

It is important for the Massachusetts Department to have this same flexibility to respond to actual real world occurrences. The elimination of the reallocation provision from the Massachusetts PAP takes away this flexibility. Verizon should have listed it as a material difference. In any event, the Department should require the same provision in Massachusetts.

3. Unlike The New York PAP, The Massachusetts PAP Does Not Contain A Provision That Requires Verizon To Issue A Refund Check Instead Of Bill Credits If A CLEC No Longer Uses Verizon's Services.

In its April 25 PAP filing, Verizon also made no mention of the fact that, for the Massachusetts PAP, it had eliminated the provision contained in the New York PAP that requires Verizon to issue a check to any CLEC that is owed bill credits but that no longer uses Verizon's services. *Compare*, NY PAP, at 16, to April 25 PAP, at 20-21, and September 15 PAP, at 19. Under both the New York and Massachusetts PAP, if Verizon provided discriminatory service in January and this discriminatory service entitled an individual CLEC to \$100,000 in bill credits, those credits would be credited to the CLEC's February bill. If the CLEC's February bill was less than \$100,000, then the remaining credits would roll over into future months.

The two PAPs differ significantly, however, in a situation where a CLEC that is owed bill credits stops doing business with Verizon (perhaps because Verizon's discriminatory service has driven them out of the market). In such a situation, the New York PAP requires Verizon to issue a check to the CLEC that is no longer doing business with Verizon for the amount of bill credits owed. The Massachusetts PAP, however, has eliminated this provision. *Compare*, NY PAP, at 16, to April 25 PAP, at 20-21, and September 15 PAP, at 19. Thus, under the Massachusetts PAP, Verizon would not have to pay anything to CLECs to which it owes bill credits if they stop using Verizon's services. This might actually have the perverse effect of giving Verizon an incentive to drive its competitors out of business once it owed them bill credits. If the competitor

were not around to collect bill credits, Verizon would never have to pay for its discriminatory behavior.

This is yet another major difference between the two plans that Verizon did not list in its April 25 PAP. *See*, April 25 PAP, at 7-8. Verizon's decision to drop this provision from the Massachusetts PAP without drawing attention to it was misleading at best. The Department should now order Verizon to modify the PAP to require refund checks when a CLEC stops ordering additional services from Verizon.

4. The Massachusetts PAP Eliminates The Electronic Data Interface Special Provisions That Are Contained In The New York PAP.

Verizon's April 25 PAP also failed to inform the Department that Verizon had eliminated the Special Provisions measures for Electronic Data Interface ("EDI") from its Massachusetts PAP. *See*, April 25 PAP, at 7-8. These measurements are included at pages 13-14 of the New York PAP and \$24 million are set aside as potential bill credits for failure to meet the standards for these measurements. *See*, New York PAP, at 13-14. They are nowhere to be found in either Verizon's April 25 PAP or its September 15 PAP.

This was a particularly glaring omission because these were the Special Provisions that were ordered by the FCC and NYPSC due to the systems problems experienced by BA-NY in the Winter and Spring of this year. Even if the Department were to scale the \$24 million that the New York Plan makes available under these measures to adjust for the size of the Massachusetts market (using the same methodology the Department used in setting the overall PAP liability cap) the exclusion of these measures from the Massachusetts PAP has trimmed over \$12.67 million dollars off of Verizon's potential liability for discriminatory performance. Despite the size of this difference, however, Verizon has strongly suggested, if not claimed, that no such change has been made. *See* April 25 PAP at 7-8. The Department should require Verizon to

include all the special provision measures. Moreover, the Department should add to Verizon's potential liability in Massachusetts the \$12.67 million Verizon's omission had eliminated. This would bring Verizon-MA's liability exposure in Massachusetts to the same 39.4% of total revenue that Verizon-NY faces, *See*, Tr. Vol. 28 (9/8/00), at 5482.

5. Verizon Has Eliminated Resale Flow-through Metrics From Critical Provisions In The Massachusetts PAP.

Similarly, Verizon has eliminated Resale flow-through metrics from the Special Provisions section of the Massachusetts PAP while claiming that no such change has been made. The New York PAP included a Special Provision for flow-through that included metrics for both UNE flow-through and Resale flow-through. *See* NY PAP at Appendix H, pp. 1-3. In the Massachusetts PAP, however, Verizon has only included the measures for UNE flow-through. *See* April 25 PAP at Appendix H, pp. 1-2; September 15 PAP at Appendix H, pp. 1-2.

6. Verizon Has Changed The Domain Clustering Rule In Several Ways, All Of Which Benefit Verizon.

The Domain Clustering Rule that Verizon included in its April 25 PAP (which is identical to the Domain Clustering Rule in the September 15 PAP) is different in potentially material ways from the Domain Clustering Rule in the New York PAP, although Verizon nowhere makes reference to, or calls attention to, any differences.

The "Domain Clustering Rule" as it appears in the New York PAP is intended to provide a level of extra protection for CLECs. It provides the potential for additional penalties when Verizon's poor performance is concentrated in any one of four domains: pre-order, ordering, provisioning and maintenance, but not necessarily within a MOE. Although the Domain Clustering Rule included in the Massachusetts PAP does roughly the same thing, *it requires Verizon-MA's behavior to be worse (i.e., more discriminatory) before it is triggered, and once triggered it provides a lower level of penalties, as compared to the New York Domain Clustering*

Rule. Although the language of the two are substantially different (*compare* Appendix E, pages 2-3, in the April 25 and September 15 PAPs, to Appendix E, page 3, of the New York PAP), the two effects (see italicized language above) of the different language are not immediately obvious. AT&T has performed a detailed analysis in order to determine these effects. However, the full analysis is beyond the scope of this pleading. Instead, AT&T will set forth below an “intuitive” explanation and urges the Department to convene a technical session in order for AT&T’s subject matter experts to explain and provide the full algebraic support.

There are three major differences between the two rules. First, the examples provided in each of the PAPs are different and connote different rules for determining when a metric and its weight will contribute to the amount necessary to “trigger” the Domain Clustering Rule. Under the New York PAP, the weights of a metric for which Verizon scores a –1 will contribute in the same manner as a metric that scores a –2 to triggering the rule *and* to the amount of penalties provided under the rule. Under the Massachusetts PAPs, the weights of a metric for which Verizon scores a –1 will contribute *partially, if at all*, to triggering the rule and to the remedy amount provided under the rule. Verizon must have a score of –2 before the metric contributes the same amount proportionally as the NY PAP. Not surprisingly, the Massachusetts method will systematically produce lower penalty amounts than the New York method. Attached as Attachment B is an example that shows the New York method producing penalty amounts that are 26.7% greater (proportionately) than the Massachusetts method.

Second, Verizon uses a percentage triggering amount in Massachusetts for the Pre-Order domain (75%) that is different from the percentage used in New York (66.7%). *Compare* April 25 and September 15 PAPs, Appendix E at 3, to New York PAP, Appendix E at 3. The effect of

this difference is also to require a worse level of performance from Verizon before the Domain Clustering Rule (with its potentially greater penalties) can be activated.

Third, in Massachusetts, Verizon expressly requires the “response time pre-ordering” metrics to all be at the –2 score before the pre-ordering Domain Clustering Rule is activated. *See*, April 25 and September 15 PAPs, Appendix E, at 3. Nowhere does this requirement appear in the New York PAP. Moreover, this requirement is misleading because it suggests that only the “response time pre-ordering” metrics are required to be at –2 before the pre-ordering Domain Clustering Rule is activated. In fact, due to the operation of the rules and as connoted by the example in the Massachusetts PAP, the pre-ordering domain reaches exactly the 75% level under this requirement but since this requirement is absent in the New York PAP many more patterns of failure would be remedied under its pre-ordering Domain Clustering Rule and therefore gives a stronger incentive for Verizon to provide non-discriminatory wholesale service.

AT&T asks the Department to require Verizon-MA to implement and comply with a Domain Clustering Rule that is the same as the one in New York. Nothing in the Department’s orders indicates a desire to change that rule in Massachusetts.

B. Verizon’s Misrepresentation In Its April 25 PAP Of The Differences Between Its April 25 And New York PAPs Require That The Department Reconsider The September 5 Order – An Order That Is In Direct Response To Verizon’s April 25 PAP and Its Misrepresentations.

It is well established that relief may be had from judgments obtained by misrepresentation. *See* Mass. R. Civ. P. 60 (“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . . fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party[.]”). Indeed, the Massachusetts Rules of Civil Procedure specifically empower courts to consider setting aside a judgment in cases of

fraud, even when the time for filing a motion for relief from judgment has otherwise passed. *See id.* (“This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.”)

Although, as the Department has noted on many occasions, this proceeding is not an adjudicatory proceeding, the Department should surely reconsider a decision that was based on a filing that was misleading at best, and deceptive and fraudulent at worse. It can hardly be in the public interest to make a decision based on misleading information, especially where the decision relied upon incomplete information in an area that the Department has stated is important in its consideration, *i.e.*, the differences between the Massachusetts and New York PAPs. When the New York Public Service Commission discovered that it had set UNE switching rates based on affirmative misstatements of New York Telephone (Verizon-NY), it immediately opened a new proceeding to reconsider UNE switching rates, as well as other UNE rates. *See* September 30, 1998 Order Denying Motion To Reopen Phase 1 and Instituting New Proceeding, Cases 95-C-0657, 94-C-0095, 91-C-1174, 98-C-1357. The Department in Massachusetts should do the same.

III. THE DEPARTMENT SHOULD REVERSE VERIZON’S UNILATERAL INTERPRETATIONS OF CERTAIN AMBIGUOUS PROVISIONS IN THE PAP ORDER AND REQUIRE VERIZON TO COMPLY WITH AN INTERPRETATION THAT IS IN THE PUBLIC INTEREST, NOT VERIZON’S PRIVATE INTEREST.

A. The Department Should Clarify Its Decision Regarding A Procedural Trigger And Should Specify That An Administrative Proceeding Will Be Triggered If Verizon Reaches Sub-Cap Limits.

AT&T applauds the Department’s decision to adopt a “procedural trigger” designed to lead to an administrative proceeding that will attempt to resolve the underlying service problems

when Verizon's behavior falls below a certain level. *See*, PAP Order, at 25. However, AT&T respectfully suggests that some clarification of this "procedural trigger" is in order.

The PAP as filed by Verizon does not make clear whether the procedural mechanism is triggered only when Verizon reaches the \$142 million total liability cap, or whether it is triggered if Verizon reaches one of its other myriad liability caps. For example, the mechanism might be triggered if Verizon reaches one of the sub-caps set out on page 4 of its PAP, or if Verizon reaches one of its monthly sub-caps. The Department order that will result from its compliance review of Verizon's PAP should clarify the Department's ruling on this important issue.

The policy behind the use of a procedural trigger counsels for a holding that the procedural trigger applies to sub-caps as well as the overall \$142 million total liability cap. The reason for this can be made quite clear with two simple examples. Under the first scenario, Verizon could provide the worst possible service for a full year for Resale, Interconnection Trunks, and Collocation, but avoid even coming close to the \$142 million cap if it provides merely adequate service in the area of Unbundled Network Elements. *See, e.g.*, PAP at 4 & Appendix A. Under the second scenario, Verizon could provide the worst possible service in every possible area for a period of many consecutive months and avoid coming close to the \$142 million cap by providing adequate service in a few areas for a few months. *See generally* PAP.

Under either scenario, and under far less extreme ones, such deficient service on the part of Verizon would likely disrupt service to hundreds, if not thousands, of end-users and could even force some of Verizon's competitors out of the local market. Yet, Verizon's clearly anticompetitive performance levels would not trigger the procedural mechanism if the trigger were based only on the overall cap. Thus, the more appropriate approach would be for the

procedural trigger to apply if Verizon reaches any of the sub-caps set out on page 4 of its PAP, or reaches a cap for any particular month.

The Department should also make clear in the PAP that the CLECs are free to seek Department intervention if other extraordinary performance issues arise. The events in New York in the Winter and Spring of 2000 demonstrate the need for such a provision. As the Department is aware, shortly after Verizon-NY received FCC approval to begin offering long-distance service in New York, Verizon-NY's systems experienced severe problems. This resulted in Verizon-NY's inability to process commercially reasonable CLEC order volumes properly. Verizon-NY's severe discriminatory behavior, however, was not picked up by the metrics then in place and therefore would not have tripped any procedural triggers. It was only through the intervention of the NYPSC and the FCC, at the request of the CLECs, that the problem was finally resolved. There should be no doubt that the Massachusetts PAP permits such intervention by the Department, and Verizon's compliance filing should so state.

B. The Department Should Clarify That Its Audit Requirement Must Include Verification Of Verizon's Raw Data, Both Before Section 271 Approval Is Granted And On An On-Going Basis Thereafter.

There has still been no verification of the accuracy of Verizon's raw data. KPMG's report explicitly states that KPMG *did not* attempt to investigate the validity of Verizon's raw data. *See* KPMG Draft Final Report Version 1.3 (August 9, 2000) at 629 ("The accuracy of the raw data itself was not verified, except during the transaction test, where it was only indirectly verified."). This is a particularly important issue in light of the FCC's explicit statement in both

its New York¹ and Texas² Orders that the verification of the validity of an ILEC's raw data is an essential component of both a performance plan and the FCC's decision to allow an ILEC to enter the long distance services market. *See*, NY 271 Order, ¶ 442; Texas 271 Order, ¶ 429. As the FCC stated in its review of Southwestern Bell Telephone's Section 271 application for Texas, "[B]ecause the Performance Remedy Plan rests entirely on SWBT's performance as captured by the measurements, the credibility of the performance data should be *above suspicion*." Texas 271 Order, at ¶ 429 (emphasis added); *see also*, FCC September 27, 1999, letter to U.S. West, at 2 (stating that any independent third party evaluation should include "an assessment of whether the raw data being collected by the BOC is accurate...").

It is also important to note that Verizon's PAP implies that an examination of data reliability issues will only occur during the first audit and will not occur during subsequent audits. *See*, September 15 PAP, at 23. Due to the importance of testing the credibility of data, however, it is important that an examination of data reliability occur as part of every annual audit. Indeed, continuing review of the reliability of Verizon data is necessary in order to provide the same oversight as that available in New York. *See*, NY 271 Order, ¶ 442. It is only through such a provision that the Department can ensure that the quality of Verizon's data remains as high in Massachusetts as it is in New York.

¹ *In the Matter of 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*, FCC No. 99-295 (released December 22, 1999) ("NY 271 Order").

² *In the Matter of 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 (released June 30, 2000) ("Texas 271 Order")

On the current record, the FCC cannot have confidence that the performance data upon which Verizon ultimately relies are valid and cannot have confidence that the PAP that is supposed to ensure Verizon's future performance is based on statistics that accurately measure Verizon's performance. Only after procedures have been established for on-going data reconciliation, such as the procedures developed by the Texas Public Utilities Commission for that state (*see* Texas 271 Order, ¶ 269), will the FCC be confident that the PAP will, indeed, *assure* Verizon's performance. Thus, until a full verification of the validity of Verizon's raw data can take place and until there is a provision that such verification be on-going, the Department should neither accept Verizon's Revised PAP nor provide a positive recommendation in connection with Verizon's FCC application.

C. The Department Should Clarify That CLECs And The Attorney General May Participate In The Annual Review Of The PAP.

Verizon's PAP provides that "each year the Department and Verizon-MA will review the Performance Assurance Plan to determine whether any modifications or additions should be made." *See* September 15 PAP at 22. This language appears to contemplate that *only* the Department and Verizon-MA, and not any CLECs, will be involved in such review. This is inappropriate and the Department should clarify the PAP to allow for participation by CLECs and the Attorney General in the annual review.

The purpose of the annual review is presumably to ensure that the PAP is serving its intended purpose, to ensure that Verizon is continuing to provide non-discriminatory service. If the CLECs are not involved in the annual review, it is highly likely that problems with the PAP will go unaddressed because Verizon will have no incentive to seek changes unless it is Verizon that is being harmed. Furthermore, the CLECs will have the most intimate knowledge

concerning the effectiveness of the PAP. Thus, it only makes sense to include them in the review process. As the public's advocate, the Attorney General should also be included.

IV. THE DEPARTMENT SHOULD RECONSIDER ITS DECISION NOT TO ORDER THE PAP REMEDIES IN ADDITION TO THE REMEDIES UNDER THE INTERCONNECTION AGREEMENTS, BECAUSE THE SIGNIFICANTLY LOWER AMOUNTS AT RISK IN MASSACHUSETTS MAKE FOR A SIGNIFICANTLY WEAKER PLAN.

In adopting the PAP in Massachusetts, the Department set a financial liability cap of \$142 million. *See*, PAP Order, at 24. This figure fell between Verizon's proposed cap of \$100 million and the proposed caps of other participants, such as the Attorney General's \$278 million proposal. *See id.* In reaching the adopted \$142 million figure, the Department placed great emphasis on the fact that \$142 million constitutes 36% of Verizon's total net return for 1999. *See id.*

AT&T believes that it is vital that Verizon-MA face at least the same total potential liability for poor performance that Verizon-NY faces under the remedies contained in both the New York PAP and the New York ICAs. The Massachusetts PAP's \$142 million potential liability figure does not yet compare to Verizon's total exposure in New York today.³

The Massachusetts PAP ignores an additional element of the total liability at risk in New York which the FCC has pointed to in both its New York 271 Order and its Texas 271 Order. In its review of both the New York and Texas applications, the FCC emphasized that the ILEC faces substantial liquidated damages under ICAs *in addition to* PAP remedies. *See*, New York

³ One of the reasons that liability under the two plans is different is a direct result of Verizon's failure to identify in its list of New York-Massachusetts differences an additional \$24 million at risk in New York for special provisions. In New York, Verizon-NY now faces potential PAP liability that is equal to 39.4% of its total net revenues, not 36%. This is because, in March 2000, the New York cap was increased by \$24 million due to the problems that were experienced in New York after Verizon-NY's entry into the long distance market. Verizon's failure to note this as a difference is a material omission in Verizon's filing that has already been discussed above.

271 Order, at ¶ 435; Texas 271 Order, at ¶ 424. The FCC responded to criticisms that the PAP liability caps were not “sufficient, standing alone, to completely counterbalance [the ILECs’] incentive to discriminate,” finding that they did not have to be independently sufficient if the ILEC faces the possibility of substantial additional liquidated damages for violation of contractual performance standards. *Id.* The same cannot be said about Massachusetts. Given the timing and nature of the development of performance remedies during the *Consolidated Arbitrations*, the remedies under the ICAs in Massachusetts are quite limited by comparison to the contract remedies in New York. Second, and even more determinative, is the fact that under the PAP approved by this Department, the contractual remedies in Massachusetts are applied *in lieu of* instead of *in addition to* the PAP remedies.⁴

Thus, to have an amount at risk that is comparable to that which exists in New York, the Department needs to determine the total liability exposure under both the New York PAP and the New York ICAs *combined*, and ensure that a proportionate amount is at risk in Massachusetts. Clearly, the total liability at risk in New York far exceeds 36%, and could be as much as double that. Because of these differences, the overall level of liability that Verizon will face in Massachusetts for anti-competitive conduct is proportionally far less than the liability faced by Verizon-NY. As a result, the Department must amend the liability cap in the Massachusetts PAP

⁴ In order to implement the Department directive to provide the higher of remedies due under the PAP and remedies due under the *Consolidated Arbitrations* plan, Verizon has had to address the problem that amounts payable for a specific period become final at different times under the two plans and amounts due are payable at different times under the two plans. See September 15 PAP at 17-19. While Verizon’s method for reconciling these differences appears fair (assuming that the billing credit offset is applied as prescribed in the New York PAP; see discussion in Section I.B. hereof), the language in the PAP could be misleading if quoted out of context. At a minimum, and to the extent that the Commission does not make the PAP and ICA consequences cumulative, AT&T suggests that the following sentence be added to the end of the first full paragraph on page 18: “This interim payment rule only works because a similar process is followed in the second two months of the quarter, so that eventually CLECs will receive for each quarter the greater of the remedies due under the PAP or under the *Consolidated Arbitrations* plan for that quarter.”

and make such liabilities cumulative to those in interconnection agreements in order to achieve its goal of creating a level of liability in Massachusetts that is proportional to the level of liability in New York. Alternatively, the Department should set total liability under the Massachusetts PAP at a level commensurate to the combined interconnection agreement and PAP exposure in New York.

V. THE DEPARTMENT CAN CONTINUE TO MAKE CHANGES TO THE PAP EVEN WHILE VERIZON'S SECTION 271 APPLICATION IS PENDING AT THE FCC.

Although Verizon filed an application for Section 271 approval at the Federal Communications Commission ("FCC") on September 22, 2000, such a filing does not cast in stone the performance assurance plan contained in that filing. As the Department is aware, changes were made in the New York PAP during the pendency of Verizon's New York Section 271 application. Verizon filed its New York application on September 29, 1999. Nevertheless, the New York Public Service Commission issued an Order Adopting The Amended Performance Assurance Plan And Amended Change Control Plan on November 3, 1999, in Cases 97-C-0271 and 99-C-0949. In the November 3, 1999 Order, the New York Public Service Commission made substantive changes to the then existing New York PAP, including the addition of a provision that would allow the New York Public Service Commission to reallocate the dollars at risk among any of the provisions in the PAP and CCAP and a change in the definition for metric PR-4-06 (Missed Appointment - % On Time Performance – Hot Cut). Indeed, the changes were ordered to the New York PAP after the New York Public Service Commission filed its evaluation of Verizon's application with the FCC on October 18, 1999.

Moreover, the FCC itself has expressly exempted the performance assurance plan from its policy of requiring that applications be final when filed. *See*, NY 271 Order, at ¶432, n. 1323.

In justifying this position the FCC stated as follows:

Because this aspect of our public interest inquiry necessarily is forward-looking and requires a predictive judgment, this is a situation where it is appropriate to consider commitments made by the applicant to be subject to a framework in the future. Accordingly, this is different from our checklist analysis in which we assess present or past compliance by an applicant.

Id.

For these reasons, the Department should not hesitate to improve the Massachusetts PAP even as Verizon's Section 271 application is pending at the FCC. Indeed, the improvements recommended herein would only enhance the prospect of favorable action at the FCC.

Conclusion.

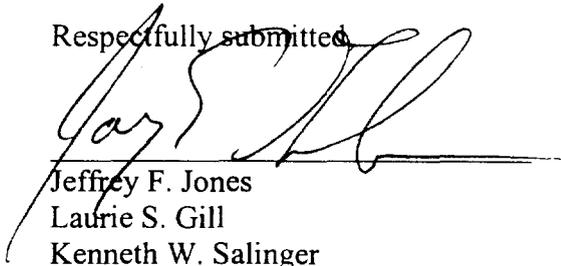
The Department, the Attorney General, Verizon and the CLECs have all worked hard to bring these proceedings to the point where they are today. Although the finish line for this proceeding is in sight, the race is just beginning in the local exchange market. Before Verizon-MA enters the long distance market, there must be a sufficiently adequate PAP in place to ensure that the race in the local exchange market is fair. Because of the importance of assuring future non-discriminatory performance, the Department should not approve Verizon's PAP, or make a favorable Section 271 recommendation, until the following events occur:

- a. The benchmark standards in Verizon's September 15 PAP should be modified to be consistent with the C2C performance benchmarks, as required by the Department;
- b. The Statistical Methodology for calculating bill credits should be made consistent with that in the New York PAP by eliminating footnote 3 in the September 15 PAP;

- c. Verizon should narrow or eliminate the waiver provision, as required by the Department;
- d. Verizon should include a Massachusetts-specific CCAP, as required by the Department;
- e. Verizon should include a method for allowing scoring for small sample sizes;
- f. Verizon should include a provision granting express authority to the Massachusetts Department to reallocate bill credits;
- g. Verizon should include a provision requiring Verizon to issue a check instead of bill credits for CLECs no longer using Verizon's services;
- h. Verizon should include a provision making Verizon's performance regarding the Electronic Data Interface subject to penalties under the "Special Provisions" section;
- i. Verizon should include a provision making Verizon's performance regarding Resale Flow-through subject to penalties under the "Special Provisions" section.
- j. The Domain Clustering Rule should be modified to operate as it does in New York;
- k. The "procedural trigger" should be tripped if any of the sub-caps discussed in Section II below are met;
- l. The PAP should provide for an initial audit of Verizon's raw data and provide for on-going reviews of raw data;
- m. The September 15 PAP should be revised to allow for CLEC participation in the annual review; and
- n. The September 15 PAP should be revised to ensure that Verizon's total liability exposure under the Massachusetts PAP is the same proportionally as it is under the New York PAP.

WHEREFORE, AT&T requests that the Department grant the motions herein and order Verizon to make the above listed changes to the September 15 PAP.

Respectfully submitted,



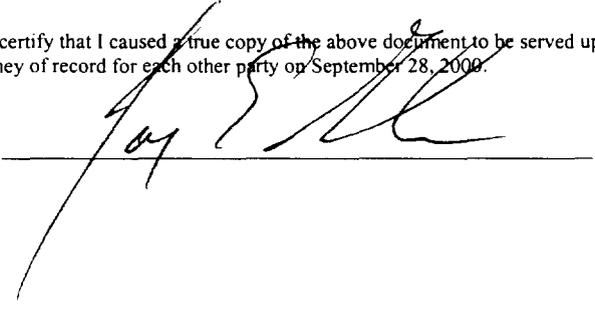
Jeffrey F. Jones
Laurie S. Gill
Kenneth W. Salinger
Jay E. Gruber
Kevin Prendergast
PALMER & DODGE LLP
One Beacon Street
Boston, MA 02108-3190
(617) 573-0100

Robert Aurigema
AT&T Communications, Inc.
32 Avenue of the Americas, Room 2700
New York, NY 10013
(212) 387-5627

September 28, 2000

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on September 28, 2000.



ATTACHMENT A

Verizon's September 15 PAP filing contains a provision pertaining to the offsetting of -1 scores on particular measures through good performance in future months. In footnote three of its filing, however, Verizon introduces a substantial new twist on this offset provision that distinguishes it from the offset provision in the New York PAP. The following scenarios detail the effect that Verizon's addition of footnote three will have on the provision of bill credits in Massachusetts. These scenarios also demonstrate differences between the Massachusetts PAP and the New York PAP created by the addition of footnote three.

Scenario 1:

	Month 1	Month 2	Month 3
Verizon Score	-1	0	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 4. Under the New York PAP, the same result would occur.

Scenario 2:

	Month 1	Month 2	Month 3	Month 4
Verizon Score	-1	0	No Score	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 5. Under the New York PAP, Verizon's -1 score would remain a -1 score.

ATTACHMENT A

Scenario 3:

	Month 1	Month 2	Month 3	Month 4	Month 5
Verizon Score	-1	0	No Score	No Score	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 6. Under the New York PAP, Verizon's -1 score would remain a -1 score.

Scenario 4:

	Month 1	Month 2	Month 3	Month 4	Month 5
Verizon Score	-1	No Score	No Score	0	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 6. Under the New York PAP, Verizon's -1 score would remain a -1 score.

Scenario 5:

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
Verizon Score	-1	No Score	No Score	0	No Score	No Score	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 8. Under the New York PAP, Verizon's -1 score would remain a -1 score.

ATTACHMENT A

Scenario 6:

	Month 1	Month 2	Month 3	Month 4
Verizon Score	-1	No Score	No Score	No Score

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 is adjusted to a 0 score for the purposes of providing bill credits in Month 5. Under the New York PAP, Verizon's -1 score would remain a -1 score.

ATTACHMENT B

Use the V-M example¹.

Say we have a domain with 14 metrics each with weight 10.² Then the total weight is 140. According to the MA rules we take twice this amount and put a minus sign in front³ we get -280.

In the example the aggregated weighted performance score is assumed to be -220. Then the ratio as calculated by V-M is

$$\frac{-220}{-280} = 0.786 \geq 0.750.$$

Since this critical ratio (percentage) is greater than 75%, the domain clustering rule overlay is used. That is, the remedy amount is calculated for the whole MOE as if this domain was the whole MOE. This only makes sense if the domain generated dollar amount is greater than the whole MOE dollar amount. If another domain in the MOE had a higher percentage, it would be used instead of the ordering domain.

Now from the lines above table that maps the aggregated score to dollar amount (Table A-3-2), the numbers used to determine the domain clustering score is

$$-0.1904 + (-0.6700 + 0.1904)(0.786) = -0.1904 - 0.3764 = -0.5668.$$

This in turn leads to a remedy amount of **\$1,626,316**.⁴

If we did this according to the NY rules, the answer would depend on how the performance score (-220) was distributed over the 14 measures. The reason is that the NY rule calls for the ratio of the tripped weights to the total weight in the domain to determine the critical percentage. If by tripped weights we also include those metrics with a score -1 as well as a -2, then the results are different. Consider that out of the 14 metrics, each of weight 10, that 11 have a score of -2. This would lead to the aggregated weight of -220 used above, and the remedy would be as above. Now assume that that 8 of the measures had a score of -2 and 6 had a score of -1. This would lead to an aggregated score of -220 as well, and therefore, according to V-M the same remedy. However, if we used the NY rules the answer would differ because in NY the number of tripped measures would be all 14. All the weights had been tripped! Therefore the percentage to use would not be 78.6% but would be 100%. Therefore, the calculated score from the table would be -0.6700. This leads to the maximum remedy amount for the MOE of **\$2,060,000**. The difference in this case would be **\$433,684 or 26.7% more would be paid under the NY rules than the MA rules**.

¹ The V-M description incorrectly states that the weight of the ordering domain in the UNE MOE is 140, when it is in fact 210. This has no bearing on the calculation.

² This is my assumption on how the metrics are weighted. It has no effect on how the MA amount is calculated, but does have an effect on how the NY amount would be calculated.

³ The example in the MA description leaves out this minus sign, but it is necessary to the result.

Bell Atlantic
1095 Avenue of the Americas, New York, NY 10036
37th Floor
Tel 212 395-6495
Fax 212 768-7568



William D. Smith
Counsel

April 7, 2000

BY HAND

Honorable Debra Renner
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

**Re: Cases 97-C-0271 and 99-C-0949 – Compliance Filing –
Performance Assurance Plan**

Dear Acting Secretary Renner:

Enclosed please find an original and twenty (20) copies of the Compliance Filing of New York Telephone Company, d/b/a Bell Atlantic - New York ("BA-NY"), for the Performance Assurance Plan (the "PAP"), which is being filed pursuant to the "Order Amending Performance Assurance Plan."¹ As noted in that Order (March 9 Order at 6, n. 2), the Commission has issued a number of orders directing that modification be made to the Performance Assurance Plan,² including a subsequent order that required further refinements to the Performance Assurance

¹ See Cases 97-C-0271 and 99-C-0949, "Order Amending Performance Assurance Plan" (issued March 9, 2000) (the "March 9 Order").

² See Cases 97-C-0271 and 99-C-0949, "Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan" (issued November 3, 1999) (the "November 3 Order"); and Cases 00-C-0008, 00-C-0009 and 99-C-0949, "Ordering Directing Improvements to Wholesale Service Performance" (issued February 11, 2000) (the "February 11 Order").

Plan.³ The annexed Performance Assurance Plan reflects each of the modifications that the Commission has directed. The amendments that have been made, according to each of the orders, are as follows:

A. The November 3 Order

1. Section II(B) has been modified to delineate the amount of bill credits available for reallocation. (November 3 Order at 7, n.9.)
2. Section II(F) has been modified to indicate that BA-NY will provide each CLEC the underlying data, in a usable format, that was used to calculate BA-NY's performance for the CLEC. (*Id.* at 30.)
3. Section II(J) has been modified to indicate that CLECs will be compensated for lost interest if BA-NY does not prevail on a waiver request. (*Id.* at 24). This section has also been modified to indicate that the Commission will resolve waiver exception requests prior to the scheduled payment period and that waiver petitions must be filed within 45 days of the last day of the month in which the challenged event occurred. CLECs will have 10 days to serve and file replies to BA-NY requested exceptions. (*Id.*)
4. Section II(A)(2) has been modified to indicate that the collocation measures encompass cageless collocation. (*Id.* at 26.)
5. Appendix A has been modified to raise the weight of the M&R Average Response Time metrics from 1 to 5. (*Id.* at 26.)
6. Appendix A has been modified to include OR-5-03 "% Flow Through Achieved" as a measure under the Resale and UNE Modes of Entry. (*Id.* at 30.)

³ See Cases 00-C-008, 00-C-0009 and 99-C-0949, "Order Directing Market Adjustments and Amending Performance Assurance Plan" (issued March 23, 2000) (the "March 23 Order").

7. Section II(K)(1) has been modified to indicate that the annual review will not be subject to limitation and that any topic legitimately related to the PAP may be raised during the annual review. (*Id.* at 31.)

B. The February 11 Order

1. Beginning with the March 2000 data, the weights within the Resale and UNE Mode of Entry Ordering Domains (Appendix A) will be modified. (February 11 Order at 3.)

a. The weights for the following metrics have been doubled:

OR-1-02 “% On Time LSRC - Flow Through - POTS”;

OR-1-04 “% On Time LSRC < 10 lines (No Flow Through) POTS”;

OR-1-06 “% On Time LSRC >= 10 Lines - Flow Through - POTS”;

OR-2-02 “% On Time LSR Reject - Flow Through - POTS”;

OR-2-04 “% On Time Reject < 10 Lines (No Flow Through)”;

OR-2-06 “% On Time LSR Reject >= 10 Lines (No Flow Through) - POTS”; and

OR-4-02 “Completion Notice - % On Time - POTS and Specials.”

b. The weights for the metrics listed below for the UNE Mode of Entry measures (Appendix A) have been reduced to 0:

OR-1-04 “% On Time LSRC < 10 Lines (Electronic - No Flow Through Complex)”;

OR-1-06 “% On Time LSRC > 10 Lines (Electronic) – Complex”;

OR-2-04 “% On Time LSR Reject < 10 Lines (Electronic – No Flow Through Complex)”;

OR-2-06 “% On Time LSR Reject > 10 Lines (Electronic) - Complex.”

c. The weight of OR-6-03 “% On Time Accuracy” is reduced to 10.

2. In the Critical Measure section (Section II(A)(2) and Appendix B), Measure No. 3, OR-6-03 “% On Time Accuracy LSRC,” has been replaced with the metrics that were doubled in the MOE categories listed above in section B(1)(a), and the bill credits allocated to Measure No. 3 have been allocated according to the weight of each measure. (*Id.*)

C. The March 9 Order

1. In the Critical Measure section, Critical Measure No. 4b, “% Missed Appointment – Complex,”⁴ has been deleted, and a new Critical Measure No. 12 consisting of the following measures related to the provisioning of DSL Services has been included (March 9 Order at 5-6):

- a. PO-8-01 “Manual Loop Qualification Response Time” and PO-8-02 “Engineering Record Request Response Time”;
- b. PR-4-14 through PR-4-18 – Missed Appointment metrics for DSL Services; and
- c. PR-6-01 “Installation Troubles for DSL capable loops reported within 30 days.”

2. The DSL Critical Measure No. 12 bill credits will be funded from the other Critical Measures and each of the twelve Critical Measures set forth in Appendix B will be allocated the amount of \$354,167 per month. PO-8-01, PO-8-02 and PR-6-01 have each been allocated 12.5% of the available bill credits in Appendix B and the five PR-4 submetrics have been allocated 62.5% of the available bill credits in Appendix B. (*Id.* at 6.)

3. The Critical Measures section has been modified to indicate that all bill credits in this section are at risk each month; and that any bill credits assigned to a submetric

⁴ Critical Measure No. 4b included PR-4-04 “% Missed Appointment – Dispatch – Complex” and PR-4-05 “% Missed Appointment No Dispatch – Complex.”

which has no activity or is under development will be divided proportionately among the submetrics in that Critical Measure. (*Id.* at 6.)

D. The March 23 Order

1. Measure OR-4-02, which appears in the Resale and UNE MOE categories, has been replaced with a new measure for billing completion notices: OR-4-09 “% SOP to Bill Completion Notice Sent Within 3 Business Days.” (March 23 Order at 4.) (A copy of the measure is included in Appendix I.) The measure has a standard of 95%.

2. Section II(E) has been modified to add three new Special Provisions for the three measures that were included in the Federal Communications Commission Order and Consent Decree.⁵ (March 23 Order at 4.) A total of \$24 million has been allocated to these new measures. The new measures and bill credit monthly allocation are as follows:

- a. “% Missing Notifier Trouble Ticket PONs Cleared within 3 Business Days” - \$1 Million;
- b. “% Order Confirmations/Rejects Sent Within 3 Business Days” - \$0.5 Million; and
- c. “% SOP to Bill Completion Notice Sent within 3 Business Days” - \$0.5 Million.

3. Each of the new Special Provision measures will record the combined performance for the Resale and UNE MOEs, with an equal weighting to Resale and UNE orders. A 90% performance standard will be applied to each. (*Id.*) The new measure “% Missing Notifier Trouble Ticket PONs Cleared within 3 Business Days” will also be subject to the requirement that no more than 5% of the orders resubmitted may be rejected as duplicates. (*Id.*)

⁵ *In the Matter of Bell Atlantic - New York Authorization Under Section 271 of Communications Act to Provide In-Region, InterLATA Service in State of New York*, File No. EB-00-IH-0085, Acct. No. X32080004, Order (rel. March 9, 2000).