

groups exceeding this blocking standard is small. Specifically, in the aggregate, less than two percent<sup>588</sup> of competitive LEC trunk groups exceeded the blocking standard due to insufficient trunking from September through December 2000. Stated another way, Verizon met the trunk blocking standard approximately 98 percent of the time during these four months. Moreover, the difference between the percentage of competitive LEC trunk groups and the percentage of Verizon trunk groups exceeding the blocking standard is also small, with a difference of only 1.64 percentage points between the competitive LEC and Verizon four-month averages for September through December 2000.<sup>589</sup> Second, as discussed below, other data used to evaluate Verizon's interconnection trunking performance demonstrate, on their face, that Verizon is providing interconnection in a manner that complies with this checklist item.<sup>590</sup> Finally we note that no commenter has complained about trunk blockage in this proceeding.<sup>591</sup> If the rate of competitive LEC trunks exceeding the blocking standard were competitively significant, we would expect the commenting parties to address this issue, particularly when competitive LECs have been provided with carrier-specific data showing their individual rates for trunk groups exceeding the blocking standard.

186. *Interconnection Timeliness.* Other aspects of Verizon's performance data further indicate it is providing nondiscriminatory interconnection trunking in Massachusetts. In previous section 271 applications, the Commission has evaluated missed installation appointments and average installation intervals to gauge trunk provisioning timeliness.<sup>592</sup> Verizon demonstrates satisfactory performance in both of these areas in Massachusetts. Verizon's performance data concerning the percentage of missed installation appointments for provisioning of interconnection trunks show that, in recent months, Verizon's provisioning performance for competitors in Massachusetts was as good as that provided to interexchange

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<sup>588</sup> This calculation includes an adjusted figure of 2.11 percent for November. The percentage of competitive LEC trunk groups exceeding the blocking standard rose in November to 4.21 percent. Verizon has explained that this spike in the rate was due to a brief equipment failure that affected six of the twelve competitive LEC final trunk groups that exceeded the design threshold in November. Excluding those trunk groups, only six competitive LEC trunk groups exceeded the design threshold because of insufficient trunking, or 2.11 percent. See Letter from Dee May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 at 1 (filed March 27, 2001) (Verizon March 27 *Ex Parte* Letter).

<sup>589</sup> This difference was calculated using the adjusted figure for November discussed *supra* n.588. The proportion of final trunk groups that were blocked due to insufficient trunking for the period September through December was 1.94 percent for dedicated competitive LEC interconnection trunk groups and 0.30 percent for Verizon common final trunk groups.

<sup>590</sup> See *infra* paras. 186-192.

<sup>591</sup> RNK briefly notes that it has experienced inward trunk blockage, but supports Verizon's application for section 271 authorization in Massachusetts. See RNK Massachusetts I Comments at 2-3.

<sup>592</sup> Pursuant to the metrics approved by the Massachusetts Department, Verizon's interconnection trunking performance for competitive LECs is measured against its performance for interexchange carriers (except for trunk blockage, which is measured against Verizon common final trunks). See, e.g., Verizon Massachusetts II Application App. B, Vol. 1, Tab B, at 53, 82.

carriers. In Massachusetts, from September to December 2000 in the aggregate, Verizon-caused missed trunk installations averaged 4.44 percent for competitive LECs, and 4.43 percent for interexchange carriers.<sup>593</sup> These figures indicate that, in general, Verizon provided parity or better performance for competitive LECs in Massachusetts for trunk installations.

187. *Average Installation Intervals.* Verizon's performance data measuring the average time for installation of interconnection trunks in Massachusetts also show that Verizon's installation performance for competitors was as good as or better than that provided to interexchange carriers. For example, Verizon's performance data show that the average time to install interconnection trunks for competitive LECs for the months of September through December 2000 was 27 days, and 49 days for interexchange carriers.<sup>594</sup>

188. *Issues Raised by Commenting Parties.* CompTel, on behalf of ICG, and Winstar raise issues concerning Verizon's interconnection trunking performance. In particular, they have raised provisioning timeliness as an issue. Winstar also raises issues concerning service outages on interconnection trunks, and argues that the current performance data do not accurately reflect Verizon's performance.

189. Winstar alleges that Verizon caused ordering and provisioning delays and provided untimely or otherwise inadequate FOCs for interconnection trunks. We do not find these allegations persuasive. As an initial matter, we note that a number of the provisioning delays cited by Winstar appear to have occurred in the first half of 2000 or earlier.<sup>595</sup> Accordingly, those contentions have little bearing on Verizon's performance in recent months and its current checklist compliance. Moreover, we find that those allegations, as well as Winstar's claims relating to more recent performance,<sup>596</sup> are not supported by affidavit. Given the fact that Verizon's responses to these issues *are* supported by affidavit and are much more factually detailed, we find that Verizon satisfactorily refutes Winstar's claims.<sup>597</sup> Winstar also

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<sup>593</sup> These four-month averages are weighted to reflect the number of trunk installation appointments each month. Verizon's rates of missed trunk installation appointments for competitive LECs in Massachusetts were 9.3 percent, 6.0 percent, 2.3 percent, and 0.0 percent for the months of September through December, respectively. Verizon's rates of missed trunk installation appointments for interexchange carriers were 12.0 percent, 7.0 percent, 2.9 percent, and 0.0 percent respectively for the same four months. *See* PR 4-01 (Percent Missed Appointments – Trunks).

<sup>594</sup> *See* PR 2-09 (Average Completed Interval – Trunks). The average completed installation interval for trunks for competitive LECs for September was 27 days. There were no orders shown for this measure for competitive LECs for October through December. The average monthly installation intervals for interexchange carriers for September through December were approximately 54, 40, 21, and 66 days, respectively.

<sup>595</sup> *See* Winstar Massachusetts I Comments at 4.

<sup>596</sup> For example, Winstar raises issues concerning the provision of 64 Kbps Clear Channel interconnection trunks and two-way trunks.

<sup>597</sup> *See* Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at paras. 12-13, 23; Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at paras. 25-29; Verizon Massachusetts II Lacouture/Ruesterholz Reply Decl. at paras. 177, 180, 183-85.

cites to the provisioning delays raised by other carriers as evidence of endemic provisioning problems. Except for ICG's claims, as discussed below, other carriers' claims were only raised before the Massachusetts Department and not in this proceeding, and have now been resolved.<sup>598</sup>

190. ICG's allegations<sup>599</sup> concerning delays in trunk provisioning likewise do not warrant a finding of noncompliance with checklist item 1. Verizon states that the trunks requested by ICG carry traffic from Verizon to ICG and that the number of trunks requested was not justified by existing or reasonably anticipated traffic,<sup>600</sup> and that the existing trunks were under-utilized, with only a 33 percent overall utilization level.<sup>601</sup> We find the detailed information Verizon provided to support its explanation persuasive. Verizon states that the delays in the provisioning of entrance facilities cited by ICG were actually caused by ICG.<sup>602</sup> ICG provided no response to Verizon's explanations. In any event, to the extent that there may have been delays in the provisioning of interconnection trunks to ICG, this appears to have been an isolated situation rather than evidence of a widespread problem.<sup>603</sup>

191. Nor do Winstar's claims of service outages on interconnection trunks or maintenance and repair problems persuade us that Verizon is not currently in compliance with checklist item 1. The outage primarily relied on by Winstar in support of these contentions occurred in September 1999. Thus, it is not relevant to Verizon's recent or current performance for purposes of the instant proceeding. The other outages referred to by Winstar do not involve interconnection trunking provided by Verizon in Massachusetts.<sup>604</sup> We also note that none of the other commenting parties raise concerns relating to service outages.

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<sup>598</sup> Winstar also cites claims of trunk provisioning delays made by AT&T, NECLEC and RNK in the proceedings before the Massachusetts Department. AT&T has not raised these claims in its filings before the Commission in either the Massachusetts I or II Applications. See Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at para. 24. NECLEC and RNK both stated that they had experienced provisioning problems, but concluded that Verizon was making improvements and filed in support of the Massachusetts I Application. See NECLEC Massachusetts I Comments at 2; RNK Massachusetts I Comments at 2-3.

<sup>599</sup> See CompTel Massachusetts I Comments at 15-18 and Attach. (Washington Affidavit).

<sup>600</sup> Verizon states that ICG forecasted that Verizon should provision over 24,000 trunks to deliver traffic from Verizon to ICG (the equivalent of 120 trunks from Verizon to ICG for every one trunk from ICG to Verizon). Verizon further states that the number of trunks ICG requested amounts to nearly 8 percent of all the local interconnection trunks Verizon installed during the last four and a half years to serve all competitive LECs, and is more trunks than Verizon typically installs for all competitive LECs in a two-month period. See Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at paras. 27-31.

<sup>601</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 36-45.

<sup>602</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at paras. 42-44.

<sup>603</sup> The record does not contain persuasive evidence of significant ongoing trunk provisioning delays. An isolated example of poor performance by a BOC, absent special circumstances, does not warrant denial of a section 271 application if the performance data do not indicate a broader problem. See, e.g., *SWBT Kansas/Oklahoma Order* at para. 138.

<sup>604</sup> See Verizon Massachusetts II Lacouture/Ruesterholz Reply Decl. at paras. 174-75.

192. Winstar also alleges that Verizon engages in practices designed to distort the performance data and conceal its poor provisioning and maintenance and repair of interconnection trunking.<sup>605</sup> These claims by Winstar are not supported by affidavits, and, based on the current record, we are unable to determine the extent to which Winstar's claims are true.<sup>606</sup> We also note that no other carrier raises similar claims in this proceeding. We emphasize that, as an initial matter, competitive LECs should raise issues such as this concerning the performance metrics in the relevant state proceedings where they can be investigated and properly addressed. Further, in the future, if competitive LECs allege that poor performance is not being captured by the state-approved performance measures, then competitive LECs should provide evidence, such as reliable performance data, along with a showing of why the BOC is responsible for the performance.<sup>607</sup>

193. Finally, we reject the contentions of Winstar, CompTel and Global Crossing involving the provision of interexchange access services. The Commission has held in prior orders that checklist compliance is not intended to encompass the provision of these services.<sup>608</sup>

## 2. Collocation

194. Verizon demonstrates that its collocation offerings in Massachusetts satisfy the requirements of sections 251 and 271 of the Act. Verizon provides physical and virtual collocation through state-approved tariffs. Verizon's Massachusetts physical and virtual collocation tariffs are virtually identical to the New York physical and virtual collocation tariffs, which the Commission found to satisfy checklist item 1 in the *Bell Atlantic New York Order*.<sup>609</sup> In its application, Verizon states that shared, cageless, and adjacent collocation options are available in Massachusetts, and that it has taken other steps necessary to implement the

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<sup>605</sup> See Winstar Massachusetts II Reply at 4-13.

<sup>606</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 22; Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at para. 33.

<sup>607</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18383-84, para. 69.

<sup>608</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340; *SWBT Texas Order*, 15 FCC Rcd at 18520, para. 335. The provisioning of special access services is not relevant for the purposes of determining section 271 checklist compliance. Therefore, although Winstar, Global Crossing, and CompTel filed comments alleging Verizon's inadequate performance in providing special access, this is not a factor in determining Verizon's compliance with checklist item 1. See Winstar Massachusetts I Comments at 12; Global Crossing Massachusetts I Comments at 2-5; CompTel Massachusetts I Comments at 2-3.

<sup>609</sup> See Verizon Massachusetts I Application at 12, 14. Verizon states that it has provided 1,700 collocation arrangements in central offices that serve 96 percent of Verizon's business access lines and 94.5 percent of its residential lines in Massachusetts. See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 34; Verizon Massachusetts II Reply at 44.

collocation requirements contained in the *Advanced Services First Report and Order* and the *Collocation Reconsideration Order*.<sup>610</sup>

195. Verizon's collocation performance data generally indicate that Verizon processed collocation requests and provisioned collocation arrangements in accordance with the time frames established by the Massachusetts Department.<sup>611</sup> Verizon's performance data show 100 percent on-time responses to requests for physical and virtual collocation for the period September through December 2000.<sup>612</sup> Although Verizon's performance data for average on-time completion for both new and augmented orders of physical collocation demonstrate some facial disparities, when adjusted for the time lost during the August strike, Verizon's performance is at or near the established benchmarks.<sup>613</sup> We conclude that this overall level of on-time performance for completion of physical collocation arrangements satisfies Verizon's section 271 obligations and allows an efficient competitor a meaningful opportunity to compete.

196. Contrary to the assertions made by ALTS,<sup>614</sup> we conclude that Verizon has demonstrated that it has a concrete and specific legal obligation to provide remote terminal collocation consistent with the *UNE Remand Order*.<sup>615</sup> We are also not persuaded by Rhythms' and ALTS' contentions<sup>616</sup> that Verizon attempts to limit the Remote Terminal Equipment

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<sup>610</sup> See Verizon Massachusetts I Application at 14, n.16; Verizon Massachusetts I Reply at 31-32; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) (*Advanced Services First Report and Order*), *aff'd in part and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), *on recon., Collocation Reconsideration Order*, 15 FCC Rcd at 17806.

<sup>611</sup> The timeframe is generally 76 business days. This time period can be extended up to 15 days in the case of complex orders. See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 37.

<sup>612</sup> See NP 2-01; Verizon Massachusetts II Lacouture/Ruesterholz Reply Decl. Attach. A.

<sup>613</sup> We find that the adjustments made by Verizon to account for the August strike are reasonable, and that the adjusted data present a more accurate picture of Verizon's performance in this area. The data were adjusted by extending the due dates for collocation arrangements by fifteen business days to offset the time lost during the strike. See Verizon Massachusetts II Lacouture/Ruesterholz Decl. at para. 182. The adjustment here is very simple and does not involve complex statistical adjustments that are difficult to verify and analyze.

In the case of new orders for physical collocation, the strike-adjusted data show an average 95.18 percent on-time completion rate for new physical collocation requests for the period September to November 2000. See Verizon Massachusetts II Lacouture/Ruesterholz Decl. Attach. UU at 3. The strike-adjusted data also show an average rate of 90.64 percent on-time completions for physical collocation augmentations for the period September to November 2000. See *id.* Strike-adjusted data for December show an on-time completion rate of 100 percent for new physical collocation arrangements and an on-time completion rate of 98.7 percent for augmentations. See Verizon Massachusetts II Lacouture/Ruesterholz Decl. at 71. The data for January 2001 show a return to pre-strike performance, with Verizon completing 95 percent of new physical collocation arrangements on time and 95.52 percent of augments on time, without any adjustment. See *id.* at para. 187.

<sup>614</sup> See ALTS Massachusetts I Comments at 16-17.

<sup>615</sup> See Verizon Massachusetts I Reply at 31-32; Verizon Massachusetts II Lacouture/Ruesterholz Decl. at 16.

<sup>616</sup> See Rhythms Massachusetts I Comments at 12; ALTS Massachusetts I Comments at 16-17.

Enclosures (RTEEs) at which it will provide remote terminal collocation through its definition of RTEEs.<sup>617</sup> In particular, we accept Verizon's explanation that the definition of RTEEs is intended to expand the remote locations encompassed by the definition, not limit them.<sup>618</sup> We also conclude that Verizon is not required to permit in-place conversion of virtual to physical collocation in Massachusetts for purposes of section 271<sup>619</sup> despite the contentions of Rhythms and ALTS.<sup>620</sup> Nor do we believe that the concern raised by ALTS about the ability of competitive LECs to obtain POTS lines in their collocation cages raises issues of section 271 compliance.<sup>621</sup>

### 3. Technically Feasible Points of Interconnection

197. We conclude that Verizon provides interconnection at all technically feasible points, including a single point of interconnection,<sup>622</sup> and therefore demonstrates compliance with the checklist item. Verizon demonstrates that it has state-approved interconnection agreements that set forth readily available points of interconnection, and provide a process for competitive LECs to request interconnection at additional, technically feasible points.<sup>623</sup> Verizon further shows that, for purposes of interconnection to exchange local traffic, a competitive LEC may

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<sup>617</sup> See Verizon Massachusetts I Application at 14-15 n.16.

<sup>618</sup> Verizon specifically states that Rhythms' concern "that the CRTEE tariff precludes [competing LECs] from collocating in manholes or other non-building structures reflects a misinterpretation of the tariff." Verizon Massachusetts I Reply at 32 n.43. Verizon's remote collocation tariff states that a CRTEE "provides an arrangement in which [competing LEC] equipment can be placed in Telephone Company remote terminal equipment enclosures (RTEEs)." D.T.E. Tariff No. 17, Part E, Section 11.1.1.A.1.1.A. The language complained of by Rhythms merely expands the scope of the offering to additional enclosures not owned by Verizon. As Verizon states, "[a]lthough the tariff indicates that remote equipment enclosures *include* enclosures that are 'in buildings' not owned by Verizon, it does not limit remote collocation to *only* such 'in-building' structures." Verizon Massachusetts I Reply at 32 n.43 (emphasis in original). Moreover, Verizon states "that [competing] LECs are free to remotely collocate in non-building structures as well where space is available." *Id.*; Verizon Massachusetts II Lacouture/Ruesterholz Decl. at para. 139.

<sup>619</sup> Neither the Commission's collocation rules nor the requirements adopted by Massachusetts require in-place conversion from virtual to physical collocation. See Verizon Massachusetts I Reply at 30-31.

<sup>620</sup> See Rhythms Massachusetts I Comments at 15-18; ALTS Massachusetts I Comments at 14-16.

<sup>621</sup> See ALTS Massachusetts I Comments Attach. (Landers Decl.) at 7 (stating that competitive LECs may want POTS lines in their collocation space to facilitate communications by their technicians since Verizon bars the use of mobile telephones in these areas).

<sup>622</sup> See Verizon Massachusetts I Application at 12; Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 8, 258 (describing available points of access to each of Verizon's standard methods of interconnection).

<sup>623</sup> See Verizon Massachusetts I Application, App. J, Tab 22, Attach. IV at IV-2 (*Interconnection Agreement Dated as of September 28, 1998 by and between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts and MCI Metro*). The agreement defines "technically feasible" point as described in the FCC Rules and regulation. *Id.* Part B at B-13. It also states that [Verizon] "will interconnect with MCI at any technically feasible point." *Id.* Attach. IV at IV-2.

choose a single, technically feasible point of interconnection within a LATA.<sup>624</sup> In addition, the Verizon revised Massachusetts Collocation Tariff complies with Commission rules by allowing competing carriers to choose a single technically feasible point.<sup>625</sup>

#### 4. Pricing of Interconnection

198. Checklist item 1 requires a BOC to provide “interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”<sup>626</sup> Section 251(c)(2) requires incumbent LECs to provide interconnection “at any technically feasible point within the carrier’s network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>627</sup> Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.<sup>628</sup> The Commission’s pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.<sup>629</sup>

199. Based on the evidence in the record, we find that Verizon offers interconnection in Massachusetts to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1. The Massachusetts Department concludes that Verizon currently provides collocation under approved interconnection agreements and tariffs, consistent with Commission and Massachusetts Department orders.<sup>630</sup>

200. We find that the collocation pricing issues raised by commenters that are currently before the Massachusetts Department do not cause Verizon to fail this checklist item. First, commenters contend that Verizon improperly charges for the number of amps fused, rather than the number of drained amps actually requested and used by competitive LECs.<sup>631</sup> Prior to refiling

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<sup>624</sup> Any competing LEC may request the same terms and conditions as those contained in existing interconnection agreements which allow interconnection at only one technically feasible point within a LATA. For example, Qwest based its interconnection agreement of March 19, 1999 on MCIMetro’s agreement with Verizon. *See* Verizon Massachusetts I Application, App. J, Tab 37 (*Interconnection Agreement Dated as of March 19, 1999 by and between New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts and Qwest Communications Company*).

<sup>625</sup> *See* Verizon Massachusetts II Lacouture/Ruesterholz Decl. at para. 139.

<sup>626</sup> 47 U.S.C. § 271(c)(2)(B)(i).

<sup>627</sup> *Id.* § 251(c)(2).

<sup>628</sup> *Id.* § 252(d)(1).

<sup>629</sup> *See* 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

<sup>630</sup> Massachusetts Department Massachusetts I Comments at 35-37.

<sup>631</sup> *See* ALTS Massachusetts I Comments at 14, 18-20; Covad Massachusetts I Comments at 44-47; Rhythms Massachusetts I Comments at 18-20; Rhythms Massachusetts I Reply at 8-9; ALTS Massachusetts II Comments at 6, 11-14; Covad Massachusetts II Comments at 36-39.

its Massachusetts II Application with the Commission, Verizon amended its tariff to apply collocation power charges on a per-load amp requested basis, rather than on a per-fused amp basis.<sup>632</sup> AT&T and Covad filed a petition with the Massachusetts Department requesting an investigation of this tariff revision.<sup>633</sup> When the Massachusetts Department declined to investigate the tariff revision, the parties filed a reconsideration motion, asserting that Verizon is improperly charging them on a per-fused amp basis.<sup>634</sup> In its response to the Massachusetts Department, Verizon responds that its tariff revision addresses these parties' concerns by charging them on a per-load amp basis and that such tariff revision will lead to a decrease in power charges.<sup>635</sup>

201. Second, commenters assert that Verizon is improperly charging competitive LECs for collocation power by assessing an additional power charge for each redundant feed requested by the competitive LEC.<sup>636</sup> According to these commenters, a redundant feed runs only between the power distribution bay and the competitive LEC's collocation point. They assert that Verizon is charging an additional power charge that recovers the cost of every piece of equipment in the collocation power configuration, regardless of whether or not it is utilized for the redundant feed.<sup>637</sup> ALTS contends that most competitive LECs configure their equipment to use either the A or B feed as the power source, but not both. Verizon should not charge the full amount for power for both the main and redundant feeds because the backup feed is only used when the original feed fails.<sup>638</sup> According to the commenters, competitive LECs would use only the amount of amps requested to operate their equipment, and not double that amount simply

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<sup>632</sup> See Verizon Massachusetts II Application App. B, Vol. 3, Tab 3, Subtab M, Letter from Robert Mudge, President-Massachusetts, Verizon, to Department of Telecommunications & Energy (Jan. 12, 2001) (Verizon January 12<sup>th</sup> Tariff Revision).

<sup>633</sup> See Letter from Charles E. Griffin, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed March 29, 2001) (AT&T March 29 Collocation *Ex Parte* Letter) at Attach. 2 (*Petition of AT&T Communications of New England, Inc. and Covad Communications Company to Investigate Certain Provisions of January 12, 2001 Tariff Filing and Suspend and Investigate Certain Other Provisions*, DTE 98-57 (Feb. 1, 2001)) (*AT&T/Covad Tariff Suspension Request Ex Parte*).

<sup>634</sup> See AT&T March 29 Collocation *Ex Parte* Letter at Attach. 4 (*Motion of AT&T Communications of New England, Inc. and Covad Communications Company for Reconsideration and for Extension of the Judicial Appeal Period*, DTE 98-57 (March 7, 2001)) (*AT&T/Covad Tariff Reconsideration Motion Ex Parte*).

<sup>635</sup> See Letter from Dee May, Executive Director, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed March 28, 2001) (Verizon March 28 Collocation *Ex Parte* Letter) at Attach. 1 (*Opposition of Verizon Massachusetts*, DTE 98-57 (March 15, 2001)) (*Verizon Tariff Opposition Ex Parte*).

<sup>636</sup> See ALTS Massachusetts I Comments at 14, 18-19; Covad Massachusetts I Comments at 44-47; Rhythms Massachusetts I Comments at 19; Rhythms Massachusetts I Reply at 8-9; ALTS Massachusetts II Comments at 11-13; Covad Massachusetts II Comments at 36-37.

<sup>637</sup> See Covad Massachusetts I Comments at 46-47.

<sup>638</sup> See ALTS Massachusetts II Comments at 12.

because they have back-up feeds. AT&T and Covad also raise this issue in their tariff investigation reconsideration motion before the Massachusetts Department.<sup>639</sup>

202. Verizon responds that it provides competitive LECs with a means of purchasing only the power they want. Verizon disputes ALTS' assertion that most competitive LECs configure their equipment to use either the A or B feed, but not both.<sup>640</sup> Verizon contends that most competitive LECs have collocation equipment that is designed to draw power from two feeds simultaneously.<sup>641</sup> To support this statement, Verizon asserts that it surveyed over 1,000 power feeds at collocation arrangements in Massachusetts and found that over 97 percent of them were drawing power on both feeds.<sup>642</sup> Verizon also asserts that it does not require competitive LECs to take a second backup feed, nor does it specify the load that a competitive LEC must place on a given feed.<sup>643</sup> If, for instance, a competitive LEC has a piece of equipment that draws 40 amps and wants to order and pay for only 40 amps of power, Verizon asserts that it can order two power feeds with 20 load amps on each feed.<sup>644</sup>

203. These disputes are currently before the Massachusetts Department. As we noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.<sup>645</sup> Although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored our pricing jurisdiction and has thereby directed the state commissions to follow our pricing rules in their disposition of those disputes. Here, we have confidence in the Massachusetts Department's ability to resolve these matters consistent with our rules. Verizon amended its collocation tariff in January 12, 2001 to address the concerns of the parties, and parties have presented no evidence that Verizon is not fully cooperating with the efforts of the Massachusetts Department to resolve these issues.

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<sup>639</sup> *AT&T/Covad Tariff Reconsideration Motion Ex Parte* at 7.

<sup>640</sup> Verizon Massachusetts II Reply at 45; *see also* Verizon March 28 Collocation *Ex Parte* Letter at Attach. 2, *Answer of Verizon Massachusetts*, DTE 98-57 at 8-11 (March 15, 2001) (*Verizon Tariff Reconsideration Answer Ex Parte*).

<sup>641</sup> *See* Verizon Massachusetts II Reply at 45.

<sup>642</sup> *See id.*

<sup>643</sup> *See id.*; *see also* *Verizon Tariff Reconsideration Answer Ex Parte* at 8-12.

<sup>644</sup> *See* Verizon Massachusetts II Reply at 45.

<sup>645</sup> *See SWBT Texas Order*, 15 FCC Rcd at 18541, para. 383; *see also* 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

We note that progress is being made in this regard.<sup>646</sup> We therefore find that these disputes do not cause Verizon to fail this checklist item.

204. We are not persuaded by ALTS' assertion that Verizon charges more for power in its Massachusetts tariff for cageless collocation than it charges for power in its federal tariff, in which there is no cageless collocation offering.<sup>647</sup> According to ALTS, there is no cost justification for the difference in collocation power charges.<sup>648</sup> Verizon claims that its federal power rate is based on outdated information from 1991 and greatly understates its power costs. Differences between the federal tariff and the state tariff are not enough, by themselves, to support a finding that the state tariff is unlawful. The power rates in the Massachusetts tariff are based on more recent cost studies and have been approved by the Massachusetts Department, and we find no basis for rejecting them.<sup>649</sup>

## B. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

### 1. Background

205. Section 271(c)(2)(B)(iii) requires BOCs to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.”<sup>650</sup> Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are “just and reasonable.”<sup>651</sup> Notwithstanding this general grant of authority, section 224(c)(1) states that where such matters are regulated by a state nothing in the section shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way.<sup>652</sup> Massachusetts has

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<sup>646</sup> See Letter from Kenneth Rust, Director, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-09 at 1-2 (filed April 3, 2001) (Verizon April 3 Collocation *Ex Parte* Letter) (Verizon letter informing competitive LECs of new methods for billing power in collocation arrangements in New York and Massachusetts. Verizon now bills competitive LECs for collocation power on the basis of the total number of load amps requested, on a per-load-amp basis, and permits competitive LECs to request a fuse size of up to 2.5 times the load amp requested.).

<sup>647</sup> See ALTS Massachusetts II Comments at 14.

<sup>648</sup> See *id.*

<sup>649</sup> See Verizon Massachusetts II Reply at 45; see also ALTS Massachusetts II Comments at Ex. B.

<sup>650</sup> 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, para. 171 n.574.

<sup>651</sup> 47 U.S.C. § 224(b)(1).

<sup>652</sup> 47 U.S.C. § 224(c)(1). The 1996 Act extended the Commission's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. (continued....)

certified to this Commission that it regulates the rates, terms, and conditions for pole attachments in that state.<sup>653</sup>

## 2. Discussion

206. Based on the evidence in the record, we conclude, as the Massachusetts Department does,<sup>654</sup> that Verizon demonstrates that it provides nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates in accordance with section 271(c)(2)(B)(iii).<sup>655</sup> We reject commenters' requests to find that Verizon's pole attachment policies and practices in Massachusetts are discriminatory.<sup>656</sup> As we explain above, the Massachusetts Department is certified by this Commission to regulate pole attachments in that state. The Massachusetts Department has established a process for complaints of discriminatory access to poles.<sup>657</sup> Therefore, any claim regarding discriminatory access to poles is a matter for the Massachusetts Department to consider.<sup>658</sup> The record does not indicate that anyone, including any of the commenters, has filed a discriminatory access complaint with the Massachusetts Department.<sup>659</sup>

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*See Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *See Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

<sup>653</sup> *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Order on Reconsideration, 14 FCC Rcd at 18089, para. 115 (1999) (stating that "[o]ur rule does not require . . . [previously certified] . . . states to formally re-certify in order to assert their jurisdiction over access); 47 U.S.C. § 224(c).

<sup>654</sup> *See Massachusetts Department Massachusetts I Comments at 223-49; Massachusetts Department Massachusetts I Reply at 54-61.*

<sup>655</sup> Verizon Massachusetts I Application at 34-35; Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 187-202; Verizon Massachusetts I Lacouture/Ruesterholz Reply Decl. at paras. 151-66; Verizon Massachusetts II Lacouture/Ruesterholz Reply Decl. at paras. 201-03.

<sup>656</sup> *See RCN Massachusetts I Comments; RCN Massachusetts I Reply; RCN Massachusetts I Supplementary Reply; RCN Massachusetts II Comments; Fiber Technologies Massachusetts I Comments at 5; Fiber Technologies Massachusetts I Reply at 7; ALTS Massachusetts I Comments 43-48; Massachusetts Attorney General Massachusetts I Comments at 6-7.*

<sup>657</sup> Massachusetts Department Massachusetts I Comments at 224-25.

<sup>658</sup> *See 47 U.S.C. § 224(c); see also Verizon Massachusetts I Reply at 39-40.*

<sup>659</sup> *See Massachusetts Department Massachusetts I Comments at 224.* Although we recognize that commenters raised these claims in the section 271 proceeding before the Massachusetts Department, the record does not indicate that such claims were also raised through the complaint and enforcement process established by the Massachusetts Department. The Massachusetts Department concluded that, based upon the evidence presented in its section 271 proceeding, Verizon is providing nondiscriminatory access to its poles. *See Massachusetts Department (continued....)*

### C. Checklist Item 5 – Unbundled Local Transport

207. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”<sup>660</sup> The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.<sup>661</sup> Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.<sup>662</sup> Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC’s network.<sup>663</sup>

208. We conclude, based upon the evidence in the record, that Verizon demonstrates that it provides both shared and dedicated transport in compliance with the requirements of checklist item 5.<sup>664</sup> The Massachusetts Department also finds that Verizon is in compliance with this checklist item.<sup>665</sup>

209. In prior orders the Commission has reviewed the missed appointment rates for the provision of interoffice facilities to competitive LECs to determine compliance with checklist item 5.<sup>666</sup> On first examination, the carrier-to-carrier missed appointment rate performance appears to depict a significant difference in the provision of interoffice facilities for competitive LECs compared to the retail analogue described in the carrier-to-carrier guidelines in place prior to January 2001.<sup>667</sup> We place little weight on this performance disparity, however, given the

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Massachusetts I Comments at 249. The Department further noted, however, that its “rules permit any party to raise claims of discriminatory treatment” and that its findings in the context of the section 271 proceeding “shall in no way be considered precedential in any proceedings” under its rules. *Id.*

<sup>660</sup> 47 U.S.C. § 271(c)(2)(B)(v).

<sup>661</sup> See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

<sup>662</sup> See, e.g., *id.*; *SWBT Texas Order*, 15 FCC Rcd at 18518, para. 331 n.920.

<sup>663</sup> See, e.g., *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719-20, para. 201 nn.650 & 652.

<sup>664</sup> See *Verizon Massachusetts I Application* at 30; *Verizon Massachusetts I Lacouture/Ruesterholz Decl.* at paras. 159-66 & App. B; *Verizon Massachusetts II Reply* at 38.

<sup>665</sup> See *Massachusetts Department Massachusetts I Comments* at 338-39.

<sup>666</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4126, para. 339; *SWBT Texas Order*, 15 FCC Rcd at 1851, para. 333.

<sup>667</sup> Using the carrier-to-carrier numbers provided with the application, the four month (September through December 2000) average for competitive LECs was 12.1 percent, compared to 2.1 percent for Verizon’s retail “special services” provisioning. See PR-4-01 (Provisioning of POTS/Special Services - Missed Appointments). Specifically, the competitive LEC missed appointment rates for September through December 2000 were 10.71 (continued....)

revised retail analogue developed by the carrier-to-carrier working group and adopted by the New York Commission and Massachusetts Department in December 2000, which paints a more accurate picture of Verizon's transport provisioning performance. As explained below, when Verizon's provision of unbundled transport is compared to the revised retail analogue, its performance is better for competing LECs than it is for its own retail customers.

210. Under the carrier-to-carrier guidelines in place prior to January 2001 for the missed appointments metric, the provisioning of competitive LEC interoffice facility transport was compared to Verizon's provisioning of retail "special services."<sup>668</sup> According to Verizon, retail special services are "predominately at the voice grade level."<sup>669</sup> The carrier-to-carrier working group<sup>670</sup> agreed to change the guidelines as of January 2001, however, to reflect a revised retail analogue for this performance measure using provisioning of retail DS-3s instead of retail special services because the unbundled interoffice facilities Verizon provides to competitive LECs are predominately at the DS-3 level, rather than the voice grade level.<sup>671</sup> We find that the revised retail analogue appears to be more appropriate and represents a better indicator of whether Verizon is providing the same quality of service to competitive LECs as to its own customers for transport than the comparison in place prior to January 2001.<sup>673</sup> We further

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percent, 2.76 percent, 15.21 percent, and 21.25 percent, respectively. Verizon's performance for its own retail special services for the same period was 2.78 percent, 1.90 percent, 1.43 percent, and 2.04 percent, respectively.

<sup>668</sup> Letter from Dolores A. May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission (March 29, 2001) (Verizon March 29 *Ex Parte* Letter) at 1; Verizon Massachusetts I Guerard/Canny Decl. Attach. B at 49. "Special services" are services that require engineering design intervention. Verizon Massachusetts I Guerard/Canny Decl. Attach. B at 101. These include such services as primary rate ISDN, 4 wire xDSL services, digital services, private line or foreign served services, as well as high capacity services such as DS-1 and DS-3 circuits. *See id.*

<sup>669</sup> *Id.*

<sup>670</sup> The carrier-to-carrier working group is an industry group, comprised of Verizon and all interested competitive LECs, that addresses the performance measures that should apply to the provision of service to competitive LECs and the appropriate performance standards associated with those measures. *See* Verizon Massachusetts I Application Guerard/Canny Decl. at 5.

<sup>671</sup> *See id.*; *see* Verizon Massachusetts II Application App. B, Tab 1B, at 53 (reflecting new retail analogue).

<sup>673</sup> Using the revised DS-3 retail analogue, Verizon missed about 63 percent, 25 percent, 43 percent, and 40 percent of its retail DS-3 appointments in September through December, respectively. *See id.* at 2. Because the number of orders for each of these months are relatively small -- ranging between 10 and 27 orders per month -- we rely on an average of those four months in reaching our finding. The average rate over the four-month period was 47.62 percent. This compares favorably with the four month average of the missed appointment rate for provisioning unbundled transport to competitive LECs, which was 12.13 percent.

find that the missed appointment data, using the revised carrier-to-carrier retail analogue, provides sufficient evidence that Verizon is providing unbundled transport to competitive LECs in a nondiscriminatory manner.<sup>674</sup>

211. We reject OnSite's assertion that Verizon has repeatedly failed to provide transport circuits in violation of checklist item 5<sup>675</sup> because the record indicates OnSite orders the those circuits out of Verizon's special access tariff.<sup>676</sup> The Commission previously determined in the *Bell Atlantic New York Order* that checklist compliance is not intended to encompass provision of tariffed interstate services simply because these services use some of the same physical facilities as a checklist item.<sup>677</sup> We note, however, that to the extent parties are experiencing delays in the provisioning of special access services ordered from Verizon's federal tariffs, these issues are appropriately addressed in the Commission's section 208 complaint process.

212. We also disagree with Digital Broadband's assertions that Verizon has failed to satisfy checklist item 5. Through comments filed by ALTS, Digital Broadband states that it has experienced difficulties with ordering and provisioning DS-3s during April through September 2000. Specifically, Digital Broadband complains about orders not completed by the committed due date, repeated postponements of the committed due dates and newly installed circuits that do not function properly.<sup>678</sup> Even though Digital Broadband may have experienced some problems during that time period, performance data from that period have little bearing on Verizon's performance in recent months and, consequently, its current checklist compliance. Moreover, no commenter complains of *recent* problems with ordering or provisioning of unbundled transport.

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<sup>674</sup> Although the carrier-to-carrier collaborative chose DS-3s as the retail analogue, it might have chosen to combine the missed appointment rate for DS-1s and DS-3s because both are used by competitive LECs for transport. Using both DS-1s and DS-3s, Verizon missed appointments for its retail customers about 12.33 percent on average for September through December, which compares favorably with the average missed appointment rate for providing competitive LECs with unbundled local transport for the same period: 12.13 percent. *See* Verizon March 29 *Ex Parte* Letter at 2. This analysis gives us additional confidence in our conclusion.

<sup>675</sup> *See* OnSite Massachusetts I Comments at 20-21 & Kriss Decl. at 2-6; *see also* Global Crossing Massachusetts II Comments at 3-5 (complaining of poor special access provisioning); CompTel Massachusetts II Comments at 3 (same). We discuss the Commission's oversight of the provision of special access in our discussion of section 272 below. *See infra* Part VII.B.2.

<sup>676</sup> *See* Verizon Massachusetts I Reply at 54.

<sup>677</sup> *See* Bell Atlantic New York Order, 15 FCC Rcd 4126-27, para. 340.

<sup>678</sup> *See* ALTS Massachusetts I Comments at 29 & Landers Decl. at para. 12; *see also* Digital Broadband Massachusetts I Reply at 8-10. Digital Broadband also complains about orders that were incorrectly recorded as ticketed as "customer not ready."

#### D. Checklist Item 13 – Reciprocal Compensation

213. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”<sup>679</sup> In turn, pursuant to section 252(d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”<sup>680</sup>

214. Based on the evidence in the record, we conclude that Verizon demonstrates that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2), and thus satisfies the requirements of checklist item 13. Verizon demonstrates that it: (1) has in place reciprocal compensation arrangements in accordance with section 252(d)(2),<sup>681</sup> and (2) is making all required payments in a timely fashion.<sup>682</sup> The Massachusetts Department has concluded that Verizon complies with the reciprocal compensation requirements in checklist item 13.<sup>683</sup>

215. Several commenters allege that Verizon is failing to pay reciprocal compensation for ISP-bound traffic.<sup>684</sup> We find that the issues raised by the commenters do not evidence Verizon's failure to satisfy checklist item 13. Under a prior Commission order, ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2),<sup>685</sup> therefore, as the Commission stated in the *Bell Atlantic New York Order*, whether a carrier pays such compensation is “irrelevant to checklist item 13.”<sup>686</sup> The United States Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's order, and the

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<sup>679</sup> 47 U.S.C. § 271(c)(2)(B)(xiii).

<sup>680</sup> *Id.* § 252(d)(2)(A).

<sup>681</sup> Verizon provides reciprocal compensation to competing carriers for the termination of local calls from Verizon customers under approved interconnection agreements and tariffs. *See* Verizon Massachusetts I Application at 41; Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 292.

<sup>682</sup> *See* Verizon Massachusetts I Application at 41; Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 293-94.

<sup>683</sup> *See* Massachusetts Department Massachusetts I Comments at 390.

<sup>684</sup> *See* Sprint Massachusetts I Comments at 23-26; WorldCom Massachusetts I Reply at 41-44; Conversent Massachusetts II Comments at 1-6; Global NAPS Massachusetts II Comments at 3-9.

<sup>685</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, para. 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), *rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

<sup>686</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, para. 377.

Commission is now reconsidering the matter.<sup>687</sup> Given that the Commission has not yet determined the status of ISP-bound traffic, refusal to pay reciprocal compensation for ISP-bound traffic does not violate checklist item 13's requirements at this time. As we have stated, "[i]n the absence" of a Commission rule on reciprocal compensation, "parties may voluntarily include this traffic within the scope of their interconnection agreements . . . [and] they are bound by those agreements, as interpreted and enforced by the state commissions."<sup>688</sup> At this time, therefore, provided that a carrier follows states' interpretations and requirements promulgated under their interpretation of interconnection agreements, including states' requirements concerning ISP-bound traffic, such carrier has satisfied checklist item 13.

216. The Massachusetts Department has created a rebuttable presumption that the minutes of traffic to a competitive LEC will be presumed local (*i.e.*, non-ISP) and subject to reciprocal compensation up to an amount that is twice the amount of traffic from the competitive LEC to Verizon.<sup>689</sup> Verizon states that it will make reciprocal compensation payments in excess of the 2:1 ratio if a competitive LEC provides evidence that its "local" traffic exceeds this ratio, and as of July 2000, one competitive LEC had made such a showing and was receiving reciprocal compensation payments in excess of the 2:1 ratio.<sup>690</sup> The Massachusetts Department has verified that Verizon "is providing reciprocal compensation under the obligations in its Department-approved interconnection agreements and tariffs, as well as relevant Department Orders."<sup>691</sup> Therefore, we find that Verizon is in compliance with checklist item 13.

#### **E. Checklist Item 14 – Resale**

217. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."<sup>692</sup> Based on the evidence in the record, we conclude that Verizon demonstrates that it makes telecommunications services available in Massachusetts for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. Verizon states that it is in compliance with the requirements of this checklist

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<sup>687</sup> See *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000); *Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit*, CC Docket Nos. 96-98, 99-68, Public Notice, 15 FCC Rcd 11311 (2000).

<sup>688</sup> *Reciprocal Compensation Declaratory Ruling*, 15 FCC Rcd at 3703, para. 22.

<sup>689</sup> Verizon Massachusetts I Application App. G, Vol. 5, Tab 108, *Complaint of MCI WorldCom, Inc. Against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Breach of Interconnection Terms Entered into Under Sections 251 and 252 of the Telecommunications Act of 1996*, DTE 97-116-C at 19-31 (May 19, 1999).

<sup>690</sup> Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 294.

<sup>691</sup> Massachusetts Department Massachusetts I Comments at 390.

<sup>692</sup> 47 U.S.C. § 271(c)(2)(B)(xiv).

item,<sup>693</sup> and the Massachusetts Department agrees.<sup>694</sup> Verizon says that it commits in its interconnection agreements and tariffs to making its retail services available to competing carriers at wholesale rates.<sup>695</sup> In its *Consolidated Arbitrations* proceeding, conducted after the 1996 Act was implemented, the Massachusetts Department used an avoided-cost calculation method consistent with the Commission's pricing rules to establish interim resale discount rates of 24.99 percent for lines with Verizon's operator services and directory assistance, and 29.47 percent for lines without these features.<sup>696</sup> These interim rates were adopted as permanent rates by the Massachusetts Department in 1999.<sup>697</sup> Verizon applies the wholesale discount to customer specific arrangements (CSAs), grandfathered services, and promotional offerings in effect more than 90 days. For promotional offerings of 90 days or less, competing carriers may elect to have Verizon apply the wholesale discount to the retail price of telecommunications services offered in the promotional offering, or to pay the promotional offering rate.<sup>698</sup> Competing carriers may purchase at the wholesale discount CSAs to resell to new customers.<sup>699</sup> Verizon permits competing carriers that resell CSAs to meet minimum volume requirements by aggregating the

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<sup>693</sup> See Verizon Massachusetts I Application at 41-43; Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 295-308.

<sup>694</sup> See Massachusetts Department Massachusetts I Comments at 396-97.

<sup>695</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 295-96.

<sup>696</sup> Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 295; *Consolidated Petitions of New England Telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of Interconnection Agreements Between NYNEX and the Aforementioned Companies*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 -- Phase 2 (Dec. 2, 1996) (*Massachusetts DTE Phase 2 Order*); Massachusetts Department Massachusetts I Comments at 393. We note that the United States Court of Appeals for the Eighth Circuit issued an order vacating and remanding the Commission's pricing rule regarding the determination of avoided retail costs. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000).

<sup>697</sup> See Verizon Massachusetts I Application App. F, Vol. 8, Tab 157, *Investigation by the Department on Its Own Motion Into the Propriety of the Resale Tariff of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Filed with the Department on January 16, 1998, to Become Effective February 14, 1998*, DTE 98-15 (Phases II and III) at 11-17 (Mar. 19, 1999). The Massachusetts Department recently initiated an investigation to review the avoided cost discount for Verizon's resale services. See Verizon Massachusetts II Application App. B, Tab 4, Subtab D, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, Based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combination of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts*, DTE 01-20 (Jan. 12, 2001).

<sup>698</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 298. Pursuant to Commission rules, incumbent LECs do not need to offer for resale short-term promotions of 90 days or less, as long as such short-term promotions are not used to evade the wholesale rate obligation. See 47 C.F.R. § 51.613(a)(2)(ii).

<sup>699</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 298.

traffic of multiple end-user customers, provided that those customers are similarly situated to the customer(s) of Verizon's original contract.<sup>700</sup>

218. Verizon also states that it makes its retail telecommunications services available for resale without unreasonable or discriminatory conditions or limitations.<sup>701</sup> The Massachusetts Department agrees.<sup>702</sup> According to Verizon, it provides for resale all of the telecommunications services that it provides at retail to subscribers that are not telecommunications carriers.<sup>703</sup> Verizon demonstrates that it provides its retail telecommunications services for resale in a nondiscriminatory and timely manner.<sup>704</sup>

219. We reject commenters' contentions that Verizon fails this checklist item because its separate advanced services affiliate was not providing DSL and other advanced services at resale discounts in accordance with the *ASCENT v. FCC* decision.<sup>705</sup> The mandate in that decision had not issued when Verizon filed the instant application.<sup>706</sup> Accordingly, we find the *ASCENT* decision is not relevant to our analysis of checklist compliance in the context of this proceeding.<sup>707</sup>

220. We find unpersuasive Allegiance's claim that the Commission should adopt a "fresh look" policy.<sup>708</sup> Allegiance asserts that the Commission should allow customers in long-term contracts with Verizon for local exchange and intraLATA service to switch to competing telecommunications carriers before the expiration of their Verizon contracts without incurring termination penalties. We note that a similar issue has been raised by KMC Telecom in a

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<sup>700</sup> See *id.* at para. 299.

<sup>701</sup> See *id.* at para. 296.

<sup>702</sup> See Massachusetts Department Massachusetts I Comments at 396-97.

<sup>703</sup> See Verizon Massachusetts I Application at 41; Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 295.

<sup>704</sup> See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 304-08.

<sup>705</sup> See *ASCENT* Massachusetts II Comments at 3; AT&T Massachusetts II Reply at 21 (citing *Association of Communications Enterprises v. FCC*, Case No. 99-1441, slip op. (D.C. Cir. Jan 9, 2001) (hereafter *ASCENT*). This decision overturned the Commission's determination in the *SBC/Ameritech Order* that, because the separate advanced services affiliate was not a successor or assign of the BOC, the separate advanced services affiliate could avoid the resale obligations of 251(c)(4). Because the Commission incorporated by reference the successor or assign analysis of the *SBC/Ameritech Order* into the *Bell Atlantic/GTE Order*, the D.C. Circuit's decision also impacts the Commission's conclusion in the *Bell Atlantic/GTE Order*.

<sup>706</sup> The D.C. Circuit issued the mandate in *ASCENT* on March 6, 2001.

<sup>707</sup> Verizon should not be faulted for its efforts to comply with a Commission order in effect at the time of the application, even though portions of that order were subsequently vacated. See *SWBT Kansas/Oklahoma Order* at para. 253. As the D.C. Circuit affirmed, "compliance with Commission orders cannot serve as a basis for rejecting an application." *AT&T v. FCC*, 220 F.3d at 630.

<sup>708</sup> Allegiance Massachusetts I Reply at 7-8.

Petition for Declaratory Ruling, which is currently pending.<sup>709</sup> We find, as we did in prior orders, that this issue is best addressed in the context of that pending petition, and we decline to resolve the issue here.<sup>710</sup>

221. Based on evidence in the record, we also find that Verizon satisfies the provisioning requirements of checklist item 14. As discussed above, Verizon is provisioning competitive LECs' orders for resale in substantially the same time and manner as for its retail customers.<sup>711</sup>

#### **F. Remaining Checklist Items (6-12)**

222. An applicant under section 271 must demonstrate that it complies with checklist item 6 (unbundled local switching),<sup>712</sup> item 7 (911/E911 access and directory assistance/operator services),<sup>713</sup> item 8 (white page directory listings),<sup>714</sup> item 9 (numbering administration),<sup>715</sup> item 10 (databases and associated signaling),<sup>716</sup> item 11 (number portability),<sup>717</sup> and item 12 (local dialing parity).<sup>718</sup> Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, we conclude that Verizon demonstrates that it is in compliance with checklist items 6, 7, 8, 9, 10, 11 and 12 in

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<sup>709</sup> See *In re Establishment of Rules to Prohibit the Imposition of Unjust, Onerous Termination Penalties on Customers Choosing to Partake of the Benefits of Local Exchange Telecommunications Competition*, Petition for Declaratory Ruling, CC Docket No. 99-142 (Apr. 26, 1999) (requesting that the Commission declare unlawful termination penalties imposed by incumbent LECs, prohibit enforcement of incumbent LEC termination penalties, and require the removal of incumbent LEC termination penalties from state tariffs until more competition develops).

<sup>710</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4148, para. 391; *SWBT Texas Order*, 15 FCC Rcd at 18547-48, para. 391; *SWBT Kansas/Oklahoma Order* at para. 253.

<sup>711</sup> See *supra* Part IV(A)(2).

<sup>712</sup> 47 U.S.C. § 271(c)(2)(B)(vi). We discuss the statutory requirements of checklist items 6-12 in Appendix B to this Order.

<sup>713</sup> *Id.* § 271(c)(2)(B)(vii).

<sup>714</sup> *Id.* § 271(c)(2)(B)(viii).

<sup>715</sup> *Id.* § 271(c)(2)(B)(ix). ALTS and Sprint allege that Verizon mismanaged its responsibility when it was the local numbering administrator. See ALTS Massachusetts I Comments at 52; Sprint Massachusetts II Comments at 11. Because Verizon is no longer the administrator, however, these parties do not claim that Verizon has failed to satisfy checklist item 9. Rather, they raise this issue as a public interest concern. Accordingly, we discuss these claims in the Public Interest section below. See *infra* Part VIII.C.

<sup>716</sup> 47 U.S.C. § 271(c)(2)(B)(x).

<sup>717</sup> *Id.* § 271(c)(2)(B)(xi).

<sup>718</sup> *Id.* § 271(c)(2)(B)(xii).

Massachusetts.<sup>719</sup> The Massachusetts Department also concludes that Verizon complies with the requirement of each of these checklist items.<sup>720</sup> Moreover, no commenter raised allegations challenging Verizon's compliance with these checklist items.

## VI. COMPLIANCE WITH SECTION 271(C)(1)(A)

### A. Background

223. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).<sup>721</sup> To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."<sup>722</sup> The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."<sup>723</sup>

The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.<sup>724</sup>

### B. Discussion

224. We conclude, as did the Massachusetts Department, that Verizon demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers in Massachusetts.<sup>725</sup> The Massachusetts Department has approved a substantial number of binding interconnection agreements between Verizon and

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<sup>719</sup> See Verizon Massachusetts I Application at 30-31 (checklist item 6), 35-37 (checklist item 7), 37-38 (checklist item 8), 38 (checklist item 9), 38-39 (checklist item 10), and 40 (checklist items 11 and 12); Verizon Massachusetts I Lacouture/Ruesterholz Decl. at paras. 145-58 (checklist item 6), 203-34 (checklist item 7), 235-51 (checklist item 8), 252-56 (checklist item 9), 257-82 (checklist item 10), 283-86 (checklist item 11), and 287-91 (checklist item 12); Verizon Massachusetts I Reply at 42 (checklist item 9).

<sup>720</sup> See Massachusetts Department Massachusetts I Comments at 340-48 (checklist item 6), 348-57 (checklist item 7), 357-63 (checklist item 8), 363-66 (checklist item 9), 366-71 (checklist item 10), 371-81 (checklist item 11), and 381-84 (checklist item 12).

<sup>721</sup> See 47 U.S.C. § 271(d)(3)(A).

<sup>722</sup> *Id.*

<sup>723</sup> *Id.*

<sup>724</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20633-35, paras. 46-48.

<sup>725</sup> See Massachusetts Department Massachusetts I Comments at 18; see also Department of Justice Massachusetts I Evaluation at 3-5 (describing level of residential and business telephone exchange service competition in Massachusetts).

competing providers of telephone exchange service.<sup>726</sup> The record demonstrates that the three largest competing carriers in Massachusetts -- AT&T, WorldCom, and RCN -- collectively provide telephone exchange service predominantly over their own facilities to residential and business subscribers.<sup>727</sup> Verizon also asserts that six other competitive LECs provide business and/or residential service through some mix of their own facilities, UNEs, UNE-P, and resale.<sup>728</sup>

225. Although AT&T and WorldCom have challenged some of Verizon's estimates of the number of residential customers served over competitors' own facilities, those carriers have not challenged Verizon's claim that a sufficient number of residential customers are being served by competing LECs using their own facilities to demonstrate that there is an "actual commercial alternative" to Verizon in Massachusetts for purposes of a Track A showing.<sup>729</sup> Specifically, both AT&T and WorldCom complain that Verizon's method of estimation overstates the current level of residential telephony competition in Massachusetts.<sup>730</sup> Even if we credited such claims, however, Verizon has shown that facilities-based competing carriers serve more than a *de minimis* number of residential customers in Massachusetts. AT&T and WorldCom do not challenge this claim.<sup>731</sup> Moreover, no carrier has challenged Verizon's evidence with regard to the level of facilities-based business competition. Accordingly, we conclude that Verizon has met the requirements for a Track A showing.

## VII. SECTION 272 COMPLIANCE

### A. Background

226. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."<sup>732</sup> The

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<sup>726</sup> See Massachusetts Department Massachusetts I Comments at 17-18. The Massachusetts Department has approved, pursuant to section 252 of the Act, more than 70 interconnection agreements between Verizon and various competing carriers. See *id.* at 17; see also Verizon Massachusetts I Taylor Decl. Attach. A at paras. 16-36.

<sup>727</sup> See Verizon Massachusetts I Application at 5; see also Massachusetts Department Massachusetts I Comments at 17-18.

<sup>728</sup> See Verizon Massachusetts I Taylor Decl. Attach. A at paras. 16-36. The six competitive LECs are: Allegiance, Network Plus Corp., ChoiceOne Communications, Global Crossing, PaeTec Communications and NEXTLINK. See also the updated totals in Verizon Massachusetts II Application Attach. B.

<sup>729</sup> *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, 12 FCC Rcd 8685, 8695, para. 14 (construing section 271(c)(1)(A) as requiring that "there must be an actual commercial alternative to the BOC in order to satisfy" Track A). The D.C. Circuit affirmed this reading of Track A. See *SBC Communications v. FCC*, 138 F.3d 410, 416-17 (D.C. Cir. 1998).

<sup>730</sup> See WorldCom Massachusetts I Comments at 70-72; AT&T Massachusetts I Reply at 8.

<sup>731</sup> AT&T and WorldCom do assert, however, that approving this application at the current level of residential competition in Massachusetts would be contrary to the public interest. See *infra* Part VIII.A.

<sup>732</sup> 47 U.S.C. § 271(d)(3)(B).

Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.<sup>733</sup> Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.<sup>734</sup> In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.<sup>735</sup> As the Commission stated in prior section 271 orders, compliance with section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.<sup>736</sup>

## B. Discussion

227. Based on the record, we conclude that Verizon has demonstrated that it complies with the requirements of section 272. Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Massachusetts as it does in New York, a state in which Verizon has already received section 271 authority.<sup>737</sup> With the exception of Verizon’s provisioning of special access services, no party challenges Verizon’s section 272 showing. We address each section 272 requirement below.

### 1. Unchallenged Sections

228. We find, based on the evidence in the record, that Verizon’s Massachusetts section 272 structure and compliance controls are the same as those the Commission reviewed for New York.<sup>738</sup> Specifically, we conclude that Verizon demonstrates it will operate in

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<sup>733</sup> See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*); First Order on Reconsideration, 12 FCC Rcd 2297 (1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff’d sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999).

<sup>734</sup> See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

<sup>735</sup> See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

<sup>736</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20725; see *SWBT Texas Order*, 15 FCC Rcd at 18549, para. 395.

<sup>737</sup> See Verizon Massachusetts I Application at 55-56; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 403.

<sup>738</sup> See Verizon Massachusetts I Application at 55-59; Verizon Massachusetts I Application App. A, Vol. 4, Declaration of Susan C. Browning at para. 9 (Verizon Massachusetts I Browning Decl.) (Massachusetts “structural and transactional safeguards are the same as those that the Commission approved in granting Verizon section 271 authority for New York.”); see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4154-58, paras. 406-14. In addition, Verizon proffers unchallenged evidence that the same section 272 internal controls the Commission reviewed for New York are in place in Massachusetts. See Verizon Massachusetts I Application at 55-58; Verizon (continued....)

accordance with the following elements of section 272: 1) section 272(a), which requires the BOC and its local exchange carrier affiliates that are subject to section 251(c) to provide certain competitive services through structurally separate affiliates; 2) section 272(b), which requires the BOC to demonstrate that its section 272 affiliates will operate independently, maintain separate books, records, and accounts, maintain separate officers, directors and employees, comply with certain credit requirements, and comply with the Commission's arm's length and public disclosure requirements; 3) section 272(c), which requires the BOC to account for all transactions with section 272 affiliates in accordance with the accounting principles designated or approved by the Commission and prohibits discrimination in favor of the section 272 affiliates in the "provision or procurement of goods, services, facilities, and information, or in the establishment of standards;" 4) section 272(d), which requires an independent audit of the BOC's compliance with section 272 after receiving interLATA authorization; and 5) section 272(g), which requires that the BOC comply with that section's joint marketing provisions and affiliate services requirements.<sup>739</sup>

## 2. Challenged Sections

229. *Section 272(e) – Fulfillment of Certain Requests.* Based on the evidence in the record, we conclude that Verizon will comply with section 272(e).<sup>740</sup> Specifically, section 272(e) requires the BOC to fulfill requests for, among other things, telephone exchange and exchange access services from unaffiliated entities within the same time period the BOC fulfills such requests for its own retail operations.<sup>741</sup> In addition, section 272(e) also provides that a BOC "shall not provide any facilities, services, or information concerning its provision of exchange access to the [section 272 affiliate] unless such facilities, services or information are made available to other providers of interLATA services in that market on the same terms and conditions."<sup>742</sup> Finally, section 272(e) places certain accounting and nondiscrimination

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Massachusetts I Browning Decl. at paras. 7, 10(b), 10(c), 11, 12(a), 12(b), 12(c), 13, 14, 22-26, 29 & Attachs. B, D, F, G, H, K, J, M, P, Z.

<sup>739</sup> Verizon Massachusetts I Application at paras. 55-58; Verizon Massachusetts I Browning Decl. at paras. 7, 10(b), 10(c), 11, 12(a), 12(b), 12(c), 13, 14, 22-26, 29 & Attach. B, D, F, G, H, K, J, M, P, Z; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4154-58, paras. 406-14.

<sup>740</sup> *See* Verizon Massachusetts I Application at 57-58; Verizon Massachusetts I Browning Decl. at paras. 18-21 & Attachs. O, P. Verizon demonstrates that it will provide accurate data regarding actual service intervals so that unaffiliated parties can evaluate the performance Verizon provides itself and its affiliates and compare such performance to the service quality Verizon provides to competing carriers. *See also* Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 23.

<sup>741</sup> 47 U.S.C. § 272(e)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22018-22, paras. 239-45; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20800-01, paras. 348-50; *see* Verizon Massachusetts I Application at 57-58; Verizon Massachusetts I Browning Decl. at para. 18.

<sup>742</sup> 47 U.S.C. § 272(e)(2).

requirements on BOCs with respect to exchange access and facilities or services provided to their section 272 affiliates.<sup>743</sup>

230. Several parties complain that the quality of Verizon's provisioning of special access services is poor.<sup>744</sup> These comments do not undermine our finding that Verizon complies with section 272. As the Commission stated in the *Bell Atlantic New York Order* and the *SWBT Texas Order*, we do not consider the provision of special access services pursuant to a tariff for purposes of Verizon's section 272 showing.<sup>745</sup> In addition, our section 272 analysis does not focus on Verizon's provisioning of special access services because Verizon does not currently have an operational section 272 affiliate in Massachusetts. Consequently, we do not, nor could we, inquire whether Verizon provides competitors special access on a nondiscriminatory basis, as compared to Verizon's section 272 affiliates. Our review, instead, focuses upon whether, after it receives section 271 authority, Verizon will maintain records tracking the quality of service to its section 272 affiliate for telephone exchange and exchange access services.<sup>746</sup> While the Commission has not prescribed a reporting format, Verizon will provide exchange access service quality as described in its application.<sup>747</sup> Because Verizon's special access performance will be included in these reports,<sup>748</sup> we expect that any such discrimination will be detectable.

231. Finally, we note that Verizon reports to the Commission its special access performance pursuant to the *Bell Atlantic/GTE Merger Conditions*<sup>749</sup> and, to the extent that parties are experiencing problems in the provisioning of special access services ordered from Verizon's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process.

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<sup>743</sup> See *id.* § 272(e)(3), (e)(4); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20802-03, paras. 353-55; see Verizon Massachusetts I Application at 57-58; Verizon Massachusetts I Browning Decl. at para. 18.

<sup>744</sup> See, e.g., CompTel Massachusetts I Comments at 9-15; AT&T Massachusetts II Reply at 28-33.

<sup>745</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340; *SWBT Texas Order*, 15 FCC Rcd at 18520, para. 335; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20800-01.

<sup>746</sup> See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22018-22, paras. 239-45.

<sup>747</sup> See Verizon Massachusetts I Browning Decl. at para. 18 & Attach. Q (providing performance metrics reporting format and business rules).

<sup>748</sup> See, e.g., *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Remand, 15 FCC Rcd 385, 406, para. 45 (1999) (stating that special access services are included within the broader category of exchange access services).

<sup>749</sup> See *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, App. D, at para. 53 (2000).

## VIII. PUBLIC INTEREST ANALYSIS

232. Separate from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.<sup>750</sup> We conclude that approval of this application is consistent with the public interest.

233. We view the public interest requirement as an opportunity to 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, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this application.<sup>751</sup> Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that this market is open to competition.

### A. Competition in Local Exchange and Long Distance Markets

234. As set forth below, we conclude that approval of this application is consistent with promoting competition in the local and long distance telecommunications markets in Massachusetts. Consistent with our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local markets have been removed and the local exchange markets today are open to competition. We further find that the record confirms our view, as noted in prior section 271 orders, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.<sup>752</sup>

235. Several commenters argue that the public interest would be disserved by granting Verizon's application because the local market in Massachusetts has not yet truly been opened to competition.<sup>753</sup> We disagree. Commenters cite an array of evidence which, they argue, demonstrates that the local telecommunications market is not open and that competition has not sufficiently taken hold in Massachusetts. For example, several commenters suggest that the state of competition for residential services in Massachusetts indicates that this market is not yet truly

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<sup>750</sup> See 47 U.S.C. § 271(d)(3)(C).

<sup>751</sup> See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

<sup>752</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 419.

<sup>753</sup> See, e.g., Sprint Massachusetts I Comments at 68; AT&T Massachusetts II Comments at 24-29.

open.<sup>754</sup> Given an affirmative showing that a market is open and the competitive checklist has been satisfied, low customer volumes in and of themselves do not undermine that showing. Factors beyond a BOC's control, such as individual competitive LEC entry strategies, might explain a low residential customer base. We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here.<sup>755</sup>

## B. Assurance of Future Compliance

236. Verizon's Performance Assurance Plan (or PAP) for Massachusetts provides additional assurance that the local market will remain open after Verizon receives section 271 authorization. The Commission previously has explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue to satisfy the requirements of section 271 after entering the long distance market.<sup>756</sup> Although the Commission strongly encourages state performance monitoring and post-entry enforcement, it has never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval.<sup>757</sup> The Commission has stated that the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.<sup>758</sup> Indeed, performance monitoring and enforcement mechanisms administered by state commissions can be critical complements to this Commission's section 271(d)(6) authority given the state commissions' historical role in regulating local exchange services. We note that in all the applications that have been granted to date, each contained an enforcement plan to protect against backsliding after entry into the long-distance market.<sup>759</sup>

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<sup>754</sup> See, e.g., WorldCom Massachusetts I Comments at 65-73; AT&T Massachusetts II Comments at 24. The commenters generally attribute the lack of competition to Verizon's UNE pricing. As noted above, however, Verizon has made a sufficient showing on this issue. See *supra* Part VI.A.1.

<sup>755</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

<sup>756</sup> See, e.g., *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806, paras. 363-64; see *Ameritech Michigan Order*, 12 FCC Rcd at 20747, para. 390.

<sup>757</sup> These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6). Moreover, in this instance, we find that the collaborative process by which these mechanisms were developed in New York and adapted in Massachusetts has itself helped to bring Verizon into checklist compliance.

<sup>758</sup> See *SWBT Kansas/Oklahoma Order* at para. 269.

<sup>759</sup> See, e.g., *id.* at paras. 270-80.

## 1. Performance Assurance Plan

237. The Massachusetts Department has ordered Verizon to report performance data, on a monthly basis, using a wide range of performance measurements or metrics.<sup>760</sup> These measurements were developed through the “Carrier-to-Carrier Service Quality” proceeding before the New York Commission.<sup>761</sup> The measurements track Verizon’s performance on functions essential to an open, competitive local market: pre-ordering, ordering, provisioning, maintenance and repair, network performance (interconnection trunks), collocation, billing and operator services. Associated with most of these measurements are standards -- either benchmarks or retail analogues -- also developed through the carrier-to-carrier proceeding.<sup>762</sup>

238. The Massachusetts Department also required Verizon to submit a comprehensive performance enforcement mechanism, which would become effective upon Verizon receiving authority to provide interLATA services under section 271.<sup>763</sup> The PAP is modeled on the New York plan the Commission reviewed in the *Bell Atlantic New York Order*. The PAP establishes an automatic process under which affected competitors receive bill credits if Verizon fails to satisfy pre-determined performance standards on a sub-set of the carrier-to-carrier reporting metrics.<sup>764</sup>

239. The PAP has undergone several changes since Verizon’s first Massachusetts filing. After that filing, the Massachusetts Department responded to competitive LECs’

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<sup>760</sup> See Verizon Massachusetts I Guerard/Canny Decl. at para. 16; Massachusetts Department of Telecommunications and Energy, *Evaluation of Bell Atlantic-Massachusetts Operation Support Systems: Final Attachment A to 11/19/99 Letter Order on Final Master Test Plan*, Verizon Massachusetts I Application App. B, Vol. 24, Tab 282 (adopting in Massachusetts the carrier-to-carrier guidelines established by the New York Commission); Verizon Massachusetts II Application App. B, Vol. 1, Subtabs A & B (current carrier-to-carrier guidelines).

<sup>761</sup> See Verizon Massachusetts I Guerard/Canny Decl. at paras. 13-16. Verizon must notify the Massachusetts Department of changes to the New York PAP. Verizon must file the notification within 10 days of the New York Commission’s order. The Massachusetts Department will then decide whether the changes should be made to the Massachusetts PAP. See Massachusetts Department of Telecommunications and Energy, *Order on Motions for Clarification and Reconsideration of Performance Assurance Plan*, D.T.E. 99-271, Verizon Massachusetts II Application App. B, Vol. 3, Tab 4, Subtab B at 14 (*Massachusetts DTE November 21<sup>st</sup> Order*).

<sup>762</sup> Wherever possible, the carrier-to-carrier guidelines establish “parity” standards (a performance level which is the same for competitors as it is for Verizon’s retail operations). See Verizon Massachusetts I Guerard/Canny Decl. at para. 20. For wholesale functions that do not have retail analogues, the carrier-to-carrier guidelines establish absolute standards, usually a fixed percentage or a fixed period of time. See *id.*

<sup>763</sup> See Letter from Dee May, Executive Director – Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, FCC (Feb. 3, 2001) (*Verizon January 30<sup>th</sup> PAP*). This PAP was adopted by the Massachusetts Department on February 23, 2001. See Massachusetts Department Massachusetts II Reply App. C.

<sup>764</sup> The procedures and requirements of the PAP are described generally in Verizon’s application, submissions made to the Massachusetts Department, and the Massachusetts Department’s orders. See, e.g., *Verizon January 30<sup>th</sup> PAP*.

complaints by ordering Verizon, *inter alia*, to increase the amount of bill credits available for payment and to add DSL and Line Sharing metrics.<sup>765</sup>

## 2. Key Elements of the Performance Assurance Plan

240. The PAP in Massachusetts provides incentives to foster post-entry checklist compliance. Plans may vary in their strengths and weaknesses, and there is no one way to demonstrate assurance.<sup>766</sup> In the *Bell Atlantic New York Order*, the Commission predicted that the enforcement mechanisms developed in New York would be effective in practice.<sup>767</sup> The carrier-to-carrier guidelines were developed through a collaborative process involving the New York Commission, Verizon, and competitive LECs. The collaborative efforts yielded workable measures to sufficiently capture Verizon's wholesale performance.<sup>768</sup> As explained below, the Massachusetts Department established a PAP that discourages anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business.

241. *Total Liability At Risk.* The Massachusetts PAP places a total of \$155 million in potential bill credits placed at risk, on an annual basis, under all components of the PAP.<sup>769</sup> The PAP adopted by the Massachusetts Department does not represent the only means of ensuring that Verizon continues to provide nondiscriminatory service to competing carriers. In addition to the \$155 million at stake under this plan, Verizon faces other consequences if it fails to sustain a high level of service to competing carriers, including: federal enforcement action pursuant to section 271(d)(6) and remedies associated with antitrust and other legal actions.<sup>770</sup>

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<sup>765</sup> See *Massachusetts DTE November 21<sup>st</sup> Order*; *Verizon January 30<sup>th</sup> PAP*.

<sup>766</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20741-51, para. 393.

<sup>767</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433. This prediction was based on five characteristics: potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; a reasonable structure that is designed to detect and sanction poor performance when it occurs; a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and reasonable assurances that the reported data are accurate. See *id.* at 433.

<sup>768</sup> See *Verizon Massachusetts II Application App. B, Vol. 1, Tab 1, Subtabs A and B* (current carrier-to-carrier guidelines).

<sup>769</sup> See *Verizon January 30<sup>th</sup> PAP* at 4. We reach this number by adding the following components: \$39.68 million (Mode of Entry (MOE)); \$39.68 million (MOE "doubling" provisions); \$42.85 million (Critical Measures); \$27.51 million (Special Provisions); and \$5.28 million (Change Control Assurance Plan). See *id.* In the *Bell Atlantic New York, SWBT Texas, and SWBT Kansas/Oklahoma Orders* the Commission reviewed plans that subjected 36 percent of the applicant's Net Return to liability for sub-par service quality. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4168, para. 436 n.1332; *SWBT Texas Order*, 15 FCC Rcd at 18561, para. 424 n.1235; *SWBT Kansas/Oklahoma Order* at para. 274 n.837. The \$155 million at risk here represents 39 percent of Verizon's Net Return. See *Massachusetts Department Massachusetts II Reply App. C*.

<sup>770</sup> See *Verizon Massachusetts I Application* at 74. See also *Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430 (stating that the BOC "risks liability through antitrust and other private causes of action if it performs in (continued....)").

242. We reject commenters' assertions that the PAP limitations on the damages available to competitive LECs to the *higher* of PAP bill credits or damages under their individual interconnection agreements dilutes the PAP's value as an anti-backsliding safeguard.<sup>771</sup> We also note that in previous section 271 orders the Commission has seen public interest benefits in liquidated contract damages to supplement enforcement plan damages.<sup>772</sup> The Massachusetts Department concludes, however, that the interconnection agreements here provide damages more like a comprehensive PAP than the limited contract damages available to competitive LECs in New York.<sup>773</sup> In addition, the Massachusetts Department has found that requiring Verizon to pay cumulative damages would result in double counting.<sup>774</sup> Finally, the Massachusetts Department can increase the amount of bill credits available to competitive LECs under the PAP should it decide that the current amount is inadequate to compensate competitive LECs and penalize Verizon.<sup>775</sup> Given this, the PAP, with the Massachusetts Department's ongoing oversight, will deter backsliding and serve the public interest.

243. *Performance Measurements and Standards.* Each performance metric developed through the carrier-to-carrier proceeding has a clearly-articulated definition, or "business rule," which sets forth the manner in which the data are to be collected by Verizon, lists any relevant exclusions, and states the applicable performance standards.<sup>776</sup> The clarity provided by these business rules will help to ensure that the reporting mechanism provides a "benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service rendered to new entrants."<sup>777</sup>

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an unlawfully discriminatory manner") (footnote omitted); *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421 (same).

<sup>771</sup> See, e.g., ALTS Massachusetts I Comments at iii, 58; WorldCom Massachusetts I Kinard Decl. at paras. 32-33; WorldCom Massachusetts I Reply at 33.

<sup>772</sup> See, e.g., *SWBT Texas Order*, 15 FCC Rcd at 18562, para. 424; *Bell Atlantic New York Order*, 15 FCC Rcd at 4168, para. 435.

<sup>773</sup> See *Massachusetts DTE November 21<sup>st</sup> Order* at 12-13; Massachusetts Department Massachusetts II Reply at Attach. C; see also Verizon Massachusetts I Reply at 56; Verizon Massachusetts I Guerard/Canny Joint Reply Decl. at para. 35.

<sup>774</sup> See Massachusetts Department of Telecommunications and Energy, *Order Adopting Performance Assurance Plan*, D.T.E. 99-271, Verizon Massachusetts I Application App. B, Vol. 47, Tab 559 at 29-30 (*Massachusetts DTE September 5<sup>th</sup> Order*); *Massachusetts DTE November 21<sup>st</sup> Order* at 12-13 ("the contract liability [for Verizon] in Massachusetts is significantly greater than [Verizon's] contract liability in New York").

<sup>775</sup> See, e.g., *Massachusetts DTE November 21<sup>st</sup> Order* at 6 (ordering Verizon to increase the amount of total bill credits available under the PAP to account for the addition of DSL and Line Sharing metrics).

<sup>776</sup> See Verizon Massachusetts II Application App. B, Vol. 1, Tab 1, Subtabs A & B (current carrier-to-carrier guidelines).

<sup>777</sup> *SWBT Kansas/Oklahoma Order* at para. 275.

244. We note that commenters in the first Massachusetts application complained that the PAP lacked sufficient DSL and Line Sharing measurements to deter backsliding in these important areas.<sup>778</sup> Since that filing, these concerns have been addressed. Specifically, Verizon has added DSL as its own Mode of Entry category and added DSL metrics to the Critical Measures.<sup>779</sup> Verizon also imported EDI notifier metrics from the New York PAP to the Massachusetts plan (including additional damages).<sup>780</sup> Although commenters raise a handful of additional concerns about specific metrics in the PAP,<sup>781</sup> none of these arguments demonstrate that the PAP is contrary to the public interest or insufficient to prevent backsliding in light of the substantial progress Verizon and the Massachusetts Department have made strengthening the plan since the first application.

245. *Structural Elements of the PAP.* The structural elements of the PAP are designed to detect and sanction poor performance when it occurs. The PAP sets forth, in great detail, the processes by which Verizon's performance is measured and evaluated, the method for determining compliance and noncompliance with respect to individual metrics, and the manner in which noncompliance with individual metrics will translate into bill credits.<sup>782</sup>

246. *Self-executing mechanism.* The PAP's performance monitoring and enforcement mechanisms are reasonably self-executing and comparable to those the Commission reviewed in the *Bell Atlantic New York Order*, the *SWBT Texas Order*, and the *SWBT Kansas/Oklahoma Order*.<sup>783</sup> We reject commenters' claims that the PAP's waiver provisions allow Verizon to

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<sup>778</sup> See, e.g., ALTS Massachusetts I Comments at iv, 6, 49-51; Covad Massachusetts I Comments at 47-48; Massachusetts I Department of Justice Evaluation at 16 n.58.

<sup>779</sup> See *Verizon January 30<sup>th</sup> PAP* at 12-14. MOE categories comprise an element of the PAP designed to gauge Verizon's performance in broad areas of competitive LEC entry, e.g., UNE, and resale. See *Verizon Massachusetts I Guerard/Canny Decl.* at 58-59. MOE categories contain a variety of metrics related to that mode of entry and associated bill credits that are paid to all competitive LECs using that mode. The Critical Measurements, on the other hand, consist of 12 groups of metrics that represent key aspects of service, e.g., performance of OSS interfaces and hot cut completions. See *Verizon January 30<sup>th</sup> PAP* App. B. If Verizon misses the relevant performance standard for any of the 12 groups, it must provide bill credits the competitive LECs who received sub-standard performance. See *id.* at 12-13.

<sup>780</sup> See *Verizon January 30<sup>th</sup> PAP* at App. H, 4-7.

<sup>781</sup> See, e.g., ALTS Massachusetts I Comments at 57 (criticizing plan for not including resale flow-through metrics); WorldCom Massachusetts I Comments at 54 (stating that trunking metrics are flawed in definition and weight); WorldCom Massachusetts I Kinard Decl. at 17 (stating that answering time metrics are not useful); WorldCom Massachusetts I Comments at 54 (stating that Average Interval Offered and Completed metrics should be further disaggregated); WorldCom Massachusetts I Comments at 54 (Trouble Duration should be further disaggregated).

<sup>782</sup> See generally *Verizon January 30<sup>th</sup> PAP*.

<sup>783</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4171, para. 441; *SWBT Texas Order*, 15 FCC Rcd at 18563-64, para. 427; *SWBT Kansas/Oklahoma Order* at para. 277.

escape liability too easily.<sup>784</sup> In this case, Verizon may ask for a waiver for “unusual” competitive LEC behavior.<sup>785</sup> When it seeks a waiver, Verizon must provide detailed documentation as to why competitive LEC behavior necessitates the waiver. Verizon, moreover, must prove its case with clear and convincing evidence and provide competitive LECs an opportunity to respond to Verizon’s petition. We disagree with commenters, therefore, that the absence of a deadline to act on waivers detracts from the effectiveness of the PAP or undermines its public interest value.

247. *Data Validation and Audit Procedures.* The PAP includes review and monitoring mechanisms that assure the data will be reported in a consistent and reliable manner. The Massachusetts Department has ordered Verizon to obtain an independent audit of Verizon’s data and reporting on an annual basis.<sup>786</sup> The Massachusetts Department will select the auditor and the audit will be subject to the Massachusetts Department’s review.<sup>787</sup> The Massachusetts Department will also conduct an annual review to determine whether changes should be made to improve the PAP.<sup>788</sup>

248. *Accounting Requirements.* Consistent with our accounting rules with respect to antitrust damages and certain other penalties paid by carriers,<sup>789</sup> Verizon should not reflect any portion of market adjustments as expenses under the revenue requirement for interstate services of the Verizon incumbent LEC. Such accounting treatment ensures that ratepayers do not bear, in the form of increased rates, the cost of market adjustments under the enforcement plan in the event Verizon fails to provide adequate service quality to competitive LECs.<sup>790</sup>

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<sup>784</sup> See, e.g., ALTS Massachusetts I Comments at 57 (waiver standard for competitive LEC behavior is too broad); WorldCom Massachusetts I Comments at 56 (no deadline for Massachusetts Department to act on waiver petition and PAP not explicit that Verizon will provide bill credits during pendency of waiver).

<sup>785</sup> Verizon January 30<sup>th</sup> PAP at 22.

<sup>786</sup> See Verizon January 30<sup>th</sup> PAP at 25. The first audit will begin six months after Verizon enters the long-distance market in Massachusetts. See *id.*

<sup>787</sup> See *id.*

<sup>788</sup> Verizon January 30<sup>th</sup> PAP at 24.

<sup>789</sup> See *Accounting for Judgments and Other Costs Associated with Litigation*, CC Docket No. 93-240, Report and Order, 12 FCC Rcd 5112 (1997); 47 C.F.R. § 32.7370(d). As a general matter, a carrier’s operating expenses recovered through its rates must be legitimate costs of providing adequate service to ratepayers. See, e.g., *West Ohio Gas Co. v. PUC*, 294 U.S. 63, 74 (1935); *Mountain States Tel. and Tel. Co. v. FCC*, 939 F.2d 1035, 1044 (D.C. Cir. 1991).

<sup>790</sup> See *SWBT Kansas/Oklahoma Order* at para. 280. Although the PAP does not explicitly prohibit Verizon from including performance-related damages in its state price cap calculation, the Massachusetts Department states that it will monitor Verizon’s accounting of such damages. See *Massachusetts DTE September 5<sup>th</sup> Order* at 34.

### C. Other Issues

249. ALTS and Sprint allege that Verizon mismanaged its responsibility when it was the local numbering administrator and, therefore, granting the application would be in violation of the public interest.<sup>791</sup> These allegations do not convince us that a grant of this application would be inconsistent with the public interest. Specifically, even assuming these allegations are true, they do not undermine our confidence that Verizon's local market is open to competition and will remain so after it receives interLATA authority.<sup>792</sup>

## IX. SECTION 271(D)(6) ENFORCEMENT AUTHORITY

250. Section 271(d)(6) of the Act requires Verizon to continue to satisfy the "conditions required for . . . approval" of its section 271 application after the Commission approves its application.<sup>793</sup> As the Commission has already described the post-approval enforcement framework and its various section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again in this Order.<sup>794</sup> Working in concert with the Massachusetts Department, we intend to monitor closely Verizon's post-approval compliance for Massachusetts to ensure that Verizon does not "cease[ ] to meet any of the conditions required for [section 271] approval."<sup>795</sup> We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Massachusetts. For example, we expect that Verizon's proposed new processes for LFACS access and pre-order manual loop qualifications will enhance competitors' ability to access loop make-up information in a nondiscriminatory fashion. As stated above, we note that Verizon has established October 2001 as the expected completion date for its system enhancements. We stress that we are prepared to use our authority under section 271(d)(6) if evidence surfaces at a later date that Verizon's OSS have fallen out of compliance with the requirements of the *UNE Remand Order*.

251. The Commission has a responsibility to not only ensure that Verizon is in compliance with section 271 today, but also that it remains in compliance in the future. The

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<sup>791</sup> See ALTS Massachusetts I Comments at 52; Sprint Massachusetts II Comments at 11 (stating that Verizon inadequately forecasted the need for area codes and did not optimize the use of numbering resources). Verizon is no longer the numbering administrator. See *In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, CC Docket No. 92-237, Order, 14 FCC Rcd 19792 (1999).

<sup>792</sup> We emphasize that grant of this application *does not* reflect any conclusion that Verizon's conduct in the individual instances cited by commenters is nondiscriminatory and complies with the company's obligations under the Communications Act.

<sup>793</sup> 47 U.S.C. § 271(d)(6).

<sup>794</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4174-77, paras. 446-53; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *SWBT Kansas/Oklahoma Order* at paras. 283-85.

<sup>795</sup> 47 U.S.C. § 271(d)(6)(A).

Commission will not hesitate to use its enforcement authority after section 271 authority has been granted. In this regard, the Commission will pay particular attention to section 271 checklist items where Verizon's performance was most marginal. For example, like many commenters in this proceeding<sup>796</sup> and the Department of Justice,<sup>797</sup> we have serious concerns that repetition of some of the assumptions incorporated into the original Massachusetts Department-approved UNE switching rates may result in rates outside the range that the reasonable application of TELRIC principles would produce. We note that these original rates were significantly higher than those of any other state of comparable population and teledensity,<sup>798</sup> and there does not appear to have been any justification for such significant differences based on Massachusetts-specific technological, environmental, regulatory, and economic conditions. The original cost study used to set those rates has a number of potential flaws that, if repeated without justification, could result in UNE rates that warrant enforcement action. These include the size of switch discounts that it assumed would be available from vendors, the use of an installation factor (the cost to install a switch) that was based on installation costs relative to discounted switches but applied to undiscounted switches, a cost of capital in excess of the authorized rate of return in Massachusetts and higher than any other state in Verizon's territory with nothing on the record to justify a Massachusetts-specific difference, and an inappropriate busy hour conversion factor.<sup>799</sup> Because states have considerable flexibility in setting UNE rates, certain flaws in a cost

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<sup>796</sup> See ASCENT Massachusetts I Comments at 3-6; AT&T Massachusetts I Comments at 2-4; CompTel Massachusetts I Comments at 8-9; Massachusetts Attorney General's Massachusetts I Comments at 3-8; RNK Massachusetts I Comments at 2-3; WorldCom Massachusetts I Comments at 9-25, 28-33; AT&T Massachusetts I Reply at 8-23; Massachusetts Attorney General's Massachusetts I Reply at 7; WorldCom Massachusetts I Reply at 5-10. WorldCom and AT&T questioned specific inputs used in the cost studies to set UNE rates in Massachusetts, including whether Verizon misrepresented the discount it receives from vendors for new switches, and whether an inflated cost of capital was used. See WorldCom Massachusetts I Comments at 12-25; WorldCom Massachusetts II Comments at 15-18; WorldCom Massachusetts II Frentrup Decl. at paras. 2-28; AT&T Massachusetts I Reply at 12-24; AT&T Massachusetts II Comments at 6-11.

<sup>797</sup> In its evaluation of Verizon's Massachusetts I Application, the Department of Justice expressed concern over UNE prices, saying that "there are reasons to suspect that in some cases [certain UNE] prices have not been based on the relevant costs of the network elements." Department of Justice Massachusetts I Evaluation at 19.

<sup>798</sup> Based on WorldCom's usage assumptions, Verizon's original rate in Massachusetts for the per-line, per-month cost for switching (excluding the line port cost), transport, and signaling, was \$21.68. By comparison, Verizon's state-approved rates in New York and Pennsylvania and state-approved rates in Texas, Kansas, Oklahoma, and Michigan are \$10.60 in New York, \$5.02 in Pennsylvania, \$4.17 in Texas, \$4.23 in Kansas, \$5.47 in Oklahoma, and \$1.97 in Michigan. Verizon's original Massachusetts rates thus exceeded the rates for these elements by 105 percent in New York, 332 percent in Pennsylvania, 420 percent in Texas, 413 percent in Kansas, 296 percent in Oklahoma, and 1,001 percent in Michigan. See Letter from Keith L. Seat, Senior Counsel, Federal Law and Public Policy, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 at 13 (Jan. 31, 2001) (WorldCom Jan. 31 UNE Pricing Ex Parte Letter); see also WorldCom Massachusetts I Comments at 27-28, App. A, Joint Declaration of Patricia Proferes, John Nolan, Paul Bobeczko, and Thomas Graham at paras. 27-29 and Attach. 2.

<sup>799</sup> See WorldCom Massachusetts I Comments at 12-25; AT&T Massachusetts I Reply at 12-23; AT&T Massachusetts II Comments at 9-11; AT&T Massachusetts II Reply at 4-5; WorldCom Massachusetts II Frentrup Decl. at 3-15.

study, by themselves, may not result in rates that are outside the reasonable range that a correct application of our TELRIC rules would produce. Collectively, however, the number of possible flaws in the original cost study, if repeated without adequate state-specific justification, may well result in prices outside the reasonable range of what TELRIC would produce. The Massachusetts Department is currently examining all UNE prices in its five-year UNE rate review. We presume, as we do with all state commissions, that the Massachusetts Department will set UNE rates within the range of what a reasonable application of what TELRIC would produce. We observe that in any context in which prices are not set in accordance with our rules and the Act, we retain the ability to take appropriate enforcement action, including action pursuant to section 271(d)(6), and will not hesitate to do so.<sup>800</sup>

252. Consistent with prior section 271 orders, we require Verizon to report to the Commission all Massachusetts carrier-to-carrier performance metrics results and Performance Assurance Plan monthly reports beginning with the first full month after the effective date of this Order, and for each month thereafter for one year unless extended by the Commission or Chief of the Enforcement Bureau. These results and reports will allow us to review, on an on-going basis, Verizon's performance to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Verizon's entry into the Massachusetts long distance market.<sup>801</sup>

## X. CONCLUSION

253. For the reasons discussed above, we grant Verizon's application for authorization under section 271 of the Act to provide in-region, interLATA services in the state of Massachusetts.

## XI. ORDERING CLAUSES

254. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, Verizon's application to provide in-region, interLATA service in the state of Massachusetts, filed on January 16, 2001, IS GRANTED.

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<sup>800</sup> See 47 U.S.C. § 271(d)(6).

<sup>801</sup> See, e.g., *Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, File No. EB-00-IH-0085, Order, 15 FCC Rcd 5413 (2000)* (adopting consent decree between Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of \$3,000,000 to the United States Treasury, additional payments if Bell Atlantic failed to meet specified performance standards, and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).

255. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE April 26, 2001.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Magalie Roman Salas". The signature is written in a cursive style with a large initial "M".

Magalie Roman Salas,  
Secretary