switching and transport rates, filed on October 13 to be effective one month later, to avoid the "distraction" of having to defend its currently tariffed rates. But the new rates are not properly before the Commission and in any event appear to be every bit as unlawful and anticompetitive as the rates they will replace.

1. The Commission Should Not Consider the October 13th Rates.

The Commission should not consider the new rates. They are not now in effect, and they were not in effect at the time Verizon filed this application. It is impossible to judge their effect through the evidence of real commercial experience. Moreover, Verizon still has not indicated what arguments it intends to make, or on what record evidence it intends to rely, to make out its prima facie case that the new rates derive from an application of TELRIC principles that is reasonable under the circumstances present here.[12/]

The Commission's "complete when filed" rule was designed to prevent just such evidence (if and when it is put on the record) from being considered. That rule forbids an applicant "at any time during the pendency of its application, [to] supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties

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12/ The October 13 pricing filing is not the only new information that Verizon may seek to address for the first time on rebuttal. Verizon filed its application without awaiting the DTE's order regarding DSL, although it was scheduled for issue on October 2 and in fact issued on September 28. Also, as addressed infra p. 32 n.26, Verizon on October 27 submitted a proposed revised Performance Assurance Plan ("PAP") to the DTE, which addresses only the more minor criticisms of the PAP raised by AT&T and Rhythms in motions for reconsideration filed in September. The DTE has not approved this change and indeed has requested comments from other interested parties on AT&T's and Rhythms' motions to be filed by the close of business on November 3, 2000 – the same date on which these comments are due. It is manifestly unfair to expect commenters here to anticipate what arguments Verizon may try to make from these post-application developments.

commenting on its application." TX Order ¶ 35. The very point of the rule is "to prevent applicants from presenting part of their initial prima facie showing for the first time in reply comments." Id. ¶ 36. Of course, that is exactly what Verizon apparently intends to do by changing its rates now.

Verizon hardly can claim it was unaware of the Commission's procedural requirements. The Commission has insisted since its very first section 271 Orders that the BOCs present in their initial application a prima facie case on pricing. Thus in the Ameritech Michigan Order the Commission specifically required each future applicant "to include in its application detailed information concerning how unbundled network element prices were derived." MI Order ¶ 291. And, more recently, the Commission reiterated its concern that disputed issues (such as pricing in this case) be addressed in the initial application: "[A] BOC must address in its initial application all facts that the BOC can reasonably anticipate will be at issue. Through state proceedings, BOCs should be able reasonably to identify and anticipate certain arguments and allegations that parties will make in their filings before the Commission." TX Order ¶ 37.

Such a rule is virtually compelled by rudimentary requirements of due process and reasoned agency decision making. Since Verizon apparently intends to rely on the new rates, presumably at some point in this process it will explain why it believes them to be cost-based, and provide whatever evidence it believes appropriate to support that explanation. Only at that time will parties interested in those rates (including CLECs, the DOJ and the Massachusetts Attorney General) be in a position to evaluate Verizon's demonstration. But by then the comment period will be over. Even if the Commission were to waive the limitations on ex parte submissions and allow for a reasonable time within which to respond to Verizon's evidence, it

then will not have left itself enough time to consider the relevant evidence and still make a reasoned decision within the 90 days required by statute. In other words, allowing Verizon to proceed in this fashion would make a mockery of the Commission's processes, and would virtually assure a decision that will be uninformed, hurried, and vulnerable to appellate reversal on that ground alone.

The "complete when filed" rule also serves another essential purpose. The Commission has a strong preference for evaluating section 271 applications based on real commercial experience, and the Commission has correctly eschewed unnecessary reliance on conjecture about how things might be after promised changes are made to the competitive environment. But Verizon and the DTE have kept the local residential market tightly shut to UNE-P competition by adopting network element prices that constitute an insuperable barrier to entry.

Because the sky-high DTE rates have completely precluded broad UNE-based competition, Verizon has deprived the Commission of actual commercial experience, which is the best evidence of whether its proposed new rates would permit competition to develop, and whether Verizon's UNE-P OSS and provisioning works on a reasonable and nondiscriminatory basis. Verizon should not be permitted to keep its local market tightly closed for four years, file a section 271 application, and then several weeks later lower its rates and declare that its market is finally opened.

If Verizon wants new rates to be considered as satisfying its checklist obligation, its only choice is to withdraw and refile its application after Verizon submits justification for the new

rates that satisfy the Commission's long-standing rules. Any other process would be sheer lawlessness and lead to further abuses.

2. Verizon's New Switching and Transport Rates do Not Derive from Reasonable Application of TELRIC Principles.

If the Commission were to consider Verizon's new rates despite Verizon's brazen violation of the Commission's well-established rules, it should conclude that Verizon has failed to prove that they fairly derive from a reasonable application of TELRIC principles. For the reasons just discussed, WorldCom is greatly hampered in its ability to discuss the new rates because Verizon has not provided any cost support for the rates, or indicated which arguments it intends to make to support its claim that the rates are cost-based. WorldCom thus can only speculate about which arguments it must attempt to rebut. Nor is WorldCom able to point to empirical evidence of the type the Commission has said is the best evidence in these proceedings to discuss a rate that has not even taken effect. Despite these limitations, WorldCom offers the following preliminary observations about the new rates.

First and foremost, the rates cannot possibly be cost-based because they are not the result of any evaluation of forward-looking switching costs in Massachusetts. While the FCC has made clear that "a BOC [must] include in its application detailed information concerning how unbundled network element prices were derived," MI Order ¶ 291, in the boxes of documents and volumes of CD-ROMs submitted by Verizon to support its application, not a single word supports these rates. And, while the FCC has stressed that each state is "oblig[ed] to determine prices on its own," id., Verizon apparently intends to eschew reliance on Massachusetts'

switching and transport rates altogether. Instead it relies on rates borrowed from New York, derived from a concededly outdated and flawed process.

Nor can New York rates that resulted from a process in New York over three years ago simply be imported wholesale into Massachusetts today on the theory that they previously passed muster in New York. As we just noted, the Commission has held to the contrary that each state is obliged to determine rates on its own because conditions in each state vary. Indeed, in the New York Order, the FCC addressed arguments about specific flaws in the New York rates by reiterating that it does not evaluate rates in the abstract, but in the concrete circumstances facing the state when it adopted the particular rates. "We stress that we place great weight on the New York Commission's active review and modification of Bell Atlantic's proposed unbundled network element prices [and] its commitment to TELRIC-based rates." NY Order ¶ 238. Similarly, considering and rejecting AT&T's criticism of the New York switching rates, the FCC concluded that the NYPSC "'appropriately exercised its power to take account of conditions in New York' when it determined switching costs pursuant to TELRIC." Id. ¶ 245 (quotation and citation omitted). One of the conditions upon which the NYPSC relied was the fact that the rate it adopted provided a sufficient margin for CLECs, so that UNE-P based competition had and would continue to develop in the state.

Likewise, the U.S. Court of Appeals for the D.C. Circuit did not uphold these New York rates in the abstract. Rather, the court found that the FCC had not been arbitrary and capricious in finding that the NYPSC had attempted to apply TELRIC principles and was committed to correcting the switch discount input, and that the FCC had not been arbitrary and capricious in

viewing such rates in a context of rapid change, recognizing that rates would often need adjustment to reflect newly discovered information. AT&T v. FCC, 220 F.3d at 617.

None of the FCC's or the court's stated reasons for accepting the New York rates in the New York application applies when considering whether those same rates pass muster in Massachusetts today. The New York Commission will play no role in further review of the Massachusetts rates, and the DTE's refusal to reconsider its rates means that the likely reduction in the on-going proceeding in New York will not have any effect on inflated prices in Massachusetts. New York's commitment to TELRIC pricing and local competition is irrelevant to competitors faced with the very different priorities of the DTE. Moreover, the New York Commission's reliance upon "conditions in New York" to which the FCC refers – the fact that the switching rate in conjunction with all of the other UNE rates allowed UNE-based competition to develop in New York – could not be more different than the conditions in Massachusetts, as we discuss below. In sum, by its own terms, the FCC's approval of New York's switching rates does not carry over to Massachusetts.

Additionally, focusing specifically on the rates in the context within which they were derived and applied, the very same considerations that show that in 1997 the NYPSC undertook a "reasonable application of TELRIC principles," also show that Verizon's decision to adopt similar rates in Massachusetts today is not a reasonable application of those same principles.

In 1997, at a time when state commissions were first considering UNE pricing issues, the NYPSC concluded that the two competing switching cost studies presented to it each were so "deeply flawed" that it could not make direct use of either to set switching rates. Instead its staff

undertook its own review of New York Telephone depreciation studies, sampled the cost of 33 switch installations during 1993 and 1994,[13/] discounted those prices somewhat to account for declining switch prices, and came up with a switching rate that was in between those proposed by the parties. See Bryant Reply Decl. ¶ 12. The New York Commission found that this method had a "clear superiority" to other methods available to it to adopt a rate, Order Setting Rates, at 86, and that the result reached was "within a range of reason" given the information "established by the record." Rehearing Order at 41.

Subsequently, when it discovered that Verizon had misrepresented the true nature of the switching discounts it receives, the NYPSC explained that, given the method it had employed, it could not simply readjust the rates to account for this misrepresentation and instead would promptly convene a new rate proceeding. It further justified its refusal to act immediately to correct the error by concluding that "the switching prices at issue here are much lower than New York Telephone's retail prices, providing ample margin to competitors even at their present level." Order Instituting New Proceeding, at 12. This is the process that the FCC later concluded produced reasonable rates in light of "conditions in New York."

Very different "conditions" prevailed in Massachusetts when Verizon adopted these same rates on October 13, 2000.

First, the same depreciation studies from which the New York Commission had sampled 33 switches, as well as similar studies by other ILECs, were analyzed by the FCC in the

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13/ This choice of years "reject[ed] criticism of the fully explained premise that the unusually large discounts associated with analog to digital conversion would not be replicated," (Rehearing Order at 40) since that conversion took place in 1995.

Universal Service docket in November 1999. Based on the costs of 946 switches in these studies, including switches purchased through 1996, the FCC determined the cost of switches for universal service. The more complete and more recent data analyzed by the FCC proves that switches cost on average $117/line, instead of the $193/line found by New York. Because the FCC's data was more complete and more recent than the data relied upon by New York, it is irrational today to rely without explanation on the 1997 New York data, when reliance on the 1999 FCC data results in greatly reduced switching rates. See Bryant Reply Decl. ¶¶ 13-18.

Second, unlike the NYPSC in early 1997, in October 2000 Verizon had available to it more recent and more complete state commission studies of switch costs, and those studies point in the same direction as the FCC data – suggesting that the New York costs are nearly twice as high as they should be, and thus are far outside a range that reasonable application of TELRIC principles would now produce. It should be noted, for example, that the switching rate adopted by the Pennsylvania PUC in its recently-concluded proceeding (which itself is in between the range of rates proposed by Verizon and the CLECs) is approximately one-half of the New York rates. It is irrational to rely on an outdated and limited 1997 calculation when more detailed and reliable calculations available today prove that 1997 calculation produces rates far above what they should be.

Third, while the NYPSC could not make an instant correction to the Verizon cost study to correct for errors identified in the study, as WorldCom showed in its opening comments here (and as it has made clear to the DTE continually since 1996), there are identifiable errors in the Massachusetts cost study that can be corrected readily and that would result in rates that are similar to rates in Pennsylvania, and similar to rates that would be generated by reliance on FCC

depreciation figures. It was irrational for Verizon to adopt rates that are double the rates that would exist if Verizon's own Massachusetts cost study were adopted after correcting the errors identified by WorldCom in an analysis unrebutted by Verizon.

Fourth, and related, the New York Commission itself acknowledges that its rates are flawed because Verizon misrepresented the true nature of the discounts it receives; yet even after Verizon has acknowledged that its own misrepresentation created inflated rates, it now adopts those rates in Massachusetts without correcting for that error.

Fifth, the switching and transport prices in New York, when considered in tandem with New York's loop rates and its retail rates, permit competition through UNE-P in New York. In Massachusetts, because loop rates are too high and retail rates are somewhat lower than New York's, substituting the New York switching and transport rates still leaves in place a competition-killing price squeeze. When faced with a variety of recent studies which suggest rates which would promote competition, and one older study that is acknowledged to be defective that produces rates twice as high that block competition, it is irrational to pick the one competition-killing study over the many alternatives that would have permitted competition to develop.

Sixth, changes in customer usage patterns over the last three years change both the reasonable estimate of the cost of switching and the competitive consequence of the per-minute switching charges. See Kelley & Chandler Reply Decl. ¶ 4 (discussing growth in Dial Equipment Minutes). Basing rates on old assumptions about usage when better assumptions are available today therefore is unreasonable. Pricing tariffs such as that employed in New York in

1997 that assess relatively high per-minute charges become less and less cost-based as usage increases on the switch, because actual switch costs largely depend upon the number of lines attached to the switch, and are not nearly as sensitive to usage on the lines as the switch rates suggest. See id. ¶¶ 5-15. This defect in the tariff is largely irrelevant when usage stays at predicted levels because given an appropriate usage assumption the rate overall is designed to compensate for the total cost of the switch. But when, as here, usage is increasing and higher than predicted, and technology is continually driving switching costs down, the switching rate no longer reflects the real cost of using the switch. See id. ¶16 (discussing impact of technological changes on declining switching costs). Increased switch usage also means that defective switching rates have increasing competitive significance. One of the principal reasons the NYPSC gave for leaving its defective switching rates in place in 1998 until new cost studies could be completed was that "switching costs in general represent a much smaller component of CLEC expense than the much more significant link cost." Order Instituting New Proceeding, at 12. While that was so in New York in 1998, it is not so in Massachusetts today. Because of increased usage, switching costs are now an extremely significant component of UNE-P pricing. See Proferes Reply Decl. ¶ 7.

Seventh, in affirming New York's rates, the FCC, to repeat, "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 [and] its commitment to TELRIC-based rates." NY Order ¶ 238. The FCC relied, in other words, on the fact that the NYPSC was committed to fixing the error it had identified in the rate. The DTE's record in this regard speaks for itself, as does its aggressive defense of its rates in this proceeding. While New York is committed to

fixing the error in the very rates that Verizon has now tariffed in Massachusetts – caused by Verizon's misrepresentations about switching discounts – the DTE continues to insist that rates should not reflect those substantial discounts that Verizon receives. While the NYPSC is in the middle of a rate case that will clearly result in improved rates, Massachusetts just recently declined again to reconsider its rates.[14/] While New York insists that the rates it set "provid[e] ample margin to competitors," Order Instituting New Proceeding, at 9, the DTE asserts that consideration of the competitive consequences of its actions is "fraught with risk to orderly implementation of the Act," and "irrelevant." DTE Eval. at 339 n.665. While the NYPSC concludes that because switch prices are declining, a forward-looking calculation results in a lower cost than an historical-cost analysis, the DTE argues, incredibly, that it is no valid criticism of its "TELRIC" rate that it is grossly higher than Verizon's historical costs. DTE Eval. at 330-31. The FCC is correct that such considerations matter for TELRIC analysis. CLECs are confident that the NYPSC will strive to set real cost-based UNE rates, and there is substantial UNE-based residential competition in New York to prove it. CLECs are equally confident that the DTE will not, and there is virtually no UNE-based residential competition in Massachusetts. In determining whether rates are reasonable under the circumstances, the FCC should continue to place "great weight" on such considerations.

In sum, for each of these reasons, while every indication in 1997 was that the New York switching and transport rates were within a "range of reason," every indication in October 2000

14/ See DTE's May 30, 2000 Letter Denying AT&T Petition Requesting the Review and Reduction of Unbundled Network Element Recurring Charges (VZ-MA App. B, Tab 481).

is that it is entirely unreasonable to apply these rates to Massachusetts today, and that the rates are about double what a reasonable TELRIC analysis would produce.

3. Verizon's New Switching and Transport Rates Create a Competition-Killing Price Squeeze.

Verizon's new rates create a price squeeze as debilitating as the price squeeze created by the rates which they replace. As WorldCom previously explained, with CLEC internal costs of providing local service in excess of $10.00/month/line, WorldCom has declined to market its local service in parts of New York, Texas, and Pennsylvania where it would receive an inadequate gross margin. See Proferes Reply Decl. ¶ 8. In Massachusetts, the new UNE-P rates provide a statewide gross margin of only $2.83, and apart from the 2% of the population that lives in Boston's "metro" zone, the best margin in any of Massachusetts' rate zones is $4.38. See id. ¶¶ 5-6. These are well below the margins that would support competition by WorldCom or any other new entrant seeking to provide broad-based local residential competition through UNE-P. WorldCom is not competing for customers in rural New York where the gross margins are slightly better than the gross margins anywhere in Massachusetts outside of downtown Boston. It will not compete in Massachusetts with the October 13th rates, and all evidence on the record suggests that no other broad-based UNE-P provider would provide service with these rates either.[15/]

15/ Z-Tel, which offers a high-end and comparably high-priced service to a niche market, has indicated that it can pursue its strategy with the new rates offered by Verizon. Z-Tel Comments at 3-4. But UNE-P is competitively significant precisely because if prices are cost-based it offers the prospect of ubiquitous competitive service at rates that all consumers can afford. No carrier that would like to offer local products of interest to the majority of consumers has indicated that it is willing to enter the Massachusetts market based on the new rates. WorldCom's analysis of the price squeeze powerfully suggests why this is so. And while the best evidence of the

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

The concerns that WorldCom raised in its opening comments about the availability of DSL-compatible loops, adequate performance reports and remedies, and working OSS also have been raised by CLECs attempting to use Verizon facilities to provide service in Massachusetts. Other CLECs have raised legitimate concerns about Massachusetts' reciprocal compensation regime that provide yet another reason to deny this application.

A. Verizon Has Failed to Prove That it Provides DSL-capable Loops, or That its Performance Reports and Performance Assurance Plan Are Sufficient to Prevent Backsliding on DSL and Other Checklist Items.

The Department of Justice,[16/] the Massachusetts Attorney General,[17/] and several CLECs corroborate that, as WorldCom discussed at length in its opening comments and the Declaration of Karen Kinard, Verizon's existing performance reports and the PAP to which it will be subject after its section 271 approval do not assure current or future satisfaction of Verizon's obligations under Section 271. These flaws have particular impact in the area of advanced services, where

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competitive effect of rates is no doubt competitors' real-world conduct, Verizon's decision to file its application before it set the rates it chooses to rely upon deprives the Commission of such evidence.

16/ See DOJ MA Eval. at 23 (stating that "assurances are not present in the current record" that "effective remedies will be available to quickly resolve any post-entry performance problems in Massachusetts"); id. at 2 n.5 and 22 (urging FCC to consider significant differences between Massachusetts PAP and New York PAP).

17/ See MA Attorney General Comments at 13 (stating that PAP and other state enforcement mechanisms in Massachusetts "are not sufficient to ensure that Verizon will continue to comply with the Checklist" and noting motions for reconsideration of PAP filed by AT&T and Rhythms.)

Verizon seeks to convince this Commission to overlook the fact that its DSL performance, when reported, is extremely poor, and in some significant aspects is simply undocumented.

WorldCom indicated in its opening comments that the lack of validation of data underlying Verizon's reported results makes their basic reliability problematic, and should preclude Verizon carrying its burden of proof. Accord Sprint Comments at 4. As DOJ and data CLECs Rhythms and Covad point out, this is particularly an issue for the DSL metrics, where KPMG did not perform even limited metric validation. DOJ MA Eval. at 15; Rhythms Comments at 29-30; Covad Comments at 12 n.24, 24-25, 34-35.[18/] Moreover, the lack of CLEC-specific monthly reports has left CLECs with very limited ability to contest Verizon's generalized claims (see Kinard Decl. ¶ 6) – again, a particular problem in the area of DSL, in which Verizon has claimed that its out-of-parity performance on the carrier to carrier metrics is misleadingly skewed by CLEC behavior. See DOJ MA Eval. at 15-16; Covad Comments at 13-14, 24-25; Rhythms Comments at 28. Despite this handicap, both Covad and Rhythms presented convincing evidence to demonstrate that their own orders do not lead to the "false positives" in reporting discrimination that Verizon claims.

Verizon's energetic manipulations of the existing metrics neither prove its current performance is adequate nor give CLECs adequate tools to ascertain the truth of Verizon's contentions. They merely prove that the existing metrics are, in Verizon's view, inadequate. It is no surprise that the DOJ has concluded that Verizon's application must be rejected because

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18/ Covad indicates that there is reason to fear that data is not being accurately collected. Covad Comments at 12 (noting that for July, the first month of reported results on PR3-10, on-time loop delivery for DSL, the total observations reported by Verizon is fewer than the number Covad alone ordered in that period).

Verizon has not proven nondiscriminatory performance with regard to DSL. DOJ MA Eval. at 8, 10-14.

Verizon's excuses at most show that the record does not prove definitively whether or not its DSL provisioning performance is discriminatory. But Verizon has the burden of proving its performance is not discriminatory, and it fails to satisfy that burden. Covad and Rhythms have both addressed in detail the insufficiency of Verizon's explanations, based on their own experience. Commenters confirm additional flaws in Verizon's excuses. For example, this Commission must reject Verizon's contention that it should not be held responsible for an obvious disparity in the provisioning time for DSL loops because "over 40 percent of CLEC orders for xDSL loops require manual loop qualification."[19/] LaCouture/Ruesterholz Decl. ¶ 100. Verizon claims this manual processing increases the time required to provision those orders relative to Verizon's own retail DSL product, which does not rely on manual loop qualification. But as the DTE acknowledged, Verizon never supplied to the DTE the study that it alleges documents that absent this factor, its performance is not discriminatory. DTE Eval. at 299 n.589, 308; see also Covad Comments at 50. In its application to the FCC, Verizon also failed to

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19/ As WorldCom and Rhythms have pointed out, Verizon has yet to report any results under the metrics measuring Verizon's response time for manual loop qualifications and engineering record requests, despite the fact that these are some of the few DSL metrics currently in place under the Carrier to Carrier Guidelines and will be two of only four DSL metrics included in the PAP. See Kinard Decl. ¶ 9, Rhythms Comments at 39. Verizon thus cannot show that it is providing manual loop qualification in a nondiscriminatory manner. Verizon has also refused to report Achieved Flow Through in Massachusetts, even though it has been reporting and paying remedies for this metric in New York since last fall. See Kinard Decl. ¶ 8.

provide the disaggregated data that would permit assessment of this analysis. DOJ MA Eval. at 11.[20/]

Moreover, even if there were data indicating that Verizon's poor performance is explained by CLECs' need to resort to manual loop qualification more frequently than Verizon, Verizon does not address CLEC evidence that it is Verizon's discriminatory conduct that drives CLECs to use manual loop qualification in the first place. Network Access Solutions Corporation states that it is forced to use manual loop qualification because of errors in Verizon's mechanized loop qualification database. Network Access Solutions Comments at 5-6. Even the DTE expressed concern about this problem, which it noted had been raised by Digital Broadband and not yet rebutted by Verizon. DTE Eval. at 460, 465. Other CLECs have noted that Verizon has not met its obligations to make available data within its possession that is relevant to loop qualification although not used by Verizon's retail DSL operations. Covad Comments at 41-43; ASCENT Comments at 11-12. CLECs may thus be forced to use manual loop qualification processes, with their attendant high costs and delays, because Verizon has not made this information otherwise available. See VZ-MA App. B, Tab 220, at 37-46 (WorldCom Nov. 30, 1999 Declaration).

20/ Only in response to a specific request from this Commission has Verizon finally provided, in an ex parte filing, information on the percentage of loops pre-qualified by specific CLECs in the month of July. See Ex Parte filing of Verizon, Letter from May Y. Chan, Director, Regulatory Matters, for Verizon to Secretary Salas (October 13, 2000). No independent tester has validated this information, and as not all carriers featured in this confidential filing are participating in this proceeding, even with this information, Verizon's overall claim will not be verifiable.

Verizon's attempts to disparage the approved stand-alone DSL carrier to carrier metrics thus not only are insufficient to carry its burden of proof in this proceeding, they bode poorly for its commitment to avoid backsliding after entry. Both now and in the future, Verizon's performance must be appropriately recorded through neutral, verifiable measures that will permit CLECs to see and seek remedies for discrimination. Carrier to carrier metrics, including those that Verizon seeks to avoid, are intended to fulfill this function. Performance remedies depend on reliable metrics. As DOJ concludes, if Verizon is justified in arguing that existing metrics fail adequately to reflect Verizon's true performance, those metrics should be changed in an appropriate state collaborative process before Verizon is granted section 271 authorization. DOJ MA Eval. at 13-14.

In addition to Verizon's failings under existing metrics, Rhythms and Covad support WorldCom's statement, conceded by Verizon in New York, that the PAP should contain additional DSL metrics,[21/] as well as a DSL Mode of Entry with appropriate remedies. Covad Comments at 47-48, Rhythms Comments at 39.[22/]

The DOJ, Covad and Rhythms also agree with WorldCom that Verizon's application must be denied because its line sharing performance is unproven today and unassured for the

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21/ See WorldCom Comments at 58-59.

22/ Like WorldCom, Rhythms also points out that unless Verizon reports results for those DSL measures that do carry penalties under the PAP, as it has thus far failed to do for 2 of the 4 DSL metrics currently included, the PAP is useless to protect provision of advanced services. Rhythms Comments at 38-40; see WorldCom Comments at 58.

future. There are currently no approved carrier to carrier line sharing metrics[23/] (DOJ MA Eval. at 16; Rhythms Comments at 39; Covad Comments at 5), and thus none in the PAP. This not only means that Verizon has little evidence to support its claims of current performance, but also gives CLECs no protection against discriminatory line sharing performance after section 271 approval. This threat to competition is real, for both Rhythms and Covad report specific problems with line sharing today, four months after the required effective date of the FCC's Line Sharing Order, both because of provisioning issues and because adequate OSS to permit flow through of line sharing orders without manual handling is not available. Rhythms Comments at 22-23, 35-38; Covad Comments at 29-33. For all these reasons, WorldCom urges this Commission to adopt DOJ's conclusion that because Verizon's line sharing performance is not adequate, Verizon's application should be denied. DOJ MA Eval. at 16-17.

The DTE's summary of the record on line sharing does not undercut this finding. The DTE acknowledged that OSS to permit flow-through of line sharing is not yet available. Its contention that this "does not prevent a finding of nondiscriminatory access" rests in large part on its assumption that the current "manual processing will be short-lived." DTE Eval. at 515.[24/] But the DTE's assumptions about what may happen in the future cannot substitute for proof of current performance. The DTE similarly asserts that its DSL order, issued after Verizon filed its

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23/ The Consolidated Arbitrations reports in Massachusetts also do not address line sharing, and indeed do not provide disaggregated results for DSL, making them an insufficient substitute for the carrier to carrier reports.

24/ The DTE's conclusion that Verizon can handle commercial volumes of line sharing orders even under the existing manual processes is totally unfounded. Indeed, KPMG did not volume test any manual processes. See DOJ MA Eval. at 21-22 n.74.

application with the FCC, addresses remaining CLEC concerns, id. at 514, despite the utter lack of evidence that Verizon is providing line sharing in accordance with the ordered conditions. In fact, Verizon presents no substantial evidence of real line sharing experience. As the DTE admits, it did not require KPMG even to test line sharing. id. at 509 n.1006; see also Covad Comments at 36-37 (pointing out same). This record is simply not sufficient to carry Verizon's burden of proof – CLECs are entitled to more than unsupported paper promises about what may come to pass in the future. See DOJ SC Eval. at 13; DOJ LA I. Eval. at 9, 14.

Verizon's inadequate performance on stand-alone DSL and on line sharing each provide sufficient reason to deny Verizon's application, despite the DTE's promises to ensure future performance. But CLECs lack even the assurance of DTE oversight when it comes to line splitting. As a provider of voice services, WorldCom must have the same ability as Verizon to team with a data CLEC to provide a competitive package of services. But Verizon refuses to make available line splitting over UNE-P, and the DTE has concluded that "VZ-MA is not required to provide line splitting." DTE Eval. at 512. This conclusion is blatantly anticompetitive and violates the clear dictates of this Commission's Texas Order. It also stands in direct contradiction of the recent ruling of the NYPSC, in keeping with this Commission's precedents, that "line-splitting over UNE-P purchased from Verizon is technically feasible, and necessary for competitors to provide their services to customers," and that Verizon must

therefore make it available.[25/] Until Verizon makes line splitting concretely available in Massachusetts, its section 271 application must be denied. See WorldCom Comments at 62-65.

The remedies available under Massachusetts' PAP also are inadequate to deter backsliding in DSL provisioning and other important areas, and in this respect are greatly inferior to the remedies in place in the New York PAP. While the DTE describes its PAP as modeled on that in New York, it never acknowledges or explains the significance of the substantial differences between the plans. See DTE Eval. at 659; DTE Eval. Vol. II, App. A (summarizing PAP). But as WorldCom described in its opening comments (WorldCom Comments at 53-57), these differences are undeniable. The DTE's own summary of the PAP verifies, for example, that it does not include the Special Provision regarding EDI Notifiers and concomitant remedies that were added to the New York PAP to provide continuing assurance that the serious problem of missing notifiers would be addressed. DTE Eval. Vol. II, App. A at 4, 8. Like WorldCom, the DOJ points out that KPMG testing revealed a similar problem in Massachusetts, the correction of which has never been verified; in part because of the omission of the EDI Notifier Special Provision, the DOJ found the Massachusetts PAP insufficient to prevent backsliding. DOJ MA Eval. at 23 n.77.

The DTE's comments also do not explain why the Department believes the PAP provides an adequate deterrent to backsliding when its remedies are merely alternative to liquidated contract damages, and not cumulative with those remedies, as in New York. Indeed, the DTE's

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25/ See In re Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities at 15, Case No. 00-C-0127 (NYPSC October 31, 2000) (attached hereto as Exhibit F).

description of how these alternative payments will be made does nothing to clarify that only payments on equivalent measures may be offset. See DTE Eval. Vol. II, App. A at 5-6; cf. Kinard Decl. ¶ 33. These features are among several aspects in which the PAP is inadequate to protect CLECs against Verizon backsliding in Massachusetts. See WorldCom Comments at 49-59.[26]

B. Verizon Has Not Established That its OSS Is Operationally Ready.

As a result of Verizon's high UNE prices, CLECs have little commercial experience with use of Verizon's OSS. As the Department of Justice correctly finds, "CLECs have made little use of the UNE-platform in Massachusetts." DOJ MA Eval. at 6. This is especially true with respect to UNE-P orders placed via EDI, the only method that can promote ubiquitous residential service at commercial volumes. Before evaluating Verizon's OSS, the Commission should wait until Verizon dismantles the entry barriers created by its current pricing so that competitors can actually make use of the OSS the Commission is being asked to evaluate.

While most commenters agree with WorldCom that Verizon has not shown that its OSS is ready, the DTE concludes otherwise. It relies primarily on the KPMG third-party test as well as Verizon's very limited Massachusetts performance data. But Verizon's commercial experience is too limited to support such a conclusion. As for the KPMG test, Verizon should

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26/ Verizon's October 27, 2000 filing with the DTE of a revised PAP does not address these concerns. That filing, which makes minor changes in the PAP but does not solve the problems of (i) the missing EDI Notifiers metrics and accompanying remedies; (ii) the required choice between PAP and contract remedies; or (iii) the lack of DSL and line sharing metrics, has not been approved by the DTE, and is not a part of the record of this proceeding. To the extent that Verizon attempts to rely on this revised PAP in its rebuttal comments, those comments should be disregarded or Verizon should be required to refile its application, in accordance with this Commission's "complete when filed" rule, as discussed above.

not be able to block competition with high prices and then use the lack of competition as a justification to rely almost entirely on a third party test as evidence of readiness. "[A]s experience in New York has demonstrated, some OSS deficiencies are recognized only under the stress of full-scale commercial entry, which has not yet occurred in Massachusetts." DOJ MA Eval. at 21-22 (footnote omitted). In any event, the KPMG third-party test does not prove Verizon's readiness.

The KPMG test was limited in scope and insufficiently rigorous. Kwapniewski Decl. ¶¶ 58-66; DOJ MA Eval. at 21 n.74. Even so, the KPMG test revealed important problems with Verizon's OSS that are masked by KPMG's conclusion that Verizon's OSS is ready. KPMG reports that during the test, Verizon failed to return any responses on 2% of pre-order transactions, and failed to return comprehensible error messages on others. But the DTE ignores – or reports and dismisses – these and other similar findings in reaching its summary conclusion that Verizon's pre-order OSS is ready. Kwapniewski Decl. ¶¶ 50-57; Kwapniewski Reply Decl. ¶ 4. The DTE even summarily dismisses problems found by KPMG that are consistent with problems WorldCom has experienced elsewhere in the Verizon region:

Continuing problems with missing notifiers. Verizon failed to return all of the provisioning completion notices ("PCNs") and billing completion notices ("BCNs") it was required to return, and returned many others late. Kwapniewski Decl. ¶ 41. The DTE should have taken this finding seriously in light of the extensive problems CLECs had with missing notifiers in New York earlier this year. Instead, the DTE points to the fixes Verizon implemented in New York and presumes those fixes will preclude any problem from developing in Massachusetts. DTE Eval. at 174. But that presumption is not justified. Despite Verizon's

claims that these same fixes would ensure the timely return of notifiers in Pennsylvania, they have not done so. Kwapniewski Decl. ¶¶ 45-46; Kwapniewski Reply Decl. ¶¶ 6-8.

There is not sufficient experience in Massachusetts to know the extent to which the missing notifier problem will appear there with increased ordering. It is difficult even to assess the extent to which the problem has already developed in Massachusetts. Verizon has refused to import into Massachusetts the performance measures developed in New York to track missing notifiers. Kwapniewski Decl. ¶¶ 42-43 & n.7; DOJ MA Eval. at 23 n.77. In August, Verizon did begin reporting data on measures better designed to track missing BCNs. These measures reveal some early problems. Kwapniewski Reply Decl. ¶ 10. Although the DTE relies on Verizon's performance data to conclude Verizon's systems are ready, the DTE itself reports that Verizon often failed even the existing measure for timely return of BCNs. DTE Eval. at 174; DOJ MA Eval. at 23 n.77. Verizon also failed to return a significant number of AT&T's provisioning completion notices (PCNs) and BCNs. Kwapniewski Reply Decl. ¶ 9. In light of these early problems in Massachusetts, and Verizon's poor performance returning notifiers in both states in which CLECs began placing significant volumes of orders, the Commission should not conclude that Verizon is capable of returning notifiers on time until Verizon does so for commercial volumes of orders using the performance measures developed in New York. Cf. DOJ MA Eval. at 22 (noting the limited evidence of scalability of Verizon's systems).

Inadequate technical assistance. Verizon must also improve the technical assistance it provides to CLECs. At present, its help desk fails to respond quickly and efficiently either to trouble tickets regarding missing notifiers or to other trouble tickets, the documentation Verizon