COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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

REPLY BRIEF OF WORLDCOM, INC.

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I. Introduction

The evidence presented in this proceeding clearly establishes that the dedicated circuits Verizon provides for its competitor-customers are provisioned more slowly and are less reliable than the dedicated circuits it provides for itself and its retail end-user customers. Nevertheless, Verizon argues that the Department should leave well enough alone and take no action in this case. Verizon claims that the "highly competitive" market for special access circuits makes regulatory oversight unnecessary, that benign differences in wholesale and retail ordering processes merely "create the misleading appearance" of discrimination, and that the CLEC-proposed methods of monitoring its performance are unfair, unhelpful and overly burdensome.

In all respects, Verizon has failed in its initial brief ("Verizon Br.") to support its cause:

?? Its arguments to the contrary notwithstanding, Verizon is still the dominant provider of special access services in the Commonwealth (and has been recognized as such by the Department). Verizon's argument that "competition" makes monitoring of its special access performance unnecessary is simply wrong.

?? Verizon fails in its attempt to discredit the evidence presented by WorldCom and AT&T showing that Verizon discriminates against its wholesale (carrier) customers.

?? Verizon fails to present any other credible evidence that would warrant inaction by the Department (*i.e.*, that would warrant that the Department ignore the evidence of discrimination and decline the opportunity to implement performance metrics).

?? Verizon fails in its attempt to discredit the results of the special access investigation conducted by the New York Public Service Commission.

?? Verizon fails to discredit the strong policy arguments in favor of monitoring its performance through the use of well defined metrics.

For the reasons that follow, WorldCom respectfully urges the Department to order Verizon to begin reporting under the New York Special Services Guidelines immediately, and to begin reporting under the Joint Competitive Industry Group ("JCIG") metrics as soon as practicable. WorldCom further urges the Department to engage a third-party auditor to (i) perform a root cause analysis of Verizon's wholesale and retail ordering and provisioning processes, and (ii) monitor the accuracy of Verizon's metrics reporting.

II. Verizon Fails to Present Credible Evidence or Valid Arguments Against Special Access Reporting

a. The Special Access Market in Massachusetts is Not Competitive Enough to Deter Discriminatory Conduct by Verizon

The linchpin for Verizon's claim that the Department should decline to monitor its special access performance in Massachusetts is the FCC's *Pricing Flexibility Order*[1], which granted Verizon and other incumbent LECs subject to price cap regulation a limited degree of pricing flexibility for special access services. Pursuant to the bright line rules established in the *Pricing Flexibility Order,* Verizon has received limited pricing flexibility on special access services in Massachusetts in the *Verizon 2001 Pricing Flexibility Order* and the *Verizon 2002 Pricing Flexibility Order*.[2]

Verizon argues that achieving pricing flexibility under the bright line rules articulated in the *Pricing Flexibility Order* "clearly demonstrate[s] the competitiveness of special access services in each of the major MSAs in Massachusetts." Verizon Br. at 14. But there is a world of difference between meeting the FCC's threshold criteria required to obtain limited pricing flexibility and reaching the conclusion that competition is sufficiently robust that

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[1] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*"), *aff'd, WorldCom, Inc. et al. v. FCC et al*., 238 F.3d 449 (D.C. Cir. 2001).

[2] *In the Matter of Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, DA 01-663, CCB/CPD Nos.00-24, 00-28 (rel. March 14, 2001) ("*Verizon 2001 Pricing Flexibility Order*"); *In the Matter of Petition of Verizon for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, DA 02-706, CCB/CPD Nos.01-27, 00-28 (rel. March 22, 2002) ("*Verizon 2002 Pricing Flexibility Order*").

Verizon's special access pricing and performance to its carrier-customers are constrained by market forces. Determining whether or not market forces are sufficient to discipline an incumbent LEC would ordinarily be part of a comprehensive examination on whether the incumbent LEC should no longer be considered a "dominant" provider of special access services, something the FCC did not do. Indeed, in the *Pricing Flexibility Order*, the FCC expressly *refused* to deem incumbent LECs non-dominant in the provision of special access services[3] and retained tariffing and other requirements to restrain abuse of market power. As the FCC acknowledged in the *Special Access NPRM*, its *Pricing Flexibility Order* "did not go so far as to find that incumbents do not have market power" with respect to the provision of special access services.[4]

Moreover, Verizon's argument that "[t]he presence of competition disciplines the provision of [special access] services by all suppliers" (Verizon Br. at 3) is hardly a foregone conclusion if the "disciplining" effects of competition on Verizon's pricing serve as a guide. Earlier this year, Verizon *raised* rates for special access services in areas where it has been granted Phase II pricing flexibility.[5] Verizon's prices for special access services in the price

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[3] *Pricing Flexibility Order* at ¶ 151.

[4] *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 ¶ 14 (citing *Pricing Flexibility Order* at ¶ 3). *See also Pricing Flexibility Order* at ¶ 151, n. 372 ("Phase II relief is not tantamount to non-dominant treatment"); *WorldCom Inc., v. FCC*, 238 F.3d 449 at 460 (D.C. Cir. 2001) ("the FCC did not engage in a thorough competition analysis" of the sort that would be expected in non-dominance proceedings). The FCC further recognized that, even after receiving pricing flexibility, an incumbent LEC may still exercise market power, particularly in those areas of a Metropolitan Statistical Area (MSA) that lack a competitive alternative. *Pricing Flexibility Order* at ¶ 151.

[5] Exh. WCOM 2 (Furbish Surreb.) at 5 & n.6 (citing Verizon Tariff FCC No. 1, § 7.5.16 (revised effective January 5, 2002) (showing an increase in monthly rates for DS-1 special access services in price bands 5 and 6)).

bands where it has been granted pricing flexibility are higher than its rates for the same services in the corresponding rate zones where it is still subject to price caps.[6]

Finally, Verizon's attempt to convince the Department of the competitiveness of the special access market rings particularly hollow given that, only two months ago, the Department in its *Phase I Order* in D.T.E. 01-31 agreed that "special access pricing is a barrier to entry for CLECs that want to compete against Verizon's retail private line services because special access services impose higher costs on CLECs than are imposed on Verizon." *Phase I Order* at 61. More specifically, "CLECs that seek to provide services in competition with Verizon's retail private line services incur economically-inefficient wholesale costs since the wholesale inputs (special access services) that the CLECs purchase are not priced at incremental cost; rather, these inputs . . . are priced well above incremental cost." *Id.* The ability of Verizon to maintain high special access prices necessarily means that Verizon possesses market power[7] in the special access services market. As such, Verizon's attempt to rely on the existence of competition to assuage the Department's concerns regarding Verizon's special access provisioning performance is entirely misplaced.

b. Verizon's Service Initiatives and Internal Measurements

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[6] Exh. WCOM 2 (Furbish Surreb.) at 5 & n.7 (citing Verizon Tariff FCC No. 1, which offered monthly rates for special access ranging from $142.20 - $158.57 per DS-1 channel termination in rate zones where Verizon is still subject to price caps compared to rates ranging from $146.66 - $190.49 in the corresponding price bands where Verizon has been granted pricing flexibility).

[7] *See* D.T.E. 01-31 *Phase I Order* at 1, n. 4 ("The Department has previously stated that a firm with market power has the ability to raise the price of its product or service, and to sustain this price increase over a period of time, without losing so many sales that the price increase is not profitable. AT&T Alternative Regulation, D.P.U. 91-79, at 31 n.19 (1992).").

Verizon also argues that its service initiatives and internal measurements make monthly reporting of its performance unnecessary. To state the obvious, this fox-watching-the-henhouse solution provides WorldCom with little comfort. And given Verizon's conduct in this proceeding, the Department should not draw much comfort from it either.

With respect to "service initiatives," the record is disturbing: In its May 24, 2001 Report (Exh. VZ 1), Verizon held out "Project ACE" as an internal initiative to improve its special access performance. Having made that representation, Verizon was perfectly content to leave the Department with the erroneous perception that its Project ACE was in effect throughout the course of this litigation when in fact the project had been disbanded. Only through specific, pointed follow-up discovery questions did the Department learn in May of 2002 that Project ACE had not existed since mid-year 2001. Tr. 335-344; Exh. DTE-VZ 5-51. And this despite the fact that in November of 2001, the Department asked "Does Verizon have performance standards or objectives for each of the six goals of Project ACE identified on pages 10-11 of the May 24th Report? If so, what are they?" The Department's question was phrased in the present tense; Verizon had given no indication to that point that Project ACE no longer existed. Despite the fact that Project ACE was no longer a stand-alone project and had not existed for months, in its December 2001 response Verizon simply referred the Department to an attached document from March of 2001 "for the improvement strategies and performance assurance tracking of the six goals of Project ACE." Exh. DTE-VZ 3-34.

Project ACE thus appears to have been little more than window dressing on Verizon's part – a calculated attempt to give the Department the impression that it was being proactive so that the Department would not pursue this investigation beyond ordering the initial

May 2001 Report. (It should be noted that the "Executive Briefing" appended to Exh. DTE-VZ 3-34 is dated March 22, 2001, *i.e.*, one week *after* the Department issued its *Vote and Order* opening this investigation.) But even if Verizon's Project ACE *was* a legitimate attempt to address special access concerns, that in no way diminishes the need for or the importance of having Verizon report to the Department and to carriers on its special access performance pursuant to well defined metrics.[8]

With respect to its internal performance measures, *i.e.*, the six metrics that Verizon monitors for itself, Verizon's conduct is also troubling. Verizon has been aware since the inception of this investigation that the Department has sought "evidence [concerning] whether Verizon's special access services are unreasonable under G.L. c. 159, § 16." *Vote and Order* at 2. Verizon clearly could have provided the data generated by its internal measurements with its testimony back in February of this year, or in response to any number of discovery requests propounded by the parties or by the Department itself. Instead, Verizon chose not to share the data with the Department, only offering to make it available *after* the close of the hearing. *See* Tr. 299-300, 302-305, 310. When coupled with (a) Verizon's foot-dragging and sloppiness in responding to discovery requests[9], and (b) Verizon's adamance that WorldCom's

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[8] Verizon's stated commitment to meeting internal service initiative goals is also tempered by the fact that those internal goals are subject to Verizon's unilateral revision. For instance, Verizon's internal objective *was* to have 95% of ordered circuits completed on time. But rather than make process improvements to elevate its performance and thus meet its internal objective, Verizon instead lowered the objective to 92%. Tr. 223-225.

[9] *See e.g. Hearing Officer Ruling on Opposition of AT&T To Verizon's Proposed Delay of Hearings Until May 28-30, 2002*, D.T.E. 01-34 (April 11, 2002) (noting the "problems" in obtaining reliable information from Verizon, and that the Department "has been frustrated" by Verizon discovery responses that are less than complete, difficult to understand and inconsistent). Verizon's track record with respect to discovery also calls into serious doubt its attempt to discredit the allegations in the Gillenwater Declaration (Attachment C to Exh. WCOM 1 (Furbish Dir.)) regarding Verizon's discriminatory conduct in New York. Verizon's claim that WorldCom caused the delay in provisioning special access connectivity to the customer (s*ee* Verizon Br. at 48) is directly contradicted

and AT&T's interpretation of the data provided in discovery is useless, a clearer picture of Verizon's strategy in this proceeding emerges. While the Department has sought evidence, Verizon has sought to have the Department conclude that there is no evidence upon which it could order relief. Verizon opted not to share evidence that it would agree is reliable, and has spent all of its efforts arguing that the other evidence in the case – such as the findings of the New York Public Service Commission in its special access investigation and the evidence of discrimination revealed by its discovery responses – is unreliable. It appears to have been Verizon's hope that at the end of the investigation the Department would be forced to conclude that the *lack* of evidence precluded it from taking any action. [10] However, as discussed in WorldCom's initial brief, and as discussed further below, Verizon's attempts to discredit the evidence of its discrimination are unavailing.

III. Verizon Has Failed to Discredit the Evidence of Discrimination

Verizon is squarely faced with *prima facie* evidence of discrimination revealed by its discovery responses. *See* WorldCom Br. at 8-10; AT&T Br. at 14 - 23. At core, Verizon's argument in response to that evidence is an attempt to cast doubt on its validity by asserting that a variety of process differences *could* account for why the discovery data *seem* to indicate discrimination. But Verizon provides no empirical evidence of its own to counter the empirical

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by Mr. Gillenwater's sworn account of the facts, and strains credibility given that Verizon never challenged the declaration in the New York proceeding in which it was initially filed.

[10] Verizon's affirmative evidence concerning its special access performance essentially consists of the following two statements in its brief: (1) "Verizon MA has shown steady and sustained improvement in critical areas of special access performance" (citing two data points relating to on time performance in January 2001 and January 2002) (Verizon Br. at 23), and; (2) a specific reference to its on time performance in the first quarter of 2002 (again compared with the same January 2001 data point) (Verizon Br. at 23-24).

evidence of discrimination detailed by AT&T witness Eileen Halloran. There is thus no basis on which to conclude that the differences in process that arguably *could* adversely affect the results showing discrimination actually *do* adversely affect the results.

For instance, one of the arguments Verizon raises concerning the ordering process is that the "application date" for wholesale and retail orders is determined differently, and therefore the wholesale and retail ordering processes cannot be fairly compared. Verizon argues that its retail end users "often need to engage in *lengthy* pre-order negotiations" with Verizon. Verizon Br. at 33 (emphasis added; citation omitted). The two places where supposedly lengthy negotiations can take place are (1) before the request is submitted to RequestNet, and (2) during the "Due Date Negotiation & Acceptance" phase. *See* Tr. 174; *see also* Exh. VZ 3 (Corrected Panel Reb.) at its attachment B (process flow charts). But the lengthy negotiations that might occur prior to a request being submitted to RequestNet are irrelevant for purposes of any comparison between the wholesale and retail processes. For purposes of comparison, the first critical point in the retail process is *after* the negotiations with the end user have reached a point where both parties understand the parameters of the services to be ordered and a request is submitted to RequestNet; that is the point on the retail side that is directly comparable to the point at which a wholesaler (who often must also engage in lengthy pre-order negotiations with its customers) submits a clean ASR. The parameters of the service are in both cases finalized to the point of permitting a request for circuit assignment. See Tr. at 174; Exh. VZ 3 (Corrected Panel Reb.) at its attachment B.

As for the second point, the "Due Date Negotiation & Acceptance" box in the Verizon retail flow chart, Verizon asserted at the hearing that here as well the negotiations "can be lengthy". Tr. 174. As an initial matter, it is difficult to understand why this phase would be lengthy given Verizon's description of it at the hearing:

> The due-date negotiation and acceptance, what happens, once it comes out, they go back and contact the end user to tell them the date that RequestNet has provided as when the service can be provisioned. At that point in time they would dialogue with the customer again to make sure they still want the service, that the date that came out is acceptable. And then if the customer is not, you know, ready for that date, then they may pick a date that was farther out from that point.

Tr. 173-74. Even accepting on faith that this pre-order stage on the retail side *can* be lengthy, Verizon has presented no information whatsoever to permit the Department to understand the frequency with which such negotiations *are* lengthy or the *actual* length of negotiations that have the effect of skewing the results reached by Ms. Halloran.

The differences in establishing wholesale and retail due dates is another ordering process milestone which, according to Verizon, makes comparisons meaningless. Yet it is another instance in which Verizon fails to quantify just how the process differences have corrupted the comparisons. And Verizon admits that it has made changes to its processes "that created some additional uniformity between the carrier and end-user provisioning processes." Verizon Br. at 40.

Even when Verizon provides information, it is not helpful in arriving at any meaningful conclusions. Verizon argues that "comparing interval data can be misleading because of the range of requested due dates among customers." Verizon Br. at 46. Verizon then

provides information concerning its "seven largest carrier customers in Massachusetts," identifying a "range of requested due dates was recently between 12 and 46 days. Tr. 199." *Id.* But those numbers are meaningless without further information that would help put them in context, such as the number of orders submitted by each of the seven carriers and how the carrier-requested due dates actually affected the results. Instead, Verizon makes that (unsupported) statement and hopes the Department will infer from it that the interval data in its discovery responses is unreliable for purposes of comparison.[11]

In sum, Verizon has chosen to combat empirical data with supposition and conjecture. Although Verizon has tried desparately to cast doubt on the utility of the evidence of discrimination, it has utterly failed to do so.[12]

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[11] Verizon also claims that WorldCom's comparison of Verizon's provisioning performance with that of ""CLEC X" (*see* Exh. VZ-WCOM 1-4) is unfair because the CLEC provided circuits on 100% fiber facilities that required no construction, a scenario argued by Verizon to be "atypical of Verizon MA's provision of special access services." Verizon Br. at 25. Whether "atypical" or not in a general sense, Verizon provided no evidence to suggest that construction or the provision of copper loops accounted for the fact that it provisioned circuits more slowly than CLEC X for the period in question. Moreover, the copper/fiber distinction is irrelevant; Verizon does not have different provisioning intervals for copper and fiber circuits.

[12] Verizon also argues that the discovery requests in this proceeding were an "abuse of the regulatory process and a not-so-subtle attempt by competitive carriers to burden unnecessarily Verizon MA in a competitive marketplace." Verizon Br. at 20. As for the discovery requests themselves, they were well within the parameters established by the Department, and in fact served their purpose well in that the responses eventually received have shown that the special access process in Massachusetts is in need of monitoring and further review. As for the allegation that WorldCom sought to "burden" Verizon unnecessarily, it is not only untrue, but is counterintuitive and would be counterproductive. WorldCom's goal is to have Verizon provide it with *better* service. It makes no sense whatsoever for WorldCom to "burden unnecessarily" Verizon and thus risk having Verizon's service become *worse* because it is tied up with responding to discovery requests. This is especially true given the extent to which WorldCom remains dependent on Verizon to reach its customers – WorldCom relies on other carriers to reach more than half its end user special access customers (Exh. WCOM 2 (Furbish Surreb.) at 7), and in Massachusetts in particular, WorldCom relies on Verizon to reach over 90% of the buildings in which its requires another carrier's facilities to reach its end user customers (Exh. VZ-WCOM 2-2). In an attempt to make it appear as though WorldCom is *not* dependent on Verizon, it cites an article in which WorldCom claims to have fiber to some 50,000 office buildings or campuses in the United States. *See* Verizon Br. at 16, n.22. To have meaning, however, that number must be put into context. In 1995, there were approximately 4.58 million commercial buildings in the United States according to a survey conducted by the U.S. Department of Energy. *See* U.S. D.O.E. Commercial Building Energy Consumption Survey: Executive Summary of Commercial Buildings Characteristics (

IV. The New York Public Service Commission's Findings with respect to Verizon's Market Dominance are Relevant to the Department's Investigation

Verizon has also spent a considerable amount of time in its brief trying to convince the Department just how colossally wrong the New York Public Service Commission was in reaching the conclusion that Verizon "continues to occupy the dominant position in the Special Services market [. . . and] represents a bottleneck to the development of a healthy, competitive market for Special Services."[13] Verizon first argues that the New York PSC's finding that it is the "dominant" provider of special services is "flawed" because it was based on data relating to "fiber route miles, number of buildings passes, and number of buildings actually connected to non-ILECs." Verizon Br. at 18. However, the data on which the New York PSC based its decision was actually submitted by Verizon itself as its evidence of non-dominance. Exh. WCOM 2 (Furbish Surreb.) at 6.

Second, the New York PSC subsequently requested additional data on these same indices, and the more complete, recast results still showed that Verizon was (and is) the dominant provider of special services in New York:

> Its [Verizon] data demonstrates that Verizon dwarfs its competitors. In the 132 LATA for example, Verizon has 8,311 miles of fiber compared to a few hundred for most competing carriers; Verizon has 7,364 buildings on a fiber network compared to less than 1,000 for most competing carriers. In southern and mid-town Manhattan, where it is relatively easy for competitors to

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http://www.eia.doe.gov/emeu/cbecs/char95/ex_sum.html). In other words, WorldCom has fiber to just over 1% of the commercial buildings in the United States.

[13] 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 9 (June 15, 2001) ("*NYPSC June 15, 2001 Special Services Order*").

> bring their own local loop facilities to large buildings, competition is concentrated. In other areas of New York City and throughout the rest of the state it becomes increasingly difficult for competitors to serve end users through the use of their own facilities because customers are more dispersed. As Verizon acknowledged, cost considerations force competitors to rely on Verizon's ubiquitous local loop facilities to reach most end users.[14]

Third, as for Verizon's claim that the New York PSC reached its decision informally and without the benefit of an adjudicated proceeding (Verizon Br. at 17, n.23), the PSC noted in its June 15, 2001 Order that "[n]o party requested formal evidentiary proceedings…"[15] Finally, the New York PSC found that Verizon had presented no new data in its petition for rehearing to support its claim that it did not have market dominance, nor did Verizon provide new data or show errors of law with respect to the discrimination issue.[16] The bottom line is that the New York PSC's findings with respect to Verizon's market dominance are persuasive authority which bolster the Department's own recent findings that Verizon is the dominant provider of special access circuits in Massachusetts.

V. The JCIG Metrics are a Reasonable and Effective Tool for Monitoring Verizon's Special Access Performance

As explained in WorldCom's initial brief, the JCIG metrics capture essential elements of the special access ordering, provisioning and maintenance processes, and each of the eleven JCIG metrics has a precise rationale and intent. *See* WorldCom Br. at 12-14. Verizon's

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14 *NYPSC June 15, 2001 Special Services Order* at 7.

15 *Id*. at 4.

16 New York PSC, Case Nos. 00-C-2051 and 92-C-0665, *Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines*, December 20, 2001 at 9-10.

complaints regarding the JCIG metrics are the result of its profound misunderstanding (or intentional distortion) of the metrics and their purposes. For instance, Verizon's claims that the metrics are duplicative are disproved by simply examining the metrics themselves. Metrics JIP-SA-1 (FOC Receipt) and JIP-SA-2 (FOC Receipt Past Due) are not, as Verizon claims, "mirror images of each other." Verizon Br. at 62. The FOC Receipt metric 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). The FOC Receipt Past Due metric measures all ASR requests for which the incumbent has not provided a FOC within the expected FOC receipt interval *at the end of the month.* The first metric is based calculated based on the number of FOCs received; the second is an attempt to capture information concerning orders for which *no* FOC has been received. In other words, without this second metric, there would be no mechanism to track valid orders that the incumbent LEC is late in responding to. It allows competitive carriers to gauge the magnitude of late FOCs and the buildup of any "backlog" of ASRs that have not been responded to – a situation that can carry over into subsequent months without a means to document the build-up unless and until Verizon ultimately responds with a FOC.[17]

Verizon's similar criticism of the JIP-SA-4 (On-Time Performance to FOC Due Date) and JIP-SA-5 (Entire Days Late) measures is also misplaced for the same reasons. While the former metric is a measurement of the percent of circuits completed on time (*i.e.*, on or before the FOC due date), the latter provides a snapshot of the number of circuits that are past

[17] Verizon's criticism of the FOC Receipt Past Due metric is particularly disingenuous given that Verizon itself tracks its total backlog. Tr. 259-60; Verizon Br. at 21-22.

due at the end of each month (*i.e.*, the number of "backlogged" circuits), which can build up from month to month.

Moreover, the JCIG metrics are not overly burdensome – the disaggregation in the metrics is required to ensure that incumbents do not hide poor performance for particularly critical circuit types (*e.g.*, DS1s) or user groups (*e.g.*, non-affiliated wholesale customers) in aggregated performance reports that appear to report good performance overall.[18] And contrary to Verizon's claims, the JCIG metrics do in fact take into account verifiable Customer Not Ready ("CNR") situations. And as for Verizon's criticism that the JCIG metrics do not account for events outside of Verizon's control (*e.g.*, work stoppages or the terrorist attacks of September 11, 2001), WorldCom has never said nor implied that Verizon should be held accountable for events outside its control. However, such determinations must be examined by regulatory authorities on a case by case basis, and should not be left up to Verizon to determine.

VI. Metrics Reporting Should Be Required for Verizon Only

Verizon also argues that should the Department adopt metrics, that fairness requires that all carriers report their performance, not just Verizon. Verizon's "fairness" argument relies on the faulty premise that it and all other carriers are on the same footing. That of course is untrue. Verizon is the only provider with a ubiquitous network on which virtually all

[18] Verizon also claims that "[WorldCom's] intent is clear; to increase the burden on Verizon MA and enhance the opportunity for carriers to receive damages by multiplying the number of metrics and sub-metrics as much as possible." Verizon Br. at 62. This, however, ignores the plain fact that WorldCom has *not* sought to have the Department institute a performance plan or other mechanism by which Verizon would pay damages.

other carriers rely, and it is the only carrier that could conceivably be considered to be a "dominant" provider of such services in the Commonwealth. [19]

Moreover, this is an adjudicatory proceeding the sole and express purpose of which is to investigate *Verizon's* performance. The performance of other providers of special access services is not considered as a topic of investigation in the Department's *Vote and Order* or any subsequent order, ruling or memorandum issued by the Department. It is thus beyond the scope of the Department's investigation. And critically, the Department heard no evidence whatsoever concerning the performance of other carriers (except to the extent that the performance of CLEC X was *better* than Verizon's (*see* Exh. DTE-WCOM 1-4)). Verizon's proposal should thus be recognized for what it is – not an attempt to level the playing field, but an attempt to burden smaller competitors with reporting requirements that are completely unnecessary given that no carrier other than Verizon is in a position to affect the market as Verizon can. Verizon's proposal to have all carriers report on their performance should thus be rejected.

[19] As a for-profit corporation with the only ubiquitous telecommunications network in the Commonwealth, Verizon can (and can be expected to) use its "upstream" control its network to achieve, enhance, or maintain power in the "downstream" market for end user enterprise customers by raising rivals' prices, degrading the quality of service it provides its rivals, or delaying or denying access to downstream rivals. *See* WorldCom Br. at 6-8. Since no other carrier in the Commonwealth possesses such a concentrated ability to affect the market, no other carrier in the Commonwealth should be required to report on its performance.

VII. Conclusion

As the Department deliberates on this matter, it should consider the following: if WorldCom gets everything it asks for, it receives no monetary benefit (because it has not requested penalties connected with its proposed metrics), and no guarantee that Verizon's service will actually improve. If Verizon gets what it asks for, the Department's focus on Verizon's special access performance will evaporate, and Verizon's ability to abuse its dominant position in the special access market will continue unchecked. Verizon will have obtained a critical window of time in which to engage in exclusionary behavior to the detriment of its wholesale competitors and their customers. And after a time, Verizon's competitors will undoubtedly approach the Department armed with anecdotes of discrimination and poor service of precisely the type that prompted the Department to open this investigation in the first place.

For all the foregoing reasons and for the reasons stated in WorldCom's initial brief, 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,

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Dated: New York, New York
July 8, 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
July 8, 2002

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