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

In the Matter of	)	
	)	
Application by Verizon New England Inc.	)	
Bell Atlantic Communications, Inc.	)	
(d/b/a Verizon Long Distance), NYNEX	)	CC Docket No. 01-9
Long Distance Company (d/b/a Verizon	)	
Enterprise Solutions), and Verizon Global	)	
Networks Inc., for Authorization to Provide	)	
In-Region, InterLATA Services in Massachusetts	)	
	)	

COMMENTS OF WORLDCOM, INC. ON THE SUPPLEMENTAL FILING BY VERIZON FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN MASSACHUSETTS

This application raises fundamental questions about the role network element pricing plays in opening local markets to competition, and the role the FCC should play in enforcing the Act's pricing requirements. Because the appropriate disposition of this application depends upon answers to these questions, we begin by addressing the Act's larger purposes and the role network element pricing plays in accomplishing those purposes. Following a detailed discussion of pricing, we turn to line splitting, ongoing OSS issues, and an analysis of the public interest.

I. A GRANT OF VERIZON-MASSACHUSETTS' APPLICATION WOULD BE CONTRARY TO THE PURPOSE AND TEXT OF SECTION 271 OF THE 1996 ACT.

The central purpose of the 1996 Act is to promote competition in all telecommunications markets, including the local residential market that is at issue in a section 271 application. Congress understood that accurate cost-based pricing of unbundled network elements would be one of the keys to opening local markets, and the Commission has worked hard to develop a pricing methodology to implement this legislative command. While cost-based pricing is not designed to guarantee that any particular competitor will be able to make a profit in the local market, it is designed to produce rates that promote competition, and if challenged rates to the contrary stifle competition, there is good reason to believe that they are not cost-based.

A. The 1996 Act Is Intended to Promote Competition in all Telecommunications Markets, Including the Local Residential Market.

Since the Telecommunications Act was enacted in 1996, this Commission has made extraordinary efforts to implement its provisions and to accomplish Congress' purpose: "to benefit 'all Americans by opening all telecommunications markets to competition.'"[4/] Each of its previous orders addressing section 271 applications has focused on the extent to which the local market under consideration was open to competition. Thus, this Commission has repeatedly recognized that "[t]he overriding goals of the 1996 Act are to open all telecommunications markets to competition by removing operational, economic, and legal barriers to entry, and ultimately, to replace government regulation of telecommunications markets with the discipline of the market." MI Order ¶ 386. See also, e.g., SC Order ¶ 7 (same); LA II Order ¶ 2 (same); NY Order ¶ 3 (same); Local Competition Order ¶¶ 1-4.

In the 1996 Act, Congress took affirmative steps to open local markets to competition and kept the Modified Final Judgment's ("MFJ") in-region line-of-business restrictions in place until a Bell Operating Company ("BOC") complied with these new duties. LA II Order ¶ 3; SC

4/ LA II Order ¶ 2 (quoting Conf. Rep. No. 104-458, at 1 (1996) ("Conf. Rep.")). A table of citation abbreviations and corresponding full citations is provided above, following the Table of Contents.

Order ¶ 9; NY Order ¶ 3; H.R. Rep. No. 104-204 at 89 (1995); Local Competition Order ¶ 3.[5/] As the Commission correctly recognized, Congress hoped to facilitate competition in all local markets: residential as well as business, rural as well as urban. MI Order ¶¶ 85, 391. The Commission explained:

> Although Congress replaced the MFJ's structural approach, Congress nonetheless acknowledged the principles underlying that approach – that BOC entry into the long distance market would be anticompetitive unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition. This is clear from the structure of the statute, which requires BOCs to prove that their markets are open to competition before they are authorized to provide in-region long distance services. . . . In order to effectuate Congress' intent, we must make certain that the BOCs have taken real, significant, and irreversible steps to open their markets.

MI Order ¶ 18.[6/] By precluding BOCs from providing in-region long distance service until they have opened their local markets, section 271 not only prevents re-monopolization of the long

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5/ 141 Cong. Rec. S8464 (June 15, 1995) (Statement by Sen. Dorgan, a member of the Senate Commerce Committee) (allowing BOC entry "prematurely. . . risk[ed] damaging that competitive [long] distance market."); Conf. Rep. at 149 (expressing Congress' concern that BOCs should not be permitted into long distance if they can use their power in the local market to impede competition in the long distance market); 141 Cong. Rec. S8134 (June 12, 1995) (statement of Sen. Kerry) ("Removing the separation between the local markets and other markets without ensuring that the Bell Companies cannot use the local monopoly to hurt competition and long-distance could squander the gains of the past decade").

6/ See also id. ¶¶ 386, 388; SC Order ¶ 9; SC Order ¶ 26; 142 Cong. Rec. E204 (Feb. 23, 1996) (statement of Rep. Forbes) ("[B]efore any regional Bell company enters the long distance market, there must be competition in its local market."); 142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) ("The basic thrust of the bill is clear: competition is the best regulator of the marketplace. Until that competition exists, monopoly providers of services must not be able to exploit their monopoly power to the consumer's disadvantage. . . . Telecommunications services should be deregulated after, not before, markets become competitive.") (emphasis added); 141 Cong. Rec. H8458 (Aug. 4, 1995) (statement of Rep. Bunning) ("We should not allow the regional Bells into the long-distance market until there is real competition in the local and residential markets.").

distance market, it also "creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets," an incentive that is eliminated with premature entry. MI Order ¶¶ 14-15; LA II Order ¶ 3. "Congress further recognized that, until the BOCs open their local markets, there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market" and to re-monopolize that market. LA II Order ¶ 3.

B. True Cost-Based Pricing is Critical to the Development of Competitive Local Residential Markets.

The most obvious economic barrier to entry is the BOCs' control over extensive bottleneck facilities which, in many areas, CLECs will be unable to duplicate. See MI Order ¶ 386 (discussing economic barriers to entry); Local Competition Order ¶¶ 10-11. Congress understood that it was not enough merely to require BOCs to lease (and resell) these facilities. Congress also required BOCs to lease unbundled elements to CLECs at cost-based rates, because "[n]ew entrants cannot compete effectively if . . . the price of unbundled network elements precludes efficient entry by not allowing new entrants to take advantage of the incumbent's economies of scale, scope and density." MI Order ¶ 21; Local Competition Order ¶ 618 ("[t]he price levels set by state commission will determine whether the 1996 Act is implemented in a manner that is pro-competitor . . . or, as we believe Congress intended, pro-competitive") (emphasis in original); Local Competition Order ¶ 630.

From the outset the Commission implemented this legislative judgment, understanding that "efficient competitive entry into the local market is vitally dependent upon appropriate pricing of the checklist items." MI Order ¶ 281. The Commission determined to set nationwide pricing principles because it believed them to be necessary if the local bottlenecks were to be broken, Local Competition Order ¶¶ 113, 618, 679, and it has shown (and is showing) extraordinary will in defending those principles against unrelenting BOC legal challenges. And while it left to states the authority to adjust prices in light of "'local technological, environmental, regulatory and economic conditions,'"[7/] the Commission also determined it was "critical . . . to establish among the states a common, pro-competition understanding of the pricing standards," Local Competition Order ¶ 618, since "[d]etermining cost-based rates has profound implications for the advent of competition in the local markets and for competition in the long distance market." MI Order ¶ 287. Thus, the Commission with great specificity laid out the methodology that states must employ to derive their rates, and subsequently has made clear that for purposes of checklist compliance under section 271 rates must conform to the FCC-mandated methodology, and so should fall within a reasonable range whose outer bounds are set by the local conditions that would lead costs to vary from state to state.

While acknowledging that differences in network costs among states necessarily means that cost-based wholesale rates will vary somewhat, and that the states themselves are in the best position to assess these differences, the Commission made clear that states are not free to set rates at any level they choose so long as they call them "TELRIC." "[I]t is not the label that is critical in making our assessment of checklist compliance, but rather what is important is that

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7/ NY Order ¶ 244 (quoting Local Competition Order ¶ 114). See also MI Order ¶ 291 ("Costs may vary, for example, due to differences in terrain, population density, and labor costs from one state to the next. TELRIC principles will not generate the same price in every state.").

price reflect TELRIC principles and result in fact in reasonable, procompetitive prices." MI Order ¶ 290. As the Commission recently re-affirmed, a rate falls within a reasonable range to the extent any departure from the norm can be explained by specific relevant conditions in the state.[8/] "Reasonable range" is not the same thing as "anything goes."

C. Application of TELRIC Principles Should Result in the Development of Competitive Markets.

As the Commission has recently emphasized, TELRIC is not designed to guarantee a profit to any particular CLEC. KS-OK Order ¶ 92. The Act does not require any ILEC to lease network elements at below-cost rates in order to facilitate entry. At the same time, the impact of proposed UNE rates on the prospects for competition is relevant to whether these rates are cost-based, and to whether BOC entry into long-distance promotes the public interest. The Commission has repeatedly made clear that checklist compliance is not a sterile, academic exercise, but a legislative test to assure that local markets are open for competition. The Commission adopted TELRIC precisely "to expedite the development of fair and efficient competition," Local Competition Order ¶ 618, for "[t]he statutory rights of new entrants would be meaningless if an incumbent could charge such high rates for the use of its network that new entrants could not profitably offer competing services to consumers." Opening Brief for the

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8/ Thus, in providing guidance on the meaning of the concept of "range of reasonableness" in the KS-OK Order, ¶ 91 & n.266, the Commission pointed to an earlier Universal Service order where it allowed for a 15% variation in a fixed amount allowed for corporate operations expenses "recognizing that small study areas, based on the number of lines, may experience greater amounts of corporate operations expense per line than larger study areas." USF Report and Order ¶ 283. Analogously, in recognition of the fact that there are certain differences in geography among states, small variations in UNE pricing would be within a range of reasonableness in UNE rates.

Federal Petitioners, FCC v. Iowa Utils. Bd., No 97-831 at 25 (U.S. filed April 3, 1998). As a result, the Commission has considered evidence of the real-world effect of the pricing process to be highly relevant to whether the rate-setting process resulted in cost-based rates: "Because the purpose of the checklist is to provide a gauge for whether the local markets are open to competition, we cannot conclude that the checklist has been met if the prices for interconnection and unbundled elements do not permit efficient entry." MI Order ¶ 287. Accordingly, if the rates do not permit competition, absent some other explanation (for example, subsidized retail rates), they are likely not based on the cost of the elements.

Competitive pricing not only bears on whether pricing is cost-based and compliant with the checklist, but also is "a relevant concern in [the Commission's] public interest inquiry under section 271(d)(3)(C)." Id. ¶ 288. Indeed, since the public interest analysis focuses on the existence of barriers to entry into the local market, see infra Part IV, pricing ought to be among the most critical factors in public interest analysis.

The Commission should in particular scrutinize with great care UNE rates where they effectively preclude entry, where the state commission has refused to consider the competitive effect of the rates, and where other state commissions have set analogous rates at lower levels that permit competition where the ILEC's cost appear to be the same in both states. To the extent that a state is called upon to exercise its discretion in establishing a rate, it is unreasonable given the broader purposes of the Act for it to select a higher rate that kills competition when the evidence also supports selection of a lower rate that permits competition to flourish. See, e.g., American Tel. & Tel. Co. v. FCC, 836 F.2d 1386, 1390 (D.C. Cir. 1988) (per curiam)

(Communications Act "requires a balance of investor and consumer interests"). A state commission should be able to articulate a principled basis for adopting a rate that both permits a BOC to recover its economic costs and earn a reasonable profit, and enables local residential competition to develop. It would frustrate the purposes of the Act for a state commission to set a rate that blocks competition even if it is at the upper end of what arguably could be defended as based on cost, when a more reasonable rate also based on cost would give the BOC room to earn a reasonable profit, and would also promote competition within the state. At a minimum, if a state commission approves a rate incompatible with competitive entry, it ought to provide a detailed, persuasive explanation of why no lower rate would satisfy TELRIC principles.

In sum, while the effect of pricing rules on any particular competitor and its plans to enter a market is irrelevant under section 271, the effect of pricing on competition in general relates directly to whether prices are cost-based and whether BOC provision of in-region long-distance service is in the public interest. To repeat, the Act is not pro-competitor, but it is most decidedly pro-competition. Local Competition Order ¶ 618.

In evaluating rates in prior section 271 proceedings, the Commission has applied two other important principles:

First, by definition, "cost-based" rates must be supported by cost studies proving that the rates are derived from the cost of providing the leased elements, taking into account the particular circumstances present in each state. The Commission has specifically stated that each state is "oblig[ed] . . . to determine prices on its own. In order for us to conduct our review, we expect a BOC to include in its application detailed information concerning how unbundled network element prices were derived." MI Order ¶ 291 (footnote omitted). Rates cannot be proved to be "based on cost" unless there is some way to compare those rates with the BOC's underlying network costs.

In addition to the technical analysis provided by supporting cost studies, the Commission has found relevant comparisons with rates and inputs in other states, KS-OK Order ¶¶ 82, 87, as well as comparisons to the rates set by the agency itself in setting universal service subsidy rates. Id. ¶¶ 80, 84. While evidence of rates in other states is relevant – switches do not likely cost the BOC twice as much in Massachusetts as they do in Pennsylvania, Texas or Kansas, for example – the ultimate question remains whether the record establishes that the rates in place relate to the forward-looking costs in that state. As the Commission warned in the context of making use of its universal service rates, such comparisons by their nature are never determinative. See USF Ninth Report and Order ¶¶ 41-42; NY Order ¶ 245. Instead, the Commission has looked at the totality of the circumstances to evaluate the legality of the rates, just as it has in reviewing other checklist items.

Second, the Commission has stressed that rate-making is an on-going process, and so a state's commitment to "active review and modification" of rates and its "commitment to TELRIC-based rates," are critical considerations. NY Order ¶ 238. Thus, the Commission has found permissible even rates it acknowledged were defective when it has been persuaded that the state commission set the best rates possible under the circumstances and was undertaking a process that would result in rates that better reflected costs. Of course, rates accepted on that basis cannot be imported whole cloth into another state where those same conditions are not present.

As we showed in our submissions in response to Verizon's initial application, and as we summarize in what follows, applying these factors should lead the Commission to conclude that Verizon's rates in Massachusetts are substantially higher than cost-based rates and are not compliant with the competitive checklist.[9]

II. VERIZON HAS NOT MET ITS BURDEN OF PROVING THAT IT HAS SATISFIED THE CHECKLIST PRICING REQUIREMENTS.

A. Verizon's UNE Rates Do Not Derive from Reasonable Application of TELRIC Principles.

The Commission cannot rationally accept Massachusetts' UNE pricing. To defend its newly tariffed switching and transport rates, Verizon puts no cost evidence whatsoever on the record, but relies entirely on New York rates that were set under entirely different circumstances and endorsed on grounds that do not apply here. Unsurprisingly, Verizon declines to put on the record any of the New York cost study material that would be necessary to show that the switching costs in Massachusetts today are similar to the costs found in New York when the rates were set. Verizon's switching and transport rates are approximately double any plausible cost-based rate, and approximately double the rates accepted in Texas, Kansas and Oklahoma, as well as in Pennsylvania, Michigan and Illinois. See KS-OK Order ¶¶ 54-55, 73-95. Meanwhile,

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9/ On these points WorldCom relies on the proof provided in the Comments, Reply Comments and supporting declarations and ex parte presentations made in response to Verizon's initial application, which it hereby incorporates by reference.

Verizon's only defense of its loop rates is that they are TELRIC-compliant because the DTE said they were. But these loop rates contain critical inputs that are not consistent with TELRIC principles, and cause loop rates in Massachusetts to be overstated by 31% statewide.

1. Verizon's Revised Switching and Transport Rates Are Not TELRIC-Compliant

Verizon's entire defense of its switching and transport rates is that they are similar to New York's rates. But these rates are double the rates the Commission has approved in Texas, Kansas and Oklahoma, double the rates set in Pennsylvania, Michigan and Illinois, and double the rates that would exist if reasonable inputs were used.

Verizon makes no effort to defend the rates in terms of its actual switching costs. Obviously it did not pay (or reasonably expect to pay) twice as much for switches in Massachusetts as in Pennsylvania, or twice as much as SBC paid in its region. Instead, Verizon's entire defense of those rates is that because it voluntarily reduced its switching and transport rates "to the same levels that the Commission approved in New York," Verizon Supp. Filing at 37, "that is the end of the matter." Id. at 39. At the same time, it argues that comparison to switching rates in other states, including rates in other states which this Commission has found to be TELRIC, "is foreclosed." Id. In other words, in Verizon's view, rate comparisons are conclusive when they support Verizon, and unlawful when they do not. Nothing in the New York Order – or in any subsequent Order – remotely supports Verizon's cavalier approach to checklist compliance.

First, Verizon has never filed any cost studies, workpapers or any other documentation – in either this application or its first one – demonstrating that its October 13th switching rates are based on the cost of providing switching. In the boxes of documents and volumes of CD-ROMs submitted by Verizon to support two applications, Verizon has never attempted to explain how these rates were derived or why they are cost-based. Thus, in its refiled application Verizon once again declines to put on the record any of the "extensive records of the New York Commission's network element rate case" that the Commission ruled were needed to carry Bell Atlantic's burden of proof in New York (NY Order ¶ 241). Because much of the New York record is confidential and by Verizon's choice cannot even be discussed in this proceeding, the Commission is being asked to find a rate TELRIC without one iota of evidence that the rate is based on the cost of providing switching in Massachusetts.

Nor is this some mere technical quibble. The question before the Commission is whether the record that supported a prima facie case in New York in 1997 is adequate to support a prima facie case in Massachusetts today. As we set out below, and in more detail in our comments to Verizon's first application, there is good reason to believe that it is not.

Second, while the Commission has recently again made clear that comparisons to rates in other states may be instructive, KS-OK Order ¶ 82, the particular circumstances under which the switching rates were set in New York (and approved by this Commission in the New York section 271 application) are not present here, and render reliance on the New York rates entirely inappropriate.

The New York rates resulted from a process in New York that took place more than three years ago and, as the NYPSC itself has conceded, the rates are outdated and in need of revision. They will be replaced within months in New York by rates that derive from a reliable full-fledged cost proceeding, and New York has committed to give CLECs a true up to account for the difference between the old and new rates. Verizon here relies on rates that will soon be superceded because of generally acknowledged flaws.

More specifically, in adopting a switching rate that it promptly ordered to be reconsidered, the NYPSC reviewed and addressed a whole range of New York-specific factors and "asserted that it 'appropriately exercised its power to take account of conditions in New York' when it determined switching costs pursuant to TELRIC." NY Order ¶ 245 (quoting New York Commission Reply at 46). Those unique factors included the flawed nature of the evidence available to it, the impossibility of any more precise calibration of the rate in light of that evidence, the impossibility of easily correcting errors in existing cost studies, its own commitment to a new cost proceeding accompanied by a true-up of existing rates, the competitive effect of the rate it set, and the limited role switching rates were thought to play in UNE-P pricing in 1997.

After reviewing and assessing these factors, the NYPSC set a rate with the best information available to it at the time. It was this process, and not the rate itself in the abstract, that the FCC approved when it approved the New York application.[10/] NY Order ¶ 245. Such a

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10/ In this regard the FCC's approval of the New York switching rate is entirely different than the Commission's approval of the much lower Texas switching rates, rates which were adopted in Texas under an entirely different set of circumstances that produced a much more modulated and state-specific judgment cannot be imported wholesale into another state at another time without considering whether the same conditions pertain. Specifically, there is no record pursuant to which the FCC could "take account" of differences in "conditions" or available evidence in New York in 1997 and Massachusetts today that might lead the FCC to reach a reasoned conclusion about application of New York rates in Massachusetts. Among other things, there is no way on this record for the FCC to conclude that in Massachusetts, as in New York, "the switching prices at issue here . . . provid[e] ample margin to competitors even at their present level,"[11] one of the many factors that led the New York Commission to leave flawed rates in place temporarily in New York, and one of the many factors the FCC considered when it approved those rates in the context of the New York section 271 application.

Because acceptance of the New York switching rate involved such a contextual inquiry, importing one component of a New York rate package into a suite of Massachusetts rates without saying a word about why this substitution satisfies TELRIC principles in Massachusetts today obviously will not do. Instead, the Commission must consider whether the conditions that existed in New York in 1997 that led the Commission in its New York Order to conclude that the NYPSC undertook a "reasonable application of TELRIC principles" (NY Order ¶ 244) existed on

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reliable rate. Thus the FCC's approval of other states relying on Texas' switching rates, see KS-OK Order ¶ 82, cannot be understood as a wholesale endorsement of the view that any state's approved rates can be adopted by any other state at any other time without regard to how those rates were set or the reasons given for their approval.

11/ Order Instituting New Proceeding at 12.

October 13, 2000 in Massachusetts when Verizon adopted nearly identical rates. Even a cursory look at those conditions leads to the conclusion that they do not.

WorldCom extensively discussed these "different conditions" in its Reply Comments to Verizon's first Massachusetts application (see WorldCom 11/3/00 Reply Comments at 20-24), and summarizes them here:

In 1997, the NYPSC was forced to employ its own method to derive switching rates because the switching cost studies presented to it in the cost proceedings were "deeply flawed." The NYPSC found that its method was superior to other methods available and that the results reached were "within a range of reason" given the information "established by the record." Rehearing Order at 41. The NYPSC subsequently discovered that Verizon had misrepresented the true nature of switching discounts it received, but stated that given the method it had employed, it could not simply readjust the rates to account for this misrepresentation. Instead, the NYPSC convened a new rate proceeding to correct the errors. The NYPSC further justified its refusal to correct switching rates immediately by the fact that switching prices at issue were "much lower than New York Telephone's retail prices, providing ample margin to competitors even at their present level." Order Instituting New Proceeding at 12. This is the process the FCC later concluded produced reasonable rates in light of "conditions in New York." NY Order ¶ 245.

Verizon and the DTE had far more accurate information available to them in 2000 than New York did in 1997, and this information conclusively establishes that Massachusetts switching rates today are approximately double what a cost-based rate would be. For example:

- In calculating switching rates in 1997, the NYPSC was able to sample only the 33 switches described in Verizon's depreciation studies and, based on this information, determined that switches cost $193/line. By October 13, 2000, the DTE and Verizon had considerably more highly relevant information available. The Commission in its Universal Service docket in November 1999 analyzed a switch sample containing 1,085 observations, including many more recently purchased switches than those upon which the NYPSC had to rely, and determined that switches cost on average $117/line. The FCC's more complete and recent data was available to Verizon on October 13, 2000. Verizon's reliance on the outdated data relied upon by the NYPSC over three years earlier was irrational and unjustified. See Bryant Reply Decl. ¶¶ 13-18; Frentrup Decl. ¶¶ 10–16.

- Unlike the NYPSC in early 1997, in October 2000 Verizon had available to it more recent and more complete state commission studies of switch costs. Those studies point in the same direction as the FCC's data in the Universal Service proceeding – current New York switching rates are about twice as high as they should be and are far outside a range that a reasonable application of TELRIC principles would produce today. For example, Pennsylvania, Illinois and Michigan all adopted switching and transport rates that are effectively about one-half or less than the current New York rates,[12/] as did commissions in Texas and Kansas, in rate-setting approved by this Commission. These more detailed and reliable state commission studies and calculations were readily available to Verizon on October 13, 2000.

12/ Moreover, the New York blended switching and transport usage rate is nearly double what it is in Pennsylvania. See Proferes Decl. Att. 1, at 1.

- While the NYPSC could not make an instant correction to the Verizon cost study to correct the known errors, today there are identifiable errors in the existing Massachusetts cost study that can be corrected readily and that would result in true TELRIC-based rates. As WorldCom showed in its comments in the first Verizon-Massachusetts 271 proceeding, substituting forward-looking inputs into Verizon's cost models would reduce the pre-October 13, 2000 Massachusetts switching and transport rates to levels that are effectively TELRIC-compliant.[13/]

- Despite the fact that the NYPSC itself acknowledged that its existing rates are in need of revision because Verizon misrepresented the true nature of the discounts it receives, on October 13, 2000, just as the NYPSC was revisiting those very rates to replace them with more accurate ones, Verizon-MA adopted them without correcting those errors, and without agreeing to provide a true-up when cost-based rates finally are set.

- The switching and transport prices in New York, when considered in tandem with New York's loop rates and its retail rates, were intended to permit competition through UNE-P in New York. In contrast in Massachusetts, because loop rates are too high and retail rates are notably lower than in New York, use of the New York switching and transport rates makes widespread local competition impossible in Massachusetts. Moreover, this problem is

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13/ See WorldCom 10/16/00 Comments at 11-31. Specifically, correcting Verizon's numbers and assumptions would have the combined effect of reducing analog port rates by more than 77%, local switching usage rates in the range of 63 to 67%, trunk port rates by 79.76%, and common transport rates by 62.2%. See Bryant Decl. ¶ 2.

exacerbated by the fact that switching usage is higher than what was anticipated when New York rates were set.

Nor is there reason to believe that matters in Massachusetts will improve. The DTE has recently made clear in reply comments to Verizon's withdrawn application that it believes rates that are twice as high as currently in place in Massachusetts satisfy its particular understanding of "TELRIC." There is every reason to take the DTE at its word and assume that the rates it sets at the conclusion of its newly opened cost docket will be higher, not lower, than the rates currently in place. The DTE also has made clear that it will refuse to consider whether UNE prices permit competition.

In sum, while every indication in 1997 was that the New York switching and transport rates were within a "range of reason," every indication is that it is unreasonable to apply these soon-to-be abandoned rates in Massachusetts today, and that the rates are more than double what a reasonable TELRIC analysis would produce. Therefore, Verizon cannot rely on the New York rates merely because they were good enough for New York at the time they were approved there. At the same time, it is both unwilling and unable to defend the rates on any other ground. Its application should be denied because it has made no showing that its switching rates are cost-based, and the rates plainly are not cost-based.

2. <u>Verizon's Loop Rates Are Not TELRIC-Compliant</u>.

Verizon's loop rates are as undefended and indefensible as its switching rates. Those rates, and in particular the loop rates for the urban and suburban areas of the state containing over

90% of its households, are grossly in excess of the cost of the loop, taking them far outside a range that reasonable application of TELRIC principles would produce.

Although there are errors in the costing model employed by Verizon, the principal errors that infect the loop rates involve the use of inputs to that model that bear little or no relation to either forward-looking inputs, or to Verizon's actual practices. Specifically, five of the inputs used by Verizon – utilization factors, cost of capital, pole inputs, Network Interface Device (NID) costs, and cable costs – are unsupportable under any standard, and the combined effect of these inputs is to inflate loop rates in Massachusetts by 31% statewide.[14/] Not surprisingly, Verizon fails to provide any cost justification for its inflated loop rates either in these comments or in its previous ones. Instead, Verizon relies entirely on the DTE's unsupported conclusion that its loop rates do comply with TELRIC, and on its own false claim that loop rates in Massachusetts are on average comparable to loop rates in New York. See Verizon Supp. Filing at 40 (citing DTE Eval. at 212-13). In fact, Massachusetts loop rates are on average 85 cents higher than existing loop rates in New York (which like all other UNE rates, are current being reevaluated by the NYPSC) and over $1.60 higher in many urban and suburban areas.[15/]

14/ See Frentrup Decl. ¶ 17. This is most clear by comparing Verizon's inputs to the conservative inputs adopted by the FCC in its Synthesis Model. While WorldCom does not endorse all input or methodological aspects of the model, it does represent a conservative estimate of correct TELRIC inputs.

15/ The statewide average loop rate in Massachusetts is $15.66, but only $14.81 in New York. Meanwhile, loop rates in the urban and suburban areas of Massachusetts are $14.11 and $16.12, respectively, but only $12.49 in New York's "major cities" other than Manhattan.

i. Utilization factors

In calculating the cost of loops, Verizon applied utilization factors of 60% and 50% for fiber cable and conduit, respectively, in all density zones in Massachusetts, factors ranging from 60 to 70% for copper feeder cable across all zones, and factors of 65% in the rural zone and 40% in all other zones for copper distribution cable. See Frentrup Decl. ¶¶ 18, 20, 21. All of these utilization factors are unreasonably low and cause loop rates to be significantly inflated.

For example, for fiber cable and conduit, the cost models submitted in the Universal Service proceeding – including the BCPM Model sponsored by several ILECs and the Synthesis Model adopted by the Commission – assume a utilization factor of 100%, based on the fact that fiber cable can be "resized" simply by changing the electronics at the end of the fiber and, therefore, does not require additional fibers to accommodate growth or spares. Id. ¶¶ 19, 20. Meanwhile, for copper feeder cable, the Commission's Synthesis Model uses utilization factors ranging from 70 to 82.5%. Id. ¶ 24. In addition, for copper distribution cable, the Commission's Synthesis Model used factors of 75% in the metro and urban zones, 65% in the suburban zone, and 55% in the rural zones. Id. Substituting the Synthesis Model utilization factors in Verizon's loop cost model results in a 20% reduction in statewide average loop costs in Massachusetts, with the largest reductions in the urban and suburban zones. Id. ¶ 22.

ii. Cost of capital

Verizon assumed in its loop cost model the same 12.16% cost of capital that it assumed for switches and transport. As described in WorldCom's Comments in the first Verizon-Massachusetts application, Verizon's 12.16% cost of capital is heavily weighted to equity (76%

equity) and is inconsistent with the FCC-approved capital structure of 44.2% debt and 55.8% equity financing. See WorldCom 10/16/00 Comments at 22-23; Frentrup Decl. ¶ 28. Substituting the FCC's approved cost of capital of 11.25% for Verizon's cost of capital reduces statewide average loop costs by 8.7% in Massachusetts. By density zone, the reductions are as follows: 10.4% in the metro zone; 9.3% in the urban zone; 8.3% in the suburban zone; and 8.2% in the rural zone. See Frentrup Decl. ¶ 28.

iii. Pole inputs

A key component of loop prices is the cost of the poles that support aerial cables. Pole costs depend on both the number of poles used and the cost per pole. Verizon's assumptions as to number of poles and cost per pole are much higher than the assumptions made by the Commission in the Universal Service proceeding. For example, Verizon assumed in its cost model that poles would be relatively close together – 120 feet apart in the urban zone, 135 feet apart in the suburban zone, and 150 feet apart in the rural zone. Frentrup Decl. ¶ 23. These distances are much shorter than the pole distances assumed by the Commission in its Synthesis Model: 150 feet apart in the urban zone, 187.5 feet apart in the suburban zone, and 250 feet apart in the rural zone. Id. As a result, Verizon assumed that a greater number of poles would be needed over any distance. Verizon produces no evidence that the conditions in Massachusetts would justify the use of so many poles.

Meanwhile, Verizon assumed pole costs ranging from $538 per pole in the rural zone to $688 per pole in the urban zone. These costs are much higher than the costs assumed by the Commission in the Synthesis Model, where costs range from $393.60 to $424.15, depending on zone. Id. ¶ 24. Once again, there is no reason to believe that Verizon pays so much more for poles than anyone else. Substituting the Synthesis Model pole spacing length and price per pole for Verizon's assumptions results in a 3.0% reduction in statewide average loop costs in Massachusetts, with reductions of 1.2% in the urban zone, 3.9% in the suburban zone, and 4.9% in the rural zone. Id. ¶ 25.

iv. NID costs

Verizon also assumed a significantly higher cost per NID than the Commission assumed in its Synthesis Model. Frentrup Decl. ¶ 26. Substituting the Commission's NID cost for Verizon's much inflated NID cost results in a 1.8% reduction in statewide average loop costs in Massachusetts, with reductions of 1.7%, 2% and 1.8% in the urban, suburban and rural zones, respectively. Id. [16/]

v. Cost of cables

In its cost model, Verizon included 24 separate fiber and copper cable costs. Of these 24, all but six exceeded the equivalent cable costs assumed by the Commission in the Synthesis Model, with Verizon's fiber cable costs generally twice as high as the Commission's equivalent costs, and copper cable costs generally 25% higher. Id. ¶ 27. Substituting the Commission's much lower cable costs into Verizon's loop cost model lowers the statewide average costs of loops in Massachusetts by 1.7%, with reductions of 2.2% in the metro zone, 4.8% in the urban zone, and 5.3% in the rural zone, while increasing loop costs 0.7% in the suburban zone. Id.

16/ There was no change in loop costs in the metro zone because the buildings that predominate in this zone usually contain PBXs rather than NIDs. Id. ¶ 26 n.31.

B. Verizon's Current Rates Create An Impassible Barrier to Entry in Massachusetts' Residential Market.

As noted above, the Commission has made clear that whether UNE rates "permit efficient entry" is relevant to whether the rates are cost-based and result from reasonable application of TELRIC principles. Verizon's current rates in Massachusetts do not permit residential competition to develop. Verizon's new rates preclude widespread competition in Massachusetts' residential markets. See Bobeczko & Huffman Decl. ¶ 3. The revised rates result in a gross margin for CLECs of only $1.32 statewide, and anywhere from $4.38 to negative numbers in zones other than the metro zone (where only 2% of the state's population resides). Id. ¶¶ 5, 7. These figures do not account for CLECs' own internal costs of providing local service, which are greatly in excess of these margins provided in Massachusetts. Id. ¶ 6. As a result, the current rates in Massachusetts are not procompetitive and clearly do not permit efficient entry into Massachusetts. See Kelley Sup. Decl. ¶ 7. In the absence of any other explanation, and especially in a state like Massachusetts with high retail rates, this is powerful corroborative evidence that Massachusetts' UNE rates are not cost-based.

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

In addition to non-cost-based pricing, Verizon fails to satisfy checklist requirements because it fails to provide line splitting and fails to provide adequate working OSS.

A. Verizon Has Not Demonstrated That it Currently Enables Line Splitting on Nondiscriminatory Terms and Conditions.

This Commission has unequivocally established that, under requirements the Commission established in June 2000, "Bell Operating Companies [must] demonstrate, in the context of section 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line-split services." Line Sharing Reconsideration Order ¶ 20 n.36. Incumbent LECs have a current "obligation to permit competing carriers to engage in line splitting using the UNE-platform," and "[t]his obligation extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting." Id. ¶¶ 19, 18. This obligation is not a new one but was specifically acknowledged as early as the Texas 271 Order. Id. ¶ 19.[17/] To fulfill it,

> incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS

17/ See TX Order ¶ 325 (ILEC must "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.' . . . 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.") (emphasis added); accord KS-OK Order ¶ 220; see also 47 C.F.R. § 51.307.

The Massachusetts DTE also has ordered Verizon to provide line splitting. See DTE DSL Reconsideration Order at 52. The DTE correctly concluded that "from a technical and operational standpoint, there should be no difference between how CLECs provide UNE-P line splitting from how an ILEC provides its combined voice and data offering." Id. at 56. The DTE's Reconsideration Order required Verizon to file a compliance filing with the Department on January 29, 2001. Rather than acceding to the clear and uncontradicted line of precedent on line splitting and filing a tariff setting forth prices for placing line splitting orders, Verizon instead filed a motion for clarification with the DTE.

> necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. Thus, an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement.

Id. ¶ 20 (footnote omitted). Verizon is not entitled to a grace period to come into compliance with these requirements. "Because line splitting is an existing legal obligation, incumbent LECs must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place." Id. ¶ 20 n.36.

In this section 271 application, Verizon has failed to prove that as a practical matter it is able to handle line splitting orders today, let alone that it does so on a nondiscriminatory basis, supported by appropriate OSS. In its initial application, Verizon claimed only 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." LaCouture & Ruesterholz Decl. ¶ 186. This perfunctory mention of the availability of individual UNEs falls far short of a commitment to provide UNE-P line splitting on nondiscriminatory terms and conditions.

But even assuming that this indicates a promise to provide line splitting over the UNE-P, Verizon provided no evidence that it did or could as a practical matter provide UNE-P line splitting in a timely fashion and on nondiscriminatory terms. Verizon points to neither commercial experience in providing line splitting,[18] nor to third party testing of its provisioning

18/ This Commission has repeatedly recognized that "the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage." See, e.g., of this arrangement, nor to any performance measures to track line-splitting performance, either in Massachusetts or any other state. It does not even explain how it would go about honoring this commitment or how a UNE-P carrier could go about establishing a line-splitting arrangement. Consequently, Verizon has failed to meet its burden with respect to this checklist requirement. See WorldCom 10/16/00 Comments at 62-65; WorldCom 11/3/00 Reply Comments at 32-33.

In this supplemental application, despite recent orders by the FCC and the DTE, and CLEC allegations that it has no process in place for line splitting, Verizon remains silent on the subject, adding nothing to the insufficient proof in its initial application.[19] Indeed, rather than tariff a line splitting product and producing relevant business rules, Verizon's only response to the DTE's recent order requiring line splitting was pointless regulatory evasion – a motion to the DTE to "clarify" its abundantly clear order.

This is a serious competitive issue. "[R]esidential and small business customers . . . demand voice-compatible xDSL-based services," Line Sharing Order ¶ 35, and likewise, demand voice service that is compatible with these services. Verizon can today team with data carriers to provide a package of voice and high speed data services over the same line, and in fact indicates that in concert with its data affiliate, it is now providing voice and data services over a single loop to a substantial and growing number of customers. See Verizon Supp. Filing at 28;

NY Order ¶¶ 53-54.

19/ Verizon is now engaged in line splitting collaborative sessions in New York, but these too began only after Verizon lost its fight before that state's PSC to resist this obligation, and, in any event, as the Commission just recently stressed, BOCs should not use the absence of a fully electronic interface as a pretext to delay implementing line splitting. Line Sharing Reconsideration Order ¶ 20 n.36.

Lacouture & Ruesterholz Supp. Decl. ¶ 144. To remain competitive, if UNE pricing ever allowed entry, WorldCom and other voice providers would have to have the same ability.

Section 271 demands no less. "[W]here a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness." KS-OK Order ¶ 28.[20/] Here, line splitting for UNE-P users must be available on terms and conditions equivalent to line sharing, without creating discriminatory excessive costs and service disruption.[21/] See Line Sharing Reconsideration Order ¶ 22. This includes having ordering processes in place to permit this configuration to be ordered as easily as a line sharing configuration or a UNE-P configuration may be ordered for an existing voice circuit, including equivalent electronic OSS. See, e.g., KS-OK Order ¶ 105.

Consequently, as this Commission has made clear, Verizon must show that it has "a single-order process for competing carriers to add xDSL service to UNE-platform voice customers" just as it has a single order process for implementing line sharing, and that it "us[es]

20/ Likewise, "[f]or those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a 'meaningful opportunity to complete.'" KS-OK Order ¶ 28 (citations omitted). These standards are equally rigorous. NY Order ¶ 45.

21/ Provisioning stand-alone DSL is more expensive and less efficient than provisioning DSL over the same loop as voice service. See, e.g., Line Sharing Order ¶ 33. But the charges associated with establishing a line splitting arrangement should be no more than the cost-based charges assessed when establishing a line-sharing arrangement using a CLEC-owned splitter, as the two configurations are physically identical. And where an existing line share customer – one who has been receiving Verizon voice and data CLEC DSL – simply seeks to change his voice provider to a CLEC, even these charges should be absent, for this migration requires no physical work if the data CLEC does not change. Accord Line Sharing Reconsideration Order ¶ 22.

the same number of cross connections, and the same length of tie pairs for line splitting and line sharing arrangements." Line Sharing Reconsideration Order ¶ 21. Moreover, as this Commission has recognized, "no central office wiring changes are necessary in a conversion from line sharing to line splitting," so ILECs must offer "streamlined ordering processes for migrations between line sharing and line splitting that avoid voice and data service disruption and make use of the existing xDSL-capable loop." Id. ¶ 22. Until Verizon provides concrete proof of its ability to provide UNE-P line splitting meeting these nondiscrimination requirements, it plainly has not fulfilled its checklist obligations, and this application must be denied.[22/]

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

Verizon does not discuss OSS in its latest section 271 filing for Massachusetts. It relies entirely on the evidence it presented in its prior section 271 application. But as WorldCom demonstrated in response to the earlier Verizon-Massachusetts filing, that evidence is insufficient to show that Verizon's OSS is ready.

That evidence largely consisted of the results of the KPMG third-party test and Verizon's experience processing orders in New York. For the most part, Verizon did not rely on its

22/ Verizon devotes the bulk of its Supplemental Filing to explaining away sub-par performance relating to DSL. WorldCom will leave it to those immediately affected to address these claims. Part of the difficulty in evaluating Verizon's claim, however, is that Verizon's DSL and line-sharing performance are not adequately established under proper performance measurements. New line sharing and DSL metrics have only recently been incorporated into the carrier-to-carrier guidelines in Massachusetts, and performance reports under these metrics will not be reported under these metrics until the end of February. Whatever proof it attempts to put on the record here, Verizon's claims are not supported by "comprehensive and accurate reports of performance measures." TX Order ¶ 282.

commercial experience in Massachusetts because, as a result of excessive UNE prices, that experience was extremely limited. WorldCom 10/16/00 Comments at 39; Kwapniewski Decl. ¶¶ 6, 27; DOJ MA Eval. at 6. The evidence on which Verizon did rely, however, was an inadequate substitute for commercial experience in Massachusetts. The KPMG test found numerous defects in Verizon's OSS, and the test was flawed in any event. WorldCom 10/16/00 Comments at 41-42; Kwapniewski Decl. ¶¶ 43, 50-66; Kwapniewski Reply Decl. ¶ 4; DOJ MA Eval. at 21 n.74. As for Verizon's experience in New York, while relevant, it cannot be dispositive in assessing whether Verizon's Massachusetts OSS is ready, because there are important differences between OSS in the two states. WorldCom 10/16/00 Comments at 39-40; Kwapniewski Decl. ¶¶ 31-35.

In this regard, comparison to the facts analyzed in the KS-OK Order is instructive. Unlike in Kansas, Oklahoma and Texas, the Massachusetts and New York systems are not products of a common legacy company. Kwapniewski Decl. ¶ 33; KS-OK Order ¶ 112 n.312. Thus, it is far more likely that the back-end systems in New York and Massachusetts vary significantly than was true for the systems in SWBT's region. Certainly, Verizon has not provided the detailed explication of sameness that this Commission demanded in the Kansas and Oklahoma proceeding. KS-OK Order ¶¶ 110-113. Indeed, Verizon has acknowledged some key differences between its systems in New York and Massachusetts. Kwapniewski Decl. ¶¶ 33-35. In addition, unlike in Kansas and Oklahoma, KS-OK Order ¶ 107, no third party has attempted to compare Verizon's systems in New York and Massachusetts to attest to their similarities and differences. KPMG did not perform such a comparison when it separately analyzed the systems in New York and Massachusetts. Moreover, KPMG's initial findings of numerous flaws in

Verizon's Massachusetts systems (prior to correction of some of these flaws) suggests that those systems are not identical to New York systems that had not been shown to contain these same flaws.

Finally, Verizon cannot rely on its New York experience to prove that its Massachusetts OSS is ready because that experience, as well as Verizon's experience in Pennsylvania, shows that Verizon's OSS still has important defects. The problems that WorldCom reported in response to Verizon's prior filing continue to plague Verizon today. The technical assistance Verizon provides to CLECs remains inadequate. Verizon's documentation for new releases was error-filled in the past and Verizon has not been through a major release subsequently which would show that this has changed. Lichtenberg & Chapman Decl. ¶¶ 13-14; WorldCom 10/16/00 Comments at 44-45; Kwapniewski Decl. ¶¶ 73-98; WorldCom 11/3/00 Reply Comments at 37; Kwapniewski Reply Decl. ¶¶ 11-13. Verizon still has not even provided all of the necessary documentation related to ExpressTrak, its new back-end billing system. Lichtenberg & Chapman Decl. ¶ 15; WorldCom 10/16/00 Comments at 46; Kwapniewski Decl. ¶¶ 102-115; WorldCom 11/3/00 Reply Comments at 38-39; Kwapniewski Reply Decl. ¶ 16. And one recent software release, a minor December EDI release, contained an error that resulted in rejection of hundreds of orders. Lichtenberg & Chapman Decl. ¶ 14. Moreover, Verizon's help desk continues to take far too long to resolve trouble tickets, id. ¶¶ 11-12; WorldCom 10/16/00 Comments at 43-44; Kwapniewski Decl. ¶¶ 118-228; WorldCom 11/3/00 Reply Comments at 37; Kwapniewski Reply Decl. ¶ 117, Verizon's GUI continues to experience outages at rates beyond what the Commission deemed acceptable in its NY Order, Lichtenberg &

Chapman Decl. ¶ 16; WorldCom 10/16/00 Comments at 48-49; Kwapniewski Decl. ¶¶ 131-132, 136-138; WorldCom 11/3/00 Reply Comments at 40; Kwapniewski Reply Decl. ¶¶ 20-21, and Verizon also continues to transmit inaccurate line loss notifications, Lichtenberg & Chapman Decl. ¶ 16; Kwapniewski Decl. ¶¶ 147-151.

Verizon's problem with missing notifiers also continues. As the Commission is well aware, soon after Verizon gained section 271 authority in New York, Verizon had significant systemic problems that resulted in its failure to return tens of thousands of notifiers to CLECs. Although the Commission took steps to ensure that Verizon reduced this problem significantly, the problem never disappeared entirely. And in recent months the number of missing notifiers has again increased. As of January 22, 2001, WorldCom was missing 1,153 provisioning completion notices and 933 billing completion notices in New York. Some of the missing notifiers date back as far as June 2000. Lichtenberg & Chapman Decl. ¶ 5. Moreover, when WorldCom launched service in Pennsylvania in August 2000, the problem appeared there as well. WorldCom 10/16/00 Comments at 42-43; Kwapniewski Decl. ¶¶ 42-46. In Pennsylvania, as of January 22, 2001, WorldCom was missing 484 provisioning completion notices and 1,755 billing completion notices even though order volumes in Pennsylvania have not reached New York levels. Lichtenberg & Chapman Decl. ¶ 6. Furthermore, the number of missing notifiers in Pennsylvania has increased dramatically in recent days. As of February 2, WorldCom was missing 481 provisioning completion notices and 5,574 billing completion notices in Pennsylvania, an increase of almost 4000 billing completion notices in 11 days. Id.

What is most disturbing about the problem of missing notifiers is that it continues to exist more than a year after it was first identified – further demonstrating the inadequate technical assistance provided to CLECs. WorldCom must still provide lists of missing notifiers to Verizon every week, engage in weekly conference calls with Verizon to discuss the problem, and hope that Verizon reflows the missing notifiers. Because Verizon has never successfully identified the root cause and eliminated it despite repeated communication with WorldCom, WorldCom has been forced to request expedited dispute resolution by the New York Public Service Commission. Lichtenberg & Chapman Decl. ¶¶ 7-9.

There is every reason to expect that Verizon's missing notifier problem will also appear in Massachusetts if order volumes there ever increase – just as it has in the two other states in which CLECs began submitting a large number of orders. WorldCom 11/3/00 Reply Comments at 36; Kwapniewski Reply Decl. ¶ 9. Moreover, Verizon's failure to eliminate the problem after more than a year of effort points to a lack of commitment by Verizon as a whole that will almost certainly affect CLECs operating in Massachusetts. Verizon cannot be allowed to continue to place significant burdens on CLECs and their customers simply because Verizon has deemed the problem not worthy of its full attention.

Finally, since Verizon's first application for section 271 authorization, one additional problem with Verizon's OSS has become apparent: Verizon's process of jeopardy notification is defective. Verizon previously claimed that some of the notifiers WorldCom listed as missing were actually orders that Verizon had placed in jeopardy status. Because of the manual nature of the jeopardy process, Verizon either failed to transmit these jeopardies or WorldCom failed to become aware of them. Verizon promised this problem would be eliminated with the introduction of EDI transmission of jeopardies beginning in October 2000. Unfortunately, when WorldCom began receiving these EDI jeopardies, it realized that not all jeopardies were listed on the reports. Some of the jeopardies appearing on the manual reports were not showing up on the EDI transmissions for either New York or Pennsylvania. Lichtenberg & Chapman Decl. ¶¶ 17-18.

After numerous meetings to discuss the problem, Verizon finally informed WorldCom that the industry standard interfaces were not designed to transmit all of the different jeopardy codes used by Verizon. Thus, the list of jeopardies transmitted via EDI would necessarily be incomplete. Id. ¶ 18. This is inconsistent with Verizon's prior statements, however. As the New York Public Service Commission explained last July, "BA-NY. . . has proposed full implementation of electronic jeopardies by October 2000. . . . We expect that BA-NY will meet its commitment." Id. ¶ 17, Att. 1. Verizon has failed to meet this commitment even though Verizon could easily transmit all jeopardies via EDI. Id. ¶ 19.

This failure is causing significant problems for WorldCom. WorldCom must now rely on three different reports to obtain jeopardy information, and even this method is hardly fool proof. Verizon frequently is failing to make the manual jeopardy reports available at all. Id. ¶ 20. Prior to gaining section 271 authorization, Verizon must fix this and other defects in its OSS, must reduce its UNE prices and then must prove the readiness of its OSS through real commercial experience. Current experience in other states does not show Verizon's OSS to be ready.[23/]

IV. THE PUBLIC INTEREST WOULD NOT BE SERVED BY GRANTING THIS APPLICATION.

A. Massachusetts' UNE Pricing Erects an Impassable Barrier to Entry Into its Residential Local Market, and it Would Be Contrary to the Public Interest to Allow In-Region Long-Distance Entry With that Barrier in Place.

"Congress did not repeal the MFJ in order to allow checklist compliance alone to be sufficient to obtain in-region interLATA authority." MI Order ¶ 385. Instead, the Commission has consistently maintained that the "focus" of the public interest inquiry must be "the status of market-opening measures in the relevant local exchange market." Id. See also KS-OK Order ¶ 269 n.822 ("the public interest analysis may include consideration of 'whether approval . . . will foster competition in all relevant telecommunications markets'") (quoting LA II Order ¶ 361); NY Order ¶ 423 ("[We] must review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open."); TX Order ¶ 417 (same). Review of local conditions here should lead the Commission to deny this application as not consistent with the public interest.

23/ These are hardly Verizon's only checklist violations. As we noted in our Reply Comments filed in response to Verizon's withdrawn application, which are incorporated here by reference, Verizon refuses to pay reciprocal compensation for the exchange of calls with local Internet Service Providers ("ISPs"), even after the Commission's ruling removing such traffic from the Act's federal reciprocal compensation requirement was vacated by the federal court. This is a clear violation of the competitive checklist, and one that is having a substantial economic impact on WorldCom, as it continues to terminate calls over its network and receive no compensation.

In Massachusetts, as in other states, if competitors are not able to make use of BOC facilities, they will not be able to compete with the BOC for residential customers. Therefore, if prices for those elements are too high to permit effective competition, there will be no effective competition. WorldCom, along with AT&T, offered unrebutted proof in response to Verizon's initial application that Massachusetts' UNE prices are too high to permit effective competition. Verizon has chosen to re-file without correcting its competition-killing prices, leaving this insurmountable barrier to entry in place.

The most powerful evidence of the closed market is the state of residential competition in Massachusetts today. Verizon has not updated the record with new residential market share information after its first application – presumably it declined to do so because such evidence would prove only that its new prices have not led to any new residential competition. Thus, the fact remains that except for the minority of the state's population that can obtain cable telephony services, residential customers remained virtually consigned to Verizon's monopoly service. In particular, a statistically insignificant portion of the state's residences have UNE-P-based services. Presumably those few thousand that do have obtained the niche product for high-end users available from Z-Tel. In Massachusetts, because of UNE pricing, the UNE-platform is not a mass markets service entry vehicle.

As indicated above and in our initial comments, a comparison of Verizon's retail rates, its UNE rates and its true cost of providing service provides a full and complete explanation for the absence of residential competition in the state. UNE-P competition is unprofitable because elements are not available at cost-based rates, see Kelley Supp. Decl. ¶ 5, and companies provide service only when they believe they can do so profitably. The point is not, as Verizon would have it, that WorldCom chooses not to enter Massachusetts for its own business reasons. Congress obviously did not pass the 1996 Act to assure WorldCom or any other potential competitor a profitable business. But while the Act is not pro-competitor, it is most emphatically pro-competition. And here, UNE prices are so high that no broad-based residential competition is possible.

It is not in the public interest to allow Verizon to enter its in-region long-distance market when it retains bottleneck control over its local market for discretionary reasons entirely within its control. Such a step risks allowing Verizon to re-monopolize the residential long-distance market to the detriment of the state's residents. It also removes all remaining incentives for Verizon to open its local market. It is the central purpose of section 271 to prevent entry before these barriers are removed and the incentives have worked. See supra pp. 1-9.

Nor has Verizon presented one scintilla of evidence that there are special facts here which would suggest that the public interest would be benefitted by a grant even though this barrier to entry remains. Thus there is no suggestion that there is some reason other than price that prevents competition. Competitors are not boycotting the state. There is no suggestion that unusual retail rates or subsidies are excluding competitors – to the contrary the state's retail rates are high and no commenter has suggested that they make competition impossible. The unrebutted evidence is that if prices were reduced to cost-based levels, competition would flourish. See Proferes Decl. ¶ 22.

Above-cost pricing is a barrier to entry just as is unworkable OSS or state exclusive franchise laws. Just as the Commission properly would deny this application if Massachusetts by law prohibited most residential competition, so it should deny this application when Massachusetts has tariffed pricing that has exactly the same effect. The Commission should deny this application and reject Verizon's assertion that the existence of barriers to entry to its local market is "utterly irrelevant" to its application for in-region entry.

B. Verizon Has Not Agreed to Put Into Place Adequate Measures to Assure Against Backsliding in the Provisioning of Advanced Services UNEs.

The Commission has repeatedly made clear that it will not grant a section 271 application unless the BOC demonstrates that it can be relied on to remain in compliance with section 271 in the future. See MI Order ¶ 22; NY Order ¶ 429; LA II Order ¶¶ 363-364. This application should be denied for the additional reason that Verizon here has not made adequate commitments and safeguards to counter its natural incentive to harm its competitors in the advanced services market once it gains long-distance entry.

Verizon asserts that it provides advanced services to CLECs in a non-discriminatory manner and that there are sufficient backstops to prevent future backsliding. But Verizon then proceeds to undercut the primary basis for this assertion: it at once relies on the existence of a separate data affiliate to make these claims, and then indicates that it is not committed to retaining its separate data affiliate in the future. Without such assurance, there is no basis for concluding that Verizon's future performance will be acceptable.

Verizon initially established a separate data affiliate in order to fulfill the conditions established by the Commission in the Bell Atlantic/GTE Merger Agreement. In discussing the analogous conditions imposed as part of the SWBT/Ameritech Merger, the Commission emphasized that "establishment of a 'fully operational' separate affiliate for advanced services 'may provide significant evidence' of nondiscrimination.'" TX Order ¶ 282 (quoting NY Order ¶ 331). This is because, according to the Commission, the safeguards applicable to an affiliate:

> will make engaging in anticompetitive misconduct more difficult. In addition, the separate affiliate condition will counterbalance Bell Atlantic/GTE's increased incentive to degrade services and facilities furnished to competitors by making such behavior readily apparent to the Commission and the public.

GTE/Bell Atlantic Order ¶ 260 (footnote omitted). Thus, according to the Commission, the existence of a separate data affiliate both makes discrimination more difficult and makes discrimination more apparent.

Verizon therefore relies on its establishment of a separate data affiliate to demonstrate that it does not currently discriminate in the provision of advanced services and that its performance will not deteriorate after gaining section 271 approval. Verizon Supp. Filing at 36. Verizon explains that its data affiliate has separate officers, directors, facilities and equipment from those of Verizon itself. Dowell Supp. Decl. ¶¶ 5, 7. Verizon also repeatedly emphasizes that its performance in providing advanced services to CLECs is as good or better than its performance in providing such services to its data affiliate. Verizon Supp. Filing at 30-33.

Yet at the same time it trumpets its data affiliate as proof that it could not possibly harm its advanced services competitors post-entry, Verizon states that it is not committed to maintaining a separate data affiliate in the future. Verizon explains that if the recent D.C. Circuit decision in Association of Communications Enterprises (ASCEND) v. FCC, No. 99-1441, 2001 U.S. App. LEXIS 217 (D.C. Cir. Jan. 9, 2001), becomes final and non-appealable, it may eliminate its separate data affiliate altogether.[24/]

While Verizon may have the right under its merger order to eliminate its separate data affiliate after the ASCEND decision becomes final, it cannot threaten to do so while simultaneously relying on its affiliate as proof that it cannot engage in backsliding after this application is granted. Without the proof of non-discriminatory performance the data affiliate provides, Verizon's evidence of such performance is patently inadequate. For a number of key performance areas, Verizon's only evidence of non-discrimination is the comparison it draws between its performance for CLECs and for its affiliate. See Verizon Supp. Filing at 30-33.[25/] Elimination of the separate data affiliate will undermine the conditions for monitoring Verizon's current performance, thus reducing any assurance that current performance levels will continue or improve in the future.

Elimination of the separate data affiliate will eliminate the mechanism that helps make discriminatory performance "readily apparent." GTE/Bell Atlantic Order ¶ 261. But it is vitally

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24/ Verizon Supp. Filing at 36 n.26. In Association of Communications Enterprises, the D.C. Circuit concluded that an advanced services separate affiliate is a successor or assign to the BOC.

25/ Verizon asserts that even if it eliminates its separate data affiliate, it will be required to provide advanced services through a separate division. Verizon Supp. Filing at 36 n.26. But a separate division is not subject to many of the procedural safeguards that help ensure that transactions between a separate affiliate and an ILEC are at arms length and limit the ability of ILEC employees to discriminate against CLECs.

important that discriminatory performance be readily apparent in order to prevent future backsliding.[26]

26/ In addition to Verizon's failure to commit to maintaining its data affiliate, the approved Massachusetts PAP continues to suffer from the major flaws identified by WorldCom, the DOJ, and the Massachusetts Attorney General in their comments on Verizon's initial application, and so fails adequately to protect against backsliding. See WorldCom 11/3/00 Reply Comments at 26 and nn.16 & 17. On January 30, 2000, two weeks after filing its supplemental application with this Commission, Verizon filed a proposed revised PAP with the DTE, which the DTE has not yet approved. This Commission should adhere to its complete-when-filed rule and disregard this filing, which is not yet an enforceable change. Cf. KS-OK Order ¶ 23 (consideration of revisions recently made but already in effect "differs from consideration of promises of future action, which may or may not actually take place"); id. ¶ 26 ("we believe it would be rare for other parties to satisfy the high bar set here [for waiver of the complete-when-filed rule] in future applications").

In any event, this new PAP is still inadequate. While it incorporates the DSL, line sharing, and EDI metrics from the New York PAP, and provides some additional remedies, it also reallocates monies within the PAP so as to lower the amount of money available under the UNE and resale Modes of Entry. The amount and allocation of remedies are not sufficient to provide adequate deterrence, and in fact do not comply with the DTE's prior order to "increase the amount of bill credits available under the PAP to account for the DSL metrics." DTE PAP Reconsideration Order at 6. Unless adequate additional money is allocated, these new measures will dilute the deterrent value of the PAP by spreading the existing money so thin as to provide no incentive at all. See WorldCom 10/16/00 Comments at 59; see KS-OK Order ¶ 273 (to discourage anti-competitive behavior, PAP must set "damages and penalties at a level above the simple cost of doing business."); cf. KS-OK Order ¶ 274 n.838 ("[A]n overall liability amount would be meaningless if there is no likelihood that payments would approach this amount, even in instances of widespread performance failure."). The revised PAP also fails to address most other issues raised in WorldCom's first-round comments. See, e.g. WorldCom 10/16/00 Comments at 56 (no binding time line for resolution of waiver requests); id. at 51-52 (no reporting of Achieved Flow Through); id. at 55 (unavailability of contract remedies).

CONCLUSION

Verizon Massachusetts' application should be denied.

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February 6, 2001

CERTIFICATE OF SERVICE

I, Mark D. Schneider, hereby certify that I have this 6th day of February, 2001, caused a true copy of Comments of WORLDCOM, Inc. and Appendices to be served on the parties listed below:

Josh Walls
Department of Justice
Telecommunications Task Force
Antitrust Division, Suite 8000
1401 H Street, N.W.
Washington, D.C. 20530
(Via Hand Delivery)

Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(Via Hand Delivery)

Henk Brands
Kellogg, Huber, Hansen, Todd
& Evans P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(Via Hand Delivery & Email)

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
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Thomas Reilly
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200 Portland Street
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Cathy Carpino
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One South Station
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ITS, Inc.
The Portals
445 12th Street, S.W.
Washington, D.C. 20554
(Via Hand Delivery)

Mark D. Schneider

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