

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition for Forbearance of the) CC Docket No. 01-338
Verizon Telephone Companies)
Pursuant to 47 U.S.C. § 160(c))

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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I. INTRODUCTION

Qwest Communications International Inc. (“Qwest”) hereby respectfully submits these comments in support of the Verizon Telephone Companies’ (“Verizon”) Petition for Forbearance¹ requesting the Federal Communications Commission (“Commission”), pursuant to section 10(c) of the Communications Act of 1934 (“Act”),² to forbear from applying an independent unbundling obligation pursuant to section 271 with respect to broadband network elements that no longer need to be unbundled pursuant to section 251. As demonstrated below, the establishment of an independent and ongoing unbundling obligation for broadband elements under section 271 is fundamentally inconsistent with the Act and relevant court decisions and will impose substantial and unjustifiable operating and financial burdens on the Bell Operating

¹ On July 29, 2002, Verizon filed a Petition for Forbearance Pursuant to 47 U.S.C. § 160(c), CC Docket No. 01-338 (“*Original Petition*”), requesting the Commission to forbear from applying items four, five, six and ten of the section 271 competitive checklist once the corresponding elements no longer need to be unbundled pursuant to section 251(d)(2). On October 24, 2003, Verizon filed an *ex parte* letter (“*Ex Parte Letter*”) withdrawing its request for forbearance with respect to any narrowband elements that no longer need to be unbundled pursuant to section 251. The Commission thereafter denied the *Original Petition* on the grounds that the *Ex Parte Letter* abandoned the core legal rationale underlying the *Original Petition*. The Commission also chose to treat the *Ex Parte Letter* as a new forbearance petition (“*Verizon Petition*”), for which the Commission established a comment cycle pursuant to a *Public Notice* released on October 27, 2003, FCC 03-263. This document sets out Qwest’s comments in support of the *Verizon Petition*.

² 47 U.S.C. § 160(c).

companies (“BOCs”).

The standards for the exercise by the Commission of its forbearance authority have clearly been met in this instance. Accordingly, the Commission should properly grant the relief requested in the *Verizon Petition* and forbear from imposing a stand-alone unbundling obligation for broadband elements pursuant to section 271 to the extent that the corresponding unbundling obligations under section 251 have been removed.

II. ESTABLISHING AN INDEPENDENT AND ONGOING UNBUNDLING OBLIGATION UNDER SECTION 271 WITH RESPECT TO BROADBAND ELEMENTS IS FUNDAMENTALLY INCONSISTENT WITH THE ACT AND RELEVANT COURT DECISIONS

In the *Triennial Review Order*,³ the Commission concluded that BOCs have an “independent and ongoing access obligation” under section 271(c)(2)(B) to provide unbundled access to checklist items 4 (local loop transmission), 5 (local transport), 6 (local switching) and 10 (databases and associated signaling) to the extent those elements are no longer subject to unbundling pursuant to section 251.⁴ In the broadband context, such an independent and ongoing unbundling obligation applies in particular to checklist items 4, 5 and 6. The establishment of such a stand-alone unbundling obligation, especially as it relates to broadband network elements, is clearly contrary to the purposes and provisions of the Act as well as recent court decisions that have limited the scope of unbundling obligations under the Act.

³ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket Nos. 01-338, 96-98 and 98-147, FCC 03-36, rel. Aug. 21, 2003 (“*Triennial Review Order*”).

⁴ *Id.* ¶¶ 652, 654.

A. An Independent and Ongoing Section 271 Unbundling Obligation Is Contrary to the Act’s Objective of Stimulating Facilities-Based Competition, Particularly in the Broadband Area

One of the central purposes of the Act is the promotion of facilities-based competition. This goal has been repeatedly acknowledged, not only by the courts,⁵ but also by the Commission itself. For example, the Commission has recognized that “in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition” because “only facilities-based competition can fully unleash competing providers’ abilities and incentives to innovate, both technologically and in service development, packaging, and pricing.”⁶ Similarly, the Commission has recognized that unbundling rules that “encourage competitors to deploy their own facilities . . . will provide incentives for both incumbents and competitors to invest and innovate, and will allow the Commission and the states to reduce regulation once effective facilities-based competition develops.”⁷ In the *Triennial Review Order* itself, the Commission stressed its awareness that “excessive network unbundling requirements

⁵ See, e.g., *Competitive Telecommunications Association v. Federal Communications Commission*, 309 F.3d 8, 16 (2002), where the Court of Appeals for the District of Columbia Circuit found that “the Supreme Court’s discussion of the incentive effects of TELRIC in *Verizon Communs., Inc. v. FCC* . . . would be meaningless if the Court had not understood the Act to manifest a preference for facilities-based competition[.]” and that the Supreme Court “obviously” accepted “the ILECs’ view that Congress preferred ‘facilities-based competition’ over ‘parasitic free-riding [.]’” (citation omitted).

⁶ *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98*, 14 FCC Rcd 12673, 12676-77 ¶ 4 (footnote omitted), 12685-86 ¶ 23 (1999).

⁷ *In the Matter of 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, 3701 ¶ 7 (footnote omitted) (1999) (“*UNE Remand Order*”).

tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”⁸

Creating an independent and ongoing unbundling obligation under section 271 with respect to network elements that are no longer subject to unbundling pursuant to section 251 -- because competitive local exchange carriers (“CLECs”) are not impaired without unbundled access to such elements -- is clearly at odds with the well-founded policy described above. In particular, a stand-alone unbundling obligation under section 271 will lead to more unbundling over a much longer period,⁹ thereby discouraging the development of effective facilities-based competition. The availability of network elements on an unbundled basis pursuant to section 271 will have a particularly deleterious effect where there has been a formal finding of non-impairment under section 251, which would indicate that conditions are ripe for facilities-based competition. Moreover, making unbundled network elements available under section 271, potentially indefinitely, will only serve to further reduce the economic and operational incentives for CLECs to make serious investments in their own facilities. Accordingly, the Commission’s decision is bound to achieve exactly the opposite of the Act’s objective of promoting facilities-based competition.

With respect to broadband network elements, as correctly noted in the *Verizon Petition*, the Commission’s section 271 unbundling decision will frustrate the fulfillment of section 706(a) of the Act, which requires the Commission to “encourage the deployment . . . of advanced telecommunications capability to all Americans.” Section 706(a) explicitly encourages the Commission to use all means consistent with the public interest, including “regulatory

⁸ *Triennial Review Order* ¶ 3.

forbearance,” to “promote competition in the local telecommunications market” and “remove barriers to infrastructure investment.” In the *Triennial Review Order*, the Commission acknowledged that section 706 requires the Commission to “craft unbundling rules that provide the right incentives for all carriers, including [incumbent local exchange carriers (“ILECs”)], to invest in broadband facilities.”¹⁰

In the *Triennial Review Order* the Commission recognized the correlation between unbundling requirements and broadband investment incentives, stating that “[t]he effect of unbundling on investment incentives is particularly critical in the area of broadband deployment, since incumbent LECs are unlikely to make the enormous investment required if their competitors can share in the benefits of these facilities without participating in the risk inherent in such large scale capital investment.”¹¹ Bearing this in mind, the Commission purported to “eliminate most unbundling requirements for broadband, making it easier for companies to invest in new equipment and deploy the high-speed services that consumers desire.”¹²

The Commission’s decision to impose unbundling of network elements pursuant to

⁹ While the *Triennial Review Order* refers to an “ongoing” obligation, it provides no guidance as to when and how such obligation could be lifted, suggesting that unbundling could in principle be required in perpetuity.

¹⁰ *Triennial Review Order* ¶ 213. See also, *id.* ¶ 198 (recognizing the Commission’s “mandate . . . to promote the rapid deployment of advanced services throughout the nation[.]”); ¶ 177 (acknowledging that section 706 reflects Congressional intent of factors to be taken into account in making unbundling decisions); and ¶ 288 (stating that unbundling decisions that “would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities” would be “in direct opposition to the express statutory goals authorized in section 706[.]”).

¹¹ *Id.* ¶ 3.

¹² *Id.* ¶ 4. The Commission thus generally declined to require unbundling of fiber-based local loops on the grounds that doing so would not only “promote investment in, and deployment of, next-generation networks[.]” but also motivate CLECs “to continue to seek innovative network access options to serve end users and to fully compete against incumbent LECs in the mass market.” *Id.* ¶ 272.

section 271, even after such elements are no longer required to be unbundled pursuant to section 251, is entirely inconsistent with the above-described policy statements. Such a decision dramatically broadens, rather than narrows, the scope of BOC unbundling obligations, with no end-point in sight. As such, the independent section 271 unbundling obligation will serve to create profound disincentives, for both BOCs and CLECs, to make investments in facilities for advanced telecommunications services. BOCs will have a diminished motivation to make broadband investments due to a well-founded concern that CLECs will be able to access such network elements on highly-favorable terms, allowing them to enjoy substantially all the benefits of the BOCs' broadband investments without assuming any portion of the financial and operational risks taken on by the BOCs in making such investments. For their part, CLECs will have little incentive to invest in their own next generation infrastructure if they know they can lease all needed broadband elements from the BOCs -- potentially indefinitely -- on advantageous conditions. Such a situation would give rise to precisely the sort of "parasitic free-riding" that Congress sought to avoid in adopting the Act¹³ and would impede the deployment of reasonably priced next generation services, thereby harming consumers.

B. Relevant Court Decisions Have Consistently Sought to Limit, Not Expand, the Scope of the ILEC Unbundling Obligation

In the first 400 pages of the *Triennial Review Order*, the Commission adopted and applied a detailed, multi-factored test for each category and variation of network element to determine when ILECs are required to provide unbundled access to such elements pursuant to section 251.¹⁴ Then, based on ten pages of perfunctory analysis (none of which was focused on

¹³ *Verizon Communications v. FCC*, 535 U.S. 467, 504 (2002).

¹⁴ In its section 251 analysis, the Commission required differing degrees of unbundling depending on the capacity of the network element, the services that are to be provided over the

broadband elements), the Commission in large measure undid its section 251 impairment analysis by concluding that the BOCs are subject to a vague, undefined independent unbundling obligation under section 271. By deciding that an element must be indefinitely unbundled under section 271, even after a CLEC is no longer deemed impaired without access to such element pursuant to section 251, the Commission has dramatically broadened the scope of the BOCs' unbundling obligations. This is a result that is at odds with recent court decisions, which have consistently sought to *limit* the scope of ILEC unbundling obligations to clearly defined circumstances.

The Supreme Court has unambiguously stated that in making unbundling decisions, the Commission must “apply *some* limiting standard, rationally related to the goals of the Act[.]”¹⁵ The Commission’s section 271 unbundling decision -- to which no limiting standard was applied and which, as explained above, is directly contrary to the goals of the Act -- is clearly at odds with the Supreme Court’s admonition in *Iowa Utilities Board*.

The need to narrow, not broaden, the scope of ILEC unbundling obligations is also stressed in *USTA v. FCC*.¹⁶ In that case, the D.C. Circuit firmly rejected the notion that “more unbundling is better[.]” stating that “Congress did not authorize so open-ended a judgment.”¹⁷ The court in *USTA* also held that in the absence of genuine impairment, the Commission must “point to something a bit more concrete than its belief in the beneficence of the widest unbundling possible.”¹⁸ Warning against the “synthetic competition” that would result from

element, and the customers to be served. No similar analysis was undertaken with respect to the independent section 271 unbundling obligation.

¹⁵ *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 388 (emphasis in original) (1999).

¹⁶ *USTA v. FCC*, 290 F.3d 415 (2002).

¹⁷ *Id.* at 425.

¹⁸ *Id.*

over-reliance on unbundling the court also held:

[M]andatory unbundling comes at a cost, including disincentives to research and development by both ILECs and CLECs and the tangled management inherent in shared use of a common resource. *Iowa Utilities Board*, 525 U.S. at 428-29. And, as we said before, the Court's opinion in *Iowa Utilities Board* ... plainly recognized that ***unbundling is not an unqualified good*** In sum, nothing in the Act appears a license to the Commission to inflict on the economy the sort of costs [noted in Justice Breyer's separate opinion in *Iowa Utilities Board*] under conditions where it had no reason to think doing so would bring on a significant enhancement of competition."¹⁹

While the *Iowa Utilities Board* and *USTA* cases dealt with the ILECs' unbundling obligations under section 251, the courts' cogently expressed concerns regarding the pernicious effects of excessive unbundling apply with equal force in the section 271 context. In either case, mandatory unbundling will result in "disincentives to research and development" and the "tangled management inherent in shared use of a common resource," leading to the "synthetic competition" condemned by the court in *USTA*.²⁰ Moreover, it would make absolutely no sense for Congress to place strict limits on the ability to impose unbundling pursuant to one provision of the Act (section 251), while including another unbundling provision (section 271) that effectively sets no limitations at all.

The scope of the section 251 and section 271 unbundling obligations is in most ways practically identical. The only real difference between section 251 unbundling and section 271 unbundling is that the former must be provided at TELRIC prices while the latter must be "priced on a just, reasonable and not unreasonably discriminatory basis -- the standards set forth in sections 201 and 202."²¹ In fact, the exact level of pricing to be applied to network elements unbundled pursuant to section 271 is the subject of considerable uncertainty, with parties already

¹⁹ *Id.* at 429 (emphasis added).

²⁰ *Id.*

²¹ *Triennial Review Order* ¶ 656 (citation omitted).

claiming that state commissions have the authority to oversee the pricing process.²² While the Commission has stated that it, not the state commissions, has oversight over the rates for these elements,²³ the CLECs are likely to receive a receptive audience to their arguments on the pricing issue in some states. There is therefore a real danger that the price for section 271 unbundled network elements will be driven down to TELRIC-like levels, in which case any real difference between the two types of unbundling obligation will narrow or disappear entirely.

For these reasons, the Commission's decision regarding the scope of the section 271 unbundling requirement should adhere to the courts' insistence that *all* unbundling decisions must be tied to some rational showing of impairment. In the *Triennial Review Order*, the Commission did not even *attempt* to undertake such an analysis in the section 271 context. In addition, in establishing an independent and ongoing unbundling obligation under section 271, the Commission failed to make any showing that its decision would "bring on a significant enhancement of competition," as required by *USTA*. Moreover, the need to undertake the analysis prescribed by the courts is especially urgent in the broadband area, given the importance of next generation networks to the future of the country's future economic development and the massive capital investments required to realize the broadband vision.

C. The Act Clearly Contemplates Removal of the Section 271 Unbundling Obligation Once the Corresponding Section 251 Unbundling Obligation Has Been Removed

The Commission has previously acknowledged the clear-cut link between the unbundling obligations arising under sections 251 and 271. In the *UNE Remand Order*, the Commission recognized that "there is a common purpose between sections 251 and 271 of the Act of opening the incumbents' monopoly local exchange networks to competition[.]" and that "Congress

²² *See infra* at 13.

intended section 251(c)(3) of the Act and the competitive checklist to contain similar, if not identical, obligations.”²⁴ Given the Commission’s reasoning, if an ILEC network element has been opened to competition for purposes of section 251, then logically the “common purpose” reflected in the section 271 unbundling requirement should also be deemed satisfied with respect to that element. Furthermore, even if the unbundling obligations under sections 251 and 271 are “not identical,” surely they cannot be interpreted to be so entirely dissimilar that one can remain in effect, potentially in perpetuity, even after the other has been eliminated based on a finding of non-impairment. Accordingly, once an element no longer meets the section 251(d)(2) standard, the purpose underlying the corresponding checklist item (namely opening the market to competition) should be deemed to have been fully achieved. In that regard, the Commission has in practice treated the section 271 checklist unbundling obligations as coextensive with those contained in section 251.²⁵

In reaching its decision to establish a stand-alone unbundling obligation under section 271, the Commission misinterprets the plain meaning of section 271(c)(2)(B). The Commission claims: (A) that checklist item 2 (which covers all network elements that must be unbundled pursuant to sections 251(c)(3) and 251(d)(2)) is duplicative of items 4, 5, 6 and 10; (B) that had Congress wished to make items 4, 5, 6 and 10 subject to section 251, it would have explicitly

²³ *Triennial Review Order* ¶ 664.

²⁴ *UNE Remand Order*, 15 FCC Rcd at 3748 ¶ 109. The Commission’s statements in the *UNE Remand Order* regarding the “common purpose” of sections 251 and 271 and the “similar, if not identical, obligations” arising under those two sections is wholly inconsistent with the Commission’s finding in the *Triennial Review Order* that “it is reasonable to interpret section 251 and 271 as operating independently.” *Triennial Review Order* ¶ 655.

²⁵ *See*, Petition of BellSouth Corporation for Clarification and/or Partial Reconsideration, CC Docket Nos. 01-338, *et al.* filed Oct. 2, 2003 at 13.

done so as it did with checklist item 2; and (C) that to conclude otherwise would render items 4, 5, 6, and 10 “entirely redundant.”²⁶

In fact, the meaning of the statute is clear and entirely consistent with the relief sought in the *Verizon Petition*. Section 271(c)(2)(B) is worded as it is because it contemplated a situation where a network element (for example, switching) came off the section 251 list of unbundled elements *before* a BOC applied for in-region interLATA service authorization pursuant to section 271. In this situation, the BOC would have an obligation (at least until it received its section 271 authorization) to continue to provide unbundled access to circuit switching pursuant to section 271(c)(2)(B)(vi), even if there were no corresponding unbundling obligation under section 251. In addition, the inclusion of items 4, 5, 6 and 10 ensured that, before approving an application under section 271, the Commission specifically confirmed that a BOC applicant was in fact providing unbundled access to loops, switching, transport and databases.

The Commission’s reading of the statute is illogical -- among other things, it would keep alive a BOC’s unbundling obligation with respect to items 4, 5, 6 and 10 in perpetuity, no matter how competitive the telecommunications market becomes. Moreover, in the situation where a BOC has obtained in-region interLATA service authorization, there is no reason to keep any of the unbundling obligations in checklist items 4, 5, 6 and 10 in effect once the corresponding section 251 obligations have been eliminated.

The Commission also distinguishes between sections 251 and 271 on the grounds that the former applies to ILECs and the latter to BOCs.²⁷ In fact, this distinction highlights how irrational it would be to remove unbundling obligations for ILECs under section 251, yet keep

²⁶ *Triennial Review Order* ¶ 654.

²⁷ *Id.* ¶ 655.

unbundling obligations in effect for the identical network elements under section 271 for the BOCs, which cover some 80% of all local access lines.

The Commission's section 271 unbundling decision is a resounding endorsement of the "more unbundling is better" principle that was specifically rejected by the court in *USTA*. The practical effect of this decision will be to render the section 251 impairment analysis largely superfluous. The pernicious effects arising from this decision will only be heightened in view of the high probability that CLECs and state commissions will attempt to drive down section 271 unbundled element prices to TELRIC-like levels²⁸ and to combine or commingle section 271 elements with other section 271 elements and elements unbundled pursuant to section 251. Such a result would essentially lead to the continuation of UNE-P, despite a finding of non-impairment in the nine-month mass market switching proceedings. While the Commission clearly did not intend this result, the CLECs will undoubtedly attempt to game the system and seek unilateral advantage through the state regulatory process, resulting in time consuming and expensive litigation and ongoing regulatory uncertainty. Moreover, continuing litigation and uncertainty is also likely to result from the completely undefined scope of the independent section 271 unbundling obligation.

III. **ESTABLISHING AN INDEPENDENT AND ONGOING UNBUNDLING OBLIGATION UNDER SECTION 271 WITH RESPECT TO BROADBAND ELEMENTS WILL IMPOSE SUBSTANTIAL AND UNJUSTIFIABLE OPERATING AND FINANCIAL BURDENS ON THE BOCs**

Qwest fully agrees with Verizon's detailed and well-reasoned analysis of the operating and financial burdens that will arise as a result of the imposition of an independent and ongoing

²⁸ See, *Verizon Petition* at 12, quoting NARUC as stating that "CLECs say states do have a role" in "setting prices under §§ 201 and 202 for UNEs required under section 271."

section 271 unbundling obligation.²⁹ If an independent section 271 unbundling obligation is imposed, Qwest will suffer precisely the same problems identified by Verizon with respect to network redesign requirements; the development and deployment of new systems to support the required unbundling; and the cost and effort required to implement network, operations and systems modifications to conform to the unbundling obligation as it evolves over time.

The serious difficulties identified by Verizon, which as described above are entirely unjustified, will only serve to exacerbate the deleterious effects of the section 271 unbundling requirement.

IV. THE CONDITIONS FOR FORBEARANCE HAVE CLEARLY BEEN SATISFIED

Section 10(a) of the Act specifies that the Commission “shall” exercise its forbearance authority if the three conditions set out in section 10(a) are satisfied. As described below, the *Verizon Petition* clearly demonstrates that each condition set out in section 10(a) has been met.

A. An Independent Section 271 Unbundling Obligation Is Not Necessary to Ensure That the Relevant Charges, Practices, Classifications, or Regulations Are Just and Reasonable and Are Not Unjustly or Unreasonably Discriminatory

The establishment of an independent and ongoing unbundling obligation under section 271 is not necessary to ensure that the relevant charges, practices, classifications or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.³⁰ As discussed above, establishment of an independent unbundling obligation pursuant to section 271, far from being “necessary” to ensure just and reasonable practices, will actually result in practices that are unjust and unreasonable, in that they will impose an ongoing unbundling obligation without any showing of impairment or competitive benefit deriving from the decision. Moreover, forbearance will in fact ensure just and reasonable rates. Once a network element no longer

²⁹ *Verizon Petition* at 9-11.

needs to be unbundled pursuant to section 251, CLECs are by definition no longer impaired without access to such element. As a result, the market for such element will therefore be competitive, which will ensure that the rates and practices relating to that element are just and reasonable. Lastly, it should be noted that the independent section 271 unbundling decision is discriminatory with respect to broadband elements, in that cable companies, which dominate the broadband sector, providing some 57% of all high-speed connections,³¹ are under no obligation to unbundle any of their network elements.

B. An Independent Section 271 Unbundling Obligation Is Not Necessary for the Protection of Consumers

The establishment of an independent and ongoing unbundling obligation under section 271 is not necessary for the protection of consumers.³² On the contrary, this decision will cause substantial harm to consumers as a result of the lowered broadband infrastructure investment by ILECs and CLECs alike. This in turn will lead to slower deployment of next generation networks, less consumer choice and higher prices for advanced services. The Commission itself has stressed that “consumers will benefit from [the] race to build next generation networks and the increased competition in the delivery of broadband services.”³³ Because the Commission’s section 271 unbundling decision will impede, rather than accelerate, the rollout of next generation networks, that decision will in fact achieve precisely the opposite of the Commission’s stated objectives with respect to consumer benefits.

³⁰ 47 U.S.C. § 10(a)(1).

³¹ FCC Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2002* (June 2003), Table 1.

³² 47 U.S.C. § 10(a)(2).

³³ *Triennial Review Order* ¶ 272.

C. The Requested Forbearance Is Consistent With the Public Interest

The requested forbearance is consistent with the public interest.³⁴ Forbearance is unquestionably in the public interest, as it will motivate both ILECs and CLECs to accelerate their deployment of advanced services and promote the development of facilities-based competition. Indeed, as pointed out above, section 706(a) specifically *requires* the Commission to utilize “regulatory forbearance” to encourage the deployment of advanced telecommunications services. Forbearance will also help achieve Congress’ intention of implementing the Act in a manner that is “pro-competition” rather than “pro-competitor.”³⁵

D. The Requirements of Section 271 have been Fully Implemented

Section 10(d) provides that “the Commission may not forbear from applying the requirements of section . . . 271 . . . until it determines that those requirements have been fully implemented.” As shown below, section 271 has in fact been “fully implemented.”

The “requirements” in question are those set out in the section 271 competitive checklist, specifically items 4, 5 and 6. Pursuant to section 271(d)(3)A(i), the Commission may grant 271 authorization only if it has expressly determined that the BOC in question has “fully implemented the competitive checklist[.]” As pointed out in the *Verizon Petition*, the Commission has granted 271 authorizations -- and *ipso facto* found that the section 271 checklist has been “fully implemented” -- in 49 states, with approval in the last state (Arizona) expected in

³⁴ 47 U.S.C. § 10(a)(3).

³⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 FCC Rcd 15499, 15812 ¶ 618 (1996).

the near future.³⁶ Verizon correctly notes that the “normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning[.]”³⁷ applies here, especially since one statutory provision (section 10(d)) explicitly cross-references the other (section 271). Hence, the requirements of section 271 should be deemed “fully implemented” for purposes of section 10(d).

V. CONCLUSION

For reasons set forth above, the Commission should properly grant the relief requested in the *Verizon Petition*.

Respectfully submitted,

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November 17, 2003

³⁶ On September 4, 2003, Qwest filed an application with the Commission for authority to provide long-distance service in Arizona (WC Docket No. 03-194). On October 9, 2003, the Department of Justice recommended that the Commission approve Qwest’s application.

³⁷ *Commissioner v. Lundy*, 516 U.S. 235, 250 (1996) (citations omitted).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served via e-mail on the FCC's duplicating contractor Qualex International, Inc., 3) served via e-mail on Ms. Janice M. Myles of the Wireline Competition Bureau, and 4) served via First Class United States mail, postage prepaid on the party listed on the attached service list.

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