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December 5, 2000

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EX PARTE OR LATE FILE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: EX PARTE -- CC Docket No. 00-176/ Applications of Verizon Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide InterLATA Services in Massachusetts

Dear Ms. Salas:

In response to a request by Jordan Goldstein, legal advisor to Commissioner Susan Ness, for materials on DSL line splitting in Massachusetts, attached are:

- (1) Pages 35-40 of the Massachusetts DTE DSL Order (which was attached to WorldCom's initial Comments as Tab F), in which the DTE defined line splitting as "line sharing between two CLECs" (p. 35), and stated that Verizon has no obligations as to this arrangement (p. 39);
- (2) Pages 162-63 of the FCC's Texas 271 Order, esp. ¶ 325;
- (3) Pages 10-20 of the New York State Order requiring UNE-P line splitting (which was included as Exhibit F to WorldCom's Reply Comments). The New York PSC made clear (p. 14) that – despite Verizon's position that it was not legally obligated to provide line splitting – UNE-P line splitting is technically feasible and necessary for competition; and
- (4) Portions of Verizon's filings in this proceeding – Verizon's Comments and Reply Comments rely on the statement in its Lacouture/Ruesterholz Declaration (para. 186) that "nothing precludes CLECs from engaging in a line splitting arrangement by ordering the necessary unbundled network elements to offer integrated voice and data service." Verizon contends this means that it "permits CLECs to engage in line splitting exactly as described in the SBC Texas Order" (Reply Comments at 35), quoting the DTE's DSL Order for this conclusion. But as noted above, the DTE has defined line splitting – where a voice CLEC and a data LEC provide service over the same loop – as "line sharing between two CLECs," and in referring to line splitting, misinterpreted the Texas 271 Order as involving only one CLEC.

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In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and one copy of this Notice are being filed with your office. The page limit on ex partes filed in this matter does not apply.

Sincerely,


Keith L. Seat

Enclosures

cc (w/encls.): Jordan Goldstein, Susan Pie, Josh Walls, Cathy Carpino

1

D.T.E. 98-57-Phase III

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000.

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TABLE OF CONTENTS

I.	<u>INTRODUCTION AND PROCEDURAL HISTORY</u>	Page 1
II.	<u>STANDARD OF REVIEW</u>	Page 4
III.	<u>PHASE III OPERATIONAL ISSUES</u>	Page 7
A.	<u>General Tariff Issues</u>	Page 7
1.	<u>xDSL Definitions</u>	Page 7
a.	<u>Introduction</u>	Page 7
b.	<u>Positions of the Parties</u>	Page 8
i.	<u>Verizon</u>	Page 8
ii.	<u>CLECs</u>	Page 9
c.	<u>Analysis and Findings</u>	Page 11
2.	<u>Significant Degradation</u>	Page 15
a.	<u>Introduction</u>	Page 15
b.	<u>Positions of the Parties</u>	Page 15
i.	<u>Verizon</u>	Page 15
ii.	<u>CLECs</u>	Page 16
c.	<u>Analysis and Findings</u>	Page 18
B.	<u>Operations Support Systems Issues</u>	Page 20
1.	<u>Introduction</u>	Page 20
2.	<u>Positions of the Parties</u>	Page 21
a.	<u>Verizon</u>	Page 21
b.	<u>Attorney General and CLECs</u>	Page 22
3.	<u>Analysis and Findings</u>	Page 23
C.	<u>Splitter Ownership and Placement</u>	Page 26
1.	<u>Introduction</u>	Page 26
2.	<u>Positions of the Parties</u>	Page 27
a.	<u>Verizon</u>	Page 27
b.	<u>CLECs</u>	Page 30
3.	<u>Analysis and Findings</u>	Page 32
D.	<u>Line Splitting</u>	Page 35
1.	<u>Introduction</u>	Page 35
2.	<u>Positions of the Parties</u>	Page 36
a.	<u>Verizon</u>	Page 36
b.	<u>CLECs</u>	Page 37
3.	<u>Analysis and Findings</u>	Page 39
E.	<u>Intervals</u>	Page 41
1.	<u>Provisioning and Loop Conditioning Intervals</u>	Page 41
a.	<u>Introduction</u>	Page 41
b.	<u>Positions of the Parties</u>	Page 42
i.	<u>Verizon</u>	Page 42
ii.	<u>Attorney General and CLECs</u>	Page 45
c.	<u>Analysis and Findings</u>	Page 50

2.	<u>Splitter and Cable Capacity Augmentation Interval</u>	Page 53
a.	<u>Introduction</u>	Page 53
b.	<u>Positions of the Parties</u>	Page 53
i.	<u>Verizon</u>	Page 53
ii.	<u>Attorney General and CLECs</u>	Page 55
c.	<u>Analysis and Findings</u>	Page 59
F.	<u>Wideband Testing System</u>	Page 73
1.	<u>Introduction</u>	Page 73
2.	<u>Positions of the Parties</u>	Page 74
a.	<u>Verizon</u>	Page 74
b.	<u>CLECs</u>	Page 75
3.	<u>Analysis and Findings</u>	Page 78
G.	<u>Line Sharing over Fiber-Fed Loops</u>	Page 80
1.	<u>Introduction</u>	Page 81
2.	<u>Positions of the Parties</u>	Page 81
a.	<u>Verizon</u>	Page 81
b.	<u>Attorney General and CLECs</u>	Page 82
3.	<u>Analysis and Findings</u>	Page 86
H.	<u>Miscellaneous Operational Issues</u>	Page 89
1.	<u>Line and Station Transfer and Test Access Tariff Language</u>	Page 89
2.	<u>Shielded Cable</u>	Page 91
3.	<u>Reference to xDSL Metrics in Tariff</u>	Page 91
IV	<u>COSTS AND RATES ISSUES</u>	Page 92
A.	<u>Line Qualification and Loop Conditioning</u>	Page 94
1.	<u>Introduction</u>	Page 94
2.	<u>Positions of the Parties</u>	Page 96
a.	<u>Verizon</u>	Page 96
b.	<u>Attorney General and CLECs</u>	Page 98
3.	<u>Analysis and Findings</u>	Page 103
B.	<u>Wideband Testing System Charge</u>	Page 106
1.	<u>Introduction</u>	Page 106
2.	<u>Positions of the Parties</u>	Page 106
a.	<u>Verizon</u>	Page 106
b.	<u>CLECs</u>	Page 107
3.	<u>Analysis and Findings</u>	Page 109
C.	<u>Cooperative Testing</u>	Page 111
1.	<u>Introduction</u>	Page 111
2.	<u>Positions of the Parties</u>	Page 111
a.	<u>Verizon</u>	Page 111
b.	<u>CLECs</u>	Page 112
3.	<u>Analysis and Findings</u>	Page 113
D.	<u>Collocation Augmentation and Engineering Implementation Charges</u>	Page 113
1.	<u>Introduction</u>	Page 113
2.	<u>Positions of the Parties</u>	Page 114
a.	<u>Verizon</u>	Page 114

	b.	<u>CLECs</u>	Page 115
	3.	<u>Analysis and Finding</u>	Page 116
E.		<u>Splitter Installation Charge</u>	Page 116
	1.	<u>Introduction</u>	Page 116
	2.	<u>Positions of the Parties</u>	Page 117
	a.	<u>Verizon</u>	Page 117
	b.	<u>CLECs</u>	Page 117
	3.	<u>Analysis and Findings</u>	Page 119
F.		<u>Splitter Monthly Administration and Support Charges</u>	Page 120
	1.	<u>Introduction</u>	Page 120
	2.	<u>Positions of the Parties</u>	Page 120
	a.	<u>Verizon</u>	Page 120
	b.	<u>CLECs</u>	Page 121
	3.	<u>Analysis and Findings</u>	Page 122
G.		<u>Splitter Equipment Support Charge</u>	Page 122
	1.	<u>Introduction</u>	Page 122
	2.	<u>Positions of the Parties</u>	Page 123
	a.	<u>Verizon</u>	Page 123
	b.	<u>CLECs</u>	Page 123
	3.	<u>Analysis and Findings</u>	Page 124
H.		<u>Cross-Connects</u>	Page 124
	1.	<u>Introduction</u>	Page 124
	2.	<u>Positions of the Parties</u>	Page 125
	a.	<u>Verizon</u>	Page 125
	b.	<u>CLECs</u>	Page 126
	3.	<u>Analysis and Findings</u>	Page 126
I.		<u>POT Bay/Splitter Termination Charge</u>	Page 127
	1.	<u>Introduction</u>	Page 127
	2.	<u>Positions of the Parties</u>	Page 128
	a.	<u>Verizon</u>	Page 128
	b.	<u>CLECs</u>	Page 128
	3.	<u>Analysis and Findings</u>	Page 128
J.		<u>Miscellaneous Costs and Rates Issues</u>	Page 129
	1.	<u>Request to Make Permanent Verizon's Proposed</u> <u>Zero Loop Charge</u>	Page 129
	2.	<u>Retroactive Recovery of Costs to Enhance Verizon's OSS</u>	Page 130
V.		<u>ORDER</u>	Page 130

Remand Order, declare splitters either part of an existing or a new UNE, the Department can direct Verizon to amend its tariff accordingly. Until such time, however, the Department finds it unnecessary to address CLEC requests for per line or per shelf access to Verizon's splitters.

Witnesses for both Covad and Rhythms stated that it is technically feasible for CLECs to make available to other CLECs their splitters on a line-by-line or shelf-by-shelf basis (Tr. at 461-463).

Finally, the Department rejects the CLECs' request to direct Verizon to permit CLECs to mount their splitters directly on Verizon's MDF. Contrary to Rhythms' assertion that it has "thoroughly and completely refuted" Verizon's NEBS-compliant argument, it has provided no evidence that such splitters are NEBS-compliant (see Rhythms Brief at 93, citing Exh. RLI/CVD-1). According to Verizon, the only MDF-mounted splitter compatible with Verizon's frame is not NEBS-compliant because such splitters have failed NEBS safety requirements (Exh. VZ-MA-4, at 27; Exh. DTE-BA-MA 2-12). There is nothing in our record that rebuts Verizon's statements. Unrebutted, these statements have credibility and substance as evidence. When it is shown that MDF-mounted splitters that are compatible with Verizon's frame meet the appropriate safety standards, the Department would be willing to revisit its decision.

D. Line Splitting

1. Introduction

As stated most recently in its SBC Texas Order, the FCC notes that "the obligation of an [ILEC] to make the high frequency portion of the loop separately available is limited to those instances in which the [ILEC] is providing, and continues to provide, voice service on the particular loop to which the [CLEC] seeks access." SBC Texas Order at ¶ 324. Thus, the term "line sharing" is used to describe a situation where the ILEC and a CLEC use the same loop to

provide separate services. The term “line splitting” is used by the FCC to characterize the provisioning of both voice and data services over a single loop by a CLEC, through the UNE-Platform (“UNE-P”). Id. According to the Line Sharing Order, ILECs are “not required to provide line sharing to [CLECs] that are purchasing a combination of network elements known as the platform. In that circumstance, the [ILEC] no longer is the voice provider.” Line Sharing Order at ¶ 72. Verizon argues that it is not required to offer or permit “line splitting.” Several CLECs disagree.

There is not consistent usage among the parties about terminology and definitions; therefore, specification of how the Department uses certain terms is in order. As mentioned above, the FCC stated that “line sharing” is limited to an arrangement where an ILEC is providing and continues to provide voice service over a loop and shares the same loop with a single data CLEC. Line Sharing Order at ¶¶ 72-75; SBC Texas Order at ¶ 324. “Line splitting” is an arrangement where a CLEC, and not the ILEC, provides both the voice and data service over a single loop. SBC Texas Order at ¶ 324. Verizon uses the term “line sharing on UNE-P” to describe an arrangement where a voice CLEC and a data CLEC share a single loop. For this same arrangement, Rhythms uses the term, “line splitting on UNE-P.” In order to avoid confusion between line sharing and line splitting, we will refer to this scenario as “line sharing between two CLECs.”

2. Positions of the Parties

a. Verizon

Verizon asserts that the SBC Texas Order makes clear that ILECs do not have a legal obligation to provide line splitting or line sharing between two CLECs (Verizon Reply Brief

at 34). Contrary to arguments made by AT&T and WorldCom, Verizon contends that it has no obligation to preserve a CLEC's UNE-P arrangement should that CLEC decide it would like to offer data, as well as voice, over that loop (id. at 35). Rather, Verizon argues, the SBC Texas Order states that a CLEC can order "an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service" (id. at 36, citing SBC Texas Order at ¶ 325). This language, Verizon argues, indicates that the FCC did not envision that a UNE-P arrangement would remain in place after the provisioning of line splitting (id.). Therefore, Verizon urges the Department to reject AT&T's and WorldCom's argument that Verizon has to preserve the UNE-P arrangement in conjunction with line splitting (id.).

According to Verizon, its obligation to provide "line sharing" is limited just to those instances where it is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access (Verizon Brief at 34-36, citing Line Sharing Order at ¶ 72; SBC Texas Order at ¶¶ 320-329). However, Verizon notes that discussions to facilitate line splitting and line sharing between two CLECs are underway in the New York and Verizon will continue to work with the CLECs to resolve this matter (Verizon Brief at 38, citing Tr. at 206-210).

b. CLECs

AT&T argues that ILECs have an additional obligation to permit CLECs to engage in line sharing between two CLECs (AT&T Reply Brief at 3, citing SBC Texas Order at ¶ 325). According to AT&T, this obligation to facilitate line sharing between two CLECs flows directly

from Verizon's obligation under the Act to provide CLECs with non-discriminatory access to all "features, functions, and capabilities" of network elements, including the loop (id.). AT&T argues that when a CLEC leases a loop as part of a UNE-P arrangement, it is entitled to use all capabilities of that loop, including the high frequency spectrum (id.).

AT&T and WorldCom argue that when a customer who currently receives xDSL service from a data CLEC under a line sharing arrangement with Verizon wants to migrate his or her voice service to a CLEC using UNE-P, but continue to receive xDSL services from the same data CLEC, the voice service can be electronically migrated without any disruption or dismemberment of facilities. AT&T and WorldCom insist that Verizon's offer to permit the UNE-P provider to migrate its UNE-P configuration to an unbundled xDSL-capable loop and unbundled switch port at a collocation node provided by that CLEC or another CLEC does not preserve the UNE-P arrangement, and, thus, prevents voice CLECs from engaging in line-splitting (AT&T Reply Brief at 4-5, citing Tr. at 224-225, 237; WorldCom Reply Brief at 2). According to AT&T, a Verizon requirement for unnecessary re-wiring and disconnection is discriminatory (AT&T Reply Brief at 4-5). Lastly, AT&T and WorldCom claim that Verizon must offer line splitting functionality to CLECs on a line-at-a-time basis (AT&T Reply Brief at 7; WorldCom Reply Brief at 2).

Rhythms argues that a customer obtaining voice service from a CLEC through UNE-P is entitled to obtain xDSL service from a data CLEC, and, thus, the Department should require Verizon to implement line sharing between two CLECs (Rhythms Reply Brief at 32-34). Sprint and ASCENT also urge the Department to order Verizon to provide xDSL service where a CLEC is providing voice service through UNE-P or on resold lines (Sprint Brief at

5-6; ASCENT Reply Brief at 4).

3. Analysis and Findings

In the SBC Texas Order at ¶ 325, the FCC states that ILECs have an obligation to permit competing carriers to engage in line splitting where the competing carrier purchases the entire loop and provides its own splitter. The FCC states that in order for a competing UNE-P carrier to provision both data and voice service over the same loop, it can order the loop portion of the existing UNE-P as an unbundled, xDSL-capable loop terminated to a collocated splitter and DSLAM equipment along with unbundled switching combined with shared transport to “replace its UNE-P.” SBC Texas Order at ¶ 325. Verizon states, and we agree, that it permits CLECs to engage in line splitting exactly as described in the SBC Texas Order (Exh. DTE-BA-MA 1-19). Therefore, we find that Verizon has met its obligation to provide “line splitting.” AT&T and WorldCom argue that the voice service can be electronically migrated without any disruption or dismemberment of facilities, and, therefore, UNE-P must remain intact in line splitting. However, the argument AT&T and WorldCom use to support their claim that UNE-P migration is possible without disruption is based on line sharing between two CLECs, and not line splitting as defined by the FCC.²² In addition, AT&T and WorldCom do not rebut Verizon’s argument that a UNE-P arrangement no longer exists under a line splitting arrangement. We agree with Verizon that the SBC Texas Order at ¶ 325 states that a line splitting configuration replaces a UNE-P arrangement, and not that a UNE-P arrangement remains in place after the provisioning of line splitting. Therefore, the Department rejects the CLECs’ request to permit a CLEC’s UNE-P arrangement to remain intact after line splitting.

²² See AT&T Reply Brief at 4, citing Tr. at 224-225, 237; WorldCom Reply Brief at 2.

AT&T and WorldCom also claim that Verizon must offer line splitting functionality to CLECs on a line-at-a-time basis. This argument is premised on the assumption that Verizon is required to provide CLECs with access to Verizon's splitter, which, as we decided above in section III.C, is incorrect. The FCC states that its UNE Remand Order cannot "fairly be read to impose on [ILECs] an obligation to provide access to their splitters." SBC Texas Order at ¶ 328. Similarly, the FCC states that it has not imposed any obligation on ILECs to provide access to their splitters in a line splitting arrangement. Therefore, we deny AT&T's and WorldCom's requests. See SBC Texas Order at ¶ 329.

With respect to Rhythms' argument that Verizon must provide line sharing between two CLECs, the FCC states that when the customer, for whatever reason, voluntarily terminates its ILEC-provided voice service on the shared loop, or if the ILEC disconnects the customer's voice service in compliance with applicable federal, state and local law (e.g., the customer does not pay its local voice telephone bill), the data CLEC must purchase the entire unbundled loop. Line Sharing Order at ¶¶ 72-73. Although the FCC states that, in such cases, the data CLEC may enter into a voluntary line sharing agreement with a voice CLEC, the FCC does not make this arrangement the ILEC's obligation. We agree with Verizon that it is not obligated to provide line sharing between two CLECs. Line Sharing Order at ¶73. The FCC has emphasized numerous times that an ILEC is required to provide line sharing only when it is the voice service provider. In addition, Verizon indicated that it is working with CLECs to resolve technical and operational issues on this matter in the New York collaborative. We expect Verizon to import whatever technical and operational resolutions are reached in New York to Massachusetts (see

Exh. VZ-MA-3, at 4, 14, in which Verizon commits to implement in Massachusetts any resolutions reached in the New York collaborative). Therefore, we reject Rhythms' request.

E. Intervals

1. Provisioning and Loop Conditioning Intervals

a. Introduction

Part A, Section 3.2.10.A of Verizon's proposed tariff states that Verizon will provision one to nine line-shared loops within six business days, and for orders of ten or more line-shared loops, the provisioning interval is negotiated. Verizon states that this interval applies to both its unbundled xDSL stand-alone loop offering and its retail ADSL service (Verizon Brief at 6). For loop conditioning, Part A, Section 3.2.3.7 of Verizon's tariff proposes a 15 business-day interval. In contrast, several CLECs support a staggered provisioning interval, beginning with three business days upon issuance of the Order in this proceeding and decreasing to one business day after a certain period of time (Rhythms Brief at 16; Covad Brief at 2; DBC Brief at 22). In addition, Covad proposes a loop conditioning interval of five business days (Covad Brief at 2).

b. Positions of the Parties

_____ i. Verizon

Verizon argues that the FCC makes clear in its Line Sharing Order that the most appropriate line sharing interval to apply "at the outset" of line sharing is the provisioning interval applicable to Verizon's stand-alone xDSL loop offering, and that the FCC encourages

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

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

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FEDERAL COMMUNICATIONS COMMISSION

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2000

Released: June 30, 2000

By the Commission: Commissioner Furchtgott-Roth concurring and issuing a statement.

I. INTRODUCTION..... 1
II. BACKGROUND 8
A. STATUTORY FRAMEWORK 8
B. HISTORY OF THIS APPLICATION..... 12
C. TEXAS COMMISSION AND DEPARTMENT OF JUSTICE EVALUATIONS 17
III. ANALYTICAL FRAMEWORK..... 21
A. OVERVIEW 21
B. COMPLIANCE WITH UNBUNDLING RULES..... 28
C. SCOPE OF EVIDENCE IN THE RECORD 34
1. Procedural Framework..... 34
2. Ex Parte Submissions..... 41
D. FRAMEWORK FOR ANALYZING COMPLIANCE WITH STATUTORY REQUIREMENTS 43
1. Legal Standard 44
2. Evidentiary Case 47
IV. COMPLIANCE WITH SECTION 271(C)(1)(A)..... 59
A. BACKGROUND..... 59

application on the basis of its alleged failure to comply with the requirements of the *Line Sharing Order*.⁹⁹⁶

323. *Line Splitting*. Some commenters contend that SWBT has unlawfully hindered the ability of competing carriers to use the UNE-P to provide both xDSL and voice services.⁹⁹⁷ For instance, AT&T argues that SWBT has unlawfully denied AT&T access to SWBT's splitter and has thereby made it more difficult for AT&T to use the UNE-P to provide advanced services.⁹⁹⁸ The Department of Justice also noted this issue in passing, but it did not suggest that the issue casts doubt on the merits of this application.⁹⁹⁹

324. As a preliminary matter, we note that under the *Line Sharing Order*, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access.¹⁰⁰⁰ Thus, the situation that these commenters describe is not technically line sharing, because both the voice and data service will be provided by competing carrier(s) over a single loop, rather than SWBT. To avoid confusion, we characterize this type of request as "line splitting," rather than line sharing.

325. The Commission's rules require incumbent LECs to provide requesting carriers with access to unbundled loops in a manner that allows the requesting carrier "to provide any telecommunications service that can be offered by means of that network element."¹⁰⁰¹ As a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter.¹⁰⁰² The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P.¹⁰⁰³ For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to

⁹⁹⁶ Covad Texas II Comments at 2-3, 7-8; Covad Texas II Goodpastor Decl. at paras. 14-20; IP Texas II Comments at 2-4; NorthPoint Texas II Comments at 7-12; NorthPoint Texas II Lewandowski Aff. at paras. 23-29; Rhythms Texas II Lopez Aff. at paras. 4-15.

⁹⁹⁷ AT&T Texas II Reply Comments at 8-9; IP Communications Texas II Comments at 14; AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; IP Communications Texas I Comments at 5.

⁹⁹⁸ AT&T Texas II Pfau/Chambers Decl. at paras. 29-42.

⁹⁹⁹ Department of Justice Texas II Evaluation at 7 n.17.

¹⁰⁰⁰ *Line Sharing Order*, 14 FCC Rcd at 20941, para. 13; 47 C.F.R. § 51.319(h)(3).

¹⁰⁰¹ 47 C.F.R. § 51.307(c).

¹⁰⁰² We note, however, that nothing in our rules prohibits an incumbent LEC from voluntarily providing the splitter in this line splitting situation.

¹⁰⁰³ SWBT June 6 *Ex Parte* Letter at 2.

replace its UNE-P with a configuration that allows provisioning of both data and voice service.⁹⁰⁴ SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.⁹⁰⁵

326. AT&T also argues that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter.⁹⁰⁶ AT&T alleges that this is “the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive.”⁹⁰⁷ Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop.⁹⁰⁸ AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.⁹⁰⁹

327. We reject AT&T’s argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available.⁹¹⁰ As we stated in the *UNE Remand Order*, “with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity.”⁹¹¹ We separately determined that the DSLAM is a component of the packet switching unbundled network element.⁹¹² We observed that “DSLAM equipment sometimes includes a splitter” and that, “[i]f not, a separate splitter device separates voice and data traffic.”⁹¹³ We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished

⁹⁰⁴ SWBT June 6 *Ex Parte* Letter at 2.

⁹⁰⁵ For instance, when the UNE platform is part of a DLC or exceeds distance limitations for xDSL service, such loops would not be xDSL-capable and could not be provisioned as an xDSL-capable unbundled loop. In these circumstances, modifications to the existing loop or other alternatives would need to be provided. SWBT June 6 *Ex Parte* Letter at 2. In light of SWBT’s representations, we find moot concerns expressed by commenters regarding an earlier SWBT proposal to require competing carriers using the UNE-P to order a new loop in addition to the existing UNE-P loop in order to ultimately engage in line splitting over the UNE-P. AT&T Pfau/Chambers Texas II Decl. at paras. 29-36; IP Communications Texas I Comments at 5.

⁹⁰⁶ See AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; see also IP Communications at 12, 14.

⁹⁰⁷ AT&T Texas II Pfau/Chambers Decl. at para. 41.

⁹⁰⁸ AT&T Texas II Pfau/Chambers Decl. at paras. 40-42.

⁹⁰⁹ AT&T Texas II Pfau/Chambers Decl. at para. 40.

⁹¹⁰ See 47 U.S.C. § 251(d)(2); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

⁹¹¹ *UNE Remand Order*, 15 FCC Rcd at 3776, para. 175.

⁹¹² *UNE Remand Order*, 15 FCC Rcd at 3833, paras. 302-303.

⁹¹³ *UNE Remand Order*, 15 FCC Rcd at 3833, para. 303.

3

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 00-12

CASE 00-C-0127 - Proceeding on Motion of the Commission to
Examine Issues Concerning the Provision of
Digital Subscriber Line Services

OPINION AND ORDER CONCERNING
VERIZON'S WHOLESALE
PROVISION OF DSL CAPABILITIES

Issued and Effective: October 31, 2000

augmentations, as proposed by Verizon, is inconsistent with the FCC's approach. Furthermore, the 45-day interval for augmentations we adopt here is consistent with the FCC's intent to have shorter intervals where the nature of the modification to the collocation arrangement is appropriate.¹ Parties may propose refinements of these intervals to specify sub-intervals for certain tasks, and submit such modifications to us for review, after further discussion of the operational issues in the DSL collaborative and the Carrier Working Group.

Provision of Access to the
High Frequency Spectrum for
Carriers Providing Voice Over UNE-P

The second issue is whether Verizon should be required to facilitate an offering comparable to line sharing for voice competitors serving customers using the Unbundled Network Element Platform (UNE-P) and, if so, on what timetable must its wholesale offering be available to competitors. Verizon has been providing DSL services to retail customers using line sharing since the inception of its DSL offering, first by itself and after July 2000 through a data affiliate. Verizon's voice customers may also enjoy line shared DSL from other data providers. Competitors offering voice and data service now propose that customers served by voice carriers other than Verizon, for whom service is provided via the UNE-P, must have access to DSL over their voice lines. The DSL collaborative group named this process "line splitting," to distinguish it from line sharing.

¹ PCC Order on Reconsideration, §114 and footnote 241.

1. Parties' Legal and Policy Arguments

At the technical conference and in brief, Verizon asserted it had no legal obligation to provide line sharing over UNE-P or resold lines or to provide splitters to accomplish these ends for UNE-P or resale providers. However, Verizon asserted it would continue to work with CLECs and DLECs to facilitate access to the high frequency portion of loops provided to CLECs.

The competitors, both voice providers of local exchange service and data service providers, point out that Verizon's position falls short of a binding commitment to provide line splitting, and that Verizon has refused to offer line splitting pursuant either to tariff or contract. Competitors fear the incumbent will delay the splitting of lines for which voice service is provided by others, while moving aggressively to build out its own line sharing customer base, as evidenced by the proposed Verizon merger with NorthPoint Communications Group, Inc.¹

There is no dispute that the engineering processes entailed in splitting a line for a UNE-P voice customer and sharing a line for a Verizon voice customer are identical: there is no physical difference. The record evidence to this effect is unambiguous. The differences arise in the operation of the OSS, which must be modified to reflect the different business relationships among the end-user, the voice provider, the data service provider, and Verizon. According to Verizon, its software vendor, Telcordia, expects to release new software by November 30, 2000, reflecting a two-wholesaler environment. Verizon expects the testing and modification of that software to

¹ Verizon's petition seeking merger approval is pending in Case 00-C-1487.

conclude no later than March 2001. Verizon points out, however, that competitors bear a considerable burden to address and agree to the business rules that will govern in this new environment.

Verizon asserts it has no legal obligation to line split, and that New York cannot require it to do so consistent with FCC rulings. It relies on the FCC Line Sharing Order which noted that the record before the FCC did not support extending line sharing requirements to loops other than those on which an incumbent LEC provides voice band service. The FCC concluded that "incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on the loops on which the incumbent LEC is also providing analog voice service ... Similarly, incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer".¹ Verizon points out that the conclusions found in the Line Sharing Order are also embodied in FCC Rule 319(h).²

Competitors respond that the FCC is presently reconsidering those portions of its Line Sharing Order, and that in its approval of the SBC/Texas §271 application, it indicates that purchase of UNE-P may be construed to imply purchase of the

¹ Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket 96-98 (Line Sharing Order), ¶72.

² The regulation requires an incumbent LEC only to provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, voiceband services on that loop. 47 CFR 51.319(h).

full capability of the loop including its capacity to be split to accommodate DSL service.¹ Competitors urge the requirement of line splitting under state law, citing Public Service Law §§91, 94, and 97, and this Commission's long history of requiring unbundling. VAD adds its voice to that of data competitors, asserting that data providers should be able to provide data services over loops used by other CLECs to provide voice services.

2. Discussion

Over two million lines are being served by Verizon's competitors in the New York local exchange market; the majority of these are lines served using the UNE-P mode of entry.² Currently, this group of customers is ineligible for DSL services provided by line sharing. These customers may, however, obtain line sharing DSL by migrating their voice service back to the incumbent. Thus, this restriction operates to advantage Verizon in its capacity as a voice local exchange service provider: it alone can provide customers with a full range of desirable associated services.

Conversely, competitors submitted evidence that customers were precluded from replacing Verizon as their local exchange service provider without also terminating their line shared DSL service. Accordingly, this restriction prevents free

¹ CC Docket No. 00-65, Application by SBC Communications In. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order (released June 30, 2000) (SBC/Texas 271 Approval Order), ¶325.

² Over 1.1 million customers receive local exchange service over UNE-P; over a quarter of million UNE-P orders were filled in July 2000 alone. Verizon Carrier-to-Carrier Report for July 2000.

migration by customers to their voice provider of choice. Competitive voice providers using UNE-P constitute a substantial segment of the local exchange market and their share is steadily increasing. Access to the high frequency portion of the UNE-P loop will allow voice CLECs the capacity to provide the same range of advanced services to residential and business customers as are now available to Verizon customers.

The Commission has broad authority to review the rules, regulations, and practices of telephone companies to ensure, consistent with federal law, that that they are just, reasonable, and nondiscriminatory.¹ This authority encompasses requiring Verizon to facilitate line splitting for customers served by competing voice carriers using UNE-P to promote competition and avoid discrimination. We find that a restriction on line splitting would unreasonably hinder the deployment of advanced services to New York's consumers and would discriminate against competitor carriers' voice offerings. Thus, we require Verizon to provide access to the full functionality of the UNE-P loop, including the high frequency spectrum.

Requiring line splitting is also consistent with federal law and FCC regulations. First, the FCC designated the high frequency loop spectrum of an ILEC voice loop an unbundled network element.² In so doing, it also expressly invited states to add to its line sharing requirements, recognizing state markets may develop differently and more quickly than the national market;³ and it is currently reconsidering the UNE-P

¹ Public Service Law §§94 *et seq.*

² Line Sharing Order, ¶¶13, 25.

³ Line Sharing Order, ¶¶223-225.

line splitting issue. Further, although CLECs generally take the position that the SBC/Texas 271 Order obligates ILECs to provide line splitting over UNE-P, the FCC noted that line splitting issues had not been fully developed at the time the Texas Commission was considering SBC's Section 271 application. Unlike the record before the Texas Commission, line splitting issues have been thoroughly presented in this proceeding. Based on the record before us, we find that line splitting over UNE-P purchased from Verizon is technically feasible, and necessary for competitors to provide their services to customers.

Second, viewing the requirement that Verizon facilitate CLEC access to the high frequency portion of the loop as a further unbundling is also consistent with federal law.¹ In its UNE Remand Order, the FCC stated that "Section 251(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of Section 251 and the national policy framework instituted in this Order."² Requiring Verizon to facilitate line splitting access to the high frequency portion of the loop meets the criteria in §251. States may require the unbundling of additional network elements upon a determination that lack of access to a non-proprietary network element impairs a CLEC's ability to provide the service it seeks to offer. We find that lack of access to line splitting would impair both voice and data competitors' ability to provide customers with desired services. Lack of such access

¹ Telecommunications Act of 1996 (the 1996 Act) (47 U.S.C. §251(d)(3)) provides for state regulations, orders, and policies establishing access and interconnection obligations of local exchange carriers, where consistent with the Act.

² UNE Remand Order §154; see, also, Line Sharing Order §§221-225.

would materially diminish voice service providers' ability to offer a package of services comparable to that offered by Verizon, as a practical, economic, and operational matter. Further, lack of access to UNE-P customers on a line-splitting basis would materially diminish data competitors' capacity to offer all DSL services to a significant customer base. The alternative, providing DSL on a dedicated line basis, is qualitatively more costly, more technically cumbersome, and more time-consuming to provision.

Additional consideration must be given to whether the CLEC can provide the element or whether an alternative element can be obtained from outside the ILEC's network.¹ If the lack of access impairs the CLEC's ability to offer the service it wishes to provide, we may require the unbundling of that element. States may take into consideration whether unbundling of a network element promotes the rapid introduction of competition, promotes facilities-based competition, investment, and innovation; promotes reduced regulation; provides certainty to requesting carriers regarding the availability of the element; and is administratively practical.²

Based on the record before us, we find that denial of access to line splitting significantly impairs both the voice and the data CLECs' ability to offer services to customers; there is no comparable resource available outside the ILEC system. In addition, we find that line splitting will promote competition, for the competitive (voice) local exchange carriers, and the data CLECs, opening a large segment of the market for the provision of their services. Provision of line splitting will increase the likelihood that CLECs will begin to

¹ 47 CFR 51.317 (b), (d).

² 47 CFR 51.317(c).

make investments in facilities by helping to solidify the CLECs' market share. Finally, line splitting will make advanced services available to customers of all local exchange carriers and therefore raises the possibility of less regulation.

3. Timetable for Providing Line Splitting and OSS Modifications

Substantial modification of the Verizon OSS is required to address ordering, provisioning, billing, maintenance, inventory, and repair functions. This process is underway and must be fully developed by Verizon in cooperation with the CLECs, particularly with respect to business rules.¹

Verizon's vendor, Telcordia, is preparing a software application to be released by November 30, 2000, to interface with Verizon's OSS. Although Telcordia's effort was primarily intended for basic line sharing, Verizon indicated that the new release will include fields which will accommodate two wholesalers, one providing voice and the other data. Verizon reports that it could take as much as three months to test the new software, debug it, send it back to Telcordia for revisions, and retest it. This schedule would allow implementation of the new OSS by March 2001, which we will require.

Anticipating the successful Telcordia release, Verizon should take steps immediately to establish a pilot for line splitting to test the ordering and provisioning processes and to work through some of the problems that likely will be encountered. Line splitting must be made available as soon as practicable, whether or not a fully electronic interface is in place.

¹ For example, parties are negotiating the OSS systems necessary to reflect the range of business relationship between data and voice CLECs.

Ownership of Splitters in
the Verizon Central Office

At issue is whether to require Verizon to purchase and own splitters located in its central offices and, if so, whether to require Verizon to provide splitter access to competitors one line at a time. The FCC has rejected CLEC attempts to impose a splitter ownership requirement upon the incumbent LEC.¹ In AT&T's view, the splitter should be viewed as an intrinsic component of the loop and should be provided with the loop by the incumbent as part-and-parcel of its loop unbundling obligations.² It asserts that incumbent ownership of splitters would facilitate consumer choice of Internet Service Provider and, possibly, data local exchange carrier as well. Data CLECs take a middle road and ask for an option of a Verizon owned splitter.

Verizon takes issue with these views; it points out that there are widely differing splitter designs, each with different wiring. In its view, this is a constantly changing technology in which the splitter should be matched to the DSLAM, the property of the data service provider, to ensure protection of the DSLAM.

The AT&T position is based upon the assumption that there will be a high proportion of Internet service provider churn, requiring concomitant data service provider churn. It asserts incumbent ownership of the splitter will facilitate a significantly simpler cross-connect process and result in faster and more accurate migration of data customers from one data service provider to another. Verizon countered with the

¹ SBC/Texas §271 Order, ¶327.

² Citing the UNE Remand Order, ¶175.

assertion that incumbent splitter ownership would make high volume changes more, not less, burdensome.

Parties to the DSL collaborative discussed in considerable depth the relative merits of various configurations of splitter ownership and placement and agreed to two options, neither of which entailed incumbent ownership of the splitter. In fact, dozens of collocation installations have been put in place, and data CLECs indicated no enthusiasm for reconfiguring these for ILEC ownership.¹ In light of the heavy burden AT&T must shoulder to demonstrate that reconfiguration or change in plans adopted by the collaborative are necessary, it cannot be said to have made a convincing case. Nor is its legal argument compelling that the splitter is an intrinsic component of the loop; Verizon's response that splitters are widely available in the marketplace refutes the view that AT&T must be provided them by the incumbent or face impairment of its provision of DSL-capable loops to customers. Further, although competitors are interested in the provision by Verizon of access to the splitter function a line at a time, their evidence failed to establish that this was either a superior or a more equitable network design than that presently in place. Moreover, the FCC has not required incumbent LECs to provide access to these splitters as part of the loop, but is reviewing that determination in response to petitions for reconsideration of the UNE Remand

¹ Rhythms, for example, asserts it would be beneficial for CLECs if Verizon were to own splitters, but expresses its preference for ownership and control of splitters within its collocation space. Rhythms' Initial Brief, p. 26.

Order. Thus, splitter ownership by Verizon will continue to be at its option unless the FCC rules otherwise.¹

LINE SHARING IN THE
DIGITAL LOOP CARRIER ENVIRONMENT

Other issues relate to customers served by digital loop carrier, that is, loops consisting of fiber optic cable with electronics from the central office to a remote terminal and a feeder distribution interface point, and from there copper to the customers' premises. The issues concern whether the current Verizon tariff filing, offering competitors certain collocation opportunities at the remote terminal, comports with its legal obligations or whether additional forms of access to these customers are necessary for competitors to offer their services.

Verizon's Remote Terminals and Present Technology

Approximately 15% of Verizon's loops are served by digital loop carrier technology, entailing installation of fiber optic cable from the central office to a remote terminal, closer to the end user, with copper facilities installed from the remote terminal to the end user premises.² Verizon intends to expand its network, and replace faulty all-copper loops, with these part-fiber/part-copper loops, at an undetermined rate.

¹ Parties reached agreement on a method to resolve disputes as to the source of trouble on a line shared loop (appended to this order as Attachment 1). We approve the agreement, which is reasonable. As to other testing issues, we will require Verizon to provide data competitors test access identical to, and at the same price as, the test access it provides its data affiliate, in order to ensure parity among all competitors.

² Tr. 381.

4

Order Clarification and allows CLECs to convert special access services to EELs where the CLEC demonstrates significant local usage. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, 15 FCC Rcd 1761 (1999); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000). Verizon will also make EELs available in accordance with the Department's Order in D.T.E. 98-57 (Sept. 7, 2000). EEL arrangements enable CLECs to provide unbundled loops to end users without having to collocate in the central office in which those loops terminate. EEL arrangements are comprised of the following unbundled network elements: Unbundled Loop (2/4-wire analog, 2-wire digital ISDN, 4-wire digital DS-0 56 Kbps, 4-wire digital 1.5 Mbps, 4-wire digital 45 Mbps); in combination with transport (voice grade/DS-0, DS-1, DS-3); or multiplexing (DS-3 to DS-1, DS-1 to DS-0). Existing special access arrangements may be converted to EEL arrangements if a CLEC certifies that such arrangements provide significant local exchange service to an end user, as specified by the FCC and ordered by the Massachusetts Department of Telecommunications and Energy. See *Supplemental Order Clarification* ¶ 8.

185. Finally, Verizon also permits CLECs to engage in "line splitting." That is, Verizon does not preclude CLECs, either on their own or in partnership with a third party CLEC, from offering integrated voice and data over a single unbundled xDSL compatible loop and combining that loop with unbundled local switching and transport at the CLEC's collocation cage or the collocation cage of a third party CLEC. Consistent with the FCC's discussion of line splitting in the Texas order, a CLEC with a UNE platform arrangement that seeks to line split may "order an unbundled xDSL-capable loop

terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P" *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, Memorandum Opinion and Order ¶ 325, FCC 00-238, CC Docket. No. 00-65 (rel. June 30, 2000).*

186. Verizon is currently working with the CLECs in the context of the DSL collaborative to investigate the development of additional and more detailed methods and procedures for line splitting arrangements. In the meantime, nothing precludes CLECs from engaging in a line splitting arrangement by ordering the necessary unbundled network elements to offer integrated voice and data service. And Verizon is capable of providing the necessary unbundled network elements for line splitting (*i.e.*, an unbundled xDSL capable loop and unbundled switching) because it is already successfully doing so in other contexts. As discussed elsewhere in this declaration, Verizon has plenty of experience provisioning unbundled loops and switching. In short, today CLECs have the ability to offer integrated voice and data service over a single loop in a line splitting arrangement as found acceptable by the FCC in the Texas 271 order.

C. Poles, ducts, conduit, and rights of way (Checklist Item 3)

187. Verizon provides access to poles, ducts, conduit and rights of way that it owns or controls. As of July 2000, Verizon is providing over 1,059,000 pole attachments and over 2,626,000 feet of conduit in Massachusetts.

Rhythms claim that Verizon failed to complete the work necessary to implement line sharing by the Commission's June 6, 2000 deadline. This is not true. As the DTE confirmed, Verizon met the Commission's deadline by offering line sharing to CLECs that elected to place their splitters in their own collocation space. See DTE Eval. at 327 (“[W]e find that Option A CLECs may offer line sharing today wherever they have collocation facilities.”); see also Lacouture/Ruesterholz Rep. Decl. ¶¶ 103-105. Verizon was also ready to provide a second kind of line-sharing arrangement — where Verizon installs a CLEC's splitter in Verizon's own central office space — but the only CLEC that wanted this arrangement did not have its equipment ready. See Lacouture/Ruesterholz Rep. Decl. ¶¶ 109-115.⁵⁰ While Covad says otherwise, its claims have already been considered and rejected by the DTE. As the DTE has noted, “[o]ur record supports VZ-MA's contention that Covad failed to ship its splitters in a timely fashion for installation by VZ-MA at certain central offices requested by Verizon. We cannot hold VZ-MA responsible for Covad's actions, which resulted in line sharing delays.” DTE Eval. at 327.

Finally, Verizon “permits CLECs to engage in line splitting exactly as described in the SBC Texas Order.” Sept. 29, 2000 Order at 40. WorldCom disputes this (at 62), but its claims

business-day collocation augment interval for line sharing to 40 business days. See DTE, Investigation by the Department on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in M.D.T.E No. 17, No. 98-57 – Phase III (Sept. 29, 2000) (“Sept. 29, 2000 Order”); see also Lacouture/Ruesterholz Rep. Decl. ¶ 45. Verizon is seeking reconsideration of this ruling.

⁵⁰ Rhythms claims (at 36-37) that Verizon did not have certain pre-wiring work completed or properly inventoried by June 6, 2000. Verizon was, however, ready to provision line-sharing orders on this date. See Lacouture/Ruesterholz Rep. Decl. ¶ 116. Although Verizon had not completed inventorying all pre-wiring work during the initial implementation phase, it implemented a temporary manual work around that ensured it could accept and provision CLEC orders in a timely manner. See id. ¶¶ 116-117. Nevertheless, Rhythms did not submit any line sharing orders in Massachusetts until September. See id. ¶ 116. In any event, this issue is now

boil down to nothing more than the unsupported assertion that Verizon has failed to promise that it will allow a CLEC using a line-splitting arrangement to obtain unbundled switching and transport from Verizon to combine with the loop and splitter in the CLEC's collocation cage. As Verizon stated in the application, however, "Verizon does not preclude CLECs, either on their own or in partnership with a third party CLEC, from offering integrated voice and data over a single unbundled xDSL compatible loop and combining that loop with unbundled local switching and transport at the CLEC's collocation cage or the collocation cage of a third party CLEC." Lacouture/Ruesterholz Decl. ¶ 185; see also Lacouture/Ruesterholz Rep. Decl. ¶¶ 133-134.

Loop Qualification Database. As described in its application, Verizon provides CLECs with access to all of the information they need to determine whether a customer's line is capable of supporting DSL service. See Application at 26; Lacouture/Ruesterholz Decl. ¶ 108. The DTE concluded that "VZ-MA is providing CLECs, through its enhanced loop qualification database, the amount of information most CLECs require to qualify a loop." DTE Eval. at 295. The DTE noted, for example, that it recently approved Verizon's tariff to make available all of the loop-qualification information required in the UNE Remand Order. See id. at 295 n.937.⁵¹

Covad and a few other commenters complain that Verizon has failed to provide access to its LFACS database in violation of the UNE Remand Order.⁵² This is wrong. In December 1999, Verizon asked Telcordia to prepare a cost estimate for developing an interface that CLECs

moot because Verizon's inventory database now contains the necessary cable and pair information for the pre-wiring work. See id. ¶ 117.

⁵¹ Implementation of the Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

⁵² Covad at 41-43; Kiser Decl. ¶¶ 8-14; Melanson Decl. ¶¶ 7-10, 16-17; ALTS at 25-27; ASCENT at 11-12.