

April 9, 2001

Michael K. Powell, Chairman
Federal Communications Commission
Portals II, 445 12th Street S.W., 8th Floor
Washington, DC 20554

re: EX PARTE - In the Matter of Application by Verizon New England, Inc., for
Authorization Under Section 271 of the Communications Act To Provide In-Region,
InterLATA Service in the State of Massachusetts (CC Docket No. 01-9).

Dear Chairman Powell:

I am writing to reiterate my earlier request that the Federal Communications Commission (“Commission”) withhold approval of the Supplemental Application (“Supplemental Application”) filed on January 16, 2001 by Verizon New England, Inc., et al. (collectively, “Verizon” or “the Company”), for authority to provide in-region interLATA service in the Commonwealth of Massachusetts pursuant to Section 271 of the Telecommunications Act of 1996. In my previous comments I focused on digital subscriber line (“DSL”) and unbundled network element (“UNE”) issues. I take this opportunity to emphasize that Verizon’s UNE switching prices are not based on TELRIC principles. Additionally, I write to urge the Commission to withhold approval because there is clear evidence that Verizon does not provision its special access service (“SAS”) circuits to competitors on a neutral and nondiscriminatory basis.

In the initial comments I filed in October 2000, I argued against approval because unrebutted evidence suggested that Verizon’s UNE switching prices were excessive, not TELRIC-based, and create a price squeeze that served as a barrier to entry for competitors. Verizon has done little to alter that conclusion. Instead of adopting permanent UNE rates that are demonstrably TELRIC-based (or, at a minimum, using interim UNE rates subject to refund), Verizon continues to rely on New York-based UNE prices that were not investigated by the Massachusetts Department of Telecommunications and Energy (“DTE”), do not reflect Massachusetts costs, and which are now the subject of an ongoing New York investigation. Moreover, recent ex parte presentations demonstrate that Verizon’s Massachusetts UNE switching rate (roughly \$11) is significantly higher than that charged by Verizon in Pennsylvania (\$5), the price calculated according to the Commission’s Universal Service Model (\$6.00), and

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the price charged by SBC in Texas (\$6.50).¹ Given that the switches used in these states appear to be fairly standard in design and sold by the same vendors, there is simply no logical basis to conclude that these prices are TELRIC-based or, consequently, that Verizon has complied with its UNE pricing obligations under Checklist Item Number 2 of the 14-point checklist. Granting Verizon's Section 271 application in these circumstances will nullify the Commission's UNE pricing principles that supported the New York, Texas, Kansas, and Oklahoma Section 271 reviews.

In addition, I urge you to deny Verizon's Supplemental Application because the Company has not shown that it provisions special access services ("SAS") on a nondiscriminatory basis. To provide high speed, large capacity telephone service, competitive local exchange carriers and interexchange carriers require SAS circuits, such as dedicated DS1 and DS3 level circuits, provided under Verizon's federal and state access tariffs. SAS circuits are instrumental to the delivery of voice and data at high speeds over the Internet, enhancing greatly the efficiency of communication while reducing costs for consumers. In the evolving telecommunications market, SAS is as crucial to meeting commercial needs as plain old telephone service ("POTS") was in the past.

¹ WorldCom ex parte, March 23, 2001 (CC Docket 01-9).

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While the Commission has said that challenges regarding an applicant's SAS performance should be presented to the Commission under its Section 208 complaint process, rather than in a Section 271 review (See, *e.g.*, SBC Texas 271 Approval Order, CC Docket 00-65, at ¶ 335, June 30, 2000), I urge the Commission to examine the SAS complaints filed in this docket. Part of the public interest analysis under Section 271 is to determine "whether the requested authorization would be consistent with the public interest, convenience, and necessity."² Evidence that Verizon is hindering competition through delayed provisioning of SAS circuits falls squarely under the categories of "relevant factors [that] exist that would frustrate the congressional intent that markets be open" and/or "unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications."³ These are the elements the Commission has explained should be considered under the public interest standard. Carriers have already submitted claims of discriminatory SAS provisioning by Verizon to both the Commission and to the Massachusetts Department of Telecommunications and Energy ("DTE"), and the DTE recently opened a docket to investigate complaints about Verizon's intrastate special access services.⁴

For all these reasons, I respectfully urge the Commission to withhold approval of Verizon's supplemental application for authority to enter the Massachusetts market for long distance services.

² SBC Kansas and Oklahoma Approval Order, CC Docket 00-217, at ¶ 266. The public interest requirement is contained in 47 U.S.C. § 271(d)(3)(C).

³ *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, January 22, 2001, at ¶ 267.

⁴ See, *e.g.*, Global Crossing Comments, Affidavit of Diane Peters, at 3-4, CC Docket 01-9 (February 6, 2001) (Global Crossing states that it purchases SAS circuits through Verizon's interstate access tariffs, which resulted in higher call blockage rates, increased costs to terminate calls through alternate vendors and lost revenues caused by Verizon's delays in delivering service). See also the DTE's order opening its SAS investigation (D.T.E. 01-34, *Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc. d/b/a Verizon Massachusetts' provision of Special Access Services*, Vote and Order to Open Investigation (March 14, 2001) ("These problems include problems providing high capacity trunks, lack of SONET interoffice facilities, and lack of switch ports ... According to the complaints, Verizon's delays in provisioning special access services, coupled with maintenance and repair problems, are causing severe customer impacts with adverse business consequences."), at 1-2.

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Sincerely,

Thomas F. Reilly

Attorney General for the
Commonwealth of Massachusetts