under section 271. It is more a matter of Pennsylvania policy. Mr. David Lewis of the PAPUC staff testified that the PAPUC should promulgate new regulations. We find that the consideration of new regulations would be the more appropriate arena to address this issue.

b. Metrics

Across the spectrum of metrics applicable to Checklist 14, Verizon PA has demonstrated fairly continuous improvement in its ability to perform up to the expected standards throughout the commercial availability period and into April 2001.[614]

Of the metrics with misses at various times during the commercial availability period, seven showed continuous improvement including passes in March 2001 and passes in April 2001. These are OR-2-04 "% On Time LSR Rejects <10 lines (elec.) – 2 wire digital," OR-6-01 "% Accuracy – Orders POTS/Specials," PR-1-01 "Average Interval Offered – Total No Dispatch – POTS Business," PR-2-01 "Average Interval Completed – Total No Dispatch – POTS Business," PR-3-02 "% Completed within 2 days (1-5 lines) No Dispatch - POTS," PR-6-01 "% Installation Troubles within 30 days," and MR-2-03 "Network Trouble Report Rate CO – POTS." We do not see this pattern as creating a concern that the market is not open. To the extent that there may be problems with the interpretation of any of the metrics applicable to Checklist 14 or with the retail analogs, we shall defer such discussion to our further proceeding regarding metrics and remedies. Accordingly, we feel there is no further need to discuss these particular metrics at this time.

[614] As with the other Checklist items with associated metrics, the commercial data relative to Cklist 14 was drawn from the monthly C2C Aggregate Reports that Verizon PA files monthly with the PAPUC. The association of particular metrics with Cklist 14 was made by Verizon PA in its revised Measurements Declaration Attachment 403, filed on April 18, 2001.

Thirteen of the Checklist 14 metrics showed one or two misses during the commercial activity period and passes in April 2001 but without the trend of continuous improvement. These metrics are OR-1-04 "% On Time LSR Confirmations < 10 lines (elec.) 2 wire digital," PR-1-03 "Average Interval Offered – Dispatch (1-5 lines) – POTS Residence," PR-1-10 "Average Interval Offered – Disconnects – No Dispatch (Specials)," PR-2-03 "Average Interval Completed – Dispatch (1-5 Lines) – POTS Residence," PR-3-03 "% Completed within 3 days (1-5 lines – No Dispatch) – POTS," PR-3-08 "% Completed within 5 days (1-5 lines – No Dispatch) – POTS," PR-3-10 "% Completed within 6 days (1-5 lines – No Dispatch) – POTS," PR-6-02 "% Installation Troubles within 7 days -- POTS," MR-2-02 "Network Trouble Report Rate Loop – 2 wire digital," MR-2-02 "Network Trouble Report Rate Loop – 2 wire xDSL," MR-2-03 "Network Trouble Report Rate CO – 2 wire digital," MR-2-03 "Network Trouble Report Rate CO – 2 wire xDSL," MR-3-02 "% Missed Repair Appointment – CO – POTS." Noting the passes in April 2001, we do not see this pattern as creating a concern that the market is not open. To the extent that there may be problems with the interpretation of any of these metrics applicable to Checklist 14, we shall defer such discussion to our further proceeding regarding metrics and remedies as more fully discussed in the segment of this consultative report dealing with Checklist item 4. Accordingly, we feel there is no further need to discuss these particular metrics at this time.

Three of the metrics were either passed or had only one miss during commercial availability but also missed April 2001. These metrics are: PR-1-01 "Average Interval Offered – Total Dispatch – 2 wire digital, "PR-1-10 "Average Interval Offered – Disconnects – No Dispatch (POTS & Complex)" and PR-2-10 "Average Interval Completed Disconnects – No Dispatch (POTS & Complex)." Because April 2001 was not part of the designated commercial availability period, we shall not use the misses in April 2001 to fault Verizon PA.[615] Furthermore, two missed metrics for disconnecting

[615] We note that we have used April 2001 data when the metric has been met to establish a positive trend. We shall not use the miss to establish a negative trend because Verizon PA has had no opportunity to

service would not substantiate a negative 271 recommendation. To the extent that there may be problems with the interpretation of any of these metrics or with the retail analogs applicable to Checklist 14, see our discussion of Checklist item 4 herein.

Five remaining Checklist 14 metrics have misses throughout the commercial availability period. The particular metrics are: PR-1-01 "Average Interval Offered – Total No Dispatch – POTS Residence," PR-2-01 "Average Interval Completed – Total No Dispatch – POTS Residence," PR-3-01 "% Completed within 1 Day (1-5 lines – No dispatch) – POTS," PR-3-06 "% Completed within 3 Days (1-5 lines – Dispatch) – POTS," and MR-5-01 (% Repeat Reports within 30 days – POTS." If we were to take the commercial data for these metrics at face value,[616] we would have a concern as to

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explain such a miss in this proceeding. If these three April 2001 misses truly constitute a trend in declining service, then that pattern will be apparent when Verizon PA's 271 application is considered by the FCC and Verizon Pa has an opportunity to respond to such allegations.

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Metric	Month	Performance Score	Verizon PA performance	CLEC performance	Difference/Impact
PR-1-01	JAN 2001	Z = -52.91	0.81 day	2.60 days	Less than 1 day
	FEB 2001	Z = -8.89	0.89 day	1.18 days	Approx. 7 hours
	MAR 2001	Z = -9.78	0.91 day	1.18 days	Approx. 6.5 hours
PR-2-01	JAN 2001	Z = -37.55	0.79 day	1.91 days	Approx. 1 day
	FEB 2001	Z = -8.14	0.88 day	1.15 days	Approx. 6.5 hours
	MAR 2001	Z = -9.39	.09 day	4.52 days	Approx. 3.5 days
PR-3-01	JAN 2001	Z = -7.05	72.29%	62.45%	~ 94,000 for VP ~ 650 for CLECs
	FEB 2001	Z= -2.71	69.9%	65.92%	~ 82,000 for VP ~ 650 for CLECs
	MAR 2001	*Passed*	*67.77%*	*71.75%*	*Parity*
PR-3-06	JAN 2001	Z = -2.53	54.57%	43.61%	~ 8600 for VP ~ 60 for CLECs
	FEB 2001	Z= - 1.91	56.12%	47.58%	Small miss*
	MAR 2001	Z = -2.18	54.91%	44.12%	~ 8500 for VP ~ 50 for CLECs
MR-5-01	JAN 2001	Z = -3.39	15.69%	20.13%	~ 7900 for VP ~ 160 for CLECs
	FEB 2001	Z = -1.71	14.94%	17.21%	Small miss*
	MAR 2001	*Passed*	*15.17%*	*17.39%*	*Parity*

whether the data established a pattern as to Verizon PA's marketplace performance in these specific areas. We do not see, however, such performance in these few metrics as indicative of overall poor market activity.

A closer examination further reveals that for PR-1-01 and PR-2-01, the average difference was about a day or less the majority of the time. For the other three metrics, PR-3-10, PR-3-06, and MR-5-01, we see what appears to be a trend of the gap in performance narrowing.

Coupling this performance (which is basically confined to one particular type of product, POTS) with our concerns that the retail analogs for all the metrics may not be as precisely fine-tuned as they could be and that in some cases all the parties may not have the same understanding of the business rules used to apply the metrics, we find that these misses cannot form the predicate for a negative 271 recommendation from the PAPUC. None of these concerns are egregious enough to warrant a negative 271 recommendation. To the extent that there may be problems with the analogs for or interpretation of any of these metrics applicable to Checklist 14, we shall defer such discussion to our further proceeding regarding metrics and remedies as more fully discussed in the segment of this consultative report dealing with Checklist item 4.

6. Conclusion

On consideration of the record, the PAPUC concludes that Verizon PA has met the requirements of Checklist item 14.

* "Small miss" -- Z-scores between -1.645 and -2.0 have been presumed to be adequately addressed by remedies and not indicative of sufficiently egregious performance as to warrant extensive discussion herein or a negative 271 recommendation.

P. Metrics and Performance Assurance Plan

1. Description

The metrics in the C2C Guidelines establish performance measures and standards to evaluate the performance of Verizon PA's OSS and other similar services. A performance measure defines the particular function or service to be evaluated. The metrics are structured to generate commercial data and are to be reported monthly by Verizon PA in its C2C Reports. Some metrics have standards upon which remedies are based. A standard is the level of performance that is required for the relevant measure.[617]

Commercial data are the quantified observations of the services requested and the measured performance rendered by Verizon PA to the CLECs. Commercial data is reported on an aggregated basis and disaggregated basis. Commercial data is disaggregated along various product lines and geographic areas and on a CLEC-specific basis. Verizon PA is obligated to provide commercial data and C2C reports on a monthly basis. The CLECs are under no obligation to report their versions of the commercial data or C2C reports.

Remedies are a system of self-executing, liquidated damage payments, set forth in PAP, to be paid by Verizon PA to the CLECs in the event that Verizon PA does not deliver specified services to the CLECs, either at or above parity or at or above specific benchmark levels of performance. Remedies reports are to be generated monthly.

[617] To ensure statistical validity, the PAPUC directed Verizon PA to calculate a measure only if there are at least ten observations in a month. For parity measures in which there are at least 30 observations for Verizon PA and a CLEC, Verizon PA uses a modified Z statistic for percent measures and a modified t statistic for average measures. Similar tests are used for smaller sample sizes. For most benchmark measures, Verizon PA is deemed to have satisfied the benchmark standard if the performance meets the benchmark 95% of the time; some benchmarks are higher. Additionally, some standards are measured in absolute time frames.

We have chosen to address these issues in conjunction with each other because the challenges raised by the CLECs and the advocates, as well as the deficiencies noted by KPMG Consulting, have been addressed and will be resolved by the requirements we set forth in our June 6, 2001 Secretarial Letter to Verizon PA, the terms of which Verizon PA accepted on June 7, 2001.

2. Standard of Review Relative to Metrics

a. PAPUC

The PAPUC's PMO proceeding established the metrics, standards, and remedies used to evaluate Verizon PA's performance during the commercial operations period. The PUC's Functional Structural Separation Order enhanced the design of the PAP by increasing certain of the remedies.

The metrics are divided into eight domains with numerous submetrics: Pre-Order ("PO"), Ordering, ("OR") Provisioning ("PR"), Maintenance & Repair ("MR"), Network Performance ("NP"), Billing ("BI"), Operator Services & Databases ("OD"), and General ("GE"). The metrics and standards are set in the C2C Guidelines that are publicly accessible on Verizon PA's website. The metrics evaluate Verizon PA's performance for the three modes of entries (UNE, UNE-P and Resale), by geography, and by products and services.

The metrics consist of 47 general measures in the eight categories, which are in turn divided further into 168 sub-metrics. The measures, when further disaggregated by product and by geography, result in over 2,000 disaggregated submetrics and the potential collection and reporting of millions of bits of data every month. The reports of commercial data, performance measures, and remedies are considered proprietary and are not published.

b. FCC

The FCC examines whether the metrics in the C2C guidelines have clearly-articulated definitions or "business rules," which set forth the manner in which the data is to be collected, any relevant exclusions, and the applicable performance standards. The clarity of these business rules will help 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."[618] The FCC also examines whether the scope of performance covered by the metrics is sufficiently comprehensive and contains key competition-affecting metrics for inclusion in the PAP.[619] The FCC examines whether the performance measures, standards, and remedies are within the "zone of reasonableness."[620]

While the FCC review is limited to an BOC's existing metrics, the FCC notes that metrics need not be static and can be modified over time in response to competitive concerns.[621] When commenters in New York raised concerns about the details of specific metrics, the FCC noted that the New York Department of Public Service ("DPS")had provided a forum for ongoing modification and improvement of the metrics. The FCC added that this on-going review is an important feature because it ensures that the performance measures, standards, and remedies can evolve to reflect changes in the telecommunications industry and the local market.[622] In Texas, several commenters

[618] See Verizon MA 271 Order at ¶ 243; see SWBT KS/OK 271 Order at 275; see SWBT TX 271 Order at ¶ 425; see BA NY 271 Order at ¶ 438.

[619] See BA NY 271Order at ¶ 439.

[620] See SWBT KS/OK 271Order at ¶ 273; see SWBT TX 271 Order at see BA NY 271 Order at ¶ 433.

[621] See Verizon MA 271 Order at ¶ 243; see SWBT KS/OK 271 Order at 275; see SWBT TX 271 Order at ¶ 425; see BA NY 271 Order at ¶ 438.

[622] BA NY 271 Order at ¶ 438.

alleged that the metrics failed to capture certain problems experienced by CLECs. As in New York, the FCC emphasized that the metrics are not static and noted that the Texas Commission was considering the modification of existing measurements and adding new measurements based on input from the BOC and the CLECs.[623]

In looking at commercial data, the review and monitoring mechanisms in New York for the performance data provided the FCC with reasonable assurances that the metrics data will be reported in a consistent and reliable manner. In order to identify and investigate any discrepancies, the FCC noted that the New York commission independently replicated the BOC's performance reports from raw data submitted by the BOC and that it would continue to do so for the next six months or longer. The FCC further noted that the New York DPS also planned to perform a yearly review of the BOC's performance data and measures. PA NY 271 Order at ¶ 442.

Concerning data integrity in Texas, Kansas, and Oklahoma, the FCC agreed that the reliability of reported data is critical and that properly validated metrics must be meaningful, accurate, and reproducible. In particular, the raw data underlying the measurement must be stored in a secure, stable, and audible file. SWBT Texas 271 Order at ¶ 428; SWBT KS/OK 271 Order at ¶ 278.

In Massachusetts, having first found that the BOC consistently exceeded the 95% benchmark for orders that do not require manual handling, the FCC found that the BOC had "generally exceeded" the state's benchmark with only "scattered exceptions" for orders requiring manual processing. In consideration of the small number of orders that could have been affected by disparities and in the absence of evidence of discrimination or competitive harm, the FCC found that the disparities had little competitive impact. Verizon MA 271 Order at ¶ 71.

[623] SWBT TX 271 Order at ¶ 425.

3. Summary of the Evidence Before PAPUC Relative to Metrics

a. Verizon PA

Verizon PA asserted that its performance measures, standards and remedies are accurate and informative. Verizon PA 4/18/01 Comments at 75-76. The data for these measures are collected in accordance with detailed business rules approved by the Commission. Verizon PA makes its performance data available to CLECs and the PAPUC through a website that includes CLEC-specific data (not available to other CLECs) and aggregated data for all CLECs providing service in Pennsylvania. Verizon PA Meas. Dec. at ¶¶ 23-9; 4/4/01 Tr. at 98-100.

Verizon PA also asserts that the metrics it passed were passed by a wide margin, while the metrics it missed were missed very narrowly. Verizon PA 4/18/01 Comments at 78. Acknowledging these poor performance scores, Verizon PA alleges, however, that some measures are based on comparisons that are "invalid" and/or "misleading." For example, submetrics PO-1-04 and PO-1-05, which measure the average response time for "Product and Service Availability" and "Telephone Number Availability and Reservation" pre-order queries, involve apples-to-oranges comparisons of CLEC performance with Verizon PA retail.[624] With both transactions, Verizon PA provides CLECs with much more information than Verizon PA provides its own retail personnel. This additional information takes longer for Verizon PA's systems to gather and process, which of course, renders a flat parity processing comparison misleading.[625] Likewise, as

[624] The measurement for PO-1-04 has been corrected in the Pennsylvania C2C results for February 2001, and the results show that Verizon PA is meeting the established Guideline. The comparison of wholesale and retail results for PO-1-05, are still flawed. However, the corrected results show no discrimination when measured on a like-for-like basis. Verizon PA Supp. Meas. Dec.. at ¶ 10; Revised Att. 405.

[625] Verizon PA 4/18/01 Comments at 79.

Verizon PA has previously explained,[626] numerous provisioning and maintenance and repair measures inappropriately compare Verizon PA's performance in repairing and maintaining complicated, high capacity circuits of CLECs with Verizon PA's own "local specials," such as burglar alarms and off-premise extensions, which are much easier to diagnose and repair.[627]

Verizon PA's entire metrics production and reporting process has been subject to extensive third-party verification and review by KPMG Consulting. As part of its extraordinarily comprehensive review of Verizon PA's OSS, KPMG Consulting evaluated the procedures and systems Verizon PA has implemented to measure and report its performance for the relevant categories. After extensive, military-style testing, KPMG Consulting concluded that Verizon PA has implemented satisfactory practices for collecting and storing performance data, and that Verizon PA has implemented appropriate procedures for replicating and converting performance data into reportable results.[628] KPMG Consulting also tested Verizon PA's overall policies and practices for developing and documenting metrics standards and definitions.[629]

Verizon PA asserts that KPMG Consulting has replicated its January 2001 aggregate C2C report with a near perfect 99% rating. Verizon PA 4/18/01 Comments at 82. Verizon PA asserts that the 99% replication on the aggregate report undermines any suggestion that the CLEC-specific reports are inaccurate and that the more likely explanation is that the CLECs have made errors. 4/18/01 Comments at 82-83. Likewise, Verizon PA attributes allegations of raw data problems to CLEC error and confusion. 4/18/01 Comments at 83. Verizon PA, thus, asserts that the metrics reporting is

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[626] Id., citing Verizon PA OSS Dec.. at ¶ 110-113.

[627] Id.

[628] 4/18/01 Verizon Comments at 81, citing KPMG Consulting Final Report Release 2.0 at 575-89 (PMR1) & at 591-617 (PMR2).

[629] Id., citing KPMG Consulting Final Report Release 2.0 at 619-27 (PMR3).

sufficiently accurate and informative and that the reporting of metrics as under development or under review (UD/UR) has been virtually eliminated. 4/18/01 Meas. Dec. at ¶ 4-5.

Verizon PA maintains, notwithstanding, that meeting "approximately 78%" of the standards set by the PAPUC for the past six months puts it ahead of the Verizon NY (then at approximately 77%) when it received 271 authority in December 1999. Verizon PA 4/18/01 Comments at 77. Further, Verizon PA asserts that the metrics it passes are passed by a wide margin, while the metrics it misses are missed very narrowly. Verizon PA 4/18/01 Comments at 78.

On April 16, 2001, Verizon PA circulated a Collaborative Proposal to address various aspects of metrics development and evolution. Specifically, the proposal contains four points:

- Use the existing New York Metrics Collaborative to update metrics definition and implementation in Pennsylvania.
- Establish a Pennsylvania collaborative to supplement the New York Metrics Collaborative.
- Replace the existing Pennsylvania C2C Guidelines with the existing New York C2C Guidelines (subject to certain Pennsylvania-based distinctions).
- On a going-forward basis, adopt in Pennsylvania any "consensus decisions" to change the New York Guidelines resulting from the New York Collaborative facilitated by the New York commission (subject to certain Pennsylvania-based distinctions).

According to Verizon PA, implementing the New York metrics in Pennsylvania by adoption of the New York C2C Guidelines will require careful analysis to determine the differences between the Pennsylvania metrics and the New York metrics; change management initiatives would be required for each affected metric; and scheduling, development, testing, and implementation for each new metric, submetric, product disaggregation, and geographic disaggregation. This process requires revised mapping from data providers to the report outputs as well as testing the results to insure accuracy.

b. Other Parties

MCIW asserts that the performance measures, standards, and remedies are not accurate and informative.[630] MCIW complained about the UD/UR metrics,[631] claiming that reporting results UR allows Verizon PA to not report on a metric if it thinks that certain results "do not look right."[632]

AT&T notes that the KPMG Consulting January Replication Study did not address data integrity yet after 18 months of experience, even KPMG Consulting needed more than four full-time employees working for a month to complete the January 2001 Replication Study. (Citing 4/10/01 Tr. at 442). AT&T further argues that Verizon's track record of unilateral & unauthorized changes to the process have the effect (if not the intent) of making and underreporting discrimination. AT&T 4/18/01 Comments at 58). AT&T adds that Verizon PA's C2C reports are inaccurate because Verizon PA refuses to comply with and report on the measurements prescribed in the C2C Guidelines.[633]

The CLECs also identified certain metrics "defective" metrics, claiming that a metric is "defective" if: (1) there is an inaccurate definition or improperly applied exclusion leading to a faulty measurement or (2) there is a particular measurement, standard and/or remedy that is not included in the C2C guidelines and/or PAP that a party

[630] 4/18/01 MCIW Comments at 14. See also commercial availability filings, the original and reply declaration of Karen A. Kinard, and at technical conferences on March 13 and 14, 2001,

[631] Kinard Dec. at ¶ 18.

[632] Id. at ¶ 20.

[633] 4/18/01 AT&T Comments at 47.

alleges should be included, or (3) Verizon PA improperly reported a metric as "UD" or "UR." See Appendix G. The CLECs also proposed numerous additional metrics to measure Verizon PA performance. See Appendix H.

The CLECs expressed varying degrees of interest in going to the New York metrics. There was support for process aimed at fostering consistency across the Verizon Inc. footprint, but there were a number of open questions relative to how that could be accomplished. [634] Further, while the CLECs expressed interest in moving toward a more unified, footprint-wide, collaborative process, a collaborative in another state could limit participation by the Pennsylvania advocates.

c. KPMG Consulting

KPMG Consulting noted that the commercial data and C2C report calculations do vary between Verizon PA and the CLECs. KPMG Consulting opined that metric and business rule interpretations appear to be one of the root causes for the apparent differences in results. KPMG Consulting further suggested that variances in systems, processes, methods and expectations contribute to the misunderstandings between Verizon PA and the CLECs as to data interpretation and metric values. Some discrepancies may result from different data collection and analysis mechanisms. Resolution "of the discrepancies could only be accomplished through a thorough review of the CLEC data and storage mechanisms and data integrity together with full replication of CLEC calculations." KPMG Consulting did note, however, that some of the data necessary for the calculation of the metrics is available only to Verizon PA. 5/31/01 KPMG Consulting Final Metrics Rep. at 25. See also 6/15/01 KPMG Consulting Revised Metrics Rep.

[634] 4/27/01 Tr. at 503, passim.

To address this problem, KPMG Consulting believes that there should be openness in the change management process. Specifically available to all should be (1) detailed definitions beyond those contained in the C2C Guidelines, (2) mutually accessible measuring points, and (3) algorithms.

Further, KPMG Consulting conducted a Replication Study on the January 2001 commercial data, pursuant to the January 5, 2001 Secretarial Letter, and, upon review of the January 2001 replication results , the PAPUC determined that Verizon PA had satisfied the open replication issue from the OSS Test.

4. Discussion and Conclusion Relative to Metrics and Commercial Data

We find our current metrics and remedies are adequate to ensure continued 271 compliance. Indeed, as the New York DPS found, many of the Pennsylvania metrics and remedies go beyond 271 requirements.

As noted above, we believe that the further metrics and remedies proceeding stemming from the Functional Structural Separation Order will address these metrics and commercial data concerns. Given that many of the participants in this proceeding have agreed, in principle, to adopt the New York metrics as proposed by Verizon PA, this further proceeding will also address whether to conform the Pennsylvania metrics to New York metrics as well as an appropriate transition to such metrics. Accordingly, we have combined our discussion on this point with our following discussion of remedies.

5. Standard of Review Relative to Remedies

a. PAPUC

The PMO instituted a 3-tier incentive plan modeled after the suggestions of the parties. Under Tier I, a CLEC receives payment for out-of-pocket losses if Verizon PA violates a metric within a 30-day period and the CLEC does not receive the service.[635] In addition, the PAPUC expressly retained full authority to impose penalties available under Section 3301 of the Public Utility Code, particularly with intentional metrics violations. PMO at 159.

Under Tier II, Verizon PA makes additional payments for repeated poor performance. If Verizon PA's performance with the same submetric is substandard for two consecutive months, it pays an affected CLEC $2,000 per submetric violation. If Verizon PA's performance is substandard for three consecutive months, it pays an affected CLEC $4,000 per submetric violation. PMO at 159.[636] For any violation of the same submetric beyond three months or if Verizon PA misses the performance standard for five or more different submetrics per CLEC, Verizon PA must file a report with the PUC explaining the nature of the problem and efforts to correct it. PMO at 160. If service dips to this level, an affected CLEC may argue for Tier II payments up to $25,000. PMO at 160.

Under Tier III, the violation of a submetric beyond three months may trigger the PAPUC to request the FCC for authority to restrict Verizon PA's entry into the long-distance market on a geographic basis, for a period of time, or both. PMO at 160.

[635] Verizon PA and the CLECs generally disagree as to the definition of "out-of-pocket" expense for Tier I remedies. (3/14/01 Tr. at 80, passim).

[636] The Functional Structural Separation Order increased these payments to $3,000 and $5,000, respectively. SSO at 46.

Additionally, both the PMO and the Functional Structural Separation Order provide for further review of the PAP. Specifically, a proceeding shall be scheduled to determine whether any further adjustment of the PAP is necessary to ensure performance by Verizon PA and to address order flow through issues and BCN and UD metrics. A report and recommendation are due to the PAPUC for decision by September 30, 2001.[637]

b. FCC

The FCC wants strong assurance that the local market will remain open after an BOC receives section 271 authorization. The fact that an 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. BA NY 271 Order ¶ 429; SWBT Texas 271 Order at ¶ 420; SWBT KS/OK 271Order at ¶ 269.

The FCC evaluates reporting and enforcement mechanisms within the context of other regulatory and legal processes that provide additional positive incentives to an BOC such as the FCC's enforcement authority under section 271(d)(6), the potential for payment of liquidated damages through interconnection agreements, and the risk of liability through antitrust actions and other private causes of action. BA NY 271 Order at ¶430; SWBT Texas 271 Order at ¶ 412.

Where an BOC relies on performance reporting and enforcement mechanisms to provide assurance that it will continue to maintain market-opening performance after receiving section 271 approval, the FCC reviews the mechanisms involved to ensure they perform as promised. Noting that the details of such mechanisms developed at the state

[637] One item to address in that proceeding will be Verizon PA's ability to miss some CLEC-specific metrics month after month but incur no remedies because a different CLEC is being affected each month.

level may vary widely, the FCC examines certain key aspects of a plan to determine whether it falls within the zone of reasonableness and is likely to provide incentives that are sufficient to foster post-entry checklist compliance. BA NY 271 Order at ¶ 433.

In New York, the FCC based its determination that the enforcement mechanisms were effective in practice on the following characteristics:

- Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of C2C performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- Reasonable assurances that the reported data is accurate;
- A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards.

While the FCC does not require that liability under a PAP be sufficient, standing alone, to completely counterbalance a BOC's incentive to discriminate, a remedies plan with relatively low potential liability would be unlikely to provide meaningful post-entry compliance incentives. BA NY 271Order at ¶ 435-436. The FCC concluded that having 36% of an BOC's revenues from local service (total operating revenue less operating expenses and operating taxes) at risk was a substantial percentage of the BOC's profits. BA NY 271 Order at ¶ 436. The FCC added, however, that an overall liability amount would be meaningless if there were no likelihood that payments would approach that amount, even with widespread performance failure. BA NY 271 Order at ¶ 437. In Texas, using the same criteria it used in New York, the FCC found that the remedies portion of the PAP would discourage anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business. SWBT Texas 271Order at ¶ 424.

In Kansas and Oklahoma, the FCC accepted plans that placed similar percentages of the BOCs' in-state returns at stake as the plans adopted in New York and Texas. In addition, the FCC pointed out that the BOC faced additional consequences, as in New York and Texas, for failing to sustain a high level of service to competitors. SWBT KS/OK 271 Order at ¶ 274.

6. Summary of the Evidence Relative to Remedies Before PAPUC

a. Verizon PA

In its appeal of the PMO to the Commonwealth Court (1902 C.D. 2000), Verizon PA argued that the PAP should not be in place until section 271 authority has been granted. Verizon PA further claimed that the PAPUC has no authority to impose self-executing remedies. Verizon PA further asserted that the PAP was sufficient (as well as premature prior to section 271 authority). 4/26/01 Tr. at 407–435.

After initially insisting that it must reserve the right to assert that the PAPUC has no authority to impose self-executing remedies,[638] Verizon PA has now withdrawn its appeal on June 7, 2001, in the wake of the June 6, 2001 Secretarial Letter.

Further, Verizon PA has committed to issuing separate remedies payments and will provide sufficient explanation for the CLECs to verify the remedies calculations. 3/14/01 Tr. at 42-45, 75.

[638] 4/26/01 Tr. at 407, passim.

b. Other Parties' Positions

In this record and in other proceedings, the CLECs asserted that the PAP as originally designed was insufficient to prevent backsliding. Additionally, the CLECs complained that certain categories of metrics result in no remedies payments despite Verizon PA's poor performance and that other essential categories of metrics escape the incentive of remedies because they either have no standard or are designated as diagnostic. The CLECs were further dismayed that Verizon PA has no consequences for reporting a mandated metric as UD/UR.[639]

(1) AT&T

In particular, AT&T filed a cross appeal (2028 C.D. 2000) to Verizon PA's appeal, alleging that the PAPUC is entitled to no deference in interpreting TA-96. AT&T Cross Appeal Br. at 22. AT&T alleged that the PAP was impermissibly designed to "incent" Verizon PA; whereas the PAP should have been designed to deter illegal discrimination. (AT&T Cross Appeal Br. at 22) AT&T argues that the PAP imposes an unfair burden on CLECs in that CLECs must prove a loss to trigger Tier I remedies, rendering it not self-executing. (AT&T Cross Appeal Br. at 23, 24). AT&T further claimed that 95% of a benchmark is not equal service and violates the FCC standard. (AT&T Cross Appeal Br. at 23, 40, 41). AT&T maintained that the PAP is insufficient as a disincentive to Verizon PA to refrain from impermissible treatment of CLECs. (AT&T Cross Appeal Br. at 31). AT&T fears that marketplace problems exacerbated by less than adequate service from Verizon PA impugn the business reputation of CLECs. (AT&T Cross Appeal Br. at 37).

[639] The PAPUC addresses (1) metrics that fail to appropriately trigger remedies, (2) metrics that lack standards and/or remedies, and (3) the lack of consequences for metrics that are UD/UR elsewhere in this report.

AT&T also filed an appeal (2792 C.D. 2000) of the PAPUC's November 14, 2000 Order at Docket No. P-00991643, alleging that the Order violates AT&T constitutional due process rights and is not supported by law or substantial evidence. (Appeal Pet. at 6). Specifically, AT&T argues that the November 14, 2000 Order violates Pa. RAP 1701 in that the underlying PMO was already on appeal. (Appeal Pet. at 6).

In this proceeding, AT&T maintained that, even with an increase in Tier I remedies as provided by the Functional Structural Separation Order, the PAP dollar amounts are, at best, one-half what a violation of equal magnitude would trigger under the New York PAP.[640] Citing better flow through rates in New York than in Pennsylvania over arguably similar LSOG4 systems, AT&T alleged the New York PAP provides greater incentive to achieve adequate flow-through rates. AT&T 4/18/01 Comments at 29. AT&T faulted the Tier I remedies as being virtually non-existent and not self-executing. AT&T 4/18/01 Comments at 49-50. AT&T characterized Verizon PA's examples of maximum exposure as "absurd" (because regulators would step in long before that level is reached) and overstated due to miscalculations. AT&T 4/18/01 Comments at 51-52. AT&T alleged that Verizon PA's aggregate remedy summary (given to the PUC but not to CLECs) does not identify UD/UR submetrics but rather reports $0 payment for remedies, implying a lack of CLEC measurable activity when in fact the situation actually is Verizon PA's failure to have an operative submetric or non-anomalous data. AT&T 4/18/01 Comments at 53-54. AT&T concluded that with existing remedies inadequate and under challenge, they do not assure competition will remain irreversible (AT&T 4/18/01 Comments at 61-62).

(2) MCIW

In its cross appeal (2011 C.D. 2000) filed before the Functional Structural Separation Order, MCIW argued that the PAP was based upon the premise of structural

[640] 4/4/01 Tr. at 68-68.

separation without proof that structural separation will have a deterrent effect on Verizon PA's behavior. MCIW Cross Br. at 17. MCIW recounted that, because the parties' proposals relative to remedies and the Recommended Decision in the PMO were pre-Global and the PMO was post-Global, the PAP is, therefore, not premised on PMO record. MCIW Cross Br. at 22.

In this proceeding, MCIW claimed that Verizon PA is in control of Tier I remedies, that Tier I is not self-executing, and that Tier I is unreasonably open to litigation and appeal. (Kin. Dec. 2/12/01 at 9-10). MCIW argued that Tier II remedies should be disaggregated at the product and geographic levels. (Kin. Dec. 2/12 at 10). MCIW faulted the PAP as insufficient as a disincentive. (Kin. Dec.. 2/12 at 11). In response to Verizon PA's claim that if it were to fail every metric for 36 CLECs for 2 consecutive months, it would owe 21% of its monthly net return as reported in ARMIS, MCIW suggested that this level of failure is an unlikely occurrence. MCIW pointed out that missing a single metric for two consecutive months for 36 CLECs would cost only $2000 per CLEC or $72,000. At the third month and thereafter, Verizon PA would only owe $4000 per CLEC or $144,000. These amounts do not automatically increase. (Kin. Dec.. 2/12 at 11-12) Tier II remedies for any one CLEC for all 103 submetrics for an entire year would total only $4,326,000 or 0.24% of Verizon PA's annual net revenue. (Kin. Dec.. 2/12 at 12). MCIW characterized Verizon PA's exposure as merely a cost of doing business in relation to its gain – shutting CLECs out of the market – especially if the metric missed was a central metric such as system availability. (Kin. Dec.. 2/12 at 12). MCIW argued that a CLECs' recourse for such on-going discrimination is capped and not self-executing. (Kin. Dec.. 2/12 at 12).

7. Discussion Relative to Metrics, Commercial Data, and Remedies

As we stated in our June 6, 2001 Secretarial Letter, in our judgment, Verizon PA had to take further action relative, *inter alia*, to the PAP beyond its showing as of that date in order to demonstrate to our satisfaction that the local exchange and exchange access markets in Pennsylvania are fully and irreversibly open to competition in accordance with the requirements of section 271(c)(2)(B). With respect to metrics and remedies, we recognize that the Pennsylvania market, like any dynamic market, requires comprehensive and properly focused metrics together with appropriate penalty levels, performance standards, and other features that properly incent Verizon PA's continued provision of adequate and non-discriminatory service to CLECs after section 271 approval is achieved. Moreover, absent withdrawal of Verizon PA's appeal challenging the PAPUC's legal authority to impose remedies, no PAP can be considered adequate and permanent so as to prevent backsliding.

Thus, as a condition to a favorable 271 recommendation, we required Verizon PA to:

- Withdraw its pending PMO appeal alleging a lack of statutory authority by the PAPUC to impose self-executing remedies, which it has done.[641]
- Implement a PAP effective with performance beginning July 1, 2001, as follows:

  1. Tier II remedies payments for metrics that are missed beyond ninety (90) days shall be set at the amount of $25,000 and shall be self-executing and applicable to all metrics;

[641] With respect to the continuing cross-appeals and appeal, the Pennsylvania Commonwealth Court's review is limited, *inter alia*, to determining whether there is adequate evidence, somewhere in the record, to support the PAPUC's decision. There are no federal or state statutory mandates as to the explicit elements of a PAP. Pursuant to section 335 of the Public Utility Code, 66 Pa. C.S. § 335, and Pennsylvania case law, the PAPUC is not bound by the decision of an ALJ. In choosing not to adopt the recommendation of the ALJs but rather establishing an alternative structure, the PAPUC relied heavily on all proposed plans presented during the PMO proceeding. In our opinion, our PMO PAP was clearly within the scope of the PAPUC's broad discretionary powers and expertise; there is no evidence of bad faith, fraud, capricious action, or abuse of power in the adoption of the PMO PAP. Additionally, there were adequate provisions for further on-going review and modification of the PAP as market conditions and commercial experience warrants.

2. Billing remedies payments shall increase for electronic billing measurements as follows: for violations up to 30 days, $50,000 per metric per affected CLEC; for violations up to 60 days, $75,000 per metric per affected CLEC; and for violations up to 90 days and each month thereafter, $100,000 per metric per affected CLEC; and
3. The increased billing remedies will remain in effect until conclusion of the further proceeding called for in ordering paragraph 16 of our Functional Structural Separation Order, or for performance through December 31, 2001, whichever comes first.

- Augment the metrics as follows:
  Update, in consultation with staff, the Pennsylvania billing metrics applicable to the paper bill so as to make them additionally applicable to electronic billing effective for performance beginning July 1, 2001.
- Agree that in the further proceeding called for in ordering paragraph 16 of our Functional Structural Separation Order, there will be a rebuttable presumption that the features of the New York remedies plan should be made applicable and tailored to Pennsylvania. Given that many of the participants in this proceeding have agreed, in principle, to adopt the New York metrics as proposed by Verizon PA, this further proceeding will also address whether to conform the Pennsylvania metrics to New York metrics as well as an appropriate transition to such metrics.[642]
- The present Pennsylvania metrics and PAP will continue to apply until July 1, 2001, and thereafter with the July 1, 2001, changes until modified by the PAPUC.

[642] The Verizon PA April 16, 2001 proposal on the table is appealing at least to the CLECs that were at the *en banc* hearings when it was discussed. Likewise, the PAPUC understands that a certain amount of metric consistency across the Verizon Inc. footprint would have merit. However, any transition should be well-planned and allow for pre- and post-comparisons relative to 271 authority and the metrics change itself.

The June 6, 2001 Secretarial Letter is contained in Appendix I.

By letter dated June 7, 2001, Verizon PA has expressly and unconditionally agreed to the further conditions sought by the PAPUC regarding withdrawal of the PMO appeal, voluntary implementation of self-executing remedies at the $25,000 level for violations over 90 days within Tier II, voluntary implementation of certain enhanced self-executing remedies for the metrics applicable to electronic bills, and agreement to a "rebuttable presumption" that the features of the New York remedies plan should be made applicable and tailored to Pennsylvania. We find that Verizon PA has fully complied with the conditions set forth in our letter dated June 6, 2001. In particular, we expressly rely upon (a) the increased self executing remedies for Tier II, (b) the enhanced self-executing remedies for electronic billing metrics, and (c) Verizon PA's withdrawal of its pending appeal at No. 1902 C.D. 2000 challenging the Commission's statutory authority to impose self-executing remedies for our conclusion and recommendation to the FCC that the Pennsylvania PAP is adequate and permanent for section 271 purposes. Moreover, having unconditionally accepted these terms for our positive recommendation to the FCC, we do not expect Verizon PA to seek to undo these terms in any subsequent litigation or proceeding.

We have expressly not recommended extensive changes to the metrics or further testing of data integrity at this time. While we are concerned by the CLECs' allegations of poor performance by Verizon PA as to certain metrics for various subsets of products and allegations of improperly reported commercial data, we are not persuaded that Verizon PA's performance has deteriorated since the OSS Test. Nor did KPMG Consulting substantiate any of the CLEC allegations of improper reporting. We believe that much of the dispute between the CLECs and Verizon PA will disappear with the resolutions to be reached in the further proceeding specified in the Functional Structural Separation Order, which should ensure that both camps are on the same page with respect to metrics definitions including appropriate retail analogs or benchmarks and when the parties are using mutually accessible reference points and analogues.

We further note KPMG Consulting's concerns that there are additional business rules beyond those expressly stated in the C2C Guidelines. Based upon the lack of substantiated evidence that there is any reason to dispute the accuracy of the Verizon PA's data, we conclude that these issues can and will be resolved in the further proceeding mandated by us in our Functional Structural Separation Order.
We believe that the further proceeding outlined above will be sufficient to address ambiguities as to the metrics and reporting requirements, to review and amend (or add as necessary) the standards, and to evaluate the effectiveness of the augmented PAP.

Finally, while some parties had expressed concern about the number of metrics that Verizon PA had previously reported as either UD or UR, this concern is now moot. In July 2000, Verizon PA reported 47% of its metrics as either UD or UR. However, this percentage has steadily declined. As of February 2001, only three metrics, BI-6 (Completeness of Usage Charges), BI-7 (Completeness of Fractional Recurring Charges), and BI-8 (Non-recurring Charge Completeness) were UD. These metrics are now being reported.

8. Conclusion Relative to Metrics, Commercial Data, and Remedies

We note that we have established a regulatory process for on-going metrics development and remedies enhancement to which Verizon PA has committed. This regulatory process has a prioritized implementation plan and a firm completion date. In the interim, the existing metrics (bolstered by the New Jersey matrix method) and the enhanced PAP will be applicable. Therefore, we find that the existing metrics and standards in the C2C Guidelines and the enhanced PAP provisions are adequate to support our favorable 271 recommendation.