Affiliates") that comply fully with the requirements of that section and the Commission's rules.[70] In both those prior cases, the Commission found that Verizon "demonstrated that it will comply with the requirements of section 272." New York Order ¶ 403; Massachusetts Order ¶ 227.

A. Verizon's Separate Affiliates Comply Fully with the Structural and Transactional Requirements of Section 272(b).

Verizon's 272 Affiliates are operated as independent carriers and conduct business with Verizon (and all of its other local BOC affiliates) on an arm's length basis. Accordingly, the 272 Affiliates comply with the five requirements of section 272(b): *First*, the 272 Affiliates will operate independently as required by section 272(b)(1); *second*, the 272 Affiliates will maintain separate books, records, and accounts; *third*, the 272 Affiliates will have separate officers, directors, and employees; *fourth*, the 272 Affiliates will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of Verizon; *finally*, Verizon will use the same practices to ensure that transactions between it and the 272 Affiliates will be conducted

[70] As required by the Act, the services that will be provided through the 272 Affiliates include any interLATA services originating in Pennsylvania that are covered by section 272(a)(2)(B). Under section 271(j), private line and 800 services receive unique treatment for these purposes: any such services that terminate in Pennsylvania are deemed to originate there, while such services that originate in Pennsylvania are deemed to terminate there. As a result, these types of services are subject to the requirements of sections 271 and 272 on the terminating (rather than the originating) end. While some have claimed that section 271(j) should be construed as an additional restriction, the plain language of that section makes clear that they are incorrect. In reality, section 271(j) reverses the normal presumption and treats the terminating end of 800 and private line services as the originating end — hence, the section 271(j) restriction applies only on the terminating end for these services.

on an arm's-length basis, reduced to writing, and available for public inspection. See Browning Decl. ¶¶ 6-18; Massachusetts Order ¶¶ 227-228; New York Order ¶¶ 406, 408-414.[71]

B. Verizon Will Comply with the Non-Discrimination Safeguards of Section 272(c).

The Commission's finding in Massachusetts and New York that Verizon "will comply with section 272(c)(1)" applies equally to Pennsylvania. Massachusetts Order ¶ 228; New York Order ¶¶ 417-418. Specifically, as in Massachusetts and New York, Verizon will not discriminate between the 272 Affiliates and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. See Browning Decl. ¶ 20.

For the same reason, the Commission's finding that Verizon has "demonstrate[d] that its BOCs account for all transactions with its section 272 affiliates in accordance with the accounting principles designated or approved by the Commission" also applies to Pennsylvania. New York Order ¶ 415. As in Massachusetts and New York, Verizon will account for any transactions with the 272 Affiliates as required by section 272(c)(2) and will fully comply with the Commission's cost allocation and affiliate transaction rules. See Browning Decl. ¶¶ 27-30.

C. Verizon Will Comply with the Audit Requirements of Section 272(d).

Verizon also "will comply with section 272(d), which requires an independent audit of a BOC's compliance with section 272 after receiving interLATA authorization." New York Order

[71] As explained below, Verizon also meets the requirements of section 272(c). See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 17539, ¶ 170 (1996). Certain accounting and record-keeping services for each of Verizon's 272 Affiliates are performed by other affiliated centralized services companies that are not separated under section 272. See Browning Decl. ¶ 17. The Commission has made clear, however, that such shared-service arrangements are permitted. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶¶ 168, 178-186 (1996).

¶ 416; Massachusetts Order ¶ 228. As in New York and Massachusetts, Verizon has mechanisms in place for retaining independent auditors and making records available to verify compliance with the Commission's rules in order to comply with section 272(d). See Browning Decl. ¶¶ 31-36.

D. Verizon Will Fulfill All Requests in Accordance with Section 272(e).

Verizon will not discriminate in favor of its 272 Affiliates with respect to requests for telephone exchange and exchange access services. See New York Order ¶ 418; Massachusetts Order ¶ 229. *First*, Verizon will fulfill requests for telephone exchange and exchange access services from unaffiliated entities within the same time period in which Verizon fulfills such requests for its own retail operations. See 47 U.S.C. § 272(e)(1); Browning Decl. ¶ 20. *Second*, Verizon will not provide any facilities, services, or information concerning the provision of exchange access to its 272 Affiliates unless such facilities, services, or information are made available to other providers of interLATA service on the same terms and conditions. See 47 U.S.C. § 272(e)(2); Browning Decl. ¶ 22 & Att. 11. *Third*, Verizon will charge its 272 Affiliates or impute to itself (if using access for the provision of permitted interLATA services of its own) an amount for telephone exchange and exchange access services that is no less than the amount charged to unaffiliated interexchange carriers for such service. See 47 U.S.C. § 272(e)(3); Browning Decl. ¶ 23. *Fourth*, Verizon will provide interLATA or intraLATA facilities or services to the 272 Affiliates only if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions. See 47 U.S.C. § 272(e)(4); Browning Decl. ¶ 24.

E. Verizon and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g).

As in Massachusetts and New York, Verizon will comply with the requirements of section 272(g) in Pennsylvania. See Massachusetts Order ¶ 228; New York Order ¶ 419. Specifically, Verizon's 272 Affiliates will not market or sell local exchange service provided by Verizon except to the extent that Verizon permits non-affiliated long distance carriers to do the same. See Browning Decl. ¶ 25. Moreover, Verizon will not market or sell interLATA service provided by its 272 Affiliates in an in-region state until Verizon has received authorization to provide such service in that state. See id.

While Verizon plans to market its services jointly with those of its 272 Affiliates, as permitted by section 272(g)(3), the Commission has made clear that submission of a joint marketing script is not a requirement of an application under section 271. See New York Order ¶ 419. The D.C. Circuit affirmed that decision, expressly holding that the nondiscrimination requirements of section 272(c)(1) do not apply to joint marketing under section 272(g)(3). See AT&T Corp. v. FCC, 220 F.3d at 632. Verizon also plans to permit the sharing of Customer Proprietary Network Information ("CPNI") with its 272 Affiliates in accordance with 47 U.S.C. § 222 and the Commission's holdings that CPNI is not subject to section 272(c). See Browning Decl. ¶ 26.[72]

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[72] See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"); Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999) ("CPNI Reconsideration Order"). Although in U.S. WEST, Inc. v. FCC, 182 F.3d 1224 (10th Cir. 1999), cert. denied, 530 U.S. 1213 (2000), the Tenth Circuit vacated the CPNI Order on other grounds, the portion of the CPNI Order concluding that section 272(c)(1) does not apply to CPNI was never challenged before the Tenth Circuit and therefore remains the relevant law on the subject. See AT&T Corp. v. New York Tel., File No. EB-00-MD-011, FCC 00-362 (rel. Oct. 6, 2000).

F. Verizon's Compliance Program Will Ensure Satisfaction of Its Obligations Under Section 272.

Finally, the Commission found that Verizon had "demonstrate[d] that each affiliate has implemented internal control mechanisms to prevent, as well as detect and correct, any noncompliance with section 272." New York Order ¶ 405; see Massachusetts Order ¶ 228. Verizon will continue its compliance efforts, which are designed to ensure compliance with the requirements of section 272. See Browning Decl. ¶¶ 37-49. For example, Verizon has established an Affiliate Transactions Compliance Office ("ATCO"), which centralizes the corporation's compliance efforts, reviews affiliate transactions, maintains Verizon's Affiliate Transactions Policy, and conducts employee training on section 272 compliance. See Browning Decl. ¶ 39.

IV. APPROVING VERIZON'S APPLICATION IS IN THE PUBLIC INTEREST.

The Commission has held that "compliance with the competitive checklist is, itself, a strong indicator that long distance entry is consistent with the public interest." New York Order ¶ 422. As described above, there is no question that the checklist is satisfied in Pennsylvania. In addition, the Commission has explained that it "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." Id. ¶ 423. No such unusual circumstances exist here; to the contrary, the evidence is overwhelming that Verizon's entry into long distance in Pennsylvania is in the public interest.

First, the local market in Pennsylvania unquestionably is open and local competition is thriving. As Verizon's experience in New York unambiguously demonstrates, Verizon's entry into the long distance market in Pennsylvania will further promote local competition.

Second, mechanisms are in place to ensure that the local market will remain open. The Pennsylvania PUC has set TELRIC rates for unbundled network elements. It has adopted strict performance standards, and it has approved a comprehensive performance assurance plan.

Finally, Verizon's entry will greatly enhance long distance competition. Verizon's provision of long distance service in New York and Massachusetts provides empirical proof that Bell company entry into long distance leads to lower prices and increased demand for long distance service.

A. Local Competition in Pennsylvania Is Already Thriving, and Verizon's Entry Will Increase Local Competition Further Still.

Local markets in Pennsylvania are unquestionably open to competition.[73] There is extensive competition — from all types of competitors using all three entry paths provided under the Act — throughout Pennsylvania. Moreover, as experience in New York and Texas unambiguously proves, Verizon's entry into the long distance market will prompt still further local competition.

First, competitors have entered the local market in Pennsylvania using all three entry paths provided under the Act, and facilities-based competition is particularly well-established. See Taylor Decl. ¶ 35. As graphically illustrated by the exhibits attached to this Application,

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[73] Verizon disagrees as a legal matter that the Commission may conduct any analysis of local competition in its public-interest inquiry. Under the terms of the Act, the public-interest inquiry should focus on the market to be entered: the long distance market. The statute requires that "the requested authorization" be consistent with the public interest. 47 U.S.C. § 271(d)(3)(C). The "requested authorization" is to provide in-region, interLATA services. See id. § 271(b)(1). Therefore, the statute's public-interest focus is clearly on the long distance market, not the local market. This reading finds strong support in section 271(c)(2)(B), which sets forth an intricate competitive checklist, and section 271(d)(4), which states that "[t]he Commission may not . . . extend the terms used in the competitive checklist." It is implausible that Congress would have spent countless hours honing the checklist, would further have enjoined the Commission from improving or expanding upon it, but somehow would also have authorized the Commission to add still further local competition-related requirements in the context of its public-interest review.

competitors are entering the local market in all areas of the State and are using all three entry paths provided under the Act to do so. See Br. Att. A, Exh. 3. As noted above, this is precisely the set of circumstances envisioned by the Department of Justice when it explained that, "[i]f actual, broad-based entry through each of the entry paths contemplated by Congress is occurring in a state, this will provide invaluable evidence supporting a strong presumption that the BOC's markets have been opened." DOJ Oklahoma Evaluation at 43.

The fact that facilities-based competition is well-established is equally significant. According to the Commission, "in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition."[74] Among other things, "the construction of new local exchange networks" benefits consumers, the Commission has explained, because facilities-based carriers "can exercise greater control over their networks, thereby promoting the availability of new products that differentiate their services in terms of price and quality." UNE Remand Order ¶ 110.

The Justice Department also has recognized that the presence of facilities-based competitors not only disciplines behavior in the *retail* business, but also creates an enormous incentive to provide superior *wholesale* service. To recoup investment in its own ubiquitous sunk-cost network, Verizon must generate revenue from traffic flowing over that network. If Verizon provides poor wholesale service to CLECs, they will move traffic that otherwise would have traveled over Verizon's network — either through resale or unbundled network elements — onto competing facilities. See Schwartz Aff. ¶ 177. This is precisely what the Justice Department's economic expert meant when he explained that "facilities-based entry options . . .

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[74] Promotion of Competitive Networks in Local Telecommunications Markets, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673, ¶ 4 (1999).

can discipline an incumbent's behavior in more segments, not only on the retailing side but also in certain *network* functions." Id. ¶ 177 (emphasis added).

Moreover, as the Department of Justice has observed, competitors' willingness to sink enormous sums of precious investment dollars to construct facilities is itself an unmistakable expression of confidence that the local market is open and will remain so. The fact that competitors have "commit[ted] significant irreversible investments to the market (sunk costs) signals their perception that the requisite cooperation from incumbents has been secured or that any future difficulties are manageable." Id. ¶ 174. Even in the unlikely event that competitors making the initial investments withdraw from the market, once facilities are in the ground, they remain available for use by other competitors. See Taylor Decl. ¶ 40.

As noted above, competing carriers in Pennsylvania have voted with their wallets on the openness of the local market by investing heavily in competing facilities. As of April 2001, competitors in Pennsylvania already serve a very conservatively estimated 600,000 lines through facilities they have deployed themselves. See id. ¶ 35. Even based on incomplete information, competitors in Pennsylvania have deployed at least 30 voice switches, 50 data switches, and more than 2,700 fiber-route miles in Verizon's service territory. See id. Att. 1, ¶ 3. And they have spent literally hundred of millions of dollars to do so. See id. ¶ 40.

Moreover, competitors are now able to reach virtually all of Verizon's customers in the State using those facilities. As of April 2001, competitors have established approximately 2,000 collocation arrangements, which gives them access to more than 90 percent of Verizon's lines — 88 percent of Verizon's residential access lines and more than 94 percent of Verizon's business lines. See Lacouture/Ruesterholz Decl. ¶ 43.

Moreover, cable operators in Pennsylvania have invested large sums to upgrade their

networks to compete directly against Verizon in the provision of broadband access and voice telephony. For example, AT&T offers local cable telephony service to its cable subscribers in Pittsburgh. See Taylor Decl. Att. 1, ¶ 18. Comcast — the largest cable operator in Pennsylvania — began providing cable modem service in Philadelphia in 1997, and has stated that it plans to have its cable modem service available to 100 percent of its Philadelphia region customers by the end of 2001.[75] RCN has constructed "overbuild" cable networks in Pennsylvania and currently offers local telephone services and cable modem service in several Philadelphia suburbs. See Taylor Decl. Att. 1, ¶ 22.

Second, competition in Pennsylvania comes in all shapes and sizes and is being provided throughout the State. Pennsylvania has attracted competition from both the biggest CLECs in the country (e.g., AT&T and WorldCom) and many smaller ones (e.g., CTSI, PaeTec Communications and Broadview Networks). See id. Att. 1, ¶¶ 16, 19, 23, 28, 37. Numerous cable operators are providing local service, including the largest cable operator in the country (AT&T), the largest overbuild cable operator (RCN), and several smaller operators (MetroCable, and Service Electric). See id. There are also fixed wireless providers offering service (e.g., XO), and a wide variety of "pure" resellers. See id. Att. 1, ¶¶ 15, 48-49.

Competing carriers are serving both residential and business customers. As of April 2001, CLECs were serving roughly 330,000 residential customers in Pennsylvania, including more than 95,000 over facilities they deployed themselves, approximately 197,000 through platforms, and approximately 36,000 through resale. See id. ¶ 36.

And, as the attached map shows, competitive entry in Pennsylvania is taking place across the State. See Br. Att. A, Exh. 3. In fact, there is every form of competition in every part of the

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[75] Patricia Horn, Philadelphia Consumers Learn Joys, Frustrations of High-Speed Internet

State. See id. While competition is most intense in Philadelphia and Pittsburgh, and their surrounding metropolitan areas, there also is intense competition throughout the less populous parts of the State. See id. As of April 2001, competing carriers were serving customers using both some or all of their own facilities and through resale in each of the area codes in Pennsylvania. See id.; Taylor Decl. Att. 1, Table 1.

Third, as actual experience in both New York and Texas now unequivocally proves, granting Verizon long distance relief will prompt still further local competition. As the Commission's own recent Local Telephone Competition report confirms, "[s]tates with long distance approval show [the] greatest competitive activity."[76] In fact, "CLEC market share in New York and Texas . . . are over 135% and 45% higher than the national average, respectively."[77]

This is hardly surprising: a Bell company's imminent or actual entry into the long distance market is the catalyst that forces long distance incumbents to finally enter local markets for mass-market customers. See Taylor Decl. ¶ 29. New York was the first state in which a Bell company received long distance relief, and it was the first state in which AT&T, WorldCom, and Sprint began extensively serving mass-market customers. See id. ¶ 30. Texas was the second state in which a Bell company received long distance relief, and it was the second state in which these three incumbents began extensively serving mass-market customers. See id. ¶ 31.

In both New York and Texas, the long distance incumbents responded to impending BOC entry by rolling out new, lower-priced bundles of local and long distance service that typically

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Access, Philadelphia Inquirer, July 13, 2000.

[76] FCC News Release, Federal Communications Commission Releases Latest Data on Local Telephone Competition (May 21, 2001).

[77] Id.

are marketed uniquely to customers in those states. See id. ¶¶ 24-26. The long distance incumbents have made significant headway in marketing these bundles. In New York, for example, competitors served just over 1 million lines at the time of Verizon's application, and today serve more than 3 million lines. See id. ¶ 30. AT&T has boasted: "'We've won more local customers in New York than we've lost residential long-distance customers to [Verizon].'"[78]

Verizon's entry in New York has not only sparked increased competition from the long distance incumbents, but has sparked added local competition across-the-board. Since Verizon's entry in New York, the number of local lines served by competitors there has increased at least 125 percent, including a 440-percent increase in UNE-Platform lines and a 50-percent increase in facilities-based lines. See Taylor Decl. ¶ 30. During this time there also has been a 260-percent percent increase in stand-alone loops, a 110-percent increase in collocation sites, and an 80-percent increase in interconnection trunks. See id.

B. Local Markets in Pennsylvania Will Remain Open After Verizon Obtains Section 271 Approval.

Even apart from the marketplace realities demonstrating that the local market not only is open, but irreversibly so, there simply is no realistic risk that Verizon could close the local market or deter further entry. For one thing, Verizon's compliance has been, and will continue to be, closely scrutinized by both competitors and state and federal regulators. For another thing, Verizon is subject to comprehensive performance reporting and performance assurance plans that put a substantial amount of bill credits at risk annually.

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[78] See Reinhardt Krause, Verizon's New York Fight Key to AT&T Challenge, Investor's Bus. Daily, Aug. 15, 2000, at A6 (quoting AT&T spokesman Gary Morgenstern).

1. The Regulatory Framework in Pennsylvania Strongly Favors Competition.

As in New York and Massachusetts, the process of opening local markets began in Pennsylvania even before the Act was enacted, and has continued since.

Most significant here, the Pennsylvania PUC has conducted extensive proceedings to evaluate Verizon's compliance with the competitive checklist. In fact, about six months ago, in January 2001, the PUC opened a docket specifically devoted to evaluating Verizon's compliance with the checklist: Docket M-00001435. Since that time, it has intensively analyzed every aspect of Verizon's checklist compliance down to the most minute detail, all with constant input from competing carriers — both through formal filings and hearings and through informal "collaborative" sessions. The formal record in Docket M-00001435 includes hundreds of submissions totaling thousands of pages from more than 35 parties. Verizon also has responded to dozens of interrogatory requests and several hundred questions and data requests from the PUC staff and CLECs. There have been 28 days of hearings, filling more than 5,000 pages of transcript. This process only recently wrapped up with en banc hearings involving all interested parties, and the Pennsylvania PUC has indicated that, based on this exhaustive record, it will prepare a consultative report recommending to this Commission that it approve Verizon's application to provide long distance service in Pennsylvania. See PUC Recommendation Letter at 5.

Of course, the PUC's efforts have not been limited to its section 271 proceeding. Before it established a proceeding to evaluate Verizon's compliance with the checklist, the Pennsylvania PUC conducted numerous proceedings to foster local competition, and to implement the requirements of the 1996 Act. As the PUC has stated, its "findings are also based on our consideration of our recent decisions in a number of other dockets, including our Functional/Structural Separations Order (adopted March 22, 2001, at Docket No. M-00001353),

UNE Pricing Order (adopted May 24, 2001, at Docket Nos. R-00005261, et al.), and Collocation Order (adopted May 24, 2001, at Docket Nos. R-00994697, et al.)" Id. at 2.

Moreover, the Pennsylvania PUC has conducted an "active review and modification of [Verizon's] proposed unbundled network element prices," and has demonstrated its "commitment to TELRIC-based rates." New York Order ¶ 238; Massachusetts Order ¶ 27. The Pennsylvania PUC first set rates for UNEs in the so-called MFS Phase III proceeding. After thoroughly examining the requirements for pricing UNEs under the 1996 Act, and after receiving literally thousands of pages of testimony and briefing from all interested parties, the PUC adopted a comprehensive order establishing the rates and wholesale discounts that Verizon could charge.[79] One year later, following still further proceedings in which interested parties submitted thousands of additional pages of testimony and briefing, the PUC revised Verizon's UNE rates in the so-called Global Order, resulting in the rates that are in effect today.[80] And the PUC has continued to conduct proceedings to establish rates for those network elements that were not in existence at the time of the MFS Phase III Order and the Global Order.[81]

The outcome of the PUC's pricing proceedings is entirely consistent with the Act and Commission precedent. The Pennsylvania PUC labeled its pricing methodology a Total Service

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[79] See Application of MFS Intelenet of Pennsylvania, et al., Final Opinion and Order, Docket Nos. A-310203F0002, et al. (Pa. PUC Aug. 7, 1997) ("MFS Phase III Order") (App. B, Tab O-12).

[80] Joint Petition of NextLink Pennsylvania, Inc., Opinion and Order, Docket Nos. P-00991648, et al. (Pa. PUC Sept. 30, 1999), aff'd, 763 A.2d 440 (Pa. Commw. Ct. 2000) ("Global Order"), appeal pending, No. 745 E.A.L. 2000 (Pa. Filed Nov. 22, 2000). The Global Order was affirmed by the Pennsylvania Commonwealth Court, and is now on review to the Pennsylvania Supreme Court.

[81] See, e.g., Further Pricing of Bell Atlantic-Pennsylvania Inc.'s Unbundled Network Elements, Docket Nos. R-00005261, et al.; PUC Collocation Order.

Long Run Incremental Cost ("TSLRIC") methodology for network elements.[82] As this Commission has stated, TELRIC is merely the label coined by the Commission to describe "the TSLRIC of the network element." See Local Competition Order ¶ 672.[83] And as the PUC has explained, it "has followed state and federal law in establishing UNE rates in accordance with the TELRIC methodology," and has produced rates that are "consistent with" TELRIC.[84] Accordingly, the Commission should "place great weight" on the PUC's decisions in this regard. New York Order ¶ 238.

Moreover, there simply is no legitimate claim that the prices set by the PUC are somehow too high. On the contrary, even the long distance incumbents have readily conceded that, overall, the UNE rates are at levels that "permit competitive entry," create a local market that is

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[82] On June 30, 2000, the United States District Court for the Middle District of Pennsylvania remanded the MFS Phase III Order back to the Commission to clarify whether it actually followed the FCC's TELRIC rules. MCI Telecomms. Corp. v. Bell Atlantic-Pennsylvania, Inc., No. 97-CV-1857 (M.D. Pa. filed Dec. 8, 1997) (judgment entered June 30, 2000). This order is on appeal to the United States Court of Appeals for the Third Circuit. MCI Telecomms. Corp. v. Verizon Pennsylvania Inc., Nos. 00-2257 & 00-2258 (3d Cir. filed Feb. 14, 2001). The district court did not review the substance of the order, but rather decided the case solely on the fact that the Pennsylvania PUC called its methodology "TSLRIC" rather than "TELRIC." Brief of Appellants at 29, MCI Telecomms. Corp. v. Verizon Pennsylvania Inc., No. 00-2257 (3d Cir. filed Dec. 20, 2000) ("The issue before the District Court was whether the method used by the PUC produced unlawful rates. The District Court should have, but did not, reach this issue. Instead, the District Court rejected the PUC's rates based solely on the PUC's use of the acronym 'TSLRIC.'").

[83] Implementation of the Local Competition Provisions in the Telecommunications Act, First Report and Order, 11 FCC Rcd 15499 (1996).

[84] Bell Atlantic Pennsylvania, Inc. v. Pennsylvania PUC, 763 A.2d 440, 483 (2000); MFS Phase III Order at 12; see also Brief for the Respondent Pennsylvania PUC at 108, Bell Atlantic-Pennsylvania, Inc. v. PUC, No. 2790 C.D. 1999 (Pa. Commw. Ct. May 1, 2000) (stating that UNE rates "comport with the FCC's dictated cost methodology."); Respondent Pennsylvania PUC's Brief in Opposition to MCI WorldCom's Petition for Allowance of Appeal at 21-22, MCI WorldCom, Inc. v. PUC, No. 34 E.A.L. 2001 (Pa. filed Feb. 23, 2001) ("the PUC has followed state and federal law in establishing UNE rates in accordance with TELRIC methodology").

"open to competition," and enable them to "offer a quality product at a reasonable price."[85] Indeed, both AT&T and WorldCom have held out Pennsylvania as the standard that should be followed in other proceedings. In Massachusetts, for example, WorldCom argued that Verizon should be required to "[a]gree to the Pennsylvania rates, the state in the region that has most recently analyzed UNE rates, rates that we know lead to competitive entry, because they have statewide in Pennsylvania."[86]

In fact, the only pricing argument to which the long distance incumbents devoted any effort in the course of the state proceedings is their claim that unbundled loop rates in rural areas — referred to as Density Zones 3 and 4 — are too high. This is baseless. The simple fact is that the Pennsylvania PUC concluded that these rates are consistent with TELRIC, and its decision is entitled to great deference. Moreover, the facts on the ground belie the long distance carriers' claims. Competitors are using proportionately just as many unbundled loops in Zones 3 and 4 as they are in Zones 1 and 2. For example, as of December 2000, Zones 3 and 4 contained 76.7 percent of Verizon's retail switched access lines, and 76.5 percent of all the stand-alone unbundled loops that Verizon has provisioned to CLECs. As of this same date, Zones 3 and 4 also contained 60 percent of all UNE platforms (some 70,000), the vast majority of which were being used to serve residential customers. And this was before the PUC reduced the loop rates in

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[85] Final Brief of MCI WorldCom Communications, Inc. at 6, Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Docket No. M-0000-1435 (Pa. PUC filed Apr. 18, 2001) ("WorldCom Final Brief"); WorldCom, MCI Local Service: Frequently Asked Questions, at www.mciworld.com/for_your_home/products_services/local/faq.shtml.

[86] Transcript at 5606, Technical Session before the Massachusetts DTE, Docket DTE 99-271 (Mass. DTE Sept. 8, 2000) (testimony of Robert Lopardo, WorldCom) ("Lopardo Testimony"); see also Comments of AT&T Corp. In Opposition To Verizon New England Inc.'s Section 271 Application For Massachusetts, CC Docket No. 01-9, at 19 n.25 (FCC filed Feb. 6, 2001) (arguing that Verizon's Pennsylvania switching rates are "50 percent lower" than those in New York, which are similar to those in Massachusetts).

Zone 4 an additional 75 cents. See Structural Separation Order at 38. These facts simply do not support the notion that the loop rates in these areas are somehow out of line with the other network element rates that no one seriously suggests are not TELRIC compliant.[87] To the contrary, as WorldCom has conceded elsewhere, the rates in Pennsylvania have led "to competitive entry . . . *statewide*."[88]

2. Verizon Is Subject to Comprehensive Performance Reporting and Performance Assurance Mechanisms.

Verizon also is subject to extensive performance reporting requirements that, like the comparable requirements in Massachusetts and New York, allow competitors and regulators alike to identify and investigate potential problems before they pose a risk to competition. And it also is subject to a comprehensive, self-executing performance assurance mechanism that provides still further incentives to provide the best wholesale performance possible.

Performance Measurements. Verizon is subject to comprehensive performance reporting requirements established by the Pennsylvania PUC. See Guerard/Canny/DeVito Decl. ¶¶ 13, 15-21; New York Order ¶¶ 438-439; Massachusetts Order ¶¶ 240, 243. Under the terms of the PUC's orders, Verizon currently reports its monthly performance for a total of 163 separate measurements and submeasurements. See Guerard/Canny/DeVito Decl. ¶ 150. These measurements are reported each month on both an aggregate and CLEC-specific basis, and also are further disaggregated by product and service type and by geographic region of Pennsylvania.

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[87] While WorldCom has claimed that those rates are not low enough to be used as part of a UNE-platform combination, see WorldCom Final Brief at 7, the reality is that competitors have signed up 70,000 customers using UNE platforms in these two density zones. In any event, the Pennsylvania PUC has found that its rates in Zones 3 and 4 fall within the range that a reasonable application of TELRIC would produce, and whether these rates "promote competitive entry" is irrelevant under the Act. See Massachusetts Order ¶¶ 41, 235.

[88] Lopardo Testimony at 5606 (emphasis added).

See id. ¶¶ 150, 152. In total, nearly 2,000 pieces of performance data are reported each month. See id. ¶ 150.

Moreover, about 70 percent of the measurements used in Pennsylvania are the same as those developed in the New York PSC's collaborative "Carrier-to-Carrier" process and that are used in New York and Massachusetts. See id. ¶ 17. For example, the PUC adopted both the DSL and line-sharing measurements from New York. See id. ¶ 19. And to the extent that differences exist between the Pennsylvania and New York measurements, they typically are a function of the PUC's decision to include measurements that do not exist in New York, reflect the PUC's decision to adopt slightly different business rules and standards, or, in a number of cases, reflect the fact that the Pennsylvania measurements have not yet been updated to reflect needed refinements agreed to in the New York collaborative proceedings. See id. ¶ 18. And all parties now agree that the remaining New York measurements should be adopted for use in Pennsylvania as well. See id. ¶ 21.[89]

Likewise, the PUC has established corresponding standards against which Verizon's performance is measured.[90] As in New York, where a measurement tracks performance on a service that has a retail analogue, the standards in Pennsylvania generally compare Verizon's performance for CLECs against Verizon's performance for itself. See Guerard/Canny/DeVito Decl. ¶ 28. Where no retail analog exists, the measurements compare Verizon's performance against benchmarks established by the Pennsylvania PUC. See id. These benchmarks represent "absolute standards" — rather than minimum performance levels — that provide Verizon with objectives for providing CLECs excellent service. See id.; see also New York Order ¶ 55 n.107

[89] See PUC Recommendation Letter at 4 n.4 (noting that "the participants in this proceeding have agreed to adopt the New York metrics").

[90] Not all measures have performance standards; the Pennsylvania PUC required Verizon

(recognizing that "states may choose to set their performance benchmarks at levels higher than what is necessary to meet the statutory nondiscrimination standard").

Verizon's Pennsylvania performance data also have been validated by independent reviews conducted by KPMG, just as in New York and Massachusetts. See Guerard/Canny/DeVito Decl. ¶¶ 134-146; Massachusetts Order ¶ 6; New York Order ¶ 11. Based on its initial review, which the PUC concluded that Verizon "pass[ed]," KPMG determined that Verizon satisfied 96 percent of the applicable test criteria pertaining to its collection and processing of performance data, its development of measurement standards, and its measurements change control practices. See Guerard/Canny/DeVito Decl. ¶ 134. And the few issues that it identified have since been addressed. See id. ¶¶ 139-140.[91]

KPMG also conducted an independent replication of Verizon's reported performance results. See Guerard/Canny/DeVito Decl. ¶ 141. KPMG conducted its initial review in mid-2000, and a second review in January 2001 following Verizon's implementation of a quality assurance process. See id. ¶¶ 141, 143. Based on that review, KPMG was able to replicate more than 99 percent of the measures in the January 2001 report. See id. ¶ 143. In fact, there was

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to report some data for diagnostic purposes only. See Guerard/Canny/DeVito Decl. ¶ 151.

[91] The few issues KPMG identified in this analysis pertained to the practices Verizon has implemented to manage changes to the performance standards, measurement definitions, and calculation of performance results. See Guerard/Canny/DeVito Decl. ¶¶ 138, 141. In the course of that review, to respond to issues KPMG raised, Verizon enhanced its existing metrics change control plan in September 2000. See id. ¶¶ 139-140. This is the exact same process, using the same personnel, that Verizon employs in Massachusetts. See id. ¶ 139. This plan also operates in New Jersey, where KPMG has reviewed it and has raised no issues with Verizon's implementation of changes to performance measurements. See id.

only *one* measure that KPMG could not replicate that related to Pennsylvania performance, and the difference KPMG found for that measure was *less than 0.01 percent*. See id.[92]

Performance Assurance Plan. Verizon is subject to a self-executing Performance Assurance Plan that was designed by the Pennsylvania PUC. See Guerard/Canny/DeVito Decl. ¶ 147. Although this Plan has a different structure from the plans in Massachusetts and New York, the Commission has recognized that "[p]lans may vary . . . , and there is no one way to demonstrate assurance." Massachusetts Order ¶ 240. The Pennsylvania Plan nonetheless provides "strong assurance that the local market will remain open after [Verizon] receives section 271 authorization." New York Order ¶ 429; see Massachusetts Order ¶ 240; Guerard/Canny/DeVito Decl. ¶ 162.[93] The Plan indeed contains every element that the Commission has previously identified as important, including "clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance." New York Order ¶ 433. Moreover, KPMG's testing provides more than "reasonable assurances that the reported data is accurate." Id.

Further, as explained below, the Plan is "self-executing," "detect[s] and sanction[s] poor performance when it occurs," and subjects Verizon to "potential liability that provides a meaningful and significant incentive to comply with the designated performance standards." Id. The Pennsylvania PUC has included in the Plan 110 separate submeasurements that Verizon

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[92] At the direction of the Pennsylvania PUC, KPMG also has analyzed twenty new performance measurements that were not included in its original analysis, with Verizon satisfying 100 percent of the applicable "test points" KPMG reviewed. See id. ¶ 144.

[93] On June 6, 2001, the Pennsylvania PUC announced that it had adopted "a rebuttable presumption that the features of the NY remedies plan should be made applicable and tailored to Pennsylvania." PUC Recommendation Letter at 4. Verizon also has withdrawn its appeal challenging the PUC's statutory authority to impose a Plan. See id. at 3; Letter from Julia A. Conover, Vice President, Verizon Pennsylvania, Inc., to James J. McNulty, Secretary, Pa. PUC (June 7, 2001) ("June 7 Verizon Letter") (App. B, Tab B-3).

reports monthly. See Guerard/Canny/DeVito Decl. ¶ 151. Verizon is deemed to have missed measurements with a parity standard if the difference between Verizon's retail performance and its performance for CLECs is statistically significant, resulting in payments to CLECs regardless of whether the difference is competitively significant.[94] Verizon is deemed to have missed measurements with a benchmark standard whenever Verizon's performance for CLECs is below the benchmark; thus, under the PUC's stringent scoring systems, 94.9 percent timely performance on a measurement with a 95-percent benchmark (while still excellent service) is scored as a miss and results in payments to CLECs. See Guerard/Canny/DeVito Decl. ¶ 165.[95]

The Pennsylvania PUC also has established an escalating scale of self-executing performance remedies. *First*, if Verizon misses a measure or measures for two consecutive months, it must pay a fixed amount of $3,000 per CLEC affected, per measure, per month.[96] *Second*, if Verizon misses a measure or measures for three consecutive months, it must pay

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[94] In measuring performance, Verizon employs the statistical methodology that the Commission endorsed in its New York Order. See Guerard/Canny/DeVito Decl. ¶ 166; compare New York Order App. B.

[95] For the vast majority of the submeasurements included in the Plan, Verizon's performance is assessed at the CLEC level. Therefore, even if Verizon's performance on a particular submeasurement is excellent for CLECs overall, it might still miss that submeasurement for a particular CLEC or CLECs, resulting in payments to those CLECs. See Guerard/Canny/DeVito Decl. ¶ 152. For the remaining submeasurements, Verizon's performance is assessed on an aggregate basis; if Verizon misses such a submeasurement, it is deemed to have missed that submeasurement for every CLEC that used the measured service or product during that month. See id.

[96] If Verizon misses a measure within a 30-day period, Verizon will provide a CLEC with a pro-rated refund of a CLEC's out-of-pocket expenses for services that it did not receive. Verizon automatically credits all CLECs using the service covered by that measurement that had an out of service condition for a period greater than 24 hours, and CLECs can inform Verizon of their out-of-pocket expenses and receive a pro-rated refund. See Guerard/Canny/DeVito Decl. ¶¶ 155-158.

$5,000 per CLEC affected, per measure, per month. See id. ¶ 160.[97] *Third*, if Verizon misses a measure or measures for four or more consecutive months, it must pay $25,000 per CLEC affected, per measure, per month. See Guerard/Canny/DeVito Decl. ¶ 160.[98] *Finally*, the PUC has adopted a separate payment structure for the electronic billing measurements it has required Verizon to establish in consultation with the PUC Staff. See id. ¶ 161. If Verizon misses any of those new measurements, it must pay $50,000 per CLEC per measure for the first month, $75,000 per measure per CLEC for the second consecutive month, and $100,000 per measure per CLEC for three or more consecutive months. See id.

The PUC's Plan also differs from the New York plan in that it places no cap on payments Verizon can be required to make. Because of this, the maximum potential liability under the Plan easily exceeds the proportion of net revenues that the Commission found sufficient in previous orders. See id. ¶ 162; New York Order ¶ 436; Texas Order ¶ 424; Massachusetts Order ¶ 241. For example, if Verizon missed only 25 of the 110 measurements included in the Plan for 35 of the 90 active CLECs in the state over the course of a year, it would face over $200 million in payments, which exceeds the 39 percent of net revenues the Commission found sufficient in Massachusetts. See Guerard/Canny/DeVito Decl. ¶ 162; Massachusetts Order ¶ 241 & n.769.[99] This level of potential liability clearly provides Verizon with "a meaningful and significant

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[97] Of these amounts, $1,000 is paid to the PUC. See Structural Separation Order at 36-38. Those payments are intended for use to train PUC staff members in the assessment of performance measurements and administration of the Plan.

[98] When Verizon misses a measurement for four or more months — or a total of six measurements in four consecutive months — it also must file a report with the PUC explaining the nature of the problem and its efforts to correct that problem. See Guerard/Canny/DeVito Decl. ¶ 160.

[99] The Plan also ensures that Verizon could not selectively provide poor service to CLECs using a particular mode of entry, such as the platform or DSL, without incurring significant remedy payments. See Gertner/Bamberger/Bandow Decl. ¶¶ 18, 27-29.

incentive to comply with the designated performance standards." New York Order ¶ 433; see also Guerard/Canny/DeVito Decl. ¶ 163; Gertner/Bamberger/Bandow Decl. ¶¶ 27-29.

Finally, even aside from its own business interest in providing superior wholesale service in order to encourage other carriers to use its network, Verizon also is subject to a host of additional safeguards and remedial measures that provide abundant protection against the possibility of anticompetitive conduct. For example, competing carriers still have recourse to the appropriate regulatory and judicial forums to enforce their legal or contractual rights. Likewise, the Commission itself retains the ability to enforce the requirements of section 271 with penalties, up to and including possible revocation of long distance authority under section 271(d)(6)(A). And it already has made clear that it will not hesitate to invoke that authority.

C. Verizon's Entry Will Increase Long Distance Competition.

A consumer group that has carefully followed the development of competition in New York since Verizon's entry recently released a comprehensive study that concludes that consumers in New York who have switched to Verizon long distance have saved up to $284 million annually — nearly $14 per month for the average consumer.[100] This is consistent with the findings of a report by two of the nation's major consumer groups, which concluded that Verizon's entry in New York has enabled consumers in that state to obtain rate reductions of 20 percent for local and long distance service.[101] Moreover, these enormous savings do not even

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[100] Telecommunications Research & Action Center (TRAC), 15 Months After 271 Relief: A Study of Telephone Competition in New York (Apr. 25, 2001), reproduced at Taylor Decl. Att. 3.

[101] See Consumer Fed'n of Am. & Consumers Union, Lessons from 1996 Telecommunications Act: Deregulation Before Meaningful Competition Spells Consumer Disaster 9-10 (Feb. 2001).

account for the fact that, while Verizon is offering customers lower rates, AT&T is *raising* its basic rates yet again.[102]

Verizon's entry will undoubtedly have the same pro-competitive effects in Pennsylvania that it has had in New York, because Verizon will offer equally attractive rates in Pennsylvania.[103] When Verizon entered the long distance market in January 2000 in New York and in April 2001 in Massachusetts, it introduced simpler and less expensive calling plans than most other carriers, particularly the big three long distance incumbents. See Taylor Decl. Att. 2, ¶ 2. Verizon has several calling plans with both very attractive per-minute rates and no monthly calling plan fees, as well as plans with no minimum charges. See id. Verizon also offered pre-paid calling plans with some of the lowest rates in the industry. See id. And it offered calling plans with longer off-peak hours than the industry norm at the time (5:00 p.m. to 8:00 a.m. instead of 7:00 p.m. to 7:00 a.m.). See id. About 93 percent of the customers who had at least one interLATA call would have a lower bill by subscribing to the lowest-cost Verizon calling plan than by subscribing to the lowest-cost calling plan from the big three long distance incumbents. See id. ¶ 15.

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[102] Bruce Sullivan, AT&T Gambles with Long-Distance Rate Hike, Communications Today, June 5, 2001 (noting that AT&T raised its basic rates and that 28 million of AT&T's 60 million residential long-distance customers pay these basic rates).

[103] Moreover, Verizon's real-world experience in New York puts to rest once and for all the claims that the long distance incumbents have rehashed for more than 15 years — based on nothing more than far-fetched theories and hyperbole — that Bell company entry into long distance would have adverse competitive effects. The Commission has already determined that such claims have no place in the review of a section 271 application. See New York Order ¶ 428; see also Texas Order ¶ 419. In the event that the long distance incumbents nevertheless repeat these claims, the Declaration of William Taylor again explains why they are groundless. See Taylor Decl. ¶¶ 41-69.

Verizon's calling plans have been particularly attractive for the low-volume customers that the long distance incumbents historically have tried to discard or ignore.[104] For example, not only does Verizon offer a number of plans with no monthly minimum and no calling plan fee, but it also automatically enrolls all of its customers in a lower-cost calling plan (known as its Timeless plan) if they fail to choose a plan. The Timeless plan is particularly attractive for low-volume users because it offers a flat, low rate of 10 cents per minute with no monthly calling plan fees or minimum usage fees. See Taylor Decl. Att. 2, ¶ 6. In contrast, the long distance incumbents require customers who do not enroll in a plan to pay relatively higher "basic" rates, or they put those customers in default plans with rates considerably higher than their most popular calling plans. See id. ¶ 42 & Att. 2, ¶ 9. And, even when the long distance incumbents do offer a flat-rate plan (i.e., with no monthly plan fee or minimum usage fee) that might otherwise be attractive to low-volume users, their rates typically are substantially higher than those offered by Verizon. For example, AT&T's cheapest flat-rate plan is its "AT&T One Rate Basic," which offers a flat rate of 16 cents per minute — *60 percent more expensive* than Verizon's Timeless plan. See id. Att. 2, ¶ 7.[105] And AT&T has announced that, effective July 1, 2001, it is raising this rate to 17.5 cents.[106]

Both in anticipation of and in response to Verizon's entry into the long distance market, the incumbent long distance carriers have been forced to introduce special, lower-priced bundled services offerings to customers. See Taylor Decl. ¶ 28. For example, in New York, WorldCom

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[104] See Low-Volume Long-Distance Users, Notice of Inquiry, 15 FCC Rcd 6298 (1999).

[105] See AT&T Press Release, AT&T Radically Redesigns Basic Residential Calling Plan; Introduces New Family of No-Fee Offers; Lowers Prices for Low-Volume Callers (June 23, 2000).

[106] See AT&T Press Release, AT&T Raises Basic Residential Calling Rates While Offering Consumers Unprecedented Choice, Flexibility, and Savings (Jun. 1, 2001).

has rolled out a new "One Company Advantage" plan under which its customers receive unlimited local and long distance calls for 7 cents a minute, plus 200 free minutes of long distance calling. See id. Att. 2, ¶ 12. In contrast, its flagship national plan charges nearly 14 cents per minute for in-state long distance. See id. Likewise, AT&T introduced its "AT&T Local One Rate New York" package, which includes reduced rates of 7 cents per minute for interstate calls and 10 cents per minute for in-state calls, and which drops the monthly fee associated with AT&T's most comparable national plan. See id. Att. 2, ¶ 13.

In Massachusetts, AT&T has responded to Verizon's entry by providing its customers in the state with thirty free minutes of long-distance calling. See Taylor Decl. ¶ 21. AT&T has made consumers aware of this promotion through a special greeting that plays when the customer makes a long distance call. See id. Massachusetts is the only state in Verizon's region in which AT&T has made this promotional offer available, which follows a similar promotion that AT&T made to its customers in Kansas and Oklahoma just two days before SBC was authorized to provide long distance service in those states. See id. Moreover, AT&T extended its offer to Massachusetts despite AT&T's statement just weeks earlier that it had "no immediate plans to extend the program to other states." See id.; Communications Daily at 9 (Mar. 8, 2001).

As this experience makes clear, Verizon's entry not only has promoted additional local competition, but also it has produced substantial competitive benefits for long distance and bundled services packages. Consumers in Pennsylvania are now entitled to the same benefits.