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November 3, 2000

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Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Dear Secretary Salas:

Pursuant to the Commission's September 22, 2000, Public Notice requesting reply comments on the application by Verizon New England Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts (CC Docket No. 00-176), Rhythms is filing the confidential portions of its submission and a redacted version of the entire submission.

Please contact me at 202/955-6300 if you have any questions concerning these materials.

Sincerely yours,

Mary Jean Fell / el

Mary Jean Fell

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

RHYTHMS NETCONNECTIONS INC.
REPLY COMMENTS IN OPPOSITION TO VERIZON'S APPLICATION
FOR 271 AUTHORITY IN THE STATE OF MASSACHUSETTS

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Dated: November 3, 2000

SUMMARY

As reflected by the Comments of Rhythms, other CLECs and the Evaluation of the Department of Justice, Verizon simply has not met its burden of demonstrating that is provides nondiscriminatory access to the unbundled network elements that data CLECs require to compete to provide advanced services to customers in Massachusetts. The Massachusetts Department of Telecommunications and Energy ("DTE" or "Department") reached a different conclusion and in doing so unfortunately overlooked many of Verizon's deficiencies when it comes to xDSL.

It would be inconsistent with the Act's requirements, including sections 271 and 706, to approve a 271 Application that is woefully deficient in demonstrating xDSL performance. Accordingly, the Commission should deny Verizon's Application to provide interLATA services in the state of Massachusetts. The conclusions of the Massachusetts DTE should not dissuade the Commission from making its own critical evaluation. The importance of strong directives from the Commission in its 271 Orders can not be overstated.

Verizon bears the burden of establishing nondiscrimination, and it has yet to meet that burden. Instead of providing performance data that meet the nondiscrimination standards required by section 271 and Commission Orders, Verizon offers only excuses for its poor reported performance on DSL.[1] Instead of reviewing its entire performance to demonstrate that it is providing nondiscriminatory access to xDSL loops, Verizon

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[1] In its Application, Verizon suggested that the "parity" standard is not an appropriate standard for many of the xDSL measures because providing service at retail is not a good substitute for the work effort involved in provisioning wholesale services. Verizon Application at 17. Rhythms recently made a proposal to the New York Carrier-to-Carrier Working Group that an absolute standard of 95% be instituted in lieu of the parity standards for DSL. Rhythms believes that even with this switch from parity to an

points to a small sub-set of data as indicative of its performance. Instead of raising issues with CLECs in a business setting to discuss and resolve concerns that Verizon may have with CLEC behavior, Verizon chooses to wait and raise the issues for the first time in this regulatory forum. This is hardly the conduct of a firm that is providing nondiscriminatory access to UNEs and will continue to do so following its grant of section 271 interLATA authority.

There are serious problems with Verizon's xDSL performance. These deficiencies are reflected in the metrics that Verizon put forward in support of its Application – measures that Verizon was fully involved in developing.[2] There are also serious problems with Verizon's line sharing readiness. Rhythms and other CLECs have experienced significant problems rolling out line sharing in Massachusetts. Yet, while CLECs experienced delays and problems, Verizon rolled out its InfoSpeed service and, although its product was late to market, Verizon now is the leading provider of xDSL services in the state of Massachusetts.[3]

While the Massachusetts DTE accepted many of Verizon's excuses and claims, the Department of Justice was not persuaded by Verizon's "evidence." The Commission, therefore, should, as it must, carefully review the information before it and give the Department of Justice Evaluation the "substantial weight" that the law requires.[4] As the Department of Justice found, the evidence of Verizon's compliance with section 271's competitive checklist falls far short when it comes to xDSL issues.

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absolute standard, Verizon's performance measures would not demonstrate that it is providing nondiscriminatory access to unbundled xDSL capable loops.

[2] Rhythms Comments at 27-28.

[3] Department of Justice Evaluation at 7.

[4] 47 U.S.C. § 271(d)(2)(A).

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I. Introduction

On September 22, 2000 Verizon filed its Application with the Federal Communications Commission to provide interLATA services in the state of Massachusetts. On October 16, the Massachusetts DTE, numerous CLECs and some of the citizenry of Massachusetts filed their comments on Verizon's Application with the Commission. The Massachusetts DTE disagreed with many of the CLECs operating in Massachusetts when it concluded that Verizon had satisfied its obligations under section 271 of the 1996 Act.

On October 25, the United States Department of Justice filed its Evaluation of Verizon's Application with the Commission. That Evaluation was consistent with what many CLECs operating in Massachusetts said: Verizon has not met its burden of demonstrating that its markets in Massachusetts are open to competition.[5] The Department of Justice and the CLECs operating in Massachusetts both expressed serious concerns with Verizon's provision of xDSL services.[6] As broadband services are the fastest growing sector of the telecommunications market, the Commission must give serious consideration to the issues raised by the Department of Justice and data CLECs like Rhythms operating in Massachusetts. If the Commission likewise determines that Verizon's performance for xDSL services does not meet its nondiscrimination requirements, the Commission must deny Verizon's Application.

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5 Department of Justice Evaluation at 2-3.

6 *Id.*; Rhythms Comments at 27-28; Covad Comments at 9-10.

II. The Massachusetts Evaluation Should Not Be Given the Weight that the Commission Gave Prior State Commission Assessments

While the Massachusetts DTE certainly conducted a lengthy evaluation into Verizon's compliance with the 14 point checklist, the Commission cannot give this evaluation the same weight that it gave to the New York Public Service Commission's evaluation or even the Texas Public Utility Commission's evaluation. While Rhythms expressed concerns over both of those states' 271 processes at the time, the Commission was convinced that New York, in particular, reflected a full inquiry by the New York PSC. The Commission specifically noted the New York PSC's effort in its Order, underscoring the "rigorous" evaluation in New York.[7] Even the Texas proceeding, which was far less "rigorous" than the New York proceeding, entailed "significant time and effort" by the Texas PUC.[8]

Unfortunately, the same accolades cannot be showered on the Massachusetts proceeding. As a number of the Comments pointed out, the testing by KPMG in Massachusetts was hardly the rigorous evaluation that took place in New York.[9] As WorldCom explained, KPMG did not conduct a full test of Verizon's LSOG 4 interface, and KPMG's evaluation was not true "military style" as it was in New York, because in Massachusetts Verizon did not perform a root cause analysis of the problems KPMG uncovered.[10] In addition, xDSL metrics were not validated by KPMG in Massachusetts,

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[7] *In the Matter of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (rel. Dec. 22, 1999) ("*Bell Atlantic New York Order*") at ¶¶ 8-12.

[8] *In the Matter of Application of SBC Communications Inc. To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (rel. June 30, 2000)("*SWBT Texas Order* ") at ¶¶ 3-4.

[9] Department of Justice Evaluation at 21; WorldCom Comments at 41-42; Covad Comments at 34-37; Winstar Comments at 17; OnSite Access Local Comments at 13-14.

[10] WorldCom Comments at 41-42.

and as Covad pointed out, the testing on xDSL was flawed because Verizon was aware of KPMG's observations.[11]

Furthermore, while the Massachusetts proceeding was open to all participants, actual participation was not necessarily encouraged. For example, while Rhythms' was cross-examining the Verizon panel of witnesses on Verizon's xDSL performance from the Carrier-to-Carrier reports, the Commission suggested that the line of questioning was somehow unnecessary and could be handled in closing arguments.[12] As the ALTS Coalition points out, there were no closing briefs following the last round of technical sessions, and participants were precluded from presenting information on the public interest considerations of Verizon's Application.[13] The Massachusetts DTE also ignored important information presented to it or otherwise decided to "look the other way" in its analysis of Verizon's Application.[14] For example, the DTE indicated that the issues with Rhythms' in-place conversion were settled between the parties and cited to a joint letter submitted by Verizon and Rhythms on the issue.[15] Apparently, however, the DTE chose to ignore a second letter that Rhythms submitted on the same day, which indicated that the issue of in-place conversion was not settled from Rhythms' perspective.[16]

The most glaring example of where the Department ignored record evidence, however, is with Verizon's xDSL performance data. While recognizing that Verizon's

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[11] Covad Comments at 34-35.

[12] Tr. at 4339-40.

[13] ALTS Comments at 4-5.

[14] Department of Justice Evaluation at 8 n. 30 (finding many of the DTE's conclusions without support); Covad Comments 24.

[15] Massachusetts DTE Evaluation at 41.

[16] *See* September 1, 2000 Letter to the Massachusetts DTE from Mary Jean Fell, Attachment 1 to the Supplemental Declaration of Robert Williams in Support of the Reply Comments of Rhythms NetConnections Inc. in Opposition to Verizon's Application for 271 Authority in the State of Massachusetts ("Williams Supplemental Declaration").

performance "has not yet reached formal parity" the Department nonetheless determined that Verizon's poor performance was not poor enough "to support a finding of non-compliance with the requirements of checklist item 4."[17] Verizon's data demonstrates unequivocally that Verizon's performance when it comes to DSL is sub-par, but the Massachusetts DTE accepted Verizon's "excuses," in many cases with little or no basis for doing so.[18]

Finally, as many of the Comments demonstrated, the Performance Assurance Plan adopted by the Massachusetts DTE will not prevent backsliding, particularly with respect to advanced services, and is otherwise inadequate to protect the nascent competitive marketplace in Massachusetts.[19] For all of these reasons, the Massachusetts DTE evaluation should not be given the significant weight that this Commission has given to other state commission evaluations.

III. The DOJ Evaluation Must Be Given Substantial Weight From this Commission

The Commission must give the Department of Justice Evaluation "substantial weight" as a matter of law.[20] In this case, the Commission also should give the Department's Evaluation "substantial weight" because it is the more thoughtful analysis presented to the Commission. While the Massachusetts DTE appears to accept many of Verizon's claims without question, the Department of Justice correctly points out that evidence is lacking with which to come to an adequate conclusion on many issues.[21]

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17 Massachusetts DTE Evaluation at 305.

18 Department of Justice Evaluation at 8 n.30.

19 ALTS Comments at 53-60; Covad Comments at 47-48; Massachusetts Attorney General's Comments at 13.

20 47 U.S.C. § 271(d)(2)(A).

21 Department of Justice Evaluation at 8, n.30.

In a single footnote, the Department of Justice captures the essence of the problems with Verizon's xDSL performance evidence and accurately questions what the Massachusetts DTE relied upon in making its assessment.[22] As a result of the issues raised by Verizon concerning its performance metrics, the Department of Justice also correlates these deficiencies to Verizon's Performance Assurance Plan.[23] To the extent there are problems with the metrics, as Verizon asserts, the Department of Justice correctly determines then that "there is little assurance that future backsliding can be readily detected and addressed" through the Performance Assurance Plan.[24] Moreover, the Department of Justice is concerned, as are various CLECs, over Verizon's lack of data to support is "reformulated performance calculations"[25] and the lack of testing by KPMG of the xDSL metrics.[26]

For all of these reasons, the Department of Justice concludes that "Verizon has not yet demonstrated (1) that it provides nondiscriminatory access to DSL loops, and (2) that suitable performance measures with unambiguous benchmarks are in place to deter backsliding."[27] Given the "substantial weight" that the Department of Justice's Evaluation must be given, and the lack of substance Verizon presented to support many of its claims and excuses, this Commission has no choice but to deny Verizon's application to provide interLATA services in Massachusetts.

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22 *Id.*

23 *Id.* at 9

24 *Id., see also id.* at 14 ("To the extent that the Massachusetts performance measures do not accurately indicate whether Verizon is providing discriminatory or nondiscriminatory access to DSL loops, those deficiencies in the performance measures will substantially increase the difficulties of detecting and providing remedies for any discriminatory performance that may arise in the future.").

25 *Id.* at 11 and 14; *see also* Rhythms Comments at 27-28; Covad Comments at 20-22.

26 Department of Justice Evaluation at 15; *see also* Rhythms Comments at 29; Covad Comments at 21; ALTS Comments at 39.

27 *Id.* at 2-3.

IV. Other Parties' Comments Support Rhythms' Assertions

A. Checklist Item One – Interconnection (Collocation)

1. Collocation At Remote Terminals

Without any analysis of whether Verizon's current tariff offering for collocation at remote terminals complies with the Commission's *UNE Remand Order*, the Massachusetts DTE merely indicated that it has a continuing investigation into Verizon's collocation at remote terminal tariff offering to determine compliance.[28] Verizon's Application, however, must be evaluated by the Commission as it was filed, and Verizon's current offering does not comply with *UNE Remand.*[29] Rhythms' comments fully address this issue, as do the comments of Covad and ALTS, both of whom agree with Rhythms that Verizon's collocation at remote tariff offering is not consistent with the *UNE Remand Order* and does not provide CLECs with a reasonable opportunity to serve customers in Massachusetts who are served by remote terminals.[30]

Verizon was fully in control of the timing of its Application and chose to file without the resolution of this issue by the Massachusetts DTE. Therefore, any promises by Verizon of future compliance are insufficient to meet its burden.[31] As a result, if the Commission finds that Verizon's tariff offering on collocation at remote terminals is inconsistent with its *UNE Remand Order*, the Commission must also find that Verizon has not met is burden of demonstrating nondiscriminatory access to interconnection under checklist item one.

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28 Massachusetts DTE Evaluation at 38.
29 *Bell Atlantic New York Order* at ¶ 34; ALTS Comments at 17.
30 Rhythms Comments at 10-14; ALTS Comments at 16-17; Covad Comments at 25-28.
31 *Bell Atlantic New York Order* at ¶ 37.

2. In-Place Conversions

The Massachusetts DTE was quick to dismiss Rhythms' concerns over in-place conversions of its virtual arrangements to physical arrangements. The DTE indicated that a letter jointly submitted to the Department[32] by Rhythms and Verizon that attempted to resolve issues associated with repairs of virtually collocated equipment demonstrates that Verizon and Rhythms "have taken affirmative steps to ensure that similar problems do not occur" again and thus the Department dismissed Rhythms' concerns.[33] While that letter did indeed attempt to resolve future problems with repairs of virtually collocated equipment, it did not address the heart of Rhythms' concerns regarding control if its collocated equipment so that it could most effectively serve customers in the two central offices where Rhythms has virtual collocation arrangements.[34] Moreover, the Department completely ignored a second letter that Rhythms sent the very same day that addressed this specific point and clearly indicated that the issue of in-place conversions was not resolved from Rhythms perspective.[35]

The issue of in-place conversions of virtual to physical collocation is important for Rhythms and other CLECs,[36] and the Commission should provide the specific guidance in its orders to demonstrate under what circumstances these types of conversions are required.

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32 The letter was submitted pursuant to Department directive. Tr. at 4275.
33 Massachusetts DTE Comments at 41.
34 Rhythms Comments at 15-17.
35 Williams Supplemental Declaration at ¶¶ 3-4 and Attachment 1 thereto.
36 Rhythms Comments at 15-17; ALTS Comments at 14-16.

3. Collocation Power Charges

Yet again, the DTE summarily rejected Rhythms concerns over collocation power charges, citing to the Department's Order in the *Consolidated Arbitrations*.[37] In reviewing that Order, the specific issues of which Rhythms complains – namely the policy of charging for amps of fused power versus amps of drained power, and charging for amps fused on redundant feeds – do not appear to be addressed as the Department asserts. Rhythms did not participate in that proceeding (as it was not operational in Massachusetts when the Order was issued in June 1998). Nonetheless, the issue is one that Rhythms will continue to press, because Verizon's collocation power charges are not cost based and provide it with a windfall profit, while raising Rhythms and other CLECs' costs of operating.[38]

Moreover, Rhythms agrees with the Comments of Covad and ALTS, both of whom have addressed this issue with Verizon to no avail.[39] As Covad points out in its comments, Verizon's federal tariff "bases power charges upon the amount of drained amps requested"[40] not on the amps that are fused. Thus, Verizon is not following its own tariff when it charges for amps fused rather than the amount of amps a CLEC requests.[41] In addition, Covad agrees that Verizon's policy of charging for power on the redundant feed is not cost-based as required by the Act.[42] Should the Commission also conclude

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37 Massachusetts DTE Comments at 40.

38 **** BEGIN PROPRIETARY**
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END PROPRIETARY ****

39 Rhythms Comments at 18-20; Covad Comments at 43-47; ALTS Comments at 18-23.

40 Covad Comments at 45.

41 Rhythms Comments at 19; Covad Comments at 45.

42 Covad Comments at 47.

that Verizon's collocation power charges are not cost based, it should not approve Verizon's 271 Application.

B. Checklist Item Two – OSS

A number of CLECs noted substantial problems with Verizon's OSS in their Comments.[43] The Department of Justice Evaluation also questioned the scalability of Verizon's OSS in Massachusetts.[44] The Massachusetts DTE, however, did not adequately address these issues, and the Commission must, therefore, evaluate carefully the Department's conclusions before making its determinations.

For example, Rhythms and other CLECs have asked that Verizon extend the hours of its TISOC.[45] The Massachusetts DTE indicates that this issue was raised by CLECs during the technical sessions in Massachusetts,[46] but the Department does not draw any conclusions nor even mention the fact that Verizon had refused this request when it concluded that Verizon provides nondiscriminatory access to ordering OSS.

TISOC hours are a significant issue for Rhythms and other data CLECs.[47] Despite its contrary assertions, much of Verizon's OSS is still manual for xDSL and line sharing, resulting in multiple queries between the Verizon TISOC and CLECs' order centers.[48] As a result, the hours that Verizon's TISOC is available directly relates to the timing with which Rhythms can provide service to its customers.[49] With the more limited

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43 Rhythms Comments at 20-25; ALTS Comments at 20-28; Association of Communications Enterprises Comments at 8-11; Covad Comments at 39-43; OnSite Access Local Comments at 6-24; Winstar Comments at 10-24

44 Department of Justice Evaluation at 22.

45 Rhythms Comments at 23-24; Covad Comments at 48.

46 Massachusetts DTE Evaluation at 129-30.

47 Rhythms Comments at 23-24; Covad Comments at 48.

48 Rhythms Comments at 24.

49 *Id.* at 23-24.

hours of operation of Verizon's TISOC, hours and sometimes even days can be lost in getting a customer's order fulfilled.[50]

C. Checklist Items Two and Four – Unbundled Loops

1. The Data Speak for Themselves and Verizon's "Excuses" Should Carry No Weight

Verizon's Carrier-to-Carrier data on xDSL issues speak volumes. Verizon is not performing at parity for many of the metrics and where there are absolute standards in place they are not being met either. To compensate for this deficiency, Verizon has taken two tacts. First, it points to the subset of provisioning metrics where its performance is arguably good – although Verizon still does not achieve the absolute standard in all cases.[51] The specific metrics that Verizon cites to are: PR-4-14, PR-4-15, PR-4-16, PR-4-17 and PR-4-18. To fully understand this subset of metrics, however, one must understand exactly what they represent. As Verizon correctly points out, these metrics exclude orders missed for lack of facilities.[52] In fact, these metrics are measuring completions by the due date, so they do not account for situations where the due date is changed for some reason. As a result, just looking at this exclusion is like an airline reporting its on-time performance but excluding all times when weather or equipment problems delay the flight.

What is not clear, however, is how Verizon calculates its performance for these measures and how its performance compares with its reported performance under the Average Interval Completed Measures. The "% Completed On Time" metrics are intended to measure the percent of 2-wire xDSL services completed on time. For June,

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50 *Id.*

51 Guerard and Canny Declaration at ¶ 129 and Attachment M.

Verizon reports that it completed such orders on time anywhere from 88% to 93% of the time.[53] For July, Verizon reports 90% to 94% of such orders were completed on time.[54] This reported performance is not consistent with Verizon's performance on the Average "Interval Offered" versus "Completed" measures. It is impossible to tell how Verizon concludes that it completed orders on time around 92% of the time when it reports that for the same two months it completed the same orders almost a day later than the committed due date. Moreover, it is virtually impossible to figure out how Verizon calculates its performance for the "% Completed On Time" measures because the number of observations listed does not add up to the total number of orders completed that month.[55]

A full review of Verizon's metric performance is crucial to gain a better understanding of its overall provisioning, maintenance and repair performance. The "big picture" is not a rosy one for Verizon, nor for data CLECs relying on Verizon for UNEs. For example, taking the MR-4 series of metrics "Trouble Duration Interval" it is apparent that Verizon is clearing its own trouble tickets much more quickly than CLEC ticket.[56]

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52 *Id. see also,* Rhythms Comments at 30-31.

53 Carrier-to-Carrier Performance Standards and Reports for June 2000, PR-4-14 through PR-4-17 (2-wire xDSL).

54 Carrier-to-Carrier Performance Standards and Reports for July 2000, PR-4-14 through PR-4-17 (2-wire xDSL).

55 The number of observations listed under PR-4-08 appears to be the total number of xDSL orders completed in a month because the denominator for that measure is the "count of orders completed." It is interesting to note that the number of observations listed for PR-4-08 and PR-4-04 are identical each month yet the denominator for each is different. The denominator for PR-4-08 is "count of orders completed" while the denominator for PR-4-04 is "count of dispatched orders." Based on this, one would assume that all wholesale xDSL orders required a dispatch, but Verizon reports that a few hundred orders each month did not require a dispatch.

56 The MR-4 metrics, includes a number of exclusions that should demonstrate a better performance record for Verizon than if these exclusions were included. For example, exclusions for these metrics include subsequent reports of the same trouble, CPE troubles and no troubles found.

Even if the FCC were to accept all of Verizon's excuses for its poor performance on DSL, the data show that Verizon provides its retail customers with DSL in the interval in which it promised but does not do the same for its wholesale customers. A comparison of the "Average Interval Offered" (PR-1) and "Average Interval Completed" (PR-2) data highlights that Verizon routinely completes its retail orders in the number of days promised but completes its wholesale orders almost a day later than the committed due date. For example, in June, July and August, Verizon completed the bulk of its retail orders on the date in which it had promised the service would be provided.

2-wire xDSL Services—Retail (INFOSPEED)
Average Interval Offered & Completed – No Dispatch[57]

	Days Promised	Days Completed
June	5.54	5.54
July	4.79	4.70
August	5.29	5.36

Unfortunately, the same is not true for Verizon's provision of xDSL loops to data CLECs. The performance data for the same three months—June through August—shows that Verizon offered data CLECs due dates outside of the standard 6-day interval and failed to complete the order in the timeframe promised.

[57] In assessing Verizon's performance to its retail customers is appropriate the review the "No-Dispatch" measures because the majority of Verizon's retail orders do not require an outside dispatch. *See* "Number Observations" listed under PR-1-01 and PR-2-01 (no dispatch) versus PR-1-02 and PR-2-02 (dispatch) of Carrier-to-Carrier Performance Reports, Bell Atlantic-Massachusetts.

2-wire xDSL Services—Wholesale (CLEC Aggregate)
Average Interval Offered & Completed – Dispatch[58]

	Days Promised	Days Completed
June	6.96	7.16
July	6.84	7.14
August	6.48	12.04

Verizon cannot use CLEC behavior as an excuse for why it is offering CLECs intervals longer than 6 days and then completing the orders about a day later because the "Average Interval Offered" and "Completed" measures specifically exclude instances when the CLEC either requested a longer interval or caused the order to be completed late due to any end user or CLEC caused delay.[59]

When the metrics are viewed as a whole, a much clearer picture of Verizon's performance on xDSL loops comes into focus. The numbers do not support Verizon's claims of nondiscriminatory access to xDSL capable loops. Because of its less than stellar performance when all of the metrics are viewed together, Verizon takes its second tact of pointing out the various reasons its performance falls short.

2. No Access Situations

Verizon's claim that "no access" situations skew its performance is confusing to Rhythms. Rhythms has heard this complaint from Verizon during collaborative proceedings in New York in the context of provisioning, never repair. Thus, Verizon has

[58] Unlike Verizon's retail offering, stand-alone xDSL loops require a dispatch. In assessing Verizon's performance to DLECs on xDSL loops it is more appropriate to review the "Dispatch" measures.

[59] *See* Exclusions listed under PR-1 Average Interval Offered and PR-2 Average Interval Completed Carrier-to-Carrier Measures. Also, a review of the number of observations listed on Verizon's performance reports reveals that Verizon is indeed excluding orders from the pool of orders used to calculate its performance.

complained that customer "no access" during the provisioning process skews its performance. In reviewing the metrics, however, it is not clear what Verizon is concerned about. The PR-2 and PR-3 metrics specifically excludes "Orders completed late due to any end user or CLEC caused delay."[60] Therefore, these metrics specifically exclude "no access" situations from the measure.

The data for PR-2-02 consistently reveals that when a dispatch is involved, Verizon's intervals for its own retail service are substantially shorter than the actual interval provided to CLECs. In July the disparity was 5.93 days for Verizon and 7.14 days for CLECs. For August, the disparity was even more significant with Verizon providing itself with service within 8.15 days, but CLECs having an average interval of 12.04 days. As this metric specifically excludes "no access" situations, Verizon's "excuse" for its poor performance is wholly inapplicable.

In reviewing the most recent data for PR-3-10, "% Completed in 6 days" it is abundantly clear that Verizon is not meeting it nondiscrimination obligations. For July, Verizon completed its own orders 83.12% of the time but CLEC orders only 51.45% of the time, a nearly 32% disparity. The results are similarly poor for August.[61] Verizon completed its own orders within the interval 62.93% of the time and CLEC orders only 40.29% of the time, again demonstrating a substantial performance difference of over 22%. Because this metric also specifically excludes "no access" situations, Verizon's

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[60] New York Carrier-to-Carrier Guide, February 2000.

[61] Due to the strike, one might expect some disappointing performance from Verizon in August, but would expect that it would be equally poor for Verizon as well as for CLECs. That, however, is not the case. Verizon's own performance for August is not nearly as poor as it was for CLECs. Covad Comments at 22-23.

allegation concerning "no access" skewing its performance results is nothing more than a diversion to avoid focussing on its poor performance.

As a number of CLECs pointed out, moreover, any problems with "no access" easily could be solved by Verizon if it provided CLECs with an appointment window similar to what it provides to its own retail customers.[62] Verizon provides its own retail customers with a four-hour window but does not do the same for CLECs, requiring their customers to be available all day.[63] A simple change in Verizon's policy, which would provide nondiscriminatory treatment for CLECs, could very well solve the "no access" problems that Verizon alleges.

3. Acceptance Testing

Rhythms was not aware that acceptance testing is a problem with Verizon until August, 2000, when the issue was first raised in the technical sessions before the Massachusetts DTE.[64] As Rob Williams points out in his Supplemental Declaration, he is the point person for Rhythms in the Verizon region,[65] and therefore the person that Verizon would approach to discuss issues regarding inappropriate acceptance testing or accepting bad loops.[66] Mr. Williams reports that Verizon has not discussed these issues with him or his staff.[67] In fact, the first time the issue was raised, it was at the technical session in Massachusetts in August, 2000 – in a legal proceeding, not in a business context, as one might expect.[68]

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62 Covad Comments at 22; Network Access Solutions Corp. Comments at 3.
63 *Id.*
64 Williams Supplemental Declaration at ¶¶ 5-6.
65 *Id.* at ¶ 5.
66 *Id.* at ¶¶ 5-6.
67 *Id.*
68 *Id.* at ¶¶ 5-7.

In their Comments, Covad, like Rhythms, strongly opposed the idea that they would simply accept loops and then open trouble tickets on them.[69] Covad correctly points out that because Verizon has not provided CLECs with company-specific reports, as was done in New York, CLECs are unable to test the validity of Verizon's assertions.[70] Rhythms and Covad both have requested carrier-specific reports from Verizon.[71] Such CLEC review and validation was crucial to the review process in New York but totally absent here. Verizon, therefore, attempts to meet its burden of proof in this matter by making unsupported allegations that CLECs are unable to test.

Verizon submitted some data in an *ex parte* filing that allegedly supports its contentions, however, it does nothing of the sort. For Rhythms, these data demonstrate that Rhythms rarely opens trouble tickets within 30 days. Moreover, Verizon illogically assumes that all trouble within 30 days somehow equates to poor loop acceptance testing by CLECs.[72] How Verizon reached that conclusion is a mystery. Rhythms does not accept bad loops and only opens trouble tickets when experiencing legitimate troubles after the line has been turned up.[73]

4. Loop Qualification

Verizon's claims relating to loop qualification are equally confusing. Verizon's mechanized loop query tool does not provide Rhythms with all of the information that it

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69 Covad Comments at 17; Rhythms Comments at 32-33.

70 Covad Comments at 21. Covad and Rhythms have both requested these reports. *See* Williams Supplemental Declaration at ¶ 9.

71 Williams Supplemental Declaration at ¶ 9. Verizon does provide carrier-specific reports as part of the *Consolidated Arbitration*, but Rhythms was not a participant in that matter and DSL is not included in the reported metrics in that case.

72 Williams Supplemental Declaration at ¶ 7.

73 *Id.* at ¶¶ 6-7.

needs to determine whether it can serve a given customer or not.[74] Verizon uses the mechanized tool 100% of the time to prequalify loops.[75] Unfortunately, this tool does not always provide the necessary information from Verizon to determine whether it can serve the customer, and therefore Rhythms must request manual loop qualification.[76] Manual loop qualification is necessary in some cases. Rhythms would not take the extra time and pay the extra expense for a manual query if it had obtained all of the information it needed from Verizon's mechanized query.[77] It would not be rational for Rhythms or other CLECs to operate by wasting time in money in this way. As a result, the only plausible explanation is that, as Rhythms asserts, the mechanized query does not provide CLECs with all of the information they need to service the xDSL needs of their customers.[78]

Again, this issue is one that Rhythms would have expected Verizon to raise in a business context, particularly f it was seriously effecting Verizon's ability to meet its statutory obligations and effectively serve its wholesale customers.[79] Nonetheless, this issue was never raised with Rhythms outside of the 271 regulatory process.[80] This type of eleventh hour allegation with nothing to support is must be rejected.[81]

Surprisingly, the only data that Verizon has put forward to support its eleventh hour allegation supports Rhythms' position instead. Rhythms prequalifies all of the loops it submits to Verizon. On the LSR, Rhythms will indicate whether the loop has been

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74 *Id.* at ¶¶ 11-12.
75 *Id.* at ¶¶ 9-10
76 *Id.* at ¶ 12.
77 Rhythms Comments at 33-34; Covad Comments at 14; Williams Supplemental Declaration at ¶12.
78 Rhythms Comments at 34; Williams Supplemental Declaration at ¶12.
79 Williams Supplemental Declaration at ¶ 8.
80 *Id.*
81 *Id.* at 15.

prequalified or requires manual loop qualification. As part of an *ex parte* submission, Verizon submitted data reporting that ** **BEGIN PROPRIETARY** **********

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**********END PROPRIETARY**

D. Checklist Items Two and Four – Line Sharing

Rhythms and Covad both have detailed the problems that they have experienced with line sharing in Massachusetts to date.[82] While Verizon certainly is working to resolve many of the issues that were raised (in large part because of this proceeding), Rhythms continues to experience problems. Rhythms repeatedly has requested that Verizon train its central office and service center personnel appropriately so that issues with line sharing can be addressed more expeditiously without constantly escalating the issues.[83] In addition, Rhythms has asked a number of times that central office wiring, which Verizon was required to complete by June 6, 2000, be finished.[84] Verizon has failed to fulfill either of these requests, both of which are essential to Rhythms' ability to offer line shared services.

Verizon's difficulties in Massachusetts suggest that it is not yet prepared to offer line sharing on any significant scale.[85] This issue is evidenced by Verizon's moving of resources from its southern region to Massachusetts to address line sharing issues there

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82 Rhythms Comments at 35-38; Covad Comments at 29-33.
83 Williams Supplemental Declaration at 16-17.
84 *Id.*
85 *Id.* at 16.

first.[86] Even New York is experiencing problems and is still awaiting central office wiring.[87] These problems suggest a serious scalability issue that Verizon must resolve before it can claim that it has met the requirements of section 271.

V. Conclusion

The Department of Justice correctly found that Verizon had not met its burden of proof to establish its compliance with its obligations to provide nondiscriminatory access to xDSL loops. Rhythms and other CLECs strongly echo that conclusion in their comments. While the Massachusetts DTE came to a different conclusion, the Commission must give the Department of Justice Evaluation "substantial weight" as a matter of law, and should nonetheless do so, as it is the more thoughtful recommendation before this Commission.

The facts are simple. Verizon's performance data does not demonstrate nondiscrimination. Data CLECs uniformly affirm this point. Instead of facing the facts on what the data reveal and attempting to improve upon it, Verizon instead makes excuses and raises issues at the eleventh hour. The Commission should not be persuaded by these tactics and should deny Verizon's Application to provide interLATA services in Massachusetts.

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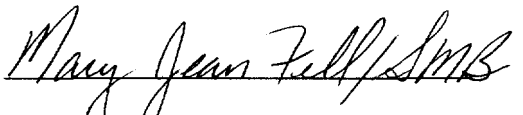
86 Rhythms Comments at 36.
87 *Id.*

Respectfully submitted,



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

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

SUPPLEMENTAL DECLARATION OF ROBERT WILLIAMS IN SUPPORT OF THE REPLY COMMENTS OF RHYTHMS NETCONNECTIONS INC. IN OPPOSITION TO VERIZON'S APPLICATION FOR 271 AUTHORITY IN THE STATE OF MASSACHUSETTS

1. My name is Robert Williams. I am employed by Rhythms Links Inc. ("Rhythms") as the Vice President of Regulatory Affairs and Deployment, Eastern Region. My business address is 8605 Westwood Center Drive, Suite 300 Vienna, Virginia 22182.

2. My background and job responsibilities are detailed in the Declaration I submitted to the Commission on October 16, 2000, in connection with Rhythms initial Comments opposing Verizon's 271 Application. I am filing this Supplemental Declaration to address additional issues that have arisen since filing that initial Declaration and to provide clarifying information on some of Verizon's assertions.

In-Place Conversions from Virtual to Physical Collocation

3. In its Evaluation, the Massachusetts Department of Telecommunications and Energy suggests that Rhythms' issue over its virtually collocated equipment at the Westborough and Westford central offices was settled by Verizon and Rhythms when they submitted a

joint letter to the DTE. That letter did attempt to determine the source of the problems that Rhythms experienced and to avoid similar situations in the future, but it did not resolve Rhythms' issues associated with the need for in-place conversions in the Westborough and Westford central offices.

4. Rhythms needs to have ultimate control over its virtually collocated equipment in Massachusetts. Full ownership and the ability to repair and maintain that equipment is the most effective means for Rhythms to service its existing and future customers at these two central offices. In fact, Rhythms felt so strongly about this issue, that it submitted a separate letter to the DTE on the very same day the joint letter was submitted. This second letter underscored Rhythms' continued desire to have these virtual collocation arrangements converted in-place to physical collocation arrangements. A copy of that letter is attached to this Supplemental Declaration as Attachment 1

Verizon's Excuse Regarding Loop Acceptance

5. As Rhythms' Vice President of Regulatory Affairs and Deployment for the Eastern region, I am Rhythms' point-person for issues with Verizon. As part of my job, I regularly meet with Verizon personnel to discuss operational issues. It is very common for me to call my counterparts at Verizon and for them to call me when issues arise between the companies. In addition, my counterparts at Verizon and I meet in regulatory arenas and have an opportunity to discuss and resolve issues in those settings as well.

6. Because we regularly touch base on issues, I was surprised to learn about some of the xDSL issues that Verizon raised in its Application. Specifically, considering that Verizon never raised any issues with me concerning Rhythms accepting bad loops and opening trouble tickets on them in a business context, I was disheartened to read that Verizon is accusing

Rhythms of such behavior. Since hearing this allegation, I looked into Rhythms' practices and learned that Rhythms does not accept bad loops. Rhythms goal is to provide quality service to its customers as quickly as possible. To that end, Rhythms does not request longer intervals, and Rhythms does not accept bad loops.

7. Verizon seems to have assumed that the mere presence of a trouble ticket within 30 days of a loop's delivery must mean that a CLEC has accepted a bad loop. Verizon ignores the fact that there could be legitimate problems with the loop after it was turned up. In fact, Verizon offers no evidence to support its contention that all troubles within 30 days are associated with CLECs accepting bad loops. I can assure you that if Rhythms opens a trouble ticket within 30 days, that means that there is some sort of legitimate trouble on the line, not that Rhythms inappropriately accepted a loop that would not support the service it was offering.

Verizon's Excuse Regarding Loop Prequalification

8. Similarly, Verizon's issues with how Rhythms and other CLECs perform loop pre-qualification testing were never raised with Rhythms before this proceeding. These types of issues are discussed between Rhythms and Verizon all the time and I would have expected to hear about them prior to this regulatory proceeding.

9. Moreover, since learning of these issues, I again confirmed Rhythms' practices. Rhythms uses Verizon's mechanized loop pre-qualification tool 100% of the time. Verizon would like this Commission to believe that somehow CLECs are to blame for its poor performance, but there is no evidence to support such a contention. Verizon has failed to put forth any credible information to support its claims. The two major data CLECs in Massachusetts – Rhythms and Covad -- have stated unequivocally that they use Verizon's loop pre-qualification tool 100% of the time. Verizon, on the other hand, provides no CLEC-specific reports to support

its allegations. I know that Covad requested this information in an e-mail on July 21, 2000. A copy of the e-mail communication between Covad and Verizon on this topic is attached to this Supplemental Declaration as Attachment 2. I also know that Rhythms' attorneys assumed that CLEC-specific reports would be appended to Verizon's August 4, 2000, filing with the Massachusetts DTE. I understand that Mary Jean Fell, who represents Rhythms in this and other matters, requested these reports from Verizon's attorney Bruce Beausejour shortly after Verizon's August 4 filing. She was told that there were no Rhythms-specific data.

10. Verizon has provided *no information* to support its claims that CLECs do not prequalify loops and therefore skew its performance metrics when they request manual loop qualification (which adds 2 days to the provisioning interval). Rhythms and Covad have both stated that they use Verizon's mechanized loop pre-qualification tool 100% of the time, thus Verizon must come forward with some kernel of information to support its claim. Verizon has the ability to provide this Commission with information from the LSRs that CLECs submit. An analysis of this information would reveal whether Verizon's claims have any merit. By analyzing data from the LSRs, Verizon easily could determine whether it meets the established interval for prequalified loops and whether it meets the slightly longer interval for loops that need manual qualification. I know that Rhythms only requests manual loop qualification on approximately 20% of the orders that we submit to Verizon. Thus, using our estimate, Verizon's performance is not skewed in any meaningful sense by Rhythms' *legitimate needs* for manual loop qualification. Verizon's assertions, therefore, are without support and must be critically evaluated by this Commission.

11. Verizon's mechanized database, which Rhythms uses for loop pre-qualification, was developed for Verizon's retail ADSL offering. The mechanized database originally was not particularly useful for CLECs, and only very recently became a more robust tool. As more and more CLECs perform manual loop qualification (and pay Verizon to perform it) the information is added to the mechanized database, making it a more useful tool for Rhythms and other CLECs. Nonetheless, it does not contain all of the loops in Verizon's network, and it does not contain all of the information that Rhythms needs to determine whether one of its products is available for the customer. Rhythms, therefore, is forced to request manual loop qualification because Verizon's system is not adequate.

12. According to the Verizon's Business Rules, a mechanized query *should* return complete information concerning the address and the reason the loop does or does not qualify. This information *should* including: wire center information; the length of the loop; whether there is a digital loop carrier present; whether there are load coils on the loop; whether there is spectrum management involved; and whether there is work in progress. The mechanized query *should* return this information, but typically it does not. Unfortunately, Rhythms does not receive information that would enable us to determine whether the customer can accept one of Rhythms products. In fact, the most prevalent reason why a loop does not qualify is "address tested not qualified," which hardly gives Rhythms adequate information with which to make its determination. As a result, when Verizon's response to the mechanized query does not include loop length, digital loop carrier information or load coils information, the only recourse Rhythms has for determining how to proceed with the order is to request that manual loop qualification be performed by Verizon. A manual query provides Rhythms with

the following specific information: the type of facilities available (*i.e.,* copper, DLC, IDLC); the actual length of the loop; and whether there are load coils or bridge taps on the line.

13. Due to the high cost of an engineering query -- $123 per query -- Rhythms rarely requests engineering queries.

14. LFACS is not yet available to CLECs, but it would provide Rhythms with all of the characteristics of the loop. Rhythms has requested access to LFACS but discussions between the parties have stalled. Starting approximately a year ago, CLECs began requesting direct access to LFACS, but Verizon argued that access to LFACS was not required by Commission Orders. Finally the New York PSC ordered CLECs to make a specific proposal regarding access to LFACS. Following that, Verizon announced that it would cost $1 million for Telecordia to build an interface to provide CLECs with direct access and that there would be additional costs incurred by Verizon, suggesting to CLECs that a per dip charge would be levied. Verizon also informed CLECs that LFACS is not complete. It contains complete information on only 8-10% of all Verizon loops and some information on an additional 50% of Verizon loops. The negotiations have stalled as this point leaving CLECs uncertain concerning how the Telecordia costs would be allocated and what they would be getting from LFACS.

15. Verizon has made last minute spurious accusations concerning CLEC behavior in an attempt to justify its substantially below par performance when it comes to DSL. Verizon has produced no date to support these allegations. Verizon has produced no CLEC-specific reports with which to test these allegations. These allegations are meritless and must be reviewed very carefully by the Commission.

Line Sharing

16. Verizon still is not ready to handle line sharing on any significant scale in Massachusetts or across its region for that matter. The same issues relating to training of personnel and central office wiring continue to arise.

17. Rhythms repeatedly has met with and requested that Verizon complete the central office wiring it was required to complete for line sharing to be implemented and complete the training of all of all its personnel associated with the provisioning a line sharing. Verizon claims to have completed these tasks by June 6, 2000, as was required by the Commission. As Rhythms places line shared orders, however, it has become clear that Verizon did not complete the wiring and training by June 6. Rhythms' experience with line sharing continues to indicate that neither the central office wiring nor the personnel training have been accomplished, as Rhythms regularly experiences order rejections because of wiring and training problems. These issues remain unresolved and, as a result, Verizon has not complied with the Commission's Order or its obligations under the competitive checklist.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Robert Williams /SMB
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September 1, 2000

By Email & U.S. Mail
Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: **D.T.E. 99-271**

Dear Secretary Cottrell:

At the Technical Session on August 17, 2000, Chairman Connelly directed Rhythms Links Inc. ("Rhythms") and Verizon New England Inc. d/b/a/ Verizon-Massachusetts ("Verizon") to confer regarding the problems Rhythms experienced with its two virtual collocation arrangements in Massachusetts.

On August 28, 2000, representatives from each company met in an attempt to resolve some of the provisioning and maintenance issues related to Rhythms' virtual collocation arrangements at the Westford and Westborough central offices. The resolution that was reach in that meeting is described in a letter submitted to the Department today by Rhythms and Verizon ("Joint Letter").

While the agreement described in the Joint Letter should solve the recent problems that Rhythms has experienced with its virtual collocation arrangements in Massachusetts, it does not address the underlying issue that Rhythms raised in the 271 proceeding, namely the need for in-place conversion of these virtual arrangements to physical collocation arrangements. Additional input into the maintenance and repair of Rhythms' virtually collocated equipment is a firm step in the right direction, but it does

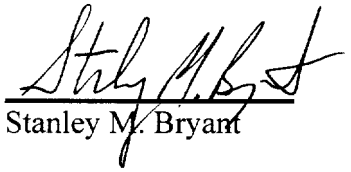
not provide Rhythms with the ultimate control over its equipment that it needs to effectively serve its customers in Westford and Westborough. In the Tariff 17 Decision, the Department ordered that Verizon provide in-place conversions of virtual collocation arrangements to physical collocation. Rhythms' position is that until Verizon complies with the Department's Order (or that Order specifically is overturned on appeal) Verizon's application should not be approved.

Respectfully submitted,

Mary Jean Fell
Blumenfeld & Cohen
On behalf of Rhythms Links Inc.

cc: James Connelly, Chairman
Cathy Carpino, Hearing Examiner
99-271 Service List

I, Stanley M. Bryant, do hereby certify that on this 3rd day of November, 2000, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage pre-paid, to the following:



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