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March 1, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William Caton
Acting 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 England 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 Vermont, CC Docket 02-74

Dear Mr. Caton:

This is the cover letter for the Reply Comments for the Application by Verizon New England 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 Vermont ("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 of Verizon New England," and (b) supporting material.

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2. Specifically, we are herewith submitting for filing:
 - a. One original of the portions of the Reply Comments that contain confidential information;
 - b. One CD-ROM containing portions of the confidential Reply Comments;
 - c. One original of the redacted Reply Comments;
 - d. Four copies of the redacted Reply Comments; and
 - e. 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 Vermont Public Service Board, 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,



Evan T. Leo

Encs.

**APPLICATION BY VERIZON NEW ENGLAND
FOR AUTHORIZATION TO PROVIDE IN-REGION,
INTERLATA SERVICES IN VERMONT**

CC DOCKET NO. 02-7

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FOR AUTHORIZATION TO PROVIDE IN-REGION,
INTERLATA SERVICES IN VERMONT**

CC DOCKET NO. 02-7

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**APPLICATION BY VERIZON NEW ENGLAND
FOR AUTHORIZATION TO PROVIDE IN-REGION,
INTERLATA SERVICES IN VERMONT**

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by Verizon New England)
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 Vermont)

CC Docket No. 02-7

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March 1, 2002

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INTRODUCTION AND SUMMARY

Based on its “comprehensive investigation of Verizon[’s] compliance with the statutory requirements enumerated in Section 271(c) of the Act,” the Vermont Public Service Board (“PSB”) concludes that Verizon is meeting its legal obligation to provide each of the 14 checklist items. PSB Report at 4. Based on that same exhaustive review, the PSB also concludes that “the Vermont local telephone markets are open to meaningful competition.”¹ The PSB therefore “recommends that Verizon’s application be approved.” PSB Report at 4. And the Department of Justice (“DOJ”) likewise “recommends approval.” DOJ Eval. at 2.

These conclusions are obviously correct because Verizon has taken the same extensive steps to open its local markets in Vermont as it has taken in other Verizon states where the Commission has found — as recently as last week — that Verizon satisfies all the requirements of the Telecommunications Act of 1996 (“1996 Act” or “Act”). For example, in almost all cases Verizon uses the same processes and procedures to provide the various checklist items in Vermont as it uses in Massachusetts, Rhode Island, and throughout the New England states. 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 and none whatsoever about Verizon’s OSS, which are the same as those the Commission just found checklist compliant in

¹ Letter from Michael H. Dworkin, David C. Coen & John D. Burke, Vermont PSB, to V. Louise McCarren, President & CEO, Verizon Vermont, at 7, Docket No. 6533, (Vt. PSB filed Jan. 16, 2002) (“Vermont PSB Approval Letter”) (Application, App. L, Tab 21).

granting Verizon's Rhode Island application. The DOJ also finds no evidence to suggest that there are any checklist-related obstacles to competition. DOJ Eval. at 5-6. The comments instead focus overwhelmingly on one issue — the wholesale rates adopted by the PSB — despite the fact that, as the PSB explains, “with minor exceptions, *no party* raised concern over Verizon's pricing of unbundled network elements” during the state proceedings. PSB Report at 5 (emphasis added). In any event, the facts here show that the rates established by the Vermont PSB comply with TELRIC principles, as the PSB found.

Moreover, while the Commission is under no legal obligation to perform a profit-margin analysis here, the facts show that the Vermont rates permit competitors to earn a substantial gross profit. As the long distance incumbents themselves concede, the rates in Vermont allow competitors to earn a gross margin of nearly 40 percent or more for close to two-thirds of the customers in the state. And, as Verizon has demonstrated, when the analysis of the long distance incumbent is corrected for various flaws, the average margin available statewide in Vermont is likewise substantial.

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 PSB have already rejected. For the most part, the CLECs either seek to modify Verizon's checklist offerings in ways that go beyond the requirements of the Act or raise issues that the Commission repeatedly has held should be addressed in other proceedings.

The same is true with respect to claims that there somehow is not enough local competition for residential customers in Vermont. None of the commenters contests that the level of facilities-based competition, adjusted for the number of lines that Verizon serves in Vermont, exceeds the levels that the Commission has found sufficient in other applications. Nor does any commenter seriously contest that the development of competition is affected by the fact that Vermont is a highly rural state with no major cities, as well as by competitors' "tepid marketing efforts" in that state. Vermont PSB Approval Letter at 7.

Moreover, while one competing carrier — AT&T — complains about Verizon's Performance Assurance Plan in Vermont, the simple fact is that this Plan is modeled on the New York Plan, which the Commission has repeatedly approved. The PSB accordingly has found that the Plan "will provide a comprehensive, effective, self-executing enforcement mechanism that will deter backsliding and the provision of substandard performance." PSB Report at 9.

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 Vermont PSB has urged, consumers in Vermont 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 in substantially the same manner and using the same systems and processes as in Massachusetts and across the New England states, where the Commission has twice found that Verizon satisfies the 1996 Act in all respects. Verizon also demonstrated that its performance in Vermont — and in Massachusetts, where volumes are even higher, and which the Commission reviewed in approving Verizon’s Rhode Island application — is excellent across the board. The Vermont PSB has confirmed all of this, verifying unambiguously that Verizon has complied with the requirements of each of the 14 competitive checklist items. See PSB Report at 4.

The PSB’s conclusion is based on a “comprehensive investigation” that is entitled to maximum deference under this Commission’s well-settled precedent. Id.² The PSB “reviewed Verizon’s compliance with the Act’s 14-point Competitive Checklist.” PSB Report at 4. Its “investigation considered the declarations, exhibits, briefs and other comments submitted by Verizon, the Department of Public Service (‘Department’), other telecommunications providers, and interested persons.” Id. at 4-5. The PSB also considered the report of PricewaterhouseCoopers (“PwC”) that, “in accordance with

² 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”).

attestation standards . . . , examined and verified that the OSS and performance metrics reporting are the same in Vermont as in Massachusetts” and found that “[n]o parties have raised concerns regarding the PricewaterhouseCoopers attestation.” Id. at 22. In order to “ensure that the review was comprehensive,” the PSB held “five days of evidentiary hearings.” Id. at 5. At the conclusion of this extensive investigation, the PSB issued a letter concluding that Verizon “has taken the appropriate steps to open the local exchange and exchange access markets in Vermont to competition in accordance with the standards set forth in the Act.” Vermont PSB Approval Letter at 2. The PSB has further concluded that Verizon “has demonstrated its compliance with the requirements of Section 271,” id., and has already complied with “[a]ll conditions imposed by the Board,” PSB Report at 36. The PSB recommends that “Verizon’s application be approved.” Id. at 4.

The DOJ likewise concludes that “Verizon has generally succeeded in opening its local markets in Vermont to competition.” DOJ Eval. at 2. The DOJ finds that “Verizon has submitted evidence to show that its Vermont OSS are the same as those that the Commission found satisfactory in Massachusetts”; that “the record indicates few complaints regarding Verizon’s Vermont OSS”; and that there are no “material non-price obstacles to competition in Vermont.” Id. at 5-6. Accordingly, “[s]ubject to the Commission satisfying itself” as to certain pricing issues raised by commenters — on which the DOJ expresses no opinion — the DOJ “recommends approval of Verizon’s application for Section 271 authority in Vermont.” Id. at 2.³

³ The DOJ explains that it “will not attempt to make its own independent determination whether prices are appropriately cost-based,” given “the Commission’s experience and expertise in rate-making issues.” DOJ Eval. at 7 (internal quotation marks omitted).

As demonstrated below, the conclusions of the Vermont PSB and the DOJ are 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 Vermont are providing service predominantly over their own facilities to both business and residential subscribers, and that Track A is therefore met. See Application at 6-12. In particular, Verizon demonstrated that, as of November 2001, competitors in Vermont were serving approximately 21,500 lines, approximately one-quarter of which were provided either wholly or partially over facilities that they deployed themselves (including in all cases their own local switches). See Brown Decl. Att. 1, Table 1; see also DOJ Eval. at 4. Verizon also demonstrated that, as of December 2001, there were at least four carriers — Adelphia, SoVerNet, Z-Tel, and OneStar — providing facilities-based service to *residential* customers in Vermont.

Although Adelphia claims (at 2) that it does not consider any of its lines to be “residential,” it does not dispute that residents of senior living centers use its local phone service and have their own residential directory listings.⁴ These lines are properly classified as residential lines for purposes of Track A. As the Commission has made clear, the relevant “subscribers” for purposes of section 271(c)(1)(A) are “the persons receiving the service.” Oklahoma Order ¶ 17.⁵ This is consistent with the definition of

⁴ See Ex Parte Letter from Richard T. Ellis, Director – Federal Affairs, Verizon Communications, to William Caton, Acting Secretary, FCC, at 2, CC Docket No. 02-7 (FCC filed Feb. 11, 2002).

⁵ 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”).

“subscriber” that the Commission has adopted in other contexts as well.⁶

None of the other carriers disputes Verizon’s Track A showing, nor does any other CLEC.⁷ In fact, SoVerNet’s comments reveal that it provides facilities-based service to more residential customers than Verizon was able to identify. Compare SoVerNet at 3 with Brown Decl. Att. 1 ¶ 28.⁸ As Verizon demonstrated in its Application, this level of facilities-based competition is proportionately greater than what the Commission found to satisfy the requirements of Track A in Michigan and Kansas. See Application at 10-11; Michigan Order ¶¶ 65, 74 n.161, 78;⁹ Kansas/Oklahoma Order ¶ 41.¹⁰ And this level of competition is all the more impressive given the fact that Vermont is the most rural state in the country and, of the 15 least populous states, has the

⁶ See, e.g., 47 C.F.R. § 76.5(ee) (defining “subscribers” as “a member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it”).

⁷ 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 services,” that “[t]he 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”).

⁸ SoVerNet also states that it plans to offer “services in six additional communities by the end of March 2002,” adding to the eight communities it currently serves. See SoVerNet at 2.

⁹ 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”).

¹⁰ 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 (2001) (“Kansas/Oklahoma Order”), remanded in part on other grounds, Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001).

fewest inhabitants living in cities. See Application at 6 & Exhs. 2-3.¹¹ In sum, Verizon has met its burden of demonstrating that the level of residential competition in Vermont is more than *de minimis*.

In fact, Verizon's Application proves beyond dispute that, as the PSB found, "the Vermont local telephone markets are open to meaningful competition." Vermont PSB Approval Letter at 7. The DOJ also found that "[t]he amount of entry by competitive facilities-based carriers and resellers serving business customers in Vermont" confirms that "opportunities to serve business customers . . . are available," and that "[a]lthough there is significantly less competition to serve residential customers . . . the Department does not believe there are any material non-price obstacles to competition in Vermont." DOJ Eval. at 5-6.

Although some commenters nonetheless claim that the level of residential competition is still too small, see AT&T at 23-31, 40-44; Sprint at 9-10; SoVerNet at 3-4, their arguments boil down to the timeworn argument that section 271 should be interpreted to include some kind of market-share test. As the Commission has held, however, these claims are legally irrelevant.¹² There is no requirement under Track A

¹¹ Although AT&T (at 38-39) points to Arkansas as a "heavily rural" state where CLECs serve a higher percentage of competitive lines, the two states simply are not comparable. First, Arkansas has more than four times as many residents as Vermont, and a significantly larger percentage of Vermont's residents are rural. Second, Arkansas has *nine* cities larger than the largest city in Vermont (Burlington), and Vermont's second largest city (Essex) would rank *twenty-third* in Arkansas — indeed, the population of Little Rock, Arkansas, alone, is more than 30 percent of the total population of Vermont. See U.S. Census Bureau, Urban and Rural Population: 1900 to 1990 (rel. Oct. 1995), at <http://www.census.gov/population/censusdata/urpop0090.txt>; U.S. Census Bureau, Census 2000 Redistricting Data, at <http://www.census.gov/clo/www/redistricting.html>.

¹² Equally irrelevant are Sprint's repeated claims (at 4-6) that Verizon's Application should be denied because of the supposed "crisis" in the CLEC industry and the alleged failure of Bell companies to compete with each other. As the Commission

“that a new entrant serve a specific market share . . . to be considered a ‘competing provider.’” Michigan Order ¶ 77. Furthermore, “[g]iven an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not undermine that showing.” Pennsylvania Order ¶ 126. The Commission has also repeatedly explained that “Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance” and has expressly refused to “establish one” in prior section 271 proceedings. Arkansas/Missouri Order ¶ 126;¹³ see also, e.g., Pennsylvania Order ¶ 126; Kansas/Oklahoma Order ¶ 268; Massachusetts Order ¶ 235.¹⁴

II. VERIZON SATISFIES THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.

Verizon demonstrated in its Application that it provides checklist items using substantially the same processes and procedures as in Massachusetts. Verizon also demonstrated that its performance in providing access to the various checklist items in

has held, such claims are irrelevant here. See, e.g., Application by Verizon Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order ¶ 126, 16 FCC Rcd 17419 (2001) (“Pennsylvania Order”) (“We disagree with those commenters that assert under our public interest examination we must consider the level of competitive LEC market share, the financial strength of competitive LECs and the failure of other BOCs to enter the market . . . as evidence that, despite checklist compliance, the local market is not yet truly open to competition.”); Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Rhode Island, Memorandum Opinion and Order ¶ 106, CC Docket No. 01-324, FCC 02-063 (rel. Feb. 22, 2002) (“Rhode Island Order”) (same).

¹³ Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, CC Docket No. 01-194, FCC 01-338 (rel. Nov. 16, 2001) (“Arkansas/Missouri Order”).

¹⁴ 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”).

both Vermont and Massachusetts has been excellent, and this continues to be the case. For example, in December 2001 and January 2002 — the two most recent months for which data are available — even though volumes are often too low to provide meaningful results, Verizon nonetheless provided on time for competing carriers in Vermont 100 percent of their interconnection trunks, 100 percent of their network element platforms, nearly 96 percent of their stand-alone voice-grade loops, 100 percent of their hot-cut loops, and 100 percent of their dispatch orders for unbundled DSL-capable loops. See Lacouture/Ruesterholz/Webster Reply Decl. ¶¶ 7, 20, 32, 69, 77. During those months, Verizon also provided on time for competing carriers in Massachusetts 100 percent of their interconnection trunks, more than 99 percent of network element platforms, more than 98 percent of their stand-alone voice-grade loops, approximately 99 percent of their hot-cut loops, and more than 99 percent of their dispatch orders for unbundled DSL-capable loops. See id. ¶¶ 8, 21, 33, 70, 78.

A few commenters nonetheless take issue with certain limited aspects of Verizon's checklist compliance. These comments, however, simply rehash claims made and rejected during the state proceedings or in previous section 271 proceedings before this Commission.

A. Interconnection.

The Vermont PSB concluded that “Verizon meets the requirements of checklist item 1.” PSB Report at 25. As Verizon demonstrated in its Application, Verizon provides the same forms of interconnection and collocation, through the same processes and procedures, as in Massachusetts and Rhode Island, where the Commission found that Verizon's provision of interconnection satisfies the requirements of section 271. See Massachusetts Order ¶¶ 182-194; Rhode Island Order ¶¶ 73-75; Lacouture/Ruesterholz

Decl. ¶¶ 11, 33. No party takes issue with any part of Verizon’s performance in providing interconnection trunks to CLECs, which is excellent. See Lacouture/Ruesterholz Decl. ¶¶ 12-32. For example, in December and January, Verizon completed 100 percent of CLECs’ interconnection trunk orders on time in Vermont, and there were only four installation trouble reports on the trunks provided in those months. See Lacouture/Ruesterholz/Webster Reply Decl. ¶ 69. In Massachusetts, during those months, Verizon completed 100 percent of interconnection trunk orders on time, and there were no trouble reports on the trunks provided. See id. ¶ 70.

Similarly, Verizon has provided CLECs with excellent performance in provisioning collocation arrangements. From September through November 2001, Verizon completed 100 percent of its physical collocation arrangements and collocation augments on time in both Vermont and Massachusetts. See Lacouture/Ruesterholz Decl. ¶¶ 40-41. And, in December and January, Verizon again met the applicable interval 100 percent of the time both for physical collocation arrangements and for collocation augments that it provided to CLECs in Vermont and Massachusetts. See Lacouture/Ruesterholz/Webster Reply Decl. ¶¶ 71-72.

CTC is the only commenter to contest Verizon’s compliance with this checklist item, arguing that it should not have to pay for two collocation arrangements in Vermont that it admits it ordered and that Verizon completed on its behalf. See CTC at 1-16. The PSB found that, despite CTC’s claim to have cancelled its orders for these two collocation arrangements in April 2000, “CTC did not produce any written confirmation of this alleged event.” PSB Report at 24 n.26; see also Lacouture/Ruesterholz Decl. ¶¶ 68-74; Lacouture/Ruesterholz/Webster Reply Decl. ¶¶ 73-76. Moreover, the PSB

concluded that “[e]xisting procedures are adequate to resolve” this dispute, PSB Report at 25, which echoes the Commission’s own repeated conclusion that a section 271 proceeding is not the appropriate forum for addressing individual billing disputes. See, e.g., Massachusetts Order ¶ 203; Texas Order ¶ 383. This is all the more true here, as CTC has filed an informal complaint with the Commission raising these very issues. See CTC at 3.¹⁵ Consequently, the Vermont PSB found that the “testimony and exhibits offered by CTC do not support a finding or conclusion that Verizon is failing to provide interconnection in accordance with the requirements of checklist item 1.” PSB Report at 25.

B. Unbundled Network Elements.

The Vermont PSB 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 PSB Report at 27 (checklist item 2), 31 (checklist item 4), 34 (checklist items 5 and 6); see also Application at 24-47.

Furthermore, Verizon’s performance continues to be excellent. In December and January, Verizon provided more than 440 unbundled loops to CLECs in Vermont, including 180 that were provided as part of an unbundled network element platform that also included switching and transport. See Lacouture/Ruesterholz/Webster Reply Decl. ¶ 6. Verizon consistently delivered these unbundled elements on time — both in

¹⁵ In any event, the PSB also explained that Verizon subsequently “adopted a standard form by which CLECs may reduce or terminate collocation orders,” which “should avoid at least some similar disputes in the future.” PSB Report at 24.

Vermont and in Massachusetts, where volumes are higher — and with a high degree of quality. See, e.g., id. ¶¶ 9-10, 22-23, 36-37, 69-70, 79-80.

CTC is the only commenter to take issue with any aspect of Verizon's performance in providing unbundled network elements, arguing that Verizon's policies and procedures in Vermont with respect to dark fiber violate the Act. See CTC at 16-35. Yet the Vermont PSB found, and CTC ultimately admits (at 18), that it is "critical to note that Verizon's dark fiber offerings in Vermont are the same as or similar to those in New York and Pennsylvania, states in which the FCC has already determined Verizon to be in compliance with checklist item 5." PSB Report at 33; see Pennsylvania Order ¶¶ 109-113; Connecticut Order ¶¶ 62-66;¹⁶ Application at 45; Lacouture/Ruesterholz/Webster Reply Decl. ¶ 92. In any event, as the PSB noted, CTC and Verizon are negotiating a new interconnection agreement and, if the parties cannot reach agreement on CTC's dark fiber claims, the PSB can "address many of these dark fiber issues soon in an arbitration proceeding under the terms of the federal act." PSB Report at 33.

Faced with this Commission's prior orders, the most CTC can do is "suggest[] that the Commission recognize that there is now a higher standard of reasonableness in Verizon's region." CTC at 19. Yet the Commission has previously explained that "disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding." Pennsylvania Order ¶ 92; see also Rhode Island Order ¶ 93 ("CTC does not . . . support its assertions with references to our rules or precedent. We will not find

¹⁶ 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").

noncompliance based on such vague assertions.”). Therefore, CTC’s attempt to change the Commission’s dark fiber rules is more properly addressed in other forums. See Pennsylvania Order ¶ 92; Massachusetts Order ¶ 10; Texas Order ¶¶ 23-24. The Vermont PSB similarly decided “that a broad array of policy questions regarding dark fiber can, if necessary, be pursued in a separate proceeding.” PSB Report at 33.

Although CTC’s complaints about Verizon’s dark fiber offering need not be addressed here, they are also wrong. For example, although CTC claims that Verizon should be required to provide access to dark fiber at splice points, it ignores that the UNE Remand Order expressly excluded splice points from the definition of technically feasible points for accessing dark fiber.¹⁷ That determination controls. See Rhode Island Order ¶ 93. In addition, the Vermont PSB has already addressed CTC’s claim that Verizon’s policies result in higher reject rates for dark fiber orders in Vermont than in Massachusetts. See CTC at 20, 29-31. Because Verizon will “assess a per-circuit record review charge only for . . . circuits where dark fiber is actually ordered,” “even though Vermont CLECs may experience a high rejection rate for their dark fiber applications, it will be Verizon . . . that will be burdened with paying the costs of researching the availability of routes . . . where fiber ultimately is not available to the CLEC.” PSB Report at 33. CTC also repeats its erroneous claim that Verizon does not repair dark fiber for CLECs. See CTC at 28-29. As Verizon explained in its Application, Verizon

¹⁷ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking ¶ 206 & n.395, 15 FCC Rcd 3696 (1999) (“UNE Remand Order”) (“Accessible terminals . . . differ from splice cases, which are inaccessible because the case must be breached to reach the wires within.”), petitions for review pending, United States Telecom Ass’n v. FCC, Nos. 00-1015 & 00-1025 (D.C. Cir. oral arg. Mar. 7, 2002).

will repair dark fiber for CLECs using the same processes and procedures that it uses for itself. See Lacouture/Ruesterholz Decl. ¶¶ 230-232. CTC's other claims are equally meritless. See CTC at 20-35; Lacouture/Ruesterholz/Webster Reply Decl. ¶¶ 93-95.

C. Reciprocal Compensation.

The PSB found that “Verizon has met the requirements of checklist item 13.” PSB Report at 36. Adelphia nonetheless raises a billing dispute related to reciprocal compensation for Internet-bound traffic. See Adelphia at 2-3. As the Commission has repeatedly found, however, whether a BOC pays reciprocal compensation for Internet-bound traffic “is not relevant to compliance with checklist item 13,” and such claims thus have no place in a review of a section 271 application. Connecticut Order ¶ 67; accord Pennsylvania Order ¶ 119; Massachusetts Order ¶ 215; see also Lacouture/Ruesterholz/Webster Reply Decl. ¶ 97. Moreover, as the PSB noted, although it is “reviewing this issue in Docket 6566,” the “mere existence of a dispute does not suggest that Verizon is failing to meet the Act’s requirements.” PSB Report at 35; see also Pennsylvania Order ¶ 118 (“section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions”).

D. Resale.

The PSB found that “Verizon has met the requirements of checklist item 14.” PSB Report at 36. Indeed, it found that Verizon’s demonstration that it satisfies this checklist item was “uncontested.” Id. However, DIRECTV, which did not participate in the state proceedings and, therefore, did not raise any issues there, now raises several complaints about the DSL and ATM services that Verizon provides under its interstate tariffs. See DIRECTV at 1-7. DIRECTV is an Internet service provider (“ISP”) that purchases both DSL and ATM Transport Service from Verizon under its federal tariff,

which it resells as part of its bundled high-speed Internet access service. See Lacouture/Ruesterholz/Webster Reply Decl. ¶ 107.¹⁸ But DIRECTV merely argues that it wants Verizon to make certain changes to its existing tariffed services, and wants the Commission to prohibit Verizon from changing certain other features of its tariffed services in states other than Vermont. These claims have nothing to do with checklist requirements. Even aside from the fact that DIRECTV is not a carrier entitled to invoke section 251(c) — and does not claim otherwise — the simple fact is that Verizon has no obligation to make available for resale a service that it does not provide at retail. See Lacouture/Ruesterholz/Webster Reply Decl. ¶ 108; New York Order ¶ 395.¹⁹ Accordingly, DIRECTV’s claims are not relevant here.

E. Operations Support Systems.

Verizon demonstrated in its Application that it provides CLECs operating in Vermont with access to the same operations support systems (“OSS”) that serve Massachusetts and the other New England states (including Rhode Island), which the Commission has found to satisfy the requirements of the Act in all respects. See Massachusetts Order ¶¶ 50, 70, 90, 95, 97, 102, 114; Rhode Island Order ¶¶ 58-71; see also Application at 56-69. PwC “verified that the OSS . . . are the same in Vermont as in Massachusetts,” PSB Report at 22, and KPMG’s review of Verizon’s New England OSS demonstrates that Verizon continues to provide CLECs with high quality and

¹⁸ During the period covered by this Application, Verizon’s data affiliate provided these services. See Lacouture/Ruesterholz/Webster Reply Decl. ¶ 107.

¹⁹ In any event, there is no legal basis for requiring changes in Verizon’s policies in *other* states — as DIRECTV requests (at 5) — as a condition for approving Verizon’s Application in Vermont. See 47 U.S.C. § 271(d)(3)(C) (requiring that the “requested authorization” — here, to provide in-region, interLATA service in *Vermont* — be “consistent with the public interest”).

nondiscriminatory access to its OSS, see McLean/Wierzbicki Decl. ¶ 16; see also Rhode Island Order ¶ 60. No party disputes that Verizon's OSS are fully compliant, nor does any party take issue with the PwC attestation or the KPMG test in Rhode Island, and the Vermont PSB concluded that Verizon's OSS meet the requirements of the Act. See PSB Report at 22; see also DOJ Eval. at 6; Lacouture/Ruesterholz/Webster Reply Decl. ¶ 109.

III. THE VERMONT PSB HAS FOUND THAT THE UNE RATES IT ADOPTED COMPLY IN ALL RESPECTS WITH THE ACT, AND THESE RATES DO NOT RAISE A LEGITIMATE PUBLIC INTEREST ISSUE.

As the Vermont PSB confirms in its consultative report, the rates it has established for Verizon's unbundled network elements "were set using TELRIC principles." PSB Report at 27.²⁰ As the Commission has found, that determination is entitled to great deference in the context of a section 271 proceeding.²¹ The Commission "will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if 'basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.'"

Kansas/Oklahoma Order ¶ 59 (quoting New York Order ¶ 244). As described below, the

²⁰ See Investigation into New England Telephone and Telegraph Company's (NET's) Tariff Filing re: Open Network Architecture, Including the Unbundling of NET's Network, Expanded Interconnection, and Intelligent Networks in re: Phase II, Module 2 – Cost Studies, Order, Docket No. 5713 (Vt. PSB Feb. 4, 2000) ("February 4 Order") (Application, App. E, Tab 7).

²¹ See, e.g., New York Order ¶¶ 238-244; see also 47 U.S.C. § 252(c)(2) (giving state commissions the primary role to "establish . . . rates for interconnection, services, or network elements"); AT&T Corp. v. FCC, 220 F.3d 607, 615 (D.C. Cir. 2000) ("The FCC does not conduct *de novo* review of state pricing determinations in section 271 proceedings, nor does it adjust rates to conform with TELRIC. It assesses only whether those rates comply with basic TELRIC principles.") (citation omitted).