billing currently being developed in the New York collaborative as an alternative to the current Pennsylvania metric for wholesale billing accuracy.[157] These new performance measurements –

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[151] *Id.* at para. 48.

[152] Letter from Gordon R. Evans, Vice President, Verizon to Magalie R. Salas, Secretary, Federal Communications Commission at 3 (Aug. 31, 2001) (Verizon Aug. 31 *Ex Parte* Letter); Letter from Clint E. Odom, Verizon, to Magalie Salas Roman, Secretary, Federal Communications Commission, at Attach. 1 (Sept. 7, 2001) (Verizon Sept. 7 *Ex Parte* Letter).

[153] Verizon Aug. 31 *Ex Parte* Letter at 3 and Attach. 3 (describing agenda of four, full-day billing workshops).

[154] *Id.* (offering to conduct on-site visits to those who participate in the workshops).

[155] *Id.* at 4.

[156] *Id.*

[157] *Id.* at 4-5. Several competitive LECs and the Department of Justice assert that the Pennsylvania metrics do not accurately reflect their commercial experience with Verizon's wholesale bills. *See, e.g.*, Department of Justice Evaluation at 13-14; ASCENT Comments at 18; Capsule Joint Comments at 20; WorldCom Comments at 14-15; Z-Tel Comments at 10; AT&T Comments Exhibit D, Joint Declaration of Joseph Bloss and E. Christopher Nurse on Behalf of AT&T Corp., at paras. 21-24 (AT&T Bloss/Nurse Decl.); AT&T Fawzi/Kirchberger Decl. at paras. (continued….)

for dispute-acknowledgement timeliness and dispute-resolution timeliness – represent important new steps to discourage wholesale billing errors and to ensure that any errors that occur are resolved as quickly as possible.[158] We are encouraged by the efforts Verizon is making to continue to improve its business-to-business relationship with competitive LECs.

42. Taken together, Verizon's proof of system performance through both commercial evidence and third-party testing as well as its record of steady improvement demonstrate that Verizon's wholesale billing systems provide competing carriers a meaningful opportunity to compete. Working in concert with the Pennsylvania Commission, we intend to monitor Verizon's post-approval compliance to ensure that Verizon does not "cease [] to meet any of the conditions required for [section 271] approval."[159] If Verizon's performance deteriorates, we will not

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98-101; Z-Tel Aug. 17 *Ex Parte* Letter at 4. While nearly all of the billing performance metrics show nearly perfect performance, the competitive LECs allege that various structural defects, omissions, inaccuracies and miscalculations distort the picture that the current billing metrics present. *See, e.g.*, Department of Justice Evaluation at 13; ASCENT Comments at 18; Capsule Joint Comments at 20; WorldCom Comments at 14-15; Z-Tel Comments at 10; AT&T Fawzi/Kirchberger Decl. at 98-101; Z-Tel Aug. 17 *Ex Parte* Letter at 4. Verizon itself acknowledges some of the metrics' flaws. *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 55-57 (describing errors that led Verizon to eliminate most, if not all, billing adjustments from the BI-3 billing accuracy metric and noting that "Verizon agrees that it [BI-3] is a flawed measure"); *see also* Verizon Application App. A, Vol. 3, Joint Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito (Performance Measurements) at para. 126 (Verizon Guerard/Canny/DeVito Decl.) (for several months for four billing metrics, "Verizon . . . was improperly 'netting' credits and debits, which resulted in objectively incorrect data"). Until July, moreover, the billing accuracy and timeliness metrics did not apply to Verizon's BOS BDT bills. *See* Letter from Julia A. Conover, Verizon Vice President and General Counsel, to James J. McNulty, Secretary, Pennsylvania Public Utilities Commission, CC Docket 01-138 (July 18, 2001) (Verizon July 18 *Ex Parte* Letter) (reporting that, consistent with the Pennsylvania Commission's June 6, 2001 directive, Verizon has updated the Pennsylvania billing metrics to make them applicable to the BOS BDT bill effective July 1, 2001); Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 52. Verizon generally does not rely on its wholesale billing performance metrics to establish its affirmative case. In these circumstances, we do not rely on the billing accuracy metrics in considering Verizon's section 271 showing.

[158] Verizon Aug. 31 *Ex Parte* at 4-5 and Attach. 2. The billing metrics that New York is developing are BI-3-03 (Percent Competitive LEC Billing Claims Acknowledged Within Two Business Days) and BI-3-04 (Percent Competitive LEC Billing Claims Resolved Within 28 Calendar Days after Acknowledgement). These metrics are designed to measure the timeliness with which Verizon acknowledges and resolves competitive LEC billing adjustment claims. According to its recent announcement, Verizon will allow competitive LECs to replace the single BI-3 metric with two alternative metrics, but will split the Pennsylvania performance assurance plan remedies for the current BI-3 metric between the two new alternative metrics. Pennsylvania currently imposes the following remedies for poor billing performance: $50,000 per competitive LEC per metric for violations up to thirty days; $75,000 per competitive LEC per metric for violations up to sixty days; and 100,000 per competitive LEC per metric for violations up to ninety days. *See* Pennsylvania Commission Comments at 103. For each of the new alternative metrics to the current BI-3, therefore, Verizon would pay $25,000 per competitive LEC per metric for violations up to thirty days; $37,500 per competitive LEC per metric for violations up to sixty days; and $50,000 per competitive LEC per metric for violations up to ninety days. *See* Verizon Aug. 31 *Ex Parte* Letter, Attach. 2 at 3.

[159] 47 U.S.C. § 271(d)(6)(A).

hesitate to invoke our enforcement authority to ensure that Verizon continues to provide non-discriminatory access to its wholesale billing functions.[160]

(ii) Billing Notifiers

43. We find that Verizon provides Billing Completion Notifiers (BCNs) to its competitors in a non-discriminatory manner. BCNs inform competitors that all provisioning and billing activities necessary to migrate an end user from one carrier to another are complete and thus the competitor can begin to bill the customer for service.[161] Premature, delayed or missing BCNs can cause competitors to double-bill, fail to bill or lose their customers.[162] As a preliminary matter, we note that the Pennsylvania Commission currently does not require Verizon to track the timeliness and accuracy of BCNs.[163] However, the absence of a particular performance metric is not, in and of itself, fatal to the ability of the applicant to demonstrate checklist compliance. Instead, we rely on a variety of performance measurements to examine a BOCs compliance with the competitive checklist.

44. In this case, Verizon has committed to implement a BCN timeliness metric in Pennsylvania in the future[164] and, for the purposes of this application, has provided BCN timeliness information in Pennsylvania based upon the New York BCN metric.[165] The New York BCN metric measures the time elapsed from the moment that Verizon's Service Order Processor (SOP) records a service order as complete to the moment Verizon's gateway system generates a BCN.[166] According to Verizon, the SOP does not transmit information to the gateway system instantaneously.[167] In New York, this cycle generally ranges from two to three days.[168] In

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[160] *See, e.g., Bell Atlantic-New York Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Order, 15 FCC Rcd 5413 (2000) (announcing a $3 million payment to the United States Treasury and other terms of a Consent Decree entered with Bell Atlantic following an investigation into lost or mishandled orders for electronically submitted unbundled network element orders in New York).

[161] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4052-53, para. 187; *see also* CompTel Comments, Declaration of Elliot M. Goldberg on Behalf of the Competitive Telecommunications Association at para. 4 (CompTel Goldberg Decl.).

[162] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4052-53, para. 187. These types of BCN errors can also cause a competitive LEC to continue to purchase wholesale services from Verizon to serve a customer whose service should have already been terminated due to either non-payment or migration back to the incumbent LEC. *See, e.g.*, CompTel Comments at 18; CompTel Goldberg Decl. at para. 7.

[163] AT&T Bloss/Nurse Decl. at para. 24; WorldCom Kinard Decl. at para. 11.

[164] Verizon Reply at 60.

[165] Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 74.

[166] Verizon McLean/Wierzbicki/Webster Decl. at paras. 102-105.

[167] *Id.* at paras. 104-105.

Pennsylvania, however, this cycle generally ranges from three to four days.[169] Accordingly, while the New York BCN timeliness metric uses a benchmark of three business days, Verizon uses a benchmark of four business days to demonstrate that it provides BCNs to competitors in a non-discriminatory manner for purposes of this application.[170] Using the four-day benchmark to account for Pennsylvania's different billing cycles, Verizon reports 98.1% and 98.55% performance levels for May and June 2001, respectively.[171] Significantly, it appears that at least one of the competitive LECs that alleged untimely and inaccurate BCNs in the past now acknowledges that Verizon has demonstrated significantly improved performance in recent months.[172] For purposes of this application, therefore, we find that Verizon's reliance on the four-day benchmark is reasonable and that Verizon delivers BCNs in a timely manner.

(iii) Access to Loop Qualification Information

45. In the *UNE Remand Order*, the Commission concluded that all incumbent LECs must provide nondiscriminatory access to the same loop information that is available to the incumbent.[173] We find that Verizon provides competitive LECs with access to loop qualification

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[168] *Id.* at para. 104. During this time, Verizon cannot process updates to the billing system for held accounts for either wholesale or retail customers. *Id.*

[169] *Id.*

[170] While some competitive LECs cite data purporting to show Verizon's BCNs are inaccurate and arrive late, *see, e.g.*, AT&T Comments at 49; AT&T Fawzi/Kirchberger Decl. at para. 46; WorldCom Comments at 26; CompTel Comments at 19; CompTel Goldberg Decl. at paras. 4-16 and Attach. I; Capsule Joint Comments at 18-19, this data generally relies on a three-day standard or on date and time stamps that differ from those stamps actually used in the design and operation of Verizon's OSS. *See, e.g.*, AT&T Fawzi/Kirchberger Decl. at para. 46 (relying on a three-day standard, rather than the more appropriate four-day standard to determine timeliness); CompTel Comments at 19 (calculating BCN timeliness with date and time stamps that differ from those stamps actually used in the design and operation of Verizon's OSS); *see also* Verizon Reply Comments at 44-45; Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 77. While we recognize that Verizon's February-March performance falls short of the goal of moving 95 percent of relevant data from SOP to BCN within four days, Verizon provided more timely BCN performance in January and April and, after system modifications, still better performance in May and June. *See* Verizon Reply Comments at 45; Verizon McLean/Wierzbicki/Webster Decl. at para. 106 and Attach. 24; Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 74-77.

[171] Verizon Reply at 45; Verizon McLean/Wierzbicki/Webster Decl. at para. 106 and Attach. 24; Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 74-77.

[172] WorldCom Lichtenberg Decl. at paras. 60-62 ("As of early February, WorldCom calculated that it had submitted trouble tickets with missing notifiers for nearly a fifth of the [PONs] it had transmitted." Recent fixes have improved BCN performance, but "WorldCom has no confidence that the current improvement will be permanent."). Although WorldCom asserts that Verizon has not performed a root-cause analysis, Verizon states that it provides competitive LECs with a "root-cause" analysis of BCN problems that have occurred and provides competitive LECs with weekly "root-cause" reports for any PONs reported on missing-notifier trouble tickets that are not resolved by resending the requested notifier through Verizon's OSS. *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 75. We find Verizon's response persuasive.

[173] The Commission's rules require Verizon to provide competitors all available information in its databases or internal records, in the same time intervals that it is available to any incumbent LEC personnel, regardless of (continued….)

information in a manner consistent with the requirements of the *UNE Remand Order*. We note that the Pennsylvania Commission also found that Verizon provides nondiscriminatory access to loop qualification information.[174] In our *Verizon Massachusetts Order*, the Commission concluded that Verizon's interim process for access to loop qualification information, coupled with Verizon's work in the formal change management process to implement enhanced permanent loop qualification processes, was sufficient for checklist compliance.[175] In addition, we are encouraged by Verizon's indication, in the instant application, that it is on track to provide access to loop qualification information through the permanent fix described in its Massachusetts application by October 2001.[176] After October 2001, therefore, in future section 271 applications, we would expect to review Verizon's permanent OSS process for access to loop qualification information.

46. POCA complains that Verizon has not yet included in its loop qualification database information on all loops in its network inventory.[177] We note that under our current rules Verizon does not have an affirmative duty to create additional loop qualification information but rather an obligation to share with requesting carriers all such information that exists anywhere in Verizon's back office and can be accessed by any of Verizon's personnel.[178] We do not find any evidence in the record to support allegations that Verizon is not in compliance with our rules.

47. We find unpersuasive Covad's assertion that a recent Arthur Anderson audit of Verizon found evidence that Verizon possesses loop make-up information that it only makes available to itself.[179] As Verizon explains, this audit reviewed its provision of loop qualification information prior to its implementation of the interim process approved by the Commission in the

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whether Verizon's retail arm or advanced services affiliate has access to such information. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order, 15 FCC Rcd 3696, 3885-3886, paras. 427-431 (*UNE Remand Order*).

[174] *See* Verizon Reply at 22 (*citing Verizon Massachusetts Order,* 16 FCC Rcd 8988 at 9021, para. 60); Pennsylvania Commission Comments at 134.

[175] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9021-9022, paras. 61-62, 9024-9025, para. 67. Covad raises issues regarding Verizon's interim process similar to those it raised in Massachusetts. *See* Covad Comments at 17. We reject Covad's arguments for the same reasons expressed in our *Verizon Massachusetts Order*.

[176] *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 63. Verizon states that this permanent method of access to loop qualification will be made available throughout the Verizon territory. *Id.*

[177] POCA Comments at 7-9. POCA asserts that Verizon has only included information in its loop qualification database for those central offices where competitive LECs have collocation arrangements. *See* POCA Comments at 11-12.

[178] *See UNE Remand Order* at 3886, para. 430. As we explained in the *UNE Remand Order*, to the extent an incumbent has not compiled loop information for itself, it is not required to "conduct a plant inventory and construct a database on behalf of requesting carriers." *Id.* at 3886, para. 429. Instead, the incumbent is obligated to provide requesting competitors with nondiscriminatory access to loop information within the same time frame whether it is accessed manually or electronically. *Id.*

[179] *See* Covad Comments at 16-17.

Verizon Massachusetts Order.[180] The record contains no evidence to suggest that Verizon's current OSS process for access to loop qualification information have not addressed any section 271 concerns raised by the audit Covad cites. Moreover, we note that audit findings do not contain legal determinations and, accordingly, find that they do not necessarily warrant a finding of checklist noncompliance.

(iv) Flow-Through

48. Verizon provides adequate electronic processing of orders. Flow-through measures the percentage of orders that pass through an incumbents' ordering systems without the need for manual intervention. Flow-through rates are not an end in themselves, but rather a tool used to indicate a wide range of possible deficiencies in a BOC's OSS that may deny an efficient competitor a meaningful opportunity to compete in the local market.[181] Contrary to the claims of some commenters, [182] we do not specifically require Verizon to provide data on its achieved flow-through rate[183] to determine that Verizon's OSS are capable of offering high flow-through.[184]

49. Some parties complain that Verizon's flow-through rates for Pennsylvania are low, but there is no further evidence that there are OSS deficiencies related to an insufficient level of flow-through in OSS access for competitive LECs in the state.[185] In Pennsylvania, Verizon measures "total" and "simple" flow through.[186] Although Verizon's commercial data show relatively low average total flow-through rates – ranging from about 54 to 66.5 percent from February 2001 through June 2001[187] – we agree with the Pennsylvania Commission and 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.[188] We reach this conclusion for several reasons.

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[180] *See* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 64.

[181] *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9030, para. 77.

[182] *See* AT&T Bloss/Nurse Decl. at para. 25; *see also* WorldCom Kinard Decl. at paras. 9, 20, 27.

[183] "Achieved flow through" measures the percentage of orders designed to flow through that do, in fact, flow through.

[184] *Verizon Massachusetts Order*, 16 FCC Rcd at 9032, para. 80 ("We do not specifically need . . . achieved flow-through figures in order to determine that Verizon's OSS are capable of offering high flow-through.").

[185] Some competitive LECs assert that Verizon's flow-through performance is inadequate. *See, e.g.*, AT&T Comments at 46-47; AT&T Fawzi/Kirchberger Decl. at paras. 33-45; AT&T, Bloss/Nurse Decl. at para. 25-26; AT&T Reply Comments at 32-35; Capsule Joint Comments at 9, 14-15; Covad at 20; WorldCom at 27-28; WorldCom, Lichtenberg Decl. at para. 64; WorldCom, Kinard Decl. at para. 9; PAOCA at 15-24.

[186] "Total flow through" measures the percentage of all orders (both those that are designed to flow through and those that are not designed to flow through) that flow through. "Simple flow through" measures the percentage of all electronically submitted basic POTS service orders that flow through.

[187] *See* OR 5-01 (Percent Flow-Through Total).

[188] *See* Pennsylvania Commission Comments at 87.

First, since April 2001, Verizon has demonstrated a steady improvement in its flow-through performance.[189] Second, Verizon's accuracy in processing orders is on par with the performance levels that we found acceptable in the New York and Massachusetts section 271 applications.[190] Third, Verizon's carrier-specific performance reports show that some competing carriers in Pennsylvania attain much higher flow-through rates than others.[191] 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.[192] Finally, our conclusion that Verizon's systems are capable of achieving high overall levels of order flow-through is reinforced by KPMG's testing, which found that Verizon satisfied all test criteria for flow-through performance.[193] In these circumstances, we do not find competitive LEC arguments concerning flow-through rates persuasive and conclude that Verizon provides sufficient flow-through of orders to meet checklist item 2.[194]

(v) Other OSS Issues

50. Commercial data demonstrates that Verizon electronic interfaces support a robust volume of commercial activity in Pennsylvania.[195] Nevertheless, some commenters allege that Verizon's Electronic Data Interchange (EDI) interface has serious shortcomings[196] and others claim to have experienced problems with Verizon's Web-based Graphical User Interface (Web GUI).[197] According to AT&T, for example, KPMG tested the wrong version of Verizon's EDI

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189 Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 67 and Attach. 11.

190 *Compare* Verizon Reply App. A, Vol. 2, Joint Reply Declaration of Elaine M. Guerard, Julie A. Canny and Marilyn C. DeVito (Performance Measurements) at Attach. 1 (Verizon Guerard/Canny/DeVito Reply Decl.) (service order accuracy scores for OR-6-01 (percent accuracy orders) and OR-6-02 (percent accuracy opportunities) ranging from 85 to 99 percent), *with Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 174 and n.548 (adjusted service order accuracy score of 87 percent), *and Verizon Massachusetts Order*, 16 FCC Rcd at 9032, para. 81and n.251 (service order accuracy scores ranging from 82 to 99 percent). *See generally* Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 67.

191 Verizon McLean/Wierzbicki/Webster Decl. at para. 77.

192 *See Verizon Massachusetts Order*, 16 FCC Rcd at 9030, para. 78.

193 KPMG Final Report at 307-308 (reporting satisfactory results for the TVV-3-1, TVV-3-2, TVV-3-3, TVV-3-4 and TVV-3-5 tests, which evaluate various aspects of Verizon's systems and processes that affect flow-through performance); Verizon McLean/Wierzbicki/Webster Decl. at para. 75; *see also* Verizon McLean/Wierzbicki/Webster Reply Decl. at paras. 59-62.

194 *See, e.g.*, WorldCom Comments at 28; AT&T Comments at 47-48.

195 Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 58.

196 AT&T Comments at 45-46; Covad Comments at 19. EDI is an asynchronous ordering interface that competitive LECs use to order services from incumbent LECs. EDI is well suited for large-volume transactions.

197 Capsule Joint Comments at 12-13; AT&T Bloss/Nurse Decl. at para. 21. Web GUI is a synchronous ordering interface that competitive LECs use to order services from incumbent LECs. Web GUI is well suited for small-volume transactions.

interface.[198] AT&T adds that Verizon's pre-ordering metrics fail to capture long response times and outages and that certain other metrics for ordering are similarly flawed.[199] We do not find these arguments persuasive. KPMG tested LSOG 2, which was the current EDI version deployed by Verizon when KPMG began its test.[200] Moreover, KPMG's testing involved more than seven times the number of transactions that AT&T's testing did.[201] In addition, Verizon has provided convincing information concerning EDI implementation, jeopardy notices over the EDI interface and the processing of Local Service Requests with multiple blocking options.[202] Verizon also has demonstrated that most of the remaining competitive LEC claims regarding its OSS interfaces result in large part from errors in compiling data.[203] Under these circumstances, we find that Verizon provides nondiscriminatory access to its electronic interfaces.

51. A few commenters also allege that Verizon's change-management performance is sub-standard. Some competitive LECs assert that Verizon makes improvements to its BOS BDT bill without notifying competitive LECs through the change management process.[204] Verizon responds that the changes to the BOS BDT bill systems are "back-office" OSS changes that do not impact OSS interfaces, and therefore, are not subject to the same business rules and specification requirements as interface software releases.[205] CompTel alleges that competitive LEC-initiated change management proposals languish compared to Verizon-initiated change management proposals.[206] Even if we were to credit CompTel's claims, however, Verizon has shown that competing carriers can influence the change management process in many ways other than initiating new proposals.[207] Based on Verizon's explanations, we agree with the Pennsylvania Commission and find that Verizon is not violating the principles of change management.[208]

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198 AT&T Comments at 45; AT&T Fawzi/Kirchberger Decl. at paras. 20-21.

199 AT&T Bloss/Nurse Decl. at paras. 20-23. According to AT&T, KPMG's interface test was flawed because KPMG tested the LSOG 2 rather than the LSOG 4 interface; however, KPMG tested the current version of the EDI interface at the time KPMG began its test. Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 59.

200 Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 59.

201 *Id*. at para. 61.

202 *Id*. at paras. 71-72.

203 *Id*. at paras. 59-62 (comparing KPMG's testing methodology with AT&T testing methodology), 65 (responding to limited complaints about the Web GUI interface by noting that WorldCom made several errors in compiling its data, including using the wrong hours and business days in its definition of "prime time").

204 AT&T Fawzi/Kirchberger Decl. at paras. 78, 80, and n.63, n.64; WorldCom Lichtenberg Decl. at para. 16.

205 Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 78.

206 CompTel Goldberg Decl. at para. 21.

207 Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 79.

208 *See* Pennsylvania Commission Comments at 104.

52. Finally, some commenters claim that Verizon's "line-loss" notifications are inaccurate.[209] "Line loss" occurs when a competitive LEC loses a customer to another competitive LEC or back to the incumbent LEC. If a carrier does not receive complete, timely and accurate line-loss notifications, a carrier will continue to bill an end-user even though the end-user has discontinued service with that carrier.[210] While Verizon notes that a line-loss reporting error did occur in the past, Verizon represents that it notified the industry, fixed the problem and provided competitive LECs with corrected files in a timely manner.[211] In addition, Verizon represents that the percentage of working telephone numbers reported as missing or incorrect has averaged less than one percent across the entire Verizon South footprint and adds that this one-percent figure actually overstates the trouble ticket tally in Pennsylvania, of which Verizon asserts approximately one-third result from competitive LEC error.[212] We are persuaded by Verizon's showing on this issue.

b. Pricing of Network Elements

(i) Background

53. In setting UNE rates, the Pennsylvania Commission has conducted numerous proceedings that have culminated in three rate proceedings. On April 10, 1997, the Pennsylvania Commission released the MFS III Order, setting forth interim rates for unbundled elements.[213] On August 7, 1997, the Commission made the rates in the MFS III Order permanent.[214] The Pennsylvania Commission stated in the MFS III Order that its rates were set using Total Service Long-Run Incremental Cost (TSLRIC), a forward-looking costing methodology similar to

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[209] AT&T Fawzi/Kirchberger Decl. at paras. 60-64; WorldCom Reply at 1-4; WorldCom Lichtenberg Reply Decl. at paras. 3-18.

[210] *See* WorldCom Reply at 2. WorldCom adds that a competitive LEC that does not receive complete, accurate and timely line-loss reports will have no indication that a customer who calls to complain about double-billing has discontinued service and, in fact, has been improperly billed. *Id.* "As a result," according to WorldCom, "customers will be double billed, [competitive LECs] will be unable to resolve the problem, and the damage to the [competitive LEC's] reputation will be severe." *Id.*

[211] Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 70; Letter from Clint E. Odom, Verizon, to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 1-2 (Aug. 29, 2001) (Verizon Aug. 29 *Ex Parte* Letter).

[212] Verizon Aug. 29 *Ex Parte* Letter at 1-2. "Verizon South" refers to the original pre-merger Bell Atlantic territory.

[213] Verizon Application App. B, Tab O, Sub-Tab 8 (Pennsylvania Commission's Interim Order setting UNE rates (Apr. 10, 1997)) (MFS III Order).

[214] Verizon Application App. B, Tab O, Sub-Tab 12 (Pennsylvania Commission's Final Opinion and Order adopting and modifying MFS III Order (Aug. 7, 1997)) (Final MFS III Order). In the Final MFS III Order, the Pennsylvania Commission reduced the common overhead factor, but otherwise adopted the MFS III Order. *Id.* at 4-6, 9.

TELRIC.[215] Subsequently, a federal district court remanded for reconsideration the manner in which the Pennsylvania Commission established the pricing of UNEs in the MFS III Order.[216] The court found that the Pennsylvania Commission had failed to demonstrate that the TSLRIC methodology it applied complies with TELRIC.[217] The district court's order is currently on appeal.

54. In the Global Order, released on September 30, 1999, the Pennsylvania Commission ordered Verizon to adjust its rates to reflect modifications the Pennsylvania Commission made to its earlier decisions.[218] On June 8, 2001, the Pennsylvania Commission released an interim order reviewing Verizon's implementation of the Global Order rates, and setting rates for unbundled elements related to DSL, line sharing, collocation in remote terminals, dark fiber, and sub-loops.[219] Verizon has filed revisions to its tariff to implement most of these rates, and, pursuant to an order by the Pennsylvania Commission, will file the remainder on September 28, 2001.[220]

(ii) Discussion

55. Based on the evidence in the record, we find that Verizon's charges for UNEs made available in Pennsylvania to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2. The Pennsylvania Commission concludes that Verizon has satisfied the requirements of this checklist item.[221] 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."[222] In reviewing Verizon's Pennsylvania pricing, we find that the Pennsylvania Commission generally followed

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[215] *See* MFS III Order at 13.

[216] Memorandum and Order, *MCI Telecomm. Corp. v. Bell Atlantic-Pennsylvania, Inc.*, No. 97-CV-1857, *slip op.* At 10-13 (M.D. Pa. June 30, 2000), appeal pending, No. 00-2257 (3d Cir., filed July 28, 2000).

[217] *See id*.

[218] Verizon Application App. B, Tab J, Sub-Tab 6 (Pennsylvania Commission's Opinion and Order Resolving Several Dockets (Sep. 30, 1999)) (Global Order).

[219] Verizon Application App. B, Tab S, Sub-Tab 2 (Pennsylvania Commission's Interim Opinion and Order Setting UNE Rates (June 8, 2001)).

[220] *See* Letter from Clint E. Odom, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at Attach. D (filed Aug. 8, 2001) (Verizon Aug. 8 *Ex Parte* Letter).

[221] Pennsylvania Commission Comments at 55, 61.

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

basic TELRIC principles, and that the resulting rates are within the range that reasonable application of TELRIC would produce.

56. As an initial matter, we find that the Pennsylvania Commission followed basic TELRIC principles. We reject AT&T's and WorldCom's assertion that the district court's findings demonstrate that the Pennsylvania Commission did not apply TELRIC in its MFS III cost proceeding.[223] The Commission, in adopting the TELRIC methodology, specifically noted that TELRIC is "a version of the methodology commonly referred to as TSLRIC."[224] Thus, the Pennsylvania Commission's use of TSLRIC does not necessarily result in UNE rates that violate TELRIC. Similarly, AT&T and WorldCom assert that Verizon's Pennsylvania UNE rates use an embedded cost methodology, and estimate the cost of replicating rather than replacing Verizon's network, in violation of our TELRIC methodology.[225] We are unconcerned with labels and general characterizations of the approach a state commission uses in setting rates. Instead, we consider allegations of specific decisions in violation of a TELRIC approach, and the actual rates that are in effect.

57. The orders of the Pennsylvania Commission provide numerous indicia that it has followed a forward-looking approach that is consistent with TELRIC. In the MFS III Order, the Pennsylvania Commission made a decision to use Next Generation Digital Loop Carriers rather than existing Digital Loop Carriers.[226] In the Final MFS III Order, the Pennsylvania Commission adjusted the common overhead factor to prevent Verizon from being made whole in the face of anticipated losses arising from competition.[227] In the Global Order, the Pennsylvania Commission made adjustments to the cost of capital and the copper feeder fill factor to better reflect forward-looking levels.[228] We note that these, as well as the vast majority of the specific decisions made by the Pennsylvania Commission, are consistent with the TELRIC methodology, and are not challenged here.

58. We also find that the Pennsylvania Commission properly applied the TELRIC methodology with respect to several issues disputed by the parties. First, WorldCom asserts that the fill factors for copper cable and DLCs are unreasonably low.[229] A fill factor is the estimate of

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[223] *See* AT&T Comments at 13; WorldCom Comments at 19-20.

[224] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15845-46, para. 678 (1996) (*Local Competition First Report and Order*).

[225] AT&T Comments at 19-22; WorldCom Comments at 18-22. AT&T also asserts that the rates are "the product of an arbitrary negotiated settlement." AT&T Comments at 10-11. Given that both AT&T and WorldCom are able to state with specificity various alleged TELRIC defects with the methodology used in Pennsylvania, we find this assertion without merit.

[226] MFS III Order at 69-70.

[227] Final MFS III Order at 7-9.

[228] *See* Global Order at 74-76.

[229] WorldCom Comments at 23.

the proportion of a facility that will be used. In other words, the per-unit cost associated with a particular element should take into account the total cost associated with the element divided by a reasonable projection of the actual total usage of the element.[230] In its Global Order, the Pennsylvania Commission set copper cable fill factors at eighty-five percent.[231] We find nothing unreasonable in the copper cable fill factor adopted by the Pennsylvania Commission, and WorldCom has not presented any evidence in support of its contention that this fill factor was set too low. We also note that this fill factor is above what the Commission adopted in the Universal Service proceeding.[232] In the MFS III Order, the Pennsylvania Commission set the DLC fill factor at eighty-five percent. The Pennsylvania Commission decided that Verizon's DLC fill factor struck the appropriate balance between necessary reserve capacity and efficient facility utilization, but that the ninety percent fill factor proposed by AT&T and MCI's witness failed to allow for unforeseen requirements.[233] We find nothing unreasonable in this conclusion, and note that this fill factor adopted is only slightly below the ninety percent level adopted in the Universal Service proceeding.[234]

59. Second, AT&T criticizes the fact that Verizon's loop rates improperly include the cost of a one hundred percent fiber network in anticipation of Verizon someday providing broadband services. We reject AT&T's concerns with respect to Verizon having twenty percent of all loops use one hundred percent fiber cable.[235] The Commission has previously found that, even though fiber can be more expensive than copper in shorter loop lengths, the use of fiber can be consistent with TELRIC.[236] In the *Bell Atlantic New York Order*, the Commission rejected the argument that Verizon "installed all-fiber feeder in order to subsidize its own broadband network for the provision of future services, and that competitors should not be required to subsidize such costs."[237] Consistent with the New York Commission's findings, the Pennsylvania Commission also found that costs associated with fiber loops are likely to be lower than those of copper loops.[238] The Pennsylvania Commission noted that in setting its loop rates, Verizon only included the voice-grade, narrowband costs, and not the costs of the electronics associated with broadband

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[230] If a fill factor is set too high, the particular element will have insufficient capacity to accommodate anticipated increases in demand or service outages. If a fill factor is set too low, the network could have considerable excess capacity, which results in increases to the per-unit cost higher than an efficient firm's cost.

[231] Global Order at 75-76.

[232] *See Universal Service Tenth Report and Order*, 14 FCC Rcd at 20369, App. A, Part 1.

[233] MFS III Order at 70-72.

[234] *See* http://www.fcc.gov/ccb/apd/hcpm.

[235] *See* AT&T Comments at 22-24.

[236] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4086-87, paras. 248-49, *aff'd AT&T Corp. v. FCC*, 220 F.3d 607, 619 (D.C. Cir. 2000).

[237] *Bell Atlantic New York Order*, 15 FCC Rcd at 4086-87, para. 248.

[238] MFS III Order at 67, 69.

deployment.[239] We believe that the Pennsylvania Commission's findings here are reasonable, and find that AT&T has not presented evidence sufficient to prove that the Pennsylvania Commission erred in this decision.

60. Third, we reject WorldCom's assertion that Verizon overstates switching costs in the manner by which it incorporates the cost of features. WorldCom claims that certain features are not included within the switching rates, and that Verizon has included the costs for features as if they were separate retail services.[240] Verizon has provided two separate rates for switching ports: one that includes all features, set at $2.67; and one that includes all except four features, set at $1.90. The four features are priced separately.[241] WorldCom provides no evidence that the rates for the full-featured switch port do not incorporate features using a TELRIC methodology, and fails to identify any features that are excluded from the higher switching port rate. The fact that Verizon offers a cheaper alternative with less than all the available features does not render the price for a switch port with all features unlawful.

61. We note that AT&T and WorldCom allege additional specific TELRIC violations not addressed above.[242] Even assuming, *arguendo*, that all of AT&T's and WorldCom's pricing claims are correct and that the specific inputs do not comply with TELRIC, we conclude that the alleged errors do not yield an end result outside a TELRIC-based range. After comparing relevant rates and costs in Pennsylvania with those in New York, we conclude that the Pennsylvania Commission's calculations result in rates that a reasonable application of TELRIC would produce.

62. *Rate Comparison*. The Pennsylvania Commission has expended an enormous amount of effort in its ratemaking proceedings, and we applaud the Pennsylvania Commission for the tremendous amount of work it has done. The Pennsylvania Commission's approach is generally compliant with our TELRIC methodology. Indeed, of the literally hundreds of decisions the Pennsylvania Commission has had to make in setting rates, parties allege that only a handful of them are suspect. In examining the rates adopted by the Pennsylvania Commission, we must determine whether Pennsylvania loop and non-loop recurring UNE rates fall outside the range that a reasonable TELRIC-based ratemaking would produce.

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239 MFS III Order at 69.

240 WorldCom Comments at 24.

241 *See* Verizon Application App. B, Vol. 29b, Tab BB, Sub-Tab 4, Verizon Pennsylvania Tariff No. 216, at 36.

242 Specifically, AT&T and WorldCom make the following additional allegations: (1) the UNE rates are inflated by short depreciation lives and excessive maintenance and repair costs; (2) the costs of digital loop carrier (DLC) are unlawfully inflated by using a weighted average of integrated DLC and universal DLC, even though integrated DLC is the forward-looking technology; (3) the loop rates are inflated by low fill factors for fiber cable; (4) Verizon's loop cost model inflates loop rates by double counting the need for excess capacity in its distribution cables; and (5) the switching rates are set too high because Verizon used a combination of new and add-on switch discounts in determining switch prices, rather than the new switch discount only. *See* AT&T Comments at 22-30; WorldCom Comments at 22-25.

63. The Commission has stated that when a state commission does not apply TELRIC or does so improperly (*e.g.*, there was a major methodological mistake or incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce.[243] In comparing the rates, the Commission has used its USF cost model to take into account the differences in the underlying costs between the applicant state and the comparison state. The Commission has stated that a comparison is permitted when the two states have a common BOC; the two states have geographic similarities; the two states have similar, although not necessarily identical, rate structures for comparison purposes; and the Commission has already found the rates in the comparison state to be reasonable.[244]

64. We find that New York is a permissible state for comparison purposes here. New York is adjoining, has a similar rate structure, and has been found to have adopted reasonable rates in compliance with TELRIC. The Commission's previous orders did not make clear whether two states would be considered as having the same BOC if they were part of the same BOC upon divestiture, when the pricing dockets were considered, or at the time of application. New York and Pennsylvania, although both part of Verizon's service territory, were not part of the same original BOC. We find, however, that while a comparison state's rates must have been found reasonable,[245] the remaining criteria previously set forth should be treated as indicia of the reasonableness of the comparison. This change in our test is mandated because, on review, it is clear that the most relevant factor of the four-part test is TELRIC compliance. Without a finding of TELRIC compliance for the benchmark state, a comparison loses all significance. The other criteria do not rise to such a level. They are useful to assure us that a comparison is meaningful, but the absence of any one of them does not render a comparison meaningless. In this instance, we find that given that New York meets at least three of the four indicia, we are confident that the comparison is sound. The cost model makes no distinction between data among BOCs, and we have no reason to suspect that such a comparison has been made less significant because different BOCs served the two states.[246]

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[243] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

[244] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

[245] To date, we have found that the New York, Texas and Kansas commissions have applied TELRIC correctly for recurring UNE charges.

[246] To date, we have not been in the position where the only previously-approved states that we could use to compare an applicant's state are in other BOCs' regions. We will evaluate the appropriateness of such a comparison should the situation arise.

65. As the Commission has previously noted, our USF cost model provides a reasonable basis for comparing cost differences between states.[247] For recurring charges,[248] if the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as predicted by the USF model, then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant.[249]

66. We consider the reasonableness of loop and non-loop rates separately. Where the Commission finds that the state commission correctly applied TELRIC for one category of rates, it will only compare the rates of the other category. If, however, there are problems with the application of TELRIC for both loop and non-loop rates, as is the case with Verizon's rates here, then the same benchmark state must be used for all rate comparisons to prevent a BOC from choosing for its comparisons the highest of approved rates for both loop and non-loop UNEs.

67. We conclude that Pennsylvania recurring UNE rates fall within the range that TELRIC-based ratemaking would produce. Specifically, with respect to loops, in taking a weighted average in Pennsylvania and New York, we find that Pennsylvania's rates are roughly the same as those in New York,[250] even though the USF cost model suggests that costs in

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[247] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20455-56, paras. 41-42 (1999).

[248] We cannot rely on the USF model to provide guidance in examining non-recurring rates, because it does not examine these costs.

[249] Example 1: State X's rates are 20 percent higher than benchmark state B's rates, and X's costs are 25 percent higher. Because the 20 percent difference in rates is less than the 25 percent relative difference in costs, X's rates would be found to be within the reasonable range that TELRIC would produce. Example 2: State Y's rates are 15 percent less than benchmark state B's rates, and Y's costs are 10 percent lower. Because the -15 percent difference in rates is less than the -10 percent relative difference in costs, X's rates would be found to be within the reasonable range that TELRIC would produce.

In making this analysis, we make a number of adjustments to the USF cost model. *See* http://www.fcc.gov.ccb/apd/hcpm. The overhead costs used in the model are adjusted to reflect the fact that the UNE-P is a wholesale offering, while USF costs are for a retail offering. Specifically, the overhead cost is reduced and spread across all network elements. *See* letter from Robert W. Quinn, Jr., Vice President, Federal Government Affairs, AT&T, to Magalie Roman Salas, Federal Communications Commission, CC Docket No. 01-9, at Attach. (filed February 1, 2001); *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20421-23, Appendix D.

The USF end office switching, common and direct transport, and signaling costs are adjusted to include, in addition to local traffic costs, costs for intrastate and interstate access, and intraLATA toll traffic. This adjustment is made because a CLEC might use the UNE-P for access and intraLATA toll traffic in addition to local traffic, and the USF cost model excludes these costs. In addition, the allowance for retail uncollectible revenues reflected in the USF costs is removed, and allowances for wholesale uncollectible revenues costs and for carrier-to-carrier customer service costs are added to the USF costs.

[250] The weighted average rates for a 2-wire analog loop in New York and Pennsylvania are $14.03 and $14.08, respectively.

Pennsylvania are roughly one-third more than the costs in New York.[251] With respect to non-loop elements, we find that the rates in Pennsylvania are over forty-one percent less than the rates in New York,[252] even though the USF cost model suggests that non-loop costs in Pennsylvania are around six percent more than the costs in New York.[253] In approving Verizon's application in Massachusetts, we also relied on a comparison with New York rates. We note that the rates in Pennsylvania, in contrast to those in Massachusetts, are well below the cost-adjusted rates in New York. This fact gives us even greater confidence as to the reasonableness of the Pennsylvania recurring UNE rates.

68. *Non-recurring Charges.* We also conclude that based upon the evidence in the record, Verizon has demonstrated that its non-recurring UNE rates are in compliance with TELRIC. The Pennsylvania Commission has reached the same conclusion, and no party has raised allegations challenging these rates.

69. Because we find the rates currently in effect to fall within the range that TELRIC-based ratemaking would produce, we find the concerns of WorldCom regarding a potential delay to the pending UNE cost proceeding before the Pennsylvania Commission to be unwarranted.[254] We also note that the Pennsylvania Commission recently issued an order requiring the UNE rate proceeding to begin on September 17, 2000, and requiring the presiding administrative law judge to issue a decision by April 30, 2002.[255]

70. Finally, we reject WorldCom's and AT&T's contention that competitors lack a sufficient profit margin between Verizon's retail and wholesale rates to allow local residential competition over the UNE-P, which indicates that the UNE rates are not TELRIC-based.[256] In

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[251] *See supra* n.249.

[252] Under an illustrative analysis, the weighted average rates for port, switching, signaling and transport for UNE-P in New York and Pennsylvania are $13.14 and $7.63, respectively. This makes the following monthly per line assumptions: 1200 originating and 1200 terminating local minutes of use (UNE charges for terminating local minutes of use to a competitive LEC's end users are offset exactly by reciprocal compensation owed to the competitive LEC); 25 percent of minutes intraswitch; 200 local calls; 370 originating and terminating intraLATA toll, intrastate interLATA, and interstate interLATA minutes of use; 25 intraLATA toll, intrastate interLATA, and interstate interLATA calls; and in New York, 60 percent of usage is day, 30 percent is evening, and 10 percent is night or weekend. We find that the weighted average for these rates in Pennsylvania is within the reasonable range that TELRIC would produce regardless of which set of reasonable usage assumptions we make in a comparison with New York rates.

[253] *See supra* n.249.

[254] *See* WorldCom Reply at 9.

[255] *See* Letter from Maryanne R. Martin, Assistant Counsel, Pennsylvania Public Utility Commission, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, Attach. at 10 (filed Sept. 6, 2001) (Pennsylvania Commission Sept. 6 *Ex Parte* Letter).

[256] *See* WorldCom Comments at 18; WorldCom Reply, Declaration of Vijetha Huffman at paras. 5-10 (WorldCom Huffman Reply Decl.); AT&T Reply at 8-9.

the *SWBT Kansas/Oklahoma Order*, the Commission held that this profitability argument is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based.[257] The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market. In this case, we have conducted an analysis of Verizon's recurring UNE rates and concluded that their rates meet this requirement. Questions of profitability are independent of this determination.

71. In addition, conducting a profitability analysis would require us to consider the level of a state's retail rates, because such an analysis requires a comparison between the UNE rates and the state's retail rates. Retail rate levels, however, are within the state's jurisdictional authority, not the Commission's.[258] Conducting such an analysis would further require a determination of what a "sufficient profit margin" is. We are hesitant to engage in such a determination. Moreover, even if this were a relevant consideration, WorldCom has not demonstrated that the rates set by the Pennsylvania Commission do not allow for profitable entry. WorldCom's own submission indicates that the state average rate provides a gross margin of roughly thirty percent for residential lines, and the margin is substantially higher for forty-six percent of the residential lines.[259] WorldCom does not provide any evidence with respect to business lines, where we expect the profitability is even greater. WorldCom's contentions notwithstanding, we note that competition currently exists in Pennsylvania through the use of the UNE-P.[260]

72. For these reasons, we conclude that Verizon meets its pricing obligations under the requirements of checklist item 2.

c. Provision of UNE Combinations

73. In order to comply with checklist item 2, a BOC also must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier.[261] We conclude, based upon the evidence in the record, that Verizon demonstrates that it provides nondiscriminatory access to network element combinations as required by the Act and our rules. We note also that the Pennsylvania

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[257] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6269, 6280-81, paras. 65, 92. *See also Verizon Massachusetts Order*, 16 FCC Rcd at 9008-09, paras. 41-42.

[258] *See id*.; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15922, para. 848 (declining to implement an imputation rule that would prevent price squeezes because doing so would impose substantial burdens on states to rebalance their retail rates. The issue of retail rates would similarly apply to any profitability analysis for a specific region of the state. *See* WorldCom Comments at 18; AT&T Reply at 7-8, n.7.

[259] *See* WorldCom Huffman Reply Decl. at Attach.

[260] *See* Verizon Application App. A, Vol. 4, Declaration of William E. Taylor, Attach. 1 at para. 1 (Verizon Taylor Decl.) (Competitive LECs serve more than 197,000 residential customers through the UNE-platform).

[261] 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315(b).

Commission found Verizon's provisioning of UNE combinations was compliant with the requirements of this checklist item.[262]

74. In Pennsylvania, Verizon provides access to both combinations of the loop-switch-transport elements (UNE-platform) and the loop-transport elements (enhanced extended loop or EEL).[263] At the time of its application, Verizon had provisioned over 220,000 UNE-platform combinations and 770 EELs, of which approximately 700 were conversions from existing special access circuits.[264]

75. Although commenters do not raise any issues with Verizon's provisioning performance for UNE combinations,[265] several commenters assert that contrary to our rules, Verizon refuses to convert special access circuits to EELs or charges unreasonable termination fees.[266] In reply, Verizon states that it is providing conversions of special access circuits to EELs in compliance with its obligations under our rules and that any termination fees associated with such conversions are reasonable and allowed by our rules.[267] We find that Verizon's position in regards to the conversion of special access circuits to EELs, as presented in this docket, complies with our current rules and that commenters have not presented evidence that Verizon has systematically deviated from its stated policies for such conversions. We further note that our current rules do not require incumbent LECs to waive tariffed termination fees for carriers requesting special access circuit conversion.[268]

2. Checklist Item 4 – Unbundled Local Loops

76. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide, "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or

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[262] *See* Pennsylvania Commission Comments at 68-74.

[263] *See* Verizon Application, App. A, Vol. 1, Joint Declaration of Paul A. Lacouture and Virginia P Ruesterholz at paras. 303, 310 (Verizon Lacouture/Ruesterholz Decl.).

[264] *See* Verizon Application at 23; Verizon Lacouture/Ruesterholz Decl. at para. 311.

[265] We also note that KPMG found Verizon's provisioning performance for UNE-platforms and EELs to be nondiscriminatory. *See* Verizon Lacouture/Ruesterholz Decl. at para. 312. Commenters also raise issues concerning Verizon's policies regarding the availability of facilities for high capacity loops, one of the network elements that make up the EEL combination, which we discuss in Section III.A.2.

[266] *See* Broadslate Joint Comments at 13-14; ALTS Reply at 7-8; Broadslate Joint Reply at 2-3; *see also* Capsule Joint Comments at 2-7.

[267] *See* Verizon Lacouture/Ruesterholz Decl. at paras. 312-315; *see also* Verizon Reply, App. A, Vol. 1, Reply Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at paras. 40-44 (Verizon Lacouture/Ruesterholz Reply Decl.).

[268] To the extent that commenters assert that Verizon's tariffed termination fees are not just and reasonable the appropriate forum to challenge such fees is in the appropriate federal or state review of the specific tariff at issue.

other services."[269] We conclude that Verizon demonstrates that it provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cuts, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for line sharing and line splitting.

77. In analyzing Verizon's compliance with this checklist item, we note first that the Pennsylvania Commission approved Verizon's performance as meeting the requirements of section 271.[270] We also recognize that, as of the date of Verizon's application, competitors have acquired and placed into use over 164,000 loops from Verizon in Pennsylvania, which is significantly more than were provided by other applicants at the time previous section 271 applications were filed with the Commission.[271] Finally, we note that commenters have not raised any significant issues with voice grade loops, which comprise the overwhelming majority of loops ordered by competitive LECs.[272] As in past section 271 proceedings, in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete.[273] Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.

78. Upon review, we find that Verizon provides nondiscriminatory access to all loop types. We also find that Verizon has demonstrated that it adequately provisions line-sharing and

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[269] 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. Dark fiber and loop conditioning equipment are among the features, functions, and capabilities of the loop. *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, n.301. *See* Appendix C at paras.48-52, regarding requirements under checklist item 4.

[270] *See* Pennsylvania Commission Comments at 4, 161. The Department of Justice concluded that "Verizon has made significant progress toward opening its local markets in Pennsylvania to competition." Department of Justice Evaluation at 2. The Department of Justice cites Verizon's estimate that, using all modes of entry, competitors serve approximately 990,000 lines in Pennsylvania, around 14 percent of all lines in Verizon's area. Of these, competitors serve approximately 661,000 business lines, around 23 percent of all business lines. *Id*. at 4, 5.

[271] For example, Verizon had provided approximately 69,000 stand-alone unbundled local loops in Massachusetts when it filed its section 271 application in that state. *See Verizon Massachusetts Order*, 16 FCC Rcd 8988 at 8990, para. 3. When SWBT filed its application in Texas, it had provided approximately 54,000 loops on a stand-alone basis. *See SWBT Texas Order*, 15 FCC Rcd at 18481, para. 249. In New York, Verizon had provided approximately 50,000 stand-alone loops when it filed its application there. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4097, para. 277.

[272] The record reflects that in Pennsylvania, Verizon had provisioned approximately 145,000 voice grade loops, 15,000 stand-alone xDSL-capable loops, 2,800 digital loops, 500 high capacity loops, and 1,000 line sharing arrangements to competitive LECs as of June 21, 2001, the date Verizon filed its section 271 application. Verizon Application at 23, 26, 33; Verizon Lacouture/Ruesterholz Decl. at para. 140; Verizon Guerard/Canny/DeVito Reply Decl. at Attach. 1, 47.

[273] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

line-splitting. Furthermore, as described above in Section A.1.a., we find that Verizon provides access to loop makeup information in compliance with our rules.

79. *xDSL-Capable Loops.* We find that Verizon demonstrates that it provides stand-alone xDSL-capable loops in accordance with the requirements of checklist item 4. Verizon makes available xDSL-capable loops in Pennsylvania through interconnection agreements and pursuant to tariffs approved by the Pennsylvania Commission.[274] In analyzing Verizon's showing, we review performance measures comparable to those we have relied upon in prior section 271 orders: order processing timeliness, installation timeliness, missed installation appointments, installation quality, and the timeliness and quality of the maintenance and repair functions.[275]

80. We find that Verizon demonstrates that it provisions xDSL-capable loops in a nondiscriminatory fashion. Five of the six performance measures listed above demonstrate that Verizon's performance for competitive LECs is generally in parity with benchmarks established in Pennsylvania.[276] Specifically, Verizon provides responses to competing carrier requests for loop information in substantially the same time and manner as for itself and provides timely order confirmation notices to competitors.[277] Further, Verizon has generally met the benchmark for installation timeliness and missed installation appointments for each month from February through May.[278] Pennsylvania data for maintenance and repair timeliness and quality also show nondiscriminatory performance between competitors and Verizon's retail customers. Both the

[274] Verizon Lacouture/Ruesterholz Decl. at para. 157.

[275] *See Verizon Connecticut Order*, 16 FCC Rcd at 15153-56, paras. 15-20; *Verizon Massachusetts Order*, 16 FCC Rcd at 9056, para. 123, and 9059, para. 130; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6237 at 6326-27, paras. 181-182. We note that individual states and BOCs may define performance measures in different ways. We look to those measurements, however, that provide data most similar to data we have relied upon in past orders.

[276] Upon initial review, Verizon's installation quality measure appears to be out of parity; however, as discussed below, we conclude that the current benchmark for this measure in Pennsylvania is not appropriate for a parity comparison.

[277] *See* PO 1-06 (Average Response Time - Facility Availability - ADSL Loop Qualification); OR 1-04 (Order Confirmation Timeliness), Appendix B at B-4, B-14.

[278] There is no formal benchmark for the installation interval metric. We find, however, that the six-day interval currently offered by Verizon in Pennsylvania is an appropriate standard in Pennsylvania. Verizon met this standard for each month between February and June, 2001. *See* PR 2-02 (Average Interval Completed), Appendix B at B-18. Verizon also met the 5 percent benchmark for missed dispatch appointments for each month from February through June, 2001. *See* PR 4-04 (Percent Missed Dispatch Appointments), Appendix B at B-18. Verizon's performance for non-dispatch appointments is generally at parity as well. While Verizon's missed appointments for May 2001 spikes to 2.04 percent (compared to .12 percent for retail), we find that this is not competitively significant because there are few competitive LEC orders that do not require a dispatch. *See* PR 4-05 (Percent Missed Non-Dispatch Appointments), Appendix B at B-18. Finally, for PR 5-01 (Percent Facility Missed Orders), Verizon missed parity between February and June, 2001, but since the rate of missed orders ranges from around 1 percent to 3 percent, we do not find this to be competitively significant. *See* Appendix B at B-18.

mean time to repair and the repeat trouble rate are in parity,[279] and Verizon missed fewer repair appointments for competitors than for its own retail customers for most months reported.[280] In addition, the overall level of trouble reports for stand-alone xDSL-capable loops in Pennsylvania is very low.[281]

81. Upon initial review, Verizon's performance for installation quality appears to be out of parity. This is because the current benchmark in Pennsylvania for this metric is a comparison with Verizon's performance for its advanced services affiliate. Verizon explains that although it provides primarily stand-alone xDSL-capable loops to competitive LECs, which generally require the dispatch of a field technician, its advanced services affiliate has exclusively deployed line-sharing, which generally does not require a dispatch. Verizon asserts, therefore, that a more appropriate benchmark for its installation quality performance is its installation quality performance for POTS service orders that require a dispatch.[282] Consistent with the Commission's analysis in previous section 271 orders,[283] we agree that this appears to be a more probative comparison. Viewed against this benchmark, Verizon's performance is in parity.[284]

82. Covad alleges that Verizon excludes a majority of loop orders from its xDSL performance measures, providing an inaccurate picture of Verizon's performance.[285] In its reply

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[279] *See* MR 5-01 (Percent Repeat Reports Within 30 Days) and MR 4-02/03 (Mean Time to Repair), Appendix B at B-22.

[280] *See, e.g.*, MR 3-01/02 (Missed Appointment Rate) Appendix B at B-22. Verizon's missed loop appointments for competitive LECs exceed those for retail customers (MR 3-01) for February, 2001, Appendix B-22.

[281] For MR 2-02 (Network Trouble Report Rate – Loop), Verizon's trouble report rate for competitors has trended in the .5 percent range between February and June, 2001. For MR 2-03 (Network Trouble Report Rate – Central Office), Verizon's trouble report rate for competitors has trended around .1 percent.

[282] Verizon states that the New York Carrier-to-Carrier Working Group has established new guidelines for measuring installation quality, which compare Verizon's provision of xDSL-capable loops to competitive LECs and Verizon's provision of dispatched retail POTS. *See* Verizon Lacouture/Ruesterholz Reply Decl. at para. 65. We note that the Pennsylvania Commission has an ongoing proceeding in which it has indicated an express intention to similarly revise its performance measures. In addition, in previous section 271 decisions, we have not relied upon a comparison with the BOC's advanced services affiliate when examining its performance in delivering stand-alone xDSL-capable loops to competitors. *See Verizon Connecticut Order*, 16 FCC Rcd at 14153-54, para. 15, n.31; *Verizon Massachusetts Order*, 16 FCC Rcd at 9059, para 130, n.411.

[283] *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9057, para. 126; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6326-27, paras. 182-83.

[284] The February to May, 2001 average for PR 6-01 (Percent Installation Troubles within 30 days) is 5.91 percent for competitive LECs, as compared to 1.76 percent for Verizon retail customers. *See* Appendix B at B-18. Verizon has recalculated these figures to account for the fact that this measure compares competitive LEC stand-alone xDSL-capable loop services to retail line sharing; the revised measure compares the competitive LEC services to dispatched retail POTS, where Verizon's trouble rate was 6.2 percent. Verizon Lacouture/Ruesterholz Decl. at paras. 180-181; *see also supra* n.310. Under this revised measure, Verizon's performance for competitive LECs is at parity. *Id.*

[285] *See* Covad Comments at 4, 6-7.

comments, Verizon acknowledges that a system programming error caused some competitive LEC orders to be excluded from its performance measures for xDSL.[286] Verizon recalculated the affected metrics to include these improperly excluded orders and submitted this revised data in reply comments it filed in this proceeding.[287] The inclusion of previously excluded orders in the revised data did not affect Verizon's performance under this measure. We find that the revised data supports our conclusion that Verizon's performance is in compliance.

83. Covad also alleges that Verizon designates a majority of Covad trouble reports as "no trouble found," permitting Verizon to exclude reported trouble from the performance metrics prior to final resolution of the trouble.[288] In its reply comments, Verizon denies Covad's allegations, explaining that it does not exclude "no trouble found" orders from the performance measures and moreover, it attempts to contact the competitive LEC to verify the location of the trouble, often obtaining confirmation from the competitor that there was no trouble found.[289] We note that trouble reports are a subject of ongoing dispute between Covad and Verizon.[290] We find that a section 271 application is not an appropriate forum for the resolution of such inter-carrier disputes.

84. NAS asserts that Verizon has failed to conduct cooperative testing on a significant percentage of its xDSL-capable loop orders.[291] Verizon states that it performs cooperative testing on NAS loop orders except in those circumstances where it is not possible to do so, such as when testing equipment is unavailable at the time Verizon installs the loop.[292] Although we expect Verizon to continue to lower the percentage of orders in which it fails to engage in cooperative testing as it gains more experience with this relatively new process, we find that, even assuming that NAS's version of the facts is correct, the evidence presented by NAS is insufficient to show

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[286] *See* Verizon Lacouture/Ruesterholz Reply Decl. at paras. 55-56. The error in Verizon's systems treated orders placed after 5:00 p.m. the same as orders received earlier that day, rather than as orders placed the following day. The result of this error was to treat the competitive LEC's order as requesting a longer provisioning interval than Verizon's standard interval and therefore, to exclude these orders from the performance metric. *Id.*

[287] *Id.* at para. 56.

[288] *See* Covad Comments at 8-10.

[289] *See* Verizon Lacouture/Ruesterholz Reply Decl. at paras. 66-68.

[290] *See* Covad Comments at 2-3, 8-9.

[291] *See* NAS Comments at 3-4; Letter from Rodney L. Joyce, Counsel, NAS, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 1 (filed July 31, 2001) (NAS July 31 *Ex Parte* Letter). NAS argues that the Commission mandated cooperative testing and other changes in the Massachusetts section 271 proceeding. *See* NAS Comments *id.*; NAS July 31 *Ex Parte* Letter, Attach. at 1. NAS also states that the installation quality measure should not exclude data from carriers that cooperatively test their lines. NAS Comments at 2 (citing *Verizon Massachusetts Order*, 16 FCC Rcd at 9069-9070, para. 146). Verizon indicates that revised business rules governing PR 6-01 include competitive LEC data regardless of whether the competitor cooperatively tests. Verizon Lacouture/Ruesterholz Decl. at paras. 180-181.

[292] Verizon Lacouture/Ruesterholz Reply Decl. at paras. 70-72.

that Verizon's implementation of its corporate policy for cooperative loop testing is discriminatory.

85. *Digital Loops.* We find that Verizon provisions digital loops to competitors at an acceptable level of performance in Pennsylvania. Verizon's performance for competitive LECs is generally in parity with benchmarks established in Pennsylvania. In particular, Verizon's installation intervals and missed appointments metrics, as well as its repair and maintenance measurements, have shown parity or very low trouble rates in recent months.[293] In addition, while Verizon's performance for installation quality has shown some limited disparity, we find this disparity is minor and therefore not competitively significant.[294] Finally, we note that no commenter raises specific issues with digital loops and that the volume of digital loops ordered by competitors remains relatively low. [295]

86. *Hot Cut Activity.* We find that Verizon is providing voice grade loops through hot-cuts in Pennsylvania in accordance with the requirements of checklist item 4. We note that no commenter has raised concerns with Verizon's hot-cut provisioning activity. Verizon has satisfied its benchmark for on-time performance for hot-cuts for every month since February 2001,[296] and Verizon indicates that trouble reports received within seven days of installation have been fewer than one percent.[297] In addition, since February, Verizon on average has provided all hot-cuts in just over one day longer than the six-day interval for ten or fewer lines.[298] We note, however, that

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[293] Verizon's installation intervals for dispatch services have been at parity for competitive LECs and for its own retail customers. *See* PR 1-02 (Average Interval Offered), PR 2-02 (Average Interval Completed), Appendix B at B-17. Verizon has been in parity for missed installation appointments since April 2001 (*see* PR 4-04 Percent Missed Dispatch Appointments, Appendix B at B-18). Missed repair appointments have been better for competitive LECs than for Verizon's retail customers. *See* MR 3-01/02 (Missed Repair Appointment – Loop/Central Office), Appendix B at B-21. While trouble report rates have been out of parity for most months, the overall rates have been lower than 2 percent for loop trouble and lower than 1 percent for central office trouble. *See* MR 2-02/03 (Network Trouble Report Rate Loop/Central Office), Appendix B at B-21. Trouble duration has been in parity. *See* MR 4-01/02/03 (Mean Time to Repair – Total/Loop/Central Office), Appendix B at B-21. Repeat trouble has been in parity for most recent months. *See* MR 5-01 (Repeat Trouble Report), Appendix B at B-22.

[294] Verizon has been out of parity for installation quality for each reported month except March 2001, but only by approximately 4 to 5 percent in recent months. *See* PR-6-01 (Percent Troubles Reported in 30 Days), Appendix B at B-18.

[295] In addition, we note that by the time it filed its application, Verizon had provisioned only 2,800 digital loops in Pennsylvania. *See supra* n. 300.

[296] *See* PR 9-01 (Percent On Time Performance – Hot Cuts), Appendix B at B-16.

[297] *See* Verizon Lacouture/Ruesterholz Decl. at para. 138.

[298] *See* Verizon Lacouture/Ruesterholz Decl. at para. 137; PR 1-01 (Average Interval Offered – Total No Dispatch – Hot Cut Loops), PR 2-01 (Average Interval Completed – Total No Dispatch – Hot Cut Loops) Appendix B at B-16. In Pennsylvania, the standard interval for orders of 1-10 lines is six days, and for 11-20 lines, the standard interval is ten days. For orders larger than twenty lines, Verizon would negotiate an installation date. Verizon Lacouture/Ruesterholz Decl. at para. 137. Verizon indicates, however, that the standard interval is not an official benchmark standard in Pennsylvania as it is in New York. *See id.* at paras. 136-137. Rather, Verizon's (continued….)

the data used to calculate Verizon's performance for hot-cuts includes orders of ten or fewer lines as well as orders of greater than ten lines. We, therefore, find that the difference between Verizon's overall hot-cut performance and the six-day benchmark is not competitively significant in these circumstances.

87. *Voice Grade Loops.* We find that Verizon provides new voice grade loops to competitors in Pennsylvania in accordance with the requirements of checklist item 4.[299] Although Verizon's performance for installation quality has not met parity for each reported month, we find that the difference between the reported numbers for competitors and its own retail customers is nominal and thus, not competitively significant.[300] Verizon's performance for installation intervals also appears out of parity, but in April 2001, Verizon changed the manner in which it provisions voice grade loops for competitors to conform to the manner it provisions service to its own retail customers.[301] Using the new process, Verizon's performance has improved.[302] We also note that no commenter has raised an issue relating to voice grade loops.

88. *Line Sharing.* We find that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, pursuant to its interconnection agreements and in accordance with our rules.[303] Although ordering volumes have been low,

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performance in Pennsylvania is measured by parity with its retail affiliate, even though there is no comparable retail product. *Id.* at para. 136.

[299] Verizon meets parity for trouble report rate and missed repair appointments. *See* MR 2-02/03 (Network Trouble Report Rate – Loop/Central Office) and MR 3-01/02 (Percent Missed Repair Appointment – Loop/Central Office), Appendix B at B-20. In general, Verizon meets parity for loop trouble. While Verizon is out of parity for central office trouble, its performance has improved since January 2001. *See* MR 4-02/03, Appendix B at B-20. On one measure, repeat trouble, Verizon's performance has been worse for competitive LECs than for its retail customers. *See* MR 5-01 (Percent Repeat Reports Within 30 Days – POTS loop). Verizon argues, however, that competitive LECs have contributed to this problem because they often do not correctly locate the source of a problem or do not provide Verizon access to their customers. *See* Verizon Lacouture/Ruesterholz Decl. at paras. 123-126. Verizon also maintains that it lacks the capacity to test competitive LECs' loops. *Id.* at paras. 127-128.

[300] *See* PR 6-01, Appendix B at B-17. The incidence of trouble reported in 30 days has hovered between approximately two and three percent for competitive LECs, while remaining under two percent for Verizon's retail arm. While these numbers are not in strict parity, the difference is minimal.

[301] *See* PR 1-03 (Average Interval Offered – Dispatch 1-5 lines – POTS loop) and PR 2-03 (Average Interval Completed – Dispatch 1-5 lines – POTS loop), Appendix B at B-16 and B-17. Prior to April 21, 2001, Verizon automatically assigned a six-day standard interval to competitive LECs. *See* Verizon Lacouture/Ruesterholz Decl. at para. 109. For its own retail arm, Verizon assigns dates according to a "SMARTS clock", which takes into account work force and workload prior to assigning a date. *Id.* On April 21, 2001, Verizon began applying the SMARTS clock to competitive LECs as well. *Id.*

[302] Verizon's performance for intervals offered has achieved parity for May and June, 2001. Verizon's intervals completed have improved as well. *See* PR 1-03 and PR 2-03, Appendix B at B-16 and B-17.

[303] *See* Verizon Lacouture/Ruesterholz Decl. at para. 193; *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, 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….)

Pennsylvania performance data demonstrate that Verizon's performance for provisioning and maintaining line-shared DSL loops to competitors is generally in parity.[304]

89. *Line Splitting.* Based on the evidence in the record, we find that Verizon complies with its line-splitting obligations and that Verizon demonstrates it provides access to network elements necessary for competing carriers to provide line splitting.[305] Verizon states that, since June 2001, it has accepted line-splitting orders through an interim process.[306] Competitive LECs have raised no complaints about Verizon's interim process or its plan for permanent line-splitting OSS. We find, therefore, given the record before us, that Verizon's interim process for line-splitting orders is in compliance with the requirements of this checklist item. In addition, Verizon asserts that it will transition to a permanent OSS process for line splitting in Pennsylvania by October 2001.[307] We expect Verizon to meet its commitment to implement permanent OSS for line splitting by October 2001.

90. *High Capacity Loops.* Given the totality of the evidence, we find that Verizon's performance with respect to high capacity loops does not result in a finding of noncompliance for checklist item 4. Verizon's performance data for installation quality and maintenance and repair functions demonstrate that it has been comparable for Verizon retail customers and

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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*).

[304] For PR 1-01 (Average Interval Offered – Total No Dispatch), Verizon's Pennsylvania performance is at general parity for non-dispatch in relevant months. For PR 2-01, (Average Interval Completed – Total No Dispatch), Verizon's performance has generally met parity. We note that Verizon's performance in April, according to this measure, is not in parity with its retail performance, but order volumes were significantly lower in April than in other recent months. For PR 4-05 (Percent Missed Appointments – No dispatch), Verizon's performance is out of parity for several recent months, but we do not find the disparity to be competitively significant. We find the same to be true for PR 6-01 (Percent Installation Troubles Reported Within 30 Days). *See* Appendix B at B-18 and B-19. Covad contends that it was unable to obtain line sharing from Verizon in Pennsylvania until March 14, 2001, when Verizon certified it had solved problems associated with collocating its central offices to permit line sharing, long after the Commission's June 6, 2000, deadline for deploying line sharing. *See* Covad Comments at 12-13. We find that Verizon was providing line sharing in Pennsylvania as of June 21, 2001, the date it filed its section 271 application. *See* MR 4-03 (Mean Time to Repair – Central Office Trouble). In cases where Verizon has not met parity, trouble report rates have been low. *See, e.g.*, MR 2-03 (Network Trouble Report Rate – Central Office), Appendix B at B-22.

[305] *See Line Sharing Reconsideration* Order, 16 FCC Rcd at 2111, para. 20 n.36.

[306] *See* Verizon Lacouture/Ruesterholz Reply Decl. at paras. 102-103.

[307] *See* Verizon Lacouture/Ruesterholz Reply Decl. at para. 104. Verizon is engaged in a line-splitting pilot in New York, which uses new OSS functionality to provide line splitting, while using the same loop and port. *Id.* at para 102.

competitors.[308] We recognize, however, that Verizon's performance with respect to other performance measures for high capacity loops has been poor in Pennsylvania. Verizon's installation intervals for competitive LECs are consistently longer than those for its retail customers, and Verizon has missed a significant percentage of appointments to provision high capacity loops for competitors.[309] High capacity loops, however, represent a small percentage of all loops ordered by competitors in Pennsylvania. Given the relatively low volume of orders for high capacity loops compared to all loop types, we cannot find that Verizon's performance for high capacity loops warrants a finding of checklist noncompliance for all loop types.[310]

91. In addition to Verizon's performance-related issues, several competing carriers allege that Verizon refuses to provide high capacity loops as unbundled network elements unless all necessary equipment and electronics are present on the line and at the customer's premises. According to commenters, this practice violates Commission rules.[311] Verizon responds that its policy is to provide unbundled high capacity loops when all facilities, including central office and end-user equipment and electronics, are currently available.[312] Moreover, Verizon explains that,

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[308] *See* PR 6-01 (Percent Installation Troubles within 30 days), Appendix B at B-19. Pennsylvania's data for repair performance show some disparities, but these are not competitively significant. Trouble reports have been out of parity for competitive LECs for each reported month, but the percentages have generally been under 2 percent. *See* MR 2-01, Appendix B at B-22. Trouble duration has been out of parity for some months, but generally to a slight degree. *See* MR 4-01/02, Appendix B at B-22. Also, repeat trouble has been slight. *See* MR 5-01, Appendix B at B-23.

[309] *See* Verizon Lacouture/Ruesterholz Decl. at paras. 143, 148-151. Verizon missed approximately 30 percent to 40 percent of competitive LEC's provisioning appointments for every month between February and June, 2001, and it takes Verizon approximately five to ten days longer to install high capacity loops for competitive LECs. One installation measure, Average Interval Offered, appears to be improving slightly. *See* PR 1-07 and PR 2-07 (Average Interval Offered and Completed for DS-1 lines) and PR 4-01 (Percent Total Missed Appointments), Appendix B at B-19; *but see* Verizon Lacouture/Ruesterholz Reply Decl. at para. 28.

[310] By the time it filed its application, Verizon had provisioned approximately 500 high capacity loops in Pennsylvania. *See* Verizon Application at 23, 26, 33; Verizon Lacouture/Ruesterholz Decl. at para. 140.

[311] *See* Broadslate Joint Comments at 8; Capsule Joint Comments at 2-7; Covad Comments at 24-26. More broadly, competitors contend that Verizon will not perform necessary provisioning work for high capacity loops unless the competitive LEC orders them out of Verizon's special access tariffs. *See* Broadslate Joint Comments at 3, 7, 9; Covad Comments at 26; ALTS Reply at 3, 7. In addition, carriers argue that once Verizon provisions a loop as a special access facility, Verizon refuses to convert it into an unbundled network element or charges prohibitively expensive termination fees to do so. *See, e.g.*, Broadslate Joint Comments at 3, 9-10; *but see* Verizon Lacouture/Ruesterholz Decl. at para. 44. One commenter indicates that prior to filing its section 271 application, Verizon had appeared willing to convert special access facilities to unbundled high capacity loops, but that its policy has since changed. *See* ALTS Reply at 3. Verizon argues that its policy has not changed. *See* Verizon Lacouture/Ruesterholz Reply Decl. at paras. 35-37 and Attach. 14.

[312] Verizon will fill a competitive LEC's order where "there are already high capacity loop facilities in use serving a customer." Verizon Lacouture/Ruesterholz Reply Decl. at para. 36; s*ee also id*. at Attach. 14; Letter from W. Scott Randolph, Director – Regulatory Affairs, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at Attach. (filed August 24, 2001) (Verizon August 24 *Ex Parte* Letter). Verizon further explains that it will reject an order where "it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network (continued….)

where facilities are currently unavailable, but Verizon has construction underway to meet its own future demand, it will provide competitive LECs with an installation date based on the anticipated completion date of the pending job.[313] Further, when requisite electronics, such as line cards, have not been deployed but space exists for them in the multiplexers at the central office and end-user premises, Verizon will order and place the necessary line cards in order to provision the high capacity loop.[314] Verizon will also perform the cross connection work between the multiplexers and the copper or fiber facility running to the end user.[315] In the event that spare facilities and/or capacity on those facilities is unavailable, Verizon will not provide new facilities solely to complete a competitor's order for high-capacity loops.[316] In those circumstances, Verizon will only provide a high-capacity facility pursuant to tariff.[317]

92. We disagree with commenters that Verizon's policies and practices concerning the provisioning of high capacity loops, as explained to us in the instant proceeding, expressly violate the Commission's unbundling rules. Accordingly, we decline to find that these allegations warrant a finding of checklist non-compliance. To the extent that commenters have specific disputes with Verizon's actual practice in implementing these policies, such disputes are best addressed in an alternative forum. As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.[318]

3. Checklist Item 14 – Resale

93. 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)."[319] Based on the record in this proceeding, we conclude that Verizon satisfies the requirements of this checklist item in Pennsylvania. In reaching this

(Continued from previous page)
element," or where, "there is no available wire or fiber facility between the central office and the end user." Verizon Lacouture/Ruesterholz Reply Decl. at Attach. 14.

313 *See* Verizon August 24 *Ex Parte* Letter at 1.

314 *Id.*

315 Verizon Lacouture/Ruesterholz Reply Decl., Attach. 14.

316 *Id.* at paras. 35-37 and Attach. 14. Verizon argues that it "is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers." *Id.* at Attach. 14.

317 *Id.*

318 *See Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10, *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23.

319 47 U.S.C. § 271(c) (2)(B)(xiv). *See* Appendix C at para. 67.

conclusion, we reaffirm our determination in the *Verizon Connecticut Order*[320] concerning the scope of Verizon's DSL resale obligations after the United States Court of Appeals decision in *ASCENT v. FCC*.[321] Thus, for the reasons set forth in the *Verizon Connecticut Order*, we conclude that, post-*ASCENT*, it would be unreasonable under sections 251(c)(4) and 252(d)(3) of the Act for Verizon to limit the resale of DSL to customers receiving retail voice service from Verizon.[322] Accordingly, we cannot accept Verizon's contention that it is not required to permit the resale of DSL unless Verizon also provides voice service on the line involved.[323]

94. We find that Verizon demonstrates that it is currently in compliance with the requirements of this checklist item in Pennsylvania. Verizon has a concrete and specific legal obligation in its interconnection agreements and tariffs to make its retail services available for resale to competing carriers at wholesale rates.[324] None of the commenting parties question Verizon's showing of compliance with the requirements of this checklist item except in the area of DSL resale. Our review of the record confirms that Verizon clearly demonstrates checklist compliance in those areas not involving DSL.[325]

95. We further conclude that Verizon demonstrates current compliance with the checklist requirements with regard to DSL resale. As discussed in more detail below, in reaching this conclusion, we waive our procedural requirements to permit consideration of information and events taking place after the deadline for filing comments. Verizon Advanced Data Inc.'s (VADI's) tariff revisions making expanded DSL resale available in the former Bell Atlantic areas in Pennsylvania became effective on September 1, 2001.[326] This offering is the same as that in

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320 *See Verizon Connecticut Order*, 16 FCC Rcd at 14161-62, paras. 30-33.

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

322 *See Verizon Connecticut Order*, 16 FCC Rcd at 14161, para. 30. Section 251(c)(4) states that incumbent LECs must "offer for resale at wholesale rates any telecommunications service that [they] provide[] at retail . . . ." 47 U.S.C. § 251(c)(4).

323 *See* Verizon Application at 52-56; Verizon Reply at 35, n.30; Letter from Dee May, Executive Director – Federal Regulatory, Verizon, to Dorothy T. Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 01-138 at 1 (filed July 9, 2001) (Verizon July 9 *Ex Parte* Letter).

324 Verizon Application at 52 n.54; Verizon Lacouture/Ruesterholz Decl. at paras. 457-58.

325 *See* Verizon Application at 52-53; Verizon Lacouture/Ruesterholz Decl. at paras. 457, 459, 461-62, 467-70, 475-78; Verizon Taylor Decl. Attach. 1 at para. 1b.

326 *See* VADI Tariff F.C.C. No.1, Transmittal 19 (filed August 31, 2001); Letter from Jane Jackson, Chief, Competitive Pricing Division, Federal Communications Commission, to Donald R. Fowler, Director – Tariffs, Verizon Advanced Data Inc. (rel. August 31, 2001) (Special Permission Letter) (granting VADI's application and assigning Special Permission No. 01-093 and waiving 47 C.F.R. §§ 61.38 and 61.58). The Commission also has waived the relevant conditions in the *GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032, App. D, to allow Verizon and VADI to offer coordinated provision of voice and DSL services. *Application of GTE Corp., transferor, and Bell Atlantic Corp., Transferee, For Consent to transfer of Control*, CC Docket No. 98-184, Order, DA 01-2039 (CCB rel. August 31, 2001).

Connecticut except for certain implementation details. The tariff provides that VADI will process up to 100 orders for the expanded DSL resale offering per day until October 1, 2001. From October 1, 2001 through December 1, 2001, VADI will process up to 200 orders per day, with no cap on the number of orders the company will process per day thereafter. The tariff also states that there is no limit on the number of expanded DSL resale orders that carriers may submit, adding that the company will process all orders in the order in which they are received.[327]

96. In light of this, we cannot agree with commenting parties that argue Verizon has failed to demonstrate present compliance with the requirements of this checklist item.[328] Based on the current record before us, we conclude that the order processing obligations in the tariff are sufficient to accommodate reasonably anticipated current commercial demand for the expanded DSL resale offering. In particular, we conclude that VADI's obligation to process up to 100 orders per day is sufficient to address initial demand based on the current record, and thus demonstrate current compliance with its resale obligations.[329] We also note that the obligation to process up to 200 orders per day beginning on October 1, 2001, and to eliminate this limit on December 1, 2001, should ensure that Verizon remains in compliance with its section 271 resale obligations. In particular, these steps appear reasonably calculated to address increases in demand that are likely to occur in the future as resellers expand their marketing efforts and increase the availability of resold DSL to consumers.

97. Moreover, we cannot agree with commenting parties[330] arguing that Verizon must permit resale of DSL service in conjunction with voice service provided using the UNE loop or UNE-P in order to demonstrate compliance with this checklist item. As stated in the *Verizon Connecticut Order*, we continue to believe that resale of DSL in this context "raises significant additional issues concerning the precise extent of an incumbent LEC's resale obligations."[331] Such issues would require additional proceedings to resolve, and we do not consider them in the context of this application.[332]

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[327] VADI Tariff F.C.C. No 1, 3rd Revised Page 603 (effective Sept. 1, 2001).

[328] *See, e.g.*, ASCENT Comments at 10-13; AT&T Comments at 43-44; ASCENT Reply at 20; AT&T Reply at 21-23.

[329] *See* Verizon Aug. 31 *Ex Parte* Letter at 2. Verizon states that the five carriers currently providing resale service in Pennsylvania expressing an interest in the expanded DSL resale offering submitted a total of approximately 125 orders for new resold lines in Pennsylvania during July. On average, these carriers submitted approximately 40 orders per day during July for all types of resold voice lines, including feature changes and disconnects on resold lines. *Id.*

[330] *See, e.g.*, AT&T Comments at 36, 44; ASCENT Reply at 20-23; AT&T Reply at 16-21; WorldCom Reply at 10-11.

[331] *Verizon Connecticut Order*, 16 FCC Rcd at 14162, para. 33.

[332] *See Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10, *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23.

98. As previously stated, we waive the Commission's general procedures restricting the submission of late filed information and the consideration of developments that occur after the date for filing comments.[333] This will allow us to rely on VADI's tariff filing offering expanded DSL resale that became effective on September 1, 2001 and the information contained in Verizon's August 31 *Ex Parte* Letter.[334] We recognize that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[335] Under the present circumstances, however, we conclude that this test is satisfied. Special circumstances exist that satisfy the first prong of the waiver test. First, these tariff revisions are virtually identical to those previously filed for Connecticut, with the exception of the order processing provisions. As a result, they place a very limited additional analytical burden on the staff. The tariff revisions filed by VADI also constitute positive action that will actively facilitate the development of competition. In addition, modifying the VADI and Verizon internal order processing systems to accommodate these resale obligations is relatively complex, [336] and the Commission did not address the extent of Verizon's DSL resale obligations in light of the *ASCENT* decision until after this application was filed.[337] We also find that grant of this waiver to allow consideration of late-filed information and recent developments will serve the public interest under the present circumstances by avoiding the administrative delay inherent in rejecting an otherwise persuasive application for failure to demonstrate compliance with this checklist item. In light of the fact that Verizon now has ample notice of the Commission's determination concerning its DSL resale obligations, we do not expect to grant similar waivers to Verizon in the context of future section 271 applications.

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[333] The Commission's procedural rules governing section 271 applications provide that when an applicant files new information after the comment date, the Commission retains the discretion to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. 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. *See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 14 FCC Rcd 16128, 16130 (1999); Mar. 23 Section 271 Procedural Notice.

[334] We did not request comment on Verizon's August 31 *Ex Parte* Letter since it simply committed to accelerate the implementation schedule for expanded DSL resale which Verizon had agreed to in a filing made prior to the comment date. *See* Verizon July 9 *Ex Parte* Letter. We also note that interested parties were free to file *ex parte* comments on Verizon's accelerated implementation schedule.

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

[336] This is a natural consequence of the Commission's prior determination in the *GTE/Bell Atlantic Merger Order* requiring Verizon to provide advanced services through a separate corporate affiliate. *See GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032 at Appendix D.

[337] The court did not issue the mandate in the *ASCENT* case until March 6, 2001, and the Commission released the *Verizon Connecticut Order* addressing the scope of Verizon's DSL resale obligations on July 20, 2001, after this application was filed.

B. Other Items

1. Checklist Item 1 – Interconnection

99. Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252.[338] Based on our review of the record, we conclude that Verizon demonstrates that it is in compliance with the requirements of this checklist item.[339] We also note that the Pennsylvania Commission found that Verizon satisfied this checklist item[340] and that no commenters raised any issues concerning Verizon's performance for the provisioning of interconnection.

100. Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that Verizon's policies do not represent a violation of our existing rules.[341] Verizon states that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it permits carriers to *physically* interconnect at a single point of interconnection (POI).[342] Verizon acknowledges that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities.[343] The issue of allocation of financial

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[338] *See* Appendix C at paras. 17-24.

[339] Verizon Application at 17-22; Verizon Lacouture/Ruesterholz Decl. at paras. 9-96; Verizon Reply at 16-20; Verizon Lacouture/Ruesterholz Reply Decl. at paras. 105-124.

[340] Pennsylvania Commission Comments at 23-49.

[341] The commenting parties claim that Verizon's inclusion of language requiring a "Geographically Relevant Interconnection Point (GRIP)" in interconnection agreements effectively denies competing carriers the right to select a single point of interconnection because GRIP requires competitive carriers to build additional and unnecessary interconnection points. Or, alternatively, the competitive LEC is required to bear the costs of Verizon's transport from Verizon's designated interconnection point (IP), which is usually its end office of tandem, to the actual competitive LEC physical point of interconnection (POI), thereby improperly shifting to competing carriers inflated transport and switching costs associated with such an arrangement. *See* Sprint Comments at 2-8; WorldCom Comments at 30-31; Broadslate Joint Reply at 24-27; Letter from A. Renée Callahan, legal counsel for Sprint Communications Company L.P., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138 (filed August 16, 2001) at 1 (Sprint Aug. 16 *Ex Parte* Letter); Letter from Sue D. Blumenfeld, legal counsel for Sprint Communications Company L.P., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138 (filed September 13, 2001) at 3 (Sprint Sept. 13 *Ex Parte* Letter).

[342] Verizon Lacouture/Ruesterholz Decl. at para. 9 (emphasis added); Verizon Lacouture/Ruesterholz Reply Decl. at para. 107; Letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 2-3 (filed September 10, 2001) (Verizon Sept. 10 *Ex Parte* Letter).

[343] Verizon Lacouture/Ruesterholz Reply Decl. at paras. 107-111. Verizon distinguishes the POI from the IP, which it defines as the point where traffic is dropped off for billing purposes. Traditionally, the physical point of interconnection is the same as the billing point. *See* Pennsylvania Commission Comments at 42-43 n.136 (noting the crux of the issue lies in Verizon's distinction between the POI and the IP); Sprint Comments at 3-4 n.3.

responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM*.[344] We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single *physical* point of interconnection per LATA.[345] Because the issue is open in our *Intercarrier Compensation NPRM*, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.[346]

101. Covad claims that Verizon's process for migrating virtual collocation arrangements to physical collocation arrangements violates section 251(c)(6) of the Act.[347] Our collocation rules do not explicitly address the appropriate terms and conditions for collocation migration, but we note that the incumbent LEC has a statutory duty to provide for physical collocation at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.[348] The record before us is insufficient to show that Verizon's migration process violates section 251(c)(6), and thus in turn, affects section 271 compliance. Covad's claim is a fact-specific dispute concerning Verizon's statutory obligations. We find, therefore, that a complaint brought before the Commission through the section 208 complaint process is the more appropriate place for this allegation to be examined. As the Commission has found in past proceedings, given the time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligations to its competitors.[349]

102. In addition, we reject Sprint's contention that Verizon impermissibly attempts to impose a collocation obligation on competitive LECs through the negotiation of interconnection

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[344] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634-9635, 9650-9652, paras. 72, 112-114 (2001) (*Intercarrier Compensation NPRM*).

[345] We note that Verizon currently is appealing the decision by the U.S. District Court of the Middle District of Pennsylvania ordering the Pennsylvania Commission to modify its arbitration decision approving an interconnection agreement that allowed a single point of interconnection per tandem instead of per LATA. *See* Verizon Application App. B, Tab O, Subtab 17 (*MCI v. Bell Atlantic-Pennsylvania*, No. CV-97-1857, slip op. at 14-15 (M.D. Pa. Jun. 30, 2000)); *see also* Sprint Comments at 5-7; WorldCom Comments at 31. In the future, to the extent that Verizon required competitive LECs to physically interconnect with Verizon at every tandem area (a smaller geographic area than a LATA), Verizon would not be in compliance with our rules.

[346] We note, however, that Verizon will have to comply with any rule adopted in the *Intercarrier Compensation* proceeding in order to remain in compliance with section 271.

[347] *See* Letter from Jason Oxman, Senior Counsel, Covad, to Michelle Carey, Chief, Policy and Program Planning Division, Common Carrier Bureau and Alexander Starr, Chief, Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission, CC Docket No. 01-138 (filed August 3, 2001) (Covad Aug. 3 *Ex Parte* Letter).

[348] 47 U.S.C. § 251(c)(6).

[349] *See, e.g.*, *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230; *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27.

agreements.[350] Although the 1996 Act does not impose a collocation obligation on non-incumbent LECs,[351] we find no evidence in the record that Verizon has conditioned its provision of collocation on a competitive LEC's agreement to provide collocation to Verizon.[352]

103. Finally, parties assert that an independent audit report demonstrates that Verizon does not comply with all of the Commission's collocation rules.[353] In response, Verizon states that it has modified and improved its collocation procedures to address the issues raised in the audit and by the commenters and is thus now in compliance with this checklist item.[354] There is no evidence in the record to suggest that Verizon's current collocation procedures have not addressed any section 271 concerns raised by the audit cited by these commenters. Moreover, we note that audit results are not a legal determination of Verizon's section 271 compliance.[355] Based on the record in this proceeding, we believe that Verizon has demonstrated compliance with this checklist item.

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350 Sprint Comments at 23; Sprint Aug. 16 *Ex Parte* Letter at 2; Sprint Sept. 13 *Ex Parte* Letter at 4.

351 *Local Competition First Report and Order*, 11 FCC Rcd at 16109, para. 1247.

352 Verizon has requested permission to collocate (*i.e.*, self-provision its own transport facilities to Sprint's POPs to deliver Sprint's local traffic) at Sprint's switch centers in its interconnection negotiations but it acknowledges that Sprint is not legally obligated to do so under the Act. Verizon also notes that it is currently in arbitration on this issue with Sprint before the Pennsylvania Commission. *See* Verizon Reply at 19 n.13; Verizon Lacouture/Ruesterholz Reply Decl. at paras. 117-118; Verizon Sept. 10 *Ex Parte* Letter at 3; *see also* Sprint Aug. 16 *Ex Parte* Letter at Attach. 3.

353 *See* CompTel Comments at 23; Covad Comments at 15-16; *see also* January 29, 2001 Report of Independent Public Accountants, Arthur Andersen LLP. This audit was conducted pursuant to conditions of the Commission's order approving the merger application of Bell Atlantic and GTE. CompTel and Covad claim that Verizon has failed to timely report space-exhausted offices on its website and failed to submit the appropriate information on space-exhausted offices to the Pennsylvania Commission before declaring that a central office was space-exhausted. CompTel Comments at 23; Covad Comments at 16. Covad also claims that Verizon requires competitive LECs to collocate with an intermediate point of interconnection, *e.g.*, point of termination (POT) bay, instead of direct connection to the incumbent's network when technically feasible. *See* Covad Comments at 16. In addition, Covad asserts that Verizon did not collect collocation application fees from its advanced services affiliate or charge its advanced services affiliate for completed virtual collocation arrangements. *Id.* at 15.

354 Verizon Lacouture/Ruesterholz Decl. at paras. 86-96; Verizon Lacouture/Ruesterholz Reply Decl. at paras. 121-124.

355 We are aware that the Enforcement Bureau has recently issued a Consent Decree following an investigation for possible violations of the Commission's rule requiring incumbent local exchange carriers promptly to post notices of premises that have run out of collocation space. *See* Verizon Communications, Inc., Consent Decree, File No. EB-01-IH-0236, DA-01-2079 (rel. Sept. 14, 2001). Therefore, we believe that the Enforcement Bureau, in its review prior to the issuance of the Consent Decree, has appropriately addressed the concerns raised in the audit.

a. Pricing of Interconnection

104. Checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[356] 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.[357] Based on the record, we find that Verizon offers interconnection in Pennsylvania to other telecommunications carriers at just, reasonable and nondiscriminatory rates and is therefore in compliance with checklist item 1. The Pennsylvania Commission concludes that Verizon currently provides collocation under approved interconnection agreements and tariffs, consistent with Commission and Pennsylvania Commission orders.[358]

105. We find that the collocation pricing issue raised by Sprint does not cause Verizon to fail this checklist item. Sprint asserts that by charging per feed rather than based on the amount of power the feed actually drains, Verizon double charges competitive LECs for DC power. Sprint states that competitive LECs order double power feeds to ensure that at least one feed will be able to deliver the necessary amps should the other one fail.[359] Sprint cites to an industry letter[360] from Verizon stating that "Verizon East will provision and bill DC power applications in accordance with the prevailing tariff terms, conditions, and rates in effect."[361] Sprint contends, however, that the "prevailing tariff terms, conditions and rates in effect" in Pennsylvania today allow Verizon to double charge for back-up power.[362]

106. Verizon disputes Sprint's assertion that most competitive LECs configure their equipment to use either the primary feed or the back-up feed, but not both. Verizon contends that most competitive LECs have collocation equipment that is designed to draw power from two power feeds simultaneously. To support this statement, Verizon surveyed over 806 power feeds at collocation arrangements in Pennsylvania, and found that eighty-one percent were drawing power on both feeds at the time of the test.[363] Verizon also asserts it does not require competitive LECs to take a primary feed and a back-up feed; rather, it is up to the competitive LEC to determine the number of feeds delivered.

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356 47 U.S.C. § 271(c)(2)(B)(i).

357 *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.

358 Pennsylvania Commission Comments at 38-39, 49.

359 Sprint Comments at 19-22.

360 *See* Verizon Lacouture/Ruesterholz Decl. at Attach. 12.

361 Sprint Comments at 21 n. 36.

362 *Id.*

363 *See* Verizon Lacouture/Ruesterholz Decl. at para. 83.

107. Verizon asserts that it has worked cooperatively with competitive LECs, and has agreed to charge competitive LECs for the number of load amps actually ordered rather than the number of fused amps.[364] Verizon filed the required tariff amendments on April 2, 2001.[365] Additionally, Verizon issued the above-mentioned industry letter clarifying how competitive LECs should order DC power.[366] Verizon states that it provides competitive LECs with a way of purchasing only the power they want because, regardless of the number of power feeds requested by the competitive LEC, all power feeds in a central office draw power from the same power source. If that power source fails, none of the other power feeds to the competitive LECs or Verizon's telecommunications equipment will be able to supply power.[367]

108. This issue was also raised in Massachusetts,[368] and as was the case there, the issue is currently before the state commission.[369] As we 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.[370] Although we have an independent 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 our pricing jurisdiction and has thereby directed the state commissions to follow our pricing rules in their disposition of those disputes. As we do with respect to the Massachusetts Department, we have confidence in the Pennsylvania Commission's ability to resolve this matter consistent with our rules. Verizon has amended its collocation tariff to address the concerns of the parties, and parties have presented no evidence that Verizon is not fully cooperating with the efforts of the Pennsylvania Commission to resolve these issues. We therefore find that these disputes do not cause Verizon to fail this checklist item.

2. Checklist Item 5 – Unbundled Transport

109. 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

364 *Id.* at para. 80.

365 *Id.* at para. 78.

366 *Id.* at Attach. 12.

367 *Id.* at para. 81.

368 *See Verizon Massachusetts Order*, 16 FCC Rcd at 9100-03, paras. 200-03.

369 *See* Verizon Reply at 20; Verizon Lacouture/Ruesterholz Decl. at para. 85. We note that we are presently conducting a similar investigation with respect to the charges for DC power in Verizon's *interstate* collocation tariff. *See Bell Atlantic Telephone Companies Revisions in Tariff FCC Nos. 1 and 11*, CC Docket No. 01-140, Order Designating Issues for Investigation, DA 01-1525 (CCB, rel. June 26, 2001).

370 *See SWBT Texas Order*, 15 FCC Rcd at 18541, para. 383; *see also* 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

switching or other services."[371] Verizon provides unbundled transport pursuant to interconnection agreements and tariffs.[372] We conclude, based upon the evidence in the record, that Verizon demonstrates that it provides both shared and dedicated transport in compliance with the requirements of checklist item 5.[373] We also note that the Pennsylvania Commission found that Verizon complies with this checklist item.[374]

110. In prior section 271 orders, the Commission has reviewed the missed appointment rates for the provision of interoffice facilities to competitive LECs to determine compliance with checklist item 5.[375] On first examination, the missed appointment rate performance appears to depict a significant difference in the provision of interoffice facilities for competitive LECs compared to the retail analogue described in the carrier-to-carrier guidelines.[376] All parties appear to agree, however, that the revised retail analogue used for this measure in New York and Massachusetts should be adopted in Pennsylvania.[377] As we found in the *Verizon Connecticut Order*, we agree that the revised retail analogue provides a more appropriate standard to gauge Verizon's unbundled transport performance. Using the revised retail analogue, the weighted average for Verizon's missed installation appointment rate in Pennsylvania for retail DS-3 service was 19.27 percent, as compared to the reported competitive LEC transport performance of 12.31

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[371] 47 U.S.C. § 271(c)(2)(B)(v). *See also* Appendix C at para. 53.

[372] *See* Verizon Lacouture/Ruesterholz Decl. at para. 270. The Pennsylvania Commission recently directed Verizon to offer dark fiber pursuant to tariffs, which Verizon asserts it has done. On July 11, 2001, Verizon filed revisions to its tariffs that contain rates, terms, and conditions for its dark fiber offering, which took effect on August 10, 2001. Verizon Lacouture/Ruesterholz Reply Decl. at para. 130.

[373] *See* Verizon Application at 40-41; Verizon Lacouture/Ruesterholz Decl. at paras. 249, 254, 270-271 and App. B, Tabs E3, E4, E6, E8, E10, E11 and E12; Verizon Reply at 28-31.

[374] *See* Pennsylvania Commission Comments at 172.

[375] *See SWBT Texas Order*, 15 FCC Rcd at 1851, para. 333; *Bell Atlantic New York Order*, 15 FCC Rcd at 4126, para. 339.

[376] Using the carrier-to-carrier numbers provided with the application, the five-month (February through June 2001) average for competitive LECs was 12.82 percent, compared to 2.3 percent for Verizon's retail "special services" provisioning. *See* PR-4-01 (Provisioning of Special Services – Missed Appointments – Total IOF). Specifically, the competitive LEC missed appointment rates for February through June 2001 were 14.29 percent, 15.79 percent, 9.38 percent, 21.05 percent, and 3.57 percent respectively. Verizon's performance for its own retail special services for the same period was 4.98 percent, 1.24 percent, 1.09 percent, 2.39 percent, and 1.80 percent respectively.

[377] *See* Verizon Lacouture/Ruesterholz Decl. at para. 275. In Pennsylvania, the retail analogue for this measure historically has been all retail "special services," which predominantly includes relatively simple voice-grade services, rather than the more complex services that CLECs order. *Id.* at paras. 275-276. The revised retail analogue uses provisioning of retail DS-3s instead of retail special services because the unbundled interoffice facilities Verizon provides to competitive LECs are predominately at the DS-3 level, rather than the voice grade level. *Id. See also Verizon Massachusetts Order*, 16 FCC Rcd at 9106, para. 210.

percent.[378] Based on this data, we conclude that Verizon provides unbundled transport to competitive LECs in a nondiscriminatory manner.

111. Commenters also argue that Verizon attempts to mask poor transport provisioning performance by seeking to exclude from the performance measurements orders for which no facilities are available.[379] As noted above, the revised retail analogue for missed transport provisioning appointments supports our conclusion that Verizon complies with this checklist item. We have not relied on Verizon's proposed exclusion of "no facilities" orders from the performance measurements in finding compliance with this checklist item. Commenters also assert that Verizon claims UNE transport facilities are unavailable in order to force requesting carriers to order transport circuits through Verizon's special access tariffs.[380] The record does not offer sufficient evidence to support that claim. We do, however, expect Verizon to meet its obligations to take those steps necessary to make UNEs available to requesting carriers as required by our rules.[381] We will continue to monitor Verizon's performance in this area, and will take swift and appropriate enforcement action in the event such action is warranted by the facts.

112. Verizon has established two trial programs to address commenters concerns regarding parallel provisioning under Verizon's current ordering systems for both dark fiber and transport facilities in general.[382] One of the ongoing trials allows Cavalier to request collocation and the provision of dark fiber contemporaneously. If this trial is successful, the new provisioning process for dark fiber ordering will be expanded to all carriers, subject to the negotiation of interconnection agreement amendments, as necessary.[383] Sprint and Verizon also have established a similar trial to test the technical and practical viability of implementing a parallel provisioning structure for DS-3 interoffice transport facilities and collocation arrangements.[384] In light of these

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[378] *See* Verizon Lacouture/Ruesterholz Decl. at para. 275 and Attach. 68. The weighted average was based on missed installation appointments occurring between February and April 2001.

[379] Broadslate Joint Comments at 5-7; Capsule Joint Comments at 4-5.

[380] Broadslate Joint Comments at 7-11.

[381] *See* 47 C.F.R. §§ 51.307, 51.311, 51.319; *UNE Remand Order,* 15 FCC Rcd at 3841-42, paras. 318-321.

[382] In the state proceeding, Cavalier noted that Verizon's current ordering system prevents CLECs from ordering dark fiber while collocation arrangements are being built or augmented. *See* Verizon Lacouture/Ruesterholz Decl. at para. 298. Sprint's comments also raise this issue with respect to transport facilities in general, noting that Verizon's transport ordering practices can subject competitive LECs to unreasonable delays in provisioning, or cause competitive LECs to lose access to transport that was available at the time a collocation order was placed. *See* Sprint Comments at 9-13.

[383] Carriers that do not wish to use this method of provisioning will retain the option of using the current system. *See* Verizon Lacouture/Ruesterholz Decl. at para. 300. The implementation of this trial addresses Cavalier's concerns and Cavalier stipulates that Verizon meets the requirements of the checklist with respect to dark fiber. *See* Verizon Lacouture/Ruesterholz Reply Decl. at para. 129.

[384] The current Sprint trial is being conducted in Maryland. However, Verizon states that it will be able to apply the results of the Maryland trial to Pennsylvania, as the systems and procedures in place in both states are similar. *See* Verizon Lacouture/Ruesterholz Reply Decl. at para. 120. A Pennsylvania administrative law judge issued a (continued….)

facts, we believe that commenters' transport and dark fiber ordering concerns have been adequately addressed.

113. Finally, we reject Yipes' arguments that the restrictions Verizon places on the provisioning of unbundled dark fiber deny competitors the opportunity to meaningfully compete.[385] As both Yipes and Verizon acknowledge, the dark fiber issues raised by Yipes are currently before the Pennsylvania Commission for arbitration.[386] Moreover, some of these issues now appear to be moot.[387] We believe that Yipes' concerns are best resolved through the section 252 negotiation and arbitration process, which Yipes has already invoked, or through the section 208 complaint process.

3. Checklist Item 8 – White Pages Directory Listings

114. Section 271(c)(2)(B)(viii) of the competitive checklist requires a BOC to provide "[w]hite page directory listings for customers of the other carrier's telephone exchange service."[388] Based on the evidence in the record, we conclude that Verizon satisfies the requirements of checklist item 8.[389] Verizon asserts that KPMG found Verizon's performance acceptable[390] and that Verizon provides directory listings to competitive LECs in Pennsylvania under the same business rules as the Commission previously approved in Verizon's New York

(Continued from previous page)
recommended decision on August 8, 2001 that requires Verizon to implement the parallel ordering and provisioning process for transport by December 31, 2001. *See* Sprint August 16 *Ex Parte* Letter.

385 *See* Yipes Comments at 2-3.

386 *See* Yipes Comments at 3; Verizon Lacouture/Ruesterholz Reply Decl. at para. 131. According to Verizon, the arbitration hearings began July 27, 2001, and a decision is not due until late October.

387 Yipes has withdrawn from the arbitration its claim that Verizon does not allow a competitive LEC to collocate a fiber patch panel in order to connect to dark fiber upon which construction is not complete. *See* Yipes Comments at 12; Verizon Lacouture/Ruesterholz Reply Decl. at para. 135. Verizon states that it will not pursue implementation of the provision allowing it to "take back" provisioned dark fiber where Verizon determines that the fiber is being "underutilized." *See* Yipes Comments at 15; Verizon Lacouture/Ruesterholz Reply Decl. at para. 137.

388 47 U.S.C. § 271(c)(2)(B)(viii); *see* Appendix C at paras. 59-60.

389 Verizon provides competitive LECs with white page directory listings under interconnection agreements and tariffs. Verizon Lacouture/Ruesterholz Decl. at para. 380.

390 KPMG Final Report at 415. KPMG reviewed a sample of directory listings orders and found that Verizon provisioned correctly 153 out of 156 orders, a 98 percent accuracy rate. Where, as here, there is no retail analogue to measure commercial performance, we will consider other evidence, such as independent third-party testing, in making our determination as to whether a BOC provides nondiscriminatory access. *See, e.g., Bell Atlantic New York Order,* 15 FCC Rcd at 3993, para. 89.

and Massachusetts applications.[391] We also note that the Pennsylvania Commission found that Verizon complies with this checklist item.[392]

115. XO and CTSI allege that Verizon's accuracy rate for their customers' directory listings is higher than Verizon's accuracy rate for its own retail customers.[393] XO states that Verizon committed several errors for individual listings in the Allentown/ Bethlehem, Harrisburg, and Philadelphia directory listing verification report (LVR).[394] Verizon, however, explains that the LVR is intended to provide an opportunity for competitors to detect and correct potential listings errors before publication and therefore the LVR is not representative of the accuracy of the published directory.[395] Verizon further explains that it has established additional measures to further improve the accuracy of its order process.[396] As the Commission has noted in prior orders, we require BOCs to implement procedures that are intended to minimize the potential for errors in the listings provisioned for the customers of competing LECs.[397] We accept as reasonable Verizon's contention that the listing verification report and its quality-assurance procedures are designed to minimize potential directory listings errors and, based on our review of the record, we find that Verizon satisfies our requirements. Accordingly, we reject XO's contention that errors contained in an LVR are evidence of discriminatory treatment.

116. For similar reasons, we reject CTSI's contention that Verizon's error rate for two directories represents discriminatory treatment. The record indicates that Verizon failed to correct 87 out of 205 errors CTSI identified in the Lancaster LVR and "approximately 188" out of 1004 errors it identified in the Wyoming Valley LVR.[398] Verizon, however, contends that these

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391 Verizon Application App. B, Tab D.

392 Pennsylvania Commission Comments at 207-209.

393 Broadslate Joint Comments at 15-18, 20-22; Broadslate Joint Reply at 13-20.

394 Broadslate Joint Comments Exhibit A, Declaration of Craig Plue on behalf of XO Communications, Inc., at para. 18 (Broadslate Plue Decl.). The LVR is a draft of the directory listings provided to competitive LECs for pre-publication review. Verizon Lacouture/Ruesterholz Decl. at para. 393.

395 Verizon Lacouture/Ruesterholz Reply Decl. at paras. 138, 140.

396 Verizon Lacouture/Ruesterholz Decl. at paras. 403-404. Verizon states that it has created a "quality assurance team" to verify the accuracy of its provisioning of competitive LEC orders. Verizon also states that it has designated a group of employees to serve as the single point of contact in responding to competitive LEC requests to emend listings in the LVR. *Id.* Broadslate, *et al.*, concede that these steps "may offer some assistance to CLECs in correcting errors." Broadslate Joint Comments at 19.

397 *See, e.g., BellSouth Second Louisiana Order,* 13 FCC Rcd at 20749, para. 257.

398 *See, e.g.*, POCA Comments at 22-24. *See also* Broadslate Joint Comments Exhibit C, Declaration of Ronald L. Reeder on behalf of CTSI, Inc., at paras. 3-5 (Broadslate Reeder Decl.); Broadslate Joint Reply at 13, 17-18. We received additional information regarding errors in the Lancaster area directory. *See* Letter from Robin F. Cohen, Counsel for CTSI, Inc., to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 1 and Attachments (filed Sept. 13, 2001) (CTSI Sept. 13 *Ex Parte* Letter). Due to its lateness, we exercise our discretion to give this evidence minimal weight. Moreover, based on our limited review, we find that CTSI's claims do not undermine our conclusions regarding this checklist item.

LVR "error rates" are not representative of the actual accuracy rate for CTSI and overall competitive LEC entries in the published directories.[399] We agree with Verizon that evidence concerning the number of corrections made to errors reported in an LVR does not necessarily reflect actual provisioning accuracy for published directories. Based on our review of the evidence in the record, we do not find that the number of errors present in the published directories cited by CTSI to be competitively significant.[400]

117. Commenters also allege that Verizon's manual method for processing facilities-based competitors' directory listings orders unnecessarily introduces opportunity for additional error.[401] Based on our conclusion above that Verizon meets this checklist item, we reject commenters contentions that such manual treatment is a per se violation. As we have concluded in previous orders, the Commission does not require incumbent LECs to provide a certain level of automation in the provision of wholesale services, rather incumbent LECs must undertake additional automation as necessary to ensure that it can provide nondiscriminatory treatment to competitive LECs in light of existing and reasonably foreseeable commercial volume.[402] We nevertheless acknowledge commenters' concerns about Verizon's manual processing and the increased need for automation as competitive volumes increase in Pennsylvania. Therefore, while we do not rely on such evidence for our finding of present compliance, we take additional comfort that Verizon has committed to further automate many of the manual processes identified by commenters in this record.[403]

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[399] Verizon Lacouture/Ruesterholz Reply Decl. at para. 139. Verizon states that it accurately provisioned 99 percent of CTSI's customers listings for the Wyoming Valley directory, and 99.4 percent of CTSI listings for the Hazelton directory. *Cf. SWBT Texas Order*, 15 FCC Rcd at 18530, para. 358; *Bell Atlantic New York Order*, 15 FCC Rcd at 4045, para. 176. The benchmark for manual updates to the SWBT directory assistance database in Texas is a 97 percent accuracy rate. *See SWBT Kansas/Oklahoma Order*, 15 FCC Rcd at 18529, para. 355, n.988 (*citing* SWBT Dysant Texas I aff. at paras. 640-641, 646-648 and Attach. A at 133-136 (PM 110-113)).

[400] *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9093, para. 184*; Bell Atlantic New York Order*, 15 FCC Rcd at 3976, paras. 59-60 ("Finally, in some instances, we may find that statistically significant differences in measured performance may exist, but that such differences have little or no competitive significance in the marketplace. As such, we may deem such differences non-cognizable under the statutory standard.")

[401] Broadslate Joint Comments at 16-22; POCA Comments at 18-20.

[402] *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 3992, paras. 83-84, 87-89; *Ameritech Michigan Order*, 12 FCC Rcd at 20616-18, paras. 137-138, and 20638, para. 180.

[403] Verizon states that it will adopt additional procedures by October 2001 intended to ensure that all competitive LEC orders clearly indicate how Verizon should process their customer listing information. Verizon Lacouture/Ruesterholz Decl. at para. 406. Verizon also has committed to implementing in the first quarter of 2002, further improvements to its systems intended to automate the transfer of customer listing information that is currently handled on a manual basis by Verizon. *Id*.

C. Checklist Item 13 – Reciprocal Compensation

118. 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)."[404] 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.[405] Based on the record, we conclude that Verizon demonstrates that it provides reciprocal compensation as required by checklist item 13. We reject Sprint's contention that Verizon is not in compliance with the reciprocal compensation requirements of the Act. Sprint asserts that Verizon is characterizing all outbound operator services "00 minus" calls as access traffic, even though a user can dial "00 minus" to make a local call. Sprint argues that Verizon's decision to subject all "00 minus" calls to access charges is violative of the Act.[406] We observe that Sprint's dispute over reciprocal compensation and access charges is currently before the Pennsylvania Commission in an arbitration proceeding.[407] As the Commission 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.[408] Although we have an independent 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.

119. We also reject commenters' assertion regarding reciprocal compensation for ISP-bound traffic.[409] Under a prior Commission order, ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2).[410] This decision was reaffirmed by the recent Commission order on remand, which found that ISP-bound traffic is information access traffic under section 251(g) and thus not subject to reciprocal compensation.[411] Therefore, we continue to find that whether a carrier pays such compensation is "irrelevant to

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404 47 U.S.C. § 271(c)(2)(B)(xiii); *see* Appendix C at para. 66.

405 47 U.S.C. § 252(d)(2)(A).

406 Sprint Comments at 15-18.

407 *See* Verizon Reply at 34 n.29; Sprint Aug. 16 *Ex Parte* Letter at Attach. 3 (Recommended Decision).

408 *SWBT Texas Order*, 15 FCC Rcd at 18541, para. 383.

409 *See* Broadslate Joint Comments at 26-28, Capsule Joint Comments at 24-27.

410 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, para. 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), *rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

411 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68, 16 FCC Rcd 9151, 9167, 9171-72, paras. 35, 44 (2001).

checklist item 13."[412] We therefore conclude that Verizon has met its obligations under Checklist Item 13.

D. Remaining Checklist Items (3, 6, 7, and 9-12)

120. 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),[413] item 6 (unbundled local switching),[414] item 7 (911/E911 access and directory assistance/operator services),[415] item 9 (numbering administration),[416] item 10 (databases and associated signaling),[417] item 11 (number portability),[418] and item 12 (local dialing parity).[419] Based on the evidence in the record, we conclude that Verizon demonstrates that it is in compliance with checklist items 3, 6, 7, 9, 10, 11, and 12 in Pennsylvania.[420] We also note that the Pennsylvania Commission concluded that Verizon complies with the requirements of each of these checklist items.[421]

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

121. 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 section 271(c)(1)(B) (Track B).[422] To qualify for Track A, a

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412 *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, para. 377.

413 47 U.S.C. § 271(c)(2)(B)(iii).

414 *Id.* § 271(c)(2)(B)(vi).

415 *Id.* § 271(c)(2)(B)(vii).

416 *Id.* § 271(c)(2)(B)(ix).

417 *Id.* § 271(c)(2)(B)(x).

418 *Id.* § 271(c)(2)(B)(xi).

419 *Id.* § 271(c)(2)(B)(xii).

420 *See* Verizon Application at 44-45 (checklist item 3), 40-41 (checklist item 6), 45-47 (checklist item 7), 49 (checklist item 9), 49-50 (checklist item 10), and 51 (checklist items 11 and 12); Lacouture/Ruesterholz Decl. at paras. 316-343 (checklist item 3), 249-269 (checklist item 6), 344-377 (checklist item 7), 409-413 (checklist item 9), 414-439 (checklist item 10), 440-448 (checklist item 11), and 449-454 (checklist item 12). *See also* Appendix B.

421 *See* Pennsylvania Commission Comments at 107-119 (checklist item 3), 172-180 (checklist item 6), 189 (checklist item 7 (the Pennsylvania Commission requires that Verizon continue to offer directory assistance/operator services as a UNE until Verizon is able to provide customized routing)), 212 (checklist item 9), 216 (checklist item 10), 224 (checklist item 11), and 226 (checklist item 12).

422 47 U.S.C. § 271(d)(3)(A).

BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[423]

122. We conclude, as the Pennsylvania Commission did,[424] that Verizon demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers in Pennsylvania. In support of its Track A showing, Verizon relies on interconnection agreements with AT&T, WorldCom, RCN and Commonwealth Telephone Services (CTSI) in Pennsylvania.[425] Specifically, Verizon contends that AT&T serves residential customers, WorldCom serves business customers and RCN and CTSI serve both residential and business customers. Collectively, these companies provide telephone exchange service, predominantly over their own facilities, to residential and business subscribers.

123. We conclude that a sufficient number of residential and business 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 Pennsylvania.[426] Verizon has shown that facilities-based competing carriers serve more than a *de minimis* number of residential customers in Pennsylvania. No carrier has challenged Verizon's evidence with regard to the level of facilities-based business competition.

V. SECTION 272 COMPLIANCE

124. 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."[427] Based on the record, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.[428] Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Pennsylvania, as it does in Connecticut, New York

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[423] *Id.*

[424] Pennsylvania Commission Comments at 21-22.

[425] Verizon Application at 8-10.

[426] *See SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

[427] 47 U.S.C. § 271(d)(3)(B). *See* Appendix C at paras. 68-69.

[428] *See* Verizon Application at 68-73; Verizon Application App. A, Vol. 4, Tab F, Declaration of Susan C. Browning at para. 4 (Verizon Browning Decl.).

and Massachusetts, states in which Verizon has already received section 271 authority.[429] No party challenges Verizon's section 272 showing.[430]

VI. PUBLIC INTEREST ANALYSIS

125. Separate from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[431] We conclude that approval of this application is consistent with the public interest.[432] From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets today are open to competition. We further find that the record confirms our view, as noted in prior section 271 orders, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[433]

126. We disagree with those commenters that assert under our public interest examination we must consider the level of competitive LEC market share, the financial strength of competitive LECs and the failure of other BOCs to enter the market in Pennsylvania as evidence that, despite checklist compliance, the local market is not yet truly open to competition.[434] For example, one commenter argues that the relatively low percentage of residential customers served by competitive LECs indicates the market is not yet open.[435] Another commenter suggests that

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[429] *Verizon Connecticut Order*, 16 FCC Rcd at 14178-79, para. 73; *Verizon Massachusetts Order*, 16 FCC Rcd at 9114-17, paras. 226-31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4152-61, paras. 401-21; Verizon Application at 68-73; Verizon Browning Decl. at paras. 4-49.

[430] 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 PriceWaterhouseCoopers 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 were required to submit comments on the audit report no later than August 20, 2001. *See* 47 C.F.R. § 53.213(d) (establishing 60-day comment period after audit report is made public). Because the Commission will not have had the opportunity to complete its own review of the audit results before it is required to issue a decision on this section 271 application, it would be premature to consider the audit as evidence of shortcomings in Verizon's section 272 compliance. *See* 47 U.S.C. § 271(d)(3) (establishing 90-day deadline after receipt of section 271 application for issuing a written determination).

[431] *See* 47 U.S.C. § 271(d)(3)(C); Appendix C at paras. 70-72.

[432] We emphasize that grant of this application *does not* reflect any conclusion that Verizon's conduct in the individual instances cited by commenters is nondiscriminatory and complies with the company's obligations under the Communications Act.

[433] *See SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 419.

[434] AT&T Comments at 66-75; Covad Comments at 27.

[435] AT&T Comments at 66-75.

the failure of other BOCs to compete with Verizon in Pennsylvania raises similar questions as to whether the market is truly open.[436] Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not undermine that showing. Factors beyond the control of the BOC, such as individual competitive LEC entry strategies might explain a low residential customer base. We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance and we have no intention of establishing one here.[437]

A. Assurance of Future Compliance

127. As set forth below, we find that the existing performance assurance plan ("PAP") currently in place for Pennsylvania provides assurance that the local market will remain open after Verizon receives section 271 authorization. The plan in combination with the Pennsylvania Commission's active oversight of the PAP and its stated intent to adopt revised metrics and performance assurance remedies[438] provides additional assurance the local market will remain open. In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market. Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission previously has stated that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.[439]

128. In prior section 271 orders, the Commission has reviewed performance assurance plans modeled after either the New York Plan or the Texas Plan.[440] Although similar in some respects, the current Pennsylvania plan, however, differs significantly from each of these two plans. As stated above, we do not require any monitoring and enforcement plan and therefore, we do not impose requirements for its structure if the state has chosen to adopt such a plan.[441] We recognize that states may create plans that ultimately vary in their strengths and weaknesses as

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436 Covad Comments at 27.

437 *See Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

438 Pennsylvania Commission Reply at 8-10 ("There is a rebuttable presumption that the features of the New York Remedies Plan will be adopted…").

439 *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-398. We note that in all of the previous applications that we have granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long-distance market.

440 In our other section 271 applications, the relevant state commission had adopted either the New York or Texas plans for use in their respective state. *See SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421; *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433.

441 *SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 423; *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433.

tools for post-section 271 authority monitoring and enforcement.[442] We also recognize that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. We anticipate that state commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace.

129. We conclude that the Pennsylvania PAP provides incentives to foster post-entry checklist compliance.[443] We note that the Pennsylvania PAP was developed in an open proceeding with participation by all sectors of the industry.[444] We further note that the Pennsylvania Commission is presently conducting a proceeding intended to adopt revised metrics and performance assurance remedies.[445] As in prior section 271 orders, our conclusions are based on a review of several key elements in any performance assurance plan: total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting

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[442] *See Ameritech Michigan Order*, 12 FCC Rcd at 20748, para. 393. The Commission has previously predicted that the enforcement mechanisms developed in different plans developed by New York and Texas would be effective in practice. *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433. This prediction was based on five characteristics*:* potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; a reasonable structure that is designed to detect and sanction poor performance when it occurs; a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and reasonable assurances that the reported data are accurate. *Id.*; *see also SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 423.

[443] We note that Verizon has voluntarily agreed to certain changes to the existing PAP pending approval of a revised PAP by the Pennsylvania Commission. Letter from Gordon R. Evans, Vice President, Federal Regulatory, Verizon to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138 at 2-3 (filed August 31, 2001). Verizon commits to allow individual competitive LECs to make a one-time choice for remedies for poor performance between the existing PAP and any remedy plan that may exist in their individual interconnection agreements. Verizon also agrees that in the event it believes a specific penalty payment under the existing PAP is not warranted for reasons stated in the existing PAP, it will not invoke its existing right to place such payments into escrow but instead will pay the penalty and then petition the Pennsylvania Commission for determination of whether Verizon should not have to make the specific payment. *Id.*

[444] Verizon Guerard/Canny/DeVito Decl. at paras. 13, 15-21.

[445] Verizon Application at 85. *See also* Pennsylvania Commission Reply at 8-9 ("There is a rebuttable presumption that features of the New York remedies plan will be adopted, *i.e.*, weighing of metrics and liability cap." "Improvements may also include the promotion of efficiencies for all carriers through adoption of metrics common to other jurisdictions in the Verizon footprint."). Verizon proposes two alternate PAPs, one closely modeled on the existing New York PAP with changes to the penalty cap amount, a relative-weight scoring system for metrics and a phased-in flow-through metric benchmark. The other proposed plan is characterized by Verizon as incorporating elements of both the New York and Texas PAPs and includes the changes to the New York PAP indicated above as well as modifying the penalty payments structure to a per occurrence basis and adding penalties for the first-month of missing a performance metric. Verizon Reply at 65-70.

requirements.[446] We discuss only those elements that parties have raised substantial issues with in the record.

130. Commenters assert that although the PAP does not place a cap on total payments to competitive LECs, the actual amount Verizon is likely to pay for discriminatory performance to competitive LECs is insufficient to deter Verizon activity.[447] In response we note that, the PAP is not the only means of ensuring that Verizon continues to provide nondiscriminatory service to competing carriers. In addition to the monetary payments at stake under this plan, Verizon faces other consequences if it fails to sustain an acceptable level of service to competing carriers, including: enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6) and remedies associated with antitrust and other legal actions.[448]

131. Commenters also argue that the effectiveness of the PAP is limited because of incomplete or missing important metrics, improper implementation of existing metrics, ineffective metrics and change management process and unverified performance results.[449] We recognize that development and implementation of metrics and inclusion in a PAP is an ongoing process. During this year the Pennsylvania Commission already has updated the PAP by requiring Verizon to separately report line-sharing and DSL metrics, revise certain billing metrics, and increase the penalty for missing a metric for four months or more.[450] We also note that Verizon has agreed to adapt the performance measurements and standards used in New York to Pennsylvania.[451] In addition, commenters assert that New York metrics must be implemented in Pennsylvania by Verizon prior to section 271 approval.[452] We disagree. As we stated above, we believe that in combination with the existing PAP, the ongoing work by the Pennsylvania Commission to revise the performance measurements and standards is sufficient to provide us with assurance that Verizon will continue to comply with its section 271 obligations after approval.

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[446] *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9121-25, paras. 240-247; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6377-81, paras. 273-278;.

[447] Department of Justice Evaluation at 16-17; AT&T Comments at 61-63; Broadslate Joint Comments at 20-22; WorldCom Comments at 8; AT&T Reply at 38-39.

[448] Verizon Application at 88-90. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430 (stating that the BOC "risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner") (footnote omitted); *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421 (same).

[449] Department of Justice Evaluation at 14-15; AT&T Comments at 54-65; CompTel Comments at 22; CWA Comments at 6; WorldCom Comments at 14-19. We note that CWA's comments pertain to information regarding Verizon's conduct in New York.

[450] Verizon Application at 88-90.

[451] Pennsylvania Commission Comments, App. I (Pennsylvania Commission's conditional approval, and Verizon letter accepting conditions).

[452] AT&T Comments at 65-66; WorldCom Comments at 9; AT&T Reply at 44-45.

132. Finally, commenters assert that the public interest requires Verizon to commit not to challenge the Pennsylvania Commission's authority to implement or modify the PAP.[453] We note that the Pennsylvania Commission was satisfied by Verizon's withdrawal of its previous lawsuit challenging the Pennsylvania Commission's authority to implement a PAP.[454]

B. Other Public Interest Issues

133. WorldCom asserts that Verizon's Local Service Provider Protection Service ("local freeze") is anti-competitive.[455] We have previously stated, however, that a "local freeze" program is not a *per se* violation of our rules,[456] but rather there must be some anti-competitive impact from the particular implementation of the program. Based on the record before us, we are not able to find this service to have such an anti-competitive impact as to raise public interest concerns necessitating withholding of section 271 approval. WorldCom has taken appropriate action, that is, filed a complaint with the appropriate state commission[457] and may do so with this Commission.

134. AT&T asserts that prior to a grant of section 271 authority for Pennsylvania, Verizon should be required to demonstrate that its affiliate, GTE North, complies with the checklist, or in the alternative, Verizon should not receive section 271 authority to provide interLATA services from GTE North's territory.[458] As discussed in Section II above, the Act requires Verizon to demonstrate checklist compliance for the BOC or its successor or assign but not for its affiliates.[459] GTE North is not a successor or assign of the BOC applicant described in the Act, namely "The Bell Telephone Company of Pennsylvania," but rather is an affiliate acquired as a result of the merger between Bell Atlantic and GTE.[460] Once the requirements of section 271

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[453] AT&T Comments at 64-66; POCA Comments at 5, 32-40; WorldCom Comments at 31.

[454] Pennsylvania Commission Reply at 6-7. The Pennsylvania Commission believes "… Verizon is not likely to maintain a claim, in a subsequent litigation after Section 271 approval is obtained …." *Id.*

[455] WorldCom Comments at 29-30. When a local freeze is in effect, customers wishing to change local service providers must contact their current provider before the customer's new carrier submits the change of service order or the new carrier's order to migrate the customer is rejected by the current provider.

[456] *See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996,* CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1589-90, paras. 135-137 (1998).

[457] WorldCom has a pending complaint before the Pennsylvania Commission regarding Verizon's Local Service Provider Protection Service. *See* MCI WorldCom Communications, Inc. v. Verizon Pennsylvania Inc., Docket No. C-00015149.

[458] AT&T Comments at 80-81.

[459] *See, e.g.*, 47 USC § 271(c)(2)(B) ("[a]ccess or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following . . .[setting forth the checklist requirements].")

[460] 47 U.S.C. § 153(4).

are met, the statute provides for a grant of interstate authority to the BOC for the entire state. Nothing in the Act or the Commission's own review of the record supports a subsequent modification of the grant of authority to prohibit such service in the GTE North territory.

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

135. 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.[461] 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.[462]

136. Working in concert with the Pennsylvania Commission, we intend to closely monitor Verizon's post-approval compliance for Pennsylvania to ensure that Verizon does not "cease [] to meet any of the conditions required for [section 271] approval."[463] 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 Pennsylvania. Like many commenters in this proceeding[464] and the Department of Justice,[465] we have given close scrutiny to Verizon's billing system. Recent performance indicates that Verizon now delivers timely and accurate wholesale bills. We stress, however, that we are prepared to use our authority under section 271(d)(6) if evidence shows that recent improvements in Verizon's OSS performance have not been maintained.

137. The Pennsylvania Commission-approved UNE rates are within the range of what a reasonable application of TELRIC would produce.[466] Because states have considerable flexibility in setting UNE rates, certain flaws in cost studies, by themselves, may not result in rates that are outside the reasonable range that a correct application of our TELRIC rules would produce. Collectively, however, the number of possible flaws in the cost studies, if repeated without adequate state-specific justification, may well result in prices outside the reasonable range of what TELRIC would produce. We observe that in any context in which prices are not set in

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461 47 U.S.C. § 271(d)(6).

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

463 47 U.S.C. § 271(d)(6)(A).

464 ASCENT Comments at 14-19; AT&T Comments at 65-67; Capsule Joint Comments at 16-21; CompTel Comments at 5-8; Curry Comments at 5-7; WorldCom Comments at 4-5; Z-Tel Comments at 5-11; WorldCom Reply at 7-10.

465 Department of Justice Evaluation at 7-14.

466 *See supra* Section III(A)(1)(b).

accordance with our rules and the Act, we retain the ability to take appropriate enforcement action, including action pursuant to section 271(d)(6), and will not hesitate to do so.[467]

138. We require Verizon to report to the Commission all Pennsylvania 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. 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 Pennsylvania long distance market.[468]

VIII. CONCLUSION

139. 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 Pennsylvania.

IX. ORDERING CLAUSES

140. 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 Pennsylvania, filed on June 21, 2001, IS GRANTED.

141. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE September 28, 2001.

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[467] *See* 47 U.S.C. § 271(d)(6).

[468] *See, e.g., Bell Atlantic-New York, Authorization Under Section 271 of 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 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).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

DISSENTING OPINION OF COMMISSIONER MICHAEL J. COPPS

September 19, 2001

In the Matter of: Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania (CC Docket No. 01-138)

A primary purpose of the Telecommunications Act of 1996 was to eliminate barriers to competition in the local telecommunications market. One of the most important tools Congress created to achieve this goal was Section 271 of the Communications Act.[1] The combination of competitive BOC entry into the interLATA market and competitive local exchange carrier (CLEC) entry into the BOC's once-dominant local market, Congress believed, would lead to significant consumer benefits in the form of lower prices, better service, and investment in new technologies. Continued BOC dominance of a state's local market, however, could undermine consumer benefits if the BOC could leverage this dominance upon entering the interLATA market.

I voted to approve Verizon's application to provide interLATA service in Connecticut because I found that Verizon met its burden of proving that it complied with section 271. I believe that Verizon has made great strides in opening the local market in Pennsylvania as well. The company should be commended for its hard work. Despite these efforts, however, the record does not demonstrate that Verizon has satisfied the requirements of section 271 in Pennsylvania.

The Application reveals that Verizon has worked diligently and successfully on many of its section 271 responsibilities. We should all be pleased that Verizon has demonstrated that problems seen in several prior applications can be fixed. In Section 271, however, Congress did not provide us with a balancing test, where we look to the quality of a BOC's overall effort to meet its responsibilities. Congress insisted, as the Commission has noted in previous Orders, that a BOC must meet *each and every checklist item* before the Commission grants permission to offer interLATA service.[2] Additionally, we must not forget that the granting of an application must be in the public interest.

The record before us fails to prove that Verizon provides competitors with adequate wholesale bills. Verizon has therefore not yet met its burden of proving that it complies with item 2 of the "competitive checklist." Furthermore, the Commission's analysis and procedures related to UNE rates were troubling. Additionally, I agree with the United States Department of Justice's (DOJ) determination that "the effectiveness of the Pennsylvania PAP [Performance

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[1] The Telecommunication Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan*, 12 F.C.C. Rcd. 20, ¶ 9 (1997) (*Michigan 271*).

Assurance Plan] may be compromised not only by the lack of effective billing metrics, but also by its structural remedies."[3] This lack of effectiveness leads me to conclude that the PAP does not provide adequate incentives to ensure continued compliance with checklist items.

I deem approval of the Application at this point to be premature. It may well be that with just a few months more time, and with additional information about procedures recently put in place and presently at work, this Application could gain my support. We are not quite there yet, however. Because we lack the option of taking this brief time to collect such additional information, I must respectfully, and somewhat reluctantly, dissent.

I. BACKGROUND ON SECTION 271

In 1996 Congress faced a telecommunications industry where local and long distance companies were barred from competing against each other by legal restrictions and economic forces. Judge Greene's Modified Final Judgement (MFJ) prohibited the BOCs from offering long distance services. The MFJ stated that the restriction was "clearly necessary to preserve free competition in the interexchange market."[4] Judge Greene's determination was based on the belief that BOCs could discriminate against their interexchange rivals and . . . cross-subsidize their interexchange ventures," if they offered interLATA services while maintaining control of the local exchange market.[5]

In order to promote competition in both the long distance and the local market in this legal and economic landscape, Congress passed the Telecommunications Act (the Act). In addition to the market-opening mechanisms and requirements found in Sections 251, 252 and 253 of the Act, Congress included Section 271. The Commission has stated that Congress included Section 271 because "the BOCs . . . have little, if any, incentive to assist new entrants in their efforts to secure a share of the BOCs' markets," and that Congress sought to create such an incentive by "requir[ing] BOCs to demonstrate that they have opened their local telecommunications markets to competition before they are authorized to provide in-region long distance services."[6]

In order to advance Congress's goal of promoting competition, the Commission must ensure that a BOC fully complies with Section 271's requirements before we approve an

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[3] Evaluation of the United States Department of Justice, In the Matter of Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, 14-15 (July 26, 2001) (citation omitted) (DOJ Evaluation).

[4] *United States v. American Telegraph & Telephone Co.*, 552 F. Supp. 131, 188 (D. D.C. 1982) (Modification of Final Judgement).

[5] *See Michigan 271* at ¶ 10.

[6] *Id.* at ¶ 14. *See also In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, 13 F.C.C. Rcd. 20, ¶ 3 (1998).

application to provide interLATA services. As we have stated before, "unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition," BOC entry into the long distance market "would be anticompetitive."[7] I agree that "[i]n order to effectuate Congress' intent, we must make certain that the BOCs have taken real, significant, and irreversible steps to open their markets."[8]

The rewards for following Congress's direction by deregulating and opening the local markets are substantial – creation of consumer choice of carriers, one-stop shopping, the competing away of implicit subsidies, lower prices, better quality of service, and more technological innovation in both the long distance and local markets.

II. VERIZON HAS NOT DEMONSTRATED THAT IT SATISFIES COMPETITIVE CHECKLIST ITEM 2

In order to win approval of this Application Verizon must prove that it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B).[9] Section 271 states that, among fourteen other checklist items, "access or interconnection provided or generally offered by a Bell operating company to another telecommunications carrier [must] include[] . . . [n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[10] This is checklist item 2.

As the Majority states, "[u]nder checklist item 2, a BOC must demonstrate that it provides non-discriminatory access to . . . billing."[11] The Order also correctly states that "[i]n previous section 271 decisions, the Commission has held that, pursuant to checklist item 2, BOCs must provide competitive LECs with . . . complete, accurate and timely wholesale bills,"[12] and that "the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2."[13]

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7 *Michigan 271* at ¶ 18.

8 *Id.* at ¶ 18.

9 *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications Inc. (D/B/A Verizon Long Distance), NYNEX Long Distance Company (D/B/A Verizon Enterprise Solutions), and Verizon Global networks Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts,* 16 F.C.C. Rcd. 8988, ¶ 11 (2001) (*Massachusetts 271*).

10 47 U.S.C. § 271(c)(2)(B).

11 *In the Matter of Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* (CC Docket No. 01-138), ¶ 12 (*Pennsylvania 271*). *See also Bell Atlantic New York Order,* 15 FCC Rcd at 3989, ¶ 82.

12 *Pennsylvania 271* at ¶ 13.

13 *Id.* at ¶ 22.

If Verizon's wholesale bills are not readable, auditable and accurate, we must deny the Application because of the critical role these bills play in local competition. The majority identifies four ways in which "[i]naccurate or untimely wholesale bills can impede a competitive LEC's ability to compete."[14]

> "First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the changes are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from and incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT [electronic] formats thus represent a crucial component of OSS."[15]

Verizon has the burden of proving that it has provided competitors with adequate wholesale bills.[16] "The BOC at all times bears the burden of proof of compliance with section 271."[17] In determining whether Verizon has met its burden, the Commission uses a "preponderance of the evidence" standard.[18]

It is also worth noting that in the Commission's Public Notice announcing procedures governing BOC section 271 applications, we unequivocally stated that "[w]e expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon."[19]

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[14] *Id.* at ¶ 23 (citations omitted). *See also id.* at ¶ 13 ("Wholesale bills are essential [to competitors] because competitive LECs must monitor the costs they incur in providing services to their customers.").

[15] *Id.* at ¶ 23 (citations omitted). "BOS-BDT" refers to the "Billing Output Specification (BOS) Bill Data Type (BDT) electronic billing format.

[16] *See Massachusetts 271* at ¶ 11.

[17] *Id.* Note that the Commission has found that "[i]n the first instance . . . a BOC must present a prima facie case in its application that all of the requirements of section 271 have been satisfied. Once the applicant has made such a showing, opponents of the BOC's entry must, as a practical matter, produce evidence and arguments necessary to show that the application does not satisfy the requirements of section 271 or risk a ruling in the BOC's favor. We emphasize, however, that the BOC applicant retains at all times the ultimate burden of proof that its application satisfies section 271." *Michigan 271* at 44.

[18] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc. D/B/A/ Southwestern Bell Long Distance*, 15 F.C.C. Rcd. 18, ¶ 48 (2000).

[19] *Procedures for Bell Operating company Applications Under New Section 271of the Communications Act*, 11 F.C.C. Rcd. 19 (Dec. 6, 1996).

The Order does not waive this rule with respect to the billing issue in the Verizon Application. The Commission must therefore rely only on information received before the Application was filed in June. This is particularly important with regard to billing, because it means that the Commission only had the benefit of the June billing cycle for its analysis of Verizon's last critical billing software fix. It also means that the Commission did not have the benefit of the July and August billing cycles, and that CLECs did not have adequate time to determine whether the June bills had actually been fixed, as Verizon asserted.

In addition, it is important to note that, "a BOC's promises of future performance to address particular concerns raised by commenters have no probative value in demonstrating its present compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior."[20] I cannot, therefore, give any weight to assertions that Verizon's billing practices will improve in the future.

CLECs have provided the Commission with evidence that Verizon's wholesale bills include substantial errors.[21] Errors include: charging for lines that were not provided; assessing retail charges where wholesale charges were appropriate; double billing; assessing taxes improperly; including charges where subtotaled amounts were inconsistent with totaled amounts; and miscrediting previous billing errors, or crediting in ways that could not be identified.[22]

The Majority admits that the question of whether Verizon's Application should be denied because of these billing problems "is a close call."[23] The record demonstrates that Verizon's wholesale billing system has serious flaws.[24] The Pennsylvania Commission found the presence of billing errors.[25] While the Majority of the Pennsylvania Commission approved the Application, two of the five Commissioners dissented, finding that wholesale billing was too flawed to meet the requirements of section 271. Commissioner Nora Mead Brownell stated that "Verizon must

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[20] *Michigan 271* at ¶ 55.

[21] *See* Reply Comments of Z-Tel at ¶ 4 and footnote 1; *Ex Parte* Letter of Z-Tel at 3 (August 10, 2001); *Ex Parte* Letter of Z-Tel at 2-3 (August 17, 2001); WorldCom Reply Comments at 4-5; Lichtenberg Reply Declaration at ¶ 21, 23-28; Fawzi/Kirchberber Declaration at ¶¶ 93-95. It is important to note that these commenters indicate that problems with bills received after the software change relied upon by the majority. There is additional evidence that bills prior to June contained serious errors as well, including an admission by Verizon of billing errors. *See, e.g.*, Verizon McLean/Wierzbicki/Webster Declaration at ¶ 135.

[22] *See Pennsylvania 271* at ¶ 18 and footnote 55.

[23] *Id.* at ¶ 15.

[24] *See DOJ Evaluation* at 7-8.

[25] Consultative Report of the Pennsylvania Public Utilities Commission, 100-103 (June 25, 2001).

implement adjustments to its electronic billing systems to insure that CLECs are able to obtain timely and accurate electronic bills. . . . Without confidence that the billing systems are absolutely able to deliver adequate services and billing support to its customers, I cannot see how the market can work."[26] Commissioner Terrance J. Fitzpatrick added that even after Verizon designated its electronic bill as its bill of record that "the fact remains that the e-billing system is unreliable."[27]

As late as July 26, 2001, DOJ concluded that "the Department is unable fully to endorse Verizon's application based on the current record."[28] DOJ was unable to find that Verizon satisfied section 271 because "Verizon filed its Pennsylvania application with the FCC without sufficient evidence to show that numerous problems with its wholesale billing systems have been corrected." More than a month after Verizon submitted the last billing information on which the Commission may legally rely, DOJ found that "insufficient time has elapsed to determine whether Verizon's proposed fixes to its billing problems will be effective."[29]

The majority, nonetheless, finds that Verizon has proved that it provides competitors with wholesale bills that satisfy item 2 of the competitive checklist. They note that Verizon's evidentiary showing is "minimally sufficient."[30] I believe that the evidence that the majority relies on is inadequate. The Order states that "[i]n past section 271 orders, the Commission has determined checklist compliance for OSS functions primarily by relying on performance data that reflects actual commercial usage."[31] Performance data is not the primary source of evidence here, despite the fact that the Commission "has consistently held that commercial performance data is the most persuasive form of evidence."[32] The majority explains that it "cannot rely exclusively on past commercial performance data, because, among other things, Verizon has made significant changes to its wholesale billing systems in the most recent months leading up to this application."[33]

This means that Verizon's billing software update in May left the Commission with only the June bill to analyze. The only commercial performance data that the Majority relies on that satisfies checklist item 2, therefore, is the June bill. Prior bills did not satisfy item 2. Subsequent bills are not relied upon, because they are not part of the record under the Commission's "complete when filed" rule.

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[26] Dissenting Statement of Commissioner Nora Mead Brownell, 1, (June 6, 2001).

[27] Dissenting Statement of Commissioner Terrance J. Fitzpatrick, 2 (June 6, 2001).

[28] *DOJ Evaluation* at 3.

[29] *Id.* at 3.

[30] *Pennsylvania 271* at ¶ 37.

[31] *Id.* at ¶ 24.

[32] *Id.*

[33] *Id.*

Apart from the June bill, the Commission has only the KPMG and PriceWaterhouseCoopers (PWC) studies as evidence that Verizon has actually satisfied section 271. The KPMG study did not relate to the electronic bill, only to the paper bill, and was completed months before Verizon made significant billing changes.[34] The PWC study was not open for participation by third parties, and did not include an assessment of billing accuracy.[35] In addition, even if these studies provided direct evidence of satisfactory billing practices, this type of evidence is less probative than commercial performance data. The Commission "has consistently held that commercial performance data is the most persuasive form of evidence."[36] DOJ points out that "[t]he experience in Pennsylvania highlights the weakness of third-party testing, as the CLECs' commercial experience with Verizon's billing in the past, both paper and electronic, has revealed numerous problems with both accuracy and auditability."[37]

This evidence does not convince me that Verizon has met its burden. Accurate and reliable bills, and the ability to uncover and dispute billing errors are critical to competition. Verizon admits that billing problems existed before the June billing cycle.[38] These billing problems persuaded DOJ and two Pennsylvania Commissioners that they could not support the Application. While Verizon claims that software changes corrected billing problems by the June billing cycle, there is evidence that Verizon's software changes leave substantial billing problems uncorrected. AT&T, Z-Tel, and MCI/WorldCom all state that the June bill contained errors that negatively impacted their ability to compete.[39]

In addition, the software changes that are manifested in the June bills do not leave the Commission with the ability to collect enough evidence on whether Verizon successfully corrected billing problems. The June bill was sent to competitors just before our "complete when filed" deadline. That gave the Commission only one billing cycle to use in analyzing the software corrections. In this case, given the long history of billing problems, one billing cycle was not enough. Commissioner Nora Mead Brownell stated that "the system must complete at least two

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[34] *See* KPMG, Verizon Pennsylvania Inc. OSS Evaluation Project Final Report (Dec. 22, 2000).

[35] *See Pennsylvania 271* at ¶ 21.

[36] *Id.* at ¶ 24.

[37] *DOJ Evaluation* at 10.

[38] *Pennsylvania 271* at ¶ 26 ("Verizon concedes past problems, particularly with the BOS BDT bill [but] contends that recent data show significantly improved performance.").

[39] *See* Reply Comments of Z-Tel at ¶ 4 and footnote 1; *Ex Parte* Letter of Z-Tel at 3 (August 10, 2001); *Ex Parte* Letter of Z-Tel at 2-3 (August 17, 2001); WorldCom Reply Comments at 4-5; Lichtenberg Reply Declaration at ¶ 21, 23-28; Fawzi/Kirchberber Declaration at ¶¶ 93-95. I note that in subsequent *Ex Parte* filings, these parties state that serious billing problems persist beyond the June bill, spilling into the July and August bills. While these *Ex Parte* communications occurred late in our process, to the extent that improvements in the July and August billing cycles give the Majority additional comfort in the decision that Verizon has complied with item 2, this evidence is important.

billing cycles [to provide] confidence that the billing systems are absolutely able to deliver adequate services and billing support to customers." Because of evidence of persistent billing problems, I believe that without several months of evidence on the record that Verizon's bills meet the requirements of section 271, the Commission should not approve the Application.

Verizon, while it has obviously worked hard and has made strides in correcting these problems, has not demonstrated that it has eliminated the problems to the point that it provides complete, accurate and timely wholesale bills, as section 271 requires.

I believe that the Commission is inviting future problems by relying so heavily on late filed evidence and the subsequent flurry of *Ex Parte* letters and meetings that were necessary to analyze this new information in an already very complicated application. I fear such a precedent when we are faced with multi-state 271 applications, or applications where more checklist items are in dispute. Reliance on this information could undermine the 271 process in the future and is an invitation to litigation.

III. THE COMMISSION'S PRICING ANALYSIS IS TROUBLING

Verizon must also prove that the pricing of network elements in Pennsylvania does not violate competitive checklist item 2. Pricing of network elements, like wholesale billing, is critical to BOC provision of "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[40]

Several commenters argued that Pennsylvania's cost methodology was not TELRIC compliant.[41] These commenters identified a long list of potential TELRIC violations.[42] The majority ignores much of this evidence and finds instead that "Verizon's charges for UNEs made available in Pennsylvania to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2."[43] The majority specifically addresses only the three allegations where they find no TELRIC violation, rejecting arguments related to the fill factors for copper cable, fiber cable, and digital loop carriers,[44] and switching costs.[45] It then, in a footnote, "note[s] that AT&T and WorldCom allege additional specific TELRIC violations" but strangely declines to analyze or even comment on why it reacts only to two TELRIC allegations and ignores the majority of allegations.[46] I am troubled by the majority's reluctance to deal with

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40 47 U.S.C. § 271(c)(2)(B).

41 AT&T Comments at 22-30; WorldCom Comments at 22-25.

42 *Id*.

43 *Pennsylvania 271* at ¶ 55.

44 *Id.* at ¶¶ 58-59.

45 *Id.* at ¶ 60.

46 *Id.* at ¶61 and footnote 242.

the full range of specific TELRIC issues.[47] The majority argues that it need not address the commenters' arguments because Pennsylvania's rate calculations result in rates that a reasonable application of TELRIC methodology would produce. If this is true, why reveal analysis on only the allegations that support the majority decision and ignore other allegations, leaving the question of pricing adequacy so confused?

Commission precedent holds that the TELRIC analysis is important to the 271 process. I believe that the Commission should address these potential TELRIC violations. And it should do so in a way that allows the parties to the proceeding and the Commissioners to analyze this information in an orderly and deliberate process, rather than in a last minute change to the Order.

It is also important to note that because it does not rely on a finding of TELRIC compliance, the majority turns to the Commission's practice of "look[ing] to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce," and bases its acceptance of Pennsylvania's rates on a comparison to New York's rates.[48] A New York Administrative Law Judge has found the New York rates were improper.[49] The Commission does not know the results of the process that will follow this determination, yet it relies on Pennsylvania's comparability to New York prices that are likely to be reduced. I therefore believe that the majority incorrectly relies so heavily on Pennsylvania's comparability to New York's current, uncorrected rates. The majority seems comfortable with this comparison, however, and curiously fails even to note that if New York's rates were reduced so that the comparison is no longer valid, Verizon might no longer be in compliance with section 271. Our precedent holds that this would, in fact, be a subject for Commission scrutiny.[50]

IV. THE "PERFORMANCE ASSURANCE PLAN" DOES NOT ADEQUATELY DISINCENT BACKSLIDING

In addition to requiring a BOC to demonstrate that it has met all fourteen competitive checklist items, Section 271 requires the Commission to determine that a BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity."[51] The majority notes that "[i]n prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market."[52] The

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47 *Id.* at ¶ 58-60.

48 *Id.* at ¶ 63.

49 *See* Recommended Decision on Module 3 Issues, Administrative Law Judge Joel A. Linsider, Case 98-C-1357.

50 *See Massachusetts 271* at ¶¶ 29-30.

51 47 U.S.C. § 271(d)(3)(c).

52 *Pennsylvania 271* at ¶ 127.

Commission has previously stated that "[i]t is not enough that the BOC prove it is in compliance at the time of filing a section 271 application; it is essential that the BOC must also demonstrate that it can be relied upon to remain in compliance."[53] The Commission has therefore properly decided to consider the Pennsylvania PAP under section 271's public interest requirement.

The Majority concludes that the Pennsylvania PAP "provides incentives to foster post-entry checklist compliance" and therefore is consistent with the public interest.[54] I believe that while Pennsylvania has begun a process that may lead it to adopt a PAP that provides proper incentives for post-entry checklist compliance, the current plan does not do so.

DOJ found that "the effectiveness of the Pennsylvania PAP may be compromised not only by the lack of effective billing metrics, but also by its structural remedies."[55] The current PAP is quite different from the PAPs used in the states where the Commission has approved applications to provide interLATA service. First, performance incentives are not tailored to the level of competitive harm caused by types of performance failure or the gravity of the failure. Second, remedy payments are too low to be effective. Third, the PAP does not provide Pennsylvania State regulators with the flexibility needed to focus on particularly insufficient performance. Fourth, by measuring discrimination CLEC-by-CLEC instead of on a market-wide bass, the PAP unreasonably increases the potential that pervasive discrimination will be missed.

In response to arguments that the PAP is ineffective, the Majority states that "[w]e recognize that the development and implementation of metrics and inclusion in a PAP is an ongoing process," and that "Verizon has agreed to adapt the performance measurements and standards used in New York to Pennsylvania."" While Pennsylvania's process for altering the PAP may result in a plan that is effective, the Commission has no assurance that this will be the case. While there is some evidence that Verizon has agreed that the PAP should follow the New York model, Verizon has also proposed two plans with the Pennsylvania PUC that are significantly different from the New York PAP in place when the Commission approved Verizon's 271 application in that state.[56] While the PAP that results from this process may satisfy our public interest standard, there is no guarantee that it will, despite Pennsylvania's "rebuttable presumption." Because I find that the current PAP does not provide adequate incentives to foster post-entry checklist compliance, and because we lack convincing evidence that Pennsylvania's PAP revision process will improve the situation, I must conclude that the PAP is inadequate.

V. CONCLUSION

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[53] *Michigan 271* at ¶ 22.

[54] *Pennsylvania 271* at ¶ 129.

[55] *DOJ Evaluation*, 14-15 (citation omitted).

[56] *See* Letter of William B. Petersen to James J. McNulty Re: Performance Measures Remedies, Doc. No. M-00011468, 1.

The Commission has stated that:

> "Complying with the competitive checklist, ensuring that entry is consistent with the public interest, and meeting the other requirements of section 271 are realistic, necessary goals. That is not to say, however, that they are easy to meet or achievable overnight. Given the complexities of the task of opening these local markets to true, sustainable competition, it is not surprising that companies that are earnestly and in good faith cooperating in opening their local markets to competition have not yet completed the task. It is through such earnest, good faith efforts that BOCs will obtain authorization to provide in-region long distance service."[57]

I believe that Verizon has worked hard to comply with Section 271 in Pennsylvania. Continuing billing problems, and inadequate time and evidence to properly analyze potential billing improvements, however, mean that Verizon has not yet met its burden with respect to item 2 of the competitive checklist. This alone should result in the Commission denying this Application. In addition, troubling analysis and procedures related to UNE rates and the fact that Pennsylvania's PAP process is still unresolved add to my discomfort with this Order.

These are problems that can be solved. I believe that if the Commission denied this application, and Verizon refiled it in the next few months, the Commission would have access to critical new record evidence that could result in compliance with section 271. My colleagues have decided that there is enough evidence to approve the Application today, and that the Pennsylvania PAP and the Commission's 271(d)(6) authority are adequate to resolve any problems that may arise on the issues that are "close calls" in this Order. I do not agree that this Application justifies that confidence, nor do I believe that approving a "compliance in the making" arrangement will help us deal successfully with future 271 applications. Given the Majority's reliance on the PAP and 271(d)(6), I hope that the Commission will closely and carefully monitor and assess Verizon's continuing efforts to improve wholesale billing, the New York pricing proceeding, and Pennsylvania's PAP process, and be willing to act decisively if necessary to protect competition.

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[57] *Michigan 271* at ¶ 23.

Appendix A

Verizon Pennsylvania, 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 Pennsylvania

CC Docket No. 01-138

COMMENTS

Commenter	Abbreviation
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
Broadslate Networks, Inc., CTSI, Inc., and XO Communications, Inc. (Joint filing)	Broadslate Joint Comments
Capsule Communications, Inc., Covista, Inc. and US LEC Corp. (Joint filing)	Capsule Joint Comments
Cavalier Telephone LLC & Cavalier Mid Atlantic, LLC	Cavalier
Communications Workers of America	CWA
Competitive Telecommunications Association	CompTel
Covad Communications Company	Covad
Curry Communications, Inc.	Curry
U.S. Department of Justice	Department of Justice
Keep America Connected, *et al*.	
Network Access Solutions	NAS
Pennsylvania Office of Consumer Advocate	POCA
Pennsylvania Public Utility Commission	Pennsylvania Commission
Sprint Communications Company	Sprint
Telecommunications Research and Action Center	TRAC
WorldCom, Inc.	WorldCom
World Institute on Disability, *et al*.	
Yipes Transmission, Inc.	Yipes
Z-Tel Communications, Inc.	Z-Tel

REPLIES

Association of Communications Enterprises	ASCENT
Association for Local Telecommunications Services	ALTS
AT&T Corp.	AT&T
Broadslate Networks, Inc., Cavalier Telephone, LLC, CTSI, Inc., Focal Communications Corporation, US LEC Corp., and XO Communications, Inc.	Broadslate Joint Reply

(Joint filing)	
Conestoga Enterprises, Inc.,	CEI
Keep America Connected, et al.	
Pennsylvania Office of Small Business Advocate	
Pennsylvania Public Utility Commission	Pennsylvania Commission
Telecommunications Research and Action Center	TRAC
WorldCom, Inc.	WorldCom
Z-Tel Communications, Inc.	Z-Tel

Letter Commenters and Reply Commenters

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Anthony J. Girifalco
Anthony G. Melf
Balayszis' Cafe
Berean Institute
Berwick Industrial Plan, Inc. & Spirit, Inc.
Brian C. Morris Custom Cabinets
Carlo DeMarco
Catherine McCollom
Central Credit Control
Central Property Search, Inc.
Central Westmoreland Chamber of Commerce
Charles DiSanto
Chester County Development Council
Clarion University
City of Greensburg
City of Philadelphia City Council
City of Philadelphia, Mayor's Commission on Services to the Aging
Cultural Alliance of York County
Dauphin County Department of Community & Economic Development
Dymond Associates
Dr. Theodore E. Fuller
Economic Development Council of Northeastern Pennsylvania
Edmonds & Associates
Gerald E. Depo
Greater Bridgeville Area Chamber of Commerce
Greater Hazelton Chamber of Commerce
Greater Philadelphia Urban Affairs Coalition
Greater Scranton Chamber of Commerce
Guiding Light for the Blind
Harrisburg Hello
Harrisburg Magazine

Hispanic Business Council of the Lehigh Valley
HJG Associates
John P. Durante
Karl Associates Inc.
Latrobe Area Chamber of Commerce
Laurel Business Institute
Lehigh Valley Economic Development Corporation
Lehigh County Senior Center
Martin's Potato Chips Inc.
Michael W. Krajovic
Millersville University
Montgomery County Association for the Blind
Montgomery County Cultural Center
Nash Communications, Ltd.
National Consumers League
North Penn Chamber of Commerce
North Penn Hospital
PABCOM (Paul A. Bennett Communications)
Partners for Small Business Development, Inc.
Patricia Giambrone
Penn's Northeast
Pennsylvania Downtown Center
Pennsylvania League of Cities and Municipalities
Pennsylvania Resources Council, Inc. (PRC)
Phillip Laplante
Philadelphia Opportunities Industrialization Center, Inc.
Pocono Northeast Development Fund
Senior Fest, Inc.
Squires Consulting
The Enterprise Center
The MBF Center
Three Rivers Center for Independent Living (TRCIL)
TRR & Associates
United Seniors Health Council
West Philadelphia Coalition of Neighborhoods

Appendix B

Pennsylvania Performance Data

Appendix C
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 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

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[1] For purposes of 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 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).

[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-(continued….)

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

(Continued from previous page)
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.* § 272. *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom., SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom., Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review pending sub nom. Bell Atlantic Telephone Companies v. FCC*, No. 97-1423 (D.C. Cir. filed July 11, 1997); *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

11 47 U.S.C. § 271(d)(3)(C).

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

rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application.[13] In the context of section 271's adjudicatory framework, the Commission has established certain procedural rules governing BOC section 271 applications.[14] The Commission has explained in prior orders the procedural rules it has developed to facilitate the review process.[15] Here we describe how the Commission considers the evidence of compliance that the BOC presents in its application.

5. As part of the determination that a BOC has satisfied the requirements of section 271, the Commission considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B). The BOC at all times bears the burden of proof of compliance with section 271, even if no party challenges its compliance with a particular requirement.[16] In demonstrating its compliance, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.[17] In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a 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

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[13] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19; *see also AT&T 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.

retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself.[20] Thus, where a retail analogue exists, a BOC must provide access that is equal to (*i.e.*, substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[21] For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete."[22]

6. The determination of whether the statutory standard is met is ultimately a judgment the Commission must make based on its expertise in promoting competition in local markets and in telecommunications regulation generally.[23] The Commission has not established, nor does it believe it appropriate to establish, specific objective criteria for what constitutes "substantially the same time and manner" or a "meaningful opportunity to compete."[24] Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances. Therefore, the Commission looks at each application on a case-by-case basis and considers the totality of the circumstances, including the origin and quality of the information in the record, to determine whether the nondiscrimination requirements of the Act are met.

A. Performance Data

7. As established in prior section 271 orders, the Commission has found that performance measurements provide valuable evidence regarding a BOC's compliance or noncompliance with individual checklist items. The Commission expects that, in its *prima facie* case in the initial application, a BOC relying on performance data will:

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 examine how many months a variation in performance has existed and what the recent trend has been. The Commission may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.

9. Where there are multiple performance measures associated with a particular checklist item, the Commission would consider the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, 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 it less likely to hold the BOC wholly accountable for the disparity. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

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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. 55andn.102.

[26] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3970, 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 the judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist.

B. Relevance of Previous Section 271 Approvals

11. In some section 271 applications, the volumes of the BOC's commercial orders may be significantly lower than they were in prior proceedings. In certain instances, volumes may be so low as to render the performance data inconsistent and inconclusive.[27] Performance data based on low volumes of orders or other transactions 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, related section 271 proceedings may be a relevant factor in the Commission's analysis. Where a BOC provides evidence that a particular system reviewed and approved in a prior section 271 proceeding is also used in the proceeding at hand, the Commission's review of the same system in the current proceeding will be informed by the findings in the prior one. Indeed, to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues. Appropriately employed, such a practice can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties 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] Thus, the BOC's actual performance in the applicant state may be relevant to the analysis and determinations with respect to the 14 checklist items. Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.

14. Moreover, because the Commission's review of a section 271 application must be based on a snapshot of a BOC's recent performance at the time an application is filed, the Commission cannot simply rely on findings relating to an applicant's performance in an anchor state at the time it issued the determination for that state. The performance in that state could change due to a multitude of factors, such as increased order volumes or shifts in the mix of the types of services or UNEs requested by competing carriers. Thus, even when the applicant makes a convincing showing of the relevance of anchor state data, the Commission must examine how recent performance in that state compares to performance at the time it approved that state's section 271 application, in order to determine if the systems and processes continue to perform at acceptable levels.

III. COMPLIANCE WITH ENTRY REQUIREMENTS -- SECTIONS 271(C)(1)(A) & 271(C)(1)(B)

15. As noted above, in order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[29] To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[30] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[31] The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.[32]

16. As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and

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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*.

[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.

interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the State has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under section 271(d)(3)(A)(ii), the Commission shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, "with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist...."[33] Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.[34]

IV. COMPLIANCE WITH THE COMPETITIVE CHECKLIST – SECTION 271(C)(2)(B)

A. Checklist Item 1– Interconnection

17. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[35] Section 251(c)(2) imposes a duty on incumbent LECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."[36] In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred "only to the physical linking of two networks for the mutual exchange of traffic."[37] Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network."[38] Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."[39] Finally, the incumbent LEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and

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[33] *See* 47 U.S.C. § 271(d)(3)(A)(ii).

[34] *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.

[35] 47 U.S.C. § 271(c)(2)(B)(i); *see Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662, para. 222.

[36] 47 U.S.C. § 251(c)(2)(A).

[37] *Local Competition First Report and Order*, 11 FCC Rcd at 15590, para. 176. Transport and termination of traffic are therefore excluded from the Commission's definition of interconnection. *See id.*

[38] 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the Commission identified a minimum set of technically feasible points of interconnection. *See Local Competition First Report and Order*, 11 FCC Rcd at 15607-09, paras. 204-211.

[39] 47 U.S.C. § 251(c)(2)(C).

nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252."[40]

18. To implement the equal-in-quality requirement in section 251, the Commission's rules require an incumbent LEC to design and operate its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within the incumbent LEC's network.[41] In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC's technical criteria and service standards.[42] In prior section 271 applications, the Commission concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.[43]

19. In the *Local Competition First Report and Order*, the Commission concluded that the requirement to provide interconnection on terms and conditions that are "just, reasonable, and nondiscriminatory" means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations.[44] The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service[45] and its provisioning of two-way trunking arrangements.[46] Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection

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[40] *Id.* § 251(c)(2)(D).

[41] *Local Competition First Report and Order*, 11 FCC Rcd at 15613-15, paras. 221-225; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20641-42, paras. 63-64.

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

[43] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64*; Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-50, paras. 74-77; *Ameritech Michigan Order*, 12 FCC Rcd at 20671-74, paras. 240-45. The Commission has relied on trunk blockage data to evaluate a BOC's interconnection performance. Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer's perception of a competitive LEC's service quality.

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

[45] 47 C.F.R. § 51.305(a)(5).

[46] The Commission's rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York* Order, 15 FCC Rcd at 3978-79, para. 65*; Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-220.

service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.[47]

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.[48] Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.[49] The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.[50] In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.[51] 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.[52] 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.[53]

21. As stated above, checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[54] 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.[55]

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47 47 C.F.R. § 51.305(a)(5).

48 *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50*; see Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66*; Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

49 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66*; Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

50 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

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

52 *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20643, para. 66; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

53 *Bell Atlantic New York Order*, *id*.; *Second BellSouth Louisiana Order*, *id*. at 20640-41, paras. 61-62.

54 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

55 *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.[56]

22. To the extent pricing disputes arise, the Commission will not duplicate the work of the state commissions. As noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.[57] 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.[58]

23. Consistent with the Commission's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as: (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.[59] In addition, the Commission has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.[60]

24. Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.[61] 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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[56] *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.

[57] *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.*).

[58] *SWBT Texas Order*, *id.*; *AT&T v. Iowa Utils. Bd.*, 525 U.S. at ___ .

[59] *SWBT Texas Order*, *id.*; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258 (explaining the Commission's case-by-case review of interim prices).

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

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

1. Access to Operations Support Systems

25. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.[62] The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[63] 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.[64] 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.[65]

26. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[66] 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.[67] The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).[68] 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.[69] Consistent with prior orders, the Commission examines a BOC's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.[70]

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

63 *See Bell Atlantic New York Order*, *id.* at 3990, para. 83; *BellSouth South Carolina Order*, *id.* at 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.

64 *See Bell Atlantic New York Order*, *id.* at 3990, para. 83.

65 *Id.*

66 47 U.S.C. § 271(c)(2)(B)(ii).

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

68 *Id.*

69 *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.*

70 *Id.* at 3990-91, para. 84.

27. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, unbundled network elements, and resale.[71] 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.[72] The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.[73] 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.[74]

28. For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[75] 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.[76] 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.[77] If such performance standards exist, the Commission will evaluate whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.[78]

29. The Commission analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to

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

[72] *Id.*

[73] *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.

[74] *See id.*

[75] *Id.* at 3991, para. 86.

[76] *Id.*

[77] *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *Id*. at 20619-20.

[78] *See id.* at 3991-92, para. 86.

understand how to implement and use all of the OSS functions available to them."[79] The Commission next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[80]

30. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.[81] 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.[82] In addition, a BOC must disclose to competing carriers any internal business rules[83] and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[84] Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.[85] 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.[86]

31. Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling

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[79] *Id.* at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616; s*ee also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, the Commission "consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions," including the interface (or gateway) that connects the competing carrier's own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC's OSS (including all necessary back office systems and personnel); and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. *Ameritech Michigan Order*, 12 FCC Rcd at 20615; s*ee also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

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

[81] *Id.* at 3992, para. 87; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."). For example, a BOC must provide competing carriers the specifications necessary to design their systems interfaces and business rules necessary to format orders, and demonstrate that systems are scalable to handle current and projected demand. *Id.*

[82] *Id.*

[83] Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders and include information concerning ordering codes such as universal service ordering codes (USOCs) and field identifiers (FIDs). *Id.; see also Ameritech Michigan Order*, 12 FCC Rcd at 20617 n. 335.

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

[85] *Id.*

[86] *See id.*

current demand and will be able to handle reasonably foreseeable future volumes.[87] The most probative evidence that OSS functions are operationally ready is actual commercial usage.[88] 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.[89] Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors, The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.[90] 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.[91] Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

a. Relevance of a BOC's Prior Section 271 Orders

32. The *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.[92] 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.[93] To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces, systems

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

88 *Id.*

89 *Id.*

90 *See id.; Ameritech Michigan Order*, 12 FCC Rcd at 20659 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

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

92 *See id*. at 6286-91, paras. 107-118

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

and, in many instances, even personnel.[94] 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.[95] Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.[96] Second, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, an applicant must submit evidence relating to *all* aspects of its OSS, including those OSS functions performed by BOC personnel.

b. Pre-Ordering

33. A BOC must demonstrate that: (i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces;[97] 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.[98]

34. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.[99] 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

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[94] 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.

[95] *See SWBT Kansas/Oklahoma Order*, *id*. at 6287, para. 108.

[96] *See id*. at 6288, para. 111.

[97] In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC. *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148.

[98] The Commission has held previously that an interface that provides responses in a prompt timeframe and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as a BOC serves its own customers. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029, paras. 145 and 154.

[99] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd. at 20660, para. 94 (referring to "pre-ordering and ordering" collectively as "the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof"). In prior orders, the Commission has identified the following five pre-order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4015, para. 132; Second *BellSouth Louisiana Order*, 13 FCC Rcd. at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd. at 619, para. 147.

efficient and responsive than the incumbent.[100] 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.[101] 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.[102] 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.[103]

(i) Access to Loop Qualification Information

35. In accordance with the *UNE Remand Order*,[104] 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,[105] and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.[106] 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 of a BOC's personnel.[107] Moreover, a BOC may

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[100] *Bell Atlantic New York Order*, *id*. at 4014, para. 129.

[101] *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).

[102] *Bell Atlantic New York Order*, *id*.

[103] *See id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

[104] *UNE Remand Order*, 15 FCC Rcd 3696, 3885, para. 426 (determining "that the pre-ordering function includes access to loop qualification information.").

[105] *See id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

[106] As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. *See id.*, 15 FCC Rcd at 4021, para. 140.

[107] *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, (continued….)

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.[108] 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.[109] 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."[110]

c. Ordering

36. Consistent with Section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS 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 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.[111]

d. Provisioning

37. A BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers. [112]

(Continued from previous page)
it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

[108] *See SWBT Kansas Oklahoma Order* at para. 121.

[109] *Id.*

[110] *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431.

[111] *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.

[112] *See Bell Atlantic New York*, *id*. 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.

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).[113]

e. Maintenance and Repair

38. 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.[114] 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.[115] 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.[116] Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.[117]

f. Billing

39. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.[118] 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.[119]

g. Change Management Process

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[113] *Id.*

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

[115] *Bell Atlantic New York Order*, *id.*; *see also Second BellSouth Louisiana Order*, *id.* at 20692-93.

[116] *Bell Atlantic New York Order*, *id.*

[117] *Id.*

[118] *See SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

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

40. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.[120] 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."[121] 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.[122] 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.[123]

41. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS system.[124] 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.[125] 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.[126] 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).[127]

42. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the Commission first assesses whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that

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[120] *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.

[121] *Bell Atlantic New York Order*, *id*. at 3999, para. 102.

[122] *Id.* at 3999-4000, para. 102

[123] *Id.* at 4000, para. 102.

[124] *Id.* at 4000, para. 103.

[125] *Id.*

[126] *Id.* at 4000, para. 103.

[127] *Id.*

information relating to the change management process is clearly organized and readily accessible to competing carriers;[128] (2) that competing carriers had substantial input in the design and continued operation of the change management process;[129] (3) that the change management plan defines a procedure for the timely resolution of change management disputes;[130] (4) the availability of a stable testing environment that mirrors production;[131] and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.[132] 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.[133]

2. UNE Combinations.

43. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) . . . ."[134] 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 . . . ."[135] 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.[136]

44. 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

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[128] *Id.* at 4002, para. 107.

[129] *Id.* at 4000, para. 104.

[130] *Id.* at 4002, para. 108.

[131] *Id.* at 4002-03, paras. 109-10.

[132] *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, the Commission used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. The Commission left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

[133] *Id.* at 3999, para. 101, 4004-05, para. 112.

[134] 47 U.S.C. § 271(c)(2)(B)(ii).

[135] *Id.* § 251(c)(3).

[136] *Id.*

[137] *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

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]

3. Pricing of Network Elements

45. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[141] Section 251(c)(3) requires local 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 also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.[145] 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

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138 *BellSouth South Carolina Order*, *id*. *See also Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

139 *Bell Atlantic New York Order* at para. 230.

140 *Id.*

141 47 U.S.C. § 271(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 *See* 47 C.F.R. § 51.315(b).

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."[146]

46. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996,[147] 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.[148] On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission's pricing rules were contrary to Congressional intent.[149] The Eighth Circuit has stayed the issuance of its mandate pending review by the Supreme Court.[150] Accordingly, the Commission's pricing rules remain in effect.

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

47. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[151] 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."[152]

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

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

[148] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The Court also held that the pricing provisions implemented under the Commission's rulemaking authority do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id.*

[149] *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).

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

[151] 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.

[152] 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).

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."[153] Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[154] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[155] 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."[156] As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.[157]

D. Checklist Item 4 – Unbundled Local Loops.

48. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[158] 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

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[153] 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.

[154] 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).

[155] 47 U.S.C. § 224(b)(1).

[156] *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.

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

[158] 47 U.S.C. § 271(c)(2)(B)(iv).

four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.[159]

49. In order to establish that it is "providing" unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.[160] Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

50. On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL).[161] HFPL is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions." This definition applies whether a BOC's voice customers are served by cooper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal, however, the HFPL network element is *only* available on a copper loop facility.[162]

51. To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas Orders. Specifically, a successful BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle

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[159] *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).

[160] *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

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

[162] *Line Sharing Reconsideration Order*, para. 10.

commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases.

52. Section 271(c)(2)(B)(iv) also requires that a BOC must 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] In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer. To make such a showing, a BOC must show that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.[164]

E. Checklist Item 5 – Unbundled Local Transport.

53. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[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

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[163] *See generally SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. §51.703(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers "to provide any telecommunications service that can be offered by means of that network element.").

[164] *See 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.* 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.

switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.[168]

F. Checklist Item 6 – Unbundled Local Switching.

54. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[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]

55. 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

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[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 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. 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, para. 140).

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]

56. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.[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.

57. 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

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[175] *Id.*

[176] *Id.*

[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). 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).

nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[184] The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).[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

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[184] *Id*. § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *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.*, 119 S.Ct. 721 (1999)*; see also Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

[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 (continued….)

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 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]

58. 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]

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competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. *See Directory Listings Information NPRM*.

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

[188] *Id*. at 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] *Local Competition Third Report and Order* at 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] *Local Competition Third Report and Order* at paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

H. Checklist Item 8 – White Pages Directory Listings

59. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."[194] 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]

60. In the *Second BellSouth Louisiana Order,* the Commission concluded that, "consistent with the Commission's interpretation of 'directory listing' as used in section 251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[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) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.[198]

I. Checklist Item 9 – Numbering Administration.

61. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established."[199] The checklist mandates compliance with "such guidelines, plan, or rules" after they have been established.[200] A BOC must

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194 47 U.S.C. § 271(c)(2)(B)(viii).

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 (citing the *Local Competition Second Report and Order,* 11 FCC Rcd at 19458-59). 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, para. 160 (rel. Sept. 9, 1999).

198 *Id.*

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.

62. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[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]

K. Checklist Item 11 – Number Portability.

63. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[208] Section 251(b)(2)

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[201] *See Second Bell South Louisiana Order*, 13 FCC Rcd at 20752*; see also Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000).

[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] *Id*. at 15741-42, para. 484.

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

[208] 47 U.S.C. § 271(c)(2)(B)(xii).

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]

L. Checklist Item 12 – Local Dialing Parity.

64. Section 271(c)(2)(B)(xii) requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[216] Section 251(b)(3)

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[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. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355 and 8399-8404, 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.

[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* (continued….)

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]

65. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.[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.

66. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[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 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

67. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and

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

[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).

[222] *Id.* § 252(d)(2)(A).

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 Federal Communications Commission.[229] In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.[230]

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

68. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[231] The

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[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.*

[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).

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]

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.[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 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).

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[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.

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[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*), petition for review pending sub nom. SBC Communications v. FCC, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

[233] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

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

[235] *Ameritech Michigan Order*, *id*.; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[236] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-20786 at para. 322; *Bell Atlantic New York Order*, *id*.

[237] *Bell Atlantic New York Order*, *id*.

[238] 47 U.S.C. § 271(d)(3)(C).

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

[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. 360-366; *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").