

fix, including ten customers in September.

Another assertion that WorldCom raised in its comments is Verizon's alleged failure to provide wholesale bills in electronic format. WorldCom contends that it has repeatedly requested electronic billing from Verizon since Verizon's announcement in January 2000 that all bill types would be available electronically. WorldCom states that Verizon agreed in July 2000 to provide WorldCom with electronic bills once WorldCom submitted to Verizon a list of Billing Account Numbers ("BANs") for those bills WorldCom wanted to receive electronically.¹³⁰ WorldCom argues that even though it provided Verizon with the necessary BAN information, it still has not begun receiving electronic bills.¹³¹ Moreover, WorldCom contends that it has experienced significant problems due to Verizon's late transmission of wholesale bills. Specifically, WorldCom asserts that Verizon frequently fails to send WorldCom's bills on time and then demands that WorldCom pay late charges.¹³² Finally, WorldCom also contends that Verizon has consistently failed to keep track of payments made by WorldCom and has forced WorldCom to expend unnecessary time and expense to prove that it has paid its bills.¹³³

¹³⁰ Id. at ¶ 168.

¹³¹ Id.

¹³² Id. at ¶ 169.

¹³³ Id. at ¶ 170.

ii. Conclusions

As with previous WorldCom claims, its billing complaints are not supported by any factual evidence. Specifically, WorldCom provides no evidence in its comments to support its claims that Verizon has provided it with inaccurate usage data and wholesale bills, nor did it provide any such evidence during the Department's § 271 proceeding. As to WorldCom's reference to KPMG's evaluation and the Observations and Exceptions issued therein, WorldCom fails to point out that KPMG closed each of the cited Observations and Exceptions with satisfaction that VZ-MA had resolved each of the problems raised by KPMG.¹³⁴

The remainder of WorldCom's arguments were raised during our § 271 proceeding and addressed sufficiently in our Evaluation.¹³⁵ However, it is necessary to respond to several of those allegations here because WorldCom now changes the substance of its arguments since first raising them with the Department. In our Evaluation, we addressed WorldCom's

¹³⁴ See D.T.E. Evaluation at Appdx. M (Observation Status Summary Dated August 25, 2000); VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Disposition Reports for Exceptions #6 and #11). The Department notes that KPMG's satisfactory closure of the Observations and Exceptions cited by WorldCom were based on either re-tests of VZ-MA's billing processes or the evaluation and confirmation of VZ-MA explanations for KPMG's perceived errors. In a number of cases, KPMG closed issues because it found its initial assessment to be based on an inaccurate understanding of VZ-MA's policies and procedures. See, e.g., D.T.E. Evaluation, Appdx. M, at 20 (stating that KPMG closed Observation issue 41.4 after confirming VZ-MA's explanation that KPMG incorrectly expected to receive a charge that was not applicable to the class of service on KPMG's lines).

¹³⁵ See, generally, D.T.E. Evaluation at 181-196.

contention that Verizon had mistakenly disconnected WorldCom customers for non-payment of previous Verizon bills.¹³⁶ As noted in the Evaluation, VZ-MA's investigation of WorldCom's claims found that only two WorldCom customers had been mistakenly disconnected after May 23, 2000 (i.e., after Verizon's manual fix).¹³⁷ Importantly, WorldCom does not dispute VZ-MA's findings with respect to its original claims but, rather, it now claims different customers have been disconnected.¹³⁸ Further, no participant raised the issue of SNPs with respect to Massachusetts customers during the Department's proceeding. Indeed, only WorldCom raised this issue to any degree before the Department.

With respect to the availability of electronic transmission of wholesale bills, the Department is not swayed by WorldCom's complaints. When WorldCom raised the same issue during the Department's § 271 proceeding, it neglected to mention Verizon's January 2000 notice that all bills are available in electronic format but, rather, stated that Verizon did not offer electronic bills anywhere in the region.¹³⁹ Further, though Verizon testified at

¹³⁶ Id. at 187-188.

¹³⁷ Id. at 188.

¹³⁸ Though WorldCom now contends that an additional 40 customers have had their service disconnected for non-payment of Verizon bills, and lists these additional SNPs in an attachment to its comments, the Department is unable to address the validity of WorldCom's claim, as they were not raised during the Department's § 271 proceeding.

¹³⁹ VZ-MA Application, Appdx. B, Vol. 37, Tab 455, at ¶ 134 (WorldCom Lichtenberg/Sivori Decl.).

Department technical sessions that it had informed all CLECs in January 2000 of the availability of electronic bill formats for all bill types, WorldCom did not contest Verizon's testimony, nor did WorldCom raise any complaints about Verizon failing to respond to its requests for electronic bills.¹⁴⁰ There is no evidence in the record, either from WorldCom or any other participant, to support WorldCom's recent claims.

As to the issue of Verizon's alleged late transmission of wholesale bills and attempts to assess late fees for payments made on bills that were sent late, the Department questioned WorldCom as to whether it notifies Verizon when it does not receive expected wholesale bills. WorldCom claimed that it does notify Verizon "as soon as it is aware that it has not received a bill."¹⁴¹ WorldCom contends that it had notified Verizon in mid-May 2000, that it had not received its May UNE bill in New York, but that Verizon did not retransmit the bill until June 7, 2000.¹⁴² VZ-MA responded that WorldCom did not notify Verizon of any problems with the May UNE bill until it sent an e-mail to Verizon's billing and collections center on

¹⁴⁰ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4585, 4600-4602 (Transcript of Technical Session Held 8/21/00); VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4678 (Transcript of Technical Session Held 8/22/00).

¹⁴¹ VZ-MA Application, Appdx. B, Vol. 41, Tab 488 (WorldCom Response to Information Request DTE-WCOM-6).

¹⁴² Id.

June 2, 2000.¹⁴³

Verizon further testified that it informed WorldCom of the proper procedures for reporting a missing bill, which include calling the WCCC, but that WorldCom failed to follow those procedures and instead called the systems support center on June 5, 2000. Verizon stated that, although WorldCom failed to follow properly defined procedures, Verizon still researched WorldCom's complaint and re-transmitted WorldCom's bill within three hours of receiving WorldCom's call.¹⁴⁴ Despite being afforded numerous opportunities, WorldCom has not contested VZ-MA's testimony as to the details of this situation.

Finally, with respect to WorldCom's claim that Verizon loses track of WorldCom payments, the Department notes that WorldCom has not contested VZ-MA's explanation that it is required to request proof of payment from WorldCom and other carriers when these carriers fail to submit the payment stubs from the bills they are paying.¹⁴⁵ VZ-MA states that without the payment stubs, it is very difficult for it to reconcile CLEC accounts, and, therefore, VZ-MA asks CLECs to provide proof of payment for their bills. Though VZ-MA provided this explanation for what WorldCom contends is discriminatory activity in early August,

¹⁴³ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4585-4586 (Transcript of Technical Session Held 8/21/00).

¹⁴⁴ Id.

¹⁴⁵ See VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 96 (VZ-MA August Supplemental OSS Aff.)

WorldCom did not dispute VZ-MA's explanation.

2. Pricing

A number of commenters contend that VZ-MA is not in compliance with checklist item 2 because, they allege, its prices for UNEs in Massachusetts are not properly based on the FCC's total-element, long-run incremental cost ("TELRIC") method.¹⁴⁶ The DOJ states that it has not reached any final conclusions about Verizon's "failure . . . to make certain network elements available to competitors at cost-based prices,"¹⁴⁷ but that "there are reasons to suspect that in some cases [certain prices for UNEs] have not been based on the relevant costs of the network elements."¹⁴⁸ While we disagree with the DOJ that there is any question that VZ-MA's UNE prices are cost-based, it is significant that both the Department and the DOJ agree that the appropriate standard for evaluating UNE prices is whether they are cost-based, and not whether there is a sufficient margin between costs and revenues (i.e., the "price squeeze" argument), as suggested by WorldCom and the Attorney General.¹⁴⁹

Almost all of the arguments raised by the commenters were anticipated by the

¹⁴⁶ See WorldCom Comments at 2-38, Bryant Decl.; AT&T Comments at 2-8; CompTel Comments at 5-9; ASCENT Comments at 3-6; and Attorney General Comments at 3-5.

¹⁴⁷ DOJ Evaluation at 17.

¹⁴⁸ Id. at 19.

¹⁴⁹ We do not concede that there is a price squeeze in Massachusetts. We simply assert that the question of a price squeeze is irrelevant to a checklist investigation.

Department and thus were addressed in detail in our Evaluation.¹⁵⁰ We will not repeat here what we said in our Evaluation; however, some comments warrant reply. We group our responses under five headings.

First, WorldCom contends that (1) the Department has “rubber-stamped” VZ-MA’s UNE rates; and (2) that “the [Department] has shown scant interest in promoting local residential competition generally.”¹⁵¹ The first claim is clearly untrue and does not do justice to the hard work of the Department and its appointed arbitrator in setting UNE rates.¹⁵² The Department’s evaluation of UNE cost studies was thorough, fair, and well-reasoned in its analysis.¹⁵³ The second claim also is false. WorldCom’s analysis of VZ-MA’s UNE prices

¹⁵⁰ See D.T.E. Evaluation at 199-223.

¹⁵¹ WorldCom Comments at 34.

¹⁵² At the request of VZ-MA, AT&T, WorldCom, and others, the Department appointed Paul F. Levy as the arbitrator for the initial series of arbitrations, including the setting of UNE rates, the wholesale discount, and establishing performance standards. Mr. Levy currently is the Executive Dean for Administration at Harvard Medical School. Before joining Harvard Medical School, Mr. Levy was adjunct professor of environmental policy at MIT, where he taught infrastructure planning and development and environmental policy for seven years. Mr. Levy has served as executive director of the Massachusetts Water Resources Authority, Chairman of the Massachusetts Department of Public Utilities, and Director of the Arkansas Department of Energy. He currently serves on the board of directors for the Providence Energy Corporation, Water Solutions Group, LLC, and the Silent Spring Institute. Mr. Levy received his B.S. in Economics, B.S. in Urban Studies and Planning, and Masters in City Planning from MIT.

¹⁵³ CompTel argues that the Department’s evaluation of UNE rates was not “a true all-
(continued...)

does not support a general conclusion either about the motives of the Department or about the status of competition for residential customers in Massachusetts.¹⁵⁴

Some commenters also questioned the Department's commitment to TELRIC-based rates.¹⁵⁵ Bald and unconvincing assertion does not establish the factual truth. There is no weight to this airy claim. Notably, the Attorney General "does not question that the [Department] is committed to follow the FCC's TELRIC pricing rules."¹⁵⁶ As we stated in our Evaluation, "[t]he Department has established UNE prices in Massachusetts consistent with basic TELRIC principles. One cannot read the various Department TELRIC Orders and

¹⁵³(...continued)

party rate proceeding," or a "generic cost docket . . . but resulted instead from a consolidated proceeding to arbitrate several discrete interconnection agreements." See CompTel Comments at 8. This is true, but we do not see what negative conclusion this fact is evidently thought by CompTel to support. The Act itself provides that rate decisions be made in the context of arbitrations, and the "discrete" agreements that were subject to the Consolidated Arbitrations involved AT&T, WorldCom, Sprint Communications Company, L.P. ("Sprint"), Teleport, and Brooks Fiber. It is hard to imagine what other carriers would have been involved in a so-called "all-party proceeding" in 1996. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-94 ("Consolidated Arbitrations").

¹⁵⁴ See The DOJ's conclusion: "[T]he MA DTE has ensured that Massachusetts will benefit from competition . . . and the [DOJ] is particularly pleased to see a major commitment to facilities-based residential competition by AT&T Broadband and RCN." DOJ Evaluation at 2.

¹⁵⁵ WorldCom Comments at 37; CompTel Comments at 9.

¹⁵⁶ Attorney General Comments at 5.

reasonably conclude otherwise.”¹⁵⁷

Second, several commenters contend that the Department either “has no stated plans to convene a cost proceeding,” or has “declared that it would refuse to consider [UNE rates] again until December 2001.”¹⁵⁸ Both of these contentions are categorically false. As we discussed in our Evaluation, the Department will do a complete review of all UNE rates and the wholesale discount next year.¹⁵⁹ The start-up date for that investigation depends on the U.S. Supreme Court’s decision whether to review the Eighth Circuit’s vacatur of the FCC’s pricing rules. We believe the Court will, but it is prudent and administratively efficient to pause and await the Court’s signal. With respect to WorldCom’s allegation that the Department refused to consider UNE rates until December 2001, the statement referenced by WorldCom actually read as follows: “[W]e determine that the resale rates contained in the Phase 2 Order and the UNE rates contained in the Phase 4 Order shall be in effect until

¹⁵⁷ D.T.E. Evaluation at 213.

¹⁵⁸ CompTel Comments at 8; WorldCom Comments at 17.

¹⁵⁹ D.T.E. Evaluation at 216-217. WorldCom has advocated that the Department do an investigation into only a subset of UNE rates. The Department’s scheduled review will include all UNE rates and the wholesale discount, as it properly should, and not just the handful of UNE rates to which WorldCom objects. In fact, it is worth noting that when the Department broached with WorldCom this past May the possibility of advancing the start of the comprehensive rate investigation by a year, WorldCom representatives expressed strong opposition to that course of action.

December 2001.”¹⁶⁰ Clearly, in order to have new rates ready to be in effect from and after December 2001, the Department will necessarily begin its rate consideration well in advance of that month.

Third, some commenters erroneously contend that, whenever an ILEC faces an “unresolved rate dispute with its competitors,”¹⁶¹ there are a number of FCC requirements, which, they contend, have not been met in Massachusetts. Those requirements are as follows: (a) an on-going state consideration of rates; (b) establishment of interim rates; (c) a demonstration that a state commission is committed to the FCC’s pricing rules; and (d) a “true-up” provision.¹⁶² As noted above, the Department is committed to TELRIC-based rates (item c), but the other “requirements” (items a, b, and d) are not in place generally for UNE rates in Massachusetts. We believe that these commenters mis-read what the FCC refers to as an “unresolved rate dispute” in this context.

It is clear to the Department from the FCC’s Orders¹⁶³ that the “unresolved rate dispute” the FCC is referring to in this context is one in which the state commission has not

¹⁶⁰ VZ-MA Application, Appdx. F, Tab 157, at 15-16 (D.T.E. 98-15 (Phase II, III)) (emphasis added).

¹⁶¹ See SBC Texas Order at ¶ 236.

¹⁶² Attorney General Comments at 5; CompTel Comments at 8.

¹⁶³ See Bell Atlantic New York Order at ¶¶ 250, 257-260; SBC Texas Order at ¶¶ 236-237, 241.

yet established permanent rates for particular UNEs.¹⁶⁴ On the contrary, the so-called “rate dispute” in Massachusetts is one in which some CLECs contend that permanent, Department-approved UNE rates in Massachusetts are not TELRIC-compliant. The rate dispute was resolved; some just do not like the resolution. The FCC does have a standard to apply in the case where permanent UNE rates are challenged,¹⁶⁵ but the requirements for an ongoing proceeding, interim rates, and a true-up mechanism are discussed by the FCC only in the context of situations where there are no permanent rates for particular UNEs.

Fourth, it is very important to note that, with one exception, no carrier or other intervenor in the Department’s UNE rate proceeding has taken advantage of the specific legal recourse provided by Congress (i.e., an appeal to federal district court, pursuant to § 252(e)(6)) in a case where a party believes that the state commission has made mistakes in

¹⁶⁴ SBC Texas Order at ¶ 236 (footnote omitted):

As previously discussed, we are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors and the relevant state commission, which has primary jurisdiction over the matter, is currently considering the matter. Instead, as we have explained, interim rate solutions are a sufficient basis for granting a 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set.

¹⁶⁵ See Bell Atlantic New York Order at ¶ 244.

applying the pricing provisions of the Act. WorldCom has appealed the Department's UNE rate decision, but only on the ground that the Department should not have accepted VZ-MA's assertion that the TELRIC cost study should assume 100 percent fiber in the feeder portion of the loop.¹⁶⁶ WorldCom has not legally challenged Department findings on any of the other issues discussed in its October 16 comments, including any of the local switching rate decisions. AT&T and the Attorney General, which were both parties to the Department's UNE rate proceeding, have not appealed any of the Department decisions that they now criticize in their comments.

Fifth, notwithstanding the fact that the Department finds that the UNE rates it established in December 1996 are TELRIC-compliant, any remaining dispute about these rates was made moot by the filing and approval on October 13, 2000 of a VZ-MA tariff that lowered switching, transport, and port rates to levels that are effectively the same as the corresponding VZ-NY rates, which have already been approved by the FCC as being within the range that reasonable application of TELRIC principles would produce (an approval sustained on appeal).¹⁶⁷

Many of the commenters, including the DOJ, addressed whether or not the new tariff complies with the FCC's "complete as filed" and other procedural rules for a § 271

¹⁶⁶ MCI Telecommunications Corporation, Inc. et al. v. New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, et al., No. 98-CV-12375-RCL.

¹⁶⁷ See AT&T Corp. v. FCC, 220 F.3d 607, 617 (D.C. Cir. 2000).

investigation. Because the procedural issue is not a checklist-related item, the Department will not comment on it, except to note that the Department has included consideration of the new tariff as part of its Evaluation.¹⁶⁸

C. Checklist Item 3 - Poles, Ducts, Conduits, and Rights-of-Way

The Attorney General argues that several of VZ-MA's policies, relevant to the FCC's inquiry under this checklist item, favor VZ-MA over other carriers. Specifically, the Attorney General states that VZ-MA requires competitors to move their pole attachments within 15 days after VZ-MA requests access to a pole, but that VZ-MA allows itself up to seven and a half months to comply with a competitor's request for access.¹⁶⁹ We disagree with the Attorney General and note that the Attorney General is attempting to compare two entirely different processes, one of which requires a significantly greater amount of time to complete. While VZ-MA requires all licensees to rearrange their existing pole attachments within 15 days of a request to accommodate the equipment of a new licensee,¹⁷⁰ we note that this rearrangement is a separate process, different from make-ready work to accommodate a new licensee on a pole. In the former process, existing licensees simply need to raise or lower their pole attachment

¹⁶⁸ D.T.E. Evaluation at 213, 222-223.

¹⁶⁹ Attorney General Comments at 6, citing VZ-MA Application, Appdx. B, Vol. 38, Tab 461, at 13-29 (NECTA Initial Comments); VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4099-4200 (Transcript of Technical Session Held 8/14/00).

¹⁷⁰ VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4184 (Transcript of Technical Session Held 8/14/00).

equipment (and 15 days is ample time to perform this function), whereas in the latter function, VZ-MA may need to coordinate the rearrangement of the lines of electric utilities, fire alarm companies, and other attachment owners so that a competitor may gain access to a pole.¹⁷¹

Under VZ-MA's standard licensing agreement, best efforts will be made to have make-ready work completed within 180 days.¹⁷² During May through July 2000, VZ-MA completed make-ready work for pole attachments within 80 days, on average, for CLECs and cable operators compared to 151 days it required to complete make-ready work for itself.¹⁷³ Thus, we conclude that VZ-MA is providing make-ready work on a timely and nondiscriminatory basis.

The Attorney General also contends that VZ-MA requires CLECs to identify their lines on poles but does not identify its own lines.¹⁷⁴ As stated in the Department's Evaluation, VZ-MA does not license itself and so the licensing procedures, including identifying or "tagging" one's lines, logically would not apply to VZ-MA.¹⁷⁵ There is no need for VZ-MA

¹⁷¹ Id. at 4133.

¹⁷² Id. at 4187.

¹⁷³ VZ-MA Application, Appdx. A, Tab 1, at ¶ 201 (Lacouture/Ruesterholz Decl.).

¹⁷⁴ Attorney General Comments at 6, citing VZ-MA Application, Appdx. B, Vol. 38, Tab 461, at 13-29 (NECTA Initial Comments); VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4099-4200 (Transcript of Technical Session Held 8/14/00); RCN Comments at 10.

¹⁷⁵ D.T.E. Evaluation at 248.

to tag its own lines since it knows how to identify them.¹⁷⁶ Such a requirement would be pointless formalism.

The Attorney General and RCN-BecoCom, L.L.C. (“RCN”) argue that VZ-MA is able to reserve attachment space for one year but only allows CLECs to reserve space for 90 days.¹⁷⁷ The issue of VZ-MA’s reservation of space was previously addressed in the Department’s Evaluation.¹⁷⁸ We will not repeat that analysis here except to point out that this policy falls within the FCC’s narrow exception permitting a utility with a “bona fide development plan” to reserve space for its core utility services.¹⁷⁹ That exception allows a utility to reserve space for itself for no more than one year, if the utility has a documented, fully engineered plan for such purpose.¹⁸⁰ VZ-MA has such a plan when it pre-allocates space,¹⁸¹ and, therefore, VZ-MA’s policy falls within the parameters of the requirements set forth in the Reconsideration Order.

¹⁷⁶ Id.

¹⁷⁷ Attorney General Comments at 6, citing VZ-MA Application, Appdx. B, Vol. 38, Tab 461, at 13-29 (NECTA Initial Comments); VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4099-4200 (Transcript of Technical Session Held 8/14/00).

¹⁷⁸ D.T.E. Evaluation at 245.

¹⁷⁹ In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 99-266, at ¶ 54 (October 26, 1999) (“Reconsideration Order”).

¹⁸⁰ D.T.E. Evaluation at 245.

¹⁸¹ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at 43 (VZ-MA May Supplemental Comments).

The comments submitted by ALTS raise many of the same issues presented earlier (but not now raised) by New England Cable Television Association, Inc., RCN, and AT&T during our § 271 proceeding concerning checklist item 3.¹⁸² Since the Department already addressed these issues at length in our Evaluation (e.g., the costs and timing of VZ-MA's make-ready procedures, the terms and conditions of VZ-MA's pole attachment and conduit license agreements), there is no need to repeat ourselves here.¹⁸³ However, in response to ALTS' contention about VZ-MA's delays in make-ready work, the Department notes that during the second quarter of 2000, VZ-MA was able to fulfill approximately 90 percent of CLEC requests for access to poles without having to perform make-ready work.¹⁸⁴ In these instances, CLECs gained access to poles, conduits and ducts immediately upon the issuance of a license.¹⁸⁵ ALTS also contends that VZ-MA "proposed meetings with CLEC field staff, but barred CLEC attorneys from attendance."¹⁸⁶ While ALTS is correct that these licensee workshops were open only to technical staff and not attorneys, ALTS overlooks the fact that the purpose of these workshops was to improve communications between VZ-MA and CLECs, and to provide training and information on VZ-MA's pole attachment and conduit procedures

¹⁸² ALTS Comments at 46-48.

¹⁸³ D.T.E. Evaluation at 223-249.

¹⁸⁴ VZ-MA Application, Appdx. A, Tab 1, at ¶ 194 (Lacouture/Ruesterholz Decl.).

¹⁸⁵ Id.

¹⁸⁶ ALTS Comments at 45.

-- and not a forum for “quiddities” and “quillites.”¹⁸⁷ The workshops resulted in several important modifications to VZ-MA’s licensing procedures, and that progress would likely not have been made had attorneys been present.¹⁸⁸

In its comments, RCN makes allegations concerning VZ-MA’s policy on “boxing” poles,¹⁸⁹ many of which we addressed in our Evaluation.¹⁹⁰ RCN raises for the first time a new allegation – that VZ-MA is the only utility that does not allow for the boxing of poles¹⁹¹ and that the practice of boxing occurs in other Verizon jurisdictions (e.g., Pennsylvania, New Jersey) and throughout the country.¹⁹² Because this allegation was not made during our investigation, we are unable to comment on it. However, we reiterate our findings from the Evaluation that VZ-MA’s prohibition on boxing is not an unnecessary restriction on RCN

¹⁸⁷ VZ-MA Application, Appdx. A, Tab 1, at ¶ 191 (Lacouture/Ruesterholz Decl.); Hamlet, V.i.97.

¹⁸⁸ Id.

¹⁸⁹ D.T.E. Evaluation at 231 n.708.

¹⁹⁰ Id. at 246.

¹⁹¹ RCN Comments at 13.

¹⁹² Id. at 13-14, Exhibit C (Statement of RCN’s Michael Cook explaining that poles in Queens, NY, are boxed), Exhibit D (Statement of RCN’s Kevin Comfort explaining that poles in New Jersey are boxed), Exhibit E (Statement of RCN’s Fred Fabricious explaining that poles in California are boxed), Exhibit F (Statement of RCN’s Marvin Glidewell explaining that poles in Philadelphia, PA, are boxed), and Exhibit G (Statement of consultant Edmund Feloni explaining that boxing is a generally accepted technique).

because this policy is designed to protect existing facilities on poles, and that VZ-MA's policy does not unduly affect any particular CLEC or unfairly advantage VZ-MA.¹⁹³

RCN also argues that VZ-MA's policy on boxing violates the FCC's decision in Cavalier Telephone, LLC v. Virginia Electric and Power Company.¹⁹⁴ We addressed the Cavalier decision in our Evaluation in response to RCN's allegations and need not repeat our analysis.¹⁹⁵ In Cavalier, the Respondent boxed its own attachments while prohibiting the Complainant from engaging in the same practice.¹⁹⁶ This is not the case in Massachusetts because VZ-MA no longer boxes for itself.¹⁹⁷ Moreover, there is no evidence in the record that VZ-MA has selectively enforced this boxing prohibition on RCN.

RCN also asserts that VZ-MA allowed a CLEC to attach to VZ-MA's poles in violation of industry standards and then required RCN to pay make-ready costs to remedy the problem.¹⁹⁸ Other than this vague allegation, however, RCN does not offer any information or documentation to support its argument. For instance, RCN does not identify the CLEC

¹⁹³ D.T.E. Evaluation at 246.

¹⁹⁴ Cavalier Telephone, LLC v. Virginia Electric and Power Company, 15 FCC Rcd 40 (2000) ("Cavalier").

¹⁹⁵ D.T.E. Evaluation at 241-242.

¹⁹⁶ Cavalier at ¶ 19.

¹⁹⁷ D.T.E. Evaluation at 241-242.

¹⁹⁸ RCN Comments at 10.

purported to be involved, the approximate date and location of the alleged infraction(s) or the make-ready costs assigned to RCN.¹⁹⁹ In addition, RCN contends that VZ-MA overcharges for make-ready work.²⁰⁰ We addressed VZ-MA's make-ready costs in our Evaluation and found that the costs are accurately broken down into specific categories and that the make-ready costs are sufficiently explained to the licensee.²⁰¹ Moreover, should a CLEC believe that a pole attachment cost is unreasonable, the Department has rules governing complaint procedures whereby a licensee may file an action alleging unreasonable pole attachment rates.²⁰² Thus, RCN's comments are without merit.

Lastly, the DOJ raised concerns about RCN's allegations that VZ-MA has failed to provide nondiscriminatory access to poles.²⁰³ The DOJ stated that if RCN's allegations are true, this could slow down entry of other facilities-based providers.²⁰⁴ The DOJ also commented that it was not able to fully assess RCN's claims because VZ-MA failed to discuss

¹⁹⁹ VZ-MA Application, Appdx. B, Vol. 38, Tab 459, at 3 (RCN July Supplemental Comments).

²⁰⁰ RCN Comments at 10.

²⁰¹ D.T.E. Evaluation at 247.

²⁰² See 220 C.M.R. §§ 45.00 et seq.

²⁰³ DOJ Evaluation at 7 n.28, citing RCN Comments at 28-35.

²⁰⁴ Id.

these issues fully in its application.²⁰⁵

While VZ-MA did not specifically address in its FCC brief each of the allegations raised by RCN,²⁰⁶ VZ-MA has addressed fully RCN's claims in its accompanying attachments filed with the FCC.²⁰⁷ As we stated in our Evaluation²⁰⁸ and in these reply comments, we are satisfied that VZ-MA has conclusively demonstrated that it is providing to RCN, and all other CLECs, nondiscriminatory access to its poles, ducts, conduits, and rights-of-way in accordance with the requirements of § 224.

D. Checklist Item 4 - Unbundled Local Loops

Since there appears to be some disagreement by at least one commenter about the Department's process in D.T.E. 99-271, it is useful to explain again the procedures we followed before responding to the specific arguments raised in the comments on checklist item 4. According to Covad, the data submitted by Southwestern Bell Telephone ("SWBT") in its Texas § 271 application was subject to substantial scrutiny and review by interested parties

²⁰⁵ Id., citing VZ-MA Brief at 34-35.

²⁰⁶ VZ-MA Application, Brief at 37-38.

²⁰⁷ VZ-MA Application, Appdx. A, Tab 1, at ¶¶ 187-202 (Lacouture/Ruesterholz Decl.), VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at 37- 51 (VZ-MA May Supplemental Comments), VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 63-74 (VZ-MA August Supplemental Checklist Aff.).

²⁰⁸ D.T.E. Evaluation at 239-249.

including “competitive LECs, KPMG, and the Texas Commission.”²⁰⁹ Covad contends that, unlike the Texas Commission, not only did the Department “refuse to involve itself in the factual disputes on the record, but [it] ignored Covad’s complaint that KPMG had not performed any xDSL data reconciliation.” Covad argues that as a result of the Department’s and KPMG’s inaction (coupled with not having collaborative discussions with VZ-MA), it never had the opportunity to have its objections to VZ-MA’s performance properly evaluated.²¹⁰

Covad is incorrect. Like any other participant, Covad was given a meaningful opportunity to challenge VZ-MA’s assertions or to substantiate Covad’s claims about VZ-MA’s performance by providing its own data. With the exception of one VZ-MA study related to longer provisioning intervals resulting from, in VZ-MA’s opinion, CLEC requests for manual loop qualification,²¹¹ all of VZ-MA’s justifications for its performance data were addressed in its May and August, 2000, filings and during the August technical sessions. Covad had ample opportunity to enquire, either through discovery or witness examination, VZ-MA’s explanations, and to request the supporting data from VZ-MA. That Covad, by its own (in)action, chose not to pursue a VZ-MA argument is not a reflection on the Department’s

²⁰⁹ Covad Comments at 24.

²¹⁰ Id. at 24-25.

²¹¹ See D.T.E. Evaluation at 300 n.947.

process but, rather, indicates a conscious decision by Covad.²¹²

In addition, KPMG did conduct a thorough and rigorous test of VZ-MA's OSS, including xDSL orders, in Massachusetts.²¹³ Moreover, if by "xDSL data reconciliation" Covad means "xDSL metric replication," the Department did not "ignore" Covad's request. The Department undertook this task of xDSL metric replication on its own initiative, even before VZ-MA made its filing with the FCC, as a direct result of Covad and others having raised it as a concern.²¹⁴

It is unclear to the Department what Covad means by the Department's alleged refusal to involve itself in the factual disputes on the record. In its investigation, the Department attempted to resolve all factual disputes that were brought to our attention. For a significant number of claims Covad made throughout our proceeding, it was unable to produce any supporting data.²¹⁵ In those instances where Covad did produce data, VZ-MA reviewed and

²¹² We note that, unlike other participants, Covad chose not to propound any discovery on VZ-MA's May 2000 filing.

²¹³ Covad is incorrect when it states that KPMG reviewed SWBT's data. It did not. Telcordia was the third-party evaluator used by the Texas Commission to aid in its evaluation of SWBT's OSS. In addition, we note that Telcordia's test excluded SWBT's provisioning of xDSL loops. See SBC Texas Order at ¶ 103 n.263.

²¹⁴ See Section II.B.1.b, above, for a discussion of the process and results of this replication.

²¹⁵ See VZ-MA Application, Appdx. B, Vol. 24, Tab 274 (Covad Response to Record Request 197); VZ-MA Application, Appdx. B, Vol. 28, Tab 363 (Covad Responses to (continued...))

persuasively responded to Covad's claims on our record.²¹⁶ Covad did not challenge VZ-MA's accounting of Covad's data nor did it ever seek to "reconcile" its claims with VZ-MA's responses.

The Department scheduled two and a half weeks of technical sessions this summer. Unlike the technical sessions last year, which the Department indicated were designed primarily to educate the Department about VZ-MA's claimed compliance with the checklist, these August technical sessions were for the benefit of the CLEC participants to challenge VZ-MA's claims and to present any factual disputes. Similar to the New York Public Service Commission's ("NYPSC") § 271 proceeding, this last round of technical sessions afforded each CLEC the opportunity to present its case of VZ-MA's non-compliance with its § 271 obligations by questioning VZ-MA's experts and KPMG, and by presenting expert testimony of its own. The Department permitted questioning of VZ-MA's experts by the CLECs' experts, as well as by CLEC attorneys, and sustained VZ-MA's objections to CLEC

²¹⁵(...continued)

Record Requests 255, 256, 259); Covad Response to Record Request 258; VZ-MA Application, Appdx. B, Vol. 45, Tab 11 (Covad Responses to Information Requests DTE-Covad 4, 6, 7, and 10); VZ-MA Application, Appdx. B, Vol. 45, Tab 14 (Covad Responses to Information Requests DTE-Covad 5 and 11).

²¹⁶ See e.g., VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 206-207 (VZ-MA May Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 102-103, 144-145 (VZ-MA August Supplemental Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4321-4326 (Transcript of Technical Session Held 8/17/00).

questioning only when the question was obviously not relevant to our proceeding, repetitive or argumentative. Not only did we anticipate using all two and a half weeks, we built into the procedural schedule several additional days in case the proceedings lasted longer than expected. Instead, these technical sessions were completed in eight days (several of which ended early). Covad cannot legitimately argue that it was denied an opportunity to investigate VZ-MA's performance. Ample time and opportunity were provided for CLEC concerns to be aired and thrashed out. Nor should Covad fault the Department for its own inaction during the VZ-MA § 271 investigation.

On a related matter, the DOJ asks that the Department clarify whether the CLECs' opportunity to comment on VZ-MA's assertions related to trouble tickets was limited to the oral argument.²¹⁷ It was not. CLECs were afforded the opportunity to question VZ-MA's experts (and to make data requests of VZ-MA) on this topic and others during the August technical sessions. We reiterate that, but for one VZ-MA study related to the six-day versus nine-day xDSL provisioning interval, the substance of the xDSL information contained in VZ-MA's § 271 application filed on September 22, 2000, was addressed by VZ-MA during our proceeding – and not raised for the first time by VZ-MA during the September 8, 2000, oral argument. Similarly, the DOJ argues that it is in the public interest for VZ-MA to raise its performance measurement concerns before the state commission rather than to raise them for

²¹⁷ DOJ Evaluation at 8-9 n.30.

the first time in its § 271 application to the FCC.²¹⁸ In support of this argument, the DOJ cites to Rhythms' FCC comments, in which Rhythms contends that several of VZ-MA's concerns were never addressed at the state level.²¹⁹ Rhythms is incorrect. VZ-MA did raise its concerns with lack of access to CLEC customers and cooperative testing by some CLECs (two of the three issues cited by Rhythms) during our proceeding.²²⁰

1. Hot Cuts

Despite the attention this issue has attracted in other § 271 proceedings before the FCC, only the Attorney General raised concerns about VZ-MA's hot cut performance, and those concerns were limited to the Attorney General's uncertainty about the status of the hot cut data reconciliation between VZ-MA and AT&T. The Attorney General states that it "remains unclear whether [VZ-MA] is accurately reflecting its hot cut performance," and "[a]bsent evidence that the hot cut scoring problem raised by AT&T is solved, [VZ-MA] has not

²¹⁸ Id. at 13-14.

²¹⁹ Rhythms Comments at 27-28; see also DOJ Evaluation at 14 n.51.

²²⁰ See VZ-MA Application, Vol. 45, Tab 520, at 4286 (Transcript of Technical Session Held 8/17/00) (no access rate is five times higher for CLEC customers than VZ-MA retail customers, clarified later in VZ-MA Response to Record Request 323 as a ten-fold increase in the no access rate from April through June 2000); see also VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 197, 210 (VZ-MA May Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 108 (VZ-MA August Supplemental Checklist Aff.) (indicating that cooperative testing is optional and that one CLEC, Vitts, did not utilize this process). The Department already addressed the third issue mentioned by Rhythms, alleged pre-qualification errors made by CLECs, above.