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February 8, 2002

Ex Parte

Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

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

Dear Commissioner Abernathy:

As a follow up to the meeting between representatives of Verizon and your office, the attached white paper addresses the claim that, in light of the New York Public Service Commission's recent decision to adopt new rates for unbundled network elements in New York, the Federal Communications Commission must either require Verizon to adopt those same rates in Rhode Island or reject Verizon's pending application for section 271 authority in that state.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Clint E. Odom".

Clint E. Odom

cc: Matthew Brill
Dorothy Attwood
Rich Lerner
Tamara Preiss
Deena Shetler
Julie Veach
Jonathan Stanley
G. Remondino

THE NEW YORK PSC'S DECISION TO ADOPT NEW RATES IN NEW YORK DOES NOT AFFECT VERIZON'S CHECKLIST COMPLIANCE IN RHODE ISLAND

This paper responds to AT&T's claim that, in light of the New York PSC's recent decision to adopt new UNE rates in New York, the Commission must either require Verizon to adopt those same rates in Rhode Island or reject Verizon's pending Application for section 271 authority in that state.

Background. The principal dispute in Rhode Island involves the unbundled local switching rates that were adopted by the Rhode Island PUC and that are now in effect. These rates were adopted following extensive proceedings – in the context of both a lengthy TELRIC pricing proceeding and the state section 271 proceeding – and have been found TELRIC-compliant by the PUC.

The Rhode Island PUC initially adopted rates for unbundled local switching in 1999 as part of the Phase I pricing proceeding that it had initiated in November 1997.¹ That proceeding involved a “comprehensive investigation of the cost studies filed” by Verizon and other parties “in order to thoroughly examine their compliance with the FCC's TELRIC methodology.”² The rates that were adopted were supported by the Rhode Island Division of Public Utilities and Carriers, an independent arm of the state government.³ Significantly, as the PUC has explained, the rates adopted by the PUC in the Phase I proceeding did not face “any meaningful opposition.”⁴ The key input assumptions underlying the rates – including a 9.5 percent cost of

¹ See Application at 85-86; Cupelo/Garzillo/Anglin Decl. ¶ 15.

² Review of Bell Atlantic – Rhode Island TELRIC Study, Docket No. 2681, at 4 (RI PUC Nov. 18, 2001) (“November 18, 2001 Order”).

³ See Cupelo/Garzillo/Anglin Decl. ¶ 24.

⁴ Total Element Long Run Incremental Cost Interim Rates for Bell Atlantic – Rhode Island, Docket No. 2681, Order at 2 (RI PUC Sept. 23, 1999); Cupelo/Garzillo/Anglin Decl. ¶ 24.

capital, FCC-approved depreciation lives, and fill factors – are entirely consistent with what this Commission has found TELRIC-compliant in the past.⁵ At the conclusion of this proceeding, the Rhode Island PUC found that the rates it established were “consistent with the FCC’s TELRIC methodology” as “supported by substantial evidence in the record of this proceeding.”⁶ And just as these rates faced no meaningful opposition before the PUC, no party subsequently challenged those rates in federal district court under the procedures prescribed by the Act.⁷

Notwithstanding the PUC’s determination that the unbundled local switching rates it adopted in the Phase I proceeding were TELRIC-compliant, during the course of the state section 271 proceeding in Rhode Island these rates were further reduced.⁸ In particular, the rates were reduced to bring them into line with the new generation of cost studies that Verizon had recently completed for use in ongoing pricing proceedings in Massachusetts.⁹ The cost studies supporting these new rates were provided to the Rhode Island PUC as part of the record in the section 271 proceeding, and the Rhode Island PUC gave CLECs an opportunity to comment on these new rates. AT&T, for example, “availed itself of this opportunity, and provided its critique and supporting evidence in writing,” including “[a]mong other things . . . a copy of the sworn testimony filed in the Massachusetts UNE rate case by the switch cost expert sponsored by AT&T and WorldCom.”¹⁰ The Rhode Island PUC, “[b]ased upon the evidence presented,”

⁵ See Cupelo/Garzillo/Anglin Reply Decl. ¶¶ 6-8; Massachusetts Order ¶ 38 n.95; Pennsylvania Order ¶ 57; Kansas/Oklahoma Order ¶¶ 79-80.

⁶ November 18, 2001 Order at 5, 74; see Cupelo/Garzillo/Anglin Decl. ¶¶ 41-50.

⁷ See 47 U.S.C. § 252(e)(6).

⁸ See Cupelo/Garzillo/Anglin Decl. ¶¶ 37-38 & Att. 1.

⁹ See id. ¶ 38; Unbundled Local Switching Rates Verizon – Rhode Island’s Section 271 Compliance Filing, Report and Order, Docket No. 3363, at 2 (RI PUC Nov. 28, 2001) (“November 28, 2001 Order”).

¹⁰ AT&T Comments at 7.

approved the new switching usage rates and found that they were “TELRIC compliant.”¹¹ The new unbundled switching rates adopted by the PUC in the section 271 proceeding resulted in a substantial reduction both compared to the rates established by the PUC in the Phase I proceeding and compared to the switching rates then in effect in other states such as New York.¹²

AT&T now claims that the local switching rates adopted by the Rhode Island PUC are invalid because of an intervening decision of the New York PSC adopting switching rates that are lower than those in Rhode Island. That decision was released on January 28th, two months after Verizon filed its Rhode Island Application, and will not take effect until February 28th (after the 90-day review period for Verizon’s current Application has expired).¹³ In fact, it is not yet even clear what the new rates in New York will be, as the decision does not specify new rates but instead requires Verizon to make a compliance filing that the PSC and interested parties will then review. Moreover, the PSC’s order did not find that the previously approved New York rates (which are still in effect) failed to comply with TELRIC.¹⁴ On the contrary, while AT&T and others had urged the PSC to find that the previously approved rates were not TELRIC-compliant, the PSC expressly declined to do so.¹⁵ In contrast, the PSC, this Commission, and the D.C. Circuit have all previously concluded that those rates *were* TELRIC-compliant, and that

¹¹ November 28, 2001 Order at 4-5.

¹² See Cupelo/Garzillo/Anglin Decl. ¶ 54.

¹³ Order on Unbundled Network Element Rates, Case No. 98-C-1357, Proceeding on Motion of the Commission to Examine New York Telephone Company’s Rates for Unbundled Network Elements, at 162 (NY PSC Jan. 28, 2002) (“New York PSC Order”).

¹⁴ See id. at 47.

¹⁵ See id.

those rates are within the range that a reasonable application of TELRIC would produce.¹⁶ The PSC's decision does not upset these prior determinations, but instead adopts new rates that are at (or below) the low end of the broad range of what TELRIC permits, and that are significantly lower than the rates in each of the states that have received section 271 authority, and virtually all other states as well.

Legal Issues. AT&T has argued that, in light of the New York PSC's decision, Verizon's Application should be rejected unless the New York unbundled local switching rates are adopted in Rhode Island.¹⁷ This claim is without merit.

a) As a threshold matter, AT&T's claims are factually flawed. AT&T argues that the Rhode Island rates should be reduced because those rates were based solely on the old New York rates, and are not supported by *any* independent analysis of the Rhode Island PUC. This is not true.

As explained above, the Rhode Island local switching rates are not based on the New York rates at all. Rather, the Rhode Island rates are based on a new generation of TELRIC cost studies that were performed initially for ongoing rate proceedings in other New England states, that were filed with the Rhode Island commission in the context of the state 271 review, and that AT&T itself commented on in the course of those proceedings. And contrary to AT&T's claims, the rates that are now in effect in Rhode Island are significantly *lower* than the New York rates that were previously approved by this Commission and the D.C. Circuit as being both TELRIC-compliant and within the range that a reasonable application of TELRIC would produce. The

¹⁶ See Massachusetts Order ¶ 31 (noting that the old New York rates were "found to be TELRIC-compliant by the New York Commission in an extensive rate-making proceeding, and by this Commission in the Bell Atlantic New York Order, as affirmed by the D.C. Circuit").

¹⁷ See Ex Parte Letter from Robert W. Quinn, Jr., AT&T, to William F. Caton, FCC, CC Docket No. 01-324 (Feb. 1, 2002) ("AT&T Ex Parte Letter").

switching usage rate in Rhode Island is \$0.002563 per terminating minute and \$0.002921 per originating minute, respectively. The comparable rate that previously was approved in New York is \$0.003150 per minute.

Moreover, the Commission has made clear that TELRIC is capable of producing a wide range of rates and there is no single “correct” rate that must be adopted everywhere. Rather, the “use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC may vary from state to state.”¹⁸ And the Rhode Island rate is hardly an outlier compared to the switching rates that have been adopted by other state commissions (and this Commission) following exhaustive TELRIC proceedings. For example, the local switching rates recently adopted in New Jersey based on an exhaustive TELRIC review by the New Jersey commission are \$0.002508 per terminating minute and \$0.002773 per originating minute, respectively, which are closely comparable to the Rhode Island rates. Likewise, this Commission’s own range of proxy rates that it established for use by state commissions until they set their own TELRIC rates included switching rates of between \$0.002 and \$0.004 per minute.¹⁹ And this Commission has consistently approved state-set rates that fall within this range. For example, the Commission approved rates of \$.002217 in Oklahoma and of \$.003150 in New York as falling within the TELRIC range.²⁰ And while the New York PSC has since chosen a lower rate, it did not conclude that the previously approved rates were not TELRIC

¹⁸ Michigan Order ¶ 291.

¹⁹ See Local Competition Order ¶ 815.

²⁰ Even those states that have set local switching rates at a somewhat lower point within the TELRIC range such as Pennsylvania (at \$0.001615 per terminating minute and \$0.001802 per originating minute, respectively) have established unbundled switching rates that are higher than the newly adopted New York rates.

compliant and no authority has concluded that the previously approved rates are outside the TELRIC range.

Given all of this, the local switching rates in Rhode Island pass muster under the deferential standard the Commission has applied – and the D.C. Circuit has upheld – in the context of a section 271 proceeding. As the Commission and the court have acknowledged, “enormous flexibility is built into TELRIC” and the Act gives states “wide latitude” on how to implement these “methodological principles.”²¹ The Commission has held that its own role under the Act is merely to examine whether rates fall within the broad parameters of the “reasonable range of TELRIC prices.”²² The Commission may not “adjust rates to conform with TELRIC,” and therefore will “not conduct a *de novo* review of a state[’s] pricing determinations” in the context of a section 271 proceeding.²³ Rather, the Commission will “place great weight” on the determination of the state commission, and examine “only if ‘basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.’”²⁴

Here, there is no question that the Rhode Island PUC adhered to basic TELRIC principles. It set rates initially for unbundled elements based on a comprehensive TELRIC analysis – one that used a forward-looking cost standard that adopted inputs consistent with those

²¹ AT&T Corp. v. FCC, 220 F.3d 607, 616 (D.C. Cir. 2000); Sprint Communications Co. v. FCC, 274 F.3d 549, 556 (D.C. Cir. 2001); New York Order ¶ 238; see id. ¶ 244 (“while TELRIC consists of ‘methodological principles’ for setting prices, states retain flexibility to consider ‘local technological, environmental, regulatory, and economic conditions.’”) (quoting Local Competition Order ¶ 114).

²² Kansas/Oklahoma Order ¶ 55.

²³ AT&T, 220 F.3d at 615; Kansas/Oklahoma Order ¶ 59.

²⁴ New York Order ¶ 238; Kansas/Oklahoma Order ¶ 59.

the Commission has endorsed previously – and reduced those rates further when a new generation of cost studies became available. Nor is there any real question that the resulting rates fall within the broad range that TELRIC could produce. On the contrary, the rates not only are directly comparable to those adopted by other respected state commissions based upon an exhaustive TELRIC review, but they are even lower than rates that previously have been found to fall within the TELRIC range (and that have never been found by any authority not to fall within the TELRIC range).

b) AT&T also is wrong to the extent it suggests that this Commission, rather than the Rhode Island PUC, is the appropriate entity to consider what impact, if any, the New York PSC's decision should have in Rhode Island.

Under section 252(c)(2), it is the “State commission” that “shall . . . establish . . . rates for interconnection, services, or network elements.” The Supreme Court has endorsed this view: it has held that, although this Commission may establish standards setting forth a pricing methodology, “[i]t is the States that will *apply* those standards and implement that methodology, determining the concrete result in particular circumstances.”²⁵ Nor will the Commission assume a more comprehensive price-setting role in reviewing section 271 applications. The section 271 checklist requires the Commission to evaluate only whether prices are “in accordance with the requirements of [section] 252(d)(1)” 47 U.S.C. § 271(c)(2)(B)(i), (ii).

The Rhode Island PUC already has announced that it will soon be commencing a new pricing proceeding, and is therefore already in position to evaluate whether the decision of its sister commission in New York has any relevance to the rates the PUC ultimately seeks to adopt in Rhode Island. In its November 18, 2001 Order, the PUC initiated this new proceeding by

²⁵ AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721, 732 (1999) (emphasis added).

requiring Verizon to “file new rates . . . based on fresh TELRIC cost studies” by May 1, 2002 at the latest.²⁶ To the extent that the switching usage rates in Rhode Island should be modified, that proceeding – not this one – is the forum in which it should be done. Thus, as in prior section 271 orders, the Commission may take comfort in the fact that the Rhode Island rates already are under review.²⁷ That proceeding before the Rhode Island PUC also is the appropriate forum in which to consider AT&T’s claim that the underlying next-generation cost study on which the currently effective rates are based employed the wrong inputs – arguments that repeat claims made by AT&T in the state proceeding and that, as we have explained elsewhere, are wrong in any event.²⁸ And allowing the Rhode Island PUC to make this determination is all the more

²⁶ November 18, 2001 Order at 76.

²⁷ See, e.g., Massachusetts Order ¶¶ 30, 33, 35-36 (noting in connection with rejecting complaints about Verizon’s existing rates that the Massachusetts DTE had opened a proceeding to establish new rates); Pennsylvania Order ¶ 69 (noting in connection with rejecting complaints about Verizon’s existing rates that the Pennsylvania PUC had opened a proceeding to establish new rates).

²⁸ AT&T focuses on two principal inputs. First, AT&T claims that the study assumed the wrong mix of new and growth switches, and asserts that it should have used solely the discounts available on new switches. But the Commission and the D.C. Circuit have acknowledged that a mix of new and growth switches is appropriate under TELRIC. See, e.g., New York Order ¶¶ 243-246; Massachusetts Order ¶ 33; Kansas/Oklahoma Order ¶ 77; AT&T Corp. v. FCC, 220 F.3d at 617-18. The Commission has made this determination for good reason. As it explained to the D.C. Circuit, “vendors have an incentive to sell new switches to telephone companies in the expectation that telephone companies . . . will then become reliant on that vendor’s technology to update the switch,” but “in an ideal world where vendors can’t lock telephone companies into their products” there would not necessarily be a discount between new switches and growth additions. Oral Argument Transcript at 33-35, AT&T Corp. v. FCC, Nos. 99-1538 & 99-1540 (D.C. Cir. argued Apr. 24, 2000). Consistent with this, the cost studies provided to the Rhode Island PUC calculate the actual per-line costs that switching vendors charge for a mix of new switches and growth additions. And in a hypothetical world where vendors did not benefit from a lock-in effect, it is that per-line cost that the vendors would seek to replicate regardless of whether a carrier purchased new switches or growth additions.

Second, AT&T claims the cost study used the wrong cost of capital because it used the average cost of capital for S&P 400 companies. This cost of capital therefore reflects the cost of capital used in a competitive market, which both the Commission and AT&T have acknowledged is an appropriate standard. See, e.g., Transcript at 3202, Testimony of Terry

appropriate given that it has already required Verizon to modify its cost studies in ways that, as even AT&T concedes, comply fully with TELRIC principles.²⁹

Moreover, to the extent there is any remaining concern about the local switching rates that will apply in the interim while this new pricing proceeding is underway, that concern can readily be addressed by simply making the Rhode Island rates interim and subject to true up to any new rate that the Rhode Island PUC may determine is appropriate. The Commission has stated that it would rely on such an approach where “1) the interim solution to a particular rate dispute is reasonable under the circumstances; 2) the state commission has demonstrated its commitment to our pricing rules; and 3) provision is made for refunds or true-ups once permanent rates are set.”³⁰ Each of these factors is readily met here.

First, the interim solution is reasonable under the circumstances here. As demonstrated above, the Rhode Island local switching rates already are significantly lower than the previously approved New York rates that this Commission found TELRIC-compliant and which no authority has found not to be TELRIC-compliant. Moreover, the Rhode Island rates are within

Murray, AT&T, Virginia Arbitration Proceeding, CC Docket Nos. 00-218, 00-249, 00-251 (FCC Oct. 23, 2001) (“all the model assumptions [under TELRIC] have to be consistent. So, to the degree that it requires a competitive market to get all of the other assumptions, that would be true for the cost of capital as well.”); Reply Brief for Petitioners United States and the Federal Communications Commission at 12 n.8, Verizon Communications, Inc. v. FCC, Nos. 00-511 et al. (filed July 23, 2001) (“an appropriate cost of capital determination takes into account not only existing competitive risks . . . but also risks associated with the regulatory regime to which a firm is subject.”). If anything, that cost of capital is understated because it does not take into account the added risk (that other S&P 400 companies do not face) inherent in being subject to a regulatorily mandated unbundling requirement and a hypothetical TELRIC pricing standard.

²⁹ For example, the PUC has established the cost of capital at 9.5 percent in this new proceeding, which is lower than this Commission has found TELRIC-compliant in prior section 271 orders. See Massachusetts Order ¶ 38 n.95; Pennsylvania Order ¶ 57; Cupelo/Garzillo/Anglin Reply Decl. ¶ 6.

³⁰ Missouri/Arkansas Order ¶ 64; see also Kansas/Oklahoma Order ¶ 238 (same); Texas Order ¶ 88 (same).

the same broad range of reasonableness as the rates in other states the Commission has found TELRIC-compliant, and are within the range established by the FCC's own proxy rates.

The procedural context here also makes it reasonable to rely on interim rates. The New York PSC's decision was issued two months after Verizon filed its Application, thereby denying Verizon the opportunity to address the consequences of that decision, if any, in the Rhode Island proceedings before filing its Application. Indeed, any consideration of that decision in this proceeding is at best questionable to begin with, given the Commission's well-settled precedent of requiring a Bell company "to demonstrate that it is currently in compliance with the rules *in effect on the date of filing*," but of not requiring the Bell company "to demonstrate that it complies with rules that become effective during the pendency of its application."³¹ Whatever impact a decision by another state commission may have on deliberations in Rhode Island (where it obviously does not directly apply), that decision did not exist at the time Verizon filed its Application (and even today is not in effect) and consideration of that decision could therefore be barred under the Commission's procedural rules. As the D.C. Circuit has held, "rates may often need adjustment to reflect newly discovered information If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change."³²

Second, the Rhode Island PUC has demonstrated a commitment to TELRIC principles. As noted above, the core assumptions it has applied in setting rates are consistent with the assumptions this Commission has found TELRIC-compliant in prior section 271 orders.

³¹ Texas Order ¶ 28.

³² AT&T Corp. v. FCC, 220 F.3d at 617.

Moreover, modifications it has required of Verizon's future cost studies comply fully with TELRIC principles, as even AT&T has admitted.

Third, to the extent there are any remaining concerns about the rates that are in effect pending the completion of the PUC's further proceeding, the current rates can simply be made subject to "refunds or true-ups once permanent rates are set," which will "help to ensure that competitive LECs pay cost-based rates."³³

c) AT&T's argument also fails because, as its own statements make clear, it boils down to a claim that rates should be set at the lowest level adopted in any state.³⁴ As both the Commission and the courts have recognized, TELRIC is not designed to produce the same result in every case.³⁵

AT&T's argument is particularly out of place in Rhode Island, where the Rhode Island commission has succeeded in producing one of the country's top competitive success stories. Indeed, Rhode Island leads the country in promoting facilities-based competition. As the undisputed record of this proceeding demonstrates, there is a facilities-based alternative offering service to between 75 and 95 percent of the state's residents, which is "by far the highest percentage in the nation."³⁶ And large number of residential consumers have actually switched

³³ Massachusetts Order ¶ 34.

³⁴ See, e.g., AT&T Reply Comments at 9 ("[E]ven if the provision of local service were found to be unprofitable even when all revenues are taken into account, and even when UNEs are priced at the lower end of the [TELRIC] range, then that would simply establish that the Section 271 Application must be denied.").

³⁵ See, e.g., AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states"); Michigan Order ¶ 291 ("use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC vary from state to state").

³⁶ Greg Bicket, Commentary, How the Telecom Act Has Helped R.I., Providence J.-Bull., Mar. 26, 2001, at 10A (Greg Bicket is the Vice President and General Manager of the Rhode Island unit of Cox Communications) (emphasis added); Application at 79.

to these alternatives, giving Rhode Island a proportionately greater degree of competitive facilities-based entry – both overall, and for residential customers – than in any of the other states that have received section 271 authority, at the time applications were filed in those states.³⁷ Thus, while AT&T claims that the failure to impose the newly adopted New York rates in Rhode Island “would remove any hope of real local competition,”³⁸ the fact of the matter is that “real” local competition – that is, facilities-based competition – is already ubiquitous in Rhode Island.

In light of its great success in promoting facilities-based competition in the past, the Rhode Island PUC should be given the opportunity to continue to promote such competition in the future. In particular, it should be permitted to set rates at the point within the broad TELRIC range that, based on its experience, is most likely to ensure that facilities-based competition is not undermined and instead continues to develop. The PUC may find, for example, that setting rates at the low end of the TELRIC range is likely to deter facilities-based based competition, particularly in light of recent economic studies bearing this out and its own real-world.³⁹ In contrast, requiring the PUC to adopt the New York rates – which already are at the lowest point within the TELRIC range (or below it) – would undermine the ability of the PUC to continue with its policies that promote facilities-based competition, and would therefore risk snatching defeat from the jaws of victory.

³⁷ See Application at 80 & Brief Att. A, Exs. 3 & 4.

³⁸ AT&T Ex Parte Letter at 3.

³⁹ See, e.g., James Eisner, FCC, & Dale Lehman, Fort Lewis College, Regulatory Behavior and Competitive Entry, for presentation at the 14th Annual Western Conference Center for Research in Regulated Industries, June 28, 2001, at 2 (finding that “states with lower UNE prices have less facilities-based entry.”).

d) Finally, AT&T wrongly implies that the Commission's benchmark test is an independent statutory requirement that may override a state commission's determination that its rates comply with TELRIC.

To be sure, the Commission has held that the use of a benchmark comparison serves a purpose where a state commission has simply "adopted in whole" rates for one or more elements from another state, rather than conducting an independent TELRIC analysis of its own.⁴⁰ But the rates here were not simply adopted from another state. Consequently, the question under the Commission's standard is whether, in adopting the current rates, the Rhode Island PUC made "clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."⁴¹ Where there are no "clear errors," there is no need for the Commission to conduct a benchmark comparison. Consistent with this, the Commission has found that a benchmark comparison was unnecessary to approve the switching rates in Oklahoma, Kansas, New York, and Texas.

As demonstrated above, the evidence here shows that the Rhode Island PUC did not commit any "clear errors" in applying TELRIC, and that a benchmark comparison is therefore unnecessary. This is all the more true because the PUC already is undertaking a new review of its local switching rates in which it has committed to TELRIC principles, and in the meantime Verizon's rates can be made interim and subject to true up.

Given all of this, AT&T's claim that the Massachusetts Order somehow requires Verizon, as a condition of obtaining 271 approval, to pass a benchmark test against the recently adopted New York rates is wide of the mark. In Massachusetts, the Commission relied on a benchmark

⁴⁰ Massachusetts Order ¶ 22; see Arkansas/Missouri Order ¶ 56; Kansas/Oklahoma Order ¶ 82.

⁴¹ New York Order ¶ 238; Kansas/Oklahoma Order ¶ 59.

test because the switching rates at issue there were “adopted in whole from another state whose rates have been found to comply with TELRIC.”⁴² The Commission accordingly held that, “because Verizon would have us rely on switching rates from the New York proceeding, a decision by the New York Commission to modify these UNE rates *may* undermine Verizon’s reliance on those rates in Massachusetts and its compliance with the requirements of section 271, *depending on the New York Commission’s conclusions.*”⁴³ This statement was made in response to claims that the previously approved New York rates themselves were not TELRIC-compliant, and the Commission accordingly stated that, if at some point in the future the New York PSC found that those rates did not comply with TELRIC, it would undermine the ability of the Commission to rely on the previously approved New York rates. But that has not happened. The New York PSC’s decision did *not* find that the previously approved rates were not TELRIC-compliant, and that decision does not, therefore, affect the prior determinations – of the PSC, this Commission, and the D.C. Circuit – that the previously approved New York rates do comply with TELRIC, and are within the range that a reasonable application of TELRIC would produce. In any event, the Rhode Island rates are not in any way based on the previously approved New York rates, but are instead significantly lower than those rates. As a result, the New York PSC’s decision to adopt new rates does not in any way undermine the validity of the Rhode Island rates, or require Verizon to benchmark its Rhode Island rates against the new rates in New York.

Moreover, even if some kind of benchmark comparison were needed to demonstrate that the Rhode Island rates were within the range that a reasonable application of TELRIC would produce, there would be no need to benchmark the Rhode Island rates against the rates recently adopted in New York. The New York rates are at the lowest end of the TELRIC range (or below

⁴² Massachusetts Order ¶ 22.

it), and, as explained above, Verizon is required to demonstrate only that its rates fall within the broad range of TELRIC prices, not that they conform to the lowest rates permitted within this range. Any benchmark comparison to determine whether the Rhode Island rates are within the TELRIC range must consider rates adopted in other states that have conducted a comprehensive TELRIC analysis – which more accurately reflect the full “zone of reasonableness” – not just to the rates recently adopted in New York (where Verizon has not even yet made its compliance filing and the specific rates produced by the New York PSC’s order are not yet even known).

Finally, some parties have complained that the switching port rate in Rhode Island is higher than the rates in other states. As an initial matter, the port rate was set by the Rhode Island PUC based on its own comprehensive TELRIC analysis and no party has identified any “clear error” committed by the PUC in establishing this rate. Under the Commission’s standard, that should be the end of the matter.

Nonetheless, to the extent there are concerns about the port rate set by the Rhode Island PUC, the obvious solution is to modify the port rate to correspond to the range adopted by other states. For example, while AT&T touts the recent New York PSC decision for other purposes, it fails to point out that the PSC set port rates of \$4.22 for an analog port and \$2.57 for a digital port. In Rhode Island, where approximately 80 percent of the switching ports are analog, applying the New York rates would produce a weighted average rate of \$3.89. And the Pennsylvania PUC set a port rate of \$2.67 based on its own exhaustive TELRIC review. Any remaining concerns could readily be addressed by bringing the Rhode Island port rate within this same range.

⁴³ Id. ¶ 30 (emphasis added).

Moreover, the Commission has held that, notwithstanding its so-called “complete when filed rule,” it is both permissible and appropriate to rely on a mid-application rate reduction where, as here, it “will serve the public interest.”⁴⁴ Like the rate reductions on which the Commission has relied in the past, a reduction in the Rhode Island port rate would be “quite limited in nature” and would not affect Verizon’s “rate structure.”⁴⁵ Moreover, a reduction in the port rate would be an “instance in which an applicant has responded to criticism in the record by taking positive action that will clearly foster the development of competition.”⁴⁶ Finally, this application is “otherwise generally persuasive,” and “demonstrates a commitment to opening local markets to competition as required by the 1996 Telecommunications Act.”⁴⁷ Indeed, for the first time in a section 271 proceeding, no party in this proceeding has disputed that Verizon is offering everything under the checklist in the manner that it is required to, or that Verizon’s performance in providing access to the various checklist items is excellent across the board. And the record establishes beyond dispute the enormous public interest benefits that would follow from Verizon’s entry. In New York, for example, Verizon’s entry has benefited consumers to the tune of up to \$700 million per year in savings from increased long distance and local competition. There is no reason to deny Rhode Island consumers those same benefits.

⁴⁴ Kansas/Oklahoma Order ¶ 22.

⁴⁵ Id. ¶ 23.

⁴⁶ Id. ¶ 24.

⁴⁷ Id.