D.T.E. 01-20-Part A-B May 29, 2003

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.

ORDER ON VERIZON MASSACHUSETTS' COMPLIANCE FILING

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I. INTRODUCTION

The Department of Telecommunications and Energy ("Department") opened the D.T.E. 01-20 docket on January 12, 2001 to establish new rates for unbundled network elements ("UNEs") and interconnection offered by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") to competitive local exchange carriers ("CLECs"). UNE Rates, D.T.E. 01-20, Vote and Order to Open Investigation (January 12, 2001) ("Vote and Order").[1] Verizon and AT&T Communications of New England, Inc. ("AT&T") filed direct cases, including proposed cost models, model inputs, and cost studies, on May 8, 2001. On July 11, 2002, after a comprehensive 18-month investigation, the Department issued its order completing D.T.E. 01-20 Part A[2] ("Order"). In the Order, the Department made determinations, using the Total Element Long-Run Incremental Cost ("TELRIC") standard of the Federal Communications Commission ("FCC"), on the development of recurring and nonrecurring rates for CLECs' use of Verizon elements.

Verizon and several other parties filed motions for reconsideration and clarification of the Order on August 14, 2002. On January 14, 2003, the Department issued order

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1 The Department opened the investigation pursuant to the five-year cycle established in Investigation of Resale Tariff of Bell Atlantic, D.T.E. 98-15-Phases II/III (March 19, 1999).

2 Part B remains in abeyance pending establishment of new resale discount rules by the Federal Communications Commission. D.T.E. 01-20, Interlocutory Order on Part B Motions (April 4, 2001).

D.T.E. 01-20-Part A-A deciding those motions ("Reconsideration Order").[3] The Department did not direct specific rates and thus required Verizon to submit a compliance filing containing new rates based on the findings in the Order and Reconsideration Order. As directed in the Reconsideration Order, Verizon submitted its D.T.E. 01-20 Part A Compliance Filing on February 13, 2003[4] ("Compliance Filing"). The compliance phase of the proceeding included technical sessions on March 5 and 6, 2003, at which the Department and other parties issued ten technical session requests to Verizon ("TS-1" through "TS-10").[5] AT&T; WorldCom, Inc.; RCN-BecoCom, LLC ("RCN"); Brahmacom, Inc.; Conversent Communications of Massachusetts, LLC ("Conversent"); and the Attorney General submitted initial comments ("Comments") on Verizon's Compliance Filing on March 18, 2003.[6] Verizon filed reply

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3 On September 24, 2002, the Department issued an Order Granting Verizon and AT&T Motions for Reconsideration, In Part, and Requesting Additional Evidence on four issues raised in Verizon's and AT&T's motions for reconsideration. The Department conducted discovery, pre-filed testimony, and evidentiary hearings on those issues, which were then decided with the remainder of the issues in the Reconsideration Order.

4 Verizon supplemented its filing with additional supporting documentation, in some cases requested by the Department or AT&T and in some cases due to inadvertent omission from the original filing, on February 28, March 3, March 4, and April 16, 2003.

5 See D.T.E. 01-20, Hearing Officer's Ruling on Scope of Compliance Phase (February 28, 2003). The Hearing Officers also granted two late-filed petitions for limited participation. D.T.E. 01-20, Hearing Officer Ruling on RCN-BecoCom, LCC's Late-Filed Petition to Intervene as a Limited Participant (February 28, 2003); New England Public Communications Council Inc.'s Late-Filed Petition to Intervene as a Limited Participant (Granted by Hearing Officer Ruling March 6, 2003).

6 In its comments, AT&T includes associated motions for clarification, reconsideration, or recalculation (AT&T Comments at 2-3). We address these motions in our analyses below. WorldCom urges the Department to adopt AT&T's proposed adjustments to Verizon's cost studies (WorldCom Comments at 1). We do not address certain other comments of WorldCom, Brahmacom, and Conversent in this Order because they are

(continued…)

comments ("Verizon Reply") on March 28, 2003. The Department requested a response to Verizon's reply, limited to the topic of Verizon's proposal to clarify its compliance tariff language on interoffice transport rates (see Verizon Reply at 35-37). AT&T and RCN filed response comments on this issue on April 4, 2003 ("AT&T Response" and "RCN Response," respectively).

The Department issued a Letter Order on February 12, 2003, granting Verizon's Motion for Clarification Regarding Alternative Hot Cut Process (January 23, 2003). Verizon submitted a Supplemental Compliance Filing containing its alternative hot cut process materials on February 27, 2003. The Department subsequently deferred review of Verizon's alternative hot cut process from the compliance phase of the proceeding, pending the opening of a new docket to investigate the process that Verizon has proposed in its Compliance Filing.

The Department established the effective date of Verizon's new tariff DTE MA No. 17 ("Tariff 17") as August 5, 2002 in the Order and in an additional July 30, 2002 order on parties' motions for time extensions ("Extension Order"). Verizon filed interim switching rates on August 5, 2002, and, upon approval of its Compliance Filing, will retroactively true-up

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[6](…continued)

unrelated to Verizon's compliance in this proceeding. In particular, WorldCom and Brahmacom express the opinion that Verizon's UNE loop rates are too high, and Brahmacom also expresses concern about some of the cost study inputs; neither issue is appropriately raised in the compliance phase. Also, Conversent's comments, in part, address hot cut costs and the alternative hot cut process Verizon submitted in its Compliance Filing. As noted herein, the Department will examine hot cuts in a new docket, in which Conversent may participate if it chooses, and therefore we do not discuss the hot cut issue in this Order.

rates to that effective date.[7] Extension Order at 14. On January 27, 2003, the Commission granted the January 17, 2003 Motion of Verizon Massachusetts to Extend the Judicial Appeal Period, extending the period to 20 days after the Department's final ruling in the compliance phase of this proceeding. In this Order we resolve a number of concerns raised by the parties, and these findings will require Verizon to submit a revised compliance filing for Department review.[8]

II. COMPLIANCE FILING

Verizon's Compliance Filing consists of a summary of all changes made to its original cost studies ("Compliance Tracking Matrix") and a comparison of current rates to proposed compliance rates (Book 1); its recurring cost studies (Book 2, Part A through Part B-4, and Book 3, Part B-5 through Part G) and nonrecurring cost studies (Books 4 and 5, Part I); collocation studies (Book 6); and an illustrative compliance Tariff 17 ("Compliance Tariff") (Book 7). The Department has reviewed the Compliance Filing cost studies Verizon submitted in response to our directives in the Order and Reconsideration Order. Below we discuss portions of the Compliance Filing to which other parties objected and render findings on those issues. Regarding all other sections of the Compliance Filing, we have reviewed these sections

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7 The coordinated hot cut rate was excepted from the rates to be retroactively trued-up. Extension Order at 14. That rate and effective date will now be determined in the separate hot cut process docket.

8 This Order addresses the narrow question of Verizon's compliance with our Order and Reconsideration Order and, thus, whether the Compliance Filing conforms with the law of the case. It does not implicate the issues raised by the Partial Concurrence and Dissent of the Reconsideration Order.

and we find that Verizon has accurately and completely met the requirements we set forth in our orders, and accordingly we approve those portions of the Compliance Filing.

III. ANNUAL COST FACTORS ("ACFs")

A. Forward-Looking Conversion ("FLC") Factor

1. Positions of the Parties

a. AT&T

According to AT&T, the Department mistakenly "believed that the FLC factor could be adjusted in a mechanical, mathematical way" such that one could compare the forward-looking investment yielded by Verizon's compliance cost models with the corresponding forward-looking investment yielded by Verizon's proposed cost models (AT&T Comments at 4-5). AT&T asserts that because Verizon's recurring cost models generally compute per-unit costs, but not total investment, it was "impossible" for Verizon to comply with the Department's directive. AT&T contends that Verizon should have informed the Department of its "inability to comply" or sought clarification of the Department's Order (id. at 5). AT&T asks the Department to reconsider its prior order and direct Verizon to recalculate its rates based on a FLC factor of 80 percent because, according to AT&T, "Verizon failed to comply with the Department's order to adjust its FLC factor based on record evidence," and, rather than seek "clarification on this fundamental point," Verizon instead implemented a "unilateral and unauthorized interpretation" (id. at 5-6, 6 n.1).

AT&T makes three general arguments for adopting a FLC factor of 80 percent. According to AT&T: (1) Verizon's proposed 59 percent FLC is not based on record evidence but rather on assumptions that the Department has not reviewed; (2) Verizon's calculation is based on the ratio of data that are not comparable, yielding "a number that is meaningless and arbitrary"; and (3) if the Department attempted to remedy the deficiencies in Verizon's "back of the envelope calculation," the resulting FLC would be similar to, and possibly higher than, the 80 percent FLC factor Verizon originally proposed (id. at 5).

AT&T contends that Verizon's witness explained at the evidentiary hearings that its cost models do not estimate the total cost of the network in Massachusetts, and this, according to AT&T, belies Verizon's assertion that it can estimate total TELRIC costs (id. at 6). AT&T considers Verizon's FLC computation to be "flawed and arbitrary" (id. at 8). First, according to AT&T, Verizon's analysis in its Compliance Filing uses the per-unit costs that result from its models and then multiplies those costs by "demand assumptions – taken from an 'external source' – that do not appear anywhere in its models" to compute TELRIC investment (id. at 7). Further, AT&T asserts, Verizon's calculation of its forward-looking investment (the numerator of the FLC ratio) includes demand assumptions that are inconsistent with the Department's orders, and also excludes categories of network investment that are included in the 1999 denominator of the FLC ratio (id. at 8).

AT&T contends that to "do a FLC calculation of the kind attempted by Verizon in a manner that could possibly provide the Department with a sound evidentiary basis for accepting it would require an additional proceeding rivaling this one in scope" (id.). Nevertheless, AT&T proposes adjustments to "correct the flaws" in Verizon's FLC calculation, as follows.

Demand Assumptions. Regarding the demand assumptions used in Verizon's calculation, AT&T asserts that Verizon "concealed the fact that it used demand assumptions external to its models to derive a figure purporting to represent forward-looking investment" until the technical sessions for this compliance phase of the proceeding (id. at 9). AT&T contends these demand assumptions are flawed because they "are untested, were never investigated, and certainly were never adopted by the Department" (id.). AT&T argues that it would be improper for the Department to adopt a FLC factor that is based on demand assumptions that are not in evidence (id. at 10). AT&T proposes increasing the demand growth through 2004 (the expected mid-point of the period during which the rates are to be in effect). This, depending on the growth assumption, yields a FLC factor between 62.6 percent and 71.7 percent (id. at 10-11).

Physical Plant Investment. AT&T claims that Verizon's analysis erroneously omits certain large categories of physical plant, thus rendering the numerator (the estimate of forward-looking investment) incomparable to the denominator (the estimate of total plant in service ("TPIS")) (id. at 12). AT&T identifies several categories of plant investment that it contends are missing from Verizon's calculation, including right to use ("RTU") fees, dark fiber, interoffice entrance facilities, DSL-related investment and other investment (id. at 13-14).

Citing an FCC audit of Verizon's continuing property records ("CPR") for its equipment, AT&T asserts that the FCC's analysis showed that approximately $900 million of investment in Massachusetts was unexplained, and, therefore, according to AT&T, this amount should be added to the TELRIC numerator of the FLC calculation (id. at 15-17, citing FCC Accounting Safeguards Division, Audit of the Continuing Property Records of the NYNEX Telephone Operating Companies as of March 31, 1997, at ¶ 9 n.16).

Booked Investment. AT&T asserts that it is improper for Verizon to use a different number for total 1999 booked investment in its Compliance Filing than it did during the evidentiary phase. AT&T contends that "[i]t is unfair for Verizon to use its very large cost study staff to make corrections in Verizon's favor during the compliance phase, when it is impossible for CLECs to identify counterbalancing errors that undoubtedly still linger" (id. at 18-19). Adding to the numerator RTU investments of $200 million and $900 million to account for the CPR investments and adjusting the TPIS to correspond with the amount included in Verizon's surrebuttal testimony, AT&T computes a FLC factor between 76.9 percent and 88.1 percent, depending on assumptions about access line growth (id. at 18).

In summary, AT&T contends that: (1) Verizon misled the Department into believing that Verizon's cost models could produce an estimate of total TELRIC investment, which AT&T asserts they cannot do; (2) Verizon's "unauthorized effort to calculate a new FLC factor from scratch is largely based on unverifiable assumptions rather than record evidence"; and (3) incorporating the revisions AT&T claims are necessary produces a FLC factor close to or greater than 80 percent (id. at 18-19). AT&T urges the Department to reject the 59 percent FLC factor and to use the 80 percent FLC factor instead (id. at 19).

b. Attorney General

The Attorney General asserts that the Department rejected Verizon's proposed FLC, and states that because "[t]he accuracy of this important factor depends on the validity of all of the inputs," the Department should carefully review Verizon's backup documentation to ascertain whether the demand assumptions Verizon used to calculate the investment expenses and the FLC are appropriate (Attorney General Comments at 1-2). The Attorney General also notes that if either the numerator or the denominator is inaccurate, then the FLC will be incorrect (id. at 2).

c. Verizon

According to Verizon, the Department specifically ordered Verizon "to recalculate the 80 percent FLC Verizon MA had used as a placeholder in its initial, proposed rates" (Verizon Reply at 2). Verizon states that its recalculation of the FLC factor was based on the same methodology detailed in its surrebuttal testimony and thus was "fully consistent with the Department's directives" (id. at 3). Verizon characterizes AT&T's criticisms as "disingenuous" because Verizon's methodology is the same as that proposed by Verizon in New York and used by the New York Public Service Commission. The time for AT&T's petition for reconsideration is "well past," Verizon asserts, and AT&T should have objected to Verizon's methodology when Verizon submitted its surrebuttal testimony or in its reconsideration pleadings (id. at 4, 8). Furthermore, Verizon asserts, AT&T "defies belief" with its claims that the Department was misled and "made this decision with no understanding of what it meant, how it would be implemented, or how the underlying Verizon MA recurring cost models it adopted worked" (id. at 4-6).

According to Verizon, the 80 percent FLC factor "clearly has no relationship to the actual investment relationships in this case" (id. at 3-4) (emphasis in original) (citation omitted). Furthermore, Verizon, citing its response to RR-DTE-87 (id., Att. A), indicates that, contrary to AT&T's assertion, demand assumptions are in the record, as is the methodology associated with the calculation of the 59 percent FLC factor that Verizon submitted with its Compliance Filing (id. at 6-7).

Regarding AT&T's specific proposed adjustment to Verizon's demand assumptions, Verizon contends that the "aggressive utilization factors" in the studies account sufficiently for projected demand growth. Verizon further criticizes AT&T's analysis of the impact of growth in demand on TELRIC investment by asserting that all investment is not demand-sensitive. In summary, Verizon asserts that demand growth is irrelevant to the FLC (id. at 9-10).

Verizon asserts that all of AT&T's arguments regarding the specifics of the categories of plant included in Verizon's compliance calculation are without merit, although Verizon "does agree with AT&T's central premise, that is, to the extent a category of investment is included in the denominator of the FLC – booked investment for Verizon MA plant in 1999 – that same category of investment should be accounted for in the numerator of the FLC – forward-looking investment" (id. at 11). Verizon questions the significance of AT&T's observation that the 1999 booked investment that Verizon uses in the denominator does not incorporate depreciation (id. at 11-12). According to Verizon, depreciation is properly excluded because it is similarly excluded from the denominator of the ACFs, to which the FLC is applied (id.).

In response to AT&T's concern about Verizon's addition of new categories of investment to the embedded investment figures, Verizon explains that its Compliance Filing "properly accounts for that omitted support investment in both the denominator and the numerator of the FLC" and that, furthermore, had Verizon not made this adjustment, the FLC factor would drop from 59 percent to 47.4 percent (id. at 12).

Regarding AT&T's argument about RTU fees, Verizon asserts that it excluded RTU fees from both the numerator and the denominator of the FLC, and that adding the RTU fees to the numerator, as AT&T suggests, "violates AT&T's apples-to-apples comparison principle" (id. at 13). Furthermore, according to Verizon, if the RTU investment were included in both the numerator and the denominator, the impact would be minimal, changing the FLC factor from 59.0 percent to 59.43 percent (id.).

Countering AT&T's argument that Verizon excluded certain equipment (such as E911 equipment) from the FLC factor, Verizon explains that it excluded the investment from both the numerator and the denominator (id.). Including the investment figures would only minimally affect the FLC, Verizon adds. Verizon concedes that it failed to account for DSL-related splitter and router investment in the numerator, although it did include the investment in the denominator, but it asserts that correcting this error would increase the FLC factor only minimally, from 59.0 percent to 59.4 percent (id. at 14).

Verizon contends that AT&T's reference to unexplained investment in the FCC's 1999 audit of Verizon's CPR is irrelevant, and that, furthermore, Verizon "was later able to account for almost all such assets" (id. at 15) (citation omitted). Finally, Verizon asserts, AT&T should have raised its arguments during the evidentiary phase of the proceeding (id.).

2. Analysis and Findings

As recounted in the Order (see Order at 93-95), several parties had argued against the inclusion of a FLC factor, but the Department rejected those arguments and determined "that Verizon's ACFs should be adjusted by the proposed FLC factor." Order at 97-98. In terms of the calculation of the FLC factor, the Department said:

> Finally, we note that our directives to Verizon to revise its network assumptions or input values in other sections of this Order (e.g., proportion of copper/ IDLC/UDLC) may lead to a forward-looking investment different from what Verizon proposed and, thus, a FLC factor different from Verizon's proposed 80 percent FLC factor. Therefore, we direct Verizon in its compliance filing to file a new FLC with supporting documentation that shows in detail how the level of investment in each plant account has changed and how it calculated a new FLC.

Id. at 98.[9]

In its original TELRIC filing, Verizon proposed a FLC factor of 80 percent, and in its Compliance Filing, Verizon proposes a FLC factor of 59 percent (Exh. VZ-36, at 59-60;

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[9] AT&T moves that the Department reconsider its Order at 98, adopt a FLC factor of 80 percent, and direct Verizon to recalculate its rates based upon the 80 percent factor (AT&T Comments at 2). Under 220 C.M.R. § 1.11(10), a motion for reconsideration must be filed within 20 days of service of a final Department order. Extensions of this deadline under 220 C.M.R. § 1.01(4) require the petitioner to request and to show good cause for the extension. See, e.g., Nandy v. Massachusetts Electric Co., D.P.U. 94-AD-4-B at 3 (1995); A&M Equipment Co., D.P.U. 92-DS-37, at 1 (1994); CMS Generation Co., D.P.U. 92-166-A at 2 (1993); Boston Edison, D.P.U. 92-92-A at 2 (1992). See also D.T.E. 98-57-Phase III-A at 56 (January 8, 2001); D.T.E. 98-57, at 9 (June 2, 2000); Consolidated Arbitrations D.P.U. 96-73/74,96-75,96-80/81, 96-83,96-94, Phase 4-H at 5 (July 23, 1998), citing Boston Edison, D.P.U. 90-335-A at 4 (1992) (regarding what constitutes "good cause"). AT&T asserts that its motion for reconsideration is justified because the Department may reconsider if an "order to adjust some specific aspect of a cost study is discovered at the compliance filing stage to be the result of mistake or inadvertence" (AT&T Comments at 2). However, as set forth in our finding herein, there was no mistake or inadvertence in our Order; rather, we find that Verizon failed to comply with our directives, and we require Verizon to revise the FLC portion in its re-compliance filing. Hence, AT&T's motion attempts to relitigate a settled issue. AT&T further argues that its motion is timely because AT&T did not have the opportunity to discover the "errors and inadequacies" in Verizon's calculations until it reviewed the Compliance Filing. We are unconvinced by AT&T's argument that errors in a compliance filing are grounds for reconsideration; the appropriate recourse is the remedy that we have ordered, i.e., that Verizon file a revised compliance filing. Hence, lacking good cause for its late filing, AT&T's motion is also untimely. Accordingly, as AT&T's motion is both late-filed and inadequate to meet the Department's standard for reconsideration, we deny AT&T's motion for reconsideration.

Compliance Filing, Part G-10). Originally, as support for its assertion that a FLC factor of 80 percent was reasonable, Verizon included an attachment in its surrebuttal testimony that compared Verizon's estimate of the forward-looking (TELRIC) investment with the 1999 TPIS, which yielded a ratio of approximately 65 percent (Exh. VZ-38-P, Att.).[10] According to Verizon, this analysis demonstrates that the proposed 80 percent FLC factor was a conservative estimate. Order at 92, citing Verizon Brief at 101-103.

In its Compliance Filing, Verizon replicated its earlier analysis, which it originally included in its surrebuttal testimony in support of its proposed 80 percent FLC, as justification for a revised FLC of 59 percent (Compliance Filing, Part G-10). As a result of the Department's directives regarding network assumptions for its cost models, and based on its interpretation of the Department's Order, Verizon contends that the revised compliance FLC should be 59 percent (Compliance Filing, Compliance Tracking Matrix at 2-4; Part G-10). In essence, Verizon proposes to replace its conservative estimate of a FLC factor with one calculated as a one-to-one ratio of TELRIC costs to TPIS. The question is whether this is consistent with the Department's directives, and the answer to that question is in part a function of how confident the Department is in Verizon's analysis.

We share a number of concerns that AT&T raised about data incorporated in Verizon's analysis. For example, AT&T disputes the use of a new TPIS amount, different than that Verizon provided with its surrebuttal testimony, after completion of the evidentiary phase of this proceeding. AT&T also raises concern about omitted categories of investment. For

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10 Lowering the FLC factor has the effect of raising the TELRIC cost, and thus, a FLC of 65 percent would lead to higher TELRIC costs than would a FLC of 80 percent.

example, AT&T contends that Verizon omitted the $200 million associated with RTUs from the numerator. However, Verizon claims that it omitted the same RTU-related amount from the denominator, thus maintaining an apples-to-apples comparison. An "apples-to-apples" comparison (which requires that the universe of investment categories included in the numerator matches the universe of investment categories included in the denominator), while clearly an essential component of the FLC, does not alone suffice to ensure an accurate calculation. Mathematically, as identical absolute dollars are added simultaneously to both the numerator and the denominator, the FLC increases. Therefore, the effect of <u>omitting</u> investment categories from the FLC calculation (where the investment amount is the same for forward-looking and TPIS investment) is to understate the FLC. The magnitude of the understatement depends upon the relative size of the omitted items. Therefore, ensuring the accurate calculation of the FLC ratio entails inclusion of the entire "basket of fruit" in the analysis, and ensuring that the compositions of the "fruit baskets" are identical. Absent further evidence, the Department cannot accurately address this impact.

Recognizing these various limitations, we do not believe that a one-to-one relationship of the FLC factor to the ratio of TELRIC to TPIS is appropriate. Verizon was correct in its initial TELRIC filing to be conservative in its proposal for a FLC factor. Given the limitations in the data discussed above, we find that an exact calculation of the ratio of TELRIC costs to TPIS is not feasible at this time. Therefore, an estimate is required, and we find that use of a conservative estimate of 65 percent for the FLC factor is appropriate. A 65 percent factor is equal to Verizon's original estimate of TELRIC costs to TPIS, is considerably lower and less conservative than Verizon's initially proposed FLC factor of 80 percent, and is corroborated by use in other jurisdictions (see Verizon Reply Brief at 7, citing Order on Unbundled Network Element Rates, N.Y.P.S.C. Case 98-C-1357, at 61 (January 28, 2002)). For all of the reasons discussed above, Verizon shall use 65 percent as the new FLC factor.

B. Retail-Related Expenses

1. Positions of the Parties

a. AT&T

AT&T contends that Verizon improperly reduced its avoidable retail-related cost percentages “without authorization or justification,” when it should have increased them (AT&T Comments at 19). According to AT&T, Verizon should have adjusted the retail-related portion of its cost study, based on 1999 expenses and excluding depreciation expenses. AT&T asserts that Verizon erroneously submitted an entirely different analysis which is based on 1995 expenses and which compares retail-related expenses to a total that includes depreciation expenses (id. at 19). AT&T contends that the Department “agreed with AT&T on all points” related to this issue that AT&T made in its briefs (id. at 20, citing Order at 116).

AT&T claims two general errors in Verizon’s proposed compliance study: (1) Verizon calculates avoidable retail percentages based on 1995 expenses rather than on the 1999 expenses that AT&T asserts the Department approved; and (2) in the cost model that the Department approved, Verizon excluded depreciation expenses and uncollectibles from its analysis of avoidable retail expense because other portions of the cost model deal with these two categories of expenses, yet Verizon’s Compliance Filing fails to exclude these expenses (id. at 20, citing Tech Session Tr. at 54). AT&T compares the 26.5 percent avoidable retail expense calculation that it contends the Department approved with the 18.7 percent that results from "Verizon's unauthorized substitute analysis" (id. at 21).

Anticipating an argument by Verizon that, because the Department concluded its analysis by directing Verizon "'to revise its ACFs to exclude all retail related expenses to the extent required by the Consolidated Arbitrations,[11]'" Verizon was supposed to substitute an analysis based on 1995 data including depreciation expenses, AT&T requests that the Department clarify that this was not the Department's intent (id. at 21-22, citing Order at 116). AT&T also contends that Verizon's proposed compliance is "nonsensical," as evidenced by the percentage resulting from its proposed compliance cost study. Specifically, AT&T observes that Verizon's originally proposed cost study (i.e., the May 2001 study, Exh. VZ-37) included a ratio of 22.06 percent of avoidable direct expenses to total direct expenses. AT&T asserts that the Department's ordered changes would increase the ratio to 26.50 percent; yet in its Compliance Filing, Verizon reduced the figure to 18.7 percent (id. at 22). In summary, AT&T recommends that the Department reject Verizon's proposed avoidable cost percentage and instead use the percentages shown in the Addendum at 1 to both AT&T's Initial Brief and AT&T's Comments, which, AT&T argues, the Department previously ordered (id.).

AT&T attaches a three-page addendum to its compliance comments. The first page is a copy of the restated avoidable retail expense calculations that AT&T recommends the Department use, and that AT&T included with its initial brief in this proceeding. This analysis yields a ratio of 26.50 percent. The second page replicates Verizon's proposed compliance

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[11] Consolidated Arbitrations, D.P.U. 96-73/74,96-75,96-80/81,96-83,96-94, Phase 2 (1996).

calculation (i.e., based on 1995 expenses) with the significant exception that it excludes depreciation expenses and uncollectibles, yielding a result of 28.71 percent – even higher than the amount that AT&T contends the Department ordered. The analysis that AT&T includes on the third page of the addendum is identical to that on the second page, except that the avoidable shares for accounts 6612, 6623, and 6124 are those that AT&T states were "conceded by Verizon in the cost study that it filed in this proceeding" (id. at 21). This analysis yields a ratio of 29.58 percent (id.).

b. Verizon

Verizon refutes AT&T's assertion that the Department "accepted all of AT&T's criticisms of Verizon MA's avoided cost calculation" (Verizon Reply at 16, citing AT&T Comments at 20). Verizon asserts that it complied with the Department's directive to "exclude all retail-related expenses to the extent required by the Consolidated Arbitrations" (id. at 16, citing Order at 116).

Verizon explains that it used the 1995 expenses in its analysis because, in the Consolidated Arbitrations, the Department calculated expenses to exclude items in absolute dollar amounts, not percentages (id. at 16-17). By examining the dollar amount that the Department excluded relative to the total amount in the account, Verizon computed the percentage avoided (id. at 17).

Verizon disputes AT&T's assertion that the Department "approved" Verizon's avoided cost model and counters that the Department "rejected it and ordered Verizon to go back to the 'avoidable' cost analysis used by the Department in the Consolidated Arbitrations" (id.). Verizon justified its inclusion of depreciation expenses in its compliance analysis because, according to Verizon, the Department required Verizon to use the avoidable cost analysis in the Consolidated Arbitrations, and because in that proceeding "the Department explicitly directed Verizon MA to include Depreciation and Amortization in Verizon MA's total direct costs and to treat none of that expense as avoided" (id. at 17-18) (emphasis in original) (citation omitted).

Verizon asserts that the Department did not direct Verizon to increase the amount of avoidable retail-related expenses as AT&T contends, and also that the Department did not adopt "AT&T's hybrid restatement of Verizon MA's cost study" in which AT&T "selectively borrowed" from the 1999 avoided cost study and the Consolidated Arbitrations proceeding (id. at 18). In summary, Verizon asserts that it complied with the Department's directives (id.).

2. Analysis and Findings

In opening this proceeding, the Department divided this investigation into two parts. Vote and Order at 6. Part A, now in the compliance phase, concerns the development of new recurring and nonrecurring UNE and interconnection rates. Part B, concerning the development of a new avoided cost discount, was held in abeyance pending establishment of new resale discount rules by the FCC. Id.; Interlocutory Order on Part B Motions at 14-15; Order at 2. The disputed avoided cost issue in Part A is Verizon's calculation of the retail-related expenses that are excluded from its UNE cost studies.

To address the conflicting interpretations of our Order, we will provide some context for the analysis. When it submitted its original TELRIC studies in this case, Verizon indicated that its "estimation of expenses, which depends on the application of ACFs, calculated as the ratio of total forward-looking expense (excluding retail expense) to forward-looking investment or expense, ensures that no more than total forward-looking wholesale expense will be recovered in element rates" (Exh. VZ-36, at 21). One of the cost categories incorporated within the ACFs includes expenses associated with, among things, depreciation (id. at 37, 40-41). Another cost category includes common overhead expenses, which Verizon adjusted by a resale avoided cost discount percentage (id. at 53, 55). Verizon's originally proposed avoided cost discount percentage corresponded with Verizon's avoided-cost study, which had been filed in Part B of this proceeding. Order at 113.

Verizon submitted that avoided cost study as part of its original TELRIC studies in May 2001, based on 1999 expenses, and that study included a proposed discount of 22.06 percent (Exh. VZ-37, Part G-1). Among 18 categories of direct expenses, Verizon identified four accounts that it asserted would be avoided in part or in total in the provision of UNEs: 40.42 percent of product management expenses (Account 6611), 100 percent of sales expenses (Account 6612), 84.23 percent of customer services expenses (Account 6623), and 22.97 percent of testing expenses (Account 6533). That avoided cost study also includes 14 categories of indirect expenses, three of which Verizon assumed would be avoided in part in the provision of UNEs: 43.08 percent of computer expenses (Account 6124), 3.09 percent of executive expenses (Account 6711), and 9.77 percent of general and administrative expenses (Account 6728). That avoided cost analysis also excluded depreciation expenses (id.).

The Department addressed Verizon's original calculation of its avoided costs in the Order at 113-116, 127-132. We stated that "a retail-related expense adjustment based upon avoidable costs is not only permissible, but is also the appropriate standard for setting TELRIC-based UNE rates." Id. at 116. The Department's Order included several account-specific directives and a general directive that Verizon "revise its ACFs to exclude all retail-related expenses to the extent required by the Consolidated Arbitrations."[12] Id. Thus, contrary to Verizon's interpretation of our Order, the Department did not "reject" in its entirety Verizon's proposed avoided cost study, but instead, as the discussion below explains, the Department's analysis of account-specific expenses clearly shows that it intended Verizon to refile its avoided cost study, with appropriate modifications. The Department also indicated that except where our Order explicitly stated otherwise regarding particular accounts, Verizon's compliance study should have incorporated the percentages from the Consolidated Arbitrations for all other accounts. In addition, Verizon was required to apply the percentages for all accounts to the dollars shown in its 1999 avoided cost study, not its Consolidated Arbitrations avoided cost study (which was based on 1995 expenses and approved in 1996). The Department never intended, nor did it explicitly direct, that Verizon submit this 1996 cost study. This proceeding did not entail an examination of 1995 costs but rather the more recent 1999 cost studies.

Verizon contends that it complied with the Department's various retail-related expenses directives. In its Compliance Tracking Matrix, Verizon explains that it "used Section II, Page 4 of 14 in Consolidated Arbitrations to calculate a percent avoided for each account as ordered" (Compliance Filing, Book 1, Tab 1, at 5). Verizon further explains that it documents the calculation of the percent avoided in Book 3, Part G-1, and that this file and documentation replace Verizon's proposed avoided cost study (id.). In Part G-1 of its compliance cost study, Verizon includes one column of expense data that corresponds with 1995 ARMIS data (expressed in total dollars for 1995 expenses on an account-specific basis) and another column

[12] In addition, in Section V.C.8 ("Wholesale Marketing") of the Order, we made findings on other retail-related expenses. Order at 130-132.

that includes the avoided dollars in the filing Verizon submitted in compliance with the Department's Consolidated Arbitrations Phase 2 Order (December 3, 1996) and Phase 2-A Order (February 5, 1997). Verizon's Compliance Filing includes an 18.78 percent factor for avoided direct and indirect expenses.

We address Verizon's account-by-account compliance as follows. Citing portions of Verizon's 1999 proposed avoided cost study, the Department determined that "[b]ecause Verizon treats Sales Expenses [Account 6612] as 100 percent avoided in its proposal, AT&T's claim that wholesale Sales Expenses should be eliminated is moot." Order at 130 (citations omitted). Since Verizon represented that 100 percent of its sales expenses would be avoided, the Department determined that there was no need for the Department to address AT&T's concern. A reasonable reading of the Department's language (finding that AT&T's concern regarding sales expense was moot) is that Verizon would exclude sales expenses in their entirety in its compliance filing.

Thus, as noted above, the Department unambiguously approved parts of Verizon's proposed avoided cost study, and, in particular, approved Verizon's proposed treatment of Account 6612. Verizon, however, in its compliance avoided cost study, indicates that 92.5 percent of sales expenses will be avoided (Compliance Filing, Part G-1). Verizon's proposed 92.5 percent for sales expenses is apparently based on the Department's directive that "pending further FCC action [the Department] will maintain the current resale discount, and the underlying calculation of the percent of total costs to be excluded as retail-related as determined in Phase II of the Consolidated Arbitrations." Order at 116. Verizon's treatment of sales expenses does not comply, however, with the Department's directive from the Order.

Accordingly, in its next compliance filing Verizon should indicate that 100 percent of sales expenses will be avoided.

The Department also stated in the Order that "consistent with our ruling in [the Retail Related Expenses section], Verizon shall revise its proposed 'avoided' costs discount of 40.42 percent in Product Management (see Exh. VZ-37, Part G-1 (Avoided Cost Study), Tab 1, Account 6611 (Product Management)) using the current 'avoidable' cost discount." Id. at 130-131. Based on the Department's earlier directives in the Consolidated Arbitrations, 100 percent of the expenses in this category should be avoided. Phase 2 Order at 22; Phase 2-A Order at 4. Indeed, Verizon, in its Compliance Filing, correctly indicates that 100 percent of these expenses are avoided, but fails to comply with our Order by using its 1996 avoided cost study as the basis of the adjustment (Compliance Filing, Part G-1). Accordingly, Verizon shall, as it proposed in its Compliance Filing, indicate that 100 percent of these expenses are avoided, but shall use the 1999 cost study (i.e., the more current costs) as the basis for the adjustment.

Regarding wholesale advertising expenses, the Department departed from its findings in the Consolidated Arbitrations. In the Consolidated Arbitrations decision, the Department considered wholesale advertising expenses to be 100 percent avoided. Phase 2 Order at 20. Contrary to this previous finding, the Department determined in this proceeding that Verizon may assume some wholesale advertising expenses in its calculation of UNE costs. Order at 131-132. Verizon complied with this directive in Part G-4 of its study.

Unlike other accounts discussed above, our Order did not explicitly address customer services expenses (Account 6623) or testing expenses (Account 6533), and thus Verizon should have used the "percentages" set forth in the Consolidated Arbitrations proceeding,[13] as directed by our Order.[14] Accordingly, Verizon shall assume that 81.52 percent of customer services expenses are avoided, and shall apply this percentage to the dollars shown in the 1999 avoided cost study (Compliance Filing, Part G-1, col. D (ARMIS 1995 data)). See also Phase 2-A Order at 12; Phase 2 Compliance Filing, Section II, at 4. Concerning testing expenses, in the Consolidated Arbitrations, the Department found $14,216,000 to be avoided cost. Phase 2-A Order at 5; Phase 2 Compliance Filing, Section II, at 4. This represented 26.96 percent of the total amount in Account 6533 in 1995 (Compliance Filing, Part G-1, col. D (ARMIS 1995 data)). Accordingly, Verizon shall indicate that 26.96 percent of testing services expenses are avoided, and shall apply this percentage to the dollars shown in the 1999 avoided cost study.

Like Verizon's, AT&T's proposal on customer service and testing expenses also fails to comply with our Order. For customer services expenses, AT&T's restatement relies on the 84.23 percent proposed in Verizon's 1999 cost study (rather than the 81.52 percent in the Consolidated Arbitrations that Verizon should have assumed in its compliance filing). By contrast, for testing expenses, AT&T rejects the 22.97 percent proposed in Verizon's 1999 cost study, recommending instead the comparison of the avoided dollars determined in the Phase 2-A Order at 5 with the total dollars in the 1999 cost study, which yields 37.51 percent. A ratio

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13 The Consolidated Arbitrations decision did not actually contain percentages but rather a ratio of total dollars to avoided dollars for these accounts, which could then be used to determine percentages.

14 In addition, Verizon was required to apply these percentages to the dollars shown in the 1999 avoided cost study.

that consists of dollars for testing avoided in a 1996 proceeding compared to total dollars for testing in a 1999 study is illogical. We reject this aspect of AT&T's hybrid analysis because there appears to be no underlying rationale for determining when AT&T relies on the cost study submitted with Verizon's original TELRIC studies and when it relies on findings from the Consolidated Arbitrations.

The last contested category of direct expenses in Verizon's avoided cost study concerns depreciation. Verizon's original avoided cost study in this docket excludes depreciation (Exh. VZ-37, Part G-1). During the evidentiary phase of this case, neither Verizon nor any other party proposed an adjustment for depreciation in the avoided cost study that Verizon uses in its calculation of UNE costs. Thus, the Department did not direct Verizon to incorporate depreciation in its compliance avoided cost analysis. Nevertheless, Verizon now argues for the inclusion of depreciation because depreciation was included in the 1996 avoided cost study. However, depreciation is already incorporated in a separate cost category incorporated in the ACFs (Exh. VZ-36, at 37, 40-41). It would be inappropriate to include a depreciation adjustment twice in Verizon's cost study, and the Department never intended this result nor expected that Verizon would do so in its compliance filing. Hence, on this issue, we agree with AT&T and order Verizon to exclude depreciation expenses in its recalculation of avoided costs.

AT&T also disputes Verizon's treatment of indirect expenses that Verizon avoids when it provides UNEs to CLECs. Verizon's 1999 avoided cost study includes 14 indirect expense categories, and assumes that for all but three of them, the expenses will not be avoided. For these eleven categories, AT&T, in its proposed restatement, assumes instead that 26.5 percent will be avoided, i.e., an amount that corresponds with AT&T's proposed discount for direct expenses (AT&T Comments, Addendum at 1).

In its 1999 study, Verizon assumed that indirect expenses will be avoided, in part, for three accounts (Exh. VZ-37, Part G-1). Verizon assumed 43.08 percent of Account 6124 (computers) would be avoided, and AT&T adopted that assumption in its restatement. In its 1999 study, Verizon also assumed that 3.09 percent of Account 6711 (Executive) would be avoided; AT&T did not adopt that amount, but rather assumed the "default" value of 26.5 percent in its restatement. Finally, in its 1999 study, Verizon assumed that 9.77 percent of Account 6728 (General & Administrative) would be avoided, and AT&T did not adopt that amount, but rather, again, assumed the higher "default" value of 26.5 percent in its restatement.

In Verizon's compliance cost study, Verizon assumes that, rather than the originally proposed zero percent for eleven categories, and three distinct numbers for three other categories, 18.78 percent of indirect expenses will be avoided for all categories of indirect expenses (Compliance Filing, Part G-1). The 18.78 percent for indirect expenses corresponds to the percent discount that Verizon proposes as compliance for the direct expense avoided discount, and thus Verizon's approach is consistent with the methodology set forth in the Consolidated Arbitrations. Phase 2 Order at 23, 29.

Again, except where our Order explicitly stated otherwise regarding particular accounts, Verizon's compliance study should have incorporated the percentages from the Consolidated Arbitrations, as directed by the Department. Thus, we reject AT&T's hybrid reliance on Verizon's 1999 data and the default value of 26.5 percent, as well as Verizon's compliance percentage of 18.78 percent. As required by the Order, Verizon shall use the 25.51 percent avoided discount percentage that results from our directives concerning its direct expenses in the Consolidated Arbitrations and shall apply those discounts to its 1999 costs. Id. at 23.

In summary, we find that Verizon's proposed Part G-1 in its Compliance Filing fails to comply with our Order. Appendix A to this compliance Order summarizes the changes that Verizon shall make in order to comply. Appendix A corresponds with Part G-1 of Verizon's original avoided cost study with the modifications resulting from the Department's Order.

IV. INTEROFFICE FACILITIES ("IOF")

A. Positions of the Parties

1. RCN

RCN contests three aspects of Verizon's proposed terms and conditions for unbundled IOF transport. First, RCN notes that Verizon's proposed tariff language for the provisioning of unbundled dedicated transport used to connect a CLEC and Verizon includes a reference to the terms and conditions specified in DTE MA No. 15 ("Tariff 15") (RCN Comments at 2). RCN argues that Tariff 15 includes retail prices for intrastate access services, which are "drastically higher" than UNE dedicated transport rates (id. at 2-3).

In addition, RCN points out that federal regulations require interconnection and UNEs to be priced according to TELRIC (id. at 3).[15] Because the network facilities for IOF transport

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15 See 47 U.S.C. §§ 251(c)(2)-(3), 252(d)(1), 271(c)(2)(B)(i); 47 C.F.R. § 51.501; In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order,
(continued...)

are the same facilities needed for a CLEC to interconnect with Verizon, RCN argues that the rates for these facilities should be identical (id. at 4). However, RCN argues that while Verizon submits TELRIC-based usage rates for terminating calls to Meet Point A, B, and C switched interconnection services arrangements, it is not applying TELRIC rates for transport facilities that are needed and associated with these arrangements (id. at 5). RCN states that the CLECs need dedicated transport priced at TELRIC rates so that CLECs can expand the reach of their networks to certain Verizon central offices ("COs") by interconnecting with and passing traffic off to Verizon's facilities (id. at 6). RCN argues that despite Verizon's attempts to address its concerns by offering to clarify the language in Compliance Tariff, Part C, Section 1.5.1.A.2, the new language is "ambiguous, and invites confusion and potential future litigation" (RCN Response at 1). RCN states that only Tariff 17 terms and conditions should apply, not Tariff 15, and recommends that Verizon's proposal in its reply comments be modified to specify that: "Transport will be provided by the Telephone Company from the CLEC's premises to the Telephone Company end office (meet points A and C) or access tandem (meet point B) under the terms and conditions of DTE MA No. 17" (id.) (emphasis in original).

RCN also argues that the conditions contained in Part B, Sections 2.1.1.B and 2.2.2 of Verizon's Compliance Tariff require a CLEC to have a collocation arrangement on one end of the transport facility and a switch on the other end (RCN Comments at 7-8). RCN argues that not only do these conditions increase the costs for CLECs, they are also unlawful (id. at 8).

[15](…continued)
FCC 96-325 (rel. August 8, 1996) ("Local Competition Order").

RCN states that the FCC does not require that a CLEC be collocated to access IOF transport, or that dedicated transport be connected to switching facilities (id. at 8-11, citing FCC Virginia Arbitration Award[16] at ¶¶ 217, 353, 457, 498-500; 47 C.F.R. §§ 51.307, 51.311, 51.319(d)(1)(i)). Therefore, RCN requests that the Department order Verizon to refile its tariff pages without the CLEC switching or collocation conditions (id. at 12). Specifically, RCN recommends that the Department order Verizon to remove (1) the phrase “a collocation arrangement established within” from the Compliance Tariff, Part B, Section 2.1.1.B.3, and (2) the word “switch” from Compliance Tariff, Part B, Section 2.2.2.A (RCN Response at 1-2).

2. AT&T

AT&T requests that the Department require Verizon to modify its description of IOF transport to conform to the FCC’s definition of IOF transport (AT&T Response at 1). AT&T argues that Verizon fails to include language to allow a CLEC that has neither a collocation arrangement nor a switch at either end of the transport facility to lease unbundled dedicated transport between a Verizon tandem switch and a Verizon CO switch (id. at 2). This scenario, according to AT&T, falls within the FCC’s definition of dedicated transport (id. at 2-3, citing 47 C.F.R. § 51.319(d)(1); Local Competition Order at ¶ 440). Accordingly, AT&T requests that the Department order Verizon to include the following three provisions in the descriptions of unbundled IOF transport at Part B, Section 2.1.1.B: (1) A Telephone Company tandem

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16 Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket Nos. 00-218, 00-249, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002).

switch to which the CLEC brings traffic via its own facilities and a Telephone Company central office switch; (2) Telephone Company wire centers; and (3) Telephone Company switches (id. at 3).

AT&T states that Verizon's "overly restrictive" definition of transport is also found in Compliance Tariff, Part C, Section 1.5.1.2 (id.). AT&T argues that the CLEC end of the transport facility for interconnection should not be restricted to CLEC-owned premises with a switch (id. at 3-4). Rather, AT&T requests that the Department order Verizon to expand the definition of a CLEC premise to include the following in Part C, Section 1.5.1.2: "a CLEC's premise may include, but may not be limited to, a CLEC owned or leased location, as well as a CLEC's collocation space" (id. at 4).

3. Verizon

Verizon proposes to address RCN's concerns by modifying the language contained in its Compliance Tariff to clarify the terms and conditions by which the IOF transport rates will apply (Verizon Reply at 35). RCN's first concern, according to Verizon, is that the language of Compliance Tariff, Part C, Section 1.5.1.A.2 "limits the circumstances in which TELRIC-based IOF Transport rates would apply" (id., citing RCN Comments at 2-7). Verizon states that it has provided replacement language for this section of its Compliance Tariff to address RCN's concern and to clarify "that an eligible CLEC may order transport" from Tariff 17 or Tariff 15 (id. at 36).

Regarding RCN's second concern pertaining to Compliance Tariff, Part B, Section 2.1.1.B, Verizon admits that the language of this section "may be overly restrictive" and offers to include language that "would permit the dedicated IOF Transport under a Meet Point A or B arrangement from a 'CLEC designated central office premises' (not necessarily a collocation arrangement) and without the need for a CLEC switch at the end of the transport facility" (id. at 36-37). Verizon states that the clarifying tariff language it proposes for Part C, Section 1.5.1.A.2 and Part B, Section 2.1.1.B addresses RCN's concerns about the application of TELRIC-based rates to IOF transport (id. at 37).

B. Analysis and Findings

RCN and AT&T oppose the following language in Part C, Section 1.5.1.A.2 of the Compliance Tariff:

> Transport will be provided by the Telephone Company from the CLEC[']s premises to the Telephone Company end office (meet points A and C) or access tandem (meet point B) provided by the Telephone Company under the terms and conditions applicable to direct trunked transport as specified in DTE MA No. 15.

In response, Verizon agreed to modify its tariff language as follows:

> Transport will be provided by the Telephone Company from the CLEC[']s premises to the Telephone Company end office (meet points A and C) or access tandem (meet point B) under the terms and conditions of the applicable Telephone Company tariff (Verizon Reply at 36).

AT&T agrees to Verizon's language on condition that the Department also order Verizon to specify that "a CLEC's premise may include, but may not be limited to, a CLEC owned or leased location, as well as a CLEC's collocation space" (AT&T Response at 4). However, the Department finds that AT&T's proposed language runs contrary to the federal definition of dedicated transport which limits facilities to "wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers."[17] The Department therefore rejects AT&T's language.

RCN argues that Part C, Section 1.5.1.A.2 should specify unconditionally that the terms and conditions relevant to transport are contained in Tariff 17 (RCN Response at 1). However, depending on the type of traffic the transport carries, there are at least two other applicable tariffs that may apply (i.e., Tariff 15 and FCC Tariff 11). Accordingly, the Department rejects RCN's proposed language and finds instead that it is reasonable for Verizon to recognize this point in its tariff. We therefore adopt the tariff language for Part C, Section 1.5.1.A.2 that Verizon has proposed in its reply comments (see Verizon Reply at 36).

RCN and AT&T also dispute the language contained in Verizon's Compliance Tariff, Part B, Section 2.1.1.B, which contains a description of the transmission paths for which unbundled dedicated IOF transport would apply. RCN claims that the proposed language would require a CLEC to collocate at a Verizon CO to be eligible for transport (see RCN Comments at 8). Verizon concedes that its language "may be overly restrictive" and therefore offers a fourth scenario by which CLECs could order unbundled dedicated IOF transport:

> 4. A CLEC designated central office premises or collocation arrangement and a Telephone Company central office switch when used solely as an interconnection transport facility under a Meet Point A or B Reciprocal Traffic Exchange Trunk arrangement, as defined in Part C Section 1 (Verizon Reply at 36-37).

The Department finds that such a scenario addresses RCN's concern by providing an alternative to collocation for a CLEC to be eligible for dedicated transport. The Department

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17 47 C.F.R. § 51.319(d)(1)(i).

therefore adopts this language and orders Verizon to incorporate this fourth scenario in its revised compliance tariffs.

AT&T asks the Department to add three more scenarios to Part B, Section 2.1.1.B to "ensure that a CLEC may order, as a UNE, dedicated transport between switches and between wire centers owned by Verizon, as specifically authorized by 47 C.F.R. 51.319(d)(1) and the FCC's Local Competition Order" (AT&T Comments at 3). These three provisions are:

5. A Telephone Company tandem switch to which the CLEC brings traffic via its own facilities and a Telephone Company central office switch
6. Telephone Company wire centers
7. Telephone Company switches (AT&T Response at 3).

The FCC rules at 47 C.F.R. 51.319(d)(1)(i) define dedicated transport as:

> incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

The Department finds that AT&T's proposed provisions 5, 6, and 7 comply with the federal definition of dedicated transport. The Department therefore adopts these three provisions and directs Verizon to incorporate these three scenarios in its next filing.

Finally, RCN asks the Department to order Verizon to strike the word "switch" from its definition of an entrance facility (RCN Response at 2; see Compliance Tariff, Part B, Section 2.2.2.A). Verizon's proposed language states that: "An Entrance Facility provides for the transmission facility between the [telecommunications carrier's ("TC's")] switch location and the Telephone Company serving wire center" (Compliance Tariff, Part B, Section 2.2.2.A). Because an entrance facility provides for the interconnection of two networks, a CLEC switch is required at one end. Therefore, we reject RCN's proposed modification and adopt Verizon's proposed tariff language in Section 2.2.2.A.

V. COLLOCATION

A. Positions of Parties

1. Conversent

Conversent urges the Department to modify Verizon's cross-connect restructuring proposal. Conversent argues that under Verizon's proposal CLECs will be charged: (1) a new nonrecurring cost for cross-connects that have already been ordered and provisioned even though they may not be in use; (2) a monthly recurring charge for cross-connects before they are put into use; and (3) a monthly recurring charge for more cross-connects than actually may be used (Conversent Comments at 5). Conversent requests that the Department order Verizon to apply its Point of Termination Bay and Cable and Frame Termination recurring service access charges only at the time that the terminations are actually put into service (id.).

2. Verizon

Verizon states that Conversent's comments regarding the cross-connect restructuring do not pertain to the cost recovery transition plan but rather to the rate structure that the Department approved in the Order (Verizon Reply at 39). Verizon asserts that Conversent is attempting to relitigate the issue of rate structure and thus the Department must reject Conversent's arguments (id.).

B. Analysis and Findings

We agree with Verizon that the issue Conversent raises pertains to the cross-connect rate structure itself and not to the transition plan Verizon submitted in its Compliance Filing. In this phase of the proceeding, limited to evaluation of Verizon's Compliance Filing, it is improper for Conversent to relitigate the rate structure issue. Conversent's request is therefore denied.

The Department finds that Verizon's proposed transition plan provides a reasonable process for transitioning CLECs to the new cross-connect rate structure approved in the initial order. See Order at 430-432. Significantly, Verizon's transition plan grants CLECs 30 days from the date of notification to return any unused cross-connects before incurring any charges, thus minimizing any unforeseen financial impact resulting from the application of the new rate structure (see Compliance Tariff, Part E, Section 2.6.17.B). In addition, for cross-connects that were in use prior to the tariff effective date of August 5, 2002, Verizon will apply the new lower recurring rate but waive the nonrecurring charge, resulting in a financial savings for CLECs (see Compliance Tariff, Part E, Section 2.6.17.A). For the reasons discussed, the Department approves Verizon's transition plan.

VI. NONRECURRING COSTS ("NRCs")

A. Labor Rates

1. Positions of the Parties

a. AT&T

AT&T contends that Verizon improperly inflated its NRC labor rates (AT&T Comments at 22). According to AT&T, even though the Department approved labor rates trended from 1999 through 2002, Verizon improperly trended new labor rates through 2004 in its Compliance Filing (id. at 22-23). AT&T therefore argues that the Department should direct Verizon to use the NRC labor rates previously approved, and not permit Verizon to increase them by 5.92 percent (id. at 24).

b. Verizon

Verizon claims that it properly increased the time period for calculating labor rates from 2002 to 2004 "in order to comply with the Department's directive that Verizon MA base its recurring and NRC models on consistent network assumptions" (Verizon Reply at 18-19). Verizon states that the Department's order to apply a productivity offset to its recurring cost model for a time period extending through 2004 "necessarily required Verizon MA also to increase its timeframe for calculating labor rates in its NRC model through that time" (id. at 19). Accordingly, Verizon contends that AT&T's argument neglects the fact that use of consistent technology assumptions for the recurring and NRC models "requires that the models also employ consistent assumptions related to planning periods" (id.). Verizon further asserts that it is irrelevant that the recurring model does not explicitly include labor rates (id.).

2. Analysis and Findings

The Department finds that Verizon's decision to trend labor rates in its Nonrecurring Cost Model ("NRCM") through 2004 fails to comply with the Department's directives. The Department neither explicitly nor implicitly directed Verizon to submit compliance labor rates trended through 2004. The Department approved Verizon's NRCM with the model's embedded assumption that labor rates be trended from 1999 through 2002 (see Exh. VZ-14, exh. A at 16; Exh. VZ-14, exh. E). The Department's directive that "recurring and NRC models for UNEs should be based on the same network assumption" addressed technology assumptions, not planning periods. Order at 441. The Department therefore orders Verizon to resubmit its NRCM with labor rates trended from 1999 through 2002. Insofar as these labor rates impact other sections of Verizon's cost study (e.g., collocation rates), the Department further orders Verizon to make all relevant and appropriate modifications.

B. Forward Looking Adjustment Factors ("FLAFs")

1. Positions of the Parties

a. AT&T

AT&T claims that Verizon's Compliance Filing inappropriately applied specific FLAF adjustments only to hot cut NRCs (AT&T Comments at 27). AT&T concludes that the Department should direct Verizon to apply all of the FLAF reductions ordered for hot cut NRCs to the same tasks for all other NRCs, "but only to the extent that doing so results in a lower FLAF than the Department's more general order to reduce all FLAFs by 20 percent" (id. at 28) (emphasis in original). Further, AT&T requests that the Department clarify that this was the intent of its Order (id.).

b. Verizon

Verizon claims that it followed the language and intent of the Department's Order when it adjusted its fallout rates and FLAFs (Verizon Reply at 27). Verizon states that it "was not required to apply the adjustments ordered in the context of hotcuts to all other similarly-named tasks performed to provision other UNEs, regardless of whether the same tasks were involved" (id.). Verizon reasons that tasks that share the "same generic description" often require different work effort and manual handling (id. at 28). Accordingly, Verizon argues that "it makes no sense to blindly apply a fallout rate ordered for one task to tasks that share the same label when that task is not 'the same task required to provide other UNEs'" (id.).

Verizon also opposes AT&T's request that the Department order Verizon to adjust FLAFs only to the extent that doing so results in a lower FLAF than the Department's more general order to reduce all FLAFs by 20 percent (id. at 28-29). Verizon claims that the Department's language and intent is clear on this issue and therefore asks the Department to deny AT&T's clarification motion (id.).

2. Analysis and Findings

The Department's directive is clear on this issue. The Department stated that:

> Based on our review of Verizon's costs for this UNE and the record in this proceeding, we direct Verizon to adjust specific aspects of its hot cut study in order to make its study more forward-looking. Verizon shall apply these modifications to the relevant portions of the NRCM for other UNEs as well where applicable (i.e., where the same task is required to provide the other UNEs). Furthermore, where we direct changes to particular FLAFs for individual work group tasks, Verizon shall not make the general FLAF adjustments that we discuss above. On the other hand, where we do not address specific FLAFs, Verizon shall apply these general adjustments.

Order at 494-495. Verizon nonetheless argues that tasks that share the same generic description sometimes require different work effort and manual handling and therefore should not be subject to the same reduction ordered for specific hot cut UNEs.[18] While the phrases "relevant" and "where applicable" may have suggested discretion and flexibility for Verizon, the directive is constrained by the parenthetical language that states, "where the same task is required to provide the other UNEs." Id. The language therefore is not nearly as broad or

[18] Verizon could have raised this argument during the reconsideration and clarification phases of this proceeding.

elastic as Verizon interprets. In fact, the Order contemplated very little discretion. Referring to the FLAF tab contained within Verizon's NRCM (Exh. VZ-15, tab Connect - Forward Looking Adjustments), Verizon was to take those tasks listed in the left hand column under the heading "Activity Description" that are performed for hot cuts and apply in rote fashion the same reductions to the FLAFs for all other UNE NRCs listed in the corresponding horizontal columns (e.g., two-wire, new initial), because those other UNE NRCs involve the same tasks. Accordingly, the Department orders Verizon to implement its directives with the understanding that all tasks under the same activity description are in fact the same task (e.g., all tasks labeled Regional CLEC Coordination Center ("RCCC") task 3, "eliminate roadblocks from the order," are the same). Verizon is therefore directed to take all of the FLAF reductions ordered for hot cut NRCs and apply them to the same tasks for all other NRCs.

AT&T's request, that the Department order Verizon to adjust FLAFs only to the extent that doing so results in a lower FLAF than the Department's more general order to reduce all FLAFs by 20 percent, fails to comport with the Department's directive, quoted above, that Verizon make changes as specified to particular FLAFs, and apply general adjustments where we do not address specific FLAFs. Id. The Department did not order that lower result of the two directives would apply. The Department denies AT&T's clarification request as untimely, because AT&T could have raised this issue during the reconsideration and clarification phase of this proceeding, but did not do so.

C. Field Dispatch and Loop Maintenance Costs

1. Positions of the Parties

a. AT&T

AT&T claims that Verizon failed to remove field dispatch and loop maintenance costs from its NRCM and illustrative Compliance Tariff, as the Department directed (AT&T Comments at 24). According to AT&T, Verizon should have removed CO Frame tasks 17 and 18 for all NRCs, but instead removed these tasks only for hot cut NRCs (id. at 24). AT&T states that all tasks that relate solely to field dispatch and loop maintenance should be removed from the NRCM (i.e., RCCC tasks 9, 10, 11, 17, and 35; Recent Change Memory Administration Center ("RCMAC") tasks 5, 6, and 8) (id. at 25). AT&T also contends that all NRCs related solely to field dispatch and loop maintenance work should be eliminated from the NRCM in their entirety (i.e., NRCs 62, 63, 64, and 84 through 95) (id.). Furthermore, AT&T claims that "[t]he UNE-P NRCs will have to be reduced accordingly, since they are based in part on [integrated digital loop carrier] work that is solely related to field dispatches" (id.).

b. Verizon

Verizon claims that it complied with the directive on recovery of loop maintenance and field dispatch costs "by removing, where appropriate, those costs from its tariff" and that it "merely left field dispatch costs as a placeholder in its NRC model" (Verizon Reply at 20). Because NRC rates for loop maintenance and field dispatch are not included in Verizon's tariff, Verizon claims that it has complied with the Department's directive that these costs be recovered through ACFs rather than through NRCs (id.).

In response to AT&T's claim that Verizon did not remove all field work-related costs, Verizon states that it "removed all tasks from its model that exist solely as a result of field work or loop maintenance" (id. at 21). Verizon claims that the $35 million it includes in its recurring costs covers only required field work and loop maintenance (id.). Additionally, Verizon states that it removed CO Frame tasks 17 and 18, tasks that the Department determined were related to field work, only for hot cut NRCs (id.). See Order at 497. Verizon further contends that it "was not obligated to remove any tasks from the RCCC, the RCMAC, or any other work group to account for field dispatch or loop maintenance activities" (Verizon Reply at 21). Verizon claims that the RCCC has nothing to do with field dispatch and that RCMAC tasks are not related to loop maintenance (id. at 21-22). Verizon characterizes NRCs 84 through 95 as not solely related to field work (id. at 22). Finally, Verizon states that NRCs 62, 63, and 64 cover costs for field work or maintenance dispatches that do not require work and therefore "do not fall within the scope of the Department's directive to recover field dispatch and maintenance costs through recurring rates" (id.).

2. Analysis and Findings

AT&T claims that Verizon should remove eight RCCC and RCMAC tasks and 15 NRCs from its NRCM and reduce all UNE-P NRCs in order to comply with the Department's directive that Verizon recover loop maintenance and field dispatch costs through the ACF. Order at 453. For the reasons discussed below, the Department finds that the record does not support the adjustments that AT&T claims are appropriate. While AT&T persuasively argued during the evidentiary phase of this case that these costs should be recovered through recurring rates, it failed to present sufficient evidence on tasks and NRCs that should be removed from the NRCM. AT&T made a point to examine each task under the field installation heading of Verizon's NRCM to support its position that field installation costs should be recovered through the ACF, and, in fact, Verizon has removed those tasks in its Compliance Filing. However, AT&T failed to duplicate this exercise for the tasks and NRCs that it now claims fall within the Department's directive regarding the removal of field dispatch and loop maintenance costs (see Exh. ATT-14, at 39-41).[19] The Department therefore denies AT&T's request.

As to CO Frame tasks 17 and 18, the Department directs Verizon to remove these two tasks for all NRCs for the reasons discussed above in Section VI.B.2. The Department further directs Verizon to remove from its NRCM all "placeholders" and submit instead an NRCM that accurately reflects all the Department's directives and findings.

D. Fallout

1. Positions of the Parties

a. AT&T

AT&T claims that Verizon failed to modify its NRCM to assume a global fallout rate of two percent (AT&T Comments at 26). AT&T states that Verizon applied the two percent fallout rate to Telecom Industry Services Operating Center ("TISOC") tasks 1 and 2, but did not apply this directive to TISOC task 3 (id., citing Order at 496). AT&T further contends that

19 The one notable exception is RCCC task 10, which AT&T provides as an example of a loop maintenance task that should be recovered through recurring rates (AT&T Brief at 240; Exh. ATT-15, at 18). However, AT&T concedes in its argument that this task is properly included in the NRCM under some circumstances (see Exh. ATT-15, at 18). The Department therefore does not find persuasive AT&T's argument that this task should be removed from Verizon's NRCM in order to comply with the Department's directive that Verizon recover loop maintenance and field dispatch costs through the ACF. Order at 453.

"Verizon failed to apply the two percent fallout rate for these TISOC tasks to all NRCs (see, e.g., NRCs 1, 7, 11, 13, 17, 21, 23, 25, 28-30, 32-36, 38, 40-53, 80, 82, 84, 86, 88, 90, 92, 94, 120-121)" (id.). AT&T therefore asks the Department to order Verizon to "fix these deviations from the Department's orders" (id.).

AT&T also claims that Verizon failed to apply a fallout rate of two percent for Mechanized Loop Assignment Center ("MLAC") and RCMAC tasks "because the Department had ordered specific FLAF changes which resulted in an assumption of fallout far in excess of two percent" (id. at 27). AT&T asserts that "[t]his inconsistency within the Department's order appears to be a mistake . . . [that] did not come to light until Verizon made its compliance filing" (id.). AT&T therefore asks the Department to clarify that, if there is an inconsistency between the directive that Verizon apply a global fallout rate of two percent and the separate adjustments to specific FLAFs, "whichever change results in a more efficient, i.e. shorter, forward-looking work time is the one that Verizon should implement in its NRC" (id.).

b. Verizon

Verizon claims that it properly applied the Department's two percent global fallout directive to its NRCM (Verizon Reply at 22). With respect to the specific directives that pertain to TISOC tasks 1 and 2, Verizon argues that it was appropriate to apply such directives only to hot cut UNEs because to do otherwise "makes no sense" and would be "absurd" (id. at 22-23). Verizon states that the Department's directive for a global fallout rate of two percent does not apply to TISOC tasks because the TISOC does not experience fallout (id. at 23). Verizon therefore contends that it complied with the Department's "specific order to model a 2 percent fallout rate for TISOC tasks in the context of hotcuts. However, because the concept of fallout does not even apply to the TISOC, there is no basis to carry through this erroneous assumption to UNEs other than hotcuts" (id. at 24). Verizon further claims that "[b]ecause hotcuts involve different TISOC work activities than other UNEs, [it] simply makes no sense to blindly apply the 2 percent fallout to other UNEs" (id. at 25).

Verizon also rejects AT&T's proposal that the Department order Verizon to apply the two percent global fallout rate in place of specific FLAF adjustments where the former results in lower times (id.). Verizon claims that such an approach amounts to AT&T "'picking and choosing' among the Department's directives" (id.). Verizon states that the Department's order to model specific adjustments in lieu of general adjustments pertains to this issue (id. at 26). According to Verizon, the two percent global fallout directive constitutes a general adjustment which should be trumped by any of the Department's specific FLAF adjustments, because "requiring a 2 percent fallout rate is merely a different way of stating that Verizon MA is required to apply a general adjustment to its FLAFs to reflect a flat 2 percent fallout rate" (id.).

2. Analysis and Findings

The Department stated that "Verizon fails to persuade the Department to alter its previous finding that a two percent fallout rate is indicative of likely experience with forward-looking technologies in this industry. The Department therefore orders Verizon to modify its NRCM to assume a global fallout rate of two percent." Order at 483. We further directed Verizon to "revise its cost calculations for [TISOC tasks 1 and 3] to be consistent with this directive." Id. at 496 (footnote omitted). Verizon failed to apply this specific directive to

TISOC task 3. The Department therefore orders Verizon to modify TISOC task 3 to assume a fallout rate of two percent.[20]

As noted above in Section VI.B.2, Verizon also failed to comply with the Department's directive that it apply the Department's specific hot cut modifications "to the relevant portions of the NRCM for other UNEs as well where applicable (i.e., where the same task is required to provide the other UNEs)." See id. at 494. In the Order, the Department specifically included TISOC tasks 1 and 3 in this directive, ordering Verizon to revise its cost calculations for these two TISOC tasks to be consistent with the Department's directive regarding an Operations Support Systems fallout of two percent and noting that "[t]his is an example of a directive that affects the cost calculation for other UNEs (e.g., two-wire, new initial)." Id. at 496 n.184. The Department therefore orders Verizon to apply a two percent fallout rate to TISOC tasks 1 and 3 for all other NRCs.

AT&T requests that the Department make clear that "if there is an inconsistency between its directive that Verizon apply a global fallout rate of two percent and its separate adjustments to specific FLAFs," then whichever change results in a shorter forward-looking work time is the one that Verizon should implement (AT&T Comments at 27). The Department finds AT&T's request misguided, because the Department's directive regarding the global two percent fallout rate is independent of the specific FLAF adjustments that the Department ordered. However, it highlights a problem with the manner in which Verizon applied our directives in its Compliance Filing. The Department specified that "where we

20 Verizon mistakenly adjusted TISOC task 2 and, as it has acknowledged, should correct that error in its revised compliance filing (see Verizon Reply at 22 n.22).

direct changes to particular FLAFs for individual work group tasks, Verizon shall not make the general FLAF adjustments that we discuss above. On the other hand, where we do not address specific FLAFs, Verizon shall apply these general adjustments." Order at 494-495. This directive defined the hierarchy for FLAF adjustments, such that, unless the Department ordered a specific FLAF adjustment to a task, Verizon was required to apply a 20 percent reduction in that FLAF. See id. at 474. Verizon appears to have mistakenly interpreted this language to pertain to the two percent fallout rate directive, because Verizon "applied the specific adjustments to FLAFs the Department ordered for hotcuts instead of the general 2 percent fallout rate" (Verizon Reply at 26). However, the directive regarding the global two percent fallout rate is independent of the specific FLAF adjustments that the Department ordered. Order at 483. The Department therefore orders Verizon to apply the two percent fallout rate to all tasks within its NRCM, and to apply the specific FLAF adjustments contained in the Order and the default 20 percent reduction to all other FLAFs.

We provide an example to show how Verizon should comply with these directives. MLAC task 1 is to assign outside plant and CO facilities for non-flowthrough service orders. The Department specifically ordered a 50 percent FLAF for this task, so this specific FLAF applies and not the default 20 percent FLAF reduction. Id. at 498. As discussed above, this specific FLAF directive applies to hot cut and non-hot cut NRCs alike. See Section VI.B.2, above. Therefore, all of the FLAFs in the row entitled MLAC task 1 should read 50 percent (see NRCM, tab Conn FL Adj, row 73). In addition, Verizon must apply the global fallout rate of two percent to this task. Order at 483. In order to obtain a two percent fallout rate after having modified the FLAFs, Verizon must adjust the corresponding Typical Occurrence

Factors ("TOFs") accordingly. All the TOFs for all of the NRCs in the row entitled MLAC task 1 should therefore read four percent (see NRCM, tab Conn Occ, row 73).

E. Task Times

1. Positions of the Parties

a. AT&T

AT&T claims that Verizon failed to reduce the task times as ordered (AT&T Comments at 28). According to AT&T, Verizon failed to comply with the Department's directive that it "compute a 95 percent confidence interval around each of the task times used as inputs to its NRC model, and to use the low end of the 95 percent confidence interval instead of the times proposed by Verizon" (id., citing Order at 470). AT&T asserts that "Verizon ignored the Department's express orders, and instead input into its NRC model new work times that used the 'trimming' approach rejected by the Department" (id. at 29). AT&T therefore requests that the Department require Verizon to "recalculate its NRCs using the task times that it calculated in its 'lower limit without trimming' column, since that represents the low end of the 95 percent confidence as mandated by the Department" (id. at 30).

b. Verizon

Verizon states that it properly adhered to the Department's directive regarding the 95 percent confidence interval calculation for the NRC work times (Verizon Reply at 29). Verizon contends that it did not use the trimmed mean approach that was rejected by the Department on reconsideration, but rather "calculated the mean work times using all the data points, and then 'trimmed' only to properly compute the confidence interval required by the Department" (id.). Verizon claims that the data for the work times are naturally asymmetric, and therefore "the basic 'Statistics 101' confidence interval formula does not yield the 95 percent coverage probability ordered by the Department" (id.). Accordingly, Verizon "symmetrized" the work times by trimming data points "merely for the purpose of calculating a correct standard deviation – one that yields an interval (and lower limit) with 95 percent coverage probability" (id. at 30).

2. Analysis and Findings

The "trimming" of task times contained in Verizon's Compliance Filing differs from the "trimmed mean" approach that Verizon advocated and the Department subsequently rejected in the reconsideration phase of this proceeding. See Reconsideration Order at 82. Under Verizon's "trimmed mean" approach, Verizon proposed to "rank the survey responses for each work activity from lowest to highest, eliminate or 'trim' the highest 10 percent of work times and the lowest 10 percent of work times for each activity, and calculate the new average work time using the remaining responses." Id. at 78. In contrast, in "trimming" task times in its Compliance Filing, Verizon used all data points to determine the mean, computed 95 confidence intervals around those mean times, and used the lower limit of that interval (see Verizon Reply at 30). After computing the mean times and before computing the confidence intervals, Verizon ranked the survey responses for each work activity from lowest to highest and then "trimmed" the highest ten percent of work times and the lowest ten percent of work times for each activity.

Verizon states that it "trimmed" the data in response to the asymmetry of the data and "merely for the purpose of calculating a correct standard deviation – one that yields an interval (and lower limit) with 95 percent coverage probability" (id.). In other words, Verizon claims that it could not have complied with the Department's directive to calculate a 95 percent confidence interval around the task times without first "trimming" the data in an effort to create more normally distributed data sets. Therefore, we agree with Verizon that the data is asymmetrical (see RR-DTE-13-S) and that "trimming" is necessary before the confidence intervals are calculated. Accordingly, we find that Verizon has complied with our directives concerning the 95 percent confidence interval.

F. Service Order Modifications and Date Changes

1. Positions of the Parties

a. AT&T

AT&T claims that Verizon should not be able to impose NRCs for modifications of a service order or for a service date change (AT&T Comments at 30). AT&T states that Verizon never proposed these NRCs during the evidentiary portion of this proceeding (id.). AT&T further contends that these NRCs, if approved, would enable Verizon to double recover its costs, because TISOC tasks 2 and 3 already cover any forward-looking costs Verizon incurs for processing service order modifications or date changes (id.).

b. Verizon

Verizon claims that "Service Order Modification" and "Service Date Change" are properly included in Tariff 17 as NRCs (Verizon Reply at 30). Verizon states that, because the Department reviewed and approved these NRCs in the Consolidated Arbitrations, we "acknowledged their validity as rate elements subject to cost recovery" (id. at 30-31). Verizon contends that these NRCs were contained in the Rate Summary attached to Verizon's May 4, 2001 direct testimony and therefore did not first appear in this proceeding during the compliance phase, as AT&T contends (id. at 31, citing Exh. VZ-14, exh. I).

Verizon claims that the NRCs appear duplicative of the NRCs for TISOC tasks 1, 2, and 3 due to "a simple error" in Verizon's Rate Summary (id.).[21] Verizon proposes two solutions to rectify this error (id.). First, Verizon offers to map the NRCs for Service Order Modification and Service Date Change to the average service charge that applies to the orders encompassed by TISOC tasks 1, 2, and 3 (id.). Alternatively, Verizon states that it "could retain its current NRCs for 'Modification' and 'Service Date Change' and simply recalculate the average service charge so that it does not account for these two items" (id.) (footnote omitted).

2. Analysis and Findings

The Department disagrees with AT&T's claim that Verizon never submitted NRCs for Service Order Modification and Service Date Change until the Compliance Filing. Both NRCs appear in the summary of nonrecurring rates to Verizon's May 4, 2001 direct testimony (Exh. VZ-14, exh. I at 31). The Department is also unpersuaded by AT&T's contention that these two NRCs would enable Verizon to double recover its costs. There are no other NRCs in Verizon's NRCM that recover the costs associated with a service order modification or service date change.

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21 TISOC tasks 1, 2, and 3 are tasks that appear in Verizon's NRCM. Verizon describes TISOC task 1 as "Receive Local Service Request (LSR) from the CLEC and print, review, type and confirm the order request for new installation and/or account." TISOC task 2 is to "Receive [LSR] from the CLEC and print, review, type and confirm the order request for changes in existing account." TISOC task 3 is to "Respond and/or change CLEC's pending [LSR]" (Exh. VZ-37, Part I, Tab 1, at 1).

However, Verizon failed to adjust the costs for these two NRCs to reflect applicable Department ordered modifications. The Service Order Modification and Service Date Change NRCs are mapped to the NRC elements entitled "Record Change Charge" and "Design Change Charge," respectively (see id.; Exh. VZ-14, exh. M at 1). Those Department directives that pertain to Record Change Charge and Design Change Charge must therefore also apply to Service Order Modification and Service Date Change. Accordingly, the Department directs Verizon to modify its NRCs for Service Order Modification and Service Date Change to reflect the Department's ordered adjustments to the common overhead factor and the task time. See Section VI.G.2, below. The Department further orders Verizon to recalculate the average service charge so that it does not account for these two NRCs.

G. Exhibit M[22]

1. Positions of the Parties

a. AT&T

AT&T states that costs for record changes, design changes, data entry searches, and duplicate bills, contained in the Exhibit M supplement to Verizon's NRCM, were not integrated into the rest of Verizon's NRCM (AT&T Comments at 31). AT&T claims that due in part to the lack of integration, Verizon failed to make all relevant modifications for the four elements contained in Exhibit M (id.).

[22] Exhibit M is an attachment to Exhibit VZ-14 that contains miscellaneous NRCs not included in Verizon's NRCM. These NRCs include record change charge, design change charge, data entry search charge, and duplicate bill charges.

AT&T states that "[e]ach of these four NRCs were based on the 15 minutes (0.25 hours) of work time originally assumed in Verizon's NRC for TISOC task 2, for UNE-P 2-Wire New Initial orders" (id., citing NRCM, Conn Time Tab, L6, Col 36, per the reference in Exhibit M). According to AT&T, Verizon itself reduced the source time in its NRCM from 15 minutes to 7.66 minutes during this proceeding (id.). AT&T further states that the Department's two percent global fallout ruling applies to TISOC task 2 (id., citing Order at 483). AT&T therefore concludes that the forward-looking work time for the four NRCs contained within Exhibit M should be 0.14 minutes, not 15 minutes (id.). AT&T asks the Department to direct Verizon to recalculate these four NRCs accordingly (id.).

b. Verizon

Verizon concedes that it failed to modify the NRCs for record changes, design changes, and duplicative bills to account for the adjusted common overhead factor and the change in time from 15 minutes to 7.66 minutes (Verizon Reply at 32). Verizon therefore agrees to recalculate these three NRCs accordingly (id.). Verizon further offers to recalculate the NRC for data entry searches to account for the common overhead factor modification, but not the change in time (id.). According to Verizon, data entry searches are calculated on a "per quarterly hour basis" and therefore it is proper for Verizon "to continue to base the NRC for this item on the 15 minute work time" (id.).

Verizon disagrees with AT&T that the two percent fallout rate should apply to the NRCs for these four services (id.). According to Verizon, the Department approved the NRCs contained within NRC Exhibit M as filed, which did not incorporate any forward-looking adjustments (id.). Verizon further claims that "[i]n any case, the 2 percent fallout rate simply does not apply to these activities. These activities are not intended to flow through the system, and therefore require manual handling whenever they are performed" (id.).

2. Analysis and Findings

The parties agree that Verizon should modify the NRCs for record changes, design changes, and duplicative bills in NRC Exhibit M to account for the adjusted common overhead factor and the change in time from 15 minutes to 7.66 minutes. The Department concurs that such a modification is appropriate because Verizon failed to apply all relevant Department directives to these three NRCs. The Department therefore orders Verizon to modify the NRCs for these three activities accordingly.

Regarding the NRC for the data entry search charge, Verizon offers to modify the common overhead factor, but not the hourly labor rate because the data entry search charge is billed on a "per 15 minute interval or fraction thereof" (see Compliance Tariff, Part M, Section 1, at 18). The Department concurs with Verizon's rationale and therefore finds that under such a billing arrangement, 0.25 hours remains appropriate for the data entry search charge NRC. Accordingly, the Department orders Verizon to modify the common overhead factor, but not the hourly labor rate. The Department further instructs Verizon to ensure that the hourly labor rate for all NRC elements contained in Exhibit M reflects the most recent Department findings. See Section VI.A.2, above.

On the issue of the two percent fallout rate, Verizon is correct that the Department approved the NRCs contained within NRC Exhibit M as filed and without any forward-looking adjustments. The rate for the hours per activity therefore need not be modified to reflect a two percent fallout rate.

H. Tariff Language for Optional Field Dispatches

1. Positions of the Parties

a. AT&T

AT&T argues that Verizon should delete "e.g." from its proposed tariff language regarding the optional field dispatch charge, which states that the charge: "Applies when a technician is dispatched at the specific request of a TC to perform work outside of the normal routine work associated with service installation and maintenance, e.g., tagging of [network interface devices ("NIDs")], circuit identification at a demarcation point" (AT&T Comments at 33, citing Compliance Tariff, Part A, Section 3.3.2.A.6, at 12). According to AT&T, the Department permitted Verizon to assess an NRC for optional field dispatches "under very narrow circumstances" and "directed Verizon 'to specify in its compliance filing those instances where a CLEC would be charged a field dispatch NRC for optional tasks'" (id., citing Reconsideration Order at 93). AT&T argues that Verizon inappropriately submitted language that leaves Verizon "the option of assessing this charge in other, unspecified instances" (id.). AT&T requests that the Department order Verizon to modify its language to specify that an optional field dispatch charge: "Applies when a technician is dispatched at the specific request of a TC to perform work outside of the normal routine work associated with service installation and maintenance, either for tagging of NIDs or for circuit identification at a demarcation point" (id.) (emphasis in original).

b. Verizon

Verizon claims that its proposed tariff language with regard to optional field dispatches complies with the Department's directive (Verizon Reply at 34). According to Verizon, its tariff language specifies that the costs for optional field dispatches "will only apply when the CLEC requests more than the normal work" (id.). While it identified two instances in the proposed tariff, Verizon states that "there may be similar instances where the CLECs may request work" (id. at 34-35). Accordingly, Verizon claims that its tariff language is necessary to ensure proper cost recovery for optional and unnecessary work (id. at 35).

2. Analysis and Findings

The Department found in the Reconsideration Order that "Verizon may assess a nonrecurring field dispatch charge for optional field dispatches requested by CLECs" and required that Verizon "specify in its compliance filing those instances where a CLEC would be charged a field dispatch NRC for optional tasks and the corresponding costs for each instance." Reconsideration Order at 86. The tariff language that Verizon submitted with its Compliance Filing specifies that an optional field dispatch applies "when a technician is dispatched at the specific request of a TC to perform work outside of the normal routine work associated with service installation and maintenance, e.g. tagging of NIDs, circuit identification at a demarcation point" (see Compliance Tariff, Part A, Section 3.3.2.A.6, at 12).

While Verizon's language appropriately limits the cost for field dispatch NRCs to non-routine work, it fails to meet the Department's directive that Verizon specify exactly what those instances will be. The Department agrees with AT&T that Verizon's language gives Verizon the ability to assess this charge for unspecified tasks. The Department therefore orders Verizon to revise its tariff language, as proposed by AT&T, to clearly limit this optional field dispatch charge to only two specific situations, tagging of NIDs and circuit identification at a demarcation point (see AT&T Comments at 33).

VII. MISCELLANEOUS CORRECTIONS TO COMPLIANCE FILING AND TARIFF

A. Meet Point A Arrangements

AT&T identifies an apparent error in Verizon's Compliance Filing and in its illustrative Compliance Tariff for the Meet Point A rate. AT&T explains that the Meet Point A recurring rate consists of terminating end-office switching (0.000767 per minute) and common trunk port (0.000428 per minute), which sum to $0.001195, rather than the $0.002069 that Verizon included in its proposed Compliance Filing. AT&T also asserts that these numbers will be reduced further if the Department orders changes to Verizon's FLC factor and avoidable retail cost percentage (AT&T Comments at 31-32).

Verizon states that it filed a letter and corrected tariff pages with the Department, which, among other things, corrected the mistake, and which specifically changed the Meet Point end office rate from $0.002069 to $0.001195 (Verizon Reply at 33).[23]

Finding no dispute about the error in Verizon's Compliance Filing, Verizon's revised compliance filing shall include the corrected Meet Point A rate.

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23 Verizon's filing of corrections to the February 13 Compliance Filing includes a revised page 1 for its Compliance Tariff, Part M, Section 3.1.2, correcting the Meet Point A rate to $0.001195 (Letter from Bruce Beausejour, Esq., Verizon to Department, March 3, 2003).

B. Feature Charge

AT&T requests that the Department direct Verizon to include a clarification in its tariff regarding the application of the Feature Charge, which, AT&T contends, Verizon's product manager agrees would be appropriate. Specifically, AT&T asserts that Verizon concurs that the Feature Charge should apply only if an order is submitted to change features for an existing UNE-P customer, and should not be assessed as either part of a new UNE-P order or a UNE-P migration (AT&T Comments at 32-33).

Verizon acknowledges that, as it stated at the technical session, it intends to apply the feature change charge only for orders to change features for an existing UNE-P customer, and not to apply the charge to a new UNE-P order or to a UNE-P migration (Verizon Reply at 33-34). Finding no dispute about the appropriate application of this UNE, we direct Verizon to clarify the language in its revised compliance tariff.

C. Calling Name ("CNAM") Database Queries

1. Positions of the Parties

a. RCN

RCN requests that the Department direct Verizon to include a separate rate in its tariff for CNAM database queries rather than only making this information available under contract. RCN observes that Verizon's cost study includes two components of an element called Line Information Data Base ("LIDB"). RCN indicates that the total per-query LIDB cost is \$0.02669, which includes a cost of \$0.000250 for launching the database query and a cost of \$0.024264 for fraud prevention (excluding the common overhead and gross revenue loading) (RCN Comments at 12-13). RCN states that the fraud prevention center costs are associated with calling card, collect, or third number billing calls, but not with CNAM service (id. at 12). RCN contends that "Verizon's tariff filing should have a separate CNAM rate because facilities-based CLECs are constantly receiving incoming traffic from Verizon and such CLECs require Verizon's CNAM information when they terminate these calls" (id. at 13). RCN further argues that CNAM "is essential to the development of facilities-based competition" and therefore should be available under tariff and not just under contract (id.).

According to RCN, the CNAM cost can easily be split out from the LIDB cost and included as a separate rate in Verizon's tariff (id. at 14). Responding to Verizon's suggestion that it is not required to make a separate CNAM rate available in its tariff, RCN states that "because CNAM information is essential when a facilities-based CLEC terminates incoming calls coming from Verizon's customers to the CLEC's end users, RCN could not reasonably have anticipated that Verizon's compliance tariff filing would not have a separate rate for this query service given the importance of it" (id.).

b. Verizon

Verizon opposes RCN's request that it offer a separate rate for CLEC queries to the CNAM database. Verizon indicates that "this is not a separate offering that Verizon makes available under tariff in any of its jurisdictions, and it has not been requested up to now in this proceeding" (Verizon Reply at 37). Verizon also contends that RCN's "request to include a new purported UNE at this late stage of the case should be dismissed as untimely" (id. at 38).

Furthermore, according to Verizon, the FCC does not require Verizon to offer a CNAM-like service offering for CLECs with switching capability (id., citing FCC Press

Release, FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers, Att. at 1, February 20, 2003). Finally, Verizon asserts that it is willing to negotiate in good faith with RCN and other CLECs to make the CNAM service "available, through separate contract, under mutually agreed terms" (id.). In summary, Verizon requests that the Department deny RCN's proposal that Verizon offer CNAM as a separate UNE.

2. Analysis and Findings

We agree with Verizon that RCN's request to establish a new rate element for CNAM queries in the compliance phase of this proceeding is untimely.[24] In its May 2001 filing in this case, in which Verizon proposed its new UNE rates and costs for the first time, Verizon did not propose a separate CNAM rate element; only the LIDB rate was listed (Exh. VZ-37, Part A Recurring Cost Summary Results and Part E).[25] At that point, RCN had constructive, if not actual notice, that Verizon's proposal in this case did not include offering a separate CNAM UNE.[26] RCN could have intervened then and raised this issue, which would have allowed the Department and parties adequate opportunity to develop an evidentiary record on

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[24] RCN contends that it does not seek a new CNAM UNE but only a separate CNAM rate, disaggregated from the LIDB rate, which covers the costs for both CNAM and fraud prevention (RCN Comments at 14). Verizon contends that, in fact, RCN seeks an entirely new UNE, that, according to Verizon, it is not required to offer to facilities-based CLECs (Verizon Reply at 38). In either case, RCN's request is untimely. The rate structure versus new UNE distinction is only worth noting inasmuch as this case addressed new rates for existing UNEs and other wholesale services, not the creation of new UNEs.

[25] Verizon did not offer at that time, nor does it currently offer, a separate rate element for CNAM in Tariff 17, but rather includes this service in connection with LIDB. See Tariff 17, Part C.

[26] The Department published legal notice of this proceeding on January 12, 2001.

RCN's request.[27] To do so now at this late stage in the case is procedurally inappropriate and untimely. This compliance phase was intended to deal strictly with compliance issues, not new issues raised for the first time.[28] Therefore, we deny RCN's request.

D. Depreciation

AT&T requests that the Department require Verizon to correct the errors in asset lives that Verizon acknowledged in its response to TS-1 (AT&T Comments at 32). Verizon indicates that, when revising its compliance filing, it will make the necessary corrections to those errors in its response to TS-1 (Verizon Reply at 33).

In the Order, the Department directed Verizon to adopt the low range of the 1999 FCC-prescribed depreciation for all ILECs. Order at 88. Indeed, as ordered, Verizon filed the low range of the FCC-prescribed depreciation in its Compliance Filing. However, Verizon now admits, and the Department confirms, that Verizon made errors in the asset lives inputs for various accounts used in the compliance cost study. Accordingly, the Department directs Verizon to make the necessary corrections in its revised compliance filing to the errors that it acknowledged in its response to TS-1.

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[27] RCN did not petition to intervene until February 24, 2003, after Verizon submitted its Compliance Filing.

[28] The Department reminded parties on February 28, 2003, that the compliance phase of this proceeding "is limited to examination of whether Verizon's compliance filing conforms with the Department's directives in the Order and Reconsideration Order." Hearing Officer's Ruling on Scope of Compliance Phase at 2. For RCN to raise a new issue regarding Verizon's rate structure is beyond the scope of this phase of the proceeding.

E. Geographic Density Zones

1. Number of Geographic Density Zones

In its Order, the Department found that it could "better assess whether significant cost differences exist between the Urban and Metro zones, and thus make an informed decision about the appropriate number of density zones for Massachusetts, upon review of Verizon's compliance filing." Order at 219. In compliance with the Department's directives, Verizon submitted comprehensive cost results for, alternatively, four density zones and three density zones for portions of its cost study affected by geographic deaveraging (i.e., local loop, dark fiber, and DC power consumption). See id. Verizon summarized the results in Book 1 of its Compliance Filing, and in its analysis of those results, Verizon stated that the data demonstrate that "for the majority of the services, significant cost differences continue to exist between the Metro and Urban zones" and that, furthermore, the existing four-zone rate structure "is consistent with FCC guidelines" (Compliance Filing, Book 1, Tab 3, Item #2).

No parties commented on the merits of a three-zone versus a four-zone rate structure. Based on the cost differences that continue to exist between the Urban and Metro zones, and lacking any compelling reasons to alter the existing rate structure, we direct Verizon to retain its four-zone rate structure for all deaveraged UNEs.

2. Reclassification of Wire Centers

a. Positions of the Parties

i. Attorney General

The Attorney General observes that the Department "ordered Verizon to update its classification of 270 wire centers and amend Tariff No. 17 as part of the Company's Filing"

(Attorney General Comments at 2, citing Order at 220). The Attorney General further observes that, in its Compliance Filing, "Verizon shifted twenty-one wire centers from their current four density zone designations" (id.) (footnotes omitted). Also, the Attorney General summarized the effect of Verizon's reclassification, noting that Verizon reclassified the Beverly, Breckwood Park, Brockton, Greendale, Salem, Wellesley, West Peabody, and Weymouth wire centers from suburban to urban, and that Verizon also reclassified the Boylston, Carver, Charlton, Groton, Hatfield, Housatonic, Lunenburg, Middleboro, Rowley, Southwick, Sturbridge, Townsend, and Upton wire centers from rural to suburban (id., citing Compliance Tariff, Part A, Section 5.1.1-5.1.4).

The Attorney General also expresses concern that Verizon has the discretion to change its wire center classification formula, which would create uncertainty for competitors because of potentially fluctuating rates (id. at 3). The Attorney General requests that the Department retain the current wire center classification formula until the next review of rates.

ii. Verizon

Verizon asserts that the Attorney General's concerns are unfounded because Verizon "has no intention at this time of reclassifying wire centers until the Department's next UNE rate review" and that in "the unlikely event that Verizon decides it is necessary before that time to reclassify wire centers, it will first seek permission from the Department" (Verizon Reply at 41-42).

b. Analysis and Findings

Verizon's method for classifying wire centers among the four density zones is the same as that used in Consolidated Arbitrations; i.e., the classification continues to correspond with the number of working lines per square mile in the wire center. However, as a result of access line growth that has occurred since the last UNE proceeding, some wire centers have been bumped into a denser classification, and, therefore, Verizon has properly reclassified them. In all instances, the reclassification in the course of this proceeding has been to denser and thus less costly wire centers. The reclassification of 21 wire centers demonstrates the importance of requiring Verizon to conduct a similar reclassification, as necessary, with supporting documentation in the next TELRIC proceeding so that accurate pricing signals are given to CLECs about Verizon's cost of providing UNEs.

The Attorney General raises the concern that Verizon has the discretion to alter the wire center reclassification formula. We find that, contrary to the Attorney General's understanding of the formula, Verizon does not have this discretion. The classification of wire centers that Verizon clearly identifies in its Compliance Tariff will stay in place until the next Department review of Verizon's TELRIC studies, regardless of whether the actual density of the wire center changes in the interim.[29] Therefore, competitors will not confront the uncertainty that the Attorney General described. Accordingly, we approve Verizon's reclassification of wire centers.

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29 The Department's directive in the Order stated that Verizon should modify Tariff 17 "whenever it changes a wire center's zone classification." Order at 220. We clarify here that the Department intends that reclassification take place only in the context of TELRIC proceedings, due to the rate implications of reclassifying wire centers.

VIII. NEXT UNE REVIEW

The Attorney General recommends that the Department initiate the next TELRIC proceeding in August 2005 (Attorney General Comments at 3). The rates we establish in this case will be in effect from August 2002 until August 2007, given our five-year UNE review cycle. Order at 518. In order to allow sufficient time to investigate new rates, we will begin the next TELRIC case in March 2006. Thus, unless otherwise ordered in the interim, Verizon shall make a comprehensive UNE cost filing with the Department on March 1, 2006.

IX. REVISED COMPLIANCE COST STUDIES AND TARIFF

In order to facilitate a timely review, Verizon shall serve parties with electronic versions of its revised compliance filing within seven days of the date of this Order. Verizon shall also provide a Revised Compliance Tracking Matrix, similar to that included in Book 1 of its current Compliance Filing. Verizon shall file printed copies of the revised compliance filing with the Department and serve it on requesting parties within 14 days of the date of this Order.

The revised cost studies that Verizon submits in compliance with this Order will likely differ from those that are the subject of the parties' review and comments. Furthermore, the cost studies are voluminous and complex. In the interest of yielding accurate TELRIC studies that comply fully with the Department's directives and to afford parties the opportunity to review Verizon's revised compliance cost studies, we shall allow parties seven days from the date of Verizon's submission of the electronic version of its revised compliance filing to submit comments regarding Verizon's revised filing. These comments shall not raise any new issues but rather shall address whether the revised compliance cost studies are consistent with the findings herein or include any computational or calculation errors or omissions. Verizon may reply within seven days of the filing of those comments.

X. ORDER

Accordingly, after due consideration, it is

ORDERED: That the D.T.E. 01-20 Part A Compliance Filing of Verizon Massachusetts is hereby approved, in part, and rejected, in part, as discussed herein; and it is

FURTHER ORDERED: That Verizon Massachusetts shall submit electronically a revised compliance filing and cost studies, incorporating the modifications directed herein, within seven days of the date of this Order, and file paper copies to the Department and requesting parties within 14 days of the date of this Order; and it is

FURTHER ORDERED: That parties' initial comments on the revised compliance filing be filed within seven days of the due date of the revised compliance filing and that Verizon's reply comments be filed within seven days of the due date of the initial comments.

By Order of the Department,

/s/
Paul B. Vasington, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Eugene J. Sullivan, Jr., Commissioner

/s/
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).