

and outages and that certain other metrics for ordering are similarly flawed.¹⁹⁹ We do not find these arguments persuasive. KPMG tested LSOG 2, which was the current EDI version deployed by Verizon when KPMG began its test.²⁰⁰ Moreover, KPMG's testing involved more than seven times the number of transactions that AT&T's testing did.²⁰¹ In addition, Verizon has provided convincing information concerning EDI implementation, jeopardy notices over the EDI interface and the processing of Local Service Requests with multiple blocking options.²⁰² Verizon also has demonstrated that most of the remaining competitive LEC claims regarding its OSS interfaces result in large part from errors in compiling data.²⁰³ Under these circumstances, we find that Verizon provides nondiscriminatory access to its electronic interfaces.

51. A few commenters also allege that Verizon's change-management performance is sub-standard. Some competitive LECs assert that Verizon makes improvements to its BOS BDT bill without notifying competitive LECs through the change management process.²⁰⁴ Verizon responds that the changes to the BOS BDT bill systems are "back-office" OSS changes that do not impact OSS interfaces, and therefore, are not subject to the same business rules and specification requirements as interface software releases.²⁰⁵ CompTel alleges that competitive LEC-initiated change management proposals languish compared to Verizon-initiated change management proposals.²⁰⁶ Even if we were to credit CompTel's claims, however, Verizon has shown that competing carriers can influence the change management process in many ways other than initiating new proposals.²⁰⁷ Based on Verizon's explanations, we agree with the Pennsylvania Commission and find that Verizon is not violating the principles of change management.²⁰⁸

¹⁹⁹ AT&T Bloss/Nurse Decl. at paras. 20-23. According to AT&T, KPMG's interface test was flawed because KPMG tested the LSOG 2 rather than the LSOG 4 interface; however, KPMG tested the current version of the EDI interface at the time KPMG began its test. Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 59.

²⁰⁰ Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 59.

²⁰¹ *Id.* at para. 61.

²⁰² *Id.* at paras. 71-72.

²⁰³ *Id.* at paras. 59-62 (comparing KPMG's testing methodology with AT&T testing methodology), 65 (responding to limited complaints about the Web GUI interface by noting that WorldCom made several errors in compiling its data, including using the wrong hours and business days in its definition of "prime time").

²⁰⁴ AT&T Fawzi/Kirchberger Decl. at paras. 78, 80, and n.63, n.64; WorldCom Lichtenberg Decl. at para. 16.

²⁰⁵ Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 78.

²⁰⁶ CompTel Goldberg Decl. at para. 21.

²⁰⁷ Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 79.

²⁰⁸ See Pennsylvania Commission Comments at 104.

52. Finally, some commenters claim that Verizon's "line-loss" notifications are inaccurate.²⁰⁹ "Line loss" occurs when a competitive LEC loses a customer to another competitive LEC or back to the incumbent LEC. If a carrier does not receive complete, timely and accurate line-loss notifications, a carrier will continue to bill an end-user even though the end-user has discontinued service with that carrier.²¹⁰ While Verizon notes that a line-loss reporting error did occur in the past, Verizon represents that it notified the industry, fixed the problem and provided competitive LECs with corrected files in a timely manner.²¹¹ In addition, Verizon represents that the percentage of working telephone numbers reported as missing or incorrect has averaged less than one percent across the entire Verizon South footprint and adds that this one-percent figure actually overstates the trouble ticket tally in Pennsylvania, of which Verizon asserts approximately one-third result from competitive LEC error.²¹² We are persuaded by Verizon's showing on this issue.

b. Pricing of Network Elements

(i) Background

53. In setting UNE rates, the Pennsylvania Commission has conducted numerous proceedings that have culminated in three rate proceedings. On April 10, 1997, the Pennsylvania Commission released the MFS III Order, setting forth interim rates for unbundled elements.²¹³ On August 7, 1997, the Commission made the rates in the MFS III Order permanent.²¹⁴ The Pennsylvania Commission stated in the MFS III Order that its rates were set using Total Service Long-Run Incremental Cost (TSLRIC), a forward-looking costing methodology similar to TELRIC.²¹⁵ Subsequently, a federal district court remanded for reconsideration the manner in

²⁰⁹ AT&T Fawzi/Kirchberger Decl. at paras. 60-64; WorldCom Reply at 1-4; WorldCom Lichtenberg Reply Decl. at paras. 3-18.

²¹⁰ See WorldCom Reply at 2. WorldCom adds that a competitive LEC that does not receive complete, accurate and timely line-loss reports will have no indication that a customer who calls to complain about double-billing has discontinued service and, in fact, has been improperly billed. *Id.* "As a result," according to WorldCom, "customers will be double billed, [competitive LECs] will be unable to resolve the problem, and the damage to the [competitive LEC's] reputation will be severe." *Id.*

²¹¹ Verizon McLean/Wierzbicki/Webster Reply Decl. at para. 70; Letter from Clint E. Odom, Verizon, to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 1-2 (Aug. 29, 2001) (Verizon Aug. 29 *Ex Parte* Letter).

²¹² Verizon Aug. 29 *Ex Parte* Letter at 1-2. "Verizon South" refers to the original pre-merger Bell Atlantic territory.

²¹³ Verizon Application App. B, Tab O, Sub-Tab 8 (Pennsylvania Commission's Interim Order setting UNE rates (Apr. 10, 1997)) (MFS III Order).

²¹⁴ Verizon Application App. B, Tab O, Sub-Tab 12 (Pennsylvania Commission's Final Opinion and Order adopting and modifying MFS III Order (Aug. 7, 1997)) (Final MFS III Order). In the Final MFS III Order, the Pennsylvania Commission reduced the common overhead factor, but otherwise adopted the MFS III Order. *Id.* at 4-6, 9.

²¹⁵ See MFS III Order at 13.

which the Pennsylvania Commission established the pricing of UNEs in the MFS III Order.²¹⁶ The court found that the Pennsylvania Commission had failed to demonstrate that the TSLRIC methodology it applied complies with TELRIC.²¹⁷ The district court's order is currently on appeal.

54. In the Global Order, released on September 30, 1999, the Pennsylvania Commission ordered Verizon to adjust its rates to reflect modifications the Pennsylvania Commission made to its earlier decisions.²¹⁸ On June 8, 2001, the Pennsylvania Commission released an interim order reviewing Verizon's implementation of the Global Order rates, and setting rates for unbundled elements related to DSL, line sharing, collocation in remote terminals, dark fiber, and sub-loops.²¹⁹ Verizon has filed revisions to its tariff to implement most of these rates, and, pursuant to an order by the Pennsylvania Commission, will file the remainder on September 28, 2001.²²⁰

(ii) Discussion

55. Based on the evidence in the record, we find that Verizon's charges for UNEs made available in Pennsylvania to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2. The Pennsylvania Commission concludes that Verizon has satisfied the requirements of this checklist item.²²¹ The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."²²² In reviewing Verizon's Pennsylvania pricing, we find that the Pennsylvania Commission generally followed basic TELRIC principles, and that the resulting rates are within the range that reasonable application of TELRIC would produce.

²¹⁶ Memorandum and Order, *MCI Telecomm. Corp. v. Bell Atlantic-Pennsylvania, Inc.*, No. 97-CV-1857, *slip op.* At 10-13 (M.D. Pa. June 30, 2000), appeal pending, No. 00-2257 (3d Cir., filed July 28, 2000).

²¹⁷ *See id.*

²¹⁸ Verizon Application App. B, Tab J, Sub-Tab 6 (Pennsylvania Commission's Opinion and Order Resolving Several Dockets (Sep. 30, 1999)) (Global Order).

²¹⁹ Verizon Application App. B, Tab S, Sub-Tab 2 (Pennsylvania Commission's Interim Opinion and Order Setting UNE Rates (June 8, 2001)).

²²⁰ *See* Letter from Clint E. Odom, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at Attach. D (filed Aug. 8, 2001) (Verizon Aug. 8 *Ex Parte* Letter).

²²¹ Pennsylvania Commission Comments at 55, 61.

²²² *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6266, para. 59; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244.

56. As an initial matter, we find that the Pennsylvania Commission followed basic TELRIC principles. We reject AT&T's and WorldCom's assertion that the district court's findings demonstrate that the Pennsylvania Commission did not apply TELRIC in its MFS III cost proceeding.²²³ The Commission, in adopting the TELRIC methodology, specifically noted that TELRIC is "a version of the methodology commonly referred to as TSLRIC."²²⁴ Thus, the Pennsylvania Commission's use of TSLRIC does not necessarily result in UNE rates that violate TELRIC. Similarly, AT&T and WorldCom assert that Verizon's Pennsylvania UNE rates use an embedded cost methodology, and estimate the cost of replicating rather than replacing Verizon's network, in violation of our TELRIC methodology.²²⁵ We are unconcerned with labels and general characterizations of the approach a state commission uses in setting rates. Instead, we consider allegations of specific decisions in violation of a TELRIC approach, and the actual rates that are in effect.

57. The orders of the Pennsylvania Commission provide numerous indicia that it has followed a forward-looking approach that is consistent with TELRIC. In the MFS III Order, the Pennsylvania Commission made a decision to use Next Generation Digital Loop Carriers rather than existing Digital Loop Carriers.²²⁶ In the Final MFS III Order, the Pennsylvania Commission adjusted the common overhead factor to prevent Verizon from being made whole in the face of anticipated losses arising from competition.²²⁷ In the Global Order, the Pennsylvania Commission made adjustments to the cost of capital and the copper feeder fill factor to better reflect forward-looking levels.²²⁸ We note that these, as well as the vast majority of the specific decisions made by the Pennsylvania Commission, are consistent with the TELRIC methodology, and are not challenged here.

58. We also find that the Pennsylvania Commission properly applied the TELRIC methodology with respect to several issues disputed by the parties. First, WorldCom asserts that the fill factors for copper cable and DLCs are unreasonably low.²²⁹ A fill factor is the estimate of the proportion of a facility that will be used. In other words, the per-unit cost associated with a particular element should take into account the total cost associated with the element divided by

²²³ See AT&T Comments at 13; WorldCom Comments at 19-20.

²²⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15845-46, para. 678 (1996) (*Local Competition First Report and Order*).

²²⁵ AT&T Comments at 19-22; WorldCom Comments at 18-22. AT&T also asserts that the rates are "the product of an arbitrary negotiated settlement." AT&T Comments at 10-11. Given that both AT&T and WorldCom are able to state with specificity various alleged TELRIC defects with the methodology used in Pennsylvania, we find this assertion without merit.

²²⁶ MFS III Order at 69-70.

²²⁷ Final MFS III Order at 7-9.

²²⁸ See Global Order at 74-76.

²²⁹ WorldCom Comments at 23.

a reasonable projection of the actual total usage of the element.²³⁰ In its Global Order, the Pennsylvania Commission set copper cable fill factors at eighty-five percent.²³¹ We find nothing unreasonable in the copper cable fill factor adopted by the Pennsylvania Commission, and WorldCom has not presented any evidence in support of its contention that this fill factor was set too low. We also note that this fill factor is above what the Commission adopted in the Universal Service proceeding.²³² In the MFS III Order, the Pennsylvania Commission set the DLC fill factor at eighty-five percent. The Pennsylvania Commission decided that Verizon's DLC fill factor struck the appropriate balance between necessary reserve capacity and efficient facility utilization, but that the ninety percent fill factor proposed by AT&T and MCI's witness failed to allow for unforeseen requirements.²³³ We find nothing unreasonable in this conclusion, and note that this fill factor adopted is only slightly below the ninety percent level adopted in the Universal Service proceeding.²³⁴

59. Second, AT&T criticizes the fact that Verizon's loop rates improperly include the cost of a one hundred percent fiber network in anticipation of Verizon someday providing broadband services. We reject AT&T's concerns with respect to Verizon having twenty percent of all loops use one hundred percent fiber cable.²³⁵ The Commission has previously found that, even though fiber can be more expensive than copper in shorter loop lengths, the use of fiber can be consistent with TELRIC.²³⁶ In the *Bell Atlantic New York Order*, the Commission rejected the argument that Verizon "installed all-fiber feeder in order to subsidize its own broadband network for the provision of future services, and that competitors should not be required to subsidize such costs."²³⁷ Consistent with the New York Commission's findings, the Pennsylvania Commission also found that costs associated with fiber loops are likely to be lower than those of copper loops.²³⁸ The Pennsylvania Commission noted that in setting its loop rates, Verizon only included the voice-grade, narrowband costs, and not the costs of the electronics associated with broadband deployment.²³⁹ We believe that the Pennsylvania Commission's findings here are

²³⁰ If a fill factor is set too high, the particular element will have insufficient capacity to accommodate anticipated increases in demand or service outages. If a fill factor is set too low, the network could have considerable excess capacity, which results in increases to the per-unit cost higher than an efficient firm's cost.

²³¹ Global Order at 75-76.

²³² See *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20369, App. A, Part 1.

²³³ MFS III Order at 70-72.

²³⁴ See <http://www.fcc.gov/ccb/apd/hcpm>.

²³⁵ See AT&T Comments at 22-24.

²³⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4086-87, paras. 248-49, *aff'd AT&T Corp. v. FCC*, 220 F.3d 607, 619 (D.C. Cir. 2000).

²³⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 4086-87, para. 248.

²³⁸ MFS III Order at 67, 69.

²³⁹ MFS III Order at 69.

reasonable, and find that AT&T has not presented evidence sufficient to prove that the Pennsylvania Commission erred in this decision.

60. Third, we reject WorldCom's assertion that Verizon overstates switching costs in the manner by which it incorporates the cost of features. WorldCom claims that certain features are not included within the switching rates, and that Verizon has included the costs for features as if they were separate retail services.²⁴⁰ Verizon has provided two separate rates for switching ports: one that includes all features, set at \$2.67; and one that includes all except four features, set at \$1.90. The four features are priced separately.²⁴¹ WorldCom provides no evidence that the rates for the full-featured switch port do not incorporate features using a TELRIC methodology, and fails to identify any features that are excluded from the higher switching port rate. The fact that Verizon offers a cheaper alternative with less than all the available features does not render the price for a switch port with all features unlawful.

61. We note that AT&T and WorldCom allege additional specific TELRIC violations not addressed above.²⁴² Even assuming, *arguendo*, that all of AT&T's and WorldCom's pricing claims are correct and that the specific inputs do not comply with TELRIC, we conclude that the alleged errors do not yield an end result outside a TELRIC-based range. After comparing relevant rates and costs in Pennsylvania with those in New York, we conclude that the Pennsylvania Commission's calculations result in rates that a reasonable application of TELRIC would produce.

62. *Rate Comparison.* The Pennsylvania Commission has expended an enormous amount of effort in its ratemaking proceedings, and we applaud the Pennsylvania Commission for the tremendous amount of work it has done. The Pennsylvania Commission's approach is generally compliant with our TELRIC methodology. Indeed, of the literally hundreds of decisions the Pennsylvania Commission has had to make in setting rates, parties allege that only a handful of them are suspect. In examining the rates adopted by the Pennsylvania Commission, we must determine whether Pennsylvania loop and non-loop recurring UNE rates fall outside the range that a reasonable TELRIC-based ratemaking would produce.

63. The Commission has stated that when a state commission does not apply TELRIC or does so improperly (*e.g.*, there was a major methodological mistake or incorrect input or

²⁴⁰ WorldCom Comments at 24.

²⁴¹ See Verizon Application App. B, Vol. 29b, Tab BB, Sub-Tab 4, Verizon Pennsylvania Tariff No. 216, at 36.

²⁴² Specifically, AT&T and WorldCom make the following additional allegations: (1) the UNE rates are inflated by short depreciation lives and excessive maintenance and repair costs; (2) the costs of digital loop carrier (DLC) are unlawfully inflated by using a weighted average of integrated DLC and universal DLC, even though integrated DLC is the forward-looking technology; (3) the loop rates are inflated by low fill factors for fiber cable; (4) Verizon's loop cost model inflates loop rates by double counting the need for excess capacity in its distribution cables; and (5) the switching rates are set too high because Verizon used a combination of new and add-on switch discounts in determining switch prices, rather than the new switch discount only. See AT&T Comments at 22-30; WorldCom Comments at 22-25.

several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce.²⁴³ In comparing the rates, the Commission has used its USF cost model to take into account the differences in the underlying costs between the applicant state and the comparison state. The Commission has stated that a comparison is permitted when the two states have a common BOC; the two states have geographic similarities; the two states have similar, although not necessarily identical, rate structures for comparison purposes; and the Commission has already found the rates in the comparison state to be reasonable.²⁴⁴

64. We find that New York is a permissible state for comparison purposes here. New York is adjoining, has a similar rate structure, and has been found to have adopted reasonable rates in compliance with TELRIC. The Commission's previous orders did not make clear whether two states would be considered as having the same BOC if they were part of the same BOC upon divestiture, when the pricing dockets were considered, or at the time of application. New York and Pennsylvania, although both part of Verizon's service territory, were not part of the same original BOC. We find, however, that while a comparison state's rates must have been found reasonable,²⁴⁵ the remaining criteria previously set forth should be treated as indicia of the reasonableness of the comparison. This change in our test is mandated because, on review, it is clear that the most relevant factor of the four-part test is TELRIC compliance. Without a finding of TELRIC compliance for the benchmark state, a comparison loses all significance. The other criteria do not rise to such a level. They are useful to assure us that a comparison is meaningful, but the absence of any one of them does not render a comparison meaningless. In this instance, we find that given that New York meets at least three of the four indicia, we are confident that the comparison is sound. The cost model makes no distinction between data among BOCs, and we have no reason to suspect that such a comparison has been made less significant because different BOCs served the two states.²⁴⁶

65. As the Commission has previously noted, our USF cost model provides a reasonable basis for comparing cost differences between states.²⁴⁷ For recurring charges,²⁴⁸ if the

²⁴³ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

²⁴⁴ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

²⁴⁵ To date, we have found that the New York, Texas and Kansas commissions have applied TELRIC correctly for recurring UNE charges.

²⁴⁶ To date, we have not been in the position where the only previously-approved states that we could use to compare an applicant's state are in other BOCs' regions. We will evaluate the appropriateness of such a comparison should the situation arise.

²⁴⁷ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20455-56, paras. 41-42 (1999).

percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as predicted by the USF model, then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant.²⁴⁹

66. We consider the reasonableness of loop and non-loop rates separately. Where the Commission finds that the state commission correctly applied TELRIC for one category of rates, it will only compare the rates of the other category. If, however, there are problems with the application of TELRIC for both loop and non-loop rates, as is the case with Verizon's rates here, then the same benchmark state must be used for all rate comparisons to prevent a BOC from choosing for its comparisons the highest of approved rates for both loop and non-loop UNEs.

67. We conclude that Pennsylvania recurring UNE rates fall within the range that TELRIC-based ratemaking would produce. Specifically, with respect to loops, in taking a weighted average in Pennsylvania and New York, we find that Pennsylvania's rates are roughly the same as those in New York,²⁵⁰ even though the USF cost model suggests that costs in Pennsylvania are roughly one-third more than the costs in New York.²⁵¹ With respect to non-loop elements, we find that the rates in Pennsylvania are over forty-one percent less than the rates in

(Continued from previous page)

²⁴⁸ We cannot rely on the USF model to provide guidance in examining non-recurring rates, because it does not examine these costs.

²⁴⁹ Example 1: State X's rates are 20 percent higher than benchmark state B's rates, and X's costs are 25 percent higher. Because the 20 percent difference in rates is less than the 25 percent relative difference in costs, X's rates would be found to be within the reasonable range that TELRIC would produce. Example 2: State Y's rates are 15 percent less than benchmark state B's rates, and Y's costs are 10 percent lower. Because the -15 percent difference in rates is less than the -10 percent relative difference in costs, X's rates would be found to be within the reasonable range that TELRIC would produce.

In making this analysis, we make a number of adjustments to the USF cost model. See <http://www.fcc.gov.ccb/apd/hcpm>. The overhead costs used in the model are adjusted to reflect the fact that the UNE-P is a wholesale offering, while USF costs are for a retail offering. Specifically, the overhead cost is reduced and spread across all network elements. See letter from Robert W. Quinn, Jr., Vice President, Federal Government Affairs, AT&T, to Magalie Roman Salas, Federal Communications Commission, CC Docket No. 01-9, at Attach. (filed February 1, 2001); *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20421-23, Appendix D.

The USF end office switching, common and direct transport, and signaling costs are adjusted to include, in addition to local traffic costs, costs for intrastate and interstate access, and intraLATA toll traffic. This adjustment is made because a CLEC might use the UNE-P for access and intraLATA toll traffic in addition to local traffic, and the USF cost model excludes these costs. In addition, the allowance for retail uncollectible revenues reflected in the USF costs is removed, and allowances for wholesale uncollectible revenues costs and for carrier-to-carrier customer service costs are added to the USF costs.

²⁵⁰ The weighted average rates for a 2-wire analog loop in New York and Pennsylvania are \$14.03 and \$14.08, respectively.

²⁵¹ See *supra* n.249.

New York,²⁵² even though the USF cost model suggests that non-loop costs in Pennsylvania are around six percent more than the costs in New York.²⁵³ In approving Verizon's application in Massachusetts, we also relied on a comparison with New York rates. We note that the rates in Pennsylvania, in contrast to those in Massachusetts, are well below the cost-adjusted rates in New York. This fact gives us even greater confidence as to the reasonableness of the Pennsylvania recurring UNE rates.

68. *Non-recurring Charges.* We also conclude that based upon the evidence in the record, Verizon has demonstrated that its non-recurring UNE rates are in compliance with TELRIC. The Pennsylvania Commission has reached the same conclusion, and no party has raised allegations challenging these rates.

69. Because we find the rates currently in effect to fall within the range that TELRIC-based ratemaking would produce, we find the concerns of WorldCom regarding a potential delay to the pending UNE cost proceeding before the Pennsylvania Commission to be unwarranted.²⁵⁴ We also note that the Pennsylvania Commission recently issued an order requiring the UNE rate proceeding to begin on September 17, 2000, and requiring the presiding administrative law judge to issue a decision by April 30, 2002.²⁵⁵

70. Finally, we reject WorldCom's and AT&T's contention that competitors lack a sufficient profit margin between Verizon's retail and wholesale rates to allow local residential competition over the UNE-P, which indicates that the UNE rates are not TELRIC-based.²⁵⁶ In the *SWBT Kansas/Oklahoma Order*, the Commission held that this profitability argument is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based.²⁵⁷ The Act

²⁵² Under an illustrative analysis, the weighted average rates for port, switching, signaling and transport for UNE-P in New York and Pennsylvania are \$13.14 and \$7.63, respectively. This makes the following monthly per line assumptions: 1200 originating and 1200 terminating local minutes of use (UNE charges for terminating local minutes of use to a competitive LEC's end users are offset exactly by reciprocal compensation owed to the competitive LEC); 25 percent of minutes intraswitch; 200 local calls; 370 originating and terminating intraLATA toll, intrastate interLATA, and interstate interLATA minutes of use; 25 intraLATA toll, intrastate interLATA, and interstate interLATA calls; and in New York, 60 percent of usage is day, 30 percent is evening, and 10 percent is night or weekend. We find that the weighted average for these rates in Pennsylvania is within the reasonable range that TELRIC would produce regardless of which set of reasonable usage assumptions we make in a comparison with New York rates.

²⁵³ See *supra* n.249.

²⁵⁴ See WorldCom Reply at 9.

²⁵⁵ See Letter from Maryanne R. Martin, Assistant Counsel, Pennsylvania Public Utility Commission, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, Attach. at 10 (filed Sept. 6, 2001) (Pennsylvania Commission Sept. 6 *Ex Parte* Letter).

²⁵⁶ See WorldCom Comments at 18; WorldCom Reply, Declaration of Vijetha Huffman at paras. 5-10 (WorldCom Huffman Reply Decl.); AT&T Reply at 8-9.

²⁵⁷ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6269, 6280-81, paras. 65, 92. See also *Verizon Massachusetts Order*, 16 FCC Rcd at 9008-09, paras. 41-42.

requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market. In this case, we have conducted an analysis of Verizon's recurring UNE rates and concluded that their rates meet this requirement. Questions of profitability are independent of this determination.

71. In addition, conducting a profitability analysis would require us to consider the level of a state's retail rates, because such an analysis requires a comparison between the UNE rates and the state's retail rates. Retail rate levels, however, are within the state's jurisdictional authority, not the Commission's.²⁵⁸ Conducting such an analysis would further require a determination of what a "sufficient profit margin" is. We are hesitant to engage in such a determination. Moreover, even if this were a relevant consideration, WorldCom has not demonstrated that the rates set by the Pennsylvania Commission do not allow for profitable entry. WorldCom's own submission indicates that the state average rate provides a gross margin of roughly thirty percent for residential lines, and the margin is substantially higher for forty-six percent of the residential lines.²⁵⁹ WorldCom does not provide any evidence with respect to business lines, where we expect the profitability is even greater. WorldCom's contentions notwithstanding, we note that competition currently exists in Pennsylvania through the use of the UNE-P.²⁶⁰

72. For these reasons, we conclude that Verizon meets its pricing obligations under the requirements of checklist item 2.

c. Provision of UNE Combinations

73. In order to comply with checklist item 2, a BOC also must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier.²⁶¹ We conclude, based upon the evidence in the record, that Verizon demonstrates that it provides nondiscriminatory access to network element combinations as required by the Act and our rules. We note also that the Pennsylvania Commission found Verizon's provisioning of UNE combinations was compliant with the requirements of this checklist item.²⁶²

²⁵⁸ See *id.*; see also *Local Competition First Report and Order*, 11 FCC Rcd at 15922, para. 848 (declining to implement an imputation rule that would prevent price squeezes because doing so would impose substantial burdens on states to rebalance their retail rates. The issue of retail rates would similarly apply to any profitability analysis for a specific region of the state. See *WorldCom Comments* at 18; *AT&T Reply* at 7-8, n.7.

²⁵⁹ See *WorldCom Huffman Reply Decl.* at Attach.

²⁶⁰ See *Verizon Application App. A, Vol. 4, Declaration of William E. Taylor, Attach. 1* at para. 1 (*Verizon Taylor Decl.*) (Competitive LECs serve more than 197,000 residential customers through the UNE-platform).

²⁶¹ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315(b).

²⁶² See *Pennsylvania Commission Comments* at 68-74.

74. In Pennsylvania, Verizon provides access to both combinations of the loop-switch-transport elements (UNE-platform) and the loop-transport elements (enhanced extended loop or EEL).²⁶³ At the time of its application, Verizon had provisioned over 220,000 UNE-platform combinations and 770 EELs, of which approximately 700 were conversions from existing special access circuits.²⁶⁴

75. Although commenters do not raise any issues with Verizon's provisioning performance for UNE combinations,²⁶⁵ several commenters assert that contrary to our rules, Verizon refuses to convert special access circuits to EELs or charges unreasonable termination fees.²⁶⁶ In reply, Verizon states that it is providing conversions of special access circuits to EELs in compliance with its obligations under our rules and that any termination fees associated with such conversions are reasonable and allowed by our rules.²⁶⁷ We find that Verizon's position in regards to the conversion of special access circuits to EELs, as presented in this docket, complies with our current rules and that commenters have not presented evidence that Verizon has systematically deviated from its stated policies for such conversions. We further note that our current rules do not require incumbent LECs to waive tariffed termination fees for carriers requesting special access circuit conversion.²⁶⁸

2. Checklist Item 4 – Unbundled Local Loops

76. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide, “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”²⁶⁹ We conclude that Verizon demonstrates that it provides unbundled local

²⁶³ See Verizon Application, App. A, Vol. 1, Joint Declaration of Paul A. Lacouture and Virginia P Ruesterholz at paras. 303, 310 (Verizon Lacouture/Ruesterholz Decl.).

²⁶⁴ See Verizon Application at 23; Verizon Lacouture/Ruesterholz Decl. at para. 311.

²⁶⁵ We also note that KPMG found Verizon's provisioning performance for UNE-platforms and EELs to be nondiscriminatory. See Verizon Lacouture/Ruesterholz Decl. at para. 312. Commenters also raise issues concerning Verizon's policies regarding the availability of facilities for high capacity loops, one of the network elements that make up the EEL combination, which we discuss in Section III.A.2.

²⁶⁶ See Broadslate Joint Comments at 13-14; ALTS Reply at 7-8; Broadslate Joint Reply at 2-3; see also Capsule Joint Comments at 2-7.

²⁶⁷ See Verizon Lacouture/Ruesterholz Decl. at paras. 312-315; see also Verizon Reply, App. A, Vol. 1, Reply Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at paras. 40-44 (Verizon Lacouture/Ruesterholz Reply Decl.).

²⁶⁸ To the extent that commenters assert that Verizon's tariffed termination fees are not just and reasonable the appropriate forum to challenge such fees is in the appropriate federal or state review of the specific tariff at issue.

²⁶⁹ 47 U.S.C. § 271(c)(2)(B)(iv). The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. Dark fiber and loop conditioning equipment are among the features, functions, and capabilities of the loop. *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, n.301. See Appendix C at paras.48-52, regarding requirements under checklist item 4.

loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cuts, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for line sharing and line splitting.

77. In analyzing Verizon's compliance with this checklist item, we note first that the Pennsylvania Commission approved Verizon's performance as meeting the requirements of section 271.²⁷⁰ We also recognize that, as of the date of Verizon's application, competitors have acquired and placed into use over 164,000 loops from Verizon in Pennsylvania, which is significantly more than were provided by other applicants at the time previous section 271 applications were filed with the Commission.²⁷¹ Finally, we note that commenters have not raised any significant issues with voice grade loops, which comprise the overwhelming majority of loops ordered by competitive LECs.²⁷² As in past section 271 proceedings, in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete.²⁷³ Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.

78. Upon review, we find that Verizon provides nondiscriminatory access to all loop types. We also find that Verizon has demonstrated that it adequately provisions line-sharing and line-splitting. Furthermore, as described above in Section A.1.a., we find that Verizon provides access to loop makeup information in compliance with our rules.

79. *xDSL-Capable Loops.* We find that Verizon demonstrates that it provides stand-alone xDSL-capable loops in accordance with the requirements of checklist item 4. Verizon makes available xDSL-capable loops in Pennsylvania through interconnection agreements and

²⁷⁰ See Pennsylvania Commission Comments at 4, 161. The Department of Justice concluded that "Verizon has made significant progress toward opening its local markets in Pennsylvania to competition." Department of Justice Evaluation at 2. The Department of Justice cites Verizon's estimate that, using all modes of entry, competitors serve approximately 990,000 lines in Pennsylvania, around 14 percent of all lines in Verizon's area. Of these, competitors serve approximately 661,000 business lines, around 23 percent of all business lines. *Id.* at 4, 5.

²⁷¹ For example, Verizon had provided approximately 69,000 stand-alone unbundled local loops in Massachusetts when it filed its section 271 application in that state. See *Verizon Massachusetts Order*, 16 FCC Rcd 8988 at 8990, para. 3. When SWBT filed its application in Texas, it had provided approximately 54,000 loops on a stand-alone basis. See *SWBT Texas Order*, 15 FCC Rcd at 18481, para. 249. In New York, Verizon had provided approximately 50,000 stand-alone loops when it filed its application there. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4097, para. 277.

²⁷² The record reflects that in Pennsylvania, Verizon had provisioned approximately 145,000 voice grade loops, 15,000 stand-alone xDSL-capable loops, 2,800 digital loops, 500 high capacity loops, and 1,000 line sharing arrangements to competitive LECs as of June 21, 2001, the date Verizon filed its section 271 application. Verizon Application at 23, 26, 33; Verizon Lacouture/Ruesterholz Decl. at para. 140; Verizon Guerard/Canny/DeVito Reply Decl. at Attach. 1, 47.

²⁷³ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

pursuant to tariffs approved by the Pennsylvania Commission.²⁷⁴ In analyzing Verizon's showing, we review performance measures comparable to those we have relied upon in prior section 271 orders: order processing timeliness, installation timeliness, missed installation appointments, installation quality, and the timeliness and quality of the maintenance and repair functions.²⁷⁵

80. We find that Verizon demonstrates that it provisions xDSL-capable loops in a nondiscriminatory fashion. Five of the six performance measures listed above demonstrate that Verizon's performance for competitive LECs is generally in parity with benchmarks established in Pennsylvania.²⁷⁶ Specifically, Verizon provides responses to competing carrier requests for loop information in substantially the same time and manner as for itself and provides timely order confirmation notices to competitors.²⁷⁷ Further, Verizon has generally met the benchmark for installation timeliness and missed installation appointments for each month from February through May.²⁷⁸ Pennsylvania data for maintenance and repair timeliness and quality also show nondiscriminatory performance between competitors and Verizon's retail customers. Both the mean time to repair and the repeat trouble rate are in parity,²⁷⁹ and Verizon missed fewer repair appointments for competitors than for its own retail customers for most months reported.²⁸⁰ In

²⁷⁴ Verizon Lacouture/Ruesterholz Decl. at para. 157.

²⁷⁵ See *Verizon Connecticut Order*, 16 FCC Rcd at 15153-56, paras. 15-20; *Verizon Massachusetts Order*, 16 FCC Rcd at 9056, para. 123, and 9059, para. 130; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6237 at 6326-27, paras. 181-182. We note that individual states and BOCs may define performance measures in different ways. We look to those measurements, however, that provide data most similar to data we have relied upon in past orders.

²⁷⁶ Upon initial review, Verizon's installation quality measure appears to be out of parity; however, as discussed below, we conclude that the current benchmark for this measure in Pennsylvania is not appropriate for a parity comparison.

²⁷⁷ See PO 1-06 (Average Response Time - Facility Availability - ADSL Loop Qualification); OR 1-04 (Order Confirmation Timeliness), Appendix B at B-4, B-14.

²⁷⁸ There is no formal benchmark for the installation interval metric. We find, however, that the six-day interval currently offered by Verizon in Pennsylvania is an appropriate standard in Pennsylvania. Verizon met this standard for each month between February and June, 2001. See PR 2-02 (Average Interval Completed), Appendix B at B-18. Verizon also met the 5 percent benchmark for missed dispatch appointments for each month from February through June, 2001. See PR 4-04 (Percent Missed Dispatch Appointments), Appendix B at B-18. Verizon's performance for non-dispatch appointments is generally at parity as well. While Verizon's missed appointments for May 2001 spikes to 2.04 percent (compared to .12 percent for retail), we find that this is not competitively significant because there are few competitive LEC orders that do not require a dispatch. See PR 4-05 (Percent Missed Non-Dispatch Appointments), Appendix B at B-18. Finally, for PR 5-01 (Percent Facility Missed Orders), Verizon missed parity between February and June, 2001, but since the rate of missed orders ranges from around 1 percent to 3 percent, we do not find this to be competitively significant. See Appendix B at B-18.

²⁷⁹ See MR 5-01 (Percent Repeat Reports Within 30 Days) and MR 4-02/03 (Mean Time to Repair), Appendix B at B-22.

²⁸⁰ See, e.g., MR 3-01/02 (Missed Appointment Rate) Appendix B at B-22. Verizon's missed loop appointments for competitive LECs exceed those for retail customers (MR 3-01) for February, 2001, Appendix B-22.

addition, the overall level of trouble reports for stand-alone xDSL-capable loops in Pennsylvania is very low.²⁸¹

81. Upon initial review, Verizon's performance for installation quality appears to be out of parity. This is because the current benchmark in Pennsylvania for this metric is a comparison with Verizon's performance for its advanced services affiliate. Verizon explains that although it provides primarily stand-alone xDSL-capable loops to competitive LECs, which generally require the dispatch of a field technician, its advanced services affiliate has exclusively deployed line-sharing, which generally does not require a dispatch. Verizon asserts, therefore, that a more appropriate benchmark for its installation quality performance is its installation quality performance for POTS service orders that require a dispatch.²⁸² Consistent with the Commission's analysis in previous section 271 orders,²⁸³ we agree that this appears to be a more probative comparison. Viewed against this benchmark, Verizon's performance is in parity.²⁸⁴

82. Covad alleges that Verizon excludes a majority of loop orders from its xDSL performance measures, providing an inaccurate picture of Verizon's performance.²⁸⁵ In its reply comments, Verizon acknowledges that a system programming error caused some competitive LEC orders to be excluded from its performance measures for xDSL.²⁸⁶ Verizon recalculated the

²⁸¹ For MR 2-02 (Network Trouble Report Rate – Loop), Verizon's trouble report rate for competitors has trended in the .5 percent range between February and June, 2001. For MR 2-03 (Network Trouble Report Rate – Central Office), Verizon's trouble report rate for competitors has trended around .1 percent.

²⁸² Verizon states that the New York Carrier-to-Carrier Working Group has established new guidelines for measuring installation quality, which compare Verizon's provision of xDSL-capable loops to competitive LECs and Verizon's provision of dispatched retail POTS. See Verizon Lacouture/Ruesterholz Reply Decl. at para. 65. We note that the Pennsylvania Commission has an ongoing proceeding in which it has indicated an express intention to similarly revise its performance measures. In addition, in previous section 271 decisions, we have not relied upon a comparison with the BOC's advanced services affiliate when examining its performance in delivering stand-alone xDSL-capable loops to competitors. See *Verizon Connecticut Order*, 16 FCC Rcd at 14153-54, para. 15, n.31; *Verizon Massachusetts Order*, 16 FCC Rcd at 9059, para 130, n.411.

²⁸³ See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9057, para. 126; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6326-27, paras. 182-83.

²⁸⁴ The February to May, 2001 average for PR 6-01 (Percent Installation Troubles within 30 days) is 5.91 percent for competitive LECs, as compared to 1.76 percent for Verizon retail customers. See Appendix B at B-18. Verizon has recalculated these figures to account for the fact that this measure compares competitive LEC stand-alone xDSL-capable loop services to retail line sharing; the revised measure compares the competitive LEC services to dispatched retail POTS, where Verizon's trouble rate was 6.2 percent. Verizon Lacouture/Ruesterholz Decl. at paras. 180-181; see also *supra* n.310. Under this revised measure, Verizon's performance for competitive LECs is at parity. *Id.*

²⁸⁵ See Covad Comments at 4, 6-7.

²⁸⁶ See Verizon Lacouture/Ruesterholz Reply Decl. at paras. 55-56. The error in Verizon's systems treated orders placed after 5:00 p.m. the same as orders received earlier that day, rather than as orders placed the following day. The result of this error was to treat the competitive LEC's order as requesting a longer provisioning interval than Verizon's standard interval and therefore, to exclude these orders from the performance metric. *Id.*

affected metrics to include these improperly excluded orders and submitted this revised data in reply comments it filed in this proceeding.²⁸⁷ The inclusion of previously excluded orders in the revised data did not affect Verizon's performance under this measure. We find that the revised data supports our conclusion that Verizon's performance is in compliance.

83. Covad also alleges that Verizon designates a majority of Covad trouble reports as "no trouble found," permitting Verizon to exclude reported trouble from the performance metrics prior to final resolution of the trouble.²⁸⁸ In its reply comments, Verizon denies Covad's allegations, explaining that it does not exclude "no trouble found" orders from the performance measures and moreover, it attempts to contact the competitive LEC to verify the location of the trouble, often obtaining confirmation from the competitor that there was no trouble found.²⁸⁹ We note that trouble reports are a subject of ongoing dispute between Covad and Verizon.²⁹⁰ We find that a section 271 application is not an appropriate forum for the resolution of such inter-carrier disputes.

84. NAS asserts that Verizon has failed to conduct cooperative testing on a significant percentage of its xDSL-capable loop orders.²⁹¹ Verizon states that it performs cooperative testing on NAS loop orders except in those circumstances where it is not possible to do so, such as when testing equipment is unavailable at the time Verizon installs the loop.²⁹² Although we expect Verizon to continue to lower the percentage of orders in which it fails to engage in cooperative testing as it gains more experience with this relatively new process, we find that, even assuming that NAS's version of the facts is correct, the evidence presented by NAS is insufficient to show that Verizon's implementation of its corporate policy for cooperative loop testing is discriminatory.

85. *Digital Loops.* We find that Verizon provisions digital loops to competitors at an acceptable level of performance in Pennsylvania. Verizon's performance for competitive LECs is generally in parity with benchmarks established in Pennsylvania. In particular, Verizon's installation intervals and missed appointments metrics, as well as its repair and maintenance

²⁸⁷ *Id.* at para. 56.

²⁸⁸ See Covad Comments at 8-10.

²⁸⁹ See Verizon Lacouture/Ruesterholz Reply Decl. at paras. 66-68.

²⁹⁰ See Covad Comments at 2-3, 8-9.

²⁹¹ See NAS Comments at 3-4; Letter from Rodney L. Joyce, Counsel, NAS, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 1 (filed July 31, 2001) (NAS July 31 *Ex Parte* Letter). NAS argues that the Commission mandated cooperative testing and other changes in the Massachusetts section 271 proceeding. See NAS Comments *id.*; NAS July 31 *Ex Parte* Letter, Attach. at 1. NAS also states that the installation quality measure should not exclude data from carriers that cooperatively test their lines. NAS Comments at 2 (citing *Verizon Massachusetts Order*, 16 FCC Rcd at 9069-9070, para. 146). Verizon indicates that revised business rules governing PR 6-01 include competitive LEC data regardless of whether the competitor cooperatively tests. Verizon Lacouture/Ruesterholz Decl. at paras. 180-181.

²⁹² Verizon Lacouture/Ruesterholz Reply Decl. at paras. 70-72.

measurements, have shown parity or very low trouble rates in recent months.²⁹³ In addition, while Verizon's performance for installation quality has shown some limited disparity, we find this disparity is minor and therefore not competitively significant.²⁹⁴ Finally, we note that no commenter raises specific issues with digital loops and that the volume of digital loops ordered by competitors remains relatively low.²⁹⁵

86. *Hot Cut Activity.* We find that Verizon is providing voice grade loops through hot-cuts in Pennsylvania in accordance with the requirements of checklist item 4. We note that no commenter has raised concerns with Verizon's hot-cut provisioning activity. Verizon has satisfied its benchmark for on-time performance for hot-cuts for every month since February 2001,²⁹⁶ and Verizon indicates that trouble reports received within seven days of installation have been fewer than one percent.²⁹⁷ In addition, since February, Verizon on average has provided all hot-cuts in just over one day longer than the six-day interval for ten or fewer lines.²⁹⁸ We note, however, that the data used to calculate Verizon's performance for hot-cuts includes orders of ten or fewer lines as well as orders of greater than ten lines. We, therefore, find that the difference between Verizon's overall hot-cut performance and the six-day benchmark is not competitively significant in these circumstances.

²⁹³ Verizon's installation intervals for dispatch services have been at parity for competitive LECs and for its own retail customers. See PR 1-02 (Average Interval Offered), PR 2-02 (Average Interval Completed), Appendix B at B-17. Verizon has been in parity for missed installation appointments since April 2001 (see PR 4-04 Percent Missed Dispatch Appointments, Appendix B at B-18). Missed repair appointments have been better for competitive LECs than for Verizon's retail customers. See MR 3-01/02 (Missed Repair Appointment – Loop/Central Office), Appendix B at B-21. While trouble report rates have been out of parity for most months, the overall rates have been lower than 2 percent for loop trouble and lower than 1 percent for central office trouble. See MR 2-02/03 (Network Trouble Report Rate Loop/Central Office), Appendix B at B-21. Trouble duration has been in parity. See MR 4-01/02/03 (Mean Time to Repair – Total/Loop/Central Office), Appendix B at B-21. Repeat trouble has been in parity for most recent months. See MR 5-01 (Repeat Trouble Report), Appendix B at B-22.

²⁹⁴ Verizon has been out of parity for installation quality for each reported month except March 2001, but only by approximately 4 to 5 percent in recent months. See PR-6-01 (Percent Troubles Reported in 30 Days), Appendix B at B-18.

²⁹⁵ In addition, we note that by the time it filed its application, Verizon had provisioned only 2,800 digital loops in Pennsylvania. See *supra* n. 300.

²⁹⁶ See PR 9-01 (Percent On Time Performance – Hot Cuts), Appendix B at B-16.

²⁹⁷ See Verizon Lacouture/Ruesterholz Decl. at para. 138.

²⁹⁸ See Verizon Lacouture/Ruesterholz Decl. at para. 137; PR 1-01 (Average Interval Offered – Total No Dispatch – Hot Cut Loops), PR 2-01 (Average Interval Completed – Total No Dispatch – Hot Cut Loops) Appendix B at B-16. In Pennsylvania, the standard interval for orders of 1-10 lines is six days, and for 11-20 lines, the standard interval is ten days. For orders larger than twenty lines, Verizon would negotiate an installation date. Verizon Lacouture/Ruesterholz Decl. at para. 137. Verizon indicates, however, that the standard interval is not an official benchmark standard in Pennsylvania as it is in New York. See *id.* at paras. 136-137. Rather, Verizon's performance in Pennsylvania is measured by parity with its retail affiliate, even though there is no comparable retail product. *Id.* at para. 136.

87. *Voice Grade Loops.* We find that Verizon provides new voice grade loops to competitors in Pennsylvania in accordance with the requirements of checklist item 4.²⁹⁹ Although Verizon's performance for installation quality has not met parity for each reported month, we find that the difference between the reported numbers for competitors and its own retail customers is nominal and thus, not competitively significant.³⁰⁰ Verizon's performance for installation intervals also appears out of parity, but in April 2001, Verizon changed the manner in which it provisions voice grade loops for competitors to conform to the manner it provisions service to its own retail customers.³⁰¹ Using the new process, Verizon's performance has improved.³⁰² We also note that no commenter has raised an issue relating to voice grade loops.

88. *Line Sharing.* We find that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, pursuant to its interconnection agreements and in accordance with our rules.³⁰³ Although ordering volumes have

²⁹⁹ Verizon meets parity for trouble report rate and missed repair appointments. See MR 2-02/03 (Network Trouble Report Rate – Loop/Central Office) and MR 3-01/02 (Percent Missed Repair Appointment – Loop/Central Office), Appendix B at B-20. In general, Verizon meets parity for loop trouble. While Verizon is out of parity for central office trouble, its performance has improved since January 2001. See MR 4-02/03, Appendix B at B-20. On one measure, repeat trouble, Verizon's performance has been worse for competitive LECs than for its retail customers. See MR 5-01 (Percent Repeat Reports Within 30 Days – POTS loop). Verizon argues, however, that competitive LECs have contributed to this problem because they often do not correctly locate the source of a problem or do not provide Verizon access to their customers. See Verizon Lacouture/Ruesterholz Decl. at paras. 123-126. Verizon also maintains that it lacks the capacity to test competitive LECs' loops. *Id.* at paras. 127-128.

³⁰⁰ See PR 6-01, Appendix B at B-17. The incidence of trouble reported in 30 days has hovered between approximately two and three percent for competitive LECs, while remaining under two percent for Verizon's retail arm. While these numbers are not in strict parity, the difference is minimal.

³⁰¹ See PR 1-03 (Average Interval Offered – Dispatch 1-5 lines – POTS loop) and PR 2-03 (Average Interval Completed – Dispatch 1-5 lines – POTS loop), Appendix B at B-16 and B-17. Prior to April 21, 2001, Verizon automatically assigned a six-day standard interval to competitive LECs. See Verizon Lacouture/Ruesterholz Decl. at para. 109. For its own retail arm, Verizon assigns dates according to a "SMARTS clock", which takes into account work force and workload prior to assigning a date. *Id.* On April 21, 2001, Verizon began applying the SMARTS clock to competitive LECs as well. *Id.*

³⁰² Verizon's performance for intervals offered has achieved parity for May and June, 2001. Verizon's intervals completed have improved as well. See PR 1-03 and PR 2-03, Appendix B at B-16 and B-17.

³⁰³ See Verizon Lacouture/Ruesterholz Decl. at para. 193; *Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*) (*pet. for rehearing pending sub nom. USTA v. FCC*, DC Cir. No. 00-102 (filed Jan. 18, 2000)); *Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Order on Reconsideration, CC Docket No. 98-147; Fourth Report and Order on Reconsideration, CC Docket No. 96-98; Third Further Notice of Proposed Rulemaking; CC Docket No. 98-147; Sixth Further Notice of Proposed Rulemaking; CC Docket No. 96-98, 16 FCC Rcd 2101 (2001) (*Line Sharing Reconsideration Order*).

been low, Pennsylvania performance data demonstrate that Verizon's performance for provisioning and maintaining line-shared DSL loops to competitors is generally in parity.³⁰⁴

89. *Line Splitting.* Based on the evidence in the record, we find that Verizon complies with its line-splitting obligations and that Verizon demonstrates it provides access to network elements necessary for competing carriers to provide line splitting.³⁰⁵ Verizon states that, since June 2001, it has accepted line-splitting orders through an interim process.³⁰⁶ Competitive LECs have raised no complaints about Verizon's interim process or its plan for permanent line-splitting OSS. We find, therefore, given the record before us, that Verizon's interim process for line-splitting orders is in compliance with the requirements of this checklist item. In addition, Verizon asserts that it will transition to a permanent OSS process for line splitting in Pennsylvania by October 2001.³⁰⁷ We expect Verizon to meet its commitment to implement permanent OSS for line splitting by October 2001.

90. *High Capacity Loops.* Given the totality of the evidence, we find that Verizon's performance with respect to high capacity loops does not result in a finding of noncompliance for checklist item 4. Verizon's performance data for installation quality and maintenance and repair functions demonstrate that it has been comparable for Verizon retail customers and competitors.³⁰⁸ We recognize, however, that Verizon's performance with respect to other

³⁰⁴ For PR 1-01 (Average Interval Offered – Total No Dispatch), Verizon's Pennsylvania performance is at general parity for non-dispatch in relevant months. For PR 2-01, (Average Interval Completed – Total No Dispatch), Verizon's performance has generally met parity. We note that Verizon's performance in April, according to this measure, is not in parity with its retail performance, but order volumes were significantly lower in April than in other recent months. For PR 4-05 (Percent Missed Appointments – No dispatch), Verizon's performance is out of parity for several recent months, but we do not find the disparity to be competitively significant. We find the same to be true for PR 6-01 (Percent Installation Troubles Reported Within 30 Days). See Appendix B at B-18 and B-19. Covad contends that it was unable to obtain line sharing from Verizon in Pennsylvania until March 14, 2001, when Verizon certified it had solved problems associated with collocating its central offices to permit line sharing, long after the Commission's June 6, 2000, deadline for deploying line sharing. See Covad Comments at 12-13. We find that Verizon was providing line sharing in Pennsylvania as of June 21, 2001, the date it filed its section 271 application. See MR 4-03 (Mean Time to Repair – Central Office Trouble). In cases where Verizon has not met parity, trouble report rates have been low. See, e.g., MR 2-03 (Network Trouble Report Rate – Central Office), Appendix B at B-22.

³⁰⁵ See *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2111, para. 20 n.36.

³⁰⁶ See Verizon Lacouture/Ruesterholz Reply Decl. at paras. 102-103.

³⁰⁷ See Verizon Lacouture/Ruesterholz Reply Decl. at para. 104. Verizon is engaged in a line-splitting pilot in New York, which uses new OSS functionality to provide line splitting, while using the same loop and port. *Id.* at para 102.

³⁰⁸ See PR 6-01 (Percent Installation Troubles within 30 days), Appendix B at B-19. Pennsylvania's data for repair performance show some disparities, but these are not competitively significant. Trouble reports have been out of parity for competitive LECs for each reported month, but the percentages have generally been under 2 percent. See MR 2-01, Appendix B at B-22. Trouble duration has been out of parity for some months, but generally to a slight degree. See MR 4-01/02, Appendix B at B-22. Also, repeat trouble has been slight. See MR 5-01, Appendix B at B-23.

performance measures for high capacity loops has been poor in Pennsylvania. Verizon's installation intervals for competitive LECs are consistently longer than those for its retail customers, and Verizon has missed a significant percentage of appointments to provision high capacity loops for competitors.³⁰⁹ High capacity loops, however, represent a small percentage of all loops ordered by competitors in Pennsylvania. Given the relatively low volume of orders for high capacity loops compared to all loop types, we cannot find that Verizon's performance for high capacity loops warrants a finding of checklist noncompliance for all loop types.³¹⁰

91. In addition to Verizon's performance-related issues, several competing carriers allege that Verizon refuses to provide high capacity loops as unbundled network elements unless all necessary equipment and electronics are present on the line and at the customer's premises. According to commenters, this practice violates Commission rules.³¹¹ Verizon responds that its policy is to provide unbundled high capacity loops when all facilities, including central office and end-user equipment and electronics, are currently available.³¹² Moreover, Verizon explains that, where facilities are currently unavailable, but Verizon has construction underway to meet its own future demand, it will provide competitive LECs with an installation date based on the anticipated completion date of the pending job.³¹³ Further, when requisite electronics, such as

³⁰⁹ See Verizon Lacouture/Ruesterholz Decl. at paras. 143, 148-151. Verizon missed approximately 30 percent to 40 percent of competitive LEC's provisioning appointments for every month between February and June, 2001, and it takes Verizon approximately five to ten days longer to install high capacity loops for competitive LECs. One installation measure, Average Interval Offered, appears to be improving slightly. See PR 1-07 and PR 2-07 (Average Interval Offered and Completed for DS-1 lines) and PR 4-01 (Percent Total Missed Appointments), Appendix B at B-19; *but see* Verizon Lacouture/Ruesterholz Reply Decl. at para. 28.

³¹⁰ By the time it filed its application, Verizon had provisioned approximately 500 high capacity loops in Pennsylvania. See Verizon Application at 23, 26, 33; Verizon Lacouture/Ruesterholz Decl. at para. 140.

³¹¹ See Broadslate Joint Comments at 8; Capsule Joint Comments at 2-7; Covad Comments at 24-26. More broadly, competitors contend that Verizon will not perform necessary provisioning work for high capacity loops unless the competitive LEC orders them out of Verizon's special access tariffs. See Broadslate Joint Comments at 3, 7, 9; Covad Comments at 26; ALTS Reply at 3, 7. In addition, carriers argue that once Verizon provisions a loop as a special access facility, Verizon refuses to convert it into an unbundled network element or charges prohibitively expensive termination fees to do so. See, e.g., Broadslate Joint Comments at 3, 9-10; *but see* Verizon Lacouture/Ruesterholz Decl. at para. 44. One commenter indicates that prior to filing its section 271 application, Verizon had appeared willing to convert special access facilities to unbundled high capacity loops, but that its policy has since changed. See ALTS Reply at 3. Verizon argues that its policy has not changed. See Verizon Lacouture/Ruesterholz Reply Decl. at paras. 35-37 and Attach. 14.

³¹² Verizon will fill a competitive LEC's order where "there are already high capacity loop facilities in use serving a customer." Verizon Lacouture/Ruesterholz Reply Decl. at para. 36; *see also id.* at Attach. 14; Letter from W. Scott Randolph, Director - Regulatory Affairs, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at Attach. (filed August 24, 2001) (Verizon August 24 *Ex Parte* Letter). Verizon further explains that it will reject an order where "it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element," or where, "there is no available wire or fiber facility between the central office and the end user." Verizon Lacouture/Ruesterholz Reply Decl. at Attach. 14.

³¹³ See Verizon August 24 *Ex Parte* Letter at 1.

line cards, have not been deployed but space exists for them in the multiplexers at the central office and end-user premises, Verizon will order and place the necessary line cards in order to provision the high capacity loop.³¹⁴ Verizon will also perform the cross connection work between the multiplexers and the copper or fiber facility running to the end user.³¹⁵ In the event that spare facilities and/or capacity on those facilities is unavailable, Verizon will not provide new facilities solely to complete a competitor's order for high-capacity loops.³¹⁶ In those circumstances, Verizon will only provide a high-capacity facility pursuant to tariff.³¹⁷

92. We disagree with commenters that Verizon's policies and practices concerning the provisioning of high capacity loops, as explained to us in the instant proceeding, expressly violate the Commission's unbundling rules. Accordingly, we decline to find that these allegations warrant a finding of checklist non-compliance. To the extent that commenters have specific disputes with Verizon's actual practice in implementing these policies, such disputes are best addressed in an alternative forum. As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.³¹⁸

3. Checklist Item 14 – Resale

93. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make “telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252 (d)(3).”³¹⁹ Based on the record in this proceeding, we conclude that Verizon satisfies the requirements of this checklist item in Pennsylvania. In reaching this conclusion, we reaffirm our determination in the *Verizon Connecticut Order*³²⁰ concerning the scope of Verizon's DSL resale obligations after the United States Court of Appeals decision in *ASCENT v. FCC*.³²¹ Thus, for the reasons set forth in the *Verizon Connecticut Order*, we conclude that, post-*ASCENT*, it would be unreasonable under sections 251(c)(4) and 252(d)(3) of

³¹⁴ *Id.*

³¹⁵ Verizon Lacouture/Ruesterholz Reply Decl., Attach. 14.

³¹⁶ *Id.* at paras. 35-37 and Attach. 14. Verizon argues that it “is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers.” *Id.* at Attach. 14.

³¹⁷ *Id.*

³¹⁸ See *Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10, *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23.

³¹⁹ 47 U.S.C. § 271(c) (2)(B)(xiv). See Appendix C at para. 67.

³²⁰ See *Verizon Connecticut Order*, 16 FCC Rcd at 14161-62, paras. 30-33.

³²¹ *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT*).

the Act for Verizon to limit the resale of DSL to customers receiving retail voice service from Verizon.³²² Accordingly, we cannot accept Verizon's contention that it is not required to permit the resale of DSL unless Verizon also provides voice service on the line involved.³²³

94. We find that Verizon demonstrates that it is currently in compliance with the requirements of this checklist item in Pennsylvania. Verizon has a concrete and specific legal obligation in its interconnection agreements and tariffs to make its retail services available for resale to competing carriers at wholesale rates.³²⁴ None of the commenting parties question Verizon's showing of compliance with the requirements of this checklist item except in the area of DSL resale. Our review of the record confirms that Verizon clearly demonstrates checklist compliance in those areas not involving DSL.³²⁵

95. We further conclude that Verizon demonstrates current compliance with the checklist requirements with regard to DSL resale. As discussed in more detail below, in reaching this conclusion, we waive our procedural requirements to permit consideration of information and events taking place after the deadline for filing comments. Verizon Advanced Data Inc.'s (VADI's) tariff revisions making expanded DSL resale available in the former Bell Atlantic areas in Pennsylvania became effective on September 1, 2001.³²⁶ This offering is the same as that in Connecticut except for certain implementation details. The tariff provides that VADI will process up to 100 orders for the expanded DSL resale offering per day until October 1, 2001. From October 1, 2001 through December 1, 2001, VADI will process up to 200 orders per day, with no cap on the number of orders the company will process per day thereafter. The tariff also states that there is no limit on the number of expanded DSL resale orders that carriers may submit, adding that the company will process all orders in the order in which they are received.³²⁷

³²² See *Verizon Connecticut Order*, 16 FCC Rcd at 14161, para. 30. Section 251(c)(4) states that incumbent LECs must "offer for resale at wholesale rates any telecommunications service that [they] provide[] at retail . . ." 47 U.S.C. § 251(c)(4).

³²³ See *Verizon Application* at 52-56; *Verizon Reply* at 35, n.30; Letter from Dee May, Executive Director – Federal Regulatory, Verizon, to Dorothy T. Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 01-138 at 1 (filed July 9, 2001) (*Verizon July 9 Ex Parte Letter*).

³²⁴ *Verizon Application* at 52 n.54; *Verizon Lacouture/Ruesterholz Decl.* at paras. 457-58.

³²⁵ See *Verizon Application* at 52-53; *Verizon Lacouture/Ruesterholz Decl.* at paras. 457, 459, 461-62, 467-70, 475-78; *Verizon Taylor Decl. Attach. 1* at para. 1b.

³²⁶ See *VADI Tariff F.C.C. No.1, Transmittal 19* (filed August 31, 2001); Letter from Jane Jackson, Chief, Competitive Pricing Division, Federal Communications Commission, to Donald R. Fowler, Director – Tariffs, Verizon Advanced Data Inc. (rel. August 31, 2001) (*Special Permission Letter*) (granting VADI's application and assigning Special Permission No. 01-093 and waiving 47 C.F.R. §§ 61.38 and 61.58). The Commission also has waived the relevant conditions in the *GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032, App. D, to allow Verizon and VADI to offer coordinated provision of voice and DSL services. *Application of GTE Corp., transferor, and Bell Atlantic Corp., Transferee, For Consent to transfer of Control*, CC Docket No. 98-184, Order, DA 01-2039 (CCB rel. August 31, 2001).

³²⁷ *VADI Tariff F.C.C. No 1, 3rd Revised Page 603* (effective Sept. 1, 2001).

96. In light of this, we cannot agree with commenting parties that argue Verizon has failed to demonstrate present compliance with the requirements of this checklist item.³²⁸ Based on the current record before us, we conclude that the order processing obligations in the tariff are sufficient to accommodate reasonably anticipated current commercial demand for the expanded DSL resale offering. In particular, we conclude that VADI's obligation to process up to 100 orders per day is sufficient to address initial demand based on the current record, and thus demonstrate current compliance with its resale obligations.³²⁹ We also note that the obligation to process up to 200 orders per day beginning on October 1, 2001, and to eliminate this limit on December 1, 2001, should ensure that Verizon remains in compliance with its section 271 resale obligations. In particular, these steps appear reasonably calculated to address increases in demand that are likely to occur in the future as resellers expand their marketing efforts and increase the availability of resold DSL to consumers.

97. Moreover, we cannot agree with commenting parties³³⁰ arguing that Verizon must permit resale of DSL service in conjunction with voice service provided using the UNE loop or UNE-P in order to demonstrate compliance with this checklist item. As stated in the *Verizon Connecticut Order*, we continue to believe that resale of DSL in this context "raises significant additional issues concerning the precise extent of an incumbent LEC's resale obligations."³³¹ Such issues would require additional proceedings to resolve, and we do not consider them in the context of this application.³³²

98. As previously stated, we waive the Commission's general procedures restricting the submission of late filed information and the consideration of developments that occur after the date for filing comments.³³³ This will allow us to rely on VADI's tariff filing offering

³²⁸ See, e.g., ASCENT Comments at 10-13; AT&T Comments at 43-44; ASCENT Reply at 20; AT&T Reply at 21-23.

³²⁹ See Verizon Aug. 31 *Ex Parte* Letter at 2. Verizon states that the five carriers currently providing resale service in Pennsylvania expressing an interest in the expanded DSL resale offering submitted a total of approximately 125 orders for new resold lines in Pennsylvania during July. On average, these carriers submitted approximately 40 orders per day during July for all types of resold voice lines, including feature changes and disconnects on resold lines. *Id.*

³³⁰ See, e.g., AT&T Comments at 36, 44; ASCENT Reply at 20-23; AT&T Reply at 16-21; WorldCom Reply at 10-11.

³³¹ *Verizon Connecticut Order*, 16 FCC Rcd at 14162, para. 33.

³³² See *Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10, *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23.

³³³ The Commission's procedural rules governing section 271 applications provide that when an applicant files new information after the comment date, the Commission retains the discretion to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. There is an exception to this approach for new information that is directly responsive to allegations raised in the comments, however. The Commission has also strictly limited the consideration of other developments that occur after the date for filing comments. See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 14 FCC Rcd 16128, 16130 (1999); Mar. 23 Section 271 Procedural Notice.

expanded DSL resale that became effective on September 1, 2001 and the information contained in Verizon's August 31 *Ex Parte* Letter.³³⁴ We recognize that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."³³⁵ Under the present circumstances, however, we conclude that this test is satisfied. Special circumstances exist that satisfy the first prong of the waiver test. First, these tariff revisions are virtually identical to those previously filed for Connecticut, with the exception of the order processing provisions. As a result, they place a very limited additional analytical burden on the staff. The tariff revisions filed by VADI also constitute positive action that will actively facilitate the development of competition. In addition, modifying the VADI and Verizon internal order processing systems to accommodate these resale obligations is relatively complex,³³⁶ and the Commission did not address the extent of Verizon's DSL resale obligations in light of the *ASCENT* decision until after this application was filed.³³⁷ We also find that grant of this waiver to allow consideration of late-filed information and recent developments will serve the public interest under the present circumstances by avoiding the administrative delay inherent in rejecting an otherwise persuasive application for failure to demonstrate compliance with this checklist item. In light of the fact that Verizon now has ample notice of the Commission's determination concerning its DSL resale obligations, we do not expect to grant similar waivers to Verizon in the context of future section 271 applications.

B. Other Items

1. Checklist Item 1 – Interconnection

99. Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252.³³⁸ Based on our review of the record, we conclude that Verizon demonstrates that it is in compliance with the requirements of this checklist item.³³⁹ We also note that the Pennsylvania Commission found that Verizon satisfied

³³⁴ We did not request comment on Verizon's August 31 *Ex Parte* Letter since it simply committed to accelerate the implementation schedule for expanded DSL resale which Verizon had agreed to in a filing made prior to the comment date. See Verizon July 9 *Ex Parte* Letter. We also note that interested parties were free to file *ex parte* comments on Verizon's accelerated implementation schedule.

³³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

³³⁶ This is a natural consequence of the Commission's prior determination in the *GTE/Bell Atlantic Merger Order* requiring Verizon to provide advanced services through a separate corporate affiliate. See *GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032 at Appendix D.

³³⁷ The court did not issue the mandate in the *ASCENT* case until March 6, 2001, and the Commission released the *Verizon Connecticut Order* addressing the scope of Verizon's DSL resale obligations on July 20, 2001, after this application was filed.

³³⁸ See Appendix C at paras. 17-24.

³³⁹ Verizon Application at 17-22; Verizon Lacouture/Ruesterholz Decl. at paras. 9-96; Verizon Reply at 16-20; Verizon Lacouture/Ruesterholz Reply Decl. at paras. 105-124.

this checklist item³⁴⁰ and that no commenters raised any issues concerning Verizon's performance for the provisioning of interconnection.

100. Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that Verizon's policies do not represent a violation of our existing rules.³⁴¹ Verizon states that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it permits carriers to *physically* interconnect at a single point of interconnection (POI).³⁴² Verizon acknowledges that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities.³⁴³ The issue of allocation of financial responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM*.³⁴⁴ We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single *physical* point of interconnection per LATA.³⁴⁵ Because the issue is open in our *Intercarrier Compensation NPRM*, we cannot find

³⁴⁰ Pennsylvania Commission Comments at 23-49.

³⁴¹ The commenting parties claim that Verizon's inclusion of language requiring a "Geographically Relevant Interconnection Point (GRIP)" in interconnection agreements effectively denies competing carriers the right to select a single point of interconnection because GRIP requires competitive carriers to build additional and unnecessary interconnection points. Or, alternatively, the competitive LEC is required to bear the costs of Verizon's transport from Verizon's designated interconnection point (IP), which is usually its end office of tandem, to the actual competitive LEC physical point of interconnection (POI), thereby improperly shifting to competing carriers inflated transport and switching costs associated with such an arrangement. *See* Sprint Comments at 2-8; WorldCom Comments at 30-31; Broadslate Joint Reply at 24-27; Letter from A. Renée Callahan, legal counsel for Sprint Communications Company L.P., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138 (filed August 16, 2001) at 1 (Sprint Aug. 16 *Ex Parte* Letter); Letter from Sue D. Blumenfeld, legal counsel for Sprint Communications Company L.P., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138 (filed September 13, 2001) at 3 (Sprint Sept. 13 *Ex Parte* Letter).

³⁴² Verizon Lacouture/Ruesterholz Decl. at para. 9 (emphasis added); Verizon Lacouture/Ruesterholz Reply Decl. at para. 107; Letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-138, at 2-3 (filed September 10, 2001) (Verizon Sept. 10 *Ex Parte* Letter).

³⁴³ Verizon Lacouture/Ruesterholz Reply Decl. at paras. 107-111. Verizon distinguishes the POI from the IP, which it defines as the point where traffic is dropped off for billing purposes. Traditionally, the physical point of interconnection is the same as the billing point. *See* Pennsylvania Commission Comments at 42-43 n.136 (noting the crux of the issue lies in Verizon's distinction between the POI and the IP); Sprint Comments at 3-4 n.3.

³⁴⁴ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634-9635, 9650-9652, paras. 72, 112-114 (2001) (*Intercarrier Compensation NPRM*).

³⁴⁵ We note that Verizon currently is appealing the decision by the U.S. District Court of the Middle District of Pennsylvania ordering the Pennsylvania Commission to modify its arbitration decision approving an interconnection agreement that allowed a single point of interconnection per tandem instead of per LATA. *See* Verizon Application App. B, Tab O, Subtab 17 (*MCI v. Bell Atlantic-Pennsylvania*, No. CV-97-1857, slip op. at 14-15 (M.D. Pa. Jun. 30, 2000)); *see also* Sprint Comments at 5-7; WorldCom Comments at 31. In the future, to the extent that Verizon (continued....)