Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application of Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a 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 New Jersey	)	CC Docket No. 01-347

DECLARATION OF
ROBERT J. KIRCHBERGER,
E. CHRISTOPHER NURSE, AND
MOHAMMED K. KAMAL
ON BEHALF OF AT&T CORP.

1. My name is Robert J. Kirchberger. My business address is 295 North Maple Avenue, Basking Ridge, New Jersey. Currently, I am a Law and Government Affairs Director in AT&T's Atlantic Division.

2. I have 32 years of experience in the telecommunications industry – 10 years with New Jersey Bell and 22 years with AT&T. Over the years, I have held positions of increasing responsibility in a number of areas, including management of local repair service centers and local switching offices, development of technical and tariff support for pricing and marketing of both New Jersey Bell's and AT&T's services, and management of customized offerings. From 1995 to November, 1996, I had business management responsibility for the AT&T Atlantic Region Local Services Organization. In that capacity, I was actively involved in

the AT&T-Bell Atlantic-New Jersey negotiations for a local interconnection agreement. Over the last five years, I have led the AT&T teams in the former Bell Atlantic-South footprint participating in the industry meetings on operations support systems ("OSS") interfaces, performance standards, measures and self-executing remedies. I have led AT&T's efforts to monitor the KPMG third-party tests of Verizon's OSS throughout the former Bell Atlantic-South footprint. I received a Bachelor's Degree in Economics from Lehigh University.

3. My name is E. Christopher Nurse. I am a District Manager of Law and Government Affairs for AT&T. My business address is 3033 Chain Bridge Road, Oakton, Virginia. As part of my current responsibilities, I was a primary negotiator for AT&T in the adoption of Performance Metrics in New Jersey in Board of Public Utilities ("BPU") Docket No. TX98010010. I also have been substantially involved in issues relating to the KPMG third-party test of the OSS of Verizon New Jersey ("VNJ").

4. I assumed my current position in September 1999, and previously was Manager of Government Affairs. Prior to that time, I held the position of Manager of Regulatory and External Affairs for AT&T Local Services. Before joining AT&T, I was employed in the same capacity by Teleport Communications Group Inc. ("TCG") beginning in February 1997.[1]

5. Prior to my employment with TCG, I was a Telecommunications Analyst with the New Hampshire Public Utilities Commission from 1991 to February 1997, and was entrusted with a broad range of responsibilities. Assigned to the Engineering Department, I was the lead analyst on over 100 dockets, and a contributing analyst to nearly all telecommunications

[1] Effective July, 1998, TCG and its subsidiaries became wholly-owned subsidiaries of AT&T Corp.

dockets before that Commission. Specifically, I routinely reviewed capital budget filings, service quality reports, service restoration procedures, and operations. This included conducting Staff investigations in response to consumer and competitor complaints, primarily from competitive pay phone providers and Internet Service Providers. As Staff Advocate, I participated in reviewing a host of new service introductions, tariff filings, cost studies, and traditional rate cases concerning Independent Telephone Companies.

6. I received a Bachelor's degree in Economics from the University of Massachusetts at Amherst. I received a Masters in Business Administration from the Graduate School of Business at Southern New Hampshire University, in Manchester, New Hampshire.

7. My name is Mohammed K. Kamal. Currently, I am Manager for OSS Negotiation in AT&T's Local Network Services Organization. My business address is 32 Avenue of the Americas, New York, New York. As part of my responsibilities in my current position, I negotiate with Verizon's business team that is assigned to manage the AT&T wholesale customer account regarding OSS, including the upgrading of OSS interfaces. I am also responsible for negotiations involving, and coordination of, the billing systems required for AT&T to receive wholesale bills from VNJ. I also monitor third-party testing of Verizon's OSS in certain States where such testing is occurring.

8. Over the last three years, I have managed testing conducted by AT&T with various incumbent local exchange carriers ("ILECs") to determine whether the OSS of these ILECs can support AT&T's entry into the local exchange service market. These ILECs include Verizon-New York, Verizon-Pennsylvania, Verizon-Massachusetts, Verizon-Virginia, BellSouth-Georgia and SBC-Michigan. In that capacity, my responsibilities have included reviewing and

coordinating AT&T's implementation of all of Verizon's business rules and processes in order to enable AT&T to use effectively the pre-ordering, ordering, provisioning, billing, and maintenance and repair functions of Verizon's OSS.

9. I have approximately nine years of experience in the telecommunications industry. I have served in various capacities within AT&T, including Directory Listings Product Management of AT&T's Digital Link Local Service, Regional Marketing Management of AT&T Consumer and Small Business Services, and sales in AT&T Business Markets. I hold a Master's degree in Economics from the University of Brussels, and am currently pursuing an M.B.A. degree at St. John's University, New York. I received a Bachelor's degree in Biology from the University of Dhaka and completed a Certification Program in Telecommunications from Columbia University.

I. PURPOSE AND SUMMARY OF DECLARATION

10. The purpose of our declaration is to address whether VNJ currently provides nondiscriminatory access to its OSS, as required by the Telecommunications Act of 1996 ("the 1996 Act"), including the competitive checklist set forth in Section 271 of the Act. For the reasons described below, VNJ is not providing parity of access to its OSS, despite its claims in its Application and in the joint declaration of its OSS witnesses that it is complying with its OSS obligations.[2]

[2] *See* Application By Verizon New Jersey For Authorization To Provide In-Region, InterLATA Services In New Jersey, filed December 20, 2001, at 57-70 ("Application"); Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster ("McLean/Wierzbicki/ Webster Decl."), ¶¶ 11, 163.

11. As the Commission has repeatedly found, "nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition."[3] CLECs entering the New Jersey local exchange market on a large scale are highly dependent upon their ability to efficiently obtain local services and unbundled network elements from VNJ. That ability, in turn, depends upon the efficient exchange of information between CLECs and VNJ relating to all of the OSS functions – pre-ordering, ordering, provisioning, maintenance and repair, and billing. Without nondiscriminatory access to VNJ's OSS, large-scale, broad-based entry by CLECs into the local exchange market will be limited, delayed or foreclosed, and many consumers will be denied the benefits of competition in local telephone services – choice, new services, and lower prices.

12. For this reason, the Commission has found that denial of nondiscriminatory access to the OSS of the incumbent LECs would present "a significant potential barrier to entry."[4] As the Commission has explained:

> [I]f competing carriers are unable to perform the functions of preordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing

[3] *See Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Communications Act of 1996 to Provide In-Region, InterLATA Services in Texas.* CC Docket No. 00-65, Memorandum Opinion and Order released June 30, 2000, ¶ 92, ("*Texas 271 Order*"); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order released August 8, 1996 ("*Local Competition Order*"), ¶ 518. *See also Local Competition Order,* ¶ 522 ("We find that such operations support systems functions are essential to the ability of competitors to provide services in a fully competitive local services market").

[4] *Local Competition Order,* ¶ 516 ("the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry").

> carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition.[5]

13. The Commission has made clear that the duty to provide "nondiscriminatory access" means that the access provided to CLECs must be "the same" as,[6] "equal,"[7] or "equivalent to,"[8] the access that the Bell Operating Company ("BOC") provides to itself. In addition, consistent with "the 1996 Act's goal of promoting local exchange competition," the Commission has stated that where a BOC does not provide any analogous function or facility for itself, the BOC must provide access "under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete."[9] The "meaningful opportunity to compete" standard is not a weaker standard than the "substantially the

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[5] *Id.*, ¶ 518. *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, Second Order on Reconsideration released December 13, 1996 ("*Second Order on Reconsideration*"), ¶ 11 (reaffirming that nondiscriminatory access to OSS functions "is a critical requirement for complying with section 251," and that "incumbent LECs that do not provide access to OSS functions, in accordance with the *First Report and Order,* are not in full compliance with Section 251"); *Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina,* CC Docket No. 97-208, Memorandum Opinion and Order released December 24, 1997 ("*South Carolina 271 Order*"), ¶ 82.

[6] *See, e.g., Local Competition Order,* ¶¶ 316, 518, 523; *South Carolina 271 Order,* ¶¶ 98, 99, 104, 116, 132.

[7] *See, e.g., Local Competition Order,* ¶ 315; *Second Order on Reconsideration,* ¶ 9.

[8] *See, e.g., Second Order on Reconsideration,* ¶ 9; *South Carolina 271 Order,* ¶¶ 16, 88, 98, 102.

[9] *Local Competition Order,* ¶ 315; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in Michigan,* CC Docket No. 97-137, Memorandum Opinion and Order released August 19, 1997 ("*Michigan 271 Order*"), ¶¶ 130, 141; *South Carolina 271 Order,* ¶¶ 98, 141.

same time and manner" standard, but is "intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, nondiscriminatory."[10] The BOC must satisfy these standards for *each* of the modes of entry established by the 1996 Act – interconnection, unbundled network elements ("UNEs"), and resale – and must not favor one entry strategy over another.[11]

14. The Commission has applied a two-part test to determine whether a BOC such as VNJ meets this parity access standard. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." Second, the Commission assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[12]

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[10] *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act of 1934 To Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order released December 22, 1999 ("*New York 271 Order*"), ¶ 83 (footnotes and citations omitted).

[11] *New York 271 Order,* ¶ 85; *Michigan 271 Order,* ¶ 133.

[12] *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri,* CC Docket No. 01-194, Memorandum Opinion and Order released November 16, 2001 ("*Arkansas/Missouri 271 Order*"), App. D, ¶ 29; *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order released September 19, 2001 ("*Pennsylvania 271 Order*"), App. C, ¶ 29; *New York 271 Order,* ¶ 87 & nn. 212-213; *Michigan 271 Order,* ¶ 136.

15. The "operational readiness" prong of the Commission's two-part test requires an assessment of the commercial readiness of the OSS to handle current and reasonably foreseeable commercial volumes.[13] The Commission has repeatedly emphasized that the most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient and reliable data on commercial usage, the Commission will consider the results of testing.[14]

16. Under these standards, VNJ has not shown – and cannot show – that it is currently providing the parity of access to its OSS required by the 1996 Act. The OSS have never been exposed to significant volumes of CLEC transactions because VNJ has precluded mass-market entry through its unreasonably high rates on UNEs. Thus, the commercial usage reflected in VNJ's reported performance data is insufficient to establish that VNJ is meeting its OSS obligations.

17. KPMG's third-party testing of VNJ's OSS also fails to demonstrate that VNJ is meeting its OSS obligations. As discussed in Part II, KPMG never conducted real-world, end-to-end volume testing of the OSS. Instead, KPMG's test was limited in several critical respects which preclude its use as an indicator of the performance of the OSS in the production environment in a truly open market. Most notably, KPMG did not conduct volume testing that fully evaluated the ability of VNJ's Service Order Processor ("SOP") – which is unique to New Jersey and a critical part of the OSS – to process orders through the provisioning and billing

[13] *See, e.g., Pennsylvania 271 Order*, App. C, ¶ 31; *New York 271 Order*, ¶ 89; *South Carolina 271 Order*, ¶ 97; *Michigan 271 Order*, ¶ 138.

[14] *See, e.g., Arkansas/Missouri 271 Order*, App. D, ¶ 31; *Pennsylvania 271 Order*, App. C, ¶ 31; *New York 271 Order*, ¶ 89.

systems. Thus, the volume test that KPMG conducted did not evaluate VNJ's capabilities, on an end-to-end basis, to provision orders, provide status notices, or update billing records on a timely basis.

18. Furthermore, as discussed in Part III, actual usage of VNJ's OSS, as reflected in the performance data reported by VNJ, shows that VNJ is not providing nondiscriminatory access. For example, unreasonably high levels of CLEC orders (local service requests, or "LSRs") for UNEs are either rejected by the OSS or fall out for manual processing; VNJ fails to provide billing completion notices on a timely basis; VNJ has not provided the same degree of billing accuracy to CLECs that it provides in the retail context; and VNJ fails to provision loops on a nondiscriminatory basis. In view of this performance, VNJ cannot reasonably be found to be in compliance with the checklist.

II. THE KPMG TEST DOES NOT SHOW THAT VNJ IS PROVIDING NONDISCRIMINATORY ACCESS TO ITS OSS.

19. In addition to emphasizing that the most probative evidence that a BOC is meeting its OSS obligations is actual commercial usage, the Commission has repeatedly made clear that in the absence of sufficient and reliable commercial usage data, it will give weight to the results of third-party testing of the OSS *only* if the testing meets certain requirements:

> The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience, and independence of the third party and the conditions and scope of the review itself. If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight.[15]

[15] *Pennsylvania 271 Order*, App. C, ¶ 31 (citing *New York 271 Order*, ¶ 89). *See also, e.g., Massachusetts 271 Order*, ¶ 46; *Michigan 271 Order*, ¶ 217.

The Commission has also "emphasize[d] that third-party reviews should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to conduct business utilizing the incumbent's OSS access." *Michigan 271 Order*, ¶ 216; *see also Pennsylvania 271 Order*, ¶ 31 n.90.

20. In its Application, VNJ argues that its OSS have been "subject to 'rigorous, comprehensive third party testing' by KPMG that provides 'persuasive evidence of Verizon's OSS readiness.'" Application at 58 (quoting *Massachusetts 271 Order*, ¶¶ 44-46). That is incorrect. Although KPMG's separately tested certain components and aspects of VNJ's OSS, KPMG's test was limited in scope. Most notably, KPMG never conducted the end-to-end volume testing of the OSS that is critical to any determination of whether VNJ is meeting its OSS obligations. Even leaving aside the lack of end-to-end volume testing, KPMG's test suffered from other deficiencies that preclude its use as an indicator of whether VNJ is providing nondiscriminatory access.

A. KPMG Failed To Perform Comprehensive, End-To-End Volume Testing of VNJ's OSS At Commercially Reasonable Volumes.

21. The Commission's preference for commercial usage data in its evaluation of OSS performance is a recognition that testing results can never duplicate real-world market activity because testing, by its nature, is held in an artificial and controlled environment. Moreover, even if sufficient and reliable commercial usage data do not exist, third-party testing cannot reliably measure OSS performance unless it evaluates how VNJ's OSS performs from end to end. That is, the third-party testing must determine how the OSS performs in processing CLEC transactions on a seamless basis, beginning with submission of a pre-order query, and

continuing through submission of the order, provisioning of the order, billing of the CLEC for the services or facilities associated with the order, maintenance and repair of the service or facilities associated with the order, and reporting of VNJ's OSS performance in its monthly Carrier-to-Carrier ("C2C") reports.

22. Only through such end-to-end testing can third-party testing even begin to approximate the "real world." In actual commercial operation, the various components of the VNJ OSS (such as ordering, provisioning, and billing systems) do not exist independently of each other, but are linked together. Thus, for example, if the systems are properly integrated, the completion of an order will result in the provision of completion notices to the CLEC and updating of VNJ's billing systems on a fully integrated, fully automated basis. End-to-end testing is essential to determine whether the OSS components are integrated properly so that the OSS performs seamlessly in a manner comparable to VNJ's own retail experience.

23. Furthermore, proper end-to-end testing must include the submission of orders at the large commercial volumes that can be reasonably be expected in the production environment once VNJ fully opens its market to competition. Even if the OSS components are properly designed and integrated, the OSS will not function adequately if they lack the capacity to handle the volumes of CLEC orders and service requests that can reasonably be expected to occur with mass market-entry.

24. The need for end-to-end volume testing of the OSS is illustrated by the experience of Verizon in New York. Although KPMG conducted a third-party test of Verizon's OSS in New York, it did not conduct a full-scale, end-to-end volume test to evaluate whether the systems were scalable and capable of supporting expected volumes of commercial transactions.

Instead, KPMG conducted volume testing only through the point in the process where Verizon issued a Local Service Request Confirmation ("LRSC"), without going through the provisioning and billing processes.

25. However, at the time Verizon filed the New York 271 application, its OSS were handling large volumes of orders that were several times the order volumes which, VNJ claims, are currently submitted on VNJ's OSS. For example, during September 1999 (the month Verizon filed its New York application), CLECs in New York submitted approximately 70,000 UNE orders and 23,000 resale orders – nearly three times the volumes submitted on VNJ's OSS in October 2001.[16] Thus, despite the lack of end-to-end volume testing, the Commission had at least some basis for believing that the OSS in New York could adequately handle large volumes of orders on an end-to-end basis at the time it approved that application. Nonetheless, shortly after the Commission approved the New York application, the New York OSS hemorrhaged (in response to ever-increasing volumes of CLEC orders) and failed to return massive numbers of acknowledgments, LSRCs, rejection notices, provisioning completion notices ("PCNs") and billing completion notices ("BCNs"). This subjected end-user customers to lost and/or delayed orders, causing grave customer service problems such as service interruptions and maintenance and repair delays. As a result of its deficient performance, Verizon (then Bell Atlantic) was required by the New York Public Service Commission to provide $10 million in bill credits to

[16] *See New York 271 Order*, ¶¶ 164, 180; McLean/Wierzbicki/Webster Decl., Att. 6 (stating that in New Jersey resale volumes were approximately 23,300 orders, and UNE volumes were approximately 9,800 orders, in October 2001, whereas resale and UNE volumes in New York in October 1999 were approximately 15,300 and 80,600 orders, respectively).

affected CLECs, and made a "voluntary payment" of $3 million to the U.S. Treasury under a consent decree with this Commission.

26. In its New Jersey test, KPMG again did not conduct end-to-end volume testing of VNJ's OSS, but instead tested OSS components separately.[17] Moreover, KPMG again limited its volume testing to the point in the OSS where an LSRC or rejection notice is issued. Thus, the volume testing did not include the provisioning or billing processes of an OSS in a State where (in contrast to the OSS in New York at the time of the *New York 271 Order*) the OSS was handling only limited volumes of actual CLEC orders.[18] In addition, because most of the orders submitted during the volume test were orders designed to flow through without manual intervention, the volume test included no assessment of the ability of VNJ to manually process those orders that do not flow through. *See* KPMG Final Report at 129, 134.

27. KPMG representatives expressly acknowledged in hearings before the BPU that the scope of the volume test was limited:

> Q. And in the volume test, the orders were never actually provisioned, correct?
>
> A. Sears: That is correct.

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[17] *See, e.g.,* KPMG Consulting, "Verizon New Jersey Inc. – OSS Evaluation Project – Final Report," dated October 12, 2001 ("KPMG Final Report") (Application, Appendix C, Tab 4), at 73-410 (describing, in separate sections of report, test results for "Pre-Order/Order Domain," "Provisioning Domain," "Maintenance and Repair Domain," "Billing Domain," and "Performance Metrics Domain").

[18] *See* KPMG Final Report at 129 (in volume test, orders were submitted using VNJ's training mode, under which LSRs "are deleted from the process mode after service order generation and the process does not continue to provision"); *id.* at 134 (in volume test, "A transaction was deemed complete if one of the following was received: a pre-order response, an order confirmation (LSRLR or LSC), or an error message"); *id.* at 345 (billing evaluation "did not rely on volume testing").

Q. That was not intended to be part of the volume test, it would have been outside the scope of the test?

A. Sears: Right. The orders were run in such a way that they would not trigger down stream provisioning systems.

Q. Did they essentially stop at the service order processor?

A. King: It stopped in the service order processor.

A. Sears: I think I'll try to be as precise as possible. They stopped within the service order process areas at the point where a local service confirmation was issued.

Q. And that was the only notifier that went out? In other words, the BCN or PCN was not a purpose of the volume test and it was never part of it, right?

A. Sears: I'll answer the question in two parts. We actually received two notifiers. We received what I believe are nine-nine-sevens which are acknowledgements and then we receive local service confirmation. But no – in the volume test was not intended to test at volume provisioning or billing completion notifiers.

Q. And it wasn't intended to look at anything that didn't – an order that didn't flow through whether it was manually worked correctly or not, that also was not part of the volume test.?

A. Sears: This was a volume test. This particular table refers to a volume test of the EDI interface, not a manual process in volume test.[19]

28. In short, because the volume test ended with the delivery of the LSRC, the test necessarily failed to examine whether, when exposed to large order volumes, VNJ's critical provisioning and billing systems performed adequately and in a timely manner. Furthermore, KPMG made no evaluation of VNJ's ability to handle manual processing of non-flow-through orders for sufficiency, accuracy, or promptness at commercial volumes. Thus, the volume test

[19] Transcript of November 16, 2001 hearing before New Jersey Board of Public Utilities in BPU Docket No. TO-001090541, at 1006-1008 (Application, Appendix B, Tab 9).

provides no assurance that the VNJ's OSS will provide CLECs with the same level of service that it provides to its own retail customers.

29. The failure of KPMG's test plan to include the performance of an end-to-end test, using reasonably forecasted commercial volumes, is critical because the Service Order Processor in VNJ's OSS is unique to New Jersey, and is not used in any other State in Verizon's region. Although VNJ asserts that the interfaces and gateways in New Jersey are the same as those in its other service areas, VNJ itself concedes that the New Jersey SOP (otherwise know as MISOS), "only serves New Jersey" and "is distinct in New Jersey." McLean/Wierzbicki/Webster Decl., ¶¶ 19, 60. As a result, the SOP in New Jersey "handles orders only for that one state." Application at 58.

30. VNJ's SOP is a critically important part of VNJ's OSS. VNJ itself describes the SOP as "the underlying OSS." McLean/Webster/Wierzbicki Decl., ¶ 52. KPMG described the SOP as "the system that controls the flow of service orders." KPMG Final Report at 173. In fact, SOP can fairly be called the "hub" of the ordering, provisioning, and billing processes.

31. First, when an LSR is submitted by a CLEC, SOP performs edits that the LSR must pass before an LSRC will be issued – and before the LSR will be routed to subsequent VNJ provisioning systems. *See id.*, ¶ 63. If the LSR fails the edits, it will fall out for manual processing by a VNJ representative, who must then re-enter the order into SOP before it will be confirmed and provisioned.

32. Second, once an LSR passes the edits in the SOP, the SOP routes the LSR to its Service Order Analysis and Control System ("SOAC") for analysis and distribution to the

appropriate downstream provisioning systems. *See* KPMG Final Report at 174; McLean/Wierzbicki/Webster Decl., ¶ 93. As VNJ states, provisioning is "a complex process requiring that multiple tasks be coordinated and completed before the service requested can be turned over to the customer." McLean/Wierzbicki/Webster Decl., ¶ 92.

33. Third, SOP plays an essential role in the distribution of provisioning completion notices and billing completion notices to CLECs. After VNJ has provisioned an order that requires physical work, the SOP is advised by VNJ's Workforce Administration System ("WFA") that the order has been completed. If the order requires no physical work, the SOP is automatically updated by the WFA during overnight processing. Once it is advised (or updated) by WFA, the SOP notifies VNJ's gateway system to send a PCN to the CLEC. In addition, once it is notified that the provisioning has been completed, the SOP routes the completed service order to VNJ's billing systems for updating. Once the billing systems are updated, they notify the SOP, which then instructs the gateway systems to send a BCN to the CLEC. *See id.*, ¶ 85 & Att. 13; *Massachusetts 271 Order*, ¶ 83. Thus, absent proper operation of the SOP, CLECs will not receive completion notices even if the LSR actually has been provisioned and the billing systems actually have been updated.

34. Fourth, the SOP is intended to serve as a source of information for CLECs on the status of LSRs. According to VNJ, once a CLEC has submitted an LSR, it can check the status of that LSR in the SOP by using VNJ's pre-ordering interfaces. McLean/Wierzbicki/Webster Decl., ¶¶ 25-26, 79, 82.

35. In short, the Service Order Processor is the "hub" of the OSS. The SOP receives and edits the LSR; routes the LSR to VNJ's downstream provisioning systems; receives

the completed service order after provisioning and transmits completion information to the gateway and billing systems; receives billing updating information from the billing systems; and instructs the gateway systems to issue completion notices. Without proper operation of the SOP, the order may not be provisioned properly, status notices may not be issued, and/or VNJ's billing systems may not be updated in a timely and accurate manner.

36. Given the importance and numerous functions of SOP – and its uniqueness to New Jersey – the scope of KPMG's volume testing was plainly deficient. Although VNJ asserts that KPMG "successfully volume-tested" the VNJ SOP, that assertion is highly misleading. *See id.*, ¶¶ 19, 60. As previously stated, KPMG volume-tested the SOP – at most – only through the point in the OSS where an LSRC is issued. The KPMG volume test did not examine the SOP's performance in the provisioning process – which VNJ describes as "complex" – including the provisioning of completion notices and status information. Nor did the KPMG volume test examine the SOP's performance in conjunction with VNJ's billing systems.

37. In light of the failure of KPMG's test plan to include the performance of an end-to-end volume test of the OSS, the "clean bill of health" that KPMG has given to the OSS can be given no weight, since the "piecemeal" approach taken by KPMG does not reflect the real-world operation of the OSS.[20] Indeed, as discussed below in Part III, VNJ's own reported

[20] Thus, KPMG's use of a 95 percent performance standard at each step in the OSS process, and its finding that the VNJ OSS demonstrated compliance with this standard, is entitled to no weight, because it cannot be assumed from KPMG's "piecemeal" approach that the total system performance – on an end-to-end basis – satisfies this standard. Moreover, KPMG did not apply the 95 percent standard in all circumstances. Instead, it relaxed the 95 percent benchmark standard with a "p-value," effectively lowering the standard to 92 or 93 percent. Such treatment was inappropriate, given the forgiveness incorporated into the 5 percent leeway that produced the 95 percent benchmark in the first instance. The p-value was applied asymmetrically, so as only to

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performance data show that, in actual commercial production of the OSS, VNJ is denying CLECs parity of access in numerous respects. For example, an unreasonably high rate of UNE orders are rejected or fall out for manual processing; VNJ fails to return completion notices in a timely manner; and VNJ's rate of billing accuracy is lower for CLECs than for its own retail operations.[21]

38. That KPMG found *none* of these deficiencies in its testing simply confirms that its test alone was inadequate to make a reliable evaluation of the performance of the OSS. Significantly, several of the deficiencies discussed in Part III could well be due, either in whole or in part, to improper operation of the SOP. For example, improper operation of the SOP's editing function could cause an order improperly to fall out for manual processing or rejection by VNJ.[22]

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help VNJ convert otherwise failing scores into passing scores. It was not applied to determine whether, in those instances where VNJ barely met the 95 percent standard, its actual performance failed to meet the benchmark. Finally, even in some instances where VNJ's performance fell far short of the standard, KPMG excused the performance by reasoning that there was no harm to CLECs. For example, in its functional evaluation of the pre-ordering and ordering systems, KPMG found that VNJ met the standard for timely return of provisioning completion notices only 83.62 percent of the time. Although it described these results as "statistical failures," KPMG nonetheless found the test criteria "satisfied" because "there are other means by which the CLECs are able to determine order completion and timeliness experienced does not present a material business impact." *See* KPMG Final Report at 111, 123.

[21] The reported data may mask other areas of poor performance, since the data showing adequate performance by VNJ are clearly inaccurate and unreliable. *See* Bloss/Nurse Declaration. For example, according to the data previously reported by VNJ, VNJ has generally satisfied two metrics related to provisioning – PR-6-01 (% Installation Troubles Reported Within 30 Days) and PR-6-03 (% Installation Troubles Reported Within 30 Days, FOK/TOK/CPE) — and affecting special services. However, on December 17, 2001, VNJ acknowledged that that it failed to include data from five of the six area codes for these metrics – further evidence that VNJ's reported data are inaccurate, incomplete, and unreliable. *See* Bloss/Nurse Declaration.

[22] *See* McLean/Wierzbicki/Webster Decl., ¶¶ 63-64, 73 (stating that when order fails to pass edits, including edits in SOP, order is either manually processed or "queried back" to CLEC for
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Billing completion notices can be delayed, or not sent at all, if the SOP fails to instruct the gateway systems that the billing system have been updated.

B. The KPMG Testing Suffered from Other Deficiencies That Preclude Its Use As Evidence That VNJ Is Providing Nondiscriminatory Access To Its OSS.

39. In addition to its failure to include end-to-end volume testing, KPMG's test suffered from other deficiencies that preclude any reliance on the testing results as proof that VNJ is in compliance with its OSS obligations.[23] The test was neither sufficiently broad in scope nor blind, as the Commission has required.

1. The KPMG Test Was Insufficiently Broad in Scope.

40. Even leaving aside its failure to assess the performance of the OSS on an end-to-end basis using commercially reasonable volumes of CLEC transactions, the KPMG test was limited in its scope. KPMG did not test certain areas for which little or no commercial data are available to evaluate VNJ's compliance with its OSS obligations. These areas include: (1) line splitting orders; (2) electronic billing; and (3) the accuracy of the performance data that VNJ has reported. The first two of these areas are discussed below. The failure of KPMG to evaluate the

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additional or corrected information).

[23] KPMG's final report itself recognizes that it does not constitute a determination or analysis concerning VNJ's compliance with its statutory obligation of nondiscriminatory access. Instead, the report notes that this determination will be made by the appropriate regulatory bodies. For example, the report expresses KPMG's expectation "that the NJ BPU will review this report in forming its own assessment of Verizon NJ's compliance with the requirements of the [1996] Act." KPMG Final Report at 16. Moreover, the report states that the test "was not intended to be exhaustive because it is neither feasible nor desirable to test all possible permutations and combinations of all features and functions across all offered products." *Id.* at 20.

accuracy of VNJ's reported performance data is discussed in the Joint Declaration of Messrs. Bloss and Nurse.

41. **Line Splitting.** The Commission made clear in its *Line Sharing Reconsideration Order* that incumbent LECs, such as VNJ, must provide CLECs with the ability to engage in line splitting arrangements, under which a CLEC can provide both voice and data service on the same loop (whether by itself or in partnership with another LEC).[24] The Commission has stated that line sharing will "further speed the deployment of competition in the advanced services market," and increase consumer choice, "by making it possible for carriers to compete effectively with the combined voice and data services that are already available from incumbent LECs and through line sharing arrangements." *Line Sharing Reconsideration Order*, ¶ 23.

42. Under the *Line Sharing Reconsideration Order*, the obligation of an ILEC with respect to line splitting includes the obligation to provide "nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements." *Line Sharing Reconsideration Order*, ¶ 20. Yet, although the *Line Sharing Reconsideration Order* was issued during the pendency of KPMG's test of VNJ's OSS, KPMG's Master Test Plan ("MTP") did not include a test of whether VNJ had met

[24] *See Deployment of Wireless Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, released January 19, 2001, ¶ 18 ("*Line Sharing Reconsideration Order*").

this obligation. Thus, the Commission has no independent analysis or data to evaluate VNJ's provision of line splitting.

43. KPMG's MTP failed to include a test of VNJ's OSS functions for line splitting even though, while the test was being conducted, VNJ offered a process for ordering line splitting. That process requires the CLEC to submit two separate LSRs, at different times. Under this process, a CLEC must instruct the customer to contact its Internet Service Provider to have its DSL service disconnected. The ISP must then instruct the DLEC to cancel the service, who in turn submits a disconnect order to Verizon. When it is verified that the DSL service has been disconnected (and that VNJ has updated its billing records), the CLEC submits an LSR to migrate the customer for voice service. Once the order to migrate the voice service has been completed and Verizon's billing records have been updated, the CLEC submits a second LSR to add the line splitting arrangement to the customer's service.

44. This two-LSR process is both burdensome and discriminatory. Because the process requires completion of the first LSR before the second LSR can be submitted, provisioning of the DSL service is delayed by several days or even weeks. Moreover, the process requires submission of multiple orders (and resulting in multiple OSS order charges by VNJ, which assesses a charge for each order submitted). VNJ's retail operations, by contrast, can request both voice and data service for a customer on a single order. VNJ can therefore provide voice and data service to a retail customer both simultaneously and expeditiously.[25] Since the

[25] The two-order process is unreasonable and discriminatory in other respects. The need to submit two LSRs increases a CLEC's costs not only because of the additional time required to submit a second LSR, but also because the CLEC must pay an OSS charge to VNJ to submit the additional LSR. Furthermore, to the extent that the LSRs are not designed to flow through, the LSRs must be manually processed, with the accompanying risk of error. Because the applicable

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MTP did not include the testing of this key service, KPMG's Final Report made no reference to this process, or to line splitting.

45. Because line splitting testing was outside the scope of the test that KPMG conducted, there is no evidence from which it could reasonably be concluded that VNJ has met its line splitting obligations under the *Line Sharing Reconsideration Order.* VNJ has not offered sufficient data to show that it meets its obligations in New Jersey with respect to line splitting as required. For example, VNJ claims that it has implemented additional OSS capabilities for line splitting, including the ability for CLECs to add line splitting to a UNE platform arrangement or to migrate from a line sharing arrangement to a line splitting arrangement using a single LSR. *See* Application at 40. However, VNJ acknowledges that it implemented these capabilities in New Jersey only on October 20, 2001 (after KPMG issued its Final Report), and that it received only 34 LSRs for line splitting under this new process from the entire former Bell Atlantic footprint through November 2001. None of these LSRs were submitted from New Jersey. *Id.* at 41.[26]

46. This "single-LSR" process, however, will allow only the most basic line splitting orders to be processed: (1) addition of line splitting arrangements to an existing UNE-P customer; (2) removal of the line splitting portion of a customer's service; (3) suspend and restore

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benchmark for order accuracy in New Jersey is 95 percent – effectively allowing VNJ a 5 percent error rate per LSR – the two-LSR system effectively allows VNJ to double its permissible error rate for a line splitting transaction when both LSRs do not flow through.

[26] VNJ suggests that the effectiveness of its new "OSS capabilities" for line sharing were demonstrated in a "trial" or "pilot" program that it conducted in New York in June 2001. *See* Application at 41. Even if successful, however, the New York "trial" is no indication of whether the new capabilities would perform adequately in New Jersey, where VNJ uses a service order processor different from that in New York.

capabilities for a line splitting arrangement; (4) change of a telephone number on a line splitting arrangement; and (5) move of a line splitting arrangement. This process will not apply, for example, when a customer who currently takes both voice and DSL service from VNJ but wishes to take both services from a CLEC, or when a customer who has not previously taken voice or data from any LEC in New Jersey wishes to take both services from a CLEC. In those situations, CLECs will still be required to use the discriminatory "two-LSR" process that preexisted the new functionality.

47. The "two-LSR" process puts CLECs such as AT&T at a significant competitive disadvantage. For example, customers who currently take voice and DSL service from VNJ constitute a significant part of the customer base that AT&T intends to "target" for its offering of combined voice and DSL service. Yet the two-LSR process, by delaying installation of the DSL service for days (or even weeks) after installation of voice service, will make the migration more expensive, difficult, and error-prone – and make it more difficult for AT&T to convince end-users to migrate from VNJ. This is particularly harmful to a CLEC because many consumers interested in DSL service have already taken such service from VNJ or another data provider — and attracting customers who have merely expressed interest in DSL, but have not previously purchased it, is a difficult task.

48. Because there has been no commercial usage and no third-party (or other) test of VNJ's OSS for line splitting, the Commission cannot find that VNJ is providing nondiscriminatory access to its OSS.

49. **Electronic Billing.** As the Commission has recognized, "Inaccurate or untimely wholesale bills can impede a competitive CLEC's ability to compete in many ways."

Pennsylvania 271Order, ¶ 23. Where VNJ fails to provide timely and accurate wholesale bills, a CLEC is forced to expend considerable resources auditing, evaluating and correcting inaccuracies. This is particularly true in the case of paper wholesale bills, which are virtually impossible for CLECs to audit because they typically consist of dozens of boxes of paper. Electronic bills are preferred to paper bills by any CLEC serving significant volumes of customers, because electronic bills can be audited within a reasonable time and at reasonable expense. VNJ itself recognizes that fact, since it has long offered electronic bills to its large retail customers.

50. VNJ implemented electronic billing for CLECs in New Jersey in April 2001, using version 35 of the CABS Billing Output Specification Bill Data Tape (sometimes referred to as the CABS BOS BDT bill). *See* McLean/Wierzbicki/Webster Decl., ¶ 114. Until August 29, 2001, however, CLECs could receive only paper wholesale bills as the "bill of record" – which VNJ defines as "the official bill to the CLEC for payment of amounts due and for submitting claims for disputed amounts." McLean/Wierzbicki/Webster Decl., ¶ 113. In other words, not until August 29 did VNJ consider its electronic bill sufficient to serve as a usable version of its wholesale bill.

51. Although VNJ implemented electronic billing while KPMG was conducting its third-party test, KPMG was directed by the BPU Staff not to expand the scope of the MTP to include testing of the timeliness or accuracy of the electronic bill. Instead, KPMG evaluated only VNJ's wholesale paper bill. *See* Application at 68; McLean/Wierzbicki/Webster Decl., ¶ 113. Even this testing was of little value, since the test bed was handled by VNJ. Moreover, to test the paper bills, KPMG set up brand new, pristine accounts that had been "scrubbed" to eliminate any prior account history. This practice does not simulate the real competitive world, because

customers migrating to a CLEC from VNJ have a prior account history with VNJ. If that prior account history is inconsistent with VNJ's billing systems, the CLEC's ability to bill the customer may be affected (for example, the billing completion notice may be delayed). Thus, KPMG's testing failed to reflect the real-world experience of CLECs. Even leaving these deficiencies aside, KPMG's test of paper billing involved only 400 to 500 account lines – a potentially insufficient volume to enable KPMG to reach any meaningful conclusions regarding the adequacy and completeness of the paper bills. Finally, KPMG's Master Test Plan did not include testing of the adequacy of the performance of VNJ in handling billing disputes.

52. KPMG concluded its test on August 24, 2001. Only on August 29, after that test had concluded, did VNJ advise CLECs that they could use the CABS BOS BDT bill as their bill of record. *See* McLean/Wierzbicki/Webster Decl., Att. 15. The timing of VNJ's announcement raises serious questions as to whether VNJ delayed its announcement to preclude any testing of its CABS BOS BDT bill by KPMG absent further directive by the BPU. Indeed, even though WorldCom filed a request with the BPU on September 6, 2001, that KPMG be directed to test the CABS BOS BDT bill, the BPU took no action on the request.

53. VNJ contends that the "attestation review" of BOS-BDT bills conducted by PriceWaterhouseCoopers ("PWC") "confirms that these bills are accurate." Application at 69. This is incorrect. As PWC has acknowledged, the PWC analysis did not evaluate the accuracy of