

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

<b>Investigation by the Department of Telecommunications</b>	)	
<b>and Energy on its own motion, pursuant to G.L. c. 159,</b>	)	
<b>§§ 12 and 16, into Verizon New England Inc.</b>	)	<b>D.T.E. 01-34</b>
<b>d/b/a Verizon Massachusetts' provision of</b>	)	
<b>Special Access Services</b>	)	

**INITIAL BRIEF OF WORLDCOM, INC.**

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**I. Introduction**

In its March 14, 2001 *Vote and Order* opening this proceeding, the Department recounted the anecdotal evidence it had heard up to that point concerning Verizon's untimely and unreliable performance in providing, maintaining and repairing special access circuits for its wholesale (*i.e.*, carrier) customers in Massachusetts:

According to the complaints, Verizon's delays in provisioning special access services, coupled with maintenance and repair problems, are causing severe customer impacts with adverse business consequences. On February 13, 2001, AT&T briefed Department staff about the customer impacts. The Department heard from one end-user customer that attributed Verizon's lack of reliability as one cause for it to move some of its business out of state. Another end-user customer stated that Verizon's delays are negatively impacting its move to internet business.

*Vote and Order* at 2. Since then, Verizon's responses to the discovery requests posed in this proceeding by the Department, WorldCom, and AT&T have confirmed that individual reported incidents of Verizon's poor service are not isolated aberrations, but rather indicate that there are substantial problems. Indeed, the body of empirical evidence that has been developed in this proceeding leads inexorably to the conclusion that Verizon is discriminating against its

wholesale carrier customers and favoring its retail customers in providing, maintaining and repairing the critical “last mile” and inter-office special access facilities that competing carriers need to reach their end user customers, and that end users need to connect to the Commonwealth’s telecommunications infrastructure. The evidence further shows that Verizon’s performance with respect to its own retail customers is in some respects substandard as well.

The Department has stated that the purpose of this investigation is “to determine through presentation of evidence: (1) whether Verizon’s special access services are unreasonable under G.L. c. 159, § 16; and (2) if so, what steps Verizon should be required to take to improve its special access services.” *Vote and Order* at 2. As discussed more fully below, the evidence presented in this proceeding confirms that Verizon’s special access services are, in fact, unreasonable. That conclusion triggers the Department’s second question: What should be done to improve Verizon’s performance? At the very least, the Department should (1) require that Verizon report on its interstate and intrastate special access performance with well-defined metrics and standards, and (2) engage an independent third party to (a) audit Verizon’s reporting under those metrics, and (b) audit Verizon’s wholesale and retail ordering, provisioning, and repair processes themselves to identify the root causes that lead to Verizon’s discriminatory and anticompetitive treatment of its carrier customers.

## **II. Verizon’s Special Access Services Are an Essential Component of the Provision of Data and Voice Services to Business Customers**

As the legacy monopoly provider of telecommunications service in Massachusetts, Verizon is in the unique position of having the only ubiquitous network that reaches virtually every would-be user of telecommunications services in its footprint. Operating

under rate-of-return regulation, Verizon and the nation's other incumbent local exchange carriers ("LECs") had the incentive and ability over an extended period of time to build out their networks ubiquitously. As a result, with their decades-long head start in deploying facilities, the incumbent LECs already have facilities in place to serve virtually every building within their regions.

Competitive carriers rely on special access – the use of the incumbent's ubiquitous network – to obtain critical last-mile and interoffice connectivity between their networks and their end-user customers. Special access service provides an unswitched transmission path between two or more points, and is most often used to allow customers with significant traffic volumes to connect directly to an interexchange carrier's ("IXC's") point of presence ("POP"). *See* Exh. WCOM 1 (Furbish Dir.) at 3.<sup>1</sup> This connectivity is available in a host of configurations (*e.g.*, analog voice grade service, digital transport and high capacity service service such as DS-1, DS-3, and OCn), and can be used to support the provision of a wide variety of services (*e.g.*, local exchange service, interexchange service, dedicated Internet access). *See* Exh. WCOM 1 (Furbish Dir.) at 3-4.

A special access circuit usually consists of (1) a local loop, or channel termination, between the customer's premises and that customer's serving wire center, and (2) interoffice transport from the serving wire center to the IXC's POP. The local loop and interoffice transport are provided using the same facilities the incumbents use to offer loop and transport unbundled network elements ("UNEs"). *See* Exh. WCOM 1 (Furbish Dir.) at 3.

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<sup>1</sup> A POP is the physical point where an IXC connects its network with the incumbent LEC's network. *See In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, 2001 FCC Rcd 6243 (rel. Nov. 19, 2001) ("*FCC Special Access NPRM*") at ¶ 1, n. 2.

Although special access services can be interstate or intrastate in nature, interstate special access is far more common due to the Federal Communication Commission's ("FCC") "ten-percent" rule, which requires that special access circuits carrying more than ten percent of interstate traffic be purchased out of federal-level tariffs filed with the FCC.<sup>2</sup>

Although WorldCom will always look first to serve a customer "on-net" by using its own facilities (Exh. WCOM 1 (Furbish Dir.) at 7), WorldCom is still dependent on the facilities of other carriers – *i.e.*, it must go "off-net" – for the majority of its special access needs (Exh. WCOM 2 (Furbish Surreb.) at 7). WorldCom relies heavily on incumbent LECs' special access services in the provision of voice and data services to its enterprise customers, especially those with multiple locations. Indeed, on average nationwide, approximately ninety percent of WorldCom's "off-net" requirements are supplied by incumbent LECs. Exh. WCOM 1 (Furbish Dir.) at 8. In Massachusetts, WorldCom's dependence on Verizon for special access connectivity is even more pronounced: WorldCom has purchased connectivity from Verizon for approximately 93% of the buildings in which WorldCom requires "off-net" connectivity to reach its Massachusetts customers. Competitive access providers or competitive LECs provide WorldCom with special access facilities in only 7% of its "off-net" buildings in Massachusetts. Exh. VZ-WCOM 2-2.

To give context to the extent to which competitive carriers must rely on Verizon in Massachusetts, it should be noted that even in the most competitive area in the country – New

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*See* the Department's August 9, 2001 *Interlocutory Order on AT&T Motion to Expand Investigation* in this matter, page 2 ("On April 30, 2001, the Hearing Officer issued an information request to Verizon asking Verizon to identify the percentage of special access services it had provisioned over the past year under the state tariff, and the percentage provisioned under the federal tariff. Verizon responded that 0.6 percent of special access services were provisioned in the past year under the state tariff, and 99.4 percent were provisioned under the federal tariff.").

York City – Verizon’s network “dwarfs its competitors.” That was the finding of the New York Public Service Commission<sup>3</sup> after assessing LATA 132, which includes New York City.<sup>4</sup> While Verizon’s network serves 7,364 buildings in LATA 132 over fiber, fewer than 1,000 buildings are served by most competitive LECs’ fiber networks.<sup>5</sup> This disparity in buildings served by fiber is magnified by the fact that Verizon’s ubiquitous copper loops allow it to provision DS-1, voice grade, and other low-speed special access services to thousands of other special access customer locations that competitors’ networks do not reach.<sup>6</sup> WorldCom’s experience in Massachusetts – having to rely on Verizon’s network for *over* 90% of its “off-net” connectivity – confirms that Verizon’s network here “dwarfs its competitors” as well.

### **III. Verizon Has an Incentive to Discriminate Against its Wholesale (Carrier) Customers**

Before examining the specifics of *how* Verizon provides poor service to and discriminates against its competitors, it is important to understand *why* Verizon would do so. Special access services should not be viewed in isolation – on either a product-specific or location-specific basis – but rather as key inputs into the broader and larger market for enterprise telecommunications services. Poor provisioning of wholesale special access services can cause

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<sup>3</sup> New York Public Service Commission, *Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting*, Case Nos. 00-C-2051, 92-C-0665 at 7 (June 15, 2001).

<sup>4</sup> The FCC has consistently recognized that LATA 132 is the most competitive area in the nation, and has found that the high volume of traffic in lower Manhattan “presents special opportunities for the development of competition.” *NYNEX Telephone Companies Petition for Waiver*, Memorandum Opinion and Order, 10 FCC Rcd 7445, 7463-7464 (1995).

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

<sup>6</sup> *Id.* at 7-8.

significant injury to competitive carriers serving all types of business customers. Historically, however, poor special access performance on the part of a Bell Operating Company (“BOC”) such as Verizon was less likely to be linked to a specific anticompetitive intent because the BOCs were precluded from offering interLATA services following the breakup of AT&T in the 1980s.

The Telecommunications Act of 1996 (the “Act”), and particularly the BOCs’ ability to offer interLATA long distance services upon meeting the fourteen point checklist of §271 of the Act, changed all that. As the BOCs’ § 271 applications are granted, and the restrictions on their ability to offer interLATA services are lifted, the BOCs are increasingly poised to compete directly for customers with significant volumes of interLATA and interstate traffic. The BOCs’ incentive to engage in anti-competitive behavior (both in the form of poor performance and unreasonable discrimination) increases significantly as they gain authority to provide long distance service.

This incentive to engage in anti-competitive conduct is consistent with the well-established economic theory of exclusionary behavior.<sup>7</sup> According to this theory, a firm with “upstream” control over inputs into a “downstream” market has an incentive to use its power in the upstream market to achieve, enhance, or maintain power in the downstream market. The firm can accomplish its anticompetitive goals by using its power in the upstream market to raise

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<sup>7</sup> S. Salop and D. Scheffman, *Raising Rivals’ Costs*, 73 Amer. Econ. Rev. 267 (1983); T. Krattenmaker and S. Salop, *Antitrust Analysis of Exclusionary Rights: Raising Rivals’ Costs to Gain Power Over Price*, 96 Yale LJ 209 (1986). The theory of exclusionary behavior is not only well established in academic literature and antitrust law, it has long been used in the regulation of telecommunications markets. See, e.g., *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, CC Docket No. 96-149, 12 FCC Rcd 15756 (1997).



rivals' prices, degrade the quality of service it provides its rivals, or delay or deny access to downstream rivals.

The theory of exclusionary behavior as applied to the market for special access services suggests that Verizon will use its power in the upstream special access market to gain an unfair advantage in the downstream business market by discriminating against competitors in the provisioning and maintenance of special access services. For example, Verizon can harm its rivals' positions in the retail market for voice and data services by providing them poor-quality wholesale special access services or untimely installation of wholesale special access orders.<sup>8</sup>

Antitrust theory therefore dictates that an incumbent LECs' performance problems in special access markets should be considered anticompetitive, exclusionary behavior designed to harm their rivals in the retail market for enterprise customers. Poor or discriminatory performance in the wholesale special access market is a lever, upon which a small amount of force can create a large amount of damage to competitors in the enterprise business market.

In the New England region, Verizon has received approval to offer interLATA long distance services in Massachusetts, Rhode Island, Vermont, Connecticut and (as of yesterday) Maine. Elsewhere, Verizon has received §271 approval in New York and Pennsylvania, and has an application pending for New Jersey (the FCC's ruling on the New

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<sup>8</sup> For a discussion of the economic costs and benefits of exclusionary behavior, see Declaration of Michael L. Katz and Steven C. Salop, *Using a Big Footprint to Step on Competition: Exclusionary Behavior and the SBC-Ameritech Merger*, Comments of Sprint, CC Docket No. 98-141 at Attachment B (October 15, 1998) (assessing the trade-off between lost profits in upstream markets and gained profits in downstream markets in the context of the SBC-Ameritech merger).

Jersey application is expected by or before next Tuesday, June 24, 2002).<sup>9</sup> As such, Verizon's incentive to engage in exclusionary behavior is increasing throughout its footprint, and exists in New England in particular.<sup>10</sup>

#### IV. Verizon Discriminates Against its Non-Affiliated Wholesale Carrier Customers

WorldCom and AT&T posed a series of discovery requests to Verizon that generated a great deal of data, much of it erroneous or inconsistent. Notwithstanding the data's shortcomings, AT&T witness Eileen Halloran performed detailed analyses (concentrating primarily on Verizon's performance with respect to DS1 circuits) confirming that Verizon is discriminating against its competitors in the provision of special access:

?? **Percent On Time** : Retail circuits are provisioned on time over 99% of the time; wholesale circuits, by contrast, are provisioned on time less than 86% of the time. See Exh. ATT 2 (Halloran Surreb.) at 13.

?? **Average Interval Offered and Completed**: The average interval offered to retail customers is consistently shorter than the corresponding interval offered for wholesale circuits; likewise, the average interval for Verizon to complete a retail circuit is shorter than the corresponding interval for wholesale circuits. See Exh. ATT 7 (update to page 11 of Exh. ATT 2

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<sup>9</sup> See FCC Common Carrier Bureau Section 271 Applications Home Page ([http://www.fcc.gov/Bureaus/Common\\_Carrier/in-region\\_applications/](http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/)) for a list of state applications, their status (*i.e.*, approved, denied, pending or withdrawn), and links to individual FCC orders and other application related documents.

<sup>10</sup> Critically, Verizon's incentive to engage in exclusionary behavior is not lessened by its assertions that it does not provide interLATA private-line or dedicated facility services. Tr. 65-66. For instance, Verizon confirmed that it is capable of offering interLATA data services notwithstanding its lack of a "dedicated" interLATA facilities offering. In response to RR WCOM - VZ 2, Verizon admitted that "it is possible that Verizon's Long Distance affiliate could provide [a] customer with interLATA (interstate or intrastate) connectivity" in the form of "virtual private network services across LATA boundaries." According to Verizon, a virtual private network service "allows customers to simulate a dedicated high-speed data network." Exh. DTE-VZ-3-8 (at fifth page of attachment). Thus, Verizon's current unwillingness or inability to provide interLATA dedicated circuits should not be mistaken for an inability to offer would-be customers a comprehensive suite of telecommunications services. Because the services Verizon offers to its end user customers are functionally equivalent to the services that competitors can offer those same customers via special access, Verizon's incentive to engage in exclusionary behavior (and thereby capture end user customers with its functionally equivalent service offerings) remains strong.

(Halloran Surreb.)). This is the case despite the fact that adjustments were made (*i.e.*, time was added) to the retail figures to account for “process” differences resulting from the fact that the “Application Date” for a wholesale order occurs *before* a request for facilities assignment is submitted to Verizon’s RequestNet system, whereas the “Application Date” for a retail order occurs *after* a facilities request passes through RequestNet. *See id.*; *see also* Exh. ATT 2 (Halloran Surreb.) at 7-13.

?? **Installation Quality:** Circuits provisioned for wholesale (carrier) customers fail with significantly greater frequency than the circuits provisioned for Verizon’s retail (end user) customers. *See* RR-AG-1 (failure rate of 1.27% for retail vs. 3.23% for wholesale).

These results and others described by Ms. Halloran (*see, e.g.*, Exh. ATT 8; Exh. ATT 1 (Halloran Dir.) at 9-13 and Attachment A; Exh. ATT 2 (Halloran Surreb.) at 8-19) are *prima facie* evidence of discrimination on the part of Verizon. (In some respects, the data also show poor service quality on Verizon’s part for both retail and wholesale, which is an equally unacceptable result given that it is the business community in (and the economy of) the Commonwealth that ultimately suffers from Verizon’s poor performance.)

Rather than present evidence of its own, Verizon has consistently maintained that it is “unable to determine a true ‘apples-to-apples’ comparison of carrier versus end user” performance. Exh. DTE-VZ-5-31. According to Verizon, “process” differences make wholesale to retail comparisons inherently flawed. *See* Exh. VZ 3 (Corrected Panel Reb.) at 2, 19, 33, etc.; Exh. DTE-VZ 5-31. This conclusion is remarkably convenient for Verizon. If perceived discrimination is merely the result of benign “process” differences, and if those differences make the processes themselves incapable of being compared, then all attempts by the Department to “determine through presentation of evidence . . . whether Verizon’s special access services are unreasonable” (*Vote and Order* at 2) must fail because gathering credible evidence is an

impossible task. Not surprisingly, this approach completely insulates Verizon from ever being held accountable for its special access performance.

Verizon's argument that the processes cannot be compared is wrong; the wholesale and retail ordering and provisioning processes *can* in fact be compared. There are comparable points along the process flows that permit "apples-to-apples" comparisons. *See* Tr. 378-385; Exh. ATT 2 (Halloran Surreb.) at 4-6, 14-18. And to the extent the processes themselves are different, there are ways of adjusting to account for those differences. *See, e.g.*, Exh. ATT 2 (Halloran Surreb.) at 8-13 (adding time to retail intervals to develop "proxies" that can be compared to wholesale intervals); Tr. 384. Second, to the extent that process differences are the cause of seemingly disparate treatment between wholesale and retail customers, then the processes themselves should be analyzed to see whether it is possible to put wholesale and retail customers on more even footing.

Because the retail and wholesale processes can (and should) be compared, WorldCom recommends that the Department adopt a set of metrics specifically designed to capture the data necessary for informed comparisons. Because the process differences between wholesale and retail are alleged by Verizon to account for the disparities between the wholesale and retail data generated in discovery, WorldCom further recommends that an independent third-party auditor be engaged by the Department to analyze those processes to identify the root causes for the apparent disparities. The independent third-party auditor would also serve the purpose of verifying the accuracy of the data Verizon provides in connection with the proposed metrics. Each recommendation is discussed in the sections that follow.

**V. The Department Should Adopt the “Joint Competitive Industry Group” Metrics Proposed by WorldCom**

Regular reporting on performance will provide a disincentive for Verizon to engage in anticompetitive activities with respect to special access services.<sup>11</sup> Without reporting requirements, measures and standards, Verizon has strong incentives to provide superior service to its affiliates and its retail customers, and little incentive to improve performance to its competing carrier customers. Effective reporting requirements based on a standard set of business rules<sup>12</sup> will provide the Department and carriers with reliable data to use in evaluating Verizon’s performance and practices. Performance reports will also enable competitive carriers to better assess their own treatment by Verizon and to pursue additional corrective actions as necessary.

At a minimum, an effective set of performance measures and enforcement mechanisms must include Verizon reporting on performance in the areas of ordering, provisioning, and maintenance and repair of special access services. WorldCom, in conjunction with other IXC’s and competitive LEC’s, the two principal competitive industry associations (CompTel and ALTS), and a leading association of large business users (the “e-commerce and Telecommunications Users Group”) (collectively referred to as the “Joint Competitive Industry Group”) has developed a carefully tailored, core set of metrics covering these critical areas. Exh. WCOM 1 (Furbish Dir.) at 13. (The proposed metrics themselves are appended to Exh. WCOM 1 (Furbish Dir.) at Attachment D and have been reproduced and attached hereto (Tab A) for the

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<sup>11</sup> Accord, *FCC Special Access NPRM* at ¶ 13.

<sup>12</sup> Business rules are detailed specifications governing the way data are to be collected, measured and reported. See *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, CC Docket No. 01-318, 2001 FCC Lexis 6242 at ¶ 1, n.2 (2001).

Department's convenience; in addition, a brief description of the metrics, and the specific purpose they serve, is provided below.) On January 22, 2002, in the FCC's pending special access proceeding, the Joint Competitive Industry Group proposed that all the major incumbent LECs be required to report their performance in accordance with these metrics. For purposes of the Department's investigation, WorldCom proposes that Verizon be required to report on its Massachusetts special access performance each month using the following Joint Competitive Industry Group metrics.<sup>13</sup>

**Ordering:**

**✍ Firm Order Commitment ("FOC") Receipt:** Measures the interval between the time a carrier sends a clean ASR and the return of the FOC with a specific date on which the incumbent LEC commits to install the requested circuit(s). Competitive carriers need to receive FOCs quickly so that they can inform their own end-user customers when they can expect installation or other work to be completed. The Joint Competitive Industry Group expects the incumbents to be able to provide 98% of all FOCs within 2 business days after receiving a clean ASR for DS-0 and DS-1 circuits, and within 5 business days for DS-3 circuits. This would address the frustration that customers experience when they must wait an extended period of time just to find out when the installation will occur.

**✍ FOC Receipt Past Due:** Measures all ASR requests for which the incumbent has not provided a FOC within the expected FOC receipt interval (*e.g.*, 2 business days for DS-0 or DS-1 circuits) at the end of the month. This metric allows competitive carriers to gauge the magnitude of late FOCs and the buildup of any "backlog" of ASRs that have not been responded to, and is essential to ensuring that FOCs are received in a timely manner. The Joint Competitive Industry Group expects that fewer than 2% of all ASRs will remain "open" (*i.e.*, without a FOC from the incumbent) at the end of any given month. When ASRs remain open for a long period of time, carriers are unreasonably prevented from providing their customers with installation dates. A carrier's relationship with its customer is harmed any time it is forced to make the customer wait weeks simply to get an installation date.

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<sup>13</sup> Because it may take some time for Verizon to develop the systems necessary to report the Joint Competitive Industry Group metrics, WorldCom further recommends that, as an interim measure, the Department adopt the New York Public Service Commission's Special Services Guidelines and require Verizon to initiate reporting immediately on both a "wholesale" basis, separately for affiliated and non-affiliated customers, and on a retail basis, for each circuit type. Verizon is already very familiar with reporting under the New York Guidelines. Exh. WCOM 1 (Furbish Dir.) at 13.

**Offered versus Requested Due Date:** Measures the percentage of time the due date the incumbent commits to in the FOC is equal to the due date requested in the carrier's ASR, when the carrier requests a due date that is equal to or greater than the stated interval offered by the incumbent LEC. This metric provides a sense of how often the incumbent LEC commits to install service on the date requested. Given that this metric only measures requests that fall within the incumbents' own stated intervals, the Joint Competitive Industry Group expects that the incumbent will commit to the requested due date 100% of the time.

### **Provisioning:**

**On-Time Performance to FOC Due Date:** Measures how frequently the incumbent LEC completes the requested installation on or before the FOC due date, taking into consideration customer not ready (CNR) situations, where the incumbent could not meet its commitment due to verifiable situations beyond its control. The Joint Competitive Industry Group expects incumbents to meet installation date promised in the FOC 98% of the time (taking into consideration verifiable CNR situations).

**Days Late:** Measures the average days late for those orders that are not completed by the FOC due date when there are no verifiable CNR situations. This metric provides insight into the magnitude of the incumbent LECs' failures to meet their committed due dates. The Joint Competitive Industry Group expects that, on average, an incumbent will not miss its FOC due dates by more than three days. Obviously, it is problematic any time an incumbent LEC misses an installation due date. However, the longer the incumbents lag behind their committed installation dates, the more strain they place on carriers' relations with their customers.


**Average Intervals—Requested/Offered/Installation:** Measures the interval between the date a carrier sends its final ASR for a particular order and: 1) the installation date requested by the carrier; 2) the installation date committed to by the incumbent in the FOC; and 3) the date the circuit is actually provisioned by the incumbent. While this metric is meant as a diagnostic tool, the Joint Competitive Industry Group would expect all three intervals to be equal (*i.e.*, the incumbent should offer to install, and actually install, an order on the date requested by the carrier).<sup>14</sup>

**Past Due Circuits:** Measures the number of outstanding circuits for which the incumbent has failed to meet its FOC due date at the end of the month. This metric provides a snapshot of the number of circuits that are past due at the end of each month (*i.e.*, the number of


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<sup>14</sup> The Joint Competitive Industry Group also established a definition of the offered installation interval. The offered interval may not be longer than the least of: (1) the standard interval (DS-0 and DS-1: 7 business days; DS-3: 14 business days); (2) the interval published by the incumbent LEC; or (3) the interval actually provided to the incumbent's affiliates or retail customers in that state. See Exh. WCOM 1 (Furbish Dir.) at Attachment D (which includes Attachment B of the *Joint Competitive Industry Group Proposal* made to the FCC on January 22, 2002).


“backlogged” circuits). The Joint Competitive Industry Group expects that fewer than 3% of all backlogged circuits will be more than 5 days past the FOC due date.

 **New Installation Trouble Report:** Measures the rate of trouble reports submitted within 30 calendar days of the installation of a new circuit. This metric provides an indication of the quality of the work performed by the incumbent during installation. Carriers and their customers expect new circuits to work properly. The Joint Competitive Industry Group therefore proposes that incumbents be held to a standard of no more than one trouble report per 100 circuits installed (*i.e.*, a 1% new installation trouble report rate).

### **Maintenance and Repair:**

 **Failure Rate:** Measures the percentage of in-service circuits for which trouble tickets have been resolved during the reporting period. This metric captures the overall quality of the circuits provided by the incumbents. The Joint Competitive Industry Group expects that the incumbents will have an annualized failure rate of no more than 10% (*i.e.*, no more than 10% of all incumbent-provided circuits will fail within any given year).

 **Mean Time to Restore:** Measures how long it takes the incumbent to restore circuits to normal operating levels once a carrier submits a trouble report to the incumbent. Given that a customers' service is likely to be interrupted until the incumbent can resolve the trouble report, the mean time to restore must be very short. The Joint Competitive Industry Group expects that the incumbents will take no more than two hours to restore circuits with capacity of less than DS-3, and no more than one hour to restore circuits with a capacity of DS-3 and above.

 **Repeat Trouble Report Rate:** Measures the percentage of maintenance troubles resolved during the reporting period that had at least one prior trouble ticket within thirty (30) days of the creation of the current trouble report. A high repeat trouble report rate indicates either poor provisioning quality by the incumbent or poor repair work. Repeat troubles mean that carriers' customers are being disrupted repeatedly as the same circuit(s) continue to go out of service or perform inadequately. The Joint Competitive Industry Group expects to experience a repeat trouble report rate of no more than 3% for all DS-3 and higher capacity special access circuits, and no more than 6% for all other circuits.

For performance reports to be effective, data on Verizon's provisioning must be sufficiently disaggregated to enable the Department and competitive carriers to detect discriminatory behavior. Specifically, as it was required to do in its discovery responses in this proceeding, Verizon must be required to disaggregate its reporting data by class of customers (*e.g.*, unaffiliated carrier customers and unaffiliated information service providers (ISPs);



Verizon retail business customers; Verizon affiliated ISPs and affiliates offering interLATA services pursuant to sections 271 and 272 of the Act) and by circuit type (*e.g.*, DS-0, DS-1, DS-3, OC-n).<sup>15</sup> This information is necessary for the Department and competitors to be able to detect unreasonably discriminatory behavior by Verizon. Accordingly, Verizon must report on its performance – including its performance for its retail customers – in a manner that effectively enables the Department and competitors to detect poor performance and/or discrimination.

In order to protect confidential, carrier-specific data, the process for reporting performance data will necessarily entail two steps (which are already familiar to the Department inasmuch as Verizon's reporting pursuant to the *Consolidated Arbitrations* metrics, as well as its reporting under the Carrier-to-Carrier metrics, is conducted in essentially the same fashion). First, Verizon will provide a monthly performance report to the Department. That report will include aggregate performance data by customer class and circuit type (for both intrastate and interstate combined) and will be publicly available. At the same time, Verizon will provide each wholesale carrier customer of its special access services an individualized monthly report containing data on Verizon's performance for that specific carrier customer. These individual carrier customer reports will also be provided to the Department, on a confidential basis, so that the Department may determine whether discriminatory treatment exists among carriers.

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<sup>15</sup> This is critical because aggregating performance data for all circuits may mask poor performance on the more significant, higher capacity circuits. Poor performance on a DS-3 or DS-1 circuit is likely to create more economic harm than poor performance on a lower capacity DS-0 circuit. Therefore, it is important to know not only how many circuits are subject to poor performance, but also the capacity of the problem circuits.

## **VI. The Department Should Engage an Independent Third-Party Auditor**

Competitive carrier-requested audits and independent audits are also necessary to ensure the on-going accuracy of performance reporting. As a general matter, the necessity of audits, especially as they impact performance reporting requirements, was made all too clear in an SBC merger conditions compliance audit conducted last year, which found that errors in SBC's report on its compliance with the Carrier-to-Carrier Performance Plan may have had an impact on the company's calculation of the penalty payments made to the U.S. Treasury.<sup>16</sup> Specific to this proceeding, audits of Verizon's reporting are particularly appropriate given the persistent difficulties Verizon has had in providing the Department and the parties with credible data in discovery.

To preserve the integrity of the performance reporting, each carrier customer must be allowed to conduct one audit per calendar quarter. The requesting carrier would pay for the audit unless the audit reveals inaccuracies in Verizon's reporting. In addition, Verizon should be required to undergo an annual independent audit of its performance reporting processes and data. The independent audit would be conducted by an auditor selected by the Department. The costs of the independent audit would be paid by Verizon.

An independent third-party auditor should also be engaged for the purpose of reviewing Verizon's ordering and provisioning processes for both wholesale and retail. The evidence shows that there are "manual steps" (Tr. 381) during the travels of an order or request

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<sup>16</sup> See *Application of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control*, CC Docket No. 98-141, Ernst & Young, Report of Independent Accountants at 4 (attached to Letter from Sandra L. Wagner, Vice President, Federal Regulatory, SBC, to Magalie Salas, FCC (Sept. 4, 2001).

in which human intervention is possible. For instance, Ms. Halloran provided an example concerning a customer in Woburn, Massachusetts in which AT&T received a lengthy provisioning interval from Verizon because of fiber construction; the customer was quoted a shorter interval when it went straight to Verizon because the Verizon retail agent was able to override the engineering inventory restriction that was driving orders to fiber instead of using spare, available copper. *See* Exh. ATT 2 (Halloran Surreb.) at 12-13; *see also* Tr. 387-88. In response to a record request, Verizon confirmed that although Verizon has an established “first-in, first-out” policy for orders that “fall out” of the mechanized flow and require manual intervention, there are ***“no system restrictions that would prevent an engineer from working the orders in a different priority order”***. RR-ATT-VZ 4 (emphasis added). This too is consistent with Ms. Halloran’s experiences with Verizon. Tr. 387-88.

In sum, there appears to exist in the retail and wholesale ordering processes instances in which Verizon employees exercise judgment over or otherwise prioritize how certain orders are handled. These instances represent opportunities for Verizon to engage in anticompetitive conduct by discriminating against the orders of wholesale carriers and in favor of Verizon’s own retail end users. Auditing Verizon’s processes may help identify the critical points in the processes during which these opportunities present themselves, whether Verizon staffs its wholesale and retail ordering centers with comparably trained and knowledgeable employees, etc. The absence of an audit process, on the other hand, will ensure that any potential opportunities for discrimination remain undetected and uncorrected.

## **VII. WorldCom's Requested Relief is Consistent with the Department's Stated Jurisdictional Limitations**

WorldCom's request that Verizon be made to report on its interstate and intrastate special access performance is entirely consistent with the jurisdictional limitations the Department has articulated in the interlocutory orders it has issued in this proceeding. In its August 9, 2001 *Interlocutory Order*, the Department concluded that the small number of intrastate special access circuits included in Verizon's original (May 24, 2001) Special Access Report (Exh. VZ 1) "does not provide the Department with an accurate view of Verizon's provision of special access services in the Commonwealth." *Interlocutory Order on Motion to Expand Investigation* at 10. The Department therefore required that Verizon include information concerning Verizon's federally tariffed special access circuits in a supplemental Special Access Report. *Id.* Critically, the Department recognized its need for interstate special access data to make an informed decision, and ordered Verizon to provide interstate data, despite having ruled that it is "preempted from investigating and regulating quality of service for federally tariffed special access services." *Id.* at 9.

Following Verizon's motion for partial reconsideration and/or clarification of the Department's August 9, 2001 *Interlocutory Order*, the Department again confirmed that its "[l]ack of jurisdiction for purposes of making legally binding findings concerning service quality and potential remedies on those interstate facilities **does not preclude the Department from enquiring into the operation of non-jurisdictional facilities** for the express and limited purposes of informing the Department about intrastate performance." *Interlocutory Order on Verizon's*

*Motion for Partial Reconsideration and/or Clarification* (October 25, 2001) at 8 (emphasis added).

By opening this investigation, the Department has clearly communicated that it understands the critical role that special access plays in the development of a robust telecommunications market (and, by extension, a robust local economy). By ordering Verizon to report on its interstate performance in its Supplemental (September 2001) Report and in discovery, the Department has recognized the importance of the wholesale interstate component of special access in obtaining an “accurate view of Verizon’s provision of special access services in the Commonwealth.” August 9, 2001, *Interlocutory Order on AT&T Motion to Expand Investigation* at 10. Requiring Verizon to *continue to* report on its interstate and intrastate special access performance in accordance with the Joint Competitive Industry Group metrics is entirely consistent with the Department’s approach to collecting relevant data, and is the only way of providing the Department and competitive carriers a window into Verizon’s special access performance. Moreover, by ordering Verizon to report on its special access performance, Massachusetts would join the growing number of states, including New York, New Hampshire, Maine, Texas, Colorado, Minnesota, Washington and Tennessee, that have come to recognize the importance of monitoring incumbent LEC special access performance.<sup>17</sup>

Likewise, requiring Verizon to submit to audits of its internal provisioning processes (which Verizon has acknowledged are the same for both intraLATA and interLATA special access services (*see* Exh. VZ 2 (supplemental (September 7, 2001) Special Access

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<sup>17</sup> A summary of the actions undertaken in those states (with references to orders and other relevant documents provided to the Department in discovery and in response to a record request) is annexed hereto at Tab B.

Report) at 2 n.1)) is consistent with the Department's goal of determining "what steps Verizon should be required to take to improve its special access services." *Vote and Order* at 2.<sup>18</sup>

In sum, the Department's conclusion that it is preempted from *regulating* the quality of federally tariffed special access services does not prevent the Department from *investigating* the quality of federally tariffed circuits if the investigation helps shed light on the processes Verizon uses to provision state tariffed circuits, over which the Department clearly has authority. State-level investigation of federally tariffed circuits is not preempted if the purpose of the investigation is legitimately within the state's jurisdiction, as is the case here. Indeed, it is difficult to fathom that Congress or the FCC intended to reign in states from pursuing legitimate areas of inquiry regarding the quality of services over which the states have jurisdiction.

In addition, the monitoring of Verizon's performance with respect to federally tariffed services in Massachusetts may well lead the Department to seek the assistance of the FCC regarding Verizon's special services performance on behalf of the businesses and economy of the Commonwealth, just as did the New York Public Service Commission when its Chair, Maureen Helmer, informed FCC Chairman Michael Powell that the PSC had "determined, based on the record in the proceeding, that Verizon remains the dominant provider of facilities for special services, that Verizon's provisioning performance for special services is significantly

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<sup>18</sup> In its May 8, 2002 *Phase I Order* in D.T.E. 01-31, the Department, in referring to this proceeding, stated that if it "should reveal that Verizon is providing unreasonable provisioning of intrastate wholesale special access services to CLECs, the Department has the means to remedy any such substandard performance by instituting a penalty mechanism similar to the PAP to give incentives for Verizon to improve its service, among other things." *Phase I Order* at 56. Although WorldCom is not at this time proposing a specific enforcement mechanism with respect to its proposed metrics, that should not be construed as a rejection of the idea. Indeed, WorldCom believes that a penalty mechanism in the context of intrastate wholesale special access services has merit, especially given the Department's stated intent to have intrastate special access services priced at UNE levels. See *Phase I Order* at 50, 54.

below [the NY PSC's] service quality standards, and that Verizon may be treating other carriers less favorably than its end users." May 22, 2001 letter from New York PSC Chairman Maureen Helmer to FCC Chairman Michael Powell. Noting that its "ability to encourage Verizon is dependent on the Federal Communications Commission's scrutiny regarding interstate circuits" the New York PSC offered to work with the FCC "to establish and enforce service standards on all special services, if this were a matter [the FCC] believed should reasonably be delegated to New York State." *Id.* Were the Department to seek similar authority from the FCC, it presumably would need to have determined that the delegation of such authority were needed. Performance reports and audits relating to Verizon's performance concerning interstate special access circuits will provide the Department with the evidence it needs to make an informed conclusion as to whether approaching the FCC for a delegation of authority is necessary.

### **VIII. Conclusion**

For the foregoing reasons, WorldCom respectfully requests the Department to:

(1) require that Verizon report on its interstate and intrastate special access performance to its affiliated and non-affiliated wholesale customers and its retail customers via the proposed Joint Competitive Industry Group metrics, and; (2) engage an independent third party to audit (a) Verizon's reporting under those metrics, and (b) Verizon's wholesale and retail ordering, provisioning, and repair processes themselves to identify the root causes that lead to Verizon's discriminatory and anticompetitive treatment of its carrier customers.

Respectfully submitted,

WORLDCOM, INC.

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Dated: New York, New York  
June 20, 2002

#### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing upon each person designated on the attached service list by email and either U.S. mail or overnight courier.

Dated: New York, New York  
June 20, 2002

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