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

In the Matter of	)	
	)	
Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey	)	WC Docket No. 02-67

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2002 **Released: June 24, 2002**

By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. On March 26, 2002, Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. – collectively, Verizon – filed this application (NJ II) 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 New Jersey.[2] Although Verizon initially filed its section 271 application for New Jersey with this Commission on December 20, 2001 (NJ I), that application was withdrawn on March 19, 2002.[3] We grant the NJ II application in this Order based on our conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in New Jersey to competition.

2. In granting this application, we recognize the work of the New Jersey Board of Public Utilities (New Jersey Board) in laying the foundation for approval of this application.

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

[2] *See Comments Requested on the Application By Verizon New Jersey Inc. for Authorization to Provide In-Region, InterLATA Service in the State of New Jersey*, WC Docket No. 02-67, Public Notice, DA 02-718 (WCB rel. Mar. 26, 2002) (*NJ II Public Notice*).

[3] *See Application of Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in New Jersey*, CC Docket No. 01-347, Order, DA 02-667 (CCB rel. Mar. 20, 2002) (*NJ I Termination Order*). We refer to the current section 271 application (filed on March 26, 2002) as "NJ II."

The New Jersey Board conducted proceedings concerning Verizon's section 271 compliance that were open to participation by all interested parties.[4] In addition, the New Jersey Board adopted a broad range of performance measures and standards, as well as an Incentive Plan designed to create a financial incentive for post-entry compliance with section 271. Moreover, the New Jersey Board has committed itself to actively monitor Verizon's continuing efforts to open its local markets to competition in a sustainable manner.[5] As the Commission has repeatedly 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]

3. Verizon's NJ I application stated that competing carriers in New Jersey served approximately 564,000 lines, approximately 57,000 of which were residential, using all three entry paths available under the Act.[7] At the time the NJ I application was filed, competitors across the state served approximately 361,000 lines solely over their own facilities; approximately 22,000 lines through unbundled network element platforms (UNE-platforms); and approximately 182,000 lines through resale.[8] Since the NJ I application was filed, Verizon notes that competing carriers have added approximately 50,000 new lines in New Jersey, and that the number of lines being served by competitors using UNE-platforms has grown to nearly 40,000 lines.[9] In addition, Verizon asserts that competitors exchange approximately 1.9 billion minutes

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[4] On September 5, 2001, Verizon filed an application with the New Jersey Board of Public Utilities seeking approval to pursue section 271 authority for the state. *See* New Jersey Board NJ I Comments at 2. The New Jersey BPU completed its review and approved the NJ I application on January 9, 2002.

[5] *See, e.g.,* New Jersey Board NJ I Comments at 24 (Verizon required to periodically provide BPU with copies of sample bills to confirm that it is continuing to bill lawful rates for unbundled network elements)), 41 (Verizon required to maintain manual review and balancing procedures in New Jersey until BPU staff is satisfied that such procedures are not necessary to produce adequately balanced electronic bills for CLECs).

[6] *See*, *e.g.*, *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Record 17419, 17421, at para. 3 (2001) (*Verizon Pennsylvania Order*); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, at 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 (2001) (*Verizon Massachusetts Order*).

[7] Verizon NJ I Application at 1 and App. A, Vol.3, Declaration of William E. Taylor (Verizon NJ I Taylor Decl.), Attach. 1 at 3.

[8] Verizon NJ I Application at 7.

[9] *See* Verizon NJ II Application at 3-4 and App. A, Tab C, Declaration of John A. Torre (Verizon NJ II Torre Decl.), Attach. 1, at para. 2. Verizon further states that the number of residential lines served by competitors using their own facilities and using UNE-platforms have each more than doubled as well. *Id*.

of traffic each month with Verizon over almost two-thirds as many trunks as Verizon has connecting its switches in its own interoffice network in New Jersey.[10] Verizon also states that competitors have access to approximately 90 percent of Verizon's access lines in New Jersey through approximately 940 collocation arrangements.[11]

II. BACKGROUND

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

5. The New Jersey Board conducted an extensive proceeding, which was open to participation by all interested parties, to facilitate competition in local exchange markets, starting with adopting carrier-to-carrier guidelines in May 2000.[14] On September 5, 2001, Verizon made a compliance filing for section 271 approval with the New Jersey Board.[15] The Board proposed a new Incentive Plan (IP) in October 2001, which was subsequently approved and finalized, with some modifications, on January 10, 2002.[16] On January 14, 2002, the New Jersey Board

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[10] *Id*. at 20.

[11] *Id*. at 22-23.

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

[13] The Commission has summarized the relevant statutory framework in prior orders. *See, e.g.*, *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001); *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[14] New Jersey Board NJ I Comments at 1.

[15] *Id*. at 2.

[16] *Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631, *Investigation Regarding the Status of Local Exchange Competition in New Jersey*, Docket No. TX98010010, Order Approving Incentive Plan, (rel. Jan. 10, 2002) (IP Order). The IP proposed by the Board in October 2001(NJ Incentive Plan) is attached to the IP Order.

recommended that this Commission grant Verizon's application for authorization to provide in-region, interLATA services in New Jersey.[17] The New Jersey Board also conducted a lengthy pricing proceeding, beginning in 1997 and culminating in a final order on pricing for unbundled network elements on March 6, 2002.[18]

6. The Department of Justice recommends approval of this application, subject to the Commission "satisfying itself" regarding Verizon's checklist compliance for certain pricing and operations support systems (OSS) issues.[19] In particular, it states that,

> [a]lthough Verizon's reduction of hot cut [non-recurring charges] appears to respond to the concern expressed in the Department's Evaluation of its first New Jersey application, it is unclear whether this reduction will remain in effect for a sufficient period of time. Moreover, issues have been raised regarding nondiscriminatory access to Verizon's OSS in New Jersey.[20]

7. As noted above, this is Verizon's second application for section 271 authority in New Jersey. Because the NJ II application was filed so shortly after the NJ I application was withdrawn, and Verizon relies largely on the same evidence in NJ II that it filed to support NJ I, we explicitly stated that parties should incorporate by reference any comments filed in response to NJ I to the extent they wished to rely on those comments in NJ II.[21] A number of commenters from the NJ I proceeding did not file comments in NJ II, and a few who did file in both proceedings did not incorporate their NJ I comments into the record here.[22] To the extent issues raised in NJ I were not incorporated into the record of this proceeding or otherwise placed in this

[17] New Jersey Board NJ I Comments at 1. The NJ Board reaffirmed its recommendation that the Commission grant Verizon authority to provide in-region, interLATA services in New Jersey. NJ Board NJ II Comments at 2.

[18] *Investigation Regarding Local Exchange Competition for Telecommunications* Services, Docket No. TX95120631 (Dec. 2, 1997); *Review of Unbundled Network Elements, Rates, Terms, and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Decision and Order (rel. March 6, 2002) (*Final UNE Rate Order* or *New Jersey BPU Final UNE Rate Order*).

[19] Department of Justice NJ I Evaluation at 8-9; Department of Justice NJ II Evaluation at 9-10.

[20] Department of Justice NJ II Evaluation at 9 (footnotes omitted).

[21] *See NJ II Public Notice* at 1-2.

[22] The following parties filed comments in both NJ I and NJ II: ASCENT; AT&T; Cavalier; Department of Justice; MetTel; New Jersey Board; NJCTA (reply only in NJ II); NJDRA; Sprint; WorldCom; and XO. Only AT&T, Department of Justice, New Jersey Board, NJCTA, NJDRA, Sprint, WorldCom, and XO explicitly incorporate their NJ I comments by reference. *See* Appendix A for a complete list of parties who submitted comments and replies in this proceeding. To the extent issues raised in NJ I were not incorporated into the record of this proceeding or otherwise placed in this record by NJ II commenters, those issues will not be addressed in this Order, as they are not properly before us in this new proceeding.

record by NJ II commenters, those issues will not be addressed in this Order, as they are not properly before us in this new proceeding.

III. PRIMARY ISSUES IN DISPUTE

8. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.[23] In this Order, we rely upon the legal and analytical precedent established in those prior orders. Additionally, as we began doing with the *Verizon Connecticut Order*, we include comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.[24] In reviewing this application, we examine performance data as reported in carrier-to-carrier reports reflecting service in the period from November 2001 through March 2002.

9. As in our most recent orders on section 271 applications, we focus in this Order on the issues in controversy in the record.[25] Accordingly, we begin by addressing Verizon's compliance with section 271(c)(1)(A), which requires the presence of facilities-based competitors serving both residential and business customers. Next, we discuss Verizon's compliance with checklist item numbers 2 and 4, which encompass access to unbundled network elements and access to unbundled local loops, respectively.[26] We then address checklist item

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[23] *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.

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

[25] *See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion & Order, FCC 02-118, at para. 9 (rel. Apr. 17, 2002) (*Verizon Vermont Order*); *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island,* CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3311 at para. 19 (rel. Feb. 22, 2002) (*Verizon Rhode Island Order*); *Joint Application By SBC Communications Inc., Southwestern Bell Telephone Company, 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 Arkansas and Missouri*, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20725, at para. 12 (rel. Nov. 16, 2001) (*SBC Arkansas/Missouri Order*).

[26] We note that the United States Court of Appeals for the District of Columbia Circuit recently opined in two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*Local Competition Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002). The court's decision addressed both our UNE rules and our line sharing rules. The Commission is currently reviewing its unbundled network elements (continued….)

numbers 1, 8, 13 and 14, which cover interconnection and collocation issues, directory listings, reciprocal compensation, and resale, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Verizon has satisfied these requirements. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

A. Compliance With Section 271(c)(1)(A)

10. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, the 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).[27] To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business customers."[28] The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"[29] which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.[30] The Commission has interpreted Track A not to require any particular level of market penetration, however, and the D.C. Circuit has affirmed that the Act "imposes no volume requirements for satisfaction of Track A."[31]

11. We conclude, as the New Jersey Board did,[32] that Verizon satisfies the requirements of Track A in New Jersey. Verizon relies on interconnection agreements with

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rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 2278 (2001), and recently extended the reply comment date to allow parties to incorporate their review and analysis of the D.C. Circuit's recent decision. *Wireline Competition Bureau Extends Reply Comment Deadline for Wireline Broadband and Triennial Review Proceedings*, Public Notice, DA 02-1284 (May 29, 2002). Further, the court stated that "the *Line Sharing Order* must be vacated and remanded." *Id*. The court also stated that it "grant[ed] the petitions for review and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id*.

[27] 47 U.S.C. § 271(c)(1).

[28] *Id.*

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

[30] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; *see also Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, para. 78 (1997) (*Ameritech Michigan Order*).

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

[32] New Jersey Board NJ I Comments at 9.

MetTel, eLEC, and Broadview in support of its Track A showing, and we find that each of these carriers serves more than a *de minimis* number of end users predominantly over its own facilities and represents an "actual commercial alternative" to Verizon in New Jersey.[33] Specifically, MetTel provides telephone exchange service to both residential and business subscribers in New Jersey primarily through UNE-platforms.[34] Broadview and eLEC provide service to both residential and business customers in New Jersey through UNE loops, UNE-Platform, and resale.[35] Verizon notes that each of these carriers has increased the number of residential lines it serves since the time Verizon filed its NJ I application.[36] We also note that the New Jersey Board has stated its intention to take additional measures to further encourage local entry by competitors of Verizon New Jersey, if necessary.[37]

12. Only one commenter disputes Verizon's compliance with Track A requirements.[38] The New Jersey Division of the Ratepayer Advocate (NJDRA) argues that Verizon should fail Track A because: (1) the numbers that Verizon reports for Track A are wrong; (2) even if those numbers are correct, the amount is *de minimis*; and, (3) Verizon does not provide evidence that the residential customers served by competitive LECs are not test customers.[39]

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[33] Verizon NJ I Application at 7; Verizon NJ I Taylor Decl., Attach. 1, at paras. 23-27 (citing confidential portion); updated in Verizon NJ II Torre Decl., Attach. 1 at Table 1 (citing confidential portion). According to Verizon, competing LECs now serve approximately 2,200 residential lines through UNE-platform or UNE loops. The numbers of customers attributed to each competing LEC are available on the record pursuant to the protective order. Letter from Clint Odom, Verizon, to William F. Caton, Acting Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed March 29, 2002) (Verizon NJ II Mar. 29 *Competitive Lines Ex Parte* Letter) at 2 (citing confidential portion). Verizon also notes that many other competing LECs, such as AT&T, WorldCom, Cavalier, and Adelphia, serve business customers in New Jersey over their own facilities. Verizon NJ I Taylor Decl. Attach. 1, at paras. 28-48 (citing confidential portion), updated in Verizon NJ II Torre Decl., Attach. 1, at paras. 5-8 (citing confidential portion); *see also SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

[34] Verizon NJ I Taylor Decl., Attach. 1 at para. 27 (citing confidential portion), updated in Verizon NJ II Torre Decl. at para. 6 (citing confidential portion).

[35] Verizon NJ I Taylor Decl., Attach. 1 at paras. 23-26 (citing confidential portion), updated in Verizon NJ II Torre Decl. at para. 6 (citing confidential portion).

[36] Verizon NJ II Reply Appendix, Reply Declaration of John A. Torre (Verizon NJ II Torre Reply Decl.), Attach. 1, at para. 4.

[37] New Jersey Board NJ II Comments at 2.

[38] Many parties raise concerns about the number of facilities-based lines served by competitive LECs. *See* discussion under Public Interest Analysis in Section VI.C., below.

[39] NJDRA NJ I Comments at 17; NJDRA NJ II Comments at 2. Additionally, two commenters claim that the apparent increase in the number of competitive LEC lines reflects only a reallocation among already existing competitive LEC lines. NJDRA NJ II Comments at 3; Sprint NJ II Comments at 2. We find this argument irrelevant. The Commission has previously concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers. *See* Appendix C at para. 15.

13. We disagree. In its application, Verizon provided estimates of the number of residential and business customers receiving facilities-based service from all the competing LECs on which Verizon relies to make a Track A showing, including MetTel.[40] The record demonstrates that MetTel alone serves a sufficient number of residential customers via UNE-platform and, therefore, is an actual commercial alternative to Verizon in New Jersey.[41] We note that MetTel, a participant in this proceeding at both the state and federal level, has not disputed those numbers.[42] Nor have the other competing LECs disputed the numbers that Verizon attributes to them for purposes of Track A. Also, we reject NJDRA's argument that Verizon should fail Track A because only a small percentage of residential access lines are currently served by competing LECs.[43] As we have noted in previous orders, Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.[44] Finally, we find no evidence in the record to support NJDRA's speculative statement that the residential customers served by the competing LECs are test customers. Again, none of the competing LECs we rely on for purposes of Track A have disputed Verizon's contention that they are providing commercial local exchange service to these customers.

B. Checklist Item 2 − Unbundled Network Elements

14. Checklist item two of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[45] Section 251(c)(3) requires incumbent LECs to provide

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[40] Verizon NJ II Torre Decl., Attach. 1 at para. 6 (citing confidential portion), updated in Verizon NJ II Mar. 29 *Competitive Lines Ex Parte* Letter at 2 (citing confidential portion) and Verizon NJ II Torre Reply Decl., Exhibit 1 (citing confidential version).

[41] Verizon NJ II Torre Decl., Attach. 1 at para. 6 (citing confidential portion) and Verizon NJ II Mar. 29 *Competitive Lines Ex Parte* Letter at 2 (citing confidential portion). *See* also New Jersey Board NJ I Comments at 8-9. We note that carriers other than MetTel (either singly or in combination) would also satisfy Track A.

[42] MetTel filed comments and reply comments opposing Verizon's application. *See* MetTel NJ I Comments; MetTel NJ I Reply; MetTel NJ II Comments; and MetTel NJ II Reply. We note the Commission's reliance on a similar showing by SWBT that it satisfied Track A using Ionex, which was explicitly approved by the United States Court of Appeals for the D.C. Circuit. The Court found that since Ionex had been a party to the proceeding, Ionex had been put on notice "that [SWBT] was using Ionex's service to satisfy Track A. Ionex uttered not a peep in protest, correction or qualification." *Sprint v. FCC*, 274 F.3d at 562.

[43] NJDRA NJ I Comments at 18.

[44] *See, e.g., Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77; *Sprint v. FCC*, 274 F. 3d at 553-54.

[45] 47 U.S.C. § 271(B)(ii). Overturning a decision issued by the Eighth Circuit Court of Appeals in 1997, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon v. FCC*, Nos. 00-511, 00-555, 00-587, 00-590, and 00-602, 2002 WL 970643 at 22 (Sup. Ct. May 13, 2002). (In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to (continued….)

"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."[46]

1. Pricing of Unbundled Network Elements

15. Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.[47] 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.[48]

16. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996 and vacated them in 1997,[49] the U.S. 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.[50] On remand, the Eighth Circuit concluded that specific Commission pricing rules were contrary to Congressional intent but stayed the issuance of its mandate pending review by the Supreme Court.[51] On May 13, 2002, day 48 of the

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separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999).) For purposes of this application, we need not consider Verizon's compliance with these new rules, because Verizon filed NJ II prior to the Supreme Court's decision. *See SWBT Texas Order*, 15 FCC Rcd at 18367-68, paras. 28-29 (concluding that, for purposes of evaluating compliance with checklist item 2, we require SWBT to demonstrate that it is currently in compliance with the rules in effect on the date of filing, but do not require SWBT to demonstrate that it complies with rules that become effective during the pendency of its application).

[46] 47 U.S.C. § 251(c)(3).

[47] *Id*. § 252(d)(1).

[48] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-.515.

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

[50] *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. The Court determined that section 251(d) 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 pricing provisions implemented under the Commission's rulemaking authority, according to the Court, 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 "[i]t is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances." *Id*. at 384.

[51] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications, Inc. v. FCC*, 531 U.S. 1124 (2001) (argued Oct. 10, 2001). *See also Iowa Utils. Bd. v. FCC*, No. 96-3321, slip op. (8th Cir. Sept. 25, 2000).

90-day application period for this section 271 application, the Supreme Court upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act."[52] Accordingly, the Commission's rules have been in effect throughout the pendency of this application.

17. In applying the Commission's TELRIC pricing principles in this application, we note that different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here. We do not conduct a *de novo* review of a state's pricing determinations.[53] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[54]

18. Based on the evidence in the record before us for this application, we find that Verizon's UNE rates in New Jersey are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates in New Jersey satisfy checklist item two.

a. Background

19. By Generic Order dated December 2, 1997, the New Jersey Board originally set rates for various unbundled network elements.[55] Consistent with its statement in the Generic Order that it would regularly monitor Verizon's New Jersey UNE rates, the New Jersey Board announced on June 1, 2000, that it would commence a new UNE rate proceeding.[56]

20. Various parties challenged the Generic Order. On June 6, 2000, five days after the New Jersey Board announced the new cost proceeding, a federal district court judge affirmed in part, reversed in part, and remanded in part the Generic Order.[57] On remand, the New Jersey

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[52] *Verizon Communications Inc. v. FCC*, __ U.S. ___; 122 S.Ct. 1646, 1679 (2002).

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

[54] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55.

[55] The new cost docket was captioned *Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631 (Dec. 2, 1997) (*Generic Order* or *New Jersey BPU Generic UNE Order*).

[56] *Review of Unbundled Network Elements, Rates, Terms, and Conditions of Bell Atlantic New Jersey, Inc.* (Docket No. TO00060356).

[57] *AT&T v. Bell Atlantic-New Jersey, Inc.*, No. 97-5762 (KSH), slip op. at 2 (June 6, 2000) (unpublished opinion).

Board commenced the new cost docket to address not only the remanded issues but also all applicable FCC orders issued since 1997.[58] The proceeding covered the entire array of UNE rates and included 17 days of hearings over 15 weeks, 26 expert witnesses, over 265 exhibits, and more than 3900 pages of transcripts.[59] Parties filed extensive initial and reply briefs on June 18 and July 13, 2001, respectively.[60]

21. The new UNE rate proceeding concluded at the November 20, 2001 agenda meeting of the New Jersey Board. At that time, the New Jersey Board approved rates for certain recurring and non-recurring elements and adopted inputs and assumptions for all other rate elements.[61] The New Jersey Board also directed Verizon to re-run certain cost models to reflect Board- established inputs and assumptions.[62] In filings dated December 3 and 10, 2001, Verizon submitted the results of those cost model re-runs. One week later, on December 17, 2001, the New Jersey Board issued its Summary Order memorializing the decisions announced at the November 20, 2001 agenda meeting. The Summary Order stated that "[a] final Order will be issued in this matter fully setting forth the Board's analysis of the issues, the positions of the parties, and the reasoning underlying the Board's determinations."[63]

22. On December 20, 2001, before a final order had been issued, Verizon filed its first application to provide interLATA service in New Jersey.[64] The New Jersey Board issued a lengthy Consultative Report on January 14, 2002, which recommended that the Commission approve Verizon's NJ I application.[65] The Department of Justice filed its evaluation of the NJ I application on January 28, 2002, concluding that Verizon's "reduced recurring rates appear to be generally within the broad range of TELRIC previously described by the FCC" in other states.[66] The Department of Justice cautioned, however, that "the non-recurring charges for 'hot cuts' seem to have been increased so that they are now significantly higher in New Jersey than in New

[58] *Board's Review of Unbundled Rates, Terms, and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Telecommunications Summary Order of Approval at 1 (rel. Nov. 20, 2001) (Summary Order or *New Jersey BPU Summary Order*).

[59] *Id*.

[60] *Id*.

[61] *Id*.

[62] *Id*.

[63] *Id*. at 2.

[64] *See* Verizon NJ I Application.

[65] New Jersey Board NJ I Comments at 1.

[66] Department of Justice NJ I Evaluation at 7 and n.27 (noting that the New York Commission voted on January 23, 2002, to approve significant reductions in its UNE prices).

York or Pennsylvania."[67] Noting that Verizon provided "[n]o justification for this difference in the [then-]current record," the Department of Justice stated that it would "rely upon the Commission for its ultimate determination of whether the prices supporting this application are appropriately cost-based."[68]

23. On March 6, 2002, day 76 of the NJ I application, the New Jersey Board released its Final UNE Rate Order.[69] The New Jersey Board filed that order with this Commission, and, on March 8, 2002, we issued a public notice asking for expedited comment on it.[70] On March 19, 2002, day 89 of the NJ I application, Verizon notified the Commission that it was withdrawing its application as a result of "process concerns" that were raised with respect to the non-recurring charge for performing a hot cut.[71] The next day, Verizon informed the New Jersey Board that, effective immediately, it would reduce the effective hot cut rate in New Jersey to the same level – $35 – that was recently made effective in New York.[72]

24. On March 26, 2002, Verizon filed its second application to provide interLATA service in New Jersey.[73] Both the Department of Justice and the New Jersey Board recommended approval of the NJ II application,[74] although the Department of Justice stated that "the Commission should also assure itself that Verizon's commitment [to provide new, lower hot cut rates] will remain in place for a sufficient time to allow competitive entry."[75] Commenters, however, were not supportive of the NJ II application. They reiterated pricing concerns from the NJ I application and also raised new pricing issues. In analyzing these issues and consistent with prior section 271 orders, our discussion is divided into two groups – recurring charges and non-recurring charges.[76]

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[67] *Id*. at 7. A "hot cut" is the process of converting a customer from one network, usually the incumbent LEC's, to a UNE-loop served by another carrier. The hot cut process is discussed below in Section III.B.1.c.

[68] *Id*. at 7-8 (citations and quotation marks omitted).

[69] *New Jersey BPU Final UNE Rate Order*.

[70] *Comments Requested in Connection With Verizon's Section 271 Application for New Jersey*, CC Docket No. 01-347, Public Notice, DA 02-580 (March 8, 2002).

[71] Letter from Michael E. Glover, Senior Vice President, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-347 (filed March 19, 2002).

[72] *See* Verizon NJ II Application at 16.

[73] *See id*. at 1-19.

[74] New Jersey BPU NJ II Comments at 1-2; Department of Justice NJ II Evaluation at 9-10.

[75] Department of Justice NJ II Evaluation at 5.

[76] *See, e.g., SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20741-56, paras. 48-75.

b. Recurring Charges

(i) Loop Rates

25. WorldCom contends that the New Jersey Board incorrectly approved Verizon's fiber/copper feeder and fill factor percentages.[77] After reviewing the record, we conclude that the New Jersey Board's decisions are consistent with our TELRIC principles.

26. *Fiber and Copper Feeder.* WorldCom disagrees with Verizon's assumption that 60 percent of feeder will be served on fiber cable with integrated digital loop carrier (IDLC) and that the remaining 40 percent served on copper feeder.[78] Copper feeder could be cheaper, WorldCom suggests, proposing the use of 30 percent fiber feeder and 70 percent copper feeder.[79]

27. The New Jersey Board considered this very issue and approved Verizon's 60/40 split between fiber and copper feeder.[80] WorldCom submits no evidence, however, demonstrating that the New Jersey Board erred approving the use of less than 70 percent copper. In prior section 271 orders, we have approved the use of less copper feeder than the 40 percent adopted by the New Jersey Board.[81] In short, WorldCom presents no arguments or evidence that would cause us to find that these assumptions are inconsistent with TELRIC principles as applied to Verizon in New Jersey.

28. In addition, WorldCom's argument amounts to mere speculation that "copper feeder *may* be cheaper" and that Verizon's use of 60 percent fiber feeder "*appears* to result in higher costs."[82] Such conjecture, especially when viewed against the backdrop of the New Jersey Board's consideration of the precise issue, is not persuasive. We thus reject WorldCom's argument that the use of 60 percent fiber feeder is improper.

29. *Fill Factors*. WorldCom also claims that the New Jersey Board approved unreasonably low fill factors for fiber and copper cable, which allegedly results in overstated loop costs.[83] For distribution cable, the New Jersey Board approved a 53 percent fill factor.

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[77] WorldCom NJ I Comments at 12-13. In its NJ II comments, WorldCom incorporated by reference its comments from NJ I. *See* WorldCom NJ II Comments at i.

[78] WorldCom NJ I Comments, Tab B, Declaration of Chris Frentrup (WorldCom NJ I Frentrup Decl.), at para. 19

[79] *Id*.

[80] *New Jersey BPU Final UNE Rate Order* at 65-72; *New Jersey BPU Summary Order* at 6.

[81] We have previously approved the use of 100% fiber feeder. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17455-56, para. 59; *Bell Atlantic New York Order*, 15 FCC Rcd at 4086-87, paras. 248-49. *See also AT&T v. FCC*, 220 F.3d at 618-19.

[82] WorldCom NJ I Frentrup Decl. at para. 19 (emphasis added).

[83] *Id*. at para. 20.

WorldCom points out that the model developed by the Commission to determine entitlement to universal service support, the Synthesis Model,[84] assumes a 75 percent cable fill for all but one density zone.[85] For copper feeder, New Jersey Board approved a 75 percent fill factor, and the Synthesis Model assumes an 82.5 percent fill factor for all but one density zone.[86] WorldCom also states that New Jersey Board approved a 77.5 percent fill factor for fiber feeder, compared to 100 percent assumed in all zones in the Synthesis Model.[87]

30. The New Jersey Board specifically addressed this issue in the Final UNE Rate Order,[88] revising Verizon's proposed fill factors upward after considering all the evidence. According to the New Jersey Board, "[t]he revision to both the copper feeder and fiber feeder fill factors is based upon a calculation of the mid-point between Verizon's actual fill level and the relief point for feeder," a calculation that is "consistent with Verizon's mid-point calculation for loop electronics."[89] The 53 percent for distribution cable was derived from the NJDRA's own analysis, "which calculated the mid-point between embedded fill and objective fill as detailed in Verizon's engineering studies."[90]

31. WorldCom does not contend that the New Jersey Board's fill factor calculation methodology was improper or invalid -- only that the fill factors fall toward the low end of the ranges approved in the Synthesis Model.[91] We reject WorldCom's argument that the generic values that the Commission used in the Synthesis Model are the only appropriate fill factors for New Jersey. First, these values might or might not be appropriate in New Jersey, but that is a fact-intensive, state-specific determination that should be made, in the first instance, by the New Jersey Board. Second, as the Commission has stated in prior section 271 orders,[92] the Synthesis

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[84] *Federal-State Joint Board on Universal Service: Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket 96-45, Tenth Report and Order, 14 FCC Rcd 20156, 20166-68, paras. 17-20 (rel. Nov. 2, 1999) (*USF Tenth Report and Order*).

[85] WorldCom NJ I Frentrup Decl. at para. 20.

[86] *Id*.

[87] *Id.*

[88] *New Jersey BPU Final UNE Rate Order* at 83-85 (distribution); 85-86 (copper feeder); 86 (fiber feeder). *See also New Jersey BPU Summary Order* at 4-5.

[89] *New Jersey BPU Summary Order* at 5. *See also New Jersey BPU Final UNE Rate Order* at 85 (noting that Verizon's feeder distribution levels represent "the mid-point between the actual fill levels and the level at which the facility would be required to be relieved under Verizon NJ's engineering guidelines").

[90] *New Jersey BPU Summary Order* at 5. *See also New Jersey BPU Final UNE Rate Order* at 84.

[91] WorldCom NJ I Comments at 13. In the *USF Tenth Report and Order*, the Commission identified the following ranges for fill factors, depending on density zone: feeder (77%-82.5%); distribution (50%-75%). *USF Tenth Report and Order*, 14 FCC Rcd at 20369, App. A.

[92] *Bell Atlantic New York Order*, 15 FCC Rcd at 4085, para. 245; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

Model was developed for the very different purpose of determining high cost support; it may not be appropriate for other purposes.[93] In any event, the Board-approved fill factors are not inconsistent with those that the Commission has approved in prior section 271 orders,[94] and we find no TELRIC errors in the New Jersey Board's analysis of Verizon's fill factors.

(ii) Switching Rates

32. Commenters make four switching arguments. They contend that Verizon improperly double-charges for intra-switch calls. They also argue that Verizon's vertical feature costs should be recovered on a flat-rated basis as part of the line port charge, not on a per minute-of-use (MOU) basis as part of the end office switch usage charge.[95] In addition, they claim that the New Jersey Board improperly approved Verizon's switch vendor discounts. Finally, they argue that Verizon improperly disregards switch usage on weekends and holidays in calculating a switching rate.

33. In addition, WorldCom argues that these TELRIC errors cannot be surmounted by means of a benchmark analysis to switching rates in New York. According to WorldCom, as an initial matter, it is inappropriate to consider switching rates aggregated with signaling and transport for the purpose of a benchmark analysis. WorldCom argues that Verizon's switching rates do not pass a benchmark comparison with New York's switching rates when signaling and transport are removed from the comparison. WorldCom also challenges Verizon's use of state-

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[93] *See USF Tenth Report and Order*, 14 FCC Rcd at 20172, para. 32 (stating that "it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements," and cautioning "parties from making any claims in other proceedings based upon the input values" in the *USF Tenth Report and Order*), 20369, App. A (listing values).

[94] *BellSouth Louisiana/Georgia Order* at paras. 66-70 (approving 48% fill factor for distribution cable, 69.5% fill factor for copper feeder, and 74% fill factor for fiber feeder in Georgia); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6275-76, para. 80 (53% fill factor for distribution cable); *Verizon Massachusetts Order*, 16 FCC Rcd at 9007, para. 39 (40% fill factor for distribution cable); *Bell Atlantic New York Order* (50% fill factor for distribution cable) (discussed in *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 80).

[95] AT&T argues that Verizon's recovery of vertical feature costs through switching rates, together with other alleged TELRIC errors, overstates switching rates by 149%. *See* Letter from David L. Lawson, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (June 18, 2002) (AT&T NJ II June 18 *Ex Parte* Letter); Letter from David L. Lawson, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at 2 (filed April 30, 2002) (AT&T NJ II April 30 *Ex Parte* Letter). Verizon responds that AT&T improperly excluded engineering, furnishing, and installing costs and wrongly excluded non-conversation time minutes in calculating the 149% figure. Letter from Clint E. Odom, Director, Federal Regulatory, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at 4 (filed June 7, 2002) (Verizon NJ II June 7 *Ex Parte* Letter). *See* also Letter from Clint E. Odom, Director, Federal Regulatory, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 21, 2002). We need not resolve this dispute. As discussed below, we find no TELRIC error in the New Jersey Board's approval of Verizon's method for recovering vertical feature costs. In any event, because we conclude that Verizon's non-loop rates pass a benchmark comparison with New York's non-loop rates, we need not address the merits of AT&T's allegation.

specific traffic data in a benchmark comparison, arguing instead that a standard set of demand assumptions should be used. In any event, WorldCom contends that the Act does not allow the Commission to perform an aggregated benchmark analysis in the first instance, claiming that each network element must be assessed separately from other elements.

34. Before addressing WorldCom's claims concerning the benchmark analysis, we discuss the four switching arguments summarized above. We then perform a benchmark analysis of non-loop rates in New Jersey and New York and conclude that Verizon's non-loop rates in New Jersey pass such an analysis.

35. *Intra-switch Calls*. The NJDRA and WorldCom allege that Verizon improperly "double charges" for calls that both originate and terminate on the same switch.[96] The commenters claim that Verizon should be allowed to charge only once for such intra-switch calls.

36. Verizon acknowledges that it charges both an originating and terminating charge for all calls, whether intra- or inter-switch.[97] Every call involves originating and terminating activity, Verizon argues, regardless of how many switches are involved in the call.[98] Costs are incurred for both types of activities, and Verizon therefore concludes that it is entirely appropriate to charge the originating rate and the terminating rate for each minute on an intra-switch call.[99]

37. Verizon's methodology is not inconsistent with our handling of this issue in prior applications. In the *Vermont Order*, for example, we noted that state commissions have reached different conclusions on whether to allow the BOC to charge on both originating and terminating MOU on intra-switch calls.[100] Thus, we have not previously concluded that TELRIC dictates a particular result on this issue.

38. In addition, commenters provide no evidence that, in connection with an intra-switch call, Verizon charges originating and terminating functions in a manner inconsistent with how Verizon developed the charges for such functions. For example, if Verizon charged competitors two MOU for every minute of intra-switch call use, but the switching rate had been calculated by treating such calls as consisting of one MOU for every minute of intra-switch call use, then Verizon's intra-switch call practice might well violate TELRIC principles. This is

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96 *E.g.*, WorldCom NJ I Frentrup Decl. at para. 14; NJDRA NJ I Comments at 24. The NJDRA incorporated by reference its NJ I comments in NJ II. *See* NJDRA NJ II Comments at 2 n.2.

97 Verizon NJ I Reply Comments, Tab D, Reply Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ I Garzillo/Prosini Reply Decl.), at para. 10.

98 *Id*.

99 *Id*.

100 *Verizon Vermont Order* at para. 32 and n.106.

because Verizon would be imposing a per-minute switching price that was calculated based on an inaccurate demand estimate. TELRIC requires that UNE rates "recover costs in a manner that reflects the way they are incurred."[101] No commenter argues that the manner in which Verizon developed its switching rates is inconsistent with the manner in which Verizon imposes these rates. We therefore reject commenters' claims that charging both an originating and a terminating rate for every call, regardless of the number of switches involved, is by itself inappropriate or a violation of TELRIC.

39. *Vertical Features*. WorldCom and AT&T also challenge Verizon's inclusion of vertical features in the switching rate.[102] They argue that non-usage-sensitive elements, such as vertical features, should be included with the port charge and not charged on a per-minute basis.[103] We find no TELRIC error in the New Jersey Board's handling of this issue.

40. While Verizon concedes that both the New York and Pennsylvania commissions directed that vertical features be recovered as part of the port charge -- which is consistent with commenters' views -- Verizon also contends that the New Jersey Board validly directed Verizon to recover vertical feature costs through the per-MOU switching rate.[104] Verizon argues that there is no requirement that vertical feature costs be recovered in the port rate.[105] We agree that there is no such requirement.

41. As an initial matter, we note that, while we have approved section 271 applications in states that allow for recovery of vertical features through the port charges, we have never established that this is the only TELRIC-compliant method for doing so. Indeed, were we to accept WorldCom's and AT&T's arguments, we would establish a requirement that conflicts with the Commission's UNE rate structure rules. These rules provide that the costs of dedicated facilities shall be recovered through flat-rated charges[106] and that the costs of shared facilities shall be recovered through either usage-sensitive charges or flat-rated charges "if the state commission finds that such rates reasonably reflect the costs imposed by the various users."[107] In the *Local Competition Order*, we recognized that it is appropriate to recover the costs of shared facilities from customers sharing the facility through either usage-sensitive or

[101] *Local Competition Order*, 11 FCC Rcd at 15874, para. 743.

[102] WorldCom NJ I Comments at 10; AT&T NJ I Comments at 15. AT&T incorporated by reference its NJ I comments in NJ II. *See* AT&T NJ II Comments at 1 n.1.

[103] *See* WorldCom NJ I Frentrup Decl. at para. 13; AT&T NJ I Comments at 15 and n.8.

[104] Verizon NJ I Garzillo/Prosini Reply Decl. at para. 12.

[105] *Id*; Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-347, at 1-2 (Feb. 20, 2002) (Verizon NJ I Feb. 20 *Ex Parte* Letter).

[106] 47 C.F.R. § 51.507(b).

[107] *Id*. § 51.507(c).

flat-rated charges.[108] The Commission's rules also provide that local switching costs shall be recovered through a combination of a flat-rated charge for line ports, which are dedicated facilities, and one or more flat-rated or per-minute usage charges for the switching matrix and trunk port, which are shared facilities.[109] In this respect, no commenter has stated that vertical features are provided over wholly dedicated facilities, nor have they provided evidence that the per-minute charge is inconsistent with the manner in which costs are incurred. Under our rules, the New Jersey Board could have properly directed Verizon to recover the costs of vertical features as part of flat-rated port charges, split the costs between the flat and per-minute switch elements, or recover the costs through the per-minute charge. The New Jersey Board's decision to allow the recovery of such costs in the per-minute switching rate fully complies with our rate structure rules. We find no TELRIC error in the New Jersey Board's handling of the vertical features costs issue.

42. *Switch Discounts*. WorldCom also claims that Verizon has overstated its switching costs by using an inappropriate switch vendor discount.[110] The New Jersey Board directed Verizon to compute its switching costs as if 79.4 percent of the switches would receive the discount for purchases of new switches and 20.6 percent would receive the discount for purchases of growth switches.[111] WorldCom contends that, in the Universal Service proceeding, the Commission determined that the appropriate discount for TELRIC purposes was the discount for purchases of 100 percent new switches.[112]

43. We do not agree with WorldCom that Verizon should be required to assume 100 percent new switches. First, we have not previously required LECs to make such an assumption. In past section 271 orders, we have approved switching rates calculated on the basis of a mix of new and growth switches discounts.[113] Second, WorldCom does not argue that, under the specific facts in New Jersey, a different split of new to growth discounts would be more appropriate. It asserts simply that only new switch discounts are appropriate. We reject this position. A state commission may take into account that there will be growth in a network in the future and that it may not be cost-effective to acquire all of the projected switching capacity needed over the life of the switch at the outset. Finally, we conclude that this issue is a fact-specific inquiry amenable in the first instance to determination by the state commissions; it is not

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[108] *Local Competition Order*, 11 FCC Rcd at 15878, paras. 755, 757, 810.

[109] *Id*. at para. 810; 47 C.F.R. § 51.509(b).

[110] WorldCom NJ I Frentrup Decl. at para. 15.

[111] *New Jersey BPU Summary Order* at 8.

[112] WorldCom NJ I Frentrup Decl. at para. 15 (citing *USF Tenth Report and* Order, 14 FCC Rcd at 20289-90, para. 317).

[113] *BellSouth Georgia/Louisiana Order* at paras. 78-83; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6274-75, para. 77; *Verizon Massachusetts Order*, 16 FCC Rcd at 9004-05, para. 33. Switch vendors often provide a greater discount for new switches and smaller discounts for growth of existing switches.

a bright-line rule. We have been presented with no evidence or rationale, beyond bare assertions, that would persuade us that the split chosen by the New Jersey Board amounts to a TELRIC error.

44. In addition, we have stated that inputs used in our Synthesis Model are not binding on states for determining prices for UNEs.[114] We are satisfied that the New Jersey Board carefully evaluated this issue, properly rejected Verizon's proposed use of 100 percent growth switches, and validly established what it considered to be more appropriate and state-specific switching discounts.[115] Accordingly, we reject WorldCom's argument.

45. *Switching Rate Calculation*. WorldCom contends that Verizon improperly calculates its switching cost by dividing by minutes associated with only 251 business days in a calendar year.[116] Switching costs would decrease by 18.5 percent or more, according to WorldCom, if Verizon assumed that usage on non-peak days is even half the level of usage on peak days.[117] WorldCom argues that we should require Verizon to reflect usage on all days or offer free switching usage during off-peak periods.[118]

46. Verizon's switching model recognizes that switches must be designed to meet the capacity requirements of the busiest hour of each day.[119] This "busy hour" determination, according to Verizon, is relevant in both sizing the switch and determining the manner in which costs should be spread among users.[120] The Verizon switching cost study develops a busy hour-to-day-usage ratio (BHDR), which Verizon uses as a basis to spread the investment over annual usage.[121] The New Jersey Board approved Verizon's switching cost study after directing Verizon

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[114] *Bell Atlantic New York Order*, 15 FCC Rcd at 4085, para. 245 ("[The] federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements. We specifically cautioned parties from making any claims in any other proceedings based on the inputs adopted in the *Universal Service Tenth Report and Order*."); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

[115] *New Jersey BPU Summary Order* at 8.

[116] WorldCom NJ I Comments at 9-10; WorldCom NJ II Comments at 6-8.

[117] WorldCom NJ I Comments at 10; WorldCom NJ I Frentrup Decl. at para. 12. *See also* WorldCom NJ I Reply Comments at 4.

[118] WorldCom NJ I Frentrup Decl. at para. 12.

[119] Verizon NJ I Garzillo/Prosini Reply Decl. at para. 14.

[120] *Id*. The cost study develops a "busy-hour"-usage-to-annual-usage ratio (BHAR). *Id. See also* Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at 1 (filed June 20, 2002) (Verizon NJ II June 20 *Ex Parte* Letter) ("[T]he BHAR is one of several different inputs that are used to develop the current switching costs.").

[121] *Id*.

"to re-run its switching model using the Board-approved inputs."[122] WorldCom argues that Verizon should use more than 251 days in calculating switching cost.

47. Verizon contends that, while its use of busy hour minutes allows for proper switch sizing, these minutes exceed those passing through the switch during all non-busy hours of the week and weekend. Verizon also shows that switching prices would increase if it used 270 days with a BHDR of ten percent,[123] instead of 251 days with a BHDR of roughly 7.5 percent, which it says is based on actual usage data in New Jersey.[124] Verizon chose the 10 percent BHDR for purpose of this comparison because that is allegedly an input that WorldCom and AT&T have advocated in other comparable proceedings.[125]

48. In confronting the same issue, the New York commission approved 308 days.[126] In our view, provided that an incumbent LEC's methodology is reasonable and consistent, TELRIC does not by itself dictate the use of a particular number of days, whether 308, 251, or some other number. The record raises serious questions concerning Verizon's use of 251 days in conjunction with the other inputs in Verizon's model and how the rates are applied. We need not resolve this dispute concerning appropriate modeling inputs. As we show below, even if the New Jersey Board erred in approving Verizon's use of 251 days together with other inputs, Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York and therefore fall within the range that reasonable application of TELRIC principles would produce.

49. *Benchmark Analysis.* States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that correct application of TELRIC principles would produce.[127] The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly, it will look to rates in other section 271-approved states to see if the applicant's rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.[128] To determine whether a comparison is reasonable, the Commission will consider

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[122] *New Jersey BPU Summary Order* at 9.

[123] Verizon NJ I Feb 20 *Ex Parte* Letter at 4.

[124] *Id*.

[125] *Id*. (claiming that AT&T and WorldCom have argued elsewhere that a BHDR of 0.100 is a recognized industry standard)

[126] New York PSC, *Proceeding on Motion of the Commission To Examine New York Telephone Company's Rates for Unbundled Network Elements*, No. 98-C-1357, Order on Unbundled Network Element Rates at 36-39 (Jan. 28, 2002).

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

[128] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82. As we have already discussed, commenters raise significant issues concerning the propriety of Verizon's use of 251 days to calculate a switching (continued….)

whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant or an appropriate benchmark.[129]

50. In this application, Verizon chooses to rely on a benchmark comparison of its rates in New Jersey to those in New York.[130] We agree that New York is similar to New Jersey in terms of both geography and rate structure, and, significantly, no commenter contends otherwise. In the *Rhode Island Order*, we commended the New York commission for the thoroughness of its recent rate docket and found that New York was an appropriate benchmark state for Rhode Island.[131] In light of that conclusion, our finding that New York and New Jersey share certain similarities, and the absence of any objection from the parties, we find that it is appropriate to rely on New York for our benchmark comparison.[132]

51. In our benchmark analysis of Verizon's non-loop UNE prices, we compare (1) the percentage difference between its New Jersey and New York UNE-platform per-line per-month prices for non-loop rate elements collectively, and (2) the percentage difference between New Jersey and New York per-line per-month costs for these non-loop elements collectively, based on the Synthesis Model.[133] For purposes of this comparison, UNE-platform non-loop rate elements are line port, end office switch usage, common transport (including the tandem switch), and signaling.[134] We develop per-line per-month prices for these elements for New Jersey and New York separately by multiplying the state-approved "rates" by per-line demand estimates.

(Continued from previous page)
rate. *See* WorldCom NJ II Comments at 6-8. Because we conclude below that Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York, we need not resolve this issue.

129 *See Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. In the *Pennsylvania Order*, we found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64. *See also Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

130 Verizon does not concede that the New Jersey Board made TELRIC errors. Verizon NJ II Application at 6-7.

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

132 *See also id.* at 3326-27, para. 53 (finding that New York is a reasonable benchmark state). Verizon and other BOCs may also demonstrate the propriety of their rates resulting from a state rate proceeding that correctly applies TELRIC principles without regard to any benchmark analysis.

133 We adjust the costs derived from the Synthesis Model to make them comparable to UNE-platform costs. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249. We benchmark non-loop rates apart from loop rates. *See, e.g., id.* at 17458, para. 66; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27.

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

State-approved rates for end office switching and transport are imposed on a MOU basis. We develop the per-line per-month overall demand for these usage-sensitive rate elements for New Jersey and New York separately by first dividing total state-specific switched access lines into state-specific total annual MOU, based on dial equipment minutes (DEM),[135] divided by 12 months.[136] We then apply to each of the usage sensitive rate elements a percentage of this overall demand that is based on state-specific traffic assumptions supplied by Verizon regarding originating versus terminating, local intra-switch versus inter-switch, and tandem-routed versus direct-routed MOU.[137]

52. We reject WorldCom's contention that Verizon's rates fail a benchmark comparison with New York rates if switching rates (port and end office usage) are considered separately from transport rates.[138] While we believe that aggregating per-minute switching with other non-loop rates such as port, signaling, and transport rates appropriately accounts for, among other things, rate structure differences between states, we need not resolve our disagreement with WorldCom here. Even under WorldCom's approach, we find that Verizon's New Jersey switching rates pass a benchmark comparison to those in New York. Specifically, we find that switching costs in New Jersey, as derived from the Synthesis Model, are roughly four percent higher than those in New York and that New Jersey switching prices are roughly the same as those in New York.[139] For purposes of this comparison, we included line and trunk ports because these assets are part of the end office switch. We included signaling in this analysis because signaling costs are recovered in the end office usage switching rates in New Jersey while they are recovered in a separate signaling rate element in New York. WorldCom's approach does not account for this rate structure difference. In addition, signaling prices and costs are typically a small fraction of the combined price and cost for line and trunk ports, end office switch usage, and signaling. In New York, for example, signaling prices are

135 47 C.F.R. § 36.125(a)(3) (defining DEM as "the minutes of holding time of the originating and terminating local switching equipment").

136 In New Jersey, the common transport rate is imposed per-MOU per-mile. The demand we apply to the rate for this element reflects common transport MOU per-line per month multiplied by average common transport mileage. We use Verizon's estimate for common transport mileage for this calculation. *See* Verizon NJ II Application, App. B, Supplemental Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ II Garzillo/Prosini Supp. Decl.), Attach. 9.

137 *See* Verizon NJ II Garzillo/Prosini Supp. Decl. at Attach. 9; Verizon NJ II May 2 *Ex Parte* Letter. For local calls, we use a local terminating switching rate of $0.001885 per minute in our benchmark analysis, and, for access calls, we use a terminating switching rate of $0.002508 per minute. *See* Verizon NJ I Feb. 28 *Ex Parte* Letter; Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed April 29, 2002) (Verizon NJ II April 29 *Ex Parte* Letter).

138 *See* WorldCom NJ II Comments at 5-6.

139 The price difference that we calculate is based on state-specific DEM and state-specific traffic assumptions.

approximately only one percent of the combined price for line and trunk ports, end office switch usage, and signaling.

53. We also disagree with Worldcom that, in this application, we should use standardized MOU and traffic assumptions (*i.e.*, demand assumptions) as opposed to state-specific demand assumptions to develop per-line per-month prices as part of the benchmark analysis.[140] Under the Commission's TELRIC rules, the formula for a UNE rate is total cost divided by total demand.[141] UNE rates are set by state commissions based on state-specific costs and demand. The UNE rates therefore necessarily reflect state-specific MOU and traffic assumptions. Use of state-specific MOU per-line and traffic assumptions to develop per-line per-month UNE-platform prices for a benchmark state and an applicant state is therefore consistent with the manner in which states establish the UNE-platform rates. In addition, we note that the purpose of TELRIC is to determine the total costs and total demand for the incumbent LEC's entire local exchange network.[142] Per-unit TELRIC prices reflecting all of these costs and demand would, if imposed on all incumbent LEC's subscribers, precisely allow for total cost recovery. We also similarly reject WorldCom's argument that it is inappropriate to use lower demand figures for New Jersey than New York in making our comparison, based on the lower actual usage in New Jersey. To the extent that switch costs are appropriately recovered through per-minute rates, a state with lower usage will require higher per-minute rates. Our analysis captures this effect. While we conclude that it is reasonable to use state-specific demand assumptions in this application, we note that use of the standardized demand assumptions in the *Pennsylvania Order* may also be reasonable depending on the particular section 271 application under review.[143] The absence of valid state-specific demand data, for example, might be a reason to use the Commission's standardized demand assumptions.

54. We also reject WorldCom's argument that, in the benchmark analysis, we should use the MOU of any particular competitive LEC's typical customer.[144] We develop the per-MOU per-line per-month numbers from total incumbent LEC DEM and total incumbent LEC switched access lines. These numbers represent the typical or average LEC customer's demand in a given service area for both the incumbent and competitive LECs.[145] We use this demand for

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[140] WorldCom NJ II Comments at 3.

[141] *Local Competition Order*, 11 FCC Rcd at 15847, para. 682.

[142] *Id*.

[143] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 67 n.252.

[144] WorldCom NJ II Comments at 2-6.

[145] The DEM that we use for Verizon in the benchmark analysis include all MOU for retail lines, resale lines, official lines (*i.e.*, lines used for Verizon's internal purposes), and UNE-platform lines. The switched access lines that we use also include these lines. *See* Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed May 2, 2002) (Verizon NJ II May 2 *Ex Parte* Letter). WorldCom states that "Verizon calculates a significantly lower level of usage per line in New York than WorldCom's actual residential experience [because] its usage levels include (continued….)

several reasons. First, we recognize that any competitive LEC has the opportunity to compete for any of the incumbent LEC's customers. Different competitive LECs may have different marketing strategies, and there is no limit to the number of such strategies. The incumbent LEC's average customer demand, including the demand of competitive LECs using its switches, as developed from total DEM and total switched access lines, fully reflects the diverse demand characteristics of the incumbent LEC's enormous customer base. It therefore provides the single most informed estimate of a potential competitive LEC customer's demand for the broad range of possible competitive LEC marketing strategies. Second, as competitive LECs' market shares grow, we expect that average competitive LEC customer demand will grow to resemble the average incumbent LEC customer's demand. Third, use of the typical customer demand of all customers using the incumbent LEC's switch has the advantage of simplicity. It also does not favor any particular competitive LEC's marketing strategy; some competitive LECs may target high-volume customers, while others may target low-volume customers. Fourth, we apply average incumbent LEC customer demand to usage-sensitive rates in the benchmark analysis because the TELRIC formula from which these rates are developed, *i.e.*, total network cost divided by total network demand, produces average incumbent LEC (forward-looking) cost. Fifth, DEM data is publicly available and easily verifiable. By contrast, in states such as New Jersey, where competitive LEC entry has not been extensive, state-specific competitive LEC MOU data may not be available or may not be large or broad enough to perform a reliable benchmark analysis. Finally, use of state-specific incumbent LEC DEM data is also consistent with our recent benchmark analysis in the *Rhode Island Order*.[146]

55. Having rejected WorldCom's contentions concerning benchmark methodology and having found that New York is an appropriate benchmark state, we find that New Jersey's non-loop rates are roughly six percent lower than New York non-loop rates. We also find that New Jersey non-loop costs are roughly one percent higher than New York non-loop costs, after taking a weighted average of New Jersey and New York costs derived from the Commission's Synthesis Model. Therefore, we conclude that New Jersey's non-loop rates pass a benchmark comparison to New York's non-loop rates and that they therefore satisfy our benchmark analysis and the requirements of checklist item two.

(Continued from previous page)
business, public retail, resale and UNE-P lines along with residential lines." WorldCom NJ II Comments, Declaration of Vijetha Huffman, at para. 5 (filed April 8, 2002) (WorldCom NJ II Huffman Decl.). As discussed above, we conclude that the incumbent LEC's average customer demand provides an appropriate estimate of a potential competitive LEC's customer demand for the broad range of possible competitive LEC marketing strategies. To the extent WorldCom intends this declaration to establish that certain lines should not be included in the calculation of the typical or average customer demand used for benchmark comparisons because they do not reflect potential CLEC customers, we find this evidence does not support the claim. WorldCom has not differentiated such lines with particularity, established why such lines do not reflect potential CLEC customers, or demonstrated that removal of such lines -- and corresponding DEM data -- would have a measurable effect on the typical or average customer demand used for the benchmark comparison before us in this proceeding.

[146] *Verizon Rhode Island Order*, 17 FCC Rcd at 3327, para. 55 n.149.

(iii) Daily Usage File Rates

56. The Daily Usage File (DUF) is an optional Verizon billing service that provides files containing records of local and intraLATA toll usage to competitive LECs for timely and accurate billing of services to the end user.[147] AT&T argues that Verizon's DUF rates are inflated and do not comply with TELRIC.[148] Specifically, AT&T alleges that Verizon's DUF rate calculation contains a math error that improperly inflates DUF rates.[149] AT&T also alleges that these rates over-recover certain "CLEC Support" labor costs that are spread over a small fraction of the number of messages actually processed within Verizon's system.[150]

57. With respect to the alleged mathematical error, Verizon has recently filed a correction with the New Jersey Board.[151] We therefore reject AT&T's claim concerning this error.

58. In addition, AT&T alleges that Verizon over-recovers the labor costs associated with the 13 employees who provide "CLEC Support."[152] According to AT&T, Verizon recovers such costs once in the expense factors within the annual cost factor (ACF) and again in the DUF rate.[153] Verizon states that it removed the labor costs associated with the Central Billing Organization, which is involved in providing DUF services.[154] Verizon also states that "even if Verizon removed the labor costs for all 13 equivalent workers contained in the DUF study, the Other Support factor would not materially change (0.0446 compared to 0.0447)."[155] Assuming

[147] *See* AT&T NJ II April 30 *Ex Parte* Letter at 3 n.4.

[148] *Id*. at 3-4. *See also* AT&T NJ II Comments at 11-14.

[149] AT&T NJ II Comments, Exh. A, Declaration of Michael R. Baranowski (AT&T NJ II Baranowski Decl.) at paras. 11-12. AT&T claims that the calculations for Verizon's "DUF Network Data Mover Cost Per Message" contains an error in the calculation of the DASD (DISK) Maintenance component that overstates the costs of that DUF rate component by nearly 100 times. *Id.* at para. 11. *See also* AT&T NJ II April 30 *Ex Parte* Letter at 3.

[150] AT&T also alleges that Verizon fails to justify CLEC support costs reflecting the work of 13 full-time employees and costs for the "Regional CBO Message Demand." *Id*. at paras. 12-14. *See also* AT&T NJ II April 30 *Ex Parte* Letter at 3-4.

[151] *See* Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at Attachs. 1 and 2 (filed May 8, 2002) (Verizon NJ II May 8 *Ex Parte* Letter). If AT&T believes that the error has not been corrected, the New Jersey Board is the most appropriate entity to address AT&T's concerns in the first instance.

[152] AT&T NJ II Baranowski Decl. at para. 12.

[153] *Id*.

[154] Verizon NJ II June 7 *Ex Parte* Letter at 5.

[155] Verizon NJ II Reply Comments, Tab D, Supplemental Reply Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ II Garzillo/Prosini Reply Decl.) at para. 51.

that the labor costs were not removed, as AT&T claims,[156] and that the difference is material, whether Verizon should remove the disputed labor costs from the DUF rate alone or should re-calculate the ACF and all recurring rates affected by this ACF change is, we believe, a local rate design decision for the New Jersey Board in the first instance. In any event, consistent with prior section 271 orders, we conclude that AT&T has presented no evidence that the New Jersey Board did not conform to TELRIC principles "simply because it [allegedly] failed to modify one input into its cost model."[157]

59. We are also not persuaded by AT&T's simple comparison of DUF rates in various states.[158] As AT&T acknowledges, the Commission has not found such comparisons persuasive in the past.[159] AT&T claims, however, that the alleged presence of undocumented labor costs in the DUF rates amounts to a TELRIC error and that such evidence of error warrants our consideration of a comparison in this instance.[160] Consistent with our precedent on this issue, however, we disagree that a state-to-state comparison is appropriate concerning this DUF dispute.[161] Other than AT&T's bare claims, there is no evidence before us suggesting that Verizon's labor costs are not supported or that the New Jersey Board committed any TELRIC error. Absent such evidence, we find that Verizon's DUF rate falls within a reasonable TELRIC range.

60. AT&T did not raise these issues before the New Jersey Board, and it has only recently challenged Verizon's DUF rates in a motion for reconsideration of the Final UNE Rate Order. AT&T's motion is presently pending before the New Jersey Board. The New Jersey Board should have the opportunity to evaluate AT&T's evidence and make any adjustments it finds appropriate. Our deference to the New Jersey Board in this instance is consistent with our treatment of the same issue in the *Vermont Order*.[162] We commend the New Jersey Board's

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[156] AT&T NJ II June 18 *Ex Parte* Letter at 5.

[157] *Bell Atlantic New York Order*, 15 FCC Rcd at 4085, para. 245. *See also AT&T v. FCC*, 220 F.3d at 617.

[158] AT&T NJ II Reply Comments at 8 and n.10. We note that our benchmark analysis does not extend to DUF rates.

[159] *Id*. at 8 n.9 (citing to *Verizon Vermont Order* at para. 26).

[160] *Id*. at 8.

[161] *See Verizon Vermont Order* at paras. 26, 27.

[162] *Id*. at para. 37. Similarly, in the *Bell Atlantic New York Order*, we deferred to the state's intention to address additional evidence regarding the appropriate switch discount value. *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247. We concluded that the commenter "presented no evidence that the New York Commission's ongoing examination of the switch discount issue betoken[ed] a failure to set TELRIC-compliant rates." *Id*. (quotations and citations omitted). The D.C. Circuit Court of Appeals affirmed our conclusion, finding that "rates may often need adjustment to reflect newly discovered information." *AT&T v. FCC*, 220 F.3d at 617.

commitment to TELRIC principles, defer to the New Jersey Board's forthcoming resolution of the DUF rate, and find no TELRIC error on the record before us on this issue.[163]

c. Non-Recurring Charges

61. *"Hot Cut" Charges*. AT&T, ASCENT, the NJDRA, and XO challenge Verizon's "hot cut" charges. A hot cut is the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch.[164] The "cut" is said to be "hot" because telephone service on the specific customer's loop is interrupted for a brief period of time, usually fewer than five minutes, during the conversion process.[165]

62. On March 6, 2002, the New Jersey Board formally approved Verizon's six hot cut rates in a range of $159.76 to $184.82, depending on the type of hot cut.[166] Effective March 20, 2002, however, Verizon lowered these rates to $35.00 for each type.[167] The reduced rate does not include surcharges for manual order handling, expedited treatment, or premises visits.[168] In announcing the rate change, Verizon initially stated that the lower rate "will be in effect until either the sooner of two years or the Board's final resolution of the AT&T motion regarding hot cut pricing in this proceeding, unless the Board otherwise modifies the rate."[169] On May 8, 2002,

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[163] AT&T retains the ability to take action pursuant to section 271(d)(6) if AT&T believes that the New Jersey Board ultimately approves a rate that does not comply with our rules. *Cf. Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30.

[164] Department of Justice NJ I Evaluation at 7 n.28; XO NJ I Comments at 17-18.

[165] XO NJ I Comments at 18.

[166] *New Jersey BPU Final UNE Rate Order*, Attachment (rate sheet). For ease of discussion, we refer to all of Verizon's various New Jersey hot cut rates collectively as the "$159.76 hot cut rate." This shorthand reference to Verizon's hot cut rates has no effect on our substantive analysis.

[167] Verizon NJ II Application at 16; Verizon NJ II Application, App. A, Tab B, Supplemental Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ II Garzillo/Prosini Decl.) at para. 4 & attach. 1 (listing the six types of hot cuts: two-wire; four-wire; ADSL/HDSL; DDS/56KD; IDLC to copper; and line port). Verizon derives the $35 hot cut rate by crediting competitors with the difference between $159.76 and $35. Verizon NJ II Garzillo/Prosini Decl., Attach. 1 at 1, 3. The credit does not apply to non-expedited or non-premises visit hot cuts. *Id*. That the $35 credit is only available for non-expedited, non-premises hot cuts does not violate our TELRIC principles. There is no evidence in this record that Verizon may not validly charge more for hot cuts requiring more work or special handling. In any event, the New Jersey Board is currently considering hot cut-related pricing issues in connection with a pending motion for reconsideration, *see* Verizon NJ II Application at 16, and, consistent with our precedent, we defer to the state's handling of this issue, *see, e.g.*, *Verizon Pennsylvania Order*, 16 FCC Rcd at 17478, para. 108; *Verizon Vermont Order* at para. 37.

[168] Verizon NJ II Garzillo/Prosini Decl., Attach. 1 at 1, 3.

[169] *Id*. at 2.

Verizon dropped the latter condition so that the $35 hot cut rate in New Jersey is now in effect until at least March 1, 2004.[170]

63. Commenters argue that the $35 hot cut rate is not TELRIC-compliant.[171] They contend generally that the hot cut rate is merely a temporary credit that does not comport with TELRIC principles.[172] AT&T argues that the New Jersey Board never approved the $35 hot cut rate and that a TELRIC-compliant rate should be no more than $4.35.[173] AT&T also asserts that the $35 hot cut rate is higher than the hot cut rates in five other Verizon states, that the $35 rate cannot be justified by reference to the New York $35 hot cut rate, which was the product of a negotiated settlement, and that Verizon has made no binding commitment to offer the $35 rate in New Jersey.

64. The New Jersey Board rejected AT&T's evidence concerning Verizon's non-recurring cost model that generated the hot cut rate.[174] In rejecting AT&T's proposed non-recurring cost model, the New Jersey Board found that AT&T's alternative non-recurring cost model "identified far fewer rate elements than the Verizon NJ Model and assume[d] away a number of potential costs on the premise that they should have been included as part of recurring costs and/or are unnecessary in a forward-looking environment due to mechanized improvements."[175] In this proceeding, AT&T has not presented persuasive evidence that the New Jersey Board committed clear error in rejecting its cost model or approving Verizon's non-recurring cost model. We are therefore not persuaded, based on the current record, by AT&T's contention that a hot cut should cost less than $5.00.[176]

65. During the NJ I proceeding, Verizon's $159.76 hot cut rate generated considerable controversy. Although Verizon continues to argue in NJ II that this rate is Board-approved and TELRIC-complaint, it voluntarily agreed to reduce the effective rates for six hot cut charges to $35.00. The $35.00 hot cut rate is a rate selected by Verizon and that has gone into effect in New Jersey. Our task is not, as AT&T claims, to determine whether $35.00 or some other rate most complies with TELRIC, but rather to determine whether $35 falls within a reasonable TELRIC range. Our review here is also not *de novo*, as we have said many times

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[170] *See* Verizon NJ II May 8 *Ex Parte* Letter and Attach. 3.

[171] *But see* Allegiance NJ II Comments at 1 ("Allegiance commends Verizon for voluntarily reducing its non-recurring charge for hot cuts to $35.00.").

[172] *See, e.g.*, AT&T NJ II Comments at 7-11.

[173] *Id*. at 8-9.

[174] *New Jersey BPU UNE Rate Order* at 157-59.

[175] *Id*. at 157.

[176] AT&T NJ II Comments at 8 & n.6.

before. Upon review, we find that Verizon's $35.00 hot cut rate in New Jersey is within the reasonable range that application of TELRIC principles would produce.

66. First, the $35.00 hot cut rate, which mirrors the effective rate in New York, bears the imprimatur of the New York PSC as well as the numerous competitive LECs who joined that settlement, including AT&T itself. We have already found that New York is an appropriate benchmark state for non-loop rate purposes, which gives us additional comfort that the $35 hot cut rate in New Jersey and the $35 hot cut rate in New York can be appropriately compared.[177]

67. Second, while AT&T argues vehemently that the New York hot cut rate should not be viewed in isolation,[178] AT&T itself presented evidence that the $35.00 hot cut rate in New Jersey falls within a reasonable range. AT&T introduced substantial expert testimony in NJ I, which it incorporated by reference in NJ II,[179] explaining that its business plan for entering the New Jersey residential market substantially depends on the existence of a cost-based hot cut rate.[180] AT&T claimed that it could compete with Verizon in the New Jersey residential market with a hot cut rate priced in the $30-$33 range, in line with Verizon's rate for a two-wire initial installation, over $130 lower than the then-existing hot cut rate of $159.76.[181] Indeed, AT&T stated that it had planned to implement its market entry strategy in New Jersey when Verizon charged $32.16 to perform a hot cut, but that it was forced to abandon that strategy only after the New Jersey Board approved a higher hot cut rate of $159.76.[182] Having argued that a hot cut charge in the range of $30-$33 would be appropriate in New Jersey and would pose no barrier to

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[177] Letter from David L. Lawson, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (April 26, 2002) (AT&T NJ II April 26 *Ex Parte* Letter), Supp. Decl. of Richard J. Walsh at para. 18 n.19. *See also SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20753-54, para. 71 & n.207; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266-68, paras. 60-61.

[178] *See* AT&T NJ II Comments at 9-11.

[179] *Id*. at 1 n.1.

[180] *See* AT&T NJ I Comments, Exh. A, Declaration of Stephen G. Huels (AT&T NJ I Huels Decl.) at para. 4 (explaining that "Verizon's [$159.76] hot cut non-recurring charge will undermine AT&T's ability to carry out" AT&T's business strategy in New Jersey); AT&T NJ I Comments at 13 ("Verizon's overstated hot cut NRCs threaten any facilities-based local business and residential entry plan in New Jersey.").

[181] *See* AT&T NJ I Comments, Exh. B, Declaration of John Sczepanski (AT&T NJ I Sczepanski Decl.) at para. 9 ("Verizon's [$159.76] hot cut NRC creates a significant barrier to AT&T's local telephone entry plans by inflating AT&T's per line cost of migrating customers from UNE-P based services to UNE-L based services by nearly 400 percent (from $32.16/line to $159.76/line)."); AT&T NJ I Comments at 13 ($159.76 - $130.30 = $29.46). In presenting this evidence, AT&T acknowledges that hot cut rates in the range of $29.46-$32.16 would not create a barrier to market entry.

[182] AT&T NJ I Sczepanski Decl. at para. 8 (stating "AT&T had already begun to carry out its UNE-P to UNE-L migration plan – in anticipation of reduced New Jersey UNE rates at the conclusion of the recent UNE rate case in New Jersey – by making substantial investments in network equipment to carry out that plan," but noting that "Verizon and the New Jersey [BPU] effectively halted" that plan by "substantially increasing Verizon's hot cut NRC by almost 400 percent").

market entry, AT&T cannot now ask us to find that a hot cut rate of $35 clearly falls outside an acceptable TELRIC range. AT&T provides no evidence that the line between TELRIC and non-TELRIC pricing for a hot cut charge in New Jersey falls somewhere between the $30-$33 rate it previously found acceptable and the $35 rate it now finds objectionable. AT&T's argument is not credible, and we therefore reject AT&T's claim that $35 falls outside a reasonable TELRIC range.

68. Finally, the New Jersey Board is presently considering AT&T's motion for reconsideration of the hot cut rate and will have an opportunity to weigh AT&T's evidence of the appropriate rate level. While the New Jersey Board made findings that cast some doubt on the $159.76 hot cut rate,[183] it also made a determination that some significant amount of work was involved in performing a hot cut.[184] We note that the $35 hot cut charge reflects a reduction of over 75 percent from the charge adopted by the New Jersey Board. These findings, in conjunction with the similarities between the New Jersey and New York hot cut rates, persuade us that the $35 rate falls within a reasonable TELRIC range. In any event, while we believe that the New Jersey Board should have the opportunity to evaluate the evidence itself, we also take comfort that the $35 hot cut rate will remain in effect until at least March 1, 2004. Our deference to the New Jersey Board is consistent with our treatment of this issue in the *SWBT Texas Order*, where we stated that we would not second-guess a state commission's responsibility to set hot cut charges.[185] Accordingly, we defer to the New Jersey Board's

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[183] *See New Jersey BPU Final UNE Rate Order* at 158.

[184] *See id*. at 157-58, 162. In approving the $159.76 hot cut rate, the New Jersey Board directed Verizon to modify eight critical inputs to Verizon's non-recurring cost model. These modifications, which are listed below, are evidence that the New Jersey Board agreed with Verizon that a hot cut required some significant amount of work. "(1) revise all travel times to 20 minutes; (2) adjust the time estimates for all additional lines to be equal to the time associated with the initial lines where the additional line is greater; (3) eliminate all computer connect times for additional lines in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial line; (4) eliminate all times associated with notifying a CLEC to complete an order in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial lines; (5) eliminate all times associated with scheduling teams, contacting CLEC, verifying service orders, obtaining CLEC approval, completing orders, and notifying the team of cancellations for all additional lines in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial line; (6) revise to five minutes all times associated with gaining access to a premises, locating terminals, contacting the mechanized loop administration center, and working with the mainframe or regional CLEC coordination center; (7) eliminate all field installation charges associated with migration orders; and (8) eliminate all manual translation times that are made obsolete by the flow-through capabilities of Verizon's operations support systems." *Id.* at 162-63.

[185] *SWBT Texas Order*, 15 FCC Rcd at 18495, para. 277. Similarly, in the *New York Order*, the Commission deferred to the state's intention to address additional evidence regarding the appropriate switch discount value. *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247. The Commission concluded that the commenter "presented no evidence that the New York Commission's ongoing examination of the switch discount issue betoken[ed] a failure to set TELRIC-compliant rates." *Id*. (quotations and citations omitted). The D.C. Circuit Court of Appeals affirmed, finding that "rates may often need adjustment to reflect newly discovered information." *AT&T v. FCC*, 220 F.3d at 617.

anticipated resolution of this matter and find no TELRIC error on the record before us in Verizon's $35 hot cut rate.[186]

69. *Feature Change Service Order Charge*. AT&T asserts that the $7.71 service order charge Verizon assesses on a competitive LEC whenever it adds or deletes a telephone feature service, such as caller identification, does not comply with TELRIC.[187] In a fully electronic or automated system, according to AT&T, this charge might be as low as $0.27.[188] AT&T also notes that Verizon assesses an initial service order charge of only $0.83 when a competitive LEC requests installation of features in an initial service order.[189]

70. First, we are not persuaded by AT&T's comparison of Verizon's $7.71 service order charge for feature changes with Verizon's $0.83 service order charge for the initiation of new UNE-platform service or with AT&T's proposed $0.27 service order charge for feature changes.[190] While we agree that there are material differences between $7.71 and $0.83 (or $0.27), a simple rate comparison does not, by itself, demonstrate that the New Jersey Board failed to follow TELRIC principles in approving the $7.71 rate. We are also not persuaded by AT&T's argument that Verizon overstates the manual processes associated with competitive LEC order fallout that generate the service order charge.[191] Verizon accounted for order fallout by discounting its service order activity time estimate by over 86 percent.[192] While AT&T might prefer if this discount were greater, AT&T does not show that the New Jersey committed clear TELRIC error in approving Verizon's use of it. Absent such evidence, we have no basis to conclude that the New Jersey Board improperly approved Verizon's service order charge for feature changes.[193]

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186 We note that the Commission retains its ability to take appropriate enforcement action pursuant to section 271(d)(6) if Verizon falls out of compliance with the requirements of section 271. *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30.

187 AT&T NJ II Comments at 18. *See also* Verizon NJ II April 29 *Ex Parte* Letter.

188 AT&T NJ II April 26, 2002 *Ex Parte* Letter at 2.

189 *Id*. at 1.

190 AT&T NJ II Comments, Exh. B, Declaration of Richard J. Walsh (AT&T NJ II Walsh Decl.) at para. 10.

191 AT&T NJ II Walsh Supp. Decl. at para. 14.

192 Verizon NJ II Garzillo/Prosini Reply Decl. at paras. 55-56; AT&T NJ II Walsh Supp. Decl. at Table 1.

193 AT&T argues that non-recurring charges can be compared to those in other states. *See* AT&T NJ II Comments at 7-8 (*e.g*., hot cut charges). Were we to compare Verizon's service order charges for a feature change in New York and New Jersey, we note that in New York the charge is $9.01, $1.30 higher than New Jersey's charge of $7.71. *See* Verizon NJ II Garzillo/Prosini Reply Decl. at para. 57. Because we do not find this comparison to be, by itself, dispositive of the issue of the TELRIC compliance of the service order charge, we need not determine the relevance of the alleged interim status of the $9.01 New York charge. *See* Letter from David L. Lawson, counsel, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 19, 2002).

71. Second, unlike some other non-recurring charges such as hot cuts, which are imposed when a customer migrates to a competitive LEC's switch, a feature change service order charge is imposed only if a customer is already taking service from a competitive LEC. Even then, not all such customers request changes to their feature services. There is no evidence in the record that a feature change service order charge constitutes a barrier to market entry in the same way that a non-TELRIC hot cut charge could.

72. Finally, we note that AT&T has filed a motion for reconsideration of this issue with the New Jersey Board. We believe that the New Jersey Board should have the opportunity to evaluate the evidence itself and make adjustments it regards as appropriate.[194] In particular, the New Jersey Board may want to confirm that Verizon's use of an "averaging" methodology in calculating the $7.71 service order charge for feature changes generated a cost-based rate.[195] Consistent with prior orders, we defer to the state's resolution of this fact-specific question in the ongoing proceeding,[196] and we find no TELRIC error on the record before us in Verizon's $7.71 service order charge for feature changes.

73. For the foregoing reasons, we cannot conclude on the record before us that the New Jersey Board committed a TELRIC error in adopting Verizon's $7.71 service order charge for features changes, and, in any event, we defer to the New Jersey Board's resolution of AT&T's challenge to this non-recurring charge.

2. OSS

74. Checklist item 2 requires a BOC to demonstrate that competitors have nondiscriminatory access to the various systems, databases, and personnel (collectively referred to as OSS) that a BOC uses in providing service to its customers.[197] The Commission has identified five functional OSS domains: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.[198] Further, a BOC must show that it has an adequate

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[194] The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted); *Verizon Vermont Order* at para. 15; *BellSouth Georgia/Louisiana Order* at para. 23. *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct de novo review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

[195] *See* Verizon NJ II April 29 *Ex Parte* Letter at 2-3 (explaining averaging approach used for all elements in "loops" category); Verizon NJ II June 7 *Ex Parte* Letter at 6.

[196] We note that the Commission retains its ability to take appropriate enforcement action pursuant to section 271(d)(6) if Verizon falls out of compliance with the requirements of section 271. *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30.

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

[198] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17425, para. 12; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82.

change management process in place to accommodate changes made to its systems.[199] In assessing a BOC's OSS, we review its performance to determine both that its performance provided to all competing carriers in the aggregate is sufficient, and that its performance provided to one or more carriers does not show discriminatory treatment. We find, as did the New Jersey Board, that Verizon provides non-discriminatory access to its OSS.[200]

75. To demonstrate that its OSS is handling current demand and will be able to handle reasonably foreseeable future volumes, Verizon relies upon a combination of evidence – New Jersey commercial usage, third-party testing, and performance of certain systems identical to those in other section 271-approved states. Specifically, in addition to New Jersey performance data, Verizon certifies that it provides competitive LECs in New Jersey with interfaces and gateways to the OSS common to those serving the rest of the former Bell Atlantic service area.[201] Verizon engaged KPMG Consulting (KPMG) to test the interfaces and OSS serving New Jersey. In addition, Verizon engaged PricewaterhouseCoopers (PwC) to conduct two attestation reviews of Verizon's BOS BDT formatted bills in New Jersey in September 2001.[202]

76. As an initial matter, although we acknowledge that there are substantial similarities between the OSS available to competitors in New Jersey and the OSS that we have approved in previous 271 applications filed by Verizon, we believe that certain factors require us to review closely the operational readiness of the OSS particular to New Jersey. First, most OSS transactions handled for New Jersey customers must be processed by a service order processor (SOP) unique to New Jersey.[203] While many of the interfaces, gateways, and some back office

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[199] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17425, para. 12; *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4000 para. 102 & n.277 (citations omitted).

[200] New Jersey Board NJ I Comments at 43.

[201] Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 8. This area includes states where the Commission found OSS checklist compliance as part of its section 271 approval. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17424-25, paras. 11-12; *Verizon Massachusetts Order*, 16 FCC Rcd at 9013-14, 9026, 9036-37, 9040-42, 9043-44, 9045-46, 9051, paras. 50, 70, 90, 95, 97, 102, 114; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82; *Verizon Connecticut Order*, 16 FCC Rcd at 14170, para. 51.

[202] First, PwC verified that the BOS BDT bill provided to competitive LECs in New Jersey contained the same key summarization points and key billing elements as the paper bill; contained the same dollar value for those summarization points and billing elements; and had enough detail to allow the billing elements to be recalculated. Verizon NJ I Application, App. B, Tab 4, Joint Declaration of Catherine Bluvol and Sammy Kumar (Verizon NJ I Bluvol/Kumar Decl.) at para. 6. Second, PwC certified that certain billing line items that were issues in the *Verizon Pennsylvania Order* – most notably, taxes, directory advertising in the form of carrier usage, and resale usage on UNE-platform accounts – have been effectively eliminated. Verizon NJ I Application, App. B, Tab 4, Joint Supplemental Declaration of Catherine Bluvol and Sammy Kumar (Verizon NJ I Bluvol/Kumar Suppl. Decl.), at para. 6.

[203] The SOP is the provisioning process system used for order entry. KPMG Final Report at 440. Among other functions, the SOP transmits information to other back office systems, such as the billing system.

systems are common region-wide,[204] the SOP is different and, therefore, we must be confident that this difference has no material impact on Verizon's performance.[205] Second, a number of parties have raised issues related to Verizon's electronic wholesale bill. Because this issue was also in substantial dispute during our review of Verizon's section 271 application for Pennsylvania, and because our finding that Verizon provided nondiscriminatory access to wholesale billing systems was a "close call,"[206] we must ensure that this system in New Jersey, at a minimum, performs at the same level as the system that was approved in Pennsylvania.

77. As in prior Commission orders, we focus our review on those OSS issues in controversy, and do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that Verizon meets the nondiscrimination requirements.[207] Here, our discussion focuses on comments regarding the sufficiency, accuracy and reliability of the commercial data submitted; the sufficiency and blindness of KPMG's testing; the timeliness and accuracy associated with Verizon's delivery of order processing notifiers; wholesale billing practices; and issues raised regarding service order flow-through.

a. Third-Party Testing

78. Under the direct supervision of the New Jersey Board, KPMG conducted an independent, wide-ranging review of Verizon's OSS for three test categories: transaction validation and verification; policies and procedures review; and performance metrics reporting.[208] KPMG performed military-style testing of the five functional OSS domains, under which Verizon would memorialize and implement its response to any identified problem, and KPMG would re-test the associated activities until all 536 test points were satisfied.[209] This testing model is substantially similar to the tests that KPMG conducted in New York, Massachusetts, and Pennsylvania, and that the Commission has relied on in its decisions that Verizon's OSS met

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[204] In October 2001, Verizon began to provide access to two new functions – loop make-up information and manual loop qualification. We recently examined these new processes, which are the same region-wide, and found them to be in compliance with section 271. *Verizon Rhode Island Order*, 17 FCC Rcd at 3328-29, paras. 61-63.

[205] Due to the integral role that the SOP plays in the operation of the OSS, serving as a hub to coordinate and route data between functions, our initial assessment of it in this proceeding is not constricted to ordering but encompasses all OSS domains. Among other tasks, the SOP edits new orders, routes orders to the appropriate downstream provisioning systems, cycles completed orders to Verizon's billing systems for updating, and directs Verizon's gateway systems to issue completion notices to competitive LECs. AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 31-35.

[206] *Verizon Pennsylvania Order*, 16 FCC Rcd. at 17427, para. 15.

[207] *See, e.g.*, *id*. at 17425, para. 12.

[208] KPMG Final Report at 17.

[209] *Id*. at 17, 19, 22.

the requirements of checklist item two in those states.[210] As the Department of Justice recognized, the KPMG test was comprehensive,[211] and the New Jersey Board noted that New Jersey is the first state to conclude the test with a clean slate of no outstanding Exceptions or Observations.[212]

79. In assessing the persuasiveness of a third-party review, the Commission looks to the qualifications, experience and independence of the third party and the conditions and scope of the review itself.[213] If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight.[214] As explained below, because we find KPMG's test to be sufficiently broad and objective, we place significant reliance on the conclusions generated from that test to find that Verizon's OSS in New Jersey is in compliance with the checklist.[215]

(i) End-to-End Volume Testing

80. AT&T questions KPMG's evaluation of each test domain (*i.e.*, pre-ordering, provisioning, billing, and maintenance and repair) separately rather than on the end-to-end basis necessary to gauge "real world" commercial usage.[216] In particular, AT&T argues that the lack of volume testing past the point when the local service request confirmation (LSRC) is issued excludes the downstream provisioning and billing processes, and therefore omits critical functions of the otherwise untested SOP unique to New Jersey.[217] AT&T also points to misses for certain performance measurements, such as for the benchmark and parity of billing completion timeliness, as evidence of the shortcomings of the KPMG test.[218] AT&T claims that end-to-end volume testing in New Jersey is warranted based on the problems that Verizon had with its OSS in New York following section 271 approval, despite greater commercial usage in that state.[219]

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[210] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17426-27, 17438-39, paras. 14, 33; *Verizon Massachusetts Order*, 16 FCC Rcd at 9012, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 100.

[211] Department of Justice NJ I Evaluation at 3.

[212] New Jersey Board NJ I Comments at 30.

[213] Appendix C at para. 31.

[214] *Id*.

[215] We address in Section III.B.2.d below the testing issues relating specifically to billing.

[216] AT&T NJ I Comments at 17-18; AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 21-28.

[217] AT&T NJ I Comments at 18; AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 26-27; KPMG Final Report at 345 (stating that the billing evaluation "did not rely on volume testing").

[218] *See* AT&T NJ I Comments at 19; AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 98-107.

[219] AT&T NJ I Comments at 19 n.10; AT&T NJ I Kirchberger/Nurse/Kamal Decl. at para. 25.

81. Contrary to AT&T's assertions, KPMG's testing did include end-to-end testing and evaluation of integrated operations, including examination at a projected "normal" volume equivalent to the submission of 1.3 million orders per month into the New Jersey SOP.[220] Further, we do not give credence to the argument that a failure to meet certain limited benchmarks demonstrates that KPMG's testing did not properly evaluate the SOP. In prior decisions, isolated metric misses have not compelled the Commission to minimize or disregard third-party testing that was otherwise found to be sufficient in scope and depth,[221] and no commenter has identified a pattern of commercial usage to warrant our reaching such a conclusion here.

82. We find similarly unpersuasive the assertion that Verizon's OSS difficulties with transactions downstream from the LSRC that took place in New York during 2000 demonstrate a need for end-to-end volume testing in New Jersey. Verizon identified that problem as arising from third-party vendor software used in the EDI ordering interface that caused missing or delayed orders, and corrected this not just in New York but throughout the 14-state former Bell Atlantic footprint.[222] The KPMG test for Pennsylvania was more recent and relevant than the one for New York and was substantially similar to the one used in New Jersey, and we have no evidence of any flaw in Verizon's ability to handle greater volumes of actual usage following section 271 approval for Pennsylvania.

(ii) Blindness of Test

83. In its effort to simulate the operational experience of a competitive LEC, KPMG instituted several measures to minimize the likelihood of being recognized by Verizon and receiving any favorable treatment.[223] Among other procedures to advance this test objective, KPMG required that all documents given to it were generally available to other competitors; Verizon did not receive any advance notice of the timing or detailed nature of transactions and test calls; the New Jersey Board randomly monitored telephone calls between KPMG and Verizon; and KPMG established a weekly conference call that included competitors and the New

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[220] Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 9 (noting that the New Jersey SOP went beyond the anticipated load of its own state and successfully processed the entire regional volume). Of the more than 185 different scenarios used to structure transaction testing, some "were specific to a particular domain, while others spanned multiple domains providing an end-to-end test of Verizon NJ's systems and processes. Variations of each scenario were executed to test a range of feature/function combinations, and to reach desired transaction volume levels." KPMG Final Report at 18. The pre-order and order volume performance tests projected transaction forecasts and ran at projected normal day volumes, peak day volumes (150% of normal), and stress-test volumes (250% of normal). KPMG Final Report at 129, 133-34.

[221] *E.g.*, *Verizon Pennsylvania Order*, 16 FCC Rcd at 17439, para. 34 ("While some of the wholesale billing errors that KPMG identified continue 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.").

[222] Verizon Feb. 25 *Ex Parte* Letter at 4.

[223] KPMG Final Report at 19-20.

Jersey Board so that competitive LECs could obtain information about test progress and communicate issues of concern.[224]

84. AT&T challenges the test as insufficiently blind to Verizon, asserting that these procedures were inadequate for KPMG to hide its "pseudo-CLEC" identity from Verizon, and that Verizon could have used its advance knowledge to shield KPMG from real-world problems that other competitive LECs face.[225] In addition, AT&T argues that it and other competitors were severely limited in their ability to participate in the testing. Specifically, AT&T notes that, unlike the New Jersey Board and Verizon, it could only monitor and not express opinions during the KPMG weekly calls discussing the status of exceptions and observations, and could only voice concerns during a separate weekly call where KPMG's subject matter experts often did not participate.[226]

85. We conclude that the KPMG test was sufficiently blind to provide us with valuable evidence of the adequacy of Verizon's OSS systems. In addressing KPMG's potential for preferential treatment during the testing process in New York, the Commission previously recognized that "it was virtually impossible for the KPMG transactions to be truly blind," and relied on the efforts of KPMG to maintain blindness to treat the evidence of OSS readiness as persuasive.[227] Because KPMG implemented measures in its New Jersey testing that were substantially similar to those upon which we relied in the *Verizon New York Order*, we conclude here that the KPMG measures that we described above sufficiently obviated the likelihood of favoritism.

(iii) Limited Depth and Scope of Test

86. Finally, we dismiss AT&T's assertions that KPMG's failure to test line splitting, electronic billing, and performance data accuracy preclude the use of the entire KPMG test as evidence of nondiscriminatory OSS.[228] The scope of a third-party test is relevant to the weight we assign to that test, and such a test is not an independent requirement. Our experience in evaluating section 271 applications has shown that OSS functionalities are constantly evolving, and BOCs should not be penalized because substantially improved functionalities come on-line near the conclusion of the testing period or after testing has already concluded.[229] We address

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[224] *Id.* at 20. *See also id.* at 16 ("Significant input from the NJ BPU, Verizon NJ, and various CLECs was solicited, received, and considered during the MTP [Master Test Plan] development period.")

[225] AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 26-27.

[226] *Id*. at paras. 58-59.

[227] *Bell Atlantic New York Order*, 15 FCC Rcd at 3998-99, para. 99.

[228] AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 39-54.

[229] Notably, Verizon's BOS BDT billing became available as the bill of record in New Jersey in September 2001, and new line splitting process was made available region-wide in October 2001. *Id*. at paras. 43-54.

nondiscriminatory access to line splitting and electronic billing below, and acknowledge that the KPMG test is not probative to Verizon's showing for either system.[230]

87. With regard to performance data, KPMG did undertake a comprehensive review of Verizon's systems and procedures to measure and report its performance under the Carrier-to-Carrier Guidelines, and KMPG found that Verizon satisfied all 164 test points.[231] Furthermore, we do not find significant those criticisms that Verizon received a perfect score on KPMG's OSS testing, yet in certain instances it later discovered limited misreported or miscalculated data.[232] The failure to detect an improper calculation of performance results for an isolated number of metrics is not enough to disqualify an otherwise comprehensive review by an experienced and qualified auditor.[233] In addition, we reject AT&T's suggestion that we discredit the comprehensiveness and probative value of KPMG's test because it did not evaluate whether Verizon used the appropriate retail analogue for competitors' wholesale activities.[234] Identification of analogous functions is essential for measuring parity, and KPMG did test whether Verizon selected a retail analogue consistent with the New Jersey Board's Carrier-to-Carrier guidelines.[235]

b. Data Sufficiency, Accuracy and Reliability

88. Although some commenters challenge the small number of residential UNE-platform customers in New Jersey as being insufficient to assess the operational readiness of the

[230] *See infra* at Sections III.B.2.d (electronic billing) and III.B.2.f (line splitting).

[231] KPMG Final Report at 23, 353-405; *see also* Verizon NJ I Application App. A, Vol. 3, Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito at para. 134 (Verizon NJ I Guerard/Canny/DeVito Decl.).

[232] NJDRA Comments at 22; AT&T NJ I Bloss/Nurse Decl. at para. 40; *see also* AT&T NJ I Bloss/Nurse Decl. at para. 30 and Attach. 3 (detailing Verizon's exclusion of five of six New Jersey area codes in the calculation of its installation trouble report rates for certain digital services under PR-6-01 an PR-6-03).

[233] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17439, para. 34 (finding that "the recurrence of some errors does not diminish the value of the KPMG study" and that "remaining errors as of the date of filing were at *de minimis* levels").

[234] AT&T NJ I Bloss/Nurse Decl. at para. 39 & n.31 (citing KPMG witness' concession that "it was not a structured element of their test to look at the retail analog that was chosen and compare it to the wholesale standard or metric").

[235] KPMG testified "if a retail analog was defined in the carrier to carrier guidelines as being the one that should be used, our test did determine . . . that . . . the correct data . . . was used in the calculation of the retail analog." *November 16, 2001 Transcript*, App. B, Tab 9. We also find unpersuasive AT&T's objections to KPMG's test of the paper billing, such as AT&T's criticism of KPMG's testing of "scrubbed" new accounts that did not have actual account history. *See* AT&T NJ I Kirchberger/Nurse/Kamal Decl. at para. 51. The use of dummy accounts rather than actual customers is a necessary aspect of testing, and as we indicate above, we find KPMG's pseudo-CLEC activities to be sufficient for our reliance on its test of Verizon's OSS.

OSS,[236] the Commission has never required an applicant to achieve a specific market share in any specific sub-market, or even to demonstrate the processing and provisioning of a substantial commercial volume of orders, as a prerequisite to checklist compliance.[237] In evaluating this application, we note that with approximately 613,000 total lines deployed,[238] competitive LECs reach 10 percent of all lines in Verizon's service area through all modes of entry.[239] While the most prevalent form of competition in New Jersey has been resale, as of January 2002, competing carriers in New Jersey served approximately 39,000 lines over UNE-platform .[240] Therefore, although the number of UNE-platform customers may be proportionally low, the total number is sufficient to allow us to rely on the performance data generated by commercial usage.

89. In making this determination, we rely in part on the Department of Justice's evaluation, which found that the relatively low levels of commercial usage warranted extra attention to wholesale billing, but did not otherwise find the degree or distribution of commercial activity to be insufficient.[241] As described below, we have devoted the extra attention suggested by the Department of Justice to those issues in controversy. And while we are satisfied that we have enough data to examine how Verizon's OSS functions with respect to UNE orders, we find, as did the New Jersey Board, that we can also rely on the KPMG test results as additional significant evidence that Verizon provides nondiscriminatory access to its OSS.[242] Our reliance on the KPMG test results is warranted because of the thoroughness and rigorousness with which KMPG conducted its military-style test, which covered 536 transactions and included volume testing. Thus, we see no need to question the reliability of the data Verizon submitted in its

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236 *E.g.*, AT&T NJ I Kirchberger/Nurse/Kamal Decl. at para. 61 (citing Verizon's admission that only 800 residential lines serve New Jersey through the UNE-platform (Verizon Application at 79)). Several commenters attack Verizon's application as being premature, criticizing the amount of actual commercial usage as being insufficient. *E.g.*, AT&T NJ I Comments at 17; AT&T NJ I Kirchberger/Nurse/Kamal Decl. at para. 16; NJDRA NJ I Comments at 21. In particular, some parties argue that the lack of TELRIC rates for UNEs has precluded the development of meaningful UNE commercial usage data and experience. *E.g.*, AT&T NJ I Comments at 17; WorldCom NJ I Comments at ii ("Because we are unable to enter the market [due to excessive UNE rates] we do not have the commercial experience to be able to discuss the adequacy of the New Jersey [OSS] as a practical matter."). Although the New Jersey Board described the competitive LEC order volumes as "relatively modest to date," it found no need for additional commercial experience to confirm the adequacy of the OSS. New Jersey Board NJ I Comments at 30.

237 Appendix C at para. 11 and n.27.

238 Verizon NJ II Torre Decl. Attach. 1 at para. 2.

239 Verizon NJ II April 26 *Ex Parte* Letter (reporting a retail line count of 6,602,027).

240 Verizon NJ II Torre Decl. Attach. 1 at para. 2 and 2 tbl.1.

241 Department of Justice NJ I Evaluation at 5-6 & n.21. *See infra* at Section VI (noting that Congress declined to impose a market share test for BOC long distance entry).

242 New Jersey Board NJ I Comments at 30.

application and, in fact, we are encouraged by Verizon's efforts in coordination with the New Jersey Board, to ensure that its data are accurate, reliable, and widely disclosed.

90. We reject the arguments made by AT&T and other parties that challenge the reliability of Verizon's data on the basis of the sheer volume of the changes and corrections that Verizon made to its processes for including the relevant data.[243] Unlike the other states where Verizon has previously obtained section 271 authority, Verizon is required by the New Jersey Board to submit a monthly notice of its metric change controls to the New Jersey Board and to the competitive LECs when it implements changes to the methods and procedures it uses to calculate its performance metrics.[244] Specifically, Verizon must track all changes to wholesale performance measurements, namely, metric change control requests; data calculation clarifications; and data calculation corrections.[245] Verizon then must send out e-mail notifications to the New Jersey Board and to competitive LECs within one business day after a metrics change control request or data calculation clarification has been assigned a scheduled filing date.[246]

91. We do not accept AT&T's argument that Verizon's use of the change control process demonstrates that Verizon's performance data are so unreliable as to be of little evidentiary value that would warrant a finding that Verizon's OSS does not comply with the checklist. Rather, we believe that the metrics change control process, and Verizon's compliance

[243] AT&T argues that, pursuant to the change control process, the sheer number of metrics change control notices that Verizon has issued demonstrates that Verizon's performance data are inherently unreliable. AT&T NJ I Bloss/Nurse Decl. at para. 24; AT&T NJ II Comments at 23-24. AT&T points to Verizon's submissions of revisions of past New Jersey Board Carrier-to-Carrier reports to correct errors, as well as Verizon's identification of changes to a variety of metrics and submetrics every month since June of 2000. AT&T NJ I Bloss/Nurse Decl. at paras. 27-31; AT&T NJ II Comments at 23-26. AT&T also criticizes Verizon for failing to recalculate past performance reports, with limited exceptions. AT&T NJ I Bloss/Nurse Decl. at paras. 31-34. MetTel attaches copies of 37 metric change control notices for March 17 through March 28, 2002. MetTel NJ II June 13 *Ex Parte* Letter at 4 & Attach.

[244] Verizon NJ I Guerard/Canny/DeVito Decl. at paras. 140-46; *see also* Wholesale Performance Metrics: Change Control Notification Process, July 2001, Appendix J, Tab 13 (Wholesale Performance Metrics July 2001). Building upon the metrics change control process that it uses throughout the former Bell Atlantic region, Verizon began in July 2001 to provide to the BPU and competitive LECs far more information about changes implemented to the performance measurements calculations than it did in New York, Massachusetts, or Connecticut.

[245] Verizon NJ I Guerard/Canny/DeVito Decl. at para. 142; Wholesale Performance Metrics July 2001 at 4. A metric change control request relates to five types of changes: regulatory orders, including a new metric; process improvement changes; new products and services; administrative changes; and template changes. Data calculation clarifications identify a definition or methodology for calculating a performance measurement, and data calculation corrections fix the deficiencies that Verizon discovers in the calculation or completeness of a performance measurement.

[246] Verizon NJ I Guerard/Canny/DeVito Decl. at para. 143. By notifying the competitive LECs of the planned date to file data with the New Jersey Board consistent with the metrics change control request or data calculation clarification, Verizon permits the competitive LECs to track these changes. Wholesale Performance Metrics July 2001 at 1, 5.

with that process, provides improved transparency and openness into a data collection effort that is inherently complex and iterative. Although the improved transparency of this process has identified certain miscalculations,[247] as the Commission has previously held, regular corrective activity does not demonstrate systemic infirmities as an end in itself.[248] In fact, the New Jersey Board found that the number of change control notifications issued by Verizon "indicate [Verizon's] necessary commitment to improvement where areas of concern arise."[249] We also note that KPMG tested and approved the metric change control methodology, and we place substantial reliance on its examination.[250]

92. Furthermore, the Commission's procedural rules requiring that parties submit accurate, reliable and truthful information provide significant further assurances of the integrity of the data presented here.[251] Finally, the iterative nature of tracking system performance and recording the resulting data creates a moving target for which precise recomputation during the

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[247] AT&T seizes on a handful of correction notices to show the untrustworthiness of Verizon's reporting process, AT&T NJ I Bloss/Nurse Decl. at paras. 28-32, but none of these are emblematic of OSS dysfunction. For instance, AT&T points to a metrics change control notice of September 20, 2001, where Verizon recognized that the sampling error and Z-score results for certain UNE special provisioning measures have been incorrect since June 2000. AT&T NJ I Bloss/Nurse Decl. at para. at para. 28. However, as Verizon notes, this issue was actually corrected in April 2001, and in only one month were the volumes sufficient under the Carrier-to-Carrier guidelines to warrant the calculation of a Z-score, and Verizon provided superior service to competitors in that case. *See* Verizon NJ I Guerard/Canny/DeVito Reply Decl. at para. 21. We also do not find Verizon's data reporting credibility to be undermined by Verizon's revelation that, from June 2000 to October 2001, it excluded data from five of six area codes when calculating its installation trouble report rates for certain digital services under PR-6-01 (percent installation troubles within 30 days) and PR-6-03 (percent installation troubles reported within 30 days). AT&T NJ I Bloss/Nurse Decl. at para. 30. This exclusion affected only one of eleven wholesale products reported under these measurements (resale 2 wire services), and the uncorrected retail data actually overstate Verizon's own retail performance, so that the misses reported for July and August 2001 for PR-6-01 were subsequently revised to be hits. *See* Verizon NJ I Guerard/Canny/DeVito Reply Decl. at para. 23 and Attachment 6 (Letter from Bruce Cohen, Verizon, to Henry Ogden, Acting Secretary, New Jersey Board of Public Utilities (January 8, 2002))

[248] *E.g.*, *Verizon Pennsylvania Order*, 16 FCC Rcd at 17439 n.123, para. 33 n.123 ("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."). In the *SBC Arkansas/Missouri Order*, AT&T contended that SWBT's performance data as a whole was suspect due to a third-party tester's failure to uncover performance data anomalies arising from two performance data-related problems. We found nothing sufficient to place in doubt the correctness of SWBT's data collection methodologies. *SBC Arkansas/Missouri Order*, 16 FCC Rcd at 20726-27, para. 17. In addition, we recently rejected assertions that a pattern of data restatements by BellSouth and its recognition of problems with certain metrics indicated that the data was too unstable to be relied on. *BellSouth Georgia/Louisiana Order*, at para. 17.

[249] New Jersey Board Comments at 80.

[250] KPMG Report at 408-09; *see supra* Section III.B.2.a.

[251] *See* 47 C.F.R. § 1.65.

90-day section 271 application process is not always realistic.[252] Unless the change in the data collection and computation process results in material differences in the performance calculations, we do not believe that recomputation and resubmission of the results is required simply as a matter of course during the pendency of a section 271 application with the Commission.[253]

c. Order Processing Notifiers

93. An important aspect of a competing carrier's ability to serve its customers at the same level of quality as a BOC is the timely receipt of order processing notifiers, which inform competitors of activities that an incumbent has initiated or completed at the request of the competing carrier. In processing an order, Verizon's systems progressively generate four principal sets of notifiers that track the status of the order: (1) an acknowledgement that the order has been received (ACK) or negative acknowledgement (NACK), which indicates flawed transmission of the order and inability to process it; (2) an LSRC or order rejection notice; (3) a provisioning completion notice (PCN), which informs a carrier of the completion of the work associated with an order,[254] or a "jeopardy" notice that a service installation due date will be missed;[255] and (4) a billing completion notice (BCN), which informs 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.[256] When a competitive LEC has not received a notifier when it expects to, it can open a trouble ticket with the BOC to determine the status of the missing notifier.

94. Competitors in New Jersey raise several issues regarding notifier timeliness and accuracy,[257] and the Department of Justice comments that the Commission should satisfy itself that Verizon returns BCNs on an accurate and timely basis.[258] For example, as described in more detail below, MetTel raises a threshold accusation that Verizon issues "false" order completion

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[252] Verizon NJ I Guerard/Canny/DeVito Reply Decl. at para. 19 ("The processes required to convert Verizon's retail and wholesale data into performance results are tremendously complex and implementation of performance measurements is an iterative process that will never be 'final.'").

[253] The NJ Incentive Plan attempts to resolve this issue going forward, as Verizon must revise and re-file in a timely fashion any performance report that it subsequently determines to have been incomplete or inaccurate. NJ Incentive Plan at 8; Verizon NJ I Guerard/Canny/DeVito Reply Decl. at para. 27. A more detailed discussion of the Incentive Plan is contained in Section VI, below.

[254] *Bell Atlantic New York Order*, 15 FCC Rcd at 4053, para. 188.

[255] *SWBT Texas Order*, 15 FCC Rcd at18447, para. 184.

[256] *Verizon Pennsylvania Order*, 17 FCC Rcd at 17446, para. 43.

[257] MetTel NJ II Comments at 5-6; AT&T NJ I Comments at 22.

[258] Department of Justice NJ II Evaluation at 9.

notifiers.[259] In contrast to more anecdotal-based challenges made by competitors in previous section 271 proceedings,[260] MetTel has extensively documented and inventoried its submissions of orders and receipt of notifiers. We commend MetTel on its efforts to compile and submit independent evidence and construct an affirmative case for its position.

95. Nevertheless, for the same reasons outlined below in Part III.B.2.a, and because the New Jersey Board relied explicitly on KPMG's replication and validation of Verizon's completion notifier data, we continue to place primary reliance on the notifier data that Verizon has submitted with its application.[261] At the same time, we recognize that, although the issues raised by MetTel do not generally demonstrate checklist noncompliance, Verizon has an affirmative obligation to continue to engage MetTel and attempt to reconcile its disagreements with MetTel through a carrier-to-carrier dispute resolution process. In this regard, we note that Verizon has begun a data reconciliation process with MetTel during the course of this proceeding that, although incomplete, has focused the number of issues in dispute and led to a more precise identification of the underlying data in dispute.[262] As a result, it appears that much of the remaining gap between the performance results reported by Verizon and the performance results generated by MetTel arise from an apparent disagreement over the application of various aspects of the Carrier-to-Carrier Guidelines. Although the record reveals that this reconciliation process has been contentious and adversarial, at this time we do not believe that Verizon is not engaged in a good-faith effort to resolve these issues. We fully expect Verizon to continue these efforts at reconciliation as part of its nondiscrimination obligations and to continue to make efforts to improve its OSS performance. We also expect the New Jersey Board will make every effort to facilitate this reconciliation effort either formally through its dispute resolution process or through other administrative measures.

96. For purposes of checklist compliance, we are convinced by the thoroughness and rigorousness of KPMG's independent audit that Verizon's performance data, including its data related to notifiers specifically, is sufficiently accurate. The fact that no other company questions whether Verizon's performance data related to the timeliness and accuracy of Verizon's notifier data gives us additional assurance that such data are reliable. Further, MetTel's attempts to introduce certain usage proxies as indicators of system events and reliance

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[259] MetTel NJ II Comments at 5-6 ("Verizon either intentionally or mistakenly reports transactions as completed when in fact they are not completed"); MetTel NJ II Reply at 6-14 (challenging the veracity of the completion notifiers transmitted by Verizon).

[260] "When considering commenters' filings in opposition to the BOC's application, we look for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice." *SBC Texas Order*, 15 FCC Rcd at 18375, para. 50.

[261] New Jersey Board NJ I Comments at 34.

[262] *See*, *e.g.*, Verizon NJ II May17 *Ex Parte* Letter at 1 (noting that the MetTel's and Verizon's "discussions, and the review and reconciliation of data in conjunction with them, have already borne fruit and resulted in increased understanding").

on measures not adopted by the New Jersey Board do not persuade us to abandon the more objective and industry standard performance measures approved by the Board.

97. We conclude that Verizon has demonstrated that it provides notifiers in a nondiscriminatory manner that allows efficient competitors a meaningful opportunity to compete. In reaching this determination, we recognize that the processes for notifying competitors of the status of their orders, the set of metrics to measure notification, and the corresponding process to record notifier performance, are all evolving and will continue to do so. Accordingly, we expect Verizon to continue to work with MetTel and other competitors in enabling them to understand the business rules and address carrier-specific problems.[263]

(i) Timeliness of Confirmation and Reject Notices

98. We find that Verizon's provisioning of LSRCs and reject notices to competing carriers meets the requirements of checklist item two in this case. The Commission, in prior section 271 orders, has held that the functionality encompassed by order confirmation notices is an important element of the ordering process, and that data demonstrating that such notices are provided in a timely manner is a key consideration for assessing whether competitors are allowed a meaningful opportunity to compete.[264] Among other things, competing carriers rely on LSRC notices to make commitments to their customers regarding the date for the commencement of service.[265] Moreover, the Commission has noted that the "[t]imely delivery of order rejection notices has a direct impact on a new entrant's ability to service its customers, because new entrants cannot correct errors and resubmit orders until they are notified of their rejection. . . ."[266] Under the New Jersey Carrier-to-Carrier guidelines, and depending on the classification of the service ordered, Verizon must return an order confirmation or reject within 2 hours, 24 hours, 48 hours, or 72 hours for 95 percent of the orders within each category in order to meet the relevant benchmarks.[267]

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[263] Just as the Commission's approval of change management depends upon the adequacy of a process for the communication and management of changes to electronic interfaces and other applications, *BellSouth Georgia/Louisiana Order* at para. 179, our finding of checklist compliance for OSS is based in part upon Verizon's procedures for working with competitors to address notifier and other OSS issues.

[264] *E.g.*, *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-37, paras. 163-64.

[265] *See 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, 603, para 115 (1997) (*BellSouth South Carolina Order*). The Commission noted that "[d]elays in the return of the FOC [LSRC] notice therefore delay a new entrant's ability to inform its customers when service will begin." *Id*. at 606, para. 122.

[266] *BellSouth South Carolina Order*, 13 FCC Rcd at 604, para. 117.

[267] *See* OR-1-02 (% On Time LSRC – Flow-Through) (2 hours), OR-1-04 (% On Time LSRC < 6 lines – Electronic – No Flow-Through) (24 hours), OR-1-06 (% On Time LSRC ≥ 6 lines – Electronic – No Flow-Through) (72 hours), OR-1-08 (% On Time LSRC < 6 lines - Fax) (48 hours), OR-2-02 (% On Time Reject - Flow-Through), OR-2-04 (% On Time LSR Reject < 6 lines -Electronic - No Flow-Through), and OR-2-06 ((% On Time (continued….)

99. MetTel challenges the timeliness of Verizon's provision of LSRCs and rejects in New Jersey. Based on its analysis of Verizon's performance for November and December 2001, MetTel asserts that Verizon has overstated its positive performance in providing LSRCs and reject notifiers.[268] According to MetTel, at least part of Verizon's inaccuracy stems from the exclusion of 520 purchase order numbers (PONs), or 16 percent of the New Jersey PONs.[269] In addition, contrary to Verizon's reported results, MetTel asserts that less than 75 percent of these notifiers were issued on time.[270]

100. Consistent with Commission precedent in evaluating section 271 applications, we rely on the performance measurements adopted by the New Jersey Board through an industry-wide collaborative effort, and the results reported by Verizon using those measurements. The Commission has previously expressed support for the efforts of state commission to build and oversee a process that ensures the development of local competition, and that allows the technical details of metric definitions to be worked out with the participation of all concerned parties.[271] Under the New Jersey business rules, Verizon has consistently returned confirmation and reject notices for resale and UNE-platform orders well beyond the 95 percent performance metric threshold for November 2001 through February 2002 for all competitive LECs in the aggregate,[272] and for MetTel specifically.[273]

101. We place little weight on MetTel's data analysis for November and December 2001, as Verizon has shown that MetTel appears to have included data in its analysis that

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LSR Reject ≥ 6 lines – Electronic – No Flow-Through), OR-2-08 (% On Time LSRC < 6 lines – Fax) (48 hours). These metrics allow longer time interval standards for more complex products that are likely to require longer processing periods.

268 MetTel NJ II Comments, Declaration of Elliott Goldberg at para. 6 (MetTel NJ II Goldberg Decl.) MetTel maintains its own measurement data, based on the interval between when it sends in an order the date/time stamp encrypted in the header of the confirmation and reject notices that it receives. *Id*. Verizon agrees that the use of the encryption date/time stamp is a reasonable measurement point. Verizon NJ II April 15 *Ex Parte* Letter at 2-3; Verizon NJ II Reply App. A, Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster, at para. 15 (Verizon NJ II McLean/Wierzbicki/Webster Reply Decl.). According to MetTel's analysis of the data that it collects, Verizon's actual reject and confirmation measures for MetTel range from 78 to 90%, well below the 98% and 99% scores that Verizon reported. MetTel NJ II Goldberg Decl. at para. 6.

269 MetTel NJ II Goldberg Decl. at para. 6; MetTel NJ II April 15 *Ex Parte* Letter.

270 MetTel NJ II Goldberg Decl. at para. 6 (excepting the data for September). MetTel submits these results for the June-December 2001, which it explains was the most recent data available. *Id*. at paras. 6-7.

271 *SWBT Texas Order*, 15 FCC Rcd at 18376-77, para. 54.

272 *See* OR-1-02-2320; OR-1-04-2320; OR-1-06-2320; OR-1-02-3140; OR-1-04-3140; OR-1-06-3140; OR-2-02-2320; OR-2-04-2320; OR-2-06-2320; OR-2-02-3140; OR-2-04-3140; OR-2-06-3140.

273 Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 13.

normally would be excluded under the Carrier-to-Carrier Guidelines.[274] Verizon argues that MetTel's calculation of response times based on a "run clock" basis fails to take into account certain weekend and other scheduled hour exclusions recognized by the Carrier-to-Carrier Guidelines where the service order processor is off-line. In addition, Verizon explains that 91 percent of the PONs that it supposedly failed to include in its performance data were appropriately excluded as "front-end" rejects that are not counted in performance in the Carrier-to-Carrier guidelines, and that the remainder were actually from other states; either confirmed or rejected in a different month; or were submitted twice.[275] We also note that MetTel raises concerns about its ability to analyze LSRCs and rejects due to difficulties in obtaining the "flat files," which are records that Verizon uses to calculate performance measurements down to the PON level of detail.[276] However, Verizon is committed to producing and providing the flat files for the most recent month to all requesting competitors on a going-forward basis.[277] To the extent that MetTel continues to disagree with Verizon regarding the calculation of performance

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[274] Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at paras. 15-17; Verizon NJ II April 15 *Ex Parte* Letter at 2-3. We do not undertake a PON-by-PON review in this expedited proceeding.

[275] Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 14. (citing Verizon Application I Appendix J, Tab 17 at 21, 30) As a general matter, Verizon notes that that front-end rejects are usually returned quickly, and their inclusion would likely improve the performance data. Verizon also identifies other examples of how MetTel's calculations are inconsistent on their face, such as MetTel's explanation that it excludes Web GUI data, which the Carrier-to-Carrier Guidelines clearly include. Verizon NJ II May 17 *Ex Parte* Letter at 4 (citing October 2001 Guidelines at 21, 30); *but see* MetTel NJ II June 13 *Ex Parte* Letter at 5-6 (explaining that MetTel simply classified all Web GUI PONs as having passed the metric in the interest of expediency, thereby granting Verizon possible grace items). MetTel raises other challenges to Verizon's notifier calculations, asserting that (1) Verizon issued multiple copies of notifiers and counted the latest one; (2) Verizon issued both an LSRC and reject on a single order and counted the LSRC; and (3) Verizon counted a different notifier in lieu of a notifier that was never sent. MetTel NJ II May 14 *Ex Parte* Letter at 2. In a section 271 proceeding we do not undertake interpretations of business rules as a matter of first impression.

[276] In the absence of flat files in its possession earlier in the proceeding, MetTel submitted that a weighted average of Verizon's response rates for LSR confirmations and rejections in New Jersey is almost three times longer than in Pennsylvania and almost four times longer than in New York. MetTel NJ I Feb. 7 *Ex Parte* Letter at 4. Although Verizon's production of the flat files obviates the need to address this claim dispositively, we note that such a weighted average is not a performance measure approved by the New Jersey Board, and that the disparity between states appears to result from MetTel's averaging different intervals of timeliness without controlling for the percentage of orders that fall into the 2-hour, 24-hour, 48-hour, or 72-hour intervals. Verizon Feb. 25 *Ex Parte* Letter (MetTel Issues) at I.A.3.

[277] Verizon NJ II April 15 *Ex Parte* Letter at 4 (explaining that retrieving and processing past reports is burdensome).

measures under the business rules,[278] we expect that the New Jersey Board will engage and resolve these issues through its dispute resolution process or other administrative mechanisms.[279]

(ii) Order Completion Notifiers

102. Until a competing carrier receives an order completion notice, the carrier does not know that the customer is in service, and cannot begin billing the customer for services or addressing any maintenance problems experienced by the customer.[280] Premature, delayed or missing BCNs can cause competitors to double-bill, fail to bill, or lose their customers.[281] To assess the sufficiency of Verizon's order completion notification, the Commission looks to both the provisioning of PCNs, or "work completion" notices, as well as BCNs.[282] More recently, we have recognized that BCNs inform competitors of the completion of both provisioning and billing.[283] As described below, we find that Verizon issues order completion notifiers in compliance with checklist item two.

(a) Accuracy of Order Completion Notifiers

103. Based on Verizon's performance data and KPMG's evaluation, we find that Verizon provides accurate order completion notifiers. MetTel challenges the validity and accuracy of certain data that Verizon submitted in this proceeding regarding the accuracy of Verizon's order completion notifiers. Relying on data generated by its own databases, MetTel represents that it has analyzed the PCNs and BCNs generated and transmitted by the Verizon systems, and claims the analysis has shown that customer usage data does not conform to the information supposedly relayed by the notifiers.[284] More specifically, MetTel argues that a significant number of Verizon's completion notifiers falsely indicate that the order has been completed because MetTel's own data have shown (1) an absence of usage three or more days after an account has purportedly been migrated to MetTel; (2) the existence of usage by a

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278 The latest submissions filed in this proceeding indicates that the flat file dispute is, at bottom, a business rule controversy. *See* MetTel NJ II June 13 *Ex Parte* Letter at 4-6.

279 *See Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631, Order on Reconsideration (rel. June 19, 1998).

280 *Bell Atlantic New York Order*, 15 FCC Rcd at 4052-53, para. 187.

281 *Verizon Pennsylvania Order*, 17 FCC Rcd at 17446, para. 43; *Bell Atlantic New York Order*, 15 FCC Rcd at 4052-53, para. 187; MetTel NJ II Comments at 7. Among other problems, MetTel points to the significant costs that a competitive LEC incurs in time and money to identify and remediate "false" notifiers, as well as the appearance to the end user that the competitive LEC is a low quality provider. MetTel NJ I Feb. 1 *Ex Parte* Letter, at Slide 11.

282 *Bell Atlantic New York Order*, 15 FCC Rcd at 4053-54, para. 188.

283 *Verizon Pennsylvania Order*, 16 FCC Rcd 17446, para. 43.

284 MetTel NJ I Comments at 8-9; MetTel NJ II Comments at 6-14.

customer after suspension of service but before a restoral or disconnection; and (3) the misdirection of long distance calls to a carrier other than the presubscribed carrier.[285] MetTel claims that during the section 271 hearing before the New Jersey Board, Verizon failed to explain specifically its response to MetTel's problem of delayed and missing usage,[286] and that the Board's decision was based on "incomplete information."[287]

104. We are unpersuaded by MetTel's own data and find that Verizon's PCNs and BCNs are sufficiently accurate to allow an efficient competitor a meaningful opportunity to compete. As an initial matter, we note that KPMG tested the accuracy of Verizon's completion notifiers and found them to be accurate.[288] Furthermore, we find it significant that no other party has raised such a threshold allegation in this proceeding. If Verizon were systematically generating inaccurate completion notifiers, we would expect other carriers to experience similar problems. Although MetTel identified this issue during the state proceeding, as well as during the pendency of NJ I, no other party has raised this issue or reported similar problems.

105. In addition, contrary to MetTel's criticism of the sufficiency of the state section 271 hearing, the state's administrative record on the issue of data accuracy appears to be detailed and extensive, and we accord substantial weight to the New Jersey Board's factual findings on this issue.[289] Verizon conducted a review of sample MetTel data as well as its own data, and identified four scenarios in which MetTel's allegations that misdirected or late usage could have occurred were, for the most part, mistaken.[290] Verizon asserted that the facts behind these

[285] MetTel NJ II Comments at 7-8.

[286] MetTel NJ I Comments at 10-11.

[287] MetTel NJ I Feb. 1 *Ex Parte* Letter at 22.

[288] KPMG Final Report, at 111 (Test TVV1-3-8, TVV1-3-9).

[289] *See* Appendix C at para. 2 (stating that the Commission has discretion in each section 271 proceeding to determine the amount of weight to give the state commission's verification). Verizon filed a reply declaration in the state proceeding specifically to address MetTel's concerns. Letter from Clint Odom, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-347 (filed February 22, 2002), Document Appendix, Tab 6, Verizon Reply Declaration in Response to Metropolitan Telecommunications, Docket No. TO01090541 (filed with New Jersey Board Nov. 19, 2001) (Verizon NJ I Feb. 22 *Ex Parte* Letter, New Jersey Reply Decl., Tab 6).

[290] Verizon NJ I Feb. 22 *Ex Parte* Letter, New Jersey Reply Decl., Tab 6 at paras. 18-21. First, and predominantly, according to Verizon, MetTel continues to migrate end-users to platform service without changing the long distance or local PIC to MetTel at the time of the initial migration. *See also* Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 38 (stating that Verizon's review of October PONs revealed that less than half requested that the PIC be changed to MetTel). Second, Verizon may have won back the customer shortly after the initial migration. *See id.* (finding that over 15% of the PONs listed by MetTel for October had either been won back to Verizon or had migrated to another competitive LEC). Third, for a very small group of PONs where MetTel was migrating an existing competitive LEC UNE loop end user to MetTel UNE-platform service, Verizon concedes that there were a few examples in MetTel's data where this migration was not handled smoothly by Verizon, and could have resulted in delayed usage to MetTel. Fourth, Verizon recognized that there were some PONs where a Verizon error resulted in end users being PIC'd incorrectly to MetTel, although the trouble ticket process can address these (continued….)

scenarios provide empirical refutation of MetTel's analysis.[291] The Board heard live testimony specifically on this issue,[292] and both MetTel and Verizon filed post-hearing briefs that addressed these issues.[293] Therefore, the Board had a sufficient record, and there is nothing to show that the Board acted unreasonably in agreeing with Verizon and finding that Verizon is performing its completion notifier obligations satisfactorily.[294]

106. Moreover, while our 90-day review does not permit us to act as the exclusive fact-finder here, especially when such an inquiry would require us to undertake a PON-by-PON analysis, MetTel's summarized data submissions do not persuade us that Verizon's completion notifiers are inaccurate. First, according to MetTel, usage based on the Daily Usage File (DUF)[295] for a significant percentage of customers starts significantly later than usage as indicated by the notifiers, and sometimes not at all.[296] Specifically, MetTel asserts that where there is no indication of usage in the DUF within three days of the issuance of a BCN, the notifier is "false" and unreliable.[297] Using this assumption, MetTel has found that 39 percent of end user migrations to MetTel in November and December 2001 were not completed as per the BCN.[298] We do not accept MetTel's argument that a lack of usage for three days following the

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errors, and their incidence is low. *See* PR-6-02-3140 (% Installation Troubles Reported Within 7 Days - Platform) (ranging from 0.14% to a high of .0.50% from April through November 2001, and always less than retail).

291 Verizon NJ I Feb. 22 *Ex Parte* Letter, Tab 6, at para. 21.

292 Verizon NJ I Application, App. B, Vol. 7a-b, Tab 11.

293 *See* Verizon NJ I Feb. 22 *Ex Parte* Letter at 2; Verizon NJ I Feb. 25 *Ex Parte* Letter, Document Appendix, Tabs 10, 12; Verizon NJ I Application, App. B, Vol. 8, Tabs 13 and 14.

294 New Jersey Board NJ I Comments at 34. MetTel implies that the New Jersey Board improperly viewed the usage issue as a billing issue by discussing it in the Billing section of its Consultative Report, MetTel Feb. 1 *Ex Parte* Letter at 24, but no such organizational criticism undermines the merits of the Board's findings. We are also encouraged by Verizon's commitment to meet with MetTel to review the trouble tickets submitted by MetTel for New York, Pennsylvania, and New Jersey that claim no usage. Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 39.

295 The DUF is the cumulative record of the total customer usage of a competitive LEC. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17426, para. 14.

296 MetTel NJ I Comments at 9-14. For example, MetTel alleges that Verizon's explanation that a lack of usage in many instances arising from winbacks soon after migration to MetTel is suspect. According to MetTel, even under this "quick winback" operational scenario, at least some usage should take place. MetTel NJ I Comments at 11.

297 *See* MetTel NJ II April 15 *Ex Parte* at Attachment 1, at 16-17; MetTel NJ II Reply at 7.

298 MetTel NJ II April 15 *Ex Parte* at Attachment 1, p.18. MetTel also reports that for the January 1 – May 23, 2002 timeframe, over 14% of all orders migrated to MetTel did not register usage in the first three days after the completion date. MetTel NJ II May 14 *Ex Parte* Letter at 3. MetTel also conducted an analysis of the converse scenario – usage after loss of line (LOL) – and reports that it received usage past the effective migration date for over 31% of the lines which MetTel lost to another carrier. MetTel NJ II June 4 *Ex Parte* Letter at 2-3 (covering the January 1- May 27, 2002 period).

issuance of a BCN necessarily proves that the notifier is faulty. Such delayed usage appears to be more the exception than the rule, and moreover, there are several plausible explanations for customer usage to begin several days after migration at the DUF.[299] We are thus not persuaded that such a lack of usage is a reliable proxy for a conclusion that notifiers are inaccurate. Further, Verizon has reviewed records for the nearly 1,000 billing telephone numbers for which MetTel submitted trouble tickets for missing usage in New Jersey.[300] In 75 percent of these cases, Verizon either found usage at some point in time or MetTel agreed that no usage was due. For the remaining 251 cases, Verizon did not find usage and did not detect any problem. We take comfort in the further investigation that Verizon has undertaken for the remaining accounts where missing usage was reported.[301] If this remaining reconciliation effort demonstrates that Verizon's systems are deficient, we will not hesitate to take action pursuant to section 271(d)(6).[302]

107. Second, MetTel submits data that purport to show that usage has accumulated when it should not. Specifically, MetTel claims that it had received usage on 88 lines after it submitted an order to suspend the line for non-payment (SNP) and received a BCN.[303] However, Verizon's research indicates that for 73 of these lines, MetTel had actually submitted a later order to restore the line, and that first usage came *after* the restoral order was submitted.[304] For the remainder of the lines, Verizon's investigation reveals similar explanations for usage.[305]

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299 *See supra* at n.290.

300 Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 27; Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 32.

301 Verizon explains that 62% of the payphone accounts where usage was supposedly missing were actually in a seasonal suspend status, and that 4% had been disconnected. Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 28. Verizon also investigated the locations of a sample of 41 of the remaining coin account telephone numbers, and found that these locations either had no phone (28 numbers); had phones, but the phone was not working (7 numbers); had phones that were not MetTel's (5 numbers); or was a MetTel phone but had a phone number other than the one submitted (1 phone). Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 28.

302 47 U.S.C. § 271(d)(6).

303 *See* MetTel NJ II Comments, Attachment 7.

304 Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 29.

305 For example, Verizon won back eleven of the lines, but because a suspended line cannot be migrated, Verizon restored the lines solely in preparation for migration. Such restorals are generally for one day or less prior to the win-back disconnect order for the competitive LEC losing the customer. *Id*. In addition, three of the lines were complex Centrex lines that are not designed for service suspension. *Id*. Although MetTel complains that its inability to block these lines to suspend service indicates that the BCN is "false" and that Verizon's recognition of an "improper" PCN is indicative of the problem, MetTel has been aware of this limitation in New York since 2000, and the limitation on a discrete set of offerings is the same in New Jersey as in New York and other states that the Commission has already approved under section 271. *See* MetTel NJ II May 14 *Ex Parte* Letter at 3; MetTel NJ II June 13 *Ex Parte* Letter at 2. Because the inability to suspend Centrex lines is applicable to both retail and wholesale customers, we do not make a finding of discrimination. *See* Verizon NJ II May 17 *Ex Parte* Letter at 7. (continued….)

Based on the record before us, we are satisfied that the results of these inquiries address MetTel's concerns about the accuracy of usage accumulation.

108. Third, MetTel claims that its examination of the DUF indicates errors in provisioning the presubscribed interexchange carrier (PIC) on an end user's account.[306] We are satisfied with Verizon's explanation that these concerns do not reveal systemic OSS failure that would lead us to find checklist non-compliance. Verizon points out several plausible circumstances where the usage records could reflect a different carrier identification other than the predesignated carrier shown on the BCN,[307] and also reports the results of specific investigations that it undertook which contradict MetTel's claims.[308] Despite the presence of other UNE-platform providers in operating New Jersey, the record does not indicate that any of these carriers share MetTel's reported difficulties. We also find it significant that no other commenter complained about the issue. We recognize, however, that the data reconciliation

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Further, although MetTel alleges that Verizon has been restoring accounts an average of two days prior to migration rather than one day, we note that no other party makes such a claim. *See* MetTel NJ II June 13 *Ex Parte* Letter at 2. Moreover, it appears that this issue may again represent primarily a dispute over the application of the relevant business rules.

306 MetTel NJ II Reply at 11-13. According to MetTel, 9.7% of PIC change transactions indicate usage to a predesignated carrier other than the one indicated on the BCN, and MetTel verifies the PIC change by examining Cat 11 (Carrier Access Usage) records. MetTel NJ I Feb. 1 *Ex Parte* Letter at 12-13. MetTel recently supplemented its analysis of the Cat 11 records for November and December 2001 with an analysis of those records for the January-March 2002 time period. MetTel NJ II May 14 *Ex Parte* Letter at 3. MetTel submits that Verizon's performance has been deteriorating, based upon its review of whether the first call subsequent to the issuance of a BCN reflecting the change to MetTel's Carrier Identification Code (CIC) did in fact go to the proper presubscribed carrier. *See* Verizon NJ II May 17 *Ex Parte* Letter at 6 (noting that MetTel claims that 46 percent of first calls examined were not routed to MetTel's CIC for March 2002). Further supplementing this data, MetTel also reports that over 21 percent of New Jersey lines reflecting calls to a presubscribed carrier were not correctly provisioned during the first quarter of 2002. MetTel NJ II June 10 *Ex Parte* Letter at 3-4. Reiterating this argument, MetTel submits an additional filing on the progress of its reconciliation with Verizon, and reports that it continues to find fault with Verizon's investigation. MetTel NJ II June 18 *Ex Parte* Letter at 5-7.

307 *See* Verizon NJ I Feb. 25 *Ex Parte* Letter (MetTel Issues) at II.C; Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 33. These scenarios include calls to a toll-free number; casually dialed numbers (dial-arounds); and terminating usage. In its review of MetTel's January 2002 usage records, Verizon found that 12.4% of MetTel's migration PONs did not request MetTel's usual carrier as the PIC, and that 76.8% of the usage records for the telephone numbers associated with these migration orders appropriately contained carrier IDs other than the PIC ID that MetTel specified (*e.g.*, toll-free calls, casually dialed calls, terminating usage). Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 34.

308 In another review, Verizon examined trouble tickets submitted between December 1, 2001 and February 28, 2002 for UNE-platform lines that were determined to be switch translation problems. Of the more than 25,000 platform lines provisions, Verizon received only 145 trouble reports that were determined to be switch translation problems, a trouble rate below 1 percent. Of the switch translation trouble reports, the narrative text identified only 7 of them as having PIC problems. Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 35. For March 2002, of the more than 7,000 platform line provisions, Verizon received only 2 PIC-related installation trouble reports, and only 80 trouble reports that were determined to be central office problems. Verizon NJ II May 17 *Ex Parte* Letter at 6.

process between MetTel and Verizon is still ongoing and not complete. If at the end of the process the reconciliation indicates that Verizon has violated our rules, we will take appropriate action.

109. Although we recognize that the notifier accuracy issues raised by MetTel appear to be more than just a few isolated incidents, we find it significant that, proportionally, the number of customers impacted has been relatively low, and is thus not competitively significant. As a general matter, such cases are more appropriately handled as a carrier-to-carrier dispute. However, we also view the manner in which Verizon handles these issues with the competing carriers to be a factor in our decision here. Therefore, we emphasize that our approval is based not only on the substantive explanations that Verizon has determined through detailed investigation, but also the thoroughness of the investigative process itself, which demonstrates Verizon's commitment to ensuring nondiscrimination.[309]

(b) Timeliness of Order Completion Notifiers

110. Although we recognize that Verizon has not consistently met the state-established performance thresholds performance in delivering completion notices in the aggregate, we find that the timeliness concerns raised by MetTel and AT&T do not warrant a finding of checklist non-compliance. In addition to MetTel's disputes regarding the accuracy of Verizon's PCNs and BCNs, MetTel and AT&T raise challenges over the timeliness with which Verizon provisions PCNs and BCNs.[310] Both criticize Verizon's shortcomings in meeting the benchmark for certain performance metrics that measure the interval between the time an order has been recorded at the SOP and the time Verizon generates a notifier at the gateway and sends the order to the competitor's interface.[311] In addition, MetTel has also placed into the record several statistical charts which purport to show deficiencies in BCN timeliness based on MetTel's own data.[312]

[309] We are not convinced by MetTel's argument that Verizon improperly excluded certain "project" PONs from its performance measurement calculations, particularly for the time from SOP to BCN. MetTel NJ II Reply at 17-18; MetTel NJ II May 14 *Ex Parte* Letter at 2. Specifically, MetTel objects to Verizon's calculation of OR-4-09 without including 3500 PONs associated with a "project" to migrate coin telephones from another LEC to MetTel. MetTel NJ II Reply at 17-18 (citing Verizon NJ II April 15 *Ex Parte* Letter at 5 n.1). MetTel admits that it signed an agreement to exclude project orders from certain performance measurements, but Verizon and MetTel disagree about the scope of the exclusion. *E.g.*, MetTel NJ II June 13 *Ex Parte* Letter at 6-7. In light of the expedited nature of this proceeding and the apparent lack of an explicit provision in the business rules to cover migration projects, we do not find that MetTel project data must be included in measurement OR-4-09. Our acceptance of Verizon's performance data here is not meant to preclude MetTel or any other carrier from challenging Verizon's calculation of project data, or any other interpretation of the Carrier-to-Carrier Guidelines, before the New Jersey Board, the New York Public Service Commission Carrier-to-Carrier Working Group, or any other forum.

[310] In Section III.B.2.a, above, we address separately MetTel's related questions concerning the accuracy of Verizon's measurement of the timeliness of its generation of order completion notifiers.

[311] *See* AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 97-98; MetTel NJ II Comments at 5. A gateway connects the BOC's OSS to a competing carrier's own OSS. *See Bell Atlantic New York Order*, 15 FCC Rcd 3953, 3992 at para. 87 n.212.

[312] *See, e.g.,* MetTel NJ I Feb.1 *Ex Parte* Letter ; MetTel NJ II April 15 *Ex Parte* Letter, Attachment at 9-28.

Nevertheless, we find that Verizon has sufficiently improved its performance and undertaken modifications to improve its systems, and that its overall performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.

111. Our analysis of order completion notices relies heavily on the performance measures that the New Jersey Board developed through a collaborative process with the carriers to determine order processing timeliness, and we place substantially less reliance on alternative statistical measures submitted by either Verizon or MetTel. Verizon's performance for most of the completion notifier metrics from November, 2001 through February, 2002 has been strong,[313] and despite misses for certain BCN metrics, we are not persuaded that they warrant a finding of checklist non-compliance. For the last four months, although Verizon missed the BCN timeliness benchmark for UNEs (97 percent by noon of the next business day) in two of the months, the scores were over 95 percent in both instances,[314] near-misses which we do not find competitively significant in the context of the other performance data. Verizon's improved performance also eliminates the concerns about completion notifiers that AT&T raised in its objections to NJ I and incorporates into this proceeding. AT&T complains that near-misses from July-November 2001 with an aberrantly low score for October indicates inadequate performance.[315] In our review of this application, we rely on Verizon's performance for the relevant review period, November 2001 through March 2002 and find this performance to be consistent with its past performance.

112. After reviewing Verizon's aggregate performance data in provisioning timely order completion notifiers to all carriers, we next address MetTel's allegations and examine the timeliness with which Verizon issues these notifiers to MetTel. As explained below, upon review of Verizon's performance specific to MetTel, we conclude that Verizon does not discriminate against MetTel with regard to the timeliness of its order completion notifiers.

113. Despite alternative proposals from both Verizon and MetTel, we nevertheless defer to the performance measurement standards set by the New Jersey Board, including the benchmark of three business days for the SOP-to-Billing Completion in the New Jersey Carrier-to-Carrier Guidelines.[316] Verizon criticizes the three-day interval as being unduly short, because the standard bill cycle in New Jersey is three business days per month, with some four-day

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[313] For example, Verizon scored above 99% for both UNE and resale PCN provisioning, OR-4-05 (Work Completion Notice – % On Time) (95% by next business day), and has provisioned resale BCNs above the benchmark of 97% within three business days, OR-4-09-2000 (% SOP to Bill Completion w/in 3 Business Days).

[314] For November, 2001 and January, 2002, Verizon's scores for OR-4-02 (Completion Notice - % on Time) were 95.24 and 96.00, respectively.

[315] AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 97-107 (citing a 75.91 score for OR-4-02-3000 for October).

[316] *See* OR-4-09. For an explanation of our preference for the metrics resulting from industry-wide participation, see paragraph 100, above.

cycles.[317] During this cycle, a customer's account is "frozen" and the systems cannot update an account, including migrations to a new service provider and feature changes to an existing customer's service.[318] Verizon states that this cycle is the same in New Jersey as in Pennsylvania, and that because we determined in the *Verizon Pennsylvania Order* that four days was a reasonable benchmark for this metric, it is appropriate to use such a standard here.[319] While we did find that Verizon's reliance on a four-day benchmark was reasonable in that Order, we only accepted Verizon's reliance on that standard in the absence of a metric to track BCNs that was approved by the Pennsylvania Commission.[320] Here, we look to the measurement that the New Jersey Board adopted.

114. In relying on the New Jersey business rules, we also place little weight on MetTel's comparison of the timeliness with which it receives order completion notices in New Jersey against Pennsylvania. In particular, MetTel submits a comparison of systems transactions that shows that it takes an average of one day for its BCNs and PCNs to be received in New Jersey, as opposed to none in Pennsylvania and New York,[321] and claims that its completion notices take twice as long to arrive in New Jersey as in Pennsylvania.[322] However, even if Verizon's timeliness in issuing notifiers varies from state to state, where performance is at or better than benchmark standards in both states, we do not make a finding of discrimination.[323]

115. With regard to Verizon's performance in providing BCNs to MetTel specifically, as we discussed above, we rely on the data that Verizon has submitted in this Application and that it has compiled in response to its obligations under the New Jersey Carrier-to-Carrier Guidelines. Verizon undertook a special study which shows that 95 percent of MetTel's BCNs were generated within five business days for November 2001, and improved to within four for December 2001 and January 2002.[324] Accordingly, we do not accept MetTel's assertion that

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[317] Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 11.

[318] *See* Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 19. During a migration between competitive LECs, the billing systems are unable to update accounts during any one of three different monthly billing cycles -- the wholesale billing cycle of either competitive carrier, or the billing cycle for the retail end-user. *See* Verizon NJ II April 15 *Ex Parte* Letter at 4-5.

[319] Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 19 (citing *Verizon Pennsylvania Order* at para. 44).

[320] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17446-47, para. 44.

[321] MetTel NJ I Feb. 1 *Ex Parte* Letter, OSS Issues Chart 2A: System Transaction Comparison.

[322] MetTel NJ I Feb. 1 *Ex Parte* Letter at 6.

[323] *See* Verizon NJ I Feb. 25 *Ex Parte* Letter (MetTel Issues) at I.A.3 (arguing that so long as the notifications are timely, as they are here, then the comparative timeliness is not relevant).

[324] Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 21; Verizon NJ I Feb. 25 *Ex Parte* Letter at I.B.3.

Verizon takes over 31 days to complete 95 percent of BCNs after the work has been completed.[325]

116. While Verizon does not meet the three-day benchmark for BCNs with regard to MetTel, this is not sufficient to result in a finding of checklist non-compliance. These disparities have improved for December and January to be within one day, and appear to be attributable for the time to clear post-completion discrepancies for certain PONs.[326] Moreover, we find the absolute number of orders affected not to be competitively significant, and that such lesser deficiencies may be appropriately addressed by remedies contained in the Incentive Plan. Our finding that Verizon's systems and processes demonstrate nondiscrimination also rests in part on Verizon's efforts to work closely with MetTel to fix any problems.

117. Finally, we also take comfort in a change that Verizon made to its order processing systems on March 18, 2002, just prior to filing this application. Specifically, Verizon changed the daily sequencing of orders assembled by the SOP so that disconnect orders precede new connect orders. Verizon expects this change in sequencing protocol to reduce the time it takes to generate a BCN for an LSR that involves a migration with these internal service orders.[327] Depending upon the mix of UNE-platform orders submitted each month, Verizon believes that this sequencing change could improve BCN timeliness for those orders affected by up to 24 hours.[328]

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[325] *See* MetTel NJ I Feb.1 *Ex Parte* Letter at 6.

[326] Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 21; Verizon NJ I Feb. 25 *Ex Parte* Letter at I.B.3. More specifically, the one extra day in these two months may be attributed to late notices for eight orders in November and nine orders in December, which are not indicative of a systemic problem. *Id*. In addition, we note that the hold status for bill cycle updates may also be a factor.

[327] Verizon NJ II April 4 *Ex Parte* Letter at 2.

[328] Verizon expects the change will reduce the time for migration order types involving a "disconnect" order and "new connect" order. Verizon NJ II April 4 *Ex Parte* Letter at 2. At the close of business each business day, Verizon's SOP creates a file with all internal service orders that were work completed that day to be processed during a nightly batch process. Verizon NJ II April 4 *Ex Parte* Letter at 1. A batch process reads and processes a file of input records through programs that process in a defined sequence, beginning with the first record and ending with the last. Verizon NJ II April 4 *Ex Parte* Letter at 2. A single local service request from a competitive LEC may generate multiple internal service orders. *Id*.; Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 31. The internal service orders also update the billing systems, which also use a batch process. Verizon NJ II McLean/Wierzbicki/Webster/Canny Decl. at para. 15; Verizon NJ II April 4 *Ex Parte* Letter at 2. In assembling the service orders for the SOP's batch processing, Verizon's legacy systems used a sort sequencing protocol that would process connect orders ahead of disconnect orders. Verizon NJ II April 4 *Ex Parte* Letter at 2. However, the billing system does not allow a new connect order to be processed before a disconnect order, so the system would process the new connect order, but "re-cycle" the disconnect order, placing it in a sort sequence that allowed it to be processed during the next batch process.

(iii) Notifier Trouble Tickets

118. We find that Verizon administers notifier trouble tickets in a manner that provides a competitor with a meaningful opportunity to compete. As a check on missing notifiers, notifier trouble tickets play an important role in tracking and communicating the status of order processing to competing carriers. When a competitive LEC expects to receive a status notifier from Verizon but fails to do so, it may contact Verizon's Wholesale Customer Care Center (WCCC) to open a notifier trouble ticket, and then submit a file containing specified information about the relevant PONs to the WCCC.[329] Using the same trouble ticket (or PON exception) process that has been in place when the Commission granted 271 approval in Massachusetts, Connecticut, and Pennsylvania, Verizon responds to a competitive LEC's submission of a PON exception by providing the status of each PON listed on the trouble ticket.[330] This is the same process for "clearing" delayed or missing notifiers that Verizon began in New York in February 2000, and that the Commission relied on in June 2000 in determining that Verizon had satisfied the performance objective of the March 9, 2000 Consent Decree.[331] If the requested notifier or a later notifier has been generated, Verizon's policy is to resend the notifier within three business days.

119. The New Jersey Board does not require Verizon to track its responses to trouble tickets, and we have noted that the absence of a particular metric is not fatal to the ability of an applicant to demonstrate checklist compliance.[332] Without a Board-approved measurement,

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[329] Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 158.

[330] Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 59; Verizon NJ I Feb. 22 *Ex Parte* Letter (MetTel Issues) at III.A.

[331] Verizon NJ I Feb. 25 *Ex Parte* Letter (MetTel Issues) at III.A; *see New York Telephone Company (d/b/a Bell Atlantic-New York)*, Consent Decree, 15 FCC Rcd 5415 (2000) (*New York Consent Decree*). *See* Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 60; Verizon Feb. 25 *Ex Parte* Letter (MetTel Issues) at III.A.; Verizon NJ I Feb. 22 *Ex Parte* Letter, New Jersey Reply Decl., Tab 6 at para. 23. The Consent Decree resulted from an investigation by the Commission that focused on Bell Atlantic's problems associated with lost or mishandled orders. *New York Consent Decree*, 15 FCC Rcd at 5415 para. 1.

[332] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17446, para. 43. More recently, we note that effective February 1, 2002, the New York Public Service Commission implemented a performance measurement under which Verizon should resolve 95% of its PON Notifier Exceptions within 3 business days, and 99% within 10 business days. *Order Modifying Existing and Establishing Additional Inter-Carrier Service Quality Guidelines*, Case 97-C-0139 (NYPSC Oct. 29, 2001) at Attachment 1, Section G. Pursuant to that metric, a PON notifier exception is considered "resolved" when Verizon has either sent the requested notifier or subsequent notifier, requested the competitor to resubmit the PON if no notifier has been generated, or taken one of three other steps. *Id*. at Attach. 1, Section G, OR-XX PON Notifier Exception Resolution Timeliness. Specifically, the other three steps for resolution are when Verizon has completed the investigation showing the next action is a competitor's action and that the competitor has been sent or resent the notifier; has completed work that will allow the PON to proceed to the next step in the business process, and sent the appropriate notifier to the competitor; or has notified the competitor that the confirmed due date plus the notifier production interval has not yet passed for requested PON notifier and provided the current work status of the PON. *Id*. This definition is substantially similar to the definition of "resolved" that Verizon has presented in this proceeding. Namely, Verizon deems a trouble ticket to be "resolved" if it takes a (continued….)

MetTel alleges that Verizon does not respond to notifier trouble tickets in a commercially viable timeframe because it does not resolve trouble tickets within three days. Specifically, MetTel alleges that Verizon only resolved 88 percent of MetTel trouble tickets within three days.[333] MetTel argues that the *New York Consent Decree* benchmark of clearing missing notifier trouble tickets within three business days[334] is the only standard in this area, and Verizon "fails miserably" under it.[335]

120. In evaluating Verizon's performance data, we look at the totality of Verizon's responsiveness to trouble tickets, and do not rely specifically on either the definitions or performance standards associated with the trouble ticket clearance measurement that the Commission relied on in finding Verizon to have complied with the 2000 Consent Decree.[336] We accord substantial weight to the New Jersey Board's factual findings that Verizon does meet its responsibilities in administering trouble tickets,[337] and combined with KPMG's testing of this aspect of OSS and the available performance data, we find that Verizon's OSS systems are in compliance with the checklist.[338] Using data generated through a special study, Verizon reports that it has cleared all PONs submitted in New Jersey within three business days. Specifically, of the approximately 490,000 PONs submitted in New Jersey, competitive LECs submitted exception trouble tickets (for a notifier believed to be delayed or missing) for only 454 PONs. All of these PONs were cleared within three business days,[339] and also were resolved on average

(Continued from previous page)
corrective action; if it determines that the competitive LEC must take the corrective action and Verizon communicates that finding to the competitive LEC; or if it determines the sought notifier will never exist. Verizon Feb. 25 *Ex Parte* Letter (MetTel Issues) at III.A.1, III.B; *see also* Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 60.

[333] MetTel NJ II April 15 *Ex Parte* Letter at Attachment, p. 29; MetTel NJ II May 14 *Ex Parte* Letter, Supplemental Decl. of Elliott Goldberg at 1 (correcting information for the period August through December 2001, not including September or October 27-31). Two examples of notifiers that will never come into existence are listed below in footnote 341.

[334] In agreeing to the Consent Decree in New York, Verizon agreed to a metric based upon the percentage of missing notifier trouble ticket PONs cleared within 3 business days. *New York Consent Decree*, Appendix A, 15 FCC Rcd at 5425.

[335] MetTel NJ II April 15 *Ex Parte* Letter at 4. MetTel also questions the timeliness and accuracy of Verizon's responses to trouble tickets, accusing Verizon of improperly creating a dichotomy between "clearing" and "solving" a notifier trouble ticket in order to improve its score on trouble ticket metrics. MetTel Comments at 14-15; MetTel *Ex Parte* at Slides 18-19.

[336] We are aware that MetTel sought the adoption of a three-day standard for notifier trouble ticket resolution in the underlying state proceeding, but the New Jersey Board specifically noted that MetTel failed to demonstrate why it should conclude that three days is the reasonable commercial standard. New Jersey Board NJ I Comments at 42. Similarly, we do not rely on the current trouble ticket resolution measurement used in New York.

[337] *Id*.

[338] New Jersey Board NJ I Comments at 42; KPMG Final Report at 43-48, 114-16.

[339] Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 63.

in less than four business days.[340] Thus, we are persuaded that MetTel's claims of improper resolution are overstated, and do not warrant a finding that Verizon's OSS systems are not in compliance with the checklist.[341] Further, even MetTel recognizes that Verizon has improved in this area, resolving over 96% of missing trouble ticket notifiers in New Jersey in three business days for March and April 2002.[342] We find that, absent a state-sanctioned performance measurement and standard, combined with the relatively low number of notifier trouble tickets submitted and in upward trend in timely resolution, Verizon's performance in administering trouble tickets is sufficient for the purpose of checklist compliance.

d. Wholesale Billing

121. The Commission has established in past section 271 orders that, as part of its OSS showing, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.[343] As the Commission has held previously, BOCs must provide two essential billing functions: (1) complete, accurate and timely reports on the service usage of competing carriers' customers, which Verizon records in the DUF; and (2) complete, accurate, and timely wholesale bills.[344] Service usage reports are issued to competitive LECs that purchase unbundled switching and measure the types and amounts of incumbent LEC services that a competitive LEC's end user-customers use, typically measured in minutes of use, for a specific period of time (usually one day).[345] An incumbent LEC issues wholesale bills to competitive LECs to collect compensation for the wholesale inputs, such as UNEs, purchased by competitive LECs

[340] Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 34.

[341] Verizon points to two categories of trouble tickets submitted by MetTel and resolved by Verizon where MetTel wrongly believes it is entitled to a notifier that may not exist: (1) requested notifiers for orders that were rejected (negatively acknowledged) by the EDI interface and never submitted into the SOP; (2) requests for notifiers where MetTel had already cancelled the order, but its systems or processes failed to record the cancellation. Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 61; Verizon NJ I Feb. 25 *Ex Parte* Letter (MetTel Issues) at III.A.1. Further, we also disregard MetTel's criticism that "Verizon required 39+ days to resolve 87% of MetTel trouble tickets." MetTel NJ I Feb. 1 *Ex Parte* Letter at 14. Because a trouble ticket may contain hundreds of PONs and is not closed until every PON is resolved, a per-ticket analysis is misleading. Verizon represents that from August to December 2001 it resolved 90% of the PONs on MetTel's trouble tickets within four business days and 100% with 30 business days. Verizon NJ I Feb. 25 *Ex Parte* Letter (MetTel Issues) at III.D.

[342] MetTel NJ II June 7 *Ex Parte* Letter at 1. MetTel compares this high score in New Jersey with an 88% and 74% scores in New York and Pennsylvania, respectively, as evidence that Verizon as evidence of "special handling" that "favored New Jersey items." *Id*. at 1-2; *see also id*. at 2 ("Merely shifting resources temporarily in order to demonstrate 'good numbers' to the Commission is deceptive and counterproductive.) We cannot agree with MetTel that such performance results necessarily demonstrate that Verizon is prioritizing New Jersey trouble tickets ahead of others.

[343] Appendix C at para. 39.

[344] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17425, para. 13.

[345] *Id.*

from the incumbent LEC, to provide service to their end users. These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.[346]

122. We find that Verizon complies with its obligation to provide nondiscriminatory access to its billing functions on the basis of its provision of: (1) timely and accurate service usage data to competitive LECs; and (2) wholesale billing in a manner that provides competing carriers with a meaningful opportunity to compete.[347] No party raises any issues with Verizon's provision of service usage data to competitive LECs; and based on the evidence in the record, we find that Verizon's provision of the DUF meets its obligations in this regard. Several parties, however, raise issues with Verizon's provision of wholesale billing, which we discuss below. Specifically, a number of parties dispute the accuracy of the wholesale bill, based on both the BOS BDT format and the retail format.[348] AT&T also asserts that evidence provided by Verizon in this application is insufficient to demonstrate the accuracy of the BOS BDT format.[349] In addition, AT&T alleges that Verizon's BOS BDT bill does not conform to industry standards and therefore cannot be considered "readable and auditable."[350] Although we review the timeliness and accuracy of both bill formats, the primary focus of our review is on Verizon's BOS BDT bill format due to its compliance with industry standards and the need for electronic billing once wholesale volumes reach a certain threshold.[351] We note that no party directly challenged the timeliness of Verizon's wholesale bills, and we find that Verizon demonstrates that it is providing both bill formats on a timely basis.[352]

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346 *Id.*

347 Appendix C at para. 39.

348 AT&T NJ II Comments at 19, 21-23; Joint Commenters NJ II Comments at 4; Metro Teleconnect NJ II Comments at 3. Verizon operates two systems to generate bills for resale and UNEs. The Customer Record Information System (CRIS) generates bills for UNE-platforms, resale offerings, and some UNEs, such as loops; the Carrier Access Billing System (CABS) generates bills for access services, collocation, and the remaining UNEs, such as switching. Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 108; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17428, para. 17. Verizon can then use these systems to provide a competitive LEC with either a "retail-formatted" bill or a "BOS BDT" bill. Although a retail-formatted bill can be transmitted to competitive LECs in a variety of media, Verizon usually prints its retail-formatted wholesale bills on paper. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17428, para. 17. Regardless of the medium, Verizon's retail-formatted bill cannot be easily transferred to a computer spreadsheet or other electronic system that allows for computer auditing. *Id*. at para. 17 n.51. We refer to "paper billing" and "retail-formatted billing" interchangeably. In contrast, a BOS BDT bill appears in the industry-standard Billing Output Specification (BOS) Bill Data Tape (BDT) format that permits a wholesale carrier to use computer software to readily audit the data. We refer to "electronic billing" and "BOS BDT billing" interchangeably.

349 AT&T NJ II Reply at 12-13, n.15.

350 AT&T NJ II Comments at 19-21; AT&T NJ II Kamal Decl. at paras. 14-21.

351 *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17432, n.80; *Local Competition Order*, 11 FCC Rcd at 15767-68, paras. 525, 527.

352 *See* BI-2-01-2030 (Timeliness of Carrier Bill).

123. Verizon employs the same billing systems in New Jersey as it does in Pennsylvania,[353] where our evidentiary finding that Verizon's wholesale bills were checklist compliant was a "close call,"[354] and many of the issues commenters raise in New Jersey are similar to the issues raised in Pennsylvania. Accordingly, we agree with the Department of Justice that the competitive experience in New Jersey is informed by that of Pennsylvania.[355] We recognize, however, that while the billing *systems* in New Jersey and Pennsylvania are identical, the overall billing *processes* differ. In particular, while the billing software used to store and update the customer service records is the same, account establishment and updates are applied from service orders that are created by different SOPs.[356] We cannot, therefore, merely rely on our previous review of Verizon's billing system in Pennsylvania to make our finding here.

124. The Commission has held that a BOC must provide a wholesale bill that is "readable, auditable and accurate" to satisfy its checklist obligations.[357] As an initial matter, we find that Verizon has made a sufficient showing that both its retail-formatted and BOS BDT bills are accurate, and we reject assertions by AT&T that KPMG's failure to test the BOS BDT bill format fatally undermines Verizon's showing.[358] To demonstrate the accuracy of its retail-formatted bill, Verizon relies on the successful test of that format by KPMG.[359] Because the BOS BDT bill was not part of the KPMG third-party test, Verizon must rely on other evidence to demonstrate the accuracy of the BOS BDT bill format.[360]

125. We find that Verizon demonstrates the accuracy of the BOS BDT bill format based on the limited commercial performance data available from its use in New Jersey, and consistent with our findings in the *Verizon Pennsylvania Order*, the PwC attestation that Verizon's BOS BDT bills are consistent with the retail format.[361] Our concerns are satisfied by

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353 Verizon NJ I Application at 66.

354 *Verizon Pennsylvania Order*, 16 FCC Rcd. at 17427, para. 15.

355 Department of Justice NJ II Evaluation at 5.

356 Verizon NJ I Feb. 25 *Ex Parte* Letter at 3.

357 *Verizon Pennsylvania Order*, 16 FCC Rcd at 17431, para. 22.

358 *See* AT&T NJ II Reply at 12-13, n.15; NJDRA NJ II Reply at 8-9.

359 KPMG Final Report at 347-52.

360 Verizon implemented its BOS BDT bill in April 2001, but did not make it available as a "bill of record" until September 2001, shortly after KPMG concluded its test. Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 113. According to AT&T, the timing of this announcement raises "serious questions" as to whether Verizon delayed it to avoid KPMG's test of the BOS BDT bill. AT&T NJ I Kirchberger/Nurse/Kamal NJ I Decl. at para. 52. We accept Verizon's explanation that it enhanced the quality assurance process of the BOS BDT bill process during June and July, and was unable to commit to making its BOS BDT bill the bill of record until it completed its programming of certain New Jersey products in August. Verizon NJ I February 25 *Ex Parte* Letter at 5.

361 In considering Verizon's showing in Pennsylvania, the Commission did not rely on certain billing accuracy metrics that compared billing dispute settlement amounts against monthly billed totals, as a number of parties, (continued….)

the recent performance data, by the low and decreasing number of discrepancies between the electronic and paper bills,[362] and by PwC's attestation that the BOS BDT bills in September contained a *de minimis* amount of erroneous charges.[363] Further, we find that Verizon has adequately demonstrated the accuracy of the BOS BDT bill by having PwC attest that it is reconcilable against the retail-formatted bill, which KPMG had previously found reconcilable with the DUF. This indirect comparison results from the combination of PwC's comparison between the BOS BDT bill and the retail-formatted bill with KPMG's comparison of the retail-formatted bill against the DUF. The Commission has accepted this type of indirect evaluation previously.[364] Since the retail-formatted bill has been tested for accuracy by KPMG, and PwC has reconciled the BOS BDT bill against the retail-formatted bill, it is reasonable to assume that the BOS BDT bill is also reconcilable with the DUF. As with all OSS functions, although we must judge Verizon's wholesale billing at the time of its application, we recognize that access to OSS is an evolutionary process and we expect that Verizon continue its efforts to improve its wholesale billing as industry standards evolve.

126. Several competitive LECs assert that their commercial experience shows that Verizon's systems produce recurring or "systemic" inaccuracies in its wholesale bills.[365] AT&T

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including Verizon, asserted that they were flawed measures. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17445, n.157. We similarly do not rely on such metrics, including New Jersey BI-3-01, in reaching our decision here. Specifically, Verizon explains that the numerator for BI-3-01 (Percent Billing Adjustments – Including Charges Adjusted Due to PCDs) is the total amount of dollars credited to competitive LECs as a result of billing errors in the reporting month, regardless of when the competitive LECs submitted the claim for the error or when the errors occurred. Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 45. Therefore, by comparing what could be credits relating to multiple months against the denominator of the current charges billed to competitive LECs, this metric can be misleading with regard to the reporting month. Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at paras. 48-51; Verizon Guerard/Canny/DeVito NJ I Reply Decl., Att. 3, Pennsylvania BI-2-02 (Timeliness of Carrier Bill – Electronic – BOS BDT Format).

[362] PwC found that for September bills, the absolute value of the manual adjustments of the balancing records inserted into all BDTs measured against the paper bills was only 0.72%, expressed as a percentage of the total current charges. Verizon NJ I Bluvol/Kumar Suppl. Decl. at para. 86; Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 117. Verizon performed the same examination for October bills, and found that the absolute value has been further reduced to 0.52%. Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 117, Att. 16. This amount dropped to less than 0.5% for November and December 2001. Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 51.

[363] Verizon NJ I Bluvol/Kumar Suppl. Decl. at para. 6; Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 117. Specifically, PwC found that (1) taken as a percent of the total charges on wholesale bills, inappropriate taxes were 0.17 of the total; (2) no directory advertising appeared in the form of carrier usage; and (3) no usage appeared on as resale usage on UNE-platform accounts. *Id.*

[364] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17440-41, paras. 35-36.

[365] AT&T NJ II Comments at 19, 21-23; Joint Commenters NJ II Comments at 4; Metro Teleconnect NJ II Comments at 3. We note that AT&T refers to ATX comments in NJ I. However, as noted above, ATX neither renewed those comments in this proceeding nor filed new allegations concerning alleged inaccuracies in Verizon's wholesale billing in this proceeding. *See supra* n. 22. ATX's comments in NJ I, therefore, are not relevant to our findings in this Order.

claims that its retail-formatted bills contain inappropriate charges for retail services[366] and the Joint Commenters and Metro Teleconnect both claim that "as much as 20 percent of the charges" are incorrect.[367] Metro Teleconnect claims generally that its disputes with Verizon "currently total almost $3 million."[368] As an initial matter, we note that no commenter has put forth the type of detailed analysis of its wholesale billing dispute with Verizon that was present in our review of Verizon's application for section 271 authority in Pennsylvania.[369] The general assertions made by the Joint Commenters and Metro Teleconnect are not persuasive because they lack additional explanation as to the types of errors that make up the alleged "20 percent" incorrect charges on their wholesale bills, and because both parties fail to clarify the actual percentage of their current wholesale bills that they have properly put into dispute with Verizon. As we stated in the *Verizon Pennsylvania Order*, "we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate."[370] We cannot, without further evidence find that the parties have demonstrated systemic inaccuracies in Verizon's wholesale bills that would require a finding of checklist noncompliance.

127. We also do not find AT&T's showing to be persuasive. AT&T alleges only one type of recurring wholesale bill error, namely, that Verizon includes inappropriate retail charges for vertical features, such as call waiting, on its wholesale bills.[371] AT&T, however, at best demonstrates that such errors occur on approximately two to three percent of its wholesale bills, which is well within the level of error the Commission concluded was acceptable in the *Verizon Pennsylvania Order*.[372] Without additional evidence demonstrating that Verizon's billing accuracy performance in New Jersey is materially worse than it was in Pennsylvania at the time

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366 Letter from Amy L. Alvarez, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-67 (filed April 26, 2002) (AT&T NJ II Apr. 26 *Ex Parte* Letter); AT&T NJ II Comments at 21-22; AT&T NJ II Kamal Decl. at para. 25-27. AT&T alleges that, based on the appearance of inappropriate retail charges, approximately 2-3% of its wholesale bill is inaccurate.

367 Joint Commenters NJ II Comments at 4-5; Metro Teleconnect NJ II Comments at 4-5. Both commenters also assert that Verizon has "inconstent[ly applied] the 32% initial promotional discount to which Verizon agreeds as part of its merger conditions." *See, e.g.*, Metro Teleconnect NJ II Comments at 4.

368 Metro Teleconnect NJ II Comments at 4-5.

369 *See Verizon Pennsylvania Order,* 16 FCC Rcd at 17433-37, paras. 25-29.

370 *Id.* at 17434, n. 93.

371 AT&T NJ II Comments at 21-22; AT&T NJ II Kamal Decl. at para. 25-27.

372 AT&T NJ II Apr. 26 *Ex Parte* Letter at 3; AT&T NJ II Kamal Decl. at para. 26. *See Verizon Pennsylvania Order,* 16 FCC Rcd at 17433-34, paras. 25-26. In addition, the amount of the bill placed in dispute by AT&T represents an amount that may be higher than the ultimate amount in error. *See id.* at n.97. *See also* Department of Justice NJ II Evaluation at 7 ("The evidence, however, suggests that these inaccuracies do not represent a substantial portion of the carrier bill."); Letter from Clint Odom, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-67 (filed May 17, 2002) (Verizon NJ II May 17 *Ex Parte* Letter) (Verizon concludes from its review of AT&T's February wholesale bill that the total dollar amount of the erroneous vertical features charges was less than 1% of AT&T's bill.)

of Verizon's application in Pennsylvania, or that Verizon's performance in Pennsylvania has materially deteriorated since our grant of section 271 authority in that state, we are unable to find that Verizon's billing performance in New Jersey does not provide competing carriers a meaningful opportunity to compete.

128. Finally, we address AT&T's allegations that Verizon's BOS BDT bill does not comply with industry standards.[373] Verizon explains that the issues raised by AT&T are in fact deviations that are allowed under the industry standard and for which Verizon has provided clear documentation.[374] AT&T also acknowledges that Verizon has made attempts to comply with AT&T's specific requests regarding the BOS BDT bill.[375] We find that Verizon complies with its obligation to provide clear documentation and assistance to AT&T regarding the BOS BDT bill, and that AT&T provides insufficient evidence to support its claim that Verizon does not offer a "readable and auditable" electronic bill format or that Verizon's BOS BDT bill impermissibly deviates from accepted industry standards. Moreover, AT&T's assertions regarding Verizon's implementation of the BOS BDT bill format are a fact-specific, carrier-to-carrier dispute concerning AT&T's use of Verizon's BOS BDT bill. As the Commission has stated in prior proceedings, given the statutory period for our review, the section 271 process simply could not function if we were required to resolve every individual factual dispute between a BOC and each competitive LEC regarding the precise content of the BOC's obligations to each competitor.[376]

129. In addition, although not a basis for our decision here, we take added comfort in the special measures that the New Jersey Board announced to ensure nondiscriminatory access to electronic billing.[377] In particular, the New Jersey Board declared that it would condition its approval of Verizon's 271 application on Verizon's retention of the current manual review and balancing procedures until it satisfies the Board's staff that manual balance records are unnecessary to produce adequately balanced BOS BDT bills for competitive LECs.[378] Further,

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[373] AT&T NJ II Comments at 19-22. AT&T alleges that contrary to industry standards, Verizon uses telephone numbers instead of circuit numbers, as the field identifies for directory listings on customer service records for UNE loops. AT&T also alleges certain other technical deviations from the BOS BDT standard, such as improper use of the "X99" code. AT&T NJ II Apr. 26 *Ex Parte* Letter at1-3; AT&T NJ II Reply at n.12; AT&T NJ II Kamal Decl. at paras. 16-18.

[374] Verizon explains that it provides the appropriate Field Identifier (FID) in Customer Service Records (CSR) for UNE loop and directory listing orders. It also explains that its use of the X99 code is valid under OBF guidelines. Verizon NJ II May 17 *Ex* Parte Letter at 1-2; Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at paras. 41-45.

[375] AT&T NJ II Comments at 20; AT&T NJ II Kamal Decl. at paras. 16, 20.

[376] *See, e.g.*, *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230.

[377] New Jersey Board NJ I Comments at 41.

[378] The number of manual adjustments to balance the records inserted into BDTs against the retail-formatted bills in Pennsylvania and New Jersey, expressed as a percentage of the total current charges, has been improving since the issuance of the *Verizon Pennsylvania Order*. For Pennsylvania, the manual adjustments have dropped to below (continued….)

the New Jersey Board conditioned its findings of OSS compliance on the requirement that, effective February 2002, Verizon include two additional billing metrics in the New Jersey Carrier-to-Carrier Guidelines and the New Jersey Incentive Plan, identical to those that Verizon voluntarily agreed to adopt in Pennsylvania.[379]

e. Order Flow-Through and Reject Rate

130. We conclude, as did the New Jersey Board, that Verizon's electronic processing of orders is sufficient to provide carriers with a meaningful opportunity to compete.[380] Flow-through measures the number of orders that are electronically processed by an incumbent LEC's OSS without the need for manual intervention.[381] Consistent with previous section 271 orders, we do not examine flow-through measures in isolation, but as "one indicium among many of the performance of Verizon's OSS."[382] Indeed, we review flow-through rates in conjunction with several other factors in order to assess the BOC's overall ability to provide access to its ordering functions in a nondiscriminatory manner.[383] Accordingly, where other evidence demonstrates

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0.5% starting in September 2001; in New Jersey, the adjustments have fallen from 0.5% in November and December 2001 to 0.48% in January 2002, 0.44% in February 2002 and 0.28% in March 2002. Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at Att. 12; Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 51, Att. 10.

[379] In the *Verizon Pennsylvania Order*, the Commission found these two measures represented important new steps to discourage wholesale billing errors and to ensure that any errors that occur are resolved as quickly as possible. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17444-45, para. 41. We note that Verizon provided New Jersey data using Pennsylvania billing metrics BI-3-04 and BI-3-05 for November and December in its application. Verizon acknowledged 17 out of 17 billing claims on time for November and 8 out of 10 for December. *See* Pennsylvania BI-3-04 (Percentage Billing Claims Acknowledged Within Two Business Days). In November, Verizon resolved 10 of 11 billing claims within 28 days after acknowledgement, and 18 out of 18 in December. *See* Pennsylvania BI-3-05 (Percentage CLEC Billing Claims Resolved Within 28 Calendar Days After Acknowledgement). Although not all of these figures reach the 95% benchmark for these metrics, we accord them little weight due to the small sample size. Since the BOS BDT bill was unavailable as a bill of record prior to September, and no carrier signed up for that billing format in New Jersey until October, there is no relevant data prior to November.

[380] New Jersey Board NJ I Comments at 33-34 (citing KPMG Final Report at 153-59). *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17449, para. 48; *see BellSouth Louisiana II Order*, 13 FCC Rcd at 20670-71, para. 107.

[381] Verizon measures three flow-through rates: total flow-through, achieved flow-through, and simple flow-through. The total flow-through rate measures the percentage of valid orders processed directly without manual intervention without excluding those orders Verizon has not yet designed its systems to process electronically. The achieved flow-through rate measures the percentage of valid orders that are designed to flow through that actually do flow through, and simple flow-through evaluates the percentage of valid orders for basic POTS services that flow-through. New Jersey Carrier-to-Carrier Guidelines at 41.

[382] *Verizon Massachusetts Order*, 16 FCC Rcd at 9030, para. 77 (quoting *Bell Atlantic New York Order*, 15 FCC Rcd at 4034, para. 161).

[383] Specifically, these factors include the BOC's ability to: (1) accurately process manually handled orders; (2) timely return order confirmations and reject notices; and (3) the overall scalability of its systems and processes. *See BellSouth Georgia/Louisiana Order* at para. 143; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17449, para. 48; *Verizon Massachusetts Order*, 16 FCC Rcd at 9010, para. 43; *SWBT Texas Order*, 15 FCC Rcd at 18443-44, para.
(continued….)

that the BOC's OSS is able to process competing carrier's orders at reasonably foreseeable commercial volumes, it is not necessary to focus our analysis solely on flow-through rates.[384] As discussed above, Verizon demonstrates that it provides timely order confirmation and reject notices.[385] In addition, Verizon demonstrates that it processes both resale and UNE orders accurately.[386] Finally, we note that the New Jersey Board concluded that Verizon's systems and processes were "ready for increased UNE order volumes."[387]

131. AT&T asserts, nevertheless, that Verizon's flow-through and order reject rates constitute discriminatory treatment, particularly as compared to Verizon's performance in other states where it has received section 271 authority.[388] In particular, AT&T points to the contrast between Verizon's flow-through performance in New Jersey versus its performance in New York, Massachusetts, and Pennsylvania.[389]

132. We reject AT&T's assertions. We generally find the achieved flow-through measure is the most indicative of the BOC's ability to electronically process orders and we look at this measure as evidence of potential discrimination. In New Jersey, while Verizon's achieved flow-through rate for UNEs has been below the 95 percent standard set by the New Jersey Board, there nevertheless, has been a consistent, upward trend in the rate, reaching 85.34 percent in January, 89.82 percent in February and 90.50 percent in March 2002.[390] Even if we look beyond achieved flow-through to total flow-through rates and order reject rates, we note that

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179; *Bell Atlantic New York Order*, 15 FCC Rcd at 4034-35, paras. 161-163; *BellSouth Louisiana II Order*, 13 FCC Rcd at 20671, para. 108.

384 *See Bell Atlantic New York Order*, 15 FCC Rcd at 4034, para. 162.

385 *See* discussion *supra* paras. 98-101.

386 *See* 01-3000 (% Accuracy – Orders – UNE) (96.85, 96.65); OR-6-02-3000 (% Accuracy – Opportunities – UNE) (99.32, 99.80); OR-6-03-3000 (% Accuracy – Local Service Request Confirmations – UNE) (0.02, 0.00); OR-6-01-2000 (% Accuracy – Orders – Resale) (97.70, 96.66); OR-6-02-2000 (% Accuracy – Opportunities – Resale) (99.64, 99.72); OR-6-03-2000 (%t Accuracy – Local Service Request Confirmations – Resale) (0.00, 0.02). *See also* Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 23; *Bell Atlantic New York Order*, 15 FCC Rcd at 4042, para. 171 (concluding that there is no reliable evidence that Bell Atlantic's manual processing of orders *per se* injects a level of error that prevents efficient competitors a meaningful opportunity to compete).

387 New Jersey Board NJ I Comments at 33-34; KMPG Final Report at 153-59.

388 AT&T NJ II Comments at 27-29. AT&T criticizes both Verizon's total and achieved flow-through performance data. *Id.*

389 AT&T NJ II Comments at 27-29 (incorporating AT&T NJ I Kirchberger/Nurse/Kamal Decl. at para. 65).

390 *See* OR-5-02-200- (% Flow Through – Achieved – Resale) (94.20, 93.81). Although we do not demand a specific level of flow-through performance in reviewing a section 271 application, we do not intend to suggest that the New Jersey Board's use of a benchmark standard for flow-through performance is not a valid tool for the Board's role in monitoring and enforcing Verizon's ongoing local competition obligations under federal and state law.

Verizon's performance appears to show an improving trend.[391] Moreover, we note that KPMG's OSS test included an examination of Verizon's ability to electronically process service orders in varying mixes of order types at reasonably foreseeable commercial volumes and that KPMG and the New Jersey Board found Verizon's performance satisfactory.[392]

133. Finally, we generally do not find mere state to state comparisons regarding flow-through and order reject rates to be persuasive. We have previously found that the mix of order types submitted in each state can vary widely and this variation can have a significant impact on the proportion of orders that will be handled on a flow-through basis. We have previously found that it would not be appropriate to attribute such a wide range of results entirely to Verizon.[393]

134. As we noted above, flow-through and order reject rates are not solely dispositive of the BOC's ability to process orders in a nondiscriminatory manner. We find that the positive trends in both Verizon's flow-through and order reject rates, along with Verizon's overall performance in providing service order information in a timely and accurate manner and KPMG's findings regarding the scalability of Verizon's OSS are sufficient to demonstrate checklist compliance.

f. Other Issues

135. AT&T claims that Verizon's ordering process for line splitting is burdensome, because a requesting carrier must submit an LSR to migrate the customer for voice service and later submit a second LSR to add the line splitting arrangement.[394] In addition, AT&T charges that this two-step process is discriminatory because Verizon's retail operations can request both

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[391] Verizon's total flow-through rate continues to improve, reaching more than 50% in February 2002. Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 5. *See* OR-5-01-3000 (% Flow-Through – Total). Verizon's total flow-through for January 2002 dropped to 35.78%; however, Verizon explains that competitive LEC order volume spiked dramatically that month because Verizon completed a one-time project, and the types of orders included in that project were not designed to flow-through its OSS. *See* Verizon NJ II Reply at 30; Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at para. 5. The percentage of UNE orders rejected continues its overall downward trend, decreasing from 47.22% in November 2001 to 38.39% in February 2002. *See* OR-3-01-3000 (POTS Special Services Aggregate – % Reject). We have previously relied on improvements in performance to indicate non-discriminatory OSS. *See, e.g.*, *Verizon Pennsylvania Order*, 16 FCC Rcd at 17433-34, para. 26.

[392] KPMG Final Report at 153-59; New Jersey Board NJ I Comments at 33-34.

[393] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17450, para. 49. For example, Verizon presented evidence that the UNE flow-through rate for individual competitive LECs from August to October 2001 ranged from under 5% to over 90%. Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at Att. 2.

[394] AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 43-48. While Verizon has recently implemented a single LSR OSS capability for competitive LECs to add line splitting to a UNE-platform arrangement to migrate from a line sharing arrangement, Verizon NJ I Application at 39-40, AT&T notes that this new process has not been tested, has never been used in New Jersey, and does not apply to other forms of line splitting migration. AT&T NJ I Kirchberger/Nurse/Kamal Decl. at paras. 45-46.

voice and data service for a single orders.[395] We reject these challenges, and find that Verizon's ordering process for line splitting in New Jersey allows efficient competitors a meaningful opportunity to compete. Verizon uses the same process for line splitting in New Jersey that it uses in other states and which the Commission has previously found to be checklist-compliant.[396] In addition, Verizon has recently implemented additional OSS functionalities to facilitate the availability of various line splitting scenarios, including the ability for a data LEC to add DSL capability to a loop in an existing UNE-platform arrangement.[397] Although no carrier had submitted an order for this functionality as of February, 2001, we recently found it to be checklist-compliant and are further satisfied with the results of Verizon's internal tests.[398]

C. Checklist Item 4 – Unbundled Local Loops

136. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[399] We conclude, as did the New Jersey Board, that Verizon provides unbundled local loops in accordance with the requirements of section 271 and our rules.[400] Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for line sharing and line splitting. As of February 2002, competitors in New Jersey have acquired from Verizon and placed into use approximately 59,000 stand-alone loops (including DSL loops), and about 51,000 loops provided as part of network element platforms that include switching and transport elements.[401]

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[395] AT&T NJ I Kirchberger/Nurse/Kamal Decl. at para. 44.

[396] Verizon NJ I Lacouture/Ruesterholz Decl. at para. 151; *see*, *e.g.*, *Verizon Vermont Order* at para. 55; *Verizon Rhode Island Order*, 17 FCC Rcd at 3343-44, para. 90.

[397] Letter from Clint E. Odom, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-347 (filed Feb. 19, 2002) (Verizon Feb. 19 *Ex Parte* Letter).

[398] *See* Verizon NJ II May 21 *Ex Parte* Letter at 1; *Verizon Rhode Island Order*, 17 FCC Rcd at 3343-44, para. 90.

[399] 47 U.S.C. § 271(c)(2)(B)(iv).

[400] *See* New Jersey Board NJ I Comments at 45-49; New Jersey Board NJ II Comments at 2. The Department of Justice concluded that there are no "material non-price obstacles to competition in New Jersey." Department of Justice NJ I Evaluation at 5; *see also* Department of Justice NJ II Evaluation at 2 n.2.

[401] *See* Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 4. As of February, 2002, Verizon had in service approximately 44,500 stand-alone competitive LEC POTS loops, 400 high capacity DS-1 loops, 15,000 DSL-capable loops, 2,600 2-wire digital loops and 1,800 line sharing arrangements. *See* Verizon NJ II Lacouture/Ruesterholz Reply Decl. at paras. 5, 27, 36, 48, 59; Letter from Clint E. Odom, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed May 6, 2002) (Verizon NJ II May 6 *Ex Parte* Letter); Letter from Clint E. Odom, Verizon, to Marlene H. Dortch, Secretary, Federal (continued….)

137. Consistent with prior section 271 orders, we do not address every aspect of Verizon's loop performance where our review of the record satisfies us that Verizon's performance is in compliance with the relevant performance standards established by the New Jersey Board.[402] Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Verizon and its competitors. In making our assessment, we review performance measurements comparable to those we have relied upon in prior section 271 orders, primarily those associated with measuring the timeliness and quality of loop provisioning and loop maintenance and repair.[403] 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.[404] Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.[405]

138. As an initial matter, we recognize that during the relevant November-March period, Verizon fails to achieve parity performance for several loop types under the average completed interval metric.[406] Although one commenter points to Verizon's performance under this metric as evidence of Verizon's discrimination against competitive LECs, we find that this performance does not warrant a finding of checklist noncompliance. Specifically, we do not rely on Verizon's performance under the average completed interval metric as a measure of Verizon's timeliness in provisioning unbundled loops. We conclude, as we have in prior section 271 orders, that the average completed interval metric is not the most accurate measure of provisioning timeliness.[407] Instead we find that the missed appointment metric is a more reliable indicator of provisioning timeliness because it measures Verizon's performance in provisioning loops at the scheduled time that competitive LECs request. We also find that performance under the missed appointment metric, unlike the average completed interval metric, cannot be skewed by competitive LEC customers that request installation intervals beyond the standard interval.[408]

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Communications Commission, WC Docket No. 02-67 (filed May 9, 2002) (Verizon NJ II May 9 *Ex Parte* Errata Letter).

402 *See, e.g., Verizon Connecticut Order*, 16 FCC Rcd at 14151-52, para. 9.

403 *See Verizon Massachusetts Order*, 16 FCC Rcd at 9078-79, para. 162.

404 *See id.* at 9055-56, para. 122.

405 *See id*.

406 Verizon's performance under the PR-2 metric, which measures the time it takes Verizon to complete orders for service, indicates that for at least one month during the relevant period there was a longer average completed interval for voice grade loops, hot cuts, xDSL capable loops, and high capacity loops provided to competitive LECs.

407 *See Verizon Massachusetts Order*, 16 FCC Rcd at 9038-39, para. 92; *Bell Atlantic New York Order*, 15 FCC Rcd at 4061-64, paras. 203-205. *See also* Verizon NJ I Application at 27 n.28; Verizon NJ I Lacouture/Ruesterholz Decl. at paras. 81-82.

408 For similar reasons, our analysis does not rely on the average offered interval as the most reliable measure of provisioning timeliness. We note that the New York Commission has issued a decision eliminating the average (continued….)

Therefore, consistent with previous section 271 orders, we place greater weight on Verizon's performance under the missed appointment metric as a measure of provisioning timeliness for all loop types.[409]

139. *Voice Grade Loops*. We find that Verizon provisions voice grade loops in a nondiscriminatory manner. We note that voice grade loops comprise the overwhelming majority of loops ordered by competitive LECs in New Jersey.[410] Verizon states that, as of February 2002, it has provided competing carriers in New Jersey with approximately 44,500 voice-grade (i.e., Plain Old Telephone Service (POTS)) loops on a stand-alone basis.[411]

140. We note that Verizon's performance in provisioning voice grade loops has met the relevant parity standard throughout the November-March period with respect to timeliness and quality. Specifically, Verizon achieves parity for all relevant months under the missed appointment metric, which we rely on to measure provisioning timeliness.[412] Verizon also achieves parity for all relevant months under the provisioning quality metric that measures the percentage of installation troubles reported within 30 days.[413] Furthermore, Verizon's performance for repair and maintenance timeliness under the mean time to repair metric also demonstrates parity during the November-March period.[414]

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interval completed PR-2 measure from the Carrier-to-Carrier Performance Reports in accordance with a decision by the New York Carrier Working Group. *See* Verizon NJ I Application App. J, Tab 18 (New York Commission Service Quality Order) at 3. The Carrier Working Group agreed to eliminate this metric because, among other reasons, other metrics capture performance in this area: PR-1 captures the provisioning interval offered, while PR-3 (Percent Completed Within X Days) and PR-4 (Missed Appointments) adequately measure success meeting the promised interval. *See id*. at 3. In past orders, we have accorded much weight to the judgment of collaborative state proceedings and encouraged carriers to work together in such fora to resolve metrics and other issues. *See , e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9057, para. 126.

[409] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4103, para. 288; *see also Verizon Massachusetts Order*, 16 FCC Rcd at 9037-39, paras. 91-92 (regarding use of missed appointments in resale analysis). In the *Bell Atlantic New York Order*, the Commission found the rate of missed installation appointments to be the most accurate indicator of Bell Atlantic's ability to provision unbundled loops. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4103, para. 288. We note that the rate of on time performance under PR 9-01 captures provisioning timeliness for hot cuts in essentially the same manner as missed appointments under PR 4. *See* PR 9-01 (Percent On Time Performance – Hot Cut).

[410] *See supra* n.401.

[411] *See* Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 5.

[412] *See* PR 4-04-3113 (% Missed Appointment – Verizon – Dispatch). *See also Verizon Massachusetts Order*, 16 FCC Rcd at 9065-66, para. 141; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17463, para. 80 n.278. As discussed above, we find that Verizon's performance under the missed appointment metric serves as an adequate measure of provisioning timeliness. *See supra* para. 137.

[413] *See* PR 6-01-3112 (% Installation Troubles Reported Within 30 Days – Loop).

[414] *See* MR 4-01/02/03-3112 (Mean Time to Repair – Total/Loop/Central Office Trouble – Loop.

141. AT&T states that, during the relevant period, Verizon only achieves parity in February with respect to one repair and maintenance metric that we traditionally rely on, the repeat trouble report rate.[415] However, consistent with statements made in its Rhode Island section 271 application, Verizon explains that performance results under this metric may be skewed by the presence of misdirected dispatches that result in overstated repeat troubles.[416] Verizon states that in October, 2001, the New York Commission revised the guidelines for the repeat trouble report rate to account for this problem. Verizon provides performance results for New Jersey using the revised guidelines and urges us to rely on these results instead.[417] Consistent with our analysis in the Rhode Island 271 Order, we agree that the revised metric more accurately reflects Verizon's performance, and find that when Verizon's performance under this metric is recalculated to account for misdirected dispatches, the difference in performance provided to Verizon retail and competitive LECs is not competitively significant.[418]

142. *Hot Cut Activity*. We find that Verizon is providing voice grade loops through hot cuts in New Jersey in a nondiscriminatory manner.[419] Verizon has satisfied its benchmark for

[415] *See* AT&T NJ II Comments at 28. Repeat trouble reports for Verizon retail customers were observed at rates of 17.82%, 18.88%, 17.83%, 17.22% and 17.91%, respectively, during the relevant November-March period. *See* MR 5-01-3112 (% Repeat Reports Within 30 Days). The percentage of repeat trouble reports observed under this metric for competitive LEC customers during the same period was 25.76%, 26.44%, 24.30%, 18.08% and 18.95%. *Id*.

[416] *See* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 88; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at paras. 11, 13.

[417] *See* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 88; *see also* New York Commission Service Quality Order at 4-5. In its order, the New York Commission modified the guidelines for the MR-5 measure to eliminate the so-called "double-trouble" phenomenon, which occurs when a competitive LEC misdirects Verizon to dispatch a technician either inside or outside the central office and no trouble is found. *See* New York Commission Service Quality Order at 4. Verizon explains that when this occurs, the trouble ticket must be closed and the competitive LEC must initiate a second ("double") trouble ticket directing dispatch in the opposite direction. *See* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 88; Verizon NJ II Lacouture/Ruesterholz Decl. at para. 11.

[418] *See Verizon Rhode Island Order*, 17 FCC Rcd at 3342, para. 85. Applying the business rules adopted in New York to the instant proceeding, Verizon's adjusted repeat trouble report rate from November to February would be approximately 19.32%, 19.66%, 18.31% and 14.02%, respectively, for competitive LECs, and 17.82%, 18.88%, 17.83% and 17.22% for the retail comparison group. *See* Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. 10, Tab 6; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 12, Attach. 1.

[419] The hot cut process is designed to move a POTS loop that is in service from Verizon's switch to a competitive LEC's switch. *See* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 91. This process requires a coordinated effort by Verizon and a competing carrier, and includes a number of steps that the parties must take before the actual hot cut is performed. *Id*. at 91-92. These steps include pre-wiring a cross-connection from the competitive LEC's collocation arrangement to Verizon's main distribution frame prior to the actual committed date and time of the migration or cut. *Id*. at 92. A competitive LEC can request that each voice grade hot cut be scheduled for completion during a specific appointment window, with the objective being that the customer be out-of-service for no more than five minutes. *Id*. at 91. Alternatively, if the competitive LEC wants to hot cut a large group of lines, the entire group can be handled on a project basis, where Verizon's technician coordinates with the competitive LEC's technician to cut one loop right after another in a particular central office. *Id*.

on time performance for hot cuts for each month of the relevant November-March period.[420] Although Verizon's installation quality performance for hot cuts is not reported in the New Jersey Carrier-to-Carrier Performance Reports, Verizon does provide a calculation of its performance under the New York guidelines. Verizon states that its installation quality performance has consistently been better than the two percent New York benchmark for trouble reports received within seven days of installation.[421]

143. AT&T claims that the disparity in Verizon's performance under the average interval completed metric for hot cuts indicates that Verizon discriminates against competitive LECs in the provisioning of unbundled loops.[422] We disagree. For the reasons stated above, we believe that the missed appointment metric (in this case, on time performance) is a more probative indicator of provisioning timeliness than the average completed interval.[423]

144. *xDSL-Capable Loops*. We find that Verizon demonstrates that it provides stand-alone xDSL-capable loops in a nondiscriminatory manner. Verizon makes xDSL-capable loops available in New Jersey under approved interconnection agreements,[424] and provides timely order confirmation notices to competitors.[425] Verizon's performance for all relevant months under the missed appointment metric indicates that Verizon provisions xDSL loops in a timely manner.[426] With respect to installation quality, Verizon also maintained parity during the relevant months

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[420] *See* PR 9-01-3114 (% On Time Performance – Hot Cut), Verizon Application II App. B, Tab 2 at 172. As discussed above, we note that the rate of on time performance may serve as an accurate indicator of timely provisioning in the context of hot cut loops. *See supra* n.408; *see also* Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. 12; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 15.

[421] Verizon shows that from November-February it received trouble reports within seven days of installation for an average of only 0.83% of the hot cuts installed. Troubles for competitive LEC hot cuts were reported within seven days of installation in New Jersey at a rate of 0.51 in November, 0.96 in December, 1.22 in January, and 0.79 in February. *See* Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. 13 and Attach. 8; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 16 and Attach. 2.

[422] *See* AT&T NJ I Comments at 23; AT&T NJ II Comments at 28. From November to February, Verizon fails to achieve parity under the PR 2-01-3111 (Average Interval Completed – Total No Dispatch) metric. Verizon's average interval completed for competitive LECs was 6.23, 5.47, 5.36, 4.94 and 5.10 respectively during the relevant November-March period. The average interval completed for Verizon retail was 2.62, 3.66, 2.44, 1.82 and 2.75 during the same period.

[423] *See supra* para. 138.

[424] Verizon NJ I Lacouture/Ruesterholz Decl. at para. 74.

[425] *See* OR 1-04-3342 (% on Time LSRC < 6 Lines – Electronic – No Flow-Through).

[426] *See* PR 4-04-3342 (% Missed Appointments – Verizon – Dispatch).

under the installation quality measure.[427] For almost every month during the relevant period, Verizon also maintained parity for measures of repair and maintenance timeliness and quality.[428]

145. We reject AT&T's contention that Verizon's performance in recent months, with respect to the average interval offered and completed, indicates discriminatory performance in the provisioning of 2-wire xDSL loops where no dispatch is required.[429] As discussed above, we find Verizon's performance under the missed appointment metric to be a more probative indicator of Verizon's provisioning timeliness.[430]

146. *Digital Loops*. We find that Verizon provisions digital loops to competitors in a nondiscriminatory fashion in New Jersey. As an initial matter, we note that digital loops only represent a small number of the total loops provided by Verizon in New Jersey.[431] We find that Verizon provided digital loops to competitors in a timely manner throughout the relevant period.[432] Verizon also achieves parity from November through March, with respect to the measure of installation quality we have traditionally relied on which measures the percent of installation troubles reported within 30 days.[433]

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[427] *See* PR 6-01-3342 (% Installation Troubles Reported Within 30 Days).

[428] *See* MR 4-02/03-3342 (Mean Time to Repair – Loop/Central Office); MR 5-01-3342 (% Repeat Reports Within 30 Days). Verizon maintains parity under the MR 5-01 metric for all months during the relevant period except March, when repeat reports occurred at a rate of 21.08% for Verizon retail and 28.00% for competitive LECs.

[429] AT&T NJ I Comments at 23; AT&T NJ I Comments App. C, Kirchberger/Nurse/Kamal Decl. at para. 114; AT&T NJ II Comments at 28. *See also* PR 1-01-3342 (Average Interval Offered – Total No Dispatch); PR 1-02-3342 (Average Interval Offered – Total Dispatch); PR 2-01-3342 (Average Interval Completed – Total No Dispatch); and PR 2-02-3342 (Average Interval Completed – Total Dispatch).

[430] *See supra* para. 138. Verizon also notes that under the October 2001 Guidelines, the New Jersey BPU eliminated the retail comparison group standard for 2-wire xDSL loops with respect to the PR 1-01/02 Average Interval Offered measures. *See* Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 47; Verizon NJ I Guerard/Canny/DeVito Decl. at para. 72.

[431] Verizon states that, as of the end of February 2002, it had a total of approximately 2,600 2-wire digital loops in service. Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 48. According to Verizon, competitive LECs typically order 2-wire digital loops when DSL loops are not available, and the volume of digital loops that Verizon has provided has steadily declined. Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. 37; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 48. Verizon states that in February 2002, it provisioned only about 70 2-wire digital loops in New Jersey. Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 48.

[432] *See* PR 4-04-3341 (% Missed Appointments – Verizon – Dispatch) indicating parity performance for all relevant months. As discussed above, we find that Verizon's performance under the missed appointment metric is a better indicator of Verizon's provisioning timeliness than performance under the average completed interval metric. *See supra* para. 138.

[433] *See* PR 6-01-3341 (% Installation Troubles Reported Within 30 Days) indicating a lower percentage of installation troubles reported for competitive LECs in November, and performance at statistical parity in December, January, February and March.

147. In addition, we find that Verizon's maintenance and repair performance is nondiscriminatory. For example, Verizon achieved parity performance throughout the relevant period with respect to maintenance and repair timeliness under the mean time to repair metric.[434] Verizon also maintained parity performance during the relevant period for every month except February with respect to a measure of maintenance and repair quality – the percentage of repeat trouble reports within 30 days.[435] We note that Verizon's performance under this measure indicates a large disparity in February with respect to the percentage of repeat reports observed for competitive LECs and Verizon retail.[436] Verizon explains, however, that the small sample size of competitive LEC trouble reports observed in February contributed to the wide fluctuation in performance under this measure.[437] Moreover, we find that this one month disparity is not competitively significant and does not warrant a finding of checklist noncompliance, given that Verizon returns to parity performance under this measure in March.[438]

148. *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 states that, as of February 2002, competitive LECs have in service in New Jersey approximately 400 high capacity DS-1 loops, and no high capacity DS-3 loops, provided by Verizon.[439] Verizon also states that high capacity loops are available in New Jersey under interconnection agreements, and that unbundled access to these loops is offered in the same manner as in other Verizon states the Commission has found to be checklist compliant.[440] According to Verizon, high capacity loops represent only about 0.4 percent of all unbundled loops provisioned to competitors in New Jersey.[441]

149. Verizon's performance under the missed installation appointment metric suggests that Verizon has generally been timely in the provisioning of high capacity loops.[442] Verizon

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[434] *See* MR 4-01-3341 (Mean Time To Repair – Total).

[435] *See* MR 5-01-3341 (% Repeat Reports Within 30 Days).

[436] *See id.*, indicating a rate, in February, of 16.84 for Verizon retail and 40.91 for competitive LECs.

[437] *See* Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 58. Verizon states that additional factors affecting the February results include an administrative error in the maintenance center, and the inability to reach a competitive LEC for a cooperative test. *Id*.

[438] *See* MR 5-01-3341 (% Repeat Reports Within 30 Days).

[439] Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 27.

[440] Verizon NJ I Lacouture/Ruesterholz Decl. at para. 98.

[441] Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 27.

[442] *See* PR 4-01-3200 (Missed Appointment – Verizon – Total), which indicates that Verizon achieved parity for every month of the relevant period. We note that Verizon's performance with respect to DS-1 loops is not separately reported on New Jersey Carrier-to-Carrier Performance Reports. Verizon's performance for DS-1 loops is included, however, in the New Jersey metrics for special services, which include high capacity loops, interoffice (continued….)

achieved parity for repair and maintenance timeliness under the mean time to repair metric for three of the five relevant months.[443] Verizon's performance with respect to repair and maintenance quality also indicates parity for four of the five months during the relevant period.[444]

150. We recognize, however, that Verizon does not achieve parity during the relevant period other than in February with respect to the installation quality metric, the percentage of installation troubles reported within 30 days.[445] Verizon contends that this measure may not be an accurate indicator of its performance because the retail group for this metric (Verizon retail) does not provide a meaningful comparison.[446] For example, Verizon explains that the retail comparison group for this measure includes a large percentage of DS-0 loops, which are less complicated to provision than DS-1 loops.[447] Verizon also argues that the small number of installation trouble reports received during the relevant period for high capacity loops, interoffice facilities, and loop/transport combinations are too few to provide meaningful performance results, and are "not as reliable an indicator of checklist compliance."[448] We do not find that Verizon's performance with respect to troubles reported within thirty days warrants a finding of checklist noncompliance, given that high capacity loops represent less than one percent of the unbundled loops that Verizon provides to competitors in New Jersey, and in light of Verizon's

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facilities, and loop/transport combinations. *See* Verizon NJ I January 22 *Ex Parte* Letter at 1; Verizon NJ II Lacouture/ Ruesterholz Reply Decl. at para. 29.

443 *See* MR 4-01-3200 (Mean Time to Repair – Total). Although Verizon appears to miss parity in November with a mean time to repair of 5.09 for Verizon retail and 8.40 for competitive LECs, low competitive LEC volumes make it difficult to draw strong conclusions regarding this data. Verizon's performance improves to achieve parity in December, January and February. Verizon does, however, miss parity in March with a mean time to repair of 5.36 for Verizon retail and 8.80 for competitive LECs.

444 *See* MR 5-01-3200 (% Repeat Reports Within 30 Days). Although there appears to be a disparity in the rate of repeat trouble reports in November, we do not find this disparity to be competitively significant in light of Verizon's parity of performance in the following four months. *See* Verizon NJ II Application App. B, Tab 2, at 235.

445 *See* PR 6-01-3200 (% Installation Troubles Reported Within 30 Days). Installation troubles reported within 30 days occurred for Verizon retail customers and competitive LEC customers at respective rates of 2.14% and 11.11% in November; 1.71% and 6.90% in December; 1.89% and 8.96% in January; 2.92% and 4.07% in February; and 3.18% and 7.41% in March. *See id.*; Verizon NJ I Guerard/Canny/DeVito Reply Decl. at Attach. 1, page 31; Verizon NJ II Application App. B, Tab 2 at 208.

446 *See* Verizon NJ I Mar. 6 *Ex Parte* Letter at 2.

447 *See id*.

448 Verizon NJ I January 22 *Ex Parte* Letter at 3 (citing *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 36.). Verizon states that it received approximately 6 installation trouble reports in November, 4 in December, 6 in January, and 5 in February. *See* Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. 20; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 29.

generally good performance under the other measures of high capacity loop provisioning, maintenance, and repair discussed above.[449]

151. XO Communications argues that Verizon unreasonably requires XO to submit test orders for high capacity loops before live orders will be accepted.[450] We note, however, that Verizon denies that it has refused to accept XO high capacity loop orders without prior testing.[451] Because XO's assertions concerning this matter are merely conclusory and not supported by any specific evidence, we cannot find that they warrant a finding of checklist noncompliance. XO and Allegiance also argue that Verizon rejects competitive LEC UNE orders under its "no facilities" policy when any "necessary" facilities are unavailable.[452] Verizon explains that it provides unbundled high capacity loops where facilities are available, and that it will also provide competitive LECs with unbundled high capacity loops where not all necessary facilities are available, but the central office common equipment and equipment at the end user's location necessary to create a high capacity loop can be accessed.[453] This is the same policy the Commission found not to expressly violate the Commission's unbundling rules in our Verizon Pennsylvania Order.[454] Accordingly, we decline to find that these allegations warrant a finding of checklist noncompliance.

152. *Line Sharing and Line Splitting*. We find that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, and access to network elements necessary for competing carriers to provide line splitting.[455] Verizon provides

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449 We also note that commenters did not criticize Verizon's high capacity loop performance under this measure.

450 XO NJ I Comments at 14.

451 Verizon NJ I McLean/Wierzbicki/Webster Reply Decl. at para. 13.

452 XO NJ I Comments at 15-17; Allegiance NJ II Comments at 2-5. Allegiance also argues that Verizon has contacted Allegiance customers directly after Allegiance places an order for high capacity loops to determine whether facilities are available and that Verizon has updated customers on the status of available facilities, but has not provided the same information to Allegiance. Allegience NJ II Comments at 4-5. In response, Verizon indicates that it has contacted Allegiance executive management regarding this issue and expects to resolve any miscommunication through further training of Verizon and Allegiance personnel. *See* Verizon NJ II Lacouture/ Ruesterholz Reply Decl. at para. 35. We expect that Verizon will resolve this issue in a business-to-business manner.

453 Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. at 22-23; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 34. Specifically, Verizon states that it will install the appropriate high capacity card in the spare slots or ports of the equipment, and perform cross connection work between the common equipment and the wire or fiber facility between the central office and the customer premises. Verizon states that it will correct conditions on an existing copper facility that could affect transmission characteristics, and terminate the high capacity loop in the appropriate network interface device at the customer premises, such as a Smart Jack or a Digital Cross Connect (DSX). Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. at 22-23; Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 34.

454 *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17470, para. 92.

455 *See supra* n.26.

line sharing pursuant to its interconnection agreements and in accordance with our rules.[456] Verizon states that it provides line sharing to competitive LECs using substantially the same methods and procedures as in the other states where the Commission has found Verizon to be checklist compliant.[457] According to Verizon, it had in service approximately 1,800 line sharing arrangements in New Jersey as of February 2002.[458] We note that Verizon generally has met the relevant performance standards for provisioning, maintaining and repairing line-shared loops for competitors in New Jersey.[459] We also note that commenters in this proceeding do not criticize Verizon's performance with regard to the provisioning, maintenance and repair of line shared loops.

153. We find that Verizon also provides nondiscriminatory access to line-splitting in accordance with our rules.[460] Verizon provides carriers that purchase line splitting with access to the same pre-ordering capabilities as carriers that purchase unbundled DSL loops or line sharing.[461] In addition, working with competitive LECs through the New York DSL Collaborative, Verizon implemented a permanent OSS process for line splitting on October 20, 2001, throughout the Verizon East territory, including New Jersey.[462] As discussed above in our

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[456] *See* Verizon NJ I Lacouture/Ruesterholz Decl. at paras. 131-132.

[457] *Id*. at para. 132 (citing to *Verizon Massachusetts Order*, 16 FCC Rcd at 9081, para. 165; *Verizon Connecticut Order*, 16 FCC Rcd at 14157-58, para. 23; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17467-68, para. 88).

[458] Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 59; Verizon NJ II May 6 *Ex Parte* Letter at 1; Verizon NJ II May 9 *Ex Parte* Errata Letter at 1.

[459] Verizon achieved parity in November, December, January and March during the relevant period and missed only about 2% of competitive LEC non-dispatch line sharing provisioning appointments in February (PR 4-05-3343 (% Missed Appointment – Verizon – No Dispatch). The quality of Verizon competitive LEC line sharing installations under PR 6-01-3343 (% Installation Troubles Reported Within 30 Days) was at parity with Verizon retail during this period. Verizon appears to maintain parity for almost every month during the relevant period under standards for maintenance and repair on which we traditionally rely, but it is difficult to draw further conclusions, given the low competitive LEC volumes observed under these measures. *See* MR 4-02/03-3343 (Mean Time to Repair – Loop/Central Office Trouble); MR 5-01-3343 (% Repeat Reports Within 30 Days).

[460] *See Line Sharing Reconsideration Order*, 16 FCC Rcd at 2111, para. 20 n.36. Verizon states, however, that it has not provided any competitive LEC line splitting arrangements through February 2002. *See* Verizon NJ II Lacouture/Ruesterholz Reply Decl. at para. 59.

[461] Competitive LECs have a choice of submitting pre-ordered queries over the Web GUI, EDI, or CORBA electronic interfaces. *See* Verizon NJ I McLean/Wierzbicki/Webster Decl. Attach. 2 at 12. Verizon confirms that the line splitting ordering process for competitors is at parity with Verizon's retail provisioning. Regardless of whether voice and data are provided through line splitting or line sharing by Verizon retail and VADI, the voice service must be established first, and a second order must be submitted to order DSL. *See* Verizon NJ II June 20 *Ex Parte* Letter at 2.

[462] Specifically, Verizon began offering new OSS functionality that enables a competitor to submit a single Local Service Request (LSR) to add DSL capability to a loop in an existing UNE-platform arrangement while re-using the same network elements, including the loop, if it is DSL-capable. In addition, Verizon implemented the ability for a competitive LEC to convert from line sharing to line splitting using a single LSR, or drop data from a line-splitting (continued….)

section on OSS, we note that AT&T raises challenges to Verizon's ordering process for line splitting, but we find that this process allows competitors a meaningful opportunity to compete.[463] Accordingly, we find that Verizon complies with the requirements of this checklist item with respect to its line sharing and line splitting processes.

IV. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

154. Section 271(c)(2)(B)(i) requires a 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.[464] Based on our review of the record, we conclude as did the New Jersey Board, that Verizon complies with the requirements of this checklist item.[465] In reaching this conclusion, we have examined Verizon's performance in providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings.[466] We note that no commenter faults Verizon's interconnection quality or timeliness, and that the New Jersey Board found that Verizon provides equal-in-quality interconnection on terms and conditions that are just and reasonable and in accordance with the section 271.[467]

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arrangement and revert back to UNE-platform with a single LSR. *See* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 159; *see also* Verizon NJ I McLean/Wierzbicki/Webster Decl. Attach. 2 at 12-13. As of November 30, 2001, Verizon had received 34 commercial line splitting orders from competitive LECs (utilizing the new line splitting OSS capabilities) outside of the pilot. None of these orders were submitted in New Jersey. *See* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 159.

[463] *See supra* para. 135.

[464] 47 U.S.C. § 271(c)(2)(B)(i). *See* Appendix C at para. 17.

[465] For example, among other measurements, interconnection quality was measured in NP 1-01 (% Final Trunk Group Blockage), and interconnection timeliness was measured in PR 4-01 (Missed Installation Appointments) and in PR 2-09 (Average Installation Intervals); *see* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 12. Consistent with the absence of comments by parties, the interconnection metrics identify no areas of concern.

[466] *See*, *e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9092-95, 9098, paras. 183-87, 195. Verizon states that it has modified its New Jersey collocation offering to comply with the Commission's *Collocation Remand Order* and has filed amendments to both its federal and state collocation tariffs to reflect the new order. Verizon also states that its collocation offering meets the requirements of its September 14, 2001 consent decree with the Commission to assure that Verizon complies with the information posting requirements of the Commission's collocation rules.

[467] New Jersey Board NJ I Comments at 17-18. We note that, although AT&T filed testimony before the New Jersey Commission regarding the adequacy of Verizon's collocation performance, the New Jersey Board found that the procedures Verizon uses to provide collocation are consistent with the law. AT&T does not discuss collocation in New Jersey in its comments or reply comments.

155. Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that the evidence presented does not demonstrate a violation of our existing rules.[468] Specifically, Verizon has demonstrated that it has entered into at least one interconnection agreement in New Jersey that allows a competing carrier to interconnect at a single *physical* point in a LATA.[469] Although certain contract language proposed by Verizon in interconnection negotiations and arbitration proceedings in New Jersey might raise potential compliance issues with our current rules governing reciprocal compensation if it were the only terms available to competing carriers in New Jersey, our review is necessarily limited to present issues of compliance.[470]

B. Checklist Item 8 – White Pages Directory Listings

156. Section 271(c)(2)(B)(viii) requires a BOC to provide "[w]hite page directory listings for customers of the other carrier's telephone exchange service."[471] Based on the evidence in the record, we conclude, as did the New Jersey Board,[472] that Verizon satisfies the requirements of checklist item 8.[473]

157. One commenter, XO, alleges that Verizon does not meet the requirements of this checklist item, because Verizon employs manual processing for certain types of directory listing

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[468] *See* AT&T NJ I Comments at 29-32, Cavalier NJ II Comments at 3-6. The commenters generally assert that Verizon improperly distinguishes between the physical point of interconnection (POI) and the point at which the parties are responsible for facilities cost and compensation for transport and termination under Section 251(b)(5), thereby improperly shifting costs from Verizon to the competitive LEC.

[469] *See Petition of Cablevision Lightpath – NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Docket No. TO01080498, *Arbitrator's Recommended Decision* at 18-19, 28, 30 (Dec. 12, 2001) (adopted by the New Jersey BPU on January 9, 2002).

[470] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6357-58, paras. 234-35. We note that the Commission has requested comment on certain issues concerning the allocation of financial responsibility for interconnection facilities in the *Intercarrier Compensation NPRM*. *See Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9634-35, para. 72; 9650-52, paras. 112-14 (2001). In general, our current reciprocal compensation rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination of local traffic that originates on the network facilities of such other carrier. 47 C.F.R. § 51.701.

[471] 47 U.S.C. § 271(c)(2)(B)(viii).

[472] New Jersey Board NJ I Comments at 64.

[473] Verizon NJ I Application at 51; Verizon NJ I Lacouture/Ruesterholz Decl. at paras. 267-285. Verizon states that it provides competitors with access to directory listings in New Jersey in the same manner as it does in other states where it has been approved for Section 271 authority. Verizon NJ I Application at 51. We also note that KPMG reviewed Verizon's provision of directory listings and found that Verizon provides accurate listings to competitive LECs. KPMG Final Report at 229; *see also* Verizon NJ I Lacouture/Ruesterholz Decl. at para. 284.

requests from competitive LECs.[474] We reject, for the same reasons articulated in the *Pennsylvania 271 Order*, that such manual processing gives rise to a *per se* violation of this checklist item.[475] XO further claims that Verizon's manual approach has resulted in numerous unnecessary errors to "as is" requests (*i.e.*, where no change is requested from an existing Verizon directory listing).[476] The New Jersey Board, however, found that XO presented no evidence in support of its claims, and XO provides no additional evidence in this proceeding.[477] Finally, XO asserts that the timeframe provided for review of the Listings Verification Report ("LVR") is not sufficient for it to review and correct all errors prior to publication.[478] Verizon asserts that it provides competitive LECs with thirty business days to review the LVR and that it also provides ongoing electronic access to directory listings that allows competitive LECs to review and make corrections at any time.[479] We find, based on the evidence presented in this record, that Verizon provides sufficient opportunity to competitive LECs to review and correct errors in their directory listings.[480]

C. Checklist Item 13 – Reciprocal Compensation

158. Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[481] In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable.[482] We conclude that Verizon provides reciprocal compensation as required by checklist item 13.

159. Cavalier alleges that Verizon refuses to provide compensation for Verizon-originated traffic that Cavalier carries from the physical interconnection point to Cavalier's

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[474] XO states that the practical effect of Verizon's policy is to subject the majority of competitors' directory listings to re-typing by Verizon's National Marketing Center personnel before the order is actually submitted to Verizon Directory Services. XO NJ I Comments at 10-11.

[475] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17482-83, para. 117; s*ee generally 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. 137-38, and 20638, para. 180.

[476] XO asserts that Verizon manually processes (*i.e.*, retypes the order) the following order types: (1) an order involving migration from Verizon facilities to competitive LEC facilities; (2) an order with greater than six lines; (3) an order that modifies directory listings; or (4) an order deemed "complex." XO NJ I Comments at 10.

[477] New Jersey Board NJ I Comments at 64.

[478] XO NJ I Comments at 13.

[479] Verizon NJ I Lacouture/Ruesterholz Decl. at paras. 280-82.

[480] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17481-82, para. 115.

[481] 47 U.S.C. § 271(c)(2)(B)(xiii).

[482] *Id*. § 252(d)(2)(A).

switch.[483] We note that the New Jersey Board found that Verizon complies with its obligations to provide reciprocal compensation for transportation and termination of local calls to competing carriers in New Jersey.[484] On the record before us, we agree. Verizon acknowledges the existence of a billing dispute with Cavalier concerning the obligation to pay Cavalier both reciprocal compensation and for use of interLATA transmission facilities.[485] Verizon contends, however, that Cavalier is "attempting to charge Verizon twice for the same thing."[486] This billing dispute concerning conflicting interpretations of an interconnection agreement should be resolved by the New Jersey Board.[487] As we have stated in prior section 271 orders, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions."[488]

160. AT&T and XO also argue that Verizon's refusal to pay reciprocal compensation for Internet-bound traffic violates checklist item 13.[489] The Commission previously determined that whether a BOC pays reciprocal compensation for Internet-bound traffic "is not relevant to compliance with checklist item 13."[490] In addition, as the New Jersey Board stated, allegations "that [competitive LECs] are entitled, under their interconnection agreements, to reciprocal compensation for Internet-bound traffic are already the subject of pending complaint proceedings . . . . [and] will be resolved by the Board in due course."[491] There is no evidence on the record before us that warrants our interfering with these ongoing state proceedings. We therefore reject XO and AT&T's claims concerning reciprocal compensation for Internet-bound traffic.[492]

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[483] Cavalier NJ II Comments at 3-4. Cavalier also characterizes this claim as showing non-compliance with checklist item 1, but we have already found that Verizon satisfies that item. *See supra* paras. 154-55.

[484] New Jersey Board NJ I Comments at 73. *See also New Jersey BPU Final UNE Rate Order* at 250-52.

[485] *See* Verizon NJ I Lacouture/Ruesterholz Reply Decl. at para. 65.

[486] *Id*.

[487] Cavalier's allegations are also the subject of an ongoing proceeding in Delaware, where Cavalier's switch is located. Cavalier NJ II Comments at 3-5 & n.1. As stated above, we decline to interfere with an ongoing state proceeding that is expected to resolve a dispute over an interconnection agreement.

[488] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118.

[489] AT&T NJ I Comments at 41-42; XO NJ I Comments at 4-6.

[490] *Verizon Connecticut Order*, 16 FCC Rcd at 14177, para. 67. *Accord Verizon Pennsylvania Order,* 16 FCC Rcd at 17484, para. 119; *Verizon Massachusetts Order*, 16 FCC Rcd at 9108-09, para. 215.

[491] New Jersey Board NJ I Comments at 73. *See also New Jersey BPU Final UNE Rate Order* at 252; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118.

[492] For the same reasons, we reject XO's additional argument that Verizon improperly amended an interconnection agreement in violation of the Commission's *Reciprocal Compensation Order*. *See* XO NJ I Comments at 7 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier*
(continued….)

D. Checklist Item 14 – Resale

161. 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)."[493] Based on the record in this proceeding, we conclude as did the New Jersey Board, that Verizon satisfies the requirements of this checklist item in New Jersey.[494]

162. Metro Teleconnect and Joint Commenters allege that Verizon unreasonably requires resellers to either purchase call blocking services or be liable for casual, third-party, and collect call charges incurred by their end users. Metro Teleconnect and Joint Commenters claim that such a policy impermissibly shifts risks and costs to the reseller from Verizon.[495] In addition, because Verizon's services will not block certain types of calls, including calls from interexchange carriers that have not opted to participate in Verizon's screening process, commenters contend that Verizon effectively requires resellers to pay for both ineffective call blocking services and for all calls that are not blocked.[496] Metro Teleconnect and Joint Commenters argue that such policies do not comply with Verizon's obligations under checklist item 14.

163. We reject these claims and agree with Verizon that its resale policies do not impermissibly shift risks and costs from Verizon to resellers.[497] As Verizon has explained, it offers resellers both a call blocking service, which restricts an end user's ability to make 10-10XXX intraLATA calls, and a Toll Billing Exception screening service, which restricts an end user's ability to accept collect and third-party or third-number calls.[498] Verizon has also explained that not all operator service providers and interexchange carriers have opted to participate in the Toll Billing Exception screening process. As a result, Verizon cannot guarantee that all such calls made by end users will be prevented by subscription to this

(Continued from previous page)
Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 18, 2001) (*Reciprocal Compensation Order*). The D.C. Circuit's ruling in *WorldCom, Inc. v. FCC*, No. 01-1218, 2002 WL 832541 (D.C. Cir. May 3, 2002), does not affect this conclusion.

493 47 U.S.C. § 271(c)(2)(B)(xiv). *See* Appendix C at para. 67.

494 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. *See* Verizon NJ I Application at 55; Verizon NJ II Lacouture/Ruesterholz Decl. at para. 331.

495 Metro Teleconnect NJ II Comments at 5; Joint Commenters NJ II Comments at 5.

496 Metro Teleconnect NJ II Comments at 6; Joint Commenters NJ II Comments at 6.

497 Verizon NJ II McLean/Wierzbicki/Webster Reply Decl. at paras. 66-67.

498 *Id*. at paras. 67-68.

service.[499] We agree with Verizon, however, that the absence of such a guarantee should not place responsibility for charges associated with such calls on Verizon. A reseller, like any other telecommunications carrier – including Verizon, with respect to its retail customers – is responsible for the charges incurred by its own end users. Therefore, we find Verizon's policy in this case is not unreasonable.

E. Remaining Checklist Items

164. In addition to showing compliance with the statutory requirements discussed above, an applicant for section 271 authority must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),[500] item 5 (transport),[501] item 6 (switching),[502] item 7 (911/E911, directory assistance, and operator services),[503] item 9 (numbering administration),[504] item 10 (databases and associated signaling),[505] item 11 (number portability),[506] and item 12 (local dialing parity).[507] Based on the evidence in the record, we conclude as did the New Jersey Board, that Verizon demonstrates that it is in compliance with checklist items 3, 5, 6, 7, 9, 10, 11, and 12 in New Jersey.[508] None of the commenting parties challenge Verizon's compliance with these checklist items.

V. SECTION 272 COMPLIANCE

165. 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."[509] Based

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[499] *Id*. at para. 68. It is the resellers' obligation to inform their end users that Verizon's Toll Billing Exception service is not a guaranteed block, and that some calls may go through and will be billed accordingly.

[500] 47 U.S.C. § 271(c)(2)(B)(iii).

[501] *Id.* § 271(c)(2)(B)(v).

[502] *Id.* § 271(c)(2)(B)(vi).

[503] *Id.* § 271(c)(2)(B)(vii).

[504] *Id.* § 271(c)(2)(B)(ix).

[505] *Id.* § 271(c)(2)(B)(x).

[506] *Id.* § 271(c)(2)(B)(xi).

[507] *Id.* § 271(c)(2)(B)(xii).

[508] Verizon NJ I Application at 48 (item 3), 45-46 (item 5), 43-45 (item 6), 48-50 (item 7), 52 (item 9), 52-53 (item 10), 53-54 (item 11), and 54 (item 12); Verizon NJ I Lacouture/Ruesterholz Decl. at paras. 218-232 (item 3), paras. 188-206 (item 5), 168-87 (item 6), 233-266 (item 7), 286-289 (item 9), 290-315 (item 10), 316-320 (item 11), and 321-326 (item 12). *See* Appendix B.

[509] 47 U.S.C. § 271(d)(3)(B); Appendix C at paras. 68-69.

on the record, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.[510] Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in New Jersey as it does in Pennsylvania, New York, Connecticut, and Massachusetts – states in which Verizon has already received section 271 authority.[511] No party challenges Verizon's section 272 showing.[512]

VI. PUBLIC INTEREST ANALYSIS

166. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[513] At the same time, section 271(d)(4) of the Act states that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."[514] Accordingly, although the Commission must make a separate determination that approval of a section 271 application is "consistent with the public interest, convenience, and necessity," it may neither limit nor extend the terms of the competitive checklist of section

[510] *See* Verizon NJ I Application at 71-76; Verizon NJ I Application App. A, Vol. 3, Tab E, Declaration of Susan C. Browning, at para 4 (Verizon NJ I Browning Declaration). As noted *infra* at Section VI.C, issues concerning premature marketing of Verizon long distance service in New Jersey arose late in this proceeding. On Day 83 of the 90-day review period, AT&T filed an *ex parte* suggesting that Verizon's marketing conduct violated Section 272(g)(2) of the Act, 47 U.S.C. § 272(g)(2). *See Reply of AT&T Corp. in Support of Motion for Emergency Relief*, WC Docket No. 02-67, at 4 and 10 (filed June 17, 2002). We take no position on the validity of AT&T's section 272(g) claims here. Instead, we defer any enforcement action pending the outcome of the Enforcement Bureau's investigation of this matter. *See infra* at paras. 188-190.

[511] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17486, para. 124; *Verizon Connecticut Order*, 16 FCC Rcd at 14178-79, para. 73; *Verizon Massachusetts Order*, 16 FCC Rcd at 9114-17, paras. 226-31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4152-61, paras. 401-21; Verizon NJ I Application at 71-76; Verizon NJ I Browning Decl. at paras. 4- 17.

[512] PricewaterhouseCoopers completed the first independent audit of Verizon's section 272 compliance pursuant to section 53.209 of the Commission's rules. *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, standing alone, are insufficient to establish whether Verizon is in compliance with section 272. Parties were required to submit comments on the audit report no later than January 24, 2002. *See Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, DA 01-2670, Order (rel. Nov. 15, 2001) (extending deadline for filing comments). On February 6, 2002, the independent auditor submitted the unredacted audit report and supplemental report. The Commission granted an extension of time for submitting comment on Verizon's section 272(d) biennial audit report. *See Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, DA 02-372, Order (rel. Feb. 15, 2002) (extending deadline for filing comments). 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.

[513] 47 U.S.C. § 271(d)(3)(C); Appendix C at paras. 70-71.

[514] 47 U.S.C. § 271(d)(4).

271(c)(2)(B). Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

167. We conclude that approval of this application is consistent with the public interest. 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 New Jersey's local exchange market have been removed, and that the local exchange market is open to competition. We further find that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[515]

168. We disagree with commenters who assert that we must, under our public interest standard, consider a variety of other factors as evidence that the local market is not yet truly open to competition, despite checklist compliance.[516] For example, some commenters argue that low levels of residential competition in New Jersey indicate that Verizon's application is premature.[517] We note that Congress specifically declined to adopt a market share or other, similar test for BOC entry into long distance.[518] 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 necessarily undermine that showing. As the Commission has stated in previous section 271 orders, factors beyond the control of the BOC, such as individual competitive LEC entry strategies, can explain low levels of residential competition.[519]

A. Price Squeeze Analysis

169. Commenters allege the existence of a price squeeze in New Jersey that, they assert, compels a finding that the grant of Verizon's NJ II application is not in the public

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[515] *See SWBT Texas Order*, 15 FCC Rcd at 18558-89, para. 419.

[516] Those factors include the level of competitive LEC market share, the level of competition in all geographic regions in New Jersey, the financial strength of competitive LECs, and the failure of other BOCs to enter the market in New Jersey. *See, e.g.,* AT&T NJ I Comments at 32-40; AT&T NJ II Comments at 29; NJCTA NJ I Comments at 4; NJCTA NJ II Reply at 6; NJDRA NJ I Comments at 28-29; NJDRA NJ II Comments at 17-18; Sprint NJ I Comments at 4-11; Sprint NJ II Comments at 2-3; WorldCom NJ I Comments at 5-8.

[517] AT&T NJ I Comments at 47; NJDRA NJ I Comments at 28-29; Sprint NJ I Comments at 11; NJDRA NJ I Reply at 3; NJCTA NJ II Reply at 6.

[518] *See, e.g., Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77; *Sprint v. FCC*, 274 F. 3d at 553-54.

[519] *See Verizon Pennsylvania Order*, 16 FCC Rcd 17487, para. 126.

interest.[520] As an initial matter, no commenter argues that the $35 hot cut rate in New Jersey effects a price squeeze on competitors.[521] XO does contend, however, that the Commission must determine whether Verizon's *previous* hot cut rates of $159.76 and $233.13 constitute a price squeeze.[522] In addition, AT&T re-asserts its NJ I argument that Verizon's UNE rates effect a price squeeze, are discriminatory, and violate checklist item two.[523] WorldCom also incorporates by reference its NJ I argument that the profit margin available to competitors in the New Jersey residential market is insufficient and constitutes a price squeeze.[524] We do not find any of these price squeeze arguments to be persuasive.

170. XO bases its contention that we must evaluate Verizon's previous hot cut rates on the claim that there are material differences between the New Jersey's $35 hot cut rate and New York's $35 hot cut rate. XO specifically alleges that the $35 rate in New Jersey, unlike that in New York, is merely a temporary credit.[525] There is no evidence that the specific hot cut terms in New York differ significantly from those in New Jersey.[526] In fact, as Verizon recently announced, the $35 hot cut rate in New Jersey will remain in effect for at least two years, until March 1, 2004, just as in New York.[527] We therefore reject commenters' argument that that there are material differences between the New Jersey and New York hot cut rates that would warrant

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[520] In our *Vermont Order*, we noted that the Commission intends to release an order addressing the issues posed in *Sprint v. FCC*, 274 F.3d 549 (D.C. Cir. 2001), concerning how we should consider allegations of a price squeeze in section 271 proceedings. *Verizon Vermont Order* at para. 66. We also stated that, because we have not yet addressed the issues remanded by the court, we would consider the specific allegations presented by the parties in that application. *Id*. We follow the same approach in this application. We also incorporate by reference our discussion in the *Vermont Order* of *FPC v. Conway*, 426 U.S. 271 (1976). *See Verizon Vermont Order* at para. 67.

[521] While AT&T claims that the $35 hot cut rate in New Jersey does not comply with TELRIC, *see* AT&T NJ II Comments at 7-9, AT&T does not argue that this rate constitutes a price squeeze. In addition, the Joint Commenters state, without support or elaboration, that Verizon's prices for call blocking services constitute a price squeeze. Joint Commenters NJ II Comments at 9. We reject this unsupported statement, which is contained in a single sentence in the conclusion of the Joint Commenter's comments. *See id.*

[522] XO NJ II Comments at 5 n.13.

[523] AT&T NJ I Comments at 42-43.

[524] WorldCom NJ I Comments at 6 & n.4.

[525] XO NJ II Comments at 3-4.

[526] Contrary to commenters' claims, *see, e.g.*, *id*. at 4 n.10 and AT&T NJ II Comments at 9-10, the existence of a global settlement in New York does not demonstrate that the hot cut rate terms and conditions differ from those in New Jersey.

[527] Verizon NJ II May 8 *Ex Parte* Letter at Attach. 3.

disapproval of the NJ II application,[528] and we also decline to conduct a price squeeze analysis using Verizon's previous hot cut rates of $159.76 and $233.13.[529]

171. We also reject the UNE price squeeze arguments of AT&T and WorldCom from NJ I, which they incorporate by reference in NJ II.[530] Both commenters make related arguments concerning the allegedly insufficient profit margin available to them in the residential telephone market in New Jersey. AT&T specifically claims that Verizon's UNE prices "effect a price squeeze that prevents UNE-based competitors from earning sufficient margins to provide local service economically in competition with Verizon, by imposing wholesale costs on Verizon's competitors that render it impossible for them to offer a retail service that would be price competitive."[531] Similarly, WorldCom argues that "[t]here is a serious price squeeze in New Jersey" because, even in the most favorable zone, "the gross margin between a CLEC's revenues and telco costs using UNE-P would be only $7.44 per line each month, which is not sufficient to cover a company's internal costs of more than $10 per line each month."[532]

172. Significantly, neither commenter claims that it cannot earn a positive gross margin in New Jersey. WorldCom concedes that residential profit margins in the state range from $7.44 to $3.85 and that the statewide average is $5.62.[533] WorldCom suggests, however, that the margin must be at least $10.00 but provides no cost and other data to support that assertion. As we have noted previously, conducting a price squeeze analysis requires a determination of what a "sufficient" profit margin is.[534] Resolving that issue requires more than simply determining what is sufficient for a particular carrier. Although WorldCom alleges that it requires at least $10.00 per line to cover its internal costs, we are concerned here not with WorldCom's own particular profit margin requirements, but with sufficient profit for an efficient competitor. The evidence before us demonstrates that competitive LECs in New Jersey can realize positive margins in 100 percent of the state and that the statewide average gross margin is $5.62. There is no record evidence before us that these profit margins are inadequate for an

[528] *See, e.g.*, XO NJ II Comments at 4 n.10; AT&T NJ II Reply at 5 n.5. For the same reasons, we also reject the NJDRA's contention that Verizon's $35 hot cut rate in New Jersey is "tenuous at best and possibly illusory." NJDRA NJ II Reply at 4.

[529] We similarly dismiss commenters' claims asserted in NJ I, which they incorporated by reference in NJ II, that the $158.76 and $233.13 hot cut rates effect a price squeeze on competitors. *See* AT&T NJ I Comments at 13; XO NJ I Comments at 17-21.

[530] AT&T NJ II Comments at 1 n.1; WorldCom NJ II Comments at i.

[531] AT&T NJ I Comments at 42.

[532] WorldCom NJ I Comments at 6.

[533] *Id*.

[534] *Verizon Vermont Order* at para.70; *Verizon Massachusetts Order,* 16 FCC Rcd at 9008-09, para. 41.

efficient competitor. Thus, the evidence submitted by WorldCom is inadequate for us to determine that a price squeeze exists in the New Jersey residential market.[535]

173. We also note that the New Jersey Board itself considered allegations of a price squeeze in the New Jersey residential market. During a November 20, 2001 state hearing, staff of the New Jersey Board presented evidence that the average residential customer generates approximately $30.00 in monthly revenue.[536] New Jersey Board staff noted that local competitors such as AT&T who are also long distance carriers would receive net access savings or revenues.[537] "As CLEC[s], [companies such as AT&T] would be providing local service to their customer[s] and they would then also be receiving access payments from long-distance carriers and/or they would not be paying access revenues to the ILEC."[538] After subtracting UNE-platform costs from estimated monthly residential rates, staff of the New Jersey Board determined that competitors could expect to earn a monthly gross profit of approximately $6.50.[539] According to the staff, this figure is "probably understated, but it's certainly indicative of an illustrative calculation that a CLEC could utilize in order to be able to decide whether it wants to enter the residential market here in New Jersey en masse."[540] New Jersey Board Commissioner Butler concluded that the staff's price squeeze analysis addressed any "excuse that these [UNE-platform] rates are higher than the income that the competitor would realize if they came in and sold service to a local customer."[541] We commend the New Jersey Board's independent analysis of the price squeeze issue and find that it provides additional support for our conclusion that commenters have not established the existence of a price squeeze in New Jersey.

174. AT&T also contends that its evidence of a price squeeze also establishes that Verizon's New Jersey UNE rates are discriminatory in violation of checklist item two.[542] As

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[535] AT&T submits no cost or other evidence in support of its profit margin claim, and we therefore reject it.

[536] *Board's Review of Unbundled Network Elements, Rates, Terms, and Conditions of Bell-Atlantic-New Jersey, Inc.*, Docket No. TO0060356, *Transcript of Board Meeting* at 33, 39-40 (Nov. 20, 2001).

[537] *Id*. at 34.

[538] *Id*.

[539] *Id*. at 35.

[540] *Id*.

[541] *Id*. at 39.

[542] AT&T NJ I Comments at 43; Letter from Robert W. Quinn, Jr., Vice President, Federal Government Affairs, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission (March 1, 2002) (AT&T NJ I March 1 *Ex Parte* Letter) at 8 (stating that, if "high-end UNE rates foreclose UNE purchasers from economically providing residential competition, then . . . Verizon is engaged in 'discrimination,' and it has not satisfied checklist item two even if the UNE rates . . . fall within some range of cost-based rates"). We do not agree that evidence of a price squeeze necessarily demonstrates discriminatory rates in violation of checklist item two. This is because, as the D.C. Circuit recognized, "the residential market may not be attractive to competitors even if UNE costs are at (continued….)

discussed above, we conclude that AT&T has not established the existence of a price squeeze in the residential market. AT&T submits no other price squeeze analysis in support of this claim. Accordingly, we need not decide whether the existence of a price squeeze in the residential market would constitute a separate violation of checklist item two.[543]

175. For the reasons stated above, we reject commenters' allegations of a price squeeze and conclude that there is no evidence in the record that warrants disapproval of this application based on such contentions, whether couched as a violation of the public interest standard or as discrimination in violation of checklist item two.

B. Assurance of Future Compliance

176. As set forth below, we find that the Incentive Plan (IP) currently in place in New Jersey provides assurance that the local market will remain open after Verizon receives section 271 authorization. We find that the plan falls within a zone of reasonableness and is likely to provide incentives that are sufficient to foster post-entry checklist compliance. 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.[544] 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.[545] The IP, in combination with the New Jersey Board's active oversight of the IP and its stated intent to undertake a comprehensive review to determine whether modifications are necessary, provides additional assurance the local market will remain open.[546]

177. In prior section 271 orders, the Commission has generally reviewed plans modeled after either the New York or the Texas plans.[547] However, the Commission has also

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the lower end of the TELRIC (assuming it to have a material range)." *Sprint v. FCC*, 274 F.3d at 556 (citations omitted). For example, "[i]n many states, . . . higher business rates subsidize some residential rates, and, consequently, certain residential services are priced below cost." *Verizon Vermont Order* at para. 68.

[543] *Accord id.* at para. 72.

[544] *See, e.g., Verizon Pennsylvania Order*, 16 FCC Rcd. at 17487-88, para. 127.

[545] *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.

[546] NJ Incentive Plan at 23.

[547] *See, e.g., Verizon Connecticut Order*, 16 FCC Rcd at 14181, para. 76; *Verizon Massachusetts Order*, 16 FCC Rcd at 9120, para. 238; *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421; *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433.

approved plans that are not modeled on either of those two plans.[548] As the Commission has stated in prior orders, we recognize that states may create plans that ultimately vary in their strengths and weaknesses as tools for post-section 271 authority monitoring and enforcement.[549]

178. We conclude that the New Jersey IP provides incentives to foster post-entry checklist compliance. As in prior section 271 orders, our conclusions are based on a review of several key elements in any performance remedy 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 requirements.[550] We note that the New Jersey IP does not impose an absolute cap on the Verizon's potential liability.[551] The amount of credits and payments due to competitive LECs under the IP increases with the severity and duration of a failure to meet performance standards, and with the number of competitive LECs affected.[552] Under the New Jersey IP, most payments to competitive LECs are based the difference between Verizon's actual performance for that competitive LEC and the applicable standard, rather than overall performance to competitive LECs on an aggregate basis compared to the applicable standard.[553] We also note that the New Jersey IP includes provisions that impose penalties on Verizon for submitting incomplete or revised reports and/or reports found to require revision.[554]

179. As the Commission has stated in prior orders, the IP is not the only means of ensuring that Verizon continues to provide nondiscriminatory service to competing carriers.[555] Moreover, 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.

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[548] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17488-89, paras. 128-129.

[549] *See id.* at 17488, para. 128.

[550] *See, e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9121-24, paras. 240-47; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6377-81, paras. 273-78.

[551] IP Order at 21.

[552] NJ Board NJ I Comments at 76.

[553] NJ Incentive Plan at 3. Therefore, Verizon may have to pay a penalty to one competitive LEC even if it meets the overall performance standard.

[554] IP Order at 22.

[555] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430; *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421; *Verizon Pennsylvania Order* 16 FCC Rcd at 17489, para. 130.

180. AT&T contends that the IP will not be effective at deterring poor performance.[556] AT&T contend that Verizon's performance reports, which the IP uses to determine poor performance, are inaccurate, incomplete, and untrustworthy.[557] We disagree.[558] The metrics adopted by the New Jersey Board are comprised of a combination of metrics in effect in Pennsylvania and New York, states where the Commission has already granted Verizon section 271 authority.[559] We take further comfort in the provisions in the IP which impose penalties for late, inaccurate, or incomplete performance reports.[560]

181. We disagree with AT&T's further assertions that the IP will not deter backsliding due to a variety of deficiencies: (1) the IP contains no penalty for low total flow-through rates; (2) the penalties in the IP are too low or are not correctly correlated with the severity of competitive harm; (3) the IP relies on flawed statistical analysis; (4) Verizon has improperly excluded "projects" in the IP and Carrier-to-Carrier (C2C) Reports;[561] and (5) the IP contains an overbroad *force majeure* provision that places the burden on the competing LEC to challenge Verizon's invocation of the provision.[562] First, although we acknowledge that the IP does not contain penalties for total flow-through, the IP does contain penalties for Verizon's failure to meet achieved flow-through targets of 95 percent for both resale and UNEs.[563] Second, the IP also provides for penalties that increase in severity with the number of misses.[564] Third, the statistical methodology chosen by the New Jersey Board is substantially similar to the methodologies used in other states in which Verizon has received section 271 approval. Fourth, whether special "projects" should be excluded from the C2C reports or the IP is best dealt with as part of the state's oversight of the performance measurements and incentive plan. As discussed above, we find that, at least for purposes of this application, Verizon's performance

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[556] AT&T NJ I Comments at 25-26; MetTel NJ I Comments at 4-5; AT&T NJ I Reply at 23. MetTel NJ II Reply at 17-18.

[557] AT&T NJ I Comments at 25-26.

[558] *See supra* Section III.2.B.2 for further discussion.

[559] NJ Board NJ I Comments at 80.

[560] NJ Board NJ I Comments at 81.

[561] MetTel also claims that the exclusion for projects in the Carrier-to-Carrier Reports means that Verizon's performance data is flawed. *See* MetTel NJ II Reply at 17-18.

[562] AT&T NJ I Bloss/Nurse Decl. at paras. 28-37; AT&T NJ I Reply at 30; AT&T NJ II Comments at 29-30; *See* MetTel NJ II Reply at 17-18 for additional comments on exclusions for "projects".

[563] "Achieved flow-through" measures the percentage of valid order received through the electronic ordering interface (EDI, Web GUI) that are designed to flow through that actually do flow through, but excluding those orders that do not flow through due to competitive LEC errors. "Total flow-through" measures the percentage of valid orders received through the electronic ordering interfaces (EDI, Web GUI) and processed directly to the service order processor without manual intervention. *See* New Jersey C2C Guidelines at 41.

[564] NJ Incentive Plan at 1.

data are generally reliable and reflective of Verizon's wholesale performance.[565] Finally, we agree with Verizon that the *force majeure* conditions available in the New Jersey plan are not materially different from the comparable provisions of the New York and Pennsylvania plans, which the Commission has previously found to provide incentives to foster post-entry checklist compliance.[566]

C. Other Issues

182. Commenters raise several other concerns which they contend support a finding that a grant of this application is not in the public interest.[567] Based on the record before us, we are unable to find that Verizon's processes or practices in the areas raised by commenters have such an anti-competitive impact as to raise public interest concerns necessitating withholding of section 271 approval.

183. The NJDRA contends that approval of Verizon's application for section 271 authority is not in the public interest without first requiring structural separation of Verizon's retail and wholesale operations.[568] However, the Act does not require structural separation as a condition to section 271 approval, and we do not require it here.

184. In addition, Allegiance alleges that Verizon engages in anti-competitive practices that make it difficult for competitors to enter or continue in the New Jersey market.[569] In support of this generalized claim, Allegiance recounts the experience of a single customer.[570] Consistent

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[565] *See supra*, Section III.B.2.b for further discussion.

[566] In the event of a *force majeure* event, Verizon will pay the appropriate remedy under the IP into an escrow account. Interested parties must request that the New Jersey Board institute an appropriate proceeding to resolve the dispute within 30 days after the monthly report. Verizon NJ I Appl., App. J, Tab 2 at 168. Verizon notes that the amount of time interested parties have to file with the New Jersey Board is longer in New Jersey than in New York or Pennsylvania. Verizon NJ I Feb. 19 *Ex Parte* Letter at 3.

[567] *See* Allegiance NJ II Comments at 5-7; NJDRA NJ I Comments at 33; XO NJ I Comments at 26-27; *see also* Joint Commenters NJ II Comments at 7-8, alleging that Verizon does not provide access to almost 12% of its residential access lines. Verizon's testimony that it has provided access to 88.8% of its residential access lines through collocation arrangements does not mean that Verizon has denied competitive LECs access to 12% of its lines. *See Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region InterLATA Service in New Jersey*, New Jersey BPU Docket No. TO01090541, Checklist Declaration on Behalf of Verizon New Jersey Inc., at para. 75.

[568] NJDRA NJ I Comments at 33. We note that the New Jersey Board is considering structural safeguards in a pending case. New Jersey Board NJ I Comments at 87.

[569] Allegiance NJ II Comments at 5-7.

[570] *Id*.

with our section 271 precedent, we find that such anecdotal evidence is not sufficient to demonstrate that this application is not in the public interest.[571]

185. Similarly, XO uses anecdotal evidence to support its claim that Verizon imposes barriers on "CLEC-to-CLEC migrations."[572] Currently, the Commission has no specific rules regarding such migrations; however, they must be executed in accordance with Verizon's general duty of non-discrimination. To the extent that XO believes specific rules are now required, it may file a petition for rulemaking or seek specific rules at the state level. Indeed, as XO notes, the New York Public Service Commission has already starting working on such rules.[573] However, we find that XO has not submitted sufficient evidence for us to conclude that granting this application is not in the public interest.

186. We also disagree with commenters who argue that the Access New Jersey program must be available to participation by carriers other than Verizon as a precondition to satisfying the public interest requirements of section 271.[574] Access New Jersey was established through an agreement reached in April 1997 by the New Jersey Board, Verizon, the Department of Education, and NJDRA. The program allows schools and libraries to receive heavily discounted internet services through Verizon. XO argues that these discounts create barriers to entry in the schools and libraries market.[575] Section 271 review is not the appropriate forum for resolving this issue; rather, Congress established section 253 as the appropriate vehicle for parties to challenge state or local laws that create barriers to competitive entry.[576]

187. We also disagree with commenters' arguments concerning Verizon's declaration of a *force majeure* event in New Jersey following the events of September 11.[577] XO also claims that Verizon is not reporting its compliance with applicable performance standards in New Jersey.[578] As Verizon has not insisted on applying *force majeure* conditions in New Jersey, we do not believe XO's comments in this respect warrant a finding that granting this application is contrary to the public interest.

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571 *See, e.g., SWBT Texas Order* 15 FCC Rcd at 18375, para. 50.

572 XO NJ I Comments at 26-27.

573 *Id.* at 27.

574 *Id*. at 24-26.

575 *Id*. at 25.

576 47 U.S.C. § 253(c).

577 XO NJ I Comments at 22-23 (arguing that it would not be consistent with the public interest to grant this application while Verizon is operating under a *force majeure* declaration, as Verizon may be excused from meeting its contractual obligations to competitors while operating under such conditions).

578 *Id*.

188. Finally, we note that Verizon recently disclosed that it had engaged in two incidents of premature mail solicitations offering long distance service in New Jersey. According to Verizon, approximately 558,000 New Jersey customers received such a solicitation.[579] AT&T subsequently filed a motion seeking an investigation of Verizon's premature marketing of long distance service in New Jersey, issuance of a "standstill order" directing Verizon to immediately cease and desist from advertising long distance service in New Jersey, and denial of this application on the grounds that Verizon has not met the public interest standard of section 271(d)(3)(C) due to these solicitation incidents.[580]

189. Upon learning of the mailings, Verizon notified the Commission and began taking corrective action, including mailing Western Union letters to affected customers to inform them that the direct mailings and bill inserts had been sent erroneously and that Verizon was not yet authorized to provide long distance service.[581] Verizon also began developing additional internal safeguards to prevent incidents of this nature from occurring in the future.[582] Verizon contends that, even if a customer were to call to request long distance service in New Jersey, its customer service representatives have been trained to respond that Verizon is not authorized to provide such service.[583] In addition, Verizon claims – and AT&T has not disputed – that, if a customer service representative were to submit an order to provide Verizon long distance service in New Jersey prior to FCC approval of this application, any long distance calls placed by the customer would be blocked and would not go through because the long distance affiliate's switching equipment has not been modified to allow such calls to be completed.[584]

[579] *See* Letter from Dee May, Asst. Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed May 31, 2002) (Verizon NJ II May 31 *Ex Parte* Letter); Letter from Dee May, Asst. Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 12, 2002) (Verizon NJ II June 12 *Ex Parte* Letter.

[580] *Motion of AT&T Corp. for Emergency Relief*, WC Docket No. 02-67, at 4-5 (filed June 13, 2002). Shortly thereafter, AT&T supplemented its motion with affidavits from two of its employees, one alleging that Verizon had engaged in telephone solicitation for its unauthorized New Jersey long distance service, and the other providing documentation of a confirmed order placed for Verizon long distance service in New Jersey on June 17, 2002, seven days prior to the statutory deadline for review of this application. *See* Letter from Robert H. Quinn, Jr., Vice President, Governmental Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 14, 2002) (AT&T NJ II June 14 *Ex Parte* Letter), attaching Declaration and Affidavit of Dilshad Khawaja, Ph.D.; Letter from Robert H. Quinn, Jr., Vice President, Governmental Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 17, 2002) (AT&T NJ II June 17 *Ex Parte* Letter), attaching Declaration and Affidavit of Michael C. Lamb.

[581] Verizon NJ II May 31 *Ex Parte* Letter at 1-2; *Verizon's Reply to AT&T's Motion for Emergency Relief*, WC Docket No. 02-67, at 3-4 (filed June 14, 2002).

[582] *Verizon's Reply to AT&T's Motion for Emergency Relief* at 4.

[583] Verizon NJ II June 12 *Ex Parte* Letter at 1.

[584] *Id*.

190. We recognize that potential violations of federal telecommunications law could be relevant to the section 271 inquiry.[585] Given the facts presented here, however, because the allegations do not relate to the openness of the local telecommunications markets to competition, we reject AT&T's argument that we should deny or delay this application under the public interest standard.[586] As a result, the Commission need not make any further determination here. Instead, we defer any enforcement action pending the outcome of the Enforcement Bureau's investigation of this matter. Regardless of what enforcement action we may take in the future, BOCs should not market long distance service in an in-region state prior to receiving section 271 approval from the Commission for that particular state, and we remind Verizon and all BOCs to exercise caution in this regard.

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

191. 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.[587] 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.[588]

192. Working with the New Jersey Board, we intend to closely monitor Verizon's post-approval compliance for New Jersey to ensure that Verizon does not "cease[] to meet any of the conditions required for [section 271] approval."[589] 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 New Jersey.

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[585] *See Ameritech Michigan Order*, 12 FCC Rcd at 20749-50, para. 397 ("Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations , evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.").

[586] *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd 4126-27, para. 340; *Verizon Massachusetts Order*, 16 FCC Rcd at 9107, para. 211.

[587] 47 U.S.C. § 271(d)(6).

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

[589] 47 U.S.C. § 271(d)(6)(A).

193. In the course of this proceeding, we have given Verizon's billing system close scrutiny, as have the New Jersey Board, the Department of Justice, and other commenters.[590] We will continue to monitor Verizon's OSS performance closely, especially its performance associated with notifiers, wholesale billing, and electronic order processing. As the Department of Justice recommends, in light of the relative lack of commercial usage of Verizon's OSS systems in New Jersey and Verizon's reliance on a similar manual reconciliation process in New Jersey as in Pennsylvania, we will closely monitor Verizon's wholesale billing performance in New Jersey following section 271 approval, as we are doing in Pennsylvania.[591] 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.

194. Consistent with prior section 271 orders, we require Verizon to report to the Commission all New Jersey carrier-to-carrier performance metrics results and Incentive Plan monthly reports, beginning with the first full month after the effective date of this Order, and for each month thereafter for one year, unless extended by the Commission.[592] These results and reports will allow us to review Verizon's performance on an ongoing basis to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Verizon's entry into the New Jersey.

VIII. CONCLUSION

195. 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 New Jersey.

IX. ORDERING CLAUSES

196. 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 New Jersey, filed on March 26, 2002, IS GRANTED.

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[590] *See* New Jersey Board NJ I Comments at 40-41; Department of Justice NJ I Evaluation at 5-6 n.21; Department of Justice NJ II Evaluation at 5-9; AT&T NJ I Comments at 22.

[591] Department of Justice NJ II Evaluation at 7 and n.27 (citing *Verizon Pennsylvania Order*, 16 FCC Rcd at 17445, at para. 42).

[592] These reports should include the electronic billing metrics identical to those reported in Pennsylvania.

197. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE July 3, 2002.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

LIST OF COMMENTERS

Commenter	Abbreviation
Allegiance Telecom of New Jersey, Inc.	Allegiance
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
Cavalier Telephone Mid-Atlantic, L.L.C.	Cavalier
Metro Teleconnect Companies, Inc.	Metro Teleconnect
Metropolitan Telecommunications	MetTel
National ALEC Association and Prepaid Communications Association (filing jointly)	Joint Commenters
New Jersey Board of Public Utilities	New Jersey Board
New Jersey Division of the Ratepayer Advocate	NJDRA
Sprint Communications Company L.P.	Sprint
WorldCom, Inc.	WorldCom
XO Communications, Inc.	XO

Reply Commenter	Abbreviation
AT&T Corp.	AT&T Reply
Conversent Communications of New Jersey, LLC	Conversent Reply
Metropolitan Telecommunications	MetTel Reply
New Jersey Cable Telecommunications Association	NJCTA Reply
New Jersey Division of the Ratepayer Advocate	NJDRA Reply
Verizon New Jersey Inc., *et al*.	Verizon Reply
WorldCom, Inc.	WorldCom Reply

Appendix C
Statutory Requirements

I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the market for provision of in-region interLATA services on compliance with certain provisions of section 271.[1] BOCs must apply to the Federal Communications Commission (Commission or FCC) for authorization to provide interLATA services originating in any in-region state.[2] The Commission must issue a written determination on each application no later than 90 days after receiving such application.[3] Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate," and the Commission is required to "give substantial weight to the Attorney General's evaluation."[4]

2. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the "competitive checklist."[5] Because the Act does not prescribe any standard for the consideration of a state commission's verification under section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to

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[1] For purposes of section 271 proceedings, the Commission uses the definition of the term "Bell Operating Company" contained in 47 U.S.C. § 153(4).

[2] 47 U.S.C. § 271(d)(1). For purposes of section 271 proceedings, the Commission utilizes the definition of the term "in-region state" that is contained in 47 U.S.C. § 271(i)(1). Section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." *Id.* § 153(21). Under the 1996 Act, a "local access and transport area" (LATA) is "a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." *Id.* § 153(25). LATAs were created as part of the Modification of Final Judgment's (MFJ) "plan of reorganization." *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, "all [BOC] territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest." *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (D.D.C. 1983).

[3] 47 U.S.C. § 271(d)(3).

[4] *Id*. § 271(d)(2)(A).

[5] *Id*. § 271(d)(2)(B).

determine the amount of weight to accord the state commission's verification.[6] The Commission has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.[7]

3. Section 271 requires the Commission to make various findings before approving BOC entry. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[8] In order to obtain authorization under section 271, the BOC must also show that: (1) it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B);[9] (2) the requested authorization will be carried out in accordance with the requirements of section 272;[10] and (3) the BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity."[11] The statute specifies that, unless the Commission finds that these criteria have been satisfied, the Commission "shall not approve" the requested authorization.[12]

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6 *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[a]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions' views any particular weight." *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998).

7 *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

8 47 U.S.C. § 271(d)(3)(A). *See* Section III, *infra*, for a complete discussion of Track A and Track B requirements.

9 *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

10 *Id.* § 272; *see Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom.*, *Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review denied sub nom. Bell Atlantic Telephone Companies v. FCC*, 113 F.3d 1044 (D.C. Cir. 1997); *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

11 47 U.S.C. § 271(d)(3)(C).

12 *Id*. § 271(d)(3); *see SBC Communications, Inc. v. FCC*, 138 F.3d at 416.

II. PROCEDURAL AND ANALYTICAL FRAMEWORK

4. To determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist, as developed in the FCC's local competition rules and orders in effect at the time the application was filed. Despite the comprehensiveness of these rules, there will inevitably be, in any section 271 proceeding, disputes over an incumbent LEC's precise obligations to its competitors that FCC rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application.[13] In the context of section 271's adjudicatory framework, the Commission has established certain procedural rules governing BOC section 271 applications.[14] The Commission has explained in prior orders the procedural rules it has developed to facilitate the review process.[15] Here we describe how the Commission considers the evidence of compliance that the BOC presents in its application.

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

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13 *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19; *see also American Tel. & Tel. Co. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000).

14 *See Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (1996); *Revised Comment Schedule For Ameritech Michigan Application, as amended, for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Michigan*, Public Notice, DA 97-127 (rel. Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 99-1994 (rel. Sept. 28, 1999); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (collectively "271 Procedural Public Notices").

15 *See, e.g.*, *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6247-50, paras. 21-27; *SWBT Texas Order*, 15 FCC Rcd at 18370-73, paras. 34-42; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-71, paras. 32-42.

16 *See SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

17 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

nondiscriminatory basis.[18] Previous Commission orders addressing section 271 applications have elaborated on this statutory standard.[19] First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself.[20] Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[21] For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete."[22]

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

A. Performance Data

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

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[18] *See* 47 U.S.C. § 271(c)(2)(B)(i), (ii).

[19] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6250-51, paras. 28-29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

[20] *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

[21] *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

[22] *Id.*

[23] *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

[24] *Id.*

a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;

b) identify the facial disparities between the applicant's performance for itself and its performance for competitors;

c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers; and

d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

8. The Commission has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.[25] Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually done. Otherwise, the Commission will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met.[26] Thus, the Commission will examine the explanations that a BOC and others provide about whether these data accurately depict the quality of the BOC's performance. The Commission also may examine how many months a variation in performance has existed and what the recent trend has been. The Commission may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.

9. Where there are multiple performance measures associated with a particular checklist item, the Commission would consider the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself,

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[25] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15 FCC Rcd at 18377, para. 55 & n.102.

[26] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3970, para. 59.

may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data are affected by factors beyond a BOC's control, a finding that would make it less likely to hold the BOC wholly accountable for the disparity. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

10. In sum, the Commission does not use performance measurements as a substitute for the 14-point competitive checklist. Rather, it uses performance measurements as valuable evidence with which to inform the judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist.

B. Relevance of Previous Section 271 Approvals

11. In some section 271 applications, the volumes of the BOC's commercial orders may be significantly lower than they were in prior proceedings. In certain instances, volumes may be so low as to render the performance data inconsistent and inconclusive.[27] Performance data based on low volumes of orders or other transactions are not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data are based on a low number of observations, small variations in performance may produce wide swings in the reported performance data. It is thus not possible to place the same evidentiary weight upon – and to draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity.

12. In such cases, findings in prior, related section 271 proceedings may be a relevant factor in the Commission's analysis. Where a BOC provides evidence that a particular system reviewed and approved in a prior section 271 proceeding is also used in the proceeding at hand, the Commission's review of the same system in the current proceeding will be informed by the findings in the prior one. Indeed, to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues. Appropriately employed, such a practice can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties

[27] The Commission has never required, however, an applicant to demonstrate that it processes and provisions a substantial commercial volume of orders, or has achieved a specific market share in its service area, as a prerequisite for satisfying the competitive checklist. *See Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77 (explaining that Congress had considered and rejected language that would have imposed a "market share" requirement in section 271(c)(1)(A)).

involved in the section 271 process, the delay and expense associated with redundant and unnecessary proceedings and submissions.

13. However, the statute requires the Commission to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the Commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states, the Department of Justice. However, the Commission has always held that an applicant's performance towards competing carriers in an actual commercial environment is the best evidence of nondiscriminatory access to OSS and other network elements.[28] Thus, the BOC's actual performance in the applicant state may be relevant to the analysis and determinations with respect to the 14 checklist items. Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.

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

III. COMPLIANCE WITH ENTRY REQUIREMENTS – SECTIONS 271(c)(1)(A) & 271(c)(1)(B)

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

[28] *See SWBT Texas Order*, 15 FCC Rcd at 18376, para. 53; *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53.

[29] *See* 47 U.S.C. § 271(d)(3)(A).

[30] *Id*.

of another carrier."[31] The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.[32]

16. As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under section 271(d)(3)(A)(ii), the Commission shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, "with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist."[33] Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.[34]

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

A. Checklist Item 1 – Interconnection

17. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[35] Section 251(c)(2) imposes a duty on incumbent LECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."[36] In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred "only to the physical linking of two networks for the

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[31] *Id*.

[32] *See Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20633-35, paras. 46-48.

[33] 47 U.S.C. § 271(d)(3)(A)(ii).

[34] *See Ameritech Michigan Order*, 12 FCC Rcd at 20561-62, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. *See* 47 U.S.C. § 271(c)(1)(B); *see also Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.

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

[36] 47 U.S.C. § 251(c)(2)(A).

mutual exchange of traffic."[37] Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network."[38] Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."[39] Finally, the incumbent LEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252."[40]

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

19. In the *Local Competition First Report and Order*, the Commission concluded that the requirement to provide interconnection on terms and conditions that are "just, reasonable, and nondiscriminatory" means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the

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[37] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*). Transport and termination of traffic are therefore excluded from the Commission's definition of interconnection. *See id.*

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

[39] 47 U.S.C. § 251(c)(2)(C).

[40] *Id*. § 251(c)(2)(D).

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

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

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

comparable function to its own retail operations.[44] The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection 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 service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.[47]

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.[48] Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.[49] The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.[50] In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.[51] In response to a remand from the D.C. Circuit, the Commission adopted the *Collocation Remand Order*, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between

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

[45] 47 C.F.R. § 51.305(a)(5).

[46] The Commission's rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-20.

[47] 47 C.F.R. § 51.305(a)(5).

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

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

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

[51] *Deployment of Wireline Services offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4784-86, paras. 41-43 (1999), *aff'd in part and vacated and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), *on recon.*, *Collocation Reconsideration Order*, 15 FCC Rcd 17806 (2000); *on remand*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435 (2001) (*Collocation Remand Order*), *petition for recon. pending*.

collocated carriers, and establishing principles for physical collocation space and configuration.[52] To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6) and the FCC's implementing rules.[53] Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, help the Commission evaluate a BOC's compliance with its collocation obligations.[54]

21. As stated above, checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) *and* 252(d)(1)."[55] Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.[56] The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.[57]

22. To the extent pricing disputes arise, the Commission will not duplicate the work of the state commissions. As noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.[58] Although the Commission has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the Commission's pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.[59]

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[52] *See Collocation Remand Order*, 16 FCC Rcd at 15441-42, para. 12.

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

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

[55] 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

[56] *Id*. § 252(d)(1).

[57] *See* 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

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

[59] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd*., 525 U.S. at 377-86.

23. Consistent with the Commission's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as: (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.[60] In addition, the Commission has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.[61]

24. Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.[62] At some point, states will have had sufficient time to complete these proceedings. The Commission will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

B. Checklist Item 2 – Unbundled Network Elements[63]

1. Access to Operations Support Systems

25. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.[64] The Commission consistently has

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60 *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258 (explaining the Commission's case-by-case review of interim prices).

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

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

63 We note that the United States Court of Appeals for the District of Columbia Circuit recently opined in two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*Local Competition Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002). The court's decision addressed both our UNE rules and our line sharing rules. The Commission is currently reviewing its unbundled network elements rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 2278 (2001), and recently extended the reply comment date to allow parties to incorporate their review and analysis of the D.C. Circuit's recent decision. *Wireline Competition Bureau Extends Reply Comment Deadline for Wireline Broadband and Triennial Review Proceedings*, Public Notice, DA 02-1284 (May 29, 2002). Further, the court stated that "the *Line Sharing Order* must be vacated and remanded." *Id*. The court also stated that it "grant[ed] the petitions for review and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id*.

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

found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[65] For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.[66] The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.[67]

26. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[68] The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.[69] The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).[70] In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.[71] Consistent with prior orders, the Commission examines a BOC's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.[72]

27. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, UNEs, and resale.[73]

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[65] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.

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

[67] *Id.*

[68] 47 U.S.C. § 271(c)(2)(B)(ii).

[69] *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

[70] *Id.*

[71] *Id.* As part of a BOC's demonstration that it is "providing" a checklist item (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service. An examination of a BOC's OSS performance is therefore integral to the determination of whether a BOC is offering all of the items contained in the competitive checklist. *Id.*

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

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

For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.[74] The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.[75] The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.[76]

28. For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[77] In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the Commission will examine, in the first instance, whether specific performance standards exist for those functions.[78] In particular, the Commission will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.[79] If such performance standards exist, the Commission will evaluate whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.[80]

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

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[74] *Id.*

[75] *Id.* For example, the Commission would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

[76] *See id.*

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

[78] *Id.*

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

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

them."[81] The Commission next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[82]

30. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.[83] For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC's systems and any relevant interfaces.[84] In addition, a BOC must disclose to competing carriers any internal business rules[85] and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[86] Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.[87] Although not a prerequisite, the Commission continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.[88]

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

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[81] *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.

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

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

[84] *Id.*

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

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

[87] *Id.*

[88] *See id.*

current demand and will be able to handle reasonably foreseeable future volumes.[89] The most probative evidence that OSS functions are operationally ready is actual commercial usage.[90] Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.[91] Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.[92] If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight. As noted above, to the extent the Commission reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations.[93] Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

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

32. The *SWBT Kansas/Oklahoma Order* specifically outlined a non-exhaustive evidentiary showing that must be made in the initial application when a BOC seeks to rely on evidence presented in another application.[94] First, a BOC's application must explain the extent to which the OSS are "the same" – that is, whether it employs the shared use of a single OSS, or the use of systems that are identical, but separate.[95] To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces,

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[89] *Id.* at 3993, para. 89.

[90] *Id.*

[91] *Id.*

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

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

[94] *See id*. at 6286-91, paras. 107-18

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

systems and, in many instances, even personnel.[96] The Commission will also carefully examine third party reports that demonstrate that the BOC's OSS are the same in each of the relevant states.[97] Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.[98] Second, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, an applicant must submit evidence relating to *all* aspects of its OSS, including those OSS functions performed by BOC personnel.

b. Pre-Ordering

33. A BOC must demonstrate that: (i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces;[99] and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.[100]

34. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.[101] Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is

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[96] The Commission has consistently held that a BOC's OSS includes both mechanized systems and manual processes, and thus the OSS functions performed by BOC personnel have been part of the FCC's OSS functionality and commercial readiness reviews.

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

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

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

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

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

critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.[102] Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, a BOC must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.[103] For those pre-ordering functions that lack a retail analogue, a BOC must provide access that affords an efficient competitor a meaningful opportunity to compete.[104] In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.[105]

(i) Access to Loop Qualification Information

35. In accordance with the *UNE Remand Order*,[106] the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,[107] and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.[108] Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in

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

[103] *Id.*; *see also BellSouth South Carolina Order*, 13 FCC Rcd at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

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

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

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

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

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

a BOC's back office and can be accessed by any of a BOC's personnel.[109] Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.[110] A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.[111] As the Commission determined in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."[112]

c. Ordering

36. Consistent with section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.[113]

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[109] *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

[110] *See SWBT Kansas Oklahoma Order*, 16 FCC Rcd at 6292-93, para. 121.

[111] *Id.*

[112] *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-31.

[113] *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, paras. 163-66. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the "same time and manner" standard. The Commission examines order confirmation notices and order rejection notices using the "meaningful opportunity to compete" standard.

d. Provisioning

37. A BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.[114] Consistent with the approach in prior section 271 orders, the Commission examines a BOC's provisioning processes, as well as its performance with respect to provisioning timeliness (i.e., missed due dates and average installation intervals) and provisioning quality (i.e., service problems experienced at the provisioning stage).[115]

e. Maintenance and Repair

38. A competing carrier that provides service through resale or UNEs remains dependent upon the incumbent LEC for maintenance and repair. Thus, as part of its obligation to provide nondiscriminatory access to OSS functions, a BOC must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.[116] To the extent a BOC performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions "in substantially the same time and manner" as a BOC provides its retail customers.[117] Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to BOC personnel.[118] Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.[119]

f. Billing

39. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.[120] In making this determination, the Commission assesses a BOC's billing processes and systems,

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[114] *See Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, the Commission looks to missed due dates and average installation intervals; for provisioning quality, the Commission looks to service problems experienced at the provisioning stage.

[115] *Id.*

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

[117] *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

[118] *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196.

[119] *Id*.

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

and its performance data. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[121]

g. Change Management Process

40. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.[122] Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[123] By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete.[124] As part of this demonstration, the Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.[125]

41. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS.[126] Such changes may include updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.[127] Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely

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

[122] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd at 19742.

[123] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

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

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

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

[127] *Id.*

notice and documentation of the changes.[128] Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).[129]

42. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the Commission first assesses whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;[130] (2) that competing carriers had substantial input in the design and continued operation of the change management process;[131] (3) that the change management plan defines a procedure for the timely resolution of change management disputes;[132] (4) the availability of a stable testing environment that mirrors production;[133] and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.[134] After determining whether the BOC's change management plan is adequate, the Commission evaluates whether the BOC has demonstrated a pattern of compliance with this plan.[135]

2. UNE Combinations

43. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3)."[136] Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory."[137] Section 251(c)(3) of the Act also requires incumbent

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

[129] *Id.*

[130] *Id.* at 4002, para. 107.

[131] *Id.* at 4000, para. 104.

[132] *Id.* at 4002, para. 108.

[133] *Id.* at 4002-03, paras. 109-10.

[134] *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, the Commission used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. The Commission left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

[135] *Id.* at 3999, para. 101, 4004-05, para. 112.

[136] 47 U.S.C. § 271(c)(2)(B)(ii).

[137] *Id*. § 251(c)(3).

LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.[138]

44. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.[139] Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.[140] Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.[141] Because the use of combinations of UNEs is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the Commission examines section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.[142]

3. Pricing of Network Elements

45. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[143] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[144] Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.[145] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long

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[138] *Id.*

[139] *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

[140] *BellSouth South Carolina Order*, 13 FCC Rcd at 646; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

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

[142] *Id.* The Supreme Court, on May 13, 2002, upheld the Commission's combination rules, finding that the requirement "is consistent with the Act's goals of competition and nondiscrimination, and imposing it is a sensible way to reach the result the statute requires." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1687 (2002) (*Verizon v. FCC*).

[143] 47 U.S.C. § 271(c)(2)(B)(ii).

[144] *Id*. § 251(c)(3).

[145] 47 U.S.C. § 252(d)(1).

run incremental cost (TELRIC) of providing those elements.[146] The Commission also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.[147] The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[148]

46. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996,[149] the Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.[150] On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission's pricing rules were contrary to Congressional intent.[151] The Eighth Circuit stayed the issuance of its mandate pending review by the Supreme Court.[152] The Supreme Court, on May 13, 2002, upheld the Commission's forward-looking pricing methodology in determining costs of UNEs and "reverse[d] the Eighth Circuit's judgment

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[146] *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-79; 47 C.F.R. §§ 51.501 *et seq*.; *see also Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98*, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 (*Line Sharing Order*) (concluding that states should set the prices for line sharing as a new network element in the same manner as the state sets prices for other UNEs).

[147] *See* 47 C.F.R. § 51.315(b).

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

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

[150] *AT&T Corp. v. Iowa Utils. Bd*., 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The Court also held that the pricing provisions implemented under the Commission's rulemaking authority do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id*.

[151] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. granted sub nom. Verizon Communications v. FCC*, 121 S. Ct. 877 (2001).

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

insofar as it invalidated TELRIC as a method for setting rates under the Act."[153] Accordingly, the Commission's pricing rules remain in effect.

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

47. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[154] Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[155] Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[156] Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[157] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[158] Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State."[159] As of 1992, nineteen

[153] *Verizon v. FCC,* 122 S.Ct. at 1679.

[154] 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, n.574.

[155] 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines "utility" to include any entity, including a LEC, that controls "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

[156] 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

[157] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

[158] 47 U.S.C. § 224(b)(1).

[159] *Id*. § 224(c)(1). The 1996 Act extended the Commission's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. (continued….)

states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.[160]

D. Checklist Item 4 – Unbundled Local Loops

48. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[161] The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.[162]

49. In order to establish that it is "providing" unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.[163] Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide 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.

(Continued from previous page)
Local Competition First Report and Order, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

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

[161] 47 U.S.C. § 271(c)(2)(B)(iv).

[162] *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase "network interconnection device" with "demarcation point," and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

[163] *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

50. On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL).[164] HFPL is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions." This definition applies whether a BOC's voice customers are served by 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.[165]

51. To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*. Specifically, a successful BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases.

52. Section 271(c)(2)(B)(iv) also requires that a BOC demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.[166] In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer. To make such a showing, a BOC must show that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.[167]

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[164] *See Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27; *see also* n.63 at C-12 *supra*.

[165] *See Deployment of Wireline Services offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, 2106-07, para. 10 (2001).

[166] *See generally SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. § 51.703(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers "to provide any telecommunications service that can be offered by means of that network element").

[167] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

E. Checklist Item 5 – Unbundled Local Transport

53. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[168] The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.[169] Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.[170] Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.[171]

F. Checklist Item 6 – Unbundled Local Switching

54. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[172] In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to provide unbundled local

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[168] 47 U.S.C. § 271(c)(2)(B)(v).

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

[170] *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

[171] *Id.* at 20719, n.650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

[172] 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to 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.

switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.[173] The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.[174] Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.[175]

55. Moreover, in the *Second BellSouth Louisiana Order*, the Commission required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.[176] The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.[177] Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.[178] Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.[179]

56. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.[180] In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.[181]

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

[174] *Id*.

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

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

[177] *Id.* at 20723, para. 208 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

[178] *Id.*

[179] *Id.*

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

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

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

57. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."[182] In the *Ameritech Michigan Order*, the Commission found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."[183] Specifically, the Commission found that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[184] For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."[185] Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.[186] Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[187] The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).[188] In the *Local Competition Second Report and Order*, the Commission

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[182] 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

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

[184] *Id.*

[185] *Id.*

[186] 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

[187] *Id*. § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) *vacated in part sub nom. People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *overruled in part*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *see also Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

[188] While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to "directory assistance," section 251(b)(3) refers to nondiscriminatory access to "operator services," while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to "operator call completion services." 47 U.S.C. (continued….)

held that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."[189] The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.[190] The Commission specifically held that the phrase "nondiscriminatory access to operator services" means that "a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."[191]

58. Competing carriers may provide operator services and directory assistance by reselling the BOC's services, outsourcing service provision to a third-party provider, or using their own personnel and facilities. The Commission's rules require BOCs to permit competitive

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§§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term "operator call completion services" is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term "operator services" was defined as meaning "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, the Commission concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, "operator call completion services" is a subset of or equivalent to "operator service." *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. As a result, the Commission uses the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

[189] 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order's* interpretation of section 251(b)(3) is limited "to access to each LEC's directory assistance service." *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC's systems but requires "nondiscriminatory access to . . . directory assistance to allow the other carrier's customers to obtain telephone numbers." 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission's conclusion that "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible," *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)'s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. *See Directory Listings Information NPRM*.

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

[191] *Id*. at 19464, para. 151.

LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.[192] Competing carriers wishing to provide operator services or directory assistance using their own or a third party provider's facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.[193] Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required UNEs in the *UNE Remand Order*.[194] Checklist item obligations that do not fall within a BOC's obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs.[195] Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.[196]

H. Checklist Item 8 – White Pages Directory Listings

59. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."[197] Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of

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[192] 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as "thank you for using XYZ Telephone Company." Competing carriers may use the BOC's brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

[193] 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, 15630-31, paras. 152-54 (1999); *Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, First Report and Order, 16 FCC Rcd 2736, 2743-51 (2001).

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

[195] *UNE Remand Order*, 15 FCC Rcd at 3905, para. 470; *see generally* 47 U.S.C. §§ 251-52; *see also* 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the … network element").

[196] *UNE Remand Order*, 15 FCC Rcd at 3905-06, paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

[197] 47 U.S.C. § 271(c)(2)(B)(viii).

telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing.[198]

60. In the *Second BellSouth Louisiana Order*, the Commission concluded that, "consistent with the Commission's interpretation of 'directory listing' as used in section 251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[199] The Commission further concluded, "the term 'directory listing,' as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof."[200] The Commission's *Second BellSouth Louisiana Order* also held that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.[201]

I. Checklist Item 9 – Numbering Administration

61. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established."[202] The checklist mandates compliance with "such guidelines, plan, or rules" after they have been established.[203] A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules.[204]

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[198] *Id*. § 251(b)(3).

[199] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

[200] *Id*. In the *Second BellSouth Louisiana Order*, the Commission stated that the definition of "directory listing" was synonymous with the definition of "subscriber list information." *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the Commission's decision in a later proceeding obviates this comparison, and supports the definition of directory listing delineated above. *See Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

[201] *Id.*

[202] 47 U.S.C. § 271(c)(2)(B)(ix).

[203] *Id.*

[204] *See Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; *see also Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource*
(continued….)

J. Checklist Item 10 – Databases and Associated Signaling

62. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[205] In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)."[206] The Commission also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).[207] In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.[208] At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.[209] In the *UNE Remand Order*, the Commission clarified that the definition of call-related databases "includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases."[210]

K. Checklist Item 11 – Number Portability

63. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[211] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in

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Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 (rel. Dec. 28, 2001).

[205] 47 U.S.C. § 271(c)(2)(B)(x).

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

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

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

[209] *Id*. at 15741-42, para. 484.

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

[211] 47 U.S.C. § 271(c)(2)(B)(xii).

accordance with requirements prescribed by the Commission."[212] The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[213] In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[214] Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability "to the extent technically feasible."[215] The Commission also requires LECs to gradually replace interim number portability with permanent number portability.[216] The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,[217] and created a competitively neural cost-recovery mechanism for long-term number portability.[218]

L. Checklist Item 12 – Local Dialing Parity

64. Section 271(c)(2)(B)(xii) requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[219] Section

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[212] *Id.* at § 251(b)(2).

[213] *Id.* at § 153(30).

[214] *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16459, 16460, 16462-65, paras. 1, 6-9 (1999) (*Fourth Number Portability Order*).

[215] *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

[216] *See* 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

[217] *See* 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

[218] *See* 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

[219] Based on the Commission's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers* (continued….)

251(b)(3) imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays."[220] Section 153(15) of the Act defines "dialing parity" as follows:

> [A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation.[221]

65. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.[222] Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.[223]

M. Checklist Item 13 – Reciprocal Compensation

66. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[224] In turn, pursuant to section 252(d)(2)(A), "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[225]

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

[220] 47 U.S.C. § 251(b)(3).

[221] *Id.* § 153(15).

[222] 47 C.F.R §§ 51.205, 51.207.

[223] *See* 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

[224] 47 U.S.C. § 271(c)(2)(B)(xiii).

[225] *Id*. § 252(d)(2)(A).

N. Checklist Item 14 – Resale

67. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[226] Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[227] Section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[228] Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A).[229] Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory.[230] If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.[231] If a state creates such a limitation, it must do so consistent with requirements established by the Federal Communications Commission.[232] In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail

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[226] *Id*. § 271(c)(2)(B)(xiv).

[227] *Id*. § 251(c)(4)(A).

[228] *Id*. § 252(d)(3).

[229] *Id*. § 251(c)(4)(B).

[230] *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission's authority to promulgate such rules, and specifically upheld the sections of the Commission's rules concerning resale of promotions and discounts in *Iowa Utilities Board*. *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.

[231] 47 U.S.C. § 251(c)(4)(B).

[232] *Id.*

telecommunications services.[233] The obligations of section 251(c)(4) apply to the retail telecommunications services offered by a BOC's advanced services affiliate.[234]

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

68. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[235] The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.[236] Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.[237] In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.[238]

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.[239] The Commission's findings regarding section 272 compliance constitute

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233 *See, e.g.*, *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

234 *See Verizon Connecticut Order*, 16 FCC Rcd 14147, 14160-63, paras. 27-33 (2001); *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

235 47 U.S.C. § 271(d)(3)(B).

236 *See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *petition for review pending sub nom. SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

237 *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

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

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

independent grounds for denying an application.[240] Past and present behavior of the BOC applicant provides "the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272."[241]

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

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[242] Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

71. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.[243] Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the Commission may review the local and long distance markets

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[240] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[241] *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[242] 47 U.S.C. § 271(d)(3)(C).

[243] In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.[244] Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission's analysis of checklist compliance, that markets are open to competition.

[244] *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

Statement of
Commissioner Michael J. Copps

Re: *Application by Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance (d/b/a Verizon Enterprise Solutions) Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in New Jersey (WC Docket No. 02-67)*

Just last week, we granted Verizon's application to provide long-distance services in Maine. That application was a strong one that raised relatively few issues and I commend Verizon and the Maine Public Utilities Commission for their efforts to open the local markets to competition. That decision demonstrated yet again that consumers in rural states benefit as greatly as anyone from the expanded competition contemplated by the Telecommunications Act of 1996.

Today, we grant Verizon's application to provide long-distance services in New Jersey. This application raised several more significant issues, focusing primarily on the pricing of network elements, and in particular the rates for unbundled switching, and on the operations support systems. It is thus a more difficult call.

In fact, the Commission recognized serious questions about the calculation of switching costs. For example, the Commission found there were serious concerns about calculating switch costs based on 251 business days. Although we approve this application due to a comparison to a benchmark rate from another state, I expect that the New Jersey Board will examine these pricing issues and correct any errors that were made in calculating the rates. For the operations support systems, our expectation is that Verizon will continue to work cooperatively with other carriers to reconcile data and to address any issues that develop. To the extent that backsliding occurs or evidence of systemic problems surfaces, the Commission and our state colleagues must be prepared to take action to ensure that carriers continue to meet their statutory market-opening obligations.

Finally, I was troubled by Verizon's actions to market its long-distance services prior to the grant of this application in violation of the law. We note that Verizon has taken steps to communicate its error to every customer that received the announcement. I caution other applicants not to jump the gun or to presume to predict a decision of this Commission.