

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Application by Verizon New England Inc.,	)	
Bell Atlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	CC Docket 00-176
Distance Company (d/b/a Verizon	)	
Enterprise Solutions), and Verizon Global	)	
Networks Inc., for Authorization To	)	
Provide In-Region, InterLATA Services in	)	
Massachusetts	)	
	)	

**COMMENTS OF THE  
ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES COALITION**

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October 16, 2000

## **SUMMARY**

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”). ALTS does not represent any of the major interexchange carriers (“IXCs”), and therefore its interest in this proceeding is singularly focused on ensuring that the Massachusetts local telephone market is truly open to competition and remains irreversibly open. In these Comments, the ALTS Coalition explains why this Commission’s approval of the Verizon-NY Section 271 Application does not afford a basis for granting Verizon Section 271 approval in Massachusetts, thus the ALTS Coalition recommends that the Commission reject Verizon-MA’s Application. Verizon-MA has failed to satisfy several of the competitive checklist items and must meet several conditions before it satisfies the rigorous requirements of Section 271. For this reason, and also due to independent, unique circumstances in Massachusetts, approval of Verizon-MA’s Application would be inconsistent with the public interest.

Since Verizon has been permitted to provide in-region interLATA long distance service in New York, Verizon’s performance in Massachusetts has deteriorated. In addition, Verizon’s Massachusetts Application is deficient in several critical respects. First, Verizon-MA has failed to comply with this Commission’s *UNE Remand Order* and *Line Sharing Order* with respect to provisioning of DSL-capable loops and subloop unbundling – items that were not at issue at the time Verizon was granted Section 271 approval in New York. Verizon-MA does not provide non-discriminatory access to unbundled loops, including DSL-capable loops, and subloops, as required by the

Commission's *UNE Remand* and *Line Sharing Orders*.<sup>1</sup> Second, Verizon-MA has not satisfied checklist item (iii). It continues to require pole and conduit attachment licensees to enter into one-sided, discriminatory license agreements that favor Verizon-MA and competitively disadvantage CLECs. It continues to limit the number of attachments that it will process in a single application, thus impairing the ability of CLECs to build out their facilities in the local markets. Third, Verizon-MA has not demonstrated that it provides non-discriminatory access to its Operations and Support Systems ("OSS"), thus failing to meet the competitive checklist requirements. Fourth, Verizon-MA fails to meet the checklist requirements relating to collocation at remote terminals and engages in improper billing for collocation power costs, which seriously disadvantages CLECs in their efforts to offer consumers lower prices and gain market share..

Moreover, approval of Verizon's Massachusetts Application would be inconsistent with the public interest. The particular Performance Assurance Plan ("PAP") accepted by the Massachusetts Department of Telecommunications and Energy ("Department" or "D.T.E.") is grossly inadequate compared to similar plans found reasonable by the Commission in the *Verizon-New York* and *SBC-Texas Orders*. The Massachusetts PAP remedies are not in addition to performance-based remedies available to CLECs under their interconnection agreements – CLECs must choose one or the other. Further, because the D.T.E. has invited Verizon-MA to seek exogenous cost treatment of any performance credits that it must provide under the PAP pursuant to a D.T.E.-approved price cap form of regulation, there is absolutely no assurance that Verizon-MA

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1 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking*, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) (hereinafter "*UNE Remand Order*") and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local* (continued...)

will suffer any adverse financial consequences if it backslides – ratepayers may pick up the tab. The New York PAP, in contrast, expressly prohibited such a perverse result. The Massachusetts PAP is also deficient because it fails to include comprehensive performance standards and metrics related to xDSL services and line sharing arrangements. Despite the Commission’s clear directives to Bell Operating Company (“BOC”) applicants and state commissions, Verizon-MA did not account for these services adequately in the Massachusetts PAP, and the D.T.E. refused to require such performance standards and metrics; instead, it simply abrogated its responsibility for the review and development of those standards and measures to the New York Public Service Commission. While it is the prerogative of the D.T.E. to do so, it is the duty of this Commission to find that such an approach renders Verizon-MA’s Section 271 Application premature.

Verizon’s Massachusetts Application is also premature due to the unique circumstances in Massachusetts pertaining to numbering resources. NXX codes in Massachusetts are strictly limited under a rationing process necessitated by an extreme jeopardy situation in Eastern Massachusetts with regard to the four existing area codes, 508, 617, 781 and 978. This situation was caused by Verizon’s past inaccurate number forecasting. An April 25, 2000 order of the D.T.E. that requires a full service overlay will not create the additional numbering resources needed by CLECs until April 2, 2001 at the earliest. The public interest would not be served by allowing Verizon to enter the long distance market in Massachusetts at a time when CLECs face the very real entry barrier of lack of numbering resources required to enable local competition.

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(...continued)

*Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, and Fourth Report and Order, 14 FCC Rcd. 20902 (hereinafter “Line Sharing Order”).*

The Verizon’s Massachusetts Application can be boiled down to the following refrain: “*Since Verizon was granted interLATA entry in New York, it should also be granted interLATA entry in Massachusetts.*” Contrary to Verizon’s assertions, and as the record in this proceeding demonstrates, Verizon cannot bootstrap the Commission’s grant of Section 271 authority in New York into a similar approval for the Commonwealth of Massachusetts. As this Commission has emphasized, each application made by an BOC must be examined independently and on its own merits. Specifically, the issue of whether an BOC has satisfied its Section 271 obligations must be determined on a case-by-case basis after review of a totality of the circumstances and based on an analysis of the specific facts and circumstances of that particular application.<sup>2</sup> Under this standard, Verizon-MA’s Application must fail.

The Commission’s review of Verizon’s Massachusetts Application comes at a critical juncture. The Commission has heard that Verizon or other BOCs may be filing additional Section 271 applications in the near future. As explained by ALTS, the Commission’s review of Verizon’s Massachusetts Application will provide a clear signal whether the Commission’s statements regarding the showing needed for DSL, line sharing and subloop unbundling will be enforced in a case like this one, where the BOC and the state commission have each failed to follow the Commission’s directives. It will also provide a clear signal as to whether BOCs may perpetuate pole and conduit attachment licenses that fail to comply with their obligations not to discriminate against

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<sup>2</sup> *Application of Bell Atlantic Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in New York*, CC Docket No. 99-295 Memorandum Opinion and Order, (December 21, 1999) (“hereinafter, “*Verizon-New York Order*”, ¶ 46, and *In the Matter of Application by SBC Communications, Inc., /Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas*, CC Docket (continued...)”)

attaching CLECs. Finally, it will test the limits to which BOCs may go and still meet the public interest criteria to be applied by the Commission. The Commission has a meaningful opportunity in this proceeding to set limits on the submission of premature Section 271 filings by Verizon in particular and BOCs in general.

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(...continued)

No. 00-65, Memorandum Opinion and Order, FCC 00-238 (rel. Jun. 30, 2000) (hereinafter, “*SBC-Texas Order*”), ¶ 46.

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**Exhibits**

A	Declarations of Digital Broadband Communications
B	FCC Charts of Verizon data
C	Letter from ALTS to Verizon regarding improper billing of collocation power
D	Petition for Reconsideration of Rhythms Links regarding MA PAP
E	Formal Petition XO Communications for Expeditious Mediation



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**Verizon-Massachusetts**

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Networks Inc., for Authorization To	)	
Provide In-Region, InterLATA Services in	)	
Massachusetts	)	
	)	

**COMMENTS OF THE**  
**ASSOCIATION FOR LOCAL**  
**TELECOMMUNICATIONS SERVICES COALITION**

The Association for Local Telecommunications Services (“ALTS”), Digital Broadband Communications, XO Communications (formerly NEXTLINK), and DSLnet Communications (the “ALTS Coalition”), pursuant to the Public Notice (“Notice”) in the above captioned proceedings, hereby files its initial comments on the Application by Verizon-Massachusetts for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Massachusetts (the “Application”).

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”). ALTS does not represent any of the major interexchange carriers (“IXCs”), and therefore its interest in this proceeding is singularly focused on ensuring that the Massachusetts local telephone market is truly open to competition and remains irreversibly open. In these Comments, the ALTS Coalition explains why this Commission’s

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approval of the Verizon-NY Section 271 Application does not afford a basis for granting Verizon Section 271 approval in Massachusetts, thus the ALTS Coalition recommends that the Commission reject Verizon-MA's Application. Verizon-MA has failed to satisfy several of the competitive checklist items and must meet several conditions before it satisfies the rigorous requirements of Section 271. For this reason, and also due to independent, unique circumstances in Massachusetts, approval of Verizon-MA's Application would be inconsistent with the public interest.

**I. HISTORY OF MA PROCEEDING**

On May 24, 1999, Verizon-MA notified the D.T.E. of its intention to seek Section 271 authority from the Commission. On June 29, 1999, the D.T.E. opened its inquiry into Verizon's compliance with Section 271's requirements. On August 30, 1999, Verizon certified to the D.T.E. that all checklist items could be considered during technical sessions prior to completion of OSS testing. On November 19, 1999, the D.T.E. approved a KPMG Master Test Plan. The D.T.E. conducted unsworn, but transcribed technical sessions, during November and December 1999. On January 14, 2000, the D.T.E. adopted the New York Public Service Commission's carrier-to-carrier guidelines as the performance metrics for the Master Test Plan and evaluating Verizon's compliance with Section 271. On February 16, 2000, the D.T.E. denied a request by AT&T (and supported by other CLECs) to reject KPMG's proposal to weaken its volume and stress testing of Verizon's pre-order and order OSS and staff capacity. The D.T.E. eliminated its previous requirement that KPMG use projected commercial volumes of 18 months for its transaction testing and replaced that requirement with a 6-month requirement. On May 12, 2000, the D.T.E. also denied CLEC requests that volume tests for pre-order, order and provisioning be conducted on Local Service Ordering Guidelines Release 4.

The D.T.E. received declarations from Verizon and from CLECs regarding the competitive checklist items. It propounded information requests to Verizon which included a number of requests proposed by CLECs. Hearings were conducted on these declarations and the Department supplemented its record through requests for additional information during the hearing process. Oral arguments were presented to the D.T.E. by several participants, including Verizon, during early September 2000. The D.T.E. did not permit participants to file closing written briefs or statements of position at the close of its proceeding and therefore will not have the benefit of such written statements prior to submitting its comments in this matter. Also, the D.T.E. precluded participants from presenting any information or views as to whether Verizon's Massachusetts Application was consistent with the public interest, as this Commission must find before granting Section 271 approval. The Department included in its record previous unsworn testimony that was adopted by declarants. On September 5, 2000, the D.T.E. issued an order adopting a Performance Assurance Plan. On September 22, 2000, the D.T.E. approved Verizon's September 15, 2000 revised Performance Assurance Plan. On September 27, 2000, AT&T and Rhythms Links, Inc. filed separate motions for reconsideration regarding the D.T.E.'s orders approving the Performance Assurance Plan. On September 22, 2000, Verizon filed its Massachusetts Section 271 Application with this Commission.

## **II. THE MASSACHUSETTS D.T.E.'S REVIEW OF VERIZON'S SECTION 271 COMPLIANCE**

The Massachusetts D.T.E.'s examination of Verizon's compliance with Section 271 should be referenced by this Commission as it conducts its own examination of Verizon's Application. Nonetheless, the Commission must conduct an independent analysis of Verizon's

compliance with the competitive checklist. Under Section 271(d)(2)(B), the Commission “shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).”<sup>3</sup> In requiring the Commission to consult with the states, Congress afforded the states an opportunity to present their views regarding the opening of the BOC’s local networks to competition. The Commission has stated that “in order to fulfill their consultative role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications.”<sup>4</sup> In evaluating the weight to accord the findings of a state commission, the Commission “will consider carefully state determinations of fact that are supported by a detailed and extensive record, and believe the development of such a record to be of great importance to [its] review of section 271 applications.”<sup>5</sup> Unlike almost every other state commission whose BOC has appeared before the FCC requesting interLATA interexchange authority, the Massachusetts D.T.E. has chosen not to provide an advisory opinion on Verizon’s application at this time. The D.T.E. did not permit participants to file closing written briefs or statements of position at the close of its proceeding and therefore will not have the benefit of such written statements prior to submitting its comments in this matter. Also, the D.T.E. precluded participants from presenting any

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<sup>3</sup> 47 U.S.C. § 271(d)(2)(B).

<sup>4</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 30 (1997) (“*Ameritech Michigan Section 271 Order*”).

<sup>5</sup> *Id.*

information or views as to whether Verizon's Massachusetts Application was consistent with the public interest, as this Commission must find before granting Section 271 approval.

Nevertheless, over the past year and a half, Verizon and numerous interested parties participated in the Department's review of Verizon's Application, amassing a record and evidence that clearly demonstrates that Verizon has not made the necessary strides to open the Massachusetts market to local competition that would warrant granting it permission to provide interLATA interexchange service in Massachusetts.

**A. The Commission Must Review Verizon-MA's Application On its Own Merits**

Verizon's Massachusetts Application relies almost exclusively on its assertion that because its sister company, Verizon-NY was granted Section 271 authority it should be as well. Contrary to Verizon's assertions, simply because Verizon was permitted into the in-region long distance market in New York does not mean that it has also earned that privilege in Massachusetts. Verizon-MA's Application must be reviewed on its own merits. This is not to say that the Commission should not, at a minimum, determine whether Verizon-MA has fulfilled the minimum requirements determined by the Commission in its *Verizon-New York Order* and its *SBC-Texas Order* – it should. However, as this Commission has emphasized, each application made by a BOC must be examined independently and on its own merits. Specifically, the issue of whether an BOC has satisfied its Section 271 obligations must be determined on a case-by-case basis after review of a totality of the circumstances and based on an analysis of the specific facts and circumstances of that particular application.<sup>6</sup> In other words, while it is true that Verizon must, at a minimum, meet the requirements that the Commission has

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<sup>6</sup> *Verizon-New York Order* ¶ 46, *SBC-Texas Order* ¶ 46.

**ALTS COALITION**  
**Verizon-Massachusetts**

articulated in its *Verizon-New York* and *SBC-Texas Orders*, simply because the Commission may have found that Verizon has met the Section 271 requirements in New York does not necessarily mean that Verizon has met these requirements in Massachusetts.

Verizon-MA has failed to meet many of the standards articulated in the FCC's prior Orders granting BOCs 271 authority. In particular:

- Verizon-MA fails to provide cageless collocation and collocation at remote terminals consistent with this Commission's requirements.
- Verizon-MA has not proven that it provides non-discriminatory access to its OSS.
- Verizon-MA does not provide non-discriminatory access to unbundled loops including DSL-capable loops as required by the FCC's *UNE Remand* and *Line Sharing Orders*.
- Verizon-MA does not provide access to subloop unbundling as required by the Commission's *UNE Remand* and *Line Sharing Orders*.
- Verizon has not demonstrated that it provides non-discriminatory access to poles, conduits and rights of ways as required by checklist item (iii) of the Act.

In addition to failing to satisfy these elements of the competitive checklist, Verizon's Massachusetts Application is inconsistent with the public interest. First, because Verizon has not satisfied all elements of the competitive checklist, granting its Application would be contrary to the public interest. Even if Verizon were found to have satisfied the competitive checklist, however, approval of its Application would remain contrary to the public interest. First, Verizon-MA's PAP is not as comprehensive as the New York PAP and potentially will insulate Verizon from any potential payment of credits to CLECs by recovering those credits from its end users as part of its Alternative Regulation Plan. Second, the PAP fails to include critical DSL and line sharing performance standards and measures, thus providing no protection against backsliding in the case of advanced services. Third, Verizon's Massachusetts Application is

premature in light of the lack of adequate numbering resources in Massachusetts until April 2, 2001 at the earliest, when an all-services overlay is scheduled to be implemented.

**B. Verizon Must Demonstrate Full Compliance With Each Requirement Under Section 271**

BOC entry into in-region, interLATA services is conditioned on compliance with Section 271. BOCs must first apply to the Commission for authorization to provide interLATA services originating in any in-region state.<sup>7</sup> The Commission must then issue a written determination on each application no later than 90 days after it was received.<sup>8</sup> In acting on a BOC's application, the Commission must consult with the U.S. Attorney General and give substantial, but not outcome determinative, weight to the Attorney General's evaluation of the BOC's application.<sup>9</sup> In addition, the Commission must consult with the applicable state commission to verify that the BOC has in place one or more state-approved interconnection agreements with a facilities-based competitor<sup>10</sup> and that such arrangements comport with the Section 271 competitive checklist.<sup>11</sup> The Commission may not authorize a BOC to provide in-region, interLATA service under Section 271 unless it finds that the BOC has demonstrated that: (1) it satisfies the requirements for Track A or B entry;<sup>12</sup> (2) it has *fully* implemented and *is currently providing* all of the items

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<sup>7</sup> See 47 U.S.C. § 271(d)(1).

<sup>8</sup> See *id.* § 271(d)(3).

<sup>9</sup> See *id.* § 271(d)(2)(A).

<sup>10</sup> See *id.* § 271(d)(2)(B). BOCs may enter an application based on one of two "tracks" established under Section 271(c)(1). Track A requires the BOC to prove the presence of an unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers. See *id.* § 271(c)(1)(A). Track B requires the BOC to prove that no unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers has requested access and interconnection to the BOC network within certain specified time parameters. See *id.* § 271(c)(1)(B). Verizon is applying under Track A. See Application at 4.

<sup>11</sup> The Competitive Checklist is a 14-point list of critical, market-opening provisions.

<sup>12</sup> See 47 U.S.C. § 271(d)(3)(A).

set forth in the competitive checklist;<sup>13</sup> (3) the requested authorization will be carried out in accordance with Section 272;<sup>14</sup> and (4) the BOC's entry is consistent with the public interest, convenience and necessity.<sup>15</sup> Pursuant to the legislation, the Commission "shall not approve" the application unless the Commission finds that the BOC meets these four criteria.<sup>16</sup>

**C. Verizon Must Satisfy the "Is Providing" Standard Under Section 271**

The Commission has found that promises of *future* performance have no probative value in demonstrating *present* compliance<sup>17</sup>. To support its application, a BOC must submit actual evidence of present compliance, not prospective evidence that is contingent on future behavior.<sup>18</sup> In its evaluation of past Section 271 applications, the Commission has mandated that a BOC demonstrate that it "is providing" each of the offerings enumerated in the 14-point competitive checklist codified in Section 271(c)(2)(B).<sup>19</sup> The Commission has found that in order to establish that a BOC "is providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or 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

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<sup>13</sup> *See id.*

<sup>14</sup> *See id.* § 271(d)(3)(B).

<sup>15</sup> *See id.* § 271(d)(3)(C).

<sup>16</sup> *Verizon-New York Order* ¶ 18.

<sup>17</sup> *Verizon-New York Order* ¶ 37. States have also adopted this standard, *see In re BellSouth Telecommunications, Inc.'s entry into InterLATA services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 6863-U, (Ga. P.S.C. Oct. 15, 1998).

<sup>18</sup> *Id.*

<sup>19</sup> *See Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 78 (1997) (citing *Ameritech Michigan Section 271 Order* ¶ 110).



checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.<sup>20</sup>

**D. Verizon Must Satisfy the “Fully Implemented” Standard Under Section 271**

To meet the required showing that it has “fully implemented” the competitive checklist under Section 271, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.<sup>21</sup> The Commission has determined that to comply with this standard, for those functions that are analogous to the functions a BOC provides itself, the BOC must provide access to competing carriers in, “substantially the same manner” as it provides itself.<sup>22</sup> The Commission has further specified that this standard requires a BOC to provide access that is equal to (*i.e.* substantially the same as) the level of access that the BOC provides itself, its customer or its affiliates, in terms of quality, accuracy, and timeliness.<sup>23</sup> Further, for those functions that have no retail counterpart, the BOC must demonstrate that it provides access, which offers competitors a “meaningful opportunity to compete.”<sup>24</sup>

**III. VERIZON HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST**

The Section 271 competitive checklist was designed to require BOCs to prove that their markets are open to competition before they are authorized to provide long distance services. In enacting the competitive checklist, Congress recognized that unless a BOC has *fully* complied

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<sup>20</sup> *See id.*

<sup>21</sup> *Verizon-New York Order*, ¶ 44.

<sup>22</sup> *Id.*

<sup>23</sup> *Verizon-New York Order* (citing *Ameritech Michigan Section 271 Order*, 12 FCC Rcd at 20618-19).

<sup>24</sup> *Id.*

with the checklist, competition in the local market would not occur.<sup>25</sup> Verizon must provide the Commission with “actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior.”<sup>26</sup> Furthermore, each and every checklist item is significant. As the Commission has consistently indicated, failure to comply with even a *single* checklist item constitutes independent grounds for denying an application for 271 authority.<sup>27</sup> Strict compliance with each requirement of Section 271 is the only sure way that the Commission can ensure that sustainable competition will be realized in a local market.

Verizon has not yet attained compliance with each item on the competitive checklist, and therefore, the Commission must deny Verizon’s application until such time as each of the criteria are satisfied.

**A. Verizon’s Massachusetts Application Does Not Meet The “Fully Implemented” Standard Under Section 271**

Verizon has failed to demonstrate that it “is providing” several of the most critical items contained on the competitive checklist under the “fully implemented” standard, and Verizon must be in compliance with this standard for all fourteen checklist items in order satisfy Section 271. Failure to satisfy even a single checklist item precludes a finding of compliance with Section 271. Verizon-MA has failed to meet many of the standards articulated in the FCC’s prior orders granting BOCs Section 271 authorization. In particular:

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<sup>25</sup> *Ameritech Michigan Section 271 Order* ¶ 18.

<sup>26</sup> *Id.* ¶ 55.

<sup>27</sup> *See, e.g., BellSouth Louisiana II Section 271 Order* ¶ 50.

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- Verizon-MA fails to provide cageless collocation and collocation at remote terminals consistent with this Commission’s requirements.
- Verizon-MA has not proven that it provides non-discriminatory access to its OSS.
- Verizon-MA does not provide non-discriminatory access to unbundled loops including DSL-capable loops as required by the FCC’s *UNE Remand* and *Line Sharing Orders*.
- Verizon-MA does not provide access to subloop unbundling as required by the Commission’s *UNE Remand* and *Line Sharing Orders*.
- Verizon has not demonstrated that it provides non-discriminatory access to poles, conduits and rights of ways as required by checklist item (iii) of the Act.

Below, the ALTS Coalition discusses the legal standards that the Commission has applied in its previous evaluations of BOC applications for 271 relief, and provides a complete analysis of Verizon’s Application.

**B. Checklist Item (i): Verizon Does Not Provide Non-Discriminatory Access To Interconnection**

Section 251 requires a BOC to allow requesting carriers to link their networks to the BOC’s network for the mutual exchange of traffic.<sup>28</sup> To fulfill the nondiscrimination obligation under this checklist item, a BOC must show that it provides interconnection at a level of quality that is indistinguishable from that which the BOC provides itself, a subsidiary, or any other party.

A Section 271 applicant must provide or offer to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”<sup>29</sup> Section 251(c)(2) imposes upon incumbent LECs “the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network

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<sup>28</sup> 47 U.S.C. § 251.

<sup>29</sup> *Id.* § 271(c)(2)(B)(i).

... for the transmission and routing of telephone exchange service and exchange access.”<sup>30</sup>

Pursuant to section 251(c)(2), interconnection must be: (1) provided at any technically feasible point within the carrier’s network; (2) at least equal in quality to that provided by the local exchange carrier to itself or ... [to] any other party to which the carrier provides interconnection; and (3) provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.<sup>31</sup>

Section 252(d)(1) of the Act states that “[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of [section 251(c)(2)] ... (A) shall be (i) based on the cost ... of providing the interconnection ... and (ii) nondiscriminatory, and (B) may include a reasonable profit.”<sup>32</sup> Competing carriers have the right to deliver traffic terminating on an incumbent LEC’s network at any technically feasible point on that network.<sup>33</sup>

Technically feasible methods of interconnection include, but are not limited to: physical collocation and virtual collocation at the premises of an incumbent LEC and meet point interconnection arrangements.<sup>34</sup> The incumbent LEC must submit to the state commission detailed floor plans or diagrams of any premises for which the incumbent LEC claims that

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<sup>30</sup> *Id.* § 251(c)(2).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* § 252(d)(1).

<sup>33</sup> See 47 C.F.R. § 51.321; *Implementation of the Local Telecommunications Provisions in the 1996 Act*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 209 (hereinafter “*Local Competition First Report and Order*”).

<sup>34</sup> See 47 C.F.R. § 51.321; *Local Competition First Report and Order* ¶ 553. *Verizon-New York Order* ¶ 66.

physical collocation is not practical because of space limitations.<sup>35</sup> A BOC must have processes and procedures actually in place to ensure that physical and virtual 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.<sup>36</sup> In evaluating whether a 271 applicant has complied with its obligations, the Commission examines information regarding the quality of the BOC’s procedures to process applications for collocation, the timeliness of provision, and the efficiency of provisioning collocation space.<sup>37</sup> Further, the BOC must provide interconnection that is “equal in quality . . . and indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate or any other party.”<sup>38</sup>

**1. Verizon’s Collocation Offerings do not Comply with the Requirements of the Act**

Verizon-MA asserts that it is currently providing collocation the same as it provides in New York and thus its collocation offerings are sufficient for 271 approval in Massachusetts.<sup>39</sup> In fact, the collocation arrangements that Verizon-MA offers are inferior to what Verizon is currently offering in New York. Unlike Verizon-NY, Verizon-MA refuses to convert CLEC virtual collocation arrangements to cageless collocation arrangements. Verizon has provided no justifiable technical or policy reason why it refuses to perform these conversions, particularly when it offers these same conversions in New York.

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<sup>35</sup> See 47 C.F.R. § 51.321(f); *Local Competition First Report and Order* ¶ 602.

<sup>36</sup> *Verizon-New York Order* ¶ 66.

<sup>37</sup> See *Verizon-New York Order* ¶ 66 (citing *Second BellSouth Louisiana Order*).

<sup>38</sup> See *Local Competition First Report and Order* ¶ 224.

<sup>39</sup> Lacouture-Ruesterholtz Affidavit ¶ 31.

Deficiencies exist in Verizon’s Massachusetts collocation service offerings. For example, Verizon-MA’s proposed collocation at remote terminal tariff offering (CRTREE) fails to satisfy its obligations under the *UNE Remand Order* because as explained in more detail below, it unreasonably restricts CLEC access to collocation at many remote terminals in Verizon’s network. In addition, Verizon has been systematically violating the terms of its physical collocation tariffs and commitments by charging CLECs for power costs based upon power demand not requested by CLECs and far in excess of CLECs’ needs, and charging for two feeds, even though only one feed is used at a time.<sup>40</sup> Additionally, Verizon has charged recurring monthly charges for collocation space and power even though the central office is not yet activated, typically because of Verizon’s delay.<sup>41</sup> The effect of these excessive and unwarranted collocation charges on local competition – based upon practices not followed by other ILECs – is devastating. ALTS has raised this issue with Verizon, to no avail.

a. **Despite Doing So in New York, Verizon-MA Refuses to  
Provide In-place Conversion of Existing Virtual Collocation  
Arrangements to Cageless Collocation Arrangements**

In its Application, Verizon-MA claims that it provides multiple collocation options and alternatives that essentially mirror those offered by Verizon-NY.<sup>42</sup> Although Verizon-MA states that it provides “collocation arrangements in the same manner as the FCC approved for Verizon-NY,”<sup>43</sup> this is simply not true. In fact, Verizon-NY provides collocation conversions that Verizon-MA refuses to offer. ALTS members Rhythms and Covad have repeatedly requested that Verizon-MA convert their virtual collocation arrangements to cageless arrangements.

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<sup>40</sup> See Exhibit A, Declaration of Theresa M. Landers ¶¶ 16-17.

<sup>41</sup> See *id.* ¶ 6.

<sup>42</sup> Application at 13, LaCouture/Ruesterholtz Decl. ¶ 27.

Notwithstanding these requests, Verizon-MA has continually refused to implement these conversions in Massachusetts. Verizon-MA's position is that CLECs must move their virtual collocations to a secure area of the central office to convert these arrangements to cageless collocations.<sup>44</sup> In stark contrast to Verizon-MA's position, Verizon-NY's tariff includes an offering for in-place conversions from virtual collocation to cageless collocation.<sup>45</sup> In fact, Verizon-NY has been providing in-place virtual to cageless conversions in New York under a tariff since December 1999.<sup>46</sup> Verizon-MA, on the other hand, refuses to make the same offering available in Massachusetts and has failed to provide any justifiable explanation as to why it refuses to make this offering available in Massachusetts.

Legitimate technical and policy justifications exist for allowing in-place conversions.<sup>47</sup> As the New York Commission recognized when it ordered Verizon-NY to allow in-place conversions, moving a collocation from one place in the central office to another is unnecessarily costly, time-consuming, and disruptive to customer service. Verizon's version of a conversion would force a CLEC to: (1) place an application for collocation with Verizon and await the standard interval; (2) incur the costs of purchasing redundant equipment to install in the new area

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(...continued)

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

<sup>44</sup> *See Comments of Rythms Links, Inc. and Covad Communications Company on Section 271 Compliance Filings of Bell Atlantic-Massachusetts and accompanying affidavit of Robert Williams ¶¶ 6-11.* (July 18, 1999).

<sup>45</sup> *See New York Telephone Company, P.S.C. No. 914, Section 5, 1<sup>st</sup> Revised Page 85.*

<sup>46</sup> *See id.*

<sup>47</sup> The Massachusetts Department required Verizon-MA to provide in-place conversions in its Decision on Tariff 17, finding that if Cageless Collocation Open Environment ("CCOE") was (i) not an available option for a particular CLEC at the time it applied for collocation; or (ii) if a CLEC's first choice was CCOE but it was not available due to space constraints, "in-place conversions of a virtual collocation arrangement to a CCOE arrangement is appropriate." Order, D.T.E. 98-57 ("Tariff 17 Decision"). On reconsideration, the D.T.E. granted Verizon-MA's request to defer compliance until the FCC's decision on this issue in its Collocation Remand proceeding.

to flash cut service from one collocation to another; and (3) disrupt customer service while the conversion occurs.

In a competitive environment, CLECs require cageless collocation to access their equipment for testing, maintenance and repair purposes. Until Verizon provides these collocation conversions to requesting carriers it should not be granted 271 authority.

**b. Verizon-MA's CRTEE Tariff Does Not Comply With the  
Obligations Established in the *UNE Remand Order***

Similarly, Verizon-MA's proposed CRTEE tariff fails to comply with this Commission's *UNE Remand Order*. In that Order, this Commission recognized that "the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office,"<sup>48</sup> and therefore, required ILECs to provide collocation at remote terminals, so that CLECs may offer DSL service to customers served over DLC facilities.<sup>49</sup> The remote terminal is the interface point between the copper and fiber portions of the loop. In order to provision DSL services over loops served by fiber, CLECs need to access the copper portion of the loop at the remote terminal. Therefore, under the *UNE Remand Order*, ILECs, including Verizon-MA, must provide collocation at remote terminals.

In support of its assertion that it satisfies its collocation obligations, Verizon-MA cites its CRTEE tariff.<sup>50</sup> According to Verizon-MA, "CRTEE will provide for collocation of CLEC equipment in [Verizon-MA's] remote terminal equipment enclosures where technically feasible

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<sup>48</sup> *UNE Remand Order* ¶ 218.

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

<sup>50</sup> LaCouture/Ruesterholtz Declaration ¶ 59.



and subject to the availability of space and conduit.”<sup>51</sup> What Verizon-MA omits, however, is that because the D.T.E. is still reviewing its CRTEE tariff, the terms and conditions included in this tariff are incomplete and not yet in effect; therefore, Verizon-MA cannot be found to be currently providing collocation as required by the Commission’s *UNE Remand Order*..

Furthermore, as ALTS members have explained, there are several terms and conditions that require clarification and correction before this tariffed offering can be considered evidence of Verizon-MA’s compliance with its 271 obligations.<sup>52</sup> For example, before Verizon-MA can be considered to have satisfied this obligation, it must revise its definition of Remote Terminal Equipment Enclosures (“RTEEs”). Verizon-MA limits the types of enclosures at which it will provide remote terminal collocation, by defining RTEEs as “controlled environmental vaults (“CEVs”), huts, cabinets, and remote terminals in buildings not owned by the Telephone Company.”<sup>53</sup> By adding the term “in buildings” Verizon-MA restricts the types of enclosures subject to its CRTEE tariff by excluding manholes and other non-building structures where remote terminal equipment is often enclosed. In addition, “huts” and “cabinets” are generally not in buildings, but are located in the field.

These are serious concerns with Verizon’s CRTEE tariff. Before the Commission approves Verizon-MA’s application for 271 approval, Verizon must fully implement an appropriate CRTEE tariff so that Massachusetts’ remote terminal collocation offerings are consistent with the *UNE Remand Order*.

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

<sup>52</sup> See Comments of Rhythms Links, Inc. and Covad Communications Company on Section 271 Compliance Filings of Bell Atlantic Massachusetts at 17-18 (July 18, 2000).

<sup>53</sup> Section 11.1.1.A.2.

c. **Verizon's Collocation Power Charges are Inappropriate**

Verizon-MA's policy on power charges for collocation, while consistent with its New York offering, is entirely inconsistent with industry standards and with other ILEC practices.<sup>54</sup> This is but one example of why parity with New York should not be sufficient for Verizon-MA's 271 approval.<sup>55</sup>

Power resources are a necessary element for the function of a CLEC's collocated equipment, whether caged or cageless. The amount of amps a CLEC needs to power its equipment is listed in Verizon's Federal and State Tariffs. It appears, however, that Verizon charges CLECs for amps that CLECs do not order and do not use, regardless of whether the equipment is for a caged or cageless arrangement. In Massachusetts, when a CLEC orders cageless collocation and requests 40 amps of power, Verizon "fuses," the requested 40 amps of power to 60 amps of power.<sup>56</sup> Verizon then charges the CLEC for 60 amps on both the A and B feeds. Verizon's practice in this regard is different from most if not all other ILECs – while other ILECs may make available more power than the CLEC either requested or can use, those other ILECs will charge only for the 40 amps that were requested and used by the CLEC, just as a power company would.<sup>57</sup> For example, at a residence, the fused capacity may be 60 amps, but if that household uses only 40 amps, it will only be charged for the 40 amps used, regardless of the fuse capacity. Thus, in Massachusetts, instead of paying for the 40 amps that CLECs request (and require, because their collocated equipment can handle no more than 40 amps), Verizon

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<sup>54</sup> See Williams Affidavit ¶¶ 11-20; See Exhibit A, Declaration of Theresa M. Landers ¶ 16-17.

<sup>55</sup> Neither the New York Commission nor the Massachusetts Department has ever addressed Verizon's practice of charging for redundant power.

<sup>56</sup> Williams Affidavit ¶¶ 11-20.

<sup>57</sup> See *id.* ¶¶ 11-16.

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charges for the 60 amps that it fuses. While Verizon has the option of fusing at more than what CLECs have ordered, CLECs should not have to pay for the extra fusing. Rather, CLECs should only be charged for what they order and use. Verizon's practice is unjustifiable and results in substantial overcharges that competitors must bear. Verizon's practice is inconsistent with the D.T.E.'s statements and Verizon's representations that power charges "charge collocators for power according to their specific amperage requirement" and that "the level of power demanded is determined by the collocator based on the equipment that collocator decides to put in the cage...." <sup>58</sup>

This overcharge is even greater when one takes into account the redundancies that are required to protect against system outages. Regardless of whether a CLEC requires 40 amps, it is fused 60 amps on two separate tracks or "feeds" – an "A" feed and a "B" feed – to provide for redundancy in the case of a power failure. The ALTS Coalition does not disagree with the need for these redundant feeds, but CLECs should not be charged for power that they do not use. It is Verizon's policy to charge CLECs for the 60 amps that are fused (*i.e.*, available) on both the "A" feed and the "B" feed. As a result, CLECs are charged for 120 amps of power when they only require – and can only use – 40 amps of power. Between charging for fused power versus ordered power, and then charging for fused power on the redundant feed, Verizon-MA's power collocation charges are unreasonably bloated.<sup>59</sup>

While Verizon-MA may assert that when it fuses 120 amps of power, CLECs conceivably could use that amount of power and therefore it should be able to recover its total potential power costs, this argument is a red herring. Verizon-MA should not be able to recoup

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<sup>58</sup> *Consolidated Arbitrations, D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4-G Order at 18(June 11, 1998).*

the costs for power that it is not in fact provisioning for CLEC use. On September 14, 2000, ALTS sent a letter to Verizon asking it to justify the cost differential between the ordered amps and the amps billed to CLECs.<sup>60</sup> To date, Verizon has not provided a response to ALTS' request for an explanation. Verizon-MA's practice of overcharging CLECs for power is contrary to industry standard practice and harms CLECs by forcing them to provide higher cost services. The ALTS Coalition submits that Verizon-MA is not in compliance with Section 271 because of this anticompetitive billing practice.

**IV. CHECKLIST ITEM (II) – VERIZON DOES NOT PROVIDE  
NONDISCRIMINATORY ACCESS TO ALL UNES**

**A. Verizon-MA does not provide non-discriminatory access to OSS in violation  
of checklist item (ii).**

**1. The Post 271-experience in New York Demonstrates the inadequacy  
of Verizon's OSS.**

In the *Local Competition First Report and Order*, the FCC concluded that incumbent LECs have an obligation under Section 251(c)(3) to provide nondiscriminatory access to the ILEC's OSS. In its *SBC-Texas Order*, this Commission again pronounced that, "the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well."<sup>61</sup> Thus, any failure to provide nondiscriminatory access to OSS means that Verizon has failed to comply with checklist item (ii).

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(...continued)

<sup>59</sup> Williams Affidavit ¶ 20.

<sup>60</sup> See Exhibit C, Letter from Kimberly M. Kirby, Vice President, State Affairs for ALTS to Tom Dreyer, Directory of Account Management – CAP/CLEC dated September 14, 2000.

<sup>61</sup> *SBC-Texas Order* ¶ 91.

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Verizon-MA states that it provides CLECs with access to various checklist items through substantially the same OSS and interfaces that it uses in New York.<sup>62</sup> Specifically, Verizon comments that, “the OSS used in Massachusetts and New York are in most instances carbon copies of one another – that is, while they are physically separate systems, they are functionally identical.”<sup>63</sup> Verizon adds that it, “provides the same pre-ordering, ordering, and maintenance and repair interfaces to access the underlying OSS in both states.”<sup>64</sup> The fact that Verizon’s Massachusetts and New York OSS are essentially the same, however, should not provide the Commission with any level of comfort. As this Commission is aware, after its 271 approval in New York, Verizon’s woeful processing of orders – including mistakes, delays and lost orders – have resulted in severe harm to the New York local market. Verizon’s OSS, with their outdated software, indecipherable manuals and insufferable delays, have strained the CLECs’ relationships with their customers. As demonstrated by the massive fines Verizon is paying to competitors in New York, and to this Commission, Verizon’s OSS are designed to fail.<sup>65</sup> Verizon continues to manually process orders, fails to provide its staff with proper training, and routinely misses provisioning deadlines. As this Commission is aware, since Verizon has gained entry into the in-region interexchange market in New York, both the New York Commission and this Commission have raised the initial remedy cap under the New York PAP, which penalizes Verizon-NY for noncompliance with its approval conditions, by \$61 million or 23%, in an effort to offset Verizon-NY’s abysmal and deteriorating performance.

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<sup>62</sup> Application at 43, McLean/Wierzbicki Decl. ¶ 8.

<sup>63</sup> *Id.*, McLean/Wierzbicki Decl. ¶ 8.

<sup>64</sup> *Id.*, McLean/Wierzbicki Decl. ¶¶ 8, 18, 39, 82.

<sup>65</sup> *See*, Order Directing Market Adjustments and Amending Performance Assurance Plan, New York Public Service Commission Case 00-C-0009, Case 99-C-0949 (March 23, 2000); *See generally*, *Verizon-New York Order*.

There is simply no reason to believe that Verizon will cease discriminating against competitors, as it is in New York, by routinely mishandling orders and destroying customer confidence in CLECs. Although Verizon has downplayed these incidents in its Application, and the D.T.E. has minimized them in its PAP decision as past problems that have been fixed, ALTS members' experiences as well as Verizon's prove otherwise.

Verizon is required to provide performance information to the Commission as a condition of the Bell Atlantic-NYNEX merger. The graphs this Commission has released that have been developed from that data unambiguously demonstrate that Verizon's OSS are not ready for prime time. Specifically, the FCC-produced graphs of data depicting Verizon's performance over the 34 months between September 1997 and June 2000 demonstrate that Verizon's provisioning and maintenance of UNEs, resale, and "specials" have not only failed to improve, but actually significantly *deteriorated* over time. For example, Verizon's provisioning of resale POTS—no dispatch has apparently steadily improved for Verizon customers over the 36 month period, while its performance for CLECs has remained significantly the same.<sup>66</sup> With respect to provisioning of UNEs, it appears that Verizon's provisioning ability has also deteriorated for CLECs in Massachusetts, while again, improving for Verizon and its customers.<sup>67</sup> The FCC's charts demonstrate the same disturbing facts with respect to Verizon's ability to provide maintenance and repair at parity with what it provides to itself. In Massachusetts, Verizon's mean time to repair for its own retail services is significantly lower than for CLEC UNEs.<sup>68</sup>

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<sup>66</sup> See Exhibit B, Chart 1.

<sup>67</sup> See Exhibit B. Charts 2 and 3.

<sup>68</sup> See Exhibit B, Chart 4.

Accordingly, the problems that Verizon is experiencing are not fixed, as demonstrated by Verizon's own data.

**2. The Observations Of KPMG Substantiate That Verizon's OSS Systems Are Woefully Inadequate and Incapable of Handling CLEC Orders**

Over 110 KPMG observations reveal the appalling performance of Verizon-MA's legacy OSS systems. The observations clearly document that Verizon continues to erroneously record orders by hand, improperly train employees, incorrectly bill CLECs, and provide CLECs with inaccurate and false end-user information. Where Verizon does use electronic ordering, its software is so flawed that CLECs cannot even submit the initial order, much less graduate to Verizon's regimen of missed installations. These observations are not the unsupported "claims" and "anecdotes" of CLECs, but rather belong to an independent party, with no financial stake in the outcome.<sup>69</sup>

KPMG's observations show that Verizon's ordering systems are set up to fail at each and every level. First, determining how to correctly place an order is nearly impossible. *See, e.g.*, Observation Report #19 (stating "information and procedures that have been stated in the CLEC handbook are inconsistent with actual practice and can mislead a CLEC or delay a CLEC's ability to conduct business"). Second, electronic orders are routinely rejected. *See, e.g.*, Observation Report #11 ("stating that "ISDN resale orders cannot be completed without providing a field stated as being optional"). Third, Verizon relies on manual transcription, which continually leads to errors. *See, e.g.*, Observation Report #1 ("This manual transcription could lead to future errors of unpredictable magnitude."). Last, in the rare event Verizon "fixes" its

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<sup>69</sup> Application at 47.

interfaces, it employs the curious tactic of not informing CLECs. *See, e.g.*, Observation Report #94 (stating “KPMG did not receive timely and complete notification of changes”).

Verizon claims that its OSS are able to handle large commercial volumes.<sup>70</sup> KPMG’s observations, however, clearly demonstrate that the glitches in Verizon’s ordering software, in addition to the monumentally large handbook explaining the software, effectively prevents CLECs from placing, tracking, and completing orders. KPMG even recognizes that when Verizon has attempted to change its system, it does not inform CLECs of the changes, nor does it re-train its own staff. In fact, the D.T.E. even refused to compel high-level commercial volume testing, as it had originally required.

Any perceived compliance by Verizon may be only a temporary phenomenon of Verizon’s diversion of resources from other endeavors. As demonstrated in New York, once Verizon received 271 approval, subsequent CLEC orders were mishandled, lost, and “backlogged.” The increase in CLEC orders in New York, combined with Verizon’s untested interfaces, demonstrates that Verizon’s dated OSS systems are incapable of processing CLEC orders. Because Verizon’s Massachusetts OSS systems are provided within the same organization, the post-271 performance of Verizon in New York suggests Verizon simply is not currently capable of sustaining any perceived compliance with the checklist. This is even more troubling since KPMG did not test Verizon-MA’s ability to process commercial volumes of traffic.

The New York experience shows that, regardless of how much Verizon strains to improve its performance under its current processing systems, massive failure will result once competition increases beyond the current insignificant level in Massachusetts. The Commission



and the D.T.E. will then be faced with protracted monitoring proceedings that can never hope to repair lost consumer confidence in CLECs. Eventually, CLECs will be forced to resort to costly and time-consuming arbitration/complaint processes, further delaying and impairing the development of local competition.

Given all the system changes to its OSS since the KPMG testing, it simply cannot be said that Verizon has demonstrated that it provides CLECs with non-discriminatory access to its OSS. The Commission should deny Verizon's Application, and should encourage Verizon to test these systems thoroughly and to establish a collaborative process whereby CLECs and Verizon can work together to fix any ordering difficulties in the software and the processes together. Only through such testing will Verizon be able to finally demonstrate that it has complied with the requirement that it provide non-discriminatory access to its OSS as required by the Act, and will it be possible for Verizon to gain entry into the in-region interLATA interexchange market in Massachusetts.

**3. Verizon does not provide nondiscriminatory access to pre-order loop qualification information**

Section 271 requires a BOC to provide nondiscriminatory unbundled access to OSS, including pre-ordering and ordering functions supported by a BOC's databases and information.<sup>71</sup> Based on its record of providing access to its pre-ordering OSS, Verizon has not satisfied checklist item (ii).<sup>72</sup> "Pre-ordering information" specifically includes "loop qualification information," which includes "the composition of the loop material..., location and type of any

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(...continued)

<sup>70</sup> Application at 44, 45, 47.

<sup>71</sup> 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.319(g).

<sup>72</sup> See Exhibit A, Declaration of B. Kelly Kiser ¶ 8-14 and Declaration of Steve Melanson ¶ 7-10.

electronics or any other equipment on the loop..., the loop length..., the wire gauge(s) of the loop; and the electrical parameters of the loop, [all of] which may determine the suitability of the loop for various technologies.”<sup>73</sup>

Verizon is required to “provide ... access to the same detailed information about the loop that is available to [it], so that [a CLEC] can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the [CLEC] intends to install.... [A]t a minimum, [Verizon] must provide [CLECs] the same underlying information that [Verizon] has in any of its own databases or other internal records,” including the information listed in the definition of “pre-ordering and ordering.”<sup>74</sup> However, Verizon discriminates against CLECs by refusing to make its LFACS database directly available to CLECs although it admits that LFACS contains substantial information CLECs need to determine whether an individual loop is qualified.<sup>75</sup> Verizon has stated that “[t]he loop qualification database [it makes available to CLECs] is distinguishable from the LFACS database,”<sup>76</sup> thereby admitting that it does not provides the same information to CLECs as it does to its retail operations. This just states the obvious fact that there are two databases. Verizon must make available to CLECs the information in LFACS in the same time and manner as that information is available to Verizon

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<sup>73</sup> 47 C.F.R. § 51.

<sup>74</sup> *UNE Remand Order* ¶ 427.

<sup>75</sup> See Verizon Application, Appendix E, *Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding)*, Vol. 24, Tab 1, Transcript of Hearing Held August 2, 2000 (Mr. White), p. 493; see also *id.* at Vol. 19, Tab 1, BA-MA’s Responses to Rhythms/Covad Information Requests (submitted 6/22/00); see also Ex. 29, BA-MA Reply to RL/CVD 1-33 (listing information contained in LFACS, including location and type of electronics, location of bridged taps, spare pair availability, cable and pair identification, and other information).

<sup>76</sup> See Verizon Application, Appendix K, *Supplemental Materials from Appendices B through H*, Vol. 6, Tab 1, Supplement to Appendix E (submitted September 1, 2000) (DTE 98-57 Phase III, Verizon Reply Brief), p. 17 n.2.

retail operations. It could do so by either making LFACS, or the information in LFACS, available to CLECs; however, it refuses to do either.<sup>77</sup>

Verizon requires CLECs ordering a DSL loop to qualify that loop before submitting an order to determine if it is capable of supporting the technologies that the CLEC plans to use.<sup>78</sup> However, Verizon's loop qualification database ("LQD") frequently provides responses that are inaccurate.<sup>79</sup> Digital Broadband tested the error messages received through Verizon's LQD by using "manual" loop ordering procedures when the LQD indicated the loop was not qualified or Digital Broadband believed the LQD message was incorrect.<sup>80</sup> During manual loop ordering, Verizon accesses its mechanized LFACS database.<sup>81</sup> "Through July of this year, Digital Broadband requested manual qualification 533 times. Of those 533 instances, Digital Broadband later was able to deploy service on 225 (42%) of the loops, meaning that close to 50% of the LQD results were what are called 'false negatives.'"<sup>82</sup> Additionally, "between January and July 2000, 14% of all of Digital Broadband's qualified loop orders were false positives."<sup>83</sup>

Provision of such inaccurate information significantly delays or prevents CLECs from providing service to their customers. Verizon's stark refusal to allow access to the automated LFACS, especially when that information is accessed by Verizon during manual order processing, clearly violates the Act and the Commission's rules. Thus, Verizon's loop

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<sup>77</sup> See Exhibit A, Declaration of B. Kelly Kiser ¶ 12.

<sup>78</sup> See Exhibit A, Declaration of Steve Melanson ¶ 7.

<sup>79</sup> See *id.* ¶ 8.

<sup>80</sup> See *id.* ¶¶ 8-10.

<sup>81</sup> See Exhibit A, Declaration of B. Kelly Kiser ¶ 11.

<sup>82</sup> See Exhibit A, Declaration of Steve Melanson ¶ 9.

<sup>83</sup> *Id.* ¶ 10.

qualification access performance and its denial of LFACS warrant rejection of Verizon-MA's 271 Application.

**4. Verizon routinely misses Firm Order Commitment (FOC) dates**

In evaluating whether Verizon's OSS complies with the section 271 competitive checklist, the Commission must examine whether Verizon provides competitors with nondiscriminatory access to due dates, often referred to as a firm order commitment ("FOC") date. FOCs and jeopardy notices allow CLECs to monitor the status of their orders and to track their orders for their own and their customers' records.

As the Commission has recognized, owing to their use as barometers of performance, FOC and jeopardy/rejection notices play a critical role in a CLEC's ability to keep its customer apprised of installation dates (or changes thereto) and to modify a customer's order prior to installation. Further, the Commission also has recognized that the inability to provide CLECs with timely FOCs is a significant indication of whether a BOC's OSS is capable of providing competitors with parity performance.

The assertions in Verizon's Application belie its actual performance. While Verizon might be able to claim it is meeting FOC dates, as several ALTS members have reported, Verizon provides, at best, FOC dates months away. In one instance, XO Communications placed an order on June 23, only to receive a FOC date of November 27. Similarly, Verizon-MA has provided Digital Broadband with FOC dates as late as December 2001 for DS-3 interoffice facilities.<sup>84</sup> At least 14 of Digital Broadband's DS-3 orders placed in June and July 2000 received FOC dates between six and fifteen months from the order date.<sup>85</sup> Furthermore, Verizon

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<sup>84</sup> See Exhibit A, Declaration of Theresa M. Landers ¶ 12.

<sup>85</sup> *Id.*

frequently changes its FOC dates, creating delays typically up to three or four months.<sup>86</sup> In one case, Verizon changed the FOC date from September 6, 2000 to June 10, 2001.<sup>87</sup> Verizon's poor performance has a substantial detrimental impact on CLECs' ability to provide timely and accurate information to their customers and often leads to order cancellation.

Despite Verizon's assertion that its "on-time completion rate for dedicated transport was 97.3 % on average,"<sup>88</sup> this is not consistent with CLEC experiences and data. For example, between April 15 and September 29, 2000, Digital Broadband placed 88 orders for DS-3 interoffice facilities in Massachusetts, yet Verizon completed less than 25% (21 of 88) of those orders by the FOC date,<sup>89</sup> nowhere near the 97.3% it claims. Furthermore, the quality of DS-3s that Verizon provisioned is poor – of all Digital Broadband's DS-3 "orders provisioned since April 15, 2000 in Massachusetts, only four worked properly on the turnover date," and Digital Broadband has been required to make multiple dispatches on nine orders before it received a fully functional DS-3 connection.<sup>90</sup> The experiences of Digital Broadband are similar to those of other CLECs dealing with Verizon in Massachusetts and elsewhere in its region.

**B. Verizon Does Not Provide Nondiscriminatory Access To Unbundled Network Elements including Local Loops**

Section 271(c)(2)(B)(iv) of the Act requires a section 271 applicant to provide, or offer to provide, access to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."<sup>91</sup> To satisfy the nondiscrimination

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<sup>86</sup> *Id.* ¶ 13.

<sup>87</sup> *Id.*

<sup>88</sup> Application at 30.

<sup>89</sup> See Exhibit A, Declaration of Theresa M. Landers ¶ 12.

<sup>90</sup> See *id.* ¶ 14.

<sup>91</sup> 47 U.S.C. § 271(c)(2)(B)(iv).

requirement under checklist item (iv), a BOC must demonstrate that it can efficiently furnish unbundled loops to competing carriers within a reasonable timeframe, with a minimum level of service disruption, and at the same level of service quality as it provides to its own retail customers.<sup>92</sup> Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

Pursuant to section 251(c)(3) BOCs have a duty to provide CLECs access to network elements on an unbundled basis.<sup>93</sup> Section 251 requires BOCs to provide unbundled access to a network element where lack of access impairs the ability of the requesting carrier to provide the services that it seeks to offer.<sup>94</sup> Consistent with this requirement, the Commission has determined that local loops are included in the minimum list of unbundled network elements that a BOC must provide, *e.g.*, 2-wire voice grade analog loops, 4-wire voice-grade analog loops, and 2-wire and 4-wire digital loops.<sup>95</sup> Pursuant to the Commission's Order on Verizon's New York Application, BOCs must offer the high frequency portion of the local loop as a separate unbundled network element.<sup>96</sup> As the Commission has found, spectrum unbundling is crucial for the deployment of broadband services to the mass consumer market.<sup>97</sup> Verizon must satisfy these minimum requirements for provision of unbundled local loops to satisfy the standards of checklist item (iv).

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<sup>92</sup> *Verizon-New York Order* ¶279.

<sup>93</sup> *See* 47 U.S.C. § 271(c)(2)(B)(ii) and (iv); *UNE Remand Order*; *Verizon-New York Order*, ¶269.

<sup>94</sup> *UNE Remand Order* ¶ 11.

<sup>95</sup> *See Local Competition First Report and Order* ¶ 360; *UNE Remand Order* ¶ 3.

<sup>96</sup> *Verizon-New York Order* ¶ 268.

<sup>97</sup> *UNE Remand Order* ¶ 6.

To satisfy the requirements of nondiscriminatory offering of unbundled network elements, BOCs must deliver the unbundled loop to the competing carrier within a reasonable timeframe and with a minimum of service disruption, and must deliver a loop of the same quality as the loop that the BOC uses to provide service to its own customer.<sup>98</sup> A BOC must also 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.<sup>99</sup> BOCs must allow requesting CLECs access to all functionalities of a loop, and the CLEC is entitled, at its option, to exclusive use of the entire loop facility.<sup>100</sup> To refuse a CLEC request for a particular loop or conditioning, the BOC must show that conditioning the loop in question will significantly degrade the BOC's voice-band services, and the BOC must show that there is not adjacent or alternative loop that can be conditioned or to which the customer's service can be moved to enable meeting the CLEC request.<sup>101</sup>

Competing carriers must also have nondiscriminatory access to the various functions of the BOC's OSS in order to obtain unbundled loops in a timely and efficient manner.<sup>102</sup> To meet this standard, it should take no longer to obtain and install equipment to condition a loop in response to a CLEC's request than it would take Verizon to procure and install the same equipment for itself.<sup>103</sup> Last, a BOC must provide cross-connect facilities, for example, between an unbundled loop and a requesting carrier's collocated equipment at prices consistent with

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<sup>98</sup> See, 47 C.F.R. § 51.313(b); 47 C.F.R. § 51.311(b); *Local Competition First Report and Order* ¶¶ 312-16.

<sup>99</sup> *Verizon New York Order* ¶ 271 (citing *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713 and *Local Competition First Report and Order*, 11 FCC Rcd at 15692).

<sup>100</sup> *UNE Remand Order* ¶ 5.

<sup>101</sup> *Id.* ¶ 36.

<sup>102</sup> *Verizon-New York Order* ¶ 270.

<sup>103</sup> *UNE Remand Order* ¶ 32.

section 252(d)(1) and on terms and conditions that are reasonable and nondiscriminatory under section 251(c)(3).<sup>104</sup>

**C. Verizon's provision of DSL-capable loops does not comply with the requirement for non-discriminatory access.**

The FCC's *Verizon-New York* and *SBC-Texas Orders* made it abundantly clear that, in reviewing subsequent BOC applications, the Commission would consider a BOC's provisioning of DSL-capable loops a critically important test of its compliance with checklist item (iv).<sup>105</sup> The Department of Justice also looked specifically at DSL loop provisioning when reviewing Verizon's New York 271 application.<sup>106</sup> Because the provisioning of xDSL services was not a factual issue in the New York proceeding, but is an important issue that the Commission must now consider for purposes of determining whether Verizon has earned interLATA entry into the Massachusetts long distance market, it is simply not enough for Verizon-MA to assert that it has provided what Verizon-NY provided.

Although Verizon-MA has been on notice for almost a year that it must satisfy the requirements for providing nondiscriminatory access to the high frequency portions of the loop set forth in the *Verizon-New York Order*, the *UNE Remand Order* and the *Line Sharing Order*, nothing in Verizon's conduct over the past year indicates that it will allow competitors a meaningful opportunity to compete in the provisioning of DSL-based services. Certainly Verizon's actions during the Tariff 17 proceeding show that Verizon expended far more energy ensuring that its ADSL offering would get to market first – through almost any tactic – than in

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<sup>104</sup> *Verizon-New York Order* ¶ 272 (citing *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713).

<sup>105</sup> *Verizon-New York Order* ¶ 330.

<sup>106</sup> The Department found that the data in the record for *Verizon* were insufficient to demonstrate its compliance with the requirement that it provide DSL-capable loops on a nondiscriminatory basis. *Verizon-New York Order* ¶ 328.



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meeting its CLEC customers' needs. In fact, many of the provisions of Verizon's proposed xDSL tariff have been found by the D.T.E. to run afoul of the *UNE Remand Order* and the *Line Sharing Order*. While the ALTS Coalition is encouraged by the Department's action in disallowing many of the untenable restrictions that pervade Verizon's DSL offering, the fact remains that today, 10 months after the Commission's *UNE Remand* and *Line Sharing Orders*, Verizon cannot demonstrate its compliance with the FCC's requirements. It should be noted that Verizon chose to file its Application while its xDSL tariff was pending at the Massachusetts Department. On September 29, 2000, days following Verizon-MA's filing with the Commission, the Department released its line sharing order, striking down many of the restrictions in Verizon's proposed xDSL tariff as inconsistent with the Commission's prior orders. Verizon has obstinately done its best to severely limit the types of xDSL services that a CLEC can offer. Specifically, Verizon's proposal unreasonably restricts the types of xDSL services a CLEC can offer as well as the lengths of the loops and the transmission speeds of the loops available to CLECs. Moreover, Verizon's subloop unbundling proposal ("USLA") is overly restrictive and contrary to the FCC's Orders. ALTS will discuss each of these issues separately below. Given the rejection of Verizon-MA's tariff filing, its failure to submit a compliance filing acceptable to the D.T.E.<sup>107</sup> and its failure to "fully implement" the Commission's and the D.T.E.'s requirements, Verizon-MA has not satisfied this checklist item.

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<sup>107</sup> If past is prologue, Verizon-MA may file a motion for reconsideration, as it did from the D.T.E.'s March 24, 2000 decision involving Tariff 17. That motion was not decided by the D.T.E. until September 7, 2000, thus depriving some CLECs of the benefits of that tariff. Similar delays would preclude CLECs from obtaining the xDSL and line sharing arrangements ordered by the D.T.E. and eliminate any claim that Verizon-MA has fully implemented these services.

1. **Verizon’s xDSL offering unreasonably and unlawfully restricts the advanced services CLECs can offer to their customers.**

The Commission has made it clear that the Act is technology neutral, and therefore, market forces, rather than regulatory distinctions, should drive the advancement of the nation’s communications infrastructure. In the Commission’s words: “Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets.”<sup>108</sup> Similarly, the Commission has noted that “[it is] mindful that, in order to promote equity and efficiency, [it] should avoid creating regulatory distinctions based purely on technology.”<sup>109</sup> Furthermore, the Commission has recently noted that “[t]he incumbent LECs’ obligation to provide requesting carriers with fully-functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC).”<sup>110</sup> Moreover, the Commission has stated that in order to demonstrate compliance with its obligation to provide nondiscriminatory access to unbundled loops, the BOC “must provide access to any functionality of the loop requested by the competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.”<sup>111</sup>

As the Massachusetts D.T.E. recently found, Verizon-MA’s xDSL offering does not live up to the standards articulated by this Commission. First, the Verizon proposal limits the type of

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<sup>108</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking* ¶ 11 (rel. Mar. 31, 1999) (“*Advanced Telecom Order*”).

<sup>109</sup> Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45, ¶ 98 (rel. Apr. 10, 1998).

<sup>110</sup> *Advanced Telecom Order* ¶ 54.

<sup>111</sup> *See BellSouth Louisiana II Section 271 Order* ¶ 187.

services that can be provided over advanced services loops to ADSL and HDSL.<sup>112</sup> This limitation is unacceptable and is in violation of FCC rules. In its *Line Sharing Order* the FCC found that ILECs are required to provide “unbundled access to the high frequency portion of the loop to any carrier that seeks to deploy any version of xDSL that is presumed to be acceptable for shared-line deployment in accordance with our rules.”<sup>113</sup> The FCC determined that an advanced services loop will be deemed to be acceptable for deployment if the technology (1) complies with existing industry standards; (2) is approved by an industry standards body, the FCC, or any state commission; or (3) has been successfully deployed by any carrier without significantly degrading the performance of other services.<sup>114</sup> Verizon’s limited xDSL offering stands in blatant violation of this Commission’s rules. Specifically, as the Massachusetts D.T.E. determined, “Part A, Section 5.4.1 of Verizon’s proposed tariff is inconsistent with the FCC Rules by narrowly defining ‘xDSL links’ as providing ‘transmission technology capable of supporting either [ADSL] or [HDSL]’”<sup>115</sup> As such, the D.T.E. ordered Verizon to modify its xDSL offering to, “indicate that a requesting telecommunications carrier may deploy any xDSL-based service that conforms to the FCC’s criteria set forth in Rule § 51.230.”<sup>116</sup> Accordingly, as it stands today, Verizon has yet to offer xDSL that is in compliance with the Commission’s Orders, and thus cannot demonstrate that it is providing access to unbundled high capacity loops as required by the Act and this Commission.

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<sup>112</sup> D.T.E. MA Tariff No. 17, Part B Section 5.4.1.A.

<sup>113</sup> *Line Sharing Order* ¶ 71.

<sup>114</sup> *Line Sharing Order* ¶ 195 and codified at 47 C.F.R. § 51.230(a).

<sup>115</sup> D.T.E. Order in 98-57, Phase III, at 13.

<sup>116</sup> D.T.E. 98-57-Phase III, at 14.

**2. Verizon's proposal unreasonably and unlawfully restricts the loop lengths that CLECs can use to provide DSL services**

In addition to restricting the types of DSL services a CLEC can provide via its tariff proposal, Verizon also unreasonably limits the loop length that CLECs can use to provide xDSL services. Specifically, the Verizon offering limits the length of loops over which CLECs can provide HDSL to 12,000 feet and loops over which CLECs provide ADSL must be restricted to less than 12,000 feet or 18,000 feet depending on the offering. These limitations are completely arbitrary and are in violation of the FCC's rules, which prohibit LECs from restricting the types of services that CLECs provide through the use of an unbundled loop.<sup>117</sup>

**3. Verizon's proposal unreasonably and unlawfully restricts the speeds of CLEC DSL offerings.**

More troubling perhaps, are the restrictions that Verizon's xDSL proposal puts on the speeds of CLEC xDSL offerings. As noted above, Verizon's proposal permits CLECs to only offer two types of xDSL services – ADSL and HDSL. For ADSL, Verizon restricts CLEC offerings to speeds up to 6 Mbps downstream and 640 Kbps upstream.<sup>118</sup> Verizon's own retail offering (Infospeed) offers retail customers speeds up to 7.1 Mbps downstream and 680 Kbps upstream. The anti-competitive and discriminatory effects of these unreasonable restrictions on CLEC offerings could not be clearer and will significantly hamper CLEC entry into the advanced

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<sup>117</sup> *First Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, ¶ 53 (rel. March 31, 1999) ("Section 251(c)(3) does not limit the types of telecommunications services that competitors may provide over unbundled elements to those offered by the Incumbent LEC.").

<sup>118</sup> D.T.E. MA Tariff No 17 §5.4.1.A

service marketplace in Massachusetts as well as the choices available to consumers in the Commonwealth.

As noted above, the Massachusetts D.T.E. recently ordered Verizon to remove the restrictions on the types of xDSL capable services CLECs can provide over Verizon's advanced services loops as well as the restrictions on transmission speeds in the tariff. While this is encouraging, the fact is that today, despite 10 months of notice that it would be required to provide xDSL within the parameters set in the Commission's *UNE Remand* and *Line Sharing Orders*, Verizon has obstinately refused to do so. The Commission should not reward Verizon for its blatant refusal to comply with this Commission's rules and should not permit Verizon to provide interLATA interexchange services until it provides a DSL offering that furthers the goals of the Act.

**4. Verizon's proposal does not provide for access to loops provisioned via fiber**

In addition, the Verizon tariff apparently prevents CLECs from obtaining digital links if Verizon provisions those links using remote concentration devices, such as digital subscriber line access multiplexes ("DSLAMs") and digital loop carriers ("DLCs"). In order to comply with its obligation to provide unbundled loops, Verizon must clarify that it will unbundle digital loops of any length requested by CLECs, regardless of whether they are provided over remote concentration devices. **This is of significant concern since more than 400, 000 (or 8.6%) of the loops in Massachusetts are served via DLC and Verizon can be expected to continue deploying DLC facilities.**<sup>119</sup>

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<sup>119</sup> Brief of the Massachusetts Attorney General regarding Verizon-MA's 271 application at 4.

In its *Line Sharing Order*, this Commission stated that, “incumbent LECs are required to unbundle the high frequency portion of the local loop even where the incumbent LEC’s voice customer is served by DLC facilities.”<sup>120</sup> Rythms and Covad have explained in detail how DLC can be used to provide providing line shared DSL service over fiber.<sup>121</sup> Even Verizon-MA concedes that it is technically feasible to provide DSL service over DLC.<sup>122</sup> As noted above, the Commission has stated that the Act is technology neutral. The Commission should remind Verizon that it will not tolerate artificial technological distinctions of the type that Verizon has proposed. While the D.T.E. has instructed Verizon to file a tariff that, “would enable CLECs to place, or have Verizon place CLEC-purchased line cards in Verizon’s DLC electronics at the RT...and to file a tariff for feeder subloops,”<sup>123</sup> such a tariff proposal does not exist today. Accordingly, before Verizon can gain 271 approval, it must prove that it provides access to high capacity loops fed via DLC, something that it does not do today.

**D. Additional Testing is Necessary to That Verizon is Providing Advanced Services Loops on a Non-discriminatory Basis.**

As noted above, Verizon-MA is the first BOC that will be required to demonstrate its compliance with the Commission’s *Line Sharing* and *UNE Remand Orders*. In its review of Verizon’s New York Application, the Commission informed Verizon that it would be required to make a specific showing of compliance for DSL loop issues in its next 271 Application. The FCC has stated that to demonstrate checklist compliance regarding DSL loop provisioning, the BOC can either (1) create an advanced services affiliate which would, “use the same processes as

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<sup>120</sup> *Line Sharing Order*, ¶ 91.

<sup>121</sup> See Initial Brief of Rythms Links, Inc., D.T.E. 98-57, Phase III (August 18, 2000) at 40.

<sup>122</sup> D.T.E. 98-57, Phase III, Tr. at 418-419.

<sup>123</sup> D.T.E. 98-57, Phase III, Tr. at 80.

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competitors to conduct such activities as ordering loops, and pay an equivalent price for facilities and services...”<sup>124</sup> or it could choose to demonstrate, “that it provides non-discriminatory access to xDSL loops in accordance with checklist item four by establishing by a preponderance of the evidence that it provides xDSL-capable loops to competitors in a nondiscriminatory manner.”<sup>125</sup>

The FCC further instructed that for any data submitted to demonstrate compliance, it would expect the BOC, “to demonstrate, preferably through the use of state or third-party verified performance data, that it provides xDSL capable loops to competitors either in substantially the same average interval which it provides xDSL service to its retail customers or an interval that offers competing carriers a meaningful opportunity to compete.”<sup>126</sup>

While the ALTS Coalition believes that testing conducted by KPMG was in many respects a comprehensive test of Verizon’s OSS, two significant flaws with the testing of xDSL make it impossible to determine if Verizon is meeting its obligation to provide CLECs with nondiscriminatory access to unbundled xDSL loops. First, unlike most of the metrics presented in the final report, KPMG did not independently verify Verizon’s ability to provision xDSL loops. Although KPMG’s Final Report indicates that it used the New York Carrier-to-Carrier guidelines dated February 28, 2000 which contain numerous DSL metrics, verification of Verizon’s xDSL performance was somehow overlooked by KPMG.<sup>127</sup>

This is especially troubling since the experience of ALTS members, independent of testing, demonstrates that real problems exist with Verizon-MA’s ability to provision xDSL loops. Verizon provisions an unacceptably large number of loops that pass initial cooperative

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<sup>124</sup> *Verizon-New York Order* ¶ 332.

<sup>125</sup> *Id.* ¶ 334.

<sup>126</sup> *Id.* ¶ 335.

testing but subsequently fail, and loops that do not function even after being installed.<sup>128</sup> For example, during August and September 2000, 19.5% (60 out of 308) of Digital Broadband's DSL loop installations passed the initial remote cooperative testing at time of loop turnover but did not pass subsequent testing when Digital Broadband performed installation at the customer premises.<sup>129</sup> In its Application, Verizon-MA lays blame on CLECs for many of these problems, stating that CLECs "are submitting ... trouble reports within short periods after the loops are installed and after they provide a serial number accepting the loops as working," and that this "suggests that CLECs are accepting loops that are not capable of supporting the services they wish to provide and then submitting 'repair' orders in an effort to force Verizon to rebuild or replace the loop."<sup>130</sup> However, Digital Broadband has found that in many cases the loop no longer passes testing because "the loop parameters have changed between the time of initial testing and installation – for example, there has been a resistive or voltage fault, or some aspect of the loop as initially tested has been altered by Verizon in such a manner that the loop as initially tested no longer is available."<sup>131</sup> Verizon's practices waste valuable CLEC time and resources that must be expended to test, retest, and re-install the loop.

Second, KPMG did not test Verizon-MA's ability to provision line sharing at all. As noted above, Verizon-MA must demonstrate that it has complied with the *Line Sharing Order* as a prerequisite for its ability to obtain 271 authorization. Failure to test its ability to provision line

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(...continued)

<sup>127</sup> Tr. of Technical Session held on August 29, 2000. Vol. 26, pp. 3387-89, MA D.T.E. 99-271.

<sup>128</sup> See Exhibit A, Declaration of John McMillan ¶ 6.

<sup>129</sup> *Id.* ¶ 7.

<sup>130</sup> Application at 26.

<sup>131</sup> See Exhibit A, Declaration of John McMillan ¶ 10.



sharing means that it has not met its burden of proof, and has thus not met its obligations that would earn it the privilege of entering the interLATA market in Massachusetts.

**E. Verizon fails to offer CLECs adequate access to subloops in violation of the UNE Remand and Line Sharing Orders.**

The *UNE Remand Order* makes clear that Verizon must offer CLECs access to subloop network elements at any feasible point.<sup>132</sup> In addition, the *UNE Remand Order* requires Verizon-MA to provide subloop unbundling.<sup>133</sup> “Subloops” are the “portions of the loop that can be accessed at terminals in the incumbent’s outside plant.”<sup>134</sup> The FCC defined subloop broadly in order to allow “requesting carriers maximum flexibility to interconnect their own facilities” at technically feasible points to “best promote the goals of the Act.”<sup>135</sup> Accordingly, Verizon is required to provide access to the subloop elements at any technically feasible point in the loop plant – this includes, but is not limited to, “points near the customer premises, such as the point of interconnection between the drop and the distribution cable, the NID, or the MPOE.”<sup>136</sup> Technically feasible points would also include, “any FDI, whether that FDI is located at a cabinet, CEV, remote terminal, utility room in a multi-dwelling unit or any other accessible terminal.”<sup>137</sup>

As determined by the FCC, “access to subloop elements promotes self-provisioning of the part of the loop, and thus will encourage competitors, over time, to deploy their own loop facilities and eventually develop competitive loops.”<sup>138</sup> Similarly, the FCC found that the lack of

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<sup>132</sup> *UNE Remand Order* ¶ 209.

<sup>133</sup> *Id.* ¶ 205.

<sup>134</sup> *Id.* ¶ 206.

<sup>135</sup> *Id.* ¶ 207.

<sup>136</sup> *Id.* ¶ 209.

<sup>137</sup> *Id.* ¶ 210.

<sup>138</sup> *Id.* ¶ 209.

access to the incumbent's subloops, "would preclude competitors from offering some broadband services."<sup>139</sup> Accordingly, it is critical that CLECs have the ability to access unbundled subloops in order to develop facilities-based competition and the further deployment of advanced services.

Verizon-MA's subloop unbundling proposal, however, does not facilitate the FCC's goals. Although Verizon states that its subloop offering is "in compliance with the FCC's *UNE Remand Order*"<sup>140</sup> it plainly is not. Verizon's proposed Unbundled Subloop Arrangement ("USLA") is limited and falls short of providing the CLECs with the maximum flexibility to interconnect their own facilities" at technically feasible points as contemplated by the Act. First, instead of allowing CLECs to access subloops at any technically feasible point, Verizon has unilaterally limited its subloop offering to the "metallic distribution pairs/facilities" at the Verizon FDI.<sup>141</sup> Accordingly, Verizon's offering is at odds with the FCC's explicit findings that ILECs are obligated to provide access to the subloops at any number of technically feasible points including NIDS, MDFs, MPOIs, RTs, SPOIs and FDIs.

Again what is disturbing is that Verizon has been fully aware of the FCC's requirement that it provide subloop unbundling for over ten months, yet it has dragged its feet in implementing that requirement and today still fails to offer a subloop unbundling offering that is fully compliant with the clear directives of this Commission. While it is somewhat understandable that the Commission permitted Verizon to enter the New York 271 market without meeting this requirement because the New York Application was filed in advance of the FCC's *UNE Remand* and *Line Sharing Orders*, that is not the case here. Verizon should not be

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<sup>139</sup> *Id.* ¶ 205.

<sup>140</sup> Verizon-MA supplemental Comments at 56.

<sup>141</sup> D.T.E. MA Tariff No. 17, Part B Section 5.4.1.A.

rewarded for its delaying tactics, and this Commission should require it to demonstrate that it provides subloop unbundling to CLECs in a manner consistent with the requirements of the Commission's orders prior to being granted the authority to provide interLATA interexchange services in Massachusetts.

**V. VERIZON HAS NOT DEMONSTRATED THAT IT PROVIDES NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS OF WAY**

Unlike the Verizon-New York and SBC-Texas situations,<sup>142</sup> the state commission record in this proceeding demonstrates that Verizon-MA has failed to comply with checklist item (iii). In particular, Verizon has failed to conform its pole and conduit attachment agreements to afford CLECs '[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 section 224.'"<sup>143</sup> During the D.T.E. proceeding, many parties, including the New England Cable Television Association, Inc., AT&T, MediaOne Telecommunications of Massachusetts (now AT&T Broadband), RCN, Conversent Communications and the Attorney General of the Commonwealth of Massachusetts, raised serious concerns about Verizon's lack of compliance with the non-discriminatory access requirements of the Act and presented evidence of Verizon's non-compliance to the D.T.E. As

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<sup>142</sup> In its Verizon-New York decision, the FCC found that the BOC satisfied this checklist item. It noted that CLECs raised only two issues concerning this checklist item: access to conduits and rights-of-way within multiple tenant environments and delays in CLEC access to conduits and ducts provided by a BOC subsidiary, Empire City Subway. The FCC accepted the conclusion of the New York Public Service Commission that this checklist item had been satisfied. *Verizon-New York Order* ¶¶ 65-267. In its *Texas Order*, the Commission found persuasive the fact that the BOC had negotiated agreements with cable providers and that the product of those negotiations is contained in the BOC's Master Agreement and incorporated into interconnection agreements approved by the state commission.<sup>143</sup> No commenter in the *Texas* 271 proceeding questioned the BOC's compliance with checklist item (iii).

<sup>143</sup> 47 U.S.C. § 271(c)(2)(B)(iii).

demonstrated during D.T.E. proceedings, Verizon's Massachusetts Application does not meet the statutory legal standards cited above.

Poles and conduits owned in whole or part by Verizon are critically important pathways in the development of competitive telecommunications services and high-speed data products. New entrants that desire to own the fiber that serves household and business premises are forced to rely heavily upon the aerial and underground plant of Verizon for attachment space. For its part, Verizon has little incentive to provide its competitors with ready access to its poles and conduit. These circumstances have been recognized by the Commission in prior proceedings. Congress properly placed non-discriminatory access to these bottleneck facilities at issue in section 271 proceedings by requiring BOC compliance with checklist item (iii).

While Verizon has historically permitted attachments to poles and conduit owned or under its control, it has done so pursuant to contracts of adhesion that do not comply with the requirements of the Act or this Commission's standards. These standard contracts originated decades ago during the infancy of the cable industry and have remained in almost the exactly same form up to the present day. The one-sided nature of these agreements was recognized by the Massachusetts Supreme Judicial Court in *Greater Media Cable v. D.P.U.*, 415 Mass. 409 (1993), affirming *Greater Media Cable*, D.P.U. 91-218 (1992). They treat attaching parties as bare licensees, subject to preemption and removal at virtually any time and for even immaterial forms of non-compliance. They impose numerous indemnification and insurance obligations for pole and conduit related problems without regard for fault and without any reciprocal obligations placed upon the pole owners.

Throughout the D.T.E proceeding and since the passage of the Act, Verizon has resisted good faith attempts by CLECs and other attaching parties to conform its standard agreements to

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the non-discrimination requirements of the Act. Even with section 271 approval at stake, Verizon has shown no interest in curing the deficiencies in its existing agreements. Instead, it has tried to create the illusion of cooperation with CLECs and the illusion of changes in its standard agreements.

In the over four and a half years since the passage of the Act, Verizon has done little, if anything, to make its attachment agreements compliant with the Act or to speed up the attachment process. Among other problems:

- Verizon didn't begin collecting data on the relative timeliness of processing applications between Verizon and other parties until first quarter 1999, just before its 271 proceeding before the D.T.E. was to begin.<sup>144</sup>
- Verizon did not initiate a process to update its attachment agreements until Spring 1999, when it was planning its initial May 1999 filing with the D.T.E.<sup>145</sup>
- Verizon proposed meetings with CLEC field staff, but barred CLEC attorneys from attendance, an ill-considered position in light of the non-discriminatory access issues that needed to be addressed.<sup>146</sup>
- In December 1999, Verizon provided new draft agreements that included new, burdensome provisions that had not been discussed at its monthly meetings and in cases ran just the opposite of the views expressed by attaching parties at those meetings.
- Verizon's "final drafts" ignored the proposed revisions offered by CLECs in June 2000.<sup>147</sup>
- Verizon admitted that it did not respond to NECTA's critique of Verizon's March 2000 draft agreement.<sup>148</sup>

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<sup>144</sup> May 1999 Harrington Affidavit. Response to DTE-NECTA 1-32.

<sup>145</sup> May 1999 Harrington Affidavit. Response to DTE-NECTA 1-21.

<sup>146</sup> Response to DTE-NECTA 1-35.

<sup>147</sup> *Compare*, Response to DTE-ATT-18(Attachment) and ???

<sup>148</sup> Response to DTE-NECTA 4-6.

The July 18, 2000 Comments of the New England Cable Television Association highlight several of the serious instances in which Verizon's pole and conduit attachment agreements are out of compliance with the principle of non-discriminatory access: (1) unnecessary overloading/rebuild restrictions; (2) refusal to commit to any performance deadlines, while requiring CLECs to accept deadlines on CLEC performance; (3) insistence of remedies against CLEC and cable attachers – including contract termination – without explicit rights of notice or opportunity to cure; at the same time, nearly three years after the disputes were identified, Verizon has failed to resolve disputes with the affiliates of joint pole owners (Boston Edison and New England Electric System – now Nstar and National Grid) that had attached to joint poles in power space, without obtaining licenses from Verizon and without complying with the National Electrical Safety Code. This approach is entirely at odds with the non-discrimination requirements of the Act;<sup>149</sup> (4) Verizon reserves space on its poles for its own use for one year, while CLECs get only 90 days;<sup>150</sup> (5) CLECs must tag their lines to permit ease of identification, but Verizon refuses to tag its own lines;<sup>151</sup> and (6) Verizon acknowledges that its internal requests for access to poles and conduit go through a process entirely different than that of unaffiliated attachers.<sup>152</sup> Verizon witness Harrington stated that she had no responsibility for attachments requested by Verizon itself.

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<sup>149</sup> NECTA Comments at 22-23. Responses to DTE-NECTA 1-24 and 25; DTE-MCIW 1-21, 26; DTE-NECTA 4-12; Harrington Testimony at technical session. *Cavalier Telephone, LLC v. Virginia Electric Power Co.*, PA No. 99-005 (June 7, 2000).

<sup>150</sup> NECTA Comments at 23. Response to DTE-NECTA 1-30.

<sup>151</sup> NECTA Comments at 24. This practice of Verizon is contrary to the Commission's ruling in the *Cavalier decision* that an attaching party cannot be forced to pay for engineering work that other parties are not required to perform.

<sup>152</sup> Response to DTE-NECTA 1-33.

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Other participants have raised non-discriminatory access concerns. RCN, for example, expressed serious problems with Verizon's limitation on the number of pole attachments that it would process in a single application. AT&T raised non-discriminatory access concerns regarding Verizon's conduit attachment agreement.

While the D.T.E. has certified to the Commission that it regulates the rates, terms and conditions associated with pole and conduit attachments, it has yet to require Verizon or any other utilities within Massachusetts to bring their pole and conduit attachment agreements into compliance with the legal requirements of the Act. The D.T.E. has an opportunity in this proceeding to express its views on the issue and hopefully will demonstrate vigilance.

In support of its Massachusetts Application, Verizon points to the number of pole attachments and conduit attachment footage, the timeliness of completing field surveys requested by CLECs, the percentage of time it can meet a CLEC request that does not involve any "make ready" work, and its completion of requests that involve make ready work within the time that it self-provisions pole attachments and conduit occupancy that require such work.<sup>153</sup> However, these statements attempt to skate by Verizon's continued imposition upon CLECs of standard attachments agreements that do not comply with the non-discriminatory access provisions of the Act and, in turn, with checklist item (iii).

Unlike prior BOC Section 271 applications, therefore, this is a case where Verizon's Massachusetts Application falls well short of meeting the requirements of checklist item (iii). Accordingly, the Commission should find and rule that Verizon has not met its burden of proving by a preponderance of the evidence that it has satisfied Checklist item (iii). Any promise of Verizon in the future to conform its attachment agreements to the requirements of Section 224

or relevant D.T.E. orders has no probative value in demonstrating present compliance with the requirements of Section 271.<sup>154</sup>

**VI. THE REQUESTED AUTHORIZATION WOULD NOT BE CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY UNDER SECTION 271(D)(3)(C) OF THE ACT**

Under Section 271(d)(3)(C) of the Act, Congress has directed the Commission to assess whether Verizon's requested authorization to provide long distance service in Massachusetts would be consistent with the public interest, convenience and necessity. The Commission has stated that a determination of compliance with the competitive checklist is, by itself, "a strong indicator that long distance entry is consistent with the public interest."<sup>155</sup> For the reasons stated in its Comments, the ALTS Coalition submits that Verizon has not complied with the competitive checklist and that therefore approval of its application would not be consistent with the public interest. Nevertheless, even if the Commission were to conclude that Verizon-MA has satisfied the competitive checklist, it should find that approval of its application is not consistent with the public interest. The Commission's examination of other factors compels the conclusion that unlike the New York and Texas situations, there are circumstances in Massachusetts that would make Verizon-MA's entry into the interLATA long distance market contrary to the public interest.<sup>156</sup> Further, as explained below, in this proceeding Verizon-MA has not provided

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(...continued)

<sup>153</sup> Application at 34-35; Lacouture/Ruesterholz Declaration at 187-202.

<sup>154</sup> *Verizon-New York Order* ¶ 37.

<sup>155</sup> *Id.* ¶ 422.

<sup>156</sup> In addition to the issues discussed below, Verizon has proven unwilling to expeditiously resolve billing disputes with CLECs. For example, XO Communications has experienced significant problems with  
(continued...)



sufficient assurance that local markets – if open – will remain open after the grant of long distance authorization.<sup>157</sup>

**A. Circumstances In Massachusetts Make The Entry Of Verizon-MA Into The Long Distance Market Contrary To The Public Interest**

**1. Comprehensive DSL Performance Standards and Measures are Missing**

As explained by Rhythms Links, Inc. (“Rhythms”) in a motion for reconsideration filed with the D.T.E. on September 27, 2000, the Verizon-MA PAP does not adequately deal with DSL issues.<sup>158</sup> This is because it was based upon a New York PAP that gave short shrift to DSL issues.<sup>159</sup> Since the Commission’s approval of the Verizon-NY Section 271 application gave that company a “free pass” on DSL issues, these shortcomings in the New York PAP may not have been material to the Commission’s *Verizon-New York Order*. However, these shortcomings constitute a fatal flaw in the Verizon-MA PAP.

In declining to add more DSL measurements to the Verizon-MA PAP, the D.T.E. stated that it would allow the New York Public Service Commission to take the lead in determining what, if any, additional DSL metrics and performance measures should be adopted, and then

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(...continued)

Verizon in resolving billing disputes regarding reciprocal compensation payments. XO Communications has provided detailed billing information to Verizon; however, Verizon has failed to follow the procedures established in its interconnection agreement for disputing those bills. *See* Exhibit E.

<sup>157</sup> *Id.* ¶ 423.

<sup>158</sup> *See* Exhibit D.

<sup>159</sup> As explained by Rhythms, in the New York PAP, Verizon’s wholesale performance with regard to DSL services is measured by only four metrics, all contained within the Critical Measures subgroup. Of these four metrics, two are not supported by any Verizon data (PO-9-01: Manual Loop Qualification Response Time” or PO-8-02: Engineering Record Request Response Time).

merely copied the existing DSL deficient New York PAP.<sup>160</sup> This approach guts the Commission's clear directive to BOCs that Section 271 applicants "demonstrate that they are providing nondiscriminatory access to xDSL-capable loops through comprehensive and accurate reports of performance measures."<sup>161</sup> For its part, the D.T.E. ignored the Commission's encouragement that "state commissions adopt specific xDSL loop performance standards measuring, for instance, the average completion interval, the percent of installation due dates missed as a result of the BOC's provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions."<sup>162</sup> In contrast to the Texas Commission, the Massachusetts D.T.E. did not even attempt to satisfy the Commission's need for comprehensive DSL performance standards. It passed the buck to the New York Commission. Unlike the Texas Commission, which developed specific xDSL-capable loop performance standards before SBC filed its application, the Massachusetts D.T.E. deferred to the New York Commission for the development of these DSL specific performance standards. As a result, this Commission has been precluded from conducting its analysis on the basis of a comprehensive state proceeding.<sup>163</sup>

Unlike Verizon-NY, Verizon-MA must demonstrate that it complies with the Commission's *Line Sharing Order*.<sup>164</sup> Thus, any PAP adopted in Massachusetts should reflect

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<sup>160</sup> See, D.T.E.'s September 5, 2000 *Order Adopting Performance Assurance Plan* at 26.

<sup>161</sup> *Verizon-New York Order* ¶ 333-335. *SBC-Texas Order* ¶ 283.

<sup>162</sup> *Verizon-New York Order* ¶ 334. *SBC-Texas Order* ¶ 282.

<sup>163</sup> See, *SBC-Texas Order* ¶¶ 284-306.

<sup>164</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98 (rel. Dec. 9, 1999).

developments that have taken place in xDSL and line sharing since the Verizon-NY Section 271 application. What was good enough for Verizon-NY a year ago is not sufficient today, given this Commission's recent orders concerning xDSL and line sharing and its clear directives in the *Verizon-New York* and *SBC-Texas Orders*.<sup>165</sup> The argument in Rhythms' Motion for Reconsideration applies with equal force in support of the ALTS Coalition's position that the Verizon-MA Section 271 Application is deficient in material respects and premature.<sup>166</sup>

For these reasons, the Verizon's Section 271 Application is premature insofar as the Massachusetts market is concerned. Verizon should be required to refile in Massachusetts after (1) the New York Commission has adopted comprehensive DSL specific performance measures and standards and the D.T.E. has, in turn, adopted the same measures and standards for Massachusetts or (2) the D.T.E. establishes such comprehensive performances measures and standards on its own, without waiting for the New York Commission to act.

**2. Given the absence of NXX codes in Massachusetts, Verizon's entry into long distance is premature**

The level of local competition in Massachusetts has been severely constrained by the lack of numbering resources since the passage of the Act. When Verizon (then NYNEX) was the numbering administrator, it did a less than adequate job forecasting the need for additional area codes. In *New England Telephone and Telegraph Company*, D.T.E. 96-61 (1997), the D.T.E. ordered that a geographic split of the 617 and 508 area codes be implemented in Eastern Massachusetts. Pending the availability of new NXXs, the few remaining NXXs were rationed and made available on the basis of a lottery system. The new area codes "were expected to

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<sup>165</sup> Even Verizon appears to agree with this assessment. In its Initial Comments in New York Commission Case 99-C-0949 filed on September 15, 2000, Verizon indicated that the addition of new DSL line sharing measures for ordering, provisioning and maintenance as well as modification of DSL loop measures should be considered by the New York Commission.

alleviate the need for further area code relief for several years.”<sup>167</sup> However, on March 4, 1998, a little less than two months before the new area codes were to be implemented, Verizon (its Bell Atlantic predecessor) notified the Department that the 617 and 508 area codes had been placed in jeopardy. On May 12, 1998, notification was received that the new 781 and 978 area codes were also in jeopardy. “Thus, even as telephone numbers were first being assigned from the new area codes, the four area codes in Eastern Massachusetts were in danger of exhausting....” CLECs were forced to again participate in NXX code rationing. Thus, numbering resources problems stemming from Verizon’s past inadequate planning practices have constricted the ability of CLECs to market and obtain customers. The D.T.E. has since ordered that an overlay be implemented in Eastern Massachusetts.<sup>168</sup> However, the implementation of the overlay will not result in additional NXXs until April 2001.<sup>169</sup>

Given these unique circumstances, the Commission should not permit Verizon to enter the long distance market in Massachusetts until additional needed NXX codes are made available in April 2001. It would not be in the public interest to permit Verizon to compete in the interLATA long distance market when other carriers are still unable to obtain the numbering resources needed to compete with Verizon in the local markets.

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(...continued)

<sup>166</sup> See Exhibit D.

<sup>167</sup> D.T.E. 99-99/99-11 (April 25, 2000) at 4.

<sup>168</sup> D.T.E. 99-00/99-11 ( April 25, 2000).

<sup>169</sup> *Id.* at 3. The original May 2001 date was modified by letter decision dated June 30, 2000, in response to a Sprint PCS request.

**B. THE PAP ACCEPTED BY THE MASSACHUSETTS DEPARTMENT FALLS WELL BELOW THE NEW YORK PAP AND LACKS THE CHARACTERISTICS ESSENTIAL TO KEEPING THE LOCAL MARKETS IN MASSACHUSETTS OPEN TO COMPETITION**

In its December 22, 1999 Order approving Verizon-NY's Section 271 application, the Commission found that the Performance Assurance Plan adopted by the New York Public Service Commission contained key characteristics that would be effective in keeping the New York local market open to competition.<sup>170</sup> For the reasons below, the September 15, 2000 Performance Assurance Plan accepted by the D.T.E. on September 22, 2000, does not provide an effective weapon against "backsliding" and therefore does not support Verizon-MA's entry into the long distance market pursuant to Section 271.

**1. The Massachusetts Performance Assurance Plan Does Not Provide Adequate Financial Incentives Against Backsliding**

The Massachusetts PAP does not provide adequate assurance against backsliding and therefore does not support Verizon-MA's entry into the long distance market under Section 271. Prescinding from the specific shortcomings of the Massachusetts PAP, it is fatally flawed by the prospect of the D.T.E.'s allowing full recovery of Verizon-MA's wholesale performance penalty expenses as exogenous costs under the Verizon's price cap plan.<sup>171</sup>

In its *Verizon-New York Order*, the Commission found that Verizon could not recover the cost of service quality penalties through its interstate revenue requirement, since it would

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<sup>170</sup> *Verizon-New York Order* ¶ 433.

<sup>171</sup> A price cap plan was approved by the D.T.E. in Docket No. 94-50 (1995).

“seriously undermine the incentives meant to be created by the [PAP].”<sup>172</sup> In addition, the New York Public Service Commission specifically precluded Verizon from recovering the costs of making performance credits from retail intrastate rates.<sup>173</sup> In stark contrast, the PAP accepted by the D.T.E. and the D.T.E. itself leave open the opportunity for Verizon to recoup performance credits as exogenous costs under its price cap plan. The D.T.E. rejected the Massachusetts Attorney General’s request for a ruling that no such cost recovery would be permitted, claiming that such a ruling “would amount to pre-judging the issue in violation of Verizon’s Price Cap Plan.”<sup>174</sup> Given the significant risk that Verizon-MA may seek and obtain exogenous cost treatment of PAP performance penalties, the financial incentives against backsliding – found to exist in the case of the Verizon-New York PAP – cannot be said to exist under the Massachusetts PAP. This Commission should therefore find that the Verizon-MA PAP does not provide an adequate remedy to prevent backsliding or “constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry [into the long distance market] would be consistent with the public interest.”<sup>175</sup>

Even assuming that the D.T.E. properly declined to make findings on whether PAP performance penalties may be recovered as exogenous costs, the lack of finality on this issue distinguishes the Verizon-MA PAP from the Verizon-NY PAP. The Commission cannot be assured that the incentives built into the Verizon-NY PAP against backsliding are contained in the Verizon-MA PAP. The Verizon-MA PAP and the D.T.E. are both strangely silent on this

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<sup>172</sup> *Verizon-New York Order* ¶ 443.

<sup>173</sup> *Id.*

<sup>174</sup> September 5, 2000 *Order Adopting Performance Assurance Plan* at 34.

<sup>175</sup> *Verizon-New York Order* at ¶ 429.

critical issue. As a result, the PAP does not feature “potential liability that provides a meaningful and significant incentive to comply with the designated performance standards” or a “self-executing mechanism that does not leave the door open to litigation and appeal....”<sup>176</sup> For this reason alone, the Commission must find and rule that the Verizon-MA PAP does not provide anti-backsliding incentives essential to keeping the local market in Massachusetts open to competition.

**2. The Massachusetts PAP is Significantly Weaker than the New York PAP and Does Not Provide Characteristics That Will Keep the Massachusetts Local Market Open to Competition**

Since the D.T.E.’s approval of the Verizon-MA PAP on September 22, 2000, it has come to light that this PAP is not the clone of the Verizon-NY PAP that this Commission lauded and that the D.T.E. thought was presented by Verizon-MA. In fact, the Verizon-MA PAP is riddled with differences that individually and collectively erode the incentives against backsliding and leave only the illusion that it will be effective in keeping the local market open to competition in Massachusetts.

Verizon-MA was not content to file the same PAP that was reviewed by the Commission in the *Verizon-New York Order*. Instead, in response to the D.T.E.’s March 28, 2000 request for the submission of a comprehensive performance monitoring and enforcement plan, Verizon-MA tried to game the system by submitting a fundamentally inadequate PAP, different in significant respects from the Verizon-New York PAP. The D.T.E. ordered several modifications that “amount to rejections of differences between Verizon’s proposed Massachusetts PAP and its

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<sup>176</sup> *Verizon-New York Order* ¶ 433.

New York PAP, which we conclude could weaken the Plan.”<sup>177</sup> Based upon its assumptions that the Verizon-MA PAP, as modified, was “based on an established model that has found favor with both state and federal regulators” and is “very closely modeled after the PAP that the NYPSC approved for Verizon in New York and which the FCC found reasonable to prevent backsliding once Verizon entered the long-distance market in New York...,”<sup>178</sup> the D.T.E. approved a modified PAP. These statements by the D.T.E. are both inaccurate and misleading. As explained below, there are critical differences between the New York PAP and the Massachusetts PAP that substantially weaken the Massachusetts PAP and preclude a finding that the Massachusetts PAP meets this Commission’s enunciated criteria for giving a PAP probative value.

Several of the problems with the Massachusetts PAP have been highlighted in AT&T’s September 28, 2000 Motion for Clarification and Reconsideration regarding Verizon’s revised PAP.<sup>179</sup> First, Verizon-MA’s September 15, 2000 revised PAP failed to comply with specific requirements of the D.T.E.’s September 5, 2000 Order Adopting Performance Assurance Plan. Verizon-MA (1) failed to incorporate benchmark standards consistent with the New York Carrier-to-Carrier benchmarks; (2) failed to adopt the same statistical scoring and bill credit methodology as used in the New York PAP; (3) failed to narrow the waiver provision, as

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<sup>177</sup> September 5, 2000 *Order Adopting Performance Assurance Plan* at 22.

<sup>178</sup> *Id.* at 23.

<sup>179</sup> On September 15, 2000, Verizon-MA filed a revised PAP to comply with the D.T.E.’s September 5, 2000 Order Adopting Performance Assurance Plan. The revised PAP was approved by the D.T.E. on September 22, 2000.



required by the D.T.E.'s order; and (4) ignored the Department's requirement to incorporate a Massachusetts-specific change control assurance plan.<sup>180</sup>

Second, in multiple respects, Verizon-MA did not fully disclose to the D.T.E. the ways in which its proposed PAP differed from the previously approved New York PAP. As a result, the D.T.E. was misled and did not identify all of the modifications required in order for the Massachusetts PAP to provide the same level of protection for competition as the New York PAP provides. In particular:

- Verizon has added a new provision that eliminates scoring for any measurement with a sample size of less than ten
- The New York PAP contains a provision for the reallocation of bill credits that the Massachusetts PAP does not contain
- Unlike the New York PAP, the Massachusetts PAP does not contain a provision that requires Verizon to issue a refund check instead of bill credits if a CLEC no longer uses Verizon's services
- The Massachusetts PAP eliminates the electronic data interface special provisions that are contained in the New York PAP
- Verizon has eliminated resale flow-through metrics from critical provisions in the Massachusetts PAP
- Verizon has changed the domain clustering rule in several ways, all of which benefit Verizon<sup>181</sup>

Third, the remedies afforded under the Massachusetts PAP are significantly smaller than those afforded under the New York PAP. In New York, the credits under the PAP and other

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<sup>180</sup> AT&T Motion at 6-11.

<sup>181</sup> *Id.* at 11-20.

financial remedies contained in interconnection agreements are cumulative. Under the Massachusetts PAP, a CLEC must elect whether to obtain credits under the PAP or under the terms of its interconnection agreement.<sup>182</sup> In this Commission's review of both the New York and Texas Section 271 applications, it emphasized that the BOC faced substantial liquidated damages *in addition to PAP remedies*.<sup>183</sup> The FCC responded to criticisms that the PAP liability caps were not "sufficient, standing alone, to completely counterbalance [the BOCs'] incentive to discriminate," finding that they did not have to be independently sufficient if the BOCs face the possibility of substantial additional liquidated damages for violation of contractual performance standards.<sup>184</sup> Here, the same cannot be said of Massachusetts. The PAP approved by the D.T.E. forces CLECs to choose between their contractual remedies or the PAP remedies.<sup>185</sup>

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<sup>182</sup> September 5, 2000 Order Adopting Performance Assurance Plan at 29, 30. The financial remedies provided for under the D.T.E.'s *Consolidated Arbitrations* are often incorporated into the terms of interconnection agreements between Verizon-MA and CLECs.

<sup>183</sup> See *Verizon-New York Order* ¶ 435. *SBC-Texas Order* ¶ 424.

<sup>184</sup> *Id.*

<sup>185</sup> Moreover, the remedies available under the D.T.E.'s *Consolidated Arbitrations*/interconnection agreements are very limited in comparison to the contract remedies available in New York.

**3. Other regulatory and legal processes do not guard against the prospect of backsliding**

While the Commission has stated that a satisfactory PAP is not a prerequisite for Section 271 approval, it has relied heavily upon the existence of a satisfactory PAP in granting Section 271 approvals to Verizon-NY and SBC-Texas. Moreover, when the context of other regulatory and legal processes is considered, full protection against backsliding does not exist in Massachusetts. First, as discussed above, the Massachusetts PAP is an alternative, not a complement, to state ordered performance plans and liquidated damages remedies under interconnection agreements. Second, while anti-trust remedies may be theoretically available, the Commission cannot seriously believe that CLECs possess the resources to pursue private causes of action against Verizon-MA for every violation. Such litigation would take years to complete. Indeed, a CLEC that devoted its limited resources to massive litigation would strip itself of the capital needed to compete and limit its ability to attract capital.<sup>186</sup> The suggestion that such litigation remedies, either before the courts or even through the Commission's own enforcement powers, supports the local market remaining open after long distance approval, is pure folly. The notion that the availability of costly and time-consuming litigation ensures that local markets will remain open is inconsistent with the Commission's own criteria for evaluating PAPs. In that context, the Commission has cited as an important characteristic "a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal."<sup>187</sup> In sum, the

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<sup>186</sup> One is reminded of the ill-fated litigation involving the company that invented VisiCalc. The company became extinct and its pioneering spreadsheet software was surpassed in the market by Lotus, the company that bought its assets.

<sup>187</sup> *Verizon-New York Order* ¶ 433.

shortcomings of the Massachusetts PAP, when taken together with the lack of alternative state remedies and the impracticality of other regulatory and legal processes,<sup>188</sup> require that the Commission reject Verizon-MA's application on public interest grounds

For the reasons above, the Commission should find that the Massachusetts PAP is inadequate to support a finding that Verizon-MA "will continue to meet its Section 271 obligations and that its entry into the long distance market would be in the public interest."<sup>189</sup>

There are factors in Massachusetts, such as the lack of comprehensive DSL performance measures and standards and the lack of numbering resources, which demonstrate that granting long distance entry to Verizon-MA would be contrary to the public interest at this time. In addition, the absence of adequate financial incentives to comply with designated performance standards and the possibility of future litigation over the recovery of any financial penalties from retail ratepayers as exogenous costs under the Verizon-MA price cap plan cause the Massachusetts PAP to fail two of the Commission's five criteria applied in the *Verizon-New York Order*. Further, the Massachusetts PAP does not comply with the D.T.E.'s Order Adopting Performance Assurance Plan. Finally, the Massachusetts PAP is weaker in other material respects than the New York PAP and was approved based upon the D.T.E.'s erroneous belief that it was the same.

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<sup>188</sup> While the D.T.E. has opened a rulemaking to consider the adoption of "rocket docket" dispute resolution procedures, it has yet to adopt any rules. In another context, the D.T.E. has not yet decided an investigation into the discriminatory practices of an electric company regarding pole attachments by its affiliate and its exclusion of CLEC-owned fiber from electric conduit into which the electric company has allowed an affiliate to place competing communications fiber. Verizon-MA, as a joint owner of the majority of poles with this electric company, has failed to enforce its own rights to compel the electric company affiliate to enter into a license agreement, attach in the communications space on the poles and pay attachment fees to Verizon-MA, as other CLECs must do. That investigation was opened in 1997. Over two years have elapsed since the case, D.T.E. 97-95, was heard and briefed. Clearly, state remedies in Massachusetts for discriminatory behavior by incumbents will not be timely enough to avoid the erosion of local market conditions in the event of backsliding by Verizon-MA.

<sup>189</sup> *Verizon-New York Order* ¶ 429.

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**CONCLUSION**

For the foregoing reasons, the Commission should deny Verizon-MA's Application because Verizon-MA does not satisfy the competitive checklist items in Section 271 and the granting the Application would not be in the public interest.

Respectfully submitted,

By: \_\_\_\_\_

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