Verizon's offer to resell DSL is also fundamentally flawed in other respects. First, the offer has not been implemented, and will not be implemented for some time. Thus, at this stage, the offer amounts to no more than a promise to resell DSL in the future, as Verizon's own description of the various "stages" of its implementation process demonstrates. *Id.* at 2-3.[18]

Notably, Verizon's offer to resell DSL in Pennsylvania is significantly different from the offer that it made to resell DSL in Connecticut. In the *Connecticut 271 Order*, the Commission found Verizon's Connecticut offer to be sufficient to support DSL resale, because Verizon would be serving only a maximum of 60,000 access lines in that State. *See Connecticut 271 Order* ¶ 40 (emphasizing "the unique circumstances of this application, which involves a service area of approximately 60,000 lines"). Thus, the number of Connecticut orders for resold DSL would likely be "very small." *Id.* By contrast, in Pennsylvania Verizon serves approximately 6.2 million access lines – more than 100 times the number it serves in Connecticut. July 9 *ex parte* at 2.

Moreover, in Connecticut Verizon was ready to "immediately begin taking orders" for resold orders, without limitations on order volumes. *Connecticut 271 Order* ¶ 39.[19] In Pennsylvania, on the other hand, Verizon offers only a phased-in process and is *not* currently ready to accept commercial volumes of orders for resold DSL. Under Verizon's own proposed timetable, pre-production testing of ordering of resold DSL in Pennsylvania will not begin until August 18. VADI will not accept commercial production orders for DSL over resold lines until September 7, at the earliest – and then only "[i]f the cooperative production trial is successful."

[18] Verizon expressly conditions its offer "on the Commission's grant of Special Temporary Authority for relief from the conditions in the Bell Atlantic/GTE Merger Order." July 9 *ex parte* at 3 (footnote omitted). Verizon's request for such authority, which was filed on July 10, 2001, is still pending before the Commission.

[19] *See also* July 9 *ex parte* at 2 (noting that Verizon would begin providing DSL for resale on July 16, 2001).

July 9 *ex parte* at 3. For the first six weeks of commercial production, order volumes will be subject to "caps" ranging from 30 to 100 orders per business day. At the end of this period – and following an evaluation of whether "orders are being handled efficiently and whether changes are needed" – Verizon "anticipates" that the order "cap" would be increased to 200 orders per business day "until systems and software enhancements can be developed and implemented, a period that Verizon expects to take approximately three months." *Id.* In other words, under Verizon's own schedule, and assuming that no problems occur, unrestricted commercial production would not begin until January 2002, at the earliest.[20]

Furthermore, Verizon's offer does not even purport to suggest that Verizon has any reason to believe at this point that the process it proposes to implement will actually work. Verizon and VADI, for example, have yet to determine what new internal methods, procedures, and training will be required for ordering, provisioning and maintenance of resold DSL in Pennsylvania. *Id.* at 2. As previously noted, VADI plans to accept commercial orders (at a volume cap) on September 7 only "[i]f the cooperative production trial is successful" – and Verizon suggests that it is unsure whether the trial will succeed, because it asserts that the participating parties "will redo the test" if "the trial criteria are not met." *Id.* And, since Verizon has not even *developed* the "systems and software enhancements" that are supposed to permit

[20] Verizon's claim that the "cap" of 200 orders per business day should be "more than adequate" is inconsistent not only with its admission that "this is a new service for which demand is unknown," but also with the rationale it gives for phasing in its DSL offering. July 9 *ex parte* at 2-3. As Verizon points out, it serves 6.2 million access lines in Pennsylvania but only 60,000 lines in Connecticut, where Verizon has implemented a similar offer without a phased-in approach. *Id.* at 2. Given the increasing demand among consumers for DSL service, and the millions of potential DSL customers in Pennsylvania, there is no basis for concluding that resellers of voice service will submit no more than 200 orders for resale DSL per business day. In any event, Verizon's claim is disingenuous. If the "cap" is adequate, it is only because Verizon has failed to extend its offer to CLECs providing service through the UNE platform, which is in significantly greater demand by CLECs compared to resale.

unrestricted commercial production (*id.*), it has no way of knowing whether they will achieve their objective.

Thus, at most, Verizon is making a conditional, tentative offer to make DSL available for resale in the future, with no assurance that the process will even work. Such a promise has no probative value in demonstrating Verizon's current compliance with Section 271. *Texas 271 Order* ¶ 38; *Michigan 271 Order* ¶ 55, 179.

Second, even leaving aside its exclusion of CLECs that provide voice service through the UNE platform and UNE loops, Verizon's offer is discriminatory. Verizon makes clear that – at least until full commercial production begins (in January 2002, at the earliest) – any orders for DSL would be manually processed by Verizon personnel.[21] Verizon has presented no evidence that such manual procedures will also be required in its own retail operations, which generally process orders on a fully automated basis.[22]

Verizon's limited, conditional offer to provide DSL for resale in Pennsylvania cannot disguise its transparent violation of Section 251(c)(4). The Commission has already rejected Verizon's argument that it is not required to resell DSL to resellers providing voice service over their own lines. The logic of the *Connecticut Order*, and the lack of any legal or

[21] *See* July 9 *ex parte* at 2-3 (stating that beginning August 10, Verizon will "conduct necessary training for employees who will be processing orders, provisioning and maintaining this service," that Verizon's implementation plan will "strive to automate as much of the process as possible," and that the cap of 200 orders per business day to be applied in October will last "until systems and software enhancements can be developed and implemented").

[22] Apparently because CLECs will be required to use VADI's (rather than Verizon's) interfaces to order resale DSL, Verizon states that the resold service "will be excluded from all reported performance measurements." July 9 *ex parte* at 1 (stating that resellers would use interfaces "that VADI makes available to ISP customers" to order DSL). By requiring CLECs to place orders for resold DSL through its affiliate's interfaces, Verizon is plainly attempting to shield its performance from scrutiny by regulators and by CLECs. Such an attempt is plainly improper, as the Commission recognized in the *Connecticut 271 Order*. *See Connecticut 271 Order* ¶ 42 ("we expect that after Verizon's performance in providing this expanded resale offering will ultimately be reflected in performance data pursuant to procedures developed in coordination with the Connecticut Department").

technical basis for conditioning Verizon's resale obligation according to the method by which voice service is provided by a CLEC, at a minimum require Verizon to resell DSL at a wholesale discount to CLECs providing voice service through the UNE platform. Moreover, the similarities to line sharing require that Verizon allow carriers that provide voice service using UNE loops to resell its DSL service as well. Because Verizon has neither offered to do so nor shown that it can do so, it cannot be found in compliance with the checklist.

III. THE COMMENTS DEMONSTRATE THAT VERIZON IS NOT PROVIDING NONDISCRIMINATORY ACCESS TO ITS OSS.

The comments also show that Verizon has failed to meet its statutory obligation to provide nondiscriminatory access to its operations support systems.[23] In at least three critical areas – billing, order flow-through capability, and provision of timely billing completion notices – Verizon's performance has fallen far short of the statutory requirements.

Failure To Provide Commercially Viable Electronic Bills: No other aspect of Verizon's performance elicited more comments than its failure to provide CLECs with adequate access to billing functions. The comments were unanimous that Verizon has failed to provide nondiscriminatory access to these functions, in numerous respects, and that this failure denies the CLECs a meaningful opportunity to compete.[24] The comments thus confirm the concerns expressed by the two PaPUC Commissioners who dissented from the PaPUC's Consultative Report on the grounds (*inter alia*) that Verizon's substandard electronic billing to CLECs was both discriminatory and competitively significant. *See* AT&T at 50 (quoting two dissenting Commissioners on billing issue). The Department of Justice, in fact, states that it "is unable to

[23] *See, e.g.*, AT&T at 44-54; ASCENT at 14-19; Joint Commenters (Capsule, Covista, and US LEC) at 8-23; CWA at 2-5; Covad at 19-23; CompTel at 2-29; WorldCom at 1-9, 26-28; Z-Tel at 2-11.

[24] *See* AT&T at 50-54; ASCENT at 14-19; Joint Commenters at 16-18; CWA at 2-5; Covad at 20-23; Curry at 6; CompTel at 2-19; WorldCom at 1-9; Z-Tel at 2-11.

endorse Verizon's application on the existing record," because "Verizon's electronic billing problems have been extensive, and the record contains little evidence that they have been fully resolved." DOJ Eval. at 14; *see also id.* at 3, 17.

Most notably, the comments showed that Verizon has failed to provide CLECs in Pennsylvania with commercially viable electronic bills.[25] Verizon cannot explain away this failure by relying on the Commission's prior approval of its § 271 applications for New York and Massachusetts. In the first place, Verizon had fully functional and adequate electronic billing systems in place in New York and Massachusetts at the time it filed its applications for those States. Second, Verizon uses a billing system in Pennsylvania that is wholly different from that used in New York and Massachusetts – and that difference explains why Verizon's billing deficiencies in Pennsylvania (including inadequate electronic wholesale bills) have not been problems in the other two States.[26] If anything, the situations in New York and Massachusetts further illustrate the deficiencies of Verizon's systems in Pennsylvania.

Numerous commenters report that, like AT&T, they have long requested Verizon to provide adequate wholesale bills in the electronic, mechanized format known as CABS BOS BDT – and that, despite those requests, Verizon *still* has not provided accurate, reliable, and auditable electronic bills. *E.g.*, AT&T at 50-51; ASCENT at 15; Joint Commenters at 16-17; CompTel at 6-7; WorldCom at 1-2; Z-Tel at 8. The electronic bills that Verizon has provided to CLECs either have been totally unreadable or, to the (very limited) extent that they have been

[25] *See* AT&T at 50-54; ASCENT at 15; Capsule at 16-17; CWA at 2-5; Covad at 21-23; CompTel at 6; WorldCom at 1-9; Z-Tel at 2, 8.

[26] *See* ASCENT at 15; CompTel at 7, 9; Z-Tel at 5 & n.11. *See also* WorldCom at 4 (noting that although WorldCom receives electronic bills in CABS-BOS format from approximately 20 vendors, including Verizon-New York, "Verizon-Pennsylvania is the only one with which WorldCom is experiencing the type of problems we have described").

readable, are riddled with errors. *E.g.*, AT&T at 51 & Fawzi/Kirchberger Decl., ¶¶ 65, 92-95; CompTel at 6-7 & Larazza Decl., ¶ 6; WorldCom at 3-4 & Lichtenberg Decl., ¶¶ 17-26; Z-Tel at 8. Furthermore, Verizon still does not provide fully electronic bills for UNE loop or resale services. AT&T at 51; WorldCom at 4 & Lichtenberg Decl., ¶ 15.

Verizon's performance on electronic billing to date gives little hope for future improvement. For example, WorldCom was not able to audit any of its electronic UNE-P bills until it received its May UNE-P bill, and even then the bill was only auditable to a limited degree and contained numerous errors. WorldCom's June bill, however, was totally inauditable and contained errors (such as the absence of USOC codes) that Verizon claimed to have fixed. WorldCom at 4 & Lichtenberg Decl., ¶¶ 26, 31. Similarly, the electronic bill that AT&T received from Verizon in early June contained several critical flaws (including incorrect formatting) in violation of industry billing guidelines, precluding AT&T from using the bill in the format Verizon transmitted. *See* Fawzi/Kirchberger Decl., ¶¶ 93-95. The May bill received by Z-Tel, which provides service through the UNE platform, also contained serious errors, including a "myriad" of incorrect USOCs that do not represent charges for UNEs. Z-Tel at 1, 8-9 & Rubino Decl., ¶ 4.

Verizon's failure to provide adequate and reliable electronic bills denies CLECs a meaningful opportunity to compete. As the DOJ notes, "Accurate and auditable electronic bills are an important factor in making local telecommunications markets fully and irreversibly open to competition." DOJ Eval. at 11. In the absence of such bills, a CLEC has no practical way of verifying the accuracy of Verizon's charges, which represent a CLEC's single largest cost of providing local exchange service. *Id.*; AT&T at 51; ASCENT at 16-17; WorldCom at 1-2. The comments demonstrate that CLECs cannot practically verify Verizon's charges to them using the paper bills Verizon provides, which are "voluminous" and can consume numerous boxes for a

single CLEC for a single month. AT&T at 51; ASCENT at 15; Joint Commenters at 16-17; Covad at 21, 23; CompTel at 7-8; WorldCom at 7-8. Such verification is essential, however, because even the limited reviews CLECs have been able to conduct of those paper bills have revealed numerous billing errors and overcharges by Verizon. ASCENT at 16; Joint Comments at 16-17; Curry at 5-6; Z-Tel at 6-8. For example, Z-Tel's "cursory review" of Verizon's paper bill revealed "a wide range of errors," including incorrect USOCs, incorrect usage rates, incorrect billing of taxes, and incorrect billing of interexchange carrier charges. Z-Tel at 7 & Rubino Decl., ¶ 12.[27]

The unavailability of an accurate, reliable electronic bill against which CLECs can verify Verizon's charges imposes needless burdens on CLECs that hinder competition in the local exchange market. Because of billing errors that they cannot reasonably detect, CLECs will likely be overcharged. A CLEC's attempt to verify Verizon's charges – whether through paper bills or the currently- inadequate electronic bills – requires a substantial dedication of time and administrative costs.[28] And critically, CLECs cannot afford to bear such burdens in a market where profit margins are already small or nonexistent. *See* Part I, *supra* (describing inadequate

[27]Other commenters have also found numerous errors in Verizon's paper bills. *See* ASCENT at 16 (ASCENT members report that bills received from Verizon "commonly include charges for lines and services not provided, misrated (often retail) charges for services received, double billing for services which are incorporated in other charges, assessments of taxes when Verizon is not the remitting carrier or on accounts on which no taxes are due, subtotaled charges which are unreconcilable to totaled charges, and miscrediting or unidentifiable crediting of earlier billing errors, all of which errors, almost without exception, favor Verizon"); Joint Commenters at 17 (bills have improperly included taxes and directory advertising charges, errors in billing adjustments, and "mysterious transfer charges"); Curry at 5-6 & App. I at 3, 6-7 (bills have failed to credit Curry for erroneous late fees and have assessed unspecified "miscellaneous transfer charges"); CompTel at 5, 8-9 (wholesale bills contain retail rates, incorrect USOCs, incorrect rates for usage, incorrect billing of taxes, and incorrect billing of IXC charges); WorldCom at 6 (Verizon tariffed only the most expensive port charge for UNE-P orders and, although it promised to give credit to WorldCom and make adjustments to its systems to allow CLECs to order the lower-charge port, there is no evidence that it has done so).

[28] *See* DOJ Eval. at 11-12; Fawzi/Kirchberger Decl., ¶ 94; CompTel at 9; Curry at App. I, ¶ 18; Z-Tel at 11 & Rubino Decl., ¶ 22.

margins for CLECs providing service through the UNE platform under current UNE prices in Pennsylvania); Z-Tel (Rubino Decl., ¶ 22). Furthermore, as the DOJ notes, the unavailability of adequate electronic bills is likely to retard the growth of competition in Pennsylvania in the future, because CLECs need accurate bills in order "to serve growing numbers of customers efficiently." DOJ Eval. at 12.

The comments also agree with AT&T that the "fixes" that Verizon claims to have implemented in its systems to improve the BOS BDT between March and June 2001, and the additional "fixes" that Verizon promises to implement, do not support – and in fact undermine – Verizon's claim that adequate electronic bills are currently commercially available to CLECs. *See* AT&T at 52; ASCENT at 17-18; 13-15; CompTel at 14-15; WorldCom at 7-9; Z-Tel at 8-9. These "fixes" obviously reflect Verizon's recognition that its electronic bills are inadequate. Indeed, the fact that Verizon planned *additional* "fixes" for July and August *as of the time it filed its application* demonstrates that Verizon itself recognizes that further changes are required before these significant problems can be fully resolved.

In any event, it is premature to conclude that the "fixes" that Verizon purported to implement during the last few months have improved its electronic billing capability, much less removed all of the preexisting deficiencies in its electronic bills. As WorldCom states, "A single month's bill is simply insufficient to establish acceptable performance, even if the May bill had been perfect. For proof of that proposition the Commission need look no further than Verizon's deficient June bill." WorldCom at 8-9. Indeed, Verizon itself has acknowledged that "several billing cycles" of data are necessary before any conclusions can be reached concerning the effectiveness of the "fixes." AT&T at 52; ASCENT at 17-18; WorldCom at 8. The deficiencies

in Verizon's May and June bills to AT&T, WorldCom, and Z-Tel are, in fact, abundant proof that the current "fixes" have *not* eliminated the serious deficiencies in Verizon's electronic billing.

Nor should Verizon's promises of future "fixes" be given any weight, since they are irrelevant to the issue of Verizon's current compliance with Section 271. AT&T at 52.[29] Even if such promises were relevant (and they are not), they lack credibility in view of Verizon's performance to date. Verizon's application claimed that it provides adequate electronic bills (Verizon Br. at 67); yet, after numerous "fixes," its electronic bills are still patently deficient.

Verizon's electronic billing inadequacies are not reduced (much less eliminated) by Verizon's recent announcement to the PaPUC that it has complied with the conditions the PaPUC attached to its recommendation of approval of Verizon's 271 application.[30] At most, Verizon's letter amounts to a promise that, effective for its performance beginning July 1, it will report performance data for the timeliness and accuracy of electronic bills, and will pay increased billing remedies payments when its performance under those measurements violates the applicable standards. July 18 letter at 1-2. These post-application promises of future compliance are no

[29] The comments agree with AT&T that the reviews conducted by Pricewaterhouse Coopers ("PwC") and KPMG do not support Verizon's position that its electronic bills are adequate. *See* AT&T at 53 & Fawzi/Kirchberger Decl., ¶¶ 85-93; DOJ Eval. at 9-10; CompTel at 10; WorldCom at 5; Z-Tel at 6-7, 9. PwC, for example, did not determine whether any of the bills it reviewed were accurate – and, as the comments show, PwC's "attestation" proved to be inaccurate. DOJ Eval. at 9-10; CompTel at 10; WorldCom at 5; Z-Tel at 9 (stating that, although PwC "attested" that adjusted totals on electronic bills matched totals on paper bills within 2 percent, Verizon subsequently advised Z-Tel that its electronic bill was out of balance by more than 5 percent). Similarly, KPMG's review was restricted to paper bills for a "pseudo-CLEC," and cannot reasonably be regarded as a reliable indicator of the accuracy of Verizon's electronic bills in the commercial context. *E.g.*, Fawzi/Kirchberger Decl., ¶ 88; DOJ Eval. at 10; WorldCom at 5. As the DOJ notes, "The experience in Pennsylvania highlights the weaknesses of third-party testing, as the CLECs' commercial experience with Verizon's billing in the past, both paper and electronic, has revealed numerous problems with both accuracy and auditability." DOJ Eval. at 10 (footnote omitted).

[30] *See* letter from Julia A. Conover (Verizon) to James J. McNulty (Secretary, PaPUC) in PaPUC Docket No. P-00991643, dated July 18, 2001 ("July 18 letter"), attached to letter from Clint E. Odom (Verizon) to Magalie Roman Salas in CC Docket No. 01-138, dated July 20, 2001.

substitute for demonstrating that Verizon is *currently in compliance* with Section 271. *Michigan 271 Order* ¶¶ 55, 179.

Furthermore, the new measurements and remedies will give Verizon no incentive to improve its performance with respect to electronic billing in the future. The erroneous methodology that Verizon uses to report billing data masks all of the billing disputes and problems that CLECs report to Verizon. In addition, the increased billing penalties under the PaPAP will expire on December 31, 2001 – plainly too short a time to give Verizon any reason to fix the numerous billing problems in its systems and render nondiscriminatory performance. *See* AT&T at 53-54.[31] Indeed, the DOJ concluded that the billing accuracy metrics "*do not appear to measure properly the adjustments made by Verizon* to resolve billing accuracy disputes" and "*are not designed to reflect outstanding CLEC billing disputes.*"[32]

Given the deficiencies in Verizon's billing performance, its application clearly should be denied. In this regard, the Commission should not accept the DOJ's suggestion that Verizon be permitted to submit "additional information" about its billing performance during the

[31] According to the C2C billing metric definitions, Verizon is required to report its results for the bills that it issued two months prior to the reporting month, in order to ensure that CLEC reports of billing disputes and claims are incorporated into the calculations of billing metrics. Verizon, however, has ignored this requirement and instead reports the billing metrics based on billing data generated in the reporting month – thus omitting any defects in bills reported to Verizon by CLECs (which, under Verizon's business rules, have 20 days from the receipt of their wholesale carrier bills to notify submit claims or disputes regarding those charges to Verizon). Because the PaPUC declined to address Verizon's erroneous methodology, Verizon has incurred no remedies for billing deficiencies – and will not do so in the future. *See* AT&T at 53-54 & Fawzi/Kirchberger Decl., ¶¶ 98-101. *See also* ASCENT at 18 (for purposes of reporting billing accuracy, Verizon admits to billing errors only if CLEC identifies – and Verizon acknowledges – them); WorldCom at 12 (noting that Verizon's reported data on the accuracy of its paper bills has not reflected its "abysmal billing practices," because the accuracy metric only reports errors that CLECs report to Verizon within 30 days of when they were supposed to receive the bills – thus excluding numerous errors that were not detected during that time period due to the lateness and inauditability of Verizon's metric performance for paper bills); Z-Tel at 10 (despite problems in its paper billing throughout 2000, Verizon reported "superlative" performance in its metric performance for paper billing and paid no fines under the PaPAP, largely because of the time lag between the reporting and ultimate resolution of claims of billing errors by CLECs).

[32] DOJ Eval. at 13-14 (emphasis added).

course of this proceeding, regardless of whether the information complies with the Commission's complete-when-filed rule. *See* DOJ Eval. at 3, 14, 17.[33] Only last month, the Commission reiterated that applicants for authority are "expect[ed] . . . to make every effort to ensure that section 271 applications are complete when filed." *Connecticut 271 Order* ¶ 38. The Commission further stated that "it will be rare for future applicants to satisfy the high bar for waiver of these procedural requirements," the purpose of which is to "maintain a fair and orderly process for consideration of Section 271 applications." *Id.*; *see also Michigan 271 Order* ¶ 52.

There can be no legitimate reason for allowing Verizon to submit evidence regarding its billing performance that post-dates the filing of the comments on its application.[34] Verizon chose to file its application in the face of overwhelming evidence that it was not providing adequate electronic bills.[35] It also did so with full knowledge of the complete-when-filed rule, which has been in effect for more than four years. *E.g., Michigan 271 Order* ¶¶ 49-50. Having chosen to proceed with the filing of its application, rather than fixing its billing problems before doing so, Verizon should not now be permitted to attempt to salvage its application through the submission of new evidence.

In fact, the issue of electronic billing here is a paradigmatic case for application of the complete-when-filed rule. The deficiencies in electronic bills cannot be fixed simply through the flick of a switch, the stroke of a pen, or change in a Verizon "policy," but must instead be

[33] The DOJ's suggestion is perplexing, in view of its own statement that "The importance of having a complete application at the FCC for third parties to evaluate cannot be overemphasized." DOJ Eval. at 3 n.5.

[34] *See Updated Filing Requirements For Bell Operating Company Applications Under Section 271 of the Communications Act*, 14 FCC Rcd. 16128, 16130 (1999) ("in no event shall [the applicant's] evidence post-date the filing of the relevant comments").

[35] *See* DOJ Eval. at 3 ("Verizon filed its Pennsylvania application . . . without sufficient evidence to show that numerous problems with its wholesale billing systems have been corrected"); PaPUC Consultative Report at 99-103 (noting evidence of Verizon's deficient billing performance, but finding that Verizon had met its checklist (continued)

accomplished through fundamental changes in Verizon's systems. Even when those changes have been made, their effectiveness can only be determined through actual commercial experience and evaluation of commercial usage data that Verizon itself conceded should encompass "several cycles." The complete-when-filed rule was established to ensure that such evidence would be included in the BOC's application – and not any reply comments or post-application submissions that have the effect of supplementing the BOC's application. Indeed, it was because Ameritech supplemented its original application describing various remedial measures to its OSS and commitments that it had purportedly made since the filing of its application that the Commission found it necessary to clarify and apply the complete-when-filed rule. *Michigan 271 Order* ¶¶ 49-59. Applying that rule, the Commission held that it would "not consider any new commitments made by Ameritech *or remedial measures taken by Ameritech after May 21, 1997, the date Ameritech filed its application*, in evaluating whether Ameritech has demonstrated it provides nondiscriminatory access to its OSS." *Id.* ¶ 154 (emphasis added).[36] The same result should obtain here.

Inadequate Flow-Through Rates: The comments confirm that the flow-through rates for CLEC orders in Pennsylvania are inadequate, and that Verizon is manually processing too many CLEC orders. *See, e.g.*, AT&T at 46-48; Joint Commenters at 14-15; Covad at 20; WorldCom at 27-28. The current flow-through rates for Pennsylvania are far below those in New York (even though there is no reason why the rates in the two States should differ) and in Texas.

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obligations based on "significant strides" made by Verizon in addressing CLECs' issues and on Verizon's promised programming modifications).

[36]*See also Michigan 271 Order* ¶¶ 51, 237 (declining to give any weight to May 1997 interconnection data that Ameritech filed on reply "because it reflects performance for a period after Ameritech submitted its application and no party submitted May interconnection data or otherwise raised arguments concerning Ameritech's compliance with the checklist data during that month").

AT&T at 46-47; Joint Commenters at 14-15. As WorldCom notes, although the total flow-through rate in Pennsylvania has generally shown some improvement in recent months, "there is no way to know if [such] improvements represent anything other than papering over of systemic problems that have not yet been addressed," since Verizon has not provided an adequate root cause analysis of its flow-through problems. WorldCom at 28.

In contrast to the proceedings involving Verizon's § 271 applications for New York and Massachusetts, Verizon has not presented – and cannot present – evidence that, notwithstanding its inadequate flow-through rates for Pennsylvania, Verizon processes CLEC orders in a nondiscriminatory and commercially reasonable manner. *See* AT&T at 47-48. For example, through May 2001 Verizon's reported overall rates of accuracy in processing service orders in Pennsylvania consistently fell short of the PaPUC's benchmark. For some individual CLECs, the order accuracy rate has been far worse. XO, for example, found that nearly 60 percent of its orders were incomplete due to errors made by Verizon. *Id.* at 48; Joint Commenters at 15. Moreover, Verizon has not returned firm order confirmation notices in a timely manner. Joint Commenters at 15-16. Verizon's poor performance in these areas, at a time when it is handling only a relatively limited volume of CLEC orders, can only be expected to worsen as volumes increase.[37]

[37] The performance data that Verizon recently reported for June 2001 provide further confirmation that Verizon's poor flow-through rates reflect serious deficiencies in its OSS that deny CLECs a meaningful opportunity to compete. *See* AT&T at 46-48 & Fawzi/Kirchberger Decl., ¶ 41 & n.29. For orders placed for less than 10 lines in the special services category (OR-2), which lack flow-through capability, Verizon returned only 69.42% of rejection notices within 48 hours. This performance falls far short of the applicable 95 percent benchmark, and is further proof that Verizon takes longer to send notices for manually processed orders than for fully automated orders. *See* AT&T at 48. The June 2001 performance data also reveal additional instances of discriminatory treatment of CLECs by Verizon in provisioning their orders and in providing maintenance and repair services. Attachment 1, attached hereto, shows that in June Verizon failed to meet the applicable benchmark for 29 competitively significant metrics for provisioning and maintenance and repair – as compared to 19 such failures in May. *See* Bloss/Nurse Decl., ¶ 75 & Exhibit G (as revised in May 20, 2001 Erratum submitted by AT&T). As
(continued)

The type of competitive harm that manual order processing causes to CLECs is described in the comments that address Verizon's failure to provide full flow-through capability for orders requesting directory listings. *See* Broadslate, CTSI, and XO ("Broadslate") at 16-20; Pennsylvania Office of Consumer Advocate ("PA OCA") at 15-24. Fewer than 50 percent of local service requests concerning directory listings flow through Verizon's systems without manual intervention, primarily because Verizon has generally provided flow-through capability only for those requests that originate from UNE-platform or resale carriers. LSRs for directory listings submitted by facilities-based carriers do not flow through. PA OCA at 17-18; Broadslate at 16-17. Given the increased risks of errors and delays inherent in manual processing, the lack of flow-through capability for such a large percentage of directory listings orders has resulted in a denial of parity to CLECs, because Verizon's systems for ordering directory listings for its own retail customers are fully automated. Broadslate's comments, for example, demonstrate that Verizon has failed to include directory listings altogether, or included inaccurate directory listings, for hundreds of CLEC customers. Broadslate at 15. Noting a "disturbing pattern of errors" by Verizon in handling listings orders by CLECs, the Pennsylvania Office of Consumer Advocate (or "PA OCA") concludes that "[t]he number and percentage of errors for Verizon retail customers, as compared to CLEC customers, is much lower and effectively demonstrates the results of the discriminatory process used by Verizon for CLECs in the processing and publication of white pages directory listings." PA OCA at 22, 24.

As the PA OCA notes, the inaccuracies and omissions in directory listings due to errors in Verizon's manual processing of CLEC requests "have impeded the progress and success

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AT&T has previously shown, Verizon's various rationalizations for its poor performance are without merit. Bloss/Nurse Decl., ¶¶ 76-79.

of local competition" and harmed consumers, who are the ultimate victims of such problems. *Id.* at 15, 24. That is why nondiscriminatory access requires that Verizon provide CLEC orders, whether for directory listings or for any other service, with the same flow-through capability that it has in its own retail operations. Verizon clearly has not yet done so.

Failure To Provide Timely Billing Completion Notices: The comments confirm that, as AT&T has previously shown, Verizon has failed to provide billing completion notices ("BCNs") in a timely manner. *See* AT&T at 47-49; Joint Commenters at 18-19; CompTel at 19; WorldCom at 26. CompTel, for example, states that Verizon returns less than 75 percent of the BCNs for one of its members, MetTel, within 3 business days after provisioning – and more than 5 percent of MetTel's BCNs are not returned (if they are returned at all) until more than 30 days after provisioning. CompTel at 19 & Goldberg Decl., ¶ 15. WorldCom also reports that from August 2000 (when it first launched service in Pennsylvania) until very recently, missing notifiers – including missing BCNs – "were a notorious feature of Verizon's poor performance in Pennsylvania." WorldCom at 26. Although the number of missing WorldCom BCNs has recently decreased, the improvement in Verizon's performance is too recent for the Commission to determine whether Verizon has truly fixed the problem or (as is likely) has simply "instituted temporary manual fixes in order to keep the number of missing notifiers down until section 271 authority is granted." *Id.*; *see also* Lichtenberg Decl., ¶¶ 60-62.

As the Commission has recognized, timely receipt of BCNs is critical to a CLEC's ability to compete effectively. Absent receipt of a BCN, a CLEC has no way of knowing whether it may properly begin billing the customer, or what services have actually been provisioned for the customer. *See New York 271 Order* ¶ 187; AT&T at 48-49. In view of Verizon's deficient past performance in providing BCNs in a timely manner, Verizon cannot be found to be in compliance

with its OSS obligations. Nor is there any basis for concluding that Verizon's performance might improve in the future. Even leaving aside the unanswered questions regarding the actual reasons for Verizon's recent improved performance in this area (at least for WorldCom), unlike New York, there is still no performance metric in effect in Pennsylvania regarding the timeliness of BCNs. AT&T at 49-50; WorldCom at 26; Joint Commenters at 18.

IV. VERIZON'S PERFORMANCE MEASURES AND THE PENNSYLVANIA PERFORMANCE ASSURANCE PLAN ARE INADEQUATE.

The Commission has recognized that the public interest analysis set forth in Section 271(d)(3)(C) is an "independent element of the statutory checklist" that "requires an independent determination." *New York 271 Order* ¶ 423. Furthermore, the Commission has repeatedly recognized that a factor in its public interest analysis is whether the Commission "ha[s] sufficient assurance that markets will remain open after grant of the application." *Id.*[38]

Although the Commission has not required an applicant to demonstrate the establishment of performance monitoring and enforcement mechanisms as a condition of Section 271 approval, it has also made clear that such mechanisms could "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." *Id.* ¶ 429; *see also Massachusetts 271 Order* ¶ 236. Thus, when an applicant relies on a performance assurance plan (or "PAP") in its application, the Commission – as part of its "independent determination" – will review the details of that plan to

[38] *See also, e.g., Texas 271 Order* ¶ 417; *Kansas/Oklahoma 271 Order* ¶¶ 267, 269; *Massachusetts 271 Order* ¶ 233. As AT&T demonstrated in its opening comments, the issue of whether the BOC's local exchange market is open to competition is a key factor in the Commission's public interest inquiry – and the evidence shows that Verizon maintains a virtual monopoly over residential service in its Pennsylvania service territories, due to entry barriers and Verizon's own actions. *See* AT&T at 66-74. Those barriers include UNE rates that are not set pursuant to any conceivably valid TELRIC-based methodology, and that are so high they do not permit substantial and irreversible UNE competition. *Id.* at 75 & n.88.

determine whether it provides a sufficient incentive for future compliance with Section 271. As the Commission stated in the *New York 271 Order*:

> Where, as here, a BOC relies on performance monitoring and enforcement mechanisms to provide assurance that it will continue to maintain market-opening performance after receiving section 271 authorization, *we will review the mechanisms involved to ensure that they are likely to perform as promised.* While the details of such mechanisms developed at the state level may vary widely, *we believe that we should examine certain key aspects of these plans to determine whether they fall within a zone of reasonableness, and are likely to provide incentives that are sufficient to foster post-entry checklist compliance.*

New York 271 Order ¶ 433 (emphasis added). *See also Texas 271 Order* ¶ 423; *Kansas/Oklahoma 271 Order* ¶ 273.

Thus, the Commission has rejected the notion that it should simply defer to a state commission's finding that a particular PAP is adequate. That holding is clearly correct, because Congress assigned to the Commission the task of making an independent determination of whether approval of a Section 271 would be "consistent with the public interest, convenience, and necessity" under Section 271(d)(3)(C). Although the Commission surely may take the State commission's views regarding adequacy of a PAP into account, the statute clearly requires the Commission to conduct its own review of the PAP, rather than simply rubber-stamp a State commission's approval – as the Commission has recognized.[39]

[39] In the *New York 271 Order*, for example, the Commission clearly conducted its own analysis as to whether the structural elements of the New York PAP appeared reasonably designed to detect and sanction poor performance by Verizon when it occurs. The Commission found that the amended PAP and amended change control assurance plan in New York "set forth, in great detail, the processes by which Bell Atlantic's performance is measured and evaluated, the method for determining compliance and non-compliance with respect to individual metrics, and the manner in which noncompliance with individual metrics will translate bill credits." *See New York 271 Order* ¶ 440. Only after addressing criticisms of the New York PAP by the commenters did the Commission state that it "also" found it "significant that the New York Commission considered and rejected most of these arguments." *Id.*

Moreover, while the Commission has not specified all of the particular requirements that a particular PAP must meet in order to constitute a sufficient incentive to the BOC to comply with Section 271 in the future, it has identified certain "important characteristics" that increase the likelihood that the enforcement mechanisms in a PAP "will be effective in practice." *New York 271 Order* ¶ 433. Thus, in the *New York 271 Order*, the Commission found that the New York PAP would serve as an effective mechanism for ensuring "marketing-opening performance" by Verizon after it received Section 271 authorization, because it contained the following characteristics:

- potential liability that provided a "meaningful and significant incentive to comply with the designated performance standards";
- "clearly-articulated, pre-determined measures and standards," which encompass a "comprehensible range of carrier-to-carrier performance";
- "a reasonable structure designed to detect and sanction poor performance";
- a self-executing mechanism "that does not leave the door open unreasonably to litigation and appeal"; and
- "reasonable assurances that the reported data is accurate."

New York 271 Order ¶ 433. In its decisions reviewing subsequent Section 271 applications, the Commission has similarly reviewed the PAP in the State at issue for these characteristics.[40]

Even if the Commission could properly give total deference to a State commission's unqualified approval of a PAP (and it cannot), the PaPUC did *not* give such approval here. The PaPUC clearly found that the remedies in the existing PaPAP are insufficient to ensure Verizon's future compliance with Section 271 because – both in its June 6 "Secretarial Letter" and in its Collaborative Report – the PaPUC established a "rebuttable presumption" that

[40] *See, e.g., Texas 271 Order* ¶¶ 424-429; *Kansas/Oklahoma 271 Order* ¶¶ 273-278; *Massachusetts 271 Order* ¶¶ 240-247.

the remedies in the New York PAP be substituted for the current remedies in the PaPAP. *See* AT&T at 63-65; WorldCom at 16-17; PaPUC Consultative Report at 267.[41] Indeed, the press release that the PaPUC issued with its June 6 Secretarial Letter stated that Verizon "*must agree* to a permanent performance plan based generally on New York's model, which has been approved by the FCC."[42]

In addition to the PaPUC's recognition that the remedies in the PaPAP are inadequate, the comments submitted by the parties confirm AT&T's showing that, contrary to Verizon's claim, Verizon is not subject to "a comprehensive, self-executing performance assurance mechanism that provides . . . incentives to provide the best wholesale performance possible." *See* Verizon Br. at 84; AT&T at 54-66. First, the PaPAP does not meet this Commission's criterion that it be a self-executing mechanism that "does not leave the door open unreasonably to litigation and appeal." Both the DOJ and the PA OCA point out that Verizon remains free to challenge *at any time* the PaPUC's authority to impose any remedies for its performance failures. *See* DOJ Eval. at 16 n.63; PA OCA at 32-37; AT&T at 64-65. Although Verizon recently withdrew its state court appeal of the PaPUC's authority to implement *any* performance standards and remedies, it did so *only* after the PaPUC expressly conditioned its approval of Verizon's application on such withdrawal. Moreover, Verizon withdrew its appeal

[41] Under Pennsylvania law, the June 6 Secretarial Letter is a final and enforceable order of the PaPUC. *See, e.g., Dept. of Highways v. PaPUC*, 189 Pa. Superior Ct. 111, 116, 149 A.2d 552 (1959) (recognizing that PaPUC letter ruling denying a rehearing petition was a valid final order).

[42] PaPUC News Release, "PUC Tentatively OKs Verizon Request to Sell Long-Distance Service," issued June 6, 2001, at 2 (located at http//:puc.paonline.com/agenda_items/2001/PM060601/V271_Press%20Release.doc) (emphasis added). Moreover, although the PaPUC cited the five characteristics that this Commission has found important in its analysis of a PAP, the PaPUC made no determination (much less a finding) that those characteristics exist in the current PaPAP. As previously stated, the PaPUC's establishment of a "rebuttable presumption" regarding the remedies in the New York PAP makes clear that the PaPUC found that one of those "important characteristics" – potential liability that provides a "meaningful and significant incentive" to comply with Section 271 – does *not* exist in the PaPAP.

without prejudice to mounting a similar challenge in the future. AT&T at 64. Thus, the PA OCA correctly states, "after 271 approval is granted, there will be nothing to prevent Verizon from reviving its argument in the future that the Pa. PUC lacks the basic authority to impose remedies of the type already imposed under the existing PAP." PA OCA at 34.

Verizon cannot credibly rely on the PaPAP as a basis for approval of its 271 application while simultaneously reserving the right to ask the courts to dismantle that plan in the future. The PA OCA properly concludes that, under such circumstances, approval of Verizon's application "cannot be in the public interest," because it would create uncertainty as to whether the PAP would remain in effect – and, thus, whether Verizon would pay any price for anticompetitive conduct against CLECs." *Id.* at 36; *see also id.* at 34. In fact, the Pennsylvania OCA notes that Verizon's pursuit of its recently-withdrawn appeal "in and of itself, likely had a chilling effect on competition through the creation of uncertainty as to the continuity of the PAP." *Id.* at 36.

Second, the comments confirm that the PaPAP is fundamentally flawed, because:

(1) it omits key measures that are essential to any showing of nondiscriminatory performance;

(2) Verizon's improper implementation of performance measures in the PaPAP renders its performance results unreliable; and

(3) Verizon's performance results that serve as the basis for calculation of remedies are unverifiable.

See AT&T at 54-66; CompTel at 22; WorldCom at 9-18. For example, as WorldCom notes, the PaPAP does not require Verizon to report on such competitively important measures as flow-through, the timeliness of billing completion notices, and (until recently) the adequacy of electronic bills. WorldCom at 10-11. Moreover, the remedies under the PaPAP are woefully

inadequate as a deterrent – as evidenced by the fact that Verizon is paying WorldCom less than $20,000 in Pennsylvania that, for an essentially similar inadequate performance in New York, would cost Verizon several times that amount, considering WorldCom's customer base and order volumes. *Id.* at 16.

The DOJ similarly concluded that "the effectiveness of the Pennsylvania PAP may be compromised not only by the lack of effective billing metrics, but also by its structural defects." DOJ Eval. at 14-15 & n.56. Among the structural defects the DOJ found in the PaPAP are:

- the PAP's failure to align Verizon's incentives to perform in a nondiscriminatory fashion with the amount of competitive harm that could be caused by discriminatory performance;
- the inadequacy of the present levels of remedy payments to deter discriminatory conduct; and
- the absence of any provision in the PaPAP that would allow the PaPUC flexibility "to shift potential payments to areas in which there are particular performance concerns." DOJ Eval. at 14-16 (footnotes omitted).

Other parties agree with AT&T that, given the patent inadequacies of the PaPAP, as well as Verizon's continuing opposition to adoption of the New York PAP in Pennsylvania, there is simply no assurance that a New York-style PAP will be in place in Pennsylvania until either the PaPUC concludes its current proceeding or Verizon agrees irrevocably to accept such a plan. *See* AT&T at 63-64; WorldCom at 12, 16; CompTel at 22. AT&T has proposed the adoption of the New York PAP in Pennsylvania not because it is perfect,[43] but because the Commission approved it in the *New York Order* as a suitable performance monitoring and

[43] AT&T has previously shown that New York PAP is deficient in certain respects. *See, e.g., New York 271 Order* ¶¶ 435, 437-440 & nn.1329, 1334, 1337, 1342, 1349 (describing AT&T's criticisms that total liability at risk in New York PAP is inadequate, that Bell Atlantic will not face sizeable penalties because New York PAP is divided into multiple sub-categories, that certain metrics in New York PAP are not adequately defined, that certain metrics need to be added to New York PAP in order to ensure its effectiveness, and that New York PAP fails to deter targeted discrimination directed against individual CLECs).

enforcement mechanism for ensuring future compliance with Section 271.[44] Although the Commission is certainly free to require an even more effective mechanism, given Verizon's own use of that plan in New York, Massachusetts, and Connecticut, the New York PAP represents the bare minimum required to ensure future compliance. Verizon has offered no justification for its willingness to accept the New York PAP in those States, but not in Pennsylvania.[45] Unless and until a New York-style PAP is adopted for use in Pennsylvania, there is no basis for finding that Verizon will comply with its checklist obligations in the future.[46]

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[44] Of course, even the effectiveness of the New York PAP depends on Verizon's good faith in reporting performance data and its compliance with the applicable performance measurement rules. According to a report submitted by the Communications Workers of America to the New York Public Service Commission last November, Verizon has engaged in a "consistent pattern of inaccurate reporting" of performance data in New York, which resulted in a significant underreporting of service problems. *See* CWA at 6-9 & App. A. Although the NYPSC Staff (on the basis of a review of only a small percentage of the cases of falsification of data described in the CWA report) decided not to recommend further investigation of the CWA's report, the NYPSC Staff did confirm the CWA's finding that Verizon's systems still enabled its managers to add to (or alter) trouble reports, despite the NYPSC's previous directive that Verizon eliminate this capability. The CWA has requested the NYPSC to reconsider the issue of a further investigation, and the Attorney General of New York has requested the NYPSC to order a targeted audit of Verizon's reported New York performance data "to verify that Verizon is accurately reporting on its customer service performance." *See* "Spitzer Calls on PSC To Conduct Audit To Verify Accuracy of Verizon Service Reports," press release of New York State Attorney General issued July 11, 2001 (found at http://www.oag.state.ny.us/press/2001/jul/jul11a_01.html). However, regardless of the NYPSC's resolution of the requests of the CWA and the Attorney General of New York, the CWA report illustrates that the existence of a PAP, by itself, provides no assurance that Verizon will render nondiscriminatory performance in the future. CWA at 6.

[45] *See, e.g., Connecticut 271 Order* ¶ 76 (finding that Verizon's PAP in Connecticut provides additional assurance that the local market will remain open after Verizon receives Section 271 authorization, because it is "essentially the same as the New York PAP we reviewed as part of Verizon's New York section 271 application," and because the Connecticut PAP will be updated automatically whenever the New York PAP is modified).

[46] The procedures by which the PaPAP was developed and adopted in Pennsylvania were significantly different from those used with respect to the New York PAP. In its *New York 271 Order*, the Commission found that "the extensive collaborative process by which these mechanisms were developed and modified in New York has, itself, helped to bring Bell Atlantic into checklist compliance." *New York 271 Order* ¶ 429 n.1316. In Pennsylvania, by contrast, CLECs had only a limited opportunity to participate in the process. Although the initial conception of the Carrier-to-Carrier guidelines and the PAP in Pennsylvania was discussed during collaborative sessions in the fall of 1998 and the first quarter of 1999, those discussions concluded without any consensus among the participants. In April 1999 the PaPUC, in response to a joint petition by CLECs, convened a formal proceeding to address these issues. *See Joint Petition of Nextline, et al. for an Order Establishing a Formal Investigation of Performance Standards, Remedies and Operations Support Systems Testing for Bell Atlantic-Pennsylvania Inc.*, PaPUC Docket No. P-00991643, Order issued April 30, 1999, at 14, 19-20. However, the PaPUC required the parties to complete the litigation phase of the proceeding within a two-month period (which the PaPUC extended only by three weeks for the date of issuance of the presiding Administrative Law Judge's Recommended Decision). *See id.* at 19-20.

(continued)

Verizon's proposed new PaPAP, filed on July 25, 2001, in the PAPUC's proceeding on performance measures remedies, certainly provides no basis for assuming that the PaPUC will ultimately adopt the New York PAP (or something very close) for use in Pennsylvania. Verizon's filing made clear that it continues to oppose the remedies in the New York PAP. Although it included the New York PAP in its submission (pursuant to the PaPUC's "rebuttable presumption" regarding the New York remedies), Verizon also filed a *separate* proposed remedy plan of its own that differs from the New York plan in a number of key respects. Moreover, a number of aspects of Verizon's proposed PAP render it patently inadequate. For example:

- The remedies in Verizon's proposed PAP (which, Verizon asserts, should become effective only beginning with the first full calendar month *after* it has been granted § 271 authority by this Commission) would supersede any higher remedy payments called for by Verizon's interconnection agreements with CLECs – in contrast to the PAP in Massachusetts, which allows CLECs to receive the higher of the two payments, and the PAP in New York, which provides that the remedies under the ICA and the PAP are *cumulative*.

In addition, since the PaPUC issued its order establishing the C2C guidelines and the current PaPAP, ongoing oversight and administration of the PaPAP has been quite limited, with few opportunities for CLECs to participate in any substantive dialogue with Verizon, despite the PaPUC's own acknowledgment that periodic review and updating of the PaPAP are necessary and the PaPUC's own stated intention to conduct such reviews with the input of all interested parties. *See* Order issued December 31, 1999, in PaPUC Docket No. P-00991643, *supra*, at 178, Ordering ¶¶ 9-12. Similarly, although the PaPUC's December 1999 order contemplated (1) a technical conference (with participation by all interested parties) to consider the appropriateness of performance measures and standards, as well as the effectiveness of remedies, (2) an annual audit of performance measures and remedies, and (3) an investigation, commencing in January 2001, to consider in detail the appropriateness of performance measures and remedies, *none* of these events actually occurred. *See id.*, Ordering ¶¶ 10-12. The current performance measurements remedies proceeding, which the PaPUC instituted in April 2001, presents the first such opportunity. Similarly, Verizon, which historically has resisted providing any explanatory information to CLECs concerning its reporting on its performance in Pennsylvania, made no proposal for collaborative sessions until April 2001 (a proposal that, even leaving aside its deficiencies, has yet to be approved or implemented). By contrast, in New York, monthly collaborative sessions have been conducted to discuss the performance measures in the New York PAP and ongoing revisions to that PAP, since shortly after the original PAP was promulgated in late 1999. *See, e.g., Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, NYPSC Case 97-C-0139, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification, issued February 16, 2000, at 27-28 (stating that regular meetings of Carrier Working Group will be held, with participation in group open to all carriers, under monitoring by NYPSC Staff, with an ALJ available to facilitate issues, and that group will provide the ALJ with semi-annual reports "of its progress and any recommendations for modifications to the Carrier Guidelines").

- Verizon's proposed PAP provides no remedies or penalties for those instances where Verizon has provided inaccurate or untimely performance reports.
- The proposed PAP provides multipliers of only 1.5 and 2.0 for the failure of Verizon to meet the applicable performance measures for three consecutive months. These levels are insufficient to give Verizon a meaningful incentive to render nondiscriminatory performance, as the Staff of the Board of Public Utilities in New Jersey recognized when it included a multiplier of 3.0 in its proposed PAP for three consecutive "misses."

Even leaving aside the deficiencies in Verizon's newly-proposed PAP, there is no basis for assuming that the PaPUC will adopt a New York-style PAP, and it will certainly not do so prior to the date the Commission must act on this application. The Administrative Law Judge of the PaPUC is not expected to issue a recommended decision regarding modifications to the PaPAP until September 30, 2001. The decision will then be reviewed by the PaPUC, which has given no indication of when it will take a final vote on the matter. Thus, the current PaPAP – with all of its deficiencies – is the only version that this Commission can look to in its deliberations here.

Thus, it is critical that the Commission find not only that the existing PaPAP is inadequate, but also that a New York-style PAP must be adopted in Pennsylvania before it can conclude that granting 271 approval for Pennsylvania would be consistent with the public interest, convenience, and necessity. At present, the only enforcement mechanism that is binding on Verizon in Pennsylvania is the current, inadequate PaPAP, because it is the only plan that Verizon has at least nominally agreed to (although it did not even fully waive its right to challenge even that plan). Unless the Commission makes clear that the adoption of a New York-style PAP is required as a condition of Section 271 approval, Verizon has no incentive (or possibly legal

obligation) to accept it – and it is not yet certain whether the PaPUC will adopt such a plan, particularly in the face of Verizon's persistent opposition.[47]

[47] Verizon also has made no showing that its provision of in-region, interLATA service in the former GTE territories in Pennsylvania would be consistent with either the public interest or with Section 27 of the Act. Consequently, whatever the disposition of Verizon's application, there is no basis for granting Verizon North – which currently provides service in the former GTE territories – authority to provide long-distance service in Pennsylvania. *See* AT&T at 80-81.