No imputation test will fix this problem because exclusion does not require that Verizon's competitor price the bundle below Px + Pl, since the existence of a benefit for a bundle (or cost savings, for that matter) creates leeway in pricing. Thus, a specific kind of exclusionary pricing that cannot be solved by imputation tests, and that arises from market power or inflated element prices, exists when bundles are differentially attractive to some consumers.

Thus, Dr. Taylor's analysis, while illustrative of a well-known principle of monopoly pricing, is not really relevant to this case. The problem is that the lack of local competition due to unrealistic UNE prices will prevent competition for bundled services, creating an advantage for Verizon that does not arise from any inherent efficiency in their operations. Consumers may be better off to the extent they can purchase a bundle from the ILEC, but not as well off as they would be if there were competition for bundled services.

The effect of the price squeeze on local facilities-based entry

Yet another way to view the problem caused by overpriced UNE is through the dynamics of competition in the local market. Assume that UNEs priced at cost result in reduced barriers to local facilities-based entry. For example, by acquiring a customer base in advance of constructing facilities, a CLEC may be able to target its facilities investments more efficiently. Similarly, by serving both UNE and facilities-based customers in a particular geographic area, the CLEC might achieve greater economies of scale in its networks, which means that it will enter in more geographic markets.

In these circumstances, it is clear that the ILEC is not indifferent between selling UNEs to CLECs and providing the bundled service itself, even though it earns monopoly

profits on the overpriced UNE whether it sells the UNE to the CLEC or offers the retail service directly. Foregoing profits may delay or deter local entry.

F

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.

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TABLE OF CONTENTS

directs Verizon to file tariff language incorporating the process set forth in the FCC rules mentioned above.

The FCC's rules are categorical and afford little flexibility. The burden they place on a state regulator to settle in a regulatory forum, with its associated delays, commercial disputes that call for dispatch in resolution, may prove quite onerous. In practice, the Department will have to dispose of such disputes with a speed consistent with the demands of the market.

B. Operations Support Systems Issues

1. Introduction

In order to provide access to the high frequency portion of the loop, ILECs, such as Verizon, must make modifications to their OSS. As the FCC summarized in its Line Sharing Order, ILECs maintain a variety of computer databases and "back-office" systems that enable ILEC employees to process customer orders more efficiently, provide the requested services to their customers, maintain and repair network facilities, and render bills. To provide these services efficiently to their customers, CLECs must have access to these databases and systems. Line Sharing Order at ¶ 93 n.213.

On or around August 1, 2000, Verizon and Telcordia Technologies ("Telcordia") contracted to upgrade Verizon's OSS so that line sharing orders may electronically flow through Verizon's systems and not drop out for manual processing (see Tr. at 486). Several CLECs argue that the Department should direct Verizon to make these OSS enhancements available in Massachusetts by a date certain (generally March 1, 2001). Verizon asserts there is no need for Department action with respect to OSS.

2. Positions of the Parties

a. Verizon

According to Verizon, there is no reason for the Department to mandate any specific schedule for the necessary OSS enhancements, which are "targeted for completion, on a staggered basis, beginning March 2001" in Pennsylvania (Verizon Brief at 32). Verizon argues that the FCC acknowledged in its Line Sharing Order that ILECs would not be able to modify fully the OSS in time for the scheduled roll-out of line sharing (id., citing Line Sharing Order at ¶¶ 126-130). Verizon states that the final acceptance of Telcordia's software is scheduled to occur on February 15, 2001, after which Verizon will begin deployment throughout its footprint (id. at 33).

A Verizon witness indicated that its OSS upgrades must be implemented on a region-by-region basis across its five regions (id., citing Tr. at 479). Because Verizon is mandated to modify its OSS in Pennsylvania by March 1, 2001, that region will receive the OSS enhancements first (id.). New York, located in a different Verizon region, has also requested this March 1 date (id.). Verizon argues that these upgrades require substantial work activities and that each region must be converted separately; thus, the only viable solution is to implement the updates on a staggered, monthly basis (id. at 33-34). Verizon indicates its willingness to work collaboratively with CLECs to develop a priority schedule for rolling out these OSS enhancements (id. at 33). Specifically, Verizon is willing to work with CLECs to rank the regions based on order of preference for this OSS roll-out (id. at 34).

b. Attorney General and CLECs

The Attorney General, ASCENT, DBC, and Rhythms oppose Verizon's suggestion not to mandate a date certain for implementation of the OSS upgrades in Massachusetts. The Attorney

General requests that the Department order Verizon to implement the line sharing OSS enhancements no later than April 1, 2001, to "ensure that Massachusetts will be next in line after Pennsylvania" to receive these upgrades (Attorney General Brief at 11). The Attorney General argues that if the Department does not mandate this due date, if not an earlier one, "Massachusetts consumers will experience increased delays because their orders will be processed manually, rather than mechanically" (id.). ASCENT also supports this April 1, 2001, deadline and notes the importance of establishing a due date as a target (ASCENT Reply Brief at 11). According to ASCENT, if Verizon is unable to meet this deadline for a good reason, then it can so explain to the Department (id.). However, ASCENT argues, if the Department fails to set a deadline and Verizon unduly delays its OSS upgrades, restrictions on the roll-out of advanced services in Massachusetts may result (id.).

Rhythms argues that Verizon has provided, at most, only unsupported claims that it could not implement the OSS enhancements at the same time Verizon provides them in Pennsylvania (Rhythms Brief at 35). Rhythms suggests that Verizon is telling the Department that the Department is unable to direct Verizon as to when the OSS upgrades will be made in Massachusetts, resulting in Massachusetts being treated as "second-class" behind other states (Rhythms Reply Brief at 24). DBC urges the Department to direct Verizon to make its Loop Facility Assignment and Control System ("LFACS") database[13] available immediately to CLECs and notes that the FCC found no technical reason why ILECs could not resolve operational

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[13] According to Verizon, LFACS inventories and assigns all loop facilities from the serving terminal to the main distribution frame in the central office (Exh. VZ-MA-2, 18). Verizon states that LFACS may contain information regarding the presence or absence of load coils, bridged taps, the length and gauges of the copper cables, and whether the loop is on digital loop carrier (id. at 19).

issues, including OSS modifications, to provide unbundled access to the high frequency portion of the loop by June 6, 2000 (DBC Brief at 40, citing Line Sharing Order at ¶ 130).

3. Analysis and Findings

The Department directs Verizon to implement the necessary OSS enhancements in Massachusetts no later than April 1, 2001, or if Pennsylvania's implementation date slips from March 1, 2001, no later than one month after implementation in Pennsylvania. Verizon's OSS expert testified that this date is feasible for Massachusetts (Tr. at 484-485). While Verizon argues that it is unable to roll-out the OSS upgrades throughout its footprint in the compressed period of time advocated by several CLECs, and that pressuring Verizon to do so will only result in system errors, it appears this inability is largely or entirely due to Verizon's current personnel constraints (Tr. at 479-481). According to Verizon's witness, it uses the same work group to perform the software installation region-by-region (Tr. at 481). Verizon has not explained why it could not use other Verizon software personnel to perform this installation in Massachusetts.

Verizon was put on notice last December, when the FCC's Line Sharing Order was released, that certain OSS modifications would have to be made to permit unbundled access to the high frequency portion of the loop. In that Order, the FCC stated that ILEC arguments that OSS issues will take at least twelve months to resolve to provide unbundled access to the high frequency portion of the loop are "significantly overstated" and that its record shows that ILECs should be able to implement necessary system changes within 180 days from release of the Order. Line Sharing Order at ¶¶ 96, 130.

The Department does not fault Verizon for not having these upgrades in place today. We recognize that the underlying technical issues are difficult ones,[14] requiring necessary input from CLECs, which has occurred through the regional OSS collaborative overseen by the New York Public Service Commission ("NYPSC"), and Verizon's vendor.[15] This consultation has been time-consuming but appears to have been productive. If Verizon adheres to the milestones it set to implement Telcordia's software releases (see Exh. DTE-BA-MA 1-15) an April 1, 2001 roll-out in Massachusetts should be feasible according to Verizon's witness, particularly since it will have made these upgrades already in Pennsylvania (and, possibly, New York). If, however, Pennsylvania's implementation date slips from March 1, 2001, we will likewise give Verizon a corresponding addition of one month to implement the OSS upgrades in Massachusetts.

We decline the suggestion of some CLECs to direct Verizon to make these enhancements available in Massachusetts by March 1, 2001. We are persuaded by Verizon's witness that the March 1 deadline provides Verizon with approximately one month less than it normally requires to test the software in its production environment (Tr. at 479-480). The Department has concerns about requiring Verizon to "cut" this software live, as opposed to testing it for one month (Tr. at 480). The Department finds that CLECs operating in Massachusetts will be well-served by allowing Verizon to test the OSS enhancements, either in a production environment or through

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[14] For example, Verizon's witness testified that the eleven OSS enhancements that Telcordia will perform involve 25 million lines of code (Tr. at 86-87).

[15] Another Verizon witness testified that Verizon began negotiations with Telcordia last February, identifying the work that had to be completed. Also this witness stated that Telcordia began to perform system changes absent a signed contract with Verizon (Tr. at 92-93).

actual experience in other Verizon regions, for one and a half months (i.e., from February 15 to April 1, 2000) in order to catch and remedy any software glitches.

In the regional OSS collaborative, Verizon and CLECs continue to discuss access to loop information, one option of which is direct access to LFACS (Exh. DTE-BA-MA 2-18; Tr. 495-496). Because the decision on which option to obtain more information about loop and terminal makeup and system type is squarely before CLECs, we find it would be counter-productive to make that decision for the CLECs, which is what DBC urges us to do (DBC Brief at 40). Therefore, we decline DBC's request to direct Verizon to make LFACS available immediately to CLECs.

## C. Splitter Ownership and Placement

### 1. Introduction

The FCC notes that a splitter's primary function is to separate the high frequency (xDSL signals) from the low frequency (voiceband) analog signals traversing the copper loop. Line Sharing Order at ¶ 9 n.11. Splitters are installed at each end of the customer's loop to accomplish this operation. Id. at ¶ 66. One splitter is installed at the customer's premises and the other splitter is placed at the central office or RT. Id. Specifically, the splitter "bifurcates the digital and voiceband signals concurrently traversing the local loop, directing the voiceband signals through a pair of copper wires to the Class 5 switch, and directing the digital traffic

Remand Order, declare splitters either part of an existing or a new UNE, the Department can direct Verizon to amend its tariff accordingly. Until such time, however, the Department finds it unnecessary to address CLEC requests for per line or per shelf access to Verizon's splitters. Witnesses for both Covad and Rhythms stated that it is technically feasible for CLECs to make available to other CLECs their splitters on a line-by-line or shelf-by-shelf basis (Tr. at 461-463).

Finally, the Department rejects the CLECs' request to direct Verizon to permit CLECs to mount their splitters directly on Verizon's MDF. Contrary to Rhythms' assertion that it has "thoroughly and completely refuted" Verizon's NEBS-compliant argument, it has provided no evidence that such splitters are NEBS-compliant (see Rhythms Brief at 93, citing Exh. RLI/CVD-1). According to Verizon, the only MDF-mounted splitter compatible with Verizon's frame is not NEBS-compliant because such splitters have failed NEBS safety requirements (Exh. VZ-MA-4, at 27; Exh. DTE-BA-MA 2-12). There is nothing in our record that rebuts Verizon's statements. Unrebutted, these statements have credibility and substance as evidence. When it is shown that MDF-mounted splitters that are compatible with Verizon's frame meet the appropriate safety standards, the Department would be willing to revisit its decision.

D. Line Splitting

1. Introduction

As stated most recently in its SBC Texas Order, the FCC notes that "the obligation of an [ILEC] to make the high frequency portion of the loop separately available is limited to those instances in which the [ILEC] is providing, and continues to provide, voice service on the particular loop to which the [CLEC] seeks access." SBC Texas Order at ¶ 324. Thus, the term "line sharing" is used to describe a situation where the ILEC and a CLEC use the same loop to

provide separate services. The term "line splitting" is used by the FCC to characterize the provisioning of both voice and data services over a single loop by a CLEC, through the UNE-Platform ("UNE-P"). Id. According to the Line Sharing Order, ILECs are "not required to provide line sharing to [CLECs] that are purchasing a combination of network elements known as the platform. In that circumstance, the [ILEC] no longer is the voice provider." Line Sharing Order at ¶ 72. Verizon argues that it is not required to offer or permit "line splitting." Several CLECs disagree.

There is not consistent usage among the parties about terminology and definitions; therefore, specification of how the Department uses certain terms is in order. As mentioned above, the FCC stated that "line sharing" is limited to an arrangement where an ILEC is providing and continues to provide voice service over a loop and shares the same loop with a single data CLEC. Line Sharing Order at ¶¶ 72-75; SBC Texas Order at ¶ 324. "Line splitting" is an arrangement where a CLEC, and not the ILEC, provides both the voice and data service over a single loop. SBC Texas Order at ¶ 324. Verizon uses the term "line sharing on UNE-P" to describe an arrangement where a voice CLEC and a data CLEC share a single loop. For this same arrangement, Rhythms uses the term, "line splitting on UNE-P." In order to avoid confusion between line sharing and line splitting, we will refer to this scenario as "line sharing between two CLECs."

2. Positions of the Parties

a. Verizon

Verizon asserts that the SBC Texas Order makes clear that ILECs do not have a legal obligation to provide line splitting or line sharing between two CLECs (Verizon Reply Brief

at 34). Contrary to arguments made by AT&T and WorldCom, Verizon contends that it has no obligation to preserve a CLEC's UNE-P arrangement should that CLEC decide it would like to offer data, as well as voice, over that loop (id. at 35). Rather, Verizon argues, the SBC Texas Order states that a CLEC can order "an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service" (id. at 36, citing SBC Texas Order at ¶ 325). This language, Verizon argues, indicates that the FCC did not envision that a UNE-P arrangement would remain in place after the provisioning of line splitting (id.). Therefore, Verizon urges the Department to reject AT&T's and WorldCom's argument that Verizon has to preserve the UNE-P arrangement in conjunction with line splitting (id.).

According to Verizon, its obligation to provide "line sharing" is limited just to those instances where it is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access (Verizon Brief at 34-36, citing Line Sharing Order at ¶ 72; SBC Texas Order at ¶¶ 320-329). However, Verizon notes that discussions to facilitate line splitting and line sharing between two CLECs are underway in the New York and Verizon will continue to work with the CLECs to resolve this matter (Verizon Brief at 38, citing Tr. at 206-210).

b. CLECs

AT&T argues that ILECs have an additional obligation to permit CLECs to engage in line sharing between two CLECs (AT&T Reply Brief at 3, citing SBC Texas Order at ¶ 325). According to AT&T, this obligation to facilitate line sharing between two CLECs flows directly

from Verizon's obligation under the Act to provide CLECs with non-discriminatory access to all "features, functions, and capabilities" of network elements, including the loop (id.). AT&T argues that when a CLEC leases a loop as part of a UNE-P arrangement, it is entitled to use all capabilities of that loop, including the high frequency spectrum (id.).

AT&T and WorldCom argue that when a customer who currently receives xDSL service from a data CLEC under a line sharing arrangement with Verizon wants to migrate his or her voice service to a CLEC using UNE-P, but continue to receive xDSL services from the same data CLEC, the voice service can be electronically migrated without any disruption or dismemberment of facilities. AT&T and WorldCom insist that Verizon's offer to permit the UNE-P provider to migrate its UNE-P configuration to an unbundled xDSL-capable loop and unbundled switch port at a collocation node provided by that CLEC or another CLEC does not preserve the UNE-P arrangement, and, thus, prevents voice CLECs from engaging in line-splitting (AT&T Reply Brief at 4-5, citing Tr. at 224-225, 237; WorldCom Reply Brief at 2). According to AT&T, a Verizon requirement for unnecessary re-wiring and disconnection is discriminatory (AT&T Reply Brief at 4-5). Lastly, AT&T and WorldCom claim that Verizon must offer line splitting functionality to CLECs on a line-at-a-time basis (AT&T Reply Brief at 7; WorldCom Reply Brief at 2).

Rhythms argues that a customer obtaining voice service from a CLEC through UNE-P is entitled to obtain xDSL service from a data CLEC, and, thus, the Department should require Verizon to implement line sharing between two CLECs (Rhythms Reply Brief at 32-34). Sprint and ASCENT also urge the Department to order Verizon to provide xDSL service where a CLEC is providing voice service through UNE-P or on resold lines (Sprint Brief at

5-6; ASCENT Reply Brief at 4).

3. Analysis and Findings

In the SBC Texas Order at ¶ 325, the FCC states that ILECs have an obligation to permit competing carriers to engage in line splitting where the competing carrier purchases the entire loop and provides its own splitter. The FCC states that in order for a competing UNE-P carrier to provision both data and voice service over the same loop, it can order the loop portion of the existing UNE-P as an unbundled, xDSL-capable loop terminated to a collocated splitter and DSLAM equipment along with unbundled switching combined with shared transport to "replace its UNE-P." SBC Texas Order at ¶ 325. Verizon states, and we agree, that it permits CLECs to engage in line splitting exactly as described in the SBC Texas Order (Exh. DTE-BA-MA 1-19). Therefore, we find that Verizon has met its obligation to provide "line splitting." AT&T and WorldCom argue that the voice service can be electronically migrated without any disruption or dismemberment of facilities, and, therefore, UNE-P must remain intact in line splitting. However, the argument AT&T and WorldCom use to support their claim that UNE-P migration is possible without disruption is based on line sharing between two CLECs, and not line splitting as defined by the FCC.[22] In addition, AT&T and WorldCom do not rebut Verizon's argument that a UNE-P arrangement no longer exists under a line splitting arrangement. We agree with Verizon that the SBC Texas Order at ¶ 325 states that a line splitting configuration replaces a UNE-P arrangement, and not that a UNE-P arrangement remains in place after the provisioning of line splitting. Therefore, the Department rejects the CLECs' request to permit a CLEC's UNE-P arrangement to remain intact after line splitting.

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[22] See AT&T Reply Brief at 4, citing Tr. at 224-225, 237; WorldCom Reply Brief at 2.

AT&T and WorldCom also claim that Verizon must offer line splitting functionality to CLECs on a line-at-a-time basis. This argument is premised on the assumption that Verizon is required to provide CLECs with access to Verizon's splitter, which, as we decided above in section III.C, is incorrect. The FCC states that its UNE Remand Order cannot "fairly be read to impose on [ILECs] an obligation to provide access to their splitters." SBC Texas Order at ¶ 328. Similarly, the FCC states that it has not imposed any obligation on ILECs to provide access to their splitters in a line splitting arrangement. Therefore, we deny AT&T's and WorldCom's requests. See SBC Texas Order at ¶ 329.

With respect to Rhythms' argument that Verizon must provide line sharing between two CLECs, the FCC states that when the customer, for whatever reason, voluntarily terminates its ILEC-provided voice service on the shared loop, or if the ILEC disconnects the customer's voice service in compliance with applicable federal, state and local law (e.g., the customer does not pay its local voice telephone bill), the data CLEC must purchase the entire unbundled loop. Line Sharing Order at ¶¶ 72-73. Although the FCC states that, in such cases, the data CLEC may enter into a voluntary line sharing agreement with a voice CLEC, the FCC does not make this arrangement the ILEC's obligation. We agree with Verizon that it is not obligated to provide line sharing between two CLECs. Line Sharing Order at ¶73. The FCC has emphasized numerous times that an ILEC is required to provide line sharing only when it is the voice service provider. In addition, Verizon indicated that it is working with CLECs to resolve technical and operational issues on this matter in the New York collaborative. We expect Verizon to import whatever technical and operational resolutions are reached in New York to Massachusetts (see