

#### 4. **The Massachusetts DTE Has Repeatedly Refused To Correct Its UNE Rates.**

Nor are CLECs likely to enter the Massachusetts market on the hope that UNE pricing might improve someday. The DTE rubber-stamped Verizon's out-of-line rates, and then, unlike state commissions in New York, Texas and Pennsylvania, repeatedly declined to review them as the evidence mounted that they were grossly defective. Indeed, the DTE has shown scant interest in promoting local residential competition generally.

Here is what the record reveals:

- The DTE set interim rates in the last quarter of 1996.<sup>46/</sup> In the hearings<sup>47/</sup> and briefs<sup>48/</sup> before the interim rates were set, MCI and AT&T identified and challenged virtually every flaw in NYNEX's studies that WorldCom raises today, and proposed switching rates much more consistent with the rates in place elsewhere across the country. Specifically, they challenged:
  - Cost of capital calculations;<sup>49/</sup>
  - Switch vendor discounts;<sup>50/</sup>
  - Building factor;<sup>51/</sup>
  - Utilization factor;<sup>52/</sup> and
  - Reliance on Bellcore proprietary "SCIS" model for switching costs.<sup>53/</sup>

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<sup>46/</sup> Phase 4 Order (VZ-MA App. H, Tab 162).

<sup>47/</sup> Ankum Test. (VZ-MA App. H, Tab 53); Ankum Rebut. Test. (VZ-MA App. H, Tab 105).

<sup>48/</sup> MCI's Phase 4 Br. (VZ-Ma App. H, Tab 145).

<sup>49/</sup> Ankum Rebut. Test. at 20-26 (VZ-MA App. H, Tab 105); MCI Phase 4 Br. at 22-24 (VZ-Ma App. H, Tab 145).

<sup>50/</sup> MCI's Phase 4 Br. at 20-22 (VZ-Ma App. H, Tab 145).

<sup>51/</sup> Ankum Rebut. Test. at 7-8 (VZ-MA App. H, Tab 105).

<sup>52/</sup> Ankum Rebut. Test. at 35-38 (VZ-MA App. H, Tab 105); MCI's Phase 4 Br. at 25 (VZ-Ma App. H, Tab 145).

<sup>53/</sup> Ankum Rebut. Test. at 3, 51 (VZ-MA App. H, Tab 105); MCI's Phase 4 Br. at 8 (VZ-Ma App. H, Tab 145).

- On December 4, 1996, the DTE adopted without change virtually every element of NYNEX's cost study and the rates it produced. The one exception was its adoption of a cost-based cost of capital. The DTE rejected every other CLEC challenge, for the most part by simply ignoring them.<sup>54/</sup> On the most fundamental problem with the rates – the refusal to take into account switching discounts NYNEX received, the DTE specifically rejected any forward-looking calculation of switching costs, concluding that it would be too “speculative to assume what the manufacturers’ discounts would be if a TELRIC network were being constructed today.”<sup>55/</sup>
- On December 31, 1996, NYNEX, MCI and AT&T sought reconsideration of the DTE Order. MCI argued that the DTE “improperly accepted the very modest discount that NYNEX currently pays for the incremental additions to its current electronic equipment and not for new switches.”<sup>56/</sup> NYNEX argued that the DTE’s cost of capital – virtually the only matter of significance on which it had not prevailed – was too low.
- On February 5, 1997, the DTE denied MCI’s motion for reconsideration without reaching its merits. At the same time it granted NYNEX’s motion, raising the cost of capital from 11.38% to 13.5%.<sup>57/</sup>
- On March 27, 1998, AT&T filed a motion with the DTE to reconsider UNE switching rates, because in New York Bell Atlantic finally had been forced to disclose the actual discounts it received on its switches, leading Bell Atlantic’s own expert to concede that the New York switching costs were excessive because an insufficient discount had been applied, and that Bell Atlantic had misrepresented the facts when it asserted that it could not take advantage of the larger discounts.<sup>58/</sup> MCI supported AT&T’s motion, and both carriers challenged Bell Atlantic’s Massachusetts switching rates as excessive.<sup>59/</sup> Initially, DTE said

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<sup>54/</sup> Phase 4 Order (VZ-MA App. H, Tab 162).

<sup>55/</sup> See id. at 37.

<sup>56/</sup> See MCI’s Motion for Reconsideration at 2 (quoting Proprietary Exhibit 1) (VZ-MA App. H, Tab 175).

<sup>57/</sup> VZ-MA App. H, Tab 194.

<sup>58/</sup> VZ-Ma App. F, Tab 12.

<sup>59/</sup> Transcript of 09/24/98 Hearing at 30-32 (VZ-MA App. F, Tab 107) (switch vendor discounts); id. 95-107(same); id. 184-202 (same); id. 130-38 (cost of capital); id. 180-85 (criticism of SCIS); Ankum Rebut. Test. at 2-7 (VZ-MA App. F, Vol. 4, Tab 59); BA-MA’s

that it would revisit its UNE rates to address the issues raised by MCI and AT&T. But on a subsequent motion by Bell Atlantic, the DTE reversed course and simply converted the interim rates into permanent rates without making a single adjustment or addressing a single one of the CLECs' claims.<sup>60/</sup> At the same time, the DTE informed the parties that it would not consider the switching rates again until December 2001.<sup>61/</sup>

- Throughout 1999, WorldCom and other CLECs in a coalition named "Breakthrough Massachusetts" met repeatedly with DTE and other Massachusetts officials to try to have pricing revisited. DTE representatives initially signaled a willingness to proceed with an expedited proceeding to address the most egregious pricing problems, but subsequently changed their minds.<sup>62/</sup>
- On March 13, 2000, when it had become increasingly clear that the switching rates were having a disastrous effect on local competition, AT&T filed yet another motion challenging the switching rates and asking the DTE to review them. It once again challenged vendor discounts, the excessive installation factor, and the high cost of capital. WorldCom submitted comments in support of the motion, and then on May 19, 2000 submitted additional comments asking the DTE to open an investigation of the rates, focusing on these same issues. WorldCom even submitted testimony that showed fixing these errors could be done quickly in just a few months. On May 30, the Massachusetts Attorney General filed comments in support of AT&T's petition.<sup>63/</sup> The DTE summarily denied the petitions, declaring that its rates were TELRIC compliant, but providing no explanation why it believed this to be the case.<sup>64/</sup>
- On July 18, 2000, in the state section 271 proceeding, WorldCom filed a pricing declaration demonstrating one final time the price squeeze caused by the switching rates, and identifying the critical errors in Verizon's cost studies: the switch discounts, the cost of capital, inflated installation factor, busy hour

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Motion to Adopt Permanent UNE Rates at 4 (VZ-MA App. F, Tab 128) (MCI asking DTE to review switch vendor discount calculation as NY PSC had).

<sup>60/</sup> Order Granting BA-MA's Motion to Adopt Permanent UNE Rates at 11-16 (VZ-MA App. F, Tab 157).

<sup>61/</sup> *Id.* at 16.

<sup>62/</sup> Proferes Decl. ¶ 31.

<sup>63/</sup> VZ-MA App. B, Tab 425.

<sup>64/</sup> DTE's Letter Denying AT&T's Petition to Reduce UNE Rates (VZ-MA App. B, Tab 481).

conversion factor and inadequate utilization rate.<sup>65/</sup> It argued that prompt correction of a few critical inputs would address at least the most draconian consequences of the illegal rate, and that correcting these errors need not long delay Verizon's efforts to enter its long-distance market.<sup>66/</sup> The DTE once again failed to take any action.

As the FCC stressed in its approval of Verizon New York's section 271 application, the local competition commitment of state commissions does matter. There, in response to AT&T claims that the switching rates were defective, the FCC found highly relevant that the New York PSC "engaged in extensive fact-finding in its rate case, and specifically considered AT&T's assertions about switching discounts. As a result, Bell Atlantic's switching prices were greatly reduced, with a final result that is very close to AT&T's estimated switching prices." NY Order ¶ 246. The FCC "stress[ed] that we place great weight on the New York Commission's active review and modification of Bell Atlantic's proposed unbundled network element prices, its commitment to TELRIC-based rates, and its detailed supporting comments concerning its extensive, multi-phased network element rate case." Id. ¶ 238. Here, in stark contrast, there has been no active review, no modification of the Verizon rates (except one upward modification at Verizon's request), no commitment to TELRIC-based rates, and no proceedings that accomplished anything other than to rubber stamp Verizon demands.

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<sup>65/</sup> VZ-MA App. B, Tab 455.

<sup>66/</sup> Id. at 9-10.

## **II. VERIZON HAS NOT MET ITS BURDEN OF PROVING THAT IT HAS SATISFIED OTHER CHECKLIST OBLIGATIONS.**

Evaluation of market conditions in a market that is closed because of an insurmountable barrier to entry like pricing is a difficult task, and for that reason the Commission in rejecting section 271 applications has declined to offer extensive analysis of issues beyond those found to be dispositive of the application. OK Order ¶ 65. But in the event the Commission here decides to address issues beyond pricing, it needs to do so without losing sight of the effect unlawful pricing has had on the market. Potential problems identified in New York or Texas, where there are proactive and pro-competition state commissions, and where there is real commercial experience through which the true nature of those problems can be probed, may carry a different weight than those same problems when they arise in Massachusetts. As the Commission recently observed, “[w]e look at each application on a case-by-case basis and consider the totality of the circumstances, including the origin and quality of the information before us, to determine whether the nondiscrimination requirements of the Act are met.” TX Order ¶ 46.

With these precepts in mind, we turn to additional factors which the Commission may address in the course of resolving this application.

### **A. Verizon Has Not Established That Its OSS Is Operationally Ready.**

As a result of the price squeeze and resulting low levels of UNE-based competition in Massachusetts, Verizon has little commercial experience with its Operations Support Systems (“OSS”) for UNEs. That limited commercial experience is insufficient to demonstrate that Verizon’s OSS is operationally ready. Verizon’s New York experience and KPMG’s third-party test also do not show the readiness of Verizon’s OSS; to the contrary, they raise concerns that Verizon’s OSS is not ready. “The Commission consistently has found that nondiscriminatory

access to OSS, is a prerequisite to the development of meaningful local competition.” NY Order ¶ 83. There is not a sufficient basis to conclude that such OSS exists in Massachusetts.

**1. Verizon’s Limited OSS Experience.**

Verizon processes very few orders through its OSS. In July, the most recent month for which Verizon presents data, Verizon processed a total of 5,000 UNE-P orders – and only 4 of them were transmitted via EDI. Kwapniewski Decl. ¶¶ 6, 27. But EDI is the interface of choice for CLECs attempting to provide service at commercial volumes. And UNE-P is the only mode of entry with the potential to provide ubiquitous mass-market service to residential customers in the near term. Thus, Verizon has almost no experience with the one method of entry that could provide meaningful state-wide competition. In contrast, in New York, Verizon processed 70,000 UNE orders in the month prior to its application, most of which were transmitted via EDI. NY Order ¶ 169. Similarly, in Texas, SWBT had processed a relatively high volume of UNE-P orders prior to its application. TX Order ¶ 249.

The Commission has emphasized that a BOC must show the readiness of its OSS to process UNE-P orders, as well as UNE-L orders and resale orders, and it must be able to do so via EDI as well as by a graphical user interface (“GUI.”). Verizon’s commercial experience provides no such proof. Kwapniewski Decl. ¶¶ 26, 29.

Neither should Verizon be allowed to rest indiscriminately on its successful section 271 application in New York to show the readiness of its OSS. Verizon’s OSS in New York is different in important respects from its OSS in Massachusetts. Approximately 20% of the business rules in Verizon’s Local Service Ordering Guide (“LSOG”) 4 interfaces vary from state to state, and a much higher percentage of the LSOG 2 business rules are non-uniform. Id. ¶¶ 31-32. Verizon acknowledges that the back-end OSS differs in a number of ways as well, as it must

since Massachusetts and New York use different legacy systems. Id. ¶¶ 33-35. It is impossible to know for sure the extent or effect of these differences since Verizon chooses not to address them in its application, and there is only very limited commercial experience with the OSS to know whether the results of transactions are identical. For this reason, during the OSS test in Massachusetts, WorldCom asked the DTE not only to fix pricing but to order a commercial experience period after pricing is fixed to ensure that Verizon OSS works. The DTE declined. Furthermore, the Verizon OSS that exist today in both Massachusetts and New York are substantially different than the OSS in place in New York at the time of its section 271 review. Subsequent to that review, Verizon was forced to scrap key OSS components that failed, and its new LSOG 4 systems did not even exist at the end of 1999. Consequentially, findings about Verizon's New York OSS a year ago are of only limited relevance to the question facing the FCC here.

Verizon therefore must rely largely on KPMG's third-party test to show the readiness of its OSS. Although the Commission has in the past emphasized that commercial experience is the best means of showing OSS is operationally ready, it has also indicated that third-party tests can also provide evidence of readiness. But the Commission has never previously approved a section 271 application where the BOC had commercial experience as minimal as exists in Massachusetts. Certainly, where the BOC's limited commercial experience results from barriers to competition that the BOC itself has erected – here, illegally high UNE prices – the Commission should not be satisfied with a third-party test as a substitute for real commercial experience. At a minimum, it should demand that the third-party test be especially rigorous.

## 2. Defects in the KPMG Test.

The KPMG test does not meet this standard. To the contrary, the KPMG test, unlike KPMG's tests in New York and Pennsylvania, was limited in scope and did not thoroughly investigate issues within its narrow scope. The test nonetheless did reveal important defects in Verizon's OSS that are obscured beneath KPMG's conclusory assertions that Verizon's performance is satisfactory.

KPMG did not conduct a full test of Verizon's LSOG 4 interfaces, the interfaces CLECs will use if significant competition is to develop in Massachusetts. Kwapniewski Decl. ¶¶ 63-65. For example, KPMG did not evaluate line loss notifications – the process by which Verizon notifies CLECs if one of their customers switches to another carrier, and a process that has proven flawed in actual operation in the Verizon region.<sup>67/</sup> And KPMG did not apply the performance measures developed in New York to assess the existence of the missing notifiers which had such a significant competitive consequence there. Furthermore, KPMG did not conduct any volume or stress test of the LSOG 4 systems. *Id.* ¶ 43 & n.7, ¶ 66.

Moreover, KPMG failed to conduct a true military style test. KPMG uncovered a multitude of problems during the course of testing and opened Observations or Exceptions with respect to many of them. Yet KPMG often closed these Observations or Exceptions without Verizon having performed a root cause analysis of the problem or implementing any permanent fix. *Id.* ¶¶ 58-61. Some of the problems KPMG uncovered made it into KPMG's Final Report. But in that Report these problems are masked beneath KPMG's generic conclusion that

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<sup>67/</sup> *Id.* ¶ 66. Verizon also continues to erroneously disconnect WorldCom customers for non-payment of Verizon bills when the customers were Verizon customers. *Id.* ¶¶ 152-153. KPMG did not test this either.

Verizon's performance was satisfactory – a conclusion at odds with KPMG's specific findings. Id. ¶¶ 50-56. KPMG found, for example, that Verizon returned inaccurate information on pre-order address validation transactions 64% of the time, failed to return 2% of pre-order transactions at all, and returned unhelpful error messages on invalid pre-order transactions. Id. ¶¶ 51-53. In each of these instances, however, as well as many others, KPMG concluded Verizon's performance was satisfactory without determining the cause of the problem it reported, requiring Verizon to implement a fix, or retesting any change that Verizon did implement. Again, WorldCom asked the DTE to mandate analysis to get to the "root cause" of the problem discovered. Again, the DTE declined.

### **3. The Persistent Problem of Missing Notifiers.**

KPMG also found problems that are even more troublesome because they correlate with problems WorldCom has experienced in New York or Pennsylvania, where WorldCom has now launched service. First, KPMG found that on approximately 2.3% of orders, Verizon failed entirely to return provisioning completion notices ("PCNs") and/or billing completion notices ("BCNs"). Kwapniewski Decl. ¶ 41. Verizon returned another 25% of BCNs late under KPMG's measure of timeliness – return within 24 hours of posting of the bill. Id. The existence of any missing and late notifiers is alarming in light of WorldCom's experience with Verizon. As this Commission well knows, when WorldCom first ramped up service in New York, it began experiencing a problem with missing notifiers. After section 271 approval, Verizon failed to return tens of thousands of notifiers, causing substantial negative impact to customers. The Commission and the New York PSC then intervened, and Verizon was able to significantly reduce the missing notifier problem in New York. Yet when WorldCom launched service in Pennsylvania months later, the problem appeared there. As of September 28, Verizon had not yet

returned BCNs on 23.1% of WorldCom's August orders in Pennsylvania for which BCNs were past due. Id. ¶ 45. As of October 6, Verizon had not yet returned BCNs on 14.7% of the orders WorldCom placed between September 3 and September 15. Id.

In light of WorldCom's current problems in Pennsylvania with Verizon's latest OSS, there is no basis for assuming that the New York fix of earlier OSS will prevent a missing notifier problem from arising in Massachusetts if order volumes increase there. Id. ¶ 46. Indeed, such a problem may already exist. KPMG's limited data suggest the existence of such a problem, and KPMG's data likely significantly understate the scope of that problem. Verizon has refused to import the relevant metrics to Massachusetts, and Verizon's failure to include these measures makes it impossible to determine whether it is failing to return notifiers during commercial operation. Id. ¶ 42 & n.7. It also vastly limits the ability of CLECs and regulators to track any future problems and minimize the scope of those problems. Given Verizon's past problems with missing notifiers, Verizon's failure to demonstrate that such a problem will not exist in Massachusetts is reason enough to reject Verizon's section 271 application.

This is especially so in light of Verizon's continued poor performance in assisting CLECs to resolve missing notifier problems. This Commission spent significant time establishing a process by which Verizon would reflow missing notifiers. Yet in Pennsylvania, Verizon is taking far too long to reflow notifiers WorldCom identifies as missing, or is reflowing the wrong notifiers altogether. Kwapniewski Decl. ¶ 122. This mirrors WorldCom's experience in New York with respect to the limited volume of missing notifiers that continue to exist. Despite meeting with Verizon every week, WorldCom still has not received notifiers missing since June. Id. The same help desk that is performing poorly with respect to Pennsylvania and New York orders also is used in Massachusetts. Indeed, during the KPMG Massachusetts test, KPMG

submitted trouble tickets on notifiers it was missing, and never received those notifiers. Id.

¶ 124.

#### **4. Inadequate Technical Assistance.**

The inadequate performance of Verizon's help desk with respect to missing notifiers points to a more general problem – Verizon's overall failure to provide adequate assistance to CLECs. Verizon's help desk is generally inadequate, its documentation is poor when initially released, and Verizon is failing to follow its change management process for its upcoming release of ExpressTrak, a major new OSS system.

**Help Desk.** Verizon's help desk not only fails effectively to resolve trouble tickets submitted on missing notifiers, it fails effectively to resolve other trouble tickets as well. Kwapniewski Decl. ¶¶ 118-122. WorldCom has long had this problem in New York, and, as a result of the experience of WorldCom and other CLECs, on July 24 Verizon created a new help desk. Yet the new help desk is performing no better. In Pennsylvania, the help desk is taking weeks to resolve trouble tickets despite repeated invocation of the escalation process. Id. ¶¶ 120-121. There is no reason to expect the performance to be any better in Massachusetts. KPMG's data from testing show that Verizon took long periods of time to resolve even critical trouble tickets. Id. ¶ 118. Verizon's limited commercial data do not show the contrary. Although WorldCom has consistently advocated such a measure, Verizon does not report on the timeliness of its resolution of trouble tickets. Id. ¶ 128.

**Inadequate Documentation.** Verizon fails adequately to assist CLECs in a second way as well: Verizon consistently releases documentation that is manifestly deficient. Verizon's initial documentation for its LSOG 2 interfaces was of extremely poor quality. Kwapniewski

Decl. ¶ 74. Then, when Verizon released documentation for its initial LSOG 4 release, KPMG found that “a substantial portion of the documentation in the LSOG 4 Pre-order and Order Business Rules and the EDI Pre-Order and Order Guides is incomplete, incorrect or unclear.” VZ-MA App. I, Tab 2, Exception 4 (emphasis added). Id. ¶ 75. In the next release, Verizon’s June 2000 LSOG 4 release, KPMG (through Hewlett Packard) again found a high number of documentation errors. Id. ¶ 79. Based on these errors, KPMG concluded that “CLECs cannot properly format EDI transactions and communicate with Bell Atlantic.” Exception 12. KPMG also observed problems with the test decks Verizon used for its February and June releases. Id. ¶ 85.

KPMG’s findings parallel WorldCom’s own experience in Pennsylvania and New York. WorldCom tested Verizon’s June release for both Pennsylvania and New York and found numerous documentation errors. As a result of these documentation errors, along with coding problems on Verizon’s side of the interface, more than 75% of WorldCom’s LSOG 4 pre-order test scenarios failed at the beginning of testing, and more than 40% failed even at the time the release was scheduled to go into production. Kwapniewski Decl. ¶ 81.

According to KPMG, Verizon eventually corrected the documentation problems that KPMG uncovered. But the poor quality of Verizon’s documentation when it is first released imposes significant costs on CLECs. Those documentation problems, coupled with Verizon coding errors, lead to an unstable test environment in which both CLECs and Verizon are forced to make repeated changes to the coding of their interfaces during testing. Id. ¶¶ 86-87. This substantially increases the cost of testing, as does the time CLECs spend ferreting out documentation problems and discussing them with Verizon. Id. ¶¶ 87-91. Indeed, WorldCom estimates that half of the time it spent testing Verizon’s June release resulted from Verizon’s

documentation and coding problems. Id. ¶ 89. The costs are increased further by the lengthy period Verizon often takes to correct documentation and the mistakes it frequently makes in the “corrected” documentation. Id. ¶¶ 94-100. Moreover, the existence of extensive documentation errors may delay CLECs’ ability to implement an interface altogether, and, if the errors are not caught, can cause significant production problems once the interface is operational. Id. ¶ 91.

**Inadequate change management.** Verizon’s difficulties in implementing significant interfaces and systems changes are likely to cause even greater problems in coming months. Verizon is currently rolling out a new back-end system called ExpressTrak that will affect major components of its OSS. Yet Verizon has shared only limited information on this system with CLECs. Even though Verizon has already begun implementing the system for wholesale customers in some states, it has not followed the change management process for implementing ExpressTrak, which requires early release of documentation and a CLEC comment period. Verizon also has not provided – or even promised to provide – a regression test deck to the CLEC community or a CLEC test period to demonstrate that the code is functioning properly. Verizon’s change management process does little good if Verizon does not include major releases such as ExpressTrak in that process. Id. ¶¶ 102-115.

The Commission has emphasized that BOCs must provide adequate technical assistance to CLECs. TX Order ¶¶ 96-97. That includes an effective help desk, complete and accurate documentation, a stable test environment based on thorough internal testing, and an effective change management process. Id. ¶¶ 106-107, 113, 132; NY Order ¶¶ 102, 109, 126. Verizon provides none of these. Although the Commission found Verizon’s technical assistance to be adequate at the time of the New York section 271 proceedings, subsequent experience has

revealed important deficiencies. Verizon must resolve these deficiencies prior to approval of further section 271 applications.

### **5. Other OSS Problems – Flow-Through and Outages.**

**Flow-Through.** Verizon relies on far too much manual intervention in processing orders. Its flow-through rate is below 50% in its reported performance measures – well below what existed in New York at the time of Verizon’s section 271 application there. Kwapniewski Decl. ¶ 156. Similarly, during testing KPMG found a flow-through rate of commercial orders of only 35%.

Verizon asserts that the same orders that flow through in New York will also flow through in Massachusetts. But there is no evidence that this is so. While KPMG relies on test data to conclude that orders which are supposed to flow through actually do, the commercial data evaluated by KPMG show that fewer than 60% of the types of orders that are supposed to flow through actually do. *Id.* ¶ 158. Although Verizon attempts to attribute this to CLEC problems, Verizon refused to provide KPMG a break-down of the orders that fell out for manual processing. Moreover, unlike in New York, Verizon does not report data in Massachusetts on flow-through achieved – the percentage of orders that are supposed to flow through which actually do flow through. *See infra* pp. 51-52; Kinard Decl. ¶ 51.

In any event, even if Verizon’s flow-through capabilities were identical in Massachusetts and New York, Verizon’s flow-through rate would still be too low. Despite promising during New York section 271 proceedings to improve flow-through dramatically in subsequent months, Verizon has not done so in New York. And while, based on these assurances, the Commission found Verizon’s flow-through in New York to be adequate, it should not do the same in

Massachusetts. Unlike in New York, Verizon simply does not have enough commercial experience in Massachusetts to demonstrate that it is capable of handling commercial volumes of orders with today's high level of manual intervention. Kwapniewski Decl. ¶¶ 155-57.

**Interface outages.** Yet another problem that has become manifest with Verizon's OSS since the time of Verizon's New York application is the limited availability of Verizon's pre-ordering and maintenance and repair systems. As a result of both scheduled and unscheduled outages in Verizon's GUI and back-order OSS, WorldCom has been unable to access Verizon's OSS more than 10% of the time during prime time hours from November 1999 through September 2000. Kwapniewski Decl. ¶¶ 136-138. In its NY Order, the Commission found that New York's standard of 99.5% availability during prime time hours was "a reasonable and appropriate measure of whether Verizon's interfaces are sufficiently available to afford an efficient competitor a meaningful opportunity to compete." NY Order ¶ 155. Since then, Verizon has come nowhere close to providing access to its OSS 99.5% of the time. Although the New York measurement technically includes only availability of the interface, not the back-end systems, unavailability of either has the same impact on CLECs. Kwapniewski Decl. ¶¶ 131-132. CLECs cannot sell or transmit orders or requests for repairs when the OSS is unavailable. Verizon has not disputed that its OSS is unavailable more than 10% of the time when back-end availability is taken into account.

Finally, Verizon's OSS has a number of other important defects. In both New York and Pennsylvania, Verizon's "SMARTS Clock" function for providing due dates consistently offers due dates to CLECs for installation of new service that are far beyond what is reasonably acceptable. Kwapniewski Decl. ¶¶ 142-44. Verizon's telephone number reservation function

often returns the message that numbers – which are necessary for installation of new service – are unavailable. Id. ¶ 145. Verizon returns UNE loop bills only in paper format, often fails to transmit bills to WorldCom and then assesses late payment charges for failure to pay on time, loses track of payments WorldCom has already made, fails to transmit all bills during the same time period each month, and imposes inaccurate charges on bills. Id. ¶¶ 165-74.

In sum, Verizon has not yet demonstrated that its OSS is operationally ready. Verizon has virtually no commercial experience in Massachusetts with OSS for UNE-P. The KPMG test was too limited in scope and insufficiently rigorous to substitute for that lack of commercial experience. If anything, that test points out remaining problems in Verizon's OSS – including in particular the continuing difficulty Verizon has with missing notifiers – that should have been fixed and retested before KPMG determined that the OSS was satisfactory.

**B. Verizon's Performance Measurements and Performance Remedy Plan Will Not Prevent Backsliding.**

Verizon's performance reporting and remedy plan also are inadequate to carry its burden of proving checklist compliance, and provide another reason that this application should be denied.<sup>68/</sup>

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<sup>68/</sup> Inadequate performance measurements implicate checklist compliance because they demonstrate a BOC's failure to prove that is providing the relevant network elements. They also implicate concerns relevant to the public interest test, since inadequate measurements and inadequate penalties make it more difficult to assure that a BOC's performance will not deteriorate after long-distance entry. To avoid duplicative briefing, WorldCom addresses all performance measure issues here rather than to cover some here and some in the following section addressing the public interest test.

**1. The Commission Cannot Rely on Verizon's Performance Reports Because the Data Have Not Been Verified, Individual CLEC Data Are Not Reported, and Verizon Does Not Report Many Critical Metrics.**

Verizon's application for section 271 authorization relies on its performance as reported in accordance with measures developed in the "Carrier to Carrier" Working Group sessions overseen by the New York PSC and subsequently adopted by Massachusetts regulators. Although these measures are designed to show whether Verizon is providing service on reasonable and nondiscriminatory terms that will enable local competition, Verizon's reports often do not accomplish this purpose.

First, although this Commission has held that "the reliability of reported data is critical," TX Order ¶ 428, Verizon's raw data has not been independently verified. See KPMG Final Report, at 646 (VZ-MA App. I, Tab 1) (discussing the so-called "Data Integrity" testing, noting that "[t]he accuracy of the raw data itself was not verified, except during the transaction test, where it was only indirectly verified"). This stands in sharp contrast to the testing in New York, where this Commission expressed confidence in the data because New York PSC staff had performed extensive data reconciliation and worked through numerous problems. NY Order ¶ 422; see also TX Order ¶ 429 (expressing confidence in data because of thorough validation by third-party tester). In Massachusetts, by contrast, the DTE expressly admitted that it lacked the resources to perform data replication, despite indications that KPMG had discovered problems in even its limited replication efforts. See Order Adopting Performance Assurance Plan, DTE 99-271, at 33 (DTE filed Sept. 5, 2000) (VZ-MA App. B, Tab 559); see also NY Order ¶ 422. This Commission has stressed the continuing importance of scrupulous data verification, stating that "because the Performance Remedy Plan rests entirely on [the BOC's] performance as captured by the measurements, the credibility of the performance data should be above suspicion." TX

Order ¶ 429. Because independent verification of Verizon's raw data is entirely lacking, the Commission should not credit any of the reported data.

The lack of independent data verification is all the more serious because, in contrast to New York prior to section 271 approval, Verizon-Massachusetts thus far has provided only CLEC aggregate results for the carrier to carrier performance measures in Massachusetts. Consequently, there is no mechanism for individual CLECs to verify the accuracy of Verizon's reports on any measures. The ability to verify a BOC's data often reveals discrepancies. In Pennsylvania, for example, where state regulators have required individual CLEC results to be provided, WorldCom found that Verizon had not reported the more than 500 UNE-P orders that WorldCom had placed in August 2000, the month that WorldCom entered the local residential market in that state. See Kinard Decl. ¶ 6. No such verification has been possible here.

There are other significant problems with Verizon's performance reporting. For a number of significant measures, Verizon has simply not provided any results at all for Massachusetts. Other key areas, including some addressed in New York, are not addressed by any metrics in Massachusetts. And even where performance has been reported, some existing metrics do not capture the most relevant information regarding consumer-affecting service. These shortcomings not only call into doubt Verizon's current compliance with the requirements of section 271, they compromise the equally important guarantee that Verizon remain in compliance after long-distance entry. Cf. NY Order ¶ 16; MI Order ¶ 22.

For example, among the measures included in the Performance Assurance Plan ("PAP") adopted in New York, and mirrored in Massachusetts, is OR-5-03, reporting Achieved Flow

Through.<sup>69/</sup> But although the Achieved Flow Through metric is in place, and although Verizon's New York affiliate has been reporting its performance – and paying substantial penalties – in accordance with this measure since last fall, Verizon Massachusetts has yet to report any performance results under this measure. Kinard Decl. ¶ 8. Verizon attributes its failure to report to the fact that there is an ongoing review in New York to address certain aspects of this measure which CLECs would like to see improved. Guerard/Canny Decl. ¶ 55. This is simply an evasion. Verizon New York is providing this information today. All aspects of the New York PAP are subject to review and revision, and indeed, the Carrier to Carrier proceedings create a climate for ongoing revision of all metrics to keep up with changing market conditions. Allowing Verizon to wait for the “definitive” version of a metric will allow it to evade reporting any performance at all. Verizon's foot dragging leaves CLECs and this Commission without necessary information to judge whether Verizon is providing nondiscriminatory access to UNEs.<sup>70/</sup> Moreover, by failing to report its results, Verizon will stymie the effectiveness of relevant part of the PAP, because Verizon cannot be held to pay penalties if it does not report its sub-standard performance.<sup>71/</sup>

Unfortunately, neither the New York PAP nor the Massachusetts PAP contains a self-executing mechanism to require Verizon to pay penalties if it does not begin reporting on an

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<sup>69/</sup> This metric is one of two comprising the Massachusetts PAP Special Provision on UNE flow-through, to which \$5.4 million of the total annual remedies available under the PAP are tied. See Guerard/Canny Decl., Att. C, Ex. 8 at 2.

<sup>70/</sup> “Missing evidence” should be construed against Verizon as the party who controls it and withholds it, and as the party with the burden of proof in this proceeding.

<sup>71/</sup> As described below, infra p. 58, Verizon also has not yet reported results for two DSL metrics ordered by the NYPSC eight months ago and adopted by Massachusetts. See Kinard Decl. ¶ 9.

ordered metric within a reasonable period of time. CLECs in this circumstance therefore will have to return to the state commissions to seek relief. This is a particular concern in Massachusetts, where the DTE has demonstrated an intention to rely in large part on proceedings occurring in New York to update the PAP and where there is no reason to believe that it will devote the resources necessary to aggressively police Verizon's anticompetitive behavior.<sup>72/</sup> Until this problem is fixed, the effectiveness of the Massachusetts PAP is compromised.

The experience with Verizon in New York during this first year after section 271 approval proves the need for quick and effective implementation of new performance metrics and remedies. As this Commission knows well, severe problems with missing EDI notifiers required this Commission to intervene and seek solutions that resulted in an Order and Consent Decree requiring rapid remediation. This crisis also prompted the New York PSC to add a new Special Provision for EDI Measures to its PAP, supported by an additional \$24 million in possible bill credits for violations.<sup>73/</sup> The New York PAP was amended to replace one metric and to add three new measures relating to notifiers. This permitted for the first time accurate tracking of Verizon's performance in this critical area, and increased the overall amount available under the New York PAP to about 44% of Verizon-NY's ARMIS-reported profits. And although Verizon-

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<sup>72/</sup> WorldCom has recently asked the New York PSC to amend its PAP to require Verizon to pay penalties if it does not begin reporting results within four months of being ordered to implement a new metric. See WorldCom, Inc.'s Comments on Verizon New York's Performance Assurance Plan and Change Control Assurance Plan, Case 99-C-0949 (NYPSC filed Sept. 15, 2000) (Kinard Decl. Att. 3); Kinard Decl. ¶ 10.

<sup>73/</sup> See Order Directing Market Adjustments and Amending Performance Assurance Plan, Cases 00-C-0008, 00-C-0009, and 99-C-0949 (NYPSC filed March 23, 2000) (Kinard Decl., Att. 4); Kinard Decl. ¶ 11. By contrast, the Massachusetts PAP fails to expressly reserve to that state's regulators even the power to reallocate money among provisions of the PAP to address unanticipated performance problems.

NY is no longer subject to this Commission's Consent Decree on this problem, the PAP provisions remain in force and Verizon continues to report its performance to state regulators in New York.

Despite the clear, severe impact of the missing notices problem in New York, the Massachusetts PAP fails to incorporate the three new metrics or a Special Provision for EDI Measures. These omissions are particularly problematic because as indicated above, supra pp. 42-44, even without the benefit of these metrics, there is reason to believe that the missing notifier problem has re-emerged in Massachusetts.<sup>74/</sup> Unfortunately, there is no mechanism in place in Massachusetts to monitor this known problem area, now or after section 271 approval.

Flaws in other metrics further undermine the conclusions about Verizon's performance that Verizon seeks to draw from them. See Kinard Dec. ¶¶ 16-29. Of particular concern to WorldCom is the decision to use a biased retail analog to measure interconnection performance, a flaw that is aggravated by the decision to aggregate inbound and outbound trunks on some measures. The result is that these measures fail to capture the real story of competition-affecting service problems. See id. ¶¶ 17-25. In addition, Verizon several times excuses poor reported performance by blaming it on distortion caused by differences between CLEC business mix and its own. The solution to this complaint, however, is further disaggregation of performance results, which would require Verizon to demonstrate parity by comparison of service on like orders. Verizon should not allowed it to obfuscate its results and use a failure in the metric as a substitute for proof of good performance. See id. ¶¶ 28-29. These residual problems with

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<sup>74/</sup> Specifically, as described above, KPMG testing in Massachusetts indicates similar problems in receiving Billing Completion Notices, which are critical to allow CLECs to begin charging their customers for service without fear of double billing. See also KPMG Final Report, at 53-54 (VZ-MA App. I, Tab 1); Kinard Dec. ¶ 12.

performance metrics must be resolved before Verizon can be said to have proven adequate performance, because they form the basis for post-entry protection of CLECs under the PAP.

## 2. **The Remedies in the PAP Are Inadequate.**

While Massachusetts purports to set its remedial caps at levels proportionate to New York,<sup>75/</sup> it has failed to do so. First, in Massachusetts, the Department has expressly held that remedies under the PAP are an alternative to remedies available under the Consolidated Arbitrations – the proceeding that set the contractual remedies available for most CLECs for poor performance suffered individually. By contrast, in New York, PAP remedies supplement liquidated damages available to individual CLECs under interconnection agreements. This Commission expressly held in approving Bell Atlantic’s New York section 271 application that the New York PAP’s monetary caps were adequate because of the combined deterrent effect of other available legal strictures, including liquidated damages in interconnection agreements.<sup>76/</sup> In Massachusetts, however, this additional deterrent is missing. Moreover, in setting the overall cap at 36% of ARMIS-reported local profits, Massachusetts did not take into account the \$24 million in additional penalties added in New York with the new EDI Measures, which raises the PAP remedies there to about 44% of ARMIS local profits. As a result, the Massachusetts PAP carries less deterrent effect than the New York plan. See Kinard Decl. ¶¶ 31-32.

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<sup>75/</sup> As in New York, the use of arbitrary remedy caps undermines the overall effectiveness of the Massachusetts PAP. See Kinard Decl. ¶ 35.

<sup>76/</sup> NY Order ¶ 430 (explaining that it may permit section 271 entry even though a state PAP alone provides less than full protection against anticompetitive behavior because of additional incentives for ILEC compliance including “payment of liquidated damages through many of its individual interconnection agreements.”); see also TX Order ¶ 424. Despite this fact, as seen, the New York PSC still found it necessary to increase the overall amount of money available under the PAP when faced with the severe missing notice issue.

The Massachusetts PAP also allows Verizon to delay remedy payments through a fundamentally flawed “waiver” process. Unlike New York’s waiver procedure, the waiver procedures contains no required time lines.<sup>77/</sup> Nor has Verizon ameliorated this problem by promising to make PAP payments on a disputed issue during the pendency of a waiver adjudication. Moreover, while the Massachusetts DTE properly ordered Verizon to strike or better define the “CLEC action” waiver category in its PAP compliance filing, see Order Adopting Verizon’s Performance Assurance Plan at 31 (VZ-MA App. B, Tab 559), echoing this Commission’s observation that this category should be more clearly defined, see NY Order ¶ 441 n.1355, Verizon’s clarification is inadequate, as it provides it even greater opportunities to derail the self-executing nature of the PAP.<sup>78/</sup>

Finally, in New York the PAP gives the NPSC the ability to shift the penalty dollars in the PAP as it sees fit. Like other competition-enhancing procedures, a PAP works best when it is supported by an active, pro-competition state commission, and the New York PAP was quite properly evaluated in that context. Here, in contrast, the Massachusetts PAP does not allow the DTE to move penalty dollars within the PAP as needed, and in any event the DTE has neither

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<sup>77/</sup> See Guerard/Canny Decl. Att. C, at 27 (setting deadline only for filing of waiver request); cf. NY Order ¶ 441.

<sup>78/</sup> For example, among the examples of CLEC behavior that might merit a waiver, in Verizon’s view, are “poor order quality, such as missing codes, incorrect codes, or misspelled directory listings.” Guerard & Canny Decl. Att. C, at 26. However, these factors would not affect Verizon’s liability, and so should not be grounds for a waiver. See Kinard Decl. ¶ 34. Another of Verizon’s “examples” of CLEC-caused delay is “inadequate testing” – a standard obviously subject to interpretation and not otherwise defined. And indeed, that all of these are just “examples” indicates that Verizon still reserves the ability unilaterally to institute waiver proceedings and thus put off payment of penalties essentially at will, eviscerating the self-effectuating nature of the PAP.

shown the will nor devoted the resources to ensuring the continued development of local competition shown by the NY PSC.

**3. The PAP Is Inadequate to Prevent Backsliding for Advanced Services.**

The Massachusetts PAP is particularly inadequate to prevent backsliding with respect to the provision of advanced services. As we discuss below, Verizon's ability to provide line sharing and line splitting is unproven, and its reported performance on DSL provisioning in general is well below the required levels. For this reason, it is particularly important that the PAP provide adequate incentives to prevent backsliding with respect to these services after Verizon's section 271 approval.

Unfortunately, it does not. The current PAP contains no metrics whatsoever with respect to line sharing, a deficiency that Verizon itself has recognized as in need of remedy in New York.<sup>79/</sup> While neither the New York nor Texas plans included such measures when those carriers received section 271 approval, neither of those carriers was obligated to provide line sharing at the time of its application, and thus backsliding on that service was not an issue. Verizon, however, is currently required to provide line sharing. See TX Order ¶ 321. Having adequate PAP protections for CLECs seeking this service is critical, since Verizon has little practical experience provisioning line sharing, and will not even implement OSS enhancements to support flow-through orders for this service in Massachusetts until at least April 2001.<sup>80/</sup>

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<sup>79/</sup> See Letter Comments of Verizon-NY in Case 99-C-0949, regarding Annual Review of the New York Performance Assurance Plan at 1 (NYPSC filed Sept. 15, 2000) (Kinard Decl., Att. 5); Kinard Decl. ¶ 13.

<sup>80/</sup> See Order, Massachusetts D.T.E. 98-57-Phase III, 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, at 20-21 (DTE filed Sept. 28, 2000) (attached

KPMG also did no testing of this service – all factors that should preclude granting Verizon’s section 271 application and require that sufficient remedy provisions be available before Verizon’s application is granted.

Likewise, although the New York PAP did not expressly address DSL at the time of Verizon-NY’s section 271 approval, this Commission required an independent showing of nondiscriminatory DSL provisioning in all subsequent section 271 applications. See NY Order ¶¶ 330-335; TX Order ¶ 282. Independent anti-backsliding safeguards for DSL are also vital. See TX Order ¶ 422 n.1224 (noting revision of Texas performance remedy plan to include DSL measures between time of first Texas filing and decision on second Texas filing.) In this area, while the Massachusetts PAP includes some DSL measures, Verizon has not in fact been reporting its performance in either New York or Massachusetts with regard to two of the four critical measures on DSL that are included in the present PAPs in both states. Kinard Decl. ¶ 9.<sup>81/</sup>

Recognition of DSL as a separate mode of entry into the residential broadband market is necessary to ensure that Verizon will facilitate the development of advanced services after its section 271 approval, a key goal of the 1996 Act. The demand for DSL services continues to grow exponentially as access to the Internet and use of e-mail become more prevalent and critical to how people obtain information and communicate. As a result, CLECs’ meaningful, sustained entry into the market depends on Verizon meeting its commitments to support CLEC DSL

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hereto at Tab F) (“Massachusetts DSL Order”).

<sup>81/</sup> Verizon New York apparently concedes that some additional DSL measures must be incorporated into a proper PAP. See Letter Comments of Verizon-NY in Case 99-C-0949, regarding Annual Review of the New York Performance Assurance Plan at 1 (NYPSC filed Sept. 15, 2000) (stating as part of annual PAP review that additional DSL measures should be added to New York PAP) (Kinard Decl. Att. 5); Kinard Decl. ¶ 15.