

FCC MAIL SECTION

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

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In the matter of )  
)  
Application of Verizon New England Inc., Bell )  
Atlantic Communications, Inc. (d/b/a Verizon ) CC Docket No. 01-9  
Long Distance), NYNEX Long Distance )  
Company (d/b/a Verizon Enterprise Solutions) )  
And Verizon Global Networks Inc., for )  
Authorization to Provide In-Region, )  
InterLATA Services in Massachusetts )

ORDER ON REMAND

Adopted: February 20, 2004

Released: February 20, 2004

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On April 16, 2001, the Commission released an order granting Verizon's application for authority under section 271 of the Communications Act, as amended, to provide in-region, interLATA services in the state of Massachusetts.<sup>1</sup> On October 22, 2002, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded part of this order to the Commission.<sup>2</sup> Specifically, the court asked the Commission to consider the relevance of price squeeze allegations in Massachusetts, in light of a prior opinion regarding a section 271 application for the states of Kansas and Oklahoma in which the D.C. Circuit found that the Commission must consider whether price squeeze evidence implicates the section 271 public interest requirement.<sup>3</sup> In response to the Kansas/Oklahoma remand, the Commission established a framework for analyzing allegations of a price squeeze in the context of a section 271 application.<sup>4</sup> As explained below, based on the evidence underlying the *Verizon Massachusetts 271 Order*, AT&T and WorldCom (appellants) have failed to establish a *prima facie* case of

<sup>1</sup> *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) (*Verizon Massachusetts 271 Order*), *aff'd in part, dismissed in part, remanded in part sub nom. WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002). The application was filed by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a/ Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. (collectively Verizon).

<sup>2</sup> *WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002) (*WorldCom v. FCC*).

<sup>3</sup> *Id.* at 9-10 (citing *Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*)).

<sup>4</sup> *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Order on Remand, 18 FCC Rcd 24474 (2003) (*Kansas/Oklahoma Remand Order*).

price squeeze or that Verizon did not satisfy the section 271 public interest requirement for the state of Massachusetts.

## II. BACKGROUND

### A. Statutory Analysis

2. In the Telecommunications Act of 1996,<sup>5</sup> Congress conditioned provision of in-region, interLATA service by a Bell Operating Company (BOC) on the Commission's finding that a BOC had complied with certain statutory requirements.<sup>6</sup> One such requirement is that a BOC must provide "nondiscriminatory access to network elements" on an unbundled basis "at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."<sup>7</sup> The statute further requires that a state commission's determination of the just and reasonable rates for unbundled network elements (UNEs) shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.<sup>8</sup> The statute also requires the Commission to conduct a separate public interest analysis.<sup>9</sup> The public interest requirement is an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that local exchange markets be open, and that entry into the long distance market will therefore serve the public interest as Congress expected.<sup>10</sup>

### B. The Verizon Massachusetts 271 Proceeding

3. Verizon filed its initial application for section 271 authority for the state of Massachusetts (the Massachusetts I Application) on September 22, 2000,<sup>11</sup> but later withdrew

<sup>5</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (*1996 Act or Act*).

<sup>6</sup> To obtain such authorization, a BOC must show: (1) that it satisfies the requirements of either section 271(c)(1)(A), known as "Track A," or section 271(c)(1)(B), known as "Track B"; (2) that it has "fully implemented the competitive checklist" or, alternatively, that the statement of terms and conditions that the company offers to provide access and interconnection and is approved by the state under section 252 satisfies the competitive checklist contained in section 271(c)(2)(B); (3) that the requested authorization will be carried out in accordance with the requirements of section 272; and (4) that the BOC's entry into the in-region, interLATA market is "consistent with the public interest, convenience, and necessity." The statute specifies that, unless the Commission finds that these four criteria have been satisfied, the Commission "shall not approve" the requested authorization. 47 U.S.C. § 271. See also *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413, 416 (D.C. Cir. 1998).

<sup>7</sup> 47 U.S.C. §§ 271(c)(2)(B)(ii) and 251(c)(3).

<sup>8</sup> *Id.* § 252(d)(1). Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-46, paras. 674-79 (1996); 47 C.F.R. §§ 51.501 *et seq.* A UNE-Platform, or unbundled network element platform, consists of a 2-wire analog loop, an analog switch port, an analog loop-to-switch port cross-connect, and transport.

<sup>9</sup> See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4161-62, para. 423 (1999).

<sup>10</sup> *Id.* at 4161-62, paras. 423-24. At the same time, Congress explicitly prohibited the Commission from enlarging the scope of the competitive checklist. "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." 47 U.S.C. § 271(d)(4).

<sup>11</sup> Application by Verizon New England for Authorization to Provide In-Region, InterLATA Services in (continued...)

it.<sup>12</sup> Verizon filed another application for Massachusetts (the Massachusetts II Application) on January 16, 2001.<sup>13</sup> The Massachusetts II Application incorporated by reference the supporting documentation on UNE and interconnection pricing from the Massachusetts I Application.<sup>14</sup> Commenters likewise incorporated by reference some of their comments on the Massachusetts I Application in the Massachusetts II proceeding. The Commission approved the Massachusetts II Application on April 16, 2001.<sup>15</sup>

4. In the course of the section 271 proceeding, AT&T and WorldCom asserted that Verizon's rates in Massachusetts for the UNE-Platform precluded competitive entry.<sup>16</sup> WorldCom argued that these rates caused a "price squeeze," that is, the rates for the competitors' recurring inputs are so high that they do not provide a "gross margin" of profit that is economically viable.<sup>17</sup> AT&T likewise contended that the prevailing UNE rates did not allow it to make a profit, precluding entry.<sup>18</sup> WorldCom and AT&T also argued that the lack of UNE-Platform competition in Massachusetts served as proof that Verizon's high rates precluded profitable competitive entry, in violation of section 271's separate public interest requirement.<sup>19</sup> The Department of Justice did not address the commenters' price squeeze allegations in its section 271 comments. The Massachusetts Department of Telecommunications and Energy (Massachusetts DTE), relying on a prior Commission order, stated that a profit margin analysis was not relevant to determining compliance with the checklist, and it did not address the issue of profitability with respect to a public interest analysis.<sup>20</sup>

5. The Commission declined to consider commenters' price squeeze allegations in the *Verizon Massachusetts 271 Order*.<sup>21</sup> The Commission stated that incumbent LECs are not

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Massachusetts, CC Docket No. 00-176 (filed September 22, 2000) (Massachusetts I Application).

<sup>12</sup> See Letter from Michael E. Glover, Senior Vice President and Deputy General Counsel, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-176 (filed Dec. 18, 2000).

<sup>13</sup> Supplemental Filing of Verizon New England, CC Docket No. 01-9 (filed Jan. 16, 2001) (Massachusetts II Application).

<sup>14</sup> See Letter from Michael E. Glover, Senior Vice President and Deputy General Counsel, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed Jan. 16, 2001).

<sup>15</sup> See *Verizon Massachusetts 271 Order*.

<sup>16</sup> AT&T Massachusetts II Comments at 12-14, 26-29; WorldCom Massachusetts II Comments at 6-7, 23, 35-36.

<sup>17</sup> WorldCom Massachusetts II Comments at 23.

<sup>18</sup> AT&T Massachusetts II Comments at 12-13.

<sup>19</sup> *Id.* at 26-28; WorldCom Massachusetts II Comments at 35.

<sup>20</sup> Massachusetts DTE Massachusetts II Comments at 21-22 (citing *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6276, paras. 81-82 (2001) (*SWBT Kansas/Oklahoma 271 Order*)). The Massachusetts Attorney General, however, argued that Verizon's rates create a barrier to entry in the Massachusetts residential market. Massachusetts Attorney General Massachusetts II Comments at 2 (incorporating into the record its Massachusetts I Comments and Reply), and Massachusetts Attorney General Massachusetts II Reply at 3-4 n.7.

<sup>21</sup> *Verizon Massachusetts 271 Order*, 16 FCC Rcd at 9008-09, paras. 41-42.

required to guarantee competitors a certain profit margin.<sup>22</sup> It also stated that if it were to focus on competitors' profitability it would have to consider the level of a state's retail rates, which are outside the scope of the Commission's jurisdiction.<sup>23</sup> The Commission further noted that it was hesitant to undertake a profitability analysis because that would require projections of penetration rates for various services and minutes of use.<sup>24</sup> The Commission also declined to consider allegations of insufficient profit margins in the context of the public interest requirement.<sup>25</sup> Several parties appealed the *Verizon Massachusetts 271 Order*, challenging various aspects of the Commission's UNE rate findings, including its finding that a price squeeze analysis was not required under either the UNE pricing rules or the public interest determination.<sup>26</sup>

6. While the appeal of the *Verizon Massachusetts 271 Order* was pending, the D.C. Circuit ruled on an appeal of a separate Commission order approving the section 271 application of SBC Communications to provide in-region long distance service in Kansas and Oklahoma, a proceeding in which the appellants had also made price squeeze arguments.<sup>27</sup> In *Sprint v. FCC*, the court reviewed the Commission's reasoning that profitability considerations were irrelevant under the statute, and concluded that the relevant issue is not profitability, but whether the UNE pricing in question "doom[s] competitors to failure."<sup>28</sup> The court noted that, even if the Commission had approved rates as being within a range that a reasonable application of TELRIC principles would produce, it might have approved rates that were at "too high a point within the [TELRIC] band"<sup>29</sup> to allow competitive providers to compete. The court agreed with the Commission that factors beyond a BOC's control, such as a competitor's specific market strategy, might keep the competitor out of the residential market, but it held that this was not an adequate basis for declining to consider appellants' evidence that UNE rates precluded competitive entry.<sup>30</sup> The court found that the Commission may not refuse to consider allegations of a price squeeze merely because it does not have jurisdiction to set retail rates.<sup>31</sup> It concluded that the Commission had offered an inadequate justification for why evidence of a price squeeze precluding profitable competition from new entrants was irrelevant to its public interest analysis, and remanded the case for reconsideration of that issue.<sup>32</sup>

7. While the remand of *Sprint v. FCC* was pending at the Commission, the D.C. Circuit ruled on the appeal of the *Verizon Massachusetts 271 Order*. The court affirmed the order in most respects, but found, as it had in *Sprint v. FCC*, that the Commission had not adequately

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<sup>22</sup> *Id.* at 9008, para. 41.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 9008, para. 41, n.110.

<sup>25</sup> *Id.* at 9118-25, paras. 232-49.

<sup>26</sup> See *WorldCom v. FCC*, 308 F.3d at 9-10.

<sup>27</sup> See *Sprint v. FCC*. See also *SWBT Kansas/Oklahoma 271 Order*.

<sup>28</sup> *Sprint v. FCC*, 274 F.3d at 554.

<sup>29</sup> *Id.* at 554-55.

<sup>30</sup> *Id.* at 555.

<sup>31</sup> *Id.* at 554-55.

<sup>32</sup> *Id.* at 555.

justified its decision not to consider the price squeeze arguments as part of its public interest analysis.<sup>33</sup> The court remanded for further consideration the relevance of a price squeeze analysis to section 271's public interest analysis in light of its recent decision in *Sprint v. FCC*.<sup>34</sup> The court noted that the only apparent difference between the *Verizon Massachusetts 271 Order* and the *Kansas/Oklahoma Order* remanded in *Sprint v. FCC* was that the record in the *Massachusetts 271* proceeding indicated a higher volume of competitive entry.<sup>35</sup>

8. On remand from *Sprint v. FCC*, the Commission concluded that allegations of a price squeeze are relevant to an evaluation of whether an applicant has met the section 271 public interest requirement.<sup>36</sup> The Commission explained that a demonstration that a price squeeze dooms competitors to failure in an applicant state may warrant a finding that the grant of the application is not in the public interest, but a mere demonstration that a price squeeze exists in some limited subset of the statewide telecommunications market, without more, does not necessarily show a failure to meet the public interest requirement.<sup>37</sup> The Commission found that the existence of a limited price squeeze is one factor that must be considered when assessing whether approval of a section 271 application for a particular state would serve the public interest, along with all other relevant public interest factors.<sup>38</sup> Based on those conclusions and the underlying evidence, the Commission found that the appellants did not establish a *prima facie* case of a price squeeze, and did not establish that SWBT failed to meet the public interest requirement for the states of Kansas and Oklahoma.<sup>39</sup>

9. The question now before us is whether appellants demonstrated that Verizon failed to meet the public interest requirement of section 271(d)(C)(3), applying the standard adopted in the *Kansas/Oklahoma Remand Order*. As explained below, an analysis of the evidence underlying the *Massachusetts 271 Order* reflects that the appellants did not establish a price squeeze and did not establish that Verizon failed to meet the public interest requirement for the state of Massachusetts.

### III. DISCUSSION

10. AT&T and WorldCom contend that the evidence of a price squeeze submitted in the *Verizon Massachusetts 271* proceeding demonstrates a violation of the section 271 public interest requirement. As set forth in the *Kansas/Oklahoma Remand Order*, our analysis of such allegations is two-pronged. First, we must determine whether the appellants have established that a price squeeze exists in some segment of the *Massachusetts* telecommunications market. In general, a price squeeze occurs when a "wholesale supplier, who also sells at retail, charges such high rates to its wholesale customers that they cannot compete with the supplier's retail rates."<sup>40</sup>

<sup>33</sup> *WorldCom v. FCC*, 308 F.3d at 9-10.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.*

<sup>36</sup> *Kansas/Oklahoma Remand Order*.

<sup>37</sup> *Id.* at 24479, para. 12.

<sup>38</sup> *Id.* at 24479-80, paras. 12-13.

<sup>39</sup> *Id.* at 24481-83, paras. 18-20.

<sup>40</sup> *Id.* at 24477, para. 7 (citing *Ellwood City v. FERC*, 731 F.2d at 959, n.15 (D.C. Circuit 1984) (internal citations omitted)).

A key issue in this analysis is whether the relationship between wholesale and retail rates is responsible for the price squeeze.<sup>41</sup> If a price squeeze is established, we will then consider whether such price squeeze demonstrates a violation of the public interest requirement.

11. In the *Kansas/Oklahoma Remand Order*, the Commission explained that evidence of a price squeeze may be probative of whether the public interest requirement has been met. The Commission found that, where the margin between UNE rates and retail rates precludes efficient competitors from entering a market, competitors that rely solely on UNEs will be doomed to failure in that market.<sup>42</sup> The Commission also found, however, that whether such a showing demonstrates a failure to meet the section 271 public interest requirement depends on the competitive characteristics of the state telecommunications market across all zones and modes of entry.<sup>43</sup> In conducting such an analysis, we must consider evidence of a price squeeze along with evidence of how much the alleged price squeeze affects competition state-wide and the state of or potential for competition by other modes of entry, including facilities-based entry and resale.<sup>44</sup> Thus, the competitive significance state-wide of any demonstrated price squeeze must be taken into account, along with other factors, in determining whether such price squeeze amounts to a violation of the public interest requirement.<sup>45</sup> Parties alleging a public interest violation bear a significant burden in filing a thorough and well-supported analysis of the state of competition in the applicant state.<sup>46</sup>

12. As discussed above, AT&T and WorldCom assert that evidence of a minimal statewide average margin between the costs associated with providing service utilizing the UNE-Platform and the revenues available from potential customers is sufficient to demonstrate that a price squeeze exists in the Massachusetts residential markets. They each provided somewhat different profit margin analyses to support their contention that UNE prices preclude profitable entry. The UNE rate for unbundled loops is disaggregated into four zones in Massachusetts: Metro/zone 1, Urban/zone 2, Suburban/zone 3, and Rural/zone 4.<sup>47</sup> AT&T offered a comparison of expected costs and expected revenues to determine a margin per line in each zone.<sup>48</sup> According to AT&T, these margins are as follows: \$14.81 (metro/zone 1); \$6.48 (urban/zone 2); \$1.42 (suburban/zone 3); and -\$2.86 (rural/zone 4), with a statewide average margin of \$3.78.<sup>49</sup>

<sup>41</sup> *Kansas/Oklahoma Remand Order*, 18 FCC Rcd at 24477, para. 7 (citing *InfoNXX, Inc. v. New York Tel. Co.*, 13 FCC Rcd 3589, 3600, para. 21 (1997)).

<sup>42</sup> *Id.* at 24479-80, para. 13.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 24480-81, para. 15.

<sup>45</sup> For example, a lack of profitability in entering high-cost areas of the residential market may reflect subsidized residential rates, not that UNE rates are too high a point in the TELRIC range. *See id.* at 24482, para. 20, n.64. In such a case, parties alleging that a price squeeze demonstrates a public interest violation will need to address the competing public policy interest in assuring that residential rates remain affordable in high cost areas. *Id.*

<sup>46</sup> *Id.* at 24481, para. 16.

<sup>47</sup> WorldCom Massachusetts II Comments, Declaration of Chris Frentrup, Attachment A (WorldCom Frentrup Declaration) at para. 18, n.16.

<sup>48</sup> AT&T Massachusetts II Comments, Declaration of Michael Lieberman, Attachment 2 (AT&T Lieberman Declaration) at para. 20.

<sup>49</sup> *Id.*

WorldCom further divided those zones to provide a margin analysis in the following six zones: metro, urban Boston, urban other, suburban Boston, suburban Other, and rural. WorldCom analyzed the gross margins in each of these zones, based on Verizon's retail rate, and subtracted the amount charged to competitors for the unbundled switch port, unbundled loop, switching and transport. According to WorldCom, those margins are as follows: metro, \$11.04; urban Boston, \$4.38; urban Other, \$2.26; suburban Boston, \$2.37; suburban Other, \$0.25; and rural, -\$3.67, with an average statewide margin of \$1.32.<sup>50</sup>

13. WorldCom argues that the available average margin in a state must be at least \$10.00 to cover WorldCom's internal costs for entry into the residential market.<sup>51</sup> Neither WorldCom nor AT&T provides cost or other data to support their assertions regarding the minimum margin necessary to support entry. We note that both WorldCom and AT&T are currently offering a bundled local and long distance package in Massachusetts.<sup>52</sup>

14. In light of the analysis outlined above, we reconsider appellants' price squeeze allegations for Massachusetts and find their analysis to be materially insufficient. Appellants did not: (1) provide cost or other data to support their assertions regarding their \$10 internal cost of entry; (2) consider potential revenues from interLATA or intraLATA toll or universal service support; or (3) consider whether using a mix of the UNE-Platform and resale<sup>53</sup> to provide service would affect their price squeeze arguments.<sup>54</sup> Both WorldCom's and AT&T's assertions that they cannot achieve a sufficient profit margin in Massachusetts are undercut by the fact that both have entered the Massachusetts residential market since the Commission issued the *Massachusetts 271 Order* – WorldCom through its offering of "The Neighborhood" and AT&T through its offering of "One Rate U.S.A."<sup>55</sup> Because appellants have failed to establish a price squeeze in Massachusetts, they also have failed to establish a public interest violation based upon a price squeeze.

#### IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, and pursuant to the authority contained in sections 1-4, 10, 201-205, 251-254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201-205, 251-254, 256, 271, and 303(r), this *Order on Remand* IS ADOPTED.

<sup>50</sup> WorldCom Massachusetts II Comments, Joint Declaration of Paul Bobeczko and Vijetha Huffman, Attachment B (WorldCom Bebeczko/Huffman Declaration) at para. 7.

<sup>51</sup> *Id.*

<sup>52</sup> See [www.mci.com](http://www.mci.com), and [www.att.com](http://www.att.com).

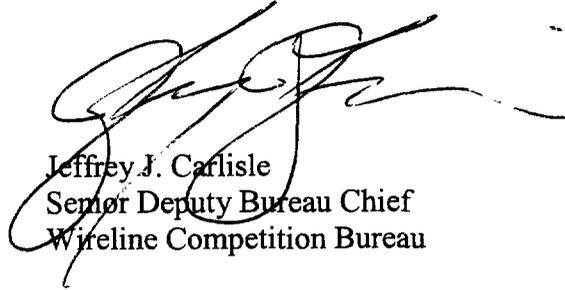
<sup>53</sup> Consideration of resale competition as part of a section 271 public interest analysis is particularly appropriate in the case of high cost areas where residential rates may be lower than the cost of providing service. See *Kansas/Oklahoma Remand Order*, 18 FCC Rcd at 24480, para. 15, n.53.

<sup>54</sup> See *id.* at 24482-83, para. 20 (citing *Application by Verizon New England Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLata Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7663, para. 69 (2002)).

<sup>55</sup> See [www.mci.com](http://www.mci.com) and [www.att.com](http://www.att.com). See also *Kansas/Oklahoma Remand Order*, 18 FCC Rcd at 24482-83, para. 20.

16. IT IS FURTHER ORDERED that, in light of appellants' failure to establish that Verizon failed to meet the public interest requirement for the state of Massachusetts, the Commission's holding in its *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, remains in effect.

FEDERAL COMMUNICATIONS COMMISSION



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