

#### 4. Dark Fiber.

Verizon provides “dark fiber” — that is, fiber that has not been activated through the connection of the electronics used to carry communications services — both in New Hampshire and in Delaware. See Lacouture/Ruesterholz NH Decl. ¶ 244; Lacouture/Ruesterholz DE Decl. ¶ 242; UNE Remand Order ¶ 165.<sup>36</sup> In Delaware, the processes and procedures used to provide dark fiber are substantially the same as those in Pennsylvania, Connecticut, and Vermont, see Lacouture/Ruesterholz DE Decl. ¶ 243, where the Commission found that Verizon’s provision of dark fiber satisfies the Act, see Pennsylvania Order ¶¶ 109-113; Connecticut Order ¶¶ 49-53; Vermont Order ¶ 56. In New Hampshire, Verizon provides dark fiber consistent with the Commission’s rules. See Lacouture/Ruesterholz NH Decl. ¶ 245. In addition, the PUC has adopted dark fiber requirements that, like the requirements adopted by the Massachusetts DTE and the Rhode Island PUC, go above and beyond those adopted by the Commission in its UNE Remand Order. See id.<sup>37</sup> Consequently, as the Commission has held, Verizon need not demonstrate its compliance with these new requirements to establish that its dark fiber offering in New Hampshire is checklist-compliant. See Vermont Order ¶ 57 (finding that, for purposes of satisfying the checklist, Verizon need not demonstrate compliance with the dark fiber

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<sup>36</sup> Under the terms of its interconnection agreements and SGAT in New Hampshire, and its interconnection agreements in Delaware, Verizon provides both dark fiber interoffice facilities and dark fiber loops, where spare facilities are available. See Lacouture/Ruesterholz NH Decl. ¶ 244; Lacouture/Ruesterholz DE Decl. ¶ 242.

<sup>37</sup> Specifically, the New Hampshire PUC ordered Verizon to make dark fiber available at existing splice points; to consider future wholesale demand for dark fiber when planning Verizon’s own fiber build out and deployment; to provide a detailed, written explanation for denial of a CLEC dark fiber request; and to repair and maintain CLEC-utilized fibers using the same methods and procedures used for Verizon-utilized fibers. See Verizon New Hampshire, Order Approving in Part and Denying in Part Statement of Generally Available Terms and Conditions Additional Unbundled Network Elements at 56-57, DT 01-206, Order No. 23,948 (NH PUC Apr. 12, 2002) (“New Hampshire UNE Remand Rate Order”) (App. D-NH, Tab 7); Lacouture/Ruesterholz NH Decl. ¶¶ 245-246.

requirements like those adopted by the Massachusetts DTE that go beyond the requirements of the Act).

As of March 2002, Verizon had received only 397 dark fiber orders from CLECs throughout its New England states, and CLECs cancelled 134 of those orders. See Lacouture/Ruesterholz NH Decl. ¶ 251. Verizon completed on time 94 percent of the remaining orders. See id. Verizon did not receive any dark fiber orders from February through April in Delaware.

#### **5. Combining Unbundled Network Elements.**

Verizon provides competing carriers in New Hampshire and Delaware with both existing combinations of network elements and access to unbundled elements that allows competing carriers to assemble combinations of elements themselves in the same manner as it does in Verizon's 271-approved states. See Lacouture/Ruesterholz NH Decl. ¶ 253; Lacouture/Ruesterholz DE Decl. ¶ 247. In addition, Verizon has notified CLECs in New Hampshire and Delaware that it will provide new combinations of network elements. See Lacouture/Ruesterholz NH Decl. ¶ 253; Lacouture/Ruesterholz DE Decl. ¶ 247.

*First*, Verizon provides the same preassembled combinations of network elements that it provides in its states that have received section 271 approval.<sup>38</sup> In New Hampshire, Verizon

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<sup>38</sup> For purposes of this Application, Verizon is not required to demonstrate that it is providing new EELs to CLECs because, while the mandate of the Supreme Court's decision in Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002), has already issued, the mandate of the Eighth Circuit's decision reinstating the new EEL requirement has not. See Massachusetts Order ¶ 219 (finding "not relevant to our analysis of checklist compliance" the question whether Verizon had complied with a court decision that "had not issued when Verizon filed the instant application."). Verizon has nonetheless always provided competing carriers with both new platforms and existing EELs, and Verizon also will provide carriers in New Hampshire and Delaware with new EELs subject to the limitations that the FCC has upheld in the Supplemental Order Clarification. See Lacouture/Ruesterholz NH Decl. ¶ 253; Lacouture/Ruesterholz DE Decl. ¶ 247.

provides the same preassembled combinations that it provides in its New England states. See Lacouture/Ruesterholz NH Decl. ¶ 253; Massachusetts Order ¶¶ 117-118 (finding that Verizon's provision of UNE combinations satisfies the checklist); Rhode Island Order ¶ 72 (same); Vermont Order ¶ 44 (same); Maine Order ¶ 42 (same). In Delaware, Verizon provides the same preassembled combinations that it provides in Pennsylvania. See Lacouture/Ruesterholz DE Decl. ¶ 247; Pennsylvania Order ¶ 73. As noted above, through March 2002, Verizon has provided competing carriers in New Hampshire with approximately 6,500 complete, preassembled platforms of network elements, and it has provided CLECs in Delaware with approximately 3,200 complete platforms. See Lacouture/Ruesterholz NH Decl. ¶ 210; Lacouture/Ruesterholz DE Decl. ¶ 208. Verizon also provides a "switch sub-platform" (local switching in combination with other shared network elements such as shared transport, shared tandem switching, and SS7 signaling), although no competitor in either New Hampshire or Delaware has yet requested this combination. See Lacouture/Ruesterholz NH Decl. ¶ 260; Lacouture/Ruesterholz DE Decl. ¶ 254. Moreover, Verizon provides loop and transport combinations in accordance with the Commission's rules. See Lacouture/Ruesterholz NH Decl. ¶ 261; Lacouture/Ruesterholz DE Decl. ¶ 255; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order, 15 FCC Rcd 1760 (1999); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) ("Supplemental Order Clarification").

*Second*, Verizon offers CLECs in New Hampshire and Delaware the same methods of access to combine unbundled network elements as it offers in its New England states and Pennsylvania, respectively. See Lacouture/Ruesterholz NH Decl. ¶¶ 253-255;

Lacouture/Ruesterholz DE Decl. ¶¶ 247-249; Massachusetts Order ¶¶ 117-119; Pennsylvania Order ¶ 73; Rhode Island Order ¶ 72; Vermont Order ¶ 44; Maine Order ¶ 42. In both states, for example, Verizon offers competing carriers a variety of forms of access that permit them to combine network elements, including physical, virtual, and various forms of cageless collocation. See Lacouture/Ruesterholz NH Decl. ¶¶ 254-255; Lacouture/Ruesterholz DE Decl. ¶¶ 248-249.

#### 6. Pricing of Unbundled Network Elements.

Both the New Hampshire PUC and the Delaware PSC have found that Verizon's wholesale rates for unbundled network elements comply fully with the Act and the Commission's rules. Under well-settled precedent, the Commission "will not conduct a *de novo* review of a state's pricing determinations" and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." Vermont Order ¶ 15 (quoting New York Order ¶ 244).<sup>39</sup> The evidence here demonstrates that neither of these two conditions is present here.

*First*, as described below, both the New Hampshire PUC and the Delaware PSC applied TELRIC principles in establishing Verizon's rates, and no party in the state proceedings has demonstrated a "clear error" on the part of those state commissions.

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<sup>39</sup> As the courts have held, the clear error standard is "narrow" and "highly deferential," and the burden of establishing a clear error is on the party challenging the decision. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971); MCI WorldCom Network Servs., Inc. v. FCC, 274 F.3d 542, 547 (D.C. Cir. 2001); see also Bailey v. Federal Nat'l Mortgage Ass'n, 209 F.3d 740, 743 (D.C. Cir. 2000); cf. Allentown Mack Sales & Serv., Inc. v. NLRB, 522 U.S. 359, 376 (1998) (agency must "apply in fact the clearly understood legal standards that it enunciates in principle").

*Second*, the loop and non-loop rates set by the New Hampshire PUC — and the loop rates set by the Delaware PSC — also satisfy this Commission’s well-established benchmark standard, and must be approved for this independent reason as well. The D.C. Circuit has recently affirmed the Commission’s practice of using a benchmark test and, where that test is met, of refusing to look behind the rates to determine whether they were “calculated by TELRIC means.” Sprint Communications Co. v. FCC, 274 F.3d 549, 561 (D.C. Cir. 2001). The court reasoned that “[t]o create a distinction between properly derived cost-based rates and rates that were equal to them . . . ‘would promote form over substance, which, given the necessarily imprecise nature of setting TELRIC-based pricing, is wholly unnecessary.’” Id. (quoting Kansas/Oklahoma Order ¶ 87).

**a. The New Hampshire PUC Established TELRIC Rates for All UNEs.**

TELRIC Proceeding. The PUC first began examining the wholesale rates that Verizon would be permitted to charge competing carriers in New Hampshire in 1997 (Docket DE 97-171). See Hickey/Garzillo/Anglin Decl. ¶ 13. Verizon filed a cost study in this proceeding in December 1997. See id. ¶ 15. In May 1998, the PUC’s staff submitted its own cost study in this proceeding — the proprietary “TELECOM” model developed by an outside consulting firm, Ben Johnson Associates, Inc. See id. There was extensive discovery regarding these cost studies and other pricing issues, which involved the participation — including the submission of data requests and written testimony — of AT&T, BayRing, Ben Johnson Associates, and the PUC’s staff. See id. ¶ 18.

In July 1998, Verizon and the New Hampshire PUC staff submitted a joint stipulation that urged the PUC to adopt the staff’s TELECOM cost model to establish loop rates, and to adopt Verizon’s cost study to establish switching and transport rates. See id. ¶ 17; Application of New England Telephone and Telegraph Company, d/b/a Bell Atlantic - New Hampshire,

Statement of Generally Available Terms and Conditions (SGAT), Stipulation Regarding Recurring Charges Proposed in Bell Atlantic-New Hampshire's SGAT Filing, DE 97-171 (NH PUC July 14, 1998) (App. I-NH, Tab 2).<sup>40</sup> The stipulation also recommended specific modifications to the inputs used by each model. See Hickey/Garzillo/Anglin Decl. ¶ 17.

On July 6, 2001, the PUC issued an order formally adopting the TELRIC methodology and establishing UNE rates. See id. ¶ 20; Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996, Order Granting in Part and Denying in Part, DE 97-171, Order No. 23,738 (NH PUC July 6, 2001) (“New Hampshire TELRIC Order”) (App. I-NH, Tab 3). The PUC adopted the joint stipulation's recommendation that it use the staff's TELECOM model to calculate loops rates and Verizon's SCIS model to calculate switching costs. See Hickey/Garzillo/Anglin Decl. ¶ 20; New Hampshire TELRIC Order at 93, 96. The PUC also decided to use Verizon's cost model to establish non-recurring costs, but required various modifications to that model. See Hickey/Garzillo/Anglin Decl. ¶ 20; New Hampshire TELRIC Order at 59-72. The PUC's order required that the new UNE rates it established become effective as of July 6, 2001, the date of the order. See Hickey/Garzillo/Anglin Decl. ¶ 20.<sup>41</sup>

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<sup>40</sup> The daily usage feed (“DUF”) rate in New Hampshire is based on a more recent Verizon cost study, which is included with this Application. See Hickey/Garzillo/Anglin Decl. ¶ 40.

<sup>41</sup> Several parties filed motions for reconsideration of the PUC's pricing decision, which the PUC addressed in two separate orders. See Hickey/Garzillo/Anglin Decl. ¶ 21; Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996, Order Addressing Motions for Reconsideration, DE 97-171, Order No. 23,847 (NH PUC Nov. 21, 2001) (App. I-NH, Tab 4); Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996, Order Addressing Motion for Reconsideration of Order No. 23,847, DE 97-171, Order No. 23,915 (NH PUC Feb. 4, 2002) (App. I-NH, Tab 6).

UNE Remand Proceeding. The PUC evaluated Verizon's compliance with this Commission's orders in the UNE Remand and Advanced Services proceedings in a separate docket (DT 01-206). See Hickey/Garzillo/Anglin Decl. ¶ 23. The Commission opened this docket in October 2001, after Verizon filed a revised SGAT to demonstrate compliance with the Commission's orders in these proceedings. See id. This proceeding — which was supervised by a Facilitator appointed by the PUC — involved extensive participation by numerous parties (including AT&T, Sprint, Covad, Network Plus and others) and included extensive discovery, a technical session, several multi-party teleconferences, and the submission of briefs. See id. ¶ 24.

Following a hearing in January 2002 to consider the recommendation of the Facilitator, on April 12, 2002, the PUC issued a final order adopting with modifications many of the Facilitator's recommendations, and requiring Verizon to make a compliance filing. See id. ¶¶ 25-26; New Hampshire UNE Remand Rate Order. The PUC again required that the rates it established take effect immediately upon the release of its final order. See Hickey/Garzillo/Anglin Decl. ¶ 26.<sup>42</sup>

Section 271 Proceeding. On August 10, 2001, the New Hampshire PUC opened a new docket (DT 01-151) to evaluate Verizon's section 271 application. See Hickey/Garzillo/Anglin Decl. ¶ 28. During the course of this proceeding, the PUC required reductions of certain UNE rates, which Verizon has agreed to implement. In particular, Verizon has agreed to the following four rate reductions: (1) reduce the monthly rates for 2-wire and 4-wire analog loops in its "rural" density zone to \$25 and \$50, respectively; (2) reduce numerous switching and transport

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<sup>42</sup> Verizon sought reconsideration of several aspects of the PUC's order regarding charges for loop qualification and conditioning of DSL-capable loops. See Hickey/Garzillo/Anglin Decl. ¶ 27. On June 13, 2002, the PUC denied Verizon's petition. See Verizon New Hampshire UNE Remand Tariffs, Order Denying Motion for Reconsideration, Rehearing, and/or Clarification, DT 01-206, Order No. 23,993 (NH PUC June 13, 2002) (App. D-NH, Tab 13).

rates to levels adopted by the PUC; (3) reduce all UNE DS1 loop rates by 20 percent; and (4) reduce the DUF rates to levels prescribed by the PUC. See Hickey/Garzillo/Anglin Decl. ¶ 29; June 5, 2002 Verizon Letter at 1-2; New Hampshire 271 Approval Letter at 3.<sup>43</sup>

Cost Inputs and Assumptions. As described in more detail in the Hickey/Garzillo/Anglin Declaration, the loop and non-loop rates established by the New Hampshire PUC were based on the use of core inputs and assumptions that are fully consistent with what this Commission has found TELRIC-compliant in the past. Indeed, in some instances the PUC has required Verizon to adopt rates that are lower than those that resulted from the PUC's final TELRIC order.

*First*, the PUC adopted AT&T's proposed depreciation lives, which are within the ranges that this Commission has prescribed. See Hickey/Garzillo/Anglin Decl. ¶ 46; Petition for Arbitration by AT&T Communications New Hampshire, Inc., Rebuttal Testimony of Michael J. Majoros, Jr., DE 96-252, at 9 (NH PUC filed Oct. 28, 1996) (App. O-NH, Tab 2) (depreciation lives "[f]or most categories . . . are within (or below) the ranges prescribed by the FCC"). This Commission previously has affirmed rates set using "the depreciation rates the Commission has set." Kansas/Oklahoma Order ¶ 76; see also Rhode Island Order ¶ 30 (approving the use of "Commission-prescribed depreciation lives.").

*Second*, the PUC used a weighted average cost of capital of 10.46 percent, see Hickey/Garzillo/Anglin Decl. ¶ 47, which is lower than the 11.25 percent cost of capital this Commission has adopted as a "reasonable starting point for TELRIC calculations." Local

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<sup>43</sup> The PUC also has recently initiated a new proceeding (Docket DT 02-110) to examine issues regarding Verizon's cost of capital as well as related issues including Verizon's capital structure, cost of equity, cost of debt, "and/or such other input variables which have changed since 1998." Order of Notice, DT 02-110 (NH PUC June 18, 2002) (App. O-NH, Tab 14). Of course, the Commission has repeatedly held that the fact that a state commission is conducting a cost proceeding while a section 271 application is pending does not affect whether a BOC meets the requirements of section 271. See, e.g., Rhode Island Order ¶¶ 31, 46; Georgia/Louisiana Order ¶ 97.

Competition Order ¶ 702.<sup>44</sup> It also is closely comparable to what this Commission has approved in prior section 271 applications. See, e.g., Pennsylvania Order ¶ 57 (approving as “consistent with the TELRIC methodology” 9.83 percent cost of capital established by the Pennsylvania PUC).

*Third*, the PUC assumed that loops longer than 12,000 feet would be served by fiber, while shorter loops would be served by copper. See New Hampshire TELRIC Order at 67, 94; Hickey/Garzillo/Anglin Decl. ¶ 42. The Commission has previously found that even the assumption that *all* loops are fiber is consistent with TELRIC, and the D.C. Circuit upheld that determination. See New York Order ¶¶ 248-249; AT&T, 220 F.3d at 618-19; see also Pennsylvania Order ¶ 59; Hickey/Garzillo/Anglin Decl. ¶ 43; Joint Complaint of AT&T et al. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Services by New York Telephone Company and Sections of New York Telephone Company’s Tariff No. 900, Opinion and Order Setting Rates for First Group of Network Elements, Case Nos. 95-C-0657, 94-C-0095, 91-C-1174 at 83-84 (NYPSC Apr. 1, 1997) (concluding that fiber’s high cost *vis-à-vis* copper wire was “more than offset” by its lower provisioning and maintenance costs in New York). Because the Commission previously has found that it is consistent with TELRIC to assume all fiber feeder, the assumptions adopted by the PUC comply with TELRIC as well.

*Fourth*, the fill factors adopted by the PUC are contained in its proprietary cost study to which Verizon does not have access, but the PUC has ordered Verizon to adopt an 80 percent fill factor for transport. See Hickey/Garzillo/Anglin Decl. ¶¶ 44-45. This is even higher than fill

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<sup>44</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) (“Local Competition Order”) (subsequent history omitted).

factors the Commission has approved in the past. See, e.g., Rhode Island Order ¶ 56 (approving 60 percent fill factor for transport).

*Fifth*, Verizon has voluntarily reduced the switching rates that were initially adopted by the New Hampshire PUC. See Hickey/Garzillo/Anglin Decl. ¶ 48. As described in more detail below, with these reductions the New Hampshire switching rates now satisfy the Commission's benchmark test when compared to the switching rates adopted in New York. See id. ¶¶ 60-62. Moreover, the New Hampshire rates account for intraswitch calls in a manner consistent with the Commission's prior holdings. See id. ¶¶ 49-50. As in New Jersey, there is "both an originating and a terminating rate for every call, regardless of the number of switches involved," which the Commission has held is not "by itself inappropriate or a violation of TELRIC." New Jersey Order ¶ 38; see also Pennsylvania Order ¶ 11 (upholding Verizon's application of both originating and terminating charges for an intraswitch call); Rhode Island Order ¶ 55 (same); Vermont Order ¶ 32 (same); Maine Order ¶ 33 (same).

*Finally*, the PUC established non-recurring rates that it found comply with TELRIC principles.<sup>45</sup> The PUC adopted Verizon's non-recurring cost model as a starting point in establishing non-recurring rates, but required significant modifications. See id. ¶¶ 55-56. For example, it required that the labor-time estimates in the non-recurring cost model be reduced, see New Hampshire TELRIC Order at 63-64; it required that assumptions regarding the use of fiber and type of DLC be made consistent with the assumptions in the PUC's cost study for recurring rates, see id. at 65-68; and it prohibited Verizon from applying up-front charges to recover for

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<sup>45</sup> CLECs in New Hampshire pay a non-recurring charge of \$29.52 for connection of a loop, plus a non-recurring charge of \$7.19 upon disconnection of that loop. See Hickey/Garzillo/Anglin Decl. ¶ 41. These charges apply whether the loop is a "new" loop or involves a hot cut, and are substantially lower than Verizon's TELRIC costs for performing hot cuts. See id.

the eventual disconnection of a UNE, see id. at 68-69; see also Hickey/Garzillo/Anglin Decl. ¶¶ 55-56.

**b. The Delaware PSC Established TELRIC Rates for All UNEs.**

The Delaware PSC established rates for UNEs in Docket No. 96-324, which was conducted in two phases. See Martin/Garzillo/Sanford Decl. ¶ 14. The first phase was intended to establish rates for the unbundled network elements specified in the Commission's Local Competition Order. See id. The second phase addressed rates for those "new" unbundled network elements that were ordered after the 1996 Local Competition Order as well as non-recurring rates and OSS access charges that were part of a remand from a federal district court. See id.

Phase I Proceeding. The Phase I proceeding in Docket No. 96-324 began in December 1996, when Verizon filed a proposed SGAT with the PSC. See id. ¶ 15. The PSC designated two Hearing Examiners to evaluate Verizon's SGAT, and eight parties (including AT&T, Sprint, MFS, and Conectiv) participated in that proceeding. See id. ¶¶ 15-16. The parties filed testimony regarding Verizon's cost studies, and AT&T submitted its own cost study. See id. ¶¶ 16-17. The PSC Staff also submitted a cost study, which was developed by the Staff's outside consultant and witness, Ben Johnson. See id. ¶ 17.

The Hearing Examiners conducted four days of evidentiary hearings in February 1997 to evaluate the three cost studies that had been submitted, which was followed by the filing of post-hearing briefs. See id. ¶¶ 18-19. On April 7, 1997, the Hearing Examiners issued a 118-page report setting forth its conclusions and recommending the adoption of certain inputs (rather than any particular cost model) to establish rates. See id. ¶ 20; Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the

Telecommunications Act of 1996, Findings and Recommendations of the Hearing Examiners, Docket No. 96-324 (DE PSC Apr. 7, 1997) (App. E-DE, Tab 4).

On April 22, 1997, the PSC held a public meeting in which it adopted several of the Hearing Examiners' recommendations, but remanded on several issues including the appropriate OSS access charges and cross-connect charges. See Martin/Garzillo/Sanford Decl. ¶ 21; Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Interlocutory Order No. 4488, Docket No. 96-324 (DE PSC Apr. 29, 1997) (App. E-DE, Tab 7). The PSC deferred reaching a final decision regarding Verizon's SGAT pending the outcome on remand, and instead ordered Verizon, AT&T, and the PSC staff to provide a list of UNE rates using their respective cost models and the cost inputs adopted by the PSC. See id. Martin/Garzillo/Sanford Decl. ¶ 21. One week later, Verizon, AT&T, and the PSC staff submitted the recalculated rates, which the Hearing Examiners reviewed at the request of the PSC. See id. ¶ 22. On May 9, 1997, the Hearing Examiners issued a report regarding those proposed rates. See id.; Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Findings and Recommendations of the Hearing Examiners on Remand from the Commission, Docket No. 96-324 (DE PSC May 9, 1997) (App. E-DE, Tab 8). On May 13, 1997, the PSC decided to adopt several of the Hearing Examiners' recommendations, but remanded on the issues of the appropriate non-recurring costs and OSS access charges. See Martin/Garzillo/Sanford Decl. ¶ 23; Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Interlocutory Order No. 4508, Docket No. 96-324 (DE PSC May 27, 1997) (App. E-DE, Tab 11). Following the submission of supplemental briefs on

these issues, the Hearing Examiners issued another report. See Martin/Garzillo/Sanford Decl. ¶ 24; Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Findings and Recommendations of the Hearing Examiners on Further Remand from the Commission, Docket No. 96-324 (DE PSC May 27, 1997) (App. E-DE, Tab 12). The PSC considered this report, together with the Hearing Examiners' earlier reports, at a public meeting on June 3, 1997. See Martin/Garzillo/Sanford Decl. ¶ 25.

In July 1997, the PSC issued its final order adopting the TELRIC methodology as “the standard for determining just and reasonable rates under § 252(d)(1) for unbundled network elements and interconnection in Delaware.” Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Findings, Opinion and Order No. 4542 ¶ 23, Docket No. 96-324 (DE PSC July 8, 1997) (“Delaware Phase I Order”) (App. E-DE, Tab 14). The PSC declined to adopt either of the three cost models proposed by the parties. See id. ¶ 26; Martin/Garzillo/Sanford Decl. ¶ 26. The PSC instead adopted certain cost inputs recommended by the Hearing Examiners, and modified other inputs. See Martin/Garzillo/Sanford Decl. ¶ 26. The PSC found that the rates it adopted “regardless of the cost study by which they were generated, appear to be within the range of just and reasonable TELRIC-based rates.” Delaware Phase I Order ¶ 24; see Martin/Garzillo/Sanford Decl. ¶ 26. The PSC ordered its rates effective as of the date of its order (for carriers with whom Verizon had entered into interconnection agreements in Delaware), and ordered Verizon to use those rates in any future SGAT it chose to file. See Martin/Garzillo/Sanford Decl. ¶ 26. On August 19, 1997, in response to petitions for reconsideration and clarification filed by Verizon and the PSC staff, the PSC reaffirmed the

Phase I rates and clarified that they would function as generic, permanent rates. See Application of Bell Atlantic Delaware, Inc. for Approval of its Statement of Terms and Conditions under Section 252(f) of the Telecommunications Act of 1996, Order No. 4577 on Petitions for Rehearing, Docket No. 96-324 (DE PSC Aug. 19, 1997) (App. E-DE, Tab 15); Martin/Garzillo/Sanford Decl. ¶ 26.

AT&T, Conectiv, and Verizon appealed the PSC's order in the United States District Court for the District of Delaware. See Martin/Garzillo/Sanford Decl. ¶ 28. Verizon appealed, claiming that the recurring UNE rates — including the switching rates — were not TELRIC-compliant and that the PSC had erred in adopting certain inputs, including an improper switching discount and cost of capital. See id. AT&T opposed Verizon's challenge, claiming that "the PSC adhered, in most relevant aspects, to the now-controlling FCC regulations and Local Competition Order rulings." AT&T Supplemental Brief, April 23, 1999 (App. M-DE, Tab 8A). AT&T and Conectiv also filed their own appeal claiming that the non-recurring rates established by the PSC were not forward-looking, and AT&T alone additionally claimed that the charges for OSS access were improper. See id.

In January 2000, the district court upheld most of the PSC's determinations. See Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2d 218 (D. Del. 2000) (App. M-DE, Tab 2); Martin/Garzillo/Sanford Decl. ¶ 29. Rejecting Verizon's arguments, the court affirmed that the recurring rates adopted by the PSC were TELRIC-compliant. See Bell Atlantic-Delaware, 80 F. Supp. 2d at 236-42. The court also agreed with AT&T and Conectiv with respect to the non-recurring rates and OSS access charges in Delaware. See id. at 247-51; Martin/Garzillo/Sanford Decl. ¶ 29. The court found that the PSC had not adequately explained why those rates were

TELRIC compliant and accordingly remanded them to the PSC. See Martin/Garzillo/Sanford Decl. ¶ 29.

Phase II Proceeding. The Phase II proceeding in Docket No. 96-324 began in May 2001, when Verizon filed with the PSC for approval of rates for new UNEs that did not exist at the time of the Phase I proceeding, and to comply with the Delaware District Court's ruling regarding non-recurring charges and OSS access charges. See id. ¶ 30. At the direction of the PSC, a Hearing Examiner conducted extensive proceedings to review Verizon's proposed rates. See id. ¶ 31. In December 2001, the Hearing Examiner issued a 100-page report making recommendations regarding the proposed rates. See id.; Application of Verizon Delaware Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Findings and Recommendations of the Hearing Examiner, Docket No. 96-324, Phase II (DE PSC Dec. 21, 2001) (App. E-DE, Tab 20). Among other things, the Hearing Examiner recommended that the PSC *not* reopen the recurring rates approved in 1997 as part of the Phase I proceeding in light of the fact that the Delaware district court had upheld those rates as TELRIC-compliant. See Martin/Garzillo/Sanford Decl. ¶ 31.

In January 2002, the PSC evaluated the Hearing Examiner's report in addition to written exceptions and oral argument from the parties. See id. ¶ 32. Although the PSC resolved many issues, it remanded several issues to the Hearing Examiner. See id. In February 2002, the Hearing Examiner conducted additional extensive proceedings to address the issues that were remanded. See id. ¶ 33. On March 5, 2002, the PSC resolved all of the issues that it had remanded except those regarding Verizon's non-recurring rates, which it ordered Verizon to recalculate based on inputs proposed by the PSC. See id. ¶ 34.

On April 30, 2002, the PSC adopted a final order (released on June 4th) establishing non-recurring rates that it found comply with TELRIC. See Application of Verizon Delaware Inc. for Approval of Its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Findings, Opinion and Order No. 5967, Docket No. 96-324, Phase II (DE PSC June 4, 2002) (“Delaware Phase II Order”) (App. E-DE, Tab 33). The Phase II order also approved recurring and non-recurring rates for the new UNEs established by this Commission’s UNE Remand Order and Line Sharing Order.<sup>46</sup> See Delaware Phase II Order ¶¶ 7, 20; Martin/Garzillo/Sanford Decl. ¶¶ 30, 37. The PSC ordered the Phase II rates effective as of the date of its order. See Delaware Phase II Order at 39; Martin/Garzillo/Sanford Decl. ¶ 39.

The PSC also reaffirmed its conclusion that the rates established in the Phase I proceeding — and affirmed by the district court — continued to be TELRIC-compliant, even as it decided to modify some of the inputs used in the Phase I proceeding for purposes of establishing the Phase II rates. See Delaware Phase II Order ¶ 24; Martin/Garzillo/Sanford Decl. ¶¶ 36-37. In reaching its decision, the PSC stated that no party had argued that any specific Phase I rate was rendered unreasonable due to changed circumstances, Delaware Phase II Order ¶¶ 24-25; that it would be improper to reconsider the Phase I rates without a “full and fair consideration of all rate- impacting issues,” id. ¶¶ 23-24; and that any attempt to revisit the Phase I rates with the modified inputs would “not only . . . considerably delay the proceeding, but the resulting rates might well be higher than the Phase I rates,” id.; cf. New York Order ¶ 245 (finding that UNE rates are not rendered invalid where a state commission recognizes that some

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<sup>46</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (“Line Sharing Order”), vacated and remanded, United States Telecom Ass’n v. FCC, 290 F.3d 415 (D.C. Cir. 2002).

of the inputs underlying those rates should be changed because rates are “the result of a complex analysis that does not lend itself to simple arithmetic correction”); AT&T, 220 F.3d at 617 (“The FCC’s decision seems reasonable to us. . . . [B]oth the NYPSC and the FCC agree that adjusting switching rates . . . is not so simple as subtracting the amount of the discount; it requires other adjustments to the cost model.”). The PSC also made clear, however, that the parties were free to petition the PSC to initiate a separate ratemaking proceeding to set new rates. Delaware Phase II Order ¶ 26.

Cost Inputs and Assumptions. As described in more detail in the Martin/Garzillo/Sanford Declaration, the loop and non-loop rates established by the Delaware PSC were based on the use of core inputs and assumptions that are fully consistent with what this Commission has found TELRIC-compliant in the past.<sup>47</sup>

*First*, the PSC adopted — and the district court affirmed — AT&T’s proposed use of FCC-prescribed depreciation lives, which are within the ranges that this Commission has held are consistent with TELRIC. See Martin/Garzillo/Sanford Decl. ¶ 56; Delaware Phase I Order ¶ 30; Bell Atlantic-Delaware, 80 F. Supp. 2d at 242. This Commission previously has affirmed rates set using “the depreciation rates the Commission has set,” Kansas/Oklahoma Order ¶ 76; see also Rhode Island Order ¶ 30 (approving the use of “Commission-prescribed depreciation lives”).

*Second*, the PSC used — and the district court affirmed — a weighted average cost of capital of 10.28 percent, see Martin/Garzillo/Sanford Decl. ¶ 57; Bell Atlantic-Delaware, 80 F. Supp. 2d at 241, which is lower than the 10.5 percent weighted average cost of capital now effective in New York, and lower than the 11.25 percent cost of capital this Commission has

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<sup>47</sup> The DUF rate in Delaware is currently \$0.0003575. See Martin/Garzillo/Sanford Decl. ¶ 49.

adopted as a “reasonable starting point for TELRIC calculations,” Local Competition Order ¶ 702; see Martin/Garzillo/Sanford Decl. ¶ 58. The cost of capital adopted by the PSC also is closely comparable to what this Commission has approved in the past, see, e.g., Pennsylvania Order ¶ 57 (approving as “consistent with the TELRIC methodology” 9.83 percent cost of capital established by the Pennsylvania PUC).

*Third*, the PSC assumed that loops longer than \*\*\* feet would be served by fiber feeder, while shorter loops would be served by copper. See Martin/Garzillo/Sanford Decl. ¶ 50.<sup>48</sup> The Commission has previously found that even the assumption that *all* loops are fiber is consistent with TELRIC, and the D.C. Circuit upheld that determination. See New York Order ¶¶ 248-249; AT&T, 220 F.3d at 618-19; see also Pennsylvania Order ¶ 59; Martin/Garzillo/Sanford Decl. ¶ 53. And in the Vermont Order, the Commission approved rates that were based on cost studies that assumed that only loops under 9,000 feet would be served by copper. See Vermont Order ¶ 18. Because the Commission previously has found that it is consistent with TELRIC to assume all fiber feeder, the assumptions adopted by the PSC comply with TELRIC as well.

*Fourth*, the PSC adopted fill factors — 79 percent for feeder and 90 percent for fiber transport — that are consistent with the fill factors that this Commission has approved as TELRIC-compliant in prior section 271 orders. See Martin/Garzillo/Sanford Decl. ¶ 54; Rhode Island Order ¶ 56 (approving 75 percent fill factor for feeder and 60 percent fill factor for

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<sup>48</sup> The PSC applied this assumption in the Phase I proceeding, which resulted in an assumption that \*\*\* percent of Verizon’s loops in Delaware would be served by fiber via a digital loop carrier, and would be priced at a rate that assumes half IDLC and half UDLC. See Martin/Garzillo/Sanford Decl. ¶ 50. In the Phase II proceeding, the PSC revised this assumption and assumed that 80 percent of fiber-served loops would be served by IDLC while 20 percent would be served by UDLC. See id. ¶ 52. Both of these assumptions are consistent with the Commission’s prior holdings, which permit all fiber feeder and the use of UDLC. See id. ¶ 53; Georgia/Louisiana Order ¶ 50.

transport); Kansas/Oklahoma Order ¶¶ 79-80 (noting that the Commission has adopted fill factors from 50 to 75 percent).

*Fifth*, the PSC adopted a 10 percent common overhead factor for the Phase I rates that were proposed by AT&T and the PSC staff. See Martin/Garzillo/Sanford Decl. ¶ 62; Delaware Phase I Order ¶ 36. The PSC adopted a lower common overhead factor (5.95 percent) for calculating the Phase II rates, due to what it determined were changed circumstances since the Phase I rates were established. See Delaware Phase II Order ¶ 39; Martin/Garzillo/Sanford Decl. ¶ 63. In particular, since the time the Phase I rates were established, Verizon is better able to assign costs that previously were included in common overhead to individual network elements. See Martin/Garzillo/Sanford Decl. ¶ 63. The PSC did not, however, require Verizon to calculate its Phase I rates. See id.

*Sixth*, the inputs underlying Verizon's switching rates in Delaware are consistent with TELRIC, as the Delaware PSC and the Delaware district court found. See Martin/Garzillo/Sanford Decl. ¶¶ 59, 61, 64; Bell Atlantic-Delaware, 80 F. Supp. 2d at 236-42. The PSC calculated a switching discount based on the assumption that Verizon would purchase a mix of new switches and growth additions, weighting these 90 percent and 10 percent, respectively. See Martin/Garzillo/Sanford Decl. ¶ 59; Delaware Phase I Order ¶ 33; April 7, 1997 Report ¶¶ 135-137; Bell Atlantic-Delaware, 80 F. Supp. 2d at 239 (upholding PSC-adopted switch discount as consistent with TELRIC). The Commission previously has found that it is consistent with TELRIC to assume an even higher ratio of growth additions (for which a smaller discount applies), which means that the assumptions adopted by the PSC comply with TELRIC as well. See, e.g., New York Order ¶¶ 240-242; AT&T, 220 F.3d at 618 (affirming the New York Order on this issue); Kansas/Oklahoma Order ¶ 77. The switching installation factor

adopted by the PSC — 20 percent — also is substantially lower than what this Commission has approved in the past. See Martin/Garzillo/Sanford Decl. ¶ 61; Vermont Order ¶ 35 (approving rates that used 54 percent installation factor).

The Delaware switching rates also use a Busy Hour Annual Ratio (“BHAR”) that produces lower rates than what the Commission has found acceptable in the past and than what Verizon’s more recent cost studies would yield. See Martin/Garzillo/Sanford Decl. ¶¶ 64-69. The BHAR in Delaware is calculated by dividing by minutes associated with 334 effective business days in a calendar year. See id. ¶ 66. By contrast, in New Jersey, WorldCom argued that the Commission should calculate the BHAR using less than 334 days. See Martin/Garzillo/Sanford Decl. ¶ 69. The switching rates adopted in New York also use a BHAR (308 days) that produces higher rates than the one used in Delaware. See New Jersey Order ¶ 48. Of course, the Commission has held that “provided that an incumbent LEC’s methodology is reasonable and consistent, TELRIC does not by itself dictate the use of a particular number of days, whether 308, 251, or some other number.” Id. But the fact that the BHAR in Delaware produces lower rates than the ones used in New Jersey and New York demonstrates that it, too, is reasonable. Indeed, the 334-day figure used to calculate the BHAR in Delaware is higher than what AT&T and WorldCom have argued should be used in other proceedings. See Martin/Garzillo/Sanford Decl. ¶ 69.

*Finally*, the PSC established non-recurring rates that it found “comply with the FCC’s TELRIC methodology.” Delaware Phase II Order ¶ 91.<sup>49</sup> The PSC adopted Verizon’s cost

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<sup>49</sup> The PSC adopted a \$35 non-recurring hot-cut rate in Delaware, which will remain in effect for two years and will then revert back to the PSC-approved TELRIC rate. See Delaware Phase II Order ¶ 95; see also Martin/Garzillo/Sanford Decl. ¶ 72. Although the PSC has adopted this new rate, it also has acknowledged that the actual forward-looking costs of performing a hot cut are significantly higher than \$35. See id.; see also Martin/Garzillo/Sanford Decl. ¶ 72. The

model as a starting point in establishing non-recurring rates, but required significant modifications. See Martin/Garzillo/Sanford Decl. ¶ 71. For example, the PSC required that the labor-time estimates in the Verizon's cost model be reduced to reflect a more recent work-time study (conducted by Andersen Consulting) than the one on which Verizon's cost model was based. See Delaware Phase II Order ¶ 90; see also Martin/Garzillo/Sanford Decl. ¶ 71. The PSC also ordered Verizon to charge rates produced either from the use of "mode" times (i.e., the most frequently occurring work times) or "mean" times (i.e., the average work times), whichever is lower. See Delaware Phase II Order ¶ 90; see also Martin/Garzillo/Sanford Decl. ¶ 71. The PSC reasoned that this approach "effectively eliminates any abnormally high survey responses" used in Verizon's cost model. Delaware Phase II Order ¶ 90; see also Martin/Garzillo/Sanford Decl. ¶ 71. The PSC also required the non-recurring rates to reflect the same input modifications that the PSC adopted with respect to the rates addressed in the Phase II proceeding. See Delaware Phase II Order ¶ 90; see also Martin/Garzillo/Sanford Decl. ¶ 71.

**c. The Rates Set by the New Hampshire PUC and the Delaware PSC Satisfy This Commission's Well-Settled Benchmark Standard.**

The Commission has held that, in making a determination about whether rates in a particular state comply with TELRIC, it "may, in appropriate circumstances, consider rates that we have found to be based on TELRIC principles" in the context of previous section 271 applications. Kansas/Oklahoma Order ¶ 82. The Commission also has held on several occasions that the rates recently adopted in New York may be used as a benchmark for Verizon states. See Rhode Island Order ¶ 53; Maine Order ¶ 32; New Jersey Order ¶ 50.

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situation here is, therefore, analogous to the one in New Jersey, where the New Jersey BPU also adopted a \$35 promotional hot-cut rate despite finding that the actual TELRIC costs were much higher. Thus, the Commission's conclusion that "Verizon's \$35.00 hot cut rate in New Jersey is within the reasonable range that application of TELRIC principles would produce" applies with equal force here. New Jersey Order ¶ 65.

Of course, section 271 does not require proof that the rates in an applicant state have been set at the lowest level adopted in any other state. As the Commission has held, a section 271 applicant “need not demonstrate” that the rates in the applicant state “pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce.” Arkansas/Missouri Order ¶ 56. Both the Commission and the courts have instead recognized that TELRIC is not designed to produce the same result in every case.<sup>50</sup> And while the Commission has recently held that it is appropriate to use the recently adopted New York rates as a benchmark, it expressly found 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 evidence that rates in the applicant state satisfy checklist item two.” Rhode Island Order ¶ 39.

Although Verizon is not required to demonstrate that the rates established by the New Hampshire PUC and the Delaware PSC are comparable (relative to cost levels) to the newly adopted rates in New York, the facts here nonetheless demonstrate that they are with respect to both the loop and non-loop rates in New Hampshire and the loop rates in Delaware. As an initial matter, the Commission may compare the rates established in New Hampshire and Delaware with the rates recently adopted in New York because New Hampshire, Delaware, and New York are in the same geographic region; Verizon has similar rate structures for unbundled network elements in both states; and, as noted above, the Commission has already found that it is appropriate to use the “new New York rates as a benchmark.” Rhode Island Order ¶¶ 51-53. As

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<sup>50</sup> See, e.g., AT&T, 220 F.3d at 615 (“application of TELRIC principles may result in different rates in different states”); Michigan Order ¶ 291 (“use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC may vary from state to state”).

described below, when compared to the newly established rates in New York, the loop and non-loop rates in New Hampshire and Delaware satisfy the Commission’s benchmark standard.

Loop Rates. The unbundled local loop rates both in New Hampshire and in Delaware are comparatively lower (relative to cost) than the newly set rates in New York.

The Commission’s USF cost model shows that the loop costs in New Hampshire are 75 percent higher than the costs in New York. See Hickey/Garzillo/Anglin Decl. ¶ 59; Pennsylvania Order ¶ 65 (“[O]ur USF cost model provides a reasonable basis for comparing cost differences between states.”). By comparison, the statewide average loop rate in New Hampshire is only about 41 percent higher than the statewide average loop rate in New York. See Hickey/Garzillo/Anglin Decl. ¶ 59. As the Commission has held, where, as here, “the percentage difference between the applicant state’s rates and the benchmark state’s rates does not exceed the percentage difference between the applicant state’s costs and the benchmark state’s costs, as predicted by the USF model, *then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant.*” Pennsylvania Order ¶ 65 (emphasis added); see Rhode Island Order ¶ 57 (finding weighted average loop rates “roughly 22 percent higher than the new New York weighted average loop rates” TELRIC-compliant when “weighted average loop costs are roughly 28.45 percent higher than New York weighted average loop costs”).

The Commission’s USF cost model shows that the loop costs in Delaware are 41 percent higher than the costs in New York. See Martin/Garzillo/Sanford Decl. ¶ 75; Pennsylvania Order ¶ 65 (“[O]ur USF cost model provides a reasonable basis for comparing cost differences between states.”). By comparison, the statewide average loop rate in Delaware is only about 5 percent higher than the statewide average loop rate in New York. See Martin/Garzillo/Sanford Decl.

¶ 75. Thus, Verizon has “met its burden to show that its rates are TELRIC-compliant.”

Pennsylvania Order ¶ 65.

Non-Loop Rates. In determining whether non-loop rates fall within the range that a reasonable application of TELRIC would permit, the Commission previously has examined those rates in the aggregate. See, e.g., Massachusetts Order ¶ 25; Arkansas/Missouri Order ¶ 60; New Jersey Order ¶¶ 51-52. Applying a similar comparison here demonstrates that Verizon’s non-loop rates in New Hampshire fall within the range that a reasonable application of TELRIC would produce. In New Hampshire, the statewide average aggregate costs for switching usage, a switching port, transport, and signaling — based on actual state-specific dial equipment minutes (from ARMIS)<sup>51</sup> — are 18 percent higher than the costs in New York. See Hickey/Garzillo/Anglin Decl. ¶ 62. By comparison, the statewide average non-loop rates in New Hampshire — calculated using state-specific allocation of MOUs among call types — are approximately 5 percent higher than the equivalent rate in New York. See id.; Rhode Island Order ¶ 47. Accordingly, “the percentage difference between the applicant state’s rates and the benchmark state’s rates does not exceed the percentage difference between the applicant state’s costs and the benchmark state’s cost.” Pennsylvania Order ¶ 65. Verizon therefore has “met its burden to show that its rates are TELRIC-compliant.” Id.

Combinations of Loop and Non-Loop Elements. While the loop and non-loop rates in New Hampshire and the loop rates in Delaware individually satisfy a benchmark comparison with the rates recently adopted in New York, the Commission can take additional comfort that the rates at issue here are well within the range of reasonableness from the fact that the combined

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<sup>51</sup> See Rhode Island Order ¶ 55 n.149 (“where available, verifiable, state-specific data provide a more valid comparison”); Arkansas/Missouri Order ¶ 60 n. 161 (relying on state-specific data from ARMIS); New Jersey Order ¶ 53.

loop and non-loop rates set by the New Hampshire PUC and Delaware PSC are substantially *lower* (relative to cost) than the newly established New York rates. As Verizon has explained previously, although CLECs sometimes purchase loops alone, CLECs only purchase non-loop elements in combination with loops. Moreover, the Commission previously has explained that it is appropriate to compare the rates for elements that are purchased together on a combined basis. See, e.g., Massachusetts Order ¶ 25; New Jersey Order ¶ 52. Thus, while it is appropriate to benchmark loops alone — because they are purchased separately — non-loop rates can properly be analyzed in combination with loop rates — because they are purchased in combination. See, e.g., Massachusetts Order ¶ 25 (explaining rationale for benchmarking various non-loop elements together). In New Hampshire, the loop and non-loop rates combined not only satisfy the benchmark test against the New York rates, but are in fact about 20 percent lower than the maximum combined rate that would be permitted by such analysis. See Hickey/Garzillo/Anglin Decl. ¶ 64. In Delaware, the combined loop and non-loop rates are about 12 percent lower than maximum combined rates that would be permitted by that same analysis. See Martin/Garzillo/Sanford Decl. ¶ 78.<sup>52</sup>

**C. Poles, Ducts, Conduits, and Rights-of-Way (Checklist Item 3).**

Verizon provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way that it owns or controls in New Hampshire and in Delaware. Through April 2002, Verizon has provided approximately 288,000 pole attachments and access to approximately 270,000 feet of conduit in New Hampshire. See Lacouture/Ruesterholz NH Decl. ¶ 264.<sup>53</sup> Through March

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<sup>52</sup> This analysis assumes state-specific DEM minutes of use for New York and Delaware. See Martin/Garzillo/Sanford Decl. ¶ 76.

<sup>53</sup> In New Hampshire, Verizon offers access to poles, ducts, conduits, and rights-of-way through standard licensing agreements that are referenced in Verizon's interconnection agreements and its SGAT. See Lacouture/Ruesterholz NH Decl. ¶¶ 265-266. In Delaware,

2002, Verizon has provided approximately 25,000 pole attachments and access to approximately 131,000 feet of conduit in Delaware. See Lacouture/Ruesterholz DE Decl. ¶ 258.

Verizon provides access to poles, ducts, and conduits on a timely basis. For example, Verizon is committed to completing field surveys and responding to pole and conduit requests within 45 days, and, from February through April, did so 100 percent of the time in New Hampshire, Delaware, and Pennsylvania, and 99 percent of the time in Massachusetts. See Lacouture/Ruesterholz NH Decl. ¶¶ 272-273; Lacouture/Ruesterholz DE Decl. ¶¶ 266-267. During 2001, Verizon was able to satisfy a competing carrier's request for poles and conduits without make-ready work at least 74 percent of the time in New Hampshire. See Lacouture/Ruesterholz NH Decl. ¶ 274. In Delaware, Verizon received only one make-ready work request from February through April 2002. See Lacouture/Ruesterholz NH Decl. ¶ 273.

In cases where make-ready work is not required, Verizon provides access immediately upon issuance of a license. See Lacouture/Ruesterholz NH Decl. ¶ 274; Lacouture/Ruesterholz DE Decl. ¶ 268. In cases where make-ready or construction work is needed, Verizon has completed such work for CLECs' pole attachments and conduits in New Hampshire and Delaware more quickly than it performed such work for itself. See Lacouture/Ruesterholz NH Decl. ¶ 279; Lacouture/Ruesterholz DE Decl. ¶ 273. Verizon's make-ready performance in Massachusetts and Pennsylvania, where volumes are higher, also continues to be strong. See Lacouture/Ruesterholz NH Decl. ¶ 280; Lacouture/Ruesterholz DE Decl. ¶ 274.

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Verizon offers access to poles, ducts, conduits, and rights-of-way through standard licensing agreements that are referenced in Verizon's interconnection agreements. See Lacouture/Ruesterholz DE Decl. ¶¶ 259-260.