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MAY - 3 2002

May 3, 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Marlene N. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
Room TW-B-204  
445 12th Street, S.W.  
Washington, D.C. 20554

**REDACTED –  
For Public Inspection**

Re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maine, CC Docket No. 02-61

Dear Ms. Dortch:

This is the cover letter for the Verizon Reply Comments in the above-captioned docket.

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

1. The Reply Comments consist of (a) a stand-alone document entitled "Reply Comments of Verizon New England," and (b) two Reply Appendices containing supporting material.

2. Specifically, we are herewith submitting for filing:

- a. One original of the portions of the Reply Comments that contain confidential information;
- b. Two CD-ROM discs containing portions of the confidential Reply Comments;

No. of Copies 04  
Listed 4

- c. One original and four copies of the redacted Reply Comments;
- d. One original and four copies of the CD-ROM disc containing the redacted Reply Comments.

3. We are also tendering to you certain copies of this letter and of portions of the Reply Comments for date-stamping purposes. Please date stamp and return these materials.

4. Under separate cover, we are submitting copies (redacted as appropriate) of the Reply Comments to Ms. Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C-327, 445 12th Street, S.W., Washington, D.C. 20554. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the Maine Public Utilities Commission, and to Qalex (the Commission's copy contractor).

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

Very truly yours,

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

Evan T. Leo

Encs.

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

CC Docket No. 02-61

**REPLY COMMENTS OF VERIZON NEW ENGLAND**

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May 3, 2002

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Michael J. Anglin  
(Pricing)

Reply Appendix B: Additional Supporting Material (Carrier-to-Carrier Reports, Trend  
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## INTRODUCTION AND SUMMARY

Based on a comprehensive investigation, the Maine Public Utilities Commission (“PUC”) concludes that Verizon “meets the Section 271 Competitive Checklist” and that “local exchange . . . markets in Maine” are “open[] . . . to competition.” The PUC therefore “recommends that the FCC grant Verizon’s application for entry into the interLATA market.” The Department of Justice (“DOJ”) likewise “recommends approval.”

These conclusions are obviously correct because Verizon has taken the same extensive steps to open its local markets in Maine as it has taken in other Verizon states where the Commission repeatedly has found – including as recently as last month – that Verizon satisfies all the requirements of the 1996 Act. For example, in virtually all cases Verizon uses the same processes and procedures to provide the various checklist items in Maine as it uses in Massachusetts, Rhode Island, and Vermont. And Verizon’s performance in providing access to the checklist items has been, and continues to be, excellent across the board.

The very few comments filed in this proceeding do not dispute any aspect of this showing. The *only* parties to challenge Verizon’s Application are long distance incumbents AT&T and Sprint. Neither takes issue with any aspect of Verizon’s performance in providing access to the various checklist items or with any aspect of Verizon’s OSS. Nor do they challenge the overwhelming majority of wholesale rates that have been adopted by the Maine PUC, which are “some of the lowest rates in the Northeast.”

AT&T's opposition focuses instead on just two of the hundreds of wholesale rates that the PUC adopted – the switching rate and the daily usage file (“DUF”) rate. But its claims with respect to both of these rates are flawed and must be rejected.

*First*, these claims for the most part involve brand-new and fact-intensive arguments that AT&T did not raise in the original state proceeding. This is the same dilatory strategy the long distance incumbents recently attempted in Vermont, where the Commission made clear that it is “both impracticable and inappropriate” for it to make these kinds of fact-specific determinations in the first instance in a section 271 review.

*Second*, AT&T's claims fail on their merits. The Maine PUC expressly found that the switching rates it adopted are consistent with TELRIC principles, and AT&T has failed to demonstrate any clear error on the part of the PUC. Under this Commission's settled standard, that is the end of the matter.

*Third*, separate and apart from that fact, the switching rates set by the PUC also satisfy the Commission's well-established benchmark standard when compared to the rates recently adopted in New York, which the long distance incumbents themselves have argued should be the standard. Accordingly, the Maine switching rates must be affirmed for that independent reason as well.

*Finally*, there also is no legitimate issue with respect to the DUF rate. As both the DOJ and WorldCom acknowledge, that rate is now zero and will remain so until the PUC – which has demonstrated its commitment to following the Commission's pricing rules – establishes a new rate. And the Commission has approved previous applications under precisely these circumstances.

Apart from AT&T's pricing-related claims, the only other argument AT&T and Sprint make is that there is somehow not enough local competition for residential customers in Maine. But the Commission has repeatedly rejected arguments of this sort, recognizing that it merely reflects the long distance incumbents' own business plans. And, in any event, the level of facilities-based residential competition in Maine is comparable to other states that have been granted section 271 authority.

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

## ARGUMENT

Verizon demonstrated in its Application that it is providing access to each of the 14 checklist items in Maine in substantially the same manner and using the same systems and processes as in Massachusetts and across the New England states, where the Commission has now found three times that Verizon satisfies the 1996 Act in all respects. Verizon also demonstrated that its performance in Maine – and in Massachusetts, where volumes are even higher, and which the Commission reviewed in approving Verizon’s Rhode Island and Vermont applications – is excellent across the board. The Maine PUC has confirmed all of this, verifying unambiguously that Verizon “meets the Section 271 Competitive Checklist.” PUC Report at 1.

The PUC’s conclusion is based on a comprehensive investigation that is entitled to maximum deference under this Commission’s well-settled precedent.<sup>1</sup> The PUC’s “investigation included several workshops, technical conferences, a bench analysis, declarations, reply declarations, responses to data requests, exhibits, briefs, and letters submitted by Verizon, OPA, other telecommunications providers, and other interested persons.” PUC Report at 2-3. In addition, the PUC “conducted two days of hearings in which witnesses were cross-examined” and hosted “four meetings . . . concerning

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

Verizon's wholesale service." Id. at 3. At the conclusion of this extensive investigation, the PUC issued a letter concluding that Verizon "meets the statutory requirements of Section 271 relating to opening the local exchange and exchange access markets in Maine to competition." Letter from Dennis L. Keshl, Administrative Director, Maine PUC, to Edward Dinan, Verizon, at 1 (Mar. 1, 2002) ("Maine PUC 271 Letter") (App. B, Tab 25). The PUC has affirmed these conclusions in its extensive consultative report where it "recommends that the FCC grant Verizon's application for entry into the interLATA market." PUC Report at 114.

The DOJ likewise unequivocally "recommends approval of Verizon's application for Section 271 authority in Maine." DOJ Eval. at 7.

As demonstrated below, the conclusions of the Maine PUC and the DOJ are correct, and Verizon's Application should be granted.

#### **I. VERIZON SATISFIES THE REQUIREMENTS OF TRACK A.**

Verizon demonstrated in its Application that, both individually and collectively, competitors in Maine are providing service predominantly over their own facilities to both business and residential subscribers, and that Track A is therefore met. See Application at 4-9. In particular, Verizon demonstrated that, as of December 2001, competitors in Maine were serving approximately 51,000 lines, approximately one-fifth of which were provided either wholly or partially over facilities that they deployed themselves (including in all cases their own local switches). See Torre Decl. Att. 1, Table 1; see also DOJ Eval. at 4-5. Verizon also demonstrated that, as of December 2001, there were at least two carriers – Oxford and Pine Tree – providing facilities-based service to *residential* customers in Maine.

AT&T is the only commenter to take issue with Verizon's Track A showing,

claiming (at 1-2) that the number of residential facilities-based lines is *de minimis*. The PUC, however, found that “no party has provided evidence that [competition in Maine] has fallen below the *de minimis* level[.]” PUC Report at 85. Moreover, Oxford and Pine Tree collectively serve approximately 260 residential lines through facilities they have deployed themselves. See Torre Decl. Att. 1, ¶¶ 23, 29. This is greater than the number of residential lines that the Commission recently found sufficient to satisfy Track A in Vermont. See Vermont Order<sup>2</sup> ¶¶ 2, 11 & n.28. Moreover, the number of residential lines served individually by one of the qualifying carriers here (Oxford) also is many times greater than the number served by each of the two carriers in Vermont that the Commission found satisfied Track A on their own. See id. ¶ 11 & n.28. Neither of these carriers disputes Verizon’s Track A showing, nor does any other CLEC. See Sprint Communications Co. v. FCC, 274 F.3d 549, 562 (D.C. Cir. 2001). In sum, Verizon has easily met its burden of demonstrating that the level of residential competition in Vermont is more than *de minimis*.

## **II. VERIZON SATISFIES THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.**

Verizon demonstrated in its Application that it provides checklist items in Maine using substantially the same processes and procedures as in Massachusetts. Verizon also demonstrated that its performance in providing access to the various checklist items in both Maine and Massachusetts has been excellent, and this continues to be the case. For example, in February and March 2002 – the two most recent months for which data are available – Verizon provided on time for competing carriers in both states 100 percent of

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<sup>2</sup> Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Vermont, Memorandum Opinion and Order, CC Docket No. 02-7, FCC 02-118 (rel. Apr. 17, 2002) (“Vermont Order”).

their interconnection trunks, more than 99.5 percent of their network element platforms, more than 99 percent of their stand-alone voice-grade loops, more than 99.5 percent of their hot-cut loops, and nearly 100 percent of their dispatch orders for unbundled DSL-capable loops. See Lacouture/Ruesterholz Reply Decl. ¶¶ 5-6, 18-19, 33-34, 75-80.

None of the commenters challenges any of this.

Verizon also demonstrated in its Application that it provides CLECs operating in Maine with access to the same operations support systems (“OSS”) that serve Massachusetts and the other New England states (including Rhode Island and Vermont), see Application at 63-75, which the Commission has found satisfy the requirements of the Act in all respects. See Massachusetts Order<sup>3</sup> ¶¶ 50, 70, 90, 95, 97, 102, 114; Rhode Island Order<sup>4</sup> ¶¶ 58-71; Vermont Order ¶¶ 39-43. The Maine PUC and the DOJ have reached the same conclusion, see PUC Report at 18-19; DOJ Eval. at 6, and no party disputes it here.

Legal Obligation To Provide UNEs and Interconnection. Although no party challenges any of Verizon’s checklist offerings or its performance in providing them, AT&T contends (at 4-7) that, because Verizon has not yet filed a Statement of Generally Available Terms (“SGAT”) or a wholesale tariff in Maine, Verizon is under “no legal obligation . . . to provide UNEs or interconnection arrangements to any CLEC.” This claim is simply wrong as a legal matter. It also is moot in light of the Maine PUC’s recent decision to require Verizon to file a wholesale tariff.

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<sup>3</sup> Application of Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) (“Massachusetts Order”).

<sup>4</sup> Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, FCC 02-63 (rel. Feb. 22, 2002) (“Rhode Island Order”).

As an initial matter, neither the 1996 Act nor the Commission's rules requires a Bell company to provide access to UNEs or interconnection through either a tariff or an SGAT. To the contrary, section 271 requires a Bell company to demonstrate only that it is providing access and interconnection "pursuant to *one or more agreements* described in [section 271(c)(1)(A)]" 47 U.S.C. § 271(c)(2)(A)(i)(I) (emphasis added); see id. § 271(c)(1)(A) (describing "binding *agreements* that have been approved under section 252 . . . specifying the terms and conditions under which the Bell operating company is providing access and interconnection") (emphasis added). And the Commission has found that a BOC need show only that it has "a concrete and specific legal obligation to furnish the [checklist] item[s] upon request *pursuant to state-approved interconnection agreements.*" Vermont Order, App. D, ¶ 5 (emphasis added); see also Texas Order ¶ 78 (relying on SWBT's interconnection agreement with WorldCom in finding that SWBT has a concrete and specific legal obligation to provide interconnection at any technically feasible point).

While some states have chosen to require wholesale tariffs, the Act itself does not address the use of tariffs at all. The Act does provide that a "Bell operating company *may* prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that state." 47 U.S.C. § 252(f)(1) (emphasis added), which is similar to a tariff. But it does not require that the Bell company do so. See, e.g., Lopez v. Davis, 531 U.S. 230, 241 (2001) (contrasting "Congress' use of the permissive 'may'" with its "use of a mandatory 'shall'"); McCreary v. Offner, 172 F.3d 76, 83 (D.C. Cir. 1999) ("the word 'may' . . . is permissive, not mandatory"). Nor does the Act anywhere require a Bell company to file a wholesale tariff.

Verizon clearly satisfies its obligations under the Act because it provides access to interconnection and UNEs through its binding interconnection agreements with numerous CLECs in Maine and through a model interconnection agreement that any CLEC may adopt. See Lacouture/Ruesterholz Decl. ¶ 5 & Att. 1; App. H, Tabs 1-4.<sup>5</sup> As AT&T concedes, these existing interconnection agreements contain concrete and specific legal obligations to provide CLECs with interconnection and access that satisfy the checklist. See AT&T at 6 (conceding that Verizon is subject to legally binding agreements with respect to CLECs that “ha[ve] already negotiated an interconnection agreement.”). And, contrary to AT&T’s claim (at 6), Verizon may not unilaterally modify an agreement in any way that is inconsistent with the terms of the agreement itself. See, e.g., App. H, Tab 1, at 7; App. H, Tab 2, at 104.

In any event, AT&T’s claim is moot because the Maine PUC has required Verizon to file a wholesale tariff by October 1, 2002, and Verizon has agreed to do so. See Maine PUC 271 Letter at 1; Letter from Edward B. Dinan, Verizon, to Thomas L. Welch, Chairman, Maine PUC, at 1 (Mar. 4, 2002) (App. B, Tab 26).

Switching Rates. Only AT&T raises any issue here with respect to the switching rates that were established by the Maine PUC in its comprehensive TELRIC pricing proceeding. Its claims fail for three separate and independent reasons.

*First*, AT&T’s only claim here is that the PUC erred in determining the specific allocation of switching costs between the per-minute switching rate and the fixed port rate. This is precisely the kind of fact-specific determination that is assigned to the states

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<sup>5</sup> Verizon also provides collocation through a tariff filed with, and approved by, the Maine PUC. See Lacouture/Ruesterholz Decl. ¶¶ 5, 36, 73 & Att. 1; App. I, Tab 1.

by the Act, and that this Commission has held should be presented to the state commissions in the first instance. Yet AT&T has failed to do so.

The Maine PUC used the Commission's USF model to set the minute-of-use (*i.e.*, usage sensitive) switching rates. See Dinan/Garzillo/Anglin Reply Decl. ¶ 6. That model assigns 30 percent of all switching costs to the fixed switching port rate and the remaining 70 percent to the switching usage rate. See id. Although AT&T objected to the allocation that *Verizon* proposed in its own model during the course of the state pricing proceeding, it never objected to the PUC's ultimate determination, which was based on the USF model. See id. ¶ 7. For example, AT&T did not raise this issue in its brief listing exceptions to the PUC's pricing order, did not petition for reconsideration of the PUC's order on this issue, and did not seek an appeal on this issue. See id. As the Commission has repeatedly acknowledged, however, it is inappropriate for carriers to raise new issues — particularly the type of fact-specific pricing issues AT&T raises here — for the first time in a section 271 proceeding. See, e.g., Vermont Order ¶ 20 (“[I]t 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.”).<sup>6</sup>

*Second*, AT&T has failed to show that the Maine PUC's allocation of switching costs to the per-minute-of-use rate constitutes a “clear error.” See New York Order ¶ 244 (applying “clear error” standard); Vermont Order ¶ 15 (same). The Commission has held

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<sup>6</sup> See also 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); 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”).

that “the costs of modern digital switches are actually predominantly [traffic sensitive].” MTS and WATS Market Structure; Amendment of Part 67 (New Part 36) of the Commission’s Rules and Establishment of a Federal-State Joint Board, Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 3 FCC Rcd 5518, ¶ 47 (1988). Consistent with this, the Commission has permitted state commissions to establish switching-rate structures that rely on “either a flat-rate or per-minute usage charge for the switching matrix and for trunk ports, which constitute shared facilities.” Local Competition Order<sup>7</sup> ¶ 810. The allocation adopted by the PUC conforms with these guidelines. Its decision cannot, therefore, be deemed an error at all, much less a clear error.<sup>8</sup>

AT&T nonetheless claims (at 10) that the so-called “getting started” costs of a switch – including the costs associated with switch-processing power – should be treated as fixed costs, rather than usage-sensitive costs, because these costs are “incurred at the time a switch is placed in operation” and “do not vary with usage.” But, contrary to

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<sup>7</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (“Local Competition Order”), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff’d in part, rev’d in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), decision on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), cert. granted in part sub nom. Verizon Communications Inc. v. FCC, 531 U.S. 1124 (2001).

<sup>8</sup> Of course, the fact that other state commissions have taken a different approach than the Maine PUC is not a ground on which to find that the PUC’s determination is not reasonable. See AT&T at 12. Rather, as both the Commission and the courts have recognized, TELRIC is not designed to produce the same result in every case. See, e.g., AT&T Corp. v. FCC, 220 F.3d 607, 615 (D.C. Cir. 2000) (“application of TELRIC principles may result in different rates in different states”); 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, ¶ 291 (1997) (“[U]se of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC may vary from state to state.”).

AT&T's claim, the getting started costs of a switch are based entirely on the anticipated usage of that switch. See Dinan/Garzillo/Anglin Reply Decl. ¶ 9. Verizon attempts to "size" its switches to handle existing and reasonably foreseeable future demand. See id. Accordingly, the amount of switch-processing capability that Verizon purchases with a switch depends on the anticipated usage on that switch. See id. ¶¶ 9-10; cf. Local Competition Order ¶ 755 ("the cost of capacity is determined by the volume of traffic that the facilities are able to handle"). It is a complete *non sequitur* to argue, as AT&T does (at 10), that, simply because such costs are borne up front when the switch is initially purchased, they should be classified as fixed costs rather than usage-sensitive costs. See Dinan/Garzillo/Anglin Decl. ¶¶ 9-10.<sup>9</sup> The time at which certain expenditures are made is irrelevant to whether these costs are driven by usage-sensitive considerations and should be treated as usage-sensitive costs. See id. ¶ 10. Moreover, because the usage-sensitive costs of a switch represent the majority of total switching costs, it is consistent with principles of cost-causation to allocate the majority of switching costs to usage-sensitive rate components, rather than to fixed-cost components. See id. ¶ 11.<sup>10</sup>

*Third*, and finally, the switching rates adopted by the Maine PUC also pass muster for the separate and independent reason that they satisfy the Commission's established

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<sup>9</sup> AT&T also now claims (at 12) that Verizon's own "switch cost data indicate that 41 percent of the switch costs is usage sensitive." But that is simply wrong. Although AT&T provides virtually no details or supporting documentation, it does admit that it derived its 41-percent figure based entirely on its own judgment of which costs should be considered usage sensitive, rather than on how those costs were actually classified in Verizon's cost studies. See Dinan/Garzillo/Anglin Reply Decl. ¶ 12. Thus, AT&T's calculation improperly omits a number of costs that are usage sensitive, such as the costs for the central processor, memory, and switch module processors. See id.

<sup>10</sup> There is no merit to AT&T's claim (at 11) that the allocation adopted by the Maine PUC should be rejected because it favors CLECs that serve low-volume customers over CLECs that serve high-volume customers. See AT&T at 11. This is irrelevant to whether the rate adopted by the Maine PUC complies with TELRIC.

benchmark standard compared to the rates recently adopted in New York. Indeed, AT&T concedes as much. Of course, the Commission repeatedly has held that, in performing a benchmark comparison, it is appropriate to compare non-loop rates as a whole. See, e.g., Massachusetts Order ¶ 25; Pennsylvania Order<sup>11</sup> ¶ 67 n.252; Rhode Island Order ¶ 40 n.108; see also Sprint, 274 F.3d at 561 (upholding Commission’s use of benchmarking in analyzing TELRIC compliance). The Commission has recognized that this approach is appropriate both because the various non-loop elements are purchased together and because different states may have “rate structure differences . . . that recover more of the switching costs through the flat-rated port charge,” rather than through usage-sensitive rates. Massachusetts Order ¶ 25.<sup>12</sup> Consistent with this precedent, Verizon demonstrated in its Application that the statewide average aggregate costs for switching usage, a switching port, transport, and signaling – based on actual state-specific dial equipment minutes (from ARMIS) – are higher than the costs in New York, while the statewide average aggregate rates for these items are lower than rates in New York. See Application at 52-53. Verizon also explained that, not only do the non-loop rates individually satisfy a benchmark comparison with the New York rates, but the

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<sup>11</sup> 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 (2001) (“Pennsylvania Order”).

<sup>12</sup> Without any citation or support, AT&T argues (at 13) that this precedent should not apply here because “[b]enchmarking total non-loop rates is appropriate only where the allocation among elements can be said to fall within a reasonable range of such allocations.” As demonstrated above, however, the allocation adopted by the PUC clearly is reasonable. Moreover, analyzing the non-loop rates in Maine as a whole is entirely consistent with AT&T’s own assertion (at 14) that “the whole purpose of unbundling is to allow an entrant to purchase – at cost-based rates – only the elements necessary to implement its particular entry strategy.” As Verizon has previously explained, competitors in Verizon’s region, including in Maine, invariably purchase unbundled switching together with other elements, including other non-loop elements and loop elements. See Application at 53-54.

Commission can also take comfort from the fact that the combined loop and non-loop rates set by the Maine PUC are substantially lower (39 percent relative to cost) than the newly established New York rates. See id. at 53-54.

Daily Usage File Rate. AT&T also complains (at 12-14) for the first time about the rate for daily usage files in Maine. As an initial matter, AT&T did not raise its claims with respect to the DUF rate during the state pricing proceeding and may not do so for the first time here. See, e.g., Vermont Order ¶ 20; New York Order ¶ 36; Massachusetts Order ¶ 147.<sup>13</sup> In any event, AT&T's claim is moot because the DUF rate that is now in effect in Maine is *zero*. See Application at 46 n.45; Dinan/Garzilla/Anglin Reply Decl. ¶ 13; see also WorldCom at 1 ("the effective DUF rate in Maine is \$0.00"); DOJ Eval. at 6 n.23.<sup>14</sup> As Verizon has explained, the Commission has repeatedly held that the fact that permanent rates have not been established for every element does not provide a basis for

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<sup>13</sup> AT&T tries to deflect this fact by stating (at 14 n.17) that it raised concerns with respect to the DUF rate in the context of its price-squeeze analysis in its exceptions to the Maine PUC's pricing order and in the state 271 proceeding. But AT&T's inclusion of the DUF rate as one of multiple line-items in its price-squeeze analysis hardly rises to the level of actually raising substantive concerns with respect to this rate, and in any event bears no relation to the claims that AT&T raises for the first time here.

<sup>14</sup> AT&T claims (at 15) that Verizon's interconnection agreements in Maine as well as its Model Agreement in Maine contain a DUF rate of \$0.004214. While Verizon's agreement with AT&T did originally contain a DUF rate, it also contained a clause stating that these rates applied until the Maine PUC issued its TELRIC order, which it did on February 12, 2002. See Dinan/Garzilla/Anglin Reply Decl. ¶ 14. Because the PUC's TELRIC order failed to establish a permanent DUF rate, Verizon has voluntarily agreed not to charge CLECs for the DUF. See id. Thus, the DUF rate is zero. See id. Moreover, Verizon has recently modified the Maine Pricing Appendix to its Model Interconnection Agreement to remove all references to DUF rates. See id. Verizon also has updated some of its billing systems to reflect the zero DUF rate, and is in the process of updating the remainder of its systems. See id. Verizon will issue credits to any CLECs that are charged a DUF rate in the interim while these remaining systems are being updated. See id. Finally, Verizon does not intend to bill CLECs retroactively for daily usage files provided between the PUC's February 12 order and the date when the PUC sets a permanent DUF rate. See id. ¶ 15.

rejecting an application. See Application at 46 n.45. And under precisely the circumstances presented here, the Commission has expressly concluded that where the interim rate has been set at zero, and the state commission “has demonstrated its commitment to [the FCC’s] pricing rules,” it will deem the interim rate “reasonable under the circumstances.” Arkansas/Missouri Order<sup>15</sup> ¶ 64; Kansas/Oklahoma Order<sup>16</sup> ¶ 238.

Nor is there any basis to WorldCom’s claim (at 1) that the Commission should simply “assume” that Verizon will in the future file DUF rates that do not comply with TELRIC. *First*, the DUF rates that have been adopted in other New England states – including Massachusetts, Rhode Island, and Vermont – have all been found TELRIC-compliant both by the commissions in those states and by this Commission.<sup>17</sup> *Second*, when Verizon does file a proposed DUF rate in Maine, it will propose a rate that complies with the Commission’s pricing rules. See Ex Parte Letter from Richard T. Ellis, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-61, at 2 (May 1, 2002). *Third*, the Maine PUC has demonstrated a commitment to the Commission’s

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<sup>15</sup> Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001).

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

<sup>17</sup> The Commission has squarely rejected AT&T’s arguments that these rates are not TELRIC-compliant on the ground that costs for providing daily usage files – including computer hardware and software – have been declining over time. See, e.g., Vermont Order ¶ 37 (“[M]ere 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.”); 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).

pricing rules, so there is no basis on which to assume that it will adopt rates that are inconsistent with those rules. See, e.g., Arkansas/Missouri Order ¶ 64; Kansas/Oklahoma Order ¶ 238.

### **III. VERIZON SATISFIES THE PUBLIC INTEREST TEST.**

In its Application, Verizon demonstrated that there is significant local competition in Maine; that Verizon's local markets will remain open after Verizon obtains section 271 approval; and that permitting Verizon to provide interLATA service in Maine will vastly enhance consumer welfare by increasing both local and long distance competition. See Application at 80-99. The PUC has affirmed all of this, concluding that Verizon "meets the statutory requirements of Section 271 relating to opening the local exchange and exchange access markets in Maine to competition." Maine PUC 271 Letter at 1. The PUC also confirms that it has adopted "a comprehensive set of performance measures" and "a comprehensive, self-executing enforcement mechanism" that "provides Verizon with sufficient incentives to provide CLECs with high quality services." PUC Report at 87, 90, 109. The DOJ likewise concludes that Verizon "has generally succeeded in opening its local markets in Maine to competition." DOJ Eval. at 2.

No commenter seriously disputes any of this. Nor does any commenter claim that the wholesale rates in Maine result in a so-called price squeeze, nor could they. As the Commission has recently held, "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." Vermont Order ¶ 69.

AT&T and Sprint nonetheless claim that approval of Verizon's Application is contrary to the public interest because there is somehow too little residential competition

in Maine. See AT&T at 1-2; Sprint at 10-12. But, as the Commission 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.” Pennsylvania Order ¶ 126. Moreover, the Commission has recognized that “[f]actors beyond the control of the BOC, such as individual competitive LEC entry strategies might explain a low residential customer base.” Id. ¶ 126; see also Massachusetts Order ¶ 235 (same); Kansas/Oklahoma Order ¶ 268 (same); Arkansas/Missouri Order ¶ 126 (same).<sup>18</sup>

Finally, no commenter takes issue with Verizon’s showing that local competition has *increased* in Verizon’s states following its long distance entry. See Application at 84-86 & Brief Att. A, Exs. 5-7. Nor does any commenter dispute Verizon’s demonstration that its entry into the long distance market in Maine will benefit consumers, just as consumers in New York, Massachusetts, Pennsylvania, Rhode Island, and Vermont have benefited from Verizon’s entry in those states. Id. at 96-99; see also Pennsylvania Order ¶ 125; Massachusetts Order ¶ 234; Rhode Island Order ¶ 103; Vermont Order ¶ 62.

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<sup>18</sup> There also is no merit to Sprint’s claim (at 4-10) that Verizon’s Application should be denied because of the supposed “crisis” in the CLEC industry and the alleged failure of Bell companies to compete with each other. As the Commission has held repeatedly, such claims are irrelevant here. See, e.g., Rhode Island Order ¶ 106; Vermont Order ¶ 64.

**CONCLUSION**

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

Respectfully submitted,



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