Verizon Communications
1300 I Street NW, Suite 400W
Washington, DC 20005

January 9, 2002

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon-New Jersey Inc. for Authorization To Provide In-Region, InterLATA Services in State of New Jersey, Docket No. 01-347

Dear Ms. Salas:

The CCB staff requested Verizon's January 2, 2002 ex parte in CC Dkt. 01-324. A copy of that filing is enclosed. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 01-2994.

Sincerely,

Clint E. Odom

Clint E. Odom

Enclosure

cc: A. Johns
S. Pie

Verizon Communications
1300 I Street NW, Suite 400W
Washington, DC 20005

January 2, 2001

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon-New England Inc. for Authorization To Provide In-Region, InterLATA Services in State of Rhode Island, Docket No. 01-324

Dear Ms. Salas:

As per the request of the FCC staff, this letter briefly explains why the legally binding UNE rates adopted by the Rhode Island Public Utilities Commission (PUC) prior to the time that Verizon filed its long distance Application satisfy the standards applied by the Commission in the context of a section 271 application.

1. Background. The Rhode Island PUC has adopted a full suite of TELRIC-compliant rates for unbundled network elements in legally binding decisions that were adopted before Verizon filed its long distance Application on November 26, 2001.

a) The Rhode Island PUC established rates for the majority of unbundled network elements that Verizon is required to provide (those specified in this Commission's Local Competition Order) in the so-called Phase I proceeding. On April 11, 2001, the PUC adopted an order setting permanent Phase I rates (to be effective as of

that same date) to replace the interim rates that had been in effect prior to that time.[1] On May 21, 2001, Verizon made the required compliance filing reflecting the PUC's decision. At its Open Meeting on November 15, 2001, the PUC approved the rates in Verizon's compliance filing, and expressly found that the rates were "consistent with TELRIC."[2]

b) The PUC adopted rates for a small number of additional elements (those added by this Commission's UNE Remand Order) in the so-called Phase II proceeding. Verizon initially filed rates for these elements with the PUC in September of 2000.[3] On May 24, 2001, Verizon then filed revised Phase II rates in order to comply with the principles established by the PUC in its April 11th decision.[4] At its Open Meeting on November 15, 2001, the PUC approved these revised Phase II rates and expressly found these rates "TELRIC-compliant."[5] The PUC directed Verizon to make the new rates effective on February 1, 2002.[6]

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[1] See Total Element Long Run Incremental Cost - Final Rates for Verizon-Rhode Island, Order, Docket No. 2681 (RI PUC May 18, 2001) (memorializing the PUC's April 11th decision).

[2] Review of Bell Atlantic — Rhode Island TELRIC Study, Docket No. 2681, at 73 (RI PUC Nov. 18, 2001) ("November 18th TELRIC Order") (memorializing November 15th Phase I decision); see Transcript of November 15, 2001 Open Meeting of the Rhode Island PUC at 38-43 ("November 15th Open Meeting").

[3] See Cupelo/Garzillo/Anglin Decl. ¶ 32.

[4] See November 18th TELRIC Order at 73-74 & n.32.

[5] Verizon-Rhode Island's TELRIC Studies – UNE Remand, Report and Order, Docket No. 2681, at 15 (RI PUC Dec. 3, 2001) ("December 3rd TELRIC Order") (memorializing November 15th Phase II decision); see November 15th Open Meeting at 38-43.

[6] See December 3rd TELRIC Order at 23.

c) Finally, on October 5, 2001, Verizon voluntarily submitted reduced rates for unbundled local switching.[7] Although Verizon believed that its previously-filed rates complied fully with the Commission's rules, Verizon offered to reduce its rates in order to ensure that they did not become an issue in Verizon's long distance application. At its Open Meeting on November 15, 2001, the PUC approved the proposed new switching rate and found that it – like the switching rate it previously approved in the Phase I proceeding – was "TELRIC-compliant."[8] The PUC directed Verizon to make the new switching rates effective on February 1, 2002.[9]

Thus, in each instance, the Rhode Island PUC adopted rates prior to the time that Verizon filed its section 271 Application on November 26, 2001.

2. Compliance with Commission standards. The rates adopted by the Rhode Island PUC satisfy the standards applied by this Commission in the context of a section 271 proceeding for several reasons.

a) First, as explained at length in Verizon's Application and accompanying declaration, the rates at issue here were set by the PUC following an exhaustive review in which it expressly found that the rates are "TELRIC-compliant." See Verizon App. 84-89; Cupelo/Garzillo/Anglin Decl. ¶¶ 13-40; see also Report of the Rhode Island PUC, CC Docket No. 01-324, at 43 (FCC filed Dec. 17, 2001) ("The RIPUC has previously

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[7] See Verizon Rhode Island, Supplemental Checklist Declaration Att. D, Verizon Rhode Island, Section 271 of the Telecommunications Act of 1996 Compliance Filing, Docket No. 3363 (RI PUC filed Oct. 5, 2001).

[8] Unbundled Local Switching Rates Verizon – Rhode Island Section 271 Compliance Filing, Report and Order, Docket No. 3363, at 4-5 (RI PUC Nov. 28, 2001) ("November 28th TELRIC Order") (memorializing November 15th decision on switching rates); November 15th Open Meeting at 38-43.

[9] See November 28th TELRIC Order at 6.

determined that these UNEs are provided at final rates that comply with the FCC's forward-looking TELRIC methodology."). In addition, the rates set by the PUC are well within the range that this Commission itself previously has found to be TELRIC-compliant. See Verizon App. 90-93; Cupelo/Garzillo/Anglin Decl. ¶¶ 52-55; Report of the Rhode Island PUC at 44. As such, the rates clearly comply with the standards applied by this Commission in the context of a section 271 application. See, e.g., Kansas/Oklahoma Order ¶ 59 (The Commission "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.'" (quoting New York Order ¶ 244)); Arkansas/Missouri Order ¶ 55 ("Even if ... specific inputs might not be TELRIC-compliant, we conclude that SWBT's voluntarily-discounted rates are within a TELRIC-based range."); Kansas/Oklahoma Order ¶ 82-84 (If the rates in the state under review are comparable to those in a state that previously was approved, especially where the two states being compared "are adjoining states," and have comparable cost structures, the rates at issue are "entitled to a presumption of compliance with TELRIC").

b) Second, the Commission previously has held that TELRIC-compliant rates adopted in a legally binding state commission order are adequate for section 271 purposes even if those rates take effect while a section 271 application is pending before this Commission. As the Commission has explained, the reason for this is straightforward. Once legally binding UNE rates have been adopted by the state commission, "there is no uncertainty concerning the availability of these rates to

competing LECs." Kansas/Oklahoma Order ¶ 23 n.63. The situation where a BOC has a legal obligation to provide UNEs at certain rates therefore "differs from consideration of promises of future action, which may or may not actually take place." Id. ¶ 23. Likewise, the implementation of these rates is "different from implementation of measures designed to achieve nondiscriminatory performance . . . since it is often impossible to determine the actual effect of such changes on performance in advance." Id.

As described above, the rates at issue here were all adopted by the Rhode Island PUC before Verizon filed its Application. While a few of those rates will become effective during the time that the Application will be pending before the Commission, Verizon is legally obligated to comply with the PUC's orders. Accordingly, Verizon has a "concrete and specific legal obligation" to provide unbundled network elements at rates the Rhode Island PUC has deemed TELRIC-compliant, New York Order ¶ 136, and "there is no uncertainty concerning the availability of these rates to competing LECs," Kansas/Oklahoma Order ¶ 23 n.63.[10]

[10] Of course, as the Commission also has made clear, even in a different case where permanent rates had not yet been adopted for all elements at the time of a section 271 application (which they have here), the fact that interim rates continued in that case to apply to some elements (for example, the newer elements adopted in the Commission's UNE Remand Order) until the state commission adopted permanent rates would not render the application non-compliant. See, e.g., New York Order ¶ 258 ("We conclude that a BOC's application for in-region interLATA authority should not be rejected solely because permanent rates may not yet have been established for each and every element or non-recurring cost of provisioning an element."); id. ¶ 259 ("The conditioning of xDSL loops is a relatively new issue, and because new issues are constantly arising, we believe it is reasonable to allow a limited use of interim rates when reviewing a section 271 application").

c) Third, because Verizon's Phase II rates and proposed new switching rates were adopted before Verizon filed its Application, they raise no issue regarding late-filed information under the Commission's procedural rules.

As the Commission previously has explained, its procedural rules "are designed to prevent applicants from presenting part of their initial *prima facie* showing for the first time in reply comments," and by doing so to "provide an opportunity for parties . . . to comment on section 271 applications." Kansas/Oklahoma Order ¶¶ 20-21. "Thus, the rules provide that *when an applicant files new information after the comment date*, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance." Id. (emphasis added). As the Commission's own description of its rules make clear, those rules simply do not come into play here.

As explained above, although a small number of rates do not take effect until February 1, 2002, those rates were adopted by the PUC before Verizon filed its

Application and were included in the original Application itself. As a result, all interested parties will have a full and fair opportunity to comment (and have, in fact, already commented) on Verizon's rates during the course of the proceeding to review Verizon's Application. Accordingly, the situation here presents none of the same procedural issues as in previous applications where rate reductions were made *after* the time those applications were filed and the formal comment period had passed, thereby limiting the opportunity for interested parties to comment on those rates.

In Kansas, for example, SBC had adopted new UNE rates "on day 63 of the 90-day period for Commission review." Kansas/Oklahoma Order ¶ 22. Thus, the concern in that case was that the new rates were "late-filed material" that violated the Commission's procedural rules designed to give interested parties a full opportunity to comment on all aspects of a BOC's application. See id. Nonetheless, the Commission found that a waiver of its procedural rules was appropriate even under those circumstances "[g]iven that interested parties have had a meaningful opportunity to comment on these rate reductions," and because "the public interest would [not] be served in this instance by strict adherence to our procedural rules." Id. ¶ 25.

The situation here bears no resemblance to the situation in Kansas. Here, the rates at issue were adopted by the PUC *before* Verizon filed its Application, and were not changed after Verizon filed its Application. Accordingly, all interested parties in Rhode Island have had a full opportunity to comment on the PUC-adopted rates.

d) Fourth, all of the rates approved by the PUC will go into effect prior to the time that this Commission grants Verizon's section 271 Application. Under the terms of the PUC's orders, all the rates that are not already effective go into effect on February 1,

2002. The statutory deadline for this Commission to act on Verizon's application is not until February 24, 2002, ensuring that Verizon's rates will go into effect prior to the time that the Commission rules on Verizon's Application. As a result, there is no issue here that Verizon might be permitted to provide long distance service before the time that these new rates take effect. And, in the meantime, all interested parties will have had an opportunity to comment on the rates that already have been adopted by the PUC.

e) Finally, the PUC's decision to give Verizon 60 days to implement the newly adopted rates in its systems was eminently reasonable.

The Rhode Island PUC has approved Verizon's revised process for implementing rate-level changes in its billing system.[11] That process provides that Verizon will implement rate-level changes in its billing systems within 60 days of the PUC's written order, or a tariff approval, that defines the rate level change; that Verizon will issue notice of the implementation of a rate-level change to CLECs through the Change Management Process; and that, if implementation is delayed beyond 60 days, interest payments will be made by Verizon starting on the 61st day through the date of implementation on all charges paid by the CLECs in excess of the newly effective rates.[12] The 60-day window provides Verizon with a reasonable timeframe in which to evaluate the requirements of the Order, develop the requirements for system and rate-table changes, make the changes, and test the changes prior to implementation.[13] And

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[11] Rate-level changes are changes to the price of an existing rate element without change to the structure of the rate element. Introduction of a new rate element or redefinition of an existing rate element is considered a rate-structure change. Under the procedures approved by the Rhode Island PUC, Verizon will propose appropriate implementation dates for future rate-structure changes on an individual-case basis.

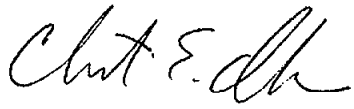
[12] See McLean/Wierzbicki Decl. ¶ 111.

[13] See id. && 111, 120-121 & Att. 14.

permitting Verizon to implement the rate changes in a rational manner is eminently reasonable.

Please feel free to call me if you would like to meet to discuss these issues in more detail. The twenty-page limit does not apply as set forth in DA 01-2746.

Sincerely,



Clint E. Odom

cc: J. Veach
J. Stanley
G. Remondino
D. Shetler