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REDACTED - FOR PUBLIC INSPECTION

November 3, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B-204
Washington, D.C. 20554

Re: In the Matter of 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

Dear Secretary Salas:

Enclosed please find the Reply Comments of the Massachusetts Department of Telecommunications and Energy ("MDTE"). Please note that the MDTE is filing a confidential portion of the submission and a redacted version of the entire submission. The MDTE is also providing an electronic version of the redacted version on disk in WordPerfect and PDF formats, in accordance with discussions with the Common Carrier Bureau. Also enclosed for filing is the MDTE's Motion to Exceed Page Limit which is being filed concurrently with the MDTE's Reply Comments. Participants in the proceeding who seek

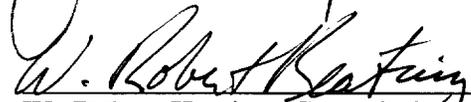
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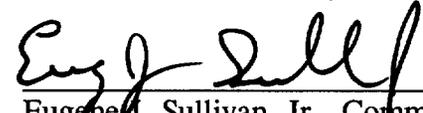
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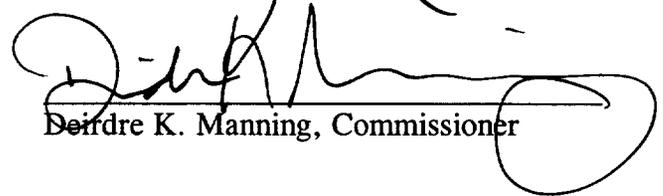
By the Commission,


James Connelly, Chairman


W. Robert Keating, Commissioner


Paul B. Vasington, Commissioner


Eugene J. Sullivan, Jr., Commissioner


Deirdre K. Manning, Commissioner

cc: Susan Pie, Policy and Program Planning Division
Common Carrier Bureau, Room 5-C224

Josh Walls, U.S. Department of Justice
Antitrust Division

REDACTED - FOR PUBLIC INSPECTION

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

In the Matter of

Application by Verizon New England)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company)
(d/b/a Verizon Enterprise Solutions),)
and Verizon Global Networks Inc.,)
For Authorization Under Section 271 of)
The Telecommunications Act of 1996)
To Provide In-Region, InterLATA)
Services in Massachusetts)

CC Docket No. 00-176

REPLY COMMENTS OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Commonwealth of Massachusetts
Department of Telecommunications and Energy

Hearing Officers:
Cathy Carpino
Tina Chin

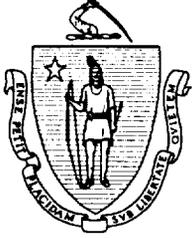
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Dated: November 3, 2000



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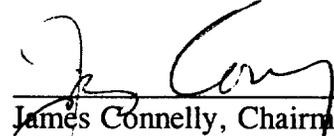
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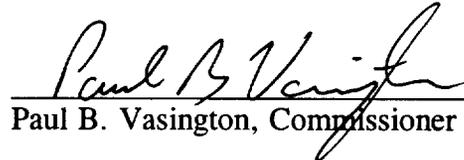
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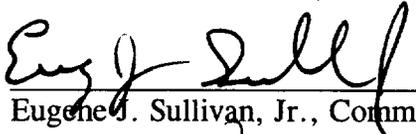
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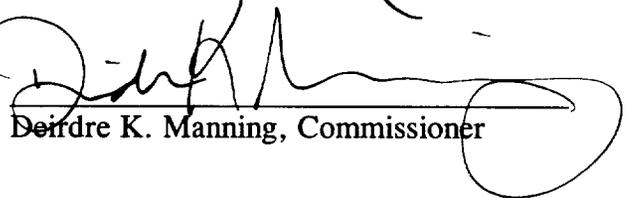
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Josh Walls, U.S. Department of Justice
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I. INTRODUCTION

On October 16, 2000, the Department of Telecommunications and Energy (“Department” or “D.T.E.”) filed its Evaluation (“D.T.E. Evaluation” or “Evaluation”) of Verizon New England, Inc.’s, d/b/a Verizon Massachusetts (“VZ-MA”),¹ compliance with § 271 of the Telecommunications Act of 1996 (“Act”). Our Evaluation recommended, without qualification, that the Federal Communications Commission (“FCC”) grant VZ-MA’s § 271 application. The Department has reviewed all of the comments filed by interested third parties, also filed on October 16, 2000, as well as the evaluation of the United States Department of Justice (“DOJ”), filed on October 27, 2000.² Nothing contained in these comments causes us to reconsider our earlier stated view, that VZ-MA meets the requirements of the § 271 competitive checklist, and that the local market in Massachusetts is irreversibly open to competition.

In these reply comments, we reaffirm our recommendation that VZ-MA be permitted to enter the interLATA market. To the extent that other participants, including the DOJ, reach different conclusions on checklist compliance than the Department does, we ask the FCC to place substantial weight on our conclusions, as the FCC has said it will do when the state

¹ The Department’s use of “Verizon,” as opposed to “VZ-MA,” in these comments refers to the corporate parent of VZ-MA.

² For purposes of our reply comments, references to the “Attorney General” shall be understood to mean the Massachusetts Attorney General. The Department will use “DOJ” when it refers to the U.S. Department of Justice.

commission has directed a rigorous collaborative process that includes the following components, all of which were an integral part of the Department's investigation: (1) an extensive independent third-party test of VZ-MA's operations support systems ("OSS") interfaces, processes and procedures; (2) active participation by Department staff, VZ-MA, and competitive local exchange carriers ("CLECs") in numerous technical sessions that helped to identify and resolve problems and factual disputes; and (3) the development of a comprehensive performance monitoring and enforcement mechanism.³

Consistent with the approach set forth in our Evaluation, the Department will address only those arguments that were raised by participants during our § 271 proceeding. The DOJ sought clarification from the Department on several issues related to digital subscriber line ("xDSL") service addressed in our Evaluation.⁴ We welcome the opportunity to provide additional explanation on these matters in order to allay the DOJ's concerns.

It bears repeating that our review of VZ-MA's § 271 compliance filing, performed in D.T.E. 99-271, was open to any interested participant upon submission of a "letter of participation." On October 16, 2000, the FCC received comments from several carriers that did not participate in D.T.E. 99-271. These carriers include: Network Access Solutions

³ Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, at ¶ 20 (1999) ("Bell Atlantic New York Order")

⁴ DOJ Evaluation 8-9 n.30.

(“NAS”); OnSite Access Local, L.L.C., (“OnSite Access”); and ICG Telecom Group, Inc. (“ICG”).⁵ These carriers did not seek to participate in D.T.E. 99-271. In contrast, AT&T Communications of New England, Inc. (“AT&T”), which participated heavily throughout our D.T.E. 99-271 investigation, filed comments on October 16 limited only to two points. Therefore, beyond the analysis in our Evaluation of AT&T’s issues that were raised in our proceeding, no reply of substance, beneficial to the record, is possible.

II. CONTESTED CHECKLIST ITEMS

A. Checklist Item 1 - Interconnection

1. Trunking

a. Discussion

Winstar Communications, Inc. (“Winstar”) and CompTel submitted comments arguing that VZ-MA fails to satisfy the trunking requirements of checklist item 1. CompTel made numerous allegations regarding VZ-MA’s performance in provisioning interconnection trunks to ICG, including the failure to honor ICG’s forecasts, provision trunks, and install entrance facilities in a timely manner.⁶ Winstar raises numerous issues, all of which have been

⁵ Competitive Telecommunications Association (“CompTel”), which is a participant in our § 271 proceeding, attached an affidavit to its comments from a ICG employee, Theodore X. Washington (“Washington Affidavit”).

⁶ CompTel Comments, Washington Aff. at ¶¶ 6-8.

resolved to the Department’s satisfaction and addressed fully in our Evaluation.⁷ In addition, Winstar raised two issues not addressed previously by the Department: Winstar argues that VZ-MA fails to return firm order confirmations (“FOCs”) on time;⁸ and that VZ-MA’s improper designation of Winstar “hubs” as “points of presence” (“POPs”) results in needless delays to Winstar.⁹

In its August supplemental comments, VZ-MA explained clearly that it does not return FOCs for individual trunks but, rather, does so for access service requests.¹⁰ VZ-MA contended that, between January and June 2000, Winstar placed five orders for 110 trunks, and that VZ-MA was late in providing the FOC for only one category 1 order.¹¹ VZ-MA added that its ten business-day standard only applies to the return of FOCs for category 1 trunk orders, and that all other categories have negotiated FOC intervals.¹² VZ-MA reviewed Winstar’s orders from January through June, 2000, and provided a summary of its findings in its August supplemental comments. Winstar chose not to contest VZ-MA’s findings (i.e., that

⁷ D.T.E. Evaluation at 29.

⁸ Winstar Comments at 4.

⁹ Id. at 6.

¹⁰ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 34 (VZ-MA August Supplemental Checklist Aff.).

¹¹ Id.

¹² Id.

Winstar submitted five not 89 orders) before the Department, nor does it appear that Winstar acknowledges this VZ-MA review in its FCC comments.

b. Conclusions

Neither CompTel nor ICG raised trunking issues during the Department's § 271 investigation, and there is no evidence concerning ICG's complaints in our record. Because ICG did not participate in the Department's § 271 investigation, we have not had an opportunity to fully explore its complaints nor VZ-MA's response to them. Therefore, the Department is unable to address CompTel's and ICG's comments regarding interconnection trunking.

Similarly, Winstar raised its entrance facility assertion (i.e., that VZ-MA improperly designates Winstar's hubs as POPs) for the first time in its FCC comments and, as a result, there is no evidence in the record that would allow the Department, or the FCC, to determine whether VZ-MA acted improperly in designating some Winstar hubs as POPs and requiring Winstar to provide entrance facilities. Therefore, the Department is not able to reply substantively to Winstar's entrance facility argument.

Regarding Winstar's comments on FOC timeliness, VZ-MA's explanation given in August is fully responsive to Winstar's complaint. The Department notes that Winstar's complaint appears to be another manifestation of the miscommunication previously addressed

in our Evaluation,¹³ and the Department reiterates its expectation that VZ-MA and CLECs will work collaboratively to arrive at clear, mutually satisfactory definitions of “order” and “project.”

For the reasons discussed above and in our Evaluation, the Department recommends that the FCC provide little weight to the claims made by Winstar and CompTel. Claims such as these could and should have been raised during the D.T.E. 99-271 investigation, where they would have been explored and, if possible, resolved. Raising them for the first time in the October 16 comment filing, well after the close of a state regulatory commission’s § 271 investigation, is inappropriate and poses problems not only in the instant matter but for all future Bell Operating Company (“BOC”) applications. In summary, we find that VZ-MA has satisfied the trunking requirement of checklist item 1.

2. Collocation

a. Discussion

Commenters dispute three aspects of VZ-MA’s compliance with its collocation obligations under checklist item 1: VZ-MA’s collocation at remote terminal tariff offering; VZ-MA’s charges for collocation power; and VZ-MA’s refusal to allow in-place conversions of virtual to physical collocation.

¹³ D.T.E. Evaluation at 30-31.

i. Collocation at Remote Terminals

Rhythms Links, Inc. (“Rhythms”) states that VZ-MA’s application is final when filed, and that, accordingly, the FCC must evaluate the application in light of VZ-MA’s current remote terminal collocation tariff offering.¹⁴ Rhythms maintains that there is no record to demonstrate that VZ-MA’s collocation at remote terminal offering meets the § 271 obligations since the Department’s decision on VZ-MA’s offering will not be issued until after this § 271 proceeding is complete; thus, Rhythms says, VZ-MA’s application is “fatally deficient.”¹⁵ Covad Communications Company (“Covad”) also argues that VZ-MA’s unbundled subloop arrangements tariff hampers the ability of carriers to provision a variety of advanced services, but that the Department is only conducting a limited investigation into this tariff.¹⁶

Commenters maintain that VZ-MA’s tariff offering does not comply with the UNE Remand Order¹⁷ or VZ-MA’s statutory obligations under § 251(c)(6). First, Rhythms and Covad state that VZ-MA’s offering limits the subloop unbundled network element (“UNE”) to the metallic distribution pairs/facilities at the VZ-MA feeder distribution interface even though

¹⁴ Rhythms Comments at 14-15.

¹⁵ Id. at 10-11.

¹⁶ Covad Comments at 27.

¹⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (“UNE Remand Order”).

there is nothing in the UNE Remand Order that allows for such a limitation.¹⁸ Second, Rhythms and the Association for Local Telecommunications Services Coalition (“ALTS”)¹⁹ argue that VZ-MA’s definition of remote terminal equipment enclosures places limitations on the type of enclosures where VZ-MA will allow CLECs to collocate.²⁰ Third, Rhythms contends that VZ-MA’s requirement that CLECs construct a separate “Telecommunications carrier Outside Plant Interconnection Cabinet” at each VZ-MA remote terminal that a CLEC seeks to serve would be prohibitively expensive.²¹

ii. In-Place Conversions

Rhythms and ALTS note that VZ-MA refuses to allow in-place conversions of virtual collocation to physical collocation, but that Verizon allows such conversions in New York.²² Rhythms states that failure to provide these conversions has serious business implications, and that the FCC must address this situation before VZ-MA receives § 271 approval in Massachusetts.²³

¹⁸ Rhythms Comments at 12; Covad Comments at 26.

¹⁹ ALTS filed comments for itself, Digital Broadband Communications (“Digital Broadband”), XO Communications (formerly Nextlink), and DSLnet Communications.

²⁰ Rhythms Comments at 12; ALTS Comments at 17.

²¹ Rhythms Comments at 12-13.

²² Rhythms Comments at 15; ALTS Comments at 14.

²³ Rhythms Comments at 18.

iii. Collocation Power Charges

Rhythms, Covad and ALTS argue that VZ-MA's collocation power charges are excessive.²⁴ By charging CLECs for collocation power based upon the capacity VZ-MA provides, rather than the amount of power requested by the CLECs, the commenters argue that VZ-MA's behavior is anti-competitive and should not be rewarded with § 271 approval.²⁵

b. Conclusions

VZ-MA's unbundled subloop arrangement and collocation at remote terminal tariff offerings are subject to the review and final approval of the Department, and, contrary to Covad's claim, the Department is conducting a full investigation of these two tariffs in D.T.E. 98-57 (Phase I), a proceeding in which both Rhythms and Covad are active participants. Moreover, the Department's investigation of the reasonableness of the terms, conditions and rates of the offerings contained in these tariffs will include a review of all applicable FCC rules. The fact that this investigation is on-going should not prevent approval of VZ-MA's § 271 application.²⁶ VZ-MA is offering, and carriers may avail themselves of, these services

²⁴ Rhythms Comments at 18; Covad Comments at 43; ALTS Comments at 18.

²⁵ Rhythms Comments at 18-20; Covad Comments at 44-46; ALTS Comments at 18-20.

²⁶ See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, at ¶¶ 87, 236-238 (2000) ("SBC Texas Order") (concluding (continued...))

now, subject to change and true-up based upon the results of the Department's investigation.

Likewise, VZ-MA's refusal to allow in-place conversions of virtual to physical collocation arrangements does not prevent a finding of compliance with checklist item 1. The Department has previously determined that VZ-MA meets its obligation to provide collocation by offering physical and virtual collocation as well as shared cages and cageless collocation under terms, conditions, and rates approved by the Department.²⁷ As correctly noted by the commenters, the Department initially required VZ-MA to allow such conversion, but we stayed our decision pending the completion of the FCC's remand proceedings.²⁸ Once those remand proceedings are complete, the Department will review the issue of in-place conversions in D.T.E. 98-57 (Phase I) in light of the FCC's rules. In the interim, because the FCC's rules on the separation of incumbent local exchange carrier ("ILEC") and CLEC equipment have yet to be promulgated, VZ-MA's prohibition against in-place conversions should not result in a finding of non-compliance with checklist item 1.

²⁶(...continued)

that the § 271 process could not function as Congress intended if the FCC adopted a general policy of denying any § 271 application accompanied by unresolved pricing and other intercarrier disputes, and finding that interim rate solutions are sufficient for § 271 purposes "when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to [the FCC's] pricing rules, and provision is made for refunds or true-ups once permanent rates are set.").

²⁷ D.T.E. Evaluation at 35-36.

²⁸ VZ-MA Application, Appdx. K, Vol. 6, Tab 72, at 15 (D.T.E. 98-57-Phase I Order).

Lastly, as to the issue of collocation power charges, the Department previously addressed the commenters concerns,²⁹ and we will not repeat our conclusions here.³⁰ In sum, the Department affirms its conclusion that the evidence in the record fully supports VZ-MA's compliance with its collocation obligations under checklist item 1.

B Checklist Item 2 - Unbundled Network Elements

1. Operations Support Systems

a. Commercial Readiness of VZ-MA's OSS

In their comments, various CLECs argue that VZ-MA has not met its obligations with respect to checklist item 2 because VZ-MA's OSS "have not been subjected to a meaningful commercial test."³¹ The Association of Communications Enterprises ("ASCENT"), for example, contends that because VZ-MA has only processed a few thousand UNE-Platform ("UNE-P") orders per month, VZ-MA lacks the "real-world" experience that would confirm that its OSS are available on a nondiscriminatory basis.³²

WorldCom, Inc. ("WorldCom") also contends that VZ-MA's commercial volumes are insufficient to warrant a finding of compliance with the OSS requirements of checklist item 2.

²⁹ See D.T.E. Evaluation at 39-41.

³⁰ Id. at 40.

³¹ ASCENT Comments at 4.

³² Id. at 4.

Similar to ASCENT, WorldCom points to the volume of UNE-P orders placed in Massachusetts in recent months compared to the UNE-P volumes in New York prior to its § 271 application.³³ WorldCom contends that UNE-P is “the only mode of entry with the potential to provide ubiquitous mass-market service to residential customers in the near term.”³⁴ WorldCom further contends that because only four of the 5,000 UNE-P orders submitted during July 2000 were submitted over the Electronic Data Interchange (“EDI”) interface, which, according to WorldCom, is “the interface of choice for CLECs attempting to provide service at commercial volumes,” VZ-MA’s pre-ordering and ordering interfaces are incapable of providing CLECs with nondiscriminatory access to VZ-MA’s OSS.³⁵ Finally, WorldCom also argues that VZ-MA’s low volume of new installations of UNE-P (as opposed to migrations of customers) disqualifies VZ-MA’s application.³⁶

While the Department agrees with commenters that CLECs’ UNE-P order volumes are not at the same level in Massachusetts as they were in New York at the time of Verizon-New York’s (“VZ-NY”) § 271 application, we disagree with commenters that this fact somehow demonstrates that VZ-MA does not meet its obligations under checklist item 2. First, contrary

³³ WorldCom Comments at 39, Kwapniewski/Lichtenberg Decl. at ¶ 26.

³⁴ WorldCom Comments at 39.

³⁵ Id.

³⁶ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 27.

to WorldCom's arguments, UNE-P is not the only mode of entry available to CLECs in Massachusetts, nor has the FCC indicated in prior Orders that UNE-P should be the primary mode of entry on which § 271 applications will be judged. Notably, AT&T stated in its comments that it prefers to avoid "relying on facilities provided by the incumbent," and that its "preferred strategy for entering local markets is through the use of its own facilities."³⁷

Further, despite WorldCom's assertions to the contrary, VZ-MA's OSS have been subjected to commercial volumes across all modes of entry. The data provided by VZ-MA in its application show that VZ-MA's systems have been subjected to significant commercial activity. Specifically, in the first half of this year, Verizon processed 2.7 million CLEC pre-order transactions between New York and New England -- more than Verizon processed in this region in all of 1999.³⁸ In addition, during the Department's August 2000 technical sessions, VZ-MA witnesses testified that over 48,000 Local Service Requests ("LSRs") were processed in Massachusetts during July 2000.³⁹ While UNE-P orders accounted for approximately 5,000 of these LSRs, VZ-MA processed approximately 17,500 resale orders and 25,500 UNE-Loop

³⁷ AT&T Comments at 9.

³⁸ VZ-MA Application, Appdx. A, Vol. 1, Tab 2, at ¶ 34 (VZ-MA McLean/Wierzbicki Decl.).

³⁹ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4578 (Transcript of Technical Session Held 8/21/00).

orders.⁴⁰

We further disagree with WorldCom's contention that the volume of UNE-P orders submitted over the EDI interface demonstrates VZ-MA's non-compliance with this checklist item. WorldCom's statement that VZ-MA processed only four EDI orders during July 2000 is wrong. In fact, VZ-MA processed over 3,600 CLEC orders over the EDI interface during that month.⁴¹ Moreover, WorldCom assumes that the EDI interface is the only interface on which VZ-MA's OSS should be judged. VZ-MA does have an obligation to provide competitors with a viable application-to-application interface, an obligation that we have found VZ-MA has met.⁴² However, VZ-MA should not be penalized for CLECs' internal business decisions, which have led certain CLECs to choose VZ-MA's Graphical User Interface ("GUI") as their means of interacting with VZ-MA's back-end OSS. Indeed, while there are currently seven CLECs using EDI for pre-ordering transactions and 15 CLECs using EDI for ordering transactions in Massachusetts, more than 75 CLECs use VZ-MA's GUI to conduct their business transactions.⁴³

⁴⁰ VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4734-4735 (Transcript of Technical Session Held 8/22/00).

⁴¹ Id. at 4696.

⁴² D.T.E. Evaluation at 99.

⁴³ VZ-MA Application, Appdx. A, Vol. 1, Tab 2, at ¶¶ 21, 40 (VZ-MA McLean/Wierzbicki Decl.)

b. KPMG Testing

Another area of focus for CLEC comments was the adequacy of the third-party testing conducted by KPMG Consulting, L.L.C. (“KPMG”). Various CLECs contend in their filings that KPMG’s evaluation of VZ-MA’s OSS was deficient in certain respects, leading those CLECs to draw the conclusion that KPMG’s findings are not indicative of the true state of VZ-MA’s OSS. First, OnSite, ASCENT, and WorldCom contend that KPMG’s evaluation of VZ-MA’s OSS was too narrow in scope. Specifically, these commenters contend that KPMG’s test, which focused primarily on Local Service Operating Guidelines (“LSOG”) 2/3, the predominant environment used by CLECs in Massachusetts, was inadequate because it did not submit VZ-MA’s newer LSOG-4 environment to a complete evaluation.⁴⁴ WorldCom contends further that KPMG’s test of LSOG-2/3 has little value because VZ-MA “intends to decommission LSOG [2/3] early next year with the introduction of LSOG 5.”⁴⁵ WorldCom and OnSite do note in their comments that KPMG did some testing of the LSOG-4 environment; however, both argue that the LSOG-4 testing was limited and insufficient to show VZ-MA’s OSS readiness.⁴⁶

⁴⁴ OnSite Comments at 14; ASCENT Comments at 5; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 63-65.

⁴⁵ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 63.

⁴⁶ OnSite Comments at 14; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 64-65.

The second area of concern raised by commenters with respect to the KPMG evaluation is that KPMG did not perform as thorough an evaluation as it is perceived to have conducted in other jurisdictions (namely, New York and Pennsylvania). OnSite contends that, unlike its evaluation in Pennsylvania, KPMG did not perform root cause analysis on problems that were uncovered during the course of the Massachusetts OSS evaluation.⁴⁷ ASCENT and WorldCom concur with this argument.⁴⁸ WorldCom argues further that the problems associated with KPMG's failure to conduct root cause analysis were compounded by the fact that many Observations were not escalated to the level of Exceptions. WorldCom contends that CLECs were not allowed to comment on Observations, and that, combined with the lack of root cause analysis, this prevented KPMG from compiling a complete record of the problems with VZ-MA's OSS.⁴⁹

ALTS also raised concerns about the adequacy of KPMG's OSS evaluation. Specifically, ALTS contends that the Observations issued by KPMG during the Massachusetts OSS evaluation "clearly document that Verizon continues to erroneously record orders by hand, improperly train employees, incorrectly bill CLECs, and provide CLECs with inaccurate

⁴⁷ OnSite Comments at 13.

⁴⁸ ASCENT Comments at 5; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 58-61.

⁴⁹ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 58-61.