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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 6, 2001

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Application by Verizon Pennsylvania, Inc. et al to Provide In-Region, InterLATA Services in Pennsylvania
CC Docket No. 01-138

Dear Ms. Salas:

Enclosed for filing please find the Reply Comments of AT&T Corp. ("AT&T") in connection with the above referenced matter. Pursuant to the Public Notice issued June 21, 2001, AT&T is submitting the original and four (4) copies of its comments and supporting exhibits in redacted form.

AT&T is also submitting under seal the portions of supporting exhibits that contain material designated as confidential pursuant to the Protective Order in this matter. These pages bear a legend indicating that they are confidential.

Please let me know if any additional information is required. Thank you.

Very truly yours,

Peter M Andros

Peter M. Andros
Legal Assistant

Encl.

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Before the
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application by Verizon Pennsylvania	)	
Inc., Verizon Long Distance, Verizon	)	
Enterprise Solutions, Verizon Global	)	**CC Docket No. 01-138**
Networks Inc., and Verizon Select	)	
Services Inc., for Authorization To	)	
Provide In-Region, InterLATA	)	
Services in Pennsylvania	)	

REPLY COMMENTS OF AT&T CORP.
IN OPPOSITION TO VERIZON PENNSYLVANIA INC.'S
SECTION 271 APPLICATION FOR PENNSYLVANIA

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August 6, 2001

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Connecticut 271 Order	Memorandum Opinion and Order, *Application of Verizon New York, Inc. et al., for Authorization to Provide In-Region InterLATA Services in Connecticut*, CC Dkt. No. 01-100 (rel. July 20, 2001)
Kansas/Oklahoma 271 Order	Memorandum Opinion and Order, *Joint Application of SBC Communications, Inc., et al., for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Dkt. No. 00-217 (rel. Jan. 22, 2001)
Line Sharing Order	Third Report and Order, *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Dkt. No. 98-147 and Fourth Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-98, 14 FCC Rcd. 20912 (1999).
Line Sharing Reconsideration Order	Third Report and Order on Reconsideration, *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Dkt. No. 98-147 and Fourth Report and Order on Reconsideration, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-98 (rel. Jan 19, 2001)
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania	)	**CC Docket No. 01-138**

REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO VERIZON PENNSYLVANIA INC.'S SECTION 271 APPLICATION FOR PENNSYLVANIA

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these reply comments in opposition to the application of Verizon Pennsylvania Inc., *et al.* ("Verizon") for authorization to provide in-region, interLATA services in the former Bell Atlantic territory in Pennsylvania.

INTRODUCTION AND SUMMARY OF ARGUMENT

The comments confirm the findings of the two dissenting members of the Pennsylvania Public Utility Commission (or "PaPUC") that Verizon's application was prematurely filed and should be denied. *See* AT&T at 1-3. Verizon has failed to meet its obligations under the Section 271 checklist in such competitively critical areas as the establishment of rates for unbundled network elements ("UNEs"), the availability of DSL service at resale to CLECs at the wholesale discount required by Section 251(c)(4) of the Act, and access to Verizon's operations support systems ("OSS"). Further, Verizon's application fails the separate public interest test of

Section 271, because its Performance Assurance Plan for Pennsylvania (or "PaPAP") is an insufficient incentive to Verizon to comply with its obligations under Section 271 in the future.

There is no basis here for lowering the standards set by Congress, which require that the checklist be "*fully* implemented" before a BOC's Section 271 application may properly be granted. *See* 47 U.S.C. § 271(d)(3)(A)(i) (emphasis added).[1] Although competitors have made modest inroads on Verizon's monopoly of local exchange service in Pennsylvania, residential competition has yet to develop to such a significant degree that the market can be considered irreversibly open to competition and likely to expand throughout the State. *See* AT&T at 2-3. To the contrary, as AT&T showed in its opening comments, and the comments of other parties confirm, significant impediments to broad-based, vigorous residential competition remain in Pennsylvania. It is therefore vital that the Commission insist that Verizon fully implement its checklist obligations – and remove the existing impediments to entry – *before* approving any application it files for Section 271 authority.

The comments show that Verizon has failed in a number of ways to fully implement the competitive checklist. As set forth in Part I, the comments confirm that Verizon's Pennsylvania UNE rates violate fundamental TELRIC principles and are well outside any reasonable range of rates that adherence to TELRIC standards would have produced. Verizon has provided virtually no evidence to the contrary. Rather, it urges the Commission to simply rubber stamp its rates because the PaPUC has labeled them TELRIC-compatible (a point with which the Pennsylvania courts disagree) and because there is limited competition in certain Pennsylvania markets. But the comments demonstrate that an arbitrary label put on Verizon's

[1] Congress reiterated the requirement of full implementation of the checklist by specifying that the Commission "may not, by rule or otherwise, limit or extend" the terms of the checklist. 47 U.S.C. § 271(d)(4).

rates by the PaPUC and the existence of some limited UNE-based competitive entry in Pennsylvania are clearly insufficient grounds for the Commission to ignore Verizon's failure of proof or the overwhelming evidence of critical TELRIC violations in the cost models on which Verizon's Pennsylvania UNE rates are based.

As set forth in Part II, the comments demonstrate that Verizon has violated its resale obligations under the competitive checklist by refusing to resell DSL service at an appropriate avoided-cost discount where the CLEC (not Verizon) is providing voice service over the line. Indeed, the Commission's recent *Connecticut 271 Order* makes clear that Verizon's unreasonable and discriminatory restriction violates Section 251(c)(4) of the Act. The Commission rejected all of the legal bases that Verizon offered in defense of its policy – which, the Commission found, severely hindered the ability of CLECs to compete because it would have enabled Verizon alone to provide both voice and DSL services to customers.

Although the *Connecticut 271 Order* (¶ 33) only resolved the issue of the legality of Verizon's restriction as it applied to carriers providing voice service over resold lines, from a legal and technical perspective Verizon's resale obligations under Section 251(c)(4) plainly extend to any carrier wishing to resell DSL, regardless of whether the carrier is providing voice service through resale, the UNE platform, or UNE loops. As Verizon itself has admitted, the physical arrangements supporting the UNE-P are identical to those supporting resale. Moreover, a CLEC using the UNE platform and desiring to provide DSL through resale would access Verizon's advanced service in exactly the same way that Verizon provides line sharing in conjunction with VADI, its advanced-services affiliate. There is similarly no basis for permitting Verizon to refuse to resell DSL to CLECs that provide voice service using UNE loops and their own circuit switch, since the technical arrangements needed to support resale of DSL to such CLECs are virtually the same as those that Verizon itself uses to provide both voice and data service to an end-user.

Verizon's belated, post-application offer to resell DSL to CLECs providing voice service over "existing resold lines" is thus too little and too late. In any event, at this stage Verizon's offer is entitled to no weight, since Verizon itself makes clear that is not ready to begin accepting commercial orders for resold DSL for some time, and will not be ready to do so on an unrestricted basis (*i.e.*, without "caps" on order volumes) until January 2002, at the earliest.

Furthermore, as described in Part III, the comments confirm Verizon's failure to provide nondiscriminatory access to its OSS. Most notably, the comments demonstrate that Verizon still does not provide CLECs with timely, accurate, and complete electronic bills, even after it purportedly implemented "fixes" to its systems to correct the problem. Indeed, the Department of Justice ("DOJ") cites the extensiveness of Verizon's billing problems, and the lack of evidence that they have been fully resolved, as the reason for its refusal to support Verizon's application. Without adequate electronic billing support, CLECs cannot validate Verizon's charges, which represent their single largest expense in providing local exchange service. Their inability to do so substantially impairs the CLECs' opportunity to compete, because – as the comments demonstrate – even the limited reviews of Verizon's voluminous paper bills by CLECs have revealed numerous billing errors and overcharges.

The comments also show that Verizon has denied parity of access to its OSS in other respects. For example, the comments confirm that too many CLEC orders in Pennsylvania fall out for manual processing, with its inherent risks of errors and delay – and that total flow-through rates for orders in Pennsylvania are substantially lower than those in New York today.

Moreover, the comments show that Verizon has failed to provide CLECs with the timely billing completion notices that they need to ensure that customers are billed accurately.

Finally, as described in Part IV, the comments demonstrate that the performance assurance plan ("PAP") in place in Pennsylvania is inadequate to provide Verizon with sufficient incentives to comply with its checklist obligations in the future, should its application be approved. As the Pennsylvania Office of Consumer Advocate states, approval of Verizon's application cannot be in the public interest, because Verizon has reserved the right to challenge the PaPUC's authority to impose any remedies for its performance failures – a challenge which, if successful, would render the PaPAP meaningless. Moreover, the comments demonstrate that the PaPAP is so fundamentally flawed that it cannot effectively deter backsliding. These facts, combined with Verizon's continuing opposition to the adoption of the New York PAP in Pennsylvania – despite the PaPUC's establishment, as an integral part of its recommendation of approval of Verizon's application, of a "rebuttable presumption" that the remedies in the New York PAP should be adopted in Pennsylvania – demonstrate that the Commission cannot find that Verizon is subject to a PAP that will effectively ensure "market-opening performance." *New York 271 Order* ¶ 433.

Thus, Verizon's application falls far short of meeting the requirements of Section 271. Verizon has shown in other States that it is capable of far providing superior performance. For example, the chronic billing problems that exist in Pennsylvania are *not* occurring in New York and Massachusetts, because in the latter two States Verizon implemented different systems that clearly enabled it to provide nondiscriminatory access to billing functions. Before it is permitted entry into the in-region interLATA market in Pennsylvania, Verizon should be required to exhibit a comparable level of performance. Because the evidence shows so clearly that it does not currently do so, its application should be denied.

I. VERIZON HAS FAILED TO SATISFY ITS CHECKLIST ITEM TWO BURDEN OF PROVING THAT ITS UNE RATES ARE COST-BASED.

The comments confirm that Verizon's Pennsylvania UNE rates "are inconsistent with the TELRIC methodology" and are well outside any reasonable range of rates that adherence to the TELRIC rules would have produced. *See* WorldCom at 18-25; *see also* AT&T at 10-30. Those conclusions are based on detailed analyses of Verizon's Pennsylvania UNE rates and the cost models used to justify those rates. *See id.* By contrast, Verizon has submitted virtually no evidence that its Pennsylvania UNE rates are TELRIC-compliant. Instead, Verizon simply points out that those rates were labeled TELRIC-compliant by the PaPUC, even though there was no factual foundation for doing so, and that there exists some competitive entry in Pennsylvania. *See* Verizon Br. at 82.[2] But, as the comments demonstrate, those assertions are plainly insufficient to satisfy Verizon's obligations under Checklist Item Two to *prove* that its rates consistent with TELRIC principles. *See* WorldCom at 18; AT&T at 25.[3]

[2] In a recent filing before the PaPUC, Verizon further demonstrated its reluctance to engage in any specific analysis of its UNE rates. *See* Response of Verizon Pennsylvania Inc. To MCI WorldCom, Inc.'s Motion to Enforce Commission Orders To Initiate UNE Rate Proceedings And Establish Schedule, *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, Docket No. M-00001353 (July 30, 2001). In that pleading, Verizon opposed a petition to initiate a UNE rate proceeding as previously promised by the PaPUC. *See id.* at 1-2. Although Verizon acknowledged that the request to complete a further UNE pricing case before the end of the year (2001) is consistent with a prior PaPUC order, Verizon urged the PaPUC to "modify its thinking" and to establish "a hiatus period" for UNE pricing. *Id.* Once again, Verizon provided no substantive response to claims that its UNE rates violate TELRIC. Instead, Verizon argued only that the PaPUC's promised UNE pricing case would be a "waste of time" because the PUC has already found that "today's rates are TELRIC compliant" and because another UNE rate case is scheduled to begin by the end of *next* year (2002). *See id.*

[3] *See, also, e.g., Kansas/Oklahoma 271 Order* ¶ 29 ("the BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement"); *New York 271 Order* ¶ 49 (the BOC applicant must make "a *prima facie* case that it meets the requirements of a particular checklist item" and "must plead, with appropriate supporting evidence, facts which, if true, are sufficient to establish that the requirements of section 271 have been met").

The Commission has consistently rejected the notion that it will simply rubber stamp rates that have been labeled "TELRIC" by a state commission. *See Massachusetts 271 Order* ¶ 20; *New York 271 Order* ¶ 244. That policy is especially applicable here, where there is overwhelming evidence that Verizon's Pennsylvania UNE rates violate TELRIC principles. *See* WorldCom at 22-24 & Frentrup Decl., ¶¶ 6-12; AT&T at 21-28 & Baranowski Decl., ¶¶ 7-41. A federal district court has squarely rejected the cost models used by the PaPUC to justify Verizon's Pennsylvania UNE rates on the grounds that those cost models violate fundamental TELRIC principles.[4] Even Verizon itself has argued, and the PaPUC has previously found, that those cost models are "not TELRIC-compliant."[5]

The comments likewise confirm that Verizon's claim that the presence of *some* competitive entry in *some* parts of Pennsylvania is sufficient to warrant a "presumption" that its Pennsylvania UNE rates are TELRIC-compliant is clearly erroneous. Even accepting Verizon's estimate that 5 percent of all residential lines in Pennsylvania are served by UNE-based competitors, that would hardly establish that Verizon's local markets throughout Pennsylvania are "'fully and irreversibly' open to competition." DOJ Eval. at 5-6. And that minute level of entry is certainly insufficient to establish a "presumption" that Verizon's Pennsylvania rates comply with TELRIC principles.[6]

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[4] Memorandum and Order, *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania Inc.*, No. 97-1857, p.10 (M.D. Pa. June 30, 2000), appeal pending, No. 00-2257 (3rd Cir., filed July 28, 2000).

[5] *See Global Order* at 69 (PaPUC stating that "[t]he empirical evidence indicates that the [*MFS III*] rates in Pennsylvania are not set at the TELRIC level"); *Presentation of Bell Atlantic—New Jersey, Inc. Augmenting the Existing Record*, State of New Jersey, Board of Public Utilities, Docket No. TO00060356, pp. 10-11 (July 28, 2000) (Verizon stating that the *MFS III* rates "have no evidentiary or factual support" (PaPUC May 24, 2001 Interim Opinion and Order, 10 (citing statement by Verizon)), are "arbitrary, capricious and unsupported by any record evidence," and "are not TELRIC compliant").

[6] Consistent with this observation is the fact that the PaPUC has found that "competition is severely lacking" in rural areas of Pennsylvania and established a new proceeding "to determine whether any further adjustment of UNE rates [beyond the minimal rate reduction the PaPUC ordered for rural Density Cell 4 loops] is necessary."
(continued)

The margins available to new UNE-based entrants in Pennsylvania are plainly inadequate to sustain statewide competition and further demonstrate that Verizon's UNE rates continue to be an effective barrier against entry for a significant proportion of Pennsylvania's local telephone markets. *See* WorldCom at 18-19; AT&T at 15. As WorldCom has explained, Verizon's UNE rates preclude it "from competing in residential local markets ubiquitously throughout the state through the leasing of UNEs." WorldCom at 18. That is powerful evidence that Verizon's rates exceed the levels that a correct application of the TELRIC methodology would produce. Accordingly, the Commission should review the evidence relating the whether Verizon correctly applied the TELRIC methodology with particularly close scrutiny. As discussed further below, the reply comments confirm that such scrutiny of Verizon's UNE rates reveals that they violate numerous TELRIC principles.

Even if the Commission could conclude that Verizon's Pennsylvania UNE rates fall within the range that a reasonable application of the TELRIC methodology would produce, the fact that Verizon's rates foreclose profitable statewide residential competitive entry would still be relevant to the Commission's section 271 analysis. Congress requires the Commission to determine not only whether cost-based UNE prices have been set, but also whether allowing the BOC to provide long distance service is in the public interest.[7] Given that the Pennsylvania local residential market remains closed to statewide competition, granting Verizon's application would clearly contravene the public interest.

Re: Structural separation of Bell Atlantic-Pennsylvania, Inc. Wholesale and Retail Operations, Opinion and Order, PaPUC Docket No. M-00001353, April 11, 2001, at 40.

[7] The Commission has recognized the independent importance of the public interest test. *See, e.g., Connecticut 271 Order* ¶ 74 ("Separate from determining whether a BOC satisfies the competitive checklist and will comply with Section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity"); *Massachusetts 271 Order* ¶ 232 (same); *Kansas/Oklahoma 271 Order* ¶ 266 (same); *Texas 271 Order* ¶ 416 (same).

The central purpose of section 271 is to ensure that a monopoly BOC, like Verizon, is not permitted to offer long distance service until it can no longer leverage monopoly power over local service to gain a competitive advantage in the long distance market. As long as Verizon can retain (and maintains) such monopoly power, it can effect a price squeeze – or other similar monopolistic strategies – to extend its local monopoly into the long distance market. The Commission, therefore, cannot reasonably make the required public interest finding in this case and should reject Verizon's application, leaving it to the state commission to decide (1) whether to set lower UNE rates; (2) whether to address the unprofitability of UNE-based residential service through the review and adjustment of inequitably available subsidies or of retail rates, or (3) whether to address it through some combination of steps. Put simply, the fact that Verizon's Pennsylvania UNE rates preclude local state-wide entry is relevant to whether Verizon has demonstrated full compliance with Section 271, and Verizon's failure to establish rates that allow for such entry is an independent bar to interLATA authorization.

On this record, a presumption that Verizon's UNE rates are appropriately cost-based would make a mockery of the Section 271 process and would clearly contravene the public interest. *See* AT&T at 67-69. The fact that Verizon's UNE rates are too high to support state-wide UNE-based entry plainly triggers the Commission's rule that, where rates are so high that they foreclose competitive entry, they clearly cannot qualify for any "presumption" of TELRIC compliance. *See Massachusetts 271 Order* ¶ 22. And in the absence of a legitimate presumption of validity, Verizon's Application plainly must be denied, because Verizon has not even seriously attempted to meet its burden to demonstrate, with specificity, that its rates are, in fact, cost-based.

That is because any serious independent review of Verizon's Pennsylvania rates confirms that those rates are inflated by myriad blatant TELRIC violations. *See* WorldCom at 22-

25 & Frentrup Decl., ¶¶ 6-12; AT&T at 19-31 & Baranowski Decl., ¶¶ 19-41. Although the rates relied on by Verizon in its Section 271 application are not themselves the product of any cost studies or cost analyses, the PaPUC defends them on the ground that they are close to the "Scenario 9" rates generated from Verizon's *MFS III* cost studies. *See* WorldCom at 18-21; AT&T at 18-19. But the comments demonstrate that the *MFS III* cost studies contain numerous critical TELRIC violations, so that the proximity of Verizon's rates to the *MFS III* cost estimates only confirms that Verizon's rates are *not* TELRIC-compliant. *See* WorldCom at 20-21; AT&T at 19-20.

The comments catalogue numerous TELRIC violations in the *MFS III* cost studies. First, those cost studies improperly replicate Verizon's existing network without regard to the existence of more efficient alternatives. *See* WorldCom at 22; AT&T at 21-22 & Baranowski Decl., ¶¶ 19-20. Second, in other respects, those cost studies improperly inflate UNE rates with the costs of a gold-plated network that forces purchasers of voice-grade lines to subsidize Verizon's investments in broadband facilities. *See* WorldCom, Frentrup Decl., ¶¶ 3-5; AT&T at 22-24 & Baranowski Decl., ¶¶ 21-26. Third, the *MFS III* cost studies rely on several key input assumptions, including those for depreciation, repair and maintenance, fill factors, digital loop carrier, and switch discounts, that violate core TELRIC principles. *See* WorldCom at 22-25 & Frentrup Decl., ¶¶ 8-10; AT&T at 24-31 & Baranowski Decl., ¶¶ 21-41.

The *MFS III* Cost Studies Are Based On An Impermissible "Replication" Approach. As WorldCom and AT&T have demonstrated, the *MFS III* rates were plainly inflated by Verizon's cost studies because those studies improperly assess CLECs for the costs of "replicating" Verizon's existing network rather than the costs of an efficient forward-looking network, as mandated by the Commission's rules. *See* WorldCom at 22; AT&T at 21-22 &

Baranowski Decl., ¶¶ 19-20. As WorldCom and AT&T have noted, Verizon itself frankly conceded this point when it boasted to the Third Circuit that its Pennsylvania cost models compute "what it would actually cost to *replicate* the *existing* network"[8] – the very approach that the Commission has repeatedly condemned and is currently challenging in the Supreme Court. *Verizon Commun., Inc.* v. *FCC*, *cert. granted,* 121 S.Ct. 877 (2001) (Nos. 00-511, 00-555, 00-587, 00-590 & 00-602) (*"Iowa Utilities Board II"*).

The *MFS III* Cost Studies Improperly Include Costs Associated With Broadband Networks. Verizon also concedes that the *MFS III* cost models include the cost of a mix of 100 percent fiber network installed by Verizon in anticipation of someday providing "broadband" (video) service in its UNE loop rates. *See* WorldCom, Frentrup Decl., ¶¶ 3-5; AT&T at 22-23 & Baranowski Decl., ¶ 21. But the Commission's TELRIC rules specifically preclude that methodology in order to foreclose the possibility that incumbent LECs will subsidize other services, like broadband services, from competitors that purchase voice-grade UNEs. *See* WorldCom, Frentrup Decl., ¶¶ 3-5; AT&T at 22 & Baranowski Decl., ¶¶ 21-26.

The *MFS III* Cost Studies Rely on Key Input Assumptions That Violate Core TELRIC Principles. The comments demonstrate that the radically shortened depreciation lives proposed by Verizon and uncritically accepted by the PaPUC plainly violate TELRIC principles. *See* WorldCom at 24-25 & Frentrup Decl., ¶¶ 11-12; AT&T at 24-26 & Baranowski Decl., ¶¶ 27-31. At the time that Verizon proposed its Pennsylvania depreciation lives, they were significantly

[8] Verizon's Appellant's Brief, *MCI Telecom. Corp. et al.* v. *Verizon Pennsylvania Inc., et al.*, 3d Cir., No. 00-2258 (filed Dec. 20, 2000), pp.38-39 (emphasis added). Based on the Eighth Circuit's second *Iowa Utilities Board* decision (*Iowa Util. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) (*"Iowa Utilities II"*)), Verizon argues that the District Court was "clearly wrong" to remand the PaPUC's rate determinations, because the *Iowa Utilities II* case makes it clear that TELRIC rates can reflect "actual costs" rather than "costs of an efficient carrier in a competitive market." Verizon Appellant's Brief, p. 38; *see also Iowa Utilities II*, 219 F.3d at 749-51 (vacating and remanding to the FCC rule 51.505(b)(1)).

shorter than the depreciation lives used by *any* state Commission in Verizon's region, *see* AT&T at 24-25; Baranowski Decl., ¶ 30, and have been since *rejected* by regulators in several of Verizon's other states. *See id.* Moreover, Verizon's Pennsylvania depreciation lives are as little as half those approved by the Commission. *See id.* As one PaPUC commissioner pointed out, "no other state [commission] in the country has accepted" Verizon's truncated lives. *MFS III* Final Order (Commissioner Hanger, dissenting).

The *MFS III* cost studies were also improperly based on repair and maintenance factors that reflect the historical (or embedded) costs of Verizon's network – a direct violation of TELRIC's forward-looking methodology – by computing repair and maintenance factors by *adding* 20 percent to Verizon's actual historical repair and maintenance costs. *See* AT&T at 26 & Baranowski Decl., ¶ 32; *see also* WorldCom at 22 (explaining more generally that the *MFS III* cost studies are based on embedded costs). Forward-looking loop repair and maintenance costs should be *lower* in a TELRIC-compatible network because those costs would be based on the assumed use of all new facilities, and would not include the obsolete and worn out facilities in Verizon's existing network. *See id.*

Additionally, WorldCom demonstrates that Verizon's Pennsylvania loop rates are inflated by the use of significantly understated fill factors that violate TELRIC principles. *See* WorldCom at 23 & Frentrup Decl., ¶ 8. Moreover, the LCAM loop cost model that is used to compute loop rates severely overstates Verizon's investment in distribution cable by double-counting the excess capacity implied by those understated fill factors. *See* AT&T at 26-27 & Baranowski Decl., ¶¶ 33-34.

WorldCom and AT&T have also identified clear errors in the *MFS III* cost studies relating to the costs of Digital Loop Carrier equipment. *See* WorldCom at 22-23 & Frentrup

Decl., ¶¶ 6-7; AT&T at 27-28 & Baranowski Decl., ¶¶ 35-37. In particular, Verizon's cost models rely on the cost of old (and expensive) universal digital loop carrier as a surrogate for the cost "Next Generation" Digital Loop Carrier ("NGDLC") equipment. *See id.* There is no reason to use such a surrogate. Prices for NGDLC equipment are readily available and identifiable. *See id.* Thus, the continued use of rates based upon the more expensive surrogate universal digital loop carrier equipment prices is clearly inappropriate and overstates Verizon's UNE rates. *See id.* Even the PaPUC has recognized that fact. *See* WorldCom at 22 (citing to the *See Global Order* at 70); *see also* AT&T at 27-28 & Baranowski Decl., ¶ 36

Finally, WorldCom (at 23-24) and AT&T (at 28-30) demonstrate that the *MFS III* cost studies violate the Commission's "scorched-node" assumption, which requires that costs be computed based on an entirely new network design and architecture where the only elements of the LEC's embedded network are the locations of existing wire centers. *See Local Competition Order* ¶ 685. All assets necessary to serve demand for telecommunications in the Verizon Pennsylvania service territory would therefore have to be newly purchased. Accordingly, the applicable switch discounts should be those that are available for new switching equipment. The *MFS III* cost studies violate that principle by computing switch discounts based on attributable growth – the volume and type of switches that would be needed to expand Verizon's *existing* network – rather than on the larger discounts that are available to Verizon for new equipment. *See* WorldCom at 23-24 & Frentrup Decl., ¶¶ 9-10; AT&T at 28-30 & Baranowski Decl., ¶¶ 38-41.

In sum, the mere fact that there is very limited UNE-based competitive entry in Pennsylvania is clearly an insufficient basis for the Commission to ignore Verizon's failure of proof – and the overwhelming evidence of critical and flagrant TELRIC violations in the cost models on which Verizon's Pennsylvania UNE rates are based. Verizon has not remotely satisfied its Checklist Item Two burden of proving that those rates comply with TELRIC principles; therefore, its Section 271 application should be denied.

II. IN LIGHT OF THE COMMISSION'S RECENT *CONNECTICUT 271 ORDER*, VERIZON CLEARLY HAS NOT FULLY COMPLIED WITH ITS CHECKLIST OBLIGATIONS WITH RESPECT TO THE PROVISION OF ADVANCED SERVICES.

In its opening comments, AT&T demonstrated that Verizon's refusal to make DSL available for resale at an appropriate avoided-cost discount when the CLEC is providing voice service to the customer is a violation of its resale obligations under Section 251(c)(4) – and, therefore, a violation of Checklist Item 14. AT&T at 31-44. The comments addressing this issue concur that, in view of its unreasonable and discriminatory policy, Verizon has failed to comply with its checklist obligations. *See* ASCENT at 3-13; CompTel at 24-26.

The Commission's *Connecticut 271 Order*, issued only two weeks ago, makes clear that Verizon's policy is flatly contrary to the requirements of Section 251(c)(4). The Commission held that, in light of the *ASCENT* decision of the U.S. Court of Appeals for the District of Columbia Circuit,[9] "we cannot accept Verizon's contention that it is not required to offer resale of DSL unless Verizon provides voice service on the line involved." *Connecticut 271 Order* ¶ 30. Thus, the Commission rejected Verizon's assertion that it was not required to resell DSL pursuant to Section 251(c)(4) because the DSL service is sold by its affiliate, VADI:

> The *ASCENT* decision made clear that Verizon's resale obligations extend to VADI, whether it continues to exist as a separate entity or whether it is integrated into Verizon, and regardless of the way Verizon structures VADI's access to the high frequency portion of the loop. Accordingly, we conclude that to the extent Verizon's attempt to justify a restriction on resale of DSL turns on the

[9] *See Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

> existence of VADI as a separate corporate entity (or even a separate division), it is not consistent with the *ASCENT* decision.

Id. ¶ 32. Citing the "plain language" of Section 251(c)(4), the Commission found that because Verizon and VADI – which, under *ASCENT*, are both subject to the requirements of Section 251(c)(4) – provide local exchange and DSL services to retail customers over the same line, "these services are eligible for a wholesale discount under section 251(c)(4)." *Id.* ¶ *30.*[10]

The Commission also rejected Verizon's argument that it was not required to resell DSL under Section 251(c)(4) where the CLEC is the voice provider because VADI provides DSL under a line sharing arrangement with Verizon. *See* AT&T at 38-41. The Commission correctly held that Verizon's position was "based on a misapplication of the Commission's line sharing rules. Line sharing is not a retail service; it is a UNE provided under section 251(c)(3). Therefore, the restriction on the line sharing UNE is inapplicable to Verizon's obligations relating to retail services." *Connecticut 271 Order* ¶ 31.

Finally, the Commission found that Verizon's restriction on the resale of DSL "severely hinders the ability of other carriers to compete," because it would enable only Verizon – and not its competitors – to provide both voice and DSL service to end-users. *Id.* ¶ 32. Such a result would be "clearly contrary to the pro-competitive Congressional intent underlying section 251(c)(4)." *Id.* For these reasons, the Commission concluded that Verizon and VADI "must permit resale of DSL by a competitive LEC over lines over which the competitive LEC provides voice service through resale of Verizon service." *Id.* ¶ 33.

[10] As AT&T has previously demonstrated, Verizon itself is offering DSL service at retail directly to end-users, and is therefore required to resell DSL pursuant to Section 251(c)(4), regardless of whether VADI is also offering DSL at retail. *See* AT&T at 33-34 & Att. 1. The *Connecticut 271 Order* confirmed that when Verizon offers both local exchange service and DSL service at retail, Verizon has "an obligation under the Act to make each service available for resale at wholesale rates." *Connecticut 271 Order* ¶ 32 n.78.

The *Connecticut 271 Order* did not resolve the issue of whether Verizon is required to resell DSL pursuant to Section 251(c)(4) when the CLEC is providing voice service using the UNE platform or a UNE loop, rather than over a resold line. *Id.* From both a legal and a technical perspective, however, Verizon's resale obligations under Section 251(c)(4) plainly extend to *any* CLEC wishing to resell DSL, regardless of the method by which the CLEC is providing voice service.

Section 251(c)(4) unequivocally requires that Verizon must "offer for resale at wholesale rates *any telecommunications service that the carrier provides at retail* to subscribers who are not telecommunications carriers," and may not "prohibit [or] impose unreasonable or discriminatory conditions or limitations on[] resale." 47 U.S.C. § 251(c)(4)(emphasis added). The statute does not base Verizon's resale obligations on the method by which the carrier has chosen to provide voice service. As ASCENT states in its comments, "The Section 251(c)(4) obligation attaches to the service and is not impacted by the technology through which the service may be delivered." ASCENT at 6. The Commission also recognized that fact when, in rejecting Verizon's misplaced reliance on its line sharing rules, it stated that "Resellers purchase retail services at a wholesale discount, they do not purchase UNEs." *Connecticut 271 Order* ¶ 31.

Verizon's refusal to resell DSL service at wholesale rates to CLECs providing voice service through the UNE platform or UNE loops is precisely the type of unreasonable and discriminatory restriction that Section 251(c)(4) prohibits. The Commission found such a refusal to be both discriminatory and anticompetitive when applied to resellers of voice service, because it would prevent them "from providing both DSL and voice services to their customers, while Verizon is able to offer both together to its [retail] customers." *Connecticut 271 Order* ¶ 32. That finding is equally true when a CLEC is providing voice service through the use of UNE-P or through UNE loops. In either case, the CLEC is using loops provided by Verizon – the very same loops that Verizon would use to provide voice and DSL service to those same customers. Thus, Verizon's restriction would have the unlawful effect of denying CLECs using the UNE-P and UNE loops the same ability to offer the same services over the same type of facilities that Verizon has in its retail operations.[11]

The fact that the CLEC that purchases a UNE loop has "exclusive control" or "exclusive use" of the loop does not affect Verizon's resale obligations. *See Local Competition Order* ¶¶ 357, 385. The CLEC's right to exclusive use and control simply means that the CLEC may, if it wishes, be the sole provider of services over the loop. If, however, the CLEC determines that it wishes to provide part or all of the services on the loop through resale, the unequivocal language of Section 251(c)(4) requires the ILEC to resell those services to the extent that it provides them at retail, and the nondiscrimination principles of Section 251(c)(4)(B) apply equally to all competitors, not just resellers of Verizon's voice services.

There is also no technical basis for limiting Verizon's resale obligations to situations where the CLEC is providing voice service through resale. In fact, with respect to the UNE platform, Verizon itself has admitted that the physical arrangements supporting UNE-P are *identical* to those that support resale. In a response that it served last month to a data request by AT&T in arbitration proceedings currently pending before the Commission, Verizon stated:

[11] In its *Line Sharing Order*, the Commission found that a competitor seeking to provide only DSL service could be "impaired" if it were required to provide voice service too, because the "additional required investment for voiceband equipment and facilities" would pose "substantial barriers to market entry" for such CLECs. *Line Sharing Order* ¶¶ 48, 56; *see also* Brief of FCC, *United States Telecom Assoc.* v. *FCC*, No. 00-1012 (D.C. Cir.), p. 27 (filed Aug. 1, 2001) (defending this holding). The converse, illustrated here, is equally true: requiring a carrier to develop the infrastructure needed to provision DSL, rather than provide that service through resale, in order to serve customers that seek obtain both voice and DSL over a single line would generally prevent the competitive carrier from serving those customers at all. Indeed, Verizon and other ILECs have refused to provide DSL retail service to end users that want their voice service provided by a competitor using UNE-P, and the Commission has not required them to do so. *Line Sharing Reconsideration Order* ¶ 26.

> There are *no operational differences* between a retail service and a UNE-P combination service, when the combination is made by Verizon Virginia. They are provisioned and maintained using the same systems.[12]

From a technical perspective, resale services are, of course, the same as Verizon's "retail services." Moreover, even prior to the issuance of the *Connecticut 271 Order*, Verizon expressed its willingness to resell DSL to CLECs in Pennsylvania that provide voice service through resale.[13] In view of Verizon's prior admission and offer, there is no reason why Verizon's resale obligations should not extend to CLECs providing voice service through the UNE-P.

Verizon's admissions in this regard merely restate the obvious. There is simply no technical basis for excluding UNE-P carriers from the scope of Verizon's resale obligations. As AT&T has previously shown, a CLEC using UNE-P would access Verizon's advanced service in the same way that Verizon provides line sharing today in conjunction with VADI; thus Verizon would use the same facilities to provide resold DSL service on a line that uses the UNE platform to provide voice service. AT&T at 42. In cases where a customer's line is already set up for line sharing by VADI, VADI would already have deployed splitters in its collocation and the UNE loop and switch port would already have been interconnected through the splitter. In such cases, a CLEC using the UNE platform to provide the voice service would assume responsibility for the loop, switch port and shared transport UNEs through a records change processed by Verizon –

[12]Response of Verizon to AT&T Data Request No. 3-30, served July 12, 2001, in CC Docket Nos.00-218, et al., *Petition of WorldCom, Inc Pursuant To Section 252(e)(5) of the Communications Act For Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., and For Expedited Arbitration.*

[13] *See ex parte* letter from Dee May (Verizon) to Magalie Roman Salas in CC Docket No. 00-138, dated July 9, 2001 ("July 9 *ex parte*").

just as would occur with any other UNE-P migration.[14] Nor is there any need to disrupt the physical configuration of the circuit. Instead, Verizon's task would simply be to make the necessary billing changes to bill the UNE-P CLEC for the resold DSL service at the appropriate wholesale discount – which is precisely the same task that it is required to perform to commence the resale of DSL to a CLEC that resells Verizon's voice service. Given these facts, it would plainly be discriminatory to exclude UNE-P CLECs from the scope of Verizon's obligation to resell DSL at a wholesale discount.

Similarly, there is no technical or other basis for permitting Verizon to refuse to resell DSL to CLECs that provide voice service using UNE loops and their own circuit switch. The technical arrangements needed to support resale of DSL for a CLEC using a UNE loop service configuration for its voice service are virtually the same as those that Verizon uses to provide both voice and data service to an end user. In such cases, the customer's loop is extended to a splitter that separates the loop's low- and high-frequency signals so that they can each be forwarded to the appropriate switch. Because the CLEC in a UNE loop arrangement would be providing the voice service, the addition of Verizon's DSL service would require only that Verizon (at an appropriate cost-based nonrecurring charge) run a cross-connect to route the "split" high-frequency signals from the CLEC's collocation to Verizon's data switch. This can be accomplished by using the same cross-connection techniques that Verizon currently employs to provide line sharing.[15] Even if Verizon is required to provide access to the entire loop when it

[14] In cases where the CLEC acquires a new (non-migrating) customer desiring both voice and DSL service, the "new" configuration of UNE-P voice service and resold DSL would be established in the same manner as the line sharing configuration established for VADI.

[15] When the CLEC provides a splitter in its own collocation in the customer's serving central office, Verizon would connect the loop outside plant to the facility connecting to the splitter input port, as it does in a line sharing arrangement. However, rather than use cross-connects to send the low-frequency signals back to Verizon's circuit switch and the high-frequency signals to its own data network, the CLEC would connect the low-frequency output
(continued)

deploys next generation digital loop carrier ("NGDLC") architecture, implementing this service arrangement is a simple matter of establishing cross-connects to the appropriate CLEC voice switch and to the DSLAM and data network of the Verizon entity providing the DSL service.

Given the lack of any technical basis for allowing Verizon to refuse to resell DSL to CLECs providing voice service through the UNE platform or UNE loops, Verizon's recent "voluntary" offer to resell DSL in Pennsylvania is patently inadequate. The offer is expressly limited to "existing resold voice lines," thus discriminating against UNE-P and UNE-loop CLECs. July 9 ex parte at 1.[16] Although Verizon characterizes its offer as "voluntar[y]" (id.) – a position that the Connecticut 271 Order rejected when it ruled that Verizon is required to resell DSL pursuant to Section 251(c)(4) – Verizon's limitation of its offer to CLECs using resold voice lines is plainly motivated by its awareness that resale is an inherently limited vehicle that CLECs cannot use to provide broad-based competitive residential service.[17]

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port of the splitter to its own local switching functionality (including use of a backhaul facility out of the central office) and would direct Verizon to connect the facility associated with the high-frequency signal output port of its splitter to Verizon's DSLAM and data switching network. In all respects, the cross-connections that would be required, and any customer disruption that would occur when the configuration was established, would be virtually indistinguishable from those involved in line sharing. Even in those circumstances where Verizon has used its own splitter to provide access to a split loop, the configuration would be similar to that used by Verizon when it provides a splitter and implements line sharing for itself and VADI: the low-frequency signal output port of the splitter would be connected to the CLEC's collocation (and from there by the CLEC to its voice switch) and the data signal output port of that same splitter would remain connected to Verizon's DSLAM and then to its data switching network.

[16]The limitation of Verizon's proposal to "existing" resold voice lines could also be construed as precluding the resale of DSL to a reseller acquiring a new customer who wishes to obtain both voice and data service from the reseller. In discussing a similar offer by Verizon for Connecticut, the Commission made clear that such a limitation would be impermissible. *See Connecticut 271 Order* ¶ 42 ("we expect permanent order processing procedures will eliminate Verizon's requirement that the reseller must already be the voice provider on the line involved before Verizon can process orders for DSL resale").

[17] *See* AT&T at 71-72 & n.86 (describing reasons for inability of resale to serve as effective means of entry into residential market on mass-market basis, and noting that less than 1 percent of all residential lines in Verizon's service territory in Pennsylvania are served through resale).