have been met.[60] Neither Sprint nor any other commenter has offered specific evidence that Verizon is not complying with its line sharing obligations. To the contrary, the Connecticut Department has found Verizon to be in full compliance with the provisions of the *Line Sharing Order*, and notes that Verizon has agreed to apply decisions made in the New York line sharing collaborative in Connecticut, unless the Connecticut Department establishes alternative requirements.[61]

26. *High Capacity Loops*. Given the totality of the evidence, we find that Verizon's performance for high capacity loops complies with checklist item 4. Verizon's New York performance data for its maintenance and repair functions for high capacity loops are comparable for Verizon retail customers and competitors.[62] We recognize that Verizon's performance on other measures with respect to provisioning high capacity loops has been poor in New York.[63] However, high capacity loops represent only approximately 0.05 percent of all unbundled loops provisioned to competitors in New York, no high capacity loops have been requested at all by competitors in Verizon's Connecticut territory,[64] and none of the commenting parties raised concerns about high capacity loops.[65] As discussed above, in terms of total loop performance, Verizon performs in a nondiscriminatory manner. Given the complete lack of orders for high capacity loops in Connecticut and the extremely small percentage of such orders in New York, we cannot find that Verizon's performance for high capacity loops should result in a finding of noncompliance for checklist item 4.[66]

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[60] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3962-63, para. 20.

[61] Connecticut Department Comments at 6.

[62] For example, for the period January through April, the Mean Time to Repair measure shows that Verizon retail customers' troubles are resolved in 6.1 hours on average, compared to 6.7 hours for competitive LECs during the same period. *See* MR 4-01 (Maintenance, UNE POTS, Special Services, Mean Time to Repair, Total), Appendix B at B–14, B–16. Fewer than three percent of competitive LECs experienced network troubles with high capacity loops in each month reported. *See* MR 2-02/03 (Network Trouble Report Rate), Appendix B at B–14; Lacouture/Ruesterholz Reply Decl. at para. 33. In addition, competitive LECs experience fewer repeat troubles than Verizon's retail customers. *See* MR 5-01 (Maintenance, UNE POTS, Special Services, Percent Repeat Reports within 30 days), Appendix B at B–14, B–16.

[63] *See, e.g.*, OR 1-10 (Special Services – Ordering, percent On Time FOC); PR 6-01 (Special Services – Provisioning, Percent Installation Troubles reported within 30 Days), in Appendix B at B–11, B–14.

[64] Verizon Application at 26-27; Verizon Lacouture/Ruesterholz Decl. at paras. 117-121.

[65] While both Covad and Sprint challenged Verizon's loop performance in their comments, neither of these commenters specifically addressed high capacity loops.

[66] Although we recognize specific performance problems in New York for high capacity loops, we do not find that these disparities in and of themselves are enough to render a finding of checklist noncompliance because of the small numbers of DS-1 and DS-3 loops requested by competing carriers. We stress, however, that we will be actively monitoring Verizon's performance in this area, and we will take swift and appropriate enforcement action in the event that Verizon's provisioning performance for high capacity loops deteriorates.

2. Checklist Item 14 – Resale

27. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)."[67] Based on the record in this proceeding, we conclude that Verizon demonstrates that it satisfies the requirements of this checklist item in Connecticut. In addressing Verizon's compliance with checklist item 14, we waive our section 271 procedural "freeze frame" requirements to the extent necessary to allow us to consider Verizon's expanded resale offering of DSL services through its advanced services affiliate, Verizon Advanced Data, Inc. (VADI). In the discussion below, we set forth the legal requirements pertaining to Verizon in view of the *ASCENT* order,[68] apply our waiver standard to the facts at hand, and then discuss our findings of checklist compliance.

28. *Legal Requirements.* In January 2001, the United States Court of Appeals for the District of Columbia Circuit held, in *ASCENT v. FCC*, that data affiliates of incumbent LECs are subject to all obligations of section 251(c) of the Act.[69] In this proceeding, we require that Verizon demonstrate for the first time that VADI provides DSL and other advanced services in accordance with the decision in *ASCENT*.[70] As discussed below, we conclude that, pursuant to the decision in *ASCENT*, Verizon is required to allow a competitive LEC to resell DSL service over lines on which the competitive LEC resells Verizon's voice service even though the DSL service is provided exclusively by Verizon's advanced services affiliate. This conclusion

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[67] 47 U.S.C. § 271(c)(2)(B)(xiv). *See* Appendix D at D–36, para. 68.

[68] *Association of Communications Enterprises* v. *FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT*).

[69] The court stated that, "the Act's structure renders implausible the notion that a wholly owned affiliate providing services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent." *ASCENT*, 235 F.3d at 668.

[70] Specifically, the *ASCENT* decision overturned the Commission's determination in the *SBC/Ameritech Order* that, because the separate advanced services affiliate was not a successor or assign of the BOC, the separate advanced services affiliate was not subject to the resale obligations of section 251(c)(4). *See Application of Ameritech Corp. and SBC Communications, Inc. for Transfer of Control of Corporations Holding Commission Licenses and Lines*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999). Because the Commission incorporated by reference the successor or assign analysis of the *SBC/Ameritech Order* into the *Bell Atlantic/GTE Order*, the D.C. Circuit's decision also impacts the Commission's conclusion in the *Bell Atlantic/GTE Order*. *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000); *Verizon Massachusetts Order*, 16 FCC Rcd at 9111, n.705. The Commission did not address the *ASCENT* decision in the *Verizon Massachusetts Order* because the court's mandate had not issued when Verizon filed that application. *Id.* 16 FCC Rcd at 9111, para. 219.

addresses many of the concerns raised by commenting parties challenging Verizon's continued claim that it is not legally required to expand its offering of DSL for resale.[71]

29. In an *ex parte* letter dated July 6, 2001, Verizon stated that VADI would expand its DSL resale offering in Connecticut, allowing a competitive LEC to resell DSL service over a line on which the competitive carrier resells Verizon's voice service.[72] At the same time, Verizon maintains that VADI "does not have an obligation to make its DSL service available for resale where other carriers are providing the voice service on the line."[73] Verizon's July 6 *ex parte* letter also contains illustrative tariff pages for its expanded resale offering of DSL. VADI implemented these changes through revisions to its F.C.C. Tariff No. 1, which became effective on July 20, 2001.[74]

30. In light of the *ASCENT* decision, we cannot accept Verizon's contention that it is not required to offer resale of DSL unless Verizon provides voice service on the line involved.[75] As an initial matter, we reject this argument based on the plain language of section 251(c)(4). Section 251(c)(4) states that incumbent LECs must "offer for resale at wholesale rates any telecommunications service that [they] provide[] at retail . . . ."[76] Verizon and VADI, which are subject to the same resale obligations, currently provide local exchange and DSL services to retail customers over the same line. Therefore, we find that, because Verizon and VADI offer these services on a retail basis, these services are eligible for a wholesale discount under section 251(c)(4). Accordingly, we conclude that Verizon must make available to resellers, at a wholesale discount, the same package of voice and DSL services that it provides to its own retail end-user customers.

31. We also reject Verizon's position on the resale of DSL on two additional grounds. First, Verizon argues that it currently provides DSL services through its affiliate VADI, and VADI provides such services exclusively through a line sharing arrangement with Verizon. Therefore, according to Verizon, the only DSL services that VADI must make available for

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[71] *See* AT&T Supplemental Comments at 2-3; ASCENT Supplemental Comments at 4; Advanced Telecom Group, Inc. (ATG) Supplemental Comments at 2-3.

[72] Letter from Dee May, Executive Director – Federal Regulatory, Verizon, to Dorothy T. Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 01-100 at 1 (filed July 6, 2001) (Verizon July 6 *Ex Parte* Letter). Previously, Verizon's separate advanced services affiliate offered for resale, at a wholesale discount, its DSL services only to end users of Verizon's voice services.

[73] *Id.*

[74] Letter from Jane Jackson, Chief, Competitive Pricing Division, Federal Communications Commission, to Donald R. Fowler, Director – Tariffs, Verizon Advanced Services Inc. (July 19, 2001) (Special Permission Letter) (granting VADI's application and assigning Special Permission No. 01-064 and waiving 47 C.F.R. §§ 61.38 and 61.58.

[75] Verizon July 6 *Ex Parte* Letter at 1.

[76] 47 U.S.C. § 251(c)(4).

resale are those provided to Verizon voice customers because, under the Commission's rules, an incumbent LEC is only required to provide line sharing, or access to the high frequency portion of the loop, when the incumbent provides the underlying voice service. Thus, Verizon takes the position that there is no DSL service for VADI to resell when a competitive LEC provides voice service over the line involved.[77] Verizon's position is the same regardless of whether the competitive LEC is reselling voice service or providing voice service over a UNE loop or UNE-platform (UNE-P). We find that Verizon's position is based on a misapplication of this Commission's line sharing rules. Line sharing is not a retail service; it is a UNE provided under section 251(c)(3). Therefore, the restriction on the line sharing UNE is inapplicable to Verizon's obligations relating to retail services. Resellers purchase retail services at a wholesale discount, they do not purchase UNEs.

32. Second, Verizon's argument rests on precisely the conduct ruled unlawful by the court – the use of an affiliate to avoid section 251(c) resale obligations. The *ASCENT* decision made clear that Verizon's resale obligations extend to VADI, whether it continues to exist as a separate entity or whether it is integrated into Verizon, and regardless of the way Verizon structures VADI's access to the high frequency portion of the loop.[78] Accordingly, we conclude that to the extent Verizon's attempt to justify a restriction on resale of DSL turns on the existence of VADI as a separate corporate entity (or even a separate division), it is not consistent with the *ASCENT* decision. We also emphasize that Verizon's policy of limiting resale of DSL services to situations where Verizon is the voice provider severely hinders the ability of other carriers to compete. Specifically, Verizon's policy prevents competitive resellers from providing both DSL and voice services to their customers, while Verizon is able to offer both together to its customers. This result is clearly contrary to the pro-competitive Congressional intent underlying section 251(c)(4).

33. We conclude, in light of the *ASCENT* decision, that VADI must permit resale of DSL by a competitive LEC over lines on which the competitive LEC provides voice service through resale of Verizon service. A number of commenting parties argue that we should also require that Verizon permit resale of DSL over lines on which a competitive LEC provides voice service using a UNE loop or UNE-P.[79] We conclude, however, that resale of DSL service in conjunction with voice service provided using the UNE loop or UNE-P raises significant

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[77] Verizon Lacouture/Ruesterholz Reply Affidavit at para. 108. Verizon states "VADI does not provide DSL service to customers where voice service is provided by other carriers. Because VADI does not provide DSL at all on these lines (whether wholesale or retail), there is no DSL service to resell." *Id.*

[78] Verizon argues that its position would be the same whether the DSL services were offered by a separate affiliate or on an integrated basis. If the services were offered on an integrated basis, however, there would be no line sharing; Verizon would simply be providing both voice and DSL services over a single loop. Verizon would thus still have an obligation under the Act to make each service available for resale at wholesale rates.

[79] *See* AT&T Supplemental Comments at 9; ASCENT Supplemental Comments at 13; ATG Supplemental Comments at 3-5.

additional issues concerning the precise extent of an incumbent LEC's resale obligations under the Act and the *ASCENT* decision that we do not reach in this proceeding.

34. *Waiver of Procedural Requirements.* We waive the Commission's general procedures restricting the submission of late filed information by section 271 applicants on our own motion pursuant to section 1.3 of the Commission's rules,[80] to the extent necessary to consider the additional information and tariff changes discussed above. The Commission's procedural rules governing section 271 applications provide that when an applicant files new information after the comment date, the Commission retains discretion to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.[81] There is an exception to this approach for new information that is directly responsive to allegations raised in the comments, however. The Commission has also strictly limited the consideration of other developments that occur after the date for filing comments.

35. "[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[82] We conclude that a deviation from the general procedures concerning consideration of late-filed information or new developments is warranted in this proceeding and will serve the public interest by allowing consideration of VADI's tariff filing to allow expanded resale of DSL. We emphasize, however, that in the absence of special circumstances, we will adhere to our general procedures designed to ensure a fair and orderly process for the consideration of section 271 applications.

36. There are a number of special circumstances that support grant of this waiver to permit consideration of these tariff revisions in determining section 271 compliance, and thus satisfy the first element of the test for grant of the waiver described above. This is the first time that the Commission has applied the *ASCENT* decision. Thus, it is understandable that Verizon would need to make late filed changes to this application to ensure compliance with that decision. The changes at issue are also relatively limited in scope. VADI is simply making tariff changes that expand its offering of DSL resale and implementing interim changes in its internal procedures in order to process orders for its expanded DSL resale offering. As a result, these changes place only a limited additional analytical burden on the Commission staff and commenting parties. This situation does not involve consideration of promises of future action, which may or may not actually take place, since the tariff revisions have become effective. The new internal procedures for order processing are also in effect. Given the extremely limited number of orders we expect for this offering in Verizon's Connecticut service area, any potential

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[80] 47 C.F.R. § 1.3.

[81] *See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 14 FCC Rcd 16128, 16130 (1999); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001).

[82] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 at 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

element of uncertainty concerning the interim ordering process does not warrant withholding this procedural waiver.[83] In light of the relatively limited scope of these changes, interested parties have had a reasonable opportunity to evaluate them and comment in a meaningful manner.[84] The limited scope of these changes has also permitted the Commission staff an adequate opportunity to evaluate them. In addition, this is a situation in which Verizon has responded positively to criticism in the record by taking action that will clearly foster the development of competition.[85] Finally, this is otherwise a generally persuasive application for a very limited service area and demonstrates a commitment by Verizon to opening local markets to competition.

37. We also conclude that grant of this waiver will serve the public interest and thus satisfy the second element of the waiver standard described above. In particular, grant of this waiver permits the Commission to act on this section 271 application within the original timeframe without the procedural delays inherent in restarting the 90-day clock. Considerations of administrative efficiency are particularly important in the case of this application which covers an extremely limited local service area. Grant of this waiver also represents a positive response to Verizon's decision to make pro-competitive tariff changes in response to the comments in this proceeding. Given that interested parties have had a meaningful opportunity to comment, we do not believe that the public interest would be served by refusing to waive the Commission's procedural rules in this instance.

38. Although we waive our section 271 procedural requirements to a limited extent here, we do not intend to allow a pattern of late-filed changes to threaten the Commission's ability to maintain a fair and orderly process for consideration of section 271 applications. Thus, we continue to expect applicants to make every effort to ensure that section 271 applications are complete when filed. Indeed, we believe it will be rare for future applicants to satisfy the high bar for waiver of these procedural requirements. We see no reason to delay, however, the effective date of this section 271 authorization for 60 days or to approve this application on a "conditional basis" as proposed by ASCENT.[86] While we recognize that the Commission delayed the effectiveness of SBC's authorization in the *SWBT Kansas/Oklahoma Order*, we believe the circumstances here do not warrant such a delay.

39. *Checklist Compliance – Non-pricing Issues.* Based on the evidence in the record, including the tariff revisions discussed above, we conclude that Verizon demonstrates that it makes telecommunications services available for resale in Connecticut in accordance with

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[83] ATG Supplemental Comments at 4.

[84] *Comments Requested In Connection with Verizon's Section 271 Application For Connecticut*, Public Notice, DA 01-1609 (CCB rel. Jul. 6, 2001).

[85] This is very different from an instance in which late-filed material provided by the applicant consists of additional arguments or information intended to demonstrate that its current performance or pricing satisfies the requirements of section 271.

[86] *See* ASCENT Supplemental Comments at 12-13.

sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. Verizon has a concrete and specific legal obligation in its interconnection agreements and tariffs to making its retail services available to competing carriers at wholesale rates.[87] In addition, the revisions to VADI's federal tariff, which are currently effective, and the associated changes in Verizon's and VADI's internal processes now permit a competitive LEC to resell DSL over a line on which the competitive LEC provides voice service to the end user through resale of Verizon service.[88] We conclude that these changes are sufficient to satisfy existing resale requirements for DSL and bring Verizon into present compliance with the requirements of checklist item 14. Given the fact that Verizon has an effective tariff as well as a manual order processing system in place to immediately begin taking orders, we cannot accept the contentions by certain commenting parties that this amounts to no more than a promise of future compliance.[89]

40. We recognize that commenting parties are correct in pointing out that Verizon has little, if any, operational experience with the interim manual order processing procedures for its expanded DSL resale offering.[90] In view of the unique circumstances of this application, which involves a service area of only approximately 60,000 access lines, we conclude that this does not justify a finding of checklist noncompliance. The volume of orders for the expanded DSL resale offering in Connecticut is likely to be very small and Verizon will be able to process orders within a reasonable period of time using the interim manual process. In the unlikely event that serious problems were to develop with the interim manual ordering process, Verizon would, of course, be subject to enforcement action under section 271(d)(6).

41. We are not persuaded that the interim manual ordering process for Verizon's expanded DSL resale offering constitutes an unreasonable restriction on resale as argued by ATG.[91] We recognize that competitive LECs will have to place separate orders with Verizon for voice service and with VADI for DSL service. However, in light of the fact that the Commission required Verizon to provide advanced services through a separate affiliate under the *GTE/Bell Atlantic Merger Conditions Order*,[92] and that we are interpreting Verizon's resale obligations under the *ASCENT* order for the first time, we believe that the approach Verizon is taking in the

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87 Verizon Application at 54; Verizon Lacouture/Ruesterholz Decl. at para. 388.

88 Verizon July 6 *Ex Parte* Letter; Tariff Revision filed by VADI under Transmittal Number 16, Dated July 19, 2001. The new tariff became effective July 20, 2001.

89 *See* AT&T Supplemental Comments at 11; ASCENT Supplemental Comments at 9.

90 *See* AT&T Supplemental Comments at 10-11; ASCENT Supplemental Comments at 11; ATG Supplemental Comments at 4-5.

91 *See* ATG Supplemental Comments at 4-5.

92 *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, 15 FCC Rcd 14032, App. D, para. 1 (2000).

interim in Connecticut is reasonable. We also note Verizon and VADI also have to place separate orders to provision service to the end user.

42. There are several other aspects of the expanded DSL resale offering and the revised internal order processing procedures that are acceptable on an interim basis, but which we expect Verizon to revise as it develops permanent order processing procedures. In particular, we expect permanent order processing procedures will eliminate Verizon's requirement that the reseller must already be the voice provider on the line involved before Verizon can process orders for DSL resale. We also expect permanent ordering procedures will eliminate Verizon's requirement that it disconnect resold DSL service if the customer switches from the reseller back to Verizon as the underlying voice provider. In addition, we expect that Verizon's performance in providing this expanded resale offering will ultimately be reflected in its performance data pursuant to procedures developed in coordination with the Connecticut Department. Contrary to ATG's assertions we see no need to reflect information on the use of this interim process in performance data before Verizon and its competitors have had an opportunity to address this at the state level. Moreover, if VADI's retail DSL offering were expanded to be available over non-copper facilities, we would expect Verizon to mirror this change in its DSL resale offering.[93]

43. *Checklist Compliance – Pricing.* In concluding that Verizon demonstrates that it is in compliance with the requirements of checklist item 14, we rely on the resale discount and rates in the currently effective tariff. Contrary to ASCENT's argument,[94] we do not believe that the mere possibility that Verizon will seek an increase in these non-recurring charges creates a sufficient level of uncertainty to warrant a finding of checklist noncompliance. However, we note that any modification of the tariff to increase these non-recurring charges would necessitate a reevaluation of Verizon's compliance with section 271.

44. We also note that Verizon has stated in this proceeding that it will modify wholesale and resale rates in Connecticut "'contemporaneously' with the modification of these rates in New York."[95] This addresses the concerns raised by AT&T concerning whether Verizon would continue to mirror these rates.[96] We understand this to be part of Verizon's overall

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[93] We are not persuaded by ATG's argument that Verizon should make its bundled offerings that include deregulated CPE and internet access available for resale. The resale obligation clearly extends only to telecommunications services offered at retail. *See* 47 C.F.R. § 51.605 (requiring an incumbent LEC to offer, on a wholesale basis, any telecommunications service that it offers to retail customers).

[94] ASCENT Supplementary Comments at 11.

[95] *See* Reply Comments of Verizon New York at 5 n.2 (referencing Connecticut Department Comments at 13: "Of course, Verizon will, as the DPUC [Connecticut Department] 'fully expects,' 'uphold its commitment' to ensure that any changes in its New York operations be 'directly reflected in its Connecticut operations.'").

[96] As noted above, AT&T in its comments did not oppose Verizon's section 271 application.

commitment to continue to mirror New York wholesale rates, as required by the Connecticut Department.[97]

B. Other Issues

1. Checklist Item 1 – Interconnection and Collocation

a. Interconnection and Collocation

45. Section 271(c)(2)(B)(i) of the competitive checklist requires that the BOCs provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252.[98] Based on the present record, we conclude that Verizon demonstrates that it is in compliance with the requirements of this checklist item.[99] Among other things, we conclude that Verizon provides interconnection at all technically feasible points, including a single point of interconnection. In reaching this conclusion, we note that Verizon has eliminated the Geographically Relevant Points of Interconnection Proposal (GRIPS) from its SGAT as directed by the Connecticut Department to ensure that the SGAT terms in Connecticut are fully consistent with those in New York.[100] We note that this eliminates the issues that such a provision would raise.[101]

b. Collocation Pricing

46. Based on the evidence in the record, we find that Verizon offers collocation[102] arrangements at just, reasonable and nondiscriminatory rates in accordance with section 251(c)(6)[103] of the Act, in compliance with checklist item 1.

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[97] *See* Reply Comments of Verizon New York at 4 ("The DPUC also confirms that, just as Verizon's wholesale products and rates in Connecticut are the same as they are in New York today, they will continue to be the same in the future"). While the Connecticut Department has chosen to track New York pricing, we recognize that there are other means of demonstrating checklist compliance.

[98] *See* Appendix D at D--8-12, paras. 17-25.

[99] Verizon Application at 17-19; Verizon Lacouture/Ruesterholz Decl. at paras. 21-32, 39.

[100] Verizon Reply Comments at n.24; Verizon Lacouture/Ruesterholz Reply Declaration at Attachment 45.

[101] In prior section 271 orders, the Commission has found that a BOC must permit interconnection at a single point. *Verizon Massachusetts Order*, 16 FCC Rcd at 8990, para. 3.

[102] Collocation generally is a method whereby requesting carriers may obtain interconnection and access to unbundled network elements from incumbent local exchange carriers. *See Local Competition First Report and Order*, 11 FCC Rcd at 15816, para. 629, and App. B-10.

[103] 47 U.S.C. § 251(c)(6).

47. The Connecticut Department approved Verizon's Collocation Tariff for the state on February 23, 2000.[104] Rates for collocation in Connecticut are the same as those in New York,[105] which were found by the Commission to be in compliance with sections 251 and 271 of the Act in the *Bell Atlantic New York Order*.[106] Before that, the New York Commission also concluded that Verizon provided collocation agreements and tariffs that were consistent with its own and this Commission's orders and in compliance with checklist item 1.[107]

48. We agree with the Connecticut Department that it is reasonable under the circumstances for Connecticut to mirror New York's collocation rates in satisfaction of section 251 and 271 requirements.[108] Indeed, under the unique circumstances of this application, we would expect collocation rates for these areas – which are contiguous to New York – to be extremely close to those of New York. Verizon is the incumbent local exchange company in only two Connecticut communities, Greenwich and Byram, which adjoin Verizon's service area in New York as part of the New York City metropolitan area. Verizon primarily uses its operations, procedures and employees based in New York to serve this limited area in Connecticut.[109] Verizon uses these New York processes and procedures to provide collocation to

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[104] *See* Verizon Connecticut Application, App. B, Vol. 1, Tab 3, Sub-Tab A, State of Connecticut Department of Public Utility Control, Application of New York Telephone to Introduce Rates and Charges for Collocation for Certified Local Exchange Carriers: Decision, Docket No. 99-05-30 (February 23, 2000) (*Connecticut DPUC Collocation Order); see also* Verizon Connecticut Application App. B, Tab 14, Sub-Tab F, *State of Connecticut No. 11-Telephone Tariff Network Interconnection Services.*

[105] *See* Verizon Application at 20.

[106] 15 FCC Rcd at 3987, para. 78.

[107] *See id.*

[108] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276-77, para. 82 n.244. The Commission has encouraged states with limited resources to take advantage of the efforts devoted by New York and Texas in establishing TELRIC-compliant prices, by relying where appropriate on the existing work product of those states. In utilizing the New York Public Service Commission's expertise, the Connecticut Department noted that "NYPSC's comprehensive investigation was conducted in a manner that is consistent with CTDPUC [Connecticut Department] and FCC standards," and that the Commission granted Verizon's section 271 application in New York. *See* Connecticut Department Comments at 4-5. The Connecticut Department believes it is reasonable for Verizon to have consistency between its Connecticut and New York operations, and in the past has permitted Verizon to offer various services in Connecticut at rates that mirror those approved in New York. *See Connecticut DPUC Collocation Order* at 3. Verizon also asserts that in recognition of using its New York based operations for service provisioning in Connecticut, the Connecticut Department "typically requires Verizon to mirror New York wholesale tariffs and rates in Connecticut." *See* Verizon Lacouture/Ruesterholz Decl. Attach. C, para. 13.

[109] *See* Verizon Application at 10-11. Thirteen Verizon employees are stationed in Connecticut and work in the Greenwich switching office, reporting to managers in New York. The central office serving Byram is located in Port Chester, NY, where Verizon has two service garages for operations, installation and maintenance for customers in Greenwich, Byram and throughout Westchester County, NY. Verizon asserts that it uses the same New York-based wholesale operations and systems for serving competitive LECs in Greenwich and Byram as it does for serving competitive LECs in New York. *See* Letter from Dee May, Verizon Executive Director – Federal Regulatory, to (continued....)

competitors in Connecticut in exactly the same way it does in New York.[110] In adopting collocation rates for Connecticut that mirror New York's rates, the Connecticut Department found that Verizon's cost studies in New York followed Connecticut and Commission guidelines and employed a long run cost approach that complied with the Act. The Connecticut Department concluded that Verizon's New York cost studies could, therefore, be relied upon to develop reasonable rates that supported Verizon's collocation tariff in Connecticut.[111]

49. In light of the unique circumstances of this application, we do not have the same concerns here as might arise in other situations in which a BOC bases its section 271 application in one state on the adoption of another state's rates. Furthermore, the Connecticut Department also requires Verizon to continue to mirror New York's rates in the future; any New York collocation changes are to be filed in Connecticut's tariffs within 10 days of New York's approval.[112] We note that the Connecticut Department's policy in this regard is a consistent and reasonable approach to safeguard ongoing pricing compliance with the Act.[113]

50. In addition, we find that the single collocation issue raised by a commenter is not germane to this application. Covad's objection to Verizon's proposed collocation price increase made "in a recent FCC filing" is not relevant to this section 271 proceeding because it does not address collocation in this checklist item.[114] Covad refers to Verizon's filing of collocation rates in the expanded interconnection tariff that is part of Verizon's interstate access service offering under section 201 of the Act.[115] As the Commission pointed out in the *Bell Atlantic New York Order*, however, the provision of interstate access services is not a checklist compliance item.[116]

(Continued from previous page)
Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket. No. 01-100, at 1-2 (June 8, 2001) (Verizon June 8 *Ex Parte* Letter); *see also* Connecticut Department Comments.

[110] *See* Verizon Application at 19.

[111] *See Connecticut DPUC Collocation Order* at 2-3.

[112] *See* Connecticut Department Comments at 12-13.

[113] *See* Letter from Sandra Dilorio Thorn, Vice President & General Counsel, NY & CT, Verizon New York Inc., to Ms. Louise Rickard, Acting Executive Secretary, Connecticut Department of Public Utility Control, *Compliance Tariff Revision for Connecticut No. 11–Telephone Tariff* (April 3, 2001) (submitting revisions to its Connecticut tariff that mirrored a change to how DC power charges are applied in New York). Of course, the Connecticut Department is free to adopt other means of ensuring ongoing compliance with the Act. If it does so, it need not continue to mirror New York rates.

[114] *See* Covad Comments at 7-8.

[115] *See* 47 U.S.C. § 201; *see also Local Competition First Report and Order,* 11 FCC Rcd at 15808, para. 610 (distinguishing collocation subject to expanded interconnection rules from that subject to section 251 and 252 checklist requirements, stating that "...section 251(I) expressly provides that '[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201, which provided the statutory basis for our *Expanded Interconnection* rules.").

[116] *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340 ("We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some (continued....)

Accordingly, the collocation matter that Covad raises related to Verizon's interstate access tariff filing is not properly considered here. We note, however, that this matter was brought before this Commission and is the subject of an ongoing tariff investigation.

2. Checklist Item 2 – Unbundled Network Elements

51. Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act.[117] Based on the record, we conclude that Verizon demonstrates compliance with this checklist item. In reaching this conclusion, we note that the Connecticut Department also concludes that Verizon has satisfied the requirements of checklist item 2.[118] Also, with limited exceptions discussed below, the commenting parties do not challenge Verizon's compliance with checklist item 2. We address the three areas where commenters challenge Verizon's compliance: (1) provision of UNE combinations; (2) Operations Support Systems (OSS); and (3) UNE pricing.

a. Provision of UNE Combinations

52. As previously discussed, Verizon uses its New York systems and processes to serve its Connecticut subscribers,[119] and the Connecticut Department has ordered Verizon to continue to make available to competitive LECs in Connecticut all UNE combinations Verizon offers in New York.[120] Verizon has also verified that it will continue to comply with the Connecticut Department's order on these issues.[121] We conclude that Verizon has adequately addressed AT&T's concern that it will continue to provide in Connecticut all UNE combinations

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of the same physical facilities as a checklist item. We have never considered the provision of interstate access services in the context of checklist compliance before."). Moreover, the Commission has previously stated that "the process of negotiating agreements for access to unbundled elements pursuant to sections 251 and 252 and the process of taking expanded interconnection service pursuant to tariffs filed under section 201 exist as two separate options for an interconnector. If an interconnector chooses to take service pursuant to an interstate expanded interconnection tariff, the interconnector's collocation arrangement is governed by the standards of the section 201 tariffing process, and not by the standards of section 251." *See New York Telephone Company and New England Telephone and Telegraph Company Petition for Extension of Waiver, Memorandum Opinion and Order,* 12 FCC Rcd 20954, 20961-62, para. 16 (1997), citing the *Local Competition First Report and Order*, 11 FCC Rcd at 15808.

[117] 47 U.S.C. § 271(B)(ii).

[118] *See* Connecticut Department Comments at 6.

[119] *See* Sec. I, *supra*; Verizon Application at 9-14; Department of Justice Evaluation at 1-2.

[120] Connecticut Department Comments at 12-13.

[121] *See* Verizon Reply at 4-5 and n.2.

it currently provides in New York.[122] We note that the approach taken by the Connecticut Department is one reasonable way to safeguard future compliance.

b. OSS

53. The Commission has consistently found that nondiscriminatory provision of access to OSS[123] is a prerequisite to the development of meaningful local competition and required that section 271 applicants demonstrate that they provide such access to OSS as a UNE.[124] We find that Verizon demonstrates that it provides nondiscriminatory access to its OSS based on the present record.[125]

54. We do not agree with Covad's claims that Verizon provides competitive LECs with inadequate access to loop make-up information.[126] As Covad acknowledges, in approving Verizon's Massachusetts section 271 application, the Commission rejected identical arguments concerning the same interim processes for access to loop make-up information through Verizon's LFACs database.[127] In that proceeding, the Commission found that Verizon's process for providing competitive LECs access to loop make-up information complies with our requirements.[128] In the *Verizon Massachusetts Order*, the Commission accepted Verizon's statement that it will implement a permanent process for access to loop qualification information by October 2001, and found that the interim process in place was providing useful, detailed information to competing carriers concerning the ability of loops to support xDSL services, within reasonable time frames.[129] Covad has not presented any new arguments or information that would cause us to reach a different conclusion here.

55. We also conclude that Covad's claims concerning order flow-through do not warrant a finding of checklist noncompliance. In particular, Covad claims that Verizon's flow-through data suggest it is not flowing through the vast majority of Covad's orders, while Verizon's own retail orders flow-through "with near precision."[130] Verizon's flow-through rates

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[122] AT&T Comments at 2.

[123] The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers. *See Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; *Bell South South Carolina Order*, 13 FCC Rcd at 588; *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

[124] *See* Appendix D at D–12-15, paras. 26-32.

[125] *See generally* Appendix B.

[126] Covad Comments at 4-5.

[127] Covad Comments at 1-2.

[128] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9021-22, 9024-25, paras. 61-62, 67.

[129] *Id.*

[130] Covad Comments at 6.

vary widely for different competitive LECs during the period from January through April 2001.[131] Although Verizon's commercial data show low *average* resale total flow-through rates, the average UNE total flow-through rates are significantly better.[132] Given that some competing carriers are achieving much higher flow-through rates than others, we conclude that Verizon's OSS is *capable* of flowing through competing carriers' orders in substantially the same time and manner as Verizon's own orders.[133] While Covad may have experienced problems with order flow through in Connecticut, other competing carriers have been able to achieve relatively high flow through rates.[134]

56. Because all competing carriers interface with the same Verizon system, we find, on this record, that it would not be appropriate to attribute this wide range of results entirely to Verizon. The Commission has consistently stated that a BOC is not accountable for orders that fail to flow-through due to competing carrier-caused errors.[135] We expect that Verizon's flow-through rates will improve over time as individual carriers gain experience with the OSS and as Verizon conducts monthly workshops for competing carriers to help them improve their order submissions.[136] Based on this record, we conclude that the flow-through problems experienced by Covad are an isolated problem that does not demonstrate discrimination.[137]

c. UNE Pricing

57. Based on the evidence in the record, we find that Verizon's charges for UNEs made available in Connecticut to other telecommunications carriers are just, reasonable, and nondiscriminatory, and in compliance with checklist item 2.[138]

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[131] *See* Verizon McLean/Wierzbicki Declaration at paras. 45-47 and Attach. H.

[132] *See* OR 5-01 (Percent Flow-Through Total), Appendix B at B–6, B–10. Verizon's average total flow through in New York ranges from about 43 to 55 percent for resale orders and 81 to 84 percent for UNE orders from December through April.

[133] For example, between December 2000 and February 2001, flow-through rates for competitive LECs with at least 100 orders in a month range from under 20% to 80% for resale; from under 10% to more than 90% for UNE orders other than platform; and from under 10% to over 93% for UNE platform orders. *See* Verizon McLean/Wierzbicki Declaration at paras. 45-47 and Attach. H.

[134] *See* Verizon Reply at 10, n.6; Verizon McLean/Wierzbicki Decl. at para. 45; Verizon Lacouture/Ruesterholz Reply Decl. at para. 42.

[135] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4039-40, para. 167, 4049, para. 181; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20674, para. 111.

[136] *See* Verizon McLean/Wierzbicki Decl. at paras. 48-50.

[137] We stress, however, that we will continue to monitor Verizon's performance in this area, and we will take swift and appropriate enforcement action in the event that Verizon's flow-through rates deteriorate.

[138] Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act. Section 251(c)(3) requires (continued....)

58. The Connecticut Department concluded that Verizon has satisfied the requirements of this checklist item. The Department established its current prices for UNEs[139] and UNE combinations[140] in separate decisions on May 17, 2000. Rates for Verizon's UNEs and UNE combinations for Byram and Greenwich in Connecticut were adopted from the New York rates,[141] which the Commission found to be TELRIC-based and in compliance with section 271 requirements in the New York section 271 proceeding.[142] The Connecticut Department also requires any New York rate changes to be filed by Verizon in Verizon's Connecticut's tariffs within 10 days of the effective date in New York, and the rates are effective automatically on 21 days notice.[143]

59. We agree with the Connecticut Department that it is reasonable under the circumstances for it to rely on New York's UNE rates. The same general analysis of the special circumstances surrounding the manner in which Verizon provides service in Connecticut in the context of collocation pricing also applies here. This includes Verizon's use of its New York-based operations and systems to serve a limited area in Connecticut, and the resulting approach to mirror New York's rates for this area. Verizon states that its costs in its Connecticut service area are the same or higher than its costs in New York on the basis of a line density

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LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . ." Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit. The Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements. Although related pricing issues are pending review by the Supreme Court, the Commission's rules remain in effect for this application.

[139] *See* Verizon Application, App. B, Vol. 1, Tab 7, Sub-Tab D, DPUC Investigation into the Unbundling of the New York Telephone Company's Local Telecommunications Network: [Connecticut] DPUC's Decision Approving BA-NY's Tariff No. 12, Docket No. 94-11-03 (May 17, 2000) *(Connecticut DPUC UNE Tariff Order)*.

[140] *See* Verizon Application, App. B, Vol. 1, Tab 8, Sub-Tab C, Application of Bell Atlantic – Proposed Tariff for Unbundled Network Elements – Rebundled Service: [Connecticut] DPUC's Decision Approving BA-NY's Tariff for UNEs-Rebundled Service, Docket No. 99-03-21 (May 17, 2000) *(Connecticut DPUC UNE Combinations Tariff Order)*.

[141] *See* Verizon Application at 12; *see also Connecticut DPUC UNE Tariff Order* at 10 ("BA-NY's proposed Connecticut tariff essentially mirrors its UNE Tariff in New York (916 Tariff).")

[142] See *Bell Atlantic New York Order*, 15 FCC Rcd at 4081-82, para. 238; Verizon Lacouture/Ruesterholz Decl. Attach. C, para. 15; *see also* Verizon Application App. B, Vol. 3a-b, Tab 14, Sub-Tabs C and D, Connecticut No. 10 –Telephone Network Combinations and State of Connecticut No. 12 – Telephone Network Elements [Tariff].

[143] *See Connecticut DPUC UNE Tariff Order* at 10-11 ("as committed to by BA-NY...the Department will require BA-NY to file identical amendments to the Connecticut UNE Tariff to the extent that modifications are made to the New York 916 Tariff. Specifically, BA-NY must implement all revisions within 10 business days of filing the amendment in New York.) and 12-13; *see also Connecticut DPUC UNE Combinations Tariff Order* at 15 (stating that BA-NY has committed to revising its Connecticut UNE combinations tariff to reflect New York changes to be filed within 10 business days after they are effective in New York.).

comparison,[144] as one would expect given the contiguous and limited geographic area at issue here. Also, the Connecticut Department found that compatibility between Connecticut and New York will provide consistency for competitive LECs which serve both areas and order UNEs from Verizon.[145] Furthermore, this consistency will be provided for in the future, because both the Connecticut Department and Verizon are committed to keeping Connecticut's rates the same as those in New York on a going-forward basis.

60. As we noted above, in light of these unique circumstances, we do not have to conduct the same analysis as we would in other situations in which a Bell Operating Company bases its section 271 application in one state on the adoption of another state's rate. We conclude the Connecticut Department's approach to relying on New York's rates is a reasonable one.

61. We note that AT&T, while not opposing Verizon's Connecticut 271 Application, asserts that Verizon should continue to keep UNE rates in Connecticut identical to those in New York.[146] The evidence submitted shows that AT&T's concerns have been addressed. The Connecticut Department has ordered Verizon to implement any New York UNE rate changes in Connecticut.[147] Verizon has also verified that it will continue to comply with the Connecticut Department's order on these issues.[148] We are satisfied that the requirements set out by the Connecticut Department and the commitment made by Verizon to timely mirror any changes to its New York UNE rates in Connecticut remove any doubt of Verizon's continuing obligation in this regard. We note that the approach taken by the Connecticut Department is one reasonable way to safeguard future compliance.

3. Checklist Item 5 – Transport

62. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[149] We conclude, based upon the evidence in the record, including the unique circumstances presented by Verizon's extremely limited operations in Connecticut, that Verizon demonstrates that it provides both shared and dedicated transport in compliance

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[144] *See* Verizon June 8 *Ex Parte* Letter at 1-2; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276-77, para. 82 n.244 and *Verizon Massachusetts Order* 16 FCC Rcd at 9000, 9002, paras. 22 and 28 (stating that one state's UNE rates could be adopted from another state with a presumption of compliance with pricing rules if certain conditions are met and if costs are demonstrated to be at or above the costs in the state whose rates were adopted.).

[145] Connecticut DPUC UNE Tariff Order at 10.

[146] *See* AT&T Comments.

[147] Connecticut Department Comments at 12-13.

[148] *See* Verizon Reply at 4-5 and n.2.

[149] 47 U.S.C. § 271(c)(2)(B). *See also* Appendix D.

with the requirements of checklist item 5.[150] We note that the Connecticut Department concludes that Verizon satisfies the requirements of this checklist item,[151] and no commenter raises concerns with Verizon's performance relating to checklist item 5.

63. In prior section 271 applications, the Commission has reviewed the missed appointment rates for the provision of interoffice facilities to competitive LECs to determine whether the applicant was provisioning transport in a nondiscriminatory manner.[152] However, due to the unique nature of Verizon's limited operations in Connecticut, there is no data on missed appointment rates, and there is likely to be little data on transport in Connecticut in the future. Specifically, Verizon provides local exchange service in Connecticut through only two central offices. Only one of the central offices is actually located in Connecticut; the other office serving Connecticut customers is located in New York. Given this network configuration, Verizon does not provide local (interoffice) transport between two wire centers/switches within the State of Connecticut. In addition, Verizon does not operate a tandem switch in Connecticut, but competitive LECs may obtain shared transport from Verizon by using Verizon's tandem switching and trunking arrangements in New York.[153]

64. As a result, there is and will be very little competitive LEC demand for interoffice local transport facilities in Connecticut.[154] There are no reported orders for interoffice transport facilities in Connecticut during the four-month period from January through April 2001.[155] And, as of February 2001, Verizon has provisioned a total of only four interoffice transport facilities in Connecticut.[156] When there are low volumes of orders in the applicant state, we typically begin our analysis of compliance by reviewing performance in the "anchor" state[157] with higher volumes because that performance may be relevant to our determination on checklist compliance. We need not do so in regard to this particular checklist item, however, because looking to Verizon's performance in New York will not inform our judgment on compliance in

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[150] Verizon Application at 44-45, Verizon Lacouture/Ruesterholz Decl. at paras. 260-268.

[151] Connecticut Department Comments at 7.

[152] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4126; para 339; *SWBT Texas Order*, 15 FCC Rcd at 1851, para. 333; *Verizon Massachusetts Order*, 15 FCC Rcd at 9105-104 para. 209.

[153] Verizon Lacouture/Ruesterholz Decl. at para. 265.

[154] We believe that the small size of Verizon's Connecticut service area has a greater impact on the demand for transport facilities than it does on demand for services and facilities covered by other checklist items since demand for transport is a function of the number of offices that can be connected by interoffice transport facilities.

[155] *See* Appendix C at C–14.

[156] Verizon Lacouture/Ruesterholz Decl. at para. 262.

[157] An "anchor" state is a state where the applicant has had prior successful section 271 application. *See, e.g., SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6254, para. 36.

Connecticut.[158] Our finding that Verizon satisfies this checklist item is a contextual decision based on the totality of the unique circumstances in Connecticut.[159]

65. In particular, we conclude that the extremely limited extent of Verizon's service area in Connecticut renders the provision of interoffice transport of relatively limited significance for purposes of determining whether Verizon's Connecticut local exchange market is open to competition. As detailed above, there is very little competitive LEC demand for interoffice local transport facilities in Connecticut, and this limited demand will continue in the future because Verizon only has one central office in Connecticut.

66. We also find that Verizon has a specific and concrete legal obligation to provide transport under its tariffs, interconnection agreements and SGAT in Connecticut. We find significant the Connecticut Department's finding that Verizon has satisfied the requirements of this checklist item. Moreover, as stated above, none of the commenting parties challenge Verizon's transport performance. Given the totality of the circumstances, therefore, we do not find the performance disparity in New York to be competitively significant in Connecticut, nor do we find it to be indicative of noncompliance when weighed against the other evidence.[160]

4. Checklist Item 13 – Reciprocal Compensation

67. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[161] In turn, section 252(d)(2)(A) specifies when a state commission may consider the terms and conditions for reciprocal compensation to be just and reasonable.[162] Based on the record, we conclude that Verizon demonstrates that it provides reciprocal compensation as required by checklist item 13. The Connecticut Department also concludes that Verizon complies with the requirements of checklist item 13.[163] With the exception of one very limited issue raised by

[158] The carrier-to-carrier missed appointment rates for New York during the period from January through April 2001, appear to depict a significant difference in the provision of interoffice facilities for competitive LECs compared to the retail analogue that is indicative of Verizon's performance to itself. *See* PR 4-01 (Percent Missed Appointments Total IOF), Appendix B at B–14. Whether this performance raises enforcement issues in New York is a separate issue more appropriate for the Commission to resolve in an enforcement proceeding, and does not, in and of itself, warrant a finding of noncompliance in Connecticut for the reasons stated in this section.

[159] We emphasize that our analysis here is limited to the special circumstances of Verizon's operations in Connecticut, which render the performance in New York on transport of little relevance. We find the network size and configuration and consequent lack of demand for transport in Connecticut is distinguishable from situations in prior section 271 applications where states had very low volumes of orders under certain checklist items.

[160] In addition, we find further assurance in the fact that the performance in New York improved in May 2001. Compare PR 4-01 (Percent Missed Appointments) May 2001 with PR 4-01 with January – April 2001.

[161] 47 U.S.C. § 271(c)(2)(B)(xiii).

[162] 47 U.S.C. § 252(d)(2)(A). *See* Appendix D at D–35, para. 67.

[163] Connecticut Department Comments at 10-11.

Sprint concerning reciprocal compensation, commenters do not question Verizon's compliance with this checklist item. Sprint, however, appears to be concerned with ensuring that Verizon has amended its Connecticut SGAT to include Internet traffic in its reciprocal compensation payments, as Verizon was ordered to do by the Connecticut Department.[164] While we note that both the Connecticut Department and Verizon state that the SGAT has been modified as ordered by the Department,[165] the Commission has found that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2); therefore, whether Verizon modified its SGAT to apply reciprocal compensation to Internet traffic is not relevant to compliance with checklist item 13.[166] Based on the record, we find Verizon to be in compliance with checklist item 13.

C. Remaining Checklist Items (3, 6-12)

68. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),[167] item 6 (unbundled local switching),[168] item 7 (911/E911 access and directory assistance/operator services),[169] item 8 (white page directory listings),[170] item 9 (numbering administration),[171] item 10 (databases and associated signaling),[172] item 11 (number portability),[173] and item 12 (local dialing parity).[174] Based on the evidence in the record, we conclude that Verizon demonstrates that it is in compliance with these checklist items in Connecticut.[175] We also note that the Connecticut Department concludes that Verizon complies

[164] *See* Sprint Comments at 2, and Attach. at 3.

[165] *See* Connecticut Department Comments at 10-11; Verizon Lacouture/Ruseterholz Decl. at para. 17.

[166] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001).

[167] 47 U.S.C. § 271(c)(2)(B)(iii).

[168] *Id.* § 271(c)(2)(B)(vi).

[169] *Id.* § 271(c)(2)(B)(vii).

[170] *Id.* § 271(c)(2)(B)(viii).

[171] *Id.* § 271(c)(2)(B)(ix).

[172] *Id.* § 271(c)(2)(B)(x).

[173] *Id.* § 271(c)(2)(B)(xi).

[174] *Id.* § 271(c)(2)(B)(xii).

[175] *See* Verizon Application at 47-48 (checklist item 3), 45-46 (checklist item 6), 48-51 (checklist item 7), 51 (checklist item 8), 51-52 (checklist item 9), 52-53 (checklist item 10), and 53 (checklist items 11 and 12); Lacouture/Ruesterholz Decl. at paras. 288-292 (checklist item 3), 247-49 (checklist item 6), 305-330 (checklist item 7), 332-348 (checklist item 8), 349-352 (checklist item 9), 353-76 (checklist item 10), 379-382 (checklist item 11), (continued....)

with the requirements of each of these checklist items.[176] None of the commenting parties challenge Verizon's compliance with these checklist items.

IV. COMPLIANCE WITH SECTION 271(C)(1)(A)

69. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[177] To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[178]

70. We conclude that Verizon demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with Network Plus and Lightpath in Connecticut.[179] Specifically, Verizon states that Network Plus provides telephone exchange service predominantly over its own facilities to residential and business subscribers. Verizon also states that Lightpath provides local exchange service to business subscribers exclusively over its own facilities . . . in the Verizon Connecticut service area."[180] The Connecticut Department "fully supports Verizon's application,"[181] and none of the commenting parties directly challenge the statements by Verizon concerning compliance with Track A.

71. Based on the existing record, we conclude that a sufficient number of residential customers are being served by competing LECs through the use of their own facilities to demonstrate that there is an actual commercial alternative to Verizon in its very limited service area in Connecticut. Our comparison of the record in the Kansas/Oklahoma application and the record in this proceeding indicates that residential customers served by competitive LECs on a facilities basis represents a somewhat greater proportion of all Verizon access lines in Connecticut than was the case for Southwestern Bell in Kansas.

72. We do not accept Sprint's arguments questioning Verizon's compliance with Track A based solely on alleged shortcomings in the underlying proceedings conducted by the

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and 383-86 (checklist item 12); Verizon Lacouture/Ruesterholz Reply Decl. at paras. 96-97 (checklist item 6). *See also* Appendices B and C.

[176] *See* Connecticut Department Comments at 7 (checklist item 3), 8 (checklist items 6 and 7), 8-9 (checklist item 8), 9 (checklist items 9 and 10), and 10 (checklist items 11and 12).

[177] 47 U.S.C. § 271(d)(3)(A).

[178] *Id.*

[179] Verizon Application at 4-5.

[180] *Id.*

[181] Connecticut Department Comments at 3.

Connecticut Department.[182] Although we consult with state commissions when conducting our section 271 proceedings, the statute directs this Commission to determine independently whether an applicant has complied with section 271.[183] As noted in the preceding paragraph, the record before this Commission demonstrates compliance. Accordingly, any shortcomings in the Connecticut Department's 271 proceedings would not be grounds for withholding section 271 approval when the record before this Commission demonstrates compliance.

V. SECTION 272 COMPLIANCE

73. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[184] Based on the record, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.[185] Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Connecticut as it does in New York and Massachusetts, states in which Verizon has already received section 271 authority.[186] No party challenges Verizon's section 272 showing.[187]

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[182] *Sprint* argues that there was no evidence in the record before the Connecticut Department to demonstrate the existence of facilities-based competition at the time it certified that Verizon could proceed with its section 271 application under Track A. Sprint Comments, Attach. at 2-3.

[183] Section 271 requires that we consult with state commissions to verify BOC compliance with the requirements of subsection 271(c). 47 U.S.C. § 271(d)(2)(B). The Commission has previously stated that the purpose of consulting with the state commission regarding Track A is "to verify that the BOC has one or more state approved interconnection agreements with a facilities-based competitor," and that it is the Commission's "role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met." *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20.

[184] 47 U.S.C. § 271(d)(3)(B). *See* Appendix D at D–37, paras. 69-70.

[185] *See* Verizon Application at 66-70; Verizon Application App. A, Vol. 3, Tab 5, Declaration of Susan C. Browning at para. 4 (Verizon Browning Decl.); Verizon Application App. A, Vol. 3, Tab 6, Declaration of Paul M. Fuglie (Verizon Fuglie Decl.).

[186] *Verizon Massachusetts Order*, 16 FCC Rcd at 9114-17, paras. 226-31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4152-61, paras. 401-21; Verizon Application at 66-70; Verizon Browning Decl. at paras. 4-15; Verizon Fuglie Decl. at paras. 3-21.

[187] We recognize that the first independent audit of Verizon's section 272 compliance conducted pursuant to section 53.209 of the Commission's rules is now complete. *See* Letter from PriceWaterhousCoopers LLP to Magalie Roman Salas, Secretary, Federal Communications Commission (June 11, 2001) (transmitting audit report). While the audit raises issues that may require further investigation, the audit results are not a legal determination of Verizon's section 272 compliance. Parties have yet to comment on the audit report and the Commission has not completed its own review of the audit results. *See* 47 C.F.R. § 53.213(d) (establishing 60-day comment period after audit report is made public). Based on the information we have to date, we are not persuaded that the issues raised in the audit warrant a finding that Verizon will not comply with the requirements of section 272.

VI. PUBLIC INTEREST ANALYSIS

74. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[188] We conclude that approval of this application is consistent with the public interest.[189] In particular, we find that barriers to competitive entry in the local markets have been removed and that the local exchange markets in Connecticut are now open to competition.[190]

75. We find that Verizon's Connecticut market is open to competition and that Verizon's entry into long distance in Connecticut will benefit customers. One commenter, Lightpath, argues that approval of this application is not in the public interest on the grounds that Verizon stalled interconnection agreement negotiations with Lightpath in Connecticut and forced Lightpath to arbitrate its interconnection agreement.[191] Lightpath asks that we establish a presumption that prior interconnection agreements are reasonable and that it is unreasonable for Verizon to start with the prior agreement's terms.[192] We find that Verizon adequately responds to Lightpath's allegations. Specifically, Verizon denies any unfair dealing or discrimination in its negotiations with Lightpath.[193] Verizon further states that, in any case, Lightpath's prior interconnection agreement stayed in effect until the new agreement took effect.[194] As the Commission has stated in prior orders, "we will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act."[195] Nothing else in the record indicates a pattern of conduct that would undermine our confidence that the Connecticut market is open to competition.[196] Instead, the record confirms our view, expressed in prior section 271 orders, that BOC entry into the long distance market will benefit

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[188] *See* 47 U.S.C. § 271(d)(3)(C). *See* Appendix D at D–38-39, paras. 71-73.

[189] *See* Verizon Application at 2-3, 71-82; Verizon Canny/Abesamis Decl.; Verizon Application App. A, Vol. 3, Tab 8, Declaration of William E. Taylor (Verizon Taylor Decl.); Verizon Reply at 20-25.

[190] *See* Verizon Application at paras. 72-75 (describing number of competitive LEC-controlled lines and modes of entry in Connecticut); Verizon Reply at 20-21.

[191] Lightpath Comments at 2.

[192] *Id.*

[193] Verizon Reply at 25.

[194] *Id.*

[195] *SWBT Texas Order*, 15 FCC Rcd at 18565, para. 431 (*citing Ameritech Michigan Order*, 12 FCC Rcd at 20749, para. 396); *see also* Verizon Reply at 23-25.

[196] *See id.* We emphasize that in granting this application, we do not reach any conclusion relating to the merits of Lightpath's allegations.

customers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[197]

76. We find that Verizon's Performance Assurance Plan (or PAP) for Connecticut provides additional assurance that the local market will remain open after Verizon receives section 271 authorization.[198] Significantly, Verizon's Connecticut PAP is essentially the same as the New York PAP we reviewed as part of Verizon's New York section 271 application,[199] except for penalty caps, which have been reduced proportionately to reflect the much smaller number of lines served by Verizon in Connecticut.[200] The Connecticut PAP will also be updated automatically whenever the New York PAP is modified.[201] We note that the approach taken by the Connecticut Department is one reasonable way to safeguard future compliance.

77. We cannot agree with Lightpath's contention that the caps on damages in the Connecticut PAP are too low and seriously undermine the PAP's effectiveness as an anti-backsliding tool. Lightpath contends that "CLEC-specific, incident-based remedies" should be added to the existing remedies to address "the direct consequences of poor service quality."[202] Specifically, Lightpath points to two other states' plans in which competitive LECs are compensated each time Verizon's performance in individual instances is below the performance standard.[203] The Connecticut PAP, in contrast, generally obligates Verizon to pay remedies when its performance to competitive LECs in the aggregate is below the performance standard.[204] As the Commission has recognized, individual state PAPs may vary, and our task is to determine

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[197] *See* Verizon Application at 79-82; Verizon Reply at 21; *Verizon Massachusetts Order*, 16 FCC Rcd at 9118, para. 233.

[198] *See, e.g., Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806, paras. 363-64; *see Ameritech Michigan Order*, 12 FCC Rcd at 20747, para. 390.

[199] *See* Verizon Application at 75, 78; Verizon Canny/Abesamis Decl. at 52, para. 116; *Bell Atlantic New York Order*, 15 FCC Rcd at 4164-73, paras. 429-43; *Verizon Massachusetts Order*, 16 FCC Rcd at 9120, paras. 237-48.

[200] *See* Verizon Application at 78; Verizon Canny/Abesamis Decl. at 52, para. 116.

[201] *See* Verizon Application at 77-78; Verizon Canny/Abesamis Decl. at 7, paras. 15, 51-52, 116.

[202] Lightpath Comments at 3-4; *see also* Letter from Cherie Kiser, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, Counsel for Lightpath, to Magalie Roman Salas, Secretary, Federal Communications Commission (July 3, 2001).

[203] *See, e.g., id.* n.11 (citing *Establishment of a Collaborative Committee to Investigate Market Opening Measures*, Va. SCC Collaborative Committee Case No. PUC000026, Proposed Verizon Performance Plan for the State of Virginia, at 1 (filed Aug. 2, 2000).

[204] *See* Verizon Canny/Abesamis Decl. at 59-65, paras. 133-54; Letter from Sandra Thorn, Vice President and General Counsel, New York and Connecticut, Verizon New York Inc., to Louise Rickard, Acting Executive Secretary, Connecticut Department of Public Utility Control, at 7-15, Verizon Application at App. F, Vol. 1, Tab 3 (Apr. 20, 2001) (transmitting Verizon Connecticut PAP). For one component of the Connecticut PAP, i.e., Critical Measures, Verizon must pay if it fails to the meet the performance standard in individual cases. This is called the "individual rule." *See id.* at 11.

whether the PAP at hand falls within a zone of reasonableness and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance."[205] We find that the caps in the Connecticut plan are directly proportionate to those we approved in the New York plan and that the payment triggers, along with other procedural aspects, are the same.[206] There is nothing in the record to indicate that higher penalty amounts or different payment triggers are necessary in Connecticut to create a proper incentive for post-entry compliance. We also agree with the Department of Justice's conclusion that the way in which Verizon has extended the New York Change Control Assurance Plan (CCAP) to cover Connecticut is acceptable in the present circumstances.[207] The CCAP requires Verizon to provide competitive LECs with bill credits "if Verizon does not provide satisfactory service pursuant to the standards established for measurements associated with the Change Management Process."[208]

78. We recognize, as did the Department of Justice, that "it may be more difficult to make statistically significant determinations that Verizon's performance in Connecticut is out of parity because of the small number of competitive LEC orders there."[209] The Department of Justice does not advocate changes to the Connecticut PAP in light of this, however. The low volumes of competitive LEC orders are not a factor within Verizon's control and we do not believe that it is necessary to require changes to the Connecticut PAP in order to ensure adequate incentives for post-entry compliance. Further, based on the Connecticut Department's comprehensive review, we are comfortable that the PAP is sufficient to deter backsliding given current volumes of commercial activity.[210]

79. Finally, we are aware of the recent independent auditor's report on Verizon's compliance with the conditions of the Bell Atlantic/GTE merger regarding its Genuity spin-off, which were designed to ensure that the merger would not result in a violation of section 271.[211]

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[205] *Bell Atlantic New York Order*, 15 FCC Rcd at 4166, para. 433.

[206] *See* Verizon Application at 78; Verizon Canny/Abesamis Decl. at 52, para. 116; Verizon Reply at 22-23; *Bell Atlantic New York Order*, 15 FCC Rcd at 4167-68, para. 435.

[207] Department of Justice Evaluation at 5 n.18. Verizon Canny/Abesamis Decl. at 70, para. 162. The Department of Justice points out that competitive LECs operating in both New York and Verizon's Connecticut service area will not be compensated for Verizon's poor performance in Connecticut. As the Department of Justice notes, any competitive impact is *de minimis* in Connecticut, but might raise a larger concern in states with volumes greater than Connecticut. *See* Department of Justice Evaluation at 5 n.18.

[208] Verizon Canny/Abesamis Decl. at 70, para. 162.

[209] Department of Justice Evaluation at 5 n.18.

[210] *See* Connecticut DPUC, Docket No. 97-01-23, Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996 (Apr. 11 2001), Verizon Application at App. B, Vol. 1, Tab 1, Sub-Tab G, 14-15.

[211] *See* Letter from Susan Browning, Executive Director, Regulatory Compliance, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission (June 1, 2001) (transmitting audit report).

Although we are concerned about the results of the Genuity audit, we believe that these issues will be appropriately addressed in the Commission's detailed review of the audit findings. Based on the information that we have to date, we are not persuaded that the audit findings warrant a conclusion of checklist non-compliance. Moreover, no commenter has raised Verizon's compliance with the Genuity conditions as an issue in this proceeding.

VII. SECTION 271(D)(6) ENFORCEMENT AUTHORITY

80. Section 271(d)(6) of the Act requires Verizon to continue to satisfy the "conditions required for . . . approval" of its section 271 application after the Commission approves its application.[212] Thus, the Commission has a responsibility not only to ensure that Verizon is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.[213]

81. Working in concert with the Connecticut Department, we intend to closely monitor Verizon's post-approval compliance for Connecticut to ensure that Verizon does not "cease [] to meet any of the conditions required for [section 271] approval."[214] We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Connecticut. In this regard, the Commission will pay particular attention to Verizon's performance for loops and transport performance as well as section 272 compliance.

82. Consistent with prior section 271 orders, we require Verizon to report to the Commission all Connecticut carrier-to-carrier performance metrics results and Performance Assurance Plan monthly reports beginning with the first full month after the effective date of this Order, and for each month thereafter for one year unless extended by the Commission or Chief of the Enforcement Bureau. These results and reports will allow us to review, on an ongoing basis, Verizon's performance to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Verizon's entry into the Connecticut long distance market.[215]

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[212] 47 U.S.C. § 271(d)(6).

[213] *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *SWBT Kansas/Oklahoma* 16 FCC Rcd at 6382-84, paras. 283-85. *See* Appendix C.

[214] 47 U.S.C. § 271(d)(6)(A).

[215] *See, e.g., Bell Atlantic-New York, Authorization Under Section 271of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* File No. EB-00-IH-0085, Order, 15 FCC Rcd 5413 (2000) (adopting consent decree between the Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of $3,000,000 to the United States Treasury, with additional payments if Bell Atlantic (continued....)

VIII. CONCLUSION

83. For the reasons discussed above, we grant Verizon's application for authorization under section 271 of the Act to provide in-region, interLATA services in the state of Connecticut.

IX. ORDERING CLAUSES

84. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, Verizon's application to provide in-region, interLATA service in the state of Connecticut, filed on April 23, 2001, IS GRANTED.

85. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE July 30, 2001.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

(Continued from previous page)
failed to meet specified performance standards and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).

Appendix A

Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., 271 Application to Provide In-Region, InterLATA Services in Connecticut CC Docket 01-100

COMMENTS

Commenters	Abbreviation
Association of Communications Enterprises	ASCENT
AT&T	AT&T
Cablevision Lightpath – CT, Inc.	Lightpath
Connecticut Department of Public Utility Control	Connecticut Department
Covad Communications Company	Covad
Department of Justice	
Sprint Communications Company L.P.	Sprint

Reply Commenters	
Verizon New York Inc., et al.	Verizon

Supplemental Commenters	
Advanced Telcom Group, Inc.	Advanced Telcom
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
Verizon New York Inc., et al.	Verizon

Appendix B

New York Performance Metrics

All data included here is taken from the New York Carrier-to-Carrier Reports. This table is provided as a reference tool for the convenience of the reader. No conclusions are to be drawn from the raw data contained in this table. Our analysis is based on the totality of the circumstances, such that we may use non-metric evidence, and may rely more heavily on some metrics more than others, in making our determination. The inclusion of these particular metrics in this table does not necessarily mean that we relied on all of these metrics, nor that other metrics may not also be important in our analysis. Some metrics that we have relied on in the past and may rely on for a future application were not included here because there was no data provided for them (usually either because there was no activity, or because the metrics are still under development). Metrics with no retail analog provided are usually compared with a benchmark. Note that for some metrics during the period provided there may be changes in the metric definition, or changes in the retail analog applied, making it difficult to compare the data over time.

AGGREGATE METRICS

Metric No.	Metric Name
Preorder and OSS Availability:	
PO-1-01	OSS Response Times - Customer Service Record
PO-1-02	OSS Response Times - Due Date Availability
PO-1-03	OSS Response Times - Address Validation
PO-1-04	OSS Response Times - Product & Service Availability
PO-1-05	OSS Response Times - Telephone No. Avail & Reservation
PO-1-06	OSS Response Times - Facility Avail (Loop Qualification)
PO-1-07	OSS Response Times - Rejected Query
PO-1-08	OSS Response Times - % Timeouts
PO-1-09	OSS Response Times - Parsed CSR
PO-8-01	Average Response Time - Manual Loop Qualification
PO-8-02	Average Response Time - Engineering Record Request
PO-2-01	OSS Interf. Avail. – Total
PO-2-02	OSS Interf. Avail. – Prime Time
PO-2-03	OSS Interf. Avail. – Non-Prime
MR-1-01	OSS M&R Response Times - Create Trouble
MR-1-02	OSS M&R Response Times - Status Trouble
MR-1-03	OSS M&R Response Times - Modify Trouble
MR-1-04	OSS M&R Response Times - Request Cancellation of Trbl
MR-1-05	OSS M&R Response Times -Trbl Reprt History (by TN/Circ)
MR-1-06	OSS M&R Response Times - Test Trouble (POTS Only)
Change Management, Billing, OS/DA:	
PO-4-01	Change Man. Notices: % Notices Sent on Time
PO-4-01	Change Man. Confirmations: % Notices Sent on Time
BI-1-02	Billing - % DUF in 4 Business Days
BI-2-01	Timeliness of Carrier Bill
BI-3-01	% Billing Adjustments - Dollars Adjusted
BI-3-02	% Billing Adjustments - Number of Adjustments
OD-1-01	Average Speed of Answer – Operator Services
OD-1-02	Average Speed of Answer – Directory Assistance
Interconnection and Collocation:	
NP-1-01	% Final Trunk Groups Exceeding Blocking Standard
NP-1-03	Number FTG Exceeding Blocking Std. – 2 Months
NP-1-04	Number FTG Exceeding Blocking Std. – 3 Months
NP-2-01	% On Time Response to Request for Physical Collocation
NP-2-02	% On Time Response to Request for Virtual Collocation
NP-2-05	% On Time – Physical Collocation
NP-2-06	% On Time – Virtual Collocation
NP-2-07	Average Delay Days – Physical Collocation
NP-2-08	Average Delay Days – Virtual Collocation
Ordering:	
OR-1-02	% On Time LSRC – Flow Through
OR-1-04	% On Time LSRC/ASRC No Facility Check
OR-1-06	% On Time LSRC/ASRC Facility Check
OR-1-10	% On Time ASRC Facility Check DS1&DS3
OR-1-12	% On Time FOC
OR-2-02	% On Time LSR Reject – Flow Through
OR-2-04	% On Time LSR/ASR Reject No Facility Check
OR-2-06	% On Time LSR/ASR Reject Facility Check
OR-2-08	% On Time LSR Reject No Facility Check
OR-2-10	% On Time LSR Reject Facility Check
OR-2-12	% On Time Trunk ASR Reject
OR-3-01	% Rejects
OR-4-02	Completion Notice – % On Time

Metric No.	Metric Name
OR-4-05	Work Completion Notice – % On Time
OR-4-07	% SOP to Bill Completion >= 5 Business Days
OR-4-08	% SOP to Bill Completion > 1 Business Day
OR-5-01	% Flow Through - Total
OR-5-03	% Flow Through Achieved
OR-6-01	% Accuracy - Orders*
OR-6-02	% Accuracy – Opportunities*
OR-6-03	% Accuracy – LSRC**
OR-7-01	% Order Confirmation/Rejects sent within 3 Business Days
OR-8-01	% Acknowledgements onTime
OR-9-01	% Acknowledgement Completeness

Provisioning:

PR-2-01	Av. Completed Interval - Total No Dispatch
PR-2-02	Average Interval Completed – Total Dispatch
PR-2-03	Av. Completed Interval - Dispatch (1-5 Lines)
PR-2-04	Av. Completed Interval - Dispatch (6-9 Lines)
PR-2-05	Av. Completed Interval - Dispatch (>= 10 Lines)
PR-2-06	Av. Interval Completed – DS0
PR-2-07	Av. Interval Completed – DS1
PR-2-08	Av. Interval Completed – DS3
PR-2-09	Av. Interval Completed – Total
PR-4-01	% Missed Appointment – Verizon – Total
PR-4-02	Average Delay Days – Total
PR-4-04	% Missed Appointment – Verizon – Dispatch
PR-4-05	% Missed Appointment – Verizon – No Dispatch
PR-4-14	% Completed On Time [With Serial Number]
PR-6-01	% Install. Troubles Reported within 30 Days
PR-6-02	% Installation Troubles reported within 7 Days
PR-8-01	Open Orders in a Hold Status > 30 Days
PR-8-02	Open Orders in a Hold Status > 90 Days
PR-9-01	% On Time Performance – Hot Cut Loop

Metric No.	Metric Name

Maintenance and Repair:

MR-2-01	Network Trouble Report Rate – Total
MR-2-02	Network Trouble Report Rate – Loop
MR-2-03	Network Trouble Report Rate – Central Office
MR-3-01	% Missed Repair Appointment – Loop
MR-3-02	% Missed Repair Appointment – Central Office
MR-4-01	Mean Time To Repair – Total
MR-4-02	Mean Time To Repair – Loop Trouble
MR-4-03	Mean Time To Repair – Central Office Trouble
MR-4-05	% Out of Service > 2 Hours
MR-4-06	% Out of Service > 4 Hours
MR-4-07	% Out of Service > 12 Hours
MR-4-08	% Out of Service > 24 Hours
MR-5-01	% Repeat Reports within 30 Days

DISAGGREGATED METRICS

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
Preorder and OSS Interface Availability										
	OSS Response Times									
PO-1-01	Customer Service Record – EDI	2.75	2.42	2.76	2.37	2.69	2.38	2.70	2.85	
PO-1-01	Customer Service Record – CORBA	2.75	1.19	2.76	1.03	2.69	1.08	2.70	1.23	
PO-1-01	Customer Service Record – Web GUI	2.75	5.59	2.76	3.50	2.69	1.62	2.70	3.20	
PO-1-02	Due Date Availability – EDI	0.12	3.67	0.14	2.62	0.12	2.48	0.13	2.77	
PO-1-02	Due Date Availability – CORBA	0.12	1.97	0.14	0.71	0.12	NA	0.13	NA	
PO-1-02	Due Date Availability – Web GUI	0.12	5.39	0.14	2.47	0.12	1.22	0.13	2.35	
PO-1-03	Address Validation – EDI	4.72	3.65	4.46	3.67	4.48	4.29	4.33	4.93	
PO-1-03	Address Validation – CORBA	4.72	2.16	4.46	2.30	4.48	2.68	4.33	2.35	
PO-1-03	Address Validation – Web GUI	4.72	6.72	4.46	5.35	4.48	2.45	4.33	5.27	
PO-1-04	Product & Service Availability – EDI	0.18	3.66	7.40	9.93	8.97	9.16	8.33	10.81	4a
PO-1-04	Product & Service Availability – CORBA	0.18	6.15	7.40	0.00	8.97	NA	8.33	NA	
PO-1-04	Product & Service Availability – Web GUI	0.18	14.99	7.40	8.80	8.97	4.93	8.33	9.23	
PO-1-05	Telephone No. Avail. & Reservation – EDI	7.08	6.40	5.57	8.73	5.99	7.41	5.36	8.04	
PO-1-05	Telephone No. Avail. & Reservation – CORBA	7.08	4.92	5.57	5.26	5.99	6.27	5.36	5.94	
PO-1-05	Telephone No. Avail. & Reservation – Web GUI	7.08	9.55	5.57	7.88	5.99	3.49	5.36	7.99	
PO-1-06	Facility Available (Loop Qualification) – EDI	13.17	3.06	11.00	2.41	13.75	5.82	13.47	3.14	4b
PO-1-06	Facility Available (Loop Qualification) – CORBA	13.17	2.42	11.00	2.36	13.75	2.71	13.47	2.62	
PO-1-06	Facility Available (Loop Qualification) – Web GUI	13.17	6.35	11.00	5.65	13.75	2.70	13.47	4.96	
PO-1-07	Rejected Query – EDI	0.13	2.85	0.16	2.45	0.10	2.52	0.10	2.26	
PO-1-07	Rejected Query – CORBA	0.13	1.05	0.16	4.29	0.10	1.26	0.10	1.17	
PO-1-07	Rejected Query – Web GUI	0.13	5.74	0.16	4.80	0.10	3.65	0.10	3.51	
PO-1-08	OSS Interface - % Timeouts – EDI		0.10		0.25		1.53		0.64	
PO-1-08	OSS Interface - % Timeouts – CORBA		0.12		0.36		0.40		0.12	
PO-1-08	OSS Interface - % Timeouts – Web GUI				0.54		0.21		0.37	
PO-1-09	Parsed CSR – EDI	2.75	3.17	2.76	4.12	2.69	2.36	2.70	2.41	
PO-1-09	Parsed CSR – CORBA	2.75	1.47	2.76	1.12	2.69	0.47	2.70	0.46	
PO-8-01	Avg Response Time – Manual Loop Qualification		UD		UD		UD		UD	
PO-8-02	Avg Response Time – Engineering Record Request		UD		UD		NA		NA	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
	OSS Interface Availability									
PO-2-01	Total – EDI		99.96		99.77		99.88		99.66	
PO-2-01	Total – CORBA		100.00		99.79		99.95		99.83	
PO-2-01	Total – Maintenance Web GUI (RETAS)		99.36		99.00		98.61		99.14	
PO-2-01	Total – Pre-order/Order WEB GUI		99.36		99.00		98.61		99.14	
PO-2-01	Total – Electronic Bonding		99.84		98.94		100.00		98.78	
PO-2-02	Prime Time – EDI		99.99		99.75		99.86		99.91	
PO-2-02	Prime Time – CORBA		100.00		99.73		100.00		100.00	
PO-2-02	Prime Time – Maintenance Web GUI (RETAS)		99.20		99.61		99.21		100.00	
PO-2-02	Prime Time – Pre-order/Order WEB GUI		99.20		99.61		99.21		100.00	
PO-2-02	Prime Time – Electronic Bonding		99.75		98.38		100.00		99.22	
PO-2-03	Non-Prime – EDI		99.89		99.81		99.91		99.26	
PO-2-03	Non-Prime – CORBA		100.00		99.90		99.86		99.55	
PO-2-03	Non-Prime – Maintenance Web GUI (RETAS)		99.62		97.92		97.45		97.70	
PO-2-03	Non-Prime – Pre-order/Order WEB GUI		99.62		97.92		97.45		97.70	
PO-2-03	Non-Prime – Electronic Bonding		100.00		99.97		100.00		98.05	
	OSS Maintenance Interface Response Times									
MR-1-01	Create Trouble	6.67	5.39	6.97	5.72	6.61	6.42	6.57	6.79	
MR-1-02	Status Trouble	4.52	2.38	4.63	2.78	4.60	3.34	4.62	3.83	
MR-1-03	Modify Trouble	6.67	5.26	6.97	5.94	6.61	6.33	6.57	6.40	1c,2b,3c,4c
MR-1-04	Request Cancellation of Trouble	7.80	6.25	8.12	6.51	7.79	8.08	7.75	7.50	
MR-1-05	Trouble Report History (by TN/Circuit)	0.82	1.02	1.49	2.04	1.10	2.74	0.57	3.42	
MR-1-06	Test Trouble (POTS Only)	58.24	57.97	57.23	49.32	57.60	49.36	57.74	48.51	
Change Management, Billing, OS/DA										
	Change Management Notices									
PO-4-01	% Notices Sent on Time – Emergency Maint.		100		100		100		100	1a,2a,3a,4a
PO-4-01	% Notices Sent on Time – Regulatory		NA		NA		NA		100	4b
PO-4-01	% Notices Sent on Time – Industry Standard		NA		NA		NA		NA	
PO-4-01	% Notices Sent on Time – Verizon Orig.		NA		NA		100		100	3a,4a
PO-4-01	% Notices Sent on Time – TC Orig.		NA		NA		NA		NA	
	Change Management Confirmation									
PO-4-01	% Notices Sent on Time – Regulatory		100		NA		NA		NA	1a

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PO-4-01	% Notices Sent on Time - Industry Standard		NA		NA		NA		NA	
PO-4-01	% Notices Sent on Time - Verizon Orig.		100		NA		NA		NA	1a
PO-4-01	% Notices Sent on Time - TC Orig.		100		NA		NA		NA	1a
	Billing									
BI-1-02	Billing - % DUF in 4 Business Days		99.20		97.45		99.34		99.80	
BI-2-01	Timeliness of Carrier Bill		98.16		99.96		99.12		96.89	
BI-3-01	% Billing Adjustments - Dollars Adjusted	0.04	2.38	0.03	1.73	0.05	0.15	0.03	2.63	
BI-3-02	% Billing Adjustments - Number of Adjustments	0.21	2.80	0.17	0.15	0.22	0.02	0.16	0.00	
	OS/DA Average Speed of Answer									
OD-1-01	Operator Services - NY OSC		1.6	0.17	1.96	1.86	0.17	1.84	0.18	
OD-1-02	Directory Assistance - NY/MA OSC			1.53	4.97	4.85	2.66	4.41	3.48	
OD-1-02	Directory Assistance - NY OSC		4.0							
OD-1-02	Directory Assistance - MA OSC		1.4							
Resale: Ordering										
	All Resale Orders									
OR-7-01	% Order Confirm./Rejects sent w/in 3 Business Days		97.61		98.38		99.51		99.39	
OR-8-01	% Acknowledgements on Time		99.17		99.94		99.74		99.68	
OR-9-01	% Acknowledgement Completeness		98.10		99.98		99.81		99.88	
OR-3-01	% Rejects Orders		51.11		54.81		51.65		49.20	
OR-4-02	Completion Notice - % On Time Orders		98.79		95.69		98.43		97.94	
OR-4-05	Work Completion Notice - % On Time Orders		99.89		99.91		99.80		99.95	
OR-4-07	% SOP to Bill Completion >= 5 Business Days Orders	UD	2.37	UD	0.72	UD	0.41	4.63	9.22	
OR-4-08	% SOP to Bill Completion > 1 Business Day Orders		11.30	UD	12.05	UD	10.09	13.98	21.42	
OR-5-01	% Flow Through - Total Orders		48.85		54.72		54.49		49.97	
OR-5-03	% Flow Through Achieved Orders		76.24		84.34		83.02		83.79	
OR-6-01	% Accuracy - Orders* Orders		88.26		89.30		85.44		91.71	
OR-6-02	% Accuracy - Opportunities* Orders		99.19		99.00		96.80		99.00	
OR-6-03	% Accuracy - LSRC** Orders		94.00		93.68		95.01		96.64	
	Resale POTS & Pre-qualified Complex									
OR-1-02	% On Time LSRC - Flow Through		98.22		98.06		98.26		99.16	
OR-1-04	% On Time LSRC/ASRC No Facility Check		98.93		97.08		98.67		99.13	
OR-1-06	% On Time LSRC/ASRC Facility Check		99.30		100.00		95.38		99.27	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
OR-2-02	% On Time LSR Reject – Flow Through		99.91		99.63		99.35		99.72	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		99.30		98.54		98.59		99.18	
OR-2-06	% On Time LSR/ASR Reject Facility Check		88.89		100.00		100.00		100.00	1a,2b,4b
	Resale 2 Wire Digital Services									
OR-1-04	% On Time LSRC/ASRC No Facility Check		87.07		90.62		97.92		81.58	
OR-1-06	% On Time LSRC/ASRC Facility Check		100.00		100.00		85.71		100.00	1a,2a,3a,4a
OR-2-04	% On Time LSR/ASR Reject No Facility Check		100.00		98.61		100.00		100.00	4c
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		100.00		NA		NA	2a
	Resale Specials – Electronically Subm									
OR-1-04	% On Time LSRC/ASRC No Fac Check (Non DS0, DS1, & DS3)		96.77		96.93		94.43		97.12	
OR-1-06	% On Time LSRC/ASRC Fac Check (Non DS0, DS1, & DS3)		90.91		100.00		80.77		86.36	1b,2b,3c,4c
OR-2-04	% On Time LSR/ASR Reject No Facility Check		97.42		95.69		97.47		98.14	
OR-2-06	% On Time LSR/ASR Reject Facility Check		100.00		100.00		100.00		100.00	1a,2a,3a,4a
Resale: Provisioning										
	Resale POTS									
PR-2-04	Avg Interval Completed – Dispatch (6-9 Lines)	8.72	14.39	8.77	7.29	7.98	7.33	8.40	3.17	1b,2a,3a,4a
PR-2-05	Avg Interval Completed – Dispatch (>= 10 Lines)	10.21	9.44	9.93	14.50	10.59	11.83	10.49	7.50	1a,2a,3a,4a,2n,3n
PR-2-01	Avg Int Completed – Total No Dispatch – Business	1.06	1.57	1.07	2.56	0.99	1.44	0.72	1.57	
PR-2-03	Avg Int Completed – Dispatch (1-5 Lines) – Bus	5.72	5.90	6.07	5.75	5.28	5.25	3.66	4.71	1n
PR-2-01	Avg Int Completed – Total No Dispatch – Residence	0.70	1.95	0.86	1.72	0.78	1.56	0.74	1.36	
PR-2-03	Avg Int Completed – Dispatch (1-5 Lines) – Res	7.25	6.97	7.99	6.78	8.84	9.46	7.58	8.93	3n
PR-4-02	Average Delay Days – Total	6.10	9.10	6.20	8.34	6.10	7.54	6.13	5.28	3n
PR-4-04	%Missed Appointment – Verizon – Dispatch	14.58	9.10	13.91	8.38	14.54	7.80	12.86	0.00	
PR-4-05	%Missed Appointment – Verizon – No Dispatch	0.08	0.04	0.11	0.09	0.07	0.04	0.09	0.02	
PR-6-01	%Installation Troubles reported within 30 Days	4.28	2.19	4.28	2.27	4.27	2.67	5.02	2.30	
PR-6-02	%Installation Troubles reported within 7 Days	2.52	1.16	2.43	1.07	2.41	1.44	2.89	1.02	
PR-8-01	Open Orders in a Hold Status >30 Days	0.10	0.28	0.08	0.19	0.04	0.07	0.00	0.00	
PR-8-02	Open Orders in a Hold Status >90 Days	0.03	0.10	0.03	0.08	0.01	0.00	0.00	0.00	
	Resale 2-Wire Digital Services									
PR-2-01	Average Int Completed – Total No Dispatch	1.25	3.07	1.28	1.98	1.61	1.16	1.18	2.00	4c

Metric Number	Metric Name	January		February		March		April		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2-02	Average Int. Completed – Total Dispatch	9.70	8.00	7.53	10.88	6.59	8.50	5.01	9.55	1a,2c,3b,4b,3n
PR-4-02	Average Delay Days – Total	7.67	16.00	9.67	6.14	8.19	9.00	5.56	NA	1a,2a,3a,3n
PR-4-04	% Missed Appointment – Verizon – Dispatch	19.56	16.67	5.34	9.30	5.52	5.88	5.06	0.00	1a,2n,3n
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.15	2.63	0.17	0.00	0.38	0.00	0.14	0.00	
PR-6-01	% Install. Troubles Reported within 30 Days	4.28	0.48	1.63	0.54	1.95	1.27	1.90	1.18	
PR-8-01	Open Orders in a Hold Status >30 Days	1.01	0.00	1.07	0.00	1.09	0.00	1.33	0.00	
PR-8-02	Open Orders in a Hold Status >90 Days	0.60	0.00	0.69	0.00	0.77	0.00	0.83	0.00	
	Resale Special Services									
PR-2-01	Average Interval Completed – Total No Dispatch	2.04	1.41	2.02	1.72	1.81	2.51	24.78	1.67	4a,3n
PR-2-02	Average Interval Completed – Total Dispatch	11.62	10.40	10.79	5.11	9.18	5.11	24.79	8.00	1b,2a,3a,4a
PR-2-06	Average Interval Completed – DS0	3.00	3.07	3.28	1.55	3.04	2.95	6.82	4.00	4a,1x
PR-2-07	Average Interval Completed – DS1	16.19	7.44	18.04	2.75	13.40	4.00	25.02	NA	1a,2a,3a
PR-2-08	Average Interval Completed – DS3	31.80	NA	16.88	NA	20.33	NA	50.49	NA	
PR-4-01	% Missed Appointment – Verizon – Total	2.39	0.65	6.60	1.94	4.30	0.88	2.30	0.00	4b
PR-4-01	% Missed Appointment – Verizon – DS0	1.66	1.41	1.61	1.67	1.75	1.56	1.39	0.00	4a,2n
PR-4-01	% Missed Appointment – Verizon – DS1	4.59	0.00	3.69	0.00	1.18	0.00	30.51	NA	1b,2a,3a
PR-4-01	% Missed Appointment – Verizon – DS3	0.00	NA	8.33	NA	0.00	NA	33.67	NA	
PR-4-01	% Missed Appointment – Verizon – Spec. Other	2.13	0.00	2.44	2.78	1.84	0.00	21.69	0.00	4a,2n
PR-4-02	Average Delay Days – Total	16.19	2.00	17.92	6.50	7.50	41.00	20.96	NA	1a,2a,3a
PR-6-01	% Installation Troubles reported within 30 Days	2.47	0.14	3.63	0.27	2.85	0.55	10.22	7.78	
PR-8-01	Open Orders in a Hold Status >30 Days	0.55	0.65	0.36	0.97	0.27	0.00	0.00	0.00	4b,1n,2n
PR-8-02	Open Orders in a Hold Status >90 Days	0.03	0.00	0.04	0.00	0.04	0.00	0.00	0.00	4b
Resale: Maintenance and Repair										
	Resale POTS									
MR-2-02	Network Trouble Report Rate – Loop	1.45	0.70	1.24	0.68	1.50	0.83	1.45	0.71	
MR-2-03	Network Trouble Report Rate – Central Office	0.21	0.18	0.21	0.17	0.20	0.18	0.19	0.15	
MR-3-01	% Missed Repair Appointment – Loop Bus	13.10	8.62	13.36	8.47	13.46	7.60	12.92	8.55	
MR-3-01	% Missed Repair Appointment – Loop Res	9.21	7.93	8.85	7.13	8.00	4.78	8.82	8.41	
MR-3-02	% Missed Repair Appointment – Central Office Bus	7.52	5.73	8.82	2.73	8.05	1.97	7.40	4.98	
MR-3-02	% Missed Repair Appointment – Central Office Res	5.30	1.69	4.45	3.38	4.56	0.88	4.76	3.80	
MR-4-01	Mean Time To Repair – Total	24.10	20.13	24.77	21.60	23.58	18.87	23.37	20.25	
MR-4-02	Mean Time To Repair – Loop Trouble Bus	22.43	21.65	23.08	23.92	21.05	20.07	20.65	20.98	2n,4n

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
MR-4-02	Mean Time To Repair – Loop Trouble – Res	26.68	24.53	27.85	25.07	26.27	21.77	26.02	26.47	4n
MR-4-03	Mean Time To Repair – Central Office Trouble – Bus	11.85	11.97	12.38	11.72	10.70	11.57	10.02	11.00	1n,3n,4n
MR-4-03	Mean Time To Repair – Central Office Trouble – Res	11.37	9.48	11.05	10.12	11.12	11.35	10.77	14.18	3n,4n
MR-4-06	% Out of Service > 4 Hours	81.27	76.46	82.19	76.28	81.83	76.94	79.97	73.58	
MR-4-07	% Out of Service > 12 Hours	63.12	56.50	65.89	59.04	63.46	55.25	62.29	53.94	
MR-4-08	% Out of Service > 24 Hours – Bus	24.46	21.90	25.75	23.05	23.26	20.12	22.33	20.64	
MR-4-08	% Out of Service > 24 Hours – Res	27.24	23.45	28.30	22.46	25.75	18.58	25.11	22.16	
MR-5-01	% Repeat Reports within 30 Days	20.77	22.00	20.39	19.91	20.60	21.04	20.78	19.41	3n
	Resale 2-Wire Digital Services									
MR-2-02	Network Trouble Report Rate – Loop	0.39	0.84	0.34	0.47	0.46	0.48	0.49	0.75	2n,3n
MR-2-03	Network Trouble Report Rate – Central Office	0.28	0.23	0.25	0.24	0.32	0.27	0.28	0.42	4n
MR-3-01	% Missed Repair Appointment – Loop	25.91	6.90	24.87	6.25	25.87	25.00	17.60	24.00	1c,2b,3b,4c,4n
MR-3-02	% Missed Repair Appointment – Central Office	19.75	12.50	26.48	12.50	18.48	22.22	18.21	28.57	1a,2a,3a,4b,3n,4n
MR-4-01	Mean Time To Repair – Total	30.55	21.33	31.97	28.40	26.12	22.43	21.42	23.28	2c,3c,4n
MR-4-02	Mean Time To Repair – Loop Trouble	35.57	20.58	37.63	29.97	29.58	17.55	24.25	24.77	1c,2b,3b,4c,4n
MR-4-03	Mean Time To Repair – Central Office Trouble	23.77	24.05	24.28	25.25	21.25	31.10	16.43	20.67	1a,2a,3a,4b,1n,2n, 3n,4n
MR-4-07	% Out of Service > 12 Hours	68.40	50.00	73.17	72.22	64.71	63.64	53.99	68.75	2b,3c,4n
MR-4-08	% Out of Service > 24 Hours	43.87	25.00	50.61	33.33	41.02	45.45	29.73	34.38	2b,3c,3n,4n
MR-5-01	% Repeat Reports within 30 Days	23.04	13.51	20.09	16.67	19.19	20.00	19.56	38.46	2c,3c,3n
	Resale Special Services									
MR-2-01	Network Trouble Report Rate	0.83	1.53	0.81	0.97	0.90	1.12	1.04	1.33	2n,3n
MR-4-01	Mean Time To Repair – Total	6.97	6.55	6.20	7.80	5.82	7.68	5.73	7.53	2n
MR-4-06	% Out of Service > 4 Hours	59.31	67.31	57.19	61.54	55.67	63.46	50.21	66.67	1n,2n,3n
MR-4-08	% Out of Service > 24 Hours	2.15	0.00	2.46	5.13	1.90	1.92	2.05	3.51	2n,3n,4n
MR-5-01	% Repeat Reports within 30 Days	22.13	25.00	24.32	28.89	24.56	26.92	27.28	25.81	1n,2n,3n
UNEs: Ordering										
	All UNE Orders									
OR-8-01	% Acknowledgements on Time		99.49		98.21		99.05		98.22	
OR-9-01	% Acknowledgement Completeness		96.67		99.90		99.23		99.64	
OR-3-01	% Rejects		21.73		23.25		21.87		21.09	
OR-4-02	Completion Notice – % On Time		99.58		97.18		99.43		99.59	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
OR-4-05	Work Completion Notice – % On Time		100.00		99.99		99.95		99.92	
OR-4-07	% SOP to Bill Completion >= 5 Business Days	UD	0.90	UD	0.51	UD	0.59		3.98	
OR-4-08	% SOP to Bill Completion > 1 Business Day		9.47	UD	12.38	UD	9.32		12.65	
OR-5-01	% Flow Through – Total (ASRs + LSRs)		83.36		83.73		82.58		80.55	
OR-5-03	% Flow Through Achieved		91.72		91.65		91.12		92.67	
	UNE Platform									
OR-1-02	% On Time LSRC – Flow Through		98.03		96.16		98.42		97.91	
OR-1-04	% On Time LSRC/ASRC No Facility Check		99.32		97.78		98.48		98.88	
OR-1-06	% On Time LSRC/ASRC Facility Check		98.61		98.97		97.22		98.93	
OR-2-02	% On Time LSR Reject – Flow Through		99.45		97.10		98.15		96.61	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		99.75		99.33		99.70		99.74	
OR-2-06	% On Time LSR/ASR Reject Facility Check		100.00		100.00		100.00		100.00	1a,2b,3b,4b
OR-6-01	% Accuracy – Orders*		87.09		92.31		93.26		92.38	
OR-6-02	% Accuracy – Opportunities*		98.51		99.36		99.46		99.09	
OR-6-03	% Accuracy – LSRC*		98.62		97.37		98.19		98.81	
OR-7-01	% Order Confirm./Rejects sent w/in 3 Business Days		96.06		97.17		99.93		99.45	
	UNE Loop/Pre-qualified Complex/ENP									
OR-1-02	% On Time LSRC – Flow Through		98.57		99.24		99.31		99.58	
OR-1-04	% On Time LSRC/ASRC No Facility Check		95.03		92.05		95.59		96.55	
OR-1-06	% On Time LSRC/ASRC Facil. Check		98.29		98.32		98.70		99.25	
OR-2-02	% On Time LSR Reject – Flow Through		99.86		99.39		99.34		99.38	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		94.98		92.61		94.96		95.39	
OR-2-06	% On Time LSR/ASR Reject Facility Check		98.54		99.14		98.98		98.94	
OR-6-01	% Accuracy – Orders*		87.01		95.63		96.11		96.00	
OR-6-02	% Accuracy – Opportunities*		98.20		99.43		99.46		99.41	
OR-6-03	% Accuracy – LSRC*		95.45		95.79		95.93		97.14	
OR-7-01	% Order Confirm./Rejects sent w/in 3 Business Days		96.60		96.33		99.44		99.14	
	UNE 2-Wire Digital Services									
OR-1-04	% On Time LSRC/ASRC No Facil. Check (Electr.)		63.64		100.00		99.13		97.51	2c
OR-1-06	% On Time LSRC/ASRC Facility Check		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		100.00		100.00		98.98		95.52	1a,2c
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	UNE xDSL Loops									

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
OR-1-04	% On Time LSRC/ASRC - No Facility Check		97.95		98.03		97.79		97.96	
OR-1-06	% On Time LSRC/ASRC - Facility Check		NA		NA		NA		100.00	4a
OR-2-04	% On Time LSR/ASR Reject - No Facility Check		97.35		98.08		96.16		98.55	
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	UNE 2 Wire xDSL Line Sharing									
OR-1-04	% On Time LSRC/ASRC - No Facility Check		NA		NA		NA		0.00	4a
OR-1-06	% On Time LSRC/ASRC - Facility Check		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject - No Facility Check		NA		NA		100.00		NA	3a
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	UNE Specials Electr. Submitted									
OR-1-04	% On Time LSRC/ASRC No Facility Check - DS0		100.00		NA		NA		NA	1a
OR-1-04	% On Time LSRC/ASRC No Facility Check - DS1		NA		NA		NA		NA	
OR-1-04	% On Time LSRC/ASRC No Facility Check - DS3		100.00		NA		NA		NA	1a
OR-1-04	% On Time LSRC/ASRC No Facil. Check (Non DS0, DS1, & DS3)		98.66		98.16		96.20		96.37	
OR-1-06	% On Time LSRC/ASRC Facility Check - DS0		100.00		NA		NA		NA	1a
OR-1-06	% On Time LSRC/ASRC Facility Check - DS1		70.98		79.46		83.36		80.00	
OR-1-06	% On Time LSRC/ASRC Facility Check - DS3		73.53		84.00		47.37		52.00	2c,4c
OR-1-06	% On Time LSRC/ASRC Fac. Check (Non DS0, DS1 & DS3)		96.21		96.26		98.20		97.56	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		99.61		98.01		98.80		100.00	
OR-2-06	% On Time LSR/ASR Reject Facility Check		87.65		97.61		94.52		93.17	
	UNE Specials Fax/Mail Submitted									
OR-1-10	% On Time ASRC Facility Check DS1		82.86		86.96		100.00		57.14	2c,3a,4a
OR-1-10	% On Time ASRC Facility Check DS3		48.00		65.71		76.92		58.33	1c,4b
OR-2-08	% On Time LSR Reject No Facility Check		NA		NA		NA		NA	
OR-2-10	% On Time LSR Reject Facility Check		84.21		93.10		92.00		38.46	1b,2c,3c,4b
UNEs: Provisioning										
	UNE Platform									
PR-2-01	Av. Completed Interval - Total No Dispatch	1.06	0.98	1.07	1.26	0.99	1.36	0.72	1.24	
PR-2-03	Av. Completed Interval - Dispatch (1-5 Lines)	5.72	8.33	6.07	10.29	5.28	10.62	3.66	11.85	
PR-2-04	Av. Completed Interval - Dispatch (6-9 Lines)	8.72	8.75	8.77	26.50	7.98	8.00	8.40	6.50	1a,2a,3a,4a,1n,3n

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PR-2-05	Av. Completed Interval – Dispatch (>= 10 Lines)	10.21	7.83	9.93	12.57	10.59	10.10	10.49	6.00	1a,2a,3b,4a,2n
PR-4-04	% Missed Appt – Verizon – Dispatch	14.58	6.85	13.91	8.09	14.54	7.73	12.86	7.28	
PR-4-05	% Missed Appt – Verizon – No Dispatch	0.08	0.02	0.11	0.02	0.07	0.05	0.09	0.01	
PR-6-01	% Installation Troubles reported within 30 Days	4.28	1.82	4.28	1.96	4.27	2.08	5.02	2.79	
PR-6-02	% Installation Troubles reported within 7 Days	2.52	0.76	2.43	0.83	2.41	0.90	2.89	1.22	
	UNE Hot Cut POTS Loops									
PR-2-01	Av. Completed Interval – No Dispatch		11.48		10.24		8.49		15.57	
PR-4-04	% Missed Appt – Verizon – Dispatch	14.58	6.30	13.91	3.81	14.54	0.67	12.86	3.30	
PR-4-05	% Missed Appt – Verizon – No Dispatch	0.08	0.93	0.11	0.80	0.07	0.25	0.09	2.15	
PR-6-02	% Install Troubles reported within 7 Days		0.83		0.46		0.30		0.23	
PR-9-01	% On Time Performance		96.23		98.19		98.79		98.46	
	UNE POTS Loops and Other POTS									
PR-2-03	Av. Completed Int. – Dispatch (1-5 Lines) – Loop	5.72	9.35	6.07	5.94	5.28	9.59	3.66	10.76	
PR-2-04	Av. Completed Int. – Dispatch (6-9 Lines) – Loop	8.72	6.14	8.77	9.00	7.98	9.50	8.40	9.50	1a,2b,3a,4b,2n,3n,4n
PR-2-05	Av. Completed Int. – Dispatch (>= 10 Lines) – Loop	10.21	9.33	9.93	10.00	10.59	14.50	10.49	9.40	1a,2a,3a,4a,2n,3n
PR-2-01	Av. Compl. Int. – Total No Dispatch – Other (UNE Switch & INP)	1.06	NA	1.07	NA	0.99	1.50	0.72	1.00	3a,4a,3n,4n
PR-4-04	% Missed Appt – Verizon – Dispatch – Loop New	14.58	10.84	13.91	8.02	14.54	6.94	12.86	5.79	
PR-4-05	% Missed Appt – Verizon – No Dispatch – Other	0.08	NA	0.11	0.00	0.07	0.00	0.09	0.00	2a,3a,4a
PR-6-01	% Install Troubles reported within 30 Days – Loop	4.28	2.02	4.28	1.37	4.27	1.39	5.02	1.16	
PR-6-02	% Install Troubles reported within 7 Days – Loop	2.52	0.93	2.43	0.76	2.41	0.71	2.89	0.52	
	All UNE POTS									
PR-4-02	Average Delay Days – Total	6.10	7.67	6.20	8.29	6.10	8.70	6.13	8.80	
PR-8-01	Open Orders in a Hold Status >30 Days	0.10	0.18	0.08	0.18	0.04	0.16	0.00	0.19	4x
PR-8-02	Open Orders in a Hold Status >90 Days	0.03	0.02	0.03	0.02	0.01	0.03	0.00	0.04	4x
	UNE 2-Wire Digital Loops									
PR-2-01	Av. Interval Completed – Total No Dispatch	1.25	5.00	1.28	NA	1.61	NA	1.18	NA	1a
PR-2-02	Av. Interval Completed – Total Dispatch	9.70	15.19	7.53	8.44	6.59	8.50	5.01	6.50	1b,2a,3b,4b,1n,2n, 3n,4n
PR-4-02	Average Delay Days – Total	7.67	6.96	9.67	8.37	8.19	8.17	5.56	9.22	
PR-4-04	% Missed Appointment – Verizon – Dispatch	19.56	4.44	5.34	0.50	5.52	1.84	5.06	0.46	
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.15	8.33	0.17	50.00	0.38	0.00	0.14	1.54	1b,2a,3a,4n
PR-6-01	% Install Troubles Reported within 30 Days	4.28	9.40	1.63	12.84	1.95	12.57	1.90	11.01	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PR-8-01	Open Orders in a Hold Status > 30 Days	1.01	9.09	1.07	10.10	1.09	15.48	1.33	7.32	
PR-8-02	Open Orders in a Hold Status >90 Days	0.60	0.76	0.69	0.96	0.77	1.19	0.83	0.91	1n,2n,3n,4n
	UNE xDSL Loops									
PR-2-01	Av. Interval Completed – Total No Dispatch		13.60		10.75		17.81		12.08	1b,2a
PR-2-02	Av. Interval Completed – Total Dispatch		9.67		9.46		6.69		5.58	
PR-4-02	Average Delay Days – Total	3.29	6.65	9.55	7.72	5.08	14.19	9.00	8.24	4x
PR-4-04	% Missed Appointment – Verizon – Dispatch		8.80		4.33		2.96		0.66	
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.46	2.49	0.88	11.54	0.73	3.85	0.53	1.41	2c
PR-4-14	% Completed On Time [With Serial Number]		85.70		86.98		90.59		94.72	
PR-6-01	% Install Troubles Reported within 30 Days	4.28	8.59	4.28	8.45	4.27	5.31	5.02	3.99	
PR-8-01	Open Orders in a Hold Status > 30 Days	0.33	3.75	0.15	4.07	0.15	1.59	0.00	1.17	
PR-8-02	Open Orders in a Hold Status >90 Days	0.33	0.84	0.00	1.22	0.00	0.48	0.00	0.29	
	UNE 2-Wire xDSL Line Sharing									
PR-2-01	Av. Interval Completed – Total No Dispatch	4.23	4.90	3.86	3.98		3.85		4.98	
PR-2-02	Av. Interval Completed – Total Dispatch	4.75	4.73	NA	19.00		24.00		0.00	1b,2a,3a,4a
PR-4-02	Average Delay Days – Total	5.41	7.24	5.71	10.17	26.16	19.50	5.35	11.23	1c,2c,3a,4b,1n
PR-4-04	% Missed Appointment – Verizon – Dispatch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1c,2a,3a,4a
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.46	2.21	0.88	3.34	0.73	0.38	0.53	1.08	
PR-6-01	% Install Troubles Reported within 30 Days	0.54	1.03	0.87	0.95	0.56	1.20	0.37	0.17	2n
PR-8-01	Open Orders in a Hold Status > 30 Days	0.33	0.00	0.38	0.12	0.02	0.15	0.01	0.00	
PR-8-02	Open Orders in a Hold Status >90 Days	0.33	0.00	0.37	0.00	0.02	0.00	0.01	0.00	
	UNE Specials									
PR-2-01	Av. Interval Completed – Total No Dispatch	2.04	42.00	2.02	31.80	1.81	47.22	24.78	40.25	1a,2b,3a,4a,4n
PR-2-02	Av. Interval Completed – Total Dispatch	11.62	31.07	10.79	26.30	9.18	24.79	24.79	25.53	1c,4n
PR-2-06	Av. Interval Completed – DS0	3.00	NA	3.28	NA	3.04	NA	6.82	NA	
PR-2-07	Av. Interval Completed – DS1	16.19	31.80	18.04	26.44	13.40	25.48	25.02	28.55	4n
PR-2-08	Av. Interval Completed – DS3	31.80	31.00	16.88	30.27	20.33	42.63	50.49	19.96	1a,2b,3a,4c,2n
PR-4-01	% Missed Appointment – Verizon – Total	8.50	24.14	6.60	14.88	4.30	22.66	2.30	22.35	
PR-4-01	% Missed Appointment – Verizon – DS0	1.66	NA	1.61	NA	1.75	NA	1.39	NA	
PR-4-01	% Missed Appointment – Verizon – DS1	4.59	25.00	3.69	14.95	1.18	21.88	30.51	21.23	
PR-4-01	% Missed Appointment – Verizon – DS3	0.00	0.00	8.33	14.29	0.00	36.36	33.67	28.13	1a,2c,3b,2n,3x
PR-4-01	% Missed Appointment – Verizon – Special Other	2.13	NA	2.44	NA	1.84	NA	21.69	0.00	4a
PR-4-02	Average Delay Days – Total	16.19	17.71	17.92	20.56	7.50	13.43	20.96	21.63	1b,1n,2n,4n

Metric Number	Metric Name	January		February		March		April		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-6-01	% Installation Troubles reported within 30 Days	2.47	24.49	3.63	9.82	2.85	14.12	10.22	10.17	
PR-8-01	Open Orders in a Hold Status > 30 Days	0.55	6.90	0.36	0.93	0.27	0.99	0.00	0.56	2n,3n,4x
PR-8-02	Open Orders in a Hold Status > 90 Days	0.03	6.90	0.04	0.93	0.04	0.99	0.00	0.56	4x
	Interoffice Facilities (Transport)									
PR-2-09	Av Interval Completed – Total – IOF		55.47		30.93		29.79		37.20	1b
PR-4-01	% Missed Appointment – Verizon – Total – IOF	12.50	20.00	10.60	14.45	3.09	19.57	0.99	23.60	1n,2n
PR-4-02	Average Delay Days – Total – IOF	16.19	61.88	16.00	35.92	NA	19.48	46.70	45.14	1a,2c,3c,4c,2x,3x
PR-8-01	Open Orders in a Hold Status > 30 Days – IOF	0.55	10.00	0.36	1.16	0.27	0.72	0.00	1.12	2n,3n,4x
PR-8-02	Open Orders in a Hold Status > 90 Days – IOF	0.03	0.00	0.04	0.00	0.04	0.00	0.00	0.00	
UNEs: Maintenance and Repair										
	UNE POTS Loops									
MR-2-02	Network Trouble Report Rate – Loop	1.45	1.07	1.24	0.92	1.50	0.93	1.45	0.85	
MR-2-03	Network Trouble Report Rate – Central Office	0.21	0.26	0.21	0.18	0.20	0.19	0.19	0.19	
MR-3-01	% Missed Repair Appointment – Loop	10.02	13.47	9.76	12.12	9.19	9.43	9.64	12.31	3n
MR-3-02	% Missed Repair Appointment – Central Office	6.05	5.95	5.68	4.63	5.95	10.07	5.61	8.03	
MR-4-01	Mean Time To Repair – Total	24.10	22.50	24.77	22.17	23.58	21.28	23.37	20.92	
MR-4-02	Mean Time To Repair – Loop Trouble	25.88	24.78	26.98	23.95	25.30	23.18	25.05	22.63	
MR-4-03	Mean Time To Repair – Central Office Trouble	11.58	13.00	11.48	13.10	11.23	11.80	10.60	13.18	1n,3n
MR-4-07	% Out of Service > 12 Hours	24.46	67.54	65.89	69.38	63.46	65.91	62.29	61.48	
MR-4-08	% Out of Service > 24 Hours	26.70	28.47	27.80	26.15	25.39	24.26	24.66	25.28	4n
MR-5-01	% Repeat Reports within 30 Days	20.77	35.21	20.39	36.53	20.60	37.23	20.78	37.36	
	UNE Platform									
MR-2-02	Network Trouble Report Rate – Platform	1.45	1.26	1.24	1.13	1.50	1.34	1.45	1.34	
MR-2-03	Network Trouble Report Rate – Central Office	0.21	0.15	0.21	0.13	0.20	0.16	0.19	0.14	
MR-3-01	% Missed Repair Appointment – Bus	13.10	8.05	13.36	10.59	13.46	9.47	12.92	8.86	
MR-3-01	% Missed Repair Appointment – Res	9.21	8.05	8.85	6.69	8.00	5.95	8.82	6.24	
MR-3-02	% Missed Repair Appointment – Central Office Bus	7.52	3.02	8.82	3.14	8.05	2.18	7.40	4.91	
MR-3-02	% Missed Repair Appointment – Central Office Res	5.30	2.63	4.45	2.29	4.56	2.45	4.76	3.93	
MR-4-01	Mean Time To Repair – Total	24.10	23.08	24.77	24.73	23.58	23.32	23.37	22.93	
MR-4-02	Mean Time To Repair – Loop Trouble – Bus	22.43	21.15	23.08	24.50	21.05	22.05	20.65	21.75	3n,4n
MR-4-02	Mean Time To Repair – Loop Trouble – Res	26.68	24.75	27.85	26.50	26.27	24.98	26.02	24.42	
MR-4-03	Mean Time To Repair – Central Office Trouble – Bus	11.85	12.42	12.38	10.07	10.70	9.48	10.02	10.92	1n,4n

Metric Number	Metric Name	January		February		March		April		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-4-03	Mean Time To Repair – Central Office Trouble – Res	11.37	10.92	11.05	10.75	11.12	10.82	10.77	10.75	
MR-4-06	% Out of Service > 4 Hours	81.27	82.48	82.19	82.88	81.83	82.82	79.97	80.22	4n
MR-4-07	% Out of Service > 12 Hours	63.12	67.25	65.89	70.05	63.46	68.39	62.29	65.29	
MR-4-08	% Out of Service > 24 Hours - Bus	24.46	19.88	25.75	27.95	23.26	23.94	22.33	21.38	3n
MR-4-08	% Out of Service > 24 Hours - Res	27.24	24.41	28.30	25.03	25.75	22.40	25.11	21.90	
MR-5-01	% Repeat Reports within 30 Days	20.77	22.63	20.39	22.05	20.60	21.74	20.78	20.61	
	UNE 2-Wire Digital Loops									
MR-2-02	Network Trouble Report Rate – Loop	0.39	1.89	0.34	1.79	0.46	2.10	0.49	1.72	
MR-2-03	Network Trouble Report Rate – Central Office	0.28	0.81	0.25	0.65	0.32	0.56	0.28	0.57	
MR-3-01	% Missed Repair Appointment – Loop	25.91	17.07	24.87	12.50	25.87	11.70	17.60	10.13	
MR-3-02	% Missed Repair Appointment – Central Office	19.75	8.57	26.48	17.24	18.48	12.00	18.21	3.85	2c,3c,4c
MR-4-01	Mean Time To Repair – Total	30.55	35.77	31.97	24.45	26.12	27.28	21.42	21.55	1n,3n,4n
MR-4-02	Mean Time To Repair – Loop Trouble	35.57	41.25	37.63	27.60	29.58	29.28	24.25	25.58	1n,4n
MR-4-03	Mean Time To Repair – Central Office Trouble	23.77	22.90	24.28	15.55	21.25	19.77	16.43	9.28	2c,3c,4c
MR-4-07	% Out of Service > 12 Hours	68.40	72.06	73.17	59.49	64.71	62.50	53.99	52.94	1n
MR-4-08	% Out of Service > 24 Hours	43.87	41.18	50.61	29.11	41.02	37.50	29.73	24.71	
MR-5-01	% Repeat Reports within 30 Days	23.04	41.88	20.09	43.12	19.19	41.18	19.56	22.86	4n
	UNE xDSL Loops									
MR-2-02	Network Trouble Report Rate – Loop	0.18	1.56	0.06	1.38	0.09	1.44	0.11	1.11	
MR-2-03	Network Trouble Report Rate – Central Office	0.20	0.33	0.11	0.27	0.11	0.28	0.09	0.32	
MR-3-01	% Missed Repair Appointment – Loop	26.29	17.49	34.44	12.35	19.70	10.89	39.53	11.01	
MR-3-02	% Missed Repair Appointment – Central Office	13.36	15.91	6.87	6.52	10.53	6.21	21.57	8.41	1n
MR-4-02	Mean Time To Repair – Loop Trouble	37.73	36.88	34.52	24.28	29.10	25.48	38.80	27.52	
MR-4-03	Mean Time To Repair – Central Office Trouble	21.63	21.37	12.32	11.88	11.85	12.63	21.83	11.62	3n
MR-4-07	% Out of Service > 12 Hours	92.86	74.31	72.22	63.18	81.82	62.17	58.88	62.27	4n
MR-4-08	% Out of Service > 24 Hours	53.57	50.24	22.22	30.99	54.55	34.11	33.64	30.92	
MR-5-01	% Repeat Reports within 30 Days	42.59	36.00	29.41	36.33	45.34	34.01	43.35	28.07	
	UNE 2-Wire xDSL Line Sharing									
MR-2-02	Network Trouble Report Rate – Loop	0.18	0.10	0.06	0.03	0.09	0.03	0.11	0.00	
MR-2-03	Network Trouble Report Rate – Central Office	0.20	0.35	0.11	0.23	0.11	0.31	0.09	0.25	
MR-3-01	% Missed Repair Appointment – Loop	26.29	0.00	34.44	0.00	19.70	0.00	39.53	NA	1a,2a,3a
MR-3-02	% Missed Repair Appointment – Central Office	13.36	10.00	6.87	12.50	10.53	7.14	21.57	20.00	1c,2b,3c,4b,2n
MR-4-02	Mean Time To Repair – Loop Trouble	37.73	17.35	34.52	10.65	29.10	3.50	38.80	NA	1a,2a,3a

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
MR-4-03	Mean Time To Repair – Central Office Trouble	21.63	56.72	12.32	20.38	11.85	8.23	21.83	16.92	1c,2b,3c,4b,1n,2n
MR-4-07	% Out of Service > 12 Hours	92.86	50.00	72.22	0.00	81.82	50.00	58.88	80.00	1a,2a,3a,4a,4n
MR-4-08	% Out of Service > 24 Hours	53.57	25.00	22.22	0.00	54.55	0.00	33.64	40.00	1a,2a,3a,4a,4n
MR-5-01	% Repeat Reports within 30 Days	42.59	21.74	29.41	22.22	45.34	27.59	43.35	66.67	1c,2b,3c,4b,4n
	UNE Specials									
MR-2-01	Network Trouble Report Rate	0.83	2.00	0.81	2.70	0.90	2.84	1.04	2.34	
MR-4-01	Mean Time To Repair – Total	6.97	8.32	6.20	6.50	5.82	6.35	5.73	6.30	1n,2n,3n,4n
MR-4-06	% Out of Service > 4 Hours	59.31	61.33	57.19	58.41	55.67	61.54	50.21	57.52	1n,2n,3n,4n
MR-4-08	% Out of Service > 24 Hours	2.15	5.33	2.46	1.77	1.90	0.77	2.05	2.65	1n,4n
MR-5-01	% Repeat Reports within 30 Days	22.13	21.43	24.32	17.36	24.56	14.18	27.28	15.83	
Interconnection										
	Interconnection Trunks Delivered to CLECs									
OR-1-12	% On Time FOC (<= 192 Forecasted)		86.96		100.00		92.59		96.88	1c,2b,3c
OR-1-12	% On Time FOC (> 192 and Unforecasted)				64.33		75.72		62.86	
OR-2-12	% On Time Trunk ASR Reject (<= 192 Forecasted)		81.25		87.50		94.12		100.00	1b,2a,3b,4c
PR-2-09	Avg. Interval Completed – Total (<= 192 Forecasted)	26.67	22.14	17.25	18.25	39.93	34.38	31.56	33.33	1a,2a,3a,4b,2n,4n
PR-2-09	Avg. Interval Completed – Total (> 192 Forecasted)	NA	18.00	NA	NA	NA	31.00	NA	18.00	1a,3a,4a,1x,3x,4x
PR-4-01	% Missed Appointment – Verizon – Total	3.62	1.95	2.98	1.15	2.90	2.21	1.64	0.89	
PR-4-02	Average Delay Days - Total	54.77	7.32	29.52	34.81	49.92	11.32	48.85	5.29	
MR-4-05	% Out of Service > 2 Hours	25.00	29.73	50.00	28.95	31.82	21.31	38.10	27.66	1n
MR-4-06	% Out of Service > 4 Hours	12.50	0.00	22.73	18.42	9.09	11.48	23.81	12.77	3n
MR-4-07	% Out of Service > 12 Hours	6.25	0.00	0.00	5.26	0.00	3.28	4.76	4.26	2x,3x
MR-4-08	% Out of Service > 24 Hours	0.00	0.00	0.00	0.00	0.00	1.64	0.00	0.00	3x
PR-6-01	% Installation Troubles reported within 30 Days	0.01	0.01	0.00	0.01	0.01	0.01	0.02	0.01	1n,2x
PR-8-01	Open Orders in a Held Status > 30 Days	NA	NA	UD	UD	UD	UD	5.49	2.52	
PR-8-02	Open Orders in a Held Status > 90 Days	NA	NA	UD	UD	UD	UD	1.96	1.18	
MR-2-01	Network Trouble Report Rate	0.01	0.01	0.00	0.01	0.00	0.01	0.00	0.01	2n
MR-4-01	Mean Time To Repair – Total	2.20	1.62	2.70	3.30	1.78	2.12	2.92	2.27	1x,2n,3n
MR-5-01	% Repeat Reports within 30 Days	6.25	0.00	9.09	5.26	4.55	6.56	0.00	6.38	3n,4x
	Interconnection Trunk Blockage									
NP-1-01	% Final Trunk Groups Exceeding Blocking Standard	15.73	4.69	4.55	1.70	5.41	3.06	1.25	0.99	
NP-1-03	Number FTG Exceeding Blocking Std – 2 Months		0.0		0.0		0.0		0.0	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
NP-1-04	Number FTG Exceeding Blocking Std – 3 Months		0.0		0.0		0.0		0.0	
Collocation										
NP-2-01	% On Time Resp to Request for Physical Coll – New		100.00		100.00		100.00		100.00	2a,3b,4b
NP-2-02	% On Time Resp to Request for Virtual Coll – New		NA		NA		NA		NA	
NP-2-05	% On Time – Physical Coll – New		96.92		90.24		100.00		100.00	3c,4b
NP-2-06	% On Time – Virtual Coll – New		NA		NA		NA		NA	
NP-2-07	Average Delay Days – Physical Coll – New		23.50		50.00		NA		NA	1a,2a
NP-2-08	Average Delay Days – Virtual Coll – New		NA		NA		NA		NA	
NP-2-01	% On Time Resp to Request for Phys Coll – Aug		100.00		98.59		100.00		100.00	
NP-2-02	% On Time Resp to Request for Virtual Coll – Aug		NA		NA		NA		NA	
NP-2-05	% On Time – Physical Coll – Augment		97.20		98.88		95.60		94.55	
NP-2-06	% On Time – Virtual Coll – Augment		100.00		100.00		100.00		NA	1a,2a,3a
NP-2-07	Average Delay Days – Physical Coll – Augment		7.25		145.00		9.50		14.00	1a,2a,3a,4a
NP-2-08	Average Delay Days – Virtual Coll – Augment		NA		NA		NA		NA	

Abbreviations:
NA = No Activity.
UD = Under Development.
blank cell = No data provided.
VZ = Verizon retail analog. If no data was provided, the metric may have a benchmark.

Notes:
1a = Sample Size under 10 for January.
2a = Sample Size under 10 for February.
3a = Sample Size under 10 for March.
4a = Sample Size under 10 for April.
1b = Sample Size between 10 and 19 for January.
2b = Sample Size between 10 and 19 for February.
3b = Sample Size between 10 and 19 for March.
4b = Sample Size between 10 and 19 for April.
1c = Sample Size between 20 and 29 for January.

2c = Sample Size between 20 and 29 for February.
3c = Sample Size between 20 and 29 for March.
4c = Sample Size between 20 and 29 for April.
1n = Poorer performance received by CLECs in January was not statistically significant.
2n = Poorer performance received by CLECs in February was not statistically significant.
3n = Poorer performance received by CLECs in March was not statistically significant.
4n = Poorer performance received by CLECs in April was not statistically significant.
The tests used to determine if a difference in performance between CLEC and Verizon retail is statistically significant were the one-tailed modified t-test for metrics that were averages or measured, the modified z-test for metrics that were proportions or counted that had large sample sizes ($n*p*(1-p)>5$ for both ILEC and CLEC data), and the binomial test for metrics that were proportions or counted that had small sample sizes. All tests were conducted at the 95% confidence level. The modified t-tests and modified z-tests performed for this appendix used the modified z-statistic score that was provided in the C2C reports, and for the modified t-tests the degrees of freedom were set equal to the number of Verizon retail observations minus one. The modified t-test and modified z-test differ from the standard t-test and modified z-test in that they rely solely on the ILEC standard deviation for calculation of the standard error. These tests were adopted for use in the New York Commission C2C proceeding for the C2C reports. *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports: Bell Atlantic Reports, February 2000*, Appendix K, in Verizon Application, Appendix F, Tab 0001, and *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports: Verizon Reports, January 2001*, Appendix K, in Verizon Application, Appendix F, Tab 0002. They were previously determined by the Commission to be a reasonable method of determining if a detected difference is statistically significant in *NY 271 Order*, Appendix B. The test for statistical significance was only done when a parity comparison was available, z-scores were provided in the C2C reports, and the reported CLEC performance was worse than the reported Verizon retail performance. Note that a modified t-test was used for average or measured metrics instead of a modified z-test because sometimes small sample sizes were involved. For large sample sizes the tests will yield the same results, because for large sample sizes the distribution of Student's t, which the t-test relies on, is virtually identical to the normal distribution, on which the z-test relies. *NY 271 Order*, Appendix B, at 4, n. 17 and at 6, n. 31. No non-parametric test results (such as the results of a permutation test or the hypergeometric test) were provided in the C2C reports. Use of a non-parametric test is a more reliable method of testing for statistical significance when the data is not normally distributed and the sample size is small. *See NY 271 Order*, Appendix B at 6.
Use of the modified t, modified z, and binomial test results in this appendix does not preclude the use of other theoretically-sound statistical test methodologies for future 271 applications.
1x = No retail data or z-score was available for January.
2x = No retail data or z-score was available for February.
3x = No retail data or z-score was available for March.
4x = No retail data or z-score was available for April.

Appendix C

Connecticut Performance Metrics

All data included here is taken from the Connecticut Carrier-to-Carrier Reports. This table is provided as a reference tool for the convenience of the reader. No conclusions are to be drawn from the raw data contained in this table. Our analysis is based on the totality of the circumstances, such that we may use non-metric evidence, and may rely more heavily on some metrics more than others, in making our determination. The inclusion of these particular metrics in this table does not necessarily mean that we relied on all of these metrics, nor that other metrics may not also be important in our analysis. The same metrics were included here as were included in the New York Performance Metrics table in Appendix B. Metrics with no retail analog provided are usually compared with a benchmark. Note that for some metrics during the period provided there may be changes in the metric definition, or changes in the retail analog applied, making it difficult to compare the data over time.

AGGREGATE METRICS

Metric No.	Metric Name
Preorder and OSS Availability:	
PO-1-01	OSS Response Times - Customer Service Record
PO-1-02	OSS Response Times - Due Date Availability
PO-1-03	OSS Response Times - Address Validation
PO-1-04	OSS Response Times - Product & Service Availability
PO-1-05	OSS Response Times - Telephone No. Avail & Reservation
PO-1-06	OSS Response Times - Facility Avail (Loop Qualification)
PO-1-07	OSS Response Times - Rejected Query
PO-1-08	OSS Response Times - % Timeouts
PO-1-09	OSS Response Times - Parsed CSR
PO-8-01	Average Response Time - Manual Loop Qualification
PO-8-02	Average Response Time - Engineering Record Request
PO-2-01	OSS Interf. Avail. – Total
PO-2-02	OSS Interf. Avail. – Prime Time
PO-2-03	OSS Interf. Avail. – Non-Prime
MR-1-01	OSS M&R Response Times - Create Trouble
MR-1-02	OSS M&R Response Times - Status Trouble
MR-1-03	OSS M&R Response Times - Modify Trouble
MR-1-04	OSS M&R Response Times - Request Cancellation of Trbl
MR-1-05	OSS M&R Response Times -Trbl Report History (by TN/Circ)
MR-1-06	OSS M&R Response Times - Test Trouble (POTS Only)
Change Management, Billing, OS/DA:	
PO-4-01	Change Man. Notices: % Notices Sent on Time
PO-4-01	Change Man. Confirmations: % Notices Sent on Time
BI-1-02	Billing - % DUF in 4 Business Days
BI-2-01	Timeliness of Carrier Bill
BI-3-01	% Billing Adjustments - Dollars Adjusted
BI-3-02	% Billing Adjustments - Number of Adjustments
OD-1-01	Average Speed of Answer – Operator Services
OD-1-02	Average Speed of Answer – Directory Assistance
Interconnection and Collocation:	
NP-1-01	% Final Trunk Groups Exceeding Blocking Standard
NP-1-03	Number FTG Exceeding Blocking Std. – 2 Months
NP-1-04	Number FTG Exceeding Blocking Std. – 3 Months
NP-2-01	% On Time Response to Request for Physical Collocation
NP-2-02	% On Time Response to Request for Virtual Collocation
NP-2-05	% On Time – Physical Collocation
NP-2-06	% On Time – Virtual Collocation
NP-2-07	Average Delay Days – Physical Collocation
NP-2-08	Average Delay Days – Virtual Collocation
Ordering:	
OR-1-02	% On Time LSRC – Flow Through
OR-1-04	% On Time LSRC/ASRC No Facility Check
OR-1-06	% On Time LSRC/ASRC Facility Check
OR-1-10	% On Time ASRC Facility Check DS1&DS3
OR-1-12	% On Time FOC
OR-2-02	% On Time LSR Reject – Flow Through
OR-2-04	% On Time LSR/ASR Reject No Facility Check
OR-2-06	% On Time LSR/ASR Reject Facility Check
OR-2-08	% On Time LSR Reject No Facility Check
OR-2-10	% On Time LSR Reject Facility Check
OR-2-12	% On Time Trunk ASR Reject
OR-3-01	% Rejects
OR-4-02	Completion Notice – % On Time

Metric No.	Metric Name
OR-4-05	Work Completion Notice – % On Time
OR-4-07	% SOP to Bill Completion >= 5 Business Days
OR-4-08	% SOP to Bill Completion > 1 Business Day
OR-5-01	% Flow Through - Total
OR-5-03	% Flow Through Achieved
OR-6-01	% Accuracy - Orders*
OR-6-02	% Accuracy – Opportunities*
OR-6-03	% Accuracy – LSRC**
OR-7-01	% Order Confirmation/Rejects sent within 3 Business Days
OR-8-01	% Acknowledgements onTime
OR-9-01	% Acknowledgement Completeness

Provisioning:

PR-2-01	Av. Completed Interval - Total No Dispatch
PR-2-02	Average Interval Completed – Total Dispatch
PR-2-03	Av. Completed Interval - Dispatch (1-5 Lines)
PR-2-04	Av. Completed Interval - Dispatch (6-9 Lines)
PR-2-05	Av. Completed Interval - Dispatch (>= 10 Lines)
PR-2-06	Av. Interval Completed – DS0
PR-2-07	Av. Interval Completed – DS1
PR-2-08	Av. Interval Completed – DS3
PR-2-09	Av. Interval Completed – Total
PR-4-01	% Missed Appointment – Verizon – Total
PR-4-02	Average Delay Days – Total
PR-4-04	% Missed Appointment – Verizon – Dispatch
PR-4-05	% Missed Appointment – Verizon – No Dispatch
PR-4-14	% Completed On Time [With Serial Number]
PR-6-01	% Install. Troubles Reported within 30 Days
PR-6-02	% Installation Troubles reported within 7 Days
PR-8-01	Open Orders in a Hold Status > 30 Days
PR-8-02	Open Orders in a Hold Status > 90 Days
PR-9-01	% On Time Performance – Hot Cut Loop

Metric No.	Metric Name

Maintenance and Repair:

MR-2-01	Network Trouble Report Rate – Total
MR-2-02	Network Trouble Report Rate – Loop
MR-2-03	Network Trouble Report Rate – Central Office
MR-3-01	% Missed Repair Appointment – Loop
MR-3-02	% Missed Repair Appointment – Central Office
MR-4-01	Mean Time To Repair – Total
MR-4-02	Mean Time To Repair – Loop Trouble
MR-4-03	Mean Time To Repair – Central Office Trouble
MR-4-05	% Out of Service > 2 Hours
MR-4-06	% Out of Service > 4 Hours
MR-4-07	% Out of Service > 12 Hours
MR-4-08	% Out of Service > 24 Hours
MR-5-01	% Repeat Reports within 30 Days

DISAGGREGATED METRICS

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
Preorder and OSS Interface Availability										
	OSS Response Times									
PO-1-01	Customer Service Record – EDI	2.75	2.42	2.76	2.26	2.69	2.71	2.70	NA	
PO-1-01	Customer Service Record – CORBA	2.75	1.19	2.76	0.89	2.69	0.97	2.70	1.45	
PO-1-01	Customer Service Record – Web GUI	2.75	5.59	2.76	3.29	2.69	NA	2.70	3.21	
PO-1-02	Due Date Availability – EDI	0.12	3.67	0.14	NA	0.12	NA	0.13	NA	
PO-1-02	Due Date Availability – CORBA	0.12	1.97	0.14	NA	0.12	NA	0.13	NA	
PO-1-02	Due Date Availability – Web GUI	0.12	5.39	0.14	2.17	0.12	1.15	0.13	1.50	4a
PO-1-03	Address Validation – EDI	4.72	3.65	4.46	NA	4.48	NA	4.33	NA	
PO-1-03	Address Validation – CORBA	4.72	2.16	4.46	2.88	4.48	2.99	4.33	3.30	
PO-1-03	Address Validation – Web GUI	4.72	6.72	4.46	5.39	4.48	1.82	4.33	6.89	
PO-1-04	Product & Service Availability – EDI	0.18	3.66	7.40	NA	8.97	NA	8.33	NA	
PO-1-04	Product & Service Availability – CORBA	0.18	6.15	7.40	NA	8.97	NA	8.33	NA	
PO-1-04	Product & Service Availability – Web GUI	0.18	14.99	7.40	6.50	8.97	4.17	8.33	8.50	4a
PO-1-05	Telephone No. Avail. & Reservation – EDI	7.08	6.40	5.57	NA	5.99	NA	5.36	NA	
PO-1-05	Telephone No. Avail. & Reservation – CORBA	7.08	4.92	5.57	NA	5.99	NA	5.36	NA	
PO-1-05	Telephone No. Avail. & Reservation – Web GUI	7.08	9.55	5.57	11.20	5.99	2.15	5.36	11.21	4a
PO-1-06	Facility Available (Loop Qualification) – EDI	13.17	3.06	11.00	NA	13.75	NA	13.47	NA	
PO-1-06	Facility Available (Loop Qualification) – CORBA	13.17	2.42	11.00	2.60	13.75	2.87	13.47	3.44	
PO-1-06	Facility Available (Loop Qualification) – Web GUI	13.17	6.35	11.00	6.56	13.75	1.86	13.47	5.30	
PO-1-07	Rejected Query – EDI	0.13	2.85	0.16	1.90	0.10	2.52	0.10	2.26	
PO-1-07	Rejected Query – CORBA	0.13	1.05	0.16	1.28	0.10	1.26	0.10	1.17	
PO-1-07	Rejected Query – Web GUI	0.13	5.74	0.16	4.12	0.10	3.65	0.10	3.51	
PO-1-08	OSS Interface - % Timeouts - EDI		0.10		0.00		0.40		0.41	
PO-1-08	OSS Interface - % Timeouts - CORBA		0.12		0.00		0.28		0.16	
PO-1-08	OSS Interface - % Timeouts - Web GUI				0.82		0.04		0.00	
PO-1-09	Parsed CSR – EDI	2.75	3.17	2.76	NA	2.69	2.20	2.70	2.60	
PO-1-09	Parsed CSR – CORBA	2.75	1.47	2.76	NA	2.69	NA	2.70	NA	
PO-8-01	Avg Response Time - Manual Loop Qualification		UD		UD		UD		UD	
PO-8-02	Avg Response Time - Engineering Record Request		UD		UD		NA		NA	
	OSS Interface Availability									

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PO-2-01	Total - EDI		99.96		99.77		99.88		99.66	
PO-2-01	Total - CORBA		100.00		99.79		99.95		99.83	
PO-2-01	Total - Maintenance Web GUI (RETAS)		99.36		99.00		98.61		99.14	
PO-2-01	Total - Pre-order/Order WEB GUI		99.36		99.00		98.61		99.14	
PO-2-01	Total - Electronic Bonding		99.84		98.94		100.00		98.78	
PO-2-02	Prime Time - EDI		99.99		99.75		99.86		99.91	
PO-2-02	Prime Time - CORBA		100.00		99.73		100.00		100.00	
PO-2-02	Prime Time - Maintenance Web GUI (RETAS)		99.20		99.61		99.21		100.00	
PO-2-02	Prime Time - Pre-order/Order WEB GUI		99.20		99.61		99.21		100.00	
PO-2-02	Prime Time - Electronic Bonding		99.75		98.38		100.00		99.22	
PO-2-03	Non-Prime - EDI		99.89		99.81		99.91		99.26	
PO-2-03	Non-Prime - CORBA		100.00		99.90		99.86		99.55	
PO-2-03	Non-Prime - Maintenance Web GUI (RETAS)		99.62		97.92		97.45		97.70	
PO-2-03	Non-Prime - Pre-order/Order WEB GUI		99.62		97.92		97.45		97.70	
PO-2-03	Non-Prime - Electronic Bonding		100.00		99.97		100.00		98.05	
	OSS Maintenance Interface Response Times									
MR-1-01	Create Trouble	6.67	5.39	6.97	5.72	6.61	6.42	6.57	6.79	
MR-1-02	Status Trouble	4.52	2.38	4.63	2.78	4.60	3.34	4.62	3.83	
MR-1-03	Modify Trouble	6.67	5.26	6.97	5.94	6.61	6.33	6.57	6.40	1c,2b,3c,4c
MR-1-04	Request Cancellation of Trouble	7.80	6.25	8.12	6.51	7.79	8.08	7.75	7.50	
MR-1-05	Trouble Report History (by TN/Circuit)	0.82	1.02	1.49	2.04	1.10	2.74	0.57	3.42	
MR-1-06	Test Trouble (POTS Only)	58.24	57.97	57.23	49.32	57.60	49.36	57.74	48.51	
Change Management, Billing, OS/DA										
	Change Management Notices									
PO-4-01	% Notices Sent on Time - Emergency Maint.		100		100		100		100	1a,2a,3a,4a
PO-4-01	% Notices Sent on Time - Regulatory		NA		NA		NA		100	4b
PO-4-01	% Notices Sent on Time - Industry Standard		NA		NA		NA		NA	
PO-4-01	% Notices Sent on Time - Verizon Orig.		NA		NA		100		100	3a,4a
PO-4-01	% Notices Sent on Time - TC Orig.		NA		NA		NA		NA	
	Change Management Confirmation									
PO-4-01	% Notices Sent on Time - Regulatory		100		NA		NA		NA	1a

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PO-4-01	% Notices Sent on Time - Industry Standard		NA		NA		NA		NA	
PO-4-01	% Notices Sent on Time - Verizon Orig		100		NA		NA		NA	1a
PO-4-01	% Notices Sent on Time - TC Orig		100		NA		NA		NA	1a
	Billing									
BI-1-02	Billing - % DUF in 4 Business Days		95.21		81.62		99.47		99.38	
BI-2-01	Timeliness of Carrier Bill		98.16		100.00		100.00		95.00	
BI-3-01	% Billing Adjustments - Dollars Adjusted	0.02	0.00	0.02	0.00	0.04	0.00	0.02	0.00	
BI-3-02	% Billing Adjustments - Number of Adjustments	0.17	0.00	0.11	0.00	0.16	0.00	0.10	0.00	
	OS/DA Average Speed of Answer									
OD-1-01	Operator Services - NY OSC	1.58	0.15	1.96	0.17	1.86	0.17	1.84	0.18	
OD-1-02	Directory Assistance - NY/MA OSC	4.26	1.37	5.54	1.53	5.20	2.66	4.73	3.48	
OD-1-02	Directory Assistance - NY OSC									
OD-1-02	Directory Assistance - MA OSC									
Resale: Ordering										
	All Resale Orders									
OR-7-01	% Order Confirm./Rejects sent w/in 3 Business Days		95.16		98.53		100.00		98.59	
OR-8-01	% Acknowledgements on Time		100.00		100.00		100.00		100.00	1b,3c,4c
OR-9-01	% Acknowledgement Completeness		100.00		100.00		100.00		100.00	1b,3c,4c
OR-3-01	% Rejects Orders		83.33		58.33		101.41		101.43	
OR-4-02	Completion Notice - % On-Time Orders		100.00		97.30		97.83		100.00	1c,4c
OR-4-05	Work Completion Notice - % On Time Orders		100.00		100.00		100.00		100.00	1c,4c
OR-4-07	% SOP to Bill Completion >= 5 Business Days Orders	UD	0.00	UD	0.00	UD	2.17	7.62	18.18	1c
OR-4-08	% SOP to Bill Completion >1 Business Day Orders	UD	14.81	UD	8.11	UD	13.04	14.34	21.21	1c
OR-5-01	% Flow Through - Total Orders		29.73		44.90		31.58		40.48	
OR-5-03	% Flow Through Achieved Orders		57.89		56.41		64.29		62.96	1b,3c,4c
OR-6-01	% Accuracy - Orders* Orders		88.26		89.30		85.44		91.71	
OR-6-02	% Accuracy - Opportunities* Orders		99.19		99.00		96.80		99.00	
OR-6-03	% Accuracy - LSRC** Orders		94.00		93.68		95.01		96.64	
	Resale POTS & Pre-qualified Complex									
OR-1-02	% On Time LSRC - Flow Through		100.00		100.00		88.89		100.00	1b,2c,3b,4b
OR-1-04	% On Time LSRC/ASRC No Facility Check		100.00		95.83		97.14		95.45	1c,2c,4c

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
OR-1-06	% On Time LSRC/ASRC Facility Check		100.00		100.00		75.00		100.00	1a,2a,3a,4a
OR-2-02	% On Time LSR Reject – Flow Through		100.00		100.00		100.00		100.00	1c,2a,4c
OR-2-04	% On Time LSR/ASR Reject No Facility Check		100.00		100.00		97.44		97.78	1b
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		100.00		NA		NA	2a
	Resale 2 Wire Digital Services									
OR-1-04	% On Time LSRC/ASRC No Facility Check		100.00		NA		NA		NA	1a
OR-1-06	% On Time LSRC/ASRC Facility Check		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		100.00		NA		NA		NA	1a
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	Resale Specials – Electronically Subm.									
OR-1-04	% On Time LSRC/ASRC No Fac. Check (Non DS0, DS1 & DS3)		100.00		100.00		NA		100.00	1a,2a,4a
OR-1-06	% On Time LSRC/ASRC Fac. Check (Non DS0, DS1 & DS3)		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		100.00		NA		NA		100.00	1a,4a
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
Resale: Provisioning										
	Resale POTS									
PR-2-04	Avg. Interval Completed – Dispatch (6-9 Lines)	2.00	NA	NA	NA	NA	NA	6.00	NA	
PR-2-05	Avg. Interval Completed – Dispatch (>=10 Lines)	4.00	NA	8.00	NA	14.50	NA	NA	NA	
PR-2-01	Avg. Int. Completed – Total No Dispatch - Business	1.52	2.00	1.07	2.09	1.03	2.15	1.07	1.80	1a,2b,3b,4a,1n,4n
PR-2-03	Avg. Int. Completed – Dispatch (1-5 Lines) - Bus	4.31	NA	13.00	4.50	6.60	5.25	4.00	3.00	2a,3a,4a
PR-2-01	Avg. Int. Completed – Total No Dispatch - Residence	0.76	NA	0.57	3.50	0.45	2.00	0.89	5.00	2a,3a,4a,3n
PR-2-03	Avg. Int. Completed – Dispatch (1-5 Lines) - Res	7.93	5.00	6.41	NA	9.95	NA	5.89	NA	1a
PR-4-02	Average Delay Days – Total	8.46	NA	6.77	1.00	7.45	4.00	5.78	NA	2a,3a
PR-4-04	% Missed Appointment – Verizon – Dispatch	15.68	0.00	16.25	25.00	18.58	9.09	14.83	0.00	1a,2a,3b,4a,2n
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.08	0.00	0.11	0.00	0.05	0.00	0.07	0.00	1c,3c,4b
PR-6-01	% Installation Troubles reported within 30 Days	4.67	0.59	7.25	2.36	7.32	0.00	6.53	3.08	
PR-6-02	% Installation Troubles reported within 7 Days	2.26	0.59	3.48	0.79	3.11	0.00	4.17	3.08	
PR-8-01	Open Orders in a Hold Status >30 Days	0.12	0.00	0.00	0.00	0.08	0.00	0.00	0.00	1c,4c
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1c,4c
	Resale 2-Wire Digital Services									

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PR-2-01	Average Int. Completed – Total No Dispatch	2.50	NA	1.67	NA	0.00	NA	1.00	NA	
PR-2-02	Average Int. Completed – Total Dispatch	9.00	NA	NA	10.00	3.50	NA	4.00	NA	2a
PR-4-02	Average Delay Days – Total	3.00	NA	NA	1.00	NA	NA	NA	NA	2a
PR-4-04	% Missed Appointment – Verizon – Dispatch	20.00	NA	0.00	100.00	0.00	NA	0.00	NA	2a,2x
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
PR-6-01	% Install. Troubles Reported within 30 Days	0.00	NA	2.13	0.00	0.00	NA	0.00	0.00	2a,4a
PR-8-01	Open Orders in a Hold Status >30 Days	0.00	NA	0.00	0.00	0.00	NA	0.00	NA	2a
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	NA	0.00	0.00	0.00	NA	0.00	NA	2a
	Resale Special Services									
PR-2-01	Average Interval Completed – Total No Dispatch	0.83	2.00	0.08	NA	3.50	NA	NA	NA	1a,1n
PR-2-02	Average Interval Completed – Total Dispatch	12.00	NA	9.00	NA	25.00	NA	9.50	NA	
PR-2-06	Average Interval Completed – DS0	2.50	NA	0.00	NA	13.50	NA	NA	NA	
PR-2-07	Average Interval Completed – DS1	17.25	NA	9.00	NA	NA	NA	NA	NA	
PR-2-08	Average Interval Completed – DS3	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-01	% Missed Appointment – Verizon – Total	0.00	0.00	0.00	NA	16.67	NA	0.00	NA	1a
PR-4-01	% Missed Appointment – Verizon – DS0	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
PR-4-01	% Missed Appointment – Verizon – DS1	0.00	NA	0.00	NA	NA	NA	NA	NA	
PR-4-01	% Missed Appointment – Verizon – DS3	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-01	% Missed Appointment – Verizon – Spec. Other	0.00	0.00	0.00	NA	33.33	NA	0.00	NA	1a
PR-4-02	Average Delay Days – Total	NA	NA	NA	NA	1.00	NA	NA	NA	
PR-6-01	% Installation Troubles reported within 30 Days	0.00	0.00	0.00	NA	0.00	0.00	3.45	NA	1a,3a
PR-8-01	Open Orders in a Hold Status ≥30 Days	0.00	0.00	0.00	NA	0.00	NA	0.00	NA	1a
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	0.00	0.00	NA	0.00	NA	0.00	NA	1a
	Resale: Maintenance and Repair									
	Resale POTS									
MR-2-02	Network Trouble Report Rate – Loop	1.48	0.19	1.76	0.26	2.27	0.10	1.69	0.48	
MR-2-03	Network Trouble Report Rate – Central Office	0.12	0.05	0.11	0.04	0.13	0.19	0.11	0.00	3n
MR-3-01	% Missed Repair Appointment – Loop Bus.	8.55	0.00	5.43	0.00	4.27	0.00	6.04	0.00	1a,2a,3a,4b
MR-3-01	% Missed Repair Appointment – Loop Res.	7.52	NA	5.50	NA	4.88	NA	7.26	NA	
MR-3-02	% Missed Repair Appointment – Central Office Bus.	0.00	0.00	17.65	NA	0.00	0.00	6.25	NA	1a,3a
MR-3-02	% Missed Repair Appointment – Central Office Res.	5.00	NA	12.82	0.00	6.82	NA	5.13	NA	2a

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
MR-4-01	Mean Time To Repair – Total	25.32	13.77	23.73	33.53	23.33	9.15	24.95	12.27	1a,2a,3a,4b,2n
MR-4-02	Mean Time To Repair – Loop Trouble – Bus	26.10	17.07	22.05	38.83	22.18	22.63	21.42	12.27	1a,2a,3a,4b,2n,3n
MR-4-02	Mean Time To Repair – Loop Trouble – Res	26.70	NA	24.32	NA	24.23	NA	26.67	NA	
MR-4-03	Mean Time To Repair – Central Office Trouble – Bus	9.90	0.53	16.32	NA	11.02	2.42	18.00	NA	1a,3a
MR-4-03	Mean Time To Repair – Central Office Trouble – Res	9.97	NA	18.38	1.72	14.12	NA	9.65	NA	2a
MR-4-06	% Out of Service > 4 Hours	90.84	66.67	90.60	100.00	87.54	75.00	91.04	71.43	1a,2a,3a,4a,2n
MR-4-07	% Out of Service > 12 Hours	68.70	66.67	51.83	100.00	62.98	50.00	72.73	57.14	1a,2a,3a,4a,2n
MR-4-08	% Out of Service > 24 Hours – Bus	18.69	0.00	20.16	50.00	19.88	0.00	34.65	14.29	1a,2a,3a,4a,2n
MR-4-08	% Out of Service > 24 Hours – Res	22.67	NA	22.29	NA	20.87	NA	22.42	NA	
MR-5-01	% Repeat Reports within 30 Days	16.73	0.00	18.89	14.29	16.91	33.33	16.63	20.00	1a,2a,3a,4b,3n,4n
	Resale 2-Wire Digital Services									
MR-2-02	Network Trouble Report Rate – Loop	0.85	2.27	0.21	0.00	0.53	0.00	0.53	2.50	1n,4n
MR-2-03	Network Trouble Report Rate – Central Office	0.21	0.00	0.21	0.00	0.00	2.50	0.21	0.00	3x
MR-3-01	% Missed Repair Appointment – Loop	12.50	100.00	0.00	NA	0.00	NA	20.00	0.00	1a,4a,1n
MR-3-02	% Missed Repair Appointment – Central Office	50.00	NA	0.00	NA	NA	0.00	50.00	NA	3a
MR-4-01	Mean Time To Repair – Total	46.30	28.93	6.33	NA	23.77	22.03	26.77	43.15	1a,3a,4a,4n
MR-4-02	Mean Time To Repair – Loop Trouble	50.07	28.93	4.00	NA	23.77	NA	24.13	43.15	1a,4a,4n
MR-4-03	Mean Time To Repair – Central Office Trouble	31.25	NA	8.67	NA	NA	22.03	33.35	NA	3a
MR-4-07	% Out of Service > 12 Hours	87.50	100.00	0.00	NA	80.00	100.00	85.71	100.00	1a,3a,4a,1n,3n,4n
MR-4-08	% Out of Service > 24 Hours	50.00	100.00	0.00	NA	40.00	0.00	57.14	100.00	1a,3a,4a,1n,4n
MR-5-01	% Repeat Reports within 30 Days	0.00	100.00	25.00	NA	20.00	0.00	14.29	100.00	1a,3a,4a,1x,4n
	Resale Special Services									
MR-2-01	Network Trouble Report Rate	0.40	0.00	0.13	0.00	0.27	0.00	0.44	0.00	
MR-4-01	Mean Time To Repair – Total	7.58	NA	9.73	NA	5.23	NA	4.73	NA	
MR-4-06	% Out of Service > 4 Hours	88.89	NA	66.67	NA	50.00	NA	70.00	NA	
MR-4-08	% Out of Service > 24 Hours	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
MR-5-01	% Repeat Reports within 30 Days	33.33	NA	33.33	NA	33.33	NA	60.00	NA	
UNEs: Ordering										
	All UNE Orders									
OR-8-01	% Acknowledgements on Time		99.08		100.00		97.18		93.82	
OR-9-01	% Acknowledgement Completeness		100.00		100.00		97.89		95.51	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
OR-3-01	% Rejects		23.94		74.47		51.52		61.68	
OR-4-02	Completion Notice – % On Time		100.00		92.59		100.00		100.00	1c,2c,4c
OR-4-05	Work Completion Notice – % On Time		100.00		100.00		100.00		100.00	1c,2c,4c
OR-4-07	% SOP to Bill Completion >= 5 Business Days	UD	3.45		3.70	UD	4.62		16.67	1c,2c
OR-4-08	% SOP to Bill Completion > 1 Business Day	UD	3.45	UD	11.11	UD	16.92		73.33	1c,2c
OR-5-01	% Flow Through - Total (ASRs + LSRs)		18.18		24.32		44.23		16.88	
OR-5-03	% Flow Through Achieved		36.84		52.94		74.19		59.09	2b,4c
	UNE Platform									
OR-1-02	% On Time LSRC – Flow Through		NA		NA		NA		NA	
OR-1-04	% On Time LSRC/ASRC No Facility Check		NA		NA		NA		NA	
OR-1-06	% On Time LSRC/ASRC Facility Check		NA		NA		NA		NA	
OR-2-02	% On Time LSR Reject – Flow Through		NA		NA		100.00		100.00	3a,4a
OR-2-04	% On Time LSR/ASR Reject No Facility Check		NA		100.00		NA		NA	2a
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
OR-6-01	% Accuracy - Orders*		87.09		92.31		93.26		92.38	
OR-6-02	% Accuracy – Opportunities*		98.51		99.36		99.46		99.09	
OR-6-03	% Accuracy – LSRC*		98.62		97.37		98.19		98.81	
OR-7-01	% Order Confirm./Rejects sent w/in 3 Business Days		NA		100.00		100.00		100.00	2a,3a,4a
	UNE Loop/Pre-qualified Complex/LNP									
OR-1-02	% On Time LSRC – Flow Through		100.00		100.00		100.00		100.00	1b,2a,3b,4b
OR-1-04	% On Time LSRC/ASRC No Facility Check		90.63		94.12		88.24		93.55	2b,3b
OR-1-06	% On Time LSRC/ASRC Facil Check		100.00		NA		NA		100.00	1a,4a
OR-2-02	% On Time LSR Reject – Flow Through		100.00		100.00		100.00		100.00	1a,2b,3a,4c
OR-2-04	% On Time LSR/ASR Reject No Facility Check		50.00		81.82		100.00		95.00	1a,2b,3b,4c
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		100.00	4a
OR-6-01	% Accuracy - Orders*		87.01		95.63		96.11		96.00	
OR-6-02	% Accuracy – Opportunities*		98.20		99.43		99.46		99.41	
OR-6-03	% Accuracy – LSRC*		95.45		95.79		95.93		97.14	
OR-7-01	% Order Confirm./Rejects sent w/in 3 Business Days		98.81		92.73		96.82		98.20	
	UNE 2-Wire Digital Services									
OR-1-04	% On Time LSRC/ASRC No Facil Check (Electr)		NA		NA		100.00		100.00	3a,4a
OR-1-06	% On Time LSRC/ASRC Facility Check		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		NA		NA		100.00		100.00	3a,4a

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	UNE xDSL Loops									
OR-1-04	% On Time LSRC/ASRC - No Facility Check		100.00		90.91		100.00		96.15	2b,3a,4c
OR-1-06	% On Time LSRC/ASRC - Facility Check		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject - No Facility Check		100.00		100.00		100.00		92.31	1a,2a,3a,4b
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	UNE 2 Wire xDSL Line Sharing									
OR-1-04	% On Time LSRC/ASRC - No Facility Check		NA		NA		NA		NA	
OR-1-06	% On Time LSRC/ASRC - Facility Check		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject - No Facility Check		NA		NA		NA		NA	
OR-2-06	% On Time LSR/ASR Reject Facility Check		NA		NA		NA		NA	
	UNE Specials Electr. Submitted									
OR-1-04	% On Time LSRC/ASRC No Facility Check - DS0		NA		NA		NA		NA	
OR-1-04	% On Time LSRC/ASRC No Facility Check - DS1		NA		NA		NA		NA	
OR-1-04	% On Time LSRC/ASRC No Facility Check - DS3		NA		NA		NA		NA	
OR-1-04	% On Time LSRC/ASRC No Facil. Check (Non DS0, DS1 & DS3)		NA		NA		NA		NA	
OR-1-06	% On Time LSRC/ASRC Facility Check DS0		NA		NA		NA		NA	
OR-1-06	% On Time LSRC/ASRC Facility Check DS1		NA		NA		100.00		NA	3a
OR-1-06	% On Time LSRC/ASRC Facility Check DS3		NA		NA		NA		0.00	4a
OR-1-06	% On Time LSRC/ASRC Fac. Check (Non DS0, DS1 & DS3)		NA		NA		NA		NA	
OR-2-04	% On Time LSR/ASR Reject No Facility Check		NA		NA		100.00		NA	3a
OR-2-06	% On Time LSR/ASR Reject Facility Check		100.00		NA		100.00		100.00	1a,3a,4a
	UNE Specials Fax/Mail Submitted									
OR-1-10	% On Time ASRC Facility Check DS1		NA		NA		NA		NA	
OR-1-10	% On Time ASRC Facility Check DS3		NA		NA		NA		NA	
OR-2-08	% On Time LSR Reject No Facility Check		NA		NA		NA		NA	
OR-2-10	% On Time LSR Reject Facility Check		NA		NA		NA		NA	
UNEs: Provisioning										
	UNE Platform									
PR-2-01	Av. Completed Interval - Total No Dispatch	1.52	NA	1.07	NA	1.03	NA	1.07	NA	

Metric Number	Metric Name	January		February		March		April		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-2-03	Av. Completed Interval - Dispatch (1-5 Lines)	4.31	NA	13.00	NA	6.60	NA	4.00	NA	
PR-2-04	Av. Completed Interval - Dispatch (6-9 Lines)	2.00	NA	NA	NA	NA	NA	6.00	NA	
PR-2-05	Av. Completed Interval - Dispatch (>= 10 Lines)	4.00	NA	8.00	NA	14.50	NA	NA	NA	
PR-4-04	% Missed Appt. - Verizon - Dispatch	15.68	NA	16.25	NA	18.58	NA	14.83	NA	
PR-4-05	% Missed Appt. - Verizon - No Dispatch	0.08	NA	0.11	NA	0.05	NA	0.07	NA	
PR-6-01	% Installation Troubles reported within 30 Days	4.67	NA	7.25	NA	7.32	NA	6.53	NA	
PR-6-02	% Installation Troubles reported within 7 Days	2.26	NA	3.48	NA	3.11	NA	4.17	NA	
	UNE Hot Cut POTS Loops									
PR-2-01	Av. Completed Interval - No Dispatch		NA		NA		23.40		NA	3b
PR-4-04	% Missed Appt. - Verizon - Dispatch	15.68	NA	16.25	NA	18.58	0.00	14.83	NA	3a
PR-4-05	% Missed Appt. - Verizon - No Dispatch	0.08	0.00	0.11	0.00	0.05	70.00	0.07	NA	1a,2a,3c
PR-6-02	% Install. Troubles reported within 7 Days		0.00		0.00		0.00		NA	1a,2a,3a,4b
PR-9-01	% On Time Performance		100.00		100.00		50.00		100.00	1a,2a,3a,4a
	UNE POTS Loops and Other POTS									
PR-2-03	Av. Completed Int. - Dispatch (1-5 Lines) - Loop	4.31	NA	13.00	NA	6.60	NA	4.00	NA	
PR-2-04	Av. Completed Int. - Dispatch (6-9 Lines) - Loop	2.00	NA	NA	NA	NA	NA	6.00	NA	
PR-2-05	Av. Completed Int. - Dispatch (>= 10 Lines) - Loop	4.00	NA	8.00	NA	14.50	NA	NA	NA	
PR-2-01	Av. Compl. Int. - Total No Dispatch - Other (UNE Switch & INP)	1.52	NA	1.07	NA	1.03	NA	1.07	NA	
PR-4-04	% Missed Appt. - Verizon - Dispatch - Loop New	15.68	NA	16.25	NA	18.58	0.00	14.83	NA	3a
PR-4-05	% Missed Appt. - Verizon - No Dispatch - Other	0.08	NA	0.11	NA	0.05	NA	0.07	NA	
PR-6-01	% Install. Troubles reported within 30 Days - Loop	4.67	0.00	7.25	0.00	7.32	0.00	6.53	4.35	2c,4c
PR-6-02	% Install. Troubles reported within 7 Days - Loop	2.26	0.00	3.48	0.00	3.11	0.00	4.17	4.35	2c,4c,4n
	All UNE POTS									
PR-4-02	Average Delay Days - Total	8.46	NA	6.77	NA	7.45	NA	5.78	NA	
PR-8-01	Open Orders in a Hold Status >30 Days	0.12	0.00	0.00	NA	0.08	0.00	0.00	NA	1a,3a
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	0.00	0.00	NA	0.00	0.00	0.00	NA	1a,3a
	UNE 2-Wire Digital Loops									
PR-2-01	Av. Interval Completed - Total No Dispatch	2.50	NA	1.67	NA	0.00	NA	1.00	NA	
PR-2-02	Av. Interval Completed - Total Dispatch	9.00	NA	NA	NA	3.50	NA	4.00	NA	
PR-4-02	Average Delay Days - Total	3.00	NA	NA	NA	NA	NA	NA	NA	
PR-4-04	% Missed Appointment - Verizon - Dispatch	10.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	1a,2a,4a
PR-4-05	% Missed Appointment - Verizon - No Dispatch	0.00	NA	0.00	NA	0.00	NA	0.00	NA	

Metric Number	Metric Name	January		February		March		April		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
PR-6-01	% Install Troubles Reported within 30 Days	0.00	0.00	2.13	0.00	0.00	NA	0.00	0.00	1a,2a,4a
PR-8-01	Open Orders in a Hold Status >30 Days	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	1a,2a,4a
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	1a,2a,4a
	UNE xDSL Loops									
PR-2-01	Av. Interval Completed – Total No Dispatch		NA		NA		24.00		6.00	3a,4a
PR-2-02	Av. Interval Completed – Total Dispatch		6.00		6.00		19.86		5.83	1a,2a,3a,4a
PR-4-02	Average Delay Days – Total	NA	3.00	NA	13.00	NA	14.00	NA	23.75	1a,2a,3a,4a,1x,2x,3x,4x
PR-4-04	% Missed Appointment – Verizon – Dispatch		0.00		7.69		14.29		0.00	1b,2b,3c,4b
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.00	NA	0.00	NA	0.00	0.00	0.00	14.29	3a,4a,4x
PR-4-14	% Completed On Time [With Serial Number]		94.12		100.00		100.00		100.00	1b,2b,3a,4b
PR-6-01	% Install Troubles Reported within 30 Days	4.67	23.08	7.25	7.69	7.32	3.33	6.53	4.55	1b,2b,4c,2n
PR-8-01	Open Orders in a Hold Status >30 Days	0.00	23.08	0.00	23.08	0.00	13.33	0.00	13.64	1b,2b,4c,1x,2x,3x,4x
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1b,2b,4c
	UNE 2 Wire xDSL Line Sharing									
PR-2-01	Av. Interval Completed – Total No Dispatch	4.40	NA	3.50	NA		NA		NA	
PR-2-02	Av. Interval Completed – Total Dispatch	NA	NA	NA	NA		NA		NA	
PR-4-02	Average Delay Days – Total	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-04	% Missed Appointment – Verizon – Dispatch	0.00	NA	NA	NA	NA	NA	NA	NA	
PR-4-05	% Missed Appointment – Verizon – No Dispatch	0.00	NA	0.00	NA	0.00	0.00	0.00	NA	3a
PR-6-01	% Install Troubles Reported within 30 Days	0.00	NA	2.22	NA	0.00	0.00	0.00	NA	3a
PR-8-01	Open Orders in a Hold Status >30 Days	0.00	NA	0.00	NA	0.00	0.00	0.00	NA	3a
PR-8-02	Open Orders in a Hold Status >90 Days	0.00	NA	0.00	NA	0.00	0.00	0.00	NA	3a
	UNE Specials									
PR-2-01	Av. Interval Completed – Total No Dispatch	0.83	NA	0.08	NA	3.50	NA	NA	NA	
PR-2-02	Av. Interval Completed – Total Dispatch	12.00	NA	9.00	NA	25.00	NA	9.50	NA	
PR-2-06	Av. Interval Completed – DS0	2.50	NA	0.00	NA	13.50	NA	NA	NA	
PR-2-07	Av. Interval Completed – DS1	17.25	NA	9.00	NA	NA	NA	NA	NA	
PR-2-08	Av. Interval Completed – DS3	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-01	% Missed Appointment – Verizon – Total	0.00	NA	0.00	NA	16.67	NA	0.00	NA	
PR-4-01	% Missed Appointment – Verizon – DS0	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
PR-4-01	% Missed Appointment – Verizon – DS1	0.00	NA	0.00	NA	NA	NA	NA	NA	
PR-4-01	% Missed Appointment – Verizon – DS3	NA	NA	NA	NA	NA	NA	NA	NA	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
PR-4-01	% Missed Appointment – Verizon – Special Other	0.00	NA	0.00	NA	33.33	NA	0.00	NA	
PR-4-02	Average Delay Days – Total	NA	NA	NA	NA	1.00	NA	NA	NA	
PR-6-01	% Installation Troubles reported within 30 Days	0.00	NA	0.00	NA	0.00	NA	3.45	NA	
PR-8-01	Open Orders in a Hold Status > 30 Days	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
PR-8-02	Open Orders in a Hold Status > 90 Days	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
	Interoffice Facilities (Transport)									
PR-2-09	Av. Interval Completed – Total - IOF		NA		NA		NA		NA	
PR-4-01	% Missed Appointment – Verizon – Total - IOF	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-02	Average Delay Days – Total - IOF	NA	NA	NA	NA	NA	NA	NA	NA	
PR-8-01	Open Orders in a Hold Status > 30 Days - IOF	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
PR-8-02	Open Orders in a Hold Status > 90 Days - IOF	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
	UNEs: Maintenance and Repair									
	UNE POTS Loops									
MR-2-02	Network Trouble Report Rate – Loop	1.48	0.30	1.76	1.20	2.27	1.52	1.69	0.88	
MR-2-03	Network Trouble Report Rate – Central Office	0.12	0.00	0.11	0.00	0.13	0.00	0.11	0.29	4n
MR-3-01	% Missed Repair Appointment – Loop	7.72	0.00	5.45	0.00	4.93	20.00	7.03	66.67	1a,2a,3a,4a,3n
MR-3-02	% Missed Repair Appointment – Central Office	4.62	NA	13.56	NA	5.71	NA	5.45	0.00	4a
MR-4-01	Mean Time To Repair – Total	25.32	48.30	23.73	21.43	23.33	40.32	24.95	42.53	1a,2a,3a,4a,1n,3n,4n
MR-4-02	Mean Time To Repair – Loop Trouble	26.83	48.30	24.07	21.43	23.98	40.32	25.78	49.98	1a,2a,3a,4a,1n,3n,4n
MR-4-03	Mean Time To Repair – Central Office Trouble	10.60	NA	17.17	NA	16.30	NA	12.08	20.18	4a,4n
MR-4-07	% Out of Service > 12 Hours	68.70	NA	51.83	100.00	62.98	100.00	72.73	100.00	2a,3a,4a,2n,3n,4n
MR-4-08	% Out of Service > 24 Hours	22.32	NA	22.14	0.00	20.86	40.00	24.60	0.00	2a,3a,4a,3n
MR-5-01	% Repeat Reports within 30 Days	16.73	0.00	18.89	0.00	16.91	0.00	16.63	25.00	1a,2a,3a,4a,4n
	UNE Platform									
MR-2-02	Network Trouble Report Rate – Platform	1.48	0.00	1.76	0.00	2.27	NA	1.69	NA	1a,2a
MR-2-03	Network Trouble Report Rate – Central Office	0.12	0.00	0.11	0.00	0.13	NA	0.11	NA	1a,2a
MR-3-01	% Missed Repair Appointment – Bus	8.55	NA	5.43	NA	4.27	NA	6.04	NA	
MR-3-01	% Missed Repair Appointment – Res	7.52	NA	5.50	NA	4.88	NA	7.26	NA	
MR-3-02	% Missed Repair Appointment – Central Office Bus	0.00	NA	17.65	NA	0.00	NA	6.25	NA	
MR-3-02	% Missed Repair Appointment – Central Office Res	5.00	NA	12.82	NA	6.82	NA	5.13	NA	
MR-4-01	Mean Time To Repair – Total	25.32	NA	23.73	NA	23.33	NA	24.95	NA	

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
MR-4-02	Mean Time To Repair – Loop Trouble – Bus	26.10	NA	22.05	NA	22.18	NA	21.42	NA	
MR-4-02	Mean Time To Repair – Loop Trouble – Res	26.70	NA	24.32	NA	24.23	NA	26.67	NA	
MR-4-03	Mean Time To Repair – Central Office Trouble – Bus	9.90	NA	16.32	NA	11.02	NA	18.00	NA	
MR-4-03	Mean Time To Repair – Central Office Trouble – Res	9.97	NA	18.38	NA	14.12	NA	9.65	NA	
MR-4-06	% Out of Service > 4 Hours	90.84	NA	90.60	NA	87.54	NA	91.04	NA	
MR-4-07	% Out of Service > 12 Hours	68.70	NA	51.83	NA	62.98	NA	72.73	NA	
MR-4-08	% Out of Service > 24 Hours – Bus	18.69	NA	20.16	NA	19.88	NA	34.65	NA	
MR-4-08	% Out of Service > 24 Hours – Res	22.67	NA	22.29	NA	20.87	NA	22.42	NA	
MR-5-01	% Repeat Reports within 30 Days	16.73	NA	18.89	NA	16.91	NA	16.63	NA	
	UNE 2-Wire Digital Loops									
MR-2-02	Network Trouble Report Rate – Loop	0.85	4.76	0.21	8.70	0.53	4.55	0.53	0.00	1c,2c,3c,4c,1n,3n
MR-2-03	Network Trouble Report Rate – Central Office	0.21	0.00	0.21	0.00	0.00	0.00	0.21	0.00	1c,2c,3c,4c
MR-3-01	% Missed Repair Appointment – Loop	12.50	0.00	0.00	0.00	0.00	100.00	20.00	NA	1a,2a,3a,3x
MR-3-02	% Missed Repair Appointment – Central Office	50.00	NA	0.00	NA	NA	NA	50.00	NA	
MR-4-01	Mean Time To Repair – Total	46.30	4.03	6.33	45.27	23.77	49.17	26.77	NA	1a,2a,3a,3n
MR-4-02	Mean Time To Repair – Loop Trouble	50.07	4.03	4.00	45.27	23.77	49.17	24.13	NA	1a,2a,3a,3n
MR-4-03	Mean Time To Repair – Central Office Trouble	31.25	NA	8.67	NA	NA	NA	33.35	NA	
MR-4-07	% Out of Service > 12 Hours	87.50	0.00	0.00	100.00	80.00	NA	85.71	NA	1a,2a,2x
MR-4-08	% Out of Service > 24 Hours	50.00	0.00	0.00	100.00	40.00	NA	57.14	NA	1a,2a,2x
MR-5-01	% Repeat Reports within 30 Days	0.00	100.00	25.00	100.00	20.00	100.00	14.29	NA	1a,2a,3a,4a,1x,4x
	UNE xDSL Loops									
MR-2-02	Network Trouble Report Rate – Loop	0.00	0.64	0.00	1.25	0.48	0.31	0.21	2.40	1x,2x
MR-2-03	Network Trouble Report Rate – Central Office	0.00	0.00	0.00	0.00	0.48	0.00	0.21	0.00	
MR-3-01	% Missed Repair Appointment – Loop	NA	25.00	NA	0.00	100.00	0.00	100.00	11.11	1a,2a,3a,4a,1x,2x,3x,4x
MR-3-02	% Missed Repair Appointment – Central Office	NA	0.00	0.00	NA	50.00	NA	100.00	NA	1a,1x
MR-4-02	Mean Time To Repair – Loop Trouble	NA	32.28	NA	14.88	50.07	55.45	97.00	36.05	1a,2a,3a,4a,1x,2x,3n,4x
MR-4-03	Mean Time To Repair – Central Office Trouble	NA	4.50	0.50	NA	127.90	NA	167.40	NA	1a,1x
MR-4-07	% Out of Service > 12 Hours	NA	50.00	NA	75.00	NA	100.00	NA	71.43	1a,2a,3a,4a,1x,2x,3x,4x
MR-4-08	% Out of Service > 24 Hours	NA	50.00	NA	25.00	NA	100.00	NA	14.29	1a,2a,3a,4a,1x,2x,3x,4x

Metric Number	Metric Name	January VZ	January CLEC	February VZ	February CLEC	March VZ	March CLEC	April VZ	April CLEC	Notes
MR-5-01	% Repeat Reports within 30 Days	NA	20.00	0.00	0.00	25.00	0.00	0.00	11.11	1a,2a,3a,4a,1x,2x,4x
	UNE 2-Wire xDSL Line Sharing									
MR-2-02	Network Trouble Report Rate – Loop	0.00	NA	0.00	0.00	0.48	0.00	0.21	0.00	2a,3a,4a
MR-2-03	Network Trouble Report Rate – Central Office	0.00	NA	0.00	0.00	0.48	0.00	0.21	0.00	2a,3a,4a
MR-3-01	% Missed Repair Appointment – Loop	NA	NA	NA	NA	100.00	NA	100.00	NA	
MR-3-02	% Missed Repair Appointment – Central Office	NA	NA	0.00	NA	50.00	NA	100.00	NA	
MR-4-02	Mean Time To Repair – Loop Trouble	NA	NA	NA	NA	50.07	NA	97.00	NA	
MR-4-03	Mean Time To Repair – Central Office Trouble	NA	NA	0.50	NA	127.90	NA	167.40	NA	
MR-4-07	% Out of Service > 12 Hours	NA	NA	NA	NA	NA	NA	NA	NA	
MR-4-08	% Out of Service > 24 Hours	NA	NA	NA	NA	NA	NA	NA	NA	
MR-5-01	% Repeat Reports within 30 Days	NA	NA	0.00	NA	25.00	NA	0.00	NA	
	UNE Specials									
MR-2-01	Network Trouble Report Rate	0.40	0.00	0.13	0.00	0.27	0.00	0.44	0.00	1a,2a,3a,4a
MR-4-01	Mean Time To Repair – Total	7.58	NA	9.73	NA	5.23	NA	4.73	NA	
MR-4-06	% Out of Service > 4 Hours	88.89	NA	66.67	NA	50.00	NA	70.00	NA	
MR-4-08	% Out of Service > 24 Hours	0.00	NA	0.00	NA	0.00	NA	0.00	NA	
MR-5-01	% Repeat Reports within 30 Days	33.33	NA	33.33	NA	33.33	NA	60.00	NA	
Interconnection										
	Interconnection Trunks Delivered to CLECs									
OR-1-12	% On Time FOC (<= 192 Forecasted)		NA		NA		NA		NA	
OR-1-12	% On Time FOC (> 192 and Unforecasted)		100.00		0.00		0.00		NA	1a,2a,3a
OR-2-12	% On Time Trunk ASR Reject (<= 192 Forecasted)		NA		NA		NA		NA	
PR-2-09	Avg. Interval Completed – Total (<= 192 Forecasted)	NA	NA	NA	NA	NA	NA	NA	NA	
PR-2-09	Avg. Interval Completed – Total (> 192 Forecasted)	NA	NA	NA	NA	NA	NA	NA	NA	
PR-4-01	% Missed Appointment – Verizon – Total	NA	0.00	NA	0.00	NA	0.00	NA	NA	1a,3c
PR-4-02	Average Delay Days – Total	NA	NA	NA	NA	NA	NA	NA	NA	
PR-6-01	% Installation Troubles reported within 30 Days	NA	0.00	NA	0.00	NA	0.00	NA	NA	1a,3c
PR-8-01	Open Orders in a Hold Status > 30 Days	UD	UD	UD	UD	UD	UD	NA	NA	
PR-8-02	Open Orders in a Hold Status > 90 Days	UD	UD	UD	UD	UD	UD	NA	NA	
MR-2-01	Network Trouble Report Rate	0.09	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
MR-4-01	Mean Time To Repair – Total	2.18	NA	NA	NA	NA	NA	NA	NA	

Metric Number	Metric Name	January		February		March		April		Notes
		VZ	CLEC	VZ	CLEC	VZ	CLEC	VZ	CLEC	
MR-4-05	% Out of Service > 2 Hours	100.00	NA	NA	NA	NA	NA	NA	NA	
MR-4-06	% Out of Service > 4 Hours	0.00	NA	NA	NA	NA	NA	NA	NA	
MR-4-07	% Out of Service > 12 Hours	0.00	NA	NA	NA	NA	NA	NA	NA	
MR-4-08	% Out of Service > 24 Hours	0.00	NA	NA	NA	NA	NA	NA	NA	
MR-5-01	% Repeat Reports within 30 Days	0.00	NA	NA	NA	NA	NA	NA	NA	
	Interconnection Trunk Blockage									
NP-1-01	% Final Trunk Groups Exceeding Blocking Standard	33.33	NA	33.33	NA	33.33	NA	0.00	NA	
NP-1-03	Number FTG Exceeding Blocking Std – 2 Months		NA		NA		NA		NA	
NP-1-04	Number FTG Exceeding Blocking Std – 3 Months		NA		NA		NA		NA	
Collocation										
NP-2-01	% On Time Resp. to Request for Physical Coll – New		NA		NA		NA		NA	
NP-2-02	% On Time Resp. to Request for Virtual Coll – New		NA		NA		NA		NA	
NP-2-05	% On Time – Physical Coll – New		100.00		NA		NA		NA	1a
NP-2-06	% On Time – Virtual Coll – New		NA		NA		NA		NA	
NP-2-07	Average Delay Days – Physical Coll. – New		NA		NA		NA		NA	
NP-2-08	Average Delay Days – Virtual Coll. – New		NA		NA		NA		NA	
NP-2-01	% On Time Resp. to Request for Phys. Coll. – Aug.		100.00		NA		NA		100.00	1a,4a
NP-2-02	% On Time Resp. to Request for Virtual Coll. – Aug.		NA		NA		NA		NA	
NP-2-05	% On Time – Physical Coll. – Augment		100.00		100.00		NA		100.00	1a,2a,4a
NP-2-06	% On Time – Virtual Coll. – Augment		NA		NA		NA		NA	
NP-2-07	Average Delay Days – Physical Coll. – Augment		NA		NA		NA		NA	
NP-2-08	Average Delay Days – Virtual Coll. – Augment		NA		NA		NA		NA	

Abbreviations:

NA = No Activity.

UD = Under Development.

blank cell = No data provided.

VZ = Verizon retail analog. If no data was provided, the metric may have a benchmark.

Notes:

1a = Sample Size under 10 for January.
2a = Sample Size under 10 for February.
3a = Sample Size under 10 for March.
4a = Sample Size under 10 for April.
1b = Sample Size between 10 and 19 for January.
2b = Sample Size between 10 and 19 for February.
3b = Sample Size between 10 and 19 for March.
4b = Sample Size between 10 and 19 for April.
1c = Sample Size between 20 and 29 for January.
2c = Sample Size between 20 and 29 for February.
3c = Sample Size between 20 and 29 for March.
4c = Sample Size between 20 and 29 for April.
1n = Poorer performance received by CLECs in January was not statistically significant.
2n = Poorer performance received by CLECs in February was not statistically significant.
3n = Poorer performance received by CLECs in March was not statistically significant.
4n = Poorer performance received by CLECs in April was not statistically significant.
The tests used to determine if a difference in performance between CLEC and Verizon retail is statistically significant were the one-tailed modified t-test for metrics that were averages or measured, the modified z-test for metrics that were proportions or counted that had large sample sizes ($n*p*(1-p)>5$ for both ILEC and CLEC data), and the binomial test for metrics that were proportions or counted that had small sample sizes. All tests were conducted at the 95% confidence level. The modified t-tests and modified z-tests performed for this appendix used the modified z-statistic score that was provided in the C2C reports, and for the modified t-tests the degrees of freedom were set equal to the number of Verizon retail observations minus one. The modified t-test and modified z-test differ from the standard t-test and modified z-test in that they rely solely on the ILEC standard deviation for calculation of the standard error. These tests were adopted for use in the New York Commission C2C proceeding for the C2C reports. *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports: Bell Atlantic Reports, February 2000*, Appendix K, in Verizon Application, Appendix F, Tab 0001, and *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports: Verizon Reports, January 2001*, Appendix K, in Verizon Application, Appendix F, Tab 0002. They were previously determined by the Commission to be a reasonable method of determining if a detected difference is statistically significant in *NY 271 Order*, Appendix B. The test for statistical significance was only done when a parity comparison was available, z-scores were provided in the C2C reports, and the reported CLEC performance was worse than the reported Verizon retail performance. Note that a modified t-test was used for average or measured metrics instead of a modified z-test because sometimes small sample sizes were involved. For large sample sizes the tests will yield the same results, because for large sample sizes the distribution of Student's t, which the t-test relies on, is virtually identical to the normal distribution, on which the z-test relies. *NY 271 Order*, Appendix B, at 4, n. 17 and at 6, n. 31. No non-parametric test results (such as the results of a permutation test or the hypergeometric test) were provided in the C2C reports. Use of a non-parametric test is a more reliable method of testing for statistical significance when the data is not normally distributed and the sample size is small. *See NY 271 Order*, Appendix B at 6.
Use of the modified t, modified z, and binomial test results in this appendix does not preclude the use of other theoretically-sound statistical test methodologies for future 271 applications.
1x = No retail data or z-score was available for January.
2x = No retail data or z-score was available for February.

3x = No retail data or z-score was available for March.
4x = No retail data or z-score was available for April.

Appendix D
Statutory Requirements

I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the provision of in-region interLATA services on compliance with certain provisions of section 271.[1] BOCs must apply to the Federal Communications Commission (Commission or FCC) for authorization to provide interLATA services originating in any in-region state.[2] The Commission must issue a written determination on each application no later than 90 days after receiving such application.[3] Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate," and the Commission is required to "give substantial weight to the Attorney General's evaluation."[4]

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[1] For purposes of section 271 proceedings, the Commission uses the definition of the term "Bell Operating Company" contained in 47 U.S.C. § 153(4).

[2] 47 U.S.C. § 271(d)(1). For purposes of section 271 proceedings, the Commission utilizes the definition of the term "in-region state" that is contained in 47 U.S.C. § 271(i)(1). Section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." *Id.* § 153(21). Under the 1996 Act, a "local access and transport area" (LATA) is "a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." *Id.* § 153(25). LATAs were created as part of the Modification of Final Judgment's (MFJ) "plan of reorganization." *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, "all [BOC] territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest." *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (D.D.C. 1983).

[3] 47 U.S.C. § 271(d)(3).

[4] *Id.* § 271(d)(2)(A).

2. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the "competitive checklist."[5] Because the Act does not prescribe any standard for the consideration of a state commission's verification under section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to determine the amount of weight to accord the state commission's verification.[6] The Commission has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.[7]

3. Section 271 requires the Commission to make various findings before approving BOC entry. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[8] In order to obtain authorization under section 271, the BOC must also show that: (1) it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B);[9] (2) the requested authorization will be carried out in accordance with the requirements of section 272;[10] and (3) the BOC's entry into the in-region interLATA market is "consistent with the public interest,

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5 *Id.* § 271(d)(2)(B).

6 *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended,* CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[A]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions' views any particular weight." *SBC Communications v. FCC*, 138 F.3d at 416.

7 *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

8 47 U.S.C. § 271(d)(3)(A). *See* Section III, *infra*, for a complete discussion of Track A and Track B requirements.

9 *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

10 *Id.* §§ 271(d)(3)(B), 272.

convenience, and necessity."[11] The statute specifies that, unless the Commission finds that these criteria have been satisfied, the Commission "shall not approve" the requested authorization.[12]

II. PROCEDURAL AND ANALYTICAL FRAMEWORK

4. To determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist, as developed in the FCC's local competition rules and orders in effect at the time the application was filed. Despite the comprehensiveness of these rules, there will inevitably be, in any section 271 proceeding, disputes over an incumbent LEC's precise obligations to its competitors that FCC rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application.[13] In the context of section 271's adjudicatory framework, the Commission has established certain procedural rules governing BOC section 271 applications.[14] The Commission has explained in prior orders the procedural rules it has developed to facilitate the review process.[15] Here we describe how the Commission considers the evidence of compliance that the BOC presents in its application.

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[11] 47 U.S.C. § 271(d)(3)(C).

[12] *Id.* §.271(d)(3); *see SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413, 416 (D.C. Cir. 1998).

[13] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19; *see also American Tel. & Tel. Co. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000).

[14] *See Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (Dec. 6, 1996); *Revised Comment Schedule For Ameritech Michigan Application, as amended, for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Michigan*, Public Notice DA 97-127 (Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (Sept. 19, 1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA-99-1994 (Sept. 28, 1999); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (collectively "271 Procedural Public Notices").

[15] *See, e.g.*, *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6247-50, paras. 21-27; *SWBT Texas Order*, 15 FCC Rcd at 18370-73, paras. 34-42; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-71, paras. 32-42.

5. As part of the determination that a BOC has satisfied the requirements of section 271, the Commission considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B). The BOC at all times bears the burden of proof of compliance with section 271, even if no party challenges its compliance with a particular requirement.[16] In demonstrating its compliance, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.[17] In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.[18] Previous Commission orders addressing section 271 applications have elaborated on this statutory standard.[19] First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides such access to itself.[20] Thus, where a retail analogue exists, a BOC must provide access that is equal to (*i.e.*, substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[21] For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete."[22]

6. The determination of whether the statutory standard is met is ultimately a judgment the Commission must make based on its expertise in promoting competition in local markets and in telecommunications regulation generally.[23] The Commission has not

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16 *See SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

17 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

18 *See* 47 U.S.C. § 271(c)(2)(B)(i), (ii).

19 *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6250-51, paras. 28-29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

20 *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

21 *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

22 *Id.*

23 *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

established, nor does it believe it appropriate to establish, specific objective criteria for what constitutes "substantially the same time and manner" or a "meaningful opportunity to compete."[24] Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances. Therefore, the Commission looks at each application on a case-by-case basis and considers the totality of the circumstances, including the origin and quality of the information in the record, to determine whether the nondiscrimination requirements of the Act are met.

A. Performance Data

7. As established in prior section 271 orders, the Commission has found that performance measurements provide valuable evidence regarding a BOC's compliance or noncompliance with individual checklist items. The Commission expects that, in its *prima facie* case in the initial application, a BOC relying on performance data will:

a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;

b) identify the facial disparities between the applicant's performance for itself and its performance for competitors;

c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (*e.g.*, competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers; and

d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

8. The Commission has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.[25] Thus, to the extent

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[24] *Id.*

[25] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15 FCC Rcd at 18377, para. 55 & n.102.

there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually done. Otherwise, the Commission will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met.[26] Thus, the Commission will examine the explanations that a BOC and others provide about whether these data accurately depict the quality of the BOC's performance. The Commission also may consider the degree and duration of the performance disparity, and whether the performance is part of an improving or deteriorating trend. The Commission may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.

9. Where there are multiple performance measures associated with a particular checklist item, the Commission considers the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data is affected by factors beyond a BOC's control, a finding that would make the Commission less likely to hold the BOC wholly accountable for the disparity. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

10. In sum, the Commission does not use performance measurements as a substitute for the 14-point competitive checklist. Rather, it uses performance measurements as valuable evidence with which to inform a judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist.

B. Relevance of Previous Section 271 Approvals

[26] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3976, para. 59.

11. In section 271 applications, volumes may be so low as to render the performance data inconsistent and inconclusive.[27] Performance data based on low volumes of orders or other transactions is not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data is based on a low number of observations, small variations in performance may produce wide swings in the reported performance data. It is thus not possible to place the same evidentiary weight upon – and to draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity.

12. In such cases, findings in prior section 271 proceedings for other states served by the same BOC may be a relevant factor in the Commission's analysis. Where a BOC provides evidence that a particular system reviewed and approved in a prior section 271 proceeding is also used in the proceeding at hand, the Commission's review of the same system in the current proceeding will be informed by the findings in the prior one. Indeed, to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues. Appropriately employed, such a practice can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties involved in the section 271 process, the delay and expense associated with redundant and unnecessary proceedings and submissions.

13. However, the statute requires the Commission to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the Commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states, the Department of Justice. However, the Commission has always held that an applicant's performance towards competing carriers in an actual commercial environment is the best evidence of nondiscriminatory access to OSS and other network elements.[28] Even where an applicant seeks to rely on findings made in a prior, successful section 271 application (the "anchor" state), then, our analysis will always start with actual performance towards competitors in the applicant state. Evidence of *satisfactory* performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.

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[27] The Commission has never required, however, an applicant to demonstrate that it processes and provisions a substantial commercial volume of orders, or has achieved a specific market share in its service area, as a prerequisite for satisfying the competitive checklist. *See Ameritech Michigan Order,* 12 FCC Rcd at 20585, para. 77 (explaining that Congress had considered and rejected language that would have imposed a "market share" requirement in section 271(c)(1)(A)).

[28] *See SWBT Texas Order,* 15 FCC Rcd at 18376, para. 53; *Bell Atlantic New York Order,* 15 FCC Rcd at 3974, para. 53.

14. Moreover, because the Commission's review of a section 271 application must be based on a snapshot of a BOC's recent performance at the time an application is filed, the Commission cannot simply rely on findings relating to an applicant's performance in an anchor state at the time it issued the determination for that state. The performance in that state could change due to a multitude of factors, such as increased order volumes or shifts in the mix of the types of services or UNEs requested by competing carriers. Thus, even when the applicant makes a convincing showing of the relevance of anchor state data, the Commission must examine how recent performance in that state compares to performance at the time it approved that state's section 271 application, in order to determine if the systems and processes continue to perform at acceptable levels.

III. COMPLIANCE WITH ENTRY REQUIREMENTS -- SECTIONS 271(C)(1)(A) & 271(C)(1)(B)

15. As noted above, in order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[29] To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[30] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[31] The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.[32]

16. As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider has requested the access and interconnection arrangements described in subparagraph A. In order for a BOC to qualify under Track B, the State must also have approved an SGAT

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[29] *See* 47 U.S.C. § 271(d)(3)(A).

[30] *Id.* § 271(c)(1)(A).

[31] *Id.*

[32] *See Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20633-35, paras. 46-48.

that satisfies the competitive checklist. Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.[33]

IV. COMPLIANCE WITH THE COMPETITIVE CHECKLIST – SECTION 271(C)(2)(B)

A. Checklist Item 1– Interconnection

17. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[34] Section 251(c)(2) imposes a duty on incumbent LECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."[35] In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred "only to the physical linking of two networks for the mutual exchange of traffic."[36] Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network."[37] Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."[38] Finally, the incumbent LEC

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[33] *See Ameritech Michigan Order*, 12 FCC Rcd at 20561-2, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. *See* 47 U.S.C. § 271(c)(1)(B); *see also Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.

[34] 47 U.S.C. § 271(c)(2)(B)(i); *see Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662, para. 222.

[35] 47 U.S.C. § 251(c)(2)(A).

[36] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n. v. FCC*, 117 F.3d 1068 (8th Cir. 1997) *and Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). Transport and termination of traffic are therefore excluded from the Commission's definition of interconnection. *See id.*

[37] 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the Commission identified a minimum set of technically feasible points of interconnection. *See Local Competition First Report and Order*, 11 FCC Rcd at 15606-09, paras. 204-211.

[38] 47 U.S.C. § 251(c)(2)(C).

must provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252."[39]

18. To implement the equal-in-quality requirement in section 251, the Commission's rules require an incumbent LEC to design and operate its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within the incumbent LEC's network.[40] In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC's technical criteria and service standards.[41] In prior section 271 applications, the Commission concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.[42]

19. In the *Local Competition First Report and Order*, the Commission concluded that the requirement to provide interconnection on terms and conditions that are "just, reasonable, and nondiscriminatory" means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations.[43] The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service[44] and its provisioning of two-way trunking arrangements.[45] Similarly, repair time

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[39] *Id.* § 251(c)(2)(D).

[40] *Local Competition First Report and Order*, 11 FCC Rcd at 15613-15, paras. 221-225; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20641-42, paras. 63-64.

[41] *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25.

[42] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-51, paras. 74-77; *Ameritech Michigan Order*, 12 FCC Rcd at 20671-74, paras. 240-45. The Commission has relied on trunk blockage data to evaluate a BOC's interconnection performance. Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer's perception of a competitive LEC's service quality.

[43] *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; *see also Bell Atlantic New York* Order, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

[44] 47 C.F.R. § 51.305(a)(5).

for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.[46]

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.[47] Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.[48]

21. The provision of collocation is also an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.[49] In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.[50] To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6) and the FCC's implementing rules.[51] Data showing the quality of procedures for processing applications for

(Continued from previous page)

[45] The Commission's rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York* Order, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-220.

[46] 47 C.F.R. § 51.305(a)(5).

[47] *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

[48] 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

[49] 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

[50] *Advanced Services First Report and Order*, 14 FCC Rcd at 4784-86, paras. 41-43.

[51] *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61-62; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

collocation space, as well as the timeliness and efficiency of provisioning collocation space, helps the Commission evaluate a BOC's compliance with its collocation obligations.[52]

22. As stated above, checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[53] Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.[54] The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.[55]

23. To the extent pricing disputes arise, the Commission will not duplicate the work of the state commissions. As noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.[56] Although the Commission has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the Commission's pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.[57]

24. Consistent with the Commission's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as: (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state

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52 *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

53 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

54 *Id.* § 252(d)(1).

55 *See* 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

56 *See SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also* 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*).

57 *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 385 .

commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.[58] In addition, the Commission has determined that rates contained within an approved 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.[59]

25. Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.[60] At some point, states will have had sufficient time to complete these proceedings. The Commission will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

B. Checklist Item 2 – Unbundled Network Elements

1. Access to Operations Support Systems

26. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.[61] The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[62] For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.[63] The Commission has determined that without nondiscriminatory access

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[58] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4090-91, para. 258 (explaining the Commission's case-by-case review of interim prices).

[59] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359-60, para 239.

[60] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 260.

[61] *Id.* at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

[62] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585, paras. 15, 82; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653-54, paras. 83-84.

[63] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.[64]

27. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[65] The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.[66] The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).[67] In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.[68] Consistent with prior orders, the Commission examines a BOC's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.[69]

28. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, unbundled network elements, and resale.[70] For OSS functions that are analogous to those that a BOC provides to itself, its customers

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64 *Id.*

65 47 U.S.C. § 271(c)(2)(B)(ii).

66 *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

67 *Id.*

68 *Id.* As part of a BOC's demonstration that it is "providing" a checklist item (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service. An examination of a BOC's OSS performance is therefore integral to the determination of whether a BOC is offering all of the items contained in the competitive checklist. *Id.*

69 *Id.* at 3990-91, para. 84.

70 *Id.* at 3991, para. 85.

or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.[71] The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.[72] The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.[73]

29. For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[74] In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the Commission will examine, in the first instance, whether specific performance standards exist for those functions.[75] In particular, the Commission will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.[76] If such performance standards exist, the Commission will evaluate whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.[77]

30. The Commission analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide

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[71] *Id.*

[72] *Id.* For example, the Commission would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

[73] *See id.*; *Bell South South Carolina Order*, 13 FCC Rcd at 594 n.292; *Ameritech Michigan Order*, 12 FCC Rcd at 20619 n.345.

[74] *Bell Atlantic New York Order*, 15 FCC Rcd at 3991, para. 86.

[75] *Id.*

[76] *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *See Ameritech Michigan Order*, 12 FCC Rcd at 20619-20, para. 141.

[77] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3991-92, para. 86.

sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[78] The Commission next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[79]

31. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.[80] For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC's systems and any relevant interfaces.[81] In addition, a BOC must disclose to competing carriers any internal business rules[82] and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[83] Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.[84] Although not a prerequisite, the Commission

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[78] *Id.* at 3992, para. 87; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20616; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, the Commission "consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions," including the interface (or gateway) that connects the competing carrier's own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC's OSS (including all necessary back office systems and personnel); and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. *Ameritech Michigan Order*, 12 FCC Rcd at 20615; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

[79] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 87.

[80] *Id.* at 3992, para. 88; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.").

[81] *See Ameritech Michigan Order*, 12 FCC Rcd at 20616-18, para. 137.

[82] Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders and include information concerning ordering codes such as universal service ordering codes (USOCs) and field identifiers (FIDs). *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88 n.216; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.335.

[83] *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

[84] *Id.*

continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.[85]

32. Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.[86] The most probative evidence that OSS functions are operationally ready is actual commercial usage.[87] Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.[88] Although the Commission does not require OSS testing, a persuasive test will provide the Commission with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.[89] If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight. As noted above, to the extent the Commission reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations.[90] Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

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[85] *See id.*

[86] *Id.* at 3993, para. 89.

[87] *Id.*

[88] *Id.*

[89] *See id.; Ameritech Michigan Order*, 12 FCC Rcd at 20658-59, para. 216 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

[90] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6301-02, para 138.

a. Relevance of a BOC's Prior 271 Orders

33. The *Kansas/Oklahoma Order* specifically outlined a non-exhaustive evidentiary showing that must be made in the initial application when a BOC seeks to rely on evidence presented in another application.[91] First, a BOC's application must explain the extent to which the OSS are "the same" – that is, whether it employs the shared use of a single OSS, or the use of systems that are identical, but separate.[92] To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces, systems and, in many instances, even personnel.[93] The Commission will also carefully examine third party reports that demonstrate that the BOC's OSS are the same in each of the relevant states.[94] Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.[95] Second, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, an applicant must submit evidence relating to *all* aspects of its OSS, including those OSS functions performed by BOC personnel.

b. Pre-Ordering

34. A BOC must demonstrate that: (i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering

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[91] *See id.* at 6286-91, paras. 106-118

[92] *See id.* at 6288, para. 111.

[93] The Commission has consistently held that a BOC's OSS includes both mechanized systems and manual processes, and thus the OSS functions performed by BOC personnel have been part of the FCC's OSS functionality and commercial readiness reviews.

[94] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6287, para. 108.

[95] *See id.* at 6288, para. 111.

interfaces;[96] and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.[97]

35. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.[98] Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.[99] Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, a BOC must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.[100] For those pre-ordering functions that lack a retail analogue, a BOC must provide access that affords an efficient competitor a meaningful opportunity to compete.[101] In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is

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[96] In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC. *SWBT Texas Order*, 15 FCC Rcd at 18426-27, para. 148.

[97] The Commission has held previously that an interface that provides responses in a prompt timeframe and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as a BOC serves its own customers. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029-30, paras. 145 and 154.

[98] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94 (referring to "pre-ordering and ordering" collectively as "the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof"). In prior orders, the Commission has identified the following five pre-order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4015-16, para. 132; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd at 619, para. 147.

[99] *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

[100] *Id.; see also BellSouth South Carolina Order*, 13 FCC Rcd at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

[101] *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.[102]

(i) Access to Loop Qualification Information

36. In accordance with the *UNE Remand Order*,[103] the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,[104] and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.[105] Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in a BOC's back office and can be accessed by any BOC personnel. [106] Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.[107] A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center,

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[102] *See id.* at para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105. *See also supra* n.96.

[103] *UNE Remand Order*, 15 FCC Rcd 3696, 3884-85, para. 426 (determining "that the pre-ordering function includes access to loop qualification information.").

[104] *See id* at para. 427. At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

[105] *See id.* As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4021, para. 140.

[106] *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

[107] *See SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6293, para. 121.

NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.[108] As the Commission determined in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."[109]

c. Ordering

37. Consistent with Section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS systems in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.[110]

d. Provisioning

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[108] *Id.*

[109] *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31.

[110] *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-4039, paras. 163-166. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the "same time and manner" standard. The Commission examines order confirmation notices and order rejection notices using the "meaningful opportunity to compete" standard. *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170.

38. A BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.[111] Consistent with the approach in prior section 271 orders, the Commission examines a BOC's provisioning processes, as well as its performance with respect to provisioning timeliness (*i.e.*, missed due dates and average installation intervals) and provisioning quality (*i.e.*, service problems experienced at the provisioning stage).[112]

e. Maintenance and Repair

39. A competing carrier that provides service through resale or unbundled network elements remains dependent upon the incumbent LEC for maintenance and repair. Thus, as part of its obligation to provide nondiscriminatory access to OSS functions, a BOC must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.[113] To the extent a BOC performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions "in substantially the same time and manner" as a BOC provides its retail customers.[114] Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to BOC personnel.[115] Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.[116]

f. Billing

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[111] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, the Commission looks to missed due dates and average installation intervals; for provisioning quality, the Commission looks to service problems experienced at the provisioning stage.

[112] *Id.*

[113] *Id.* at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

[114] *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

[115] *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212.

[116] *Id.*

40. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.[117] In making this determination, the Commission assesses a BOC's billing processes and systems, and its performance data. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[118]

g. Change Management Process

41. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.[119] Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[120] By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete.[121] As part of this demonstration, the Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.[122]

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[117] *See SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

[118] *See id.*; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, at para 163.

[119] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd at 19742.

[120] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

[121] *Id.*

[122] *Id.*

42. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS system.[123] Such changes may include updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.[124] Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.[125] Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).[126]

43. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the Commission first assesses whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;[127] (2) that competing carriers had substantial input in the design and continued operation of the change management process;[128] (3) that the change management plan defines a procedure for the timely resolution of change management disputes;[129] (4) the availability of a stable testing environment that mirrors production;[130] and (5) the efficacy of the documentation the BOC makes

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123 *Id.* at 4000, para. 103.

124 *Id.*

125 *Id.*

126 *Id.*

127 *Id.* at 4002, para. 107.

128 *Id.* at 4000, para. 104.

129 *Id.* at 4002, para. 108.

130 *Id.* at 4002-03, paras. 109-10.

available for the purpose of building an electronic gateway.[131] After determining whether the BOC's change management plan is adequate, the Commission evaluates whether the BOC has demonstrated a pattern of compliance with this plan.[132]

2. UNE Combinations

44. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) . . . ."[133] Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . 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 . . . ."[134] Section 251(c)(3) of the Act also requires incumbent LECs to provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.[135] The Commission also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.[136]

45. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.[137] Using combinations of unbundled network elements provides a competitor with

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[131] *Id.* at 4002 and 4003-04, paras. 107 and 110. In the *Bell Atlantic New York Order*, the Commission used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. The Commission left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

[132] *Id.* at 3999, para. 101, 4004-05, para. 112.

[133] 47 U.S.C. § 271(c)(2)(B)(ii).

[134] *Id.* § 251(c)(3).

[135] *Id.*

[136] *See* 47 C.F.R. § 51.315(b).

[137] *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19, para. 332. *See also BellSouth South Carolina Order*, 13 FCC Rcd at 646-47, para. 195.

the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.[138] Moreover, combining the incumbent's unbundled network elements with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.[139] Because the use of combinations of unbundled network elements is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the Commission examines section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.[140]

3. Pricing of Network Elements

46. Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act.[141] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[142] Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.[143] Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.[144] The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations

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[138] *BellSouth South Carolina Order*, 13 FCC Rcd at 647, para. 195. *See also Local Competition First Report and Order*, 11 FCC Rcd at 15667-68, paras. 332-33.

[139] *Bell Atlantic New York Order*, 15 FCC Rcd at 4077-78, para. 230.

[140] *Id.*

[141] 47 U.S.C. § 271(c)(2)(B)(ii).

[142] *Id.* § 251(c)(3).

[143] 47 U.S.C. § 252(d)(1).

and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[145]

47. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1997,[146] the Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.[147] On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission's pricing rules were contrary to Congressional intent.[148] The Eighth Circuit has stayed the issuance of its mandate pending review by the Supreme Court.[149] Accordingly, the Commission's pricing rules remain in effect.

C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

(Continued from previous page)

[144] *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-679; 47 C.F.R. §§ 51.501 *et seq. See also Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98*, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 *(Line Sharing Order)* (concluding that states should set the prices for line sharing as a new network element in the same manner as the state sets prices for other UNEs).

[145] *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59.

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

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

[148] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. filed sub nom. Verizon Communications v. FCC*, 69 U.S.L.W. 3269 (U.S. Oct. 4, 2000) (No. 00-511).

[149] *Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.* (8th Cir. Sept. 25, 2000).

48. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[150] Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[151] Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[152] Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[153] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[154] Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by

[150] 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order,* 13 FCC Rcd at 20706, n.574.

[151] 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines "utility" to include any entity, including a LEC, that controls "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

[152] 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order,* the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order,* 11 FCC Rcd at 16080-81, paras. 1175-77.

[153] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

[154] 47 U.S.C. § 224(b)(1).

a State."[155] As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.[156]

D. Checklist Item 4 – Unbundled Local Loops

49. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[157] The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.[158]

50. In order to establish that it is "providing" unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.[159] Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the

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[155] *Id.* § 224(c)(1). The 1996 Act extended the Commission's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

[156] *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

[157] 47 U.S.C. § 271(c)(2)(B)(iv).

[158] *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase "network interconnection device" with "demarcation point," and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

[159] *SWBT Texas Order*, 15 FCC Rcd at 18480-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20712, para. 185.

requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

51. On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of the local loop (HFPL).[160] The HFPL is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions."[161] In the *Line Sharing Reconsideration Order*, however, the Commission clarified "that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop, e.g., where the loop is served by a remote terminal).".[162]

52. A successful BOC applicant must have a specific and concrete legal obligation to provide line sharing. Moreover, it should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing, and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases. To determine whether a BOC makes line sharing available consistent with Commission rules, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*. Specifically, a BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates.

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[160] *See Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27.

[161] 47 C.F.R. § 51.319(h)(1).

[162] *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2106-07, para. 10. The Commission subsequently clarified that the *Line Sharing Reconsideration Order* in no way modified the Commission's packet switching rules, which describe the limited set of circumstances under which an incumbent LEC is required to provide non-discriminatory access to unbundled switching capability. *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Order Clarification, 16 FCC Rcd 4628 (2001).

53. To satisfy checklist item 4, a BOC must also demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.[163] Specifically, a BOC must provide access to the network elements necessary for competing carriers to line-split services. As part of this obligation, a BOC must also demonstrate that a competing carrier is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer in conjunction with another carrier. To make such a showing, a BOC must show that it has a concrete and specific legal obligation to provide line splitting, and offer competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment.[164]

E. Checklist Item 5 – Unbundled Local Transport

54. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[165] The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.[166] Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.[167] Shared transport

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[163] *See generally SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-29 (describing line splitting); 47 C.F.R. §51.307(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers "to provide any telecommunications service that can be offered by means of that network element.").

[164] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9088, para. 174; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

[165] 47 U.S.C. § 271(c)(2)(B)(v).

[166] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

[167] *Id.* at 20719, n.649. A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719, n.651.

consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.[168]

F. Checklist Item 6 – Unbundled Local Switching

55. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[169] In the *Second BellSouth Louisiana Order,* the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.[170] The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.[171] Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.[172]

56. Moreover, in the *Second BellSouth Louisiana Order,* the Commission required BellSouth to permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.[173] The Commission also stated that measuring daily customer usage for

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[168] *Id.* at 20719, n.650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

[169] 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second BellSouth Louisiana Order,* 13 FCC Rcd at 20722-23, para. 207. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

[170] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

[171] *Id.*

[172] *Id.* at 20722-23, para. 207.

[173] *Id.* at 20723, para. 208.

billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.[174] Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.[175] Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.[176]

57. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.[177] In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.[178]

G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

58. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."[179] In the *Ameritech Michigan Order,* the Commission found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.,* at parity."[180] Specifically, the Commission found

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[174] *Id.* at 20723, para. 208 (citing the *Ameritech Michigan Order,* 12 FCC Rcd at 20619, 20717-18, paras. 140, 330-31).

[175] *Id.*

[176] *Id.*

[177] *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

[178] *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

[179] 47 U.S.C. § 271(c)(2)(B)(vii)(I). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

[180] *Ameritech Michigan Order,* 12 FCC Rcd at 20679, para. 256.

that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[181] For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."[182] Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.[183] Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[184] The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).[185] In the *Local Competition Second Report and*

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[181] *Id.*

[182] *Id.*

[183] 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

[184] *Id.* § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*, 11 FCC Rcd 15499. 47 C.F.R. § 51.217; *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) *vacated in part, People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *overruled in part, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *see also Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

[185] While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to "directory assistance," section 251(b)(3) refers to nondiscriminatory access to "operator services," while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to "operator call completion services." 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term "operator call completion services" is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term "operator services" was defined as meaning "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, the Commission concluded in the *Second BellSouth Louisiana Order* that for checklist compliance (continued....)

Order, the Commission held that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."[186] The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.[187] The Commission specifically held that the phrase "nondiscriminatory access to operator services" means that ". . . a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."[188]

59. Competing carriers may provide operator services and directory assistance by either reselling the BOC's services or by using their own personnel and facilities to provide these services. The Commission's rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.[189] Competing carriers wishing to provide operator services or directory assistance using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or

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purposes, "operator call completion services" is a subset of or equivalent to "operator service." *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. As a result, the Commission uses the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

[186] 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order's* interpretation of section 251(b)(3) is limited "to access to each LEC's directory assistance service." *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC's systems but requires "nondiscriminatory access to . . . directory assistance to allow the other carrier's customers to obtain telephone numbers." 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission's conclusion that "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible," *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)'s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services.

[187] *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

[188] *Id.* at 19499, para. 112.

[189] 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as "thank you for using XYZ Telephone Company." Competing carriers may use the BOC's brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.[190] Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required unbundled network elements in the *Local Competition Third Report and Order*.[191] Checklist item obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the requirements of sections 251 and 252, including the requirement that rates be based on forward-looking economic costs.[192] Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.[193]

H. Checklist Item 8 – White Pages Directory Listings

60. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."[194] Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.[195]

61. In the *Second BellSouth Louisiana Order,* the Commission concluded that, "consistent with the Commission's interpretation of 'directory listing' as used in section 251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[196] The

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[190] 47 C.F.R. § 51.217(c)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44.

[191] *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

[192] *Id.* at 3905, para. 470. *See generally* 47 U.S.C. §§ 251-52; *see also* 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element").

[193] *UNE Remand Order* at 3905-06, paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

[194] 47 U.S.C. § 271(c)(2)(B)(viii).

[195] *Id.* § 251(b)(3).

[196] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

Commission further concluded, "the term 'directory listing,' as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof."[197] The Commission's *Second BellSouth Louisiana Order* also held that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.[198]

I. Checklist Item 9 – Numbering Administration

62. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established."[199] The checklist mandates compliance with "such guidelines, plan, or rules" after they have been established.[200] A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules.[201]

J. Checklist Item 10 – Databases and Associated Signaling

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[197] *Id.* In the *Second BellSouth Louisiana Order,* the Commission stated that the definition of "directory listing" was synonymous with the definition of "subscriber list information." *Id.* at 20747, para. 252 (citing the *Local Competition Second Report and Order,* 11 FCC Rcd at 19458-59, para. 137). However, the Commission's decision in a recent proceeding obviates this comparison, and supports the definition of directory listing delineated above. *See Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended,* CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, 14 FCC Rcd 15550, para. 160 (1999).

[198] *Id.* at 20747-48, para. 253.

[199] 47 U.S.C. § 271(c)(2)(B)(ix).

[200] *Id.*

[201] *See Second Bell South Louisiana Order,* 13 FCC Rcd at 20751-52, paras. 262-65; *see also Numbering Resource Optimization,* Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource Optimization,* Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200, 16 FCC Rcd 306 (2000).

63. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[202] In the *Second BellSouth Louisiana Order,* the Commission required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)."[203] The Commission also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).[204] In the *Local Competition First Report and Order,* the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.[205] At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.[206] In the *UNE Remand Order*, the Commission clarified that the definition of call-related databases "includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases."[207]

K. Checklist Item 11 – Number Portability

64. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[208] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number

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202 47 U.S.C. § 271(c)(2)(B)(x).

203 *Second BellSouth Louisiana Order,* 13 FCC Rcd at 20753, para. 267.

204 *Id.* at 20755-56, para. 272.

205 *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

206 *Local Competition First Report and Order,* 11 FCC Rcd at 15741-42, paras. 484-86.

207 *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

208 47 U.S.C. § 271(c)(2)(B)(xi).

portability in accordance with requirements prescribed by the Commission."[209] The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[210] In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[211] Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability "to the extent technically feasible."[212] The Commission also requires LECs to gradually replace interim number portability with permanent number portability.[213] The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,[214] and created a competitively neural cost-recovery mechanism for long-term number portability.[215]

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[209] *Id.* at § 251(b)(2).

[210] *Id.* at § 153(30).

[211] *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, at paras. 1, 6-9 (Jun. 23, 1999) (*Fourth Number Portability Order*).

[212] *Fourth Number Portability Order* at para. 10; *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-116 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

[213] *See* 47 C.F.R. § 52.27; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355 and 8399-8406, paras. 3 and 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

[214] *See* 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-140.

[215] *See* 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at para. 9.

L. Checklist Item 12 – Local Dialing Parity

65. Section 271(c)(2)(B)(xii) requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[216] Section 251(b)(3) imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service. . .with no unreasonable dialing delays."[217] Section 153(15) of the Act defines "dialing parity" as follows:

> . . . a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation . . .[218]

66. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.[219] Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.[220]

M. Checklist Item 13 – Reciprocal Compensation

67. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[221] In turn, pursuant to section 252(d)(2)(A), "a state commission shall not

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[216] Based on the Commission's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

[217] 47 U.S.C. § 251(b)(3).

[218] *Id.* at § 153(15).

[219] 47 C.F.R §§ 51.205, 51.207.

[220] *See* 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[222]

N. Checklist Item 14 – Resale

68. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[223] Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[224] Section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[225] Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A).[226] Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and non-discriminatory.[227] If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section

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[221] 47 U.S.C. § 271(c)(2)(B)(xiii).

[222] *Id.* § 252(d)(2)(A).

[223] *Id.* § 271(c)(2)(B)(xiv).

[224] *Id.* § 251(c)(4)(A).

[225] *Id.* § 252(d)(3).

[226] *Id.* § 251(c)(4)(B).

[227] *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission's authority to promulgate such rules, and specifically upheld the sections of the Commission's rules concerning resale of promotions and discounts in *Iowa Utilities Board. Iowa Utils. Bd. v. FCC*, 120 F.3d at 818-19, *aff'd in part and remanded on other grounds, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also* 47 C.F.R. §§ 51.613-51.617.

251(c)(4)(A) from offering the service to a different category of subscribers.[228] If a state creates such a limitation, it must do so consistent with requirements established by the Commission.[229] In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.[230]

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

69. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[231] The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.[232] Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.[233] In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.[234]

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[228] 47 U.S.C. § 251(c)(4)(B).

[229] *Id.*

[230] *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

[231] 47 U.S.C. § 271(d)(3)(B).

[232] *See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*); First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

[233] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, para. 15; *Accounting Safeguards Order*, 11 FCC Rcd at 17550, para. 25; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

[234] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, at paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

70. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.[235] The Commission's findings regarding section 272 compliance constitute independent grounds for denying an application.[236] Past and present behavior of the BOC applicant provides "the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272."[237]

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

71. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[238] Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

72. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.[239] Thus, the Commission views the public interest requirement as 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 markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the

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[235] *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[236] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86 at para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81.

[237] *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81.

[238] 47 U.S.C. § 271(d)(3)(C).

[239] In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

application at issue.[240] Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission's analysis of checklist compliance, that markets are open to competition.

73. The Commission previously has explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue to satisfy the requirements of section 271 after entering the long distance market.[241] Although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval.[242] The Commission has stated that the

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[240] *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

[241] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6376, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806; *see Ameritech Michigan Order*, 12 FCC Rcd at 20747.

[242] These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6). Moreover, in this instance, we find that the collaborative process by which these mechanisms were developed in Texas and then adapted and modified in both Kansas and Oklahoma for particular circumstances in each of these states, has itself helped to bring SWBT into checklist compliance.

fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.[243]

[243] *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL COPPS

Re: Application by Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in Connecticut (CC Docket No. 01-100)

With today's grant of Verizon's application to provide long-distance services, consumers in Connecticut will now benefit from the expanded competition envisioned by the Telecommunications Act of 1996. The core of the congressional framework to promote competition in all telecommunications markets is the requirement that Bell companies open their local markets as a condition for entering the long-distance market.

With six applications granted by this Commission, we can see the wisdom of Congress' "carrot and stick" approach. There is ample evidence that when barriers are eliminated, competitors will enter a market. Congress' plan is a win-win for Bell companies and competitors alike. But even more importantly, it is a win for consumers who are the true beneficiaries of competition, enjoying greater choice, better services, and lower prices.

We must be ever mindful, however, that although the conditions for competition exist in Connecticut today, the grant of an application is not the end of the road. Our expectation is that Bell companies and competitors will work cooperatively through their business-to-business relationships to resolve any issues that develop. To the extent that backsliding occurs, this Commission and our state colleagues have a shared obligation to address any problems.

We also must not ignore our duty to ensure that independent incumbent carriers meet their statutory market-opening responsibilities, notwithstanding that they need not seek authorization prior to providing long-distance services. Verizon's territory includes only two percent of Connecticut consumers. Other Connecticut consumers are entitled to reap the same benefits of competition that their neighbors enjoy.

I take these enforcement duties with the utmost seriousness. Only with continued vigilance can we ensure that enduring competition thrives, that Congress' vision of competitive and deregulated telecommunications markets is realized, and that the public interest is thereby served.

In the Matter of KENNETH E. BROOTEN, JR., Complainant, v. AT&T CORP., Defendant

File No. E-96-32

FEDERAL COMMUNICATIONS COMMISSION

12 FCC Rcd 13343; 1997 FCC LEXIS 4927; 9 Comm. Reg. (P & F) 786

RELEASE-NUMBER: DA 97-1871

September 4, 1997 Released; Adopted August 28, 1997

ACTION: [**1] MEMORANDUM OPINION AND ORDER

JUDGES:

By the Deputy Chief, Common Carrier Bureau

OPINIONBY: RICHARDS

OPINION:

[*13343] I. INTRODUCTION

1. Before us is a formal complaint ("complaint") filed by Kenneth E. Brooten, Jr. ("Brooten") against AT&T Corp. ("AT&T"), pursuant to Section 208 of the Communications Act of 1934, as amended (the "Act"). n1 Brooten alleges that AT&T violated Section 201(b) of the Act n2 by: (1) "backbilling" n3 up to 160 days after calls were made, and (2) representing that such delayed billing is authorized, for up to two years, by Section 415(a) of the Act. n4 Brooten seeks a ruling declaring AT&T's backbilling unlawful and requiring AT&T to credit his account for the backbilled charges. Additionally, Brooten seeks a declaratory ruling that AT&T's alleged misrepresentation of Section 415(a) was unlawful and that Section [*13344] 415(a) does not require customers to pay charges backbilled up to two years. For the reasons stated below, we deny the complaint and decline to issue the requested declaratory ruling.

n1 *47 U.S.C. § 208.* Section 208(a) provides for the filing of a complaint with the Commission by "any person . . . complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof." *47 U.S.C. § 208*(a). [**2]

n2 Id. § 201(b). This section states, in pertinent part, that all "charges, practices, classifications, and regulations for and in connection with [interstate] communication service shall be just and reasonable."

n3 The term "backbilling" has been used, in different contexts, to describe more than one billing-related scenario. Herein, backbilling refers to the time between the provision of service by the carrier and the rendering of the bill to the customer. See, e.g., *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges, 4 FCC Rcd 8797, 8798 (1989).*

n4 *47 U.S.C. § 415*(a). This section provides that "all actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after."

II. BACKGROUND

2. Brooten, an attorney, maintains law offices in Winter Park, Florida. n5 AT&T is a communications common carrier that provides domestic and international telecommunications services subject to the Commission's jurisdiction under Title II of the Act. At all times relevant [**3] to this proceeding, AT&T provided CustomNet(R) service n6 to three

separate locations of Brooten's law offices. Ordinarily, AT&T billed Brooten monthly on a single bill for all calls made during the prior month. n7 Beginning with Brooten's December 1995 invoice, however, and continuing through the March 1996 invoice, AT&T only billed Brooten for the usage at two of his locations. As for the calls made at Brooten's third location between November 1995 and February 1996, AT&T included them on its April 1996 invoice; n8 these backbilled charges totaled $821.07. n9

n5 Complaint at 1-2. Brooten states that he provides legal services to a variety of clients nationally and internationally. Id.

n6 AT&T states that it provided Brooten CustomNet service pursuant to AT&T Tariff F.C.C. No. 1, Section 6.13. Answer at 5-6. "CustomNet Service is a Custom Network Service that permits Customer-dialed outward calling from one or more locations of the Customer.... " See AT&T Tariff F.C.C. No. 1, Section 6.13.1 (effective June 22, 1996) (AT&T Responses to Interrogatories Appendix D).

n7 See Complaint at 2; AT&T Brief at 1.

n8 AT&T Brief at 4. April 1, 1996, was the "bill close date" for this invoice. See Complaint Exh. 1. The usage charges on the April 1996 invoice were listed separately for each of Brooten's locations and each call was listed individually by date, time, place, area/number, minutes, call type, rate period, and pre-discounted amount. See Complaint Exh. 1. [**4]

n9 AT&T's April 1996 invoice to Brooten also included charges for the March 1996 usage at all three locations; Brooten paid AT&T these charges, which AT&T states were $312.23. AT&T Answer at 6.

3. Brooten disputed the backbilled charges with AT&T beginning on the day he received the latter invoice, April 15, 1996. n10 AT&T responded that the charges were valid but apologized for the delay. Oral and written correspondence between the parties continued during May and June of 1996. In brief, Brooten pressed his claim to AT&T that its late billing had damaged him financially, and AT&T proffered a total of $427.95 in credits to redress any inconvenience associated with its late billing. n11 Dissatisfied, Brooten filed the above-captioned formal complaint with the Commission on June 19, 1996. [*13345] AT&T filed an answer on August 9, 1996, and Brooten filed a reply on August 26, 1996. n12 The parties also filed other motions, reports, and briefs. n13

n10 See, e.g., Complaint at 1.

n11 AT&T states that it issued Brooten $250 in credits on June 5, 1996, and an additional $177.95 in credits on June 26, 1996. See AT&T Answer at 7.

n12 Brooten also filed a Motion to Accept Late-Filed Pleading because his reply was due on August 22, 1996. Brooten avers that accepting his reply would not prejudice AT&T because no further response is permitted. We grant this motion, which was unopposed, in order to develop a complete record in this proceeding. [**5]

n13 We are also consolidating for disposition in the instant order, several motions and pleadings that Brooten and AT&T filed under a different caption. See infra paras. 21 & 31.

III. DISCUSSION

A. Backbilling Alleged to Violate Section 201(b)

1. Contentions of the Parties

4. Complainant. Brooten contends that AT&T violated Section 201(b) of the Act by billing him for calls up to 160 days after they were placed. In support, Brooten maintains that billing data are generated "automatically" by the telephone switch and the generation of bills "takes a matter of milliseconds without any appreciable need for human intervention." n14 Brooten adds that AT&T nonetheless concedes that its computer error caused the billing delay, and claims that this delay caused him unrecoverable losses because he is a business customer who "passes through" phone charges to his clients. n15 Moreover, according to Brooten, AT&T knew or should have known that "negligence in the

prompt issuance of its bills" would result in unrecoverable losses to him because AT&T has numerous business subscribers who pass through phone charges to clients or customers. n16 In view of these allegations, Brooten avers [**6] that AT&T's 160-day billing delay was so far beyond the zone of reasonableness that AT&T's conduct was unjust and unreasonable, per se, under the Bureau's 1989 declaratory ruling that the lawfulness of backbilling is determined pursuant to Section 201(b). n17 Brooten adds that AT&T compounded its unreasonableness by working for several months to correct the problem [*13346] without warning him n18 that his then-current monthly invoices might be incomplete, and then by merely adding the backbilled calls to his April 1996 invoice without any prior notice. n19

n14 Complaint at 4-6.

n15 Id.

n16 Id.

n17 See id. (citing *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges, 4 FCC Rcd 550 (Com. Car. Bur. 1989)* (AmNet Order) (holding that backbilling may, in some instances, violate Section 201(b)), recon. denied, *4 FCC Rcd 8797 (1989)* (AmNet Recon) (referred to collectively herein as "AmNet")).

n18 Brooten argues that AT&T acted unreasonably because it did not timely alert all of its affected customers about the ongoing billing problem. See Brooten Brief at 8-9. AT&T contends that this argument is unsupported by the record because Brooten only offers evidence about his experience with AT&T. See AT&T Reply Brief at 3-4. We agree with AT&T and therefore read Brooten's allegation to cover only his experience with AT&T. [**7]

n19 See Brooten Brief at 8-9.

5. Brooten also maintains that AT&T has the burden of demonstrating that its backbilling was reasonable n20 and failed to do so with "objective" data, i.e., the number of subscribers affected by the defective computer program and a quantitative statement of the resources it devoted to correcting the error. n21 In addition, Brooten contends that AT&T's billing was not reasonable in light of Section 203 of the Act, n22 which requires carriers to collect all lawful, tariffed charges. Brooten avers that the backbilling was unlawful and thus not required by Section 203. n23 Moreover, AT&T's claim that the backbilling was within the scope of Section 203 "must be incorrect," according to Brooten; otherwise AT&T violated Section 203 by issuing him the credits. n24 Brooten also argues at the briefing stage that even if the backbilling was reasonable, it still remains to be determined who should bear the burden of Brooten's loss occasioned by AT&T's conceded error, i.e., "who pays when a carrier's negligent back-billing causes damages to its customer?" n25

n20 Brooten Reply Brief at 6 (citing *The Offshore Telephone Co. v. South Central Bell, 2 FCC Rcd 4546, 4552 (Com.Car.Bur. 1987))*. Brooten contends that the burden shifted to AT&T because he made a prima facie case that the backbilling was unreasonable and AT&T conceded that the late billing occurred. Id. [**8]

n21 Brooten Reply Brief at 7. Brooten claims, for example, that if the error affected millions of subscribers and AT&T notified all of them when it discovered the error, then a five-month billing delay could be deemed reasonable; but if only ten subscribers were affected then a five-month delay would be patently unreasonable. Id.

n22 *47 U.S.C. § 203.* Section 203(a) provides in part: "Every common carrier . . . shall . . . file with the Commission . . . schedules showing all charges for [interstate communications]." Id. § 203(a). Section 203(c) provides in part: "No carrier . . . shall engage or participate in such communications unless schedules have been filed and published . . . and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation, for such communication . . . or (3) extend to any person any privileges or facilities, in such communications, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule." Id. § 203(c).

n23 See Reply at 3.

n24 Id. at 3 n.3.

n25 Brooten Reply Brief at 8-9.

6. As for damages, [**9] Brooten maintains that he had already issued bills to his clients prior to receiving AT&T's April 1996 invoice, which included the delayed billings for some of his November 1995 through February 1996 calls. Thus, according to Brooten, AT&T's backbilling caused him financial harm because he did not "pass through" AT&T's delayed charges when he billed his clients for this time period. [*13347] Moreover, Brooten states that he cannot backbill his clients and would not do so as a sound business practice. n26 Brooten also requested an award for fees and costs. n27 The record reflects, however, that Brooten declined to further prosecute this request at the briefing stage of this proceeding. n28

n26 Brooten Brief at 3, Complaint at 2-3. Brooten explains that he cannot rebill his clients, for the late phone charges that he received in April 1996, because some of the files have since closed and, in any event, doing so would injure his business reputation and be expensive. Complaint at 2-4.

n27 Complaint at 6-7. Brooten asserted that a party advancing the public interest in addition to a private interest may advocate an award for attorney fees and costs on public interest grounds. Reply at 4. [**10]

n28 Under the Commission's rules, briefs must contain the findings of fact and conclusions of law that a party is urging the Commission to adopt. 47 C.F.R. § 1.732(a). In his brief, Brooten did not address his earlier request for costs. See Brooten Brief. AT&T argues that the Commission lacks jurisdiction to award costs. See AT&T Brief at 7 n.21. Brooten did not reply to AT&T's arguments against awarding costs. See Brooten Reply Brief; see also *Notice of Proposed Rulemaking, CC Docket No. 96-238, Implementation of the Telecommunications Act of 1996 and Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, 11 FCC Rcd 20823, 20845-46 (1996)* ("Complaint-rules NPRM") (noting that Commission is not authorized to award costs in formal complaint proceedings) (citing *Turner v. FCC, 514 F.2d 1353, 1356 (1975); Comark Cable Fund III v. Northwestern Indiana Telephone Co., 100 FCC 2d 1244, 1257 n. 51 (1985)).*

7. Defendant. AT&T concedes that it billed Brooten 150 days after the November 1995 calls were placed, and 120, 90, and 60 days after the December [**11] 1995, January 1996, and February 1996 calls were placed, respectively. n29 AT&T states that ordinarily it bills Brooten monthly, i.e., within 30 days of rendering service; as such, AT&T concedes that its April 1996 bill was late: 120 days for the November 1995 calls, 90 days for the December 1995 calls, 60 days for the January 1996 calls, and 30 days for the February 1996 calls. n30

n29 AT&T Brief at 5, Answer at 6-7. Brooten states that the backbilling was up to 160 days, but AT&T argues that it was 150 days. The record reflects that the earliest calls billed on the April 1996 invoice were made on November 6, 1995. Complaint Exh. 1. The April 1, 1996, "bill close date" was 147 days after November 6, 1995. The date Brooten states he received the bill, April 15, 1996, was 161 days after November 6, 1995. Thus, the underlying facts are not in dispute. Each party merely used different benchmark dates to measure the billing delay. Based on the record before us, we find this difference insignificant and certainly not dispositive. See, e.g., *AmNet Order, 4 FCC Rcd at 552* (refers interchangeably to the date a carrier sends its bill and the date a customer receives a bill). [**12]

n30 See, e.g., AT&T Brief at 5.

8. According to AT&T, this late billing resulted from a problem in its billing system that arose from a one-time computer programming error. Specifically, AT&T explains that it became aware in late November 1995 that the usage information associated with certain customer accounts, including the account for one of Brooten's three locations, was not guided to the appropriate billing account. n31 AT&T then determined that this problem was caused by an error in a computer program it ran in October [*13348] 1995 to migrate certain message processing functions for CustomNet customers from one database to another. n32

n31 See, e.g., id. at 2. AT&T states that the group within AT&T responsible for maintaining customer accounts became aware of the account-migration problem because of an unusual increase in the level of unbilled usage that was not matched with a particular customer account. Also, CustomNet customers began contacting AT&T to express concern that they had not been billed for usage for the previous month. Id.

n32 See id. at 2, Answer at 5-6. AT&T states that it ran this program as part of combining all CustomNet message guiding functions into a single database. Because of the programming error, however, AT&T states that affected customers were not billed for the period immediately following the program's execution. AT&T Brief at 2; Response to Interrogatories at 3. [**13]

9. AT&T maintains that it first attempted to identify and bill all unmatched usage through a manual, case-by-case process, but initiated a project to correct the problem in December 1995 after it appeared more pervasive than the individual instances initially identified. n33 After reviewing numerous options, AT&T states, it concluded that the most cost- and time-efficient approach to ensure that all affected customers were billed properly was to run a "complex refresh" process. n34 The refresh program was written and tested in January 1996 and, according to AT&T, implemented during February and March 1996 -- in phases to allow for proper testing and quality control. The program was also implemented during times when computers were not running programs necessary to support the day-to-day activities of its billing system. n35 As a result of this effort, AT&T states that it was able to match Brooten's unbilled usage for November 1995 through February 1996 with his account on the billing system for the affected location. Accordingly, AT&T states that it included these unbilled charges, totaling $821.07, in its April 1996 invoice to Brooten. n36

n33 AT&T Brief at 3; Response to Interrogatories at 3-6. [**14]

n34 See AT&T Brief at 3; Response to Interrogatories at 4-6. AT&T states that the "complex refresh" process is a computer process that creates the proper "routing guides" for each CustomNet customer whose usage is not being routed to the biller. This process generates a "guide record" which provides the information necessary to route both current usage and past unmatched/unbilled usage to the correct guiding account, thus enabling that usage to be billed to the customer during the next billing cycle. Id. at 4.

n35 AT&T Brief at 3, Response to Interrogatories at 3-6. AT&T emphasizes that it refreshed all CustomNet accounts so that the guide records for all CustomNet customers who might have been affected by this problem would be updated. AT&T Brief at 3.

n36 AT&T Brief at 4, Answer at 6-7.

10. AT&T denies that it acted unreasonably in violation of Section 201(b) of the Act or contrary to the Bureau's AmNet clarification. AT&T also avers that Brooten has offered no evidence that the four-month delay in billing that he experienced for one of his three CustomNet locations was unreasonable. n37 To the contrary, AT&T maintains that the reasonableness of the billing delay [**15] is supported by the facts in the record, which demonstrate that: (1) the problem leading up to the late billing was a one-time occurrence triggered by a computer error; (2) AT&T addressed the billing problem in a short period of time during which it developed, tested, and implemented corrections to its billing system; and (3) AT&T promptly thereafter rendered corrected bills to affected customers. n38 AT&T adds that the [*13349] reasonableness of its actions is underscored by its obligation under Section 203 of the Act to collect its lawful tariffed charges. n39

n37 AT&T Brief at 5-7.

n38 Id.

n39 Id. at 7 (citing *Allnet Communications Service, Inc. v. Bell Atlantic Companies, 8 FCC Rcd 5438, 5439 (1993)* ("Allnet"); Referral of Questions from *General Communication Incorporated v. Alascom, Inc., 3 FCC Rcd 700, 704 (1988)* ("GCI")).

11. AT&T also denies Brooten's allegation that it failed to notify him that his then-current bills might be incomplete. n40 Alternatively, AT&T avers that failing to notify Brooten was not unreasonable because, even after it was aware of the problem, it still could not identify which CustomNet [**16] customers were affected because the unbilled usage was not identified to specific customer accounts. n41 Moreover, AT&T avers that Brooten's follow-up argument -- that AT&T still could have warned him by notifying every CustomNet customer that then-current invoices might be incomplete -- does not address the significant expenditure of time and resources that such a notice would have required.

AT&T adds that Brooten's argument also does not address the confusion that a blanket notice would have generated for the vast proportion of CustomNet customers who were not affected by the billing error. n42

n40 AT&T argues that because he was not billed at all for one of three locations, it is reasonable to conclude that Brooten was alerted to the fact that there was a problem with his bill. Moreover, AT&T states that although numerous other customers inquired about their incomplete bills, Brooten did not. AT&T avers that such an inquiry would have mitigated any damages. See AT&T Reply Brief at 4.

n41 Id. at 3-4 & n.1 (citing Answer at 5-6; AT&T Response to Interrogatories at 4-6).

n42 Id.

12. Finally, AT&T states that on the numerous occasions when Brooten asked about the delayed [**17] charges upon receiving his April 1996 invoice, it advised him that the charges were valid, i.e., not duplicate billings. n43 Nonetheless, AT&T states that it also apologized to Brooten n44 and issued a total of $427.95 in credits applicable to the late-billed charges as a customer accommodation and to redress any inconvenience associated with the tardy billing. n45

n43 AT&T Initial Brief at 4, Answer at 2-3 (citing letter dated June 5, 1996, from Lori Wooldridge, AT&T, to Kenneth E. Brooten ("Wooldridge Letter") (Complaint, Exh. 2)). AT&T also concedes making statements to Brooten about Section 415(a) of the Act. See e.g., AT&T Initial Brief at 7-8. In paras. 21-31, infra, we consider Brooten's allegation that AT&T's statements misrepresented Section 415(a).

n44 See, e.g., Wooldridge Letter at 2.

n45 See AT&T Brief at 4; Answer at 7-8; see also Wooldridge Letter at 2. The record reflects that after Brooten filed the above captioned complaint, the parties also attended several status conferences held by our Enforcement Division's staff to consider, inter alia, settlement of the matters in controversy by agreement of the parties. See 47 C.F.R. § 1.733(a)(4).

2. Decision [**18]

13. We note initially that the Common Carrier Bureau ("Bureau") has previously addressed the issue of backbilling in the carrier-to-carrier context. In AmNet, the Bureau clarified that the two-year [*13350] statute of limitation for recovery actions provided in Section 415(a) of the Act does not establish as a matter of law that backbilling of up to two years is reasonable under Section 201(b). More specifically, the Bureau stated that, depending on the specific circumstances, a "delay of much less than 24 months between the rendering of service and the receipt of an initial bill for such service may be an unjust and unreasonable practice" and consequently violative of Section 201(b). n46 In that proceeding, however, the party seeking a declaratory ruling on the backbilling issue failed to provide evidence that adequately established the nature and extent of the alleged backbilling. n47 Accordingly, the Bureau determined that any fixed limit upon all backbilling should be established in a rule-making proceeding and that, absent a rule, the reasonableness of the amount of time it takes a carrier to render a bill should be evaluated in accordance with the standards for what constitutes [**19] an unreasonable practice for purposes of Section 201(b) of the Act. n48 Under this case-by-case approach, we review the record of a given proceeding and determine whether the backbilling was unreasonable under the specific circumstances presented. n49

n46 *AmNet Order, 4 FCC Rcd at 552* ("Section 415(a) establishes a time limit for filing a court action to recover unpaid bills; it does not establish the time limit for sending an initial bill to the customer for services rendered."); see also supra note 4.

n47 In AmNet, the petitioner sought a declaratory ruling, inter alia, that: (1) local exchange carriers (LECs) must abide by their access tariffs, which specified that interexchange carriers (IXCs) would be billed on a prompt and current basis; (2) irrespective of these access tariffs, LECs must bill IXCs within 60 days of service; and (3) it is unlawful for facilities-based IXCs to routinely, i.e., repeatedly, backbill charges for leasing their facilities. *AmNet Order, 4 FCC Rcd at 550-52.*

n48 *Id. at 551; AmNet Recon, 4 FCC Rcd at 8798.*

n49 In AmNet, for example, the petitioner averred that Commission intervention was needed because actual and potential competition between LECs and IXCs created anticompetitive incentives for LECs to hamper IXC operations by engaging in routine backbilling. See, e.g., *AmNet Order, 4 FCC Rcd at 550-51.* [**20]

14. Turning to the above-captioned proceeding, we conclude that AT&T's practices vis-a-vis Brooten were not unlawful under Section 201(b) of the Act. First, based on the detailed information that it provided, we find credible AT&T's explanation that the backbilling that Brooten experienced arose from a one-time computer-programming error. AT&T addressed the resulting billing-system problem in a reasonable period of time, during which it developed, tested, and implemented corrections to its billing system, and then billed Brooten for previously unbilled service that was rendered and subscribed-to pursuant to tariff. n50 Next, the record also reflects that AT&T advised Brooten that the backbilled charges were valid because they: (1) covered service rendered to Brooten; (2) were not duplicative; and (3) were delayed by a computer-programming error. AT&T also told Brooten that it was authorized to bill these charges for up to two-years under the "statute of limitations" it follows for backbilling, Section 415(a). n51 Moreover, AT&T also proffered over half of the amount that Brooten claimed as damages, in the form of account credits, to redress or accommodate any inconvenience associated [**21] with the late billing. n52

n50 See, e.g., *Allnet, 8 FCC Rcd at 5439; GCI, 3 FCC Rcd at 704.*

n51 AT&T's statements about Section 415(a) are also relevant to Brooten's second count, see paras. 21-31, infra.

n52 See, e.g., AT&T Brief at 4; Wooldridge Letter at 1.

[*13351] 15. We also conclude that the backbilling in question was reasonable in part because it was within the scope of AT&T's Section 203 obligation to collect its lawful, tariffed charges. Brooten's contention that this is not so because the charges were unlawful is unavailing because he does not dispute that AT&T rendered the backbilled services; nor does he contend that rates, terms, or conditions of the CustomNet tariff were unlawful. n53 In addition, although it is not a separately plead count in the complaint, we also reject any suggestion that AT&T violated Section 203 of the Act when it attempted to settle Brooten's grievance by proffering credits to his account. n54 The "filed-rate doctrine" generally bars damage awards -- and thus settlement offers -- that are based on common-law theories that a rate, term, or condition contrary to the filed [**22] tariff should govern in place of the filed tariff. n55 Section 203 did not, however, bar AT&T from attempting in good faith to settle Brooten's bona-fide grievance, which does not arise under a legal theory contrary n56 to the filed tariff. Put differently, Brooten's Section 201(b) claim is not barred under the filed-rate doctrine because it alleges damages caused by AT&T's delayed billing. It follows thus that AT&T's attempt to settle Brooten's claim was not contrary to the filed tariff or Section 203 of the Act. n57 The Commission's policy, moreover, is to encourage carriers and their customers to settle disputes over rates and practices outside of the often costly and time consuming complaint process. n58

n53 The Commission previously has stated, moreover, that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations. See, e.g., *MCI Telecommunications Corp., 62 FCC 2d 703, 705-06 (1976)* (Customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services). [**23]

n54 Brooten's suggestion that AT&T violated Section 203 by proffering its settlement attempt via credits is particularly unpersuasive in view of his refusal to pay the outstanding charges pending anticipated litigation. See, e.g., Wooldridge Letter at 1 ("During our conversation you [Brooten] advised me that if AT&T expects to receive payment on the disputed charge then legal action would need to be taken on AT&T's behalf.").

n55 See, e.g., *Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 110 S.Ct. 2759, 111 L.Ed.2d 94 (1990).*

n56 For example, when Brooten presented his claim to AT&T's top management, in a letter claiming that AT&T's "errors and omissions" would cost him "hundreds of dollars," Brooten also recognized that he was legally and ethically responsible for his phone charges. See Answer at 7 (citing letter from Brooten to Robert E. Allen, Chairman of the Board of AT&T, dated April 15, 1996 (Answer Exh. B) ("Brooten Letter")).

n57 As for the balance of the outstanding charges, Brooten reports that AT&T initiated collection efforts against him for a portion of the backbilled charges. See Brooten's Statement for the Record, filed on November 19, 1996. In response, AT&T states that it will halt this collection activity pending resolution of the instant proceeding. See letter from Ava B. Kleinman, AT&T, to William F. Caton, Acting Secretary, FCC, dated December 5, 1996. [**24]

n58 See, e.g., *U.S. Sprint Communications Co. v. AT&T, 9 FCC Rcd 4801, 4804 (1994)* (citing Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in *Which the Commission is a Party, 6 FCC Rcd 5669, 5670 (1991)).*

16. We also disagree with Brooten's averment that it was per se unreasonable for AT&T to: (1) bill him for calls up to 160 days after they were made; or (2) make the computer programming error that caused the billing problem to occur. n59 First, Brooten's call for a "per se" determination is contrary [*13352] to AmNet's clarification that backbilling liability does not arise after any fixed number of days, i.e., liability is not based on strict liability or negligence per se. n60 Moreover, and as stated in AmNet, Section 201(b) lawfulness is determined based on the specific circumstances presented in each case. n61 Thus, while these supported factual allegations are relevant to our determination they are not dispositive as to whether AT&T's backbilling was unjust and unreasonable under all of the circumstances presented in this case. For example, the record also contains relevant [**25] evidence related to AT&T's efforts to redress Brooten's grievance, as well as detailed information as to the cause, duration, and other circumstances surrounding the backbilling at issue. n62

n59 See, e.g., supra note 14 and accompanying text.

n60 See *AmNet Order, 4 FCC Rcd at 551-552; AmNet Recon, 4 FCC Rcd at 8798.*

n61 Id.

n62 We note that Brooten's reference to AT&T tariff provisions that guaranteed billing within 120 days do not assist his claim because he did not take service pursuant to these offerings.

17. Brooten's contention that the existing record is insufficient to assess the reasonableness vel non of AT&T's actions in identifying and remedying the billing problem is also unavailing. n63 To the contrary, the record reflects that AT&T presented, in detail, the nature of its one-time computer programming error that caused the billing problem at issue, as well as its efforts to correct the problem prospectively and remedy errors in previously-sent bills, including Brooten's. Moreover, information that Brooten contends is necessary but not in the record before us is not relevant, probative, or dispositive. [**26] n64 For example, Brooten maintains that the number of subscribers affected by the error is indispensable because it would be "patently unreasonable" for AT&T to take several months to remedy the billing problem if only ten subscribers were affected. n65 We disagree. n66 The record reflects that the duration of the billing delay was not correlated to the specific number of subscribers that AT&T ultimately identified as affected by the error. Thus, the amount of time it took AT&T to correct the problem and bill Brooten accurately for his usage is relevant to our determination but the number of subscribers affected is not relevant, probative, or dispositive. n67

n63 Brooten Reply Brief at 7. Assuming arguendo that Brooten had demonstrated that AT&T took an unreasonable amount of time to correct the error (or that AT&T had the burden and failed to prove that the time taken was reasonable), this finding would not automatically establish a violation. As described above, we consider the specific circumstances presented in toto when ruling on backbilling complaints. We note in this regard Brooten's averment that AT&T set out the causes of its delayed billing "in considerable detail." See Brooten Brief at 2 n.4. [**27]

n64 See *Complaint-rules NPRM, 11 FCC Rcd at 20842-43 & n.89* (citing *American Message Centers v. FCC, 50 F.3d 34, 40 (D.C. Cir. 1995)* (the court noted the "relatively circumscribed role of discovery in a fact-pleading system" under the Commission's formal-complaint rules). See also 47 C.F.R. §§ 1.720, 1.721.

n65 Brooten Reply Brief at 7.

n66 Moreover, as noted above, neither strict liability nor negligence per se is the general legal standard for determining liability for backbilling. See supra paragraph 16.

n67 Put differently, even if Brooten demonstrated that only ten customers were affected by the error, it would not follow, based on the record before us, that AT&T was unreasonable in not identifying, correcting, and remedying the problem in time to bill Brooten for his unmatched calls before it did so in April 1996.

[*13353] 18. We are also not persuaded that AT&T violated Section 201(b) by not warning Brooten that his then-current bills might be incomplete until it corrected the problem. n68 The record reflects that the very nature of the problem prevented identification of the affected accounts until [**28] the problem was corrected; thus, AT&T could not target notices to affected customers, such as Brooten. Brooten also has not shown that AT&T acted unreasonably by failing to warn him by issuing a blanket notice to all CustomNet customers that their bills might be incomplete; we credit AT&T's contention that this allegation does not address the significant expenditure of time and resources that such an activity would entail as well as the confusion (and perhaps expense) that such notification would generate for the vast proportion of CustomNet customers who were not affected by the billing error. n69

n68 In reviewing Brooten's allegation, we are assuming arguendo that a four-month absence of any charges or usage data, for one of three locations would not constitute actual or inquiry notice to a business customer. As such, we need not resolve AT&T's suggestion that it would be reasonable to conclude that Brooten was alerted to the problem because business customers, such as Brooten, review their invoices in detail to pass through charges to clients -- and thus would notice significant abnormalities. See supra note 40. We are proceeding this way for administrative convenience and because it is not outcome determinative. [**29]

n69 Id. Absent any evidence of unreasonable discrimination, we also decline to "second guess" AT&T's business judgement to focus on finding the cause of the problem and correcting its billing system prospectively, instead of first embarking on a program to identify and to warn all affected customers. See, e.g., *Business Choice Network v. AT&T, 7 FCC Rcd 7702 (Com.Car.Bur. 1992).*

19. Brooten's argument that AT&T separately violated Section 201(b) by unreasonably apportioning the injury for its error to him is defective procedurally. Brooten did not raise this claim in either his complaint or his reply; accordingly, read as a new count it is not properly before us. n70 Moreover, if the claim was properly before us, we would have noted that it does not state a prima facie violation n71 and is in any event, unpersuasive. n72

n70 See 47 C.F.R. § 1.720(a) ("All matters concerning a claim, defense or requested remedy . . . should be pleaded fully and with specificity.").

n71 Although Brooten makes this claim assuming, arguendo, that the backbilling was reasonable, this "new" claim is essentially no more than a necessary component of Brooten's claim that the backbilling was unreasonable. [**30]

n72 For example, the claim does not consider the settlement that AT&T proffered to Brooten; it also does not address another relevant issue, according to AT&T. See supra note 40. We are not ruling, however, that our affirmative Title II jurisdiction over the events alleged by Brooten must be to the exclusion of any tort or other claim that Brooten may have in a state court; that would be a matter for a state court to decide. See generally *47 U.S.C. § 414; Valenti v. AT&T, 12 FCC Rcd 2611 (1997).*

20. In summary, we conclude that AT&T's practices vis-a-vis Brooten have not been shown to be unjust or unreasonable, in violation of Section 201(b) of the Act, as alleged in the above-captioned complaint. Our decision regarding the reasonableness of AT&T's backbilling practices in this particular case should not be construed as establishing a rule of general applicability. Our ruling is limited strictly to the facts of this case; in the future, we will continue to consider such matters on a case-by-case basis [*13354] to determine compliance with the just and reasonable requirements of Section 201(b). n73 We do not foreclose [**31] the possibility that backbilling delays of significantly less than 160 days could be found to be unjust and unreasonable under the facts of a particular case.

Likewise, billing delays exceeding 160 days may be reasonable in certain instances. As the Bureau stated in AmNet, "any fixed limit upon all backbilling should be established in a Rule Making proceeding." n74

n73 Recently, for example, we found backbilling beyond 120 days violative of Section 201(b) based on the specific record before us. See The People's Network v. AT&T, 12 FCC Rcd (1997) [DA 97-684 (rel. April 10, 1997)] ("TPN"). In TPN, some of the bills were 15 months late and requested a lump-sum payment without providing any usage detail; moreover, the defendant provided no specific information regarding its bill-preparation procedures that might have shown its reasonableness. See id. at paras. 11, 14, 16. The complainant resale-carrier maintained that a fixed 60-day limit was necessary to obtaining payment from its customers, and so its business customers could pass phone charges through to their clients on a timely basis. Id. at para. 15. In keeping with AmNet, however, we again declined to establish any fixed limit on backbilling. Id. After noting the particular requirements of the complainant as a resale carrier and its dual status as a customer and competitor of the defendant, we considered record evidence concerning, inter alia, provisions of the defendant's tariff transmittals guaranteeing to bill calls within 120 days. See id. at para. 17 (citing AT&T Tariff F.C.C. No. 1, Section 6.4.2.D (effective August 2, 1993)). [**32]

n74 *AmNet Order, 4 FCC Rcd at 551-52.* The Commission would consider revisiting the need for rulemaking action, sua sponte or in response to petitions for rule making filed under 47 C.F.R. § 1.401, should it receive indications that backbilling delays are an industry-wide concern. See generally TPN at para. 18 n.53. The backbilling at issue in the above-captioned proceeding, by contrast, involved a single-time occurrence and does not reflect backbilling problems that are so commonplace that they warrant a rulemaking action at this time.

B. Misrepresentation of Section 415(a)

1. Contentions of the Parties

21. Complainant. Brooten also contends that AT&T violated Section 201(b) of the Act by allegedly misrepresenting Section 415(a) of the Act to him as a "statute of limitations" that authorizes backbilling for up to two years after a call is placed. n75 Several months after filing the above-captioned complaint, Brooten essentially restated his misrepresentation allegations against AT&T in a separately captioned motion for an order to show cause ("Show-cause Motion"). n76

n75 See, e.g., Reply at 2-4.

n76 See Motion of Kenneth E. Brooten, Jr. for Order to Show Cause Why AT&T Corp. Should not Cease and Desist from an Unlawful Practice, filed September 9, 1996. Brooten captioned this motion as follows: "In the Matter of Enforcement of Section 205 of the Communications Act of 1934, as amended, Against AT&T Corporation." Id. Brooten certified service of this motion on AT&T and AT&T filed an Opposition to Motion for Order to Show Cause on September 24, 1996. Brooten filed a Reply to Opposition on October 3, 1996, which AT&T moved to strike on October 11, 1996. See infra para. 26. [**33]

22. Brooten alleges that AT&T misrepresented Section 415(a) to him in oral and written responses to his inquiries about the backbilled charges at issue. Brooten offers copies of letters he received from and sent to AT&T on this subject and states that AT&T also sent him and his counsel [*13355] copies of Section 415 as "asserted evidence of the legitimacy of its claim." n77 At the briefing stage of this proceeding, Brooten also argues that AT&T misrepresented to him that Section 415(a) "mandated" payment of the backbilled charges. n78

n77 See, e.g., Complaint at 5 & n. 3. According to Brooten, the record establishes that AT&T told Brooten, in substance: "You must pay the back billed charges because Section 415(a) of the Act permits us to back bill you for a period of up to two years." Brooten Reply Brief at 2; Brief at 2. During briefing, Brooten claimed for the first time that AT&T also sent his counsel a copy of a portion of AT&T Tariff P.S.C. No. 1 (New York). See Brooten Brief at 3 & Exh. 1.

n78 See, e.g., Brooten Reply Brief at 2 (citing Complaint at 5 n.3; AT&T Response to Interrogatories at 6-8). See also Wooldridge Letter at 1-2; Letter dated June 18, 1996, from Michael J. Wilhelm (counsel for Brooten) to AT&T (Complaint Exh. 3) ("Counsel Letter"). [**34]

23. Brooten maintains that Section 415(a) is irrelevant to backbilling and, as such, that AT&T's contrary statements to him were "deceptive" attempts to "gain money under false pretenses." n79 Brooten avers that AT&T's practice was unjust and unreasonable in violation of Section 201(b). Moreover, according to Brooten, AT&T's conduct was particularly egregious in light of the Bureau's specific declarations in AmNet that Section 415 is not a two-year backbilling "statute of limitations" and does not authorize backbilling for any particular period. n80

n79 See, e.g., Complaint at 6.

n80 See id. at 5 & n. 3; Reply Brief at 4 & n. 3 (citing *AmNet Order, 4 FCC Rcd at 552).*

24. In his complaint and reply, Brooten did not request any additional or specific relief for himself based on this allegation but opined that it would be consistent with the Commission's public interest mandate "to act sua sponte to cause AT&T to cease and desist misrepresenting to the public that Section 415(a) of the Act justifies back billing for up to a two-year period. . . ." n81 Claiming that AT&T does not deny telling other customers what it told Brooten about Section 415(a), [**35] n82 Brooten's Show-cause Motion requests similar Commission action as well as an order requiring AT&T to make reparations to all customers that AT&T allegedly deceived. n83 During briefing, Brooten also requested a declaratory ruling that it is unlawful for carriers to represent to subscribers that Section 415(a) of the Act requires the subscriber to pay back billed charges. n84

n81 Complaint at 6. Brooten also averred that any decision on this subject was "committed to the Commission's absolute discretion." Id. at 6-7.

n82 See Reply to Opposition to Show-cause Motion at 1-6.

n83 See Show-cause Motion at 4-5.

n84 Brooten Reply Brief at 4. Brooten adds that such a ruling would differ from AmNet because misrepresentation was not raised as an issue in AmNet. Moreover, according to Brooten, the requested ruling would not impair a carrier's right to collect backbilled charges but would only mean that the carrier had the burden of demonstrating that those charges were reasonable under the circumstances and that the carrier could not tell the customer that Section 415(a) mandates that the customer pay all back billed charges so long as the back billing period does not exceed two years. Id. [**36]

[*13356] 25. Defendant. AT&T does not dispute that, in responding to Brooten's inquiries, it asserted a right to bill and collect the disputed charges and that the "statute of limitations" it follows, Section 415(a), gives AT&T authority to backbill customers for a period of up to two-years. n85 AT&T denies the misrepresentation charge, however, and avers that its statements to Brooten were not inconsistent with the Bureau's AmNet declaration that Section 415(a) does not establish, as a matter of law, that backbilling is reasonable for two years. To the contrary, according to AT&T, Brooten fails to consider that, under AmNet, reasonableness is assessed under the particular circumstances of each case. AT&T maintains, as such, that the context in which it made the statements in question is significant, and includes: (1) Brooten's backbilling was 160 days or less -- not two years; (2) the billing was in accordance with its Section 203 obligation to collect all lawful, tariffed charges; and (3) AT&T also stated to Brooten its view that the backbilling was valid because it accurately reflected Brooten's unbilled usage and the billing delay arose from a computer error. Moreover, apparently [**37] conceding that it sent Brooten and his counsel copies of Section 415(a), AT&T maintains that "it is incredible for anyone -- let alone an attorney -- to claim that the furnishing of a copy of a statutory provision, which speaks for itself, amounts to 'mispresentation' of the statute or the parties' rights under that statute." n86

n85 See Wooldridge Letter at 1-2; Counsel Letter at 1; AT&T Response to Interrogatories at 7-8. AT&T adds that notwithstanding Brooten's allegation that it improperly relied upon Section 415(a) to support its general statements that it may be entitled to recover charges for up to two years, the specific backbilling at issue related back only four months from the then-current billing period. See AT&T Brief at 7-8.

n86 AT&T Reply Brief at 6 n.7.

26. AT&T also opposes the Show-cause Motion, primarily for the same reasons it opposes Brooten's misrepresentation allegations in the complaint. n87 In addition, AT&T avers that we should deny the Show-cause Motion because the issues raised are identical -- and thus already before us -- in the instant complaint proceeding. According to AT&T, therefore, the Show-cause Motion presents no basis for the Commission [**38] to apply its scarce resources to a broad fact-finding proceeding on the same issues. n88 AT&T also moves to strike Brooten's Reply to its Opposition to the Show-cause Motion, averring that replies to motions are prohibited under Section 1.727(f) of the Commission's rules for formal complaint proceedings. n89 The Show-cause Motion, however, was captioned as a proceeding separate from the above-captioned complaint proceeding and, as such, AT&T filed its opposition to Show-cause Motion under Section 1.45 of the rules. n90 Replies to oppositions are permitted under Section 1.45(b); n91 we therefore deny AT&T's motion to strike Brooten's reply.

n87 See Opposition to Show-cause Motion at 1-4.

n88 See id. at 4-6.

n89 47 C.F.R. § 1.727(f). See AT&T Motion to Strike Complainant's Prohibited Pleading at 1-2. This motion was unopposed.

n90 47 C.F.R. § 1.45. See Opposition to Show-cause Motion at 1.

n91 47 C.F.R. § 1.45(b).

[*13357] 2. Decision

27. In considering Brooten's charge that AT&T's oral and written statements to him about Section 415(a) of the Act constitute a violation of Section 201(b), we note that there is no significant dispute between the parties [**39] as to the literal wording of AT&T's statements to Brooten about Section 415(a). n92 There is also no serious dispute that AT&T sent Brooten and his counsel copies of Section 415(a) of the Act. Each party, however, offers different interpretations and consequent analyses of AT&T's statements, particularly in light of the Bureau's declarations in AmNet that: (1) Section 415(a) does not authorize backbilling for any particular period because it is a two-year statute of limitations for collection actions; and (2) backbilling of much less than 24 months may be an unjust and unreasonable practice for purposes of Section 201(b). n93 It is well established that, in a formal complaint proceeding under Section 208, the complainant has the burden of establishing a violation of the Act or of the Commission's rules or orders. n94 We consider first, therefore, whether the record provides persuasive evidence to support Brooten's interpretations or arguments related to AT&T's statements.

n92 For the record, AT&T does not concede sending Brooten a copy of a portion of Tariff P.S.C. No. 1 (New York), see generally supra note 77. Also, to the extent it is a new factual allegation, AT&T does not concede representing that Section 415(a) "mandated" payment of the backbilled charges. See generally supra note 78 and accompanying text. We note, moreover, that Brooten did not make this charge in his complaint or his reply and thus it is not properly before us as a separate count. See, e.g., supra note 70. As discussed below, the record does not support Brooten's averment when read as a permissible legal argument in briefs. [**40]

n93 *AmNet Order, 4 FCC Rcd at 552.*

n94 See *AT&T v. Northwestern Bell Telephone Co., 5 FCC Rcd 143, 147 (1990);* see also *Amendment of Rules Concerning Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, 8 FCC Rcd 2614, 2616-17 (1993); Connecticut Office of Consumer Counsel v. AT&T, 4 FCC Rcd 8130, 8133 (1989),* aff'd sub nom. *Connecticut Office of Consumer Counsel v. FCC, 915 F.2d 75 (2d Cir. 1990),* cert. denied, *111 S. Ct. 1310 (1991).* See generally 47 C.F.R. §§ 1.720-1.7535.

28. Brooten urges us to focus on AT&T's statements to Brooten that: (1) Section 415(a) authorizes backbilling for up to two years; and (2) Section 415(a) is the "statute of limitations" that AT&T follows for backbilling. Reviewed cursorily and isolated from the balance of the record, we agree that these statements are literally inconsistent with AmNet. AT&T argues correctly, however, that we should consider all the relevant evidence before us. In addition to the

two statements above, the record includes: the [**41] specific context in which the statements were made (AT&T was justifying backbilling of 160 days -- much less than two years); other statements that AT&T made to Brooten (AT&T also stated its view that the billing was valid, i.e., reasonable, and, moreover, sent him a copy of Section 415); and AT&T's obligation under Section 203 to collect its lawful, tariffed charges.

29. We conclude, after considering all of the evidence before us, that the record does not demonstrate persuasively that AT&T misrepresented Section 415(a) to Brooten, as alleged. n95 In particular, we give credit to Brooten's statement that AT&T sent him, and subsequently his counsel, copies of Section [*13358] 415(a). This established fact, however, appears to render factually improbable Brooten's charge that AT&T misrepresented Section 415(a) to him. n96

n95 See supra paras. 21-24.

n96 See, e.g., supra note 86 and accompanying text.

30. Based on the same evidence discussed immediately above, Brooten also urges us to find that AT&T misrepresented to him that: (1) Section 415(a) gives AT&T the unrestricted right to backbill for two years; and (2) Section 415(a) requires payment of the backbilled charges. [**42] n97 Without implying any disagreement with Brooten's legal conclusion that such statements -- if made -- would be erroneous, we conclude that the record before us does not establish that AT&T made these statements to Brooten. AT&T certainly characterized Section 415(a) in a way calculated to support its collection of the charges at issue. We find, however, that AT&T's statements were not as unqualified and broad in nature as Brooten suggests and that, in any event, AT&T tempered the effect of its statements by supplying the text of Section 415(a) to Brooten. n98

n97 See supra note 78 and accompanying text.

n98 We caution, however, that less accurate statements to a customer regarding the meaning of a statutory provision may not be saved from unreasonableness under Section 201(b) simply by supplying a copy of such provision.

31. Brooten's Show-cause Motion offers essentially the same evidence and arguments without presenting any credible evidence beyond Brooten's experiences with AT&T. n99 More specifically, there is no credible evidence before us to support Brooten's general speculation about AT&T misrepresenting Section 415(a) to "its subscribers." n100 The record before [**43] us contains evidence and arguments concerning the lawfulness of AT&T's representations to Brooten about Section 415(a) and backbilling, which are considered fully in the above-captioned proceeding pursuant to Section 208 of the Act. n101 As such, we find no persuasive reason for the Commission to either issue a declaratory ruling or commence a new proceeding apart from the above-captioned proceeding. Moreover, it does not appear that a cease-and-desist [*13359] order should be issued on the basis of the separate record created by the Show-cause Motion and the responsive pleadings. n102 We therefore deny Brooten's Show-cause Motion. n103

n99 We note that the Show-cause Motion, preferably, should have been captioned under the above-captioned complaint proceeding. See, e.g., *47 U.S.C. § 205* (whenever . . . upon a complaint the Commission shall be of the opinion that any practice of any carrier violates the Act the Commission may order the carrier to cease and desist from such violation). The record reflects, however, that Brooten served this motion on AT&T in the manner required for motions related to complaint proceedings. See 47 C.F.R. § 1.735. Thus, it appears that no party to the complaint was prejudiced by the styling of the motion under a separate caption. [**44]

n100 See, e.g., Brooten Reply Brief at 4; Show-cause Motion at 2-5. Accord *GCI, 3 FCC Rcd at 702-03* (Commission held that defendant's proven misrepresentation to complainant was an isolated incident, despite complainant's assertion that defendant made similar statements to "a number of customers," because the record presented no evidence that defendant made similar erroneous statements to others).

n101 Section 208(a) of the Act gives the Commission the authority "to investigate matters complained of in such manner and by such means as it shall deem proper." *47 U.S.C. § 208*(a).

n102 Generally, the Commission will issue an order directing the subject to show cause why a cease-and-desist order should not be issued only if it appears that a cease-and-desist order should be issued. See 47 C.F.R. § 1.91(a); see also

47 C.F.R. § 1.701. Compare *47 U.S.C. § 275*(c) (1996). See generally *Complaint-rules NPRM, 11 FCC Rcd at 20848-51.*

n103 We are acting on the Show-cause Motion in the instant memorandum opinion and order for administrative convenience only. See e.g., 47 C.F.R. § 1.1 (Commission may on its own motion or petition hold such proceedings as it may deem necessary in connection with investigation). See generally 47 C.F.R. § 1.735(a) ("Complaints may . . . be consolidated by the Commission for disposition [for example, if each raises common issues of law or fact]"). [**45]

IV. CONCLUSION

32. We find that Brooten has not made a persuasive showing that AT&T violated Section 201(b) of the Act, as alleged. We therefore deny Brooten's complaint as well as the separately captioned Show-cause Motion.

V. ORDERING CLAUSES

33. ACCORDINGLY IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205 and 208 of the Communications Act of 1934, as amended, *47 U.S.C. §§ 154*(i), 154(j), 201-205, 208, and the authority delegated by Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that the above-captioned complaint of Kenneth E. Brooten, Jr., against AT&T Corp., filed on June 19, 1996, IS DENIED.

34. IT IS FURTHER ORDERED that Brooten's Motion to Accept Late-Filed Pleading, filed on August 26, 1996, IS GRANTED.

35. IT IS FURTHER ORDERED that the Motion of Kenneth E. Brooten, Jr. for Order to Show Cause Why AT&T Corp. Should not Cease and Desist from an Unlawful Practice, filed on September 9, 1996, IS DENIED.

36. IT IS FURTHER ORDERED that AT&T's Motion to Strike Complainant's Prohibited Pleading, filed on October 11, 1996, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Richards

Deputy Chief, [**46] Common Carrier Bureau

In the Matter of THE PEOPLE'S NETWORK INCORPORATED,
Complainant, v. AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
Defendant.

File No. E-92-99

FEDERAL COMMUNICATIONS COMMISSION

12 FCC Rcd 21081; 1997 FCC LEXIS 1928

RELEASE-NUMBER: DA 97-684

April 10, 1997 Released; Adopted April 4, 1997

ACTION: [**1] MEMORANDUM OPINION AND ORDER

JUDGES:

By the Chief, Common Carrier Bureau

OPINIONBY: KEENEY

OPINION:

[*21081] I. INTRODUCTION

1. We have before us a formal complaint filed by The People's Network, Incorporated ("TPN") against the American Telephone and Telegraph Company ("AT&T"), pursuant to Section 208 of the Communications Act of 1934, as amended (the "Act"). n1 TPN alleges that AT&T has violated the Act by, (1) denying TPN service in violation of Section 201(a); (2) imposing certain limitations that were unjust and unreasonable under Section 201(b); and (3) discriminating against TPN in violation of Section 202(a). Additionally, TPN asserts that AT&T has violated the Commission's resale policy, and that AT&T violated Section 203 of the Act by failing to amend its tariff to reflect certain service limitations. TPN seeks an order prohibiting AT&T to bill or collect amounts which, TPN asserts, were unlawfully backbilled. TPN also requests that we award damages against AT&T for its alleged misconduct while providing service to TPN and its customers. For the reasons stated below, we find in favor of TPN on its Section 201(b) claim relating to backbilling and deny the remainder of its complaint.

n1 *47 U.S.C. § 208.* Section 208 provides for the filing of a complaint with the Commission by "any person ... complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof." [**2]

[*21082] II. BACKGROUND

2. TPN is a Texas corporation that provides interstate long distance services, including the resale of AT&T's Software Defined Network n2 ("SDN") and Distributed Network Services n3 ("DNS") services. n4 AT&T is a communications common carrier that provides domestic and international telecommunications services, including SDN and DNS, subject to the Commission's jurisdiction under Title II of the Act. n5

n2 AT&T's SDN service permits a customer to create a "virtual" private network within AT&T's larger, switched network. See AT&T Brief at 4.

n3 DNS is designed to provide an SDN - type service exclusively to resellers.

n4 Complaint at 1-2.

n5 Id. at 3.

3. TPN began reselling AT&T's SDN service after signing an agreement with AT&T on October 13, 1989. n6 After experiencing certain difficulties with AT&T's services, TPN requested, on February 18, 1992, that AT&T write off the remaining charges on TPN's account, alleging that AT&T's conduct justified this action. n7 Subsequently, AT&T notified TPN of its intention to terminate TPN's service for non-payment of accrued charges. TPN sought emergency relief from the Commission to prevent termination [**3] of its service; and while AT&T originally opposed the requested emergency relief, it later agreed not to terminate TPN's service. Shortly thereafter, TPN filed its formal complaint with the Commission. n8

n6 Id. at 9.

n7 Id. at Exh. 14.

n8 On the general issue of TPN's pleadings in this proceeding, we note that its counsel failed to abide by the Commission's published page limits for reply briefs. See 47 C.F.R. § 1.732(d). Although we have not done so in this instance, counsel is reminded that the Commission's rules provide for the return, without consideration, of briefs that exceed the announced page limits. See 47 C.F.R. § 1.48.

[*21083] III. DISCUSSION

A. SECTION 201(a) ISSUES

1. Service Limits

4. The Parties' Contentions. TPN asserts that AT&T violated Section 201(a) of the Act n9 by failing to provide TPN with service upon reasonable request. n10 According to TPN, it agreed to purchase AT&T's SDN service only after receiving AT&T's assurances that it could promptly provide service to TPN's projected customer base of 4,000 to 8,000 subscribers. n11 Shortly thereafter, in February 1990, AT&T announced that it would limit to 400 the number of orders per month [**4] on which AT&T would provide new service for each of its SDN customers. n12 TPN asserts that it subsequently subscribed to the DNS service in reliance on AT&T's representations that orders for DNS service could be filled more quickly than could those for SDN service. n13 TPN alleges, however, that, in December 1991, AT&T imposed a 100 order-per-week limit on the number of DNS orders for which it would provide service. n14 TPN argues that these service limits effectively denied service to TPN in contravention of the Act. n15 As discussed below, AT&T points out that TPN rarely placed enough orders that it exceeded the applicable service limits. TPN asserts, however, that, in response to the announced service limits, it scaled back its marketing efforts to avoid being unable, because of the service limits, to deliver the service that its customers had requested. n16 Thus, TPN asserts that, but for the service limits, it would have marketed its services more heavily and, consequently, would have built a larger, more profitable customer base.

n9 *47 U.S.C. § 201*(a). This section states, in pertinent part, that it "shall be the duty of every common carrier engaged in interstate ... communication by wire or radio to furnish such communication service upon reasonable request." Id. [**5]

n10 Complaint at 9.

n11 Id.

n12 Id. at 10.

n13 Id.

n14 Id.

n15 Id. at 10-13.

n16 See id.; TPN Reply at 5.

[*21084] 5. AT&T concedes that it imposed the monthly service limits. It asserts, however, that it imposed these limits in an attempt to keep pace with unexpected demand, and that, after announcing the limits, it specifically informed TPN that the limits were "not in concrete" and that AT&T would attempt to accommodate customers when their monthly service requirements exceeded the announced limits. n17 Moreover, AT&T has provided evidence that on only one occasion -- in January 1991, when TPN submitted 523 orders for SDN service -- did the complainant's requirements exceed AT&T's announced limits. n18 On that one occasion, AT&T states that it accepted for processing all 523 of the orders that TPN submitted. n19

n17 See, e.g., AT&T Brief at 13-14 & Exh. 8.

n18 See id. 14-15; TPN's Responses to AT&T's First Set of Interrogatories at 4.

n19 See TPN's Responses to AT&T's First Set of Interrogatories at 4.

6. Discussion. It is well established that, in a formal complaint proceeding under Section 208, the complainant has the burden [**6] of establishing a violation of the Act or of the Commissions rules or orders. n20 On the present record, we conclude that TPN has failed to carry its burden of establishing that AT&T's monthly service limits violated Section 201(a) by effectively denying service to TPN or its customers.

n20 See *AT&T v. Northwestern Bell Telephone Co., 5 FCC Rcd 143, 147 (1990);* see also *Amendment of Rules Concerning Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, 8 FCC Rcd 2614, 2616-17 (1993); Connecticut Office of Consumer Counsel v. AT&T Communications, 4 FCC Rcd 8130, 8133 (1989),* aff'd sub nom. *Connecticut Office of Consumer Counsel v. FCC, 915 F.2d 75 (2d Cir. 1990),* cert. denied, *111 S. Ct. 1310 (1991).* See generally 47 C.F.R. §§ 1.720-1.7535.

7. As discussed above, record evidence indicates that AT&T attempted to accommodate customer requests in excess of the monthly limits. n21 Moreover, TPN admits that only once did it submit orders in excess of AT&T's monthly limits. n22 On that one occasion, AT&T accepted all of [**7] the orders for processing. n23 Nonetheless, TPN seeks to establish a Section 201(a) violation by arguing that, but for the service limits, it would have submitted many more orders during the relevant period. The primary record evidence to which TPN cites for its claimed likely customer base is deposition testimony of Robert Castleberry, one of TPN's founders, which discusses, without numerical specifics or supporting documentation, service [*21085] agreements with various customer groups that he claimed to recall. n24 We cannot accept this portion of TPN's argument. It would require us to speculate impermissibly on the accuracy of TPN's largely unsupported initial projections regarding its customer base. We therefore find no violation of Section 201(a) arising from AT&T's imposition of monthly service order limits.

n21 AT&T Brief at 13-14 & Exhs. 8, 16.

n22 TPN's Response to AT&T's First Set of Interrogatories at 4.

n23 Id.

n24 See TPN Exh. 4 at 291-99.

2. Provisioning Delays

8. The Parties' Contentions. In addition to the above service limits, TPN asserts that the delay in AT&T's provisioning process for TPN's customers' orders often was so long from the [**8] time of placement of a service order with AT&T to the actual receipt of service by TPN's customers that it was tantamount to a denial of service in violation of Section 201(a). n25 In support of this argument, TPN's complaint identifies three of its customers who allegedly suffered unreasonable provisioning delays. n26 TPN also takes the position that any provisioning delay beyond five months is, per se, a violation of section 201(a).

n25 Complaint at 10-12.

n26 See id. at 14-15.

9. AT&T concedes that, during the time in question, many of its SDN customers experienced provisioning intervals that were longer than normal. n27 According to AT&T, this added delay was attributable to the inability of its provisioning systems to meet the sudden and unexpected demand for its SDN services. AT&T denies, however, that any of TPN's customers experienced delays that were sufficiently prolonged to constitute a denial of service under Section 201(a). Additionally, AT&T has submitted evidence indicating that it had completed the necessary process to provision two of the TPN customers named in the complaint within 75 days, and that it had completed work on the third order within 135 days. [**9] n28

n27 See, e.g., AT&T Brief at 28-29 & Exh. 21 at A30007576.

n28 Id. at 29-30 & Exh. 9 at P 6.

10. Discussion. We find that TPN has failed to meet its evidentiary burden n29 to establish that either it or its customers suffered any provisioning delay that would amount to a [*21086] denial of service under Section 201(a). n30 As discussed above, AT&T has submitted evidence tending to show that, even under TPN's proposed five-month rule, it provided reasonably prompt service to the three end users who, TPN's complaint contends, experienced an allegedly unreasonable delay. n31 Beyond these three instances of alleged provisioning delay, TPN has failed to provide evidence to support this portion of its argument. AT&T correctly points out that, in responding to an interrogatory regarding the alleged delay, TPN offered evidence only of the dates on which certain of its customers actually received SDN service. n32 TPN has not provided evidence indicating the date on which it ordered service for these customers from AT&T. Without such evidence, it is plainly impossible to determine what delay, if any, occurred. Accordingly, this portion of TPN's claim under Section 201(a) is [**10] denied.

n29 See supra, P 6 & n.20.

n30 Cf. *AT&T Communications, Apparent Liability for Forfeiture and Order to Show Cause, 10 FCC Rcd 1664, 1666 1667 (1995)* (noting that delay in provision of service beyond one year apparently constitutes violation of section 201(a)). We note that the provisioning standards necessary to comply with Section 201(a) are not as stringent as the standards that the Commission has adopted pursuant to Section 251(c). See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order, 11 FCC Rcd 15499, 15658-60, 15763-68, PP 312-314, 516-28 (1996).*

n31 Therefore, we need not address TPN's argument that any provisioning delay beyond five months is, per se, a violation of Section 201(a).

n32 AT&T Brief at 32; TPN's Responses to AT&T's First Set of Interrogatories, Interrogatory No. 4.

B. SECTION 201(b) ISSUE

1. Backbilling

11. The Parties' Contentions. TPN alleges that AT&T violated Section 201(b) of the Act n33 by including on the bills of many TPN customers calls that had been placed long before the date of the bill. TPN asserts [**11] that this backbilling caused it to lose both revenues and customers. n34 The complaint offers numerous examples of backbilling by AT&T and includes, as exhibits, copies of several letters written by TPN customers complaining about bills reflecting calls placed long before the bill date. n35 TPN asserts, without elaboration, that the Bureau's Order [*21087] in American Network, Inc. n36 compels a ruling that billing for a call more than 60 days after it is placed is, per se, unreasonable and a violation of Section 201(b). n37 Additionally, TPN complains that certain of its customers received bills that simply requested payment of a lump sum and provided no call detail.

n33 *47 U.S.C. § 201*(b). This section states, in pertinent part, that all "charges, practices, classifications, and regulations for and in connection with [interstate] communication service shall be just and reasonable."

n34 Complaint at 17-29.

n35 Id. at 22-26.

n36 *American Network, Inc., 4 FCC Rcd 550 (Com. Car. Bur. 1989)* (AmNet Order) (holding that backbilling may, in some instances, violate Section 201(b)).

n37 Complaint at 28. [**12]

12. AT&T concedes that, during the time relevant to this proceeding, TPN and many of its other SDN customers experienced substantial delays in their billing. n38 It asserts that this problem arose because its billing systems were not able to accommodate the unanticipated increase in demand that arose for SDN service. n39 Specifically, AT&T explains, because of certain delays inherent in the provisioning process, end users who had been activated on SDN service made calls before a billing identifier was in place to match the customer's calls to the appropriate billing record. n40 As a result, calls were placed that were not matched to any account. AT&T would subsequently investigate these calls and attempt to attribute them to the proper account. This investigation was largely manual, however, and caused delays that resulted in the late billing of messages once they were attributed to the proper customer. n41

n38 See, e.g., AT&T Brief at 15-16, 43-48.

n39 Id. at 15-16.

n40 Id. According to AT&T, the failure of its billing system that gave rise to backbilling could be attributable, in any particular instance, either to an error in billing information that AT&T received or to its own delay in creating the appropriate billing identifiers. See Answer at 27-28; AT&T Brief at 15-16, 44-45. [**13]

n41 See AT&T Brief at 16.

13. AT&T maintains that, upon realizing the magnitude of the delays in its billing process, it instituted a variety of remedial measures. n42 Thus, AT&T argues that, given its [*21088] inability to foresee the increase in SDN demand, which, in turn, gave rise to the billing difficulties, and given its attempts to cure the problem, the level of delayed billing that occurred here was reasonable and therefore did not violate Section 201(b).

n42 See AT&T Reply Brief at 24-25. Specifically, AT&T asserts that it took the following steps, through its Specialized Markets Division ("SMD"), in an attempt to remedy its delayed billing difficulties:

SMD implemented a tracking system to follow the progress of orders as they were entered into the provisioning and billing databases. SMD redesigned its systems so that the billing information on SDN orders was loaded mechanically from the "K report" into the billing databases, thereby generating a billing order which would then be "BARDed." It also implemented the action plan developed by the Billing Process Management Team to investigate and bill existing [unbilled] messages with the result that [the level of unbilled messages] for resellers was reduced by approximately 50 percent by January 1992.

See AT&T Reply Brief at 24-25 (citation and footnote omitted). [**14]

14. Discussion. In ruling on TPN's backbilling claim, we first note that, as the parties recognize, the Bureau has previously addressed the issues of backbilling. In AmNet, we held that, notwithstanding the 2-year statute of limitation for recovery actions provided in Section 415(a) of the Act, n43 a "delay of much less than 24 months between the rendering of service and the receipt of an initial bill for such service may be an unjust and unreasonable practice" and consequently violative of Section 201(b). n44 In that proceeding, however, the party seeking a declaratory ruling on the backbilling issue failed to provide evidence that adequately established the nature and extent of the alleged backbilling. Accordingly, we declined to decide at what point the alleged backbilling became unjust and/or unreasonable within the meaning of Section 201(b). n45

n43 *47 U.S.C. § 415*(a). This section provides that "all actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after."

n44 *AmNet Order, 4 FCC Rcd at 552;* see also id. ("Section 4-5(a) establishes a time limit for filing a court action to recover unpaid bills; it does not establish the time limits for sending an initial bill to the customer for services rendered."). [**15]

n45 *Id. at 551.*

15. The record currently before us does not appear to suffer from those weaknesses present in the AmNet record. AT&T concedes that it rendered bills as much as 15 months after provision of service. n46 Moreover, TPN has presented additional evidence that at least one of its customers received a bill for calls placed 20 months earlier. n47 We have little difficulty in determining that, under the facts of this case, billing delays of 15 or 20 months qualify as an unreasonable practice within the meaning of Section 2 [ILLEGIBLE TEXT] (b). AT&T does not deny that delays of this magnitude could substantially and unreasonably disrupt the operations of both TPN and its end users. Indeed, the record reflects that AT&T issued most of the bills about which TPN complains more than 10 months after service was rendered. TPN would have us conclude that [*21089] billing delays of 60 days or more are, per se, unreasonable under Section 201(b). Such a limit is necessary, it asserts, so that it may have some reasonable chance of obtaining payment, for the billed services, from its end users who, given the conditions prevailing in the marketplace, [**16] may regularly change their long-distance carrier. TPN also argues that some limit is necessary because its business customers wish either to pass their phone bills through to clients on a timely basis, or, at least, to be able accurately to track their long-distance expenses for budgeting purposes. n48

n46 Compare Answer at 29 n.23 and *Complaint at 22 P 42*(d) & Exh. No. 8.

n47 See Complaint at 22, P 42(c) & Exh. No. 7.

n48 TPN Brief at 32-33.

16. We accept AT&T's position that the backbilling that TPN experienced arose because of the unprecedented and unforeseen demand for its SDN service. Moreover, AT&T has represented that it took what it viewed as reasonable and timely steps to attribute and bill the unbilled messages to its various customers, including TPN's end users, and revised its billing and provisioning systems in an attempt to reduce the future incidence of unbilled messages. In the absence of credible evidence to counter these assertions, we are not prepared to adopt the 60-day limit for reasonable backbilling that TPN's complaint urges. On the other hand, AT&T has failed to make a persuasive showing that the billing delays experienced [**17] by TPN's customers -- in some cases more than 10 months -- should be viewed as reasonable under Section 201(b), especially in light of the particular requirements of TPN as a resale carrier and its dual status as a customer and competitor of AT&T. AT&T has provided no specific information regarding the policies and procedures it followed in preparing the bills at issue that might show what period was reasonably required to prepare and render some or all of the bills.

17. For the purposes of this Order and taking into account the arguments and evidence presented by the parties, we find that AT&T's actions in backbilling TPN's customers for services rendered more than 120 days after such services were rendered constituted an unreasonable practice, violative of Section 201(b). In reaching this conclusion, we note that, in 1993, AT&T amended its tariff for SDN service to guarantee that calls would be billed within 120 days of the date on which they were placed. n49 As early as 1992, it appears that AT&T had set as its goal to bill all calls within 60 days: TPN provided evidence reflecting AT&T's "objective to write off all messages that are greater than 60 days past the message date [**18] starting January 1, 1993." n50 Consistent with our findings in this case, to the extent that TPN has established in its complaint that it experienced backbilling delays exceeding 120 days in connection with AT&T's SDN [*21090] service offerings, it may file a supplemental complaint for damages as provided in section 1.722 of the Commission's Rules. n51

n49 See AT&T Tariff F.C.C. No. 1, Section 6.4.2.D (effective August 2, 1993); AT&T Brief at 47 n.101.

n50 See TPN's Second Motion to Compel, Exh. 42; TPN Brief, Exh. 43 at A30005851, Exh. 60 at A30005843; see also AT&T Brief at 16 (referring to "customary billing interval for current usage of 60 days").

n51 47 C.F.R. § 1.722.

18. Our decision regarding the reasonableness of AT&T's backbilling practices in this particular case should not be construed as establishing a rule of general applicability. As we stated in the AmNet Order, "any fixed limit upon all backbilling should be established in a Rule Making proceeding." n52 Today's ruling is limited strictly to the facts of this case. We do not foreclose the possibility that backbilling delays of less than 120 days could be found to be unjust and unreasonable under the [**19] facts of a particular case. Likewise, backbilling delays exceeding 120 days may be reasonable in certain instances. We will consider such matters on a case-by-case basis to determine compliance with the just and reasonable requirements of Section 201(b). n53

n52 *AmNet Order, 4 FCC Rcd at 551-52.*

n53 We are not persuaded that the backbilling problems described in this proceeding are so commonplace that they warrant a rulemaking action at this time. We will revisit the need for such action in response to petitions filed by interested parties or on our own motion should we receive indications that backbilling delays are an industry-wide concern.

2. Other Alleged Unjust Practices

19. In addition to the backbilling, discussed above, TPN argues in its briefs that AT&T also violated Section 201(b) in several other respects. In most instances, TPN did not include these additional claimed Section 201(b) violations in either its complaint or its reply. Accordingly, these further alleged violations are not properly before us. n54 Nonetheless, we have reviewed each of these claims; for the reasons discussed below, we find that, in each instance, TPN has failed [**20] to establish a violation of Section 201(b).

n54 See 47 C.F.R. § 1.720(a) ("All matters concerning a claim, defense or requested remedy ... should be pleaded fully and with specificity.").

20. First, TPN assigns as a violation of Section 201(b) AT&T's allegedly unreasonable delays in the provisioning n55 and termination n56 of service in response to customer orders. As we have set out above, n57 TPN has presented evidence of the date on which certain of its customers actually received AT&T's SDN service, but it has not provided evidence from which it is possible [*21091] to determine the extent of any delay. Nor has TPN presented persuasive evidence in support of its claim that AT&T delayed in disconnecting service. Indeed, the primary record evidence of delay in the termination of service -- evidence to which, inexplicably, TPN's brief does not cite for this portion of its argument -- is what appears to be an internal AT&T survey of problems with its SDN service. n58 This survey concludes only that "disconnects were not done in a timely manner," and TPN has failed to present other evidence of the disconnect delays that it claims to have suffered. n59 Accordingly, we find [**21] that TPN has failed to carry its burden of establishing a violation of Section 201(b) with respect to these two claims.

n55 TPN Brief at 21-25.

n56 See Complaint at 30, 33; TPN Brief at 27-28.

n57 See supra P 10.

n58 See TPN Brief Exh. 19 at A30011818.

n59 Even in the context of TPN's case, in which numerous other claims fall for lack of evidence, the failure of proof in connection with TPN's claim of delayed service termination is particularly glaring. Of the materials relating to this claim to which TPN's brief cites, only one exhibit appears even to mention the claimed problems with the "disconnect process." See TPN Brief, Exh. 39 at A30011155. Nonetheless, TPN's counsel has attached to the brief, and generally cited to, several other exhibits, totalling more than 40 pages, without specifically indicating what portion or portions of them may support TPN's position. See TPN Brief at 27-28, Exhs. 22, 35-39. Counsel is admonished that, under the Commission's Rules, briefs shall contain "specific citation to the record" and be "supported by relevant ... analysis." 47 C.F.R. § 1.732(a). Additionally, we note that, at least in connection with the present argument, TPN's counsel appears not to have heeded our Rule 1.52, which provides that an attorney's signature of a pleading indicates "that to the best of

his knowledge, information, and belief there is good ground to support" the arguments contained therein. See 47 C.F.R. § 1.52. [**22]

21. Second, TPN asserts that AT&T unreasonably refused to transfer customers to TPN unless AT&T received a letter in which the end user's prior carrier consented to the change. n60 The record evidence on this issue demonstrates solely that, when an end user wished to change its service from a reseller to a different carrier, AT&T required that the end user provide to the new carrier a copy of the letter terminating the end user's-service with the prior reseller. n61 We agree with AT&T's position that this requirement was not an unreasonable means of "protecting itself from claims of improperly removing end users from one reseller's account to another carrier's account." n62 Accordingly, we find no violation of Section 201(b) with respect to TPN's untimely claim on this issue. n63

n60 See TPN Brief at 27-28, 33-35.

n61 See id., Exh. 22 at A30006855.

n62 See AT&T Reply Brief at 27-28 n.56.

n63 To the extent that TPN also purports to allege that a violation of Section 203 arises from this requirement of AT&T's, see TPN Brief at 33, we find that TPN has failed to establish a violation of the statute. As discussed more fully below, Section 203 requires the inclusion in a tariff only of those "classifications, regulations and practices affecting" a carrier's charges. See infra PP 33-34. [**23]

[*21092] 22. Third, TPN complains that AT&T allegedly required it to waive any liability limit on calling cards that AT&T issued for the ultimate use of TPN's end users. n64 In support of its argument, TPN provides the "AT&T Card -- Bulk Issuance Agreement" (the "Card Agreement"), n65 which states that, "AT&T will not know that a billing card number has been compromised, or that a subscriber's account with Customer has been closed, unless Customer so notifies AT&T"; the agreement therefore provides that AT&T's customer shall be liable for all calling card charges until AT&T is notified "that the billing card number ... should be invalidated." n66 TPN offers, as its sole authority that the card issuance agreement violates Section 201(b), a regulation issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"). n67 Given the limitations on AT&T's ability to contact a reseller's end users, we decline to rule that it is unreasonable, within the meaning of Section 201(b), for AT&T to require TPN to waive the subject liability limitation for the unauthorized use of calling cards issued to TPN. This claim is therefore denied. Furthermore, the Commission [**24] is clearly not empowered to interpret or apply the regulations of the Federal Reserve Board. n68 To the extent that TPN seeks such a ruling in this proceeding, it is also denied.

n64 TPN Brief at 35-36.

n65 Id., Exh. 48.

n66 Id., Exh. 48 at A30000611.

n67 12 C.F.R. § 226.12. We also note that TPN has not established that it was subject to the liability waiver contained in the Card Agreement. The version of the agreement that TPN submitted with its brief is not signed and appears to have been prepared for an entirely different AT&T subscriber. In addressing TPN's argument on this issue, we have assumed, arguendo, that TPN entered a similar agreement.

n68 See *47 U.S.C. § 151* (Commission shall "execute and enforce the provisions of the Act.").

23. Fourth, in the last pages of its Brief, TPN asserts -- for the first time -- that AT&T violated Section 201(b) by requiring that TPN refrain from using AT&T's trademarks and service marks in marketing TPN's services. n69 Apart from its unsupported assertion of a violation, TPN has offered no authority for the proposition that AT&T's attempts to protect its registered marks constitute [**25] an unjust or unreasonable practice under the Act. Accordingly, this claim is also denied.

n69 TPN Brief at 45 & n. 28.

[*21093] C. SECTION 202(a) ISSUE: DISCRIMINATION AGAINST RESELLERS

24. TPN argues that, in a variety of different ways, AT&T unreasonably discriminates against it and other resellers in preference to AT&T's commercial, non-reseller customers. Thus, as discussed more fully below, TPN argues that: (1) for a variety of reasons, AT&T's response to the service orders of its reseller customers was substantially slower than was its response to similar orders from its commercial customers, and (2) reseller customers suffered a higher level of backbilling than did commercial customers. As we set out below, AT&T controverts TPN's arguments on each of these points. n70

n70 See infra PP 26-29.

25. Applicable judicial decisions establish a three-prong test for determining whether a violation of Section 202(a)'s prohibition of unreasonable discrimination has occurred. First, the Commission must determine whether the services at issue are like one another. Second, if the services in question are sufficiently similar, the Commission must decide whether the defendant [**26] carrier is offering disparate pricing or treatment to different customers receiving the like services. Third, if disparate pricing or treatment exists, the Commission must decide whether such disparity is justified and, therefore, not unreasonable. n71 Under Section 208, the complainant has the evidentiary burden of establishing that the services are like and that the discrimination exists between them. Once the complainant has established the presence of like services and discrimination, the burden shifts to the defendant carrier to show that the discrimination is not unreasonable. n72 In connection with each of the above instances of alleged discrimination, TPN's claim of discrimination fails.

n71 See Competition in the *Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5903 (1991); MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 39 (D.C. Cir. 1990).*

n72 See *6 FCC Rcd at 5903; 917 F.2d at 39.*

1. Provisioning Delays

26. TPN alleges that several different factors contribute to make the provisioning interval for resellers substantially greater than for similarly [**27] situated commercial customers. Specifically, TPN asserts that the greater delays experienced by AT&T's reseller customers were caused by: (1) the claimed fact that the 400 order-per-month provisioning limit had a disproportionate effect on resellers; n73 (2) AT&T's alleged refusal directly to contact TPN's end users to collect order information or to correct errors in the service orders that TPN submitted [*21094] to AT&T; n74 (3) AT&T's decisions to process reseller service orders through its SMD n75 and not to pay sales commissions to its sales employees who processed resellers' orders. n76

n73 See TPN Brief at 16-18.

n74 See, e.g., id. at 14-15. TPN refers to this genre of services as "data collection" and "data scrubbing."

n75 See id. at 12-16.

n76 See id. at 11-12.

27. Monthly Order Limits. TPN speculates that AT&T's monthly service limits had a disproportionate effect on resellers; n77 TPN provides no evidence of this effect, however. Instead, TPN has restricted itself to inferring discrimination based on what it asserts are the typical structures of AT&T's reseller and nonreseller customers. n78 On the other hand, AT&T has both averred, and presented [**28] substantial evidence tending to show, that it applied these service limits to both its commercial and its reseller customers. n79 Thus, this portion of TPN's Section 202(a) claim fails to prove that the carrier differentiates between its customers in the provision of its services.

n77 See, e.g., id. at 16 18.

n78 Id.

n79 See Answer at 21-22; AT&T Brief at 13-15, 38-39.

28. Data Collection. TPN next asserts that resellers' orders were processed more slowly because, in contrast to its practice with its commercial, nonreseller customers, AT&T refused to contact the resellers' end users to obtain accurate data for use in provisioning the ordered service. AT&T argues persuasively in response that, during the provisioning process, it declined to contact resellers' end users directly in order to protect itself from accusations of improperly attempting to lure away the resellers' customers. n80 We find that AT&T has articulated a reasonable basis for the distinction that it has drawn in connection with its collection of order data from the resellers' end users and its own end users.

n80 See, e.g., AT&T Brief at 35 & n.81.

29. Provisioning Support. TPN's next instance [**29] of claimed discrimination relates to the facilities and personnel that, it alleges, AT&T used to process resellers' service requests. In particular, TPN complains of AT&T's practice of routing through its Specialized Market Division all reseller service requests n81 and its decision not to pay sales commissions to employees who [*21095] processed reseller service orders. n82 TPN has not, however, presented adequate evidence to establish that it, or resellers generally, suffered slower service as a result of either of these two factors. Indeed, substantial record evidence shows that resellers' orders were provisioned at least as quickly as those of AT&T's commercial customers. n83 Accordingly, this portion of TPN's claim also must fail.

n81 See TPN Brief at 12-13.

n82 See id. at 11-12.

n83 See AT&T Brief at 16-17, citing Exhs. 15, 20, 21.

2. Backbilling

30. TPN's second major claim of unreasonable discrimination in violation of Section 202(a) relates to AT&T's practice, discussed above, of backbilling its SDN customers during the time in question. TPN asserts that reseller customers suffered a higher incidence of backbilling than did AT&T's commercial customers. [**30] n84 In particular, TPN avers that, on its "information and belief" AT&T simply wrote off or deleted the older charges on the bills of its commercial customers, while it routinely backbilled its reseller customers. n85 Notwithstanding its information and belief, TPN has failed to present evidence that it, or resellers in general, were subject to a higher level of backbilling than were AT&T's commercial customers. n86 Because TPN has failed to establish the necessary element of disparate treatment, its discrimination claim relating to backbilling is denied.

n84 TPN Brief at 29-33.

n85 Id. at 29.

n86 See id. at 29-33.

D. THE COMMISSION'S RESALE POLICY

31. The Parties' Contentions. TPN's complaint generally alleges that AT&T's various practices discussed above violate the Commission's resale policies by discriminatorily making AT&T's SDN service less attractive to resellers than to nonreseller commercial customers. n87 In response to TPN's allegations, AT&T asserts that all of its SDN customers have experienced the problems of which TPN complains; consequently, it argues, it cannot have violated the Commission's resale policies. n88

n87 Complaint at 4-6. Parenthetically, we note that TPN's briefs have not pursued this alleged discrimination in violation of resale policies; nonetheless, we briefly address the argument. [**31]

n88 Answer at 17-18, 32-33.

[*21096] 32. Discussion. As indicated above, TPN's claim regarding violation of the Commission's resale policies is restricted to the allegation that AT&T discriminated against resellers in the provision of its SDN service. As we previously have discussed, however, we do not find that AT&T has treated TPN, or resellers in general, in a discriminatory manner. Similarly, we do not find that AT&T has violated the Commission's resale policies, which generally prohibit a carrier's discrimination among its customers, on grounds of price or service, depending on whether the customers are, in turn, reselling the service that they have purchased from the carrier. n89 TPN has not demonstrated that the 400 order-per-month limit, the alleged provisioning delays, or AT&T's backbilling practices had a discriminatory effect, or were meant to discriminate against TPN or resellers. Rather, we agree with AT&T's assertion that TPN experienced these problems along with all other SDN customers. Since there was no showing by TPN to support its allegations that AT&T's reseller customers suffered a disproportionate impact as a result of these problems, we do not find [**32] discrimination in violation of the Commission's orders on resale.

n89 See, e.g., *In re Regulatory Policies Concerning Resale, Report and Order, 83 FCC2d 167, 171-177 (1980).*

E. SECTION 203(a) ISSUE

33. The Parties' Contentions. Additionally, TPN contends that AT&T violated Section 203(a) n90 of the Act by failing to amend the applicable tariff to reflect the monthly order limitations that AT&T placed on its service provisioning. n91 AT&T responds to this claim by arguing that its order limits do not affect the charges applicable for its services and that Section 203(a) therefore does not require their inclusion in the tariff. n92

n90 *47 U.S.C. § 203*(a). This section provides, in relevant part, that every common carrier shall "file with the Commission ... schedules showing all charges for ... interstate and foreign wire or radio communication ... and showing the classifications, practices, and regulations affecting such charges."

n91 See Complaint at 10-11.

n92 See AT&T Brief at 42.

34. Discussion. The Commission previously has ruled that, where a carrier establishes a reasonable and impartial means [**33] of responding to customer demand for service, the "carrier's practices for filling service orders are not required by Section 203 to be included in the tariff." n93 We reiterate, however, that, "as a general rule, where a carrier can reasonably foresee a shortage [*21097] of facilities, it would be advisable to include a tariff provision setting forth the practices it follows in filling orders for service." n94 Since AT&T's monthly order limitations did not affect the charges for its services, TPN's claim under Section 203(a) is denied. n95

n93 See *Spanish International Network, Inc., 78 FCC2d 1451, 1472 (1980);* see also *RCI Long Distance, Inc., 11 FCC Rcd 8090, 8109-10 (Com. Car. Bur. 1996)* (local exchange carrier's procedure for changing payphone presubscribed interexchange carrier does not affect tariffed charges paid by payphone subscribers and therefore does not fall within Section 203).

n94 *Spanish Int'l Network, 78 FCC2d at 1472.*

n95 In light of our ruling on TPN's Section 203(a) claim, we need not reach its belated claim under Section 203(c). See TPN Brief at 45-46 (seeking leave to amend TPN's complaint to plead a violation of Section 203(c)). [**34]

F. TPN's REMAINING MOTIONS

35. Finally, we note that, during the course of this proceeding, TPN filed numerous motions and petitions, not all of which were formally ruled upon. These include: (1) its July 21, 1992 Petition for Emergency Relief; (2) its August 3, 1992 Petition for Sanctions; (3) its August 6, 1992 Motion to Strike and for Sanctions; (4) its September 20, 1993 Motion for Entry of Confidentiality Order; (5) its August 23, 1996 Third Motion to Compel; and (6) its August 23, 1996 Motion to Deem Facts Established for the Record. Given the instant ruling disposing of this proceeding, these prior, interlocutory motions are rendered moot. Accordingly, they are dismissed.

IV. CONCLUSION

36. As set out more fully above, we find that TPN has made a persuasive showing that AT&T violated Section 201(b) of the Act to the extent that it rendered, to TPN or its customers, bills for calls that had been placed more than 120 days earlier. This portion of TPN's complaint is thus granted. The remainder of TPN's complaint is denied for the reasons that we previously have discussed.

[*21098] V. ORDERING CLAUSES

37. ACCORDINGLY IT IS ORDERED pursuant to Sections 4(i), 201(a), and [**35] 208 of the Communications Act of 1934, as amended, *47 U.S.C. §§ 154*(i), 201(a), 208, and authority delegated by Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that TPN's complaint IS GRANTED, IN PART, AND DENIED, IN PART.

38. IT IS FURTHER ORDERED that TPN, in accordance with Section 1.722 of the Commission's Rules, 47 C.F.R. § 1.722, MAY FILE a supplemental complaint concerning damages relating to the backbilling issue within 60 days of the date of this decision.

39. IT IS FURTHER ORDERED that the various motions listed above in paragraph 35 are hereby DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

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FOR IMMEDIATE RELEASE:
February 20, 2003

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FCC ADOPTS NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL PHONE CARRIERS

Greater Incentives for Broadband Build-Out and Greater Granularity in Determining Unbundled Network Elements Are Key Commission Actions

Washington, D.C. – The Federal Communications Commission (Commission) today adopted rules concerning incumbent local exchange carriers' (incumbent LECs) obligations to make elements of their networks available on an unbundled basis to new entrants. The new framework provides incentives for carriers to invest in broadband network facilities, brings the benefits of competitive alternatives to all consumers, and provides for a significant state role in implementing these rules.

Today's action resolves various local phone competition and broadband competition issues and addresses a May 2002 decision by the U.S. Court of Appeals for the District of Columbia which overturned the Commission's previous Unbundled Network Elements (UNE) rules. Following is a brief summary of the key issues resolved in today's decision (a more detailed summary of today's action is attached):

1. **Impairment Standard** – A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic. Such barriers include scale economies, sunk costs, first-mover advantages, and barriers within the control of the incumbent LEC. The Commission's unbundling analysis specifically considers market-specific variations, including considerations of customer class, geography, and service.

2. **Broadband Issues** – The Commission provides substantial unbundling relief for loops utilizing fiber facilities: 1) the Commission requires no unbundling of fiber-to-the-home loops; 2) the Commission elects not to unbundle bandwidth for the provision of broadband services for loops where incumbent LECs deploy fiber further into the neighborhood but short of the customer's home (hybrid loops), although requesting carriers that provide broadband services today over high capacity facilities will continue to get that same access even after this relief is granted, and 3) the Commission will no longer require that line-sharing be available as an unbundled element. The Commission also provides clarification on its UNE pricing rules that will send appropriate economic signals to carriers.

3. **Unbundled Network Element Platform (UNE-P) Issue** – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings within 9 months. Upon a state finding of no impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.

4. **Role of States** – The states have a substantial role in applying the Commission's impairment standard according to specific guidelines tailored to individual elements.

5. **Dedicated transport** – The Commission finds that requesting carriers are not impaired without Optical Carrier (or OCn) level transport circuits. However, the Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 capacity transport, each independently subject to a route-specific review by states to identify available wholesale facilities. Dark fiber and DS3 transport also each are subject to a route-specific review by the states to identify where competing carriers are able to provide their own facilities.

With today's action, the Commission also opened a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on whether the Commission should modify the so-called pick-and-choose rule that permits requesting carriers to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements.

Action by the Commission February 20, 2003, by Report and Order and Further Notice of Proposed Rulemaking (FCC 03-36). Chairman Powell approving in part and dissenting in part, Commissioner Abernathy approving in part and dissenting in part, Commissioner Copps concurring in part and dissenting in part, Commissioner Martin approving, and Commissioner Adelstein concurring in part and dissenting in part. Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

-FCC-

Docket No.: CC 01-338

Wireline Competition Bureau Staff Contact: Tom Navin at 202-418-1580.

ATTACHMENT TO TRIENNIAL REVIEW PRESS RELEASE

Order on Remand

- Local Circuit Switching – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings (including the approval of an incumbent LEC batch hot cut process) within 9 months. Upon a state finding of no impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.

- Packet Switching – Incumbent LECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. The order eliminates the current limited requirement for unbundling of packet switching.

- Signaling Networks – Incumbent LECs are only required to offer unbundled access to their signaling network when a carrier is purchasing unbundled switching. The signaling network element, when available, includes, but is not limited to, signaling links and signaling transfer points.

- Call-Related Databases – When a requesting carrier purchases unbundled access to the incumbent LEC's switching, the incumbent LEC must also offer unbundled access to their call-related databases. When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, and the Advanced Intelligent Network (AIN) database.

- OSS Functions – Incumbent LECs must offer unbundled access to their operations support systems for qualifying services. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The OSS element also includes access to all loop qualification information contained in any of the incumbent LEC's databases or other records.

- Loops

  - Mass Market Loops

    * Copper Loops – Incumbent LECs must continue to provide unbundled access to copper loops and copper subloops. Incumbent LECs may not retire any copper loops or subloops without first receiving approval from the relevant state commission.

* Line Sharing – The high frequency portion of the loop (HFPL) is not an unbundled network element. Although the Order finds general impairment in providing broadband services without access to local loops, access to the entire stand-alone copper loop is sufficient to overcome impairment. During a three-year period, competitive LECs must transition their existing customer base served via the HFPL to new arrangements. New customers may be acquired only during the first year of this transition. In addition, during each year of the transition, the price for the high-frequency portion of the loop will increase incrementally towards the cost of a loop in the relevant market.

* Hybrid Loops – There are no unbundling requirements for the packet-switching features, functions, and capabilities of incumbent LEC loops. Thus, incumbent LECs will *not* have to provide unbundled access to a transmission path over hybrid loops utilizing the packet-switching capabilities of their DLC systems in remote terminals. Incumbent LECs must provide, however, unbundled access to a voice-grade equivalent channel and high capacity loops utilizing TDM technology, such as DS1s and DS3s.

* Fiber-to-the-Home (FTTH) Loops – There is no unbundling requirement for new build/greenfield FTTH loops for both broadband and narrowband services. There is no unbundling requirement for overbuild/brownfield FTTH loops for broadband services. Incumbent LECs must continue to provide access to a transmission path suitable for providing narrowband service if the copper loop is retired.

- Enterprise Market Loops

  * The Commission makes a national finding of no impairment for OCn capacity loops.

  * The Commission makes a national finding of impairment for DS1, DS3, and dark fiber loops, except where triggers are met as applied in state proceedings. States can remove DS1, DS3, and dark fiber loops based on a customer location-specific analysis applying a wholesale competitive alternatives trigger.

  * Dark fiber and DS3 loops also each are subject to a customer location-specific review by the states to identify where loop facilities have been self-deployed.

- Subloops

  * See the copper loops summary above. In addition, incumbent LECs must offer unbundled access to subloops necessary for access to wiring at or near a multiunit customer premises, including the Inside Wire Subloop, regardless of the capacity level or type of loop the requesting carrier will provision to its customer.

- Network Interface Devices (NID) – Incumbent LECs must offer unbundled access to the NID, which is defined as any means of interconnecting the incumbent LEC's loop distribution plant to the wiring at the customer premises.

- Dedicated Interoffice Transmission Facilities – The Commission redefines dedicated transport to include only those transmission facilities connecting incumbent LEC switches or wire centers.

    * The Commission finds that requesting carriers are not impaired without access to unbundled OCn level transport.

    * The Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 transport, except where wholesale facilities triggers are met as applied in state proceedings using route-specific review.

    * Dark fiber and DS3 transport also each are subject to a granular route-specific review by the states to identify where transport facilities have been self-deployed.

- Shared Transport – Incumbent LECs are required to provide shared transport to the extent that they are required to provide unbundled local circuit switching

- Combinations of Network Elements – Competitive LECs may order new combinations of UNEs, including the loop-transport combination (enhanced extended link, or EEL), to the extent that the requested network element is unbundled.

- Commingling – Competitive LECs are permitted to commingle UNEs and UNE combinations with other wholesale services, such as tariffed interstate special access services.

- Service Eligibility – Service eligibility criteria apply to all requests for newly-provisioned high-capacity EELs and for all requests to convert existing circuits of combinations of high-capacity special access channel termination and transport services. These criteria include architectural safeguards to prevent gaming.

    - Certification – Each carrier must certify in writing to the incumbent LEC that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit.

    - Auditing – Incumbent LECs may obtain and pay for an independent auditor to audit compliance with the qualifying service eligibility criteria for high-capacity EELs. The incumbent LEC may not initiate more than one audit annually.

- Modification of Existing Network/"No Facilities" Issues – Incumbent LECs are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has already been constructed. These routine modifications include deploying mutliplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers. The Commission also requires incumbent LECs to condition loops for the provision of xDSL services. The Commission

does not require incumbent LECs to trench new cable or otherwise to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates, but it clarifies that the incumbent LEC's unbundling obligation includes all transmission facilities deployed in its network.

- Section 271 Issues – The requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling, under checklist items 4-6 and 10, regardless of any unbundling analysis under section 251. Where a checklist item is no longer subject to section 251 unbundling, section 252(d)(1) does not operate as the pricing standard. Rather, the pricing of such items is governed by the "just and reasonable" standard established under sections 201 and 202 of the Act.

- Clarification of TELRIC Rules – The order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation.

- Fresh Look – The Commission will retain its prior determination that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to an UNE.

- Transition Period – The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate the Commission's rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of the Commission's rules.

- Periodic Review of National Unbundling Rules – The Commission will evaluate these rules consistent with the biennial review mechanism established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

Further Notice of Proposed Rulemaking

- The Commission opens a further notice of proposed rulemaking to seek comment on whether to modify the Commission's interpretation of section 252(i) – the Commission's so-called pick-and-choose rule. The Commission tentatively concludes that a modified approach would better serve the goals embodied in section 252(i), and sections 251-252 generally, by promoting more meaningful commercial negotiations between incumbent LECs and competitive LECs.

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

In the Matter of	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions	)	
of the Telecommunications Act of 1996	)	

SUPPLEMENTAL ORDER

Adopted: November 24, 1999 **Released: November 24, 1999**

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. On September 15, 1999, we adopted the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in this docket responding to the Supreme Court's January 1999 decision that directed us to reevaluate the unbundling obligations of section 251 of the Telecommunications Act of 1996. (1996 Act).[1] We hereby modify that Order with regard to the use of unbundled network elements to provide exchange access services.[2]

2. We conclude that, until resolution of our Fourth FNPRM, which will occur on or before June 30, 2000, interexchange carriers (IXCs) may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties). This constraint does not apply if an IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

II. DISCUSSION

3. In the *Third Report and Order and Fourth FNPRM*, we concluded that we would address in the Fourth FNPRM whether there were any legal or policy ramifications of applying

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (*Third Report and Order and Fourth FNPRM*) (citing *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999)).

[2] *Id.* at paras. 483-89.

our unbundling rules in a way that could "cause a significant reduction of the incumbent LECs' special access revenues prior to full implementation of access charge and universal service reform."[3] We also concluded, in paragraph 486, that any requesting carrier is entitled to obtain existing combinations of loops and transport between the end user and the incumbent LEC's serving wire center on an unrestricted basis at unbundled network element prices, and that a carrier that is collocated in a serving wire center is free to order combinations of loops and dedicated transport to that serving wire center as unbundled network elements as a substitute for the incumbent LECs' regulated special access services.[4]

4. Since the release of the *Third Report and Order and Fourth FNPRM*, several incumbent LECs have claimed that we did not sufficiently preserve the special access issue in the Fourth FNPRM. Specifically, they contend that paragraph 486 allows collocated IXCs that self-provision entrance facilities (or obtain them from third parties) to convert the remaining portions of their special access circuits to unbundled network elements, even though the IXCs are not using the facilities to provide local exchange service. They contend that this would have significant effects in the competitive local exchange market as had been asserted previously to the Commission by BellSouth.[5] We intended to compile a complete record in the Fourth FNPRM prior to determining whether IXCs may employ unbundled network elements solely to provide exchange access service.[6] Accordingly, in order to preserve this issue in the Fourth FNPRM as we intended, we modify our conclusion in paragraph 486 to now allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service subject to the requirements in this Order.[7] We also modify our conclusion in paragraph 489 to the extent that it limited our concerns to entrance facilities.[8] We now conclude that, until

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[3] *Id.* at para. 489.

[4] *Id.* at para. 486.

[5] *See* Letter from Michael Kellogg, on behalf of SBC, to Magalie Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98 (filed Nov. 18, 1999); Letter from Dee May, Director, Federal Regulatory Affairs, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98 (filed Nov. 17, 1999); Letter from William B. Barfield, Associated General Counsel, BellSouth Corporation, to Lawrence E. Strickling, Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 96-98 (filed Aug. 9, 1999) (*BellSouth Aug. 9, 1999 Ex Parte*). BellSouth's *Aug. 9, 1999 Ex Parte* indicated that the use of combinations of unbundled loops and transport solely for exchange access service would either increase the incumbent's local rates or undermine universal service, or both. *BellSouth Aug. 9, 1999 Ex Parte* at 1. We underestimated the extent of the policy implications associated with temporarily constraining IXCs only from substituting entrance facilities for the incumbent LEC's special access service, and we therefore now, as explained herein, include combinations of unbundled loops and transport network elements within the scope of this temporary constraint.

[6] *See Third Report and Order and Fourth FNPRM* at para. 496.

[7] *Id.* at para. 486 (stating that it would be impermissible for incumbent LECs to require that a requesting carrier provide a certain amount of local service over combinations of unbundled loop and transport facilities).

[8] *Id.* at para. 489 (stating that we will consider in the Fourth FNPRM the "discrete situation involving the use of dedicated transport links between the incumbent LEC's serving wire center and an interexchange carrier's switch or point of presence (or 'entrance facilities')."

resolution of our Fourth FNPRM, which will occur on or before June 30, 2000, IXCs may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties). This will give us sufficient time to issue an order addressing the Fourth FNPRM.

5. This constraint does not apply if an IXC uses combinations of unbundled loop and transport network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.[9] It therefore does not affect the ability of competitive LECs to use combinations of loops and transport (referred to as the enhanced extended link) to provide local exchange service. It also does not affect the ability of competitive LECs that are collocated and have self-provided transport (or obtained it from third parties), but are purchasing unbundled loops, to provide exchange access service. As we stated in paragraph 487 of the *Third Report and Order and Fourth FNPRM*, such a competitive carrier is entitled to purchase unbundled loops in order to provide advanced services (*e.g.*, interstate special access xDSL service).[10] Finally, the constraint will have no effect on competitive LECs using long distance switches to provide local exchange service.

6. We also expand the scope of the Fourth FNPRM to seek comment on whether there is any basis in the statute or our rules under which incumbent LECs could decline to provide combinations of loops and transport network elements at unbundled network element prices. We also seek comment on the argument that the "just and reasonable" terms of section 251(c) or section 251(g) permit the Commission to establish a usage restriction on combinations of unbundled loops and transport network elements. Parties should also address whether there is any other statutory basis for limiting an incumbent LEC's obligation to provide combinations of loops and transport facilities as unbundled network elements. As we stated in the *Third Report and Order and Fourth FNPRM*, in light of the fact that it is not clear that the 1996 Act permits any restrictions to be placed on the use of unbundled network elements,[11] we particularly urge parties

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[9] For example, we would consider the local service component as described in a joint Ex *Parte* submitted by Intermedia to be significant. *See* Letter from Edward D. Young, III, Senior Vice President and Deputy General Counsel, Bell Atlantic; Heather B. Gold, Vice President-Industry Policy, Intermedia Communications; Robert W. McCausland, Vice President-Regulatory and Interconnection, Allegiance Telecom; Don Shepheard, Vice President, Federal Regulatory Affairs, Time Warner Telecom, to Chairman Kennard and Commissioners, Federal Communications Commission, CC Docket No. 96-98, at 1-2 (filed Sept. 2, 1999). In addition, we will presume that the requesting carrier is providing significant local exchange service if the requesting carrier is providing all of the end user's local exchange service. Because we intend the constraint we identify in this Order to be limited in duration, we do not find it to be necessary for incumbent LECs and requesting carriers to undertake auditing processes to monitor whether or not requesting carriers are using unbundled network elements solely to provide exchange access service. We expect that allowing requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements will not delay their ability to convert these facilities to unbundled network element pricing, and we will take swift enforcement action if we become aware that any incumbent LEC is unreasonably delaying the ability of a requesting carrier to make such conversions.

[10] *Third Report and Order and Fourth FNPRM* at para. 487.

[11] *Id.* at para. 484.

to consider and address what long term solutions may be necessary to avoid adverse effects on any special access revenues that support universal service.

7. This temporary constraint on the use of combinations of unbundled loops and transport network elements to provide exchange access service is consistent with the Commission's finding in the *Local Competition First Report and Order*, that we may, where necessary, establish a temporary transitional mechanism to help complete all of the steps toward the pro-competitive goals of 1996 Act, including the full implementation of a competitively-neutral system to fund universal service and a completed transition to cost-based access charges.[12] We believe that this short-term constraint will avoid disturbing the status quo while we consider the legal and economic implication of allowing carriers to substitute combinations of unbundled loops and transport network elements for the incumbent LECs' special access services. As we did in the *Local Competition First Report and Order*, we emphasize that this constraint will apply only as an interim measure.[13]

III. FINAL REGULATORY FLEXIBILITY ANALYSIS

8. In the *Third Report and Order and Fourth FNPRM*, we conducted a Final Regulatory Flexibility Analysis, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603. The changes we adopt in this Order do not affect that analysis.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to authority contained in sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, 303(r), the Commission amends paragraph 486, 489, and 494-96 in the *Third Report and Order and Fourth FNPRM* to be consistent with the discussion set out above. Thus, the constraint on the use of unbundled network elements as a substitute for special access service and the scope of the corresponding inquiry in the Fourth FNPRM are not limited to entrance facilities, but instead include combinations of unbundled loops and transport network elements. This constraint does not apply if an IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

FEDERAL COMMUNICATIONS COMMISSION

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[12] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd at 15499, 15862-69, paras. 716-32 (1996) (*Local Competition First Report and Order*).

[13] *Id. at* 15866, para. 725.

Magalie Roman Salas
Secretary

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION BY GLOBAL NAPS, INC., FOR THE ARBITRATION OF UNRESOLVED ISSUES FROM THE INTERCONNECTION NEGOTIATIONS WITH VERIZON DELAWARE INC. (FILED JULY 23, 2002)	)	PSC DOCKET NO. 02-235

ARBITRATION AWARD

DATED: DECEMBER 18, 2002

WILLIAM F. O'BRIEN
ARBITRATOR

CONSTANCE A. WELDE
ADJUNCT

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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ARBITRATION AWARD

I. APPEARANCES

On behalf of the Petitioner, Global NAPs South, Inc.:

JAMES R.J. SCHELTEMA, ESQUIRE, Global NAPs South, Inc.

On behalf of the Respondent, Verizon Delaware Inc.:

HUNTON & WILLIAMS
BY: KELLY L. FAGLIONI, ESQUIRE
BY: EDWARD P. NOONAN, ESQUIRE

II. BACKGROUND

1. Under the Telecommunications Act of 1996[1] ("Act"), Incumbent Local Exchange Carriers ("ILECs"), such as Verizon Delaware Inc. ("Verizon DE" or "Verizon"), must share its network with Competitive Local Exchange Carriers ("CLECs"), in order to promote competition in the local exchange markets. One way that an ILEC must share its network is by "interconnecting" its facilities with those of requesting CLECs. 47 U.S.C. § 251(c)(2). This interconnection

[1] Pub. L. No. 104-104, 110 Stat. 56; 47 U.S.C. 251 et seq.

enables the customers of one carrier to place calls to, and receive calls from, the customers of another carrier. As part of its duty to interconnect, ILECs must enter into interconnection agreements with requesting CLECs via negotiation and, if necessary, arbitration. § 251(b)(5).

2. On July 23, 2002, pursuant to § 252(b) of the Act, Global NAPs South, Inc. ("Global" or "GNAPs") filed with the Public Service Commission of Delaware ("Commission") a Petition for the Arbitration of Unresolved Issues concerning its negotiations with Verizon DE for an interconnection agreement.[2] In the body of its Petition, Global identified nine issues on which it sought arbitration. On August 19, 2002, Verizon filed its Response to Global's Petition and, therein, identified an additional three issues for arbitration.

4. In accordance with the Commission's *Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements Between Local Exchange Telecommunications Carriers* ("the Guidelines"), the Commission's Executive Director appointed the undersigned Arbitrator, and the undersigned adjunct to the Arbitrator, to arbitrate the unresolved issues.[3] John Antonuk, of The Liberty Consulting Group, was engaged to assist the Arbitrators.

5. After the parties completed discovery and filed direct and rebuttal written testimony, the Arbitrators conducted an evidentiary

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[2] Section 252(b)(4)(C) of the Act requires the Commission to resolve each issue set forth in the petition and response not later than nine months after the date on which Verizon received Global's request for negotiation. In this case, however, the parties mutually agreed to extend the request-for-negotiation date, which pushed the deadline for an award to December 18, 2002. *See* September 4, 2002 letter from the Arbitrator to the parties.

[3] *See* August 2, 2002 Memorandum of Bruce H. Burcat, Executive Director, to Petitioner, GNAPs, Respondent, Verizon, and the Public Advocate.

hearing on November 4, 2002. (Neither Commission Staff nor the Division of the Public Advocate elected to participate in this proceeding.) On November 18, 2002, Global filed its proposed arbitration award and Verizon filed an Initial Brief, along with its proposed award. On November 25, 2002, each party filed Reply Briefs.

6. On December 2, 2002, Verizon requested that the Commission not consider Global's Reply Brief because it included new arguments that should have been included in an initial brief, had Global chosen to file one. In the alternative, Verizon asked that the Commission consider its Reply to Global's post-hearing brief, which it included with its December 2, 2002 request. We agree with Verizon that the post hearing schedule, as established at the hearing, contemplated an initial, main brief to accompany the proposed award. The Reply Briefs, therefore, should have responded directly to the Initial Briefs and proposed awards. In the interest of full development of the record, however, we will consider both Global's Reply Brief and Verizon's December 2, 2002 Reply to Global's Reply Brief.

7. Pursuant to 47 U.S.C. § 252(b)(4)(B), we have considered the entire record of this arbitration proceeding and, based thereon and upon the best information available, we make the following award for the reasons set forth below.

III. ISSUES TO BE ARBITRATED

8. In a September 4, 2002 conference call, the parties agreed that the issues subject to arbitration in this proceeding consist of the nine issues identified by Global in its Petition in addition to the three supplemental issues identified by Verizon in its Response. These twelve issues are addressed below.

9. With its Petition, however, Global proposed a redlined version of its interconnection agreement with Verizon that reflected numerous other changes to contract language that it did not address substantively in the body of its petition or at any other time in the proceeding. As a result, with its November 18, 2002 post-hearing brief, Verizon moved for judgment on the disputed contract language that it argues is unrelated to the twelve identified issues. In its November 25, 2002 Reply Brief, Global contends that once the Commission resolves the twelve contested issues, on a policy level, the parties will be able to resolve all of the disputed contract language, whether or not each item was fully litigated.

10. The parties have agreed to twelve unresolved issues that are open for arbitration and we will limit our award at this time to those specific issues. As such, Verizon's motion for judgment on the uncontested issues is hereby denied. If the award, however, does not result in the timely resolution of all disputed contract language, as suggested by Global, then Verizon may renew its motion for judgment on the disputed contract language.

IV. DISCUSSION AND AWARD

A. Issue One - Single Point of Interconnection

11. **Summary of the Issue.** The parties agree that, by law, Global may choose to interconnect with Verizon "[a]t any technically feasible point within the incumbent LEC's network"[4] for the purpose of physically exchanging traffic. Verizon concedes that Global may establish a single point of interconnection ("POI") per LATA on

[4] 47 C.F.R. § 51.305(a)(2).

Verizon's network, even if it means that Verizon must transport traffic farther to get to that point than if multiple POIs were established. (Issue Two concerns the broader dispute over who pays for transport to the single POI.) The Issue One dispute lies in Global's proposed contract language for interconnection, which Verizon claims could require Verizon to interconnect with Global outside of Verizon's network, and on the contract language pertaining to alternative interconnection arrangements.

12. The disputed contract terms are Section 2.1 of the interconnection agreement and Glossary Sections 2.66 and 2.67. Global's proposal for Section 2.1.1 is, in part:

> *Global may designate a single point of interconnection per LATA.*

In contrast, Verizon proposes this language for Section 2.1.1:

> *In accordance with, but only to the extent required by Applicable Law, the parties shall provide interconnection of their networks at any technically feasible point as specified in this Agreement.*

13. The parties also dispute the definition for Point of Interconnection, found at Glossary Section 2.66. Global's proposal is:

> *POI (Point of Interconnection)*
> *Shall have the meaning stated in 47 C.F.R. § 51.319(b).*

Verizon proposes this definition:

> *The physical location where the one Party's facilities physically interconnect with the other Party's facilities for the purpose of exchanging traffic.*

14. Regarding alternative interconnection arrangements, Global testified that meet-point arrangements should proceed according to a

particular memorandum of understanding whose form and content Global derived from a memorandum of understanding used to establish a particular interconnection in New Jersey.[5] Verizon objects to Global's language (at Global's proposed Interconnection Attachment § 3) addressing such meet-point arrangements. Verizon argues that Global's proposal would set fixed rules and requirements in advance for installations that require substantial interaction and negotiation on engineering, provisioning, maintenance, and operations matters. Such case-by-case negotiation leads to a unique memorandum of understanding for each arrangement, which is then included as an addendum to the interconnection agreement.[6]

15. **Issue One Award.** Global's definition of POI is not acceptable because the FCC Rule that it references pertains to the "network interface device" ("NID"), which is a concept applicable to provider/end user demarcations -- not carrier-to-carrier demarcations.[7] Moreover, Global's proposed language does not limit points of interconnection to Verizon's network. It is not appropriate to require Verizon to accept a POI at any point other than one on its existing network.

16. Verizon's proposed language for Glossary Section 2.66, therefore, should be included in the parties' interconnection agreement. The word "physical," however, should be deleted in the two

[5] Initial Testimony of William J. Rooney, pp. 11-12.

[6] Verizon's Post Hearing Brief, pp. 11-13.

[7] A NID is the "gray box" on the customer's premises.

cases where it appears. The reason for this deletion is explained in the "Award" section under Issue Two.

17. Global's language for Interconnection Attachment Section 2.1.1 should be included in the parties' agreement, provided that there is language added that limits the interconnection points that Global may select to locations on the Verizon network. With this addition, Global's language is more appropriate than Verizon's proposal as discussed below under Issue Two.

18. Regarding alternative interconnection arrangements, the parties are free to negotiate meet points at other locations. The additional meet points are distinguished, however, by the mutual obligation to establish or fund the facilities necessary to make them functional. Verizon demonstrated that such arrangements cannot be subjected to uniform standards and requirements in advance, as proposed by Global, but must result from case-specific negotiation of important details. To the extent that such negotiations fail to produce agreement, the parties may use the interconnection agreement's dispute resolution mechanism to resolve any differences. We reject, therefore, Global's proposal for a uniform memorandum of understanding for all such arrangements.

B. Issue Two - Charges for Transport to Single POI

19. **Summary of the Issue.** Global asserts that each party should be responsible for transporting telecommunications traffic on its "side" of the POI and should be financially responsible for that traffic.[8] Verizon's proposal (discussed below) would impose transport

[8] Global NAPs Petition for Arbitration, pp. 13-16.

costs associated with its originating traffic on Global through the establishment of multiple interconnection points. Global asks that the Commission resolve the issue "on a policy level" by finding (1) that the parties need only establish a single point of interconnection; (2) that the originating party will make physical arrangements for delivering traffic to that point and will bear the associated expense; and (3) that traffic received at the POI for delivery to the called party shall be under the control of the terminating carrier subject to reciprocal compensation.

20. Verizon notes that, under the existing arrangement, Global's POI for serving Delaware is in Philadelphia, which is in the Delaware LATA. Verizon argues that Global has chosen to use transport instead of switching, and its decision to do so requires use of Verizon's network to transport traffic. Verizon argues that, "...when Global deploys fewer switches and transport facilities and selects a single physical POI per LATA, Global is attempting to maximize its use of Verizon's network. Global should be financially responsible for its increased use of Verizon's transport."[9]

21. Verizon offers its "virtual geographically relevant interconnection point," or "VGRIP," proposal,[10] which separates the point of *physical* responsibility for a call (or POI), from the point of *financial* responsibility for the call (or interconnection point). Verizon proposes to pay for traffic only to the interconnection point ("IP"), after which Global would have financial responsibility for

[9] Direct Testimony of Peter D'Amico, p. 7.

[10] See generally Direct Testimony of Pete D'Amico, pp. 1-26.

transporting the traffic to its customer. Verizon notes that Global previously agreed to the VGRIP proposal in the existing interconnection agreement between the parties.

22. Verizon argues that it would be subsidizing Global's network design and interconnection choices if it must assume the costs of transporting traffic to a single POI. Verizon contends that if Global's choice is to rely more on transport than on switches, then it should be held financially responsible for that decision. Under VGRIP, Verizon would be able to deliver traffic to a more central location relative to the originating caller's local calling area. Verizon acknowledges that, under VGRIP, Global may have to "backhaul" traffic from a distant POI to its customer in a local calling area of the originating Verizon caller. Verizon argues, however, that backhauling is unlikely because Global's customers are typically collocated at the Global facilities. Even should this occur, however, Verizon asserts that it is a consequence of Global's decision to rely more on transport than on switches.

23. In response to the Arbitrators' question regarding whether VGRIP would be limited to those cases in which Global chooses inefficient POIs, Verizon maintains that it would not apply where customers are located in close geographic proximity to the POI and the transport distance is not great. Also in response to the Arbitrators, Verizon indicates that while VGRIP has not been adopted by any of the state regulatory commissions, both the New York Commission and the FCC's Wireline Competition Bureau have noted that Verizon raises valid concerns. In addition, according to Verizon, many CLECs have voluntarily agreed to VGRIP and in the Verizon/Sprint arbitrations in

Pennsylvania and Maryland, the Commissions adopted a Sprint compromise to establish additional interconnection locations when traffic reached a certain volume and distance.

24. At the hearing, Verizon's witness described Verizon's proposal:

> *And there's a couple different options proposed in Verizon's VGRIP proposal. One is that GNAPs could establish an interconnection point at Verizon's tandems through collocation; in which case Verizon would drop off its traffic to GNAPs. And even though that traffic would be or could be transported outside of the local calling area, Verizon is willing to absorb that cost in order to deliver it to a more central point.*
>
> *The other option of VGRIP is we'll deliver it wherever GNAPs chooses to locate their point of interconnection. However, Verizon should be compensated for the transport when they deliver it, you know, to that point."*

25. In its brief, Verizon argues that the Act recognizes that an ILEC must be compensated for use of its network.[12] The ILEC must be compensated for providing access through interconnection, unbundled access, resale and collocation. Failure to provide compensation in this instance amounts "…to a taking of property without just compensation in violation of due process of law."[13] Moreover, the FCC in its *Local Competition Order* determined that a CLEC that "…wishes a 'technically feasible' but expensive interconnection would, pursuant

[11] Hearing Transcript, p. 30.

[12] Verizon Post-Hearing Brief, pp. 18-24.

[13] Verizon Post-Hearing Brief, p. 19.

to § 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[14]

26. Global argues that the Act obligates the ILEC to permit interconnection at any technically feasible point. Several state commission decisions have rejected Verizon's VGRIP proposal -- chief among these is a decision rendered by the FCC on behalf of the Virginia Commission.[15] This decision affirmed that the CLECs have the option to determine a single point of interconnection per LATA and determined that the incumbent is responsible for the costs associated with transporting a call originating on its network to the CLEC's POI. Other states considering and rejecting the VGRIP proposal include New York, Massachusetts, and Rhode Island (where Verizon voluntarily withdrew the GRIP provision, so the issue was declared moot). An Illinois arbitrator's decision also rejected the VGRIP proposal, according to Global.

27. Verizon distinguishes the *Virginia Arbitration Order* cited by Global, noting that while Verizon's VGRIP proposal was not adopted, the decision there was limited to a consideration of the contract language of the parties. Verizon also argues that Global's proposal is unfair because it permits Global to minimize its investment in both

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[14] Verizon Post-Hearing Brief, p. 19 citing ¶ 199.

[15] *In the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia, Inc., pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission regarding Interconnection Disputes with Verizon Virginia, Inc.*, CC Docket Numbers 00-218, 00-249, 00-251, DA 02-1731, Memorandum Opinion and Order (rel. July 17, 2002) ("*Virginia Arbitration Order*").

switching and transport, and to rely on Verizon's transport facilities without paying for them.[16]

28. Verizon proposes the adoption of Glossary Section 2.46 (defining the IP, or interconnection point) and Interconnection Attachment Section 7.1.1 (Reciprocal Compensation Interconnection Points). Global proposes to revise Section 2.1 to require one initial single point of interconnection (SPOI) and make the establishment of additional points of interconnection subject to Global's approval:

> *In accordance with, but only to the extent required by, Applicable Law, the Parties shall provide interconnection of their networks at any technically feasible point as specified in this Agreement. GNAPs may designate a single point of interconnection per LATA. This point shall be called the Point of Interconnection ("POI") between the Parties. The Parties may designate additional POIs within the LATA at a later date, however, only one GNAPs-designated POI per LATA is required for interconnection of the Parties' respective networks. Each Party is responsible for transporting telecommunications traffic originating on their network to the POI at their own cost.*

29. Global further proposes a revision to Section 2.1.2:

> *Each Party ("Originating Party"), at its own expense, shall provide for delivery to the relevant IP of the other Party ("Receiving Party") Reciprocal Compensation Traffic and Measured Internet Traffic that the Originating Party wishes to deliver to the Receiving Party. Verizon shall treat GNAPs' POI as Verizon's relevant IP and GNAPs will treat its POI as GNAPs' relevant IP. To the extent GNAPs establishes additional POIs in the LATA, GNAPs may designate those points as relevant IPs.*

30. **Issue Two Award.** The guiding principle from which consideration of this issue must proceed has two essential elements:

[16] Verizon Post-Hearing Brief, p. 25.

- A CLEC is entitled to select any reasonable, single point of interconnection per LATA; and
- Each party is responsible for the delivery of traffic originating from its network to that point of interconnection.

31. Verizon complains that Global is seeking to maximize its use of Verizon facilities by exercising this right. That may or may not be so, but it is irrelevant. There is no authority for the proposition that the unique aspects of CLEC and ILEC network configuration on their sides of the POI should be used to develop complex arrangements for mutual compensation, such as the VGRIP proposal. Each carrier has the right to control and the obligation to fund whatever happens on its side of the point of interconnection. The VGRIP proposal cannot be deemed as a good faith effort to allow a single point of interconnection per LATA, when its clear effect is to require a CLEC to undergo costs as if it had interconnected at multiple points.

32. Verizon argues that Global relies upon Verizon to get traffic to the POI. Global also relies upon Verizon to provide the customer loop and switch port on Verizon's network to accomplish the same purpose. Verizon in turn relies similarly on the entire network on Global's side of the POI. The real issue seems to be Verizon's concern that more traffic will flow to the Global network, than will flow back to Verizon's network from Global. Nowhere does this factor find support as a reason for altering the basic, two-element principle that the FCC has established regarding interconnection.

33. Neither is it relevant that Global accepted a supposedly similar provision in the past. The decision whether to accept a

compromise agreement, as opposed to arbitrating it, rests upon a consideration of the entire balance of the agreement. We cannot construe Global's past acceptance as an admission of the propriety of the VGRIP concept on a stand-alone basis. At most, we can presume that it formed a part of an overall bargain that Global found acceptable at one time. Global clearly no longer finds it acceptable and federal law entitles Global to a resolution of this issue uncluttered by discussion of what bargain it accepted at some juncture in the past.

34. Verizon's argument concerning the unfairness of allowing Global to make use of its network without added compensation is misplaced. There has been no allegation here that Global's requested form of interconnection would require Verizon to make substantial out-of-pocket expenditures to interconnect or would impose on Verizon's network operating problems that would be expensive to overcome. Second, Verizon's chief complaint apparently is that Global has chosen not to interconnect Verizon's end offices, which makes Verizon responsible for transporting traffic longer distances. Verizon's proposal, therefore, amounts to an indirect attempt to force Global either to interconnect at more than one POI per LATA or to make payments as if it had.

35. There may be cases where traffic volumes under a single POI arrangement grow sufficiently to begin to impose on the ILEC network significant operations problems that could be avoided by the addition of trunking to handle the traffic with the CLEC involved. In such cases, it would be appropriate to consider special payment arrangements as an alternative to requiring additional trunking.

However, that is not what Verizon has proposed here. Its VGRIP proposal might address such cases but it is too broad to be an acceptable mechanism. What would be appropriate is a more narrowly crafted proposal that allows for negotiation and third-party dispute resolution in cases where such operations problems are at issue. We must reject the VGRIP proposal, however, because there is no basis in this record for revising it in an appropriate manner.

36. Global's proposed language for Section 2.1.1 is acceptable, provided that it limits interconnection points to locations on Verizon's network. The language that Verizon struck from Interconnection Attachment Section 2.1.1 should be included in the parties' interconnection agreement. The language that it struck from Section 2.1.2, however, should not be included in the agreement.

C. Issue Three - Local Calling Areas

37. **Summary of the Issue.** Global wishes to be able to establish its own local calling areas rather than be limited to, and economically constrained by, Verizon's "legacy" local calling areas. Global asserts that the distinction between local and in-state toll calls has become artificial, and that it would be better able to compete if it were allowed to offer wider area calling options.[17]

38. Global asserts that it should have the ability to design its own local calling areas and then apply to the Commission for their approval. If approved, Global would then use these Global-specific local service areas to define its reciprocal compensation obligations on the exchange of local traffic with Verizon. According to Global,

[17] Global NAPs Petition for Arbitration, p. 17.

this arrangement would more properly follow the FCC reciprocal compensation rules. Global also argues that if Verizon is permitted to charge Global above-cost switched access rates on calls defined as local by Global, then Verizon would violate the FCC requirement that rates be based on forward-looking economic cost.

39. Global asserts that the distinction between local and toll calls is no longer supported by significant distance-based cost differences. The policy of allowing Verizon to treat a certain route as a toll call for retail and wholesale pricing purposes permits Verizon to impose its wholesale switched access charge to the call rather than reciprocal compensation, even when the call is not a toll call to the Global customer. According to Global, Verizon seeks to have the Commission protect it from potential revenue loss by allowing it to recover its "opportunity cost" when Global attracts a Verizon toll user to its service. Global argues that such competitive losses should not be recoverable by the ILEC, as this would be affording it special protection. Global also notes that while Verizon argues that Global's proposal would place the rates and quality of local phone service at risk, Verizon has commenced a retail service of its own with wide area inward calling services.[18]

40. Verizon maintains that the local calling area for a customer is the area within which the customer may still make a local, not toll, call. For the carrier, it provides the distinction between reciprocal compensation and intrastate access charges. A CLEC may define a different calling area for its customers, but the ILEC's

[18] Direct Testimony of Scott C. Lundquist, pp. 54-59.

local calling areas still provide the limits for reciprocal compensation traffic. Global's proposal would have the calling area defined by the carrier who provides retail service to the dialing customer. Verizon complains that this would allow Global to "define its retail calling areas in such a way as to avoid paying Verizon access rates, while continuing to collect access charges from Verizon for the same calls in reverse".[19]

41. In addition, Verizon objects to resolving the local calling area issue in the context of a two-party arbitration, as it would affect universal service and the ability of other carriers to provide interexchange services. Universal service would be affected because Global would be able to avoid paying Verizon access rates, which include a universal service contribution, and would pay only reciprocal compensation rates, which do not. Moreover, it would undercut Verizon's toll service and revenues, which also contribute to universal service. Verizon argues that it is inappropriate to change Commission policy in a two-party arbitration and if the Commission wishes to consider this change, it should do so in a generic proceeding.[20]

42. Verizon notes that the Texas Public Utility Commission refused to change the status quo of local calling areas because it recognized that the proposal would impact ILEC access revenue and had ramifications on rates for other calls, such as intraLATA toll calls. Verizon also maintains that both Verizon and the IXCs would be at a

[19] Direct Testimony of Terry Haynes on Behalf of Verizon Delaware, p.11.

[20] Direct Testimony of Terry Haynes, pp. 11-14.

competitive disadvantage with Global as they would still be subject to access compensation rules. Global would be unfairly excused from contributing to universal service funds that all the other carriers must pay as part of their access charges.

43. Verizon is also critical of the administrative problems associated with using the originating carrier's retail local calling area for reciprocal compensation purposes. If all CLECs changed their local calling areas, then Verizon would have to keep track of the changes by building and maintaining billing tables. This would become even more problematic if the calling areas extend beyond LATA boundaries.

44. Global takes issue with the Verizon assertion that allowing an originating carrier to define its local calling area for intercarrier compensation purposes creates an excessive administrative burden. Global notes that Verizon currently is attempting to implement another administratively complicated scheme in its proposal to bill access charges to calls completed to FX and virtual FX numbers. The proposal to allow self-definition of local calling areas, argues Global, at least has the promise of benefiting Delaware consumers and not just increasing Verizon's revenues. Global states that the Florida PSC recently ruled that the originating carrier's retail local calling area should be used as the default local calling area for purposes of determining whether reciprocal compensation, rather than access charges, are to be paid to the terminating carrier.[21] Verizon responds that access charges were created to

[21] Lundquist Rebuttal at 11, citing *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the* . . . (footnote continued to next page.)

support the goal of universal service, and not to protect monopoly era legacy pricing practices, as claimed by Global.[22]

45. Global proposes to eliminate the language in Section 2.52 that "...would impose access charges on all traffic that traverses Verizon local calling areas regardless of whether that traffic is toll traffic or not."[23] Verizon proposes language changes to a number of sections:

- Glossary §2.34 (Extended Local Calling Scope Arrangement)
- Glossary §2.48 (Interexchange Carrier)
- Glossary §2.57 (Measured Internet Traffic)
- Glossary §2.76 (Reciprocal Compensation Traffic)
- Glossary §2.84 (Switched Exchange Access Service)
- Glossary §2.92 (Toll Traffic)
- Interconnection Attachment §6.2
- Interconnection Attachment §7.3.4.

46. **Issue Three Award.** Global's proposal to use its own local calling areas as the basis for intercarrier compensation is inequitable. By using the originating carrier's definition of local calling areas, the same call would produce very different compensation outcomes depending on whose network it was originated. There is no economic justification for hinging compensation on the fortuitous event of which customer dials the number of the other when the same

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Telecommunications Act of 1996, Florida PSC Docket No. 000075-TP (Phases II and IIA), *Order on Reciprocal Compensation,* Order No. PSC-02-1248-FOF-TP, Issued September 10, 2002, at 53.

[22] Rebuttal Testimony of Terry Haynes on Behalf of Verizon Delaware, p. 1.

[23] Reply of Global NAPs, p.11.

combined network facilities are used. The basic premise behind transport and termination pricing is reciprocity. Global's proposal violates that premise without any economic rationale. If it is true that Global terminates many more Verizon/Global calls than does Verizon, then the proposal is not only arbitrary, but unjustly enriching as well.

47. In addition, the use of any local calling areas other than Verizon's would be disruptive to the application of the in-state pricing regime. It would not be appropriate to undermine the support that intrastate access charges provide to other services, such as universal service, that Verizon alone is required to provide as the carrier of last resort. If an unwarranted imbalance exists between intrastate access charges and cost based, carrier-to-carrier transport and termination charges, then that issue should be confronted directly, in a proceeding that addresses (1) the continued propriety of the price support being provided and (2) alternative means of providing the support that divides responsibility among the local exchange carriers. We agree with Verizon, therefore, that sound public policy on this issue would be difficult to implement in a two-party arbitration.

48. For these reasons, Verizon's proposed language for the above-stated sections should be incorporated into the agreement. However, as to Section 6.2, the only change required to address this issue is the deletion of Global's proposed phrase that states, "in accordance with their defined calling area(s)." The remainder of Verizon's proposed changes to Section 6.2 appears to relate to the next issue (virtual NXXs), which is discussed below.

D. Issue Four - Virtual NXXs

49. **Summary of the Issue.** Global states that it uses virtual NXXs in Delaware for its ISP (and other) customers. This approach allows customers to gain access to the Internet using their telephone line on a dial-up basis, without toll charges. Global notes that the New York Public Service Commission agreed with Global that the availability of virtual NXXs provides an efficient way to ensure that customers in all markets have a competitive choice for Internet access.[24]

50. Verizon's testimony explains that NXX codes are used by the LEC to ascertain the originating and terminating rate centers or exchange areas of the call. The dialing party is then assessed the cost of the call based on whether it is local or toll, as determined by the called number's NXX code. Virtual NXX assigns to a customer an NXX code for a rate center/exchange area other than the one in which the customer is physically located. This does not change the routing of the call, but does change the rating, as it allows for the avoidance of toll charges.[25]

51. Verizon's principal objection is that its agreement with Global should not require payment of reciprocal compensation for any interexchange traffic, including virtual NXX calls. It asserts that the Pennsylvania Public Utility Commission has required CLECs to comply with Verizon's local calling areas and to assign telephone numbers with NXX codes that correspond to rate centers in which the

[24] See Lundquist Testimony p. 62 and Attachment 10 thereto for New York decision.

[25] Haynes Testimony, pp. 23-24.

customers' premises are physically located.[26] Verizon would not restrict Global's ability to offer this service to its customers, but Global should not have the ability to collect reciprocal compensation for this traffic.

52. Global asserts that the historical rationale for maintaining the local/toll rating distinction was based on the complexity and distance involved in completing the call. Because of advances in telecommunications technology, distance has essentially been eliminated as a cost-driver for telephone calls. Global said that even some ILECs now offer a flat rate calling plan to all numbers in a LATA, thus underscoring the notion that the distinction between local and toll calls is largely arbitrary. Global argues that marketplace forces should be permitted to expand or reshape the definition of local calling. The ILECs already have tariffed FX services that allow their end users to place calls to points beyond their local calling areas and avoid incurring toll charges. Global cites a Virginia arbitration decision by the FCC that ruled in favor of the CLECs' argument that originating and terminating NPA-NXX codes are the only viable means of determining whether a call is local or toll in nature.

53. According to Global, Verizon's position on virtual NXX calls does not extend to Verizon's own services. Several of Verizon's services extend beyond the local calling area, yet are not classified as interexchange and, therefore, no switched access charges apply. For example, Verizon maintains a service that allows ISP customers to subscribe to a LATA or region-wide calling service where end users can

[26] Haynes Testimony, pp. 27-28.

call a 500 number as a local call. Global argues that this service competes directly with the VNXX service it seeks to offer in Delaware and, therefore, Global is at a competitive disadvantage if Verizon can impose access charges on it for the service.[27]

54. Global also notes that in its *Virginia Arbitration Order*, the FCC ruled that reciprocal compensation should be paid based on the NPA-NXX codes of the calling and called parties. The Bureau found that the physical location proposal (that Verizon seeks here) raises too many billing and technical issues. Verizon asserts that it can resolve these issues and can ensure that FX and virtual NXX traffic would be treated as interexchange traffic. According to Verizon, either the CLEC could conduct a study to determine the number of Verizon-originated minutes delivered to CLEC virtual NXX numbers, or it could identify these numbers to Verizon.[28]

55. In rebuttal, Global rejects both Verizon proposals regarding billing for FX and virtual NXX. It states that Verizon did not include this language at any time in the negotiations, and did not raise these concepts until a late stage of the arbitration. In addition, Global argues, Verizon overlooks a fundamental problem; *i.e.*, most of the calls to a virtual NXX number may be destined to an ISP, and would not be subject to intrastate access charges. Due to the difficulty of identifying ISP calls, the FCC's presumption for classifying this traffic would apply; *i.e.*, all traffic above a 3:1 terminating to originating ratio is ISP-bound traffic. As a result,

[27] Lundquist Testimony, pp. 76-78.

[28] Haynes Testimony, pp. 36-39.

the Global traffic flows would continue to exceed a 3:1 ratio, and neither of Verizon's proposals would lead to an accurate application of access charges.[29]

56. Global proposes revisions to Sections 2.70 through 2.73 to allow for VNXX.[30] Verizon proposes revisions to the following sections:[31]

- Glossary §2.34 (Extended Local Calling Scope Arrangement)
- Glossary §2.47 (48) (Interexchange Carrier)
- Glossary §2.56 (57) (Measured Internet Traffic)
- Glossary §2.75 (76) (Reciprocal Compensation Traffic)
- Glossary §2.83 (84) (Switched Exchange Access Service)
- Glossary §2.91 (92) (Toll Traffic)
- Interconnection Attachment §6.2

57. **Issue Four Award.** Global's argument that, on economic and technical levels, the distinction between local and toll service has disappeared is misplaced. The fact remains that those distinctions continue to be highly relevant in a regulatory context. The Act and the FCC's decisions under the Act provide that an ILEC's obligations for reciprocal compensation extend only to local exchange service. The evidence in this case demonstrates that a material portion of calls placed to virtual NXX numbers are terminated at locations that make them exempt from the obligation to pay reciprocal compensation.

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[29] Lundquist Rebuttal at pp. 12-14.

[30] Reply of Global NAPs, p. 15.

[31] Post-Hearing Brief of Verizon DE, p. 46.

58. However, as the FCC has found in the Virginia arbitration, there are difficulties in determining which calls meet all the conditions that would make them exempt from reciprocal compensation. Verizon offers a study that is based on Florida operations, which is admittedly incomplete in providing all the required information. Verizon suggests, however, that further studies of this type can form the basis for determining the portion of calls to be exempt in Delaware. The evidence it presented about the Florida study, which was at only a summary level, however, fails to convince us that similar studies can be considered sufficiently reliable.

59. The lack of precedent in using such studies for the purpose that Verizon offers them, the recognized incompleteness of the results produced in the Florida study, and the absence in this record of sufficient study details to permit a critical examination of its results, calls for a conclusion similar to that reached by the FCC; *i.e.*, the problems with measurement render the exemption requested by Verizon inappropriate at this time.

60. However, it should be recognized that a better-established track record and a more thorough analytical basis for such an approach could warrant another look at this issue in the future. Therefore, the parties' interconnection agreement should include a term providing that either party may propose during the course of the agreement a method for determining the portion of calls involving NXX numbers that should be excluded from reciprocal compensation because they terminate at locations that make them non-local calls. In the event that the parties cannot agree on such a method, the dispute resolution procedures of the agreement should be available for resolving their

disagreement, in which case the party proposing a method shall have the burden of proving that the proposed method is reliable.

61. The parties' interconnection agreement, therefore, should contain no language prohibiting Global's use of virtual NXXs, nor should it contain any language denying reciprocal compensation in the cases objected to by Verizon. The agreement may, however, contain language allowing for negotiation between the parties over proposed methods for determining which NXX calls should be exempt from reciprocal compensation obligations, as discussed above.

E. Issue Five – Change of Law Provision

62. **Summary of the Issue.** Global's concern is that any future changes in the law governing the treatment of Internet Services Provider (ISP) traffic may not be reflected in the interconnection agreement. For example, the FCC's 2001 *ISP Remand Order* could be reversed or vacated but the treatment of ISP traffic would still be subject to the provisions of the agreement.[32] In its Petition, therefore, Global requests specific language in the interconnection agreement obligating the parties to renegotiate these issues if the law changes.

63. Verizon points out that both Verizon and Global have proposed identical change of law language and that there is no need to specifically carve out the *ISP Remand Order* from the general change of law provision.[33] Verizon argues that the standard language proposed

[32] Direct Testimony of Scott C. Lundquist, p. 104.

[33] Direct Testimony of Mr. William Munsell, p. 7.

will address any future modification or reversal of the *ISP Remand Order*.

64. In its Reply,[34] Global characterizes its proposal as a request for a policy determination from the Commission that a change in the *ISP Remand Order* will require renegotiation of those parts of the agreement affected by the change. Global asks that the Commission allow for the drafting of specific language to meet this concern.

65. **Issue Five Award.** Global has presented no evidence that would support a conclusion that changes in law respecting reciprocal compensation require a contract term that differs from any other change in law provision. While the potential dollar magnitude of the issue may be relatively large, there is no reason to believe that the language the parties have agreed to for all other changes in law will not suit future changes to the law governing reciprocal compensation. We reject, therefore, Global's proposed language on this issue.

F. Issue Six – Two-Way Trunks

66. **Summary of the Issue.** In its Petition, Global asserts that it "...must have the right to utilize two-way trunking at its own discretion."[35] Global argues that since it is the purchaser of the service, it should have the ability to determine what it wishes to order from Verizon, subject to technical feasibility.

67. Verizon maintains that it is important to reach mutual agreement, on a case-specific basis, on the operation of two-way trunks because network integrity depends on such agreement. With two-

[34] Reply of Global NAPs, pp. 19-22.

[35] Global Petition, p. 24.

way trunking, the parties are sending traffic over the same trunk from the two ends so that their actions affect each other and can result in "blocking." Blocking can occur from overuse of a trunk and result in an "all circuits busy" message. Verizon argues that Global's proposal would bind the parties to certain types of equipment and technology that could become obsolete.

68. In response to the arbitrators' questions issued on September 12, 2002, Verizon specified those trunking provisions proposed by Global that causes a concern for Verizon regarding efficient network operation:

- Global's desire to dictate the number of trunks (Section 2.4.2)
- Global's proposal of a better grade of service than Verizon provides to itself or other CLECs (Sections 2.4.8, 2.4.9, 2.4.13, 2.4.14)
- Global's requirement of performance measures for Verizon on trunks where Global is primarily responsible for engineering (Section 2.4.13)
- Unreasonable timeframe for installation of one-way trunks (Section 2.4.14)
- Global's nonsensical insertion of terms "originating party" and "terminating party" in the context of two-way trunking (Section 2.4.11)
- Verizon would not be able to disconnect underutilized trunks (Section 2.4.12)
- Global's proposed definitions of traffic factor and trunk side, which have nothing to do with how the parties deploy two-way trunks (Glossary Sections 2.94, 2.95 and 2.96)
- Global's redefinition of the types of traffic to be carried on Interconnection Trunks, based on whether the carrier imposes a charge (Sections 2.2.1.1 and 2.2.1.2)
- Global's elimination of engineering design requirements, which could result in premature exhaust of Verizon's tandem switches (Section 2.2.5)

- Global's edits to one-way trunking, which are inconsistent with how edits are already handled in Delaware with other CLECs (Section 2.3)

- Requiring forecasts from Verizon when Global is in a better position to forecast its marketing of services (Section 2.4.4)

69. Global did not respond to the arbitrators' questions about two-way trunks but did, in its Reply, argue that it is unreasonable to require it to negotiate conditions for each trunking facility provisioned. It states, "Global should be able to rely on Verizon providing sufficient transport at the appropriate service quality level without being unduly delayed in its request by being forced to negotiate relatively standard arrangements."[36] Global further elucidates its proposals as follows:

- Section 2.4.4 - Global argues that Verizon should be equally obligated to provide trunking forecasts

- Section 2.4.11 - Verizon should be responsible for provisioning trunks on its side of the point of interconnection

- Section 2.4.12 - As long as Global is financially responsible for the trunks, it should be allowed to retain them, without the threat of disconnection from Verizon

70. **Issue Six Award.** Verizon raises a number of technical and operations concerns regarding Global's proposed language addressing two-way trunks. The evidence presented in support of these concerns, as discussed above, appears to be sound and Global has failed to present any evidence to the contrary. We reject, therefore, Global's proposed changes to the two-way trunking language. For those instances where the joint activity required by Verizon's language or

[36] Reply of Global NAPs, pp. 22-24.

unilateral Verizon actions (*e.g.*, disconnection of underutilized trunks) cause harm to Global, the dispute resolution provisions of the parties' interconnection agreement provides a remedy.

G. Issue Seven - Tariff References

71. **Summary of the Issue.** Global states that the interconnection agreement proposed by Verizon has many references to tariffs that are outside of the agreement. While Verizon argues that the tariff filings are a matter of public record, Global counters that it is unfair to require it to research all Verizon tariff filings to determine if that particular filing has some effect on the interconnection agreement. If Global did object to a tariff filing, then it would incur the additional expense of litigation in order to modify the term in question. Global argues that tariffs should not supersede the terms and conditions of the interconnection agreement, unless by mutual agreement, and that "tariff" should be defined in the agreement to exclude incorporation of future tariffs.

72. Verizon argues that it should not be required to provide any notice to Global of a tariff change, as this would give Global veto power over its filings. Global counters that "giving Global a right to participate in a regulatory review of Verizon's tariff filings can hardly be equated with a right to veto".[37] Moreover, Global opines, it is unfair to require Global and other CLECs to review all of Verizon's filings to determine if an interconnection agreement will be changed.

[37] Initial Testimony of William J. Rooney of GNAPS, Inc., p. 4.

73. In its brief,[38] Verizon notes that Global is proposing to strike over forty references to tariffs in the interconnection agreement. Verizon asserts that under its proposal, the parties would rely on the appropriate Verizon tariff for applicable prices or rates. However, if there were a conflict between the terms and conditions of the tariff and the interconnection agreement, those of the interconnection agreement would supersede the tariff. Thus, Verizon states, the tariff will not alter the terms and conditions of the interconnection agreement, it would only supplement them. Global's proposed deletions would "freeze" current tariff prices, and Global could choose to remain with the old rates or elect the new tariff rates, depending on which rates were lower. This would give Global an advantage over other carriers, and would contravene the requirement of the Act that rates be nondiscriminatory.

74. Global's proposed Arbitration Order offers a compromise position: "Global agrees… to incorporate Verizon tariffs for the sole purpose of utilizing [Verizon's] tariffed *rates* for UNEs or collocation."[39] Verizon replies that this proposed compromise is insufficient, as it "…fails to address Verizon's references to tariffs with respect to new services or services outside the scope of the agreement."[40]

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[38] Post-Hearing Brief of Verizon Delaware, Inc. pp. 50-56..

[39] Global NAPs Inc.'s Proposed Order, p. 25.

[40] Reply Brief of Verizon DE, p.15.

75. **Issue Seven Award.** It is likely that a review of the more than forty tariff references made in the interconnection agreement would reveal some cases where it would be appropriate for a tariff change to automatically alter the interconnection agreement and some cases where an automatic change would not be appropriate. However, the parties have not presented evidence that would allow a case-by-case examination of the tariff references. Their evidence and argument allow only two realistic choices: preclusion of any automatic effect or allowing automatic effect except where the result would be inconsistent with some other provision of the interconnection agreement.

76. From these two choices, the latter is clearly preferable. Tariff changes occur through an orderly and public process and tariffs provide generally applicable terms and conditions. Therefore, allowing tariff changes to affect the interconnection agreement in the absence of direct conflict promotes the goal of maintaining nondiscriminatory terms and conditions for all market participants. It also eliminates the inherent arbitrage potential that would be created if a CLEC had, in effect, a right to choose between the changed tariff and the one "frozen" by an interconnection agreement.

77. Global's objection to researching the tariffs is not convincing because it must already research current tariffs if it is to understand the effects that their more than forty references already have on the interconnection agreement language. Global should, however, have an opportunity to participate in the process of changing tariffs that affect its interconnection agreement. In order to ensure adequate notice and an opportunity to participate in the

process of revising a tariff, the interconnection agreement should contain language that (1) requires Verizon to notify Global of any pending change to tariffs that are referenced in the agreement and (2) requires Verizon to agree to support Global's intervention in such tariff proceedings.

H. Issue Eight - Insurance

78. **Summary of the Issue.** Global argues that Verizon's proposed contract provisions regarding insurance would require Global to obtain insurance with excessive limits.[41] Global notes that it already maintains commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage. It also has agreed that if it operates vehicles in the state, it will purchase insurance in conformance with the state's legal requirements for insurance coverage. Global notes that in California, the insurance issue was resolved through negotiation, and the California Commission made insurance coverage symmetrical between the parties. In this case, Verizon does not have the same insurance obligations that it wants to impose on Global, which creates a competitive advantage for Verizon.

79. Verizon argues that since interconnection and collocation require the presence of Global equipment and personnel on Verizon's property, its network is put at risk for damage and injury to employees and others.[42] Other risks include damage to the facilities and network, risk of fire or theft, and risk of security breaches.

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[41] Initial Testimony of William J. Rooney of GNAPS, Inc., pp. 5-8.

[42] Direct Testimony of Karen Fleming on Behalf of Verizon DE, pp. 1-9.

Since Global agrees to indemnify Verizon for damage caused by its gross negligence or intentionally wrongful acts (in § 20), the § 21 insurance requirements provide the financial guarantee for the promised indemnification. Verizon states that it maintains an extensive insurance program with combined comprehensive, primary, and liability far in excess of the $12 million requested of Global and other CLECs. It carries workers compensation coverage in accord with state law, and has a $1 billion property insurance program. Finally, Verizon notes that the relationship between the ILEC and the CLEC presents asymmetrical risks. Verizon has a more extensive network and many more employees than the collocating CLEC. Therefore, Verizon has much more at risk at any given site than would a CLEC.

80. Global did not present additional rebuttal testimony on this issue. In its rebuttal,[43] Verizon noted that while Global maintains that it has purchased $10 million in excess liability coverage and is willing to purchase automobile insurance for Delaware, the contract language it proposes still has only $1 million in excess liability coverage and deletes any reference to automobile insurance. The California case referenced by Global was a draft arbitrator's report, which was later changed by a final decision of the Commission. There, Global was required to purchase $10 million in excess liability coverage and, in addition, both New York and Ohio have adopted Verizon's insurance proposals. Verizon believes that since Global must purchase this coverage in other states, it already has the coverage Verizon seeks for Delaware.

[43] Rebuttal Testimony of Karen Fleming on Behalf of Verizon DE, pp. 1-5.

81. In its proposed award, Global contends "… that Verizon demands a level of insurance coverage that is excessive and represents a covert barrier to competition".[44] Global's Reply Brief makes the additional argument that Verizon is requiring more insurance coverage than SBC Communications: "SBC considers sufficient Global's current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage."[45]

82. Verizon claims that the insurance provisions it proposes in § 21 of the interconnection agreement are "…reasonable, necessary and minimal requirements."[46] Verizon notes that the FCC and a number of state commissions have recognized Verizon's need for protection against the risks imposed by a CLEC with insufficient financial resources.[47]

83. **Issue Eight Award.** The evidence supports a conclusion that the types and amounts of insurance that Verizon proposes as a requirement are commensurate with the business and operating risks associated with the parties' commercial relationship. However, Verizon has not shown that its need for protection is greater than that for other carriers. Indeed, the nature of the risk to facilities and personnel created by the interconnection is the same for both carriers. The language proposed by Verizon is appropriate, therefore, provided that it is amended to make the obligations strictly

[44] Global NAPs Inc.'s Proposed Order, p. 26.

[45] Global NAPs Reply Brief at p. 28.

[46] Post Hearing Brief of Verizon DE, pp 56-61.

[47] Reply Brief of Verizon DE, pp 15-16.

reciprocal. In addition, the terms should include a clause allowing for self-insurance upon the demonstration of the existence of conditions consistent with industry norms. Any disagreement about whether a carrier has demonstrated the capability for self-insurance will be resolvable under the interconnection agreement's dispute resolution provisions.

I. Issue Nine - Audits

84. **Summary of the Issue.** Global asserts that the contract between the parties should not provide Verizon the right to audit Global's accounts and records.[48] Global argues that the information in its records is competitively sensitive, and that it would be costly to have to go through and "sanitize" the documents. Although Verizon claims that the audit provisions will protect confidential business information, the actual language proposed does not reassure Global. Currently, Verizon is limited to receiving traffic reports and invoices from Global. Global maintains that there is no need for further information as Verizon already has the means to measure the traffic flowing to Global.

85. Verizon notes that its proposed interconnection agreement includes four sections that provide for audits in certain situations. In General Terms and Conditions, Section 7, Verizon proposes a provision that allows for auditing of books, records, facilities and systems for the purpose of evaluating the accuracy of the audited party's bills. The audit would be performed by independent certified public accountants selected by the auditing party, but acceptable to

[48] Initial Testimony of William J. Rooney, p. 10.

the audited party. The audits would be paid for by the auditing party and would contain a confidentiality agreement. The proposal applies equally to both parties, and is limited to one per calendar year. Verizon maintains that these audit provisions are typical in the industry and that a majority of the interconnection agreements in Delaware contain such provisions. In addition, according to Verizon, there is good reason to include these provisions in the Verizon/Global agreement because in New York, Verizon believes that it was overcharged millions of dollars in reciprocal compensation by Global.

86. Verizon's Interconnection Attachment, Section 6.3, provides for audits of traffic data for interconnection trunks. The Call Detail Records ("CDRs") provide information on traffic exchanged between two carriers. According to Verizon, this information is used for billing purposes and is an important component in assessing the accuracy of the other party's bill.

87. Verizon's proposed Section 8.5.4 of the additional services attachment permits Verizon to audit Global's use of Verizon's OSS. Verizon states that its OSS contains customer proprietary network information that Verizon is obligated to protect and it is permitted to release it only to authorized parties. Verizon notes that other CLECs and interexchange carriers use Verizon's OSS to serve their customers and a CLEC could potentially use the OSS to secure competitive information about other companies.

88. Global did not present rebuttal testimony on this issue. In its rebuttal, Verizon notes that the audit provisions it proposes do not provide it with access to Global's books and records. In one provision, an independent certified public accountant would be

reviewing information. Under other provisions, Verizon may monitor Global's use of its OSS and has access to traffic data. Global should not have to "sanitize" information, because Verizon will not have access to Global's books and records.[49]

89. In its proposed arbitration award, Global argues that the proposed audit provisions provide Verizon with unreasonably broad access to competitively sensitive Global records.[50] As a compromise, Global states that it will provide, on a voluntary basis (*i.e.*, outside of the interconnection agreement), traffic reports and call data records necessary to verify billing. Verizon states that this proposal is insufficient, as it is not memorialized in the agreement and can be withdrawn at any time.[51]

90. **Issue Nine Award.** Verizon's proposed provisions regarding billing audits are appropriate and are adequately sensitive to Global's need to protect confidential information. The ability to audit the data underlying one party's billings to another is, of course, imperative. Traffic and OSS access data, however, are another matter. While the need for independent review of the data is clear, greater protection over the confidentiality of such information is appropriate. Such audits should be conducted by an auditor mutually selected by the parties (or under the agreement's dispute resolution procedures if agreement fails) and the information disclosed to Verizon should be limited to a description of the auditor's methods,

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[49] Rebuttal Testimony of Jonathan B. Smith on Behalf of Verizon DE, pp.1-4.

[50] Global NAPS Proposed Order, p. 28.

[51] Reply Brief of Verizon DE, p. 16.

procedures, and tests, and to a statement of the auditor's opinion as to whether the traffic data of Global and its compliance with OSS information restrictions are free of material error or omission.

J. Issue Ten - Reciprocal Collocation

91. **Summary of Issue.** This issue was raised by Verizon in its Direct Testimony, and was not addressed by Global until its Reply Brief. In this proposal, Verizon seeks the ability to collocate on Global facilities, just as Global has the right to collocate on Verizon facilities. This is referred to as "reciprocal collocation." Verizon argues that it should have the same types of collocation choices that the CLECs do, so that it may also provide the most efficient type of interconnection.[52] In its brief, Verizon states that it recognizes that CLECs are not required to offer collocation to Verizon under the Act, but notes that the Commission could allow this. According to Verizon, several other Commissions have allowed Verizon reciprocal collocation options.[53]

92. Global states that there is no need for reciprocal collocation provisions in the interconnection agreement because it has voluntarily agreed to provide collocation at its facilities. "The language Global advocates providing that collocation shall be provided in Global's sole discretion was always part of the negotiation process, and was a simple and effective method for protecting Global

[52] Direct Testimony of Pete D'Amico, pp. 23-25.

[53] Post-Hearing Brief of Verizon DE, p.66.

from providing collocation in a manner that would discriminate between customers or otherwise subvert an open market."[54]

93. **Issue Ten Award.** Under federal law, the obligations of ILECs and CLECs generally are not reciprocal and, specifically, collocation obligations are not reciprocal. Moreover, with respect to interconnection, CLECs, not ILECs, select the points of interconnection, which is consistent with one-sided collocation obligations. Verizon, therefore, has failed to show any reason why it should be permitted reciprocal collocation rights, either under federal or state law, and we reject its proposed contract language on this issue.

K. Issue Eleven - Agreement to Recognize Applicable Law

94. **Summary of the Issue.** In its Response to Global's Petition for Arbitration, Verizon raised Supplemental Issue Eleven. Global proposes edits to General Terms and Conditions, Section 4.7, that would delay implementation of a change in law until appeals are exhausted, even if the challenged law is not subject to a stay.[55] Verizon's proposed Section 4.7 implements applicable law when it becomes effective, irrespective of any appeals. According to Verizon, the state commissions that have considered this issue have rejected Global's proposal.[56] Global's only response to Verizon's concerns was that "…the parties each should obey the law". [57]

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[54] Reply of Global NAPs, p. 29.

[55] Response of Verizon DE, pp. 102-103.

[56] Post Hearing Brief of Verizon DE, pp. 67-68, citing the *Verizon/Global NY Order, Verizon/Global California FAR,* and *Verizon Global OH Award.*

[57] Reply of Global NAPs, p. 29.

95. **Issue Eleven Award.** Commercial arrangements, such as the parties' interconnection agreement, require stability and promptness. After a new law takes effect, it would be unreasonable to wait until all appeals are exhausted before the law applies to the agreement, especially when the appellate processes in key areas under the federal Act can take longer to resolve than the life of the interconnection agreements they affect. The better policy is for changes in law to apply to the agreement when they have legal effect. Verizon's language applies this rule and, therefore, should be included in the parties' agreement.

L. Issue Twelve - Global's Access to UNEs

96. **Summary of the Issue.** Verizon disagrees with Global's position that it should have access, by leasing unbundled network elements ("UNEs"), to all of Verizon's "next generation technology." While Verizon will agree to unbundle its network elements in accordance with applicable law, Global's proposed contract changes would require Verizon to assume responsibility for the costs associated with accommodating new changes in its network. Verizon argues that it should not have to bear the costs of upgrading all interconnecting CLECs to whatever new technology it introduces in the future.[58] Global responds that it should have access to the same technologies as those deployed by Verizon and that Verizon should not be able to deploy new technologies that will affect Global's service quality without notice to Global and adequate joint testing.[59]

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[58] Response of Verizon DE, pp. 104.

[59] Reply of Global NAPs, p. 29.

97. **Issue Twelve Award.** There are already adequate provisions in the agreement for allowing access to new UNEs and for addressing any other network changes that may result from future technological developments. The established process is the best method for determining the changes in access, pricing, terms, conditions, upgrading, or other factors, all of which will be unique to the particular circumstances of the case involved. It would not be appropriate to adopt at this time any principles or rules that may not prove consistent with those circumstances. We reject, therefore, Global's proposed provisions on this issue.

V. CONCLUSION

98. The parties should incorporate the above determinations into a final agreement, setting forth both the negotiated and arbitrated terms and conditions. In accordance with Rule 29 of the Guidelines, within 30 days of the date of this Award, the parties shall file the final agreement with the Commission for review. If the above determinations do not serve to resolve all disputed contract language, then the parties should file an appropriate motion with the Arbitrators.

Respectfully submitted,

William F. O'Brien
Arbitrator

Constance A. Welde
Adjunct

Dated: December 18, 2002

ORDER NO. 99-242

ENTERED MAR 29 1999

This is an electronic copy. Appendices and footnotes may not appear.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 100

In the Matter of the Petition of METRO ONE TELECOMMUNICATIONS, INC., for Arbitration of Interconnection Rates, Terms, and Conditions with U S WEST COMMUNICATIONS, INC., Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996.	)COMMISSION)DECISION)

DISPOSITION: ARBITRATOR'S DECISION ADOPTED

Introduction

On November 13, 1998, Metro One Telecommunications, Inc. (Metro One), filed a petition with the Public Utility Commission of Oregon (Commission) to arbitrate a contract for network interconnection with U S WEST Communications, Inc. (U S WEST), pursuant to 47 U.S.C. §§ 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. On December 31, 1998, U S WEST filed a response.

On February 8, 1999, Michael Grant, Arbitrator, held an arbitration hearing on this matter in Salem, Oregon. Charles Best, Attorney, appeared on behalf of Metro One. Peter Butler, Attorney, appeared on behalf of U S WEST. On February 25, 1999, the parties filed post-hearing briefs.

On March 4, 1999, the Arbitrator issued his decision in this proceeding. Metro One filed comments to the decision on March 15, 1999.

Standards for Arbitration

This arbitration was conducted under 47 U.S.C. §252 of the Act. Subsection (c) of §252 provides:

> Standards for Arbitration--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—
>
> (1) ensure that such resolution and conditions meet the requirements of section 251,

> including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Section 252(e)(1) of the Act requires that any interconnection agreement adopted by arbitration be submitted for approval to the State commission. Section 252(e)(2)(B) provides that the State commission may reject an agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section." Section 252(e)(3) further provides:

> Notwithstanding paragraph (2), but subject to section 252, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

Commission Review

In its comments, Metro One contends that the Arbitrator erred in declining to address two issues. First, Metro One challenges the Arbitrator's decision to dismiss its claim that U S WEST should be required to provide a refund, with interest, to Metro One for the difference between rates for directory service listings adopted in this arbitration and those paid by Metro One since the passage of the 1996 Act. Second, Metro One contends that the Arbitrator similarly erred in failing to address the issue of whether U S WEST failed to negotiate in good faith under Section 252(b)(4). The Arbitrator declined to address both issues, because Metro One failed to identify either as open issues in its petition for arbitration. We address each argument separately.

1. Refund of Rates

In addition to seeking cost-based rates for access to directory listings, Metro One argued in its brief that U S WEST should also be ordered to refund the difference between the new rates and those it has been paying U S WEST for such listing since February 8, 1996, the effective date of the Act. In support of that request, Metro One argued that, as a certified carrier, it has been entitled to cost-based rates for directory assistance listings under Section 251(b)(3) since passage of the Act. Because U S WEST had an obligation under the Act to provide access to directory listings at such rates, Metro One argued that it should be required to refund, with interest, any difference between the rates it had been charging for the listings and those adopted in arbitration.

The Arbitrator declined to address that argument, finding that it was not properly before the Commission for review under Section 252(b), which provides, in part:

> (4) Action by state commission.—
>
> (A) The State Commission shall limit its consideration of any petition [for arbitration]

> under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

In its comments, Metro One does not dispute the facts that it neither raised this issue in its request for arbitration, nor presented it at hearing. Nonetheless, Metro One contends that the question of whether it is entitled to a refund is not a separate issue, but part of the resolution of the pricing issue for directory assistance listings. It explains:

> Obviously, until the pricing matter is resolved, there can be no issue regarding a refund. Until Metro One had an opportunity to review USWC's cost study it had no way of knowing whether any disparity existed. This occurred well after Metro One's Petition was filed through no fault of Metro One. Comments of Metro One at 3.

Furthermore, Metro One argues that the Commission has the authority to address the refund issue under Section 252(c)(3), which authorizes a state commission to impose "conditions" on the parties to the agreement. Metro One contends that the ordering of a refund of over collected revenues is a condition the Commission may impose under Section 252(c)(3), regardless of any limitations imposed by Section 252(b).

After our review, we find that the Arbitrator correctly declined to address Metro One's request for a refund. The language of Section 252(b) expressly limits our consideration in arbitration proceedings to the issues set forth in the petition. This standard ensures that any decision rendered by a state commission will be limited to those issues presented and argued by the parties. In this case, because Metro One did not make its request for a refund until after the arbitration hearing, U S WEST did not have the opportunity to oppose it. For these reasons, we agree that the issue is not properly before the Commission.

In making this decision, we acknowledge that the refund question is related to the primary pricing issue of directory assistance listings. However, while the amount of such a refund, if ordered, could only be determined after the pricing issue had been resolved, nothing prevented Metro One from earlier asserting an entitlement to a refund if new rates were adopted. Metro One's petition for arbitration alleges that the rates U S WEST was charging for directory assistance listings were not cost based. In fact, Metro One argued that such rates appeared to be as much as 50 times higher than cost-based rates in regulatory proceedings in other states. In asking that cost-based rates be adopted for U S WEST, Metro One could have also requested a refund of the difference between the new rates and those it previously paid.

We do not agree that Section 252(c)(3) authorizes us to address this issue notwithstanding the limitations imposed by Section 252(b). If Section 252(c)(3) is construed as liberally as Metro One requests, State commissions would be able to address any issue they desire simply by labeling it as a "condition" to the agreement. We are unwilling to adopt such an interpretation, especially in light of express congressional intent to the contrary set forth in Section 252(b).

Finally, even assuming that this Commission is authorized to address the issue, Metro One has failed to establish that a requesting carrier is entitled to a refund of any rates previously paid for unbundled network elements in excess of those adopted in an interconnection agreement. Section 251(c)(2) of the Act imposes a duty on incumbent carriers to provide interconnection and access to network elements at cost-based rates "*to any requesting telecommunications carrier.*" Thus, an incumbent's duty is triggered only upon a request from a carrier for an interconnection agreement. Here, Metro

One did not seek an interconnection agreement and cost-based rates for directory assistance listings until June 1998, almost two and a half years after the passage of the federal Act. Following negotiations and compulsory arbitration to resolve the appropriate rates for the directory listings, this Commission will eventually approve an interconnection agreement establishing those prices on a forward-looking basis.

2. Failure to Negotiate in Good Faith

Metro One also contends that the Arbitrator erred in failing to examine its claim that U S WEST failed to negotiate in good faith by conditioning negotiations on proof that Metro One intended to provide local exchange service. The Arbitrator found that Metro One had failed to raise the issue in its petition for arbitration and, therefore, concluded that it was not properly before the Commission for review under Section 252(b).

In its comments, Metro One contends that an allegation of failure to negotiate in good faith is not an issue that parties to an interconnection agreement need to negotiate, mediate, or arbitrate. Metro One states that it is a question of fact that need not be identified in a petition for arbitration describing open issues. For that reason, it contends that the Commission should review the record and determine whether U S WEST violated the duty to negotiate in good faith under Section 251(c)(1).

We agree with Metro One that an allegation of failure to negotiate in good faith is not a matter subject to the mediation and arbitration process designed to resolve disputes over the terms and conditions of interconnection agreements. If such an allegation is made and submitted to a State commission for determination, however, it must be done so in a manner that permits the other party the opportunity to defend and respond to the allegation. This comports with traditional standards of due process. Here, Metro One did not allow U S WEST that opportunity. As the Arbitrator noted, Metro One first asked the Commission to make a determination on this issue in its post-hearing brief. It did not raise the issue in its petition for arbitration, in its prefiled testimony, or at hearing. Thus, Metro One asks us to resolve this issue without giving U S WEST the opportunity to address it. We decline to address Metro One's untimely request.

Commission Decision

The Commission has reviewed the Arbitrator's decision and the comments filed by Metro One in accordance with the standards set out above. We conclude that the Arbitrator's decision, as supplemented above, comports with the requirements of the Act, applicable Federal Communications Commission regulations, and relevant state law and regulations.

ORDER

IT IS ORDERED that:

1. The Arbitrator's decision in this case, attached to and made part of this order as Appendix A, is adopted as supplemented in this order.

2. Metro One and U S WEST shall prepare and submit to the Commission an interconnection agreement consistent with the terms of this decision pursuant to the procedures set forth in OAR 860-016-0030(12).

Made, entered, and effective _____.

Ron Eachus	**Roger Hamilton**
Chairman	Commissioner
	Joan Smith
	Commissioner

A party may request rehearing or reconsideration of this order pursuant ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-14-095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-13-070(2)(a). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

ISSUED: March 4, 1999

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 100

In the Matter of the Petition of METRO ONE TELECOMMUNICATIONS, INC., for Arbitration of Interconnection Rates, Terms, and Conditions with U S WEST COMMUNICATIONS, INC., Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996.	)ARBITRATOR'S) DECISION)

I. Introduction

On November 13, 1998, Metro One Telecommunications, Inc. (Metro One), filed a petition with the Public Utility Commission of Oregon (Commission) to arbitrate a contract for network interconnection with U S WEST Communications, Inc. (U S WEST), pursuant to 47 U.S.C. §§ 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. On December 31, 1998, U S WEST filed a response.

On February 8, 1999, Michael Grant, Arbitrator held an arbitration hearing on this matter in Salem,

Oregon. Charles Best, Attorney, appeared on behalf of Metro One. Peter Butler, Attorney, appeared on behalf of U S WEST. On February 25, 1999, the parties filed post-hearing briefs.

II. Arbitrator's Authority

The federal Telecommunications Act of 1996 (Act) provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act requires incumbent local exchange carriers to provide any requesting telecommunication carriers interconnection with the local network. Section 252 sets forth the procedures for the negotiation, arbitration, and approval of interconnection agreements.

When an incumbent provider and a requesting carrier are unable to negotiate the terms and conditions of an interconnection agreement, Section 252(b)(1) allows either party to petition a State commission to arbitrate any open issues. In resolving any open issues by arbitration and imposing conditions on the parties, Section 252(c) requires a State commission to:

> ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251; establish any rates for interconnection, services, or network elements according to subsection (d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. See Section 252(c):

Pursuant to these federal requirements, the Commission has promulgated rules that establish procedures for conducting arbitration proceedings. *See* OAR 860-016-0030.

The Parties

Metro One provides operator-assisted telecommunications services in several states. It is certified to provide directory assistance and toll services in Oregon, has been assigned a Carrier Identification Code by Bellcore, and has obtained an Operating Company Number by the National Exchange Carrier Association.

Metro One primarily provides enhanced directory assistance service, with call completion, to end-users of local and interexchange telecommunications carriers. It also provides Short Messaging Service (SMS), which allows a caller to transmit a short digital message to another caller or telephone. It seeks an interconnection agreement with U S WEST for the transmission and routing of local exchange service and exchange access.

U S WEST is Oregon's largest incumbent local exchange carrier and a Bell Operating Company under the Act. U S WEST provides directory assistance service throughout its service territory, and competes with Metro One.

IV. Preliminary Issue

As part of its prefiled testimony in this matter, U S WEST submitted two cost studies to support its prices for directory assistance listings. U S WEST designated certain information in those costs studies, including specific cost factors, as confidential and subject to the protective order issued in this proceeding. *See* Order No. 99-050.

Metro One objects to U S WEST's designation and contends that the identified information does not qualify as a trade secret. Metro One contends that only U S WEST, as the incumbent local exchange provider, is able to create a database of subscriber listings. Therefore, Metro One maintains that U S WEST's cost of creating and maintaining such a database is not competitive information. In support of its argument, Metro One notes that similar information has been made public in other jurisdictions.

A party seeking protection must demonstrate that the designated information is a trade secret or confidential information. The party must also establish that disclosure of the information would result in a clearly defined and serious injury. *See Citizen's Utility Board v. Public Utility Commission*, 128 Or App 650 (1994). While U S WEST carries these burdens, I do not believe that it has had the opportunity in this proceeding to fully address Metro One's challenge and establish that the designated information is confidential and that its release would cause a clearly defined and serious injury. I am reluctant to make a determination on this matter based solely on the parties' cursory arguments at the commencement of the hearing.

Because it is not necessary to disclose the designated cost information for purposes of the arbitration, I decline to resolve this dispute in this proceeding. The designated information will be treated as confidential pending a final determination as to whether the information should be kept from public disclosure. The parties may request the Commission to make a final determination on this issue following the arbitration award, or renew their arguments in related proceedings involving the designated information.

V. Issues Presented for Arbitration

In its petition for arbitration, Metro One identified two open issues for resolution. I address each separately.

A. Does the Act require Metro One to have a Certificate of Authority to provide local exchange service or to provide assurances to ILECs that it will "specifically and solely" use an interconnection agreement to provide local exchange service as conditions precedent to negotiating an interconnection agreement?

This issue arose shortly after Metro One filed a request with U S WEST to negotiate an interconnection agreement. While acknowledging that Metro One had been certified to provide directory assistance and toll services in Oregon, U S WEST asked the company whether it also intended to enter the market as a local exchange carrier. U S WEST believed such information was necessary to determine whether Metro One was properly seeking interconnection "for the transmission and routing of telephone exchange service and exchange access." *See* Section 251(c)(2)(A).

Metro One objected to U S WEST's request that it verify its intention to enter the local exchange market. Metro One argued that nothing in the Act requires a carrier to expressly declare that it is seeking an interconnection agreement for the "transmission and routing of telephone exchange service and exchange access." Metro One believed that, as a certified provider of toll and operator services, it was a telecommunications carrier entitled to negotiate an interconnection agreement

This dispute continued up to and throughout most of the hearing. During cross-examination, however, Metro One witness Lonn Beedy testified that Metro One was seeking an interconnection

agreement for the "transmission and routing of telephone exchange service and exchange access." *See* Transcript at 56. Based on that representation, U S WEST withdrew its objection to negotiating an interconnection agreement with Metro One.

While acknowledging that this dispute had been resolved, both parties restated their earlier arguments in post-hearing briefs. It is obvious that a disagreement continues between the parties as to whether a requesting carrier must certify that it is a local exchange provider prior to entering negotiations for interconnection. That disagreement, however, is no longer relevant to or at issue in this arbitration. Regardless of whether the Act requires a requesting carrier to affirm that it seeks interconnection for the "transmission and routing of telephone exchange service and exchange access," Metro One has provided such affirmation and U S WEST has withdrawn its objection. Because U S WEST is now willing to enter into an interconnection agreement with Metro One, this issue is no longer a disputed issue that the Commission must resolve in arbitration.

In its post-hearing brief, Metro One also argues that, by conditioning negotiations on proof that Metro One intended to provide local exchange service, U S WEST violated the duty to negotiate in good faith under Section 251(c)(1). As a penalty for this alleged violation, Metro One believes that U S WEST should refund a portion of the rates Metro One has paid U S WEST for directory assistance listings since the passage of the 1996 Act. Metro One, however, did not raise this issue in its request for arbitration. Nor did it present this issue or any supporting evidence at hearing. Consequently, this issue is not properly before this Commission, which must limit its consideration to issues identified by the parties in the petition for arbitration and response. *See* Section 252(b)(4)(A).

B. Are USWC's directory assistance listings being offered to Metro One on a nondiscriminatory basis in compliance with the Act at cost based rates?

This issue relates to the appropriate costs for directory listings. Metro One seeks access to U S WEST's directory listings to enable it to provide directory assistance to its customers. U S WEST is willing to provide Metro One access to its directory assistance database through its Directory Assistance List (DAL) product. U S WEST states that its DAL product is available for use by directory assistance providers who wish to maintain a directory assistance database that can be accessed to obtain listings for their users. U S WEST adds that the DAL product is the underlying database used by U S WEST operators in providing directory assistance.

U S WEST's Cost Studies

U S WEST has offered Metro One the DAL product at quoted prices per listing. To support those prices, U S WEST submitted Total Service Long Run Incremental Cost (TSLRIC) studies that identify costs for the three primary components of the DAL product: (1) initial load; (2) updates; and (3) record transmittal. U S WEST states that the cost studies utilize a methodology that incorporates the TSLRIC principles that were established by this Commission in docket UM 351.

To calculate the initial load and update costs per listing, U S WEST first estimated the direct expenses for each function the company must perform to provide listings. The per listing costs are then loaded with service-specific costs, such as product management, via the application of factors to the direct expense. The service specific costs are added to direct costs to provide the TSLRIC. An allocation of group related and common costs are also identified in U S WEST's cost studies.

To determine the costs for the transmittal of directory records, U S WEST used, as a surrogate, the

cost per message of its CMDS system. U S WEST explains that the transfer of directory listings to a directory assistance provider is similar to the process used to transmit billing data using the CMDS system.

The results of the TSLRIC studies are used as a starting point to establish prices for the DAL product. Pursuant to the Commission standards adopted in docket UM 844, the identified costs for each element is subject to an approved mark-up to account for shared and common costs. Using these costs and multiplying them by the Commission approved mark-up, the prices U S WEST proposes to charge Metro One for its DAL product, per listing, are as follows: initial load - $0.0071; updates - $0.0161; transmittal - $0.00094.

Positions of the Parties

Metro One has been following regulatory proceedings in other states regarding the pricing of directory listings and does not believe that the rates quoted by U S WEST are cost-based. Metro One points out that a large disparity exists between the prices in these other dockets and U S WEST's purported costs. For example, the Texas Commission ordered Southwestern Bell to offer directory listings to competitive providers at a price of $0.0011 for each initial load, and $0.0014 or $0.0019 for updates, depending upon format. Similarly, the Florida Commission set the price for BellSouth's directory assistance database at $0.001 per listing plus a $100.00 monthly fee. Metro One contends that these rates cast doubt on U S WEST's claims that its prices—which are several times higher—are cost based.

Metro One does not believe that the costs for providing directory listings should vary significantly from state to state. It contends that the Bell System provided directory listings to others for many years using similar, if not identical, procedures, processes, and systems. Metro One doubts that U S WEST's system for producing and maintaining directory listings is much different than that used by Southwestern Bell and BellSouth, let alone several times less efficient and costly.

Metro One suggests that some of the pricing discrepancies might be explained by U S WEST's costs studies. It questions whether the costs per message of the CMDS system is an appropriate surrogate for the costs associated with the transfer of directory listings. It also suspects that U S WEST included improper costs that were excluded by the other Regional Bell Operating Companies. It notes that more than half the cost for both the initial load of listings and updates is allocated to "White Page Production." Although U S WEST claims that this category had been mislabeled and had nothing to do with directory publishing, Metro One points out that the company admitted that a portion of those costs were attributable to "expanded use subscriber lists." According to Metro One, that product is designed for directory publishers and not directory assistance providers. Metro One also questions U S WEST's inclusion of expenses for auditing.

Due to these reasons, Metro One recommends that the Commission disregard U S WEST's cost studies and adopt as prices for directory listings those established in either Texas or Florida. It believes that the decisions of these other jurisdictions are more persuasive than the surrogate cost studies presented by U S WEST. As an alternative, Metro One recommends that the Commission adopt the Texas or Florida prices as interim and open a separate investigation to review U S WEST's cost studies. Whatever rates are ultimately adopted by the Commission, Metro One also argues that U S WEST should be ordered to refund the difference between the new rates and those paid by Metro One since the effective date of the 1996 Act.

U S WEST discredits the Texas and Florida directory listing prices relied upon by Metro One to claim that U S WEST's prices are too high. U S WEST notes that Metro One did not participate in any of the proceeding in which these other rates were established and could not vouch for the accuracy of the underlying studies used to determine those prices. It also questions whether any of the cost studies submitted in these other jurisdictions followed Oregon costing principles.

U S WEST also suggests that the cost study used in Florida was outdated. While the study is dated 1996, U S WEST points out that several items in the study are dated 1992, several years before the Oregon Commission established its TSLRIC costing principles. U S WEST also believes that, in rendering its decision, the Texas Commission may have confused "volume sensitive" and "volume insensitive" costs. The order appears to simply treat all volume sensitive costs as recurring costs and all volume insensitive costs as nonrecurring costs. U S WEST contends that such treatment is inappropriate, especially in Oregon where recurring cost studies include both volume sensitive and volume insensitive costs that relate to the provision of the building block.

In addition, U S WEST dismisses Metro One's claim that directory assistance listing costs should not vary state to state. U S WEST notes that each state holds its own cost and pricing dockets because costs vary state from state. It also contends that each state employs different cost and pricing designs. It points out that the rates established in Texas and Florida differ from those proposed by U S WEST in that they either contain a set-up charge or a flat-rate charge per central office.

U S WEST concludes that the Commission should require the parties to execute an interconnection agreement containing the prices established by U S WEST's cost studies. U S WEST reemphasizes that its studies comply with Oregon's TSLRIC costing principles, and that the costs identified are properly attributable to the directory assistance database to which Metro One seeks access.

Arbitrator Decision

Section 251(c)(2) of the Act imposes a duty on incumbent local exchange providers, like U S WEST, to provide access to network elements "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." In providing such access, incumbent providers must also comply with the pricing standards of Section 252(d)(1)(A), which requires rates be based on the costs of providing the element, but may include a reasonable profit.

To support its proposed prices for access to its directory assistance database, U S WEST has submitted two cost studies in this arbitration. U S WEST contends that the studies are based on a TSLRIC methodology and accurately calculate the costs it incurs in providing access to its directory assistance listings. Metro One disputes the validity of U S WEST's cost studies and questions if they produce reasonable, cost-based rates. It urges the Commission to adopt prices established by other jurisdictions for other regional Bell Operating Companies.

After my review, I agree with U S WEST that there is not enough information in this record to justify the adoption of directory listing prices established by the Texas and Florida Commissions. While it seems reasonable that the costs of producing and maintaining directory assistance listings should not vary considerably from state to state, there are too many outstanding questions about how those costs were developed to warrant the use of those prices in this interconnection agreement. It is unknown whether those costs were developed using Oregon TSLRIC principles, or whether they include all those reasonably incurred by U S WEST in providing the listings. There also appears to be significant

pricing design issues that may account for some of the discrepancy between prices.

For these reasons, I find that the prices based on U S WEST's costs studies should be adopted in this proceeding. I believe they provide a better reflection of the costs for initial loads, updates, and transmission of directory listings. The prices based on these costs, however, should be interim subject to refund. As Metro One notes in its brief, the cost studies submitted by U S WEST have not been reviewed or audited by the Commission or its Staff. Furthermore, given the limited time available in this arbitration, I have not had the opportunity to carefully review the studies myself and to make judgments as to the reliability or reasonableness of the underlying assumptions. Indeed, such review would no doubt require assistance from U S WEST personnel familiar with the preparation of both the cost studies and directory listings.

Accordingly, I conclude that, for purposes of the interconnection agreement between Metro One and U S WEST, the prices for access to directory listings should be based on the costs contained in U S WEST's cost studies. Those prices shall be interim, subject to refund. Metro One may petition the Commission to further evaluate these costs in a formal, open investigation, in which the Commission Staff and other interested parties will have the opportunity to assess the reasonableness of the models, assumptions, and cost data used in the studies by U S WEST.

I decline to address Metro One's argument that U S WEST should be ordered to refund the difference between any new rates and those paid by Metro One since the passage of the 1996 Act. Again, Metro One did not raise this issue in its request for arbitration, nor did it present this issue at hearing. Consequently, this issue is not properly before this Commission. *See* Section 252(b)(4)(A).

Interconnection Agreement

Because U S WEST refused to enter into negotiations with Metro One prior to the hearing, Metro One was unable to submit a proposed interconnection agreement addressing all issues. In its brief, Metro One requests to select, as a proposed agreement addressing other issues, the interconnection agreement approved between U S WEST and MCI Metro Access Transmission Services, Inc. (MCI), with the exception of the section addressing the pricing of directory assistance listings. *See* ARB 6, Order Nos. 97-003 and 97-341. For the directory listings, Metro One requests to select the relevant sections of the interconnection agreement approved between U S WEST and GTE Northwest Incorporated (GTE). *See* ARB 26, Order Nos. 97-343 and 98-235. Metro One notes that these sections include a provisioning policy for providing directory assistance listings to other carriers.

Metro One's request is within its rights under the Act. Pursuant to 47 CFR Section 51.809, Metro One is entitled to incorporate into its contract any rate, term, or condition from any other interconnection agreement executed by U S WEST. Although this "pick and choose" rule was originally struck down by the Eighth Circuit in *Iowa Utilities Board v. Federal Communications Commission et al*, Case Nos. 96-3321 et seq. (8th Cir, October 15, 1996), it was recently reinstated by the U.S. Supreme Court. *See AT&T Corp. vs. Iowa Utilities Board*, __ U. S. __ (1999). Accordingly, the interconnection agreement shall incorporate the provisions identified by Metro One above.

ARBITRATOR'S DECISION

1. The interconnection agreement between Metro One and U S WEST shall specify prices for access to directory assistance listings based on U S WEST cost studies. The prices shall be interim, subject to refund, pending a separate Commission investigation into the costs of U S WEST providing such

access to carriers.

2. The interconnection agreement between Metro One and U S WEST shall include designated provisions contained in the approved interconnection agreements executed by U S WEST with MCI Metro and GTE.

3. Metro One and U S WEST shall prepare and submit to the Commission an interconnection agreement consistent with the terms of this decision pursuant to the procedures set forth in OAR 860-016-0030(12).

4. As provided in OAR 860-016-0030(10), any party may file written comments within 10 days of the date this decision is served.

Dated at Salem, Oregon, this 4th of March, 1999.

_____

Michael Grant

Arbitrator

ORDER NO. 97-034

ENTERED JAN 24 1997

This is an electronic copy.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 8

In the Matter of the Petition of WESTERN WIRELESS CORPORATION for Arbitration of Interconnection Rates, Terms, and Conditions with GTE NORTHWEST INCORPORATED, Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996.	) COMMISSION) DECISION

DISPOSITION: ARBITRATOR'S DECISION ADOPTED AS AMPLIFIED

On September 6, 1996, Western Wireless Corporation, dba VoiceStream (WW), filed a petition with the Public Utility Commission of Oregon (Commission) to arbitrate a contract for network interconnection with GTE Northwest Incorporated (GTE). The petition was filed pursuant to 47 U.S.C. §§ 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Act). On October 1, 1996, GTE filed a response. An arbitration hearing was held on November 21 and 22, 1996, before Lowell Bergen, an Administrative Law Judge and Arbitrator for the Commission. The parties filed briefs thereafter. On December 30, 1996, the Arbitrator issued his decision. On January 9, 1997, GTE and WW filed comments in response to the Arbitrator's Decision.

Standards for Arbitration

This proceeding was conducted under 47 U.S.C. § 252(b). The standards for arbitration are set forth in 47 U.S.C. § 252(c):

> In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—
>
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Commission Approval

Section 252(e)(1) of the Act requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. Section 252(e)(2)(B) provides that the State commission may reject an agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section."

Section 252(e)(3) provides:

> Notwithstanding paragraph (2), but subject to section 252, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

Commission Conclusion

The Commission has reviewed the Arbitrator's decision and the comments under the standards set out above. We conclude that the Arbitrator's Decision comports with the requirements of the Act, the FCC rules where applicable, and relevant state law and regulations, and should be approved. We do, however, add to the discussion of one issue in the Arbitrator's Decision.

Comments on the Arbitrator's Decision

The Arbitrator's Decision, consistent with other arbitration decisions recently approved by the Commission, adopted the prices established in Docket No. UM 351 as the appropriate prices for the transport and termination of calls between GTE and WW. In its comments to the Arbitrator's Decision, GTE contends that the prices established in Docket No. UM 351 should not be used in this proceeding for three reasons: 1) the UM 351 rates are based on the costs of U S WEST (USWC), so they are proxy rates for GTE; 2) GTE has not acquiesced in the use of USWC rates in this proceeding; and 3) the use of UM 351 rates will not allow GTE to recover its joint and common costs.

In Order No. 96-283 (reopened UM 351), we adopted building block prices for regulated telecommunications companies based on USWC cost information "unless alternative estimates are developed using the adopted cost principles." We stated that other local exchange carriers had the option of using the USWC results or developing their own estimates. Our basis for adoption of the UM 351 rates and a discussion of GTE's participation in the proceedings that culminated in those rates are summarized in Order No. 96-283 pp. 8-10.

In this proceeding, the parties stipulated that GTE's total service long-run incremental costs for local switching are 0.3822 cents per minute. The local switching end-office rate we established in Docket No. UM 351, and adopted in the Arbitrator's Decision, is 0.5 cents per minute. The difference between 0.3822 cents per minute and 0.5 cents per minute allows GTE a 30 percent markup for its common and joint costs. GTE has not presented convincing evidence that it should receive more than that amount, certainly not the 1.2632 cents per minute it is proposing. For this reason as well as the reasons stated in the Arbitrator's Decision, we affirm the Arbitrator's use of UM 351 prices for

termination of local calls between GTE and WW.

ORDER

IT IS ORDERED that the Arbitrator's Decision in this case, attached to and made part of this order as Appendix A, is adopted as amplified in this order.

Made, entered, and effective _____.

_____ _____

Roger Hamilton **Ron Eachus**

Chairman Commissioner

_____

Joan H. Smith

Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

Appendix A

ISSUED: December 30, 1996

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 8

In the Matter of the Petition of WESTERN WIRELESS CORPORATION for Arbitration of Interconnection Rates, Terms, and Conditions of Interconnection with GTE NORTHWEST INCORPORATED, Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996.	) ARBITRATOR'S) DECISION))

BACKGROUND

On September 6, 1996, Western Wireless Corporation, dba VoiceStream (WW) filed a petition for arbitration with GTE Northwest, Incorporated (GTE). The petition was filed pursuant to §§ 251 and 252 of the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, as amended by the Telecommunications Act of 1996 (Act). On October 1, 1996, GTE filed its response to the petition.

In its response to the petition, GTE included a motion to dismiss the petition. WW responded to the motion on October 10, and on October 11 GTE withdrew its motion. On October 30, WW filed a motion to limit issues and to strike, and on November 12 I denied the motion. On October 3, GTE filed a motion for a protective order, and on October 11 I issued Order No. 96-272 protecting confidential information.

On October 1, I presided over a procedural conference. On October 21, the parties filed a joint position statement setting out the issues in dispute. On November 19, 1996, I presided over an arbitration hearing in this matter in Salem, Oregon. The following appearances were entered:

For WW:

Beth Kaye, David Wilson, and Gene DeJordy, Attorneys at Law

For GTE:

Andrew Shore and Timothy J. O'Connell, Attorneys at Law

This arbitration is being conducted under 47 U.S.C. Sec. 252(b) of the Act. Section 252(c) of the Act sets out a state Commission's task in arbitrating an interconnection agreement as follows:

In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

On August 8, 1996, the Federal Communications Commission (FCC) issued rules on interconnection pursuant to §§ 251 and 252 of the Act. (47 C.F.R. § 51.100 *et seq.* FCC Order 96-325). On September 27, 1996, the U. S. Court of Appeals, Eighth Circuit, temporarily stayed the effective date of the FCC's rules. On October 15, 1996, the Court stayed the operation of the portions of those rules that relate to pricing and the "pick and choose" provisions. *Iowa Utilities Board v. Federal Communications Commission et al., Case Nos. 96-3321 et seq. (8th Cir., October 15, 1996) (Order Granting Stay Pending Judicial Review).* In an order on reconsideration, dated November 1, 1996, the court lifted the stay on §§ 51.701, 51.703, and 51.717. I have read and considered the stayed FCC pricing rules, but do not consider them to be binding on this arbitration.

WW is classified as a Commercial Mobile Radio Service (CMRS) provider by the FCC. Through its subsidiaries, WW holds radio licenses from the FCC to provide wireless cellular radio telephone service (cellular), personal communications service (PCS), specialized mobile radio (SMR) service, and paging and radiotelephone service (PARS) to consumers in 19 western states. In Oregon, WW provides PCS.

GTE is a telecommunications carrier providing local and intraLATA telephone service in Oregon and other states. It meets the definition of a local exchange carrier (LEC) under the Act.

The parties are not requesting that the Commission arbitrate a complete interconnection agreement between them. Rather, they are requesting that the Commission resolve the disputed issues, and then the parties will amend the current agreement between them to comply with the decisions made by the Commission and the matters they resolved during negotiations.

ISSUES IN DISPUTE

1. What Rate Should GTE Charge WW for Terminating Local Calls Originating on WW's Network?

Telecommunications Act. Section 251(b)(5) imposes a duty on local exchange carriers (LECs) to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Section 252(d)(2) tells state commissions not to consider reciprocal compensation terms to be just and reasonable unless they provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. In addition, the costs must be based on a reasonable approximation of the additional costs of terminating the calls.

FCC Rules. Section 51.305(a)(5) requires incumbent local exchange carriers (ILECs) to provide interconnection of facilities and equipment that is just, reasonable, and nondiscriminatory.

Parties' Positions. WW argues that the Act requires prices to be designed to recover the *additional* costs of terminating calls. The word *additional* suggests that only incremental costs be recovered, not embedded or historical costs. WW requests that a local switching rate of $0.38228 per minute of usage be adopted. That rate is based on GTE's total service long run incremental cost (TSLRIC). WW and GTE stipulate that GTE's TSLRIC is $0.3822 per minute.

GTE takes the position that its tariffed interstate switched access rate (currently set at 1.2632 cents per minute) should apply to the local switching function. That rate has been established by the FCC, and covers GTE's direct costs, a contribution to joint and common costs, and a reasonable profit. It is GTE's wholesale rate offered to interexchange carriers (IXEs). GTE wants to have one rate it offers to all types of wholesale customers, whether they are IXEs or wireless carriers.

Resolution

The Act requires the local switching rate GTE charges WW to be a reasonable approximation of the additional costs of terminating local calls originating on WW's network. Additional costs are incremental costs resulting from adding new demand for service to an existing facility. Tariffed interstate access rates are not based on incremental or additional costs, but are based on embedded

costs. Rates based on embedded costs are inconsistent with the requirement that rates are to be based on additional costs. GTE's interstate access rate is not the appropriate rate to charge WW for switching local calls originating on WW's network, and must be rejected.

The question then arises as to what rate is appropriate. WW argues for a rate equal to GTE's TSLRIC, a rate GTE claims would constitute an unlawful taking in violation of the U. S. Constitution.

The rates adopted by the Commission in Order No. 96-283 (reopened UM 351) are the most reliable prices for transport and termination available to the Arbitrator and the Commission. Those prices were established through a formal, open investigation in which telecommunications industry groups and consumers participated. The Commission sought and received comments, testimony, briefs, and expert advice from the participants. The Commission thoroughly examined the positions of the parties and came to a reasoned resolution of the contested issues. The rates established in Order No. 96-283 were not developed for CMRS providers. However, the industry is moving toward technology-neutral, nondiscriminatory pricing regimes, and the rates established in Order No. 96-283 are appropriate for use in this proceeding.

The rates established in Order No. 96-283 are adopted in this arbitration. That order establishes the tandem switching rate at $0.003330 per minute, and the end office terminating switching rate at $0.005000 per minute. The Commission adopted revised costing standards in Docket No. UM 773. The rates adopted in this proceeding are subject to revised rate schedules approved by the Commission in compliance with the methodology adopted in UM 773.

2. What Rate Should WW Charge GTE for Terminating Local Calls Originating on GTE's Network?

Telecommunications Act. Section 251(b)(5) imposes a duty on local exchange carriers (LECs) to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Section 252(d)(2) tells state commissions not to consider reciprocal compensation terms to be just and reasonable unless they provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. In addition, the costs must be based on a reasonable approximation of the additional costs of terminating the calls.

FCC Rules. Section 51.711 provides that, in general, rates for transport and termination of local traffic shall be symmetrical. The goal is to have each party charge the same rate that it pays the other party. This rule has been stayed by the Eighth Circuit Court of Appeals.

Parties' Positions. WW argues that its transport and termination services are functionally equivalent to those of GTE. WW alleges that its own costs for termination exceed $0.004 per minute, far higher than the termination costs of GTE. However, out of a sense of fairness and balance, WW is willing to charge GTE the same compensation for terminating traffic as GTE charges WW.

GTE argues that the Act requires each carrier's compensation to be based on that company's costs, and points out that the FCC rule mandating symmetrical compensation has been stayed by the Eighth Circuit Court of Appeals. GTE contends that WW has failed to prove its own costs, arguing that WW's cost study is insufficiently detailed to provide meaningful information, is biased to produce high numbers, and includes network components not associated with the local switching function. GTE recommends that the Arbitrator either set WW's rate at $0.0 or direct WW to provide a

meaningful TSLRIC study, after which the parties would negotiate an appropriate termination rate.

Resolution.

WW's evidence in support of the claimed $0.04 per minute cost of termination is not persuasive. The supporting study is cursory and lacks sufficient information on which to base compensation rates. GTE's suggestion to not allow WW to charge anything for terminating calls originating on GTE's network is also unacceptable. WW incurs costs in terminating those calls and is entitled to reasonable compensation to recover those costs.

During this time of transition without solid cost data, reciprocal and symmetrical compensation is fair and reasonable. GTE should pay WW the same rates for WW's termination of traffic originating on GTE's network as GTE charges WW. The rates are those established in reopened Docket No. UM 351, Order No. 96-283.

3. Date for Reciprocal Compensation.

Telecommunications Act. Section 251(b)(5) imposes a duty on LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The Act does not specify when reciprocal compensation arrangements must begin. Section 252(b)(4)(A) limits a state commission's consideration in an arbitration proceeding to issues raised in the petition and response to the petition.

FCC Rules. Section 51.717(a) provides that a CMRS provider that has an existing agreement with an ILEC which provides for non-reciprocal compensation is entitled to re-negotiate the agreement without penalties. Section 51.717(b) provides that from the date a CMRS provider makes a request to re-negotiate until a new agreement has been approved by a state commission, the CMRS provider is entitled to assess the ILEC the same rates as the ILEC has been charging the CMRS provider pursuant to the existing agreement.

Parties' Positions. WW contends that GTE's obligation to pay WW for calls terminated on WW's network originated when it requested negotiation for an interconnection agreement with GTE, which was on March 29, 1996. However, WW did not begin providing service in Oregon until July 1, 1996, so it requests that GTE be ordered to compensate WW for calls WW has been terminating for GTE since July 1 at the same rate GTE has been charging WW. That interim rate would be replaced by the new rate established in this proceeding. WW concedes that it did not allege an effective date for reciprocal compensation in its petition for arbitration, but requests that the issue be resolved in this arbitration because the Eighth Circuit's lifting of the partial stay made Section 51.717 of the FCC's rules effective.

GTE points out that neither the petition for arbitration nor the response to the petition raised the issue of compensation for the time period from July 1 until the new rates are established in this proceeding. GTE argues that the issue was not properly raised and should not be considered. GTE contends that WW never asked to re-negotiate the existing contract between the parties under Section 51.717 of the FCC's rules, so the issue never was part of the negotiations between the parties. GTE argues that the entitlement granted to WW by Section 51.717 of the FCC's rules "neither expressly nor impliedly provides that from the date that a CMRS properly asserts it *(sic)* entitlement, it has a right to go backwards in time, to any date, and collect charges it would have been entitled to if it had asserted its entitlement earlier." (Emphasis in original). GTE also argues that to now order the payment of

compensation as of July 1 would constitute impermissible retroactive ratemaking.

Resolution.

This issue was not raised in the petition for arbitration or in the answer to the petition. Therefore, it is not an issue that the Arbitrator and Commission can consider. The Act specifically limits the consideration of issues to those raised in the petition and response to the petition.

IT IS ORDERED that:

> The rates for interconnection and transport and termination of traffic to be paid after the Commission issues its final decision in this proceeding shall be the rates established by the Commission in Order No. 96-283 in Docket No. UM 351, subject to the establishment of revised rates by the Commission pursuant to the cost methodology established in Order No. 96-284 in Docket No. UM 773;
>
> This order is effective when signed by the Commission.

Dated at Salem, Oregon, this 30th day of December, 1996.

_____

Lowell Bergen

Arbitrator

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.	DOCKET NO. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.	DOCKET NO. 990321-TP ORDER NO. PSC-00-0941-FOF-TP ISSUED: May 11, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

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On behalf of the Commission Staff.

FINAL ORDER ON COLLOCATION GUIDELINES

TABLE OF CONTENTS

LIST OF ACRONYMS

ALEC	Alternative Local Exchange Carrier
AT&T	AT&T Communications of the Southern States, Inc.
CCA	Collocation Conversion Application
CDF	Conventional Distribution Frame
CEV	Controlled Environmental Vault
CFR	Code of Federal Regulations
CLEC	Competitive Local Exchange Carrier
CO	Central Office
DS*n*	Digital Signal n = level number (0-4)
DSX	Digital Signal Cross-Connect
DSL	Digital Subscriber Line
FCC	Federal Communications Commission
FCCA	Florida Competitive Carriers Association
FCTA	Florida Cable Telecommunications Association
GTEFL	GTE Florida, Inc.
HVAC	Heating Ventilation and Air Conditioning
ICB	Individual Case Basis
ILEC	Incumbent Local Exchange Carrier

MCI	MCI WorldCom, Inc.
MDF	Main Distribution Frame
NEBs	Network Equipment and Building Specifications
NECA	National Exchange Carriers Association
NRC	Non-Recurring Charge
POT	Point of Termination
SWBT	Southwestern Bell Telephone Company
UNE	Unbundled Network Element

I. CASE BACKGROUND

On December 10, 1998, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers Association, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCImetro Access Transmission Services, LLC (MCImetro), Worldcom Technologies, Inc. (Worldcom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), and Intermedia Communications Inc. (Intermedia) (collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory.

On December 30, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion to Dismiss the Competitive Carriers' Petition. On January 11, 1999, the Competitive Carriers filed their Response in Opposition to BellSouth's Motion to Dismiss.

At the March 30, 1999, Agenda Conference, we denied BellSouth's Motion to Dismiss. See Order No. PSC-99-0769-FOF-TP, issued April 21, 1999. Subsequently, by Order No. PSC-99-1078-PCO-TP, issued May 26, 1999, we indicated, among other things, that we would conduct a Section 120.57(1), Florida Statutes, formal administrative hearing to address collocation and access to loop issues as soon as possible following the UNE pricing and OSS operational proceedings.

On March 12, 1999, ACI Corp. d/b/a Accelerated Connections Inc., now known as Rhythms Links Inc., (Rhythms) filed a Petition for Generic Investigation into Terms and Conditions of Physical Collocation. On April 6, 1999, GTEFL and BellSouth filed responses to ACI's Petition. On April 7, 1999, Sprint filed its response to the Petition, along with a Motion to Accept Late-Filed Answer.

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, we accepted Sprint's late-filed answer, consolidated Dockets Nos. 990321-TP and 981834-TP for purposes of conducting a generic proceeding on collocation issues, and adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an ILEC believes there is no space for physical collocation. The guidelines addressed: A. initial response times to requests for collocation space; B. application fees; C. central office tours; D. petitions for waiver from the collocation requirements; E. post-tour reports; F. disposition of

the petitions for waiver; G. extensions of time; and H. collocation provisioning time frames.

On September 28, 1999, BellSouth filed Protest/Request for Clarification of Proposed Agency Action. That same day, Rhythms filed a Motion to Conform Order to Commission Decision or, in the Alternative, Petition on Proposed Agency Action. Our staff conducted a conference call on October 6, 1999, with all of the parties to discuss the motions filed by BellSouth and Rhythms, and to formulate additional issues for the generic proceeding to address the protested portions of Order No. PSC-99-1744-PAA-TP. As a result of that conference call, a number of stipulations were reached and our staff also was able to clarify which portions of our Order were not protested. By Order No. PSC-99-2393-FOF-TP, issued December 7, 1999, we approved the proposed stipulations and identified the portions of our Order that could go into effect by operation of law.

We note that the issues addressed herein go beyond the issues addressed in the approved collocation guidelines. An administrative hearing was conducted regarding these issues on January 12-13, 2000. Our decision is set forth below.

II. ILEC RESPONSE TO AN APPLICATION FOR COLLOCATION

In this section, we address the issue of the appropriate response interval for an ILEC following the receipt of a complete and correct application for collocation, and what information should be included in the response.

Covad witness Moscaritolo asserts that "[A]n ILEC should be required to respond to a complete and correct application within ten (10) calendar days of its receipt of the application." Witness Moscaritolo contends that this initial response should contain all necessary information for an ALEC to place a firm order for collocation, including a price quote for the collocation space. In support of his position, witness Moscaritolo refers to Paragraph 55 of the FCC's Advanced Services Order, issued March 31, 1999, FCC Order 99-48, which reads in pertinent part, "[W]e view ten days as a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied."

MGC witness Levy agrees that ILECs should respond to a complete and correct application for collocation within 10 business

days. Witness Levy further explains that this response should include space availability and price quotes for the type of collocation requested. Witness Levy argues that an ILEC should always provide enough information in its response to allow an ALEC to submit a firm order and to inform the ALEC of the applicable charges. Witness Levy also suggests that a more detailed breakdown of prices should be provided within an additional 10 business days, upon request by the ALEC.

Intermedia and Supra both support a 2-tier response interval. Intermedia witness Jackson states that the initial response interval should be 10 days, as prescribed by the FCC, which is the interval in which an ILEC must determine whether or not space is available in a particular central office. Witness Jackson also states that BellSouth's application response intervals of 30 business days for physical and 20 business days for virtual collocation are reasonable for providing the necessary detailed information, including but not limited to, cost estimates and target dates.

Similarly, Supra witness Nilson believes we should require an initial response advising whether space is available or not within 10 calendar days of an application. Witness Nilson explains that "[I]f the ten-day frame for a response is adopted by the Commission, all additional information necessary to submit a firm order should be provided by the ILEC within twenty calendar days of the ALEC's application."

AT&T witness Mills also contends that we should require ILECs to respond regarding space availability within 10 calendar days, followed by a complete response sufficient to enable the ALEC to place a firm order for collocation within 15 calendar days of a complete and correct application. Witness Mills explains that AT&T needs the following information in the ILEC's complete response: an architectural floor plan; exact location of collocation space; location of BellSouth network demarcation main distributing frame; relay rack information; joint implementation meeting dates; restatement of the central office address; date of application response sent to AT&T; estimated space ready due date; and the proposed point of demarcation.

Other parties to this proceeding suggest a later initial response time. MCI witness Martinez explains:

> Under the Advance Services Order, an ILEC is required to respond to an application for collocation within 10 days. MCI WorldCom is willing to accept the Commission's ruling in the PAA Order in this docket that the ILEC can provide the initial response within 15 calendar days from receipt of a complete and correct application, provided that the initial response includes the information necessary for the ALEC to place a firm order for collocation.

Witness Martinez further explains that the initial response should indicate whether space is available or not. If space is available, the witness contends that the initial 15-day response should include the following information: price quote; dimensions; obstructions; diversity; power considerations; hazards; engineering information; and due dates. Witness Martinez adds that "if furnishing the Engineering Information and Due Date information would delay the initial response, MCI WorldCom could agree to defer this information for a short time."

Rhythms witness Williams agrees that the ILECs should be required to respond to a complete and correct application within 15 calendar days. Witness Williams contends that this response should include all information the ILEC will require from an ALEC when submitting a firm order for collocation. Witness Williams explains that this response should include: amount of space available; estimated space preparation quotes; estimated provisioning interval; power requirements; and any other information required by the ILECs to be included in the firm order.

As a means of simplifying the application process and expediting responses to applications for collocation, several parties also suggest some form of standardized pricing for collocation. MGC witness Levy describes the benefits of tariffed collocation prices over Individual Case Basis (ICB) pricing and states that "[I]n states that have established pricing for collocation, the collocator knows before submitting the application exactly how much the space preparation will cost before the application is submitted." When the rates are established, the witness explains that the only information necessary for the response is whether space is available. Witness Levy further contends that the best way to shorten response intervals is by adopting a tariffed approach to pricing as opposed to ICB pricing.

FCCA witness Gillan agrees that "[A] standardized offering, known in advance, should simplify and accelerate these important intervals." Witness Gillan further argues:

> The reason that other processes and services have been standardized is that they become more efficient to offer in that manner. There is no reason that similar efficiencies are not possible here once collocation is made a standard product of the ILEC instead of a specialized arrangement.

Intermedia witness Jackson agrees that tariffed rates would simplify matters for the ILEC, as well as the ALEC. Supra witness Nilson also advocates detailed tariffs with prices that can be challenged before this Commission.

Witnesses for Covad and Rhythms offer an alternative form of standardization. Covad witness Moscaritolo states that flat-rate pricing is a must. He maintains that ILECs must not be allowed to take 30 days or more to provide an estimate that may be subject to true-up at a later date. Witness Moscaritolo advocates a procedure whereby parties would agree upon a flat rate to be charged initially for standard cageless collocation arrangements in certain increments. The witness further explains that when an ALEC wants collocation space in a central office, it would submit its application along with 50% of the flat-rate price. The ILEC would then begin provisioning immediately. During the provisioning interval the ILEC would develop a cost estimate and, upon delivery of the space, the prices would be subject to true-up. Covad witness Moscaritolo contends that "the flat-rate procedure eliminates the unnecessary delay associated with BellSouth's application interval."

Rhythms witness Williams agrees with Covad's proposed flat-rate procedure, stating that "Covad has proposed a viable and feasible alternative, which allows ILECs to completely respond to the application within 15 days." Witness Williams further states, "I recommend that the Commission fully adopt Covad's proposal of an estimated flat-rate price quote, subject to true-up."

Two ILECs, GTEFL and Sprint, also support establishing tariffs for collocation prices. GTEFL witness Ries believes that tariffing make the collocation process simpler, faster and better defined. Witness Ries further states that GTE intends to file a tariff reflecting an averaged flat rate for costs associated with site

modification, HVAC and power modification, and security and electrical requirements. Witness Ries asserts that this new tariff will enable GTE to respond to an ALEC's application within 15 calendar days with space availability and a price quote. Witness Ries states that ". . .[T]his eliminates the additional 15 days that was formerly necessary to finalize the price quote." Witness Ries adds that GTE's ability to provide space information and a price quote will allow ALECs to submit a firm order quickly.

Sprint also supports a tariff approach to pricing, but asserts that an ILEC should provide two responses to an application for collocation. Sprint witness Closz contends that the first response should inform the applicant whether space is available or not, while the second should provide a price quote and technical information. She explains that an ILEC should initially respond to an application for collocation within 10 calendar days with information regarding space availability. Witness Closz states that this response interval is consistent with the FCC's Advanced Services Order, FCC Order 99-48.

In addition, witness Closz presents two different intervals for the second response, depending on whether prices are tariffed or not. Ms. Closz explains that where collocation prices are tariffed or covered by the ALEC's interconnection agreement, the ILEC should provide price quotes within 15 calendar days. If collocation prices are quoted on an ICB basis, the ILEC should provide price quotes within 30 calendar days from receipt of a complete and correct collocation application.

BellSouth witness Hendrix states that BellSouth will inform an ALEC within 15 calendar days of receipt of an application whether its application for collocation is accepted or denied as a result of space availability. Witness Hendrix also states that BellSouth will provide a complete application response within 30 business days of the receipt of a completed application for physical collocation. In addition, witness Hendrix states that for virtual collocation requests, BellSouth's policy has been to provide an application response within 20 business days. He explains that "[T]he Application Response will include estimates of the Space Preparation Fees, the Cable Installation Fee (if applicable), and the estimated date the space will be available." Witness Hendrix contends that this information is sufficient for the ALEC to complete a firm order.

BellSouth witness Hendrix, responding to the position of other parties, asserts that the FCC did not establish a rule requiring ILECs to respond to applications within 10 days. Referring to Paragraph 55 of FCC Order 99-48, released March 31, 1999, in CC Docket No. 98-147 (FCC Order 99-48, or Advanced Services Order), witness Hendrix argues that "this was not stated as a requirement, but as a statement of what is a reasonable amount of time to accept or deny an application." Witness Hendrix further asserts:

> BellSouth will inform an ALEC within fifteen (15) calendar days of an application whether its application for collocation in Florida is accepted or denied as a result of space availability.

The witness notes that this is in compliance with this Commission's recent order which states in part, "The ILEC shall respond to a complete and correct application for collocation within 15 calendar days." Order No. PSC-99-1744-PAA-TP, Section IIA.

The witness also explains that BellSouth is not in favor of tariffing collocation prices, but, instead, supports the development of standard rates for all physical collocation elements to be included in a standard collocation agreement. Witness Hendrix argues that BellSouth is required by Section 252 of the Telecommunications Act of 1996 (the Act) to negotiate collocation agreements. He maintains that if BellSouth were to file a tariff, the company would likely still negotiate agreements for the majority of ALEC requests. Witness Hendrix believes that the best approach is to develop standard rates for all physical collocation elements within a standard collocation agreement. Witness Hendrix states, however, that BellSouth would file a tariff if it were required to, but the witness believes it would be a waste of time. In addition, witness Hendrix asserts that BellSouth is moving toward standardized rates to be included in a standard agreement for collocation, which the witness believes will produce the same efficiencies sought by those favoring tariffs.

BellSouth and GTEFL have also suggested response intervals for situations in which multiple applications are submitted by a single ALEC within a certain time frame. BellSouth witness Hendrix explains that when multiple applications are received within a 15 business day window, BellSouth responds no later than the following: within 20 business days for 1-5 applications; within 26 business days for 6-10 applications; within 32 business days for 10-15 applications. Response intervals for more than 15

applications must be negotiated. GTEFL witness Ries states that "when the ALEC submits 10 or more applications within a 10-day period the 15-day response period will increase by 10 days for every additional 10 applications or fraction thereof."

ANALYSIS AND DETERMINATION

In support of their suggested intervals, parties have referenced Paragraph 55 of the FCC's Advanced Services Order, which reads in part:

> We view ten days as a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied. Even with a timely response to their applications, however, new entrants cannot compete effectively unless they have timely access to provisioned collocation space. We urge the states to ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete.

FCC Order 99-48 at Paragraph 55.

We note that several ALECs argue that this paragraph requires ILECs to respond to an application within 10 days. We do not agree. Instead, we agree with BellSouth witness Hendrix's assertion that it appears the FCC intended this statement to serve as a guideline as to what constitutes a reasonable amount of time for an ILEC to accept or deny an application for collocation. The FCC did not define this as a requirement.

The FCC does, however, urge the states to ensure that collocation space is available in a timely and pro-competitive manner. It appears that the first step in this process is to establish reasonable intervals for application responses, which will enable the requesting party to place a firm order and allow the provisioning process to begin in a timely manner.

Upon consideration, we are persuaded by the testimony of MGC witness Levy that the initial response to an application for collocation should contain sufficient information for the ALEC to place a firm order. We are also persuaded by Supra witness Nilson's suggestion that price quotes must be included in the response because they are essential to placing a firm order.

We have also considered the evidence regarding the intervals in which such information should be provided to the ALEC. While BellSouth argues that it will only provide acceptance or denial due to space availability within the 15 calendar day interval, two other ILECs have provided testimony in this proceeding that supports that price quotes can also be provided within an interval of 15 calendar days. Sprint witness Closz states that "[T]o the extent that collocation price elements are tariffed or covered by the ALEC's interconnection agreement, the ILEC should provide price quotes to requesting collocators within fifteen (15) calendar days of receipt of a complete and correct collocation application." GTEFL witness Ries agrees. Upon consideration, we find that 15 calendar days is an appropriate interval to provide the information needed to place a firm order, i.e., information regarding space availability and a price quote.

While the intervals offered by BellSouth and GTEFL are not unreasonable, we believe a single set of intervals would best present uniform standards for ILECs in responding to multiple applications. Therefore, based on the evidence presented, we find that intervals similar to those proposed by GTEFL for responding to multiple applications would be more consistent with the interval of 15 calendar days we find appropriate for individual applications. Under GTEFL's proposal as explained by witness Ries, the 15-day response period will increase by 10 days for every additional 10 applications or fraction thereof when the ALEC submits 10 or more applications within a 10-day period. These intervals appear to be appropriate and reasonable; therefore, they are hereby approved.

In conclusion, we hereby require ILECs to respond to a complete and correct application for collocation within 15 calendar days. This response shall provide sufficient information to enable an ALEC to place a firm order, including information on space availability and price quotes. When an ALEC submits ten or more applications within ten calendar days, the initial 15-day response period will increase by 10 days for every additional 10 applications or fraction thereof when the ALEC submits 10 or more applications within a 10-day period.

III. APPLICABILITY OF THE TERM "PREMISES"

Another issue we have been asked to consider is to determine what areas are included in the term "premises," as set forth in Section 251(c)(6) of the Act regarding physical collocation. A broad definition of the term allows competing carriers physical

collocation at various locations under the ILEC's control. We note that although the term "premises" was not defined in the FCC's Advanced Services Order, the FCC's Order did enable ALECs to collocate in certain adjacent ILEC facilities when space is legitimately exhausted inside the ILEC's network facility. Thus, the FCC's recent expansion of the areas in which an ALEC may collocate has raised this issue of the applicability of the term "premises" to various areas. To the extent that we believe that certain areas are not included within the term "premises," we have addressed the related issue of "off-premises" physical collocation in the subsequent section of this Order.

BellSouth witness Milner argues that the term "premises" is clearly defined by the FCC, citing the FCC Local Competition Order, FCC 96-325, issued in CC Docket No 96-98, which states:

> . . . . We [FCC] therefore interpret the term "premises" broadly to include LEC central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities. We [FCC] also treat as incumbent LEC premises any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures.

FCC Order at Paragraph 573.

Witness Milner believes that if the FCC intended to broaden the definition of "premises," the FCC could have redefined the term in its most recent Order. He emphasizes, however, that the FCC did not expand the definition.

GTEFL witness Reis agrees with the position of BellSouth witness Milner and further clarifies the locations that GTEFL considers "premises." He states that GTEFL believes the term refers to any GTE location identified in the NECA (National Exchange Carrier Association) #4 tariff, which lists GTE sites nationwide.

Sprint witness Hunsucker counters, however, that GTEFL's NECA #4 tariff does not incorporate the complete definition of "premises." He states that the FCC's definition included "vaults

containing loop concentrators or similar structures." Further, he states:

> Typically, ILECs do not load these locations in NECA #4. Thus, applying GTE's definition would preclude collocation at these points in the ILEC network which is inconsistent with the FCC's definition.

Further, Sprint witness Hunsucker asserts that paragraph 44 of the First Advanced Services Order, FCC 99-48, broadens the definition of "premises." He believes the FCC's introduction of adjacent collocation redefines "premises" to include structures adjacent to a central office or wire center, if owned or leased by the ILEC. Witness Hunsucker states that ILECs are also required to allow ALECs to construct or obtain access through adjacent structures on an ILEC's property. He explains:

> . . . Upon legitimate exhaust, then the adjacent collocation could be the building on contiguous property, and I don't think we look at separation by a street or an alley as necessarily breaking that contiguous property.

On this point, BellSouth witness Milner agrees that upon legitimate space exhaustion, ALECs are allowed to construct or procure adjacent structures. However, witness Milner notes that in no case should ILECs be required to permit collocators' controlled environmental vaults (CEVs) or similar structures on any ILEC property that does not house network facilities. Witness Milner further emphasizes that adjacent structures are not "premises." He argues:

> The FCC's definition of adjacent CEVs and similar structures is inconsistent with its own definition of "premises" and the Act's requirement for collocation within BellSouth's premises. This is because the resulting structure, whether constructed by the collocator or otherwise procured, would not be owned by BellSouth and thus would not fit the definition of being any one of the types of structures named in the FCC's definition.

Supra witness Nilson counters that while the FCC's own definition might be considered inconsistent with its requirement to allow collocation in adjacent CEVs, interpreting the FCC's definition of "premises" narrowly is inconsistent with goal of the Act and the FCC's Order, which is to promote competition.

MCI witness Martinez contends that Paragraphs 39 and 45 of the Advanced Services Order further broaden the definition of "premises" as it applies to collocation. Witness Martinez cites an excerpt from the Texas Commission's findings contained in the Supplemental Collocation Tariffs Matrix, Project No. 16251, regarding the definition of "premises":

> The Commission also finds that, to the extent space in an Eligible Structure is "legitimately exhausted" and the SWBT property also has within close proximity an "administrative office" where network facilities could be housed, that space should be looked at as a possible adjacent on-site collocation.

Further, witness Martinez believes that the broad nature of the FCC's definition gives state commissions the latitude to include other collocation concepts while maintaining consistency with the FCC's Advanced Services Order. He also cites the Advanced Service Order, FCC 99-48 at Paragraph 8, which states that a collocation method used by one ILEC or mandated by a state commission is presumptively technically feasible for any other incumbent LEC.

AT&T witness Mills agrees and asserts the FCC's Expanded Interconnection collocation rules do not limit collocation to an ILEC's central office, but expand it to the premises of the ILEC. He further explains that "premises" is defined in the dictionary as "A piece of real estate; house or building and its land." Witness Mills clarifies that the use of the Webster definition in his interpretation of "premises" is to illustrate the FCC's intent to broadly define "premises" and to allow Commissions to give more concise interpretations in matters where they have specific rules and orders.

ANALYSIS AND DETERMINATION

First, we state that we agree with Sprint that the NECA #4 tariff relied upon by GTEFL does not include all the areas that should be included in the definition of "premises." We do not agree with BellSouth witness Milner's assertion that the FCC's definition of "premises," and the Telecommunication Act's requirement for collocation at the ILEC's "premises," are technically in conflict with adjacent collocation. We note that the FCC's First Advanced Services Order requirement for adjacent collocation did not specify whether the adjacent structure on an ILEC's property would be considered ILEC "premises." The Order does, however, state, ". . . The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscriminatory requirements as traditional collocation." FCC Order 99-48 at Paragraph 44.

We also note that while we have the ability to interpret more precisely FCC rules as they apply in Florida, we do not have the authority to extend or broaden FCC rules and orders, or to make a contradictory interpretation.

As for the expanded definition of "premises" contained in the Texas Matrix, based on our review of the Matrix and the testimony presented addressing it, we do not believe the definition of adjacent on-site and off-site collocation used in that Matrix was intended, or should, expand the definition of the term "premises" as it applies to physical collocation. To the extent that the term "premises" is used within the definition of adjacent on-site and off-site collocation included in that Matrix, we believe it is used only to clarify the distinction between adjacent on-site and off-site collocation.

In considering the arguments of the parties, it appears to us that may of the ALECs seek to expand the definition of the term "premises" much too broadly out of apparent concern that if certain areas are not identified as "premises," ALECs would be precluded from obtaining physical collocation in those areas. Evidence was also presented on the issue of how adjacent facilities, which house administrative personnel, should now be considered "premises" because of the FCC's adoption of adjacent collocation as an accepted method of collocation. We are not, however, persuaded that the FCC's authorization of adjacent collocation expanded the definition of "premises" to include structures that do not house network facilities, although it did expand the ILEC's obligation to

provide physical collocation. Specifically, it expands that obligation such that, ". . . The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscriminatory requirements as traditional collocation." FCC Order 99-48 at Paragraph 44. We agree with BellSouth witness Milner that an adjacent structure, whether procured from a third party or constructed on an ILEC's property by the collocator, would not be considered the ILEC's "premises," because the ILEC would not own, lease, or control the structure. It appears to us that the FCC intentionally limited the definition of "premises" to "structures that house network facilities."

Upon consideration, we find that the term "premises" should only apply to ILEC-owned or leased central offices, serving wire centers, buildings or similar structures that house network facilities, including but not limited to ILEC network facilities on public rights-of-way or in controlled environmental vaults (CEVs). When space at the existing ILEC "premises" legitimately exhausts, ILECs shall be required to permit collocation on an ILEC's property in adjacent buildings, controlled environmental vaults, or similar structures where technically feasible. However, adjacent buildings or similar structures are not a part of the ILEC's "premises."

IV. ILEC OBLIGATIONS REGARDING "OFF-PREMISES" COLLOCATION

As explained in the previous section, the FCC Advanced Services Order, expanded the ALECs' ability to collocate in controlled environmental vaults or adjacent structures when space is legitimately exhausted inside the ILEC's central office. In this section, we consider the extent to which an ILEC is obligated to interconnect with an ALEC's equipment located "off-premises," and what type of entrance cabling should be used.

Sprint witness Hunsucker believes "off-premises" collocation should not be included in this issue. He believes that ALEC equipment located in an area that is not owned or leased by the ILEC does not meet the definition of collocation at all. Witness Hunsucker does, however, believe the term "premises" should be defined more broadly than discussed above. He states that upon legitimate exhaust, adjacent collocation could be in a building or other contiguous property. He adds that he does not believe that Sprint would consider separation by a street or an alley a problem. Sprint witness Hunsucker believes that under his definition of "premises," ILECs are obligated to interconnect with ALEC's

equipment, but if the equipment is located "off-premises," it does not constitute collocation, but rather interconnection. He defines interconnection as the physical linking of networks between the ILEC's facilities and the ALEC's facilities for the mutual exchange of traffic. The evidence shows that all the carriers in this proceeding agree with witness Hunsucker that interconnection is required under the Act.

Sprint witness Hunsucker believes an ILEC does not have any obligation to provide physical collocation services for an ALEC's equipment located "off-site" since the ILEC would not own or control the site. Moreover, he believes ILECs are only required to interconnect with ALECs located at structures that are not on an ILEC's property.

BellSouth witness Milner asserts:

> I believe "off-premises" physical collocation is a reference to space an ALEC may rent or own that is in proximity to a BellSouth central office. The ALEC's equipment in such a situation would be interconnected to BellSouth's network in the same ways as if the ALEC's equipment were housed within the ALEC's central office.

Intermedia witness Jackson responds, however, that ILECs are not only required to interconnect with ALECs located "off-premises," but they are obligated to provide physical collocation services. He states:

> As a result of the FCC's collocation Order, it is clearly the obligation of the ILEC to provide collocation. The FCC adopted rule 51.323(k)(3) requiring the ILEC to provide "off-premises" or "adjacent collocation" where space is legitimately exhausted in a particular ILEC central office and where technically feasible.

BellSouth witness Milner argues that Intermedia witness Jackson implies that "adjacent collocation" and "off-premises collocation" are synonymous terms. He disagrees, stating:

> BellSouth provides "adjacent collocation" by allowing collocators to construct or otherwise procure CEVs and similar structures on BellSouth's property in cases where space is legitimately exhausted. I believe "off-premises" physical collocation is a reference to a space a collocator may rent or own in close proximity to a BellSouth central office.

MCI witness Martinez contends that if space for physical collocation is legitimately exhausted, we should follow the lead of the Texas Commission and require the ILEC to offer both adjacent on-site collocation and adjacent off-site collocation.

As for the type of entrance cabling that should be used in "adjacent collocation," little evidence was presented addressing this aspect of the issue.

Rhythms witness Williams argues that:

> We are a DSL provider, and as such we typically cannot provide service without contiguous copper connection from our equipment, called a DSLAM, to our customers' premises. If we cannot collocate our equipment and get access to unbundled copper loops, we are shut out of providing service.

BellSouth witness Milner counters that there is fiber optic equipment that would accommodate DSL over fiber. He believes this provides ALECs with a viable alternative to copper connectivity. Witness Milner asserts that BellSouth provides copper connectivity to ALECs collocating on BellSouth's property. He does not, however, believe BellSouth has an obligation to provide that form of interconnection to an ALEC located off BellSouth's property, citing Paragraph 69 of the FCC's Second Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities in CC Docket 91-141:

> LECs are not required to provide expanded interconnection for switched transport for non-fiber optic cable facilities (e.g., coaxial cable). In the Special Access Order, we[FCC] concluded that given the potential adverse effects of interconnection on the

> availability of conduit or riser space, interconnection should be permitted only upon Common Carrier Bureau approval of a showing that such interconnection would serve the public interest in a particular case. We adopt this approach for switched transport expanded interconnection.

He also argues that accommodating ALECs' requests to use BellSouth entrance facilities to bring new copper cables into BellSouth central offices would accelerate the exhaust of entrance facilities at its central offices. He further emphasizes that, "The trend in the telecommunications industry is for cables and equipment to be reduced in size, not increased in size." [emphasis in original]

AT&T witness Mills believes that restricting entrance cabling to fiber places unreasonable requirements on the ALEC. He believes we should require ILECs to permit interconnection of copper or coaxial cable.

Rhythms witness Williams argues that although copper in conduit is larger than fiber, it will not choke off entrance facilities. He states that prior to leasing a third party structure, Rhythms inquires about conduit entrance space availability.

ANALYSIS AND DETERMINATION

Our definition of the term "premises" in the previous section of this Order does not include ILEC-owned or leased property that is contiguous to what we consider the ILEC's "premises." As previously discussed, according to the FCC Advanced Services Order, ILECs are, however, required to permit collocation in adjacent buildings, controlled environmental vaults, or similar structures where technically feasible when space at the existing ILEC "premises" legitimately exhausts. Thus, applying both our definition of "premises" and the FCC's additional requirements under the FCC Advanced Services Order, we consider the terms "off-premises", "adjacent," or "on-site" collocation to be interchangeable.

As for references made to the Texas Commission's use of the term "adjacent off-site collocation" as a type of collocation arrangement, it appears that this incorporates ALEC-owned or leased

structures in proximity to an ILEC's central office or eligible structure when space legitimately exhausts for an "on-site collocation" arrangement. MCI witness Martinez notes that proximity generally refers to the area within one city block of a central office. The Texas Commission's definition of "off-site collocation," appears to include the requirement of the ILEC to perform cabling from the ILEC's premises to the ALEC's facilities for tariff purposes. ILECs are apparently not, however, required to provide power or traditional physical collocation services.

Upon consideration, we agree with Sprint witness Hunsucker's assertion that "adjacent off-site collocation," as defined by the Texas Commission, meets the FCC's definition of interconnection, and not collocation. We are persuaded by the evidence that ILECs shall only obligated to interconnect with an ALEC's facility located beyond the contiguous property of an ILEC's "premises" for the purposes of transmission and mutual exchange of traffic. Property separated by an alley or public passage way will still be considered contiguous property.

In addition, we will require that when space legitimately exhausts within an ILEC's premises, ILECs shall be obligated to provide physical collocation services to an ALEC who collocates in a CEV or adjacent structure located on the ILEC's property to the extent technically feasible, based on the FCC's Advanced Services Order.

As for the provision of DSL over fiber, the evidence supports that this is technically feasible, and that there is equipment available which accommodates DSL over fiber. An ALEC would, however, be required to obtain additional equipment to utilize this technology. Requiring an ALEC to purchase such equipment could significantly increase the ALEC's collocation costs. Therefore, we believe that requiring fiber optic entrance facilities could be a competitive obstacle for certain ALECs requesting collocation facilities and are persuaded that ALECs shall be allowed to use copper entrance cabling.

We have considered the fact that entrance facilities have a certain capacity per central office and that allowing copper cabling could accelerate the entrance facility exhaust interval. Therefore, ILECs shall be allowed to require an ALEC to use fiber entrance cabling after providing the ALEC with an opportunity to review evidence that demonstrates entrance capacity is near exhaustion at a particular central office. The evidence of record

is insufficient to determine what percentage of entrance facility should be in use before requiring fiber optic cabling; however, factors for consideration should include, but not be limited to, subscriber growth, "off-site collocation" growth and cabling request, and cabling requirements of the ILEC.

V. CONVERSION OF VIRTUAL TO PHYSICAL COLLOCATION

In this section, we address the terms and conditions that should apply for converting a virtual collocation arrangement to a physical collocation arrangement. While this issue, on its face, appears to be very broad, there are only a few items that the parties address. The disputed items are what charges should apply when an ALEC converts from virtual to physical collocation, and whether an ALEC's equipment must be relocated during the process.

In a physical collocation arrangement, the collocating carrier must submit a physical collocation application to the ILEC and pay an application fee so that the ILEC can perform the engineering and administrative assessments necessary to evaluate the application. These activities may include, but are not limited to, an evaluation of engineering drawings, HVAC, power, feeder and distribution, grounding, cable racking, and engineering and billing record updates. In a physical collocation arrangement, the collocating carrier has direct access to its equipment at all times. BellSouth witness Hendrix states that after an application has been filed, the ILEC incurs costs; therefore, an application fee is required.

In a virtual collocation arrangement, the collocating carrier must submit a virtual collocation application to the ILEC and pay an application fee for certain engineering and administrative activities that the ILEC performs. The competitor designates the equipment to be placed at the ILEC's premises. The competing provider, however, does not have physical access to the incumbent's premises, i.e., access is restricted to limited inspection visits. Instead, the equipment is under the physical control of the ILEC. In addition, the ILEC is responsible for installing, maintaining, and repairing the competing provider's equipment. FCC Order 99-48 at Paragraph 19.

Once the ALEC has established a collocation arrangement, physical or virtual, at a central office, the ALEC may decide to remove or upgrade the current equipment. Such changes to the

existing collocation configuration are considered to be a "conversion" or "rearrangement."

Sprint witness Closz states that the ALEC should submit a collocation application when the ALEC wants to convert from virtual to caged or cageless physical collocation based on the ILEC's standard provisioning terms and conditions, because in either case space and engineering work will be required. Although Sprint witness Closz states that conversions in place require changes in administrative, billing, and engineering record updates, the witness also indicates that a conversion in place constitutes no changes.

MCI witness Martinez states that there should be minimal interruption to the ALEC's services during a conversion or rearrangement. AT&T witness Mills adds that when a collocation conversion is requested by an ALEC, the ownership and maintenance responsibilities should be changed. Similarly, FCCA witness Gillan agrees that "terms for converting virtual collocation space should require no more than reversing the 'ownership' of the virtually collocated equipment."

Sprint witness Closz states that the ALEC's request to convert a virtual collocation arrangement to a cageless physical collocation arrangement requires an additional review process in which the ILEC must assess the changes requested and their potential impact on the current collocation arrangement. Witness Closz further clarifies that the collocator's equipment may need to be moved in order to satisfy the ALEC's request for conversion. In the case of conversions from virtual to caged collocation, Sprint witness Closz states that additional space and construction considerations must be taken into account.

Intermedia witness Jackson believes that the ILECs have to convert virtual arrangements to cageless arrangements at no charge. He further explains that there should not be any substantial administrative costs because the ILEC only has to update its systems to indicate that it does not own the equipment.

Rhythms witness Williams simply refers to the FCC's Advanced Services Order in Paragraph 39, in which the FCC stated:

> Moreover, we noted in the *Advanced Services Order and NPRM*, and the record reflects, that more cost-effective collocation solutions may encourage the deployment of

> advanced services to less densely populated areas by reducing the cost of collocation for competitive LECs.

In response, GTEFL witness Ries claims that GTEFL treats conversion requests the same as a new application request, since the same site surveys and engineering analysis need to be conducted. Similarly, BellSouth witness Hendrix claims that BellSouth must review its ability to provide physical collocation and assess the support components which are necessary for a particular arrangement. Witness Hendrix gives examples of the types of work that BellSouth has to perform, such as review of engineering drawings, HVAC, power feeder and distribution, grounding, and cable racking. Witness Hendrix also indicates that due to such work, the ILEC incurs costs. The BellSouth and GTEFL witnesses also contend that an ALEC's request to convert a virtual collocation arrangement to cageless physical collocation should be subject to the ILEC's standard application fees.

With respect to the relocation of equipment, BellSouth witness Hendrix states:

> The conversion of an existing virtual collocation arrangement to a physical collocation arrangement usually necessitates either the relocation of the virtual collocation equipment to the space designated for the new physical collocation arrangement or the placement of new equipment in the physical collocation space and the decommissioning of the old virtual collocation arrangement.

Witness Hendrix further states that such a conversion process allows BellSouth to manage its space in the most effective way.

Regarding the manner in which BellSouth handles conversion requests, BellSouth witness Hendrix states that conversion requests are evaluated so that a decision is made to convert the old arrangement to a caged or a cageless physical collocation arrangement. Cageless physical collocation arrangements will not require the relocation of the equipment, but caged physical collocation arrangements will. In either case, BellSouth's witness believes that conversion requests to physical collocation arrangements, whether for caged or cageless collocation, must be treated as a new application for physical collocation. Similarly, GTEFL witness Ries states that conversion requests may involve relocation of the equipment. Witness Ries further states that the

ILECs may take reasonable security measures to protect their equipment since it may be necessary to move the ALEC's equipment to properly separate it.

Rhythms witness Williams contends that the ILECs cannot require that all physical collocation arrangements be located in a segregated collocation area. He further states that the ILECs must utilize any unused space for physical collocation. Witness Williams also states that under federal regulations, it is unnecessary to relocate the equipment when a cageless collocation arrangement is requested by the ALEC. Witness Williams further argues that moving the equipment is not a reasonable security measure because such relocation causes service outages and unnecessary expenses.

Covad witness Moscaritolo states that conversions should not require the relocation of the equipment even if the ALEC's equipment is in the same line-up as the ILEC's equipment. He further states that such relocation measures delay the conversion and increase the costs associated with conversion. Witness Moscaritolo refers to the New York Public Service Commission's statement that "[S]pending time and effort to move a virtual arrangement from one area of a central office to another would be an unnecessary and time-consuming burden." Witness Moscaritolo also notes that Bell Atlantic is implementing this policy.

MGC witness Levy states that it is not possible to convert a virtual collocation arrangement to a physical collocation arrangement because a cage must be built around the existing virtual collocation arrangement. In addition, other equipment around the virtual collocation arrangement must be moved to free up some space. He states that it is, however, possible for an ALEC to get similar arrangements associated with physical collocation rather than obtaining self-contained floor space. Witness Levy indicates that in Las Vegas, Sprint permits MGC technicians to access its collocated equipment arrangement on a 24 hours/7 days a week basis even though all of its collocation arrangements are regarded as virtual collocation arrangements. He states that such arrangements are located in the same line-up as the ILEC's transmission or switching equipment.

Intermedia witness Jackson states that the ILECs should be able to perform the conversion of a virtual collocation arrangement upon request to a cageless physical collocation arrangement. In addition, he alleges that based on the FCC's Orders and Rules, the

ALECs must remain commingled with the ILEC's equipment, but under a physical cageless collocation arrangement.

ANALYSIS AND DETERMINATION

We agree with AT&T and MCI's witnesses that there should be minimal interruption to the ALEC's services during a conversion and that the ownership and maintenance responsibilities should be changed when a collocation conversion is requested by an ALEC, because in a virtual collocation arrangement, the ALEC has no access to the ILEC's premises, unlike a physical collocation arrangement. Therefore, the ILEC would transfer its ownership and responsibilities of the collocation arrangement to the ALEC.

We agree with Sprint witness Closz's statement that the terms and conditions for converting virtual collocation to either physical caged or physical cageless collocation should be differentiated because of the differences associated with these two types of physical collocation. We also agree, in part, with BellSouth witness Hendrix that "[T]hese conversions will be evaluated as to whether there are extenuating circumstances or technical reasons that would cause the arrangement to become a safety hazard within the premises or otherwise conflict with the terms and conditions of the collocator's collocation agreement." The evidence demonstrates that depending upon the type of physical collocation, technical or safety issues may have to be taken into consideration by the ILEC.

While we do not believe that a new physical collocation application needs to be submitted for conversion requests, we do, however, believe that a collocation "conversion" or "rearrangement" application (CCA) should be submitted in order to keep a record of what has been requested by the ALEC, and the acceptance or denial response by the ILEC. A CCA is appropriate, because a CCA will include all necessary information related to the type of work to be performed by the ILEC. We believe this is necessary because the record reflects that the terms and conditions that should apply for converting a virtual collocation arrangement to a physical collocation arrangement are complex in nature and may vary depending on the type of conversion being requested.

We find Sprint witness Closz's statements regarding the changes associated with conversions in place were very confusing and contradictory because we believe that changes such as

administrative, billing, and engineering record updates are necessary changes that are required to effectuate the conversion from virtual to physical collocation, be it a change in place or otherwise.

We do, however, agree with the testimony of Sprint witness Closz, and in part with Intermedia witness Jackson, that if there are no physical changes required by the ILEC to the collocation arrangement, the only charges that should apply are for the administrative, billing, and engineering record updates. We also agree with Sprint witness Closz that when converting from virtual to caged collocation, additional space and construction considerations must be taken into account. We shall refrain from imposing any terms and conditions related to matters involving administrative costs, since the record demonstrates that these costs vary depending on the type of request and need. Therefore, these costs should be negotiated in an interconnection agreement.

In addition, if there are changes to the collocation configuration being requested, we find that an application fee is appropriate. Whether or not there are changes, however, the ILEC must inform a requesting ALEC within 15 calendar days of its request whether its collocation conversion application is accepted or denied, and provide sufficient information for the ALEC to place a firm order.

As for placing and relocating equipment, we note Rhythms witness Williams's arguments that the ILECs cannot require that all physical collocation arrangements be located in a segregated collocation area. This appears to be reasonable. Also, the ILECs shall be required to utilize any unused space for physical collocation. Furthermore, regarding relocation of equipment, the record supports that the ALEC's equipment may remain in place even if it is in the ILEC's equipment line-up when converting from virtual to cageless physical collocation. It appears that to require relocation of equipment under these circumstances would be unduly burdensome and costly to the ALEC without any benefit. Second, when converting from virtual to cageless physical collocation and the ALEC is asking to place additional equipment, acquire additional space, or the ILEC must perform work on the equipment to effectuate the conversion, these situations should be handled on a case-by-case basis to be negotiated by the parties. There may be instances where additional equipment is requested to be placed or additional space is requested which cannot be

accommodated in the existing space, and the collocation arrangement would need to be relocated.

Finally, when converting from virtual to caged physical collocation, we find that the ALEC equipment should be relocated because construction of a cage will require additional space. Since virtual collocation equipment is typically in the same line-up as ILEC equipment, the record demonstrates that this space would be more efficiently re-used for another virtual collocation arrangement, a cageless physical collocation arrangement or for ILEC equipment.

VI. RESPONSE AND IMPLEMENTATION INTERVALS FOR CHANGES TO EXISTING SPACE

In this section, we consider when an ILEC should be required to respond to an ALEC's request for changes to existing collocation space and the implementation interval for these changes. Herein, we refer specifically to changes to an ALEC's existing physical collocation space.

BellSouth witness Hendrix states that the response interval for a request for a change to an existing space should not exceed 30 days. He also states that the implementation interval for a request for changes to an ALEC's existing collocation space should not exceed 60 calendar days, under normal circumstances. Witness Hendrix describes normal conditions as "conditions where none of the following exist: material equipment ordering required, HVAC or power upgrades or additions, addition to floor space, racks, or bays." He states that for conditions other than normal, the implementation interval should be the same as a new request, 90 calendar days.

GTEFL witness Ries states that the response and implementation intervals depend upon the type of change requested; however, he maintains that, in general, the response and implementation intervals are the same for changes to existing collocation space as they are for new collocation requests. Witness Ries explains:

> . . . GTE distinguishes between major and minor augments. At the time it originally submits its collocation application, the ALEC indicates the amount of power it will need and the amount of heat (in BTUs) that its

> equipment will generate. The ALEC may then place equipment that does not exceed the capacity of the engineered space. As long as any changes the ALEC wishes to make are within the ALEC's original specifications, the change is considered to be a minor augment.

He further explains:

> If the requested augment would exceed the power and BTU's originally specified, or if it would require additional space, it is considered a major augment. Major augments will be treated like new collocation applications. In these cases, the ILEC will need to assess potential impacts of requested changes on power, HVAC, cabling and space requirements. While it will not take 90 days to provision every such change, it would be impossible to define some uniform, shorter interval, because change requests can vary widely in the amount of work they require.

Sprint witness Closz states that collocation space changes will likely involve the addition of equipment to the collocation arrangement and/or changing the existing equipment. Witness Closz explains that equipment additions or changes to the existing configuration are typically referred to as "augmentations" to existing collocation arrangements. Given the varied nature of change requests, she proposes the following response and implementation intervals:

> When the change requested requires no physical work on the part of the ILEC other than record updates, ALECs should only be required to advise the ILEC of the changes that will be made. . . . This response should be provided within fifteen (15) calendar days of receipt of the ALEC's change notification.
>
> Provisioning intervals when changes are required should be reflective of the actual work involved, but should not exceed 30 calendar days from receipt of the ALEC's request for a change. Longer intervals are

> warranted only in cases where ILEC infrastructure improvements and/or upgrades requiring additional time are required but in these cases the interval should not exceed 90 calendar days from receipt of the change request.

MCI witness Martinez believes that most changes made by an ALEC within its collocation space do not warrant either implementation intervals or additional applications or application fees. Witness Martinez explains that when an ALEC submits its initial request for collocation it provides the ILEC with information about the ultimate power requirements and equipment configuration for the collocation space. He states that as long as the changes to the collocation space do not exceed the initial forecast, there should be no obligation to obtain the ILEC's permission. At most, the witness believes that the ALEC should be required to make an information notification to the ILEC to enable the ILEC to update its records regarding the types of equipment actually installed. He further states that in situations where an ALEC legitimately requires the space to be modified with respect to space, power or HVAC, then the standard intervals for collocation should apply.

MGC witness Levy maintains that changes to existing collocation arrangements can take many forms and the appropriate response and implementation intervals vary depending on the form of the change. He states that after receiving a request for a change, the ILEC should be required to respond to the ALEC within ten business days and this response should include all costs associated with the request. He also states that once a firm order has been placed, the interval for provisioning this request should be no more than 30 calendar days.

Supra witness Nilson states that a 10 day, or less, response interval is appropriate. He believes that:

> [S]ince the Commission has already determined that physical collocation should be performed within ninety days, a modification to an existing collocation space should take even less time, certainly not more.

Intermedia witness Jackson states that as a general rule, response and implementation intervals will be shorter when making

changes to existing collocation arrangements because the collocation arrangement is already established, and in most of the augmentations, the ALEC is simply installing additional equipment. Addressing response intervals, witness Jackson states that for changes to existing collocation arrangements requiring no additional space, ILECs should be required to respond within five calendar days. For changes to existing collocation arrangements that require additional space, he contends that the ILEC should respond within the 10-day interval prescribed by the FCC in its Collocation Order.

Witness Jackson proposes three different implementation intervals for changes to existing collocation space. First, if the augmentation of the collocation arrangement requires no work by the ILEC, then ALECs should be able to begin work on the arrangement as soon as the application is accepted. Second, when work is required by the ILEC on the collocation arrangement, such as the addition of facilities or engineering additional power to the collocation arrangement, the ILECs should implement such changes within 45 calendar days. Third, when the ALEC submits an application for changing existing collocation space that requires additional space, the ILECs should be required to implement such changes within 60 calendar days.

ANALYSIS AND DETERMINATION

Based on the evidence presented, it appears that there are many different modifications to existing collocation arrangements that an ALEC may request. These requests may require the ILEC to make changes ranging from administrative or record changes, to provisioning more space for the ALEC. This variety of options appears to have contributed to the multitude of varying responses and implementation intervals proposed by the parties in this case.

Upon consideration, we find that ILECs shall be required to respond to an ALEC request for change to its existing collocation arrangement within 15 calendar days, as required for responses to initial collocation applications. The evidence that the response interval for changes to existing collocation space should be different from a response to an initial collocation application was not persuasive. The evidence shows that in many cases, the ILEC will have to perform the same analyses to evaluate the change request that it would perform for an initial request. Also, consistent with our decision on responses to initial applications,

we find that the ILEC's response to an ALEC shall contain all information necessary for the ALEC to place a firm order if the changes to the collocation space will require work on the part of the ILEC.

Regarding implementation intervals, we recognize that implementation intervals can also vary widely depending on the specific change. The evidence of record is not, however, sufficient to prescribe *different* provisioning intervals relating to all of the different changes that an ALEC may request. The parties propose provisioning intervals ranging from immediately after the application is accepted, to up to 90 calendar days. In Orders Nos. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP, we ordered a provisioning interval of 90 calendar days for physical collocation after receipt of a firm order by an applicant carrier. The evidence in this case does, however, demonstrate that provisioning changes to existing collocation arrangements usually should require less time than provisioning a new collocation arrangement. Therefore, we shall require a provisioning interval of 45 calendar days. The evidence shows that most changes to existing collocation space can be provisioned in this time frame. However, if the ILEC believes it will be unable to meet this time frame and the parties are unable to agree to an extension, the ILEC shall seek an extension of time from this Commission within 30 calendar days of receipt of the firm order.

VII. DIVISION OF RESPONSIBILITIES BETWEEN ILECS AND COLLOCATORS FOR:

A. Sharing and Subleasing Space Between Collocators

In this section and subsection, we address the responsibilities of ILECs and collocators relating to shared and subleased collocation space. In most existing central office collocation arrangements, the designated physical collocation spaces of several competitive entrants are located close together within the ILEC premises. Because of the conveniences and efficiencies associated with this proximity, competitive entrants seeking to interconnect with each other may find connecting between their respective collocation spaces on the ILEC premises the most efficient means of interconnecting with each other. Under a shared collocation arrangement, a single collocation node is shared by two or more ALECs.

In the FCC's Advanced Services Order in Paragraph 8, the FCC set forth the following steps with regard to shared cage collocation:

> 1) Incumbent LECs must make available to requesting competitive LECs shared cage and cageless collocation arrangements. Moreover, when collocation is exhausted at a particular LEC location, incumbent LECs must permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible.
>
> 2) Incumbent LECs must permit competitors to collocate all equipment used for interconnection and/or access to unbundled network elements (UNEs), even if it includes a "switching" or enhanced services function, and incumbent LECs cannot require that the switching or enhanced services functionality of equipment be disengaged.

Sprint witness Hunsucker addresses this issue by referring to the FCC's Rule 51.321(k)(1). Therein, the FCC outlined the responsibilities of the ILEC and collocators when a collocator shares space with, or subleases space to, another collocator. The rule states:

> (k) An incumbent LEC's physical collocation offering must include the following:
>
> (1) Shared collocation cages. A shared collocation cage is a caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs. In making shared cage arrangements available, an incumbent LEC may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. An incumbent LEC must make shared collocation space available in single-bay increments or their equivalent, *i.e.*, a

> competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

In addition, in Paragraph 41 of FCC Order 99-48, the FCC further concluded:

> . . . a carrier should be charged only for those costs directly attributable to that carrier. The incumbent may not place unreasonable restrictions on a new entrant's use of a collocation cage, such as limiting the new entrant's ability to contract with other competitive carriers to share the new entrant's collocation cage in a sublease-type arrangement. In addition, if two or more competitive LECs who have interconnection agreements with an incumbent LEC utilize a shared collocation arrangement, the incumbent LEC must permit each competitive LEC to order UNEs to and provision service from that shared collocation space, regardless of which competitive LEC was the original collocator.

Rhythms witness Williams contends that billing each ALEC separately is not needed for services like power, HVAC, and other similar services. In addition, Rhythms witness Williams acknowledges, the ILEC must track all the changes in the collocation arrangement to make sure that it is billing the correct entity and allocating shares correctly.

In response, however, BellSouth witness Hendrix argues that separate billing causes more work and expense resulting in possible administrative and billing errors. He further emphasizes that BellSouth provides shared collocation in every central office provided that: a) local building codes allow such an arrangement; and b) BellSouth's central office premises are not located within a leased space. Witness Hendrix also indicates that a host-guest relationship occurs when an ALEC chooses to share its space with other ALECs.

Intermedia witness Jackson states that when a collocator shares space with another collocator, the ALECs should be responsible for setting terms and conditions for the shared space. The witness also states that each collocator must be permitted by the ILEC to order UNEs and provision service from the shared space. The witness further states that ILECs should not restrict the types of equipment collocated by ALECs as long as they are used for interconnection or access to UNEs. Witness Jackson's arguments

appear to correlate with those set forth in FCC Order 99-48 as Paragraph 8.

ANALYSIS AND DETERMINATION

Upon consideration, we find that the FCC has provided sufficient guidance in its rules and orders, specifically FCC Order 99-48, FCC Order 96-325, FCC Order 96-333, FCC Order 97-208, and FCC Rule 47 C.F.R. §51.321(k)(1), regarding ILEC and ALEC responsibilities in shared and subleased collocation space. Therefore, ILECs and ALECs in Florida shall be required to follow those rules and orders regarding shared and subleased collocation space set forth by the FCC.

In addition, we acknowledge that FCC Order 99-48 clearly states that the ILEC must permit each ALEC to order UNEs to and provision service from the shared collocation space, regardless of who the original collocator is and state our disagreement with BellSouth witness Hendrix's assertion that the host ALEC should be the responsible party to submit applications for initial and additional equipment placements of its guests because the ILEC may not impose unnecessary requirements on how or what the ALECs might need for their own network infrastructure according to the FCC's Order. Therefore, ALECs shall not be required to designate a host ALEC and shall be able to order directly from the ILEC any addition to its network. Instead, each ALEC shall be allowed to submit its own requests to the ILEC for equipment placement, unbundled network elements and other services, regardless of which ALEC was the original collocator.

We also acknowledge that FCC Rule 47 C.F.R. §51.321(k)(1) requires an ILEC to prorate its costs based on the number of collocators and space used by each collocator; therefore, ILECs are encouraged to bill each collocator separately, but we shall not require them to do so.

As for the sharing arrangement between collocating ALECs, we emphasize that the ALEC host makes the determination that other ALECs, the guests, will be allowed to share space within its cage under the terms and conditions governing the sharing arrangement agreed to between the ALECs. Therefore, we shall not require that the ILEC be a part of any such negotiations between ALECs.

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