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October 16, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
CY-B402
Washington, D.C. 20554

Re: 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) and Verizon Global Networks, Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts, CC Docket No. 00-176

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's September 22, 2000 Public Notice Requesting Comments are an original, one paper copy, and a diskette copy of the Comments of Winstar Communications, Inc.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,



Harisha J. Bastiampillai

Enclosures

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

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OFFICE OF THE SECRETARY**

In the Matter of)
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Application of Verizon New England, Inc.)
Bell Atlantic Communications, Inc. (d/b/a)
Verizon Long Distance), NYNEX Long Distance) CC Docket No. 00-176
Company (d/b/a Verizon Enterprise Solutions),)
And Verizon Global Networks, Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in Massachusetts)

**COMMENTS OF
WINSTAR COMMUNICATIONS, INC.**

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

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**COMMENTS OF
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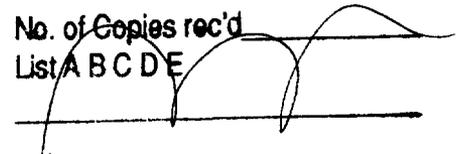
Winstar Communications, Inc. ("Winstar") by undersigned counsel and pursuant to the Public Notice issued September 22, 2000, submits these comments concerning the above-captioned application of Verizon New England, Inc, Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc. ("*Verizon Application*") filed on September 22, 2000. For the reasons stated below, the Commission should deny Verizon's application to provide inter-LATA services in the Commonwealth of Massachusetts.

I. Verizon-MA's Poor Record In Regard to Interconnection Trunking

To satisfy its obligations under Checklist Item 1 – Interconnection – a RBOC must provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of sections 251(c)(2).¹ In reviewing the quality of a BOC's interconnection trunking, the Commission will primarily look at trunk group

¹ *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 Texas, CC Docket No. 00-65, FCC 00-238 at ¶ 65 (June 30, 2000) ("SBCTX Order").*

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blockage and transmission standards as indicators of a BOC's technical criteria and service standards.² The BOC is also required to provide interconnection to a competitor "in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations."³ Among factors the Commission considers in this area are the BOC's provisioning time for two-way trunking arrangements and repair times for troubles affecting interconnection.⁴ In all these areas, Verizon MA's performance has been seriously deficient and significantly undermines the ability of CLECs to compete.

A. Outages/Repair

Winstar has experienced numerous major outages of significant duration on the trunks it obtains from Verizon.⁵ Winstar provided a list of the outages in the Massachusetts Department of Telecommunications and Energy ("MA DTE") proceeding evaluating Verizon's application.⁶ What was particularly problematic was the way Verizon handled the outages. For instance, in September 1999, Verizon, with no notice to Winstar, moved the terminating end of a trunk group over which Winstar exchanges significant traffic with Verizon from one Verizon switch to another. Even worse, Verizon failed to undertake any testing prior to the conversion. Not surprisingly, the switch to which the trunks were moved did not work. This led to numerous Winstar customers being put of service and left unable to make or receive phone calls.⁷

To compound the situation, rather than restore the trunk group to its original configuration pending the determination of the problem with the new switch, Verizon allowed the outage

² *Id.* at ¶ 62.

³ *Id.* at ¶ 63.

⁴ *Id.*

⁵ MA D.T.E. Docket No. 99-271, Comments of Winstar Communications, Inc. Regarding Bell Atlantic's Supplemental Comments at p. 3 (July 18, 2000) ("*Winstar Comments*").

⁶ *See* Attachment to Volume 38, Tab 464 of Appendix B to Verizon's Application.

⁷ *Winstar Comments* at pp. 4-5.

to continue while it tried to fix the problems on the new switch. It could have easily taken prompt remedial action after the first reported outage, but instead it allowed additional customer outages to occur.⁸

Verizon also attempts to minimize the extent of outages due to its deficient performance by unduly attributing many outage hours to CLEC responsibility. Verizon does this by utilizing the same dilatory investigation practices documented in Section III *infra* for maintenance and repair. The procedure goes as follows – a Winstar customer reports an outage to Winstar. Winstar checks its systems to make sure the problem is not on its side. Winstar notifies Verizon. After some time, and numerous CLEC-initiated escalations, Verizon reports that it can find no problem on its side, and stops the “clock” on its responsibility for the outage. Winstar must again review its equipment and systems, once again find no problem on its end, and report that fact back to Verizon. The clock will start ticking again as Verizon resumes its investigation. If Verizon does finally determine that it was responsible, it will not include the time during which Winstar was checking its system as outage time for which Verizon is responsible.⁹ Sometimes Verizon will not take responsibility at all, instead claiming that the problem mysteriously cured itself or was resolved during “testing”. In these situations, Verizon does not take responsibility for the outage at all.¹⁰ These measurement techniques conveniently overstate Verizon’s performance on trunk group blockages by excluding many hours of outage.¹¹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ As AT&T notes, Verizon often plays other games with its trunking statistics to mask its deficient performance. MA DTE Docket No. 99-271, Supplemental Comments of AT&T Communications of New England at p. 43 (July 18, 2000) (“*AT&T Comments*”).

B. Provisioning

Verizon also fails to timely provision trunks. During the period January 2000 to June 2000, out of a total of 89 trunks ordered by Winstar, Verizon only returned 5 firm order commitments (“FOCs”) on time.¹² In Massachusetts, out of 10 trunk orders, Verizon was late in returning the FOC on four of the orders.¹³ Usually when the FOC is late, the trunk is late as well.¹⁴ Other CLECs have experienced similar problems. AT&T sought to place a new switch in the South Boston area to serve its customers more efficiently, but Verizon’s failure to provide trunking in a timely manner delayed placing this switch on line.

CLECs have also been experiencing missed due dates for the completion of trunking orders.¹⁵ AT&T conservatively reported a figure of 64 missed due dates out of a total of 422 orders. This represents missed due dates on over 15% of orders.¹⁶ What is particularly frustrating for CLECs is that many of the missed due dates are on orders that Verizon had initiated to meet the traffic needs of its customers. AT&T would engineer and commit equipment and people to meet the due dates, only to find that Verizon had not issued the orders due to lack of facilities or had arbitrarily designated the order as “customer not ready,” even though Verizon was actually the customer ordering the service.¹⁷

¹² *Winstar Comments* at p. 5. Winstar is being generous on these figures as it counts as an “on-time” order those for which the FOC is late, but Verizon calls in advance to report its late status.

¹³ MA D.T.E. Docket No. 99-271, Winstar Communications, Inc. Responses to Questions of the Massachusetts Department of Telecommunications and Energy, Response to Request No. 1 (August 7, 2000).

¹⁴ Verizon will often issue a FOC only after the desired due date for the provisioning of the trunking. *AT&T Comments* at p. 41.

¹⁵ *AT&T Comments* at p. 41.

¹⁶ *AT&T Comments* at p. 42. In April and May 2000, the percentage of missed trunking dates on AT&T orders was 25% and 32% respectively.

¹⁷ *Id.* at p. 42.

In addition, Verizon attempts to mask its poor provisioning by arbitrarily aggregating a number of orders into a “project.”¹⁸ This lets it reduce the number of orders for which it misses due dates. Verizon also will require a CLEC to accede to a changed due date on orders where it has already missed the due date or is about to miss the due date. If the CLEC does not accede, the order is “backlogged” leading to further delays in provisioning.¹⁹ In most of these cases, Verizon lacks the facilities to complete the order, so it holds the order.²⁰

As a result of Verizon’s untimely provisioning, Winstar customers are unable to reach the person they are calling due to calls being blocked because of the inadequate trunking capacity.²¹ Verizon’s failure to timely provide trunking in regard to its customer’s traffic also ensures that its customers who are attempting to call Winstar customers will not be able to complete the calls. Verizon has little incentive to improve this situation as it knows the customer will likely blame the CLEC for the blocked call. This poor provisioning also impedes the CLEC deployment of switches.²²

C. Clear Channel Trunks

Verizon also fails to provide to CLECs 64 Kbps Clear Channel interconnection trunks in its Cambridge switch. This situation has occurred since July 1999 and was only recently resolved.²³ Verizon’s ability to use such trunks while denying CLEC’s the same quality of interconnection gave it a clear advantage in the type and level of service it offers its customers. For instance, without these trunks, CLECs cannot offer ISDN capability.²⁴ The Clear Channel

¹⁸ *Id.* at p. 43

¹⁹ *Id.* at 44.

²⁰ *Id.*

²¹ *Winstar Comments* at p. 5.

²² *AT&T Comments* at p. 41.

²³ *Winstar Comments* at p. 6.

²⁴ *Id.*

signaling format makes available an additional 8 Kbps of bandwidth for ISDN transmission.²⁵ It is surprising with all the forecasting that Verizon requires that such an exhaustion of capacity occurs, and this lack of facilities directly impedes Winstar's ability to provide a full array of services to its customers.

D. Miscellaneous Trunking Issues

Winstar has also encountered tremendous delays in the provisioning of trunks to its hubs in vital markets. Winstar placed orders for trunks for these hubs and were told months later that Winstar needed to provide forecasts and entrance facilities for these hubs. Verizon improperly designated these hubs as "points of presence" ("POPs"), and stated that Winstar needed to provide entrance facilities. Subsequently recognizing that some locations may have been improperly designated as a POP, Verizon still stated that there were issues of facilities not being available at this location, and the potential for required construction time. Verizon's changing of the rules mid-stream in the ordering process without notification has caused unacceptable delays in the provisioning of trunks to Winstar's vital hubs. It is also interesting to note that Verizon "suggested" that these orders be handled as a project, thereby continuing its practice, demonstrated above, of masking the delays on these orders.

Other CLECs have documented similar problems with Verizon's entrance facility process.²⁶ CLECs have experienced "unduly slow" delays in the provisioning of trunking, particularly those that must go through the entrance facility process.²⁷ The suggestion has been made that these provisioning delays are not mere isolated incidents, but the product of "a Bell Atlantic policy designed to perpetuate Bell Atlantic's monopoly position."²⁸ Winstar's experience

²⁵ MA DTE Docket No. 99-271, Supplemental Comments of Bell Atlantic-Massachusetts at p. 8 (May 26, 2000).

²⁶ See MA D.T.E. Docket No. 99-271, Comments of the Association of Communications Enterprises on Bell Atlantic's May 26, 2000 Filing at pp. 7-9 (July 18, 2000)(*"ASCENT Comments"*).

²⁷ *ASCENT Comments* at p. 9.

²⁸ *Id.*

supports this position. There was no justifiable reason for Verizon to require the “entrance facility” process mid-stream in the ordering process. The shift in policy led to unacceptable delays and detrimentally impacted Winstar given the significance of the hubs involved. The potential for anti-competitive abuse is rife in such a situation. CLECs have to make forecasts as to their need for future capacity. Thus, the BOC will know which hubs are central to a CLEC’s operations. Any delay in provisioning of trunks to such hubs not supported by a legitimate business justification needs to be carefully scrutinized by this Commission to ensure that anti-competitive motives are not at play.

Winstar is providing precisely the type of facilities-based competition that is the ultimate goal of the Telecommunications Act of 1996. Its ability to obtain interconnection trunking to facilitate the exchange of its traffic with that of Verizon is central to the provisioning of its services. Verizon’s trunk provisioning is deficient in numerous areas and undermines the ability of Winstar to compete effectively in Massachusetts. Verizon should not be allowed Section 271 authority in Massachusetts when its performance deficiencies undercut the very goal that the Section 271 requirements were designed to deliver; *i.e.*, true facilities-based competition in Massachusetts.

II. The Commission Should Not Allow Shortcuts to Section 271 Authority In Massachusetts

The next year most likely will witness a flurry of Section 271 applications, including the possibility that the Commission will have to evaluate multiple Section 271 applications at one time. Understandably, the Commission will look for ways to streamline the review process to handle the anticipated volume. Winstar urges this Commission not to allow this streamlining to dilute its standards of review of Section 271 applications, and to ensure that each applicant demonstrates its Section 271 qualification on the merits of its particular application and not merely as compared to another application.

The regional Bell Operating Companies (“RBOCs”), of course, will be quick to offer suggestions as to how to “streamline” the process, because such quick, cursory reviews may enable them to sneak deficiencies past the Commission’s review. The application at hand marks the unveiling of what is sure to be a common RBOC strategy; *i.e.*, the attempt to bootstrap the application of a prior Section 271 approval. In this case, Verizon is not shy in hiding its intent to rely heavily, if not completely, on its New York 271 grant. Verizon begins in its introduction by stating that:

. . . Verizon’s checklist offerings in Massachusetts, as well as the systems and processes used to provide them, are substantially the same as those in New York. Therefore, many of the conclusions that the Commission reached in approving Verizon’s section 271 application in New York apply in Massachusetts as well.²⁹

There is nothing wrong with alluding to performance in another state, and Verizon’s performance in New York or any other state should be a relevant and useful consideration in evaluating the viability of this application. The danger is when the RBOC uses performance in another state as a virtual substitute for performance in the applicable state. Verizon’s application is so replete with references to New York that it reads as if it just took its New York application and substituted the word “Massachusetts” throughout.

Verizon takes this “comparative application” approach to troubling extremes by arguing that the purported similarities between its operations in Massachusetts and New York allow a “presumption” that it satisfies Section 271’s requirements. Verizon boldly asserts:

The significance of this [similarities between MA and NY] is straightforward: It establishes a presumption that the manner in which Verizon provides the checklist items in Massachusetts likewise meets the Act’s requirements. As the Commission has previously held, where an aspect of an applicant’s checklist showing is ‘materially indistinguishable’ from a showing in another State, the Commission

²⁹ *Verizon Application* at p. 1.

will use its prior determination ‘as a starting point for [its] review’ and only ‘review any new data or information’ from the parties ‘to determine whether a different result is justified.’³⁰

Not only does this “presumption” have no rooting whatsoever in the language of the Act, Verizon distorts the Commission precedent that it uses to support its assertion. Verizon cites to this Commission’s *BellSouth Louisiana Order* as support for its proposition. In that proceeding, the Commission noted that since BellSouth operations support system (“OSS”) was a region-wide system, and the Commission had found BellSouth’s region-wide OSS to be deficient in its *BellSouth South Carolina Order*, the Commission used “the determinations made in that Order as a starting point for our review of BellSouth’s OSS in its Louisiana application and review any new data or information that BellSouth has provided to determine whether a different result is justified.”³¹

There is no support in that Order for any “presumption” of checklist compliance, and, in fact, the Act would not authorize such a presumption. Section 271(c)(2)(A)(ii) explicitly specifies that checklist compliance has to be demonstrated for the particular state for which authorization is sought.³² In its order granting Verizon’s New York application, the Commission has stated that “in evaluating checklist compliance in each application, we consider the BOC’s performance within the context of each respective state.”³³ The BOC has the burden to establish

³⁰ *Verizon Application* at p. 8.

³¹ *Application By BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, FCC 98-17, 13 FCC Fcd. 6245 at ¶ 3 (1998).

³² 47 U.S.C. § 271(c)(2)(A)(ii).

³³ *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*, FCC 99-404, CC Docket 99-295, Memorandum Opinion and Order at ¶ 55 (December 22, 1999)(“*BANY Order*”); *SBCTX Order* at ¶ 55.

a *prima facie* case of checklist compliance.³⁴ Verizon's purported presumption and reliance on its New York performance are transparent attempts to evade the requirements of the Act and scrutiny by this Commission. The starting point and ending point of this Commission's review must be Verizon's performance in Massachusetts, and Verizon must demonstrate that it has met the Section 271 requirements for the State of Massachusetts. In fact, perhaps the strongest argument for refraining from blindly applying Verizon's New York experience to Massachusetts comes from Verizon itself. Verizon, then Bell Atlantic, noted in a separate proceeding before this Commission:

An incumbent operating in the mountains of West Virginia clearly faces different operational challenges and local conditions than an incumbent operating in the plains of Iowa or on the crowded streets of New York City. The level at which an incumbent carrier can efficiently and effectively provision various UNEs depends in large part on the myriad of local conditions it faces.³⁵

Thus, while Verizon's performance in New York may be illuminating for purposes of this proceeding, Verizon's application must stand or fall on its checklist performance in Massachusetts. There can be no shortcuts for Verizon to the finish line.

III. Verizon OSS Deficiencies Preclude Section 271 Approval

In regard to its OSS performance, Verizon unabashedly ties its fate to its OSS performance in New York. Verizon asserts that the "OSS used in Massachusetts are in most instances

³⁴ *SBCTX Order* at ¶ 49.

³⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications, Inc., Transferee; Common Carrier Bureau and Office of Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals*, CC Docket Nos. 98-147, 96-98, 98-141, and NSD-L-00-48, Comments of Bell Atlantic at p. 5 (June 23, 2000) ("*Bell Atlantic ALTS Petition Comments*").

carbon copies of those used in New York.”³⁶ However, Verizon’s MA and NY OSS are not the identical twins that Verizon would like us to believe. The differences start at their points of origin, as the MA OSS was developed by New England Telephone while the NY OSS was developed by New York Telephone.³⁷ When one CLEC did an analysis of the interfaces of the entire Verizon region, numerous differences in business rules and differences in the EDI interfaces were discovered throughout the region.³⁸ There were also differences in ordering codes and feature identifiers used to order products in Massachusetts as compared to New York.³⁹ Only in February of this year did Bell Atlantic begin to fulfill its commitment of creating uniform interfaces, but many differences between the MA and NY system still remain, and the new uniform interface has not been truly tested.⁴⁰ There are also differences that permeate other stages and aspects of the two OSS systems including differences in the back-end systems and in the order, provisioning, and billing stages.⁴¹ Thus, as WorldCom noted in the MA DTE pro-

³⁶ *Verizon Application* at p. 8.

³⁷ *Investigation by the Department of Telecommunications and Energy upon its own Motion pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of New England Telephone and Telegraph d/b/a Bell Atlantic-Massachusetts as Part of its Application to the Federal Communications Commission for entry into the in-region, InterLATA (long distance) telephone market*, Massachusetts Department of Telecommunications and Energy Docket No. 99-271, Joint Declaration of Sherry Lichtenberg and John Sivori On Behalf of WorldCom, Inc. at ¶ 23 (“*WorldCom Declaration*”).

³⁸ *Id.* at ¶ 24. It is also interesting to note that in the context of litigating when it was required to upgrade its OSS to support line sharing, Verizon argued that the upgrades could only be done on a region-by-region basis across its five regions, and that each region must be converted separately. Verizon had New York and Massachusetts in different regions. *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17 filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000*, MA DTE Docket No. 98-57 Phase III, Order at p. 21 (Sept. 2000)(“*MA Line Sharing Order*”). Surely if the OSS systems were “carbon copies” of each other the upgrades could have been done simultaneously.

³⁹ *WorldCom Declaration* at ¶ 24.

⁴⁰ *Id.* at ¶ 25.

⁴¹ *Id.* at ¶¶ 26-28.

ceeding, based on these differences, “Bell Atlantic cannot demonstrate the operational readiness of its OSS in Massachusetts by relying on its New York experience.”⁴²

Verizon’s reliance on its NY OSS is also ironic, and somewhat risky, as it was Verizon’s OSS performance woes in New York that showed how unprepared Verizon’s OSS was for large-scale commercial usage. On February 7, 2000, this Commission commenced an investigation into Bell Atlantic New York’s potential violations of Section 271 in connection with lost or mishandled orders submitted by its local service competitors. The Commission found:

Evidence submitted by Bell Atlantic in this investigation suggests that Bell Atlantic’s performance in providing order acknowledgments, confirmation and rejection notices, and order completion notices for UNE-Platform local service orders deteriorated following Bell Atlantic’s entry into the New York long distance market. Data submitted by Bell Atlantic indicates that the problem appears most acute for January and February of this year. Specifically, Bell Atlantic indicates that it received trouble tickets from competing carriers in November 1999 regarding 33,000 orders; 60,000 in December 1999, and more than 86,000 in January 2000. For the first eleven days of February 2000, Bell Atlantic reports receiving trouble tickets regarding another 48,000.⁴³

The number of affected orders is astounding. Based on this terrible OSS performance, Bell Atlantic was required to make a contribution of \$3,000,000 to the U.S. Treasury and the NY PSC had ordered Bell Atlantic to make \$10 million in rebates to competitors because of electronic ordering problems.⁴⁴

While its OSS problems in New York alone no more form a basis for denial of this application than would adequate OSS performance in New York form a basis for approval, it

⁴² *Id.* at ¶ 28.

⁴³ *Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to provide In-Region, InterLATA Service in the State of New York*, Order, FCC 00-92, 15 FCC Rcd. 5413 at ¶ 7 (March 9, 2000).

⁴⁴ Edie Herman, *FCC Decides BA Has Satisfied OSS Requirements in N.Y. State*, *Communications Daily*, Vol. 20, No. 120, June 21, 2000 at p. 2.

does call for heightened scrutiny by this Commission of Verizon's OSS performance in Massachusetts. The Commission needs to ensure that the same disastrous consequences do not await CLECs and their customers in Massachusetts. As Winstar demonstrates below, the seeds for such a catastrophe exist in Massachusetts as Verizon's OSS has not withstood the rigors of large-scale commercial usage and many of the performance deficiencies that occurred in New York are appearing in Massachusetts.

The crippling effect to competition caused by such deficiencies cannot be underscored enough. Thousands of CLEC orders were lost and those that were processed were not accompanied by timely status and completion notices. The New York Public Service Commission found that the deficiencies were "substantially delaying the ability of consumers to move their service to competitive local exchange companies."⁴⁵ While Bell Atlantic was fined, these fines cannot eradicate the irreparable harm suffered by the CLECs who had their orders lost. The ordering process is the first substantive connection between the CLEC and its customer. It is the time in which the CLEC lays the groundwork of future business relationships with its customer. If this process is undermined by OSS deficiencies, it will leave a negative impression with the customer whose confidence in the CLEC will be undercut despite the fact that the CLEC had nothing to do with the lost or botched order. The Commission needs to be particularly vigilant to ensure that Verizon's OSS satisfies the checklist requirements prior to granting it Section 271 authority.

⁴⁵ *Complaint of MCI WorldCom, Inc. against Bell Atlantic-New York concerning Billing Completion Notices, Firm Order Commitments, Acknowledgments and Tracking Numbers and Complaint of AT&T Communications of New York, Inc. against Bell Atlantic-New York concerning Acknowledgments, Completion Notices, and Pre-Order Outages*, Case Nos. 00-C-0008 and 00-C-0009, Order Directing Improvements to Wholesale Service Performance at p. 1 (NY PSC Feb. 11, 2000).

A. Legal Standard

Checklist Item 2 requires that a BOC provide non-discriminatory access to network elements.⁴⁶ In analyzing whether a BOC provides non-discriminatory access to OSS for Section 271 purposes, the Commission has adopted a two-step approach. First, the Commission determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”⁴⁷ The Commission has traditionally focused on the functionality and capacity of the BOC’s OSS in its analysis of this step.

In the second step, the Commission determines if “the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”⁴⁸ It looks at performance measures and other evidence of commercial readiness. The Commission evaluates performance in the five stages of OSS – pre-ordering, ordering, provisioning, maintenance/repair and billing. In this case, both the general functionality/capability of Verizon MA’s OSS and its performance at the various stages of the OSS process demonstrate that Verizon is not satisfying the requirements of the competitive checklist in regard to OSS.

B. Functionality and Capacity of Verizon MA OSS System

The Commission requires a 271 applicant to demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers’ access to OSS

⁴⁶ 47 U.S.C. § 271(c)(2)(B)(ii).

⁴⁷ *SBCTX Order* at ¶ 96.

⁴⁸ *Id.*

functions.⁴⁹ There are serious concerns about the functionality and capacity of Verizon MA's OSS systems. These concerns are raised not only by CLECs, but also by the Attorney General of Massachusetts ("MA AG"). The Attorney General has recommended that Verizon's application by the MA DTE not be approved until concerns about OSS are addressed. The AG's Office is concerned about Verizon MA's capability of handling increased volumes of orders once CLECs begin mass marketing their local services, and fears a New York-like scenario of thousands of lost orders unless OSS issues are resolved.⁵⁰

The MA AG noted that under KPMG's reporting procedures, KPMG publishes reports of various "observations" of suspected deficient performance, which may or may not be resolved, and which may or may not be escalated into the more serious category of "exceptions." Verizon and CLECs are given an opportunity to comment on the observations and Verizon has the opportunity to resolve the problem. If the problem is resolved to KPMG's satisfaction, the "observation" is closed; if not, resolution is deferred to a later date. As of June 29, 2000, KPMG had noted over 100 primary observations and numerous sub-issues, and 32 primary observations and several sub-issues remained open.⁵¹ An observation is escalated into a "exception" if KPMG determines that the element of the test will fail. As of June 29, KPMG had noted nine primary exceptions and many sub-issues, and six of those exceptions and several sub-issues remained open.⁵²

⁴⁹ *Id.* at ¶ 97.

⁵⁰ MA DTE Docket 99-271, Comments of the Attorney General on Bell Atlantic's May 26, 2000 Supplemental Filing at p. 13 (July 18, 2000) ("*MA AG Comments*").

⁵¹ *Id.*

⁵² *Id.* at 13-14.

Incredibly, Verizon claims it passed the KPMG test with “flying colors.”⁵³ It strains credulity to believe that serious OSS deficiencies, which the MA AG highlighted at the end of June, had all suddenly been resolved by the time KPMG issued its report on September 7, 2000. Further undermining the credibility of Verizon’s assertion is the fact that the month of August saw Verizon in the throes of a work stoppage, which Verizon admits consumed its resources and will undoubtedly cause it to miss benchmarks in August.⁵⁴ In fact, Verizon only has performance data up to July 2000. So even if Verizon miraculously managed to address all outstanding OSS deficiencies noted as of June 29, it would have done so only for one month. This would not provide the type of sustained compliance with performance benchmarks required by the 271 checklist. The Commission should carefully scrutinize performance data to ensure that all outstanding OSS issues have been resolved and Verizon has demonstrated compliance with applicable benchmarks for a sustained period.

It is highly doubtful that many of the observations and exceptions noted have been truly resolved as KPMG was under severe time pressure to get its report to the MA DTE. As WorldCom notes, KPMG “has dismissed some observations as anomalies and has remarked that it does not have time to conduct a re-test.”⁵⁵ These observations pertained to vital elements such as “flow through.” KPMG has failed to conduct root cause analysis to ensure that problems have been fixed. Instead it would close out problems without root cause analysis or testing.⁵⁶ This is in stark contrast to Pennsylvania, where the Pennsylvania Public Utilities Commission ordered

⁵³ *Verizon Application* at p. 9.

⁵⁴ *Verizon Application* at p. 9, fn. 10.

⁵⁵ *WorldCom Declaration* at ¶ 42.

⁵⁶ *Id.* at ¶ 43.

Bell Atlantic-PA to “analyze, reveal and fix the root cause of problems identified by KPMG during the Pennsylvania OSS tests.”⁵⁷ The PA PUC did this because of “uncertainty as to whether the OSS of BA-PA is capable of handling increased volumes when CLECs begin mass-marketing of their local services.”⁵⁸

There is no assurance that Verizon’s MA OSS has this capability. The KPMG test has not been as vigilant in Massachusetts as it was in New York.⁵⁹ To compound matters, Verizon MA’s OSS has not been exposed to the large-scale commercial usage that the NY OSS had at the time of the New York application. In the month preceding their respective applications, Bell Atlantic processed 70,000 UNE-P orders in New York, and SWBT processed 203,000 UNE-P orders.⁶⁰ In contrast, in the first seven months of 2000, Verizon MA processed only 10,000 UNE-P orders.⁶¹ In addition, during this period, Verizon rolled out a new version of its Local Service Ordering Guidelines, LSOG 4, which likely will become the interface of choice for most CLECs.⁶² The KPMG test focused on another interface, LSOG 2. KPMG has only conducted limited testing of LSOG 4. CLECs conducted their own test of LSOG 4 and found key deficiencies.⁶³ AT&T found that as it sent higher volumes of orders in June in its production testing of

⁵⁷ *MA AG Comments* at p. 13, fn. 38.

⁵⁸ *Id.* at p. 13.

⁵⁹ *See WorldCom Declaration* at ¶¶ 34-43.

⁶⁰ *WorldCom Declaration* at ¶ 22 citing *BANY Order* at ¶ 169 and *SBCTX Order* at ¶ 249.

⁶¹ *Verizon Application* at p. 47. One of the major reason for this lack of commercial volume has been the exorbitant UNE rates Verizon charges in Massachusetts which has impeded competitive entry. *See* MA DTE Docket No. 99-271, Letter from WorldCom to Mary Cottrell, MA DTE at p. 2 (July 18, 2000).

⁶² *WorldCom Declaration* at ¶¶ 32-33.

⁶³ *WorldCom Declaration* at ¶ 37. For instance, Verizon’s pre-order system would return times to CLECs for appointments that did not comport with Verizon’s business rules. Thus, a CLEC would tell its customer that a Verizon rep would arrive by 5 pm, when Verizon believed it had until 7 pm to show up. *Id.*

LSOG 4, Verizon's OSS performance in regard to timely notices deteriorated. As AT&T notes, without proper volume and stress testing of LSOG 4, there is no way of knowing if Verizon MA's OSS can handle commercial volumes.⁶⁴

It does seem that the stage is set for another OSS disaster, this time in Massachusetts. If anything, the situation surrounding Verizon MA's OSS threatens to be more ripe for such an occurrence as neither third-party testing nor actual commercial experience can vouch for Verizon MA's OSS. In the next section we will focus on specific deficiencies in the various stages of Verizon MA's OSS.

C. The Stages of Verizon MA OSS

1. Pre-Ordering

The pre-ordering stage encompasses those activities that a carrier undertakes to gather and verify the information needed to place an ILEC service order to accommodate a customer's requirements. Before the CLEC can even begin to place the order, the CLEC must determine what the ILEC is able to provide. The CLEC operates at an information disadvantage vis-a-vis the ILEC, whose database already indicates what services can be provided to a particular end-user, and the CLEC must overcome this disadvantage quickly to retain the customer. As the Commission has noted:

[g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.⁶⁵

⁶⁴ *AT&T Comments* at p. 20.

⁶⁵ *BANY Order* at ¶ 129.

The general standard that the Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations is that the BOC must demonstrate that “it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC’s] retail operations.”⁶⁶ This is appropriate because most pre-ordering functions that support service through UNEs are analogous to the pre-ordering of a BOC’s retail services. For those pre-ordering functions that lack a retail analogue, the BOC “must provide access that affords an efficient competitor a meaningful opportunity to compete.”⁶⁷

The Commission has previously 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.”⁶⁸ It is not enough, however, that the CLEC have access to the same information as does the BOC. Rather the CLEC must also have the ability to retrieve this information and process the information on terms and conditions on a par with those applied to the ILEC’s retail services.

CLECs have been experiencing problems in regard to accessing Verizon’s pre-ordering interfaces. In May, AT&T could not process pre-order transactions in New York for over three consecutive days. In June, it experienced on six separate occasions shutdown of the pre-order service ranging from one hour to a full day.⁶⁹ In an eight month period, the Web-GUI interface,

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *AT&T Comments* at p. 18.

which is used by over 75 CLECs for pre-ordering functions, experienced a total of 225 unscheduled outages. Between November and June, there were over 328 hours of unscheduled outages.⁷⁰ This does not count “scheduled” outages. WorldCom calculated that the GUI was available only 88.9% during prime time hours which is far less than the 99.5% availability this Commission has found to be an appropriate and reasonable.⁷¹ In addition to shutdowns, the pre-ordering systems also experience numerous slowdowns. During peak business hours, there are continuous time-outs when trying to access the system with Bell Atlantic’s only preferred solution being for the CLEC to re-boot.⁷² WorldCom determined that it faced nearly 106 hours of slowdowns between November and June.⁷³

CLECs use these interfaces to perform pre-ordering, ordering and maintenance/repair functions. Thus, these periods of inaccessibility render CLECs incapable of processing orders and repair requests. This will obviously try the patience of their customers at both ends of the process, particularly those customers waiting for repairs. It also greatly increases the work that will have to be performed by a CLEC’s employees as orders will have to be processed manually which increases the time, expense, and possibility of error. Only CLECs use the GUI, so contrary to Verizon’s assertions, the outages do not impact CLECs and Verizon equally.⁷⁴ CLECs,

⁷⁰ *WorldCom Declaration* at ¶ 97.

⁷¹ *WorldCom Declaration* at ¶¶ 93-100. Prime time hours are 6:00 a.m. to midnight Eastern time, Monday through Friday. *Verizon Application*, Joint Declaration of Kathleen McLean and Raymond Wierzbicki at ¶ 30 (“*McLean/Wierzbicki Declaration*”).

⁷² *AT&T Comments* at p. 18.

⁷³ *WorldCom Declaration* at ¶ 100.

⁷⁴ *Id.* at ¶ 94.

who already operate at an informational disadvantage, are handicapped even more by this poor interface accessibility.

2. Ordering/Provisioning

This Commission has previously focused on “flow-through” rates as an indica of parity in the ordering stage.⁷⁵ “Flow-through” refers to orders that are transmitted electronically through the gateway and accepted into the ILEC’s back office ordering systems without manual intervention. The flow-through rate often “serves as a yardstick to evaluate whether an incumbent LEC’s OSS is capable of handling reasonably foreseeable commercial volumes of orders.” In addition, this Commission has focused on an ILEC’s “overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems.”⁷⁶

In January and February of this year, flow through for simple UNE orders was 38.8% and 45.2% respectively.⁷⁷ Orders that should be flowing through, such as orders for UNE loops with local number portability, orders to disconnect UNE-P single line residential customers, and orders to disconnect two-wire loops, do not flow through.⁷⁸ This data shows that Verizon will be manually processing a large amount of orders that will lead to human error and delay. The situation will only be exacerbated when commercial volumes of orders increase. If simple orders that should flow through require manual processing then the delays will only continue to build.⁷⁹

⁷⁵ *BANY Order* at ¶ 160, fn. 488, ¶ 162, fn. 496.

⁷⁶ *Id.* at ¶ 163.

⁷⁷ *WorldCom Declaration* at ¶ 130.

⁷⁸ *Id.*

⁷⁹ *Id.*

In addition, CLECs have been experiencing difficulties in ascertaining the status of their Orders. There are three types of notifications that a CLEC receives in regard to an order – acknowledgments, confirmation, and rejects. Acknowledgments state that the order has been received; confirmations tell the CLEC that the order will be performed on a specific date; and rejects notifies the CLEC that the order cannot be processed and gives the reason.⁸⁰ CLECs have been experiencing problems in getting timely notifications, and in some cases, do not get them at all.⁸¹

Winstar's own records demonstrate that for the period January 2000 to June 2000, out of a total of 301 loops/EELs ordered from Verizon, Verizon only was able to return only 112 firm order commitments on time, resulting in a 37% rate.⁸² These delays were being experienced by other CLECs as well. AT&T during a high volume week of production testing did not receive an acknowledgment on more than 5% of its orders.⁸³ Without these acknowledgments, it is impossible for CLECs to know if the order was received by the BOC. For confirmations, during AT&T's high volume week of testing, only 66% of the orders that should have received a confirmation actually received them within 24 hours. Verizon did not provide confirmation notices on 22% of the orders sent.⁸⁴ Thus, a CLEC is left with the unenviable choice of either assuming the order will be completed on time, or wasting time and resources to try and track down the order in Verizon's system.

⁸⁰ *AT&T Comments*, p. 19.

⁸¹ *Id.*

⁸² MA DTE, Comments of Winstar Communications, Inc. Regarding Bell Atlantic's Supplemental Comments at p. 7 (July 18, 2000)(*"Winstar Comments"*).

⁸³ *AT&T Comments* at p. 20.

These problems are the same deficiencies that plagued CLECs in New York earlier this year. If these problems are being experienced at a low level of commercial usage, one can only imagine what the future holds for Massachusetts with commercial volumes of orders.

3. Maintenance/Repair/Billing

A 271 applicant must offer access to maintenance and repair interfaces and systems at parity with the access its retail divisions have.⁸⁵ Such necessary access includes the ability to conduct mechanized loop tests, to create trouble tickets, to determine the status of a trouble ticket, and to request a trouble report history.⁸⁶ This Commission has noted that “without electronic access for competing carriers, the BOC’s ability to correct trouble reports while on line with the customer would be a ‘crucial competitive advantage.’”⁸⁷ Thus, of particular concern is the CLEC’s ability to use electronic interfaces to submit trouble tickets relating to unbundled network elements.⁸⁸ The problems with the GUI interface which many CLECs use for maintenance/repair matters have been documented. The deficiencies in the system clearly place CLECs at a competitive disadvantage in an area vital to the preservation of its customer base.

CLECs should also have the ability to be able to open trouble tickets immediately on recently-completed service orders.⁸⁹ An improperly provisioned loop will already be the cause of much consternation for the customer; a delay in getting the trouble addressed will only

⁸⁴ *Id.* at p. 21.

⁸⁵ *BANY Order*, ¶ 213.

⁸⁶ *Id.*

⁸⁷ *Id.* at fn. 677.

⁸⁸ There was a claim by Prism in the *BANY Order* proceeding that it had to manually submit trouble tickets because the Repair Trouble Administration System could not be used for UNEs. *Id.* at fn. 683.

⁸⁹ Covad noted in the *BANY* proceeding that it was unable to open a trouble ticket for at least 24 hours after the due date. *Id.* at ¶ 216.

compound the frustration. CLECs in Massachusetts have been experiencing problems with opening trouble tickets, and then the ticket status is often difficult to interpret.⁹⁰

The Commission has already ruled that an ILEC must process trouble inquiries from competing carriers “in substantially the same time and manner as [the ILEC] processes inquiries concerning its own retail customers.”⁹¹ The Commission recognized that for CLECs to compete effectively they must be able to:

diagnose and process customer trouble complaints with the same speed and accuracy that [the ILEC] diagnoses and processes complaints from its retail customers. A slower process can lead to customer perception that the competing carrier is a less efficient service provider than the BOC.⁹²

The Commission “has stressed that a BOC is obligated to repair trouble for a customer of a requesting carrier in substantially the same time that it takes to repair problems experienced by its own customers.”⁹³ Verizon’s problem with premature closing of trouble tickets has been well-documented. Some Verizon technicians will close out a CLEC trouble ticket even if the customer is not back in service if they found no trouble at the specific dispatch location without checking other locations.⁹⁴ For these “misdirected dispatch situations,” a CLEC would need to open a second trouble ticket to resolve the problem.

Once again, Verizon attempts to place the blame for its performance deficiencies on the CLECs. Verizon claims the problems with trouble tickets are due to CLECs not identifying the problems properly.⁹⁵ As the ILECs so often like to emphasize, however, the facilities being used

⁹⁰ MA DTE Docket No. 99-271, *Rhythms/Covad Comments* at p. 44 (July 18, 2000).

⁹¹ *BANY Order*, ¶ 217.

⁹² *Id.*

⁹³ *Id.* at ¶ 220.

⁹⁴ *BANY Order* at ¶ 225.

⁹⁵ *Verizon Application*, p. 20

are owned by ILECs. The ILECs are the party with the most complete and extensive knowledge about their facilities and how to repair them. The CLEC can only communicate the trouble as related by its customer and check if the problem arises on the CLEC's end. After that, it is the duty of the ILEC technician to diagnose and resolve the problem. This is the same duty it has to its customers. The proceeding in relation to the *ALTS Loop Provisioning Petition* identified numerous instances of Verizon technicians not adequately or promptly diagnosing and resolving service problems, and of improperly closing out trouble tickets.⁹⁶

In regard to repair intervals, Verizon concedes there is a lack of parity but blames it on CLECs not taking the earliest available date for a repair appointment. For instance, more than half of the CLEC UNE POTS repair requests made on a Friday request a repair date on the Monday as opposed to a time on the weekend.⁹⁷ This makes eminent sense, however. The CLEC has to coordinate two parties – the customer and the ILEC. Given the ILEC “reliability” in keeping service appointments, and the difficulties inherent in ascertaining the status of an appointment on a weekend, it makes perfect sense that CLECs would choose the Monday. The maintenance/repair problems documented in the MA DTE proceeding suggest that the ILECs have much more fundamental problems to concern themselves about than whether CLECs are scheduling appointments on a Monday.

Billing is a particularly important area for CLECs. Customers will demand the utmost in accuracy and timeliness in regard to their bills, particularly if they have just migrated from a long-term association with an ILEC. The two primary aspects of the billing function are the

⁹⁶ *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications, Inc., Transferee; Common Carrier Bureau and Office of Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals*, CC Docket Nos. 98-147, 96-98, 98-141, and NSD-L-00-48, Comments of CoreComm Incorporated, Mpower Communications Corporation, and Vits Network, Inc. at pp. 25-29 (June 23, 2000) (*ALTS Petition Comments*)

⁹⁷ *Verizon Application*, p. 20.

daily usage reports (daily usage feed or “DUF”) that provide CLECs the information to bill their customers, and the monthly bills that detail what the CLEC owes the ILEC. Both CLECs and KPMG have found inaccuracies in both the monthly bills and DUFs.⁹⁸ In regard to the monthly bills, KPMG observed “many missing, unknown, incorrect and untimely charges on bills,” and KPMG was also unable to verify UNE charges on the bills.⁹⁹ In regard to the DUF, there were discrepancies between quantity information in the usage section of the monthly bills for UNEs and the DUF records.¹⁰⁰ There were also missing records on the DUF and instances of CLECs receiving bills belonging to other CLECs.¹⁰¹ AT&T, in its production testing, found that the first outgoing DUF it received from Verizon was only 88% accurate. AT&T found that both the monthly bills and DUF contained charges pertaining to other CLECs.¹⁰²

Inaccurate bills are a sure-fire way for CLECs to lose customers, and even if the CLEC manages to keep the customer, it will have to waste precious time and resources addressing and fixing errors in bills. CLECs have to rely on the ILEC to provide accurate bills, and Verizon has not been providing accurate bills. What is particularly troublesome is the fact that in New York, AT&T experienced a situation where Verizon lost usage data completely for several thousand customers, and AT&T fears that missing call data in Massachusetts indicates the same problem may be recurring.¹⁰³ Lost usage data represents significant lost revenue for the CLEC.

Once again, despite finding a multitude of problems with Verizon’s billing, KPMG closed out the observations without ensuring that the underlying problem had been corrected.

⁹⁸ *WorldCom Declaration* at ¶ 138; *AT&T Comments* at pp. 28-29.

⁹⁹ *WorldCom Declaration* at ¶ 138.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *AT&T Comments* at pp. 28-29.

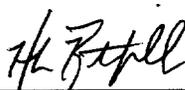
¹⁰³ *AT&T Comments* at p. 29.

For instance, one observation was closed due to the bills being corrected and resent, and another was deemed merely to be a product of manual error.¹⁰⁴ Thus, the KPMG report appears to be a mere snapshot of rosy Verizon performance taken at a fortuitous moment as opposed to a portrayal of consistent and sustained compliant performance.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny Verizon's application for Section 271 authority in Massachusetts.

Respectfully submitted,



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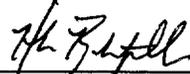
Counsel for Winstar Communications, Inc.

October 16, 2000

¹⁰⁴ *WorldCom Declaration* at ¶ 139.

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on October 16, 2000, I caused to be served upon the following individuals the Comments of Winstar Communications, Inc. in CC Docket 00-176:



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