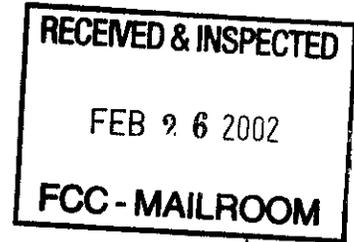


Before the
Federal Communications Commission
Washington, D.C. 20554



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 Rhode Island

CC Docket No. 01-324

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2002

Released: February 22, 2002

By the Commission: Commissioner Capps concurring and issuing a statement; Commissioner
Martin approving in part, concurring in part, and issuing a statement.

Table with 2 columns: Section Title and Paragraph Number. Includes sections I. INTRODUCTION, II. BACKGROUND, III. CHECKLIST COMPLIANCE (with sub-sections A and B), IV. COMPLIANCE WITH SECTION 271(c)(1)(A), and V. SECTION 272 COMPLIANCE.

VI.	PUBLIC INTEREST ANALYSIS .....	102
	A. PRICE SQUEEZE ARGUMENTS .....	107
	B. ASSURANCE OF FUTURE COMPLIANCE .....	108
VII.	SECTION 271(d)(6) ENFORCEMENT AUTHORITY .....	111
VIII.	CONCLUSION .....	114
IX.	ORDERING CLAUSES .....	115
	APPENDIX A: LIST OF COMMENTERS	
	APPENDIX B: RHODE ISLAND PERFORMANCE DATA	
	APPENDIX C: MASSACHUSETTS PERFORMANCE DATA	
	APPENDIX D: STATUTORY REQUIREMENTS	

## I. INTRODUCTION

1. On November 26, 2001, 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. (Verizon) filed this application pursuant to section 271 of the Communications Act of 1934, as amended,<sup>1</sup> for authority to provide in-region, interLATA service originating in the State of Rhode Island and Providence Plantations (Rhode Island). We grant the application in this Order based on our conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in Rhode Island to competition.

2. According to Verizon, competing carriers in Rhode Island serve approximately 119,000 lines (counting competitive lines served by resale, unbundled network elements, and competitive LEC facilities), or nearly 16 percent of the total access lines in the state.<sup>2</sup> Across the state, competitors serve approximately 94,000 lines using unbundled network elements or their

<sup>1</sup> We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act, or the Act. See 47 U.S.C. §§ 151 *et seq.* We refer to the Telecommunications Act of 1996 as the 1996 Act. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>2</sup> See Letter from Clint E. Odom, Director - Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-324 (filed Dec. 11, 2001) (clarifying information contained in Verizon Application, App. A, Vol. 3, Tab F, Local Competition in Rhode Island (Verizon Local Competition Report)) (Verizon Dec. 11 *Ex Parte* Letter) and Letter from Clint E. Odom, Director - Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-324 (filed Dec. 20, 2001) (providing retail line counts for Verizon Rhode Island and clarifying information contained in Verizon Local Competition Report) (Verizon Dec. 20 *Ex Parte* Letter) (*citing confidential portion*); see also Letter from Clint E. Odom, Director - Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-324 (filed Jan. 25, 2002) (attaching Declaration of Paula L. Brown).

own facilities, and approximately 25,000 lines through resale.<sup>3</sup> Almost 38 percent of competitors' lines are residential.<sup>4</sup>

3. In granting this application, we wish to recognize the hard work of the Rhode Island Public Utilities Commission (Rhode Island Commission) in laying the foundation for approval of this application. The Rhode Island Commission has conducted proceedings concerning Verizon's section 271 compliance, which have been open to participation by all interested parties. In addition, the Rhode Island Commission has adopted a broad range of performance measures and standards as well as a Performance Assurance Plan designed to create a financial incentive for post-entry compliance with section 271. As the Commission has recognized previously, state proceedings such as these serve a vitally important role in the section 271 process.

## II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the BOCs demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service. Congress provided for Commission review of BOC applications to provide such service in consultation with the affected state and the Attorney General.<sup>5</sup>

5. We rely heavily in our examination of this application on the work completed by the Rhode Island Commission. Beginning in 1997, the Rhode Island Commission began what would become a four and one-half year series of proceedings to set rates for unbundled network elements (UNEs).<sup>6</sup> The Rhode Island Commission also conducted an extensive proceeding, which was open to participation by all interested parties, to facilitate competition in local exchange markets, starting with a docket opened in September of 2000 to establish carrier-to-

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<sup>3</sup> See Verizon Dec. 11 *Ex Parte* Letter and Verizon Dec. 20 *Ex Parte* Letter.

<sup>4</sup> See Verizon Dec. 11 *Ex Parte* Letter and Verizon Dec. 20 *Ex Parte* Letter.

<sup>5</sup> The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, No. 01-1076 (D.C. Cir. Dec. 28, 2001); *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*); *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, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

<sup>6</sup> A more detailed history of the UNE pricing proceeding is provided below. See *infra* Part III.A.1.a.

carrier wholesale performance measurements standards.<sup>7</sup> In that proceeding, the Rhode Island Commission adopted a Performance Assurance Plan (PAP) modeled on the plan in use in New York, and also adopted performance measures based on the measures in use in New York.<sup>8</sup> On July 25, 2001, Verizon made a compliance filing for section 271 approval with the Rhode Island Commission.<sup>9</sup> On December 14, 2001, the Rhode Island Commission recommended that the Federal Communications Commission (the Commission) grant Verizon's application for authorization to provide in-region, interLATA services in Rhode Island.<sup>10</sup> Specifically, the Rhode Island Commission found that Verizon met the requirements of each of the 14 competitive checklist items contained in section 271 of the Act.<sup>11</sup> Additionally, the Rhode Island Commission found that Verizon complied with section 271(c)(1)(A) because Verizon has entered into over 100 binding interconnection agreements with unaffiliated competitive LECs and local exchange service is being provided to both business and residential customers by at least one unaffiliated competitive LEC.<sup>12</sup> Finally, the Rhode Island Commission found that approval of Verizon's section 271 application by the Commission is in the public interest.<sup>13</sup>

6. The Department of Justice recommends approval of Verizon's application for section 271 authority in Rhode Island, stating that:

While there is significantly less competition to serve customers by means of the UNE-platform, the Department does not believe there are any material non-price obstacles to competition in Rhode Island. Verizon has submitted evidence to show that its [operations support systems] in Rhode Island are the same as those in Massachusetts, and that aspects of its [operations support systems] that were not tested in Massachusetts are generally satisfactory in Rhode Island. Moreover, there have been few complaints regarding Verizon's Rhode Island [operations support systems].<sup>14</sup>

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<sup>7</sup> Rhode Island PUC, *Verizon-Rhode Island's Proposed Carrier-to-Carrier Performance Standards and Reports and Performance Assurance Plan for Rhode Island*, Report and Order, Docket Nos. 3195 & 3256 (rel. Dec. 3, 2001) at 1-2 (*Rhode Island PUC C2C and PAP Order*).

<sup>8</sup> *See id.*; Verizon Application App. A, Vol. 3, Tab C, Joint Declaration of Elaine M. Guerard, Julie A. Canny, and Beth A. Abesamis at paras. 27-30 (Verizon Guerard/Canny/Abesamis Decl.).

<sup>9</sup> The Rhode Island Commission concludes this proceeding with comments filed in this docket. *See Rhode Island Commission Comments* at 4-8.

<sup>10</sup> Rhode Island Commission Comments at 2.

<sup>11</sup> *Id.* at 189.

<sup>12</sup> *Id.* at 9-10.

<sup>13</sup> *Id.* at 189.

<sup>14</sup> Department of Justice Evaluation at 6 (footnote omitted).

While the Department of Justice does not believe that there exist non-price obstacles to competition in Rhode Island, it notes that several commenters raised issues about pricing in Rhode Island and “urges the Commission to look carefully at these comments in determining whether Verizon’s prices are cost-based.”<sup>15</sup> The Department “recommends approval of Verizon’s application for Section 271 authority in Rhode Island, subject to the Commission satisfying itself as to . . . pricing issues.”<sup>16</sup> We give “substantial weight” to the Department’s evaluation, as required by section 271(d)(2)(A).<sup>17</sup>

7. Before evaluating Verizon’s compliance with the requirements of section 271, however, we discuss why we accord evidentiary weight to rate reductions that Verizon filed on day 80. The Commission maintains certain procedural requirements governing BOC section 271 applications.<sup>18</sup> In particular, the “complete-as-filed” requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.<sup>19</sup> We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC’s application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record.<sup>20</sup> The Commission can waive its procedural rules, however, “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>21</sup>

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<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> 47 U.S.C. § 271(d)(2)(A).

<sup>18</sup> See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (*Mar. 23, 2001 Public Notice*); *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17472-73, para. 98 (2001) (*Verizon Pennsylvania Order*); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14163-64, paras. 34-38 (2001) (*Verizon Connecticut Order*); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247-50, paras. 20-27; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-69, paras. 32-37; *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, 20570-76, paras. 49-59 (1997) (*Ameritech Michigan Order*).

<sup>19</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

<sup>20</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20572-73, paras. 52-54.

<sup>21</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

8. We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules<sup>22</sup> to the extent necessary to consider rate reductions filed by Verizon on day 80 of the 90-day period for Commission review of the Rhode Island application.<sup>23</sup> We conclude that the special circumstances before us here warrant a deviation from the general rules for consideration of late-filed information or developments that take place during the application review period. In particular, as we discuss below, we find that the interests our normal procedural requirements are designed to protect are not affected by our consideration of these late-filed rate reductions. In addition, we also conclude that consideration of the rate reductions will serve the public interest. We will continue to enforce our procedural requirements in future section 271 applications, however, in the absence of such special circumstances, in order to ensure a fair and orderly process for the consideration of section 271 applications within the 90-day statutory deadline.

9. There are special circumstances here that satisfy the first element of the test for grant of a waiver described above. Indeed, the circumstances are unique, and, based on our experience in reviewing over a dozen section 271 applications, we expect that they will not recur. First, at the time Verizon filed its application with us on November 26, 2001, the UNE rates that were in effect in New York served as a legitimate benchmark comparison by which Verizon might demonstrate that its Rhode Island rates were TELRIC-compliant.<sup>24</sup> Yet on January 28, 2002 – day 63 of our review of Verizon's Rhode Island application – the New York Public Service Commission (New York Commission) resolved a long-standing dispute by lowering Verizon's switching rates in that state by approximately 50 percent.<sup>25</sup> Commenters asserted that the old New York rates could no longer serve as a benchmark from which to judge whether Verizon's rates in Rhode Island were TELRIC-compliant.<sup>26</sup> Indeed, AT&T suggested in an *ex*

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<sup>22</sup> 47 C.F.R. § 1.3.

<sup>23</sup> See Letter from Dee May, Assistant Vice President - Federal Regulatory, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-324 (Feb. 14, 2002) (attaching Rhode Island revised tariff filing) (Verizon Feb. 14 *Ex Parte* Letter); Public Notice, *Comments Requested in Connection with Verizon's Section 271 Application for Rhode Island*, CC Docket No. 01-324, DA 02-356 (rel. Feb. 14, 2002) (Feb. 14 Public Notice).

<sup>24</sup> As we explain in more detail *infra* part III.A.1.b(ii), when a state commission does not apply TELRIC principles or does so improperly, then we will look at whether a comparison of the rates in the applicant state to rates that were approved in other section 271 applications nonetheless evidences that the applicant's rates fall within the range that a reasonable TELRIC-based rate proceeding would produce. See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276-78, paras. 82-84. We note that there was considerable dispute in the record regarding whether Verizon's rates as originally filed would satisfy a benchmark comparison to the rates in effect in New York at that time. Because the New York Commission has modified its rates, we need not resolve this dispute with respect to the rates that are no longer in effect.

<sup>25</sup> New York PSC, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-1357, Order on Unbundled Network Element Rates (rel. Jan 28, 2002).

<sup>26</sup> Letter from Robert W. Quinn, Jr., Vice President, Federal Government Affairs, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-324 (Feb. 12, 2002); Letter from Robert W. Quinn, Jr., Vice President, Federal Government Affairs, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-324 (Feb. 1, 2002) (AT&T Feb. 1 *Ex Parte* Letter); Letter from (continued....)

*parte* presentation on February 1, 2002, that this Commission could only grant Verizon's Rhode Island application if Verizon lowered its rates in Rhode Island to New York levels.<sup>27</sup> In response, Verizon filed reduced rates with the Rhode Island Commission, and filed with us evidence that it had done so.<sup>28</sup> This unique change in circumstances – the New York Commission's long-awaited decision to modify Verizon's switching rate – was not within Verizon's control. Verizon could not have known either when the New York Commission would lower rates in that state or the exact rates that the New York Commission would adopt. Thus, this is not a situation where a BOC has attempted to maintain high rates only to lower them voluntarily at the eleventh hour in order to gain section 271 approval. Rather, this is a situation where a core element of the BOC's evidence in support of its section 271 filing changed outside of its control, and the BOC promptly took affirmative steps to adjust its showing to demonstrate compliance with section 271.

10. Second, the rate changes at issue are limited. Verizon lowered only its port and switching usage rates.<sup>29</sup> Verizon has not modified the rate structure or implemented a combination of decreases and increases. As a result, addressing the effect of this rate reduction placed a limited additional analytical burden on the Commission staff and commenting parties, in contrast to the burden that would have been caused by the consideration of more complex rate revisions. Moreover, Verizon's rate reductions have already taken effect,<sup>30</sup> so there is no concern that the Commission is approving a "promise[] of future performance."<sup>31</sup> Nor is this a situation where the BOC implements measures (such as changes to its OSS) designed to achieve nondiscriminatory performance in the applicant's provision of service to competitive LECs, the effectiveness of which would be difficult to measure in advance.

11. Third, interested parties have had an opportunity to evaluate the new rates and to comment. Numerous parties had already commented or made *ex parte* filings regarding Verizon's Rhode Island rates as compared with existing and proposed New York rates, and then on the effect of the New York Commission's reduction of rates, even prior to Verizon's filing of

(Continued from previous page)

Keith L. Seat, Senior Counsel, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-324 (Jan. 31, 2002) (WorldCom Jan. 31 *Ex Parte* letter); Letter from Clint E. Odom, Director - Federal Regulatory, Verizon, to Commissioner Kathleen Q. Abernathy, Federal Communications Commission, CC Docket No. 01-324 (Feb. 8, 2002) (Verizon Feb. 8 *Ex Parte* Letter).

<sup>27</sup> AT&T Feb. 1 *Ex Parte* Letter, at 16 ("Thus, even under Verizon's view of the NYPSC decision, the Commission cannot grant an application on February 24, 2002 unless it finds that Verizon will reduce Rhode Island rates to the New York levels no later than March 1, 2002.").

<sup>28</sup> See Verizon Feb. 14 *Ex Parte* Letter.

<sup>29</sup> Verizon Feb. 14 *Ex Parte* Letter. The rates for reciprocal compensation, which are based on these switching rates, are also correspondingly reduced. See *id.* Attach. at 2.

<sup>30</sup> See Letter from Clint E. Odom, Director - Federal Regulatory, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-324 (Feb. 21, 2002) (attaching Rhode Island PUC, *Unbundled Local Switching and Analog Line Port Rates - Verizon Rhode Island's Section 271 Compliance Filing*, Docket No. 3363, Order (rel. Feb. 21, 2002) (*Second Rhode Island Switching Order*)).

<sup>31</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20573, para. 55 (emphasis omitted).

its new rates in Rhode Island.<sup>32</sup> Thus, it was not unduly burdensome for commenters to respond to Verizon's actual reduction of a limited number of rates in a relatively short period of time. Moreover, the very limited nature of these rate changes has permitted the Commission staff to evaluate the change within the 90-day review period. In addition, the Rhode Island Commission approved the new rates expeditiously and made them effective February 20, 2002.<sup>33</sup> The Department of Justice did not comment on the rates, but in its initial comments states that "[b]ecause of the Commission's experience and expertise in rate-making issues . . . the Department will not attempt to make its own independent determination whether prices are appropriately cost-based."<sup>34</sup> Because the Commission and commenters have had sufficient time and information to evaluate Verizon's application, we see no need to restart the 90-day clock.<sup>35</sup>

12. Finally, in this instance Verizon has responded to criticism in the record by taking positive action that will foster the development of competition. This is very different from the situation in which late-filed material consists of additional arguments or information concerning whether current performance or pricing satisfies the requirements of section 271. In addition, this application is otherwise persuasive and demonstrates a commitment to opening local markets to competition as required by the 1996 Act.

13. We also conclude that grant of this waiver will serve the public interest and thus satisfy the second element of the waiver standard described above. In particular, grant of this waiver permits the Commission to act on this section 271 application quickly and efficiently without the delays inherent in restarting the 90-day clock. Grant of this waiver also serves to credit Verizon's decision to respond positively to criticism in the record concerning its rate levels by making pro-competitive rate reductions. Given that interested parties have had an opportunity to comment on these rate reductions, we do not believe that the public interest would be served in this instance by strict adherence to our procedural rules. Nor do we need to delay the effectiveness of this Order, as we did in the *SWBT Kansas/Oklahoma Order*.<sup>36</sup> In contrast to that situation, here the New York Commission dictated the timing by its resolution of the long-pending rate proceeding. As we have made clear above, however, we do not intend to allow a pattern of late-filed changes to threaten the Commission's ability to maintain a fair and orderly process for consideration of section 271 applications.

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<sup>32</sup> See *supra* n.26; ASCENT Comments at 6-9; AT&T Comments at 15; WorldCom Comments at 9-10.

<sup>33</sup> See *Second Rhode Island Switching Order* at 3.

<sup>34</sup> See Department of Justice Evaluation at 6 (quoting Evaluation of the Department of Justice, in *Joint Application by SBC Communications, Inc. et al. for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-207 (Dec. 4, 2001)).

<sup>35</sup> See AT&T Supp. Comments at 2 & n.1, 3 & n.2.

<sup>36</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6249, para. 26, 6263, para. 52, 6270, para. 72. We disagree with AT&T that delaying the effectiveness of section 271 authorization is an ineffective deterrent and remedy for violation of the complete-as-filed rule, but we do not invoke that remedy here because, as described above, Verizon was not engaging in gamesmanship by resisting rate reductions.

14. Under the unique circumstances presented in this application, we cannot agree with the commenting parties – AT&T and ASCENT – that urge us to decline to consider these rate revisions or to treat these revisions as a new filing that starts a new 90-day review period.<sup>37</sup> First, we note that neither commenter even suggested that Verizon’s modified switching rates for Rhode Island do not benchmark favorably against the new New York rates, or that the new New York rates are not TELRIC-compliant. To the contrary, AT&T has urged the Commission to do exactly what it is doing – benchmarking Verizon’s Rhode Island rates against the new New York rates.<sup>38</sup> Rather than address the outcome on this point, parties’ comments focused on the process the Commission ought to use in conducting its proceeding.

15. With respect to the parties’ process arguments, we disagree that consideration of these rate reductions permits Verizon to game the process, and benefit by delaying the opening of its local market in Rhode Island to UNE-based competition.<sup>39</sup> As explained above, we do not hold Verizon responsible for the timing of the New York Commission’s order lowering rates, and note that Verizon responded very quickly to seek a corresponding rate reduction in Rhode Island. Moreover, we disagree with ASCENT’s suggestion that the Commission must deny this waiver request to allow time to measure the impact of the new rates on competition.<sup>40</sup> The statute simply does not require such an analysis, or require that a BOC demonstrate that it has been in compliance with section 271 for any period of time before it files a section 271 application.<sup>41</sup>

16. Second, we disagree that the Commission and interested parties had too little time to analyze Verizon’s reduced switching rates, and that parties had too little time to prepare comments.<sup>42</sup> As explained above, Verizon’s rate reductions were limited and straightforward, and required only to be compared with the new switching rates for New York. Indeed, parties had already made a preliminary comparison in their earlier comments and *ex parte* presentations.<sup>43</sup> Moreover, no party has asserted that, given more time, it would even seek to demonstrate that Verizon’s switching rates in New York or Rhode Island are not TELRIC-compliant.<sup>44</sup> We also disagree with AT&T that it could not file meaningful comments without more analysis of, or information about, the derivation of Verizon’s lowered rates.<sup>45</sup> As explained

<sup>37</sup> See ASCENT Supp. Comments at 2, 6-14; AT&T Supp. Comments at 2 & n.1, 3 & n.2.

<sup>38</sup> See AT&T Feb. 1 *Ex Parte* Letter at 16; see also AT&T Comments at 15 (comparing Verizon’s Rhode Island switching rates to rates recommended by ALJ in New York).

<sup>39</sup> See AT&T Supp. Comments at 2-3; ASCENT Supp. Comments at 8-9.

<sup>40</sup> See ASCENT Supp. Comments at 10-11.

<sup>41</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6250, para. 27.

<sup>42</sup> See AT&T Supp. Comments at 2.

<sup>43</sup> See *supra* para. 11 & n.26; see also *infra* part III.A.1.b(ii).

<sup>44</sup> As noted previously, AT&T in an earlier filing urged the Commission to benchmark Verizon’s Rhode Island rates against its new New York rates. See AT&T Feb. 1 *Ex Parte* Letter at 16.

<sup>45</sup> See AT&T Supp. Comments at 2.

in more detail below, our benchmark analysis is a comparison of costs and rates in two states and does not require more than what Verizon placed in the record on February 14.<sup>46</sup>

17. Finally, we share, to some extent, commenters' concerns that incentives may exist for applicants to withhold rate reductions until the eleventh hour.<sup>47</sup> As noted above, however, granting this waiver does not encourage further late filings because the unique circumstance present here resulted from the New York Commission's order modifying Verizon's switching rates. Moreover, notwithstanding the Commission's decision occasionally to waive its general procedural rules governing section 271 applications, where warranted, we believe that our procedural requirements have led to the filing of applications that contain a tremendous amount of detail and are largely complete. The vast amount of evidence that BOCs submit on the day of filing dwarfs the relatively small amount of subsequent evidence we have considered pursuant to waiver.

### III. CHECKLIST COMPLIANCE

18. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather, we rely on the legal and analytical precedent established in prior section 271 orders, and we attach comprehensive appendices containing performance data and the statutory framework for evaluating section 271 applications.<sup>48</sup> Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting service in the most recent four months before filing (July through October 2001). Verizon has also submitted November performance data for our review. We elect in this proceeding only to examine November data in a few instances for the limited purpose of supplementing our findings concerning Verizon's performance that is demonstrated by performance data from earlier months. We generally limit our review to performance data filed with the initial application or shortly thereafter, in accordance with our procedural rules for reviewing section 271 applications, although we have considered an additional later month of data in certain circumstances.<sup>49</sup> Limiting our review in this way presents commenters a fuller opportunity to comment on the evidence that the company relies on for its showing, and is administratively more convenient for the Commission.

19. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing checklist item two – access to unbundled network elements. Next, we

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<sup>46</sup> See *infra* part III.A.1.b(ii).

<sup>47</sup> See ASCENT Supp. Comments at 10-14; AT&T Supp. Comments at 3.

<sup>48</sup> See *In the matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719, 20797-882, Appendices B, C, and D (2001) (*SWBT Arkansas/Missouri Order*); *Verizon Pennsylvania Order*, 16 FCC Rcd at 17508-45, Appendices B & C.

<sup>49</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18372, para. 39 (considering April 2000 performance data, when application was filed on April 5, 2000, and comments on the application were due on April 26, 2000).

address checklist items one (interconnection), four (unbundled local loops), five (unbundled transport), and fourteen (resale). The remaining checklist items are discussed briefly. We find, based on our review of the evidence in the record, that Verizon satisfies all checklist requirements.

**A. Checklist Item 2 – Unbundled Network Elements**

**1. Pricing of Unbundled Network Elements**

**a. Background**

20. Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions for unbundled network elements to be based on cost and nondiscriminatory, and allows the rates to include a reasonable profit.<sup>50</sup> The Commission's pricing rules require, among other things, that an incumbent LEC provide unbundled network elements based on the TELRIC pricing methodology.<sup>51</sup> Although the United States Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996,<sup>52</sup> the Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.<sup>53</sup> On remand from the Supreme Court, the Eighth Circuit concluded that, while TELRIC is an acceptable method for determining costs, certain of the Commission's pricing rules were contrary to congressional intent.<sup>54</sup> The Eighth Circuit has stayed the issuance of its mandate<sup>55</sup> pending appeal before the Supreme Court, which has granted

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<sup>50</sup> 47 U.S.C. § 252(d)(1).

<sup>51</sup> See 47 C.F.R. §§ 51.501-09.

<sup>52</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8<sup>th</sup> Cir. 1997).

<sup>53</sup> *American Tel. & Tel. Co. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The Court also held that the pricing provisions implemented under the Commission's rulemaking authority do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id.*

<sup>54</sup> *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), *petition for cert. granted sub nom. Verizon Communications v. FCC*, 121 S. Ct. 877, 148 L. Ed.2d 788, 69 USLW 3269, 69 USLW 3490, 69 USLW 3495 (U.S. Jan. 22, 2001).

<sup>55</sup> *Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.* (8<sup>th</sup> Cir. Sept. 25, 2000).

*certiorari* and recently heard oral argument in the case.<sup>56</sup> Accordingly, the Commission's rules remain in effect for purposes of this application.

21. On November 24, 1997, the Rhode Island Commission began what would become a four and one-half year series of proceedings to set rates for unbundled network elements (UNEs). In these proceedings, the Rhode Island Division of Public Utilities and Carriers (Rhode Island Division), the entity responsible for executing all laws and regulations pertaining to public utilities and carriers, represented Rhode Island ratepayers. A variety of parties participated in the proceedings.<sup>57</sup> Verizon and AT&T filed separate cost studies based on different models in the proceedings.<sup>58</sup> On August 18, 1999, the Rhode Island Commission adopted stipulated, interim rates, that "for the most part reflected the [Rhode Island Division's] position in the . . . proceedings."<sup>59</sup> In general, the Division-recommended, interim rates were lower than the rates Verizon proposed at the beginning of the proceedings. For example, the interim statewide average rate for a two-wire analog loop was \$15.00, while Verizon's proposed rate was \$21.69.<sup>60</sup>

22. On April 11, 2001, the Rhode Island Commission adopted these interim rates as permanent rates, simultaneously ordering that the rates incorporate a 7.11 percent across-the-board reduction to account for savings from Verizon mergers and process re-engineering occurring since the rate proceeding had begun.<sup>61</sup> In adopting the rates, the Rhode Island Commission found that they were "consistent with the [Commission's] TELRIC methodology and, therefore, will facilitate the development of local telephone exchange competition in Rhode Island."<sup>62</sup> The Rhode Island Commission also ordered Verizon to file new cost studies using certain specific assumptions as part of a new UNE rate proceeding which is scheduled to begin no later than May 1, 2002, and in which the Rhode Island Commission expects to adopt new UNE rates by the end of 2002.<sup>63</sup> The Rhode Island Commission has indicated that it required these new cost studies because it "wanted to receive and review more recent evidence."<sup>64</sup> The

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<sup>56</sup> *Verizon Communications v. FCC*, 121 S. Ct. 877, 148 L. Ed.2d 788, 69 USLW 3269, 69 USLW 3490, 69 USLW 3495 (Jan. 22, 2001).

<sup>57</sup> Rhode Island PUC, *Review of Bell Atlantic-Rhode Island TELRIC Study*, Report and Order at 4, Docket No. 2681 (rel. Nov. 18, 2001) (*Rhode Island TELRIC Order*); Rhode Island Commission Comments at 43; Verizon Application, App. A, Vol. 3, Tab D, Joint Declaration of Donna Cupelo, Patrick Garzillo and Michael Anglin (Verizon Cupelo/Garzillo/Anglin Decl.) at 5, para. 17.

<sup>58</sup> *Rhode Island TELRIC Order* at 4; Verizon Cupelo/Garzillo/Anglin Decl. at 6, para. 19

<sup>59</sup> Rhode Island Commission Comments at 43.

<sup>60</sup> Verizon Cupelo/Garzillo/Anglin Decl. at 7-8, para. 26.

<sup>61</sup> *Rhode Island TELRIC Order* at 5.

<sup>62</sup> *Id.* at 4.

<sup>63</sup> *Id.* at 75-76; Rhode Island Commission Reply at 3.

<sup>64</sup> Rhode Island Commission Reply at 3.

Rhode Island Commission has stated that the new rate proceeding will “in no way affect our conclusion that [Verizon’s] currently effective UNE rates are TELRIC-compliant.”<sup>65</sup>

23. On November 15, 2001, in a separate proceeding, the Rhode Island Commission adopted discounted switching rates that Verizon had voluntarily proposed in seeking the Rhode Island Commission’s approval of its section 271 application.<sup>66</sup> The discounted rates are similar to rates proposed by Verizon in an ongoing Massachusetts rate proceeding and are based on new Verizon cost studies supporting the proposed Massachusetts rates.<sup>67</sup> The Rhode Island Commission reviewed the discounted switching rates and found that, when aggregate UNE rates in Rhode Island were compared to aggregate UNE rates in Massachusetts, the aggregate Rhode Island rates fell within a reasonable TELRIC range.<sup>68</sup> The Rhode Island Commission noted that the discounted rates “are not only lower than Rhode Island’s current UNE rates, but also lower than Massachusetts’s comparable UNE rates in April 2001 when the [Commission] approved Massachusetts’s Section 271 application.”<sup>69</sup> The Rhode Island Commission also relied on a showing by AT&T that the new rates would result in a wholesale cost of \$25.45 for the UNE-Platform, which is lower than the \$28.95 price of Verizon’s Unlimited Local Calling Offer.<sup>70</sup>

24. On November 15, 2001, the Rhode Island Commission also adopted permanent rates for sixteen additional elements identified as UNEs in our *UNE Remand Order*.<sup>71</sup> Verizon had proposed these rates on September 29, 2000, and revised them on May 24, 2001 to reflect the modified, TELRIC-compliant assumptions and 7.11 percent reduction mandated by the Rhode Island Commission on April 11, 2001.<sup>72</sup> After discovery and testimony, the Rhode Island Commission reviewed the rates and found them to be within a reasonable range of rates that a

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<sup>65</sup> Rhode Island Commission Comments at 43, n.138; *see also* Rhode Island PUC, *Verizon-Rhode Island’s TELRIC Studies-UNE Remand*, Report and Order at 15, Docket No. 2681 (rel. Dec. 3, 2001) (*Rhode Island UNE Remand Order*).

<sup>66</sup> Rhode Island PUC, *Unbundled Local Switching Rate Verizon-Rhode Island’s Section 271 Compliance Filing*, Report and Order at 2, Docket No. 3363 (rel. Nov. 28, 2001) (*Rhode Island Switching Order*); Rhode Island Commission Comments at 42; Verizon Cupelo/Garzillo/Anglin Decl. at 10, para. 37.

<sup>67</sup> Rhode Island Commission Comments at 42; Verizon Cupelo/Garzillo/Anglin Decl. at 10-11, para. 38.

<sup>68</sup> *Rhode Island Switching Order* at 4-5.

<sup>69</sup> *Rhode Island Switching Order* at 5; *see also* Rhode Island Commission Comments at 42.

<sup>70</sup> *Rhode Island Switching Order* at 5-6 (citing Rhode Island PUC, *Unbundled Local Switching Rates Verizon-Rhode Island’s Section 271 Compliance Filing*, AT&T Post Hearing Brief at 7-8, Docket No. 3363 (Nov. 2, 2001)).

<sup>71</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

<sup>72</sup> *Rhode Island UNE Remand Order* at 4.

correct application of TELRIC principles would produce.<sup>73</sup> These rates are not contested in this proceeding.

25. On January 28, 2002, the New York Public Service Commission (New York Commission) concluded a complex TELRIC rate proceeding begun even before the Commission granted Verizon's application for section 271 approval in New York.<sup>74</sup> The New York Commission adopted significantly reduced UNE rates, including switching rates approximately half of Verizon's prior switching rates in effect when the Commission granted Verizon's petition for section 271 approval in New York.<sup>75</sup> This action significantly affects our conclusions in this proceeding, and is discussed in detail below.

26. On February 21, 2002, also as part of its review of Verizon's section 271 application, the Rhode Island Commission adopted further discounted switching rates voluntarily proposed by Verizon.<sup>76</sup> Verizon proposed these new, lower rates to respond to commenters' criticism of its reliance on rates superseded by the New York Commission's January 28, 2002 to demonstrate that its Rhode Island non-loop rates were within a reasonable TELRIC range. The Rhode Island Commission reviewed the further discounted switching rates and found that they fell within a reasonable TELRIC range.

#### b. Discussion

27. Based on the evidence in the record, we find that Verizon's Rhode Island UNE rates are just, reasonable, and nondiscriminatory in compliance with checklist item two. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "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."<sup>77</sup> The Rhode Island Commission concluded that Verizon's UNE rates satisfied the requirements of checklist item two.<sup>78</sup> While we have not conducted a *de novo* review of the Rhode Island Commission's pricing determinations, we have followed the urging of the

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<sup>73</sup> *Id.* at 15; *see also* Verizon Cupelo/Garzillo/Anglin Decl. at 10, para. 34.

<sup>74</sup> New York PSC, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-1357, Order on Unbundled Network Element Rates (rel. Jan. 28, 2002) (*New York UNE Rate Order*). The New York Commission based its order on an Administrative Law Judge's (ALJ's) Recommended Decision released on May 16, 2001. Until the New York Commission's order, the ALJ's recommendations were not final and subject to change.

<sup>75</sup> *Id.*

<sup>76</sup> Rhode Island PUC, *Unbundled Local Switching Rates Verizon-Rhode Island's Section 271 Compliance Filing*, Order at 3, Docket No. 3363 (rel. Feb. 21, 2002) (*Second Rhode Island Switching Order*).

<sup>77</sup> *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244.

<sup>78</sup> *Rhode Island TELRIC Order* at 4; Rhode Island Commission Comments at 43.

Department of Justice that we look carefully at commenters' complaints regarding UNE pricing.<sup>79</sup> Certain flaws in the Rhode Island Commission's initial TELRIC proceeding preclude us from concluding that Verizon's original, April 11, 2001, UNE rates fall within the reasonable range that correct application of TELRIC principles would produce. Nonetheless, after reviewing Verizon's more recent UNE rates, we conclude that Verizon's Rhode Island UNE rates fall within the reasonable range that correct application of TELRIC principles would produce.

28. We commend the Rhode Island Commission for its prodigious effort to establish TELRIC-compliant rates and note that its orders in the UNE rate proceeding demonstrate a commitment to basic TELRIC principles. After two and one-half years of discovery, briefings, and hearings, which included the examination of competing cost studies filed by Verizon and AT&T, the Rhode Island Commission adopted interim rates that incorporated many of the TELRIC-compliant assumptions recommended by its own Division of Utilities and Carriers.<sup>80</sup> Subsequently it adopted these interim rates as permanent rates,<sup>81</sup> and twice adjusted the permanent switching rates downward in response to criticism that they were too high to be TELRIC-based.<sup>82</sup> Finally, the Rhode Island Commission adopted rates for the sixteen additional elements required by our *UNE Remand Order*, and the TELRIC-compliance of these rates is not contested here.<sup>83</sup>

29. To understand our analysis, it is important to distinguish the various rates adopted over time by the Rhode Island Commission and how we are considering each of them. First, on April 11, 2001, the Rhode Island Commission adopted overall UNE rates after a lengthy proceeding.<sup>84</sup> Verizon contends, and the Rhode Island Commission agrees, that the switching rates contained in these UNE rates, referred to as Verizon's April 11 switching rates, are TELRIC-compliant.<sup>85</sup> Subsequently, Verizon twice voluntarily discounted its switching rates in seeking approval of its section 271 application.<sup>86</sup> The Rhode Island Commission adopted the first discounted switching rates, referred to as the November 15 switching rates, on November 15, 2001.<sup>87</sup> Most recently, the Rhode Island Commission adopted further discounted switching

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<sup>79</sup> Department of Justice Evaluation at 6.

<sup>80</sup> Rhode Island Commission Comments at 42. Based upon this record, we reject AT&T's claim that the interim rates were "unlitigated." AT&T Comments at 3.

<sup>81</sup> See generally *Rhode Island TELRIC Order*.

<sup>82</sup> See *Rhode Island Switching Order and Second Rhode Island Switching Order*.

<sup>83</sup> See generally *Rhode Island UNE Rate Order*.

<sup>84</sup> *Rhode Island TELRIC Order* at 5.

<sup>85</sup> Verizon Application at 88, Verizon Cupelo/Garzillo/Anglin Decl. at 10, para. 38; *Rhode Island TELRIC Order* at 5.

<sup>86</sup> Verizon Cupelo/Garzillo/Anglin Decl. at 10, para. 38; Verizon Feb. 14 *Ex Parte* Letter.

<sup>87</sup> *Rhode Island Switching Order* at 5.

rates, referred to as the February 21 switching rates, on February 21, 2002.<sup>88</sup> Although contending that its April 11 rates are TELRIC compliant, Verizon now alternatively relies on these February 21 switching rates in seeking the Commission's approval of its 271 application in this proceeding. Because Verizon asserts in this proceeding that its April 11 rates were TELRIC-compliant, and because the Rhode Island Commission relied upon its own finding that the April 11 switching rates were TELRIC-compliant in subsequently adopting Verizon's November 15 switching rates,<sup>89</sup> we review certain contested decisions the Rhode Island Commission made regarding the April 11 switching rates. Because the Rhode Island Commission adopted Verizon's February 21 switching rates without a rate proceeding and a thorough record that would allow us to determine whether the faulty assumptions underlying its original rates were corrected, we review the February 21 rates using our benchmark analysis.<sup>90</sup>

30. We find that the Rhode Island Commission properly applied the TELRIC methodology with respect to several issues disputed by the parties. Both AT&T and WorldCom assert that UNE rates in Rhode Island are not TELRIC compliant because they fail to incorporate the specific assumptions mandated by the Rhode Island Commission on April 11, 2001.<sup>91</sup> This assertion is incorrect. For example, the April 11 rates incorporate Commission-prescribed depreciation lives and a 9.5 percent cost of capital.<sup>92</sup> These Rhode Island Division-recommended assumptions are consistent with assumptions the Commission has found to comply with TELRIC principles in reviewing other section 271 applications.<sup>93</sup> Loop rates also incorporate assumptions regarding fill factors that the Division recommended and the Commission has found to be consistent with TELRIC principles.<sup>94</sup> No party has presented arguments or facts in this proceeding which would cause us to find that these assumptions are inconsistent with TELRIC principles as applied to Verizon in Rhode Island.

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<sup>88</sup> *Second Rhode Island Switching Order* at 3.

<sup>89</sup> *Rhode Island Switching Order* at 5.

<sup>90</sup> Where a state has not conducted a TELRIC rate proceeding, its rates may nonetheless be found to be TELRIC compliant if they pass our benchmark test. *See SWBT Missouri/Arkansas Order* at paras. 67-68.

<sup>91</sup> AT&T Comments at 3-4 and 6; WorldCom Comments at 3. The assertion by AT&T and WorldCom that the Rhode Island Commission mandated the assumptions is incorrect. The Rhode Island Commission adopted rebuttable presumptions for its upcoming rate proceeding, many of which were recommended by its own Division of Public Utilities and Carriers, or the Rhode Island ratepayer advocate. *Rhode Island TELRIC Order* at 21, 24, and 35; Rhode Island Commission Comments at 43, n.139; Rhode Island Reply at 2; Verizon Cupelo/Garzillo/Anglin Decl. at 16-17, paras. 49, 50.

<sup>92</sup> *Rhode Island TELRIC Order* at 24, 21; Rhode Island Commission Comments at 43, n.139; Rhode Island Reply at 2; Verizon Cupelo/Garzillo/Anglin Decl. at 16-17, paras. 49, 50.

<sup>93</sup> *See, e.g., Verizon Pennsylvania Order*, 16 FCC Rcd at 17454, para. 57.

<sup>94</sup> *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9007, para. 39; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6237, paras. 79-80.

31. We disagree with claims by AT&T and WorldCom that Verizon's UNE rates are not TELRIC compliant because the Rhode Island Commission will soon begin a new rate proceeding in which it will reconsider certain assumptions underlying the rates.<sup>95</sup> The fact that the Rhode Island Commission has scheduled a rate proceeding to update existing rates does not, in itself, prove that existing rates are not TELRIC compliant. Indeed, the Commission has recognized that rates may well evolve over time to reflect new information on cost study assumptions and changes in technology, engineering practices, or market conditions.<sup>96</sup> The United States Court of Appeals for the D. C. Circuit agrees:

[W]e suspect that rates may often need adjustment to reflect newly discovered information, like that about Bell Atlantic's future discounts. 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.<sup>97</sup>

32. Despite the fact that the Rhode Island Commission has demonstrated a commitment to basic TELRIC principles and has correctly applied these principles in many instances, for the reasons discussed below, we cannot find that Verizon has proven that its UNE rates were adopted through a proceeding which correctly applied TELRIC principles in all instances. Therefore, we evaluate Verizon's current Rhode Island UNE rates based upon our benchmark analysis. As discussed below, Verizon's Rhode Island UNE rates pass our benchmark test, and, therefore, satisfy the requirements of checklist item two.

(i) **Switching Rates**

33. As discussed above, the Rhode Island Commission adopted UNE rates, including switching rates that it found to be TELRIC compliant, on April 11, 2001 after a lengthy rate proceeding. Subsequently, on November 15, 2001, and February 21, 2002, the Rhode Island Commission adopted reduced switching rates that Verizon had voluntarily discounted in seeking approval of its section 271 application. AT&T and WorldCom criticize specific assumptions underlying the April 11 switching rates, and the switching rates adopted November 15, 2001. AT&T and WorldCom's criticisms of these rates prompt us to consider both the Rhode Island rate proceeding underlying the April 11 switching rates, and the Rhode Island Commission's actions in subsequently adopting discounted switching rates.

34. A central issue contested by the parties is the appropriate discount for Verizon's switches. Verizon's Rhode Island switching rates are based on the assumption that it will not replace any switches in Rhode Island, but only expand switch capacity through growth additions to existing switches. Typically, vendors provide greater discounts for new, replacement switches

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<sup>95</sup> AT&T Comments at 4; WorldCom Comments at 3-4.

<sup>96</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247.

<sup>97</sup> *AT&T Corp. v. FCC*, 22 F.3d 607, 617-18 (D.C. Cir. 2000).

than for growth additions to existing switches. AT&T and WorldCom contend that Verizon's assumption of no new, replacement switches and only growth additions is inconsistent with TELRIC principles.<sup>98</sup> While the Commission has not to date specified an appropriate split between new, replacement switches and growth additions, we strongly question an assumption of only growth additions, as proposed by Verizon and incorporated in the April 11 rates adopted by the Rhode Island Commission. Even if some growth additions may be used in a forward-looking network, the absence of any new switches is inconsistent with the assumption in TELRIC pricing of a forward-looking network built from scratch, given the location of the existing wire centers.<sup>99</sup> Although an efficient competitor might anticipate some growth additions over the long run, rates based on an assumption of all growth additions and no new switches do not comply with TELRIC principles. We also note that the Rhode Island Commission determined that Verizon's assumptions for switch cost recovery in the new UNE rate proceeding will be based on a rebuttable presumption of 90 percent new switches to 10 percent growth additions.<sup>100</sup>

35. We also agree with AT&T and WorldCom that Verizon used a questionable installation factor for its switches. The installation factor is the percentage amount of the original switch price added to the switch price to recover the costs of installation. Specifically, AT&T and WorldCom claim that Verizon's installation factor of more than 60 percent of the switch cost is inflated.<sup>101</sup> Verizon derives this factor from the cost of installing the switch itself rather than having the switch installed by the vendor.<sup>102</sup> The Rhode Island Commission expressed concern regarding Verizon's installation factor, but, because it found the record before it insufficient to establish a new factor, deferred a specific determination to the new rate proceeding.<sup>103</sup> Specifically, the Rhode Island Commission stated: "[T]he Commission is concerned that [Verizon] may not be as efficient in [installing switches] as it could be: perhaps Verizon should consider letting the switch manufacturer install the switch, as do most Bell companies."<sup>104</sup> The Rhode Island Commission further required Verizon to submit substantial additional evidence on its installation costs in the upcoming rate proceeding.<sup>105</sup> Again, although the Rhode Island Commission found that the rates it ultimately adopted were TELRIC compliant, its decision does not provide us with sufficient evidence to conclude that this installation factor accurately reflects cost recovery of an efficient, forward-looking network pursuant to TELRIC principles. We also note that because the installation factor is a multiplier, its application to the switch price

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<sup>98</sup> AT&T Comments at 8, 12; WorldCom Comments at 5-7.

<sup>99</sup> *Local Competition Order*, 11 FCC Rcd at 15848-49, para. 685, 15845, n.1682; *see also* 47 C.F.R. § 51.505.

<sup>100</sup> *Rhode Island TELRIC Order* at 35.

<sup>101</sup> AT&T Comments at 42-43; WorldCom Comments at 6-7.

<sup>102</sup> *Id.*

<sup>103</sup> *Rhode Island TELRIC Order* at 36-37.

<sup>104</sup> *Id.* at 36.

<sup>105</sup> *Id.* at 37-38.

magnifies the effect of any other problematic assumptions underlying switching rates, such as inaccurate assumptions for new versus growth switch discounts.

36. As discussed above, parties raised serious questions about whether Verizon's April 11 switching rates are TELRIC compliant. Verizon contends that these rates are TELRIC-compliant, but does not rely on them in this proceeding. Rather, Verizon first relied on the voluntarily discounted switching rates adopted by the Rhode Island Commission on November 15, 2001, and now relies on the voluntarily discounted switching rates adopted by the Rhode Island Commission on February 21, 2002. Therefore, because we base our determination of compliance with checklist item two on the February 21 rates, we need not decide the question of whether Verizon's April 11 switching rates are TELRIC compliant here. Verizon's subsequent adoption of discounted switching rates did not result from a rate proceeding with a thorough record that would allow us to determine whether the faulty assumptions underlying its original rates were corrected. We therefore review the switching rates Verizon now relies on to satisfy checklist item two, the February 21 switching rates, using our benchmark analysis.

### (ii) Benchmark Analysis

37. States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that a correct application of our TELRIC rules would produce. Given our findings concerning the assumptions for new versus growth switch discounts and the installation factor underlying Verizon's switching rates, we must determine whether Verizon can show that its voluntarily reduced switching rates nonetheless fall within the range that reasonable application of TELRIC principles would produce by applying our benchmark test.

38. The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly (e.g., the state commission made a major methodological mistake or used an incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if the rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.<sup>106</sup> To determine whether a comparison is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.<sup>107</sup>

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<sup>106</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

<sup>107</sup> See *SWBT Missouri/Arkansas Order* at para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. We note, however, that in the *Verizon Pennsylvania Order*, we found that several of these criteria should be treated as indicia of the reasonableness of the comparison. *Id.* at para. 64. See also *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

39. Verizon here chooses to rely on a benchmark comparison of its rates in Rhode Island to its rates in New York. While we accept Verizon's reliance on New York rates for purposes of this application, we note that in future applications, Verizon and other BOCs are free to rely on benchmark comparisons to rates in other appropriate, section 271-approved states, as described in the preceding paragraph, as evidence that rates in the applicant state satisfy checklist item two. Of course, Verizon and other BOCs may also demonstrate in future applications that their rates result from a state rate proceeding correctly applying TELRIC principles without regard to any benchmark analysis.

40. We consider the reasonableness of loop and non-loop rates separately.<sup>108</sup> Where the Commission finds that the state commission correctly applied TELRIC principles for one category of rates, it will use a benchmark analysis to evaluate the rates of the other category. If, however, there are problems with the application of TELRIC for both loop and non-loop rates, then the same benchmark state must be used for all rate comparisons to prevent an incumbent LEC from choosing for its comparisons the highest approved rates for both loop and non-loop UNEs.<sup>109</sup> In addition, we combine per-minute switching with other non-loop rates such as port, signaling, and transport rates because competing LECs most often purchase them together rather than separately, and because state commissions often differ in determining how to recover certain costs. For example, in some states shared trunk port costs are recovered through a separate rate, while in other states these costs are recovered as part of switching rates.

41. The New York Commission's recent adoption of substantially reduced switching rates<sup>110</sup> has generated some question in this proceeding about which rates to use in performing our benchmark analysis. Verizon claimed at the outset of this proceeding that its November 15 switching rates satisfied checklist item two because they passed a benchmark comparison to its original switching rates in New York and to its Massachusetts switching rates, which are based on its original New York switching rates.<sup>111</sup> When the New York Commission adopted new rates superseding the rates Verizon had relied on, commenters contended that Verizon's reliance on the superseded New York rates had become unreasonable.<sup>112</sup> Verizon then filed the February 21 switching rate reductions with the Rhode Island Commission to address commenters' contentions.

42. First, we find Verizon's reliance on Massachusetts rates for a benchmark comparison to be inappropriate. The Commission found that Verizon's Massachusetts rates satisfied checklist item two based on a benchmark analysis comparing Massachusetts rates to

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<sup>108</sup> See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 67; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27. Loop rates consist of charges for the local loop, and non-loop rates consist of charges for switching, signaling, and transport.

<sup>109</sup> *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *SWBT Missouri/Arkansas Order* at para. 58.

<sup>110</sup> See generally *New York UNE Rate Order*.

<sup>111</sup> Verizon Application at 91; Verizon Cupelo/Garzillo/Anglin Decl. at 17-19, paras. 51-56.

<sup>112</sup> See AT&T Feb. 1 *Ex Parte* Letter; WorldCom Jan. 31 *Ex Parte* Letter.

New York rates.<sup>113</sup> To allow section 271 applicants to use benchmark-approved rates in performing a subsequent benchmark analysis would compound any variations from rates in the state found to have correctly applied TELRIC principles in a full rate proceeding. Verizon's reliance on Massachusetts rates is particularly inappropriate when the Commission found that Massachusetts rates satisfied checklist item two based on a benchmark comparison to New York rates that have now been superseded.

43. On December 22, 1999, the Commission granted Verizon's section 271 application in New York, deferring to the New York Commission on the issue of switch discounts and finding that the New York switching rates fell within the reasonable range that a correct application of TELRIC principles would produce.<sup>114</sup> The Commission noted that the New York Commission was reexamining switching prices and would be revising them.<sup>115</sup> The Court of Appeals for the D.C. Circuit agreed with the Commission's analysis, noting both that the New York Commission "has said it will reexamine switching discounts, ordering refunds if appropriate" and that requiring rejection of section 271 applications due to ongoing rate proceedings would cripple the section 271 process.<sup>116</sup>

44. At the time Verizon applied for section 271 approval in Massachusetts, the New York Commission had not yet concluded its reexamination of switching prices. The Commission approved the Massachusetts application, finding that the Massachusetts rates were comparable to New York rates and passed a benchmark analysis.<sup>117</sup> The Commission rejected parties' arguments that the New York switching rates were defective and subject to a reexamination proceeding and, therefore, could not be relied on for a benchmark analysis.<sup>118</sup> The order stated, however, that, depending on the New York Commission's final conclusions, Verizon might be precluded from relying on New York switching rates as a basis for a future benchmark comparison:

If the New York Commission adopts modified UNE rates, future section 271 applicants could no longer demonstrate TELRIC compliance by showing that their rates in the applicant state are equivalent to or based on the current New York rates, which will have been superseded. Moreover, 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

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<sup>113</sup> *Verizon Massachusetts Order*, 16 FCC Rcd at 9000, para 23.

<sup>114</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4083-84, para. 242; 4084-85, para. 245.

<sup>115</sup> *Id.* at 4085-86, para. 247.

<sup>116</sup> *AT&T Corp. v. FCC*, 220 F.3d at 618.

<sup>117</sup> *Verizon Massachusetts Order*, 16 FCC Rcd at 9000, para. 23.

<sup>118</sup> *Id.* at 9003, para. 31.

its compliance with the requirements of section 271, depending on the New York Commission's conclusions.<sup>119</sup>

45. In an order issued January 28, 2002, the New York Commission completed its reexamination of switching rates, adopting many recommendations of an ALJ who conducted hearings on the issues, and rejecting many exceptions to the ALJ's Recommended Decision.<sup>120</sup> Regarding the contested issue of new versus growth discounts for switches, the New York Commission found that, although switching costs should not be predicated exclusively on new switch discounts, "it has been clear since [early 1999] that relatively deep new switch discounts are not limited to full-scale switch replacements, and there is no basis for agreeing with Verizon that incremental replacement of the system over time would entail growth discounts only."<sup>121</sup> On February 19, 2002, Verizon filed new rates to comply with the New York Commission's order that are approximately 50 percent lower than the original New York switching rates.<sup>122</sup>

46. Given these findings by the New York Commission, AT&T and WorldCom assert that Verizon cannot rely on a benchmark comparison to superseded New York switching rates to establish that its current Rhode Island switching rates are within a reasonable TELRIC range.<sup>123</sup> The Commission previously has held that the existence of a new cost proceeding is insufficient reason to find that a state's existing rates do not satisfy TELRIC principles.<sup>124</sup> We also believe that the existence of a new rate proceeding is insufficient reason to disallow a state's rates for benchmarking purposes. As the Court of Appeals for the D.C. Circuit has recognized, rates require continual adjustment to reflect changing information, and section 271 applications would never be granted if such adjustment required denial.<sup>125</sup> The need for such continual adjustment, however, also requires us to consider carefully any reliance on benchmarking to rates that have been superseded by order of a state commission. To do otherwise would be to forever freeze TELRIC ratemaking to the first TELRIC rate proceeding and *de facto* fail to recognize increased

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<sup>119</sup> *Id.* at 9002-03, paras. 29-30. We note that this Commission order was approved by two Commissioners, with one concurrence and one dissent. In his separate statement, Chairman Powell explained the situation as follows: "If New York in fact revises its rates downward after concluding that its prior determinations were not soundly cost-based, neither Verizon nor anyone else could properly rely in future applications on the rates we approved in the *Bell Atlantic New York Order* without new substantiation. Furthermore, depending on the scope of the New York Commission's upcoming decision on rates, this Commission might determine that Verizon has subsequently 'ceased to meet [one] of the conditions required for [section 271] approval,' thereby empowering us to take remedial action under section 271(d)(6)." *Id.* at 9143.

<sup>120</sup> *See generally* *New York UNE Rate Order*.

<sup>121</sup> *Id.* at 28.

<sup>122</sup> Among other things, the New York Commission adjusted how much of the cost of switching is recovered through the flat-rated port charge and how much is recovered through traffic-sensitive per-minute charges, raising the portion recovered through flat charges and reducing the portion recovered through per-minute charges. *Id.* at 36.

<sup>123</sup> AT&T Feb. 1 *Ex Parte* Letter; WorldCom Jan. 31 *Ex Parte* Letter.

<sup>124</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d at 617.

<sup>125</sup> *AT&T Corp. v. FCC*, 22 F.3d at 617-18.

sophistication in modeling or newly available evidence that could produce different, more precise TELRIC refinements that result in increased or decreased wholesale prices for UNEs. This requirement is particularly compelling here, where parties questioned Verizon's New York switching rates during the section 271 proceeding and the New York Commission expressly rejected Verizon's discredited claim of no further new switch discounts.<sup>126</sup> We must also consider the experience we have gained in approving additional section 271 applications. We note that Verizon's superseded New York switching rates are considerably higher than other switching rates that the Commission has found to be TELRIC compliant in approving other section 271 applications. For example, Verizon's superseded New York switching rates are significantly higher than switching rates in Texas, Kansas, Oklahoma, Pennsylvania, Missouri and Arkansas.<sup>127</sup> Thus, we conclude that it would be inappropriate to evaluate Verizon's Rhode Island rates based on a benchmark comparison to superseded New York rates.

47. As noted above, in response to criticism of Verizon's use of superseded New York switching rates as evidence that its Rhode Island switching rates fell within a reasonable TELRIC range, Verizon filed new, lower switching rates with the Rhode Island Commission on February 14, 2002.<sup>128</sup> The Rhode Island Commission adopted these new, lower switching rates on February 21, 2002.<sup>129</sup> Verizon maintains that its old Rhode Island switching rates were TELRIC compliant and that its new, lower switching rates are "well below the level that any reasonable measure of TELRIC costs would produce."<sup>130</sup> Verizon's February 21 Rhode Island switching rates compare favorably with the new New York switching rates when evaluated using our benchmark analysis. We consider, therefore, whether the new New York switching rates are an appropriate benchmark for determining whether Verizon's February 21 Rhode Island switching rates fall within a reasonable TELRIC range.

48. We find that the new rates adopted by the New York Commission are appropriate comparison rates in this instance. Several facts unique to this application permit us to use the new New York rates in our benchmark analysis.

49. First, although Verizon did not introduce the deliberations of the New York Commission into the record in this proceeding when it initially filed its Rhode Island section 271 application, the Commission has been aware of the existence of the New York rate proceeding since it first granted Verizon section 271 approval in New York.<sup>131</sup> Further, AT&T and

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<sup>126</sup> *New York UNE Rate Order* at 21.

<sup>127</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18471-77, paras. 231-242; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6264, para. 55, 6273, para. 73, 6274-75, para. 77; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458-59, para. 67; *SWBT Missouri Arkansas Order* at paras 60, 67.

<sup>128</sup> See Verizon Feb. 14 *Ex Parte* Letter; Feb. 14 Public Notice.

<sup>129</sup> *Second Rhode Island Switching Order* at 3.

<sup>130</sup> Verizon Feb. 14 *Ex Parte* Letter at 2.

<sup>131</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247.

WorldCom were cognizant of the New York Commission's impending action, as they argued that a significant reduction in New York switching rates was imminent and should be used in a benchmark comparison in this proceeding.<sup>132</sup> Finally, AT&T, WorldCom, and Verizon notified us of the New York Commission's new rate determinations shortly after release of the New York Commission's order.<sup>133</sup> In fact, AT&T now contends that the new New York rates are the only evidence Verizon can rely on to demonstrate that its Rhode Island rates satisfy checklist item two.<sup>134</sup> Therefore, we, along with parties to this proceeding, have been well aware of the outcome and impact of the New York rate proceeding since late January 2002, and have had an opportunity to review the new rates.

50. We commend the New York Commission's efforts in conducting a detailed and lengthy rate review in which many of the issues debated by the parties here were thoroughly evaluated.<sup>135</sup> The rate review began in February 2000, involved the filing of testimony, responsive testimony or rebuttal testimony by almost a dozen parties, including AT&T and WorldCom, seven days of hearings and several conferences, and hundreds of pages of briefs. This process resulted in a Recommended Decision by ALJ Linsider on May 16, 2001. Thereafter, for eight months, the New York Commission considered the Recommended Decision as well as exceptions filed by nearly a dozen parties, again including AT&T and WorldCom, with accompanying briefs and reply briefs. On January 28, 2002, in a detailed, 162-page order, the New York Commission reached a final determination regarding the numerous UNE rate issues it considered. In this order, the New York Commission made a reasonable, downward adjustment to switching rates in response to criticism of the superseded New York switching rates that were at issue in the New York Commission's original UNE rate proceeding, the Commission's New York section 271 proceeding, and the subsequent Massachusetts section 271 proceeding.<sup>136</sup> Specifically, the New York Commission reduced the switching rates after considering new evidence that Verizon continues to receive deep discounts on its new switches.<sup>137</sup> In adopting the lower rates, the New York Commission expressly provided for possible refunds to competing LECs who had paid the superseded (and discredited) interim rates.<sup>138</sup> Indeed, Verizon and other parties to the New York rate proceedings recently filed a settlement agreement providing for such refunds.<sup>139</sup>

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<sup>132</sup> AT&T Comments at 15; WorldCom Comments at 10.

<sup>133</sup> AT&T Feb. 1 *Ex Parte* Letter; WorldCom Jan. 31 *Ex Parte* Letter; Verizon Feb. 8 *Ex Parte* Letter.

<sup>134</sup> AT&T Feb. 1 *Ex Parte* letter at 16.

<sup>135</sup> See *New York UNE Rate Order* at 20-33.

<sup>136</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247; *Verizon Massachusetts Order*, 16 FCC Rcd at 9004, para. 33.

<sup>137</sup> *New York UNE Rate Order* at 21.

<sup>138</sup> *Id.* at 22; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247.

<sup>139</sup> AT&T Feb. 12 *Ex Parte* Letter at 3.

51. In considering whether the new New York rates are an appropriate benchmark to demonstrate TELRIC compliance, we place significant weight on the input of commenters on this issue. In particular, as noted above, even before the New York Commission adopted the new rates, AT&T and WorldCom advocated both to the Rhode Island Commission and in this proceeding that the rates proposed by the New York ALJ more than nine months ago were the appropriate benchmark rates.<sup>140</sup> In fact, WorldCom asserted in this proceeding that “Verizon should adopt in Rhode Island the revised UNE rates of the New York ALJ . . . as a suitable proxy for TELRIC rates.”<sup>141</sup> Immediately upon the New York Commission’s adoption of the ALJ’s recommendation, moreover, AT&T reiterated to this Commission that only by lowering the Rhode Island rates to meet a benchmark comparison to the new New York rates could Verizon satisfy checklist item two.<sup>142</sup> Further, when we sought comment on the question of using new New York rates as a benchmark,<sup>143</sup> no party suggested that the new New York rates are not TELRIC-compliant or are an inappropriate benchmark.

52. The New York Commission has demonstrated an admirable commitment to accurate, cost-based rate making both in the recent rate case and in the proceedings that the Commission and the United States Court of Appeals for the D.C. Circuit evaluated in granting and reviewing the decision to grant section 271 approval in New York. This conclusion is buttressed by the fact that Verizon’s new New York switching rates are approximately half of the superseded rates and much closer to switching rates in states where section 271 approval has been granted more recently than in New York. Verizon’s new New York non-loop rates more closely compare to non-loop rate levels in Texas, Oklahoma, Pennsylvania, and Missouri.

53. In sum, we base our conclusion to use the new New York rates as a benchmark in this proceeding on four factors. First, we rely on our previous conclusion that the New York Commission had conducted a TELRIC compliant proceeding when it set Bell Atlantic’s original UNE rates and our affirmative finding that the resulting rates fell within a reasonable TELRIC range – a finding affirmed by the D.C. Circuit.<sup>144</sup> Second, we rely on the fact that, in a proceeding that spanned two years, included nearly a dozen parties, and generated almost 5000 pages of transcript, the New York Commission specifically addressed, among numerous TELRIC questions, the precise issue that was heavily debated in our initial consideration of Verizon’s superseded New York rates. Third, we rely on the fact that no commenter has asserted, or submitted any evidence to indicate, that when the New York Commission adopted the new New York rates, it violated “basic TELRIC principles [or made] clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of

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<sup>140</sup> AT&T Comments at 15; WorldCom Comments at 10.

<sup>141</sup> WorldCom Comments at iii. AT&T also stated: “To the extent that a benchmark analysis is used in this case, [the New York ALJ recommended rates] are the appropriate benchmark comparisons for Rhode Island at the present time.” AT&T Comments at 15.

<sup>142</sup> AT&T Feb. 1 *Ex Parte* Letter at 16.

<sup>143</sup> See Feb. 14 Public Notice.

<sup>144</sup> *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000)

TELRIC principles would produce.”<sup>145</sup> In fact, to the contrary, commenters asserted that the new New York rates should serve as a benchmark in this proceeding.<sup>146</sup> Finally, we rely on the fact that the new New York rates are both lower and more in line with the rates we have approved in considering other section 271 applications. Under these circumstances, we find that, on the record before us, Verizon’s new New York rates fall within a reasonable TELRIC range and are, therefore, an appropriate benchmark for Rhode Island.

54. We also note that Verizon’s February 21 Rhode Island switching rates, which are much closer to its new New York switching rates, will soon be subjected to the additional scrutiny of the Rhode Island Commission. Although this additional scrutiny is not a basis for our decision, it demonstrates that commission’s significant commitment to TELRIC principles. The Rhode Island Commission also has indicated a commitment to complete its new rate case expeditiously, with an expectation of adopting permanent rates by the end of 2002.<sup>147</sup>

55. As discussed at part II, above, we waive our “complete when filed” rule in the unique circumstances presented by this application to consider Verizon’s February 21 Rhode Island switching rates as evidence of compliance with checklist item two.<sup>148</sup> Having determined that the new New York rates are appropriate rates for our benchmark comparison, we now compare Verizon’s Rhode Island non-loop rates to new New York non-loop rates using our benchmark analysis. In taking a weighted average of non-loop rates in Rhode Island and New York, we find that Rhode Island’s non-loop rates are roughly three percent lower than New York non-loop rates.<sup>149</sup> Taking a weighted average of Rhode Island and New York costs, we also find that Rhode Island non-loop costs are roughly three percent lower than New York non-loop costs. We conclude, therefore, that Verizon’s Rhode Island non-loop rates compare favorably to its New York non-loop rates, and, therefore, satisfy our benchmark analysis and the requirements of checklist item two.

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<sup>145</sup> See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59.

<sup>146</sup> See AT&T Feb. 1 *Ex Parte* Letter at 16; AT&T Comments at 15; WorldCom Comments at iii.

<sup>147</sup> Rhode Island Commission Reply at 3.

<sup>148</sup> See the discussion of our waiver of our “complete when filed” rule *supra* part II.

<sup>149</sup> In reaching this conclusion, we used state-specific Dial Equipment Minutes (DEM) rather than nationwide data to compute minutes of use for the benchmark analysis. We also used data submitted by Verizon regarding interswitch versus intraswitch and originating versus terminating minutes of use. See Letters from Clint E. Odom, Director - Federal Regulatory, Verizon to William F. Caton, Acting Secretary, Federal Communications Commission, Feb. 19, 2002, Jan. 18, 2002, and Jan. 16, 2002. We used these data because, where available, verifiable, state-specific data provide a more valid comparison. We note that our use of this data has a very small effect on the outcome of the benchmark comparison. We also note that Verizon’s new New York non-loop rates contain both a digital and an analog port rate. The New York rate structure uses the digital port rate of \$2.57 as the rate charged for ports that are purchased as part of the UNE-Platform. Therefore, for purposes of our benchmark analysis, we have compared Verizon’s New York digital port rate of \$2.57, rather than the analog port rate of \$4.22, or any blend of the two rates, to Verizon’s February 21 single Rhode Island port rate of \$1.86.

**(iii) Loop Rates**

56. We now evaluate the TELRIC compliance of Verizon's Rhode Island loop rates. Only WorldCom criticizes Verizon's loop rates, claiming that they are not TELRIC-compliant because they are based on cost studies with flawed assumptions.<sup>150</sup> We reject several of WorldCom's claims. Specifically, WorldCom objects to Verizon's assumptions regarding fill factors, fiber feed, structure-sharing, and use of more efficient integrated digital loop carrier. The Rhode Island Commission considered all of WorldCom's claims in its lengthy UNE rate proceeding. First, Verizon's loop rates incorporate fill factors – 75 percent for feeder, 50 percent for distribution, and 60 percent for interoffice transport – recommended by the Rhode Island Division<sup>151</sup> and which the Commission has found to be TELRIC-compliant in approving 271 applications in other states.<sup>152</sup> Second, based on the Rhode Island Division's recommendation, the Rhode Island Commission accepted an assumption that Verizon would use 100 percent fiber feeder, finding that “on a forward-looking basis, the industry is moving toward increased and exclusive use of fiber-optic feeder cables. . . .”<sup>153</sup> This assumption is consistent with Commission findings in approving section 271 applications in other states, which have been upheld in federal court.<sup>154</sup> We find that WorldCom presents no new arguments or facts in this proceeding which would cause us to find that these assumptions are inconsistent with TELRIC principles as applied to Verizon in Rhode Island.

57. We note that WorldCom alleges additional specific TELRIC violations not addressed above.<sup>155</sup> Assuming *arguendo* that WorldCom's other claims regarding flawed assumptions are valid, we conclude that the alleged errors do not result in rates outside the reasonable range that a correct application of TELRIC principles would produce. Applying our benchmark analysis to New York and Rhode Island loop rates, we conclude that Rhode Island loop rates fall within the range that a TELRIC-based rate proceeding would produce. This result occurs whether we use Verizon's superseded New York loop rates or its new New York loop rates in our benchmark comparison.<sup>156</sup> Specifically, in taking a weighted average in New York

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<sup>150</sup> WorldCom Comments at 10.

<sup>151</sup> *Rhode Island TELRIC Order* at 51-52; Rhode Island Commission Comments at 43, n.139; Verizon Cupelo/Garzillo/Anglin Decl. at 13-14, para. 44.

<sup>152</sup> See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9007, para. 39; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6275, paras. 79, 80.

<sup>153</sup> *Rhode Island TELRIC Order* at 40.

<sup>154</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4087-88, paras. 248-249; *AT&T Corp. v. FCC*, 220 F.3d at 618-619 (upholding the Commission's finding that rates based on an assumption of 100 percent fiber feeder were consistent with TELRIC principles); see also *Verizon Pennsylvania Order*, 16 FCC Rcd at 17455, para. 59.

<sup>155</sup> Specifically, WorldCom claims that loop rates do not incorporate TELRIC-compliant assumptions for structure sharing and use of integrated digital loop carrier. WorldCom Comments at 11-12.

<sup>156</sup> We note that Verizon's new New York loop rates resulted from the same comprehensive UNE rate proceeding described in detail at paras. 50-53, *supra*.

and Rhode Island, we find that Verizon's Rhode Island loop rates are roughly the same as its superseded New York loop rates, even though the USF cost model suggests that loop costs in Rhode Island are 28.42 percent higher than New York.<sup>157</sup> We also find that Verizon's Rhode Island weighted average loop rates are roughly 22 percent higher than the new New York weighted average loop rates, even though Rhode Island weighted average loop costs are roughly 28.45 percent higher than New York weighted average loop costs. We conclude that Verizon's Rhode Island loop rates pass our benchmark comparison to both superseded and new New York loop rates, and satisfy checklist item two.

## 2. Operations Support Systems

58. We find, as did the Rhode Island Commission, that Verizon provides nondiscriminatory access to its Operations Support Systems (OSS) in Rhode Island.<sup>158</sup> Consistent with more recent Commission orders, we do not address each OSS element in detail where our review of the record satisfies us that there is little or no dispute that Verizon meets the nondiscrimination requirements.<sup>159</sup> In this case, commenters have raised no concerns with any aspect of Verizon Rhode Island's OSS. Nonetheless, because Verizon argues that it employs the same OSS in Rhode Island that the Commission reviewed in the *Verizon Massachusetts Order*, we address those aspects of its OSS that have changed since the time of that order – primarily Verizon's loop qualification functions. We also address those aspects of Verizon's Rhode Island OSS involving minor performance discrepancies or otherwise requiring explanation: order rejection notices, electronic jeopardies, UNE-Platform provisioning, and billing.

### a. OSS Testing and Relevance of Massachusetts Performance

59. Consistent with our precedent, Verizon relies in this application on evidence that its Rhode Island and Massachusetts OSS are the same.<sup>160</sup> Specifically, Verizon asserts that it provides the same OSS to competing carriers in Massachusetts and Rhode Island.<sup>161</sup> To support its claim, Verizon submits reports from two third-party consultants.<sup>162</sup> In the first instance,

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<sup>157</sup> See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, n.249; *Verizon Massachusetts Order*, 16 FCC Rcd at 9001, n.65, for a discussion of what assumptions are made and how costs are compared using the USF cost model.

<sup>158</sup> Rhode Island Commission Comments at 92.

<sup>159</sup> See *Verizon Connecticut Order*, 16 FCC Rcd at 14151, para. 8; see also *Verizon Pennsylvania Order*, 16 FCC Rcd at 17425, para. 12.

<sup>160</sup> See Appendix D at para. 32.

<sup>161</sup> Verizon Application at 58; Verizon McLean/Wierzbicki Decl. at paras. 23, 50, 86, 90, 102, 115, 134, and Tab 2 at 1, 9, 11.

<sup>162</sup> The PwC report explains the similarities among the OSS in the Verizon New England states (Massachusetts and Rhode Island, as well as Maine, New Hampshire and Vermont). Verizon Application App. B, Tab 3, PricewaterhouseCoopers LLP report offered as Verizon's response to WorldCom data request 1-5 (PwC Report). The KPMG report explains only the similarities of Massachusetts and Rhode Island systems and describes three stand-alone tests of Rhode Island OSS elements that were not previously evaluated in Massachusetts. Verizon Application App. E, Tab 11, KPMG Report (KPMG Report).