there is in fact operational experience demonstrating that the changes have produced significant improvements in the accuracy of the directory listings.

The changes that Verizon has implemented are of two types. The first category includes changes to Verizon's underlying systems and processes handling directory listings. For example, in October 2001, Verizon implemented a quality verification process for manually processed directory listings orders, which is designed to ensure that the information contained in a CLEC's order matches the information that is submitted for entry into Verizon's systems. See McLean/Wierzbicki/Webster Decl. ¶ 107; McLean/Wierzbicki/Webster Reply Decl. ¶ 37. In February 2002, Verizon completed, pursuant to the Change Management Process, a modification to its systems that provides CLECs with greater control over the directory listings associated with migration orders that they submit, which enables the listing information to flow through Verizon's systems without being retyped by Verizon. See McLean/Wierzbicki/Webster Decl. ¶ 107; McLean/Wierzbicki/Webster Reply Decl. ¶¶ 34-35. As discussed below, these changes have produced demonstrable improvements in the accuracy of directory listings.

The second type of change that has been implemented provides CLECs themselves with additional tools to confirm the accuracy of their listings. In particular, in August 2002, Verizon made electronic and sortable the Listing Verification Report that Verizon provides CLECs prior to publication so that CLECs may verify that their listings in the directory are accurate. See McLean/Wierzbicki/Webster Reply Decl. ¶ 42. As a result, while the prior changes already produced significant improvements, this latter change allows CLECs easily to detect even the now very small number of listings that are incorrect. See id.

The changes that Verizon previously implemented have produced demonstrable improvements and its performance in providing directory listings is strong.

First, there has been a substantial increase in the flow-through rates of CLEC's directory listings in Virginia. For example, from February through July 2002, the flow-through rate has ranged from 75 to 90 percent, compared to only 35 percent in January 2002 before Verizon implemented the second modification to its systems described above. This demonstrates that CLECs are not only using the new features of Verizon's systems, but also that the opportunity to introduce errors into directory listings — which may occur when those listings do not flow through and must be retyped — has been sharply reduced.

Second, Verizon's performance continues to be strong under measurements designed to measure the accuracy with which Verizon provides directory listings to CLECs. For example, in July 2002, as in every month since Verizon started reporting this measurement, Verizon exceeded the 98-percent standard for translating information from LSRs submitted by CLECs to service orders necessary to establish directory listings. See McLean/Wierzbicki/Webster Reply Decl. ¶ 38; see also DOJ Eval. at 7 (noting that Verizon meets this measurement). Moreover, while the DOJ notes that this metric "measures only one part of the upstream process of creating a directory listing," DOJ Eval. at 7, Verizon has performed a special study in order to confirm the accuracy of the entire directing listing process, from end to end, see McLean/Wierzbicki/Webster Reply Decl. ¶ 38. This study confirms that the information in the systems of Verizon's directory company (Verizon Information Services) matches the information on the service order submitted by Verizon (which, as noted above has been checked to ensure that it matches the LSR submitted by the CLEC). See McLean/Wierzbicki/Webster Reply Decl. ¶ 38. In particular, the study shows that, in July 2002, 100 percent of the service orders match the information contained in the VIS systems. See id.

Third, data regarding Verizon's most recent directories in Virginia — those scheduled for publication in 2002 — show that the improvements to Verizon's systems are working. Verizon has measured the number of "discrepancies" that CLECs have submitted with their listings based on their review of the Listing Verification Report that Verizon provides prior to publication. See id. ¶ 39. It is important to recognize, of course, that the whole purpose of this report is to enable CLECs to review their listings before they are published, and to nip any errors in the bud. See id. ¶ 31. Discrepancies in the report do not, therefore, necessarily translate into errors in published directories. Moreover, directories are published only once a year, and even the most recent directories include listings that were submitted prior to the recent improvements that Verizon has made. See id. ¶ 39. Nevertheless, the effect of Verizon's improvements can already be seen.

For example, Verizon has reviewed the discrepancies submitted by Cavalier for three directories: South Hampton Roads, which closed in May 2002; Petersburg, which closed in June 2002; and Richmond, which closes on September 13, 2002. See id. ¶ 39. According to Cavalier's own figures, the number of discrepancies that it submitted for each of these directories as a percentage of the total number of Cavalier listings in those directories has steadily declined over time. That percentage has dropped from approximately 10 percent for the South Hampton Roads directory, to less than 6 percent for Petersburg, and to less than 3 percent for Richmond. See id. Moreover, Verizon's actual performance is considerably better than these totals suggest because many of these discrepancies are caused by reasons other than an error by Verizon, including a CLEC's own error and differences between a CLEC's initial and subsequent service order. See id. For example, when adjusted for reasons other than an error by Verizon, the percentage of Cavalier listings for which it submitted a discrepancy that required a correction by Verizon dropped from about 3.1 percent for the South Hampton Roads directory to about 2.5 percent for the Petersburg directory. See id. Thus, not only are the percentage of discrepancies decreasing, but so are the percentage that require correction of a Verizon error.

Further proof that Verizon's improvements are working is the fact that CLEC-reported discrepancies for the same directory have declined considerably from 2001 (before the improvements) to 2002 (after the improvements). See id. ¶ 40. For example, the number of discrepancies submitted by Cavalier for the South Hampton Roads directory decreased by nearly 50 percent during that period, while the number it submitted for the Richmond directory decreased by approximately 80 percent. See id.

Finally, Cavalier points (at 23-24) to a few trouble tickets it submitted to Verizon in recent months — including one for a yellow pages listing that has nothing to do with the checklist[28] — in an attempt to argue that problems with directory listings still persist. As an initial matter, however, even if these few instances represented errors by Verizon they do not rise to the level of demonstrating that Verizon fails to satisfy the checklist. See, e.g., New York Order ¶ 176 (holding that "isolated problems attributable to either

[28] See 47 U.S.C. § 271(c)(2)(B)(viii) (showing of checklist compliance involves only "[w]hite pages directory listings," not yellow pages listings); see also McLean/Wierzbicki/Webster Reply Decl. ¶ 47 (noting that yellow pages is an unregulated product).

[Verizon] or the commenters" is not enough to prove that Verizon fails to satisfy the checklist given that "we do not hold Bell Atlantic to a standard of perfection."); Texas Order ¶ 50; Massachusetts Order ¶ 122. In any event, these few trouble tickets either have been or are in the process of being resolved. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 45-47.

4. Number Portability.

Verizon demonstrated in its Application that it uses the same processes and procedures to provide number portability in Virginia as it uses in its 271-approved states. See Application at 64; Lacouture/Ruesterholz Decl. ¶ 354; Pennsylvania Order ¶ 120; New Jersey Order ¶ 164; Massachusetts Order ¶ 222; Rhode Island Order ¶ 97; Vermont Order ¶ 59; Maine Order ¶ 52. Verizon also demonstrated that its performance in porting numbers to CLECs has been excellent, and that continues to be the case. For example, in July 2002, Verizon met the due date on more than 99 percent of the orders for LNP that were performed on a stand-alone basis, and on approximately 99 percent of the LNP orders that were performed in conjunction with hot cuts. See Lacouture/Ruesterholz Reply Decl. ¶ 119.

Starpower and US LEC claim (at 18-19) that in situations where they seek to postpone a previously scheduled porting request, Verizon "routinely fails to suspend the porting request and disconnects the line from Verizon facilities." As an initial matter, Starpower and US LEC do not provide a single example or other evidence to support this claim, which is grounds alone to reject their claim. See, e.g., Texas Order ¶ 50 ("When considering commenters' filings in opposition to the BOC's application, we look for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice."). Moreover, Verizon's performance in completing an order for LNP will not be considered timely if it is provided too early as in the situation that Starpower and US LEC describe. See Lacouture/Ruesterholz Reply Decl. ¶ 120. Thus, the fact that Verizon is consistently exceeding the standard for providing LNP orders on time — both for CLECs as a whole, and for Starpower and US LEC individually, see id. — demonstrates that there is no basis to this claim.

5. E911.

As Verizon demonstrated in its Application, it provides E911 services to CLECs in Virginia using the same checklist-compliant processes and procedures that it uses in its 271-approved states. See Application at 57; Lacouture/Ruesterholz Decl. ¶ 278; Pennsylvania Order ¶ 120; New Jersey Order ¶ 164; Massachusetts Order ¶ 222; Rhode Island Order ¶ 97; Vermont Order ¶ 59; Maine Order ¶ 52.

Only one CLEC — Cavalier — complains about Verizon's provision of E911 services but its claims have nothing to do with the checklist. Cavalier complains about the amounts that Verizon charges municipalities that obtain E911 services from Verizon. But the charges that *municipalities* pay Verizon for E911 listings are irrelevant under the checklist, which deals exclusively with "[a]ccess or interconnection provided or generally offered by a Bell operating company *to other telecommunications carriers*." 47 U.S.C. § 271(c)(2)(B) (emphasis added). Moreover, as the Hearing Examiner found, this claim ultimately has nothing to do with even Verizon's tariff, but instead "relates to a billing dispute between [Cavalier] and Chesterfield County in which Cavalier is trying to collect its costs associated with providing E-911 service." Hearing Examiner's Report at 134.[29]

6. Operations Support Systems.

The SCC has endorsed the Hearing Examiner's conclusion that Verizon "provides CLECs with nondiscriminatory access to its OSS," and that Verizon's "performance results indicate that it is meeting its obligations under § 271." Hearing Examiner's Report at 71, 74; SCC Letter at 1. As Verizon demonstrated in its Application, and as the Hearing Examiner found, Verizon provides CLECs in Virginia with access to the various checklist items through interfaces and gateways to its OSS that are the same as those throughout the former Bell Atlantic service area, which this Commission has found satisfy the requirements of the Act on *eight* separate occasions. See McLean/Wierzbicki/Webster Decl. ¶ 8; Hearing Examiner's Report at 68.[30] To the extent the underlying OSS in Virginia do differ in certain respects from the underlying OSS in Verizon's 271-approved states, those systems are handling large and increasing volumes of transactions in Virginia. For example, in Virginia, Verizon processed 1.1 million pre-order transactions from January through June 2002. See McLean/Wierzbicki/Webster

[29] The Commission has held that billing disputes between Verizon and competing carriers are best dealt with in other proceedings, so the same is obviously true with respect to billing disputes that do not involve Verizon. See, e.g., Vermont Order ¶ 58 (billing disputes are "not appropriately resolved in a section 271 proceeding"); Massachusetts Order ¶ 203; Texas Order ¶ 383. In any event, this issue is now pending in a separate proceeding before the SCC as a result of petition for arbitration recently filed by Cavalier. See Lacouture/Ruesterholz Reply Decl. ¶ 118. That proceeding, not this one, is the appropriate forum in which to resolve this non-checklist issue.

[30] See Pennsylvania Order ¶¶ 11-12; New Jersey Order ¶¶ 74-75; Massachusetts Order ¶¶ 50, 70, 90, 95, 97, 102, 114; Rhode Island Order ¶ 58; Vermont Order ¶ 39; Maine Order ¶ 35; New York Order ¶ 82 (same); Connecticut Order ¶ 53 (same).

Decl. ¶ 42. During that same period, Verizon's ordering systems processed more than 385,000 LSRs in Virginia. See id. ¶ 62.

The Virginia SCC's conclusion that Verizon's OSS satisfy the requirements of the Act was also based "upon the results of KPMG's [OSS] test," in which the SCC "actively participated" on "almost a daily basis." SCC Letter at 1; Hearing Examiner's Report at 5. The test "covered 545 test points," with Verizon satisfying 99.5 percent of these test points. Hearing Examiner's Report at 69; see McLean/Wierzbicki/Webster Decl. ¶ 22. The Hearing Examiner found that "KPMG's findings concerning these test points are probative and support Verizon Virginia's contention that it has deployed the necessary systems and personnel to provide CLECs with nondiscriminatory access to each of the necessary OSS functions, and has adequately assisted CLECs in understanding how to implement and use all of the OSS functions available to them." Hearing Examiner's Report at 68. The KPMG test in Virginia was modeled after tests in other of Verizon's 271-approved states and therefore provides "persuasive evidence of [Verizon's] OSS readiness." New York Order ¶¶ 10, 100; see McLean/Wierzbicki/Webster Decl. ¶ 11; see also Hearing Examiner's Report at 69.

A few parties take issue with limited aspects of Verizon's OSS, but as demonstrated below their claims provide no basis for overruling the SCC's carefully reached determination.

Loop Qualification. As Verizon demonstrated in its Application, CLECs in Virginia have access to the same methods of obtaining loop qualification and loop make-up information as in Verizon's 271-approved states. See McLean/Wierzbicki/Webster Decl. ¶¶ 46-53 & Att. 2 at 1; McLean/Wierzbicki/Webster Reply Decl. ¶ 6. Indeed, Verizon provides CLECs with multiple methods of obtaining this information, all of which this Commission has previously reviewed and found to comply with the requirements of the Act. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 7-20; Massachusetts Order ¶ 60; Pennsylvania Order ¶¶ 45-47; Rhode Island Order ¶¶ 61-65; Vermont Order ¶ 39; Maine Order ¶ 35; New Jersey Order ¶ 74. In addition, as a result of the DSL collaborative in New York, Verizon has added loop qualification information to its LiveWire database at the request of competing carriers. See McLean/Wierzbicki/Webster Reply Decl. ¶ 8.

Although Covad and NTELOS take issue with the loop information that Verizon provides, the Hearing Examiner considered and rejected their claims. See Hearing Examiner's Report at 112-13. Instead, "based on the FCC's approval of the same processes and procedures in other Verizon jurisdictions, the fact that CLECs have access to the same pre-qualification information as Verizon Virginia's retail arms, and the relatively low manual loop qualification activity in Virginia," the Hearing Examiner found that Verizon's provision of access to loop qualification information satisfies the requirements of the Act. See id. at 113. The Hearing Examiner's conclusions, which were endorsed by the Virginia SCC, are clearly correct.

For example, Covad and NTELOS claim that Verizon's LiveWire database — the same database Verizon's retail representatives use to obtain loop qualification information — contains inaccurate information. See Covad at 6-9; NTELOS at 7-8.[31] As

[31] Covad also repeats claims raised in previous application that Verizon has designed its loop qualification database for its own retail needs. See Covad at 10-11. But this Commission has repeatedly rejected those claims. See, e.g., Massachusetts Order ¶ 67 (recognizing that "Verizon's designation of whether or not a loop qualifies for [its] retail ADSL service" is provided "*in addition* to" and "does not replace the loop make-up

an initial matter, CLECs receive the same information from LiveWire as Verizon's retail DSL representatives. And, as described above, CLECs also have numerous means of obtaining more precise loop information, including the same methods of access that this Commission approved in Verizon's prior 271 applications. See McLean/Wierzbicki/Webster Reply Decl. ¶ 24.

Moreover, while it is possible in some cases for carriers to have a DSL loop successfully provisioned despite receiving a "not qualified" response, this does not mean the database is inaccurate. See id. ¶ 23. The LiveWire database was developed using a statistical sample of loops in each distribution terminal, because every address served by a terminal could potentially be served by any of the loops in the terminal. See McLean/Wierzbicki/Webster Reply Decl. ¶ 22. The LiveWire database was not designed as a comprehensive loop inventory system with information about every loop in Verizon's network, which would have been prohibitively expensive. See id. ¶ 22; Woltz/Garzillo/Prosini Reply Decl. ¶ 59.[32] Many terminals, however, include both copper loops and loops served on digital loop carrier ("DLC"). Where at least 10 percent of the loops in a terminal were copper, Verizon classified the addresses served by that terminal as qualified, because it was likely that a copper loop would be available for a DSL order. See McLean/Wierzbicki/Webster Reply Decl. ¶ 23. Conversely, if less than 10 percent of the loops in a terminal were copper, Verizon classified the addresses served

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information contained in LiveWire that is also returned with each query"); Connecticut Order ¶ 54; Pennsylvania Order ¶ 47.

[32] Contrary to Covad's claims (at 8-9), Verizon's processes enable Covad to avoid being charged for a manual loop qualification or an engineering work order simply by requesting a manual loop qualification before it submits an order, or by accessing the limited loop make-up information in LFACS. See Woltz/Garzillo/Prosini Reply Decl. ¶ 58.

by that terminal as not qualified — although a few early requesters might obtain a copper loop from that terminal, no copper loop would be available for the majority of DSL orders. See id. As a result, while it is possible sometimes to have a DSL loop provisioned, this is equally true for all carriers and Verizon makes additional pre-qualification tools — such as a manual loop qualification — available to carriers that choose to use this in those circumstances.[33]

Covad also asserts (at 7) that Verizon's loop qualification database includes incorrect information concerning spectrum compatibility. Although Covad references a "study" of 240 line sharing orders from February 2002, it neglects to mention that only *four* of those orders were for Virginia and provides no more recent examples. See McLean/Wierzbicki/Webster Reply Decl. ¶ 27. As Verizon explained in its Application, however, in May 2002, Verizon completed its review of the entire database of Virginia loops that listed "Spectrum Interference/T-1 Carrier" and updated the information in the database as required. See McLean/Wierzbicki/Webster Decl. Att. 2 at 3; McLean/Wierzbicki/Webster Reply Decl. ¶ 27. Verizon has also implemented system enhancements that will initiate a search for alternate facilities when a loop comes back as

[33] Covad also asserts (at 6) that the LiveWire database sometimes provides loop lengths of 0 or 99,000 feet, but provides no examples of this response in Virginia. In any event, while there could be rare instances in which this might occur, the same response would be received by Verizon's retail DSL representatives, as was the case in each previous application this Commission approved. Zero loop length is the default value for offices and loops that had not been tested, although there will always be a small percentage of loops with zero loop lengths, such as new addresses or loops that cannot be tested. See McLean/Wierzbicki/Webster Reply Decl. ¶ 25. Verizon used the loop length of 99,000 feet when the loop qualification database was initially populated as a "flag" — that is where the initial loop qualification testing was not successful. See id. The number of such flags currently in LiveWire is minimal — for example, a search of LiveWire found fewer than 80 loops in Virginia with a length of 99,000 feet. See id.

not qualified because of spectrum incompatibility issues. See McLean/Wierzbicki/Webster Att. 2 at 3-4.

Finally, Covad claims (at 11-14) that Verizon's LFACS database provides "selective" and "incomplete" loop make-up information. But the Commission's rules require Verizon only to provide access to loop information in the same manner as it already exists within Verizon — and the Commission has repeatedly found Verizon has done so. Those rules do not obligate Verizon to create or populate databases specifically for CLECs. See, e.g., Pennsylvania Order ¶ 46 & n.178. And, as Verizon has explained in prior applications — and has repeatedly informed CLECs — LFACS contains loop make-up information on a limited number of loops. Consistent with long-standing industry guidelines for the use of LFACS, loop make-ups were prepared only for those loops that were designed as special circuits, which represent only a small portion of the total number of loops. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 28-29. In Virginia, LFACS contains at least one loop make-up for less than 12 percent of terminals. See id. ¶ 28.

Ordering. Cavalier and OpenBand are the only commenters to take issue with Verizon's ordering OSS. See Cavalier at 27-30; OpenBand at 18-20. Their claims are entirely anecdotal, however, and this Commission has repeatedly refused to consider such "conclusory and anecdotal" claims, which are "unsupported by any persuasive evidence." New York Order ¶ 295; Texas Order ¶ 372; see New Jersey Order ¶ 126. Consistent with this Commission's practice, the Hearing Examiner considered these claims and found that "none of these issues rises to the level of evidence that Verizon Virginia's OSS fails to offer an efficient competitor a meaningful opportunity to compete." Hearing Examiner's

Report at 74. Nor do they come close to rebutting the showing Verizon has made here, including both extensive commercial experience with strong performance results, along with the results of a comprehensive third-party test.

Billing. Verizon demonstrated in its Application that it provides CLECs in Virginia with nondiscriminatory access to billing information, including both complete and accurate service usage reports, in substantially the same time and manner as Verizon provides such information to itself, and accurate and auditable wholesale bills in both paper and industry standard electronic formats. This is confirmed not only by commercial experience and Verizon's performance data, see McLean/Wierzbicki/Webster Decl. ¶¶ 147, 150-152; McLean/Wierzbicki/Webster Reply Decl. ¶ 67, but also by third-party tests of Verizon's billing systems. As part of its OSS test, KPMG reviewed Verizon's billing systems in Virginia, including expressTRAK, and has found that Verizon satisfied all 75 test points related to billing. See KPMG, Verizon Virginia OSS Evaluation Project Final Report (Version 2.0), at 382-86, 405-08 (Apr. 15, 2002) ("KPMG Final Report") (Application App. D, Tab 5); McLean/Wierzbicki/Webster Decl. ¶¶ 143-144. In addition, as it had done in Pennsylvania and New Jersey, PricewaterhouseCoopers ("PwC") reviewed actual BOS-BDT bills that Verizon provides to CLECs in Virginia and found that those bills matched the paper bills and were both readable and auditable. See McLean/Wierzbicki/Webster Decl. ¶¶ 145-146; Pennsylvania Order ¶ 35 (relying on similar test); New Jersey Order ¶ 125 (same). Considering this evidence, the Hearing Examiner concluded that Verizon "has shown that its billing systems give competing carriers a meaningful opportunity to compete and are otherwise compliant with the Act and FCC rules." Hearing Examiner's Report at 74.

Nonetheless, a few CLECs raise issues with respect to Verizon's billing performance. Two of those CLECs (Z-Tel and WorldCom), however, did not present these claims to the Virginia SCC during the state 271 proceedings. Indeed, Z-Tel — which states (at 4) that it has been providing UNE-P residential service in Virginia since November 2000 — did not participate in the state proceedings *at all*. And while WorldCom participated in those proceedings, it raised no complaints about the bills it received from Verizon. See McLean/Wierzbicki/Webster Reply Decl. ¶ 49.[34] In fact, WorldCom still raises no billing issues of its own in Virginia, but instead simply parrots Z-Tel's claims or rehashes stale claims about Verizon's performance in Pennsylvania. See WorldCom at 14-15; McLean/Wierzbicki/Webster Decl. ¶ 26. In any event, the billing claims raised here are without merit — and this goes both for the new claims raised by these parties and for the few claims that other parties repeat that were rejected by the Hearing Examiner.

Billing Accuracy. Z-Tel argues that Verizon's bills are inaccurate because they incorrectly include taxes and charges for calling features and retail services. As an initial matter, because Z-Tel failed to raise this issue in the state proceeding, it should not be permitted to do so for the first time here under this Commission's established precedent. See Vermont Order ¶ 20; Massachusetts Order ¶ 147. In any event, Z-Tel's claims have

[34] See Vermont Order ¶ 20 ("[I]t is both impracticable and inappropriate for us to make many of the fact-specific findings the parties seek in [a] section 271 review, when many of the [state commission's] fact-specific findings have not been challenged below."); see also Massachusetts Order ¶ 147 (carriers should "bring issues . . . to the attention of state commissions so that factual disputes can be resolved *before* a BOC applicant files a section 271 application with this Commission") (emphasis added).

no merit. Z-Tel's bills either do not contain the errors about which it complains or the amounts at issue are de minimis. <u>See</u> <u>Pennsylvania Order</u> ¶ 26.

For example, although Z-Tel asserts (at 5) that Verizon incorrectly bills it for taxes from which it is exempt, the amount of such charges that Z-Tel has disputed is negligible. In 2002, Z-Tel has submitted disputes in Virginia related to taxes totaling only *** ***, which is clearly a de minimis amount and not competitively significant. <u>See</u> McLean/Wierzbicki/Webster Reply Decl. ¶ 51; <u>Pennsylvania Order</u> ¶ 26. Moreover, Verizon has conducted an analysis of Z-Tel's BOS BDT bills for recent months and determined the amount of taxes included on the bills has diminished steadily and was only *** *** in August. <u>See</u> McLean/Wierzbicki/Webster Reply Decl. ¶ 51. Similarly, Verizon has determined that incorrect retail charges for vertical features — another issue about which Z-Tel complains — on Z-Tel's April through July 2002 BOS BDT bills totaled *** ***, which, again, is a de minimis amount. <u>See</u> <u>id.</u> ¶ 52. And the same is true of Z-Tel's other claims of incorrect charges appearing on its bills. <u>See</u> <u>id.</u> ¶¶ 53-54.

Z-Tel also raises two claims about the accuracy of Verizon's usage information. First, Z-Tel claims that it was receiving bills with inflated minutes of use, but acknowledges that "the issue may have recently been resolved." Z-Tel's Laughlin Decl. ¶ 11. In fact, as demonstrated in the Application, on May 19, 2002, Verizon previously corrected a software programming error that had occurred when Verizon revised the daily usage file ("DUF") processing logic to handle usage from both the legacy CRIS billing system and the newer expressTRAK system. <u>See</u> McLean/Wierzbicki/Webster Reply Decl. ¶ 56. As a result of this error, for CLECs that had converted to expressTRAK, minutes of use associated with expressTRAK accounts were inadvertently billed in both expressTRAK and CRIS. See id. But as Z-Tel is aware, Verizon has corrected the software error and is currently assessing the amount of any resulting overbilling to Z-Tel and any other affected CLEC. See id.

Second, Z-Tel claims that Verizon has double-billed it for usage on some phone numbers, but fails to provide any detail supporting this claim. See Z-Tel's Laughlin Decl. ¶ 16. It appears that Z-Tel is describing a scenario in which some of the usage for a phone number that was generated during a particular bill period misses the cutoff for that period and therefore appears on the bill for the following bill period. See McLean/Wierzbicki/Webster Reply Decl. ¶ 57. This is not double billing, however, because usage is only billed once, although possibly on a subsequent bill. See id.[35]

Billing Format. A few CLECs have raised claims about the format of the wholesale bills they receive from Verizon, claiming that formatting errors prevent them from reviewing and validating those bills. There is no merit to these claims. Indeed, as described above, PwC has reviewed Verizon's BOS BDT bills and found that they contain a sufficient level of detail for a CLEC to recalculate specific billing elements, which PwC did using commercially available software. See McLean/Wierzbicki/Webster

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[35] Cavalier takes issue (at 28-29) with the usage records it receives for transiting traffic — that is, traffic originated by a carrier other than Verizon, which transits Verizon's tandem, and is then received by Cavalier for completion to its customer. Contrary to Cavalier's claims, however, Verizon does not rate these calls as local or toll; indeed, Verizon is not aware of the local calling areas CLECs have established for their own end users or of the billing arrangements (including rates) that two CLECs may have with each other. See McLean/Wierzbicki/Webster Reply Decl. ¶ 58. And Verizon does provide CLECs the information that it does have about these calls: the Operating Company Number of the originating carrier, the originating telephone number, and the terminating telephone number, as well as the duration of the call. See id. With that information, Cavalier can determine if it should bill reciprocal compensation or access to the originating CLEC. See id.

Decl. ¶ 146. This Commission has twice relied on similar PwC tests "to confirm that Verizon's BOS BDT bills . . . can be loaded, read and audited electronically." Pennsylvania Order ¶ 36; see New Jersey Order ¶ 125. Moreover, as explained further below, the specific formatting issues to which the CLECs point either do not exist in Virginia or are de minimis.

For example, Z-Tel complains that Verizon's bills include phrase codes that are "vague and are not associated with a specific Z-Tel customer." Z-Tel's Laughlin Decl. ¶ 9. Z-Tel specifically cites five phrase codes, yet none of those phrase codes has appeared on Z-Tel's BOS BDT bill since at least December 2001. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 61, 63.[36]

Z-Tel also claims that Verizon is mislabeling certain alternately billed calls. See Z-Tel's Laughlin Decl. ¶ 10. Verizon is aware that the BOS BDT in Virginia currently does not correctly map alternately billed calls. As a result, even though they are valid charges, until the necessary systems fixes are implemented later this year, Verizon is automatically crediting CLECs each month for the amount of such calls appearing on its BOS BDT bill. See McLean/Wierzbicki/Webster Reply Decl. ¶ 60. In any event, the total amount of credits for these charges to date represents less than 1 percent of the total current charges billed on Z-Tel's BOS BDT accounts. See id.[37]

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[36] Covad claims (at 15) that Verizon has not provided it with the information necessary for it to compare the charges on its bills with products and services it ordered. This information, however, is readily available on Verizon's Wholesale website and in the Universal Service Order Code ("USOC") database, both of which are easily accessible by Covad. See McLean/Wierzbicki/Webster Reply Decl. ¶ 66.

[37] WorldCom asserts that Verizon does not provide the information needed for it to ascertain the reason for credits on its bills. See WorldCom's Lichtenberg Decl. ¶¶ 8-11. WorldCom is incorrect. When Verizon resolves a billing claim submitted by a CLEC, Verizon sends the CLEC a letter identifying the claim number and informing the

Z-Tel complains that Verizon sends a paper bill for some of Z-Tel's Virginia customers. See Z-Tel at 5; Z-Tel's Laughlin Decl. ¶¶ 4, 12-14. This is simply a function of the fact that a few accounts have not yet been transitioned to expressTRAK and are still billed in Verizon's legacy CRIS system. For Z-Tel, these accounts contained only *** *** in charges in July 2002. See McLean/Wierzbicki/Webster Reply Decl. ¶ 59. In contrast, more than 98 percent of the amount that Verizon billed to Z-Tel in July was billed in either expressTRAK or in CABS, both of which are available, and were provided to Z-Tel, in BOS BDT electronic format. See id. Further conversion of Z-Tel's remaining accounts billed in CRIS to expressTRAK is scheduled for September 14, 2002. See id.[38]

Billing Disputes. Finally, a few CLECs complain about Verizon's process for handling billing disputes or raise specific disputes they have with Verizon. Yet these claims are belied by the facts on the ground. Verizon's dedicated efforts to improve its handling of wholesale billing claims, begun in January 2002, have resulted in a dramatic drop in the number and value of open claims in Virginia. See McLean/Wierzbicki/Webster Decl. ¶ 149. As of the end of August 2002, there are fewer than 140 open claims, representing less than $260,000 in dispute — a decrease of more than 90 percent on both open claims and amount in dispute since January 2002. See

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CLEC of the amount of any adjustment resulting from the claim and when the adjustment is expected to appear on the CLEC's bill. See McLean/Wierzbicki/Webster Reply Decl. ¶ 65. As a result, CLECs have the information necessary to determine the reason for credits on their bills.

[38] Z-Tel also complains that Verizon created an additional billing account number for its Virginia customers, which Z-Tel did not request. See Z-Tel's Laughlin Decl. ¶ 17. The creation of this additional account was due to manual error by a representative in Verizon's NMC, has been corrected, and Z-Tel acknowledges that Verizon issued a credit on August 5, 2002 that brought all balances on this third billing account to zero. See id.; McLean/Wierzbicki/Webster Reply Decl. ¶ 76.

McLean/Wierzbicki/Webster Reply Decl. ¶ 67; see also McLean/Wierzbicki/Webster Decl. ¶¶ 150-151. Moreover, Verizon is resolving new billing claims in a timely manner. Of the open claims, approximately 90 percent are less than 30 days old. See McLean/Wierzbicki/Webster Reply Decl. ¶ 67. And Verizon's performance on the Carrier-to-Carrier billing dispute resolution measurements — with respect to both acknowledging and resolving CLECs claims — has continued to be excellent. In fact, the results for both measurements were 100 percent in June and July. See id.; McLean/Wierzbicki/Webster Decl. ¶ 150.

Nonetheless, Z-Tel asserts that it still has a significant amount at issue in 141 outstanding billing disputes with Verizon. See Z-Tel at 5-6. In a number of instances, however, Verizon has in fact resolved the dispute identified by Z-Tel, including the single dispute about "inflated" usage charges, which appears to account for about 60 percent of the amount Z-Tel claims is disputed. See id. ¶ 71. In other instances, Verizon has no record of the disputes Z-Tel identified, and Verizon is working with Z-Tel to resolve the differences in the two companies' records. See id.[39]

Covad complains (at 15-16) about Verizon's "backbilling" of line sharing charges for the period July 2000 through June 2001. Only an extremely small amount — *** *** — of these charges were for Virginia, see McLean/Wierzbicki/Webster

[39] WorldCom and Z-Tel claim that the process for submitting billing disputes is cumbersome. See WorldCom's Lichtenberg Decl. ¶¶ 13-14; Z-Tel's Laughlin Decl. ¶ 10. Yet CLECs must provide Verizon with enough information to investigate the issue. See McLean/Wierzbicki/Webster Reply Decl. ¶ 68. If the issue appears to the CLEC to be systemic, however, the CLEC need not identify every line that may be affected and can simply state that the same issue applies, for example, to all its loop accounts. See id.; see also id. ¶¶ 69-70.

Reply Decl. ¶ 73, and Covad points to no recent instance of backbilling.[40] Furthermore, Verizon "backbilled" Covad for these orders because, at the time line sharing was introduced, Verizon's first priority was to complete the OSS work necessary to enable the ordering and provisioning of this product. See id. ¶ 72. As a result, Verizon accepted and completed CLECs' orders before any rates had been established, and CLECs therefore offered their customers line sharing without paying anything to Verizon in the interim. See id. And, to the extent Covad raised specific billing disputes related to amounts charged, those issues have been resolved and appropriate credits issued. See id. ¶ 73.

Finally, Covad claims that, as of August 19, 2002, it had nine disputed billing claims open with Verizon for an average of 204 days. See Covad at 16-17 & App. B. This is simply wrong. All of these claims, which involved certain collocation billing, were closed on August 15, 2002, after extensive negotiations between Verizon and Covad. See McLean/Wierzbicki/Webster Reply Decl. ¶ 74. Therefore, as of August 19, Covad had *no* open billing disputes with Verizon. Since that time, Covad has opened one billing dispute, for a de minimis amount. See id.

Change Management. Verizon's change management process in Virginia is the same process that it uses across the former Bell Atlantic footprint, which this Commission has previously reviewed and approved. See McLean/Wierzbicki/Webster Decl. ¶ 161; see Pennsylvania Order ¶ 51; Massachusetts Order ¶¶ 102-113; New York Order ¶¶ 111-112. In addition, KPMG has examined the change management process in

[40] See Pennsylvania Order ¶ 28 ("disputes reflect[ing] past performance problems with Verizon's billing system, . . . do not demonstrate that Verizon's current wholesale billing systems are flawed today or were flawed at the time Verizon filed its application").

Virginia and found it satisfactory in all respects. See McLean/Wierzbicki/Webster Decl. ¶ 169; KPMG Final Report at 18. While even WorldCom acknowledges that Verizon's process and its implementation of that process "is the best in the country," it nonetheless asserts that Verizon recently deviated from the change management process in a single instance out of the hundreds of Change Management notices that Verizon has provided since January 2002. See WorldCom's Lichtenberg Decl. ¶¶ 17-19; McLean/Wierzbicki/Webster Reply Decl. ¶ 79. And even as to this single instance, WorldCom's complaint is not that Verizon failed to provide a change control notice in advance, but instead relates to WorldCom's disagreement as to the classification of one change. Whether Verizon classified a single system change correctly — which simply automated an error message that CLECs will receive in limited circumstances — clearly is not competitively significant. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 79-81.

B. Pricing Issues.

As Verizon demonstrated in its Application, the Virginia SCC established TELRIC-compliant rates for the majority of network elements — all those established by this Commission's Local Competition Order[41] — including unbundled loops, switching, and transport. See Application at 44; Woltz/Garzillo/Prosini Decl. ¶ 34. That determination is entitled to great deference under this Commission's well-settled precedent. See Application at 52. Under the Commission's own standard, which it is bound to apply, it may reject Verizon's Application *only if it finds that* "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on

[41] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order") (subsequent history omitted).

matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." New York Order ¶ 244; see also Vermont Order ¶ 15 (same). As described below, the comments present no evidence that even remotely suggests that either of these two conditions is present here. Moreover, the loop rates in Virginia are TELRIC-compliant for the separate and independent reason that they satisfy the Commission's established benchmark standard when compared to the recently established New York rates. See Application at 51; Woltz/Garzillo/Prosini Decl. ¶¶ 74-75; Woltz/Garzillo/Prosini Reply Decl. ¶ 11.

Verizon also is charging TELRIC-compliant rates for those elements that were not included in the SCC's UNE-pricing decision. As Verizon explained: (1) for the majority of the rate elements for UNEs not addressed in the SCC's UNE order — more than 70 percent — there was an analogous rate element that was addressed in the SCC's order, and that SCC-approved rate was used; (2) for certain rates that did not have a comparable existing rate element established by the SCC, Verizon adopted rates based on the rates recently established in New York, which, in the case of loop- and port-related elements, it adjusted to account for the cost differences between Virginia and New York. See Application at 53-54; Woltz/Garzillo/Prosini Decl. ¶¶ 34-40. In either case, if a CLEC was currently purchasing an element at a *lower* rate in Virginia under an interconnection agreement, Verizon adopted that lower rate rather than the comparable SCC-approved rate or the New York rate. See Woltz/Garzillo/Prosini Decl. ¶ 36. As Verizon demonstrated, each of these approaches produces rates that fall within the range that a reasonable application of TELRIC principles would produce and are consistent with this Commission's precedent. See Application at 53-56; Woltz/Garzillo/Prosini Decl. ¶¶ 34, 42.[42]

Moreover, this Commission is establishing rates for all network elements in an arbitration proceeding that is now complete and awaiting a final decision. See Application at 56; Woltz/Garzillo/Prosini Decl. ¶¶ 30-33. In the meantime, in order to eliminate any possible concerns on the issue that has been the subject of the most contention in previous proceedings, Verizon has agreed to true-up the switching rates set by the SCC to the switching rates this Commission establishes in that proceeding. See Application at 52-53; Woltz/Garzillo/Prosini Decl. ¶¶ 50. While the switching rates set by the SCC already comply fully with this Commission's TELRIC rules, this additional step ensures that the rates CLECs ultimately pay for switching are the rates set by this Commission. See Application at 52-53.

Several commenters nonetheless argue that Verizon's Application should be rejected because the Commission has not yet issued a final decision regarding pricing issues in the pending arbitration proceeding. See NTELOS at 3-4, 6; WorldCom at 16.[43]

[42] AT&T claims (at 10) without citing any legal authority that the Commission should ignore whether these rates comply with TELRIC and reject them simply because they "have never been adjudicated by the Virginia SCC." There is no basis for this approach. The Commission has repeatedly approved rates that were not adjudicated by the state commission. See, e.g., Arkansas/Missouri Order ¶¶ 67-68, 75 (approving loop, non-loop, and non-recurring rates in Arkansas that were "adopted, as a whole" from SBC's rates in Kansas and that were not adjudicated by the Arkansas commission); Kansas/Oklahoma Order ¶¶ 52-53 (approving recurring and non-recurring rates that were not adjudicated by the Kansas commission); Massachusetts Order ¶ 20 (approving switching rates that were not adjudicated by the Massachusetts DTE); Rhode Island Order ¶¶ 26-27 (approving switching rates that were not adjudicated by the Rhode Island PUC); New Jersey Order ¶ 65 (approving non-recurring hot-cut rate that was not adjudicated by the New Jersey commission).

[43] Cavalier and NTELOS also argue that Verizon should be required to reclassify certain rural wire centers as higher density areas. See Cavalier at 14-17; NTELOS at 7.

But, if anything, the fact that the Commission is in the process of establishing new rates for all UNEs is a factor that weighs in favor of granting this application, not rejecting it. In prior applications, the Commission has expressly deferred to then-ongoing pricing proceedings that were being conducted by the state commission. See, e.g., Massachusetts Order ¶ 30 ("We note that the Massachusetts Department has undertaken a review of UNE rates in Massachusetts and is endeavoring to reset UNE rates, consistent with the Act and our rules."); Georgia/Louisiana Order ¶ 31; New York Order ¶ 247. There is an even stronger case for doing so here given that the rates under review are being revised by this Commission, which both controls the timing of those new rates and has the ability to ensure they are TELRIC-compliant.

Moreover, as Verizon explained in its Application, the Commission has repeatedly held that the fact that there are ongoing pricing proceedings to review rates that were set previously does not undermine a checklist showing. See Georgia/Louisiana Order ¶ 96 ("[W]e do not believe that the existence of a new Georgia cost docket, without more, should affect our review of the currently effective rates submitted with BellSouth's section 271 application. . . . As a legal matter, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself."); Rhode Island Order ¶ 31; Massachusetts Order ¶ 36; New York Order ¶ 247; Application at 14. Likewise, the Commission has held that "mere evidence that the data underlying a rate is old . . . does

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But the classifications of wire centers is a matter for state commissions, and as Verizon stated in its Application, the Virginia SCC has already rejected Cavalier's and NTELOS's requests. See Application of Cavalier Telephone, LLC To Reclassify the Bethia Wire Center into Density Cell One, Final Order, Case No. PUC 010213, at 4 (Va. SCC Jan. 31, 2002) (Application App. M, Tab 7); Woltz/Garzillo/Prosini Reply Decl. ¶ 62.

not demonstrate that the [state commission] committed any clear error when it adopted the rate." Vermont Order ¶ 37; Maine Order ¶ 30; Rhode Island Order ¶ 31; New York Order ¶ 247; Woltz/Garzillo/Prosini Reply Decl. ¶ 10. Indeed, the Supreme Court itself relied on the fact that there are "built-in lags in price adjustments" as one of the reasons for upholding TELRIC, Verizon Communications Inc. v. FCC, 122 S. Ct. 1646, 1669 (2002), and the D.C. Circuit has expressly held "rates may often need adjustment to reflect newly discovered information" but "[i]f new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change." AT&T, 220 F.3d at 617.

Finally, there is no merit to AT&T's and WorldCom's claim that the situation here is different from previous cases where there were ongoing pricing proceedings on the grounds that AT&T and WorldCom have submitted evidence in the Virginia arbitration proceeding allegedly showing that the current rates in Virginia are somehow too high. See AT&T at 10-11; WorldCom at 16-19. AT&T and WorldCom made the same argument in prior section 271 proceedings, and the Commission rejected those claims. For example, in the New York proceeding, AT&T attempted to attack the New York switching and loop rates on the grounds that they had submitted evidence in the then-ongoing New York proceeding claiming that those rates were no longer TELRIC-compliant. But the Commission rejected this argument, and the D.C. Circuit affirmed. See New York Order ¶¶ 242, 248; AT&T, 220 F.3d 617, 619. AT&T and WorldCom attempted to make this same argument again in the Massachusetts proceeding, and the Commission rejected it there too. See Massachusetts Order ¶ 31 ("It would be unreasonable to preclude incumbent LECs from relying on appropriate rates that have been found to be TELRIC-compliant merely because these rates are under some form of challenge or review where there has not been a determination that those rates are not TELRIC-compliant.").

Switching Rates. As noted above, Verizon demonstrated in its Application that, although the Virginia SCC established TELRIC-compliant switching rates, Verizon has agreed to true-up these rates to the rates the Commission sets in the pending arbitration proceeding. See Application at 52; Woltz/Garzillo/Prosini Decl. ¶¶ 48, 60-62. Thus, the rates that CLECs are effectively paying in Virginia during the course of this Application are the rates that will be set by this Commission, rather than the rates previously set by the SCC. See Application at 52-53.

AT&T and WorldCom — the only parties that challenge the Virginia switching rates — nonetheless argue that the rates established by the SCC fail to benchmark against the switching rates adopted in New York. See AT&T at 8; WorldCom at 18-19. That is irrelevant, however, for two reasons. As an initial matter, it is irrelevant because the rates established by the SCC are not the rates that CLECs are effectively paying now in Virginia.[44] In addition, it is irrelevant because there is no need to benchmark in a case such as this where the state commission follows TELRIC principles and committed no clear error. As the Commission has held, where "rates result from a state rate proceeding correctly applying TELRIC principles," then the application will be approved "*without*

[44] In any event, the Woltz/Garzillo/Prosini reply declaration describes why the few arguments that AT&T and WorldCom do raise with respect to the inputs here are without merit. See Woltz/Garzillo/Prosini Reply Decl. ¶¶ 24-25.

regard to any benchmark analysis." Rhode Island Order ¶ 39 (emphasis added).[45] Indeed, this is the logical corollary of the Commission's and the D.C. Circuit's recognition that there is "enormous flexibility" built into TELRIC, and that TELRIC will not produce the same rate in every state. AT&T, 220 F.3d at 615; see Michigan Order ¶ 291. Consistent with this, the Commission has found that a benchmark comparison was unnecessary to approve the switching rates in Vermont, New York, Oklahoma, Kansas, Texas, Georgia, and Louisiana. See Vermont Order ¶ 18; Kansas/Oklahoma Order ¶ 73; New York Order ¶ 238; Texas Order ¶¶ 234-242; Georgia/Louisiana Order ¶¶ 78 & n.263, 84 & n.283.

AT&T and WorldCom next claim that the Commission may not rely on Verizon's true-up proposal because it does not meet the Commission's test for approving interim rates. See AT&T at 10-11; WorldCom at 18-20 & n.16. They are wrong. The rates here satisfy each of the criteria that the Commission has identified for deeming interim rates "acceptable as part of a section 271 application." Arkansas/Missouri Order ¶ 64; see also Kansas/Oklahoma Order ¶ 238.[46]

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[45] AT&T claims (at 3-4) that the Commission has "never" approved a section 271 application where a benchmark comparison was "limited to loop rates alone," but that is simply not true. In the Kansas/Oklahoma Order, the Commission relied on a benchmark comparison with respect to the loop rates in Oklahoma, but not with respect to the non-loop rates in that state. See Kansas/Oklahoma Order ¶¶ 73-87. Moreover, on other occasions, the Commission has relied on benchmark comparisons solely with respect to non-loop rates, and not loop rates. See, e.g., New Jersey Order ¶ 66; Rhode Island Order ¶ 55. Thus, the clear implication in AT&T's claim — that the Commission must benchmark both loop and non-loop rates or none at all — is completely unfounded.

[46] WorldCom claims (at 19 n.16) that this precedent is "inapplicable" here because the rates at issue here are "not interim rates but rather permanent rates." Under the circumstances here, that distinction is pure semantics. Regardless of label, the fact that that the existing rates will soon be changed and are subject to true-up so that what competitors are effectively paying are the rates this Commission will soon adopt.

First, "the interim solution . . . is reasonable under the circumstances," Arkansas/Missouri Order ¶ 64, given that this Commission itself controls both the timing of new rates and the rates themselves. Moreover, the current amounts that CLECs must pay while they await a true-up are the rates that the SCC found TELRIC-compliant. The situation here is, therefore, analogous to the one in Texas, where the Commission relied on interim rates for physical collocation that were established and found TELRIC-compliant by the Texas commission. See Texas Order ¶ 89 ("The Texas Commission set the interim rates pursuant to TELRIC standards so that competitive LECs could obtain collocation while the state incorporated the Commission's findings in the March 31, 1999, Advanced Services Order.").[47] *Second*, as noted above, there can be no question here that the rate-setting body at issue — this Commission — "has demonstrated its commitment" to TELRIC principles. Arkansas/Missouri Order ¶ 64. *Third*, "provision is made for refunds or true-ups once permanent rates are set." Id. As noted above and in the Application, Verizon has agreed to apply whatever rates this Commission sets retroactively effective as of August 1, 2002 — the date of the filing of this Application. See Woltz/Garzillo/Prosini Decl. ¶ 60.

Finally, there is no merit to AT&T's attempt (at 10-11) to distinguish the previous cases in which the Commission relied on a true-up on the grounds that those cases "were limited to rates for a relatively small subset of the carrier's UNEs or other services." The fact of the matter here is that Verizon's true-up proposal involves the rates for a single

[47] In addition, the period during which these interim rates will remain in effect is likely to be "of short duration," which this Commission also has found significant in the past. WorldCom, Inc. v. Verizon New England Inc., Memorandum Opinion and Order, File No. EB-02-MD-017, FCC 02-219, ¶ 21 (FCC rel. July 23, 2002) ("WorldCom Massachusetts Complaint Order").

UNE — unbundled switching — and is therefore comparable to those prior cases. And while AT&T implies (at 10-11) that the Commission has previously approved interim rates only for elements that are minor or infrequently used by CLECs, that is simply not true. For example, the Commission has previously approved interim rates for physical collocation, see Texas Order ¶ 89; Kansas/Oklahoma Order ¶ 238, and xDSL loop conditioning, see New York Order ¶ 259. See also WorldCom Massachusetts Complaint Order ¶ 16 (upholding Verizon's proposal to establish interim switching rates in Massachusetts that would be subject to true-up to the rates established by the Massachusetts commission).

Loop Rates. Verizon demonstrated in its Application that the SCC established TELRIC-compliant loop rates in Virginia, and that those rates must be approved for the separate and independent reason that they satisfy this Commission's well-established benchmark standard when compared to the recently adopted rates in New York. See Application at 48-51; Woltz/Garzillo/Prosini Decl. ¶ 75. No party disputes that Verizon's loop rates satisfy the benchmark test when compared to the New York rates. See, e.g., Pennsylvania Order ¶ 63 (rates that pass benchmark test will be approved); Kansas/Oklahoma Order ¶ 65 (same); Arkansas/Missouri Order ¶ 55 (same); Rhode Island Order ¶ 57 (same); Maine Order ¶ 33 (same). For present purposes, that should be the end of the matter.[48]

[48] As the Commission explained to the D.C. Circuit in its recent brief defending the Arkansas/Missouri Order, when it uses the benchmark test, it can verify TELRIC compliance without having to make detailed, localized findings about state-specific cost evidence. See Brief for Appellee Federal Communications Commission, AT&T Corporation v. FCC, No. 01-1511, at 12-13 (filed D.C. Cir. July 19, 2002) ("Simply put, the benchmark test provides an independently sufficient means of confirming the TELRIC compliance of a State's UNE rates. Consequently, after the Commission

AT&T and WorldCom nonetheless claim — without citing any authority — that the Commission should reject the Virginia loop rates because, in the course of the Virginia arbitration proceeding, they claimed that the loop rates should be lower than those adopted by the SCC. See AT&T at 5-7; WorldCom at 19.[49] As an initial matter, this claim presumes that, in evaluating a section 271 application, this Commission will re-examine all of this evidence and conduct a *de novo* review of rates. But, as the Commission and the courts have consistently held, that is simply not the Commission's role here.[50] In any event, the mere fact that AT&T and WorldCom submitted evidence that they claim shows the rates should be set at different levels is obviously entitled to no weight. See, e.g., Massachusetts Order ¶ 31.

Moreover, the only supposed evidence to which AT&T points is its bald assertion (at 7) that the average cost of loops has fallen since 1997 because "of a growth in the number of lines demanded by Virginia residents, and in part because telecommunications is a declining-cost industry." But this is nothing more than an attempt to argue that the existing rates should be revised, and both the Commission and the D.C. Circuit have repeatedly held that such claims are appropriately addressed in state ratemaking proceedings — not in the context of a section 271 proceeding. See, e.g.,

reasonably concluded that Missouri's rates passed the benchmark test, it did not need to consider any other evidence to confirm that those rates satisfied the section 271 checklist.").

[49] Cavalier's claim with respect to negotiations regarding the DSL loop rate also are without merit. See Woltz/Garzillo/Prosini Decl. ¶ 91; Woltz/Garzillo/Prosini Reply Decl. ¶ 56.

[50] See, e.g., 47 U.S.C. § 252(c)(2) (it is the "State commission" that "shall . . . establish . . . rates for interconnection, services, or network elements"); AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 383-84 (1999); AT&T, 220 F.3d at 615; New York Order ¶ 244.

Georgia/Louisiana Order ¶¶ 37, 49, 53; New York Order ¶¶ 248-249; Massachusetts Order ¶ 31; AT&T, 220 F.3d at 617; Woltz/Garzillo/Prosini Reply Decl. ¶ 6. In any event, the fact of the matter is that, for the past two and half years, Verizon's net access lines in Virginia have been *declining* due to competition from facilities-based CLECs, wireless carriers, cable modem service and other providers.[51] And while some costs in telecommunications tend to decline over time, others — such as labor, to cite just one example — tend to increase, while various material and other costs also either increase or remain the same. See Woltz/Garzillo/Prosini Reply Decl. ¶ 6. Indeed, AT&T admitted during the Virginia arbitration proceeding that many loop-related costs have increased. See id. In addition, Verizon's uncollectible rate, which is a component of all UNE costs, has increased dramatically in the last few years as a consequence of CLECs' financial difficulties. See id. ¶ 7.

All this goes to show that AT&T is not only wrong, but that it is inappropriate even to consider its claims given that the only way to evaluate them is to conduct a *de novo* rate review. AT&T's claim therefore highlights that the appropriate forum in which to address their claims is the pending arbitration proceeding.

Non-Recurring Rates. Verizon demonstrated in its Application that the SCC established rates for various non-recurring charges that it found comply with TELRIC principles. See Application at 50; Woltz/Garzillo/Prosini Decl. ¶ 72. Verizon also demonstrated that, for those non-recurring charges that were not addressed in the SCC's proceeding, Verizon charges the lower of: (1) either the rate adopted by the SCC for a

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[51] Compare, e.g., FCC, ARMIS Database, Report 43-08: Table III, available at http://www.fcc.gov/wcb/armis/db/ (3.8 million Verizon switched access lines in Virginia as of year-end 2000) with id. (3.6 million as of year-end 2001).

comparable activity or, if there is no comparable SCC rate, the corresponding rate set by the New York PSC, which the Commission has repeatedly found suitable for such purposes, or (2) the lowest rate that a CLEC was paying Verizon under the terms of an existing interconnection agreement in Virginia at the time Verizon established its rates. See Application at 54; Woltz/Garzillo/Prosini Decl. ¶¶ 34-36; Woltz/Garzillo/Prosini Reply Decl. ¶ 40. As Verizon explained, this approach is entirely consistent with the Commission's established precedent.

With respect to the non-recurring rates that were set by the SCC, Verizon explained in its Application that the SCC adhered to TELRIC principles. See Application at 50. The SCC adopted Verizon's non-recurring cost model as a starting point in establishing non-recurring rates, but required significant modifications. See Woltz/Garzillo/Prosini Decl. ¶ 72. For example, it required that the labor-time estimates in the non-recurring cost model be reduced; it prohibited Verizon from applying up-front charges to recover the costs for the eventual disconnection of a UNE; and it required Verizon to reduce its installation and coordinated cutover costs. See id.

As demonstrated below, the non-recurring rates that the SCC declined to set also are TELRIC compliant.

First, as Verizon explained in the Application, with respect to rate elements that are comparable to elements for which the SCC did establish rates, it was reasonable to adopt the rate for the comparable existing rate element established by the SCC. See Application at 54. Given that it is appropriate for one state to adopt the rates established in a different state under these circumstances, see Arkansas/Missouri Order ¶ 75, it is, *a fortiori*, also permissible to adopt the rates established in the *same* state. This approach also is permissible here because the rate elements at issue rely on the same types of inputs and activities as those used in the rate elements that the SCC established following an exhaustive TELRIC pricing proceeding. See Woltz/Garzillo/Prosini Decl. ¶ 35.

Second, with respect to the rates adopted from New York, the Commission has held that it is appropriate for one state to adopt the rates used in another state where the rates in both states use the "same types of inputs" and involve the same types of "activities." Arkansas/Missouri Order ¶ 75. That standard is easily met here. As no party disputes, the non-recurring activities performed in Virginia and New York are essentially the same, as are the frequency with which those activities are performed, and the adjustments that would have to be made to assess forward-looking costs. In addition, labor rates are developed consistently for the two states. See Application at 56; Woltz/Garzillo/Prosini Decl. ¶ 39; Woltz/Garzillo/Prosini Reply Decl. ¶ 42.

Moreover, the non-recurring rates in New York are clearly an appropriate benchmark because they were established through an aggressive application of TELRIC principles in a pricing proceeding that this Commission has previously endorsed as appropriate for use in determining whether rates fall within the broad TELRIC range. See Rhode Island Order ¶¶ 52-53 ("The New York Commission has demonstrated an admirable commitment to accurate, cost-based rate making" in a "proceeding that spanned two years, included nearly a dozen parties, and generated almost 5000 pages of transcript"). And while this Commission has not specifically reviewed all of the rates established by the New York commission, it has acknowledged that "New York is an appropriate benchmark state" for purposes of comparing various kinds of rates, *including non-recurring rates*, as well as both loop and non-loop rates. See Maine Order ¶ 33 (relying on New York rates as a benchmark for both loop and non-loop rates); Rhode Island Order ¶ 55 (relying on New York rates as a benchmark for both loop and non-loop rates).

As Verizon has explained in these prior proceedings, the non-recurring cost studies that the New York PSC adopted were developed over the course of several years during which the PSC stringently required Verizon to produce statistically reliable work-time estimates. See Woltz/Garzillo/Prosini Reply Decl. ¶ 44. Verizon initially filed non-recurring cost studies in New York in 1997, but the New York PSC rejected these studies as unreliable. See id. To address the PSC's concerns, Verizon developed a new non-recurring cost model and, among other things, provided a statistical analysis that verified Verizon's work times for performing various activities with which non-recurring costs were associated. See id. ¶ 45. At the end of this process, the Administrative Law Judge overseeing the New York TELRIC proceeding concluded that Verizon had "made a credible effort to produce a forward-looking study of its nonrecurring costs," and had resolved "any concerns about the statistical validity of the study" supporting its work-time estimates.[52] The New York PSC then adopted the ALJ's proposed non-recurring rates (with slight modifications), finding that he had adequately explained "the basis on which he found Verizon's current studies to be generally acceptable."[53]

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[52] Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Recommended Decision on Module 3 Issues by Administrative Law Judge Joel A. Linsider, Case 98-C-1357, at 186, 188 (N.Y. PSC May 16, 2001) (Reply App. B, Tab 13); see Woltz/Garzillo/Prosini Reply Decl. ¶ 46.

[53] Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Order on Unbundled Network Element Rates, Case 98-C-1357, at 141 (N.Y. PSC Jan. 28, 2002) (Reply App. B, Tab 14); see Woltz/Garzillo/Prosini Reply Decl. ¶ 47.

In light of all this, and given the weight that this Commission — and CLECs — have placed on the New York pricing proceeding in the past, it is entirely appropriate for the Commission to rely here on the non-recurring rates adopted from New York. And this is all the more true given the special circumstances that exist here. The New York rates were adopted only for the limited set of non-recurring rates that either the SCC had not previously set or that did not have an SCC-approved comparable rate element, and that currently are pending before this Commission. As with other rates, therefore, the Commission controls both the timing and substance of those new rates. And in the meantime, Verizon has adopted rates from the very state that CLECs have championed as adhering to their own view of TELRIC principles.

Only two CLECs — AT&T and Covad — raise any issue with respect to the non-recurring rates in Virginia, but their claims are entirely without merit. For its part, AT&T merely claims (at 9) that Verizon's proposal to reduce certain UNE rates that previously were set by the SCC — including various non-recurring rates — in the Virginia arbitration proceeding is an "eloquent admission" that the current rates are "indefensible." But as explained above, the Commission and the courts have repeatedly rejected precisely this argument. As the Commission recently explained, "the Supreme Court has found that 'TELRIC rates in practice' routinely experience 'lags in price adjustments' because the UNE rates adopted by state commissions typically remain effective for several years." <u>WorldCom Massachusetts Complaint Order</u> ¶ 23. In fact, in the <u>Georgia/Louisiana Order</u>, the Commission rejected claims that BellSouth's proposal of new rates in ongoing pricing proceedings that were lower than those on which its 271 application relied meant that its existing rates did not comply with TELRIC. See Georgia/Louisiana Order ¶ 96; see also AT&T, 220 F.3d at 617-18.

Covad's claims fare no better. As an initial matter, Covad argues (at 21) that the New York rates should not be used because those rates "have never been examined for TELRIC compliance by this Commission." But as explained above, this claim is misplaced. In addition, this very claim was squarely rejected by this Commission in its Arkansas/Missouri Order, where AT&T claimed that certain Texas rates could not be relied upon because they had not been litigated in the Texas 271 proceeding. This Commission flatly rejected that claim. See Arkansas/Missouri Order ¶¶ 67-68.

Nor is there merit to Covad's claim (at 21) that Verizon picked the New York rates because they "are among the highest in the Verizon territory." As described above, Verizon chose New York as the benchmark because it is the state that CLECs have repeatedly championed as the gold standard, and that this Commission has found "has demonstrated an admirable commitment to accurate, cost-based rate making." Rhode Island Order ¶ 52. And while some of the individual non-recurring rates in New York may be higher than those in other Verizon states, many of the New York rates are lower than in those other states. See Woltz/Garzillo/Prosini Reply Decl. ¶ 38 & Att. 2. Thus, even a straight comparison of the non-recurring rates in New York to those in other states — which the Commission is under no obligation to perform — does not come close to supporting Covad's claim.

In any event, the real reason for Covad's claim is readily apparent. The states that it asserts are appropriate for use in adopting non-recurring charges are those that have set a loop conditioning charge of zero. See Covad at 22 & n.20. As this Commission has expressly held, however, Verizon is entitled to recover the costs it incurs when it conditions loops at the request of CLECs.[54] As a result, loop conditioning rates of zero flatly violate this Commission's pricing rules. In any event, this makes painfully clear that Covad is really just trying to get something valuable for nothing.

Finally, Covad also is incorrect that Verizon has unilaterally imposed non-recurring charges that are higher than those contained in Covad's interconnection agreement with Verizon. See Covad at 20. This is the same claim that Covad made in the state proceeding, and which the Hearing Examiner rejected as both disingenuous and wrong. As the Hearing Examiner found, if Covad begins purchasing any of these elements, Verizon has committed to charge Covad the lower rate contained in its Agreement. See Hearing Examiner's Report at 90 ("During the hearing . . . counsel for Verizon acknowledged the existence of its Line Sharing Amendment with Covad and agreed to honor the prices contained therein. . . . Surprisingly, on brief, Covad argued the issue as if it had not received a commitment from Verizon Virginia to honor its agreement with Covad. Nonetheless, the representation from Verizon Virginia's counsel should end this issue."); Woltz/Garzillo/Prosini Decl. ¶ 87; Woltz/Garzillo/Prosini Reply Decl. ¶ 51.

[54] See, e.g., 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, ¶ 193 (1999) ("We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.") (footnote omitted).