

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

)	
Application by Verizon New England, Inc,)	
Bell Atlantic Communications, Inc. (d/b/a)	CC Docket No. 01-324
Verizon Long Distance), NYNEX Long)	
Distance Company (d/b/a Verizon)	
Enterprise Solutions), Verizon Global)	
Networks, Inc, and Verizon Select Services,)	
Inc., for Authorization to Provide In-)	
Region, InterLATA Services in Rhode)	
Island)	

Pursuant to the Commission’s Public Notice, AT&T Corp. (“AT&T”) hereby submits its opposition to Verizon’s application for authorization to provide in-region long distance services in the State of Rhode Island.

I. VERIZON’S RATES FOR UNBUNDLED SWITCHING ARE NOT TELRIC COMPLIANT.

Verizon has not met – and cannot meet -- its statutory burden to show that its unbundled network element rates, particularly its rates for the crucial switching element, comply with the Commission’s TELRIC requirements. The Rhode Island UNE rate proceeding has a long history, but it has come to an abrupt and inconsistent conclusion that demonstrates Verizon’s current switching rates do not comply with the RI-PUC’s own application of the TELRIC rules.

The proceeding to establish permanent UNE rates began when Verizon-RI filed cost studies on November 24, 1997. Hearings were held in late 1998 and early 1999. On July 19, 1999, Verizon and the Division of Public Utilities and Carriers entered into a bilateral stipulation proposing the adoption of interim recurring and non-recurring

charges for UNEs. AT&T urged the RI-PUC by letter not to adopt the interim rates unless doing so would not further delay resolution of the issues raised by AT&T in that docket and the setting of permanent, cost-based rates for UNEs. In an order issued September 23, 1999, the RI-PUC stated that its adoption of interim rates would “not further delay resolution of the issues raised by AT&T in this docket and the setting of permanent, cost-based rates for UNEs,” and on that basis approved the proposed interim rates.¹

After a series of further delays, briefing was completed in June and July of 2000. In the course of those proceedings, AT&T demonstrated that Verizon’s cost studies relied on a large number of incorrect inputs, many of which are discussed below, that improperly increased its proposed rates for unbundled switching.

The RI-PUC took no action, however, leaving Verizon’s excessive (and undeniably not TELRIC-compliant) interim rates in place until Verizon-RI decided it would begin pressing to seek a positive recommendation for a Section 271 application. Then, remarkably, a number of events occurred in rapid succession. First, Rhode Island Senate Resolution 01-S198, dated April 24, 2001, called upon the RI-PUC to enhance “the prospect of a successful [Section 271] application” by Verizon-RI to the FCC. Second, the RI-PUC received a letter from the Rhode Island House Majority Leader dated May 4, 2001, stating that “consumers in Rhode Island” must be offered “the same benefit that consumers in Massachusetts have for long distance choice.” On May 17, 2001, the RI-PUC promptly reversed its prior course with respect to the scope of

¹ See Verizon-RI’s Appendix F, Tab 20 (RI-PUC’s September 23, 1999, Order in Docket 2681).

independent OSS testing it planned to ask KPMG to perform.² As explanation for its sudden reversal, the Commission cited the Senate resolution and the letter from the House Majority Leader, and expressly stated that the Commission

“is aware that it is a creature of statute and that ultimately, Rhode Island’s regulatory policy is determined by the state legislature. Therefore, the Commission gives great weight to policy directives of the Rhode Island General Assembly. In this instance, the Rhode Island Senate has urged this Commission to move forward with Verizon’s 271 application for Rhode Island.”

The RI-PUC implemented the same avowedly political policy the very next day on the critical issue of UNE pricing. In a perfunctory, two-page “Whereas” order issued in Docket 2681 on May 18, 2001, the RI-PUC took the previously unlitigated and expressly interim UNE rates, reduced them by 7.11 percent to reflect savings from the Bell Atlantic/GTE merger, and deemed the result to be Verizon-RI’s permanent UNE rates.³ In doing so, however, the PUC did not decide *any* of the substantive issues regarding UNE rates that the parties to Docket 2681 (the UNE rate case) had spent several years and hundreds of thousands of dollars to litigate.

On November 18, 2001, the RI-PUC issued a separate order in Docket 2681 that finally addressed the substantive issues that the parties had raised in the UNE pricing proceeding.⁴ Critically, however, the RI-PUC did *not* adopt UNE rates in accord with its rulings. Instead, it left in place the *previously adopted* rates, *i.e.*, the interim rates that had been adopted without any analysis, and it ordered that the substantive rulings in its

² See May 17, 2001 Evaluation of Verizon-Rhode Island’s Operational Support Systems - Approval of Amended Master Test Plan, page 2, footnote 4, at <<http://www.ripuc.org/news/pdfs/AmendedMTP.pdf>>. A copy of this RI-PUC order is appended hereto as Attachment 1.

³ See Verizon-RI’s Appendix F, Tab 27 (RI-PUC’s May 18, 2001, Order in Docket 2681).

⁴ See Verizon-RI’s Appendix F, Tab 34 (RI-PUC’s Nov. 18, 2001, Order in Docket 2681).

order would not be reflected in rates until a future compliance filing by Verizon, which it put off until after this Commission is required to rule upon Verizon-RI's Section 271 application.⁵ Thus, even to the extent that the RI-PUC's substantive rulings are correct, they are not effective. And critically, Verizon does not even have to file costs studies reflective of those rulings until 30 days *after* it receives Section 271 authority from this Commission or May 1, 2002, whichever is earlier. Thus, any assertion that the *current* rates in Rhode Island – the rates the Commission must review here – comply with TELRIC is *inconsistent with the RI-PUC's own definition of what TELRIC requires*. This is especially true since each of the modifications ordered by the RI-PUC should decrease the switching rate in Rhode Island, and none would tend to increase the rate.

Shortly before the RI-PUC's substantive order, on October 5, 2001, Verizon-RI, recognizing that its switching rates were excessive, proposed to reduce its switching usage rates – but not its switch port rates – to levels that Verizon has *proposed* in Massachusetts. In a November 28, 2001 order, the RI-PUC issued a conclusory assertion that those proposed rates proposed by Verizon-RI are “TELRIC compliant,” but it offered (and conducted) absolutely no analysis as to whether those rates were consistent with the TELRIC methodology that it had ordered only ten days earlier.⁶ As discussed below, the RI-PUC's conclusory assertions regarding TELRIC compliance are without merit, and they cannot withstand reasonable scrutiny.

⁵ *Id.* at 76.

⁶ The November 28, 2001, RI-PUC order was filed with the FCC by Verizon-RI as an *ex parte* submission in this docket on November 29, 2001.

A. Verizon-RI's Analog Switch Port Rate is Over Twice the Massachusetts Rate and is Grossly Excessive.

As a threshold matter, it should be noted that Verizon-RI did not reduce all of its UNE switching rates when it decided to import some of the rates it has proposed in the pending Massachusetts UNE rate proceeding. In particular, it refused to lower its monthly recurring charge for a local analog switch port. The statewide average rate for a line-side port in Rhode Island is \$4.15.⁷ In contrast, Verizon charges only \$2.00 per month for the same port under the current Massachusetts UNE rates.⁸ There is no TELRIC-compliant reason for Verizon to charge more than *twice* as much in Rhode Island as in Massachusetts for an identical line-side switch port.

B. Verizon-RI's Unilaterally Offered Switching Usage Rates are Merely Verizon's Proposed Rates in Massachusetts and Are Inconsistent with the RI-PUC's Own Application of TELRIC Principles.

The switching usage rates that Verizon-RI unilaterally implemented on October 5, 2001, are the same excessive rates that it is proposing in Massachusetts. These rates may represent Verizon's wishes for unlawfully high switching rates, but they have not yet been adopted, or even considered, by the Massachusetts regulators. The current Massachusetts UNE rates proceeding, Docket DTE 01-20, is still many months away from being completed. Hearings are not even scheduled to begin until January 7, 2002, and briefing will not be completed until March 22, 2002. Given past experience, this

⁷ See Verizon-RI's Appendix F, Tab 28 (May 21, 2001, compliance filing by Verizon-RI in RI-PUC Docket 2681).

⁸ See Verizon's Tariff No. DTE MA No. 17, Part M, Section 2, Page 7 (which can be found at http://www.bellatlantic.com/tariffs_info/intra/efftar/ma/mal7/pdf/m_sec2.pdf). This is the port rate that was in effect when Verizon received Section 271 approval for Massachusetts.

suggests that a final decision will not be rendered until at least May 2002 or later, well after a decision is required here.⁹

The switching usage rates Verizon proposed in Massachusetts, and at the last minute brought across to Rhode Island, clearly do not comport with TELRIC. Indeed, in many important and financially significant respects, these switching rates do not comport with the RI-PUC's own November 18 rulings regarding the appropriate inputs to a TELRIC study. Verizon's brief here asserts that "[w]ith respect to the assumptions regarding each of the inputs used to establish Verizon's rates, the PUC conducted an extensive investigation, and in each instance applied principles that are consistent with what this Commission has found TELRIC-compliant in the past."¹⁰ To the extent Verizon's assertion is intended to imply that its *current* rates comply with TELRIC, this assertion is patently false, especially with respect to Verizon's switching rates. The RI-PUC expressly declined to apply its findings regarding TELRIC inputs until a future date, and so far has not required Verizon to adjust any of its rates to reflect those findings. In particular, as explained below, the switching rates Verizon relies upon in making this 271 application violate many of the specific RI-PUC findings regarding the inputs that must be used to set TELRIC-compliant rates.

⁹ When the FCC approved Verizon-MA's Section 271 application on April 16, 2001, it did so with the understanding and expectation that Massachusetts would revisit and correct its UNE rates by the end of calendar year 2001 at the latest. *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, "Memorandum Opinion and Order" No. FCC 01-130, ¶ 19 (released April 16, 2001) ("Massachusetts 271 Order"). For a variety of reasons, it is now clear that this expectation will not be met.

¹⁰ "Application by Verizon New England for Authorization to Provide In-Region, InterLATA Services in Rhode Island," CC Docket No. 01-324 (Nov. 26, 2001) at 90.

The RI-PUC invited CLECs to comment in writing on Verizon-RI's proposed new switching usage rates. In accord with the RI-PUC's procedural schedule, AT&T did so in a brief filed on November 2, 2001. Among other things, AT&T provided the RI-PUC with a copy of the sworn testimony filed in the Massachusetts UNE rate case by the switch cost expert sponsored by AT&T and WorldCom. The testimony of Catherine Pitts¹¹ in that docket explains in detail why the rates proposed by Verizon-MA violate TELRIC.¹² Thus, the RI-PUC's statement in the November 28 order that "no CLEC contested the adoption of these new UNE rates during the hearing" held on October 15, 2001 – a mere ten days after Verizon-RI first proposed new switch usage rates for Rhode Island – is at best an unfair characterization of the CLECs' (and especially AT&T's) response.¹³ The RI-PUC expressly gave CLECs the opportunity of responding to Verizon's new excessive rates in writing, rather than attempting to do so through cross-examination of Verizon's witnesses at the surprise, expedited hearing. AT&T availed itself of this opportunity, and provided its critique and supporting evidence in writing.

The RI PUC's November 28, 2001 order accepting Verizon's proposed switching usage rates completely ignores AT&T's evidence. Indeed, the RI PUC did not even acknowledge receipt of this evidence. Nor did it make any effort whatsoever to perform a substantive analysis to determine whether the new switch usage rates comport with

¹¹ Ms. Pitts was previously known as Catherine Petzinger, and was formerly in charge of Telcordia's SCIS model.

¹² Copies of AT&T's brief and the accompanying Massachusetts rebuttal testimony by Catherine Pitts regarding Verizon-MA's proposed switching rates (the "Pitts Rebuttal"), are appended hereto as Attachment 2. Verizon-RI failed to include this material when filing the record from the RI-PUC 271 proceedings in this docket.

¹³ See RI-PUC's "Report and Order" in Docket 3363, dated November 28, 2001, at 5. This order was filed with the FCC by Verizon-RI as an *ex parte* submission in this docket on November 29, 2001.

TELRIC – particularly the specific TELRIC methodology that the RI-PUC itself had adopted only ten days earlier. Considering the magnitude and extent of the errors in Verizon’s Massachusetts switch cost study explained by the CLECs’ switch cost expert – and especially in light of the vastly different methodology Verizon used to calculate the Massachusetts rate, which differs substantially from the methodology prescribed by the RI-PUC itself – the state commission’s failure to review the CLECs’ evidence invalidates any assertion that Verizon’s switching usage rate complies with TELRIC, particularly the specific TELRIC methodology the RI PUC articulated in its November 18 order.

AT&T demonstrated to the RI-PUC that the errors in Verizon-MA’s analysis, in total, made Verizon’s proposed local switching rate too high by nearly an order of magnitude. In Massachusetts, and now in Rhode Island, Verizon is proposing originating switch rates of \$0.002921 per minute of use (“MOU”), and terminating switch rates of \$0.002563. In sharp contrast, AT&T and WorldCom have shown in Massachusetts that the proper rates that one generates by using Verizon’s own cost model with TELRIC-compliant inputs are \$0.0003225 and \$0.0002829, respectively, which are approximately 11 percent of (or 89 percent below) the excessive rates Verizon filed.¹⁴ The specific errors that cause this difference include the following.

- (i) **Switch Material Prices:** Verizon-MA improperly developed switch investment prices that assumed 100 percent use of so-called “growth part” discounts for buying components of a switch, and ignoring the prices that are available under Verizon’s switch contracts for purchasing new switches, in

¹⁴ See Pitts Rebuttal Ex. CP-5, Part C-2, Summary (appended as Attachment 2).

violation of TELRIC.¹⁵ The RI-PUC's November 18 order requires use of a 90:10 ratio between new and growth discounts.¹⁶ As shown in the accompanying declaration of Catherine E. Pitts ("Pitts Decl."), application of this factor alone to would result in a 32% decrease in the proposed Massachusetts (and current Rhode Island) switching rate.¹⁷

(ii) **Cost of Capital:** The RI-PUC correctly and reasonably ordered that UNE rates should be set using a 9.5 percent weighted average cost of capital.¹⁸ In sharp contrast, the switch usage rates imported from Massachusetts were derived through Verizon's use of a weighted average cost of capital of 12.6 percent.¹⁹ Notably, when the Commission reviewed Verizon's Massachusetts Section 271 application, it questioned whether Verizon's prior Massachusetts use of a 12.16 percent weighted average cost of capital was appropriate, particularly because it was "substantially higher than the cost of capital employed by any of the other states in Verizon's region."²⁰ There is no basis whatsoever for Verizon-RI to charge a rate that is based on an even *higher* cost of capital, especially in light of the RI-PUC's finding that the proper rate for Rhode Island is 9.5 percent.

¹⁵ See Pitts Rebuttal at 8 *et seq.* (appended as Attachment 2).

¹⁶ Docket 2681, Order of November 19, 2001, at 35. See Verizon-RI's Appendix F, Tab 34.

¹⁷ Pitts Decl. ¶ 6, (Attachment 4).

¹⁸ Docket 2681, Order of November 19, 2001, at 20-21 and 75. See Verizon-RI's Appendix F, Tab 34.

¹⁹ See Verizon-MA's Direct Panel Testimony in Docket DTE 01-20, dated May 4, 2001, at 41 (appended hereto as Attachment 3).

²⁰ *Massachusetts 271 Order*, ¶ 38. See also *id.*, ¶ 251.

Indeed, Verizon-RI itself endorses the 9.5 percent cost of capital figure adopted by the RI-PUC, taking pains to note in its application here that this rate is lower than the cost of capital “that was employed in Pennsylvania when this Commission granted Verizon’s long distance application in that state.”²¹ But Verizon’s assertion that the RI-PUC applied this rate “when it set unbundled network element rates” is false.²² The switch usage rates currently accepted by the RI-PUC are in fact based on a 12.6 percent cost of capital.

- (iii) **Depreciation Lives:** The RI-PUC also ordered that UNE rates should be set using depreciation lives as adopted in the FCC’s most recent depreciation prescription for Rhode Island.²³ The switch usage rates imported from Massachusetts, however, are based on significantly shorter lives. This again has the effect of improperly inflating the Verizon-RI’s switch usage rates.

The differences between the shorter depreciation lives upon which Verizon based its proposed Massachusetts switching rates and the longer lives prescribed by the FCC for both Rhode Island and Massachusetts are shown in the following table. Note especially that account 2212 (Digital Switching), for which Verizon proposes a depreciation life of 10 years, compared to this Commission’s use of a 15 year life.

²¹ See Verizon’s Joint Declaration of Donna C. Cupelo, Patrick A. Garzillo, and Michael J. Anglin, ¶ 50, filed in this docket.

²² *Id.* ¶ 41.

²³ Docket 2681, Order of November 19, 2001, at 24, 76. See Verizon-RI’s Appendix F, Tab 34.

PROJECTION LIFE COMPARISON

<u>Account Number</u>	<u>Account Name</u>	MASS <u>FCC</u> (a)	RI <u>FCC</u> (b)	MASS <u>VZ</u> (c)
2112	Motor Vehicles	8.5	8.5	8.0
2115	Garage Work Eqpt	12.0	12.0	
2116	Other Work Eqpt	12.0	12.0	10.0
2121	Buildings	38.0	40.0	30.0
2122	Furniture	15.0	15.0	12.0
2123.1	Ofc. Support Eqpt	10.0	10.0	10.0
2123.2	Co. Comm. Eqpt	7.0	7.0	8.0
2124	Gen. Purpose Computers	6.0	6.0	5.0
2212	Digital Switching	15.0	15.0	10.0
2220	Operator Systems	8.0	8.0	10.0
2232	Digital Circuit	11.0	11.0	9.0
2351	Public Telephones	7.0	7.0	8.0
2411	Poles	38.0	39.0	30.0
2421	Aerial Cable - Met	22.0	20.0	18.0
2421	Aerial Cable - Fiber	25.0	25.0	20.0
2422	Underground Cable - Met	25.0	25.0	18.0
2422	Underground Cable - Fiber	25.0	25.0	20.0
2423	Buried Cable - Met	23.0	23.0	18.0
2423	Buried Cable - Fiber	25.0	25.0	20.0
2426	Intrabldg Cable - Met	20.0	20.0	18.0
2426	Intrabldg Cable - Fiber	25.0	25.0	18.0
2441	Conduit Systems	55.0	55.0	50.0

Sources: Col a, b = FCC Parameter Report, July 9, 1996
 Col c = Verizon-MA Direct, Sovereign Ex. AES-1

Verizon-RI endorses the use of the FCC-approved depreciation lives in its Section 271 application, agreeing that these lives constitute “economic depreciation” and thus are the proper basis for a forward-looking, TELRIC-compliant cost study.²⁴ As with cost of capital, however, the switch usage rates accepted by the RI-PUC are in fact based on the much shorter, non-economic depreciation lives proffered in Massachusetts by Verizon, *not* on the depreciation lives that *both* the RI-PUC and Verizon acknowledge should serve as the basis for

²⁴ See Verizon’s Joint Declaration of Donna C. Cupelo, Patrick A. Garzillo, and Michael J. Anglin, ¶ 49, filed in this docket.

UNE rates. Again, the accompanying Pitts Declaration shows that the combined effect of applying the RI PUC-ordered cost of capital and depreciation lives would reduce the switch usage rate by 25%.²⁵

- (iv) **Switch Installation Factor:** Verizon has also substantially overstated its engineering and installation (“EF&I”) factor for switching. Other ILECs achieve a total EF&I factor of about 25 percent (or less). Verizon, which in New England performs switch installation itself at a substantially higher cost compared to installation by outside vendors, asserts that its historic EF&I for the old Bell Atlantic region is 40.27 percent, and that is the factor it used to support its proposed Massachusetts switch usage rate. Basing this factor on embedded costs when the experience of other ILECs shows that more efficient methods are readily available on a going-forward basis does not comport with TELRIC.

The RI-PUC stated that it “is concerned that Verizon RI may not be as efficient in this matter as it could be; perhaps Verizon should consider letting the switch manufacturer install the switch, as do most Bell companies.”²⁶ However, it failed to order Verizon to base its switching rates on an installation factor reflect the most efficient, forward-looking practices. In so doing, the RI-PUC failed to apply TELRIC properly. Indeed, applying the 25% EF&I factor recommended by AT&T in Massachusetts would lower the Rhode Island switch usage rate by

²⁵ Pitts Decl. ¶ 8.

²⁶ Verizon-RI’s Appendix F, Tab 34 (RI-PUC’s Nov. 18, 2001, Order in Docket 2681) at 36.

11%.²⁷ And collectively, the errors identified above result in a 54% reduction in Verizon's switch costs.²⁸

(v) **Merger Savings:** Further, the RI-PUC determined that on a forward-looking basis Verizon will save 7.11 percent of its costs as a result of the merger and process re-engineering savings publicly announced by Verizon. The RI-PUC not only applied this savings factor to reduce the previously interim UNE rates by 7.11 percent, but it also ordered Verizon to apply the same savings factor to the cost studies that it will file next year.²⁹ This adjustment has not been made to switch usage rates that Verizon has imported from Massachusetts. Since the RI-PUC has determined that this adjustment is required to make Verizon's UNE rates comport with TELRIC, it should have been made to Verizon's new switch usage rates as well. Adding this change to the factors described above demonstrates that Verizon-RI's switch usage rates should be reduced by at least 57%.³⁰

(vi) **Utilization:** And even that is not all. Verizon-MA's inputs to the SCIS model also assumed a substantial underutilization of trunk port capacity.³¹ Verizon's inputs average just over 15 busy hour CCS/trunk³² per end office trunk, which equates to only 25.63 minutes of use in the busy hour of the switch. Similarly,

²⁷ Pitts Decl. ¶ 9.

²⁸ *Id.* ¶ 10.

²⁹ *See* Verizon-RI's Appendix F, Tab 34 (RI-PUC's Order of Nov. 18, 2001, in Docket 2681) at 69-73, 76).

³⁰ Pitts Decl. ¶ 11.

³¹ *See* Pitts Rebuttal at 23-25 (appended as Attachment 2).

³² CCS is centum call seconds and is a standard measure for traffic engineering. One CCS is 100 seconds, or 1.66 minutes, of use.

Verizon's inputs average less than 18 CCS/trunk per tandem trunk, which equates to approximately 30 minutes of use in the busy hour.³³ A conservative average trunk utilization would be at least 20 busy hour CCS/trunk or almost 33 minutes of use in the busy hour of the switch. Increasing the average trunk utilization to a conservative 20 CCS per trunk for end office and tandem trunks would decrease the common trunk MOU rate by 20 percent and the tandem trunk MOU rate by 11 percent.³⁴ When the RI-PUC ignored the evidence submitted by AT&T regarding Verizon-RI's last minute switch rates, it improperly ignored among other things the evidence that demonstrates this point.

In sum, given the RI-PUC's own determinations regarding the application of TELRIC in its state, mere adoption of Verizon's *proposed* rates from Massachusetts – which are based on assumptions that differ materially from those that the RI-PUC itself adopted in its November 18, 2001, order – results in switch usage rates that are at least twice what they should be. This completely undermines Verizon's last-minute attempt to validate the unsubstantiated switching rates from Massachusetts for Section 271 purposes in Rhode Island.

C. The RI-PUC's Failure to Apply Its Own TELRIC Analysis Cannot Be Mooted by Applying a Flawed Benchmark Analysis.

The RI-PUC's simplistic assertion that the rates in RI are lower than the rates in Massachusetts at the time that Verizon's 271 application was granted for that state belie

³³ A trunk's theoretical capacity is 36 CCS, but this is not realistically achievable.

³⁴ See Pitts Rebuttal at 25 & fn. 29 (appended as Attachment 2).

the rationality of a rote use of the synthesis model comparisons in this proceeding. Here, the State Commission has issued a clear set of guidelines for implementing the TELRIC standard in its jurisdiction. It cannot walk away from those guidelines by either deferring their application (as for the non-switching rates) or applying a different rate (for switching usage) that does not comply with those guidelines at all. In either case, this Commission cannot accept, for these important purposes, the state commission's blind assertion that Verizon's *current* rates comply with TELRIC. Indeed, the facts show otherwise.

In any event, use of the benchmark approach shows that Verizon's current Rhode Island switch usage rate is 102% higher than Verizon's switch usage rate in Pennsylvania and 177% higher than the rates proposed by a New York administrative law judge after extensive hearings in that state.³⁵ Those latter rates may well be adopted by the New York PSC before the Commission must issue its decision here. Since the Commission stated in its approval of Verizon's Massachusetts 271 application that it would expect Verizon to reduce the Massachusetts switch usage rate if the New York rates were lowered before the Massachusetts DTE completed its rate case, it would be especially inappropriate to allow Verizon to obtain 271 authority for Rhode Island on the basis of proposed but unlitigated rates that are nearly three times the recommended rates for New York and twice as high as the comparable rates in Pennsylvania.

To the extent that a benchmark analysis is used in this case, these are the appropriate benchmark comparisons for Rhode Island at the present time. The

³⁵ See Declaration of Michael R. Lieberman ("Lieberman Decl."), ¶ 4 and Exhibit 1 thereto (Attachment 5).

Massachusetts switching rates in place at time of the Verizon-MA 271 application last year were not the result of any TELRIC analysis in Massachusetts, but instead were imported from New York.³⁶ Those New York switching rates were in turn adopted almost five years ago, in early 1997.³⁷ Under the RI-PUC's logic regarding the use of a benchmark analysis, Verizon would never have to go through a UNE rate proceeding again in order to obtain 271 approval in any of its states. All it would need do is adopt the now outdated rates set in New York in early 1997. But this cannot be a reasonable basis for the Commission to find compliance with the critical pricing requirements of 47 U.S.C. §§ 252(d)(1) and 271(c)(2)(B)(ii).

The ILECs' costs of obtaining most telecommunications equipment, and particularly switching equipment, has been consistently declining. Thus, it is reasonable to expect that Verizon's TELRIC costs for switching today should be notably less than a rate set five years ago. TELRIC rates must be forward-looking, and based on the "most efficient telecommunications technology currently available."³⁸ Indeed, since the New York rates were set in 1997, the Pennsylvania PUC determined that the cost should be *less than half* the rate that was just approved by the RI PUC, and the New York administrative law judge determined that the rate should be almost three times lower than the rate the RI PUC uncritically accepted as TELRIC compliant. In its *Massachusetts 271 Order*, the Commission realized this as well and observed that:

³⁶ *Massachusetts 271 Order* ¶ 21.

³⁷ *In the Matter of Application by Bell Atlantic New York For Authorization to Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295, "Memorandum Opinion and Order" No. FCC 99-404, ¶ 238 *et seq.* (December 22, 1999) ("*New York 271 Order*").

³⁸ 47 C.F.R. § 51.505(b).

[C]ircumstances have changed since Massachusetts prices were originally set in late 1996. New developments, technologies, and information, including information as to the kind of switch discounts that would be available if a carrier were building an entire network, have become available since that time. As always, we presume that the Massachusetts Department, like other state commissions, will examine these issues during the course of its ongoing rate case and set rates within the range of what a reasonable application of what TELRIC would produce.³⁹

But the RI-PUC's recent decision flies in the face of these facts, as well as its own considered judgment on the application of TELRIC in Rhode Island. Thus, its misuse of the TELRIC label must not be sanctioned here. Accordingly, the Commission must reject Verizon's application here and direct it to refile its application only after it has offered rates that actually comply with the RI PUC's TELRIC requirements.

This course is critical, because there is no question that competitors will be frozen out of the local residential market in Rhode Island if Verizon is permitted to charge its current rates. AT&T's analysis demonstrates that a CLEC would in fact incur negative *gross* margins serving the average residential customer in more than half of the state and that the statewide average gross margin for such customers is also negative.⁴⁰ Thus, it is patently obvious that no competitor could make broad-based entry plans to serve residential customers in Rhode Island. As a result, Verizon's UNE rates not only fail to comply with TELRIC, they also serve as an inherent impediment to competition in Rhode Island. Consequently, it would not serve the public interest to allow Verizon to enter the interLATA market in that state.⁴¹

³⁹ *Massachusetts 271 Order* ¶ 35.

⁴⁰ Lieberman Decl. at ¶ 21 and Exhibit 3 thereto.

⁴¹ 47 U.S.C. § 271(d)(3)(C).

II. VERIZON-RHODE ISLAND'S PERFORMANCE ASSURANCE PLAN DOES NOT DEAL APPROPRIATELY WITH SMALL SAMPLE SIZES FOR "PARITY" MEASURES.

The Performance Assurance Plan ("PAP") approved by the RI-PUC by its order dated December 3, 2001, identifies statistical methodologies that will be used to determine whether "parity" exists (*i.e.*, whether Verizon-RI's wholesale service performance for CLECs is equivalent to the performance for Verizon itself). For performance measures for which parity is the standard and a sufficient sample size exists, Verizon-RI will use the "modified Z statistic" to perform the statistical analysis. AT&T supports this approach. However, for performance measures where parity is the standard and the sample size requirement is not met,⁴² Verizon-RI's PAP states that "[i]f the performance is worse for the CLEC than Verizon-RI, Verizon RI will use the t distribution or binomial (counted or measured) until such time as a permutation test can be run in an automated fashion."⁴³ However, it is not necessary to use the t distribution or binomial as an interim measure because Verizon is currently capable of running the permutation test in an automated fashion. It is AT&T's understanding that Verizon is currently running automated permutation tests for its wholesale operations in New York. Thus, it should also be able to do so for Rhode Island.⁴⁴ Because the automated test would produce a more accurate indication of Verizon's wholesale performance, Verizon should be required to perform the automated test as soon as is practicable.

⁴² Sample sizes less than 30 are considered "small," and trigger the use of permutation testing.

⁴³ See Verizon RI PAP, Appendix D, page 2 (the PAP is filed in this proceeding as Verizon-RI's Appendix C, Tab 1).

⁴⁴ Given the small amount of competition in Rhode Island, as well as its much smaller size, application of the permutation test is at least as essential in Rhode Island as New York.

CONCLUSION

Verizon's current UNE rates, especially its critical rates for unbundled switching, are not set according to TELRIC and do not reflect efficient forward-looking costs. Indeed, Verizon's switching rates are patently excessive, do not even comport with the RI PUC's own TELRIC rules, and will not do so for the indefinite future. Consequently, Verizon's application fails to comply with the basic requirements of Section 271 and must be denied.

Respectfully submitted,

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