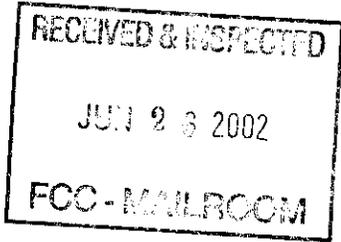


Before the
Federal Communications Commission
Washington, D.C. 20554



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

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 2002

Released: June 19, 2002

By the Commission:

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I. INTRODUCTION

1. On March 21, 2002, Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. (Verizon) filed this application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the State of Maine. We grant the application in this Order based on our conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in Maine to competition.

2. This application demonstrates that even in very rural states, competition in the market for local telecommunications can develop under the appropriate market and regulatory circumstances. According to Verizon, competing carriers in Maine serve approximately 50,600 lines using all three entry paths available under the Act (resale, unbundled network elements, and competitor-owned facilities).² Across the state, competitors serve approximately 38,800 lines through resale and approximately 11,800 lines using unbundled network elements or their own facilities.³

3. We wish to recognize the effort and dedication of the Maine Public Utilities Commission (Maine Commission). In smaller, more rural states, the section 271 process taxes the resources of the state commissions, even more heavily than in other states. Yet, by diligently

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

² *See* Verizon Application App. A, Vol. 3 Tab F, Declaration of John A. Torre (Verizon Torre Decl.) Attach. 1 at para. 3.

³ *See* Verizon Torre Decl. Attach 1 at para. 6. In its evaluation, the Department of Justice cites Verizon's estimate that using all modes of entry, for business and residential customers combined, competitors serve approximately 50,600 lines in Maine, or approximately 6.7% of all lines in Verizon's service area in the state. *See* Department of Justice Evaluation at 4.

and actively conducting proceedings beginning in 1997 to set TELRIC prices, to implement performance measures, to develop a Performance Assurance Plan (PAP), and to evaluate Verizon's compliance with section 271 of the Act, the Maine Commission laid the necessary foundation for our review and approval. We are confident that the Maine Commission's efforts, culminating in the grant of this application, will reward Maine consumers by making increased competition in all markets for telecommunications services possible in the state.

II. BACKGROUND

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

5. We rely heavily in our examination of this application on the work completed by the Maine Commission. Beginning in August 1997, the Maine Commission conducted a series of pricing proceedings to set the rates for unbundled network elements.⁵ In addition, nearly two years ago, the Maine Commission began its examination of Verizon's proposed performance measures for use in Maine, as well as the establishment of a PAP.⁶ In March 2002, the Maine Commission adopted the New York Commission's performance guidelines with minor modifications,⁷ as well as a Maine PAP.⁸ Any changes required by the New York Commission

⁴ The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001); *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*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

⁵ See Verizon Application App. A, Vol. 3, Joint Declaration of Edward B. Dinan, Patrick A. Garzillo, and Michael J. Anglin (Verizon Dinan/Garzillo/Anglin Decl.) at paras. 13-32. The history of unbundled network elements (UNE) pricing in Maine is set forth in more detail *infra* part III.A.1.

⁶ See Maine Commission Comments at 2, 91-95.

⁷ See Maine Commission Comments at 91-92; Verizon Application App. B, Tab 4, State of New York Public Service Commission Order Modifying Existing and Establishing Additional Inter-Carrier Service Quality Guidelines (Oct. 29, 2001) (New York Commission October Order).

⁸ See Verizon Application App. B, Tab 25, Letter from Maine Public Utilities Commission to Edward B. Dinan, President & CEO, Verizon New England, Inc., *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849 (Mar. 1, 2002) (Maine Commission Mar. 1 Letter).

will be filed with the Maine Commission within ten days for review and inclusion in the Maine guidelines upon the Maine Commission's approval.⁹

6. On October 18, 2001, Verizon formally asked the Maine Commission to consider whether Verizon is complying with the requirements of section 271.¹⁰ The Maine Commission opened a docket to consider Verizon's request, and conducted an evaluation of Verizon's compliance with section 271. The Maine Commission accepted comments, declarations, exhibits, and briefs from all interested parties, and also conducted two days of evidentiary hearings.¹¹ On completion of its proceeding, the Maine Commission sent a letter to Verizon expressing its conclusion that "Verizon meets the statutory requirements of Section 271 relating to opening the local exchange and exchange access markets in Maine to competition."¹² The Maine Commission's recommendation, however, was conditioned on Verizon taking several actions.¹³ Verizon replied that it "will comply with the Commission's conditions."¹⁴ In this

⁹ See Verizon Application App. I, Tab 19, Verizon Maine's Performance Assurance Plan (filed Mar. 13, 2002) (Verizon Maine PAP); see also Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-61 (filed Apr. 4, 2002) (submitting a revised version of the Maine PAP, including a new Appendix D, that was filed with the Maine Commission on March 29, 2002) (Verizon Apr. 4 *Ex Parte* Letter).

¹⁰ See Maine Commission Comments at 2. On October 18, 2000, the Maine Commission opened its initial inquiry into the entry of Verizon into the interLATA telephone market in Maine. However, in November 2000, Verizon informed the Maine Commission that it did not wish to proceed with its section 271 application at that time. Accordingly, the Maine Commission suspended its investigation until Verizon re-filed its application on October 18, 2001. See Maine Commission Comments at 1-2.

¹¹ See *id.* at 2-3.

¹² Maine Commission Mar. 1 Letter at 1.

¹³ See *id.* at 1-5. The conditions imposed by the Maine Commission are as follows: Verizon must file a wholesale tariff for Maine no later than October 1, 2002, Verizon must provision new EELs in accordance with applicable law beginning on April 1, 2002, Verizon must make certain changes to its dark fiber offering, Verizon must file redacted copies of all customer-specific contracts with the Maine Commission, Verizon must participate in the Maine Commission's Rapid Response Process, Verizon must provide the Maine Commission with a quarterly report identifying any modifications ordered by a Commission in any former Bell Atlantic state that substantially alter Verizon's obligations with respect to certain section 271 checklist items, and Verizon must make certain changes to the Maine PAP. Verizon states that it will comply with all the conditions imposed by the Maine Commission. See Verizon Application App. B, Tab 26, Letter from Edward B. Dinan, President, Verizon New England, Inc. to Thomas L. Welch, Chairman, Public Utilities Commission, *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849 (Mar. 4, 2002) (Verizon Mar. 4 letter). In fact, Verizon filed a revised Maine PAP on March 29, 2002. See Maine Commission Comments at 88. Verizon also began offering new loop/transport combinations on April 1, 2002. See Verizon Application App. A, Vol. 1, Joint Declaration of Paul A. Lacouture and Virginia P. Ruesterholz (Verizon Lacouture/Ruesterholz Decl.) at para. 257. Verizon filed a dark fiber tariff on May 1, 2002 as well. See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 (filed May 2, 2002) (Verizon May 2 *Ex Parte* Letter). On May 30, 2002, however, the Maine Commission suspended the effective date of Verizon's dark fiber tariff for a period of three months to determine whether certain provisions of the tariff comply with conditions included in the Maine Commission Mar. 1 Letter. See Letter from Trina M. Bragdon, Staff Attorney, Maine Public Utilities Commission, (continued....)

proceeding, the Maine Commission filed a more detailed recommendation, in which it “finds that Verizon [has] met the requirements of the Section 271 Checklist and recommends that the [Commission] grant Verizon’s application for entry into the interLATA market.”¹⁵

7. The Department of Justice filed its recommendation on April 25, 2002, concluding that “Verizon has generally succeeded in opening its local markets in Maine to competition.”¹⁶ Accordingly, the Department of Justice recommends approval of Verizon’s application for section 271 authority in Maine, stating that:

Although there is significantly less competition to serve residential customers and to serve business customers via the UNE-platform, the Department does not believe there are any material obstacles to competition in Maine created by Verizon. Verizon has submitted evidence to show that its Maine OSS [operations support systems] are the same as those that the Commission found satisfactory in Massachusetts. Moreover, there have been few complaints regarding Verizon’s Maine OSS in this proceeding.¹⁷

III. CHECKLIST COMPLIANCE

8. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather, we rely on the legal and analytical precedent established in prior section 271 orders, and we attach comprehensive appendices containing performance data and the statutory framework for evaluating section 271 applications.¹⁸ Our conclusions in this Order are based on performance

(Continued from previous page) _____
to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 (filed June 10, 2002). The Maine Commission and Verizon have discussed possible revisions to the language of the tariff. *Id.*

¹⁴ See Verizon Mar. 4 letter.

¹⁵ Maine Commission Comments at 115.

¹⁶ Department of Justice Evaluation at 2. Section 271(d)(2)(A) requires us to give “substantial weight” to the Department of Justice’s evaluation. 47 U.S.C. § 271(d)(2)(A).

¹⁷ Department of Justice Evaluation at 5-6.

¹⁸ Appendices B (Maine Performance Data), C (Massachusetts Performance Data), and D (Statutory Requirements); see *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, Memorandum Opinion and Order, 17 FCC Rcd 3300, Apps. B, C, and D (2002) (*Verizon Rhode Island Order*); *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, 16 FCC Rcd 20719, Apps. B, C, and D (2001) (*SWBT Arkansas/Missouri Order*); *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global* (continued....)

data as reported in carrier-to-carrier reports reflecting service in the most recent months before filing (November 2001 through March 2002).¹⁹

9. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing checklist item two (UNEs). Next, we address checklist item four (unbundled local loops). The remaining checklist items are discussed briefly. We find, based on our review of the evidence in the record, that Verizon satisfies all the checklist requirements.²⁰

A. Checklist Item 2 – Unbundled Network Elements

1. Pricing of Network Elements

a. Background

10. On August 4, 1997, the Maine Commission initiated an investigation into Verizon's total element long run incremental cost (TELRIC) of providing unbundled network elements and interconnection.²¹ The investigation was initiated to evaluate cost studies submitted by Verizon in the state proceeding considering Verizon's compliance with section 271 of the Act.²² After the submission of pre-filed testimony, two technical conferences and several days of hearings, the Maine Commission issued a procedural order on February 12, 1998, suspending its

(Continued from previous page)

Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17508-545, Apps. B and C (2001) (*Verizon Pennsylvania Order*).

¹⁹ We examine data through March 2002 because it describes performance that occurred before comments were due in this proceeding on April 10, 2002. See *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18372, para. 39 (2000) (*SWBT Texas Order*).

²⁰ We note that the United States Court of Appeals for the District of Columbia Circuit recently issued an opinion remanding two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 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). *USTA v. FCC*, 2002 WL 1040574 (D.C. Cir. issued May 24, 2002). The Commission is currently reviewing its unbundled network elements rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 2278 (2001), and recently extended the reply comment date to allow parties to incorporate their review and analysis of the D.C. Circuit's recent decision. *Wireline Competition Bureau Extends Reply Comment Deadline for Wireline Broadband and Triennial Review Proceedings*, Public Notice, DA 02-1284 (May 29, 2002).

²¹ Maine PUC, *Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Order at 1 and Attach. A at 1, Docket No. 97-505 (rel. Feb. 12, 2002) (*Maine TELRIC Order*); Verizon Dinan/Garzillo/Anglin Decl. at para. 15.

²² Verizon Dinan/Garzillo/Anglin Decl. at paras. 14-15.

investigation pending release of this Commission's universal service model platform (USF platform).²³ The Maine Commission hoped that this Commission's decision adopting the USF platform would provide additional guidance on cost model issues.²⁴ The USF platform was adopted in October 1998,²⁵ and the model inputs were released in November 1999.²⁶

11. The Maine Commission did not renew its investigation until July 2000, when it convened a technical conference to discuss the impact of subsequent legal developments and whether the existing record could be relied upon in light of these developments.²⁷ Verizon and AT&T, among others, attended the technical conference and recommended that the Maine Commission proceed based on the existing record.²⁸ Accordingly, the Maine Commission established UNE prices based on the existing record, updated where necessary, and supplemented with testimony on UNE costs that were not covered in the earlier phase of the investigation.²⁹

12. Over the course of the investigation, the parties submitted testimony and exhibits evaluating Verizon's cost studies and Verizon responded to more than 500 interrogatories and information requests.³⁰ In addition, the Maine Commission conducted six days of technical conferences and hearings.³¹ On February 12, 2002, the Maine Commission adopted an order establishing rates for UNEs and interconnection that applied the Commission's TELRIC standard.³² In adopting these rates, the Maine Commission acknowledged a degree of uncertainty

²³ *Maine TELRIC Order* at Attach. A; Verizon Dinan/Garzillo/Anglin Decl. at para. 19.

²⁴ *Maine TELRIC Order* at Attach. A.

²⁵ *Id.*; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Report and Order, 13 FCC Rcd 21323 (1998) (subsequent history omitted).

²⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Report and Order, 14 FCC Rcd 20156 (1999) (*Universal Service Tenth Report and Order*) (subsequent history omitted). During this time period, the investigation remained suspended and Verizon offered UNEs to competitive LECs at rates established in an arbitration between Verizon and AT&T. Verizon Dinan/Garzillo/Anglin Decl. at para. 19.

²⁷ *Maine TELRIC Order* at Attach. A.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Verizon Application at 45. In October 2000, AT&T withdrew its Hatfield model and supporting evidence from the proceeding. Verizon Dinan/Garzillo/Anglin Decl. at 5, para. 22.

³¹ Verizon Application at 45.

³² *Id.* at 46; *Maine TELRIC Order* at 6. With regard to some composite interconnection rates, on February 12, 2002, the Maine Commission issued a procedural order to permit comments on these interconnection rates as they had not been submitted previously by Verizon in this proceeding. *Maine TELRIC Order* at 1 n.1. See Maine PUC, *Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Procedural Order at 1, Docket No. 97-505 (rel. Feb. 12, 2002) (*TELRIC Procedural Order*). In its procedural order, the Maine Commission noted that the composite interconnection rates at issue reflected the correct (continued....)

surrounding the proper application of the TELRIC standard, but concluded that there was “value to having in place prices that are within a zone of reasonableness, even if the exact placement within that zone is not currently knowable”³³ For this reason, the Maine Commission established prices based upon the existing record and expressed a commitment to revisit Verizon’s Maine UNE rates based on more recent data and after resolution of the legal issues surrounding TELRIC.³⁴ On February 12, 2002, these rates became effective for carriers with which Verizon had entered into interconnection agreements.³⁵

13. On March 8, 2002, the Maine Commission issued a second order that revised the switching rates adopted in its original order, adopted additional composite interconnection rates for Verizon,³⁶ and made several non-substantive corrections to the original order.³⁷ In the separate proceeding considering Verizon’s compliance with section 271, AT&T had questioned the calculation of switching rates,³⁸ which prompted the Maine Commission to review, *sua sponte*, the Verizon inputs used to determine these costs.³⁹ Upon further review of Verizon’s switching costs and Automated Reporting Management Information Systems (ARMIS) data, the Maine Commission concluded that it had “incorrectly assumed” that an input represented all minutes of use reported in 1996.⁴⁰ The Maine Commission ordered Verizon to recalculate its

(Continued from previous page)

rates set by the Commission or used the appropriate methodology, but nevertheless wanted to give parties an opportunity to comment on the rates and the underlying assumptions made by Verizon in calculating these rates. *TELRIC Procedural Order* at 1.

³³ *Maine TELRIC Order* at 6 (discussing the difficulties in interpreting and applying the TELRIC standard, and concluding that seeking to find the “exact, economically correct price for each UNE in Maine would be futile exercise . . .”).

³⁴ *Id.* at 7. We note that the legal uncertainty surrounding TELRIC has now been settled by the Supreme Court. *See Verizon Communications, Inc. v. FCC*, 122 S.Ct 1646 (2002).

³⁵ Verizon Dinan/Garzillo/Anglin Decl. at 6, para. 29.

³⁶ *See supra* n.32.

³⁷ Maine PUC, *Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Order at 1, Docket No. 97-505 (rel. Mar. 8, 2002) (*Maine TELRIC Order II*); *see also* Verizon Application at 47 n.46; Verizon Dinan/Garzillo/Anglin Decl. at para. 30.

³⁸ *Maine TELRIC Order II* at 1-2. Specifically, the comments filed by AT&T claimed that the switching rates established by the Maine Commission were 28 percent higher than those recently adopted in New York and that Maine’s rates contributed to a price squeeze that precluded competition. *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

switching rates using the ARMIS data from 1996, resulting in an overall reduction in switching rates.⁴¹

14. On March 14, 2002, Verizon filed a letter with the Maine Commission detailing a number of non-substantive clerical errors in the calculation of certain rates set forth in the *Maine TELRIC Order II*.⁴² The Maine Commission issued a supplemental order on March 20, 2002, correcting the errors identified by Verizon, and it received no further notice of errors.⁴³ No party filed for reconsideration of the Maine Commission's TELRIC orders and no party is seeking judicial review at this time.

b. Pricing Legal Standard

15. Checklist item two of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.⁴⁴ Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁴⁵ Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.⁴⁶ Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the TELRIC of providing those elements.⁴⁷

⁴¹ *Id.* at 2-3. In addition, the Maine Commission reconsidered its earlier decision to adopt a zero rate for night and weekend switching and adopted a switching rate applicable to all 24 hours of every day. *Id.* at 3. *See also* Verizon Application at 47 n.46.

⁴² Verizon Application at 46 n.44; Letter from Donald W. Boecke, General Counsel – Maine, Verizon, to Dennis Keschle, Administrative Director, Maine PUC, Docket No. 97-505 (Mar. 14, 2002).

⁴³ Maine PUC, *Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Supplemental Order, Docket No. 97-505 (rel. Mar. 20, 2002) (*Maine Supp. TELRIC Order*).

⁴⁴ 47 U.S.C. § 271(c)(2)(B)(ii).

⁴⁵ *Id.* § 251(c)(3).

⁴⁶ *Id.* § 252(d)(1).

⁴⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-46, paras. 674-79 (1996) (*Local Competition Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501 *et seq.* *See also* *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 (1999). *USTA v. FCC*, 2002 WL 1040574 (D.C. Cir. May 24, 2002).

16. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996 and vacated them in 1997,⁴⁸ the U.S. Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.⁴⁹ On remand, the Eighth Circuit concluded that specific Commission pricing rules were contrary to Congressional intent,⁵⁰ but stayed the issuance of its mandate pending review by the Supreme Court.⁵¹ On May 13, 2002, the Supreme Court upheld the Commission's forward-looking pricing methodology in determining costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act."⁵² Accordingly, the Commission's rules have been in effect throughout the pendency of this application.

17. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations.⁵³ We will not reject an application "because isolated factual findings by a commission might be different from what we might have found if we were arbitrating the matter. . . ." ⁵⁴ We will, however, reject an application 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."⁵⁵

18. To establish rates that comport with TELRIC principles, the Maine Commission employed different methodologies for different rates.⁵⁶ For some recurring charges, the Maine

⁴⁸ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997).

⁴⁹ *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. The Court determined that section 251(d) provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The pricing provisions implemented under the Commission's rulemaking authority, according to the Court, do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id.*

⁵⁰ *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications, Inc. v. FCC*, 531 U.S. 1124 (2001).

⁵¹ *Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Sept. 25, 2000).

⁵² *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1679 (2002).

⁵³ *Verizon Pennsylvania Order*, 16 FCC Rcd. at 17453, para. 55. *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

⁵⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244, *aff'd*, *AT&T Corp v. FCC*, 220 F.3d at 615-16.

⁵⁵ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55.

⁵⁶ *Verizon Dinan/Garzillo/Anglin Decl.* at para. 26.

Commission adopted Verizon's cost model but rejected the inputs used by Verizon and recalculated the rates using corrected inputs.⁵⁷ For example, the Maine Commission rejected Verizon's proposed depreciation rates, adopted this Commission's prescribed depreciation lives, and recalculated recurring rates accordingly.⁵⁸ The Maine Commission also rejected Verizon's proposed capital costs and structure, and recalculated recurring rates using a weighted average cost of capital of 9.79 percent.⁵⁹ In establishing switching and port charges, the Maine Commission rejected the Verizon model and adopted the Commission's USF model.⁶⁰ For all other recurring charges, the Maine Commission compared the rate proposed by Verizon with the UNE rates found in other Verizon jurisdictions (i.e., Vermont, Rhode Island, and Massachusetts) and adopted the lower of Verizon's proposed rate or the rate equaling the average of the comparable rates in these jurisdictions.⁶¹ The Maine Commission reasoned that, while this may appear to be "rough justice," the resulting rates "have the virtue of falling (by definition) well within the range found reasonable elsewhere (and confirmed as generally reasonable by the [Commission] in its Section 271 reviews)"⁶²

19. For non-recurring charges, the Maine Commission accepted Verizon's cost model, but it identified numerous errors in the assumptions contained in the model.⁶³ To account for these errors, including errors in the work time estimates, it ordered Verizon to discount all of its

⁵⁷ Verizon Application at 46; Verizon Dinan/Garzillo/Anglin Decl. at para. 26; *Maine TELRIC Order* at 7.

⁵⁸ See *Maine TELRIC Order* at 10-11 (concluding that Verizon's proposed depreciation lives were speculative and unsupported). Specifically, the Maine Commission recalculated the rates for 2-wire analog loops, xDSL loops, transport, switching, and ports using the revised depreciation lives. *Id.* at 11. The Commission's prescribed depreciation lives are found in Part 32 of our rules. 47 C.F.R. Part 32. The Commission also adopted these lives for purposes of the Synthesis Model. See *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20344, paras. 425-26.

⁵⁹ See *Maine TELRIC Order* at 11-21 (considering parties' proposals concerning the appropriate cost of capital and recalculating the rates for 2-wire analog loops, xDSL loops, transport, switching, and ports using the revised weighted cost of capital). See also Verizon Application at 47-48; Verizon Dinan/Garzillo/Anglin Decl. at para. 47 (noting that a 9.79 percent weighted average cost of capital is lower than the 10.5 percent weighted average cost of capital in New York and lower than the 11.25 percent cost of capital used by this Commission); *Verizon Pennsylvania Order*, 16 FCC Rcd at 17454, para. 57 (finding a cost of capital of 9.83 percent consistent with the TELRIC methodology).

⁶⁰ Verizon Dinan/Garzillo/Anglin Decl. at para. 26; *Maine TELRIC Order* at 60.

⁶¹ Verizon Dinan/Garzillo/Anglin Decl. at para. 26; *Maine TELRIC Order* at 7.

⁶² *Maine TELRIC Order* at 7.

⁶³ Verizon Application at 49-50. The Maine Commission used Verizon's cost study as the basis for calculating recurring costs and decided to use the Verizon cost study as the basis for calculating non-recurring costs for consistency purposes. *Maine TELRIC Order* at 74. The errors identified by the Maine Commission include inconsistent assumptions (assumptions that differed from those used to calculate recurring charges), unreliable and inaccurate work time estimates, impermissible disconnection fees, and low flow-through rates. *Maine TELRIC Order* at 73-77; see also Verizon Application at 50.

non-recurring charges by 65 percent.⁶⁴ The Maine Commission found that this discount would reasonably estimate the value of the methodological errors contained in the cost model.⁶⁵ The discount percentage it adopted is based, in part, on the approach used in New York.⁶⁶ In considering similar work time estimates proposed by Verizon, the New York Public Service Commission decided to adopt only “minimum” times provided in surveys by Verizon workers.⁶⁷ When the rates were adjusted to reflect this revised assumption, the result was a 57 percent reduction in the non-recurring charges.⁶⁸ The Maine Commission found, however, that the Verizon cost model contained errors in addition to the work time estimates, and thus adopted a slightly larger percentage discount to account for all of the methodological errors.⁶⁹

20. In determining the appropriate UNE rates, the Maine Commission demonstrated a commitment to basic TELRIC principles, and we applaud the Commission’s efforts to establish TELRIC-compliant rates based on the information available to it. Indeed, the *Maine TELRIC Order* contains an extensive discussion concerning the proper application of the TELRIC standard and the challenges presented by its application.⁷⁰ The record demonstrates that the Maine Commission carefully examined the cost studies submitted by Verizon and concluded, in many instances, that such studies did not yield TELRIC-compliant rates. For these rates, as discussed above, the Maine Commission recalculated the rates using modified inputs or assumptions, or, alternatively, adopted a different cost model that complied with the TELRIC standard, as it did for switching rates. In other instances, the Maine Commission looked to other state jurisdictions to establish rates within a range that a reasonable application of TELRIC principles would produce.

21. We find that Verizon’s Maine UNE rates satisfy the requirements of checklist item two. Commenters in this proceeding challenge two aspects of Verizon’s Maine UNE pricing. AT&T and WorldCom raise questions and concerns about the rate Verizon charges in Maine to provision daily usage files (DUF).⁷¹ In addition, AT&T claims that Verizon’s Maine switching rates include inflated minutes-of-use charges due to an erroneous allocation of costs

⁶⁴ *Maine TELRIC Order* at 77; Verizon Application at 50.

⁶⁵ *Maine TELRIC Order* at 6-7, 77.

⁶⁶ Verizon Dinan/Garzillo/Anglin Decl. at para. 50; *Maine TELRIC Order* at 75-76.

⁶⁷ Verizon Dinan/Garzillo/Anglin Decl. at para. 50; *Maine TELRIC Order* at 75-76.

⁶⁸ *Maine TELRIC Order* at 76.

⁶⁹ Verizon Dinan/Garzillo/Anglin Decl. at para. 50; *Maine TELRIC Order* at 77.

⁷⁰ See *Maine TELRIC Order* at 2-7.

⁷¹ See AT&T Comments at 14-17; Letter from Lori Wright, Associate Counsel, WorldCom, Inc. to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-61 at 1-2 (filed Apr. 10, 2002) (WorldCom Comments). In its comments, the Maine Commission determined that Verizon’s Maine UNE rates satisfied the requirements of checklist item two. Maine Commission Comments at 28.

between the fixed and per minute-of-use rate elements.⁷² We address these issues below, finding that the Maine Commission followed basic TELRIC principles and that the record does not support a finding that the Maine Commission committed any clear error. With respect to other rates, the Maine Commission expressed uncertainty regarding the proper application of TELRIC and in some instances did not conduct a TELRIC analysis.⁷³ Therefore, in order to assure that Verizon's Maine recurring charges are TELRIC-compliant, we conduct a benchmark analysis, as set forth below, and conclude that the recurring charges fall within a range of rates that a reasonable application of TELRIC principles would produce.⁷⁴

c. Recurring Charges

(i) DUF Rate

22. In its application, Verizon states that the DUF rate in Maine is zero and will remain zero until the Maine Commission establishes a DUF rate.⁷⁵ The Maine Commission did not adopt a DUF rate during the course of its investigation into UNE rates.⁷⁶ AT&T contends, however, that Verizon is charging a DUF rate of \$0.004214 per record pursuant to the terms of Verizon's Model Agreement and existing interconnection agreements with competitive LECs.⁷⁷ AT&T states that the DUF rate charged by Verizon is inflated and fails to comply with TELRIC principles because it is four times higher than the new New York DUF rate, DUF costs are regional in nature, and DUF costs are declining.⁷⁸

⁷² AT&T Comments at 7-14.

⁷³ See *supra* paras. 12, 18.

⁷⁴ The benchmark analysis applies only to recurring charges. We note, however, that no party challenges the Maine Commission's conclusion that Verizon's non-recurring UNE rates are within a range that a reasonable application of TELRIC principles would produce. This Commission has found that the states have flexibility to set prices within a range of TELRIC-based rates. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 60; *Bell Atlantic New York Order*, 15 FCC Rcd 4085, para. 245. A review of the record and of Verizon's Maine nonrecurring charges suggests that these rates are within the range of nonrecurring charges we have concluded are reasonable in the context of other section 271 applications. See, e.g., *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20753, para. 71. Thus, based on the record before us, we find that the Maine Commission followed basic TELRIC principles in determining Verizon's Maine nonrecurring charges and we find no clear errors in substantial factual matters.

⁷⁵ Verizon Application at 46 n.45.

⁷⁶ *Id.*

⁷⁷ AT&T Comments at 14. AT&T also states that "Verizon has apparently taken no steps to modify its interconnection agreements to reflect the zero rate." *Id.* at 15. We note that this issue only arose, at the state level, in the context of a line-item in the price squeeze analysis presented by AT&T. See Verizon Reply at 14 n.13.

⁷⁸ AT&T Comments at 14, 16.

23. We find that AT&T's claims regarding the DUF rate are without merit because Verizon is not charging competing LECs a DUF rate in Maine.⁷⁹ Verizon clarified that it has modified the Model Agreement to remove DUF rates and is in the process of updating its billing systems in Maine to reflect a zero DUF rate.⁸⁰ To the extent that AT&T, or another competing LEC, was billed a DUF rate for periods following February 12, 2002, Verizon states that it will credit those carriers for bills issued prior to the date the billing systems were updated.⁸¹ Verizon states that the zero DUF rate will apply from the effective date of the final rates adopted by the Maine Commission, February 12, 2002, until the Maine Commission approves a new DUF rate.⁸² Verizon also states that it "will not impose an upward true up to the zero rate in effect today once the Maine [Commission] adopts a DUF rate."⁸³ We do not credit AT&T's contention that there is "nothing to stop Verizon from proposing another DUF rate at any time in the future . . ."⁸⁴ If Verizon adopts a DUF rate in the future, that rate will be submitted to the Maine Commission for consideration and approval,⁸⁵ which, as we have stated, has demonstrated a commitment to TELRIC principles. Thus, Verizon may not unilaterally propose another DUF rate and charge competing LECs accordingly, as AT&T suggests.

24. We also conclude that WorldCom's concern regarding Verizon's anticipated DUF rate is premature. WorldCom presumes that Verizon will file a tariff containing a DUF rate that is excessive and non-TELRIC based, as WorldCom claims Verizon has done in other states, such as Rhode Island, Massachusetts, and Vermont.⁸⁶ WorldCom claims that Verizon's DUF rates in other New England states contain TELRIC errors and presumes that the future Maine rate will

⁷⁹ See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 at 1 (filed May 1, 2002) (*Verizon May 1 Ex Parte Letter -- Pricing*) (clarifying that, as of February 12, 2002, Verizon is not charging competing LECs a DUF rate in Maine pursuant to its Model Agreement or any other competing LEC interconnection agreement). Verizon notes that the "DUF" rate in Maine was historically called the "CUD" (customer usage detail) rate. *Id.* See also *Verizon Reply* at 14.

⁸⁰ *Verizon May 1 Ex Parte Letter -- Pricing* at 1-2; *Verizon Reply* at 14 n.14.

⁸¹ *Verizon May 1 Ex Parte Letter -- Pricing* at 2; *Verizon Reply* at 14 n.14.

⁸² *Verizon May 1 Ex Parte Letter -- Pricing* at 2; *Verizon Reply* at 14 and n.14.

⁸³ *Verizon May 1 Ex Parte Letter -- Pricing* at 2; see *Verizon Reply* at 14 n.14.

⁸⁴ AT&T Comments at 15 n. 18. On reply, AT&T contends that there is nothing to prevent Verizon from seeking to continue charging the \$0.004214 DUF rate that applies under its interconnection agreement. AT&T Reply at 9 n.6. Given Verizon's representations in this proceeding, AT&T could seek relief from the Maine Commission should Verizon continue charging a DUF rate under its interconnection agreement.

⁸⁵ See Letter from Trina M. Bragdon, Staff Attorney, Maine Public Utilities Commission, to William F. Canton [sic], Acting Secretary, Federal Communications Commission, CC Docket No. 02-61, at 2 (filed May 21, 2002).

⁸⁶ WorldCom Comments at 1. Verizon plans to propose a state-specific DUF rate in Maine later this year and states that the Maine rate, under the pricing rules currently in effect, will be "similar" to the rate it has proposed in Massachusetts, which is \$0.001624. *Verizon May 1 Ex Parte Letter -- Pricing* at 2.

have similar errors.⁸⁷ Obviously, however, we are unable to assess a rate that does not exist during the period that we review the section 271 application, much less make a finding of checklist noncompliance based on such a rate. Moreover, as we stated above, to the extent Verizon proposes a DUF rate that is excessive and non-TELRIC based, WorldCom will have an opportunity to challenge that rate at the state level.⁸⁸

25. Further, we reject AT&T's contention that the interim nature of the zero DUF rate should cause Verizon to fail this checklist item because Verizon has disclosed its plans to propose a DUF rate that is not TELRIC-compliant.⁸⁹ In prior section 271 decisions, the Commission set forth a three-pronged test to determine whether interim rates are acceptable: (1) the interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to our pricing rules; and (3) the provision is made for refunds or true-ups once permanent rates are set.⁹⁰ Given the lack of information in the record concerning the appropriate DUF rate in Maine, we find that a zero rate is reasonable under the circumstances because it affords competitors the benefit of the doubt on the rates, subject to the possibility that the Maine Commission will approve a DUF rate of greater than zero in the future.⁹¹ As we discussed above, the Maine Commission has demonstrated a commitment to our pricing rules and we remain confident that the Maine Commission will apply these rules when considering a future DUF rate. The zero rate also eliminates the need for refunds or true-ups once permanent rates are established. We conclude, therefore, that Verizon's interim DUF rate of zero meets the Commission's standard for appropriate interim rates.

(ii) Switching Rates

26. As discussed above, the Maine Commission adopted UNE rates, including switching rates that it found to be TELRIC-compliant. In adopting these switching rates, the Maine Commission rejected the cost study proposed by Verizon because it failed to "provide cost estimates that are appropriate for setting local switching rates in Maine."⁹² It concluded that the output provided by Verizon's Switching Cost Information System (SCIS) model provided

⁸⁷ WorldCom Comments at 1. Thus, WorldCom insists that, if and when Verizon files a DUF rate in Maine, it should be required to demonstrate to the Commission that it is TELRIC-based and in no event higher than the New York DUF rate. *Id.*

⁸⁸ Should the Maine Commission adopt a DUF rate in the future that is excessive and fails to comply with TELRIC principles, we will consider specific challenges raised by the parties at that time.

⁸⁹ AT&T Reply at 8-9 (arguing that the interim DUF rate of zero "will be in existence only for a short time" and that a proposed DUF rate similar to the proposed Massachusetts DUF rate would not be TELRIC-compliant).

⁹⁰ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359, para. 238. See also *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258.

⁹¹ Previously, the Commission has approved interim rates set at zero, pending resolution by the state commission. *SWBT Arkansas/Missouri*, 16 FCC Rcd at 20754, para 73; *SWBT Texas Order*, 15 FCC Rcd at 18475, para 237.

⁹² *Maine TELRIC Order* at 57.

unreasonable cost estimates when compared to the switching cost data produced by the Maine Commission's consultants, David Gabel and Scott Kennedy (Gabel/Kennedy).⁹³ The Gabel/Kennedy data set was constructed using information from the depreciation reports of the BOCs.⁹⁴ The switching cost data developed by Gabel/Kennedy was subsequently adopted by this Commission, with slight modification, for use in calculating universal service support.⁹⁵ Finding the Gabel/Kennedy data more reliable than the Verizon data, the Maine Commission decided to base Verizon's unbundled local switching rates on the switching costs developed by Gabel/Kennedy and incorporated into the Synthesis Model adopted by this Commission in its universal service proceeding.⁹⁶ The Synthesis Model assigns the "getting started" switching costs, i.e., the fixed investment, to the non-traffic sensitive line port element and the remainder of the switching costs to the traffic sensitive (minute-of-use or MOU) element.⁹⁷ Specifically, it allocates 30 percent of the switching costs to the line port element and 70 percent of the switching costs to the MOU element.⁹⁸ Because the Maine Commission established switching rates based on the Synthesis Model, it ordered the same allocation of Verizon's switching costs in Maine.⁹⁹

27. AT&T claims that Verizon's switching rates are inflated by a TELRIC error that results from a misallocation of the switching costs as between the line port rate element and the MOU rate element.¹⁰⁰ AT&T argues that the allocation adopted by the Maine Commission does not reflect cost causation principles as required by TELRIC and the Commission's *Local Competition First Report and Order*.¹⁰¹ The majority of the switch cost, according to AT&T, is

⁹³ *Id.* at 59. The Maine Commission also had concerns about how the SCIS model operates because Verizon witnesses were unable to answer questions posed by the Maine Commission relating to the operation of the model. As the Maine Commission stated there, "[w]e cannot conclude that the model is reasonable when Verizon's own witnesses are unable to explain how the model operates." *Id.* at 59-60.

⁹⁴ *Id.* at 55. This data was made available to the parties, including AT&T, via a procedural order, and parties had the opportunity to serve discovery questions on Dr. Gabel. In addition, the Maine Commission held a technical conference on December 2, 1997, during which parties were able to ask Dr. Gabel questions about the data set. *Id.* at 55-56.

⁹⁵ *Id.* at 59; see also *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20279-20291, paras. 290-319 and Appendix C.

⁹⁶ *Maine TELRIC Order* at 60.

⁹⁷ *Maine TELRIC Order II* at 3; AT&T Comments at 8-9.

⁹⁸ *Maine TELRIC Order II* at 3; AT&T Comments at 8-9; Verizon Reply at 10.

⁹⁹ *Maine TELRIC Order II* at 3; AT&T Comments at 8-9; Verizon Reply at 10.

¹⁰⁰ AT&T Comments at 7; AT&T Reply at 5.

¹⁰¹ AT&T Comments at 8. AT&T explains that TELRIC requires that cost be attributed on a cost-causative basis. *Id.*; see also *Local Competition First Report and Order*, 11 FCC Rcd at 15851, para. 691 (providing a summary of the TELRIC methodology and stating that "[c]osts must be attributed on a cost-causative basis."). See also AT&T Reply at 6; Letter from Alan C. Geolot, Attorney for AT&T, Sidley Austin Brown & Wood, to Marlene H. Dortch, (continued....)

driven by the ports, not by usage, and should be recovered in the fixed port rate element.¹⁰² Thus, AT&T argues that the Maine Commission's allocation of 30 percent of costs to the fixed port element is insufficient. This misallocation, according to AT&T, creates "an inequitable cost structure for a CLEC offering UNE-P service" because, under this structure, a competitive LEC's switching costs increase with increased usage, while Verizon's underlying costs are largely fixed.¹⁰³ AT&T argues that this deters competitive LECs from serving high-use residential customers because Verizon's flat rates for residential service act as a cap on the amount competitive LECs can charge.¹⁰⁴ AT&T also argues that this misallocation allows Verizon to over-recover its costs because Verizon receives additional revenues without incurring corresponding costs.¹⁰⁵ AT&T estimates that the appropriate allocation, using cost causation principles, is 59 percent assignment to the fixed line port rate element and 41 percent to the MOU rate element.¹⁰⁶

28. We have reviewed AT&T's claim that the switch cost allocation ordered by the Maine Commission constitutes a TELRIC violation, and we conclude that the Maine Commission did not commit any clear error when it adopted switching rates using the default cost allocation contained in the Synthesis Model. The Commission has stated that it will not conduct a *de novo* review of the state commission'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. As we stated above, the Maine Commission demonstrated a commitment to basic TELRIC principles in establishing switching rates. After careful consideration of all the cost information before it, the Maine Commission determined that our model produced the most reliable data for determining switching costs in Maine and adopted the Synthesis Model, including its assumptions and allocations, for this very reason.¹⁰⁷

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Secretary, Federal Communications Commission, CC Docket No. 02-61 at 2 (filed May 30, 2002) (AT&T May 30 *Ex Parte* Letter).

¹⁰² AT&T contends that the majority of the costs associated with the switch are incurred at the time it is placed in operation and do not vary with usage. AT&T Comments at 10; AT&T Reply at 6; *see also* AT&T May 30 *Ex Parte* Letter at 2.

¹⁰³ AT&T Comments at 10-11; AT&T Reply at 7.

¹⁰⁴ AT&T Comments at 11; AT&T Reply at 7.

¹⁰⁵ AT&T Comments at 11-12; AT&T Reply at 7.

¹⁰⁶ AT&T Comments at 8, 12; AT&T Reply at 5.

¹⁰⁷ *Maine TELRIC Order* at 60. Based on the analysis performed by the Maine Commission in concluding that the Synthesis Model produced the most reliable data, we find that the Maine Commission committed no clear error in adopting the Synthesis Model to determine switching costs. We note, however, that the Commission has generally cautioned in prior section 271 orders that the Synthesis Model was developed for the purpose of determining high cost support and may not be appropriate for other purposes. *See Bell Atlantic New York Order*, 15 FCC Rcd at (continued....)

29. Despite this, AT&T argues that the Maine Commission failed to follow TELRIC principles on this point. AT&T, however, fails to present sufficient evidence for us to conclude that the Maine Commission committed clear error. The mere fact that AT&T is able to establish a different switching cost allocation based on its own calculations does not warrant a finding of any clear error by the Maine Commission.¹⁰⁸ In establishing prices, the state commissions retain the discretion to consider a variety of factors.¹⁰⁹ This discretion includes the ability to set prices within a reasonable range of TELRIC-based rates.¹¹⁰ In the *Local Competition First Report and Order*, the Commission concluded that switching costs should be recovered through a combination of a flat-rated charge for line ports and either a flat-rated or per-minute usage charge for the switching matrix and for trunk ports.¹¹¹ The Commission, however, declined to prescribe the appropriate allocation of switching costs as between the line port, which must be flat-rated, and the switching matrix and trunk ports. Because the Commission did not prescribe a specific allocation, the states retain the flexibility to adopt an allocation within a reasonable range. Because some portion of switching costs is fixed, an allocation of 100 percent of the switching costs to the MOU element would be unreasonable *per se*. We do not believe, however, that the Maine Commission's allocation of 30 percent fixed to 70 percent MOU falls outside a reasonable range. AT&T's own comments demonstrate that switching cost allocations may vary.¹¹² Thus, we find that the Maine Commission appropriately exercised its discretion to set prices within a range of TELRIC-based rates.

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4084-85, para. 245; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84. See also *USF Tenth Report and Order*, 14 FCC Rcd at 20172, para. 32 (stating that "it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements").

¹⁰⁸ As evidence of a TELRIC violation, AT&T states that the New York Public Service Commission recently adopted a switch cost allocation of 66 percent to the fixed port rate element and 34 percent to the MOU element, and that the Illinois Commerce Commission established a 100 percent flat-rated switch rate. AT&T Comments at 12; see also AT&T May 30 *Ex Parte* Letter at 6-7. As we made clear in the *Verizon Vermont Order*, mere comparisons are insufficient to demonstrate a TELRIC violation. *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7644, para. 35 (2002)(*Verizon Vermont Order*).

¹⁰⁹ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para 59, *aff'd*, *Sprint v. FCC*, 274 F.3d at 556; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; see also *Local Competition First Report and Order*, 11 FCC Rcd at 15559, para. 114.

¹¹⁰ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59, *aff'd*, *Sprint v. FCC*, 274 F.3d at 556.

¹¹¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15905, para. 810.

¹¹² AT&T presents evidence of switching cost allocations adopted by the New York Public Service Commission and Illinois Commerce Commission, both of which differ from the allocation arrived at by AT&T. AT&T Comments at 12 (e.g., the New York Commission used a 66 percent fixed to 34 percent MOU allocation, yet AT&T advocates a 59 percent fixed to 41 percent MOU for Maine). Verizon's reply comments further support the conclusion that switching cost allocations may vary. Indeed, Verizon challenges AT&T's classification of some costs as fixed and raises questions about the costs included in AT&T's calculation of usage sensitive costs. Verizon (continued....)

30. Moreover, although AT&T raised a similar issue concerning the predominantly fixed nature of switching costs with regard to the Verizon cost model,¹¹³ it did not specifically object to the cost allocation reflected in the Synthesis Model adopted by the Maine Commission and has not sought reconsideration of that decision.¹¹⁴ In fact, AT&T had supported the Hatfield Model in the Maine TELRIC proceeding until October 2000, at which point it withdrew its model due to resource constraints.¹¹⁵ The Hatfield Model sponsored by AT&T reflected the 30 percent/70 percent port/usage ratio that AT&T challenges here.¹¹⁶ AT&T now argues that the Hatfield Model was developed in the mid-1990's using limited information available at that time concerning switching costs and that new data demonstrate that such costs are predominantly fixed.¹¹⁷ We have recognized that rates may well evolve over time to reflect, among other things, new information.¹¹⁸ The fact that rates may be subject to change based on new information does not, however, require rejection of a section 271 application.¹¹⁹ AT&T notes that it has urged the

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Reply at 11-12 and n.9. AT&T, in turn, responds to Verizon's claim that switching costs are largely usage-sensitive and challenges Verizon's interpretation of AT&T's position concerning cost classification. AT&T May 30 *Ex Parte* Letter at 2-4. Because we reject AT&T's challenge to the switching cost allocation adopted by the Maine Commission, we need not address these arguments.

¹¹³ AT&T Comments at 8 n.5; *see also* Letter from Alan C. Geolot, Attorney for AT&T, Sidley Austin Brown & Wood, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 at 1 (filed May 3, 2002) (AT&T May 3 *Ex Parte* Letter); AT&T Reply at 5 and Attach. 1.

¹¹⁴ We note that AT&T had ample opportunity during the state investigation to raise any concerns about the switching cost estimates under consideration by the Maine Commission, including the switching costs contained in the Commission's Synthesis Model. *See Maine TELRIC Order* at 60-61 (deciding to adopt TELRIC prices based on this Commission's estimates because "the parties in this proceeding had the opportunity to conduct discovery, participate in a technical conference in which the data was discussed, and submit testimony"). *See also* Verizon Reply at 10 (stating that AT&T did not raise this issue in its brief listing exceptions to the Maine Commission's decision, did not seek reconsideration of the decision, and did not seek appeal on this issue). As we made clear in the *Verizon Vermont Order*, it is generally impracticable for the Commission to make fact-specific findings in the context of a section 271 proceeding when the state commission's fact-specific findings were not challenged at the state level. *Verizon Vermont Order*, 17 FCC Rcd at 7636, para. 20. *See also* Verizon Reply at 10.

¹¹⁵ *See* Letter from Trina M. Bragdon, Staff Attorney, Maine Public Utilities Commission, CC Docket No. 02-61, at 1-2 and n.2 (filed May 15, 2002) (Maine Commission May 15 *Ex Parte* Letter).

¹¹⁶ *Id.* at 1 and n.3.

¹¹⁷ AT&T May 30 *Ex Parte* Letter at 5-8.

¹¹⁸ *See Verizon Vermont Order*, 17 FCC Rcd at 7637, para. 23; *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247.

¹¹⁹ *AT&T Corp. v. FCC*, 220 F.3d at 617 ("we suspect that rates may often need adjustment to reflect newly discovered information If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change.").

allocation of the majority of switching costs to the fixed line port element in other jurisdictions,¹²⁰ but the record does not indicate that AT&T presented evidence to the Maine Commission regarding the appropriate allocation of switching costs, apart from the Hatfield Model that it now disavows.¹²¹ To the extent that AT&T now supports a different allocation of costs as between the fixed and MOU elements, it would be appropriate for AT&T to request that the Maine Commission reconsider the switching cost allocation. At that time, AT&T would have an opportunity to present evidence in support of a different switching cost allocation.

(iii) Benchmark Analysis

31. Having addressed specific challenges to Verizon's Maine UNE rates and finding no clear error by the Maine Commission on the issues raised by the commenters, we conduct a benchmark analysis to address the uncertainties expressed by the Maine Commission regarding the proper application of the TELRIC standard and its inability to conduct a TELRIC analysis for all UNE rates. During the course of its investigation, the Maine Commission acknowledged the difficulties associated with determining the proper application of TELRIC and the limitations presented by the record before it.¹²² In light of these limitations and resource constraints, the Maine Commission derived rates for some UNEs by calculating an average of rates found in other New England states.¹²³ Thus, for example, in adopting rates for 2-wire analog loops and xDSL loops, the Maine Commission modified many of Verizon's proposed inputs and recalculated loop rates using inputs that complied with TELRIC principles.¹²⁴ For other loop rates, however, the Maine Commission did not conduct a TELRIC analysis and simply adopted an average rate.¹²⁵ After comparing relevant rates and costs in Maine with those in New York, as

¹²⁰ See AT&T May 30 *Ex Parte* Letter at 7 (stating that AT&T presented evidence that switching costs are largely fixed in Virginia, Maryland and Pennsylvania, and that AT&T sponsored Version 5.2a of the HAI Model (formerly the Hatfield Model), which specifies a 60 percent non-usage (fixed) and 40 percent usage sensitive ratio, in August 2001 in the California UNE ratemaking proceeding).

¹²¹ AT&T attaches to its Reply Comments excerpts of a brief it filed in the Maine investigation. AT&T Reply, Attach 1. In that brief, AT&T argued that "getting started" costs identified in Verizon's Switch Cost Information System ("SCIS") Model should be allocated to the port rate element, but it did not specify what percentage of switching costs these getting started costs comprise.

¹²² *Maine TELRIC Order* at 6. See also *infra* para. 12 (discussing the difficulties encountered by the Maine Commission in applying the TELRIC standard).

¹²³ *Maine TELRIC Order* at 7. The Maine Commission reasoned that, while this may appear to be "rough justice," the resulting rates "have the virtue of falling (by definition) well within the range found reasonable elsewhere (and confirmed as generally reasonable by the [Commission] in its Section 271 reviews) . . ." *Id.*

¹²⁴ *Maine TELRIC Order* at 31. For instance, the Maine Commission utilized fill factors that are consistent with those we have found to be TELRIC-compliant in the past. Verizon Application at 48; Verizon Dinan/Garzillo/Anglin Decl. at para. 45 (providing a favorable comparison of the fill factors adopted in Maine to the fill factors approved by the Commission in prior section 271 orders).

¹²⁵ *Maine TELRIC Order* at 31.

discussed below, we conclude that the Maine Commission's calculations result in rates that a reasonable application of TELRIC principles would produce.

32. As stated above, the Maine Commission did not, in all circumstances, conduct a TELRIC analysis. The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly (e.g., the state commission made a major methodological mistake or used an incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if the rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.¹²⁶ In comparing the rates, the Commission has used its USF cost model to take into account the differences in the underlying costs between the applicant state and the comparison state.¹²⁷ To determine whether a comparison with a particular state is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.¹²⁸ Applying this standard to Verizon's Maine rates, we find that New York is a permissible state for UNE rate comparison purposes.¹²⁹

33. Having determined that the New York rates are appropriate rates for the benchmark comparison, we compared Verizon's Maine non-loop rates to the new New York non-loop rates using our benchmark analysis.¹³⁰ Taking a weighted average of Verizon's rates in

¹²⁶ See *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17456-57, para. 63; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

¹²⁷ See *Application of 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 Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988, 9000, para. 22 (2001) (*Verizon Massachusetts Order*); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 57; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 65; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

¹²⁸ See *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order* 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63; *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82. We note, however, that in the *Verizon Pennsylvania Order*, we found that several of these criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64.

¹²⁹ New York is in the same geographic region, has a similar rate structure, and the Commission has already found it appropriate to use the new New York rates as a benchmark to determine TELRIC compliance. See *Verizon Rhode Island Order*, 17 FCC Rcd at 3324, para. 48. The same factors that supported our finding in the *Rhode Island Order* are equally applicable here, and no commenter disputes that the new New York rates are an appropriate benchmark in determining TELRIC compliance in Maine. See *Verizon Rhode Island Order*, 17 FCC Rcd at 3325-26, paras. 51-53. See also *Verizon Application* at 51-52.

¹³⁰ Our benchmark analysis combines per-minute switching with other non-loop rates, such as port, signaling, and transport rates, because competing LECs most often purchase these together rather than separately, and because state (continued....)

Maine and New York, and using our standard assumptions,¹³¹ we find that Maine's non-loop rates satisfy our benchmark analysis and the requirements of checklist item two.¹³² We also compared Verizon's Maine loop rates to the new New York loop rates using our benchmark analysis. Taking a weighted average of Verizon's rates in Maine and New York, and using our standard assumptions, we find that Maine's loop rates also satisfy our benchmark analysis.¹³³ These conclusions eliminate any remaining concerns as to whether Verizon's Maine UNE rates fall within a range of rates that a reasonable application of TELRIC would produce.¹³⁴

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commissions often differ in determining how to recover certain costs. *Verizon Rhode Island Order*, 17 FCC Rcd at 3320-21, para. 40.

¹³¹ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 (describing our standard assumptions).

¹³² Specifically, Verizon's Maine non-loop rates are 4.83 percent higher than the new New York non-loop rates. Verizon's weighted average non-loop rate in Maine is \$7.20 per line/per month and Verizon's weighted average non-loop rate in New York is \$6.87 per line/per month. As to the weighted average costs, we find that the Maine non-loop costs are 43.13 percent higher than the New York non-loop costs. We calculate the weighted average non-loop costs in Maine to be \$5.01 per line/per month and calculate the weighted average New York non-loop costs to be \$3.50 per line/per month. Because the percentage difference between Verizon's Maine non-loop rates and the new New York non-loop rates does not exceed the percentage difference between Verizon's non-loop costs in Maine and Verizon's non-loop costs in New York, we conclude that Verizon's Maine recurring non-loop rates satisfy our benchmark analysis.

¹³³ Verizon's Maine loop rates are 40.88 percent higher than the new New York loop rates. Verizon's weighted average loop rate in Maine is \$16.20 per line/per month and Verizon's weighted average loop rate in New York is \$11.50 per line/per month. Comparing the weighted average costs, we find that the Maine loop costs are 126.88 percent higher than the New York loop costs. We calculate the weighted average loop costs in Maine to be \$23.52 per line/per month and calculate the weighted average loop costs in New York to be \$10.36 per line/per month. Because the percentage difference between Verizon's Maine loop rates and the new New York loop rates does not exceed the percentage difference between Verizon's loop costs in Maine and Verizon's loop costs in New York, we conclude that Verizon's Maine recurring loop rates satisfy our benchmark analysis. As discussed above, with respect to certain loop rates, the Maine Commission adopted rates reflecting the average of rates in Massachusetts, Rhode Island, and Vermont, states in which Verizon has received section 271 authority. Because the USF cost model shows that the average of the underlying loop costs in those three states is 28 percent lower than Maine loop costs, we are persuaded that Verizon's resulting Maine loop rates fall within a range that a reasonable application of TELRIC principles would produce.

¹³⁴ We also note that Verizon asserts, and no party disagrees, that its Maine UNE rates pass a benchmark comparison to Verizon's newly adopted New York rates. Verizon Application at 50-54. Verizon's analysis uses actual dial equipment minutes (DEM) data rather than standard assumptions. Verizon Dinan/Garzillo/Anglin Decl. at para. 54. In its comments, AT&T acknowledges Verizon's reliance on a benchmarking analysis, but claims that "even where benchmarking analyses show no substantial differences in the total non-loop rates of comparable states, clear TELRIC errors in the allocation of costs among non-loop elements can have a substantial deleterious effect on competitive entry, especially where, as here, a state comparison of gross benchmark rates masks that ever increasing harm to CLEC entry when an ILEC miscalculates costs to usage sensitive rates." AT&T Comments at 13. As stated above, we find that the Maine Commission's decision to adopt the cost allocation contained in the Synthesis Model was not clear error.

34. For the foregoing reasons, we find that Verizon has demonstrated that its Maine UNE rates satisfy the requirements of checklist item two.¹³⁵

2. Operations Support Systems

35. Based on the evidence in the record, we find, as the Maine Commission did,¹³⁶ that Verizon provides nondiscriminatory access to its OSS in Maine.¹³⁷ As we discuss below, Verizon has shown that evidence concerning its OSS in Massachusetts, which the Commission previously found satisfy the requirements of checklist item 2, should be considered in this proceeding.¹³⁸ No commenter has raised any concerns with Verizon's Maine OSS or with Verizon's reliance on evidence concerning its OSS in Massachusetts in this proceeding. We therefore discuss here only the relevance of Verizon's Massachusetts systems, and those performance areas involving minor discrepancies that require further consideration.

a. Relevance of Verizon's Massachusetts OSS

36. Consistent with our precedent, Verizon relies in this application on evidence concerning its Massachusetts OSS.¹³⁹ Specifically, Verizon asserts that its OSS in Massachusetts are substantially the same as the OSS in Maine and, therefore, evidence concerning its OSS in Massachusetts is relevant and should be considered in our evaluation of the Maine OSS.¹⁴⁰ To support its claim, Verizon submits a report from Pricewaterhouse Coopers (PwC).¹⁴¹ PwC evaluated the five OSS domains made available to support competing LEC activity in Maine and Massachusetts in order to attest to Verizon's assertions that its interfaces in Massachusetts and Maine are identical, and the personnel and work center facilities supporting its OSS "employ the same processes" in Maine as in Massachusetts.¹⁴² Verizon also submits declaratory evidence that

¹³⁵ In its comments, AT&T disputes the presence of residential competition in Maine and claims that this is due to inflated, non-TELRIC compliant rates. AT&T Comments at 18. We have considered and rejected herein all of AT&T's claims concerning non-compliant UNE rates in Maine. Thus, we do not separately consider AT&T's generalized and unsupported assertion that Verizon's Maine UNE rates are not TELRIC-compliant.

¹³⁶ See Maine Commission Comments at 18.

¹³⁷ See Verizon Application at 63-75; see generally Verizon Application App. A, Vol. 2, Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster (Verizon McLean/Wierzbicki/Webster Decl.).

¹³⁸ *Verizon Massachusetts Order*, 16 FCC Rcd at 9010-52, paras. 43-116; see also *Verizon Rhode Island Order*, 17 FCC Rcd at 3329-35, paras. 58-71.

¹³⁹ See Appendix D, para. 32.

¹⁴⁰ See Verizon Application at 63; see also Verizon McLean/Wierzbicki/Webster Decl. at paras. 7, 9-11, 13, 15, 17-18, 22-24, 48-50, 113, 132.

¹⁴¹ See Verizon Application App. B, Tab 3, Joint Declaration of Russell Sapienza and Catherine Bluvol, in *Verizon New England Inc., d/b/a Verizon Maine, Section 271 of the Telecommunications Act of 1996 Compliance Filing*, Maine Public Utility Commission (filed Oct. 18, 2001) (PwC Report).

¹⁴² See PwC Report at 7-9.

its “interfaces, gateway systems, and underlying OSS used for Maine are the same interfaces, gateway systems, and underlying OSS that serve Massachusetts and the other New England states.”¹⁴³ We note that no commenter has suggested that evidence of Verizon’s Massachusetts OSS should not be considered in this proceeding. We find that Verizon, through the PwC Report and its declarations, provides evidence that its OSS in Massachusetts are substantially the same as the OSS in Maine and, therefore, evidence concerning its OSS in Massachusetts is relevant and should be considered in our evaluation of Verizon’s OSS in Maine. Verizon’s showing enables us to rely, for instance, on findings relating to Verizon’s OSS from the *Verizon Massachusetts Order* in our analysis of Verizon’s OSS in Maine. In addition, we can examine data reflecting Verizon’s performance in Massachusetts where low volumes in Maine yield inconclusive or inconsistent information concerning Verizon’s compliance with the competitive checklist.

b. Order Accuracy

37. We find that Verizon manually processes competing carriers’ orders accurately, affording them a meaningful opportunity to compete.¹⁴⁴ The Maine Commission has followed the lead of the New York Commission in changing the performance metrics relating to order accuracy. Verizon is no longer required to report under metric OR-6-02, which measured the percentage of accurately populated fields in a random sample of orders.¹⁴⁵ Verizon will, however, continue to report the percentage of actual orders that it processes accurately, and the percentage of order confirmations that it sends accurately.¹⁴⁶ The Maine Commission has also adopted the New York Commission’s change to the accuracy standard for order confirmations from 95 percent of confirmations without error to not more than 5 percent of confirmations resent due to Verizon error.¹⁴⁷

38. We find that service order accuracy for resale,¹⁴⁸ non-platform UNE,¹⁴⁹ and UNE-Platform orders is non-discriminatory. We note, however, that we do not have performance data

¹⁴³ Verizon McLean/Wierzbicki/Webster Decl. at para. 11; *see also* PwC Report at paras. 12-18.

¹⁴⁴ The OR-6 metrics measure the accuracy of those orders (or order confirmation notices) that are handled manually. *See* Verizon Application App. I, Tab 18, State of Maine Carrier-to-Carrier Guidelines Performance Standards and Reports at 38 (Mar. 12, 2002) (Maine C2C Guidelines).

¹⁴⁵ *See* New York Commission October Order Attach. 1 at 22. The New York Commission found that this metric did not provide meaningful information.

¹⁴⁶ OR-6-01 measures the percentage of sampled orders that have errors, and OR-6-03 measures the percentage of LSR confirmations that are resent due to error. *See* Maine C2C Guidelines at 38-39.

¹⁴⁷ *See id.* at 36-37. These changes to the OR-6-02 and OR-6-03 metrics have been adopted in Massachusetts as well.

¹⁴⁸ Verizon processed between 90 and 97 percent of resale orders accurately and sent accurate confirmations to competing carriers. *See* OR-6-01-2000 (Percent accuracy – orders – Resale) (90%, 93%, 97%, 97%, 96%); OR-6-03-2000 (Percent accuracy – LSRC – Resale) (0.15%, 0%, 0.07%, 0.22%, 0.01% under the new standard of not more than 5% resent due to Verizon error).

demonstrating that Verizon provides accurate ordering for UNE-Platform for most of the relevant months of this application. The Commission generally looks at the order accuracy metric – OR-6-01-3143 – for UNE-Platform orders. Verizon explains, however, that due to a programming error this metric did not capture all the orders it should have during most of the relevant months of this application.¹⁵⁰ Verizon's performance for March, however, reveals that it meets the benchmark of 95 percent for UNE-Platform orders.¹⁵¹ Moreover, we note that UNE-Platform orders represent only a small percentage of the total orders in Maine. For instance, UNE-Platform orders made up ten percent or less of all UNE orders and less than five percent of total orders (resale and UNEs) during the months of November, December, and January.¹⁵² Given Verizon's March performance for UNE-Platform order accuracy, the small percentage of total orders that UNE-Platform comprise, and the absence of comment on this issue, we find that Verizon processes orders accurately enough to provide competitive LECs a meaningful opportunity to compete.

c. Flow-Through

39. We conclude that Verizon's flow-through performance for resale and UNEs indicates non-discriminatory access to OSS in Maine.¹⁵³ We note, however, that Verizon's flow-

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¹⁴⁹ Verizon's performance data reflect that it manually processes orders for non-platform UNEs consistently within the benchmarks for service order accuracy. See OR-6-01-3331 (Percent accuracy – orders – UNE loops) (95%, 99%, 98%, 98%, 99%); OR-6-03-3331 (Percent accuracy – LSRC – UNE loops) (1.59%, 0.85%, 1.02%, 0.16%, 0.28% under the new standard of not more than 5% resent due to Verizon error).

¹⁵⁰ Verizon placed this measurement under review in the January 2002 data month, after it discovered a programming error. Specifically, the code used to identify UNE-Platform orders was a valid code for Local Service Ordering Guide (LSOG) 2, but not for LSOG 4 or 5. As a result, the sampling program identified only those UNE-Platform orders submitted over LSOG 2. The number of LSOG 2 orders Verizon processed decreased in November and December 2001 as Verizon's wholesale customers migrated to use of LSOG 4 and 5. As a result, Verizon explains that it designated the measurement under review in January and February. Verizon has updated the sampling program with the correct code for UNE-Platform orders for LSOG 4 and 5 and has resumed reporting this measurement with the March 2002 data. See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-61 at 1 (filed Apr. 12, 2002) (Verizon Apr. 12 *Ex Parte* Letter). This programming error affected Massachusetts performance results as well.

¹⁵¹ For OR-6-01-3143 (Percent accuracy – orders – UNE-Platform), Verizon processed 99.75% of competing LECs' UNE-Platform orders accurately in March. This metric was under review for January and February. Though Verizon has reported results for November and December (90.28% and 100%, respectively), these months only identify orders submitted over LSOG 2. See Verizon Apr. 12 *Ex Parte* Letter at 1.

¹⁵² See Verizon McLean/Wierzbicki/Webster Decl. at Attach. 8 (*citing confidential version*).

¹⁵³ Flow-through measures the percentage of orders that pass through an incumbent's ordering systems without the need for manual intervention. Achieved flow-through measures the percentage of orders that are designed to pass through an incumbent's ordering system electronically that actually flow-through without needing manual handling.

through performance for UNEs dropped in January and March.¹⁵⁴ The UNE flow-through metric is an aggregate measure that combines UNE-Platform and non-platform UNE orders.¹⁵⁵ Although there is a drop in performance for January and March, when Verizon presented flow-through in a disaggregated manner and calculated non-platform UNE and UNE-Platform flow-through separately, we see that the performance drops are not competitively significant.¹⁵⁶ Verizon explains that the drops in performance results are due to two different problems – one for non-platform UNEs and the other for UNE-Platform – that have been corrected.¹⁵⁷ First, Verizon explains that the drop in flow-through in January is due to a change that affected flow-through results for non-platform UNEs only. Specifically, in an effort to increase flow-through of directory listing orders, Verizon implemented a requirement that a particular field on the order form (the LSR) needed to be used to specify the appropriate directory listing.¹⁵⁸ According to Verizon, the business rules are unclear on whether the competitive LEC or Verizon is responsible for populating this field.¹⁵⁹ In February and March, Verizon implemented alternative programming logic in an attempt to reduce the number of directory listing orders that drop out for manual handling.¹⁶⁰ Verizon shows that flow-through for non-platform UNE orders improved in

¹⁵⁴ See OR-5-03-3000 (Achieved Flow-Through – UNE) (showing performance of 90%, 86%, 78%, 89%, 71%, from November through March). Flow-through rates for resale also dropped in January, although this drop was unrelated to the drop in UNE flow-through in January. See OR-5-03-2000 (Achieved Flow-Through - Resale) (showing performance of 95%, 97%, 89%, 93%, 93%, from November through March). According to Verizon, the drop in resale flow-through was due to a substantial ordering increase by one particular competitive LEC. This competitive LEC was conducting a marketing effort to add an optional calling plan. According to Verizon, a higher than usual number of orders for this competing LEC fell out for manual processing due to various incompatibilities between the information on the service order and the preexisting accounts. See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 at 2 (filed Apr. 24, 2002) (Verizon Apr. 24 *Ex Parte* Letter). Based on the fact that subsequent performance for this measurement significantly improved in February and March, it appears that this particular problem has not persisted for this measurement.

¹⁵⁵ See Maine C2C Guidelines at 37.

¹⁵⁶ In a special study, Verizon disaggregated the flow-through metric for UNEs for the months of January and March into two components: Non-platform UNE flow-through and UNE-Platform flow-through. Verizon shows that if a particular error is excluded from the January reporting month for non-platform UNE orders, flow-through increases from 75% to 89% for non-platform UNEs, with overall UNE flow-through increasing from 78% to 91%. Verizon also shows that if a particular error is excluded from the March reporting month for UNE-Platform orders, flow-through increases from 59% to 99% for UNE-Platform, with overall UNE flow-through increasing from 70% to 97%. See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 at 2 (filed May 1, 2002) (Verizon May 1 *Ex Parte* Letter-OSS) at Attach. 2 & 3; see also Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 at Attachment (filed May 7, 2002) (Verizon May 7 *erratum*).

¹⁵⁷ See Verizon May 1 *Ex Parte* Letter-OSS at 1-2.

¹⁵⁸ See Verizon Apr. 24 *Ex Parte* Letter at 2.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

March.¹⁶¹ In addition, Verizon indicates that further work is underway to ensure the business rules are clear on when the field must be populated.¹⁶²

40. Next, Verizon explains that the drop in flow-through in March can be attributed to an error that it has since corrected that affected UNE-Platform flow-through only.¹⁶³ Specifically, according to Verizon, in March one particular competitive LEC migrated a significant number of resale customers to UNE-Platform.¹⁶⁴ When this competitive LEC went to migrate its resale accounts to UNE-Platform, a comparatively large number of accounts had a default carrier identification code (CIC) that was incorrect.¹⁶⁵ This caused these orders (otherwise eligible to flow-through) to drop down to manual handling.¹⁶⁶ On March 26, Verizon implemented a programming change so that the system will now automatically populate the correct CIC, allowing these orders to flow-through.¹⁶⁷ Verizon explains that if this fix had been in place for the entire month of March, overall UNE flow-through would have exceeded 97 percent in March.¹⁶⁸ In light of these explanations, and recognizing that no commenter raised any issues regarding Verizon's OSS, we do not believe that Verizon's flow-through performance for UNE and resale orders warrants a finding of checklist noncompliance.¹⁶⁹

¹⁶¹ See Verizon May 1 *Ex Parte* Letter-OSS at Attach. 3. Verizon shows that non-platform UNE orders flowed through 95% of the time in March.

¹⁶² See Verizon Apr. 24 *Ex Parte* Letter at 2.

¹⁶³ See Verizon May 1 *Ex Parte* Letter-OSS at 2-3.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at Attach. 3.

¹⁶⁹ We note that the Commission has stated that flow-through is not the sole indicator of non-discriminatory OSS. Specifically, the Commission found that a BOC's ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its system is more relevant than a single flow-through analysis. See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion & Order, FCC 02-147, at para. 143 (rel. May 15, 2002) (*BellSouth Georgia/Louisiana Order*); *Bell Atlantic New York Order*, 15 FCC Rcd 4034-35 at para. 162. In the instant proceeding, Verizon returns timely order confirmation and reject notices, accurately processes manually handled orders, and scales its system. See OR-1-02, OR-1-04, OR-1-06, OR-2-02, OR-2-04, and OR-2-06 for timeliness of resale and UNE orders; see discussion of order accuracy *supra* part III.A.2.b; see also Verizon McLean/Wierzbicki/Webster Decl. at 10 for evidence that Verizon's systems are successfully handling large commercial volumes.

d. Billing

41. We find that Verizon provides nondiscriminatory access to the functionality of its billing systems in Maine. We note, however, that Verizon's performance under the new billing metrics¹⁷⁰ missed the benchmarks in December and January.¹⁷¹ Verizon explains that for these two months it reported these metrics in accordance with the version of the business rules used in New York.¹⁷² Then, starting in February 2002, Verizon began to report these metrics in accordance with the business rules currently used in Rhode Island.¹⁷³ Verizon met the relevant benchmarks in February and March.¹⁷⁴ Verizon has also submitted a special study to show evidence of its billing accuracy.¹⁷⁵ In this study, Verizon presented an analysis of billing disputes submitted by competitive LECs for the period of April through December 2001.¹⁷⁶ Verizon shows that the level of current billing disputes as a percentage of current charges has averaged 2 percent in Maine for these months.¹⁷⁷ Given Verizon's recent billing performance, the results of

¹⁷⁰ Instead of measuring billing accuracy, the new billing metrics, BI-3-04-2030 and BI-3-05-2030, report on the timeliness of Verizon's acknowledgement and resolution of billing claims. See Verizon Application at 73. The old billing accuracy metrics (BI 3-01 and BI 3-02) were eliminated in New York (and other states that follow changes made to the New York metrics) after the Carrier Working Group in New York agreed that they should be replaced with BI 3-04 and BI 3-05. See New York Commission October Order Attach. 1, Sec. J.

¹⁷¹ See BI-3-04-2030 (Percent CLEC Billing Claims Acknowledged within 2 Business Days) (24% and 36% for December and January, respectively, under the New York business rules) and BI-3-05-2030 (Percent CLEC Billing Claims Resolved within 28 Calendar Days After Acknowledgement) (70% and 65% for December and January, respectively, under the New York business rules). The benchmark for both of these metrics is 95%. These metrics were both under development in November.

¹⁷² See Verizon Application, App. A, Vol. 3, Joint Declaration of Elaine M. Guerard, Julie A. Canny, and Beth A. Abesamis (Verizon Guerard/Canny/Abesamis Decl.) at para. 66; see also Verizon McLean/Wierzbicki/Webster Decl. at para. 104.

¹⁷³ Verizon took this action, pursuant to an agreement it reached with the Maine Office of the Public Advocate and Maine Commission staff. See Maine Commission Comments at 93; see also Verizon Guerard/Canny/Abesamis Decl. at para. 66. According to Verizon, the primary difference between the New York and Rhode Island business rules is that the Rhode Island rules exclude claims submitted more than 60 calendar days after the bill date since their age makes them much harder to handle. See Verizon Apr. 24 *Ex Parte* Letter at 3-4.

¹⁷⁴ See BI 3-04-2030 (Percent CLEC Billing Claims Acknowledged Within Two Business Days) (100% and 100% for February and March, respectively, under the Rhode Island business rules) and BI 3-05-2030 (Percent CLEC Billing Claims Resolved within 28 Calendar Days After Acknowledgment) (95% and 100% for February and March, respectively, under the Rhode Island business rules). The benchmark for both of these metrics is 95%. Verizon explains that it implemented personnel changes in February and re-emphasized to its personnel handling billing claims the importance of acknowledging billing claims in a timely fashion. See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 at 1-2 (filed May 9, 2002) (Verizon May 9 *Ex Parte* Letter).

¹⁷⁵ See Verizon McLean/Wierzbicki/Webster Decl. at para. 103 & Attach. 15.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

its special study, and the fact that no commenter has raised concerns with Verizon's billing performance, we do not find that Verizon's performance in December and January warrants a finding of checklist non-compliance. In reaching these conclusions, we note that these metrics are contained in the PAP approved for Maine.¹⁷⁸ Thus, Verizon has an incentive to continue its improved performance with respect to these metrics. Moreover, we recognize the Maine Commission's stated intention to consider the addition of new metrics, which could include new billing metrics if the Maine Commission does not feel that the current billing metrics capture all billing activity.¹⁷⁹

3. UNE Combinations

42. In order to comply with checklist item 2, a BOC also must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier.¹⁸⁰ Based upon the evidence in the record,¹⁸¹ we conclude that Verizon demonstrates that it provides nondiscriminatory access to network element combinations as required by the Act and our rules.¹⁸²

43. AT&T argues that because Verizon has neither a wholesale tariff approved by the Maine Commission nor a Statement of Generally Accepted Terms (SGAT), Verizon has not proven that it provides non-discriminatory access to unbundled network elements.¹⁸³ We disagree with AT&T's argument. In Maine, Verizon provides access to unbundled network

¹⁷⁸ Maine PAP at 17.

¹⁷⁹ Maine Commission Comments at 95.

¹⁸⁰ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315(b).

¹⁸¹ Verizon Lacouture/Ruesterholz Decl. at paras. 248-260.

¹⁸² Overturning a decision issued by the Eighth Circuit Court of Appeals in 1997, the U.S. Supreme Court, on May 13, 2002, upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646 (2002). (In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366, 385, 393-95 (1999).) For purposes of this application, we need not consider Verizon's compliance with these rules because Verizon filed this application prior to the Supreme Court's decision. See *SWBT Texas Order*, 15 FCC Rcd at 18367-68, paras. 28-29 (concluding that, for purposes of evaluating compliance with checklist item 2, we require SWBT to demonstrate that it is currently in compliance with the rules in effect on the date of filing, but do not require SWBT to demonstrate that it complies with rules that become effective during the pendency of its application).

¹⁸³ See AT&T Comments at 4-7; see also AT&T Reply at 3-4.

elements pursuant to interconnection agreements.¹⁸⁴ We find this legal commitment is sufficient for our section 271 analysis.¹⁸⁵ Additionally, Verizon must offer any telecommunications carrier any interconnection, service, or network element provided to any other competing LEC within the state pursuant to section 252(i) or within the entire Bell Atlantic/GTE region through the most-favored nation arrangements provided in the Bell Atlantic/GTE merger conditions.¹⁸⁶ In light of these obligations, AT&T has failed to show that Verizon has somehow violated the statute by not having an SGAT or wholesale tariff on file.¹⁸⁷

B. Checklist Item 4 – Unbundled Local Loops

44. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”¹⁸⁸ Based on the evidence in the record, we conclude, as did the Maine Commission, that Verizon provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Verizon’s performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon’s processes for hot cuts, line sharing and line splitting. As of March 2002, competitors have acquired and placed into use more than 18,000 stand-alone loops (including DSL loops) from Verizon in Maine.¹⁸⁹ Finally, we note that commenters have not raised any issues with respect to any aspect of Verizon’s loop performance.

¹⁸⁴ See Verizon Lacouture/Ruesterholz Decl. at para. 248; see also Verizon Application App. H, Tabs 2-4 (selected interconnection agreements). Verizon also has a model interconnection that any competitive LEC may adopt. See Verizon Application App. H, Tab 1 (model interconnection agreement).

¹⁸⁵ “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 to comply with the requirements of section 251” See 47 U.S.C. § 252(f)(1) (*emphasis added*).

¹⁸⁶ See 47 U.S.C. § 252(i); *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14171-72, para. 300 (2000) (GTE/Bell Atlantic Merger Order); see also Verizon Reply at 8.

¹⁸⁷ We note, however, that the Maine Commission has required Verizon to file a wholesale tariff by October 1, 2002. Accordingly, AT&T’s objections will be resolved at such time. Maine Commission Comments at 7.

¹⁸⁸ 47 U.S.C. § 271(c)(2)(b); see also Appendix D at paras. 49-53 (regarding requirements under checklist item four).

¹⁸⁹ See Verizon Reply App. A, Vol. 1 Reply Declaration of Paul A. Lacouture and Virginia P. Ruesterholz (Verizon Lacouture/Ruesterholz Reply Decl.) at para. 4. As of March 2002 (from November 2001-March 2002), Verizon provisioned more than 18,000 stand-alone loops (including DSL loops), 210 high capacity DS1 loops, 2 high capacity DS3 loops, 80 digital loops, approximately 800 line sharing arrangements and no line splitting arrangements. See *id.* at paras. 22, 47, and 62; see also Verizon Lacouture/Ruesterholz Decl. at paras. 79, 109, 150, 171, and 184.

45. Consistent with prior section 271 orders, we do not address every aspect of Verizon's loop performance where our review of the record satisfies us that Verizon's performance is in compliance with the parity and benchmark measures established in Maine.¹⁹⁰ Instead we focus our discussion on those areas where the record indicates minor discrepancies in performance between Verizon and its competitors. In analyzing Verizon's compliance with this checklist item, we note that order volumes with respect to certain categories of loops, or order volumes with respect to a specific metric for a certain category of loop, in a given month may be too low to provide a meaningful result. As such, we may look to Verizon's performance in Massachusetts to inform our analysis.¹⁹¹

46. *xDSL Loops, Digital Loops, Voice Grade Loops, High Capacity Loops and Hot Cuts.* Based on the evidence in the record, we find, as did the Maine Commission, that Verizon demonstrates that it provides xDSL-capable loops, digital loops, voice grade loops, high capacity loops, and hot cuts in accordance with the requirements of checklist item four.¹⁹²

47. Verizon's performance with respect to two specific performance measures for xDSL loops appears to be out of parity in Maine in recent months. We find, however, that this performance does not warrant a finding of checklist noncompliance. First, we recognize that Verizon's performance data with respect to a provisioning quality metric – Percentage of Installation Troubles – which measures the percentage of problems on a line within the first 30 days after installation – indicates that more problems occur for lines ordered by competitive LECs than for the retail comparison group.¹⁹³ According to Verizon, however, the disparities in performance are not the result of discriminatory conduct, but rather the result of a low number of installation troubles reported.¹⁹⁴ We recognize, as we have in past section 271 orders, that a small handful of observations can cause seemingly large variations in the performance measures.¹⁹⁵ Moreover, given Verizon's parity of performance in Massachusetts, where overall volumes are much higher, we do not find that Verizon provisions xDSL loops in a discriminatory manner in

¹⁹⁰ See e.g., *Application of Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14151-52, para. 9 (2001) (*Verizon Connecticut Order*).

¹⁹¹ Verizon uses the same processes and procedures for provisioning and maintenance and repair in Massachusetts and Maine. See *Verizon Lacouture/Ruesterholz Decl.* at para. 76.

¹⁹² See *Maine Commission Comments* at 33-48.

¹⁹³ See PR 6-01-3342 (Percent Installation Troubles Within 30 Days). In Maine, Verizon missed parity in December 2001 and January 2002. The comparable numbers for December were 3.09% for Verizon retail and 13.79% for competitive LECs and 3.89% for Verizon retail and 11.36% for competitive LECs in January.

¹⁹⁴ In December 2001 and January 2002, where Verizon did not meet the parity standard, competitive LECs reported 4 and 5 installation troubles on DSL loops, respectively. See *Verizon Apr. 12 Ex Parte Letter* at 3.

¹⁹⁵ See *Verizon Massachusetts Order*, 16 FCC Rcd at 8988, para. 93, n.296.

Maine.¹⁹⁶ Next, we note that Verizon's xDSL loop performance with respect to a maintenance and repair measure – Network Trouble Report Rate – was out of parity in Maine in recent months.¹⁹⁷ We find, however, that the disparity is slight and thus does not appear to be competitively significant.¹⁹⁸

48. Second, we recognize that Verizon's Installation Troubles Reported¹⁹⁹ and Network Trouble Report Rate²⁰⁰ for digital loops were out of parity for several of the relevant months. According to Verizon, however, the disparate performance results are not the result of discriminatory conduct, but are again the result of a low number of observations and a disparity in the comparison group.²⁰¹ First, for the Installation Trouble measure, Verizon argues, as it did in previous section 271 proceedings, that the retail comparison group for this measure does not

¹⁹⁶ In Massachusetts, Verizon has met the parity standard for each of the relevant months. See PR 6-01-3342.

¹⁹⁷ For MR 2-03-3342 (Network Trouble Report Rate – Central Office), Verizon missed parity in November 2001 and from January – March 2002. The comparable numbers were 0.06%, 0.05%, 0.04%, and 0.05% for Verizon retail and 0.75%, 0.49%, 0.40%, and 0.71% for competitive LECs in November, January, February, and March, respectively. This performance data suggests that additional problems have occurred more often for competitive LECs than for Verizon retail. Verizon explains, however, in an *ex parte* letter that its November-February average trouble report rate for competitive LECs is less than 0.4%, which indicates that more than 99.6% of competitive LECs' xDSL loops had no reported troubles found in the central office. See Verizon Apr. 12 *Ex Parte* Letter at 3.

¹⁹⁸ From November 2001-March 2002 in Maine, network trouble reports for competitive LECs found in either the outside plant or the central office (MR 2-02 and MR 2-03) were reported less often than for Verizon's retail customers. From November through March, the weighted average was 0.33% for competitive LECs and 0.41% for Verizon retail. In Massachusetts, from November through March, the weighted average was 0.67% for competitive LECs and 0.46% for Verizon retail. See Verizon Lacouture/Ruesterholz Decl. at paras. 141-142; see also Verizon Apr. 12 *Ex Parte* Letter at 3. Verizon's overall maintenance and repair performance is strong. For instance, for the mean time to repair metrics, Verizon performed at parity for all relevant months. See MR 4-02-3342 (Mean Time to Repair – Loop Trouble) and MR 4-03-3342 (Mean Time to Repair – Central Office Trouble). For the Percent Repeat Troubles Within 30 Days metric, Verizon achieved parity for all but one of the relevant months. See MR 5-01-3342.

¹⁹⁹ See PR 6-01-3341 (Percent Installation Troubles Within 30 Days). From November 2001- March 2002, Verizon provisioned only 80 digital loops for competitors. See Verizon Lacouture/Ruesterholz Reply Decl. at para. 47. Given the low volumes in Maine for this category of loop, we look to Verizon's performance in Massachusetts for this metric. In Massachusetts, for PR 6-01-3341, Verizon's performance was out of parity for all relevant months except February 2002. The November-March weighted average for this measure is 14.824% for competitive LECs and 5.745% for Verizon retail.

²⁰⁰ See MR 2-02-3341 (Network Trouble Report Rate – Loop) and MR 2-03-3341 (Network Trouble Report Rate – Central Office). In Maine, for MR 2-02-3341, Verizon's performance was out of parity for all the relevant months except February 2002. The comparable numbers were 0.61%, 0.57%, 1.34%, and 0.80% for Verizon retail and 5.13%, 10.87%, 6.00%, and 3.90% for competitive LECs in November, December, January, and March, respectively. For MR 2-03-3341, Verizon performed at parity for all but one of the relevant months.

²⁰¹ See Verizon Apr. 12 *Ex Parte* Letter at 4-5.

provide an “apples-to-apples” comparison.²⁰² According to Verizon, competitive LEC 2-wire digital loops are provisioned using fiber, while most orders in the retail comparison group are provisioned using copper.²⁰³ Given this factor, Verizon explains that cooperative testing of the 2-wire digital loops that competitive LECs purchase has proved more difficult than testing of loops provided over copper.²⁰⁴ According to Verizon, this difficulty arises because digital loops provisioned over fiber are provided through a plug-in card in the central office and another card at the remote terminal. Thus, Verizon states that “it is not possible for any of the test equipment used by the [competitive LECs] to test beyond the card in the central office.”²⁰⁵ Verizon states, however, that when competitive LECs do experience trouble on 2-wire digital loops, their troubles are resolved, on average, more quickly than installation troubles for Verizon’s retail.²⁰⁶ Based upon Verizon’s overall performance in providing and maintaining digital loops, and recognizing that digital loops represent only a small percentage of overall loop orders in Maine,²⁰⁷ and thus that this disparity impacts a correspondingly small number of competitive LEC orders, we find that Verizon’s performance on this metric does not warrant a finding of noncompliance with checklist item four.²⁰⁸

49. Verizon’s Network Trouble Report measures for digital loops were also out of parity in Maine for the relevant months.²⁰⁹ According to Verizon, however, the disparate performance results are not the result of discriminatory conduct, but are again the result of a low number of trouble reports.²¹⁰ Specifically, Verizon states that from November 2001 through

²⁰² In its October 2001 order, the New York Commission changed the retail comparison group for this measure from 2-wire digital services to Retail POTS – Dispatched. However, Verizon claims that it is still an inadequate measure of Verizon’s performance. *See* Lacouture/Ruesterholz Decl. at para. 155. *See also* Verizon Vermont Order, 17 FCC Rcd at 7654, para. 52 (2002); Verizon Rhode Island Order, 17 FCC Rcd at 3340, para. 81.

²⁰³ *See* Lacouture/Ruesterholz Decl. at para. 155; *see also* Verizon Apr. 12 *Ex Parte* Letter at 4.

²⁰⁴ *See id.*

²⁰⁵ Verizon Apr. 12 *Ex Parte* Letter at 4.

²⁰⁶ *See id.*; *see also* MR 4-01-3341. The mean time to repair 2-wire digital loops in Maine, from November 2001-March 2002, was 7.84 hours for competitive LECs and 18.87 for Verizon retail. The mean time to repair 2-wire digital loops in Massachusetts, from November 2001-March 2002, was 11.18 hours for competitive LECs and 17.97 hours for Verizon retail.

²⁰⁷ *See supra* n.199.

²⁰⁸ We note that this is consistent with our findings in other recent Verizon section 271 orders. *See* Verizon Rhode Island Order, 17 FCC Rcd at 3340, para. 81; *see also* Verizon Vermont Order 17 FCC Rcd at 7654, para. 52.

²⁰⁹ *See* MR 2-02-3341 (Network Trouble Report Rate – Loop) and MR 2-03-3341 (Network Trouble Report Rate – Central Office). In Maine, from November 2001-March 2002, network trouble reports for competitive LECs, found in either the outside plant or the central office, were reported slightly more often for competitive LECs than for Verizon’s retail customers, but the weighted average shows that this is still less than 3% of the time (4.745% for MR 2-02 and 0.730% for MR 2-03).

²¹⁰ *See* Verizon Apr. 12 *Ex Parte* Letter at 5; *see also* Verizon Lacouture/Ruesterholz Reply Decl. at para. 54.

March 2002, there were a total of 15 trouble reports for these measures (13 loop trouble reports and 2 central office trouble reports).²¹¹ Moreover, Verizon explains that 9 of the 15 troubles found during these months were installation troubles, which have already been addressed above.²¹² Given the low number of troubles reported, and Verizon's nondiscriminatory performance in Massachusetts, where volumes are higher,²¹³ we find that the disparity in Maine does not appear to be competitively significant and, thus, does not warrant a finding of checklist noncompliance.

50. In addition, we recognize that Verizon's installation troubles reported and the network trouble report rate for high capacity loops were out of parity for many of the relevant months in Maine.²¹⁴ From November 2001 through March 2002, Verizon provisioned a total of 210 DS-1 loops and 2 DS-3 loops in Maine.²¹⁵ Because these volumes are insufficient upon which to make a finding,²¹⁶ we look to Verizon's performance data in Massachusetts for the Installation Troubles measure. We find that where performance disparity exists, it is slight and thus not competitively significant.²¹⁷ Given Verizon's nondiscriminatory performance in Massachusetts, where volumes are higher, and recognizing that high capacity loops represent only a small percentage of overall loop orders in Maine,²¹⁸ we cannot find that Verizon provisions high capacity loops in a discriminatory manner. Finally, although we note that Verizon's performance with respect to the network trouble report rate also appears to be out of parity for

²¹¹ See Verizon Lacouture/Ruesterholz Reply Decl. at para. 54.

²¹² Verizon argues that as a result of the small volume of competitive LEC lines and the larger volume of lines in the retail comparison group, Verizon would have had to provide perfect performance to meet the parity standard for these measures as even one trouble report in any given month was sufficient to cause Verizon to miss parity. See Verizon Apr. 12 *Ex Parte* Letter at 5.

²¹³ In Massachusetts, from November 2001-March 2002, the weighted average for network trouble reports, found in either the outside plant or the central office, was 0.656% for competitive LECs and 0.462% for Verizon retail. See MR 2-02-3341 (Network Trouble Report Rate – Loop) and MR 2-03-3341 (Network Trouble Report Rate – Central Office).

²¹⁴ See PR 6-01-3200 (Percent Installation Troubles Reported Within 30 Days). In Maine, Verizon's performance was out of parity from November 2001-February 2002. It performed at parity in March 2002. For MR 2-01-3200 (Network Trouble Report Rate), Verizon was out of parity from November 2001-March 2002 in Maine.

²¹⁵ See Verizon Lacouture/Ruesterholz Reply Decl. at para. 22.

²¹⁶ High capacity loops in Maine represent slightly over 1% of all unbundled loops provisioned to competitors. See Verizon Lacouture/Ruesterholz Reply Decl. at paras. 22-23; see also Verizon Lacouture/Ruesterholz Decl. at para. 108.

²¹⁷ In Massachusetts, Verizon's performance was in parity for three of the five relevant months, including the most recent month we examine, March. For the months that Verizon did not achieve parity, the comparable numbers were 1.81% and 2.76% for Verizon retail and 6.98% and 8.78%, for competitive LECs in November 2001 and February 2002, respectively. See PR 6-01-3200 (Percent Installation Troubles Reported Within 30 Days).

²¹⁸ See *supra* n.216.

the relevant months in Maine,²¹⁹ we find that the disparity is slight and thus not competitively significant.²²⁰

51. *Line Sharing and Line Splitting.* Based on the evidence in the record, we find, as did the Maine Commission, that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop.²²¹ Through March 2002, Verizon had provisioned 800 line sharing orders in Maine for unaffiliated competitive LECs.²²² Verizon's performance data for line shared DSL loops demonstrates that it is in compliance with the parity and benchmark measures established in Maine.²²³ Verizon also complies with its line-splitting obligations and provides access to network elements necessary for competing carriers to provide line splitting.²²⁴ Although we recognize that no competitive LECs have ordered line splitting arrangements in Maine, we note that Verizon permits competitive LECs to engage in line splitting in Maine in the same manner that it permits them to do so in Massachusetts.²²⁵ No competitive LECs have raised complaints about Verizon's provision of line splitting. We find, therefore, given the record before us, that Verizon's process for line-splitting orders is in compliance with the requirements of this checklist item.

C. Remaining Checklist Items (1, 3, 5-14)

52. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 1 (interconnection),²²⁶ item 3 (access to poles, ducts, and conduits),²²⁷ item 5 (transport),²²⁸ item 6

²¹⁹ See *supra* n.214.

²²⁰ In Maine, for MR 2-02-3200, Verizon states that during November 2001-March 2002, the percentages have generally been under 2%. See Lacouture/Ruesterholz Reply Decl. at para. 27.

²²¹ 47 C.F.R. § 51.319(h); see Maine Commission Comments at 33-48. See *supra* n.20.

²²² See Verizon Lacouture/Ruesterholz Reply Decl. at para. 62.

²²³ See PR 4-05-3343 (Percent Missed Appointments – No Dispatch); PR 6-01-3343 (Percent Installation Troubles Reported Within 30 Days); MR 2-02-3343 (Network Trouble Report Rate – Loop); MR 2-03-3343 (Network Trouble Report Rate – Central Office); MR 3-02-3343 (Percent Missed Repair Appointment – Central Office); MR 5-01-3343 (Repeat Trouble Reports Within 30 Days); and MR 4-03-3343 (Mean Time to Repair – Central Office Trouble). There has been very little maintenance and repair activity for line sharing in Maine or Massachusetts. See Verizon Lacouture/Ruesterholz Decl. at paras. 180-183.

²²⁴ See Appendix D at paras. 50-52.

²²⁵ See Verizon Lacouture/Ruesterholz Decl. at para. 184.

²²⁶ 47 U.S.C. § 271(c)(2)(B)(i). We conclude, based upon the evidence in the record, that Verizon demonstrates compliance with the requirements of our collocation rules. See Verizon Application at 18-20.

²²⁷ *Id.* § 271(c)(2)(B)(iii).

²²⁸ *Id.* § 271(c)(2)(B)(v).

(unbundled local switching),²²⁹ item 7 (911/E911 access and directory assistance/operator services),²³⁰ item 8 (white pages directory listings),²³¹ item 9 (numbering administration),²³² item 10 (databases and associated signaling),²³³ item 11 (number portability),²³⁴ item 12 (local dialing parity),²³⁵ item 13 (reciprocal compensations),²³⁶ and item 14 (resale).²³⁷ Based on the evidence in the record, we conclude, as does the Maine Commission, that Verizon demonstrates that it is in compliance with these checklist items in Maine.²³⁸ None of the commenting parties challenges Verizon's compliance with these checklist items.

²²⁹ *Id.* § 271(c)(2)(B)(vi).

²³⁰ *Id.* § 271(c)(2)(B)(vii).

²³¹ *Id.* § 271(c)(2)(B)(viii).

²³² *Id.* § 271(c)(2)(B)(ix).

²³³ *Id.* § 271(c)(2)(B)(x).

²³⁴ *Id.* § 271(c)(2)(B)(xi).

²³⁵ *Id.* § 271(c)(2)(B)(xii).

²³⁶ *Id.* § 271(c)(2)(B)(xiii).

²³⁷ *Id.* § 271(c)(2)(B)(xiv). On September 26, 2001, the FCC granted Verizon's request to accelerate Verizon's right under the Bell Atlantic/GTE Merger Order to provide advanced services without using its separate data affiliate, Verizon Advanced Data Inc. (VADI). *See* Verizon Lacouture/Ruesterholz Decl. at para. 126. On March 1, 2002, Verizon completed the reintegration of VADI into the core company. *Id.* According to Verizon, "[t]he reintegration of VADI has not resulted in any changes to the Verizon preordering, ordering, provisioning, and maintenance and repair processes that were already in place for line sharing, resold DSL over Verizon voice lines, and resold DSL over resold voice lines This means that Verizon continues to provide [competitive LECs] with nondiscriminatory access to its OSS for preordering, ordering, provisioning, and maintenance of DSL products in the same manner as it did prior to VADI's reintegration." *See* Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-61 at 1 (filed Apr. 11, 2002) (Verizon Apr. 11 *Ex Parte* Letter). No commenter raised an issue relating to Verizon's advanced services offerings.

²³⁸ Verizon Application at 15-20 (checklist item 1), 54 (checklist item 3), 39-41 (checklist item 5), 38-39 (checklist item 6), 55-57 (checklist item 7), 57-58 (checklist item 8), 58 (checklist item 9), 59-60 (checklist item 10), 60 (checklist item 11), 60-61 (checklist item 12), 61 (checklist item 13), and 61-63 (checklist item 14); Maine Commission Comments at 5-11 (checklist item 1), 28-33 (checklist item 3), 48-71 (checklist item 5), 4 (checklist item 6), 4 (checklist item 7), 4 (checklist item 8), 4 (checklist item 9), 4 (checklist item 10), 4 (checklist item 11), 71-72 (checklist item 13), and 72-79 (checklist item 14); Letter from Trina M. Bragdon, Staff Attorney, Maine Public Utilities Commission, to William Caton [sic], Acting Secretary, Federal Communications Commission, CC Docket No. 02-61 (filed Apr. 24, 2002) (regarding Verizon's compliance with checklist item 12); *see also* Appendices B and C. With respect to checklist item 1, Verizon submitted several *ex parte* letters clarifying its collocation offering. *See* Verizon May 2 *Ex Parte* Letter at 1; Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-61 (filed Apr. 29, 2002); Verizon Apr. 11 *Ex Parte* Letter at 1.