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September 6, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie R. Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: **Notice of Oral *Ex Parte* Presentation by Z-Tel  
Communications, Inc., CC Docket No. 01-138**

Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, Z-Tel Communications, Inc. ("Z-Tel"), by its attorney, submits this notice of an oral *ex parte* presentation made in the above-captioned proceeding on September 6, 2001 with Paul Margie, Legal Advisor to Commissioner Copps. Robert A. Curtis, Tom Koutsky, and Peggy Rubino of Z-Tel and Michael B. Hazzard of Kelley Drye and Warren LLP made the presentation.

During the meeting, Z-Tel distributed the materials attached hereto. In addition, Z-Tel elaborated further on a variety of issues related to Verizon's discriminatory provision of the billing functions of the Operations Support System ("OSS") unbundled network element ("UNE") in violation of item ii of the section 271 competitive checklist.

In particular, Verizon recently filed data that expressly demonstrates that it discriminates unlawfully against competitors in the provision of OSS billing functions. On August 17, 2001, Verizon filed an *ex parte* presentation in this proceeding that effectively admits to serious and substantial problems with its Pennsylvania billing OSS. For several months, Z-Tel and other CLECs have consistently raised these issues before Verizon, the Pennsylvania PUC, the Department of Justice, and this Commission. Despite its earlier attestations about its billing OSS, Verizon's August 17 admission proves – without a doubt – that Z-Tel and other CLECs have been right all along. Further, on August 31, 2001, Verizon indicated that it would provide a

Magalie R. Salas  
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“new” third party analysis of its billing OSS. The Commission should wholeheartedly reject Verizon’s last minute gambit to salvage its flawed application.

*Recalculation of Billing Accuracy Measurements.* Attachment 4 to Verizon’s August 17, 2001 presentation proves that CLECs have been receiving discriminatory treatment in their receipt of wholesale bills.<sup>1</sup> In that attachment, Verizon “recalculated” its billing performance measurement (BI-3) for the months of February, March, April, May, and June 2001. This “recalculation” shows that the *original* submissions made by Verizon in its 271 application were wildly off the mark and obscured Verizon’s true performance.

It is important to note that in this proceeding, Verizon and the Pennsylvania PUC have placed great reliance upon the operation of the performance measurement plan. In particular, while the Pennsylvania PUC recognized that the billing OSS issues raised by Z-Tel and other CLECs were important, it expressly stated that it was confident that the performance plan would be able to monitor and diagnose this issue.

The recalculated data clearly shows that Verizon was not providing nondiscriminatory service to CLECs like Z-Tel. Indeed, the recalculated z-scores for BI-3 prove beyond *any* doubt that CLECs were receiving discriminatory treatment.<sup>2</sup>

Z-Tel has strongly made the case in its pleadings in this proceeding that it has routinely obtained inaccurate bills from Verizon in Pennsylvania and that the performance plan did not account for those inaccuracies. Verizon’s “recalculation” of BI-3 proves that Z-Tel and other CLECs have been right all along. Indeed, the recalculation at this late date calls into question the veracity of Verizon’s application and statements on this and other points.

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<sup>1</sup> In its reply comments, Verizon, in response to criticism by Z-Tel and other CLECs in the pending FCC proceeding, admitted that it had been placing CLEC billing errors in the wrong performance reports. Verizon offered to recalculate its performance on this metric. A month later, Verizon finally filed the results of this effort.

<sup>2</sup> To ensure that differences between actual performance between Verizon and CLECs are not the result of statistical error, the Pennsylvania plan calculates “z-scores” for these metrics. The z-score serves the function of determining the probability that statistical error, rather than discrimination, could explain any difference in performance. The higher the absolute value of a z-score, the less likely it is that statistical error caused the disparate measurements – and the more likely the different measurements are caused by discrimination. Importantly, calculating the probability of statistical error from a z-score of 7224.62, which is the z-score for BI-3 the month in which Verizon filed this application, is beyond the capabilities of all commercial statistical analysis packages that Z-Tel is aware of. To get a feel for this level of probability at issue, a z-score of 7 indicates that the odds of statistical error are *smaller* than the odds of a winning Lotto (1/83 million) two times a week for one hundred years.

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*Public Interest Analysis and Performance Assurance Plans ("PAPs")*. Like its prior applications, Verizon relies on a PAP to show that it will provide adequate service. In deciding whether to apply weight to any such PAP, the Commission, as part of its public interest analysis, has analyzed whether the plan is "effective in practice." As the Commission noted:

Where, as here, a BOC relies on performance monitoring and enforcement mechanisms...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.<sup>3</sup>

In the New York 271 Order, the Commission detailed five "key aspects" of PAPs in making the public interest determination under section 271:

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal;
- and reasonable assurances that the reported data is accurate.<sup>4</sup>

Verizon's late-filed "recalculation" shows that its PAP does not meet these standards. In particular, for BI-3, there can be no "reasonable assurances that the data is accurate." Verizon has provided no justifiable explanation for its failure to calculate BI-3 correctly for several months – despite repeated comments by Z-Tel and others. Instead, Verizon chose to file with this Commission performance results that showed perfect results for BI-3 in June 2001, knowing

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<sup>3</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 433 (1999), *aff'd*, *AT&T v. FCC*, 220 F.3d 607 (D.C. Cir.).

<sup>4</sup> *Id.*

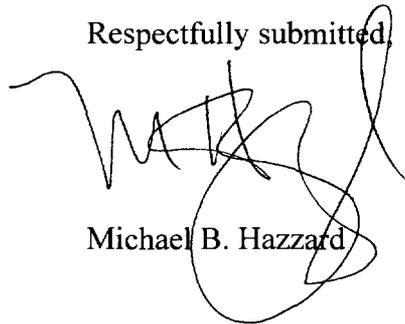
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that billing would be a key issue in this proceeding. Indeed, even after filing the damning BI-3 recalculation, Verizon still represents to the Commission that there is "no real issue" when it comes to billing anyway.<sup>5</sup> Both Verizon and the Pennsylvania PUC have relied heavily on Verizon's performance metrics. As the Pennsylvania PUC stated, a PAP, "together with self-executing remedies, appropriate penalty levels, performance standards, and other features, is essential to properly incent Verizon to provide and to continue to provide adequate and non-discriminatory service to CLECs."<sup>6</sup> Verizon's false data clearly is not reliable for such purposes.

In accordance with section 1.1206, an original and two copies of this *ex parte* is provided for inclusion in the public record of this proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael B. Hazzard", written over a printed name.

Michael B. Hazzard

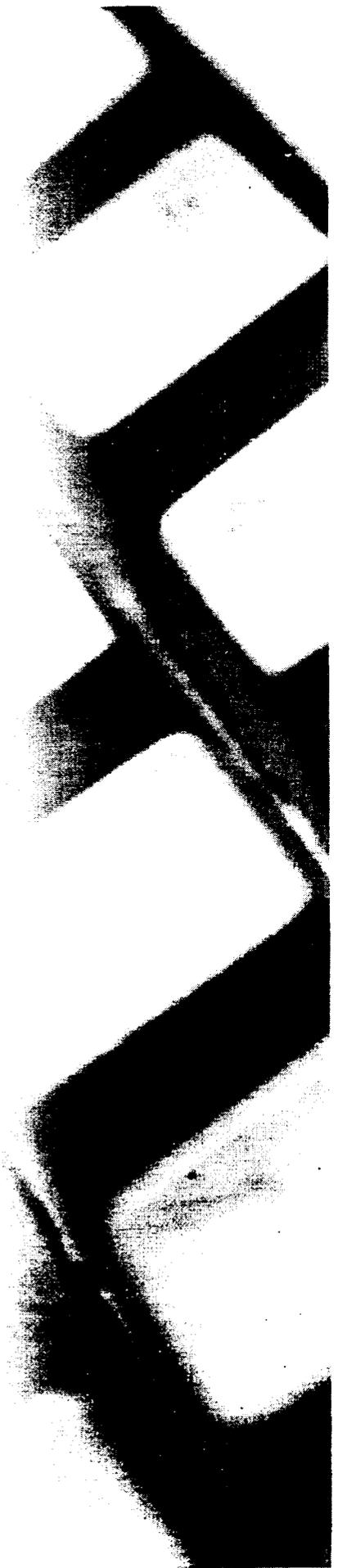
Attachments

cc: Paul Margie  
Dorothy Attwood  
Brent Olson  
Robert Tanner  
Trey Hanbury  
Qualex International  
Clint Odom, Verizon

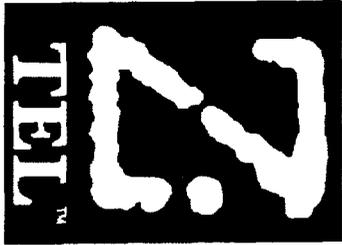
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<sup>5</sup> Ex Parte letter from Clint E. Odom, Verizon, to Magalie Roman Salas, FCC, CC Docket 01-0138, enclosure page 1 (August 17, 2001).

<sup>6</sup> Consultative Report on Application of Verizon Pennsylvania Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania, Docket No. M-00001435, p. 3 (June 6, 2001) (attached hereto).

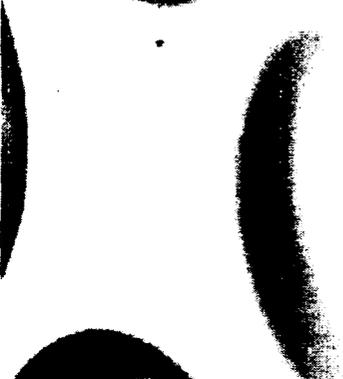
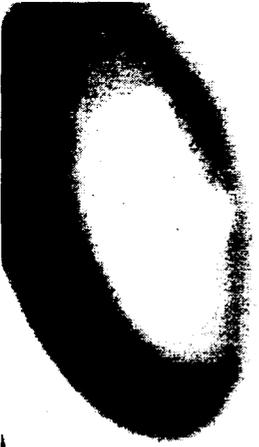


**Billing Issues in  
Pennsylvania**



**September 5-6, 2001**

**CC Docket No. 01-138**





## Billing OSS: a KEY issue

- CLECs do not receive “nondiscriminatory access” to billing OSS
- Raised repeatedly before Pennsylvania PUC; PUC relied on operation of performance assurance plan to detect and correct mistakes
- Verizon **now** admits that performance data filed before PA PUC and FCC were inaccurate
- Lack of responsiveness – **until** it became a “271 issue”
- VZ – PA overcharges more significant than other states



## Pennsylvania Timeline

- May 2000: Z-Tel enters PA market; never receives a correct bill from Verizon; Z-Tel files disputes monthly
- February 2001: Verizon credits \$1MM to Z-Tel in billing OSS overcharges; credit does not appear in “billing accuracy” performance measurement (BI-3)
- June 6, 2001: PA PUC unanimously notes “importance” of billing OSS; by 3-2 vote recommends approval of 271 on basis that recent software fixes made billing OSS adequate and that performance plan will adequately detect and deter billing OSS issues (dissents based on billing OSS issue)



## Billing Timeline, cont.

- June 21, 2001: Verizon files application, stating...
  - “Verizon also provides accurate bills to CLECs, and had only negligible billing adjustments for CLECs from February through April in Pennsylvania.” (Initial Brief at 65-66)
  - Original BI-3: CLEC bills 99.80-100.00% accurate
  - “Verizon has passed each test point relating to billing.” (Initial Brief at 66).
  - Verizon has “fully addressed” billing OSS issues (Initial Brief at 66).
  - There are “reasonable assurances that the reported data is accurate.” (Initial Brief at 87).



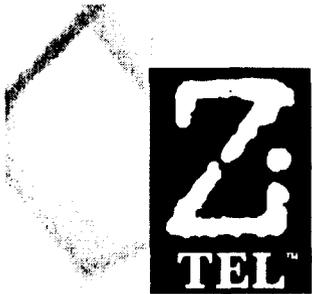
## Timeline

- June 25: PA PUC says approval “is bolstered by strong incentives” of the performance plan (PUC Consultation at 50)
- July 2001: Z-Tel billing OSS issue at core of DOJ consultation
- August 6: Verizon Reply (n.7) **admits** that original filed performance data did not correctly represent billing accuracy
- August 17: Verizon restates billing measurements (BI-3, BI-8) – **recalculation shows significant discrimination**
- August 31: Verizon tells FCC that it has “engaged” PwC “to conduct additional testing” of billing OSS and will provide results “week of September 4”. Verizon also offers to change billing accuracy measurements.



## Legal Standard: “Nondiscriminatory Access”

- Checklist requires “nondiscriminatory” provisioning
- VZ provides near-perfect retail bills
  - Restated BI-3: Verizon provided accurate bills to itself 99.47-99.80% of the time (Feb 01 to June 01)
- Do CLECs receive parity treatment?
  - Verizon’s original application: Yes
  - Verizon’s recalculated metrics (8/17): No. CLEC bills are up to 45x more inaccurate than Verizon retail bills.
- Verizon’s last-ditch argument: discrimination in providing OSS  
UNE is OK, as long as CLECs still try to sell service in the state  
anyway



# Why does this matter?

- Billing OSS is and has always been a Checklist Item

PA Commissioner Mead Brownell: "Without confidence that the billing systems are absolutely able to deliver adequate services and billing support to its customers, I cannot see how the market can work."

- Nondiscriminatory Billing OSS access crucial to entry

- Wholesale bills – even inaccurate ones – **directly** affect CLEC profit-loss statements and ability to raise capital
- As a result, billing accuracy is a component in every approved performance plan or filed plan

- Integrity of the Process

- Verizon has made changes to billing OSS after application
- Verizon initially argued billing OSS issues were "negligible", "miniscule" and "fully addressed"
- 8/17 "recalculation" shows that CLEC wholesale bills are 5x-45x more inaccurate than Verizon retail bills
- Verizon now promising to file results of a new OSS "testing" **this week!**



# Substantial Legal Questions

- Verizon's Application contained inaccurate performance data
- Verizon plans to file results of "additional testing" this week
  - No participation (or notice) of this test to CLECs
  - Will this "additional testing" cover accuracy of the bills?
  - Will the test be independent? Verizon's selected auditor (PwC) has personally lobbied FCC Staff on this issue already
  - No formal opportunity for public comment or review of results
- FCC cannot cannot rely on performance plan in public interest analysis
  - VZ-PA plan not built on reliable and accurate data
  - VZ-PA plan not self-correcting if based on inaccurate data



# The PA PUC Consultation

## Basis for Pennsylvania PUC consultation undermined

- The “fixes” to Billing OSS not in place
  - PA PUC: Fixes to be in place on June 16
  - Verizon Reply (McLean Aff. para. 43): Fixes will continued through July and are “scheduled for August”
- PA PUC consultation based upon performance plan – which has now been shown to be inaccurate on this point

**The Consultation relies on  
inaccurate Verizon data**



## Recommendations

- Reject current application
- Fix billing data problems in performance assurance plan
- Require Verizon to make new, comprehensive showing that it is providing Billing OSS in nondiscriminatory manner
- Investigate veracity and circumstances surrounding performance data used in initial application

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105**

**Consultative Report on Application  
of Verizon Pennsylvania, Inc. for  
FCC Authorization to Provide  
In-Region Inter-LATA Service  
in Pennsylvania**

**Public Meeting – June 6, 2001  
JUN-2001-L-67  
Docket No. M-00001435**

**DISSENTING STATEMENT OF COMMISSIONER NORA MEAD BROWNELL**

Today, the Commission is addressing whether Verizon Pennsylvania has satisfied the requirements of Section 271 of the Telecommunications Act of 1996. This is necessary to determine whether Verizon should be permitted to provide in-region inter-LATA service in Pennsylvania. The central theme of the Section 271 requirements is that we must determine whether Verizon has irretrievably opened its local calling markets to competition.

I have long advocated for competitive markets for both local and long distance communications services. Unfortunately, I cannot join to approve the proposed Secretarial Letter now before us. I cannot, in good conscience affirm that these markets are open as envisioned under the act.

In my judgment, Verizon Pennsylvania must take further action to demonstrate that the local exchange and exchange access markets in Pennsylvania are fully and irreversibly open to competition. Unless Verizon makes the following adjustments, Verizon's Pennsylvania's markets cannot be said to be irreversibly open.

First, regarding electronic billing - Verizon must implement adjustments to its electronic billing systems to insure that CLECs are able to obtain timely and accurate electronic bills. In addition, I believe that the system must successfully complete at least two billing cycles. Without confidence that the billing systems are absolutely able to deliver adequate services and billing support to its customers, I cannot see how the market can work.

Second, carrier-to-carrier data integrity and the change management process is still inadequate. Throughout the 271 process KPMG, our third party consultant, as well as our staff often found inconsistencies in the

carrier-to-carrier data due to differences in their interpretation of the metrics and Verizon's business rules. That KPMG could not certify the accuracy of the data is a matter of great concern. A common understanding is essential to not only securing the integrity of the carrier-to-carrier reports but also to our subsequent analysis of those reports. In addition, and equally important to the success of the process, is the requirement of advance notice of any changes to the calculation or interpretation of metrics. During the 271 process Verizon generally did not provide advance notice to either the Commission or the CLECs of its intention to change its interpretation or calculations of a metric. These processes should be transparent to the Commission and to the CLECS. Changes in a mutually agreed upon protocol cannot be made unilaterally by one party if a system is to work. These issues should be fully addressed and resolved prior to Verizon obtaining Commission approval.

Third, in order to obtain full compliance with Section 271 for local loops, Verizon must complete two tasks. One, Verizon must commit to an implementation schedule for improved access to remote terminal information (as outlined in Verizon's Supplemental Checklist Declaration, Attachment 239). Two, it must satisfactorily explain and, if necessary, correct any apparent failures in commercial performance with respect to its obligation to provide non-discriminatory access to local loops as measured by the appropriate metrics (including but limited to PR-1-01, PR-2-02, PR-4-02, PR-5-01, PR-6-01, PR-8-01, and MR-5-01).

Fourth, in order to obtain full compliance with Section 271 for local transport, Verizon should also satisfactorily explain, and, if necessary, correct apparent poor commercial performance with respect to its obligation to provide non-discriminatory access to local transport by the appropriate metrics (including but not limited to PR-4-01, PR-4-09, PR-8-01, and PR-8-02).

Fifth, compliance by Verizon for the resale of Digital Subscriber Line (DSL) service is required for non-discriminatory access. Currently, Verizon does not appear to comply because Verizon and its data affiliate, Verizon Advanced Data, Inc. (VADI) market and sell a combination of voice and DSL service on the same line to retail customers. However, this package of voice and data service is not available for resale. While each component is available for resale, the voice/data package is not. In order to be compliant, a voice/data package for resale should be made available. Verizon's June 5, 2001, letter may offer to have this package, but the letter does not cogently distinguish between line sharing and resold lines. Thus, Verizon's must give its unequivocal commitment to delivering this product.

Sixth, a permanent Performance Assurance Plan, together with appropriate self-executing remedies, performance standards, and other features is essential for a positive recommendation to the FCC. Everyone must understand the definition and consequences of performance failure. A plan with these features would properly incent Verizon to provide and to continue to provide adequate and non-discriminatory service to CLECs after Section 271 approval is obtained. Since the parties to this proceeding have agreed to adopt the New York metrics, adoption of a remedies plan modeled upon the New York remedies plan is also appropriate, especially regarding the level of remedies exposure. In addition, Verizon must withdraw its pending appeal challenging the Commission's legal authority to impose remedies. Absent such a withdrawal, no PAP can be considered adequate and permanent to prevent backsliding.

It is true that Verizon's efforts to date have yielded some improvement in relevant areas and for that I commend them. However, full compliance in these areas is clearly lacking. I can only speculate whether this process will move forward based on promises by Verizon. But based on Verizon's past performance in following other Commission orders, it is difficult to imagine that such action will accomplish the desired result. Therefore, I cannot support a positive report based on speculation.

My reluctance to cast a vote based on promises of future action is further supported by our experience with the separation of Verizon's advanced data affiliate, VADI. On April 26, 2001 John Cullina, VADI's counsel, testified at the Commission's en banc hearing that no decision had been made about folding VADI back into Verizon as a result of the Ascent decision. (Trans. En Banc Hearing, April 26, 2001, p. 274) However, on that very day Verizon filed a request with the Federal Communications Commission to accelerate Verizon's right to provide advanced services directly without using the separate advanced data affiliate. (Verizon's April 26, 2001 cover letter and filing with the FCC) Consequently, while I would like to believe that Verizon will fulfill all of its promises, given the circumstances I find it difficult to have a confidence in a company which has apparently misled this Commission on the record. This, too, needs clarification.

I believe the Commission must ensure full compliance with resolution of the above matters. By not ensuring absolute compliance we not only jeopardize having a fully and irreversibly open local telephone markets in Pennsylvania for competitive phone companies, but also Pennsylvania consumers who will not have greater choice in telecommunications. There

may be some immediate benefits for consumers, but I believe they will be short term and ephemeral.

For the above reasons, I respectfully dissent from the majority. This market is not sustainable absent a guarantee of full open access, as well as, certainty on rules and accountability.

Please let me express my sincere appreciation to each of the Commission's Section 271 team members for the enormous amount of time, energy and effort you expended regarding the Section 271 process. I applaud your commitment and integrity.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nora Mead Brownell  
Commissioner

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105**

**CONSULTATIVE REPORT ON  
APPLICATION OF VERIZON  
PENNSYLVANIA, INC. FOR FCC  
AUTHORIZATION TO PROVIDE  
IN-REGION INTER-LATA  
SERVICE IN PENNSYLVANIA**

**PUBLIC MEETING JUNE 6, 2001  
MAR-2001-L-67  
Docket No. M-00001435**

**STATEMENT OF  
COMMISSIONER TERRANCE J. FITZPATRICK  
CONCURRING IN PART, AND DISSENTING IN PART**

The majority concludes that Verizon will have satisfied, upon acceptance of certain conditions, every item on the fourteen-point checklist for determining whether its local market is open to competition, and that we should recommend that the Federal Communications Commission allow Verizon to enter the long-distance market in Pennsylvania. I agree that Verizon has satisfied most of the checklist items; however, as explained below, I do not believe that it has satisfied checklist items 2 (due to a deficient billing system) 4, or 5. Accordingly, I dissent in part.

At the outset, I must say that I wish I could give Verizon an unqualified endorsement. I recognize the benefits of allowing Verizon to provide long-distance service in Pennsylvania. However, the Telecommunications Act plainly requires Verizon to satisfy the fourteen-point checklist before it enters the long-distance market. If my view prevailed, the Commission could establish a process that would allow Verizon to correct the remaining problems and file a Section 271 Application within less than six months. Unfortunately, I must conclude that the majority is overlooking certain problems in reaching a conclusion that Verizon should be allowed into the long-distance market immediately without resolution of the problems.

**CHECKLIST ITEM 2**

Checklist item 2 requires that Verizon provide non-discriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). Because of the lack of timely and accurate electronic bills, I find that Verizon has not met Checklist item no. 2.

The problem here is that, despite its efforts over the past two years, Verizon has yet to provide CLECs with an electronic bill which is sufficiently reliable that Verizon will consider it the official "bill of record." The practical effect of this on CLECs is that every month they are required to sort through and read hundreds of boxes of paper bills in order to check the accuracy of their bills.<sup>1</sup> This is an impossible task for the CLECs, and it is ironic that they are forced to endure such a procedure in this high-tech industry. One CLEC even testified that it estimates what it owes Verizon and pays that amount, and Verizon accepts that payment because it cannot prove otherwise.<sup>2</sup>

Verizon states that CLECs can now receive an electronic bill, and it has recently made an offer to CLECs to allow them to use the electronic bill as the "bill of record." However, Verizon still needs to work through various open issues, complete certain system changes on June 16, 2001, and run it through several billing cycles. (4/25/01, Tr. 102, 146) Thus, the fact remains that the e-billing system is unreliable.<sup>3</sup>

The FCC has granted Section 271 Applications in Massachusetts, New York, Texas, Oklahoma, and Kansas. In all of these states, there was an operational electronic billing system in place.<sup>4</sup> The majority accepts Verizon's promise that it will soon provide the "official bill" in electronic form, and relies on penalties to attempt to ensure compliance. However, the FCC has stated that :

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<sup>1</sup> MCI testified that it receives "box after box of unauditible paper bills. 150 boxes per month, growing by 30 boxes a month" and it continues "to have errors in crediting. . .[and] problems with the ability to audit the BOS-BDT." (4/25/01 Tr., 97)

<sup>2</sup> John Curry, of Curry Communications, testified that: "As far as what we owe Verizon, it's pretty much a gut feeling, and I think all resellers can attest that we pay them what we believe we owe them, and some day we will all be in disputes because...there is no tracking of credits...We have no idea what [the credits are] for." 4/25/01, Tr. 97-98. Ms. Rubino of Z-tel testified "We estimate what our bills should be, and we pay that amount, and we dispute the rest of it." 3/7/01, Tr. at 137.

<sup>3</sup> During the en banc hearings, when asked when the e-bills will become the official bill of record, Verizon responded: "at such time that Verizon feels that the BOS/BDT has met all of the issues that were identified by the CLEC community and we [Verizon] have had an opportunity to work through several billing cycles. Verizon would be, at that point in time, in the position to attest that the BOS/BDT, if elected by a CLEC, would become their official bill of record." (4/25/01 Tr., 102) CLECs claim to have identified at least 10 billing problems that CLECs have brought up over the past 10 months, "most" of which Verizon claims to have resolved. (4/25/01 Tr., 102) Later, Verizon refers to 66 billing issues mutually identified by Verizon and the CLECs as being open in October 2000, 41 of which were resolved prior to April 21. Ten were to have been fixed on April 21 (with BOS/BDT Version 35), 7 were to have been fixed on May 19, and the remainder on June 16. The April 21 fixes did not happen as planned, and the change notice to the CLECs of the delay in implementing Version 35 was late. (4/25/01 Tr., 103-107) Other failed fixes are detailed in the transcript.

<sup>4</sup> The FCC's prior Section 271 Orders do not address any issues with respect to lack of electronic billing. After conversations with the FCC, it is staff's understanding that BA NY, SWBT TX, SWBT KS/OK and VZ MA all had properly-functioning electronic billing systems in place at the time of Section 271 approval in their respective states.

"[A] BOCs promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of Section 271. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on the evidence in the record that a BOC has actually demonstrated compliance with the requirements of Section 271."<sup>5</sup>

Based upon the evidence and the FCC's standard of review, I find that the electronic billing system available to CLECs today is not in compliance. Therefore, I would require, for a finding of full compliance with its obligations under subsections (ii) and (xiv) of Section 271 (c)(2)(B), that Verizon PA must implement the scheduled fixes<sup>6</sup> to its electronic billing system and the billing products must run through two billing cycles successfully.

Another problem with Verizon's billing system is missing billing completion notices (BCNs). BCNs represent the final confirmation for CLECs that an order has been completed by Verizon. Untimely or missing BCNs can result in double billing to customers, and can prevent customers from being able to change products and services. The New York experience of backsliding with missing notifiers puts this Commission on notice that missing notifiers can be so problematic as to actually halt competitive development within a state.<sup>7</sup>

Currently, Pennsylvania does not have a metric to measure missing BCNs; however this is being addressed in a further proceeding stemming from our *Functional/Structural Separations Order* (adopted March 22, 2001, at Docket

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<sup>5</sup> *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. December 22, 1999) at ¶¶ 37; *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (rel. June 30, 2000) at ¶ 38.

<sup>6</sup> I note that Verizon plans to implement a new billing system called "ExpressTRAK" at some point in the future. Staff has advised that ExpressTRAK is intended to comply with a merger obligation on Verizon to have uniform billing footprint wide. It was believed to be scheduled for introduction in PA for the summer 2000, then later to October 2000. It is yet to be installed.

<sup>7</sup> Missing notifiers became so problematic in New York that Verizon paid over \$13,000,000 in penalties and was forced to install a new system to correct the problem.

No. M-00001353). Verizon admitted that if the NY metric for BCNs were applied to PA data, Verizon would have failed the metric for all three months<sup>8</sup> of commercial operations. (4/4/01, Tr. 47) For this reason also, I find that Verizon's billing system is deficient.

#### **CHECKLIST ITEMS 4 AND 5**

Checklist item 4 requires local loop transmission from the central office to the customers premises, unbundled from local switching or other services. Checklist item 5 requires local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. With respect to checklist items 4 and 5, discrepancies exist between our staff's findings and KPMG's final report. I am hesitant to summarily dismiss staff's findings, as the majority does.

It appears that KPMG's evaluation of Verizon's marketplace performance during the commercial availability period was limited in scope. KPMG limited the scope of their review to discrepancies between CLECs and Verizon data during the commercial availability period. If Verizon's data indicated that performance was poor, and CLECs did not dispute the data, then KPMG did not consider it.

Staff evaluated Verizon's marketplace performance using Verizon's own data. While CLECs filed comments on the performance data, the CLEC comments did not form the principal basis of staff's analysis because of timing and data integrity issues. Staff analyzed Verizon's data using three tools (all prepared by Verizon): (1) Carrier-to-Carrier reports for January, February and March; (2) C2C Guidelines (dated 2/5/01), which define the performance requirements established by the PUC in the PMO; and (3) Verizon's Measurements Declaration Attachment 403 (dated 4/18/01), which sorts the metrics by checklist item.

Staff identified the instances where Verizon's performance met the standard and the instances where Verizon's performance was sub-standard. In defining sub-standard performance, staff took a conservative approach by defining sub-standard performance more narrowly to allow for checklist compliance where Verizon missed a standard by an inch rather than a mile.

The conclusion reached by staff was that sub-standard performance occurred as to certain metrics applicable to several checklist items. Staff concluded that checklist items 4 and 5 had significant sub-standard performance as to certain metrics, and staff could not find a consistent trend of improvement, including into April. Staff has considered the totality of the commercial operations data on a checklist-by-checklist basis as reported and summarized by

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<sup>8</sup> This would include all of January, February and March on a prorated basis, and this assumes a 95% performance standard. While I note that January and March are marginal misses, in February, performance dropped to 86.99%. I believe that the February performance is significant enough to warrant implementation of a BCN metric with corresponding remedies.

Verizon in Measurements Declaration Attachment 403 (dated April 18, 2001). Accepting Verizon's C2C reports as accurately reflecting Verizon's performance, staff found that Verizon's own data shows poor performance with respect to loops and transport.

Because of the gravity of staff's findings, I would have preferred to have the parties comment on the analysis done by staff. There would have been time to conduct this review if we had required Verizon to prove that its billing system is working.

**CONCLUSION**

I emphasize, again, that it is not my desire to unduly delay Verizon's entry into the long-distance business. If my preferred approach were followed, and if Verizon proved that the problems with the electronic billing system were corrected, and if Verizon satisfied the other requirements I have described, I could fully support Verizon's Application. Unfortunately, I cannot conclude that Verizon has satisfied all of the checklist items at this time.

**DATE: June 6, 2001**

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**TERRANCE J. FITZPATRICK  
COMMISSIONER**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE  
M-00001435

June 6, 2001

Julia A. Conover, Esquire  
Vice President and General Counsel  
Verizon Pennsylvania, Inc.  
1717 Arch Street, 32 N  
Philadelphia, PA 19103

Re: Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC  
Authorization to Provide In-Region InterLATA Service in Pennsylvania;  
Docket No. M-00001435

Dear Ms. Conover:

On January 8, 2001, Verizon Pennsylvania, Inc. ("Verizon") filed with this Commission its notice of intent to seek authorization from the Federal Communications Commission to provide in-region interLATA service in Pennsylvania. In accordance with our *Procedural Order* entered November 30, 2000 at the above-referenced docket, we examined Verizon's filing, received comments, held 24 days of technical conferences, received responses to data requests, and held three days of *en banc* hearings.

After a thorough and comprehensive investigation of Verizon's compliance with the statutory requirements enumerated in section 271(c) of the federal Telecommunications Act of 1996 ("Section 271"),<sup>1</sup> the Commission finds, based on the record developed in this proceeding, that Verizon has demonstrated its compliance in most respects. Verizon has made substantial progress in developing the tariffs, interconnection agreements, processes and procedures necessary to develop a competitive market in Pennsylvania.

However, we also find that Verizon must take further action in order to demonstrate to the Commission's full satisfaction that the local exchange and

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<sup>1</sup> 47 U.S.C. § 271.

exchange access markets in Pennsylvania are fully and irreversibly open to competition in accordance with standards set forth in the Telecommunications Act of 1996. Today's findings are the culmination of years of effort by the Commission, its staff, Verizon, and many interested parties to ensure strict and full compliance with each of the 14-point Checklist items listed in Section 271(c).

Staff has prepared an exhaustive analysis of each Checklist item. The analysis reflects the Commission's intensive review of both Verizon's January 8 filing, as supplemented during the last five months, and Verizon's commercial operations data for the months of January, February, and March 2001. The overall examination is based on the paper filings and testimony, as well as countless hours of informal discussions with Verizon, competing carriers ("CLECs") and interested governmental agencies to the extent permitted by our *ex parte* rules.<sup>2</sup> Moreover, it has focused on every aspect of Verizon's wholesale operations and service to CLECs. It incorporates by reference the comprehensive review of Verizon's operation support systems ("OSS") completed in December 2000. This test of Verizon's OSS was conducted by a third-party evaluator, KPMG Consulting, L.L.C. ("KPMG"), acting under the direct supervision of the Commission.<sup>3</sup>

Our findings are also based on our consideration of our recent decisions in a number of other dockets, including our *Functional/Structural Separations Order* (adopted March 22, 2001, at Docket No. M-00001353), *UNE Pricing Order* (adopted May 24, 2001 at Docket Nos. R-00005261, *et al.*), and *Collocation Order* (adopted May 24, 2001 at Docket Nos. R-00994697, *et al.*) We hereby take administrative notice of these other proceedings.

### **Findings of Section 271 Compliance**

Based on our review of the evidence, we find that Verizon has demonstrated compliance with most aspects of Section 271. We find specifically that Verizon complies with the statutory requirements of Section 271(c)(1)(A) regarding the presence of facilities-based competitors. Verizon also complies with its statutory obligations under Section 271(c)(2)(B) as follows:

1. Interconnection: Section 271(c)(2)(B)(i).

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<sup>2</sup> Interested governmental agencies included the United States Department of Justice, the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, and this Commission's Office of Trial Staff.

<sup>3</sup> KPMG also acted as an advisor to the Commission during the commercial operations period.

2. Network Elements: Section 271(c)(2)(B)(ii) with respect to pricing and non-pricing obligations, except as described below concerning the Performance Assurance Plan ("PAP") and electronic billing.
3. Poles, Ducts, Conduits and Rights-of-Way: Section 271(c)(2)(B)(iii).
4. Local Loops: Section 271(c)(2)(B)(iv).
5. Local Transport: Section 271(c)(2)(B)(v).
6. Local Switching: Section 271(c)(2)(B)(vi).
7. 911/E-911, Directory Assistance, Operator Services: Section 271(c)(2)(B)(vii).
8. White Pages: Section 271(c)(2)(B)(viii).
9. Numbering Administration: Section 271(c)(2)(B)(ix).
10. Call-Related Databases and Signaling: Section 271(c)(2)(B)(x).
11. Number Portability: Section 271(c)(2)(B)(xi).
12. Local Dialing Parity: Section 271(c)(2)(B)(xii).
13. Reciprocal Compensation: Section 271(c)(2)(B)(xiii).
14. Resale: Section 271(c)(2)(B)(xiv), except for PAP and electronic billing as described below.

#### **Further Evidence of Compliance Required**

In our judgment, Verizon needs to take further action in the following critical areas in order to demonstrate to the Commission's satisfaction that the local exchange and exchange access markets in Pennsylvania are fully and irreversibly open to competition in accordance with the requirements of Section 271(c)(2)(B). We find that the Pennsylvania markets will not be fully open to competition absent the following:

Performance Assurance Plan: A permanent Performance Assurance Plan ("PAP"), together with self-executing remedies, appropriate penalty levels, performance standards, and other features, is essential to properly incent Verizon to provide and to continue to provide adequate and non-discriminatory service to CLECs after Section 271 approval is achieved. Moreover, absent withdrawal of Verizon's pending appeal challenging the Commission's legal authority to impose remedies, no PAP can be considered adequate and permanent so as to prevent backsliding. Therefore, to implement a PAP that is adequate for Section 271 purposes, Verizon must agree to augment the current PAP as follows:

- (1) withdraw the current appeal regarding alleged lack of statutory authority to impose remedies;
- (2) effective for performance beginning July 1, 2001, the Tier II remedies payments for metrics that are missed beyond ninety (90) days shall be set at

the amount of \$25,000 and shall be self-executing and applicable to all metrics; and,

- (3) in the further proceeding called for in ordering paragraph 16 of our *Functional/Structural Separations Order*, there will be a rebuttable presumption that the features of the NY remedies plan should be made applicable and tailored to Pennsylvania.<sup>4</sup> In the interim, the present Pennsylvania metrics and PAP will continue to apply.

**Electronic Billing:** Without timely and accurate electronic bills, CLECs are unable to verify the accuracy of Verizon's wholesale bills in a timely manner. Verizon is now prepared to allow CLECs to choose the BOS-BDT bill format as the official bill of record. Verizon has also indicated that the last of its scheduled modifications to the BOS-BDT formatted bills will be completed on or about June 16, 2001, and that it will maintain a manual review process for a minimum of three (3) bill cycles to ensure that its processes have captured and corrected all issues. Nevertheless, given the importance of accurate electronic billing, for a finding of full compliance with its obligations under subsections (ii) and (xiv) of Section 271(c)(2)(B), Verizon PA must be subject to a greater remedies liability until the conclusion of the further proceeding called for in ordering paragraph 16 of our *Functional/Structural Separations Order* to incent timely and effective implementation. Therefore, Verizon must also agree to augment the current PAP as follows:

- (1) update, in consultation with staff, the Pennsylvania billing metrics applicable to the paper bill so as to make them applicable to electronic billing effective for performance beginning July 1, 2001;
- (2) increase billing remedies payments as follows: for violations up to 30 days, \$50,000 per metric per affected CLEC; for violations up to 60 days, \$75,000 per metric per affected CLEC; and for violations up to 90 days and each month thereafter, \$100,000 per metric per affected CLEC; and
- (3) increased billing remedies will remain in effect until conclusion of the further proceeding called for in ordering paragraph 16 of our *Functional/Structural Separation Order*, or for performance through December 31, 2001, whichever comes first.

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<sup>4</sup> Given that the participants in this proceeding have agreed to adopt the New York metrics, we anticipate that this further proceeding will address whether to conform the Pennsylvania metrics to New York metrics, as proposed by Verizon, and well as an appropriate transition to such metrics.

### **State Public Interest Findings**

In the Commission's judgment, the Pennsylvania local telephone markets will be fully and irreversibly open to competition upon satisfactory completion of the actions and conditions stated herein. The Commission further finds that allowing Verizon into Pennsylvania's in-region long distance market will provide additional public benefit by giving Pennsylvania customers greater choice in that market as well. With open local markets supported by functional/structural separation of Verizon retail and wholesale operations, as well as more long distance choice, the Commission concludes that approval of Verizon's application is in the public interest. Therefore, upon satisfactory completion of the required actions and conditions set forth herein, the Commission will recommend that the Federal Communications Commission approve Verizon's Section 271 application to offer in-region, long distance telephone service in Pennsylvania.

### **Conclusion**

Verizon is hereby directed to review these further actions and conditions deemed necessary to demonstrate that the market is fully and irreversibly open to competition in Pennsylvania and to respond within ten (10) business days as to whether it is willing to undertake and accomplish these actions and conditions. If Verizon declines to agree to these further actions and conditions, the Commission will be unable to make a positive consultative report and the Law Bureau will be directed to finalize the draft report based upon the present state of the record.

If Verizon agrees to these conditions, it shall notify the Commission within ten (10) business days of its unconditional acceptance of all conditions contained herein. Upon acceptance of same, as well as verification that Verizon has withdrawn its current PAP appeal (alleging lack of statutory authority to impose remedies), the Law Bureau shall issue a positive consultative report to the Federal Communications Commission.

Sincerely,

James J. McNulty  
Secretary

cc: Parties of record  
Chief Administrative Law Judge Christianson