

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WRITER'S DIRECT DIAL:
WRITER'S E-MAIL ADDRESS:

February 1, 2002

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20544

**REDACTED -
For Public Inspection**

Re: Application by 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 01-347

Dear Ms. Salas:

This is the cover letter for the Reply Comments for the Application by Verizon New Jersey 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 New Jersey ("Reply Comments").

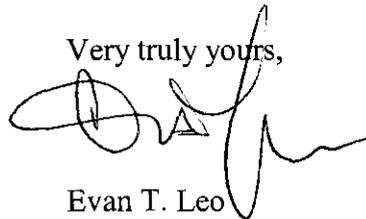
These Reply Comments contain confidential information. We are filing confidential and redacted versions of the Reply Comments.

1. The Reply Comments consist of (a) a stand-alone document entitled "Reply Comments by Verizon New Jersey," and (b) one Reply Appendix containing supporting material.

2. Specifically, we are herewith submitting for filing:
 - a. One original of only the portions of the Reply Comments that contain confidential information;
 - b. One original of the redacted Reply Comments;
 - c. Two copies of the redacted Reply Comments; and
 - d. One CD-ROM containing the redacted Reply Comments.
3. We are also tendering to you certain copies of this letter and of portions of the Reply Comments for date-stamping purposes. Please date-stamp and return these materials.
4. Under separate cover, we are submitting copies (redacted as appropriate) of the Reply Comments to Ms. Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20544. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the New Jersey Board of Public Utilities, and to Qualex (the Commission's copy contractor).

Thank you for your assistance in this matter. If you have any questions, please call me at 202-326-7930 or Steven McPherson at 703-351-3083.

Very truly yours,

A handwritten signature in black ink, appearing to read "Evan T. Leo". The signature is fluid and cursive, with a large initial "E" and "L".

Evan T. Leo

Encs.

Before the
Federal Communications Commission
Washington, D.C. 20554

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)
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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

REPLY COMMENTS OF VERIZON NEW JERSEY

Evan T. Leo
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

Michael E. Glover
Karen Zacharia
Leslie V. Owsley
Donna M. Epps
Joseph DiBella
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3860

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, N.W.
Suite 365
Washington, D.C. 20005
(202) 589-0120

Bruce D. Cohen
A. Ayo Sanderson
Verizon New Jersey Inc.
540 Broad Street
Second Floor
Newark, New Jersey 07101
(973) 649-2656

February 1, 2002

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Catherine T. Webster
(Operations Support Systems)

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Marilyn C. DeVito
(Performance Measurements)

Tab D – Reply Declaration of Patrick A. Garzillo and Marsha S. Prosini
(Pricing)

INTRODUCTION AND SUMMARY

Based on its “thorough and comprehensive investigation” that “focused on every aspect of Verizon NJ’s wholesale operations and service to CLECs” and that included a “comprehensive review of Verizon NJ’s OSS,” the New Jersey Board of Public Utilities (“BPU”) has concluded that “Verizon NJ is meeting its legal obligation to provide each of the 14 checklist items.” BPU Report at 87. Based on that same exhaustive review, the BPU also concludes that “the New Jersey local telephone markets are fully and irreversibly open to competition.” *Id.* The BPU therefore recommends that “the FCC approve Verizon NJ’s Section 271 application to offer in-region, long distance telephone service in New Jersey.” *Id.* And the Department of Justice (“DOJ”) likewise “recommends approval.”

These conclusions are obviously correct because Verizon has taken the same extensive steps to open its local markets in New Jersey as it has taken in other Verizon states where the Commission has found that Verizon satisfies all the requirements of the Telecommunications Act of 1996 (“1996 Act” or “Act”). For example, Verizon uses substantially the same processes and procedures to provide the various checklist items in New Jersey as it uses in New York, Massachusetts, Pennsylvania, and Connecticut. Moreover, competing carriers in New Jersey are actually using the various checklist items in large commercial volumes to enter the local market in New Jersey through all three entry paths available under the Act. And Verizon’s performance in providing access to the checklist items has been, and continues to be, excellent across the board.

The comments in this proceeding do not seriously dispute any aspect of this showing. Indeed, there are virtually no complaints about Verizon’s actual performance in providing access to the various checklist items. The DOJ states, for example, that “there

have been few complaints regarding Verizon’s New Jersey OSS,” and that it finds no other evidence to suggest that there are checklist-related obstacles to competition. DOJ Eval. at 5, 6. The comments instead focus overwhelmingly on one issue — the wholesale rates adopted by the BPU. The facts here, however, show that the rates established by the BPU easily satisfy the requirements of the Act.

As the BPU explains, it recently “has established TELRIC-compliant rates for UNEs” that are “the lowest rates in the Verizon region and among the lowest in the country.” BPU Report at 24. These rates were the product of an exhaustive 18-month pricing proceeding in which the BPU determined it adhered to TELRIC principles. In fact, none of the commenters here disputes that the key inputs adopted by the BPU are consistent with what this Commission has found TELRIC-compliant in prior section 271 orders. Under well-settled precedent, the BPU’s determinations are entitled to great deference in the context of a section 271 proceeding, and, applying that standard here, the New Jersey rates must be upheld.

Unable seriously to challenge any of the core rates in New Jersey, the commenters attempt to shift the focus instead onto a single rate, the nonrecurring charge for performing a hot cut. But this rate also is clearly TELRIC-compliant, as the BPU found. At the urging of the very same competitors who complain about Verizon’s nonrecurring hot-cut rate here, Verizon adopted extensive procedures to ensure that it provides hot cuts on time and with minimal service disruption. Having implemented these costly procedures, Verizon’s hot-cut performance is now superb, and it is too late for competitors to claim they do not wish to pay for the steps that were instituted at their behest to ensure this high-quality performance. In addition, when the nonrecurring hot-

cut rate is amortized and considered together with the recurring rate for a loop — which this Commission has recognized is appropriate — the combined rate in New Jersey is *lower* than the combined rates that were in effect when the Commission approved the New York and Massachusetts applications, and is comparable to the combined rate that was in place when the Commission approved the Pennsylvania application.

Contrary to the claims of the long distance incumbents, the public interest standard does not require an analysis of whether the New Jersey rates permit competitors to earn a gross profit margin they deem adequate. Rather, the Act itself precludes the possibility of a so-called “price squeeze” by allowing CLECs to resell services at an avoided-cost discount. This ensures that CLECs have an opportunity to enter and compete even where retail rates are near or below cost. Moreover, the evidence here demonstrates that the gross margin available to competitors in New Jersey is substantial. For example, according to the only CLEC that conducted a gross margin analysis here — WorldCom — the statewide average gross profit margin for residential customers is at the same level (30 percent) that this Commission previously stated is sufficient “to allow for profitable entry.” And this is all the more true given that, as the New Jersey BPU has concluded, WorldCom’s analysis understates the true revenue opportunities available to competitors in New Jersey. For example, the BPU found that the gross margin available for serving a residential customer through a platform in New Jersey was approximately 46 percent, and that this figure was “probably *under-stated*.”

Apart from their pricing-related claims, the commenters raise a handful of issues that do not come close to demonstrating that Verizon’s Application should be denied. The vast majority of the CLECs’ claims here merely rehash arguments that both this

Commission and the BPU have already rejected. For the most part, the CLECs seek either to modify Verizon's checklist offerings in ways that go beyond the requirements of the Act, raise issues that the Commission repeatedly has held should be addressed in other proceedings, or complain about isolated instances of performance under measurements on which the Commission has placed little or no weight in the past. These claims, particularly when viewed in the context of Verizon's overall performance, in no way suggest that Verizon's performance has been discriminatory.

The same is true with respect to claims that there somehow is not enough local competition for residential customers in New Jersey. As the BPU has found, Verizon "has provided evidence that a number of carriers in New Jersey serve large numbers of business customers through facilities-based service, and the fact that they do not also provide facilities-based service to residential customers is a business Decision on their part." Id. at 8. And claims about the levels of residential competition are particularly ironic coming from the very carriers who together serve literally hundreds of thousands of business customers in the state but who consciously have chosen not to enter the residential market.

Moreover, while one competing carrier — AT&T — complains about Verizon's Incentive Plan in New Jersey, the simple fact is that this Plan was adopted by the BPU and places an unlimited amount of bill credits at risk annually. The BPU accordingly has found that the Plan "ensures that Verizon will treat CLECs and their customers as well as it treats itself and its own customers." Id. at 2.

Finally, there is no serious dispute that Verizon's entry into the long distance business in its 271-approved states has produced literally hundreds of millions of dollars

of benefits for consumers in the form of increased local and long distance competition.

And, as the New Jersey BPU and numerous consumer groups have urged, consumers in New Jersey are now entitled to the same benefits.

For all these reasons, the Commission should grant this Application.

ARGUMENT

Verizon demonstrated in its Application that it is providing access to each of the 14 checklist items using substantially the same processes and procedures that it uses in Pennsylvania, Massachusetts, New York, and Connecticut, where the Commission found that Verizon satisfied the Act in all respects. Verizon also demonstrated that its systems in New Jersey are in place, operational, and handling large commercial volumes. And Verizon showed that its performance in New Jersey has been excellent across the board. The New Jersey BPU has confirmed all of this, verifying that, subject to a few minor conditions to which it already has agreed, Verizon “is meeting its legal obligation to provide each of the 14 checklist items.” BPU Report at 1.

The BPU’s conclusion is based on a “thorough and comprehensive investigation” that is entitled to maximum deference under this Commission’s well-settled precedent. *Id.* at 1, 3, 87.¹ The BPU’s evaluation “focused on every aspect of Verizon NJ’s wholesale operations and service to CLECs” and was designed “to ensure strict and full compliance with each of the 14-point checklist items.” BPU Report at 3. The BPU “examined Verizon NJ’s [compliance] filing, received comments in response, supervised an extensive discovery process, held two days of extensive technical discussions with

¹ See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 51 (1999) (“New York Order”) (“Given the 90-day statutory deadline to reach a decision on a section 271 application . . . where the state has conducted an exhaustive and rigorous investigation into the BOC’s compliance with the checklist, we may give evidence submitted by the state substantial weight.”); Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 4 (2000) (“Texas Order”) (according state commission decision “substantial weight based on the totality of its efforts and the extent of expertise it has developed on section 271 issues”).

KPMG and seven days of hearings, and then received and reviewed extensive briefs and reply briefs from the parties.” Id. The BPU supervised “a comprehensive review of Verizon NJ’s operations support systems . . . by a third-party evaluator, KPMG Consulting,” and it “adopted the New Jersey Carrier-to-Carrier Guidelines which provide a comprehensive set of performance measurements, standards and reports applicable to wholesale service provided by Verizon NJ.” Id. at 1. At the conclusion of this exhaustive investigation, the BPU prepared a report providing “detailed analysis supporting Verizon NJ’s section 271 checklist compliance based on the totality of evidence presented in the Board’s 271 proceeding.” Id. This report concludes that Verizon “has met its obligations under the Act” and “recommends that the FCC grant Verizon NJ section 271 authority.” Id. at 2.

The DOJ likewise concludes that “Verizon has succeeded in opening its local markets in New Jersey to competition in most respects.” DOJ Eval. at 2. The DOJ finds that “thorough, independent testing of virtually all aspects of [Verizon’s] OSS in New Jersey demonstrated them to be highly satisfactory”; that “there have been few complaints regarding Verizon’s New Jersey OSS”; that there are no “material non-price obstacles to competition in New Jersey”; and that the BPU’s “recurring rates appear to be generally within the broad range of TELRIC.” Id. at 5-7. Accordingly, “[s]ubject to the Commission satisfying itself” as to a single rate — the nonrecurring charge for performing a hot cut — the DOJ “recommends approval of Verizon’s application for Section 271 authority in New Jersey.” Id. at 2.²

² The DOJ performs no independent analysis with respect to this single rate, stating instead that it will “rely upon the Commission for its ultimate determination of

As demonstrated below, the conclusions of the New Jersey BPU and the DOJ are obviously correct, and Verizon's Application should be granted.

I. VERIZON SATISFIES THE REQUIREMENTS OF TRACK A.

Verizon demonstrated in its Application that, both individually and collectively, competitors in New Jersey are providing service predominantly over their own facilities to both business and residential subscribers, and that Track A is therefore met. See Application at 6-10. In particular, Verizon demonstrated that, as of October 2001, competitors in New Jersey were serving approximately 564,000 lines, more than half of which were provided either wholly or partially over facilities they deployed themselves (including in all cases their own local switches). See id. at 1; see also DOJ Eval. at 4-5 (“CLECs serve approximately 12.4 percent of all business lines using primarily their own fiber optic networks that are either connected directly to the customer premises or connected through loops leased from Verizon.”). Verizon also demonstrated that, as of October, there were at least four carriers — Broadview, eLEC, Network Plus, and MetTel — providing facilities-based service to *residential* customers in New Jersey. None of these four carriers disputes these facts, nor does any other CLEC.³

Moreover, the two most recent months of data show that competitors in New Jersey are continuing to add facilities-based lines to serve both business and residential

whether the prices supporting this application are appropriately cost-based.” DOJ Eval. at 8 (quoting DOJ Missouri I Eval. at 1).

³ See Sprint Communications Co. v. FCC, 274 F.3d 549, 562 (D.C. Cir. 2001) (upholding the Commission's finding that Track A was met based on SBC's estimate of the number of residential customers served by Ionex, given that Ionex “was itself a party to the proceeding, sturdily resisting SBC's application and presumably fully aware of its residential service” that “the public SBC Reply put [Ionex] on notice that SBC was using Ionex's service to satisfy Track A,” and that Ionex “uttered not a peep in protest, correction or qualification.”).

customers. For example, in November and December 2001: competitors added more than 21,000 facilities-based lines in New Jersey (an increase of more than 6 percent); one competitor that serves residential customers over facilities it deployed itself more than doubled the number of residential lines it is serving over those facilities; and in November alone CLECs added more than 200 new residential platform lines.⁴

The only commenter to take issue with Verizon's Track A showing is the New Jersey Division of the Ratepayer Advocate ("RPA"). The RPA first claims (at 18-19) that the number of facilities-based residential customers being served in New Jersey is *de minimis*. As support for this claim, the RPA claims that, at the time Verizon filed applications in some of its other 271-approved states, competitors in those states served a higher percentage of residential customers on a facilities basis than they do in New Jersey. As the Commission has held, however, there is no requirement under Track A "that a new entrant serve a specific market share . . . to be considered a 'competing provider.'" Michigan Order ¶ 77.⁵ Indeed, both "the Senate and House each rejected language that would have imposed such a requirement." Id.; see also Massachusetts Order ¶ 235.⁶ In any event, as Verizon demonstrated in its Application, the total number

⁴ See Ex Parte Letter from Clint Odom, Verizon, to Magalie Salas, FCC, Docket No. 01-347 (Jan. 29, 2002).

⁵ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997) ("Michigan Order").

⁶ Application of Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) ("Massachusetts Order").

of facilities-based residential lines in New Jersey is comparable to what the Commission found acceptable in Kansas, a determination that the D.C. Circuit recently upheld.⁷

The RPA next claims that Verizon “fails to provide any evidence that the alleged facilities-based residential lines are provided by competitors on a commercial basis.” RPA at 19-20; see Selwyn Decl. ¶ 12 (claiming that Verizon “has provided no bills or other evidence that the 850 or so residential lines it ascribes to facilities-based CLECs are being provided by those CLECs for a fee”) (emphasis removed).⁸ This is untrue. For each of the individual Track A carriers on which Verizon relies, it provided information from public sources — including quotes from the companies themselves — indicating that they were in fact providing service in New Jersey on a commercial basis. See Application at 8-10; Taylor Decl. Att. 1 ¶¶ 23-27. Neither the RPA nor any other party rebuts Verizon’s showing, or provides any other evidence suggesting that the qualifying Track A carriers here are not in fact providing service on a commercial basis in New Jersey.

⁷ See Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶ 41 (2001) (“Kansas/Oklahoma Order”) (finding that Sprint satisfied the requirements of Track A); Brief of the Federal Communications Commission at 41, Sprint Communications Co. v. FCC, No. 01-1076 (D.C. Cir. filed June 14, 2001) (explaining that the “FCC’s conclusion that Sprint qualifies as a competing provider of residential service under Track A” was based on the fact that, by the time SBC filed its application, “Sprint was ‘actively marketing’ its facilities-based residential service in Kansas, and had already billed 56 of its 184 residential customers there”); Sprint, 274 F.3d at 562 (upholding FCC’s finding that Track A was satisfied); Application at 11-12.

⁸ The RPA also complains (at 17-18) that Verizon’s Application relies on more facilities-based residential competition (and different individual carriers) than Verizon’s filing at the state level. That is hardly surprising. The state filing relied on data as of July 2001, whereas this Application relies on data as of October 2001.

On the contrary, the RPA relies instead on the conjecture of its own hired witness (a frequent witness for the long distance incumbents), who states merely that the number of facilities-based residential customers in New Jersey “is consistent with the provision by some CLECs of residential service without charge to their employees and/or to users on a trial basis.” Selwyn Decl. ¶ 12. As an initial matter, this simply does not seem plausible given the number of lines and carriers involved.⁹ And it is all the more implausible given that none of the relevant carriers has disputed that they offer service on a commercial basis in New Jersey. See Sprint, 274 F.3d at 562.

Finally, Verizon demonstrated in its Application that the CLECs providing facilities-based residential service in New Jersey also serve thousands of business customers, which demonstrates beyond serious dispute that they have “actually entered the market.” Oklahoma Order ¶ 17 (for purposes of Track A, a CLEC becomes a “competing provider” if it moves “beyond the testing phase” and has “actually [entered] the market.”).¹⁰ And the qualifying Track A carriers here continue to add new customers

⁹ For example, Broadview is based in New York, has only 950 employees nationwide, and its office in New Jersey represents a small fraction of that. See New Paradigm Resources Group, CLEC Report 2002, Ch. 6 – Broadview Networks at 1 (15th ed.) (“CLEC Report 2002”); Late News, Crain’s N.Y. Bus. (Oct. 23, 2000) at 1 (“Broadview is opening an office in Newark, where it will employ 50 people.”). Network Plus and eLEC have even fewer employees than Broadview, and appear to have a smaller New Jersey presence as well. See, e.g., eLEC Communications, Corp., Form 10-K at 11 (SEC filed March 1, 2001) (eLEC employs 140 full-time and 200 part-time employees, which support the companies’ operations in 15 states); Susan Biagi, Hale of A Company, Telephony (Dec. 4, 2000) (Network Plus has 920 employees split among 14 offices).

¹⁰ Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997) (“Oklahoma Order”).

— including residential customers — which is consistent with the fact that they are in fact offering service on a commercial basis.

II. VERIZON SATISFIES THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.

Verizon demonstrated in its Application that its performance in providing access to the various checklist items has been excellent, and this continues to be the case. For example, in November and December 2001 — the two most recent months for which data are available — Verizon provided on time for competing carriers more than 99 percent of their interconnection trunks, more than 99 percent of their network element platforms, more than 97 percent of their stand-alone voice-grade loops, more than 98 percent of their hot-cut loops, and approximately 100 percent of their unbundled DSL-capable loops. See Lacouture/Ruesterholz Reply Decl. ¶¶ 5, 12, 25, 62, 68.

Several commenters nonetheless take issue with certain limited aspects of Verizon’s checklist compliance. For the most part, the comments simply rehash claims made during the state proceedings or in previous section 271 proceedings before this Commission. Both the BPU and this Commission have rejected these arguments in the past, and the comments fail to provide any sound reason for taking a different approach here.

A. Interconnection.

The New Jersey BPU concluded that Verizon “provides equal-in-quality interconnection on terms and conditions that are just and reasonable in accordance with the requirements of section 251(c)(2) and 252(d)(1), as specified in section 271.” BPU Report at 18. According to the BPU, Verizon “demonstrates that it designs its interconnection facilities to meet ‘the same technical criteria and service standards’ that

are used for the interoffice trunks within its own network”; Verizon “has provided reasonable installation intervals to CLECs for the establishment of local interconnection trunks, and has installed these trunks in intervals that are comparable to the intervals provided to interexchange carriers,” Verizon has “provided CLECs with high quality facilities with a low incidence of troubles, and it has dealt promptly with any troubles that have arisen”; and Verizon “provides interconnection at all technically feasible points.”

Id.

The BPU’s conclusions reflect the fact that Verizon has provisioned a massive number of interconnection trunks, and its performance has been excellent. As of October 2001, Verizon had provided CLECs with nearly 320,000 interconnection trunks in New Jersey, which equals about two-thirds of the total number of trunks in Verizon’s entire interoffice network. See Application at 20. On average, these trunks carry approximately 1.9 billion minutes of traffic per month, and no CLEC claims that it has experienced blockage on its trunks. Nor does any party take issue with any part of Verizon’s performance in providing interconnection trunks to CLECs, which is excellent. For example, in November and December, Verizon completed 99.9 and 100 percent of CLECs’ interconnection trunk orders on time, respectively, and there was only one installation trouble report on the trunks provided in November and virtually none in December. See Lacouture/Ruesterholz Reply Decl. ¶ 62.

Cablevision and a few other CLECs nonetheless allege that Verizon requires them to establish multiple points of interconnection within each LATA. See Cablevision at 6-7; AT&T at 30; Cavalier at 5-7. This is the very same claim that was made in the course of the Pennsylvania section 271 proceedings, where the Commission found that

“Verizon’s policies do not represent a violation of our existing rules.” Pennsylvania Order ¶ 100.¹¹ Because Verizon’s policies in New Jersey are the same as those in Pennsylvania, see Lacouture/Ruesterholz Decl. ¶ 33, the Commission’s conclusion applies with equal force here. Moreover, the Commission has held that the issue here — the “allocation of financial responsibility for interconnection facilities” — is currently pending in an ongoing rulemaking proceeding, see Pennsylvania Order ¶ 100, which is the more appropriate forum to address such claims.

B. Unbundled Network Elements.

The New Jersey BPU found that Verizon provides access to unbundled loops, unbundled local transport, unbundled local switching, and network element combinations in a timely and nondiscriminatory manner, and that Verizon’s performance on each of these items fully satisfies the checklist. See BPU Report at 24 (combinations), 48 (loops), 53 (transport), 56 (switching). CLECs raise very few challenges to these findings.¹²

Voice-Grade Loops. The BPU concludes that Verizon “provides unbundled local loops in accordance with Checklist Item 4 and the FCC rules.” BPU Report at 48. The BPU also “notes that the parties that commented on this checklist item have failed to

¹¹ Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) (“Pennsylvania Order”).

¹² Without citing any legal authority, Cablevision (at 14-15) complains that Verizon provides UNEs only through interconnection agreements, not tariffs. But neither the Act nor the Commission’s rules require Verizon to provide access to the various checklist items through a tariff, rather than through interconnection agreements. To the contrary, the Commission has stated that a BOC may satisfy the Act by demonstrating that it “has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.” New York Order ¶ 52; see also Michigan Order ¶ 113.

raise any significant issues related to the voice grade loops that comprise the overwhelming majority of loops ordered by CLECs and provisioned by Verizon NJ.” Id. The same is true here.

AT&T is the only commenter even to mention Verizon’s performance in providing voice-grade loops. AT&T devotes a scant three sentences in its brief to its sweeping claim that Verizon’s performance is discriminatory, which is proof enough that AT&T’s claim has no substance. See AT&T at 23; see also Kirchberger/Nurse/Kamal Decl. ¶¶ 113-114. Moreover, AT&T relies on Verizon’s performance under only two measurements for the small subset of voice-grade loops provided through non-dispatch hot cuts — average interval offered and average interval completed. See id. But as Verizon previously has explained, these and other average interval measurements are flawed and have been eliminated by the New York PSC from the Carrier-to-Carrier Performance Reports. See Lacouture/Ruesterholz Decl. ¶ 82; See Lacouture/Ruesterholz Reply Decl. ¶ 14. Moreover, these measurements rely on a parity comparison, which the Commission has recognized is illusory in the context of hot cuts “[b]ecause there is no retail analogue for a hot cut.” New York Order ¶ 292; see also Pennsylvania Order ¶ 86 n.298 (noting that a hot cut has “no comparable retail product”). And the retail comparison group used in New Jersey is particularly inappropriate because it includes orders that have a shorter due date than hot cuts provided to CLECs. See Lacouture/Ruesterholz Reply Decl. ¶ 14. In any event, from August through October, Verizon completed hot cuts within five hours of the standard six-day interval for orders of one to ten loops in New Jersey. See Application at 28 n.29; Lacouture/Ruesterholz Decl. ¶ 15. On November 18, 2001, Verizon reduced the standard interval to five days,

and Verizon's performance in December was less than half a day longer than this new interval. See Lacouture/Ruesterholz Reply Decl. ¶ 15. Furthermore, given that Verizon's overall performance in providing access to voice-grade loops is excellent, see id. ¶¶ 5-10, its performance under these two measurements in no way supports a finding that its performance here is discriminatory.¹³

DSL Loops. AT&T also is the only commenter to complain about Verizon's performance in providing access to DSL-capable loops, again devoting just a few sentences to this claim, and again relying only on the two measurements discussed above. For all the reasons just noted, however, this claim is without merit. Moreover, as Verizon demonstrated in its Application, its performance in providing access to unbundled DSL-capable loops has been excellent under all the measurements on which the Commission *has* relied in the past. See Application at 29-34; Lacouture/Ruesterholz Reply Decl. ¶¶ 25-26, 30-34. With respect to the average interval completed measurement, while the Commission need not and should not rely on this measurement given that the New York PSC and CLECs have agreed to eliminate it, Verizon installed CLEC DSL loop orders in an average of 5.67 days from August through October, which is less than the six-day standard interval for orders of one to ten loops and better than what the Commission

¹³ See BPU Report at 48 (“when Verizon NJ’s performance for all loops is considered, including its performance on voice grade loops, hot cuts, xDSL-capable loops, digital loops, EELs and high capacity loops, Verizon NJ provides satisfactory service.”); id. at 49 (“allegations regarding Verizon NJ’s performance on some UNE provisioning measures does not demonstrate noncompliance with this checklist item when the record is reviewed in its entirety”); New York Order ¶ 278 (“[A]nalysis of this checklist item cannot focus on [Verizon’s] performance with respect to any single metric or any single type of loop,” but rather should be based on a “comprehensive picture of whether [Verizon] is providing unbundled local loops in accordance with the requirements of checklist item 4.”); AT&T Corp. v. FCC, 220 F.3d 607, 624 (D.C. Cir. 2000) (affirming determination that the checklist focus is on “overall provisioning of loops, as opposed to mandating pass-fail analysis with respect to” a single category).

previously has found acceptable. See Application at 32 n.34; Massachusetts Order ¶ 139 & n.434 (finding acceptable average completion interval for CLECs that was “one and one-half days longer than the standard six-day interval.”). And in November and December, Verizon completed DSL loop orders equally as fast — within 5.72 days and 5.57 days, respectively. See Lacouture/Ruesterholz Reply Decl. ¶ 26.

Two-Wire Digital Loops. Only one commenter — NAS — complains (at 1-5) about Verizon’s performance in providing two-wire digital loops, which make up a very small portion of the loops that Verizon provides in New Jersey. See id. ¶ 37. But NAS’s claims relate exclusively to Verizon’s reported performance results with respect to NAS, and do support a claim that Verizon’s performance for CLECs as a whole is somehow discriminatory. In fact, Verizon’s performance for providing two-wire digital loops to CLECs as a whole is strong, especially considering that volumes are low. See id. ¶¶ 37-38, 44, 46. For example, from August through December 2001, Verizon’s missed installation appointment rate on two-wire digital loops where a dispatch was required was 4.67 percent, as compared to 8.88 percent for the retail comparison group. See id. ¶ 38. Moreover, while NAS complains that its I-code rate is too high, this appears to be NAS’s own fault as demonstrated by the fact that the I-code rate for the other CLEC that orders two-wire digital loops in New Jersey is much lower. See id. ¶¶ 41-42, 45. And while NAS complains about Verizon’s performance under the measurements that track missed installation appointments *caused by either NAS or its customers*, and I-codes reported by NAS where no trouble is found, these measurements quite obviously are not relevant to Verizon’s performance. See id. ¶¶ 39, 43.

High-Capacity Loops. Only one CLEC — XO — complains about Verizon’s provision of high-capacity loops, rehashing the same claims that it made during the state proceedings and during the Pennsylvania 271 proceedings, which both the BPU and this Commission have squarely rejected. See BPU Report at 49 (“as to issues raised by XO regarding High Capacity Loops . . . the Board finds that Verizon NJ meets its unbundling obligation by providing high capacity loops where facilities are available”); Pennsylvania Order ¶¶ 91-92. For example, XO complains (at 15-16) that Verizon requires it to order a special access circuit where no facilities are available to complete a competitor’s order for high-capacity loops, but the Commission previously found that this same policy does not “warrant a finding of checklist non-compliance.” Pennsylvania Order ¶ 92.

UNE Combinations. There also is only one CLEC — ATX — that complains about Verizon’s provision of UNE combinations, and it likewise merely restates the arguments it made during the course of the state proceeding and which the BPU has rejected. In particular, ATX complains (at 12-20) that Verizon has only recently begun offering certain capabilities and features in connection with UNE platforms (such as Centrex, remote call forwarding, and analog PBX trunks). But as the BPU found, “what is important is that these requests are now being met.” BPU Report at 24; see also Lacouture/Ruesterholz Reply Decl. ¶ 74; McLean/Wierzbicki/Webster Reply Decl. ¶ 15; Application at 46 n.47. Moreover, while ATX argues (at 17-19) that there is not yet enough commercial usage data to determine whether Verizon will be able to provision these capabilities, the simple fact is that Verizon’s performance in providing platforms as a whole has been excellent across the board. See Application at 47. There is no basis to assume that Verizon’s performance will be any different for the small subset of platform

orders that include the features ATX has requested. Finally, with respect to ATX's complaint (at 20-22) that Verizon fails to provide certain capabilities to enable ATX more easily to convert certain resold services to platforms, Verizon already has, as the BPU notes, "made these capabilities and features generally available for commercial . . . orders." BPU Report at 24; see Lacouture/Ruesterholz Reply Decl. ¶ 74.

Dark Fiber. Verizon demonstrated in its Application that it has historically provided dark fiber in New Jersey in substantially the same manner as in Pennsylvania and Connecticut, where the Commission found that Verizon satisfies the checklist. See Pennsylvania Order ¶¶ 109-113; Connecticut Order ¶¶ 49-54;¹⁴ Application at 46. Moreover, Verizon stated that, pursuant to a recent BPU order, Verizon is required to expand its dark fiber offerings in New Jersey in ways that go beyond what the Act even requires. See Application at 46; Lacouture/Ruesterholz Decl. ¶ 206. The BPU accordingly found that Verizon "complies with the requirements and standards" for providing dark fiber, and that the BPU's "recent action in the UNE proceeding addresses the issues regarding unbundled dark fiber terms and conditions raised by ConEd and CTC." BPU Report at 53. No party — including CTC and ConEd — disputes any of this.¹⁵

¹⁴ Application of Verizon New York Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order, 16 FCC Rcd 14147 (2001) ("Connecticut Order").

¹⁵ CTC argues (at 14) that the Commission should not rely on its findings in the Connecticut Order because of the limited number of orders for dark fiber in that state. But the fact that there were low volumes of dark fiber in Connecticut is not relevant to the terms and conditions of that offering, but rather — if anything — only to Verizon's ability to provide that offering in large volumes. As CTC challenges only the terms and conditions of Verizon's offering — not its ability to provision that offering in a timely manner — the Connecticut Order is not only relevant, but dispositive.

Rather, ConEd and CTC concede as they must that the BPU already has required Verizon to modify its dark-fiber offering in ways that fully address their concerns. See ConEd/CTC at 14-15. And to the extent that ConEd and CTC want to change the Commission’s rules, this request is more appropriately addressed in other forums. For example, the Commission recently initiated a Triennial Review of its unbundling rules, which is intended “to comprehensively consider the appropriate changes, if any, to our unbundling approach,” rather than “decid[ing] these issues piecemeal.” UNE Triennial Review NPRM ¶ 2.¹⁶

C. Directory Listings.

The BPU has found that Verizon “has met the requirements” associated with the provision of white pages directory listing. BPU Report at 64. As in the state proceeding, only one CLEC — XO — takes issue with Verizon’s provision of this checklist item. As the BPU found, however, “[w]hile XO has raised allegations concerning this checklist item, XO failed to provide any compelling evidence to support its contention. XO did not offer a single example of a white page listing error to support its contention. For this reason, the Board rejects XO’s allegations.” Id. XO continues to repeat its claims (at 9-13) that Verizon’s process for providing directory listings can result in errors in the listings of CLEC customers, but again offers no evidence that this has actually occurred. This is hardly surprising. Verizon’s processes for ensuring that the directory listings of CLEC customers are accurate, reliable, and nondiscriminatory, are substantially the same as those used in its 271-approved states. See Application at 51. Moreover, as the BPU

¹⁶ Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, CC Docket No. 01-338, et al., FCC 01-361 (rel. Dec. 20, 2001) (“UNE Triennial Review NPRM”).