

permitted the rate for elements that are purchased only in combination to be considered as a whole for benchmarking purposes.¹⁶

WorldCom next argues that the benchmark comparison contained in Verizon's Supplemental Filing suffers from various flaws, but its claims are misplaced. WorldCom first claims (at 2-3) that Verizon has improperly compared different amounts of usage in New Jersey and New York. But the fact of the matter is that switches in New Jersey experience lower average usage than switches in New York. See Garzillo/Prosini Supplemental Reply Decl. ¶ 43.¹⁷ The purpose of a benchmark analysis is to compare what it costs to purchase the non-loop elements in two states, and the best way to measure the cost in a given state is based on the average amount of usage in that state. See Garzillo/Prosini Supplemental Reply Decl. ¶ 42. In any event, the non-loop rates in New Jersey satisfy a benchmark test with the rates recently adopted in New York, even when the comparison is made assuming that the minutes in both states are the same, using either the dial equipment minutes in New Jersey or New York and applying the Commission's own assumptions. See id. ¶ 43.

Daily Usage File Rate. Although not raised as an issue in the initial state proceeding — or in the initial federal 271 proceeding — AT&T now claims (at 12-14) that the rate for daily usage files ("DUF") in New Jersey is somehow too high. This claim fails.

As an initial matter, the Commission has repeatedly acknowledged that it is inappropriate for carriers to raise new issues — particularly pricing issues — for the first time in a section 271

¹⁶ See, e.g., Massachusetts Order ¶ 25 (relying on a comparison of the "weighted average" of the rates for "switching [usage], transport, and switch ports"); Arkansas/Missouri Order ¶ 60 (relying on aggregate comparison of "non-loop rates").

¹⁷ There is no basis to WorldCom's claim (at 3-4) that Verizon's per-line usage figures are invalid because they are lower than WorldCom's own per-line usage. WorldCom's higher-than-average usage simply reflects the fact that it has chosen to target lucrative, high-volume customers.

proceeding. As the Commission has just recently held, for example, “it is both impracticable and inappropriate for us to make many of the fact-specific findings the parties seek in [a] section 271 review, when many of the [state commission’s] fact-specific findings have not been challenged below.” Vermont Order ¶ 20.¹⁸ Moreover, AT&T has recently challenged the DUF rate adopted by the New Jersey BPU in its petition for reconsideration of the BPU’s UNE order. That proceeding, not this one, is the appropriate forum in which to address AT&T’s claim. See, e.g., Vermont Order ¶ 37 (“state-specific determination of the appropriate Vermont DUF rate . . . [is] more appropriately made by the Vermont Board”).

In any event, AT&T has failed to demonstrate any clear error on the part of the BPU that takes the DUF rate outside the range that a reasonable application of TELRIC principles could produce. AT&T’s claims therefore fail on their merits.

First, AT&T complains (at 13) about the number of employees that Verizon has devoted to providing daily usage files to CLECs, but providing such files is an involved process that requires the full number of employees that Verizon has assigned and whose costs Verizon is entitled to recover. See Garzillo/Prosini Supplemental Reply Decl. ¶¶ 48-49. And, contrary to AT&T’s claim (at 12), Verizon spreads these labor costs across the entire footprint of the former Bell Atlantic South territory. See id. ¶ 48.

Second, AT&T claims (at 12) that Verizon has failed to spread the labor costs of performing daily usage files to the other tasks that workers providing daily usage files also perform. This is not true. Verizon spreads the labor costs of employees that work on both CLEC

¹⁸ See also New York Order ¶ 36 (holding that it is only “[t]hrough state proceedings” that the BOC will “be able reasonably to identify and anticipate certain arguments and allegations that parties will make in their filings before the Commission”); Massachusetts Order ¶ 147 (carriers should “bring issues . . . to the attention of state commissions so that factual disputes can be resolved *before* a BOC applicant files a section 271 application with this Commission”) (emphasis added).

DUF records and other kinds of records across all such records, whereas the costs of employees that work only on CLEC DUF records are appropriately spread over only DUF records. See Garzillo/Prosini Supplemental Reply Decl. ¶ 50.

Finally, AT&T claims (at 12) that the costs involved in providing daily usage files have declined since the time that Verizon's original cost studies were performed.¹⁹ But the Commission has recently held with respect to an identical claim that "mere evidence that the data underlying a rate is old . . . does not demonstrate that the [state commission] committed any clear error when it adopted the rate." Vermont Order ¶ 37; see also id. ¶ 23 ("rates may often need adjustment to reflect newly discovered information," but, "[i]f 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") (quoting AT&T Corp., 220 F.3d at 617).²⁰

Non-Recurring Rate for Feature Changes. AT&T also raises a second issue for the first time here, claiming (at 18-19) that the non-recurring rate for performing a feature change is too

¹⁹ AT&T also states (at 12) that Verizon has mistakenly calculated one small element of the DUF rate, the network data mover element, but the overall effect of this mistake on the DUF rate is tiny (in the fourth decimal place). See Garzillo/Prosini Supplemental Reply Decl. ¶ 52. Moreover, even if Verizon were to update its DUF cost study today, including to correct for the mathematical error, it is likely that some changes would result in higher costs. It is for precisely this reason that both the Commission and the D.C. Circuit have held that issues such as this are properly left for the state commissions to resolve. See, e.g., Massachusetts Order ¶ 33 (rejecting AT&T's claim that the rates failed to comply with TELRIC because of an error that was discovered after the rates were adopted, and leaving the matter to the state commission to resolve); AT&T Corp., 220 F.3d at 617-18 ("Under these circumstances, we are comfortable deferring to the Commission's conclusion that basic TELRIC principles have not been violated.").

²⁰ Although AT&T claims (at 12) that the New Jersey DUF rate is "5 times higher than in Pennsylvania," this comparison is inapposite. The Pennsylvania rate is based on an outdated cost study that relies on demand projections that are no longer relevant. See Garzillo/Prosini Supplemental Reply Decl. ¶ 53. The Pennsylvania commission has recently initiated a new pricing proceeding in which it will be revisiting the DUF rate that is now in effect.

high. In fact, this charge properly reflects the costs of the manual processing that is required to perform such feature changes. See Garzillo/Prosini Supplemental Reply Decl. ¶¶ 56-58. There are several reasons why a service order for a feature change requested after an original order is placed would fall out of Verizon's systems and require manual handling, such as where the CLEC requests Verizon to install a feature on an account that conflicts with another existing feature on that account. See id. ¶ 55. As described in detail above, the non-recurring rate in New Jersey is based on work-time estimates for performing feature changes that are comparable to the work-time estimates that were developed in New York and that were adopted by the New York PSC. In any event, AT&T has complained about this rate in its petition for reconsideration of the BPU's order, and that proceeding, not this one, is the appropriate place in which to resolve AT&T's claim.

B. Other Checklist Items.

Verizon demonstrated in both its Application and its Supplemental Filing that its performance in providing access to the various checklist items over the past seven months for which data are available — including the most recent three-month period — has been excellent. From December 2001 through February 2002, for example, Verizon provided on time for competing carriers more than 99.5 percent of their interconnection trunks, 100 percent of their new and augment collocation arrangements, more than 99 percent of their network element platforms, more than 98 percent of their stand-alone voice-grade loops, nearly 98 percent of their hot-cut loops, approximately 100 percent of their unbundled DSL-capable loops that required a dispatch of a Verizon technician, more than 99.5 percent of their resale orders that did not require the dispatch of a Verizon technician, and more than 95 percent of their resale orders that did require a dispatch. See Lacouture/Ruesterholz Supplemental Reply Decl. ¶¶ 6, 15, 20, 37,

71-72; Performance Trend Report at 241, 253 (Supplemental App. B, Tab 2); see also Vermont Order ¶ 43 (“we give substantial weight to the missed appointments measure”).

Verizon’s performance has been excellent despite the fact that there are large and increasing volumes in New Jersey. For example, in the last four months for which data are available, competitors added approximately 30,000 platform lines and 43,000 lines over facilities they deployed themselves. See Torre Supplemental Reply Decl. ¶ 3 & Table 1. During this same period, the number of residential lines that competitors are serving through facilities they have deployed themselves has increased substantially, and the number of residential lines served through platforms has more than doubled. See id.

Several commenters nonetheless take issue with certain limited aspects of Verizon’s checklist compliance. For the most part, these comments simply rehash claims made in response to Verizon’s original Application or in proceedings before the BPU. Indeed, CLECs raised many of these claims before the New Jersey BPU after Verizon submitted its Supplemental Filing. The BPU, after reviewing these claims, found that “no new substantive information or arguments have been submitted that merit modification of the Board’s prior Section 271 recommendation.” BPU Comments at 1. Based on that finding, as well as its initial extensive investigation, the Board “reaffirms its recommendation” that the Commission grant Verizon’s Application. Id.

1. Unbundled Local Loops.

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

Hot-Cut Loops. AT&T repeats its earlier claims that Verizon does not meet the standards for the average interval measurements for hot cuts (PR-1-01-3111 and PR-2-01-3111). See AT&T at 28. But, as Verizon has previously explained, and as the Commission has recognized, the average offered and completed interval measurements for hot cuts rely on an invalid parity comparison. See Reply Comments at 15-16; New York Order ¶ 292 (“there is no retail analogue for a hot cut”); see Pennsylvania Order ¶ 86 n.298 (noting that a hot cut has “no comparable retail product”). For this reason, the New York PSC, pursuant to the consensus agreement of the Carrier Working Group, has eliminated PR-1-01-3111 and PR-2-01-3111. See Guerard/Canny/DeVito Decl. ¶ 79; Lacouture/Ruesterholz Reply Decl. ¶ 14. Nevertheless, while the average interval measurement is not meaningful, Verizon’s performance is consistent with the standard interval for hot-cut loops in New Jersey, and, as noted above, Verizon provided nearly 98 percent of CLECs’ hot-cut loops on time from December through February. See Performance Trend Report at 157, 159 (Supplemental App. B, Tab 2); Lacouture/Ruesterholz Supplemental Reply Decl. ¶¶ 15, 17-18; see also Pennsylvania Order ¶ 86 n.298 (finding comparable performance to satisfy the checklist).

DSL Loops. AT&T also repeats its earlier claim that Verizon does not meet the standard for the average offered interval for DSL loops. See AT&T at 28. Yet, as Verizon has previously explained, the BPU approved modifications to the Carrier-to-Carrier Guidelines to eliminate the parity standard for this measurement, because the retail comparison group includes orders with standard intervals shorter than the six-day standard interval for DSL loops. See Guerard/Canny/DeVito Decl. ¶ 72; Lacouture/Ruesterholz Supplemental Reply Decl. ¶ 47. Verizon’s performance on this measurement has consistently been below the six-day standard interval, and, as noted above, Verizon provided approximately 100 percent of CLECs’

unbundled DSL-capable loops that required a dispatch on time from December through February. See Performance Trend Report at 182 (Supplemental App. B, Tab 2); Lacouture/Ruesterholz Supplemental Reply Decl. ¶¶ 37, 47; see also Pennsylvania Order ¶ 80 n.278 (“the six-day interval currently offered by Verizon in Pennsylvania [for DSL loops] is an appropriate standard”).

High-Capacity Loops. Allegiance, which did not submit comments in response to Verizon’s original Application, repeats claims raised previously by XO about Verizon’s provisioning of high-capacity loops, such as the complaint that Verizon requires it to order a special access circuit where no facilities are available to complete a competitor’s order for high-capacity loops. See Allegiance at 2-4. As Verizon has explained, these claims were made during the state proceedings and during the Pennsylvania 271 proceedings, and both the BPU and this Commission have squarely rejected them. See BPU Report at 49 (“as to issues raised by XO regarding High Capacity Loops . . . the Board finds that Verizon NJ meets its unbundling obligation by providing high capacity loops where facilities are available”); Pennsylvania Order ¶¶ 91-92 (finding that Verizon’s policy does not “warrant a finding of checklist non-compliance”); Lacouture/Ruesterholz Reply Decl. ¶¶ 21-22; Lacouture/Ruesterholz Supplemental Reply Decl. ¶¶ 33-34.

2. Reciprocal Compensation.

The BPU has found that Verizon complies with its obligations to provide reciprocal compensation for transportation and termination of local calls to competing carriers in New Jersey. See BPU Report at 73. Cavalier, however, repeats its earlier comments about a billing dispute related to payment of reciprocal compensation for transporting traffic to the interconnection point. See Cavalier at 3-6. As we previously explained, Cavalier’s claims are misplaced. More fundamentally, the Commission has repeatedly found, this is not the

appropriate forum for the resolution of such disputes. See Vermont Order ¶ 58 (“billing dispute[s]” are “not appropriately resolved in a section 271 proceeding”); Lacouture/Ruesterholz Reply Decl. ¶ 65.²¹

3. Operations Support Systems.

Based on a “comprehensive review,” the New Jersey BPU concluded that Verizon’s OSS “meet[] the FCC’s requirements for 271 approval.” BPU Report at 1, 30, 33, 43. The BPU also found that KPMG’s comprehensive test of Verizon’s OSS “confirms” its own conclusion that Verizon “meets the requirements for 271 approval.” BPU Report at 43. Even WorldCom conceded that KPMG did an “excellent job” and that the New Jersey test was “one of the best” in the country.²² The DOJ likewise concluded that “Verizon has submitted evidence to show that thorough, independent testing of virtually all aspects of its OSS in New Jersey demonstrated them to be highly satisfactory,” and that “there have been few complaints regarding Verizon’s New Jersey OSS.” DOJ Eval. at 6. In its most recent evaluation, the DOJ states that it “has not changed its generally positive assessment of the openness of the local telecommunications markets in New Jersey.” DOJ Second Eval. at 9.

²¹ As it did in its earlier comments, Cavalier also characterizes this dispute over compensation for transport as related to Checklist Item 1. See Cavalier at 3-6. Yet the same claims were raised in the course of the Pennsylvania 271 proceedings, where the Commission found that “Verizon’s policies do not represent a violation of our existing rules.” Pennsylvania Order ¶ 100. Because Verizon’s policies in New Jersey are the same as those in Pennsylvania, see Lacouture/Ruesterholz Decl. ¶ 33, the Commission’s conclusion applies with equal force here. Moreover, the Commission has held that the issue here — the “allocation of financial responsibility for interconnection facilities” — is currently pending in an ongoing rulemaking proceeding, see Pennsylvania Order ¶ 100, which is the more appropriate forum to address such claims, see Lacouture/Ruesterholz Reply Decl. ¶ 65.

²² Consultative Report of the Application of Verizon-New Jersey, Inc. for FCC Authorization To Provide In-Region, InterLATA Services in New Jersey, Transcript of Hearing, Docket No. TO001090541, at 38 (NJ BPU Nov. 5, 2001) (Application App. B, Tab 5).

Flow Through. AT&T repeats earlier complaints about the UNE flow-through rates in New Jersey. See AT&T at 27. As Verizon has explained, all the same types of orders that flow through in New York, Massachusetts, and Pennsylvania, including the same mass market UNE orders that CLECs submit in high volumes in those states, are designed to flow through in New Jersey as well. See McLean/Wierzbicki/Webster Reply Decl. ¶ 22; McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 7. At the present time, however, the mix of UNE orders, including UNE platform orders, being submitted in New Jersey includes a higher proportion of complex orders and a lower proportion of mass market orders than is true in those other states. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 22, 24-25; McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 6. Nonetheless, Verizon's achieved flow-through rate for UNEs has been steadily increasing and was nearly 90 percent in February 2002. See Performance Trend Report at 153 (Supplemental App. B, Tab 2).²³ As the Commission has held, such an "improving trend" of performance provides persuasive evidence that Verizon is complying with its checklist obligations. See, e.g., Massachusetts Order ¶¶ 140, 146; Kansas/Oklahoma Order²⁴ ¶¶ 187, 192; Connecticut Order App. D, ¶ 8. Finally, for resale orders, which are the largest category of orders in New Jersey, Verizon's total flow-through rate was greater than 80 percent from December 2001 through February 2002, and the achieved flow-through rate was greater

²³ Verizon's total flow through for UNE orders was more than 50 percent in December 2001 and February 2002, which is comparable to the total flow-through rate at the time the Commission approved Verizon's Massachusetts application. See Performance Trend Report at 153 (Supplemental App. B, Tab 2); Massachusetts Order ¶ 78. In January 2002, however, total flow through for UNE orders fell to 36 percent, due to a special project involving the migration of a large number of payphones to MetTel from another CLEC. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 5. If these orders are excluded, performance in January 2002 would have been nearly 50 percent, which is comparable to performance in December 2001 and February 2002. See id.

²⁴ Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001) ("Kansas/Oklahoma Order").

than 94 percent during those months. See Performance Trend Report at 57 (Supplemental App. B, Tab 2); McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 5.

Notifiers. MetTel is the only commenter to take issue with Verizon's performance in providing notifiers. MetTel's challenges, however, are based on its refusal to accept the performance measurements and business rules that the BPU adopted. Thus, MetTel has compared Verizon's performance to standards of its own invention and has "recalculated" Verizon's performance data without following the business rules. MetTel's calculations are wrong and in no way disprove the fact that Verizon consistently satisfies the performance standards that the BPU established for the return of confirmation and reject notices and for provisioning and billing completion notifiers. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 13, 19; see also DOJ Second Eval. at 8-9 ("The aggregate performance reported by Verizon . . . is within the benchmarks set by the New Jersey BPU.").

For example, while the BPU has established timeliness standards for returning confirmation and reject notices of 2, 24, 48, and 72 hours, depending on the product involved and the number of lines, MetTel instead reports the percentage of confirmations and rejects returned within 18 hours and 3 minutes, a weighted average it has calculated. See October 2001 Carrier-to-Carrier Guidelines at 23, 31 (Application App. J, Tab 17); MetTel's Goldberg Decl. ¶ 6. The appropriate intervals, however, are those adopted by the BPU. Under these measurements, Verizon's performance is excellent both for CLECs as a whole and for MetTel individually. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 13, 18.

Similarly, although MetTel claims to have recalculated Verizon's performance in returning confirmations and rejects under the business rules adopted by the New Jersey BPU — which exclude certain hours, such as weekends and holidays, in calculating the timeliness of

these notifiers — this is not the case, and the attachments to MetTel’s comments clearly *include* weekend and holiday hours in determining whether notifiers are late. See MetTel’s Goldberg Decl. ¶ 6; McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 15-17.²⁵ Likewise, MetTel’s recalculation of Verizon’s performance in returning billing completion notifiers appears to use the work completion date as the start point for its analysis, even though the start point in the business rules adopted by the BPU is the time when the service order processor is updated to reflect that the provisioning work has been completed. See MetTel’s Goldberg Decl. ¶ 7; McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 25. In both instances, MetTel’s failure to follow the business rules specified in the New Jersey Guidelines appears to explain the different results that it obtained.

MetTel also repeats earlier assertions that Verizon’s billing completion notifiers are not accurate. See MetTel’s Goldberg Decl. ¶ 8. Verizon has repeatedly shown that the data MetTel has provided do not support its claims. For example, Verizon recently investigated a number of instances in which MetTel claimed that it received an inaccurate billing completion notifier because MetTel had not received any usage for that number. McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 27-28. Verizon discovered that *two-thirds* of the lines involved were either in seasonal suspend status or disconnected, and therefore could generate no usage. See id. ¶ 28. Verizon also conducted field investigations and found that, for an additional 28 of the lines involved, there was *no phone* at the location. See id. Verizon also investigated a

²⁵ MetTel also repeatedly complains that Verizon did not provide it with the “flat files” containing the performance data underlying MetTel’s CLEC-specific reports. See, e.g., MetTel’s Goldberg Decl. ¶ 4. Verizon has no record of any request for those files prior to March 22, 2002. See Guerard/Canny/DeVito Supplemental Reply Decl. ¶ 16. Per that request, Verizon will provide MetTel with its flat file for the March 2002 data month on April 25, 2002; Verizon has also made an exception to its normal policy of providing these files on a going-forward basis only and will provide MetTel with flat files for the November 2001 through February 2002 data months. See id. ¶¶ 12-15.

different set of 88 lines, for which MetTel claims it received inaccurate billing completion notifiers because it received usage for a line that it had suspended for non-payment. For 74 of the 88 lines, however, MetTel had, in fact, submitted an order to restore the line, or a new connect order, *prior* to the date on which usage occurred. See id. ¶ 29. Indeed, MetTel's own data show that it submitted restoral orders for some of these lines. See id. ¶ 31.²⁶ In both cases, Verizon's investigations conclusively demonstrate that any inaccuracies are in MetTel's data, not in Verizon's billing completion notifiers. See id. ¶¶ 26-31.

Finally, MetTel continues to claim that Verizon is receiving a high number of trouble tickets for missing notifiers and that it does not clear those missing notifier tickets quickly enough. See MetTel's Goldberg Decl. ¶¶ 10-11. As Verizon has explained, in 2001, New Jersey CLECs submitted trouble tickets for missing notifiers on 454 of their approximately 490,000 orders — less than one-tenth of one percent — and the vast majority of those tickets were submitted by MetTel. See McLean/Wierzbicki/Webster/Canny Supplemental Decl. ¶ 37. Moreover, Verizon consistently clears 95 percent of PON exception troubles within three business days, both for MetTel and for CLECs in New Jersey in the aggregate. See id. ¶ 40. MetTel, however, appears to be confusing “clearing” and “resolving” a PON exception trouble. See MetTel's Goldberg Decl. ¶ 10; see also McLean/Wierzbicki/Webster/Canny Supplemental

²⁶ MetTel also complains that it cannot place restoral orders with weekend due dates. See Ex Parte Letter from Elliot M. Goldberg, MetTel, to William Caton, Acting Secretary, FCC, CC Docket No. 02-67, at 2 (Apr. 15, 2002). Restoral orders accounted for less than three percent of all of MetTel's Local Service Requests (“LSRs”) for resold lines and UNE platforms from December 2001 through February 2002, and Verizon's overall performance in providing resold lines and UNE platforms is excellent. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 10; Lacouture/Ruesterholz Decl. ¶¶ 179-187, 340-351; Lacouture/Ruesterholz Supplemental Reply Decl. ¶¶ 19-26, 70-79. Nonetheless, by May 4, 2002, Verizon will initiate a pilot program in New Jersey for interested CLECs that will allow them to provide weekend restorals during the hours that Verizon's OSS are available. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 10. If this pilot is successful, Verizon will make these modified procedures generally available by May 11, 2002. See id.

Decl. ¶¶ 38-39 (explaining these terms). Under the New York consent decree, Verizon agreed to a standard of 95 percent of PON exception troubles *cleared* within three business days. See McLean/Wierzbicki/Webster/Canny Supplemental Decl. ¶ 36. Although no standard was established for the resolution of PON exception troubles, it takes Verizon less than four business days, on average, from receipt of a PON exception trouble to *resolution* of the PON. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 32-34.

Billing. The BPU found that Verizon provides “timely and accurate daily usage records to the CLECs”; that Verizon “allows CLECs to choose the BOS-BDT bill format as the official bill of record”; that Verizon’s “electronic bill relies on its paper bill, which KPMG has found to be acceptable”; that Verizon “has taken numerous steps to facilitate the availability of accurate electronic bills”; and that “[t]he commercial data presented by Verizon NJ, the general absence of specific CLEC claims of flaws in [Verizon’s] electronic billing vehicle, and the independent third party reviews conducted by PricewaterhouseCoopers, persuade us that the Verizon NJ electronic BOS-BDT formatted bill meets the standards for section 271 billing compliance established by the FCC.” BPU Report at 40. The DOJ concludes that any inaccuracies found in Verizon’s carrier bills “do not represent a substantial portion of the carrier bill,” and that “there is little evidence in the record” demonstrating that Verizon’s bills have caused CLECs “competitive harm.” DOJ Second Eval. at 7.

The evidence here confirms that Verizon’s New Jersey systems are working properly and that its performance is strong. For example, from December 2001 through February 2002, Verizon consistently met or exceeded the benchmarks for the billing measurements reported under the New Jersey Guidelines. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 37, 69. Moreover, during this period, Verizon provided on time to CLECs 100 percent of the

electronic bills in the BOS-BDT format in New Jersey. See Guerard/Canny/DeVito Supplemental Reply Decl. Att. 1, at 3. And, during that same period, Verizon's performance in New Jersey also has been strong in acknowledging billing claims from CLECs that have elected the BOS-BDT bill as their bill of record, and in resolving these claims. See id. at 1.²⁷ Verizon also has demonstrated that the amount of billing disputes is comparable to the levels in New York, where CLECs have conceded that the billing systems allow them to compete. See McLean/Wierzbicki/Webster Decl. ¶¶ 119-121; McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 39.²⁸

Despite all this, AT&T raises a number of complaints, notwithstanding its failure to raise them during the state section 271 proceeding or in response to Verizon's original Application, about Verizon's performance in providing BOS-BDT and paper bills. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 41; see also, e.g., Vermont Order ¶ 37

²⁷ Although NALA/PCA and Metro Teleconnect challenge Verizon's billing performance, their comments are based on information that Verizon filed before the New Jersey BPU in September 2001. See NALA/PCA at 4; Metro Teleconnect at 3. They do not discuss Verizon's current billing performance, which, as explained above, is excellent. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 37.

DOJ expresses concern with the "apparent recent deterioration in billing performance." DOJ Second Eval. at 7 n.31. DOJ appears to be referring to BI-3-03-2030 (Percentage of Billing Adjustments), but, as Verizon has explained before, this measurement does not measure the percentage of bill amounts in dispute or the accuracy of bills. Instead, it measures the total amount credited to CLECs in the reporting month — regardless of when the CLEC submitted the claim or when the billing error occurred — as a percentage of the total amount billed in the month. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 69. In any event, in February 2002, the percentage of adjustments was less than one percent, which is similar to Verizon's performance from October through December 2001. See id.; Performance Trend Report at 20 (Supplemental App. B, Tab 2).

²⁸ See also WorldCom Comments, Reply Declaration of Sherry Lichtenberg ¶ 19, CC Docket 01-138 (FCC filed Aug. 6, 2001) ("[I]n other states, including New York, WorldCom received auditable electronic bills from the time it initially entered the local residential market."); Z-Tel Reply Comments at 6, CC Docket No. 01-138 (FCC filed Aug. 6, 2001) ("Verizon knows how to make a billing system work, as evidenced by its performance in Massachusetts and New York.").

(rejecting complaints that were never raised before the state commission). None of these complaints withstands scrutiny.²⁹

First, although AT&T claims (at 20) that Verizon fails to provide a telephone number for each charge on AT&T's bill, it admits that its February 2002 bill *does* contain a telephone number for each charge, see AT&T's Kamal Decl. ¶ 16, and Verizon has confirmed that the same is true of AT&T's March 2002 bill, see McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 42.

Second, AT&T asserts that Verizon uses codes on the BOS-BDT bill that are not consistent with industry billing guidelines. See AT&T at 20-21; AT&T's Kamal Decl. ¶¶ 17-20. In fact, Verizon's BOS-BDT was developed and designed in accordance with Telcordia BOS-BDT industry standards, which permit documented differences. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 43. The particular codes AT&T references are included in Verizon's Differences List, in compliance with the Telcordia guidelines. See id. ¶¶ 43-45.

Third, AT&T criticizes Verizon's "manual" review and adjustment process for BOS-BDT bills and claims that it has no viable means of assessing whether the charges on its electronic bills are accurate. See AT&T at 20-21. AT&T misunderstands the purpose of

²⁹ ATX had raised complaints with the bills that it receives in an ex parte filed on March 6 with respect to Verizon's original Application, but did not file supplemental comments. As Verizon has previously explained, the occurrence of the errors cited by ATX has been minimal. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 53-57. Moreover, contrary to the concern expressed by the DOJ (at 7 n.31), Verizon has not changed its practice of not requiring CLECs to pay disputed amounts pending the resolution of the dispute; Verizon has not required ATX to pay the 1.4 percent of its bills that it disputed through the established processes. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 63 & Att. 15. ATX, however, also refused to pay *undisputed* amounts. Only after Verizon's repeated requests that it pay its past-due bills did ATX declare that it disputed *all* unpaid amounts. That is not a billing dispute, but simply an attempt to avoid paying its bills. See id. ¶ 61; see also id. ¶¶ 58-62.

Verizon's review and adjustment process. The purpose of this process, which was validated by PricewaterhouseCoopers ("PwC"), is to ensure that the BOS-BDT bill matches the paper bill and balances internally. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 46-47. From November 2001 through February 2002, the amounts inserted into the BOS-BDT bills in order to balance them with the paper bills was less than 0.5 percent of the total current charges — and declined further in March 2002 — demonstrating that CLECs can audit the BOS-BDT bills. See id. ¶¶ 47-49 & Att. 12; see also Pennsylvania Order ¶¶ 32 & n.119, 36 (relying on PwC evaluation that found required manual adjustments equal to 0.89 percent of total current charges).³⁰

Finally, AT&T claims that the paper bills for its UNE-P orders include charges for vertical features at retail rates. See AT&T at 21-22; AT&T's Kamal Decl. ¶¶ 24-31. Although AT&T describes this as a systemic problem, Verizon has found that less than one percent of AT&T's accounts with vertical features included retail charges. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 51. Moreover, in February 2002, the retail charges for vertical features on AT&T's bills amounted to less than \$1,000. See id.³¹

³⁰ The Ratepayer Advocate claims (at 11) that Verizon's BOS-BDT bills have "not been extensively utilized by CLECs." In fact, more than 45 CLECs currently receive the BOS-BDT bill, Verizon distributed more than 130 such bills in February 2002, and approximately 75 percent of all resale and UNE charges that Verizon bills in New Jersey are rendered on BOS-BDT bills requested by the CLECs. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶ 40. Furthermore, contrary to the Ratepayer Advocate's contention (at 10-11), Verizon began reporting its performance under the electronic billing measurements adopted by the New Jersey BPU with the February 2002 data month. See Guerard/Canny/DeVito Supplemental Reply Decl. ¶ 6.

³¹ NALA/PCA and Metro Teleconnect take issue with the requirement that resellers order call blocking if they desire to prevent their customers from making certain intraLATA toll calls or receiving collect calls. See NALA/PCA at 5-6; Metro Teleconnect at 5-6. Both commenters incorrectly describe this as a new policy. In fact, resellers have always been required to pay for such calls, if their customers make them, and Verizon has long offered CLECs the same

III. VERIZON SATISFIES THE PUBLIC INTEREST TEST.

In its original Application and Supplemental Filing, Verizon demonstrated that there is significant local competition in New Jersey; that Verizon's local markets will remain open after Verizon obtains section 271 approval; and that permitting Verizon to provide interLATA service in New Jersey will vastly enhance consumer welfare by increasing both local and long distance competition. See Application at 76-108; Supplemental Filing at 1-2, 3-4. The BPU has agreed.³²

Price Squeeze. AT&T claims (at 30) that Verizon's UNE rates effect a price squeeze, relying on the analysis that WorldCom submitted in response to Verizon's original Application. This claim fails on multiple grounds.

As an initial matter, the D.C. Circuit has recognized that conducting a price-squeeze analysis may well be incompatible with the accelerated nature of a section 271 proceeding, and that the Commission is under no obligation to perform one.³³ The Commission has recently reached that very same conclusion, expressly recognizing both that it is not possible in a section 271 proceeding to calculate what a supposedly "sufficient profit margin for an efficient

call-blocking capabilities that are available to its retail customers. See McLean/Wierzbicki/Webster Supplemental Reply Decl. ¶¶ 65-68.

³² There is no merit to the claim, raised yet again by a few commenters, that approval of Verizon's Application is contrary to the public interest because there is somehow too little residential competition in New Jersey. See AT&T at 2, 29-30; Sprint at 3; ASCENT at 2; New Jersey RPA at 4-5. As the Commission repeatedly has held, "[g]iven an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not undermine that showing." Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶ 126 (2001) ("Pennsylvania Order").

³³ See Sprint, 274 F.3d at 553-54 (where the local market is "characterized by relatively low volumes of residential competition," the FCC must *either* "pursue the[] price squeeze claim, *or* at the very least explain why the public interest does not require it to do so") (emphasis added); id. at 555-56 ("the potential scale of a serious price squeeze inquiry" may be incompatible with the "90-day limit [that] constrains the scope of the Commission's inquiries").

competitor” should be, and that evidence of a price squeeze does not mean “that it would be in the public interest to deny a section 271 application” given that “any difficulty entering” local markets may be due to the fact that certain retail rates have been set by state regulatory commissions at artificially low levels. Vermont Order ¶¶ 68, 70. The Commission also recently acknowledged that “the Act contemplates . . . and addresses . . . potential price squeezes through the availability of resale,” which “provides a profit margin” even where — as is not the case here — “the costs of individual elements exceed the retail rate.” Id. ¶ 69.

In any event, even apart from the various legal infirmities, the long distance incumbents’ price-squeeze claims also are wrong on the facts. First, even under WorldCom’s analysis, CLECs can achieve a statewide margin of 30 percent, and margins of 40 percent and 31 percent in zones one and two, respectively. See WorldCom’s Huffman Decl. Att. 1. These are *higher* than the margins that AT&T and WorldCom claimed were available in Vermont where, based on a comparable record, the Commission found that the long distance incumbents failed to demonstrate “that these profit margins are inadequate for an efficient competitor.” Vermont Order ¶ 70. Second, as in Vermont, WorldCom’s analysis here fails to account for “the incremental toll revenues that would be generated” or to consider “the ability of competitors such as AT&T and WorldCom to leverage their presence in the long-distance or business markets.” Id. ¶ 71. Finally, AT&T has not challenged the reasonableness of the New Jersey loop rates, nor could it; therefore, “it is likely that . . . any difficulty entering the residential market profitably through the UNE-Platform may be the result of subsidized local residential rates . . . and not the fact that UNE rates are not at an appropriate point in the TELRIC range.” Id. ¶ 68; see

Application at 82-84 (New Jersey has lowest basic retail residential flat rate in the entire country).³⁴

Performance Measures. Verizon is subject to comprehensive performance reporting requirements in New Jersey, which are substantially the same as those in use in Verizon's 271-approved states. See Guerard/Canny/DeVito Decl. ¶¶ 20-23; Guerard/Canny/DeVito Reply Decl. ¶¶ 6-7. The BPU has found that the guidelines in New Jersey "provide a comprehensive set of performance measurements, standards and reports" that "allow the Board and the CLECs to determine whether Verizon NJ is providing wholesale services as required by the [1996 Act]." BPU Report at 1, 80. Two commenters — NALA/PCA and Metro Teleconnect — take issue with certain of the billing measurements that the New Jersey BPU adopted. See NALA/PCA at 4 & n.6; Metro Teleconnect at 3-5. These commenters provide no reason for this Commission to overturn the consensus that was forged in years of negotiations and approved by the New Jersey BPU, especially when those measurements are based on ones that this Commission has repeatedly approved. See Guerard/Canny/DeVito Decl. ¶¶ 14-20; Guerard/Canny/DeVito Reply Decl. ¶ 7; Guerard/Canny/DeVito Supplemental Reply Decl. ¶ 6.

AT&T repeats earlier claims about Verizon's metrics change control process, claiming that the number of change control notifications issued demonstrates that Verizon's reported data is unreliable. See AT&T at 23-26. Yet Verizon uses the same metrics change control process in New Jersey as in New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, and Vermont. See Guerard/Canny/DeVito Supplemental Reply Decl. ¶ 17. Moreover, the New Jersey BPU has considered and rejected AT&T's claim, stating that it "disagrees with the CLECs

³⁴ XO repeats (at 5) its claim that the new \$35 hot-cut rate creates a price squeeze. This claim fails for the same reasons described above with respect to the long distance incumbents' claim.

that the number of change control[] notifications that have been issued impugns the accuracy and reliability of the [Carrier-to-Carrier] reports.” BPU Report at 80. “To the contrary, they indicate Verizon NJ’s necessary commitment to improvement where areas of concern arise.” *Id.* Finally, Verizon previously demonstrated that there was no basis to AT&T’s previous claim — which it does not repeat here — that the issues identified through the metrics change control process “could have a significant impact on whether Verizon actually met the relevant performance standard.” Guerard/Canny/DeVito Reply Decl. ¶ 20 (quoting AT&T’s Bloss/Nurse Decl. ¶ 33); *see id.* ¶¶ 19-25; Guerard/Canny/DeVito Supplemental Reply Decl. ¶ 19. As Verizon demonstrates again here, the change control notifications that AT&T references typically are not material and, when material, are equally likely to increase as to decrease the reported performance results. *See* Guerard/Canny/DeVito Supplemental Reply Decl. ¶¶ 20-22.

Incentive Plan. Verizon demonstrated in its Application that it is subject to a self-executing Incentive Plan in New Jersey that places an unlimited amount at risk and thereby provides “strong assurance that the local market will remain open after [Verizon] receives section 271 authorization.” New York Order ¶ 429; *see* Massachusetts Order ¶ 240; Guerard/Canny/DeVito Decl. ¶ 13. As the BPU has found, this Plan “establishes appropriate financial incentives for [Verizon], an audit mechanism for the Board and the CLEC community to avail itself of, and encompasses an extensive number of metrics.” Ex Parte Letter from Clint Odom, Verizon, to Magalie R. Salas, Secretary, FCC, CC Docket No. 01-347, Att. at 20 (filed Jan. 17, 2002) (Order Approving Incentive Plan).³⁵ AT&T is the only commenter to challenge any of this.

³⁵ One competitor — XO — repeats complaints (at 8-9) that, following the events on September 11, Verizon declared a “force majeure” event in New Jersey. But, as Verizon has explained, that is irrelevant here. It has not been invoked to excuse performance under the

AT&T claims that, when it sought to have a large number of orders handled on a project basis, Verizon improperly attempted to require AT&T to agree to exclude the data from those orders from the performance measurements and, therefore, from the Incentive Plan calculations. See AT&T at 31-33; AT&T's Regan Decl. ¶¶ 4-9.³⁶ Not only is this a fact-specific dispute between carriers that the Commission has found is appropriately resolved by a state commission and not in a section 271 proceeding, but AT&T's description of the events surrounding these orders is also incomplete and misleading. See Vermont Order ¶ 46; Guerard/Canny/DeVito Supplemental Reply Decl. ¶¶ 27-29. For example, contrary to AT&T's claim, Verizon did not require AT&T to agree that performance data on the project would be excluded from *all* performance measurements, but instead identified a limited set of measurements for which Verizon's performance results could be affected by the special handling that AT&T had requested. See Guerard/Canny/DeVito Supplemental Reply Decl. ¶ 27.

Moreover, AT&T is incorrect that excluding data from orders handled on a project basis is "plainly unreasonable." AT&T's Regan Decl. ¶ 7. As AT&T recognizes, it requested that these orders receive "special handling" — that is, that they be treated differently from other orders that Verizon processes. Id. ¶¶ 5-6. The standards and benchmarks in the Carrier-to-Carrier Guidelines, however, are designed to measure the capabilities of Verizon's standard order processing. As a result, by complying with a CLEC's request for special handling, Verizon

Incentive Plan, but merely to preserve it as an affirmative defense in the event there is any future civil litigation. See Ex Parte Letter from Clint E. Odom, Verizon, to William Caton, Acting Secretary, FCC, CC Docket No. 01-347, at 1-3 (filed Feb. 19, 2002).

³⁶ In its Supplemental Filing, Verizon provided corrected CLEC-aggregate and MetTel-specific results for certain OR-4 submeasurements, reflecting the exclusion of data from a January 2001 MetTel project involving the migration of a large number of coin telephone lines. See McLean/Wierzbicki/Webster/Canny Supplemental Decl. ¶ 18 n.3 & Att. 15. These exclusions were made pursuant to a signed project letter from MetTel, although Verizon initially failed to exclude this data from its reported results. See Guerard/Canny/DeVito Supplemental Reply Decl. ¶¶ 30-31.

could be deemed to have “missed” the performance standard. See Guerard/Canny/DeVito Supplemental Reply Decl. ¶¶ 26, 28. For this reason, CLECs in New Jersey, and in other states, authorize Verizon to exclude orders given special handling on a project basis from the performance measurements. See id. ¶ 26.

CONCLUSION

Verizon's Application to provide interLATA service originating in New Jersey should be granted.

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Before the
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Washington, D.C. 20554

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In the Matter of)
)
Application by Verizon New Jersey)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company)
(d/b/a Verizon Enterprise Solutions),)
Verizon Global Networks Inc., and)
Verizon Select Services Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in New Jersey)

WC Docket No. 02-67

SUPPLEMENTAL FILING OF VERIZON NEW JERSEY

SUPPLEMENTAL REPLY APPENDIX

Supplemental Reply Declaration of Paul A. Lacouture and Virginia P. Ruesterholz
(Competitive Checklist)

Supplemental Reply Declaration of Kathleen McLean, Raymond Wierzbicki, and
Catherine T. Webster
(Operations Support Systems)

Supplemental Reply Declaration of Elaine M. Guerard, Julie A. Canny, and
Marilyn C. DeVito
(Performance Measurements)

Supplemental Reply Declaration of Patrick A. Garzillo and Marsha S. Prosin
(Pricing)

Supplemental Reply Declaration of John A. Torre
(Local Competition)

SUPPLEMENTAL FILING OF VERIZON NEW JERSEY

WC DOCKET NO. 02-67

SUPPLEMENTAL REPLY APPENDIX

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