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REDACTED – FOR PUBLIC INSPECTION

February 6, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B-204
Washington, D.C. 20554

Re: In the Matter of the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts,
CC Docket No. 01-9

Dear Secretary Salas:

Enclosed is the Massachusetts Department of Telecommunications and Energy's ("MDTE's") Evaluation of Verizon Massachusetts's Compliance with Section 271 of the Telecommunications Act of 1996. Please note that the MDTE is filing a confidential portion of the submission and a redacted version of the entire submission. The MDTE is also providing an electronic version of the redacted version on disk in WordPerfect and PDF formats, in

accordance with discussions with the Common Carrier Bureau.

By the Commission,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

cc: Susan Pie, Policy and Program Planning Division
Common Carrier Bureau, Room 5-C224

Josh Walls, U.S. Department of Justice
Antitrust Division

REDACTED – FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application by Verizon New England)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company) CC Docket No. 01-9
(d/b/a Verizon Enterprise Solutions),)
and Verizon Global Networks Inc.,)
For Authorization Under Section 271 of)
The Telecommunications Act of 1996)
To Provide In-Region, InterLATA)
Services in Massachusetts)

EVALUATION OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Commonwealth of Massachusetts
Department of Telecommunications and Energy

James Connelly, Chairman
W. Robert Keating, Commissioner
Paul B. Vasington, Commissioner
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Dated: February 6, 2001

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EXECUTIVE SUMMARY

Last year, the Department of Telecommunications and Energy (“Department”) filed approximately 550 pages of analysis, in addition to hundreds of pages of appendices, of Verizon Massachusetts’ (“VZ-MA”) compliance with the federal requirements contained in § 271 of the Telecommunications Act of 1996. After an exhaustive review of the Department’s § 271 record, we concluded that VZ-MA met its obligations and recommended that the Federal Communications Commission (“FCC”) grant VZ-MA’s application to offer long distance telecommunications services in Massachusetts. For procedural reasons explained in its December 18, 2000 letter to the FCC, VZ-MA withdrew its application and re-filed it on January 16, 2001, together with several hundred pages of supplemental material. To the relief of the Department and -- we expect -- the FCC and interested parties, there is no need for the Department to seek a waiver from the FCC of its 100-page limit for these comments. We limit this Supplemental Evaluation of VZ-MA’s performance to material VZ-MA filed this year and events that occurred subsequent to our November 3, 2000 reply comments in CC Docket No. 00-176.

Nothing filed by VZ-MA in its supplemental application causes any concern to the Department or prompts us to reconsider our earlier, extensive findings. Indeed, VZ-MA’s § 271 supplemental filing supports and further confirms the conclusions we reached last year. In that earlier proceeding, CC Docket No. 00-176, we determined that almost all of VZ-MA’s application was founded in our § 271 record. The only exception of note was one study related to the effect of pre-qualifying loops as opposed to requesting manual loop qualifications on VZ-MA’s digital subscriber line (“xDSL”) provisioning performance. In contrast, several

interested parties did raise concerns about VZ-MA's performance for the first time in their FCC comments. As we mentioned in our reply comments last year, since those parties neglected to make those arguments before us, we could not test their validity. Nonetheless, in response to those concerns, VZ-MA performed additional studies and contracted with independent evaluators to do the same, the results of which are contained in its supplemental application.

As supplemented by the information in its 2001 application, VZ-MA leaves little room for doubt about its compliance with its § 271 obligations. Namely, VZ-MA has provided studies affirming that its provision and repair of xDSL loops is nondiscriminatory, and that its provision and repair of line-shared loops is nondiscriminatory. VZ-MA also has provided carrier-specific data going back to May 2000 to any requesting carrier so that these carriers have every opportunity to challenge VZ-MA's reported performance. The Department will await comments by these carriers and, if necessary, will attempt to reconcile any alleged discrepancies.

As we mentioned in the executive summary from the Evaluation filed last year with the FCC, the local telephone markets in Massachusetts are irreversibly open to competition. That statement is as true today as it was last October. Equally valid today is our conclusion that consumers will benefit from having the option of selecting VZ-MA for long distance service. Based on the totality of the record before the FCC, the Department recommends, without reservation, that the FCC grant VZ-MA's application.

I. INTRODUCTION

On September 22, 2000, Verizon New England, Inc. d/b/a Verizon Massachusetts (“VZ-MA”) filed with the Federal Communications Commission (“FCC”) its application to enter the interLATA, long distance telecommunications market in Massachusetts.¹ On October 16, 2000, the Massachusetts Department of Telecommunications and Energy (“Department” or “D.T.E.”) submitted its comprehensive evaluation (“Evaluation”) of VZ-MA’s performance and competing local exchange carriers’ (“CLECs”) ability to compete in our state. Based on our extensive record,² we determined that VZ-MA complies with its obligations under 47 U.S.C. § 271(c)(2)(B) and that the telecommunications market in Massachusetts is irreversibly open to competition. Additionally, on November 3, 2000, the Department filed comments responsive to concerns raised by several interested parties (“Reply Comments”). We reaffirm our October 16 and November 3 filings now and do so without reservation or exception.

As noted in its December 18, 2000 ex parte letter to the FCC, VZ-MA withdrew its September 2000 § 271 application because of procedural concerns related to the ability of parties to review and comment upon all evidence submitted by VZ-MA in CC Docket No. 00-176. According to VZ-MA, withdrawing and re-filing its FCC application will enable all parties additional opportunity to comment and will also permit VZ-MA to update its application

¹ The FCC docketed VZ-MA’s application as CC Docket No. 00-176.

² See D.T.E. Evaluation at 7-16 for a detailed discussion of D.T.E. 99-271, the Department’s investigation of VZ-MA’s compliance with § 271 of the Telecommunications Act of 1996.

with the most current data, especially with respect to digital subscriber line (“xDSL”) services.³

The Department has reviewed VZ-MA’s supplemental application, which it filed with the FCC on January 16, 2001 and was docketed as CC Docket No. 01-9, and has determined that the analyses and conclusions contained in our Evaluation and Reply Comments remain accurate. Therefore, this supplemental evaluation (“Supplemental Evaluation”) only addresses those discrete areas in which VZ-MA has supplemented its earlier application. Moreover, consistent with the FCC’s Order granting Southwestern Bell Telephone’s (“SWBT”) request to withdraw and re-file its § 271 application for Texas while incorporating the record in the earlier proceeding, the Department requests that the FCC similarly consider, in the instant proceeding, all of the Department’s filings made last year in CC Docket No. 00-176.⁴

In addition to updating its measurement data since its last § 271 application, VZ-MA includes the following new material in its supplemental application: calculation of new and

³ See Letter from Michael E. Glover, Senior Vice President & Deputy General Counsel, Verizon to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-176 (filed December 18, 2000).

⁴ Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, FCC 00-238, at ¶ 16 (2000) (“SWBT Texas Order”). See also Comments Requested on the Application by Verizon New England, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts, Public Notice, DA 01-106, at 1 (Jan. 16, 2001) (granting VZ-MA’s request to incorporate its filings from CC Docket No. 00-176).

modified performance metrics, as adopted by the New York Public Service Commission (“NYPSC”) and applicable to Massachusetts; independent, third-party xDSL metric replication by PricewaterhouseCoopers (“PwC”); independent assessment of the comparability of the processes, systems, and procedures used by Verizon⁵ for line sharing in Massachusetts and New York; independent validation that the methods and procedures for line sharing followed by VZ-MA’s data affiliate, VADI,⁶ are identical to those used by CLECs, and that VZ-MA processes the line sharing orders of both VADI and CLECs in the same manner; independent analysis of VZ-MA’s xDSL provisioning performance; and information confirming that VZ-MA’s rates for unbundled switching are at the same levels as those rates approved by the NYPSC, which the FCC already has found to be consistent with total element long run incremental cost (“TELRIC”) principles.

Other than determining that PwC’s metric replication process was consistent with that used by KPMG and the Department, as described in our Evaluation and Reply Comments,⁷ the Department has reviewed but not tested PwC’s findings with respect to the following areas contained in the Sapienza/Mulcahy supplemental declaration (and the accompanying attachments): (a) comparability of line sharing processes, systems, and procedures used by

⁵ Consistent with our Evaluation and Reply Comments, in this Supplemental Evaluation, the Department uses the term “Verizon” to refer to the corporate parent of VZ-MA.

⁶ Verizon Advanced Data Inc. (“VADI”). See VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 4, at ¶ 1 (Dowell Supp. Decl.).

⁷ See D.T.E. Evaluation at 44-196; see also D.T.E. Reply Comments, Appdx. A.

Verizon in Massachusetts and New York; (b) similarity of interface options available to both VADI and non-affiliated CLECs, and whether VZ-MA treats transactions from VADI in the same manner as transactions from non-affiliated CLECs; and (c) accuracy and consistency of VZ-MA's Massachusetts xDSL studies.⁸ Similarly, we have reviewed the Dowell supplemental declaration and note that, as described in this declaration, it appears that VADI follows the same procedures available to CLECs to order line sharing from VZ-MA. VZ-MA's intention and plan to set up a separate data affiliate was a matter of record in our state § 271 proceeding (i.e., D.T.E. 99-271), but VADI was not operational during the pendency of our § 271 proceeding. However, because PwC performed an independent analysis testing VZ-MA's assertions about the methods and procedures available to VADI and non-affiliated CLECs, the Department finds that the Dowell supplemental declaration is persuasive. Moreover, there is no information before us that would lead us to question the accuracy of this declaration or of the Sapienza/Mulcahy supplemental declaration.

In addition to corroborating the Department's conclusions contained in last year's Evaluation and Reply Comments, VZ-MA's supplemental application addresses all issues raised

⁸ VZ-MA Supplemental, Application Appdx. A, Vol. 2, Tab 2, at ¶ 9 (Sapienza/Mulcahy Supp. Decl.). According to PwC, it required almost 50 employees and over 4,400 hours to perform the work described above in addition to its xDSL metric replication (id. at ¶ 11). We also have not tested Lexecon's reconciliation of the number of orders captured by different metrics. See VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶¶ 19-29 (Gertner/Bamberger Supp. Decl.). Should a CLEC produce documentation refuting Lexecon's study, the Department will review the competing filings in an effort to reconcile the differences.

in the December 18, 2000 statement of former FCC Chairman Kennard. According to Mr. Kennard, VZ-MA's re-filed application should contain "verified data reflecting acceptable levels of performance, including an independent showing for loops used to provide advanced services, and sufficient information to permit competitors an adequate opportunity to respond."⁹ PwC and Lexecon¹⁰ are independent evaluators of VZ-MA's data, including data related to xDSL-capable and line-shared loops; and VZ-MA indicates that it has provided CLEC-specific reports to requesting carriers (including data going back to May 2000) and, on a going-forward basis, will provide such reports to requesting CLECs by the 25th day of the following month. Furthermore, within the next several months, VZ-MA expects this information will be obtainable by CLECs over a secure web site.¹¹

Mr. Kennard also noted that VZ-MA's supplemental application should address the following three issues: (a) nondiscriminatory provisioning of loops used by competitors to provide advanced services, (b) improved access to the systems and information necessary to order loops used to provide advanced services, and (c) pricing of elements used by competitors

⁹ "Statement of FCC Chairman William E. Kennard on Verizon 271 Filing," December 18, 2000 < <http://www.fcc.gov/Speeches/Kennard/Statements/2000/stwek094.html> > .

¹⁰ Drs. Gertner and Bamberger are senior vice presidents of Lexecon Strategy Group ("Lexecon"). When we use the term "Lexecon" in our Supplemental Evaluation, it should be understood to include the work performed by these gentlemen as set forth in their supplemental declaration and accompanying attachments.

¹¹ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 17 (Lacouture/Ruesterholz Supp. Decl.).

based on forward-looking costs.¹² As documented in the supplemental declarations (and attachments) and as discussed below, the Department concludes that VZ-MA provisions xDSL-capable loops in a nondiscriminatory manner. Additionally, since VZ-MA filed its § 271 application last fall, it has made several improvements to its operations support systems (“OSS”) used by CLECs to order xDSL loops. Finally, procedural questions related to the timing of VZ-MA’s Department-approved reduction in local switching unbundled network element (“UNE”) rates have been addressed since VZ-MA included those reductions as part of its initial filing in CC Docket No. 01-9. Also, the Department has begun, and is in the process of conducting, its scheduled review of all of VZ-MA’s UNE and resale rates.

Approximately one month prior to VZ-MA’s § 271 filing last September, Verizon experienced a work stoppage throughout its former Bell Atlantic service territory. In Massachusetts, this strike lasted from August 6 to August 21.¹³ As detailed in VZ-MA’s reply comments, this strike adversely affected both VZ-MA’s retail and wholesale performance for

¹² “Statement of FCC Chairman William E. Kennard on Verizon 271 Filing,” December 18, 2000.

¹³ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶ 76 (Sapienza/Mulcahy Supp. Decl.). On January 26, 2001, the Department sent VZ-MA a question seeking clarification about the strike dates and the effect of the strike on VZ-MA’s performance data. On January 30, 2001, VZ-MA responded that, pursuant to an agreement with the union, VZ-MA’s union employees were given 48 hours to report back to work at the end of the strike. Moreover, VZ-MA uses union employees from other Verizon states to assist in its collocation work, for example. Thus, the direct effects of the work stoppage continued beyond August 21, 2000, which was technically the last day of the strike in Massachusetts. See Appdx. 2 (VZ-MA Responses to D.T.E. Work Stoppage Questions Based on VZ-MA’s Supplemental Application).

August and, in some instances, through last fall.¹⁴ We expect some CLEC commenters will urge the FCC not to consider VZ-MA's performance data that exclude strike-affected orders, arguing that, as reported last fall, the monthly Carrier-to-Carrier ("C2C") Guideline reports accurately captured VZ-MA's performance. While such an assertion may be true on its face, whether VZ-MA treated its competitors in a nondiscriminatory manner seems to the Department to be the best indicator of VZ-MA's true performance during the work stoppage. In addition, the Department-approved Performance Assurance Plan ("PAP") expressly lists a work stoppage as a basis for a VZ-MA waiver request to modify monthly service quality results for those performance measures with absolute standards.¹⁵

VZ-MA reviewed almost forty metrics, the data for which appeared out of parity in the August C2C report and, as a result, decided to examine 25 of these measurements in greater detail.¹⁶ Based on its analysis, which was presented in CC Docket No. 00-176, VZ-MA determined that its practices during the work stoppage, which aided CLECs at the expense of VZ-MA's retail business, actually skewed VZ-MA's performance results so that it appeared that VZ-MA was not providing parity service.¹⁷ We find that VZ-MA's extensive analysis on

¹⁴ VZ-MA Reply Comments, Appdx., Tab 1, at ¶¶ 173-191 (Lacouture/Ruesterholz Reply Decl.).

¹⁵ VZ-MA Application, Appdx. B, Vol. 47, Tab 559, at 10, 31-32 (D.T.E. 99-271 Order Adopting VZ-MA's PAP, Issued 9/05/00)

¹⁶ VZ-MA Reply Comments, Appdx., Tab 3, at ¶ 16 (Guerard/Canny Reply Decl.).

¹⁷ Id. at ¶¶ 17-22, Attachs. B, C.

this point is persuasive. Should a CLEC contest this analysis, which is found in VZ-MA's CC Docket No. 00-176 reply comments and ex partes (and accompanying attachments), and provide supporting documentation, the Department would attempt to reconcile the competing data in a timely manner. As the FCC stated in its SWBT Kansas and Oklahoma Order, parties generally pointing to disparities in the Bell Operating Company's ("BOC") performance data without providing additional evidence of competitive harm is not persuasive to show nondiscriminatory access to UNEs.¹⁸

Since the date that the Department filed its Reply Comments in CC Docket No. 00-176, we directed VZ-MA to modify its Department-approved PAP to incorporate the requests of several CLECs to establish a separate Mode of Entry for xDSL, add line sharing-specific and other xDSL metrics, and add more xDSL metrics to the Critical Measures component of the PAP.¹⁹ In recognition of a related proceeding in New York and because of the inter-relationship between our PAP and New York's, the Department determined that it would await further NYPSC action before directing VZ-MA to make specific modifications to its PAP.²⁰

¹⁸ Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, at ¶ 189 (rel. Jan. 22, 2001) ("SWBT Kansas and Oklahoma Order").

¹⁹ See VZ-MA Supplemental Application, Appdx. B, Tab 4B (D.T.E. Order on Motions for Clarification and Reconsideration of the PAP, Issued 11/21/00) ("PAP Reconsideration Order").

²⁰ Id. at 6.

As noted by VZ-MA in its supplemental application, on December 15, 2000, the NYPSC ordered Verizon-New York to make changes to its PAP that are consistent with the directives contained in our PAP Reconsideration Order.²¹ In response, on December 22, 2000, Verizon-New York submitted a compliance filing that was approved by the NYPSC on January 24, 2001.²² VZ-MA submitted this NYPSC-approved compliance filing to the Department on January 30 and on February 2, 2001, the Department requested comments on this filing from interested participants to D.T.E. 99-271.²³ After our review of these comments, the Department will either direct VZ-MA to make the appropriate modifications to the amended PAP or approve the filing as being consistent with our PAP Reconsideration Order.

Finally, while VZ-MA's initial application was pending at the FCC, the Department initiated discussions between VZ-MA and Digital Broadband Communications, Inc. ("DBC") to reconcile competing claims concerning VZ-MA's xDSL performance.²⁴ In its comments to the FCC in opposition to VZ-MA's § 271 application, DBC raised a number of issues that the Department determined were significant enough to warrant Department investigation. A summary of these discussions and the Department's findings are contained in the Simon

²¹ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 175-176 (Lacouture/Ruesterholz Supp. Decl.)

²² Id. at ¶ 177.

²³ See Appdx. 3 (NYPSC-Approved Compliance Filing Submitted to D.T.E. on 1/30/01).

²⁴ See Appdx. 4 (D.T.E. Letter to VZ-MA and DBC, Issued 11/03/00).

affidavit.²⁵ This affidavit provides an analysis of the data provided by both VZ-MA and DBC in response to DBC's claims regarding the accuracy of VZ-MA's mechanized loop qualification database and VZ-MA's ability to provision quality xDSL loops. This analysis shows that DBC's claims are merely anecdotal and do not constitute evidence of any discriminatory practice by VZ-MA. VZ-MA's supplemental application also includes data that resulted from the Department's investigation.²⁶

II. CHECKLIST ITEM 2 - UNBUNDLED NETWORK ELEMENTS

A. Operations Support Systems - Pre-Ordering

1. Standard of Review

In its SWBT Kansas and Oklahoma Order, the FCC stated that for a BOC to demonstrate nondiscriminatory access to its OSS pre-ordering functions, it must show, among other things, that it provides nondiscriminatory access to "OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies."²⁷ Specifically, the FCC requires the BOC to provide CLECs with access at the pre-ordering stage to the same detailed information the BOC makes available to itself concerning loop make-up information so that the CLEC may make fully informed judgments

²⁵ See Appdx. 1.

²⁶ See VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 41-44, Attachs. M, N (Lacouture/Ruesterholz Supp. Decl.).

²⁷ SWBT Kansas and Oklahoma Order at ¶ 119.

about whether to provision xDSL service to end users.²⁸ As the FCC noted in its UNE Remand Order, the relevant inquiry is not whether the BOC's retail arm has access to a loop's underlying information but, rather, whether such information exists anywhere in the BOC's back office and can be accessed by any of the BOC's personnel. In addition, if that loop qualification information is not normally provided to the BOC's retail personnel but can be obtained by contacting any BOC personnel, then such information must be provided to other carriers within the same amount of time that it is obtained by the BOC's personnel.²⁹

2. Discussion and Conclusions

As explained in our Evaluation and Reply Comments, VZ-MA permits CLECs to obtain loop information relevant to determining whether that loop may support xDSL service.³⁰ In Massachusetts, a CLEC may obtain this information in one of three ways. First, the CLEC may query VZ-MA's enhanced mechanized loop qualification database prior to submitting an order. As we noted in our earlier filings, this database provides information beyond a simple "yes/no ADSL-compatible" response (e.g., this database includes the loop length and whether

²⁸ Id. at ¶ 120, citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order").

²⁹ Id. at ¶ 121, citing UNE Remand Order at ¶¶ 427-431.

³⁰ D.T.E. Evaluation at 292-293, 295-296; D.T.E. Reply Comments at 31, 33.

such devices as load coils are present on the particular line).³¹ Before VADI became operational in Massachusetts, VZ-MA's retail personnel used the same loop qualification database as CLECs, which is consistent with VZ-MA's UNE Remand Order obligations.³² As of November 2000, VADI also obtains its loop qualification information from this database, known as "LiveWire."³³

Since the Department filed its Reply Comments in CC Docket No. 00-176 last year, we issued an Order addressing motions for reconsideration of several xDSL and line sharing rulings contained in a September 29, 2000 Department Order.³⁴ Among other things, the Phase III-A Reconsideration Order upheld an earlier Department decision not to require VZ-MA to make direct access to its Loop Facility Assignment Control System ("LFACS") available to CLECs. The Department issued this ruling after careful review of the UNE Remand Order and the record in our Phase III proceeding. Specifically, we found that under this FCC Order, VZ-MA may fulfill its obligation to provide nondiscriminatory access to its OSS by making available the information contained in that OSS (i.e., LFACS) within the same

³¹ D.T.E. Evaluation at 295 n.937; D.T.E. Reply Comments at 76.

³² VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 21 (VZ-MA August OSS Aff.).

³³ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 4, at ¶ 14 (Dowell Supp. Decl.); VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 51-54 (Sapienza/Mulcahy Supp. Decl.).

³⁴ VZ-MA Supplemental Application, Appdx. B, Tab 4C (Phase III-A Reconsideration Order, D.T.E. 98-57-Phase III-A, Issued 1/08/01).

amount of time as it is provided to VZ-MA's non-retail employees, in lieu of direct access to that OSS.³⁵ This finding makes clear our disagreement with an argument advanced by several CLECs in CC Docket No. 00-176, that because VZ-MA does not provide direct access to LFACS, it is not meeting its § 271 obligation to provide nondiscriminatory access to loop qualification information.³⁶ Finally, we noted that we simply did not have information in our record about how long VZ-MA's back office personnel require to access and extract CLEC-requested information from LFACS. We determined that this narrow issue should be investigated further in our continuing Phase III proceeding.³⁷

Immediately prior to issuance of our Phase III-A Reconsideration Order, VZ-MA filed a letter with the Department updating the status of several related matters pending in the New York regional collaborative proceeding, namely, electronic access to the loop make-up information contained in LFACS and development of a process that would enable CLECs to submit requests for manual loop qualifications using a pre-ordering, as opposed to ordering,

³⁵ Id. at 6.

³⁶ D.T.E. Reply Comments at 33. Our record is also clear that VZ-MA's retail personnel do not have direct access to LFACS, and VZ-MA's supplemental application affirms that VADI also does not have such access. See VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 45 (Lacouture/Ruesterholz Supp. Decl.). If this were not true, we would agree with DBC and Covad Communications Company that VZ-MA fails to provide nondiscriminatory access to loop qualification information.

³⁷ VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 9 (Phase III-A Reconsideration Order). Similarly, should VZ-MA's back office personnel use other OSS to perform a manual loop qualification, we would review the amount of time required to obtain the relevant information from that OSS and to provide it to the requesting CLEC.

interface.³⁸ We acknowledged VZ-MA's letter in our Reconsideration Order and noted that should CLECs reach agreement with Verizon on electronic access to information in LFACS, the Department would direct VZ-MA to file an amended tariff incorporating this decision in a timely fashion.³⁹ The Department will act in a similar manner if and when agreement is reached on a pre-order transaction that can accommodate manual loop qualifications, which is discussed below. The Department has attached to our Supplemental Evaluation the summary of Verizon's proposed initiatives made at the most recent Change Management meeting.⁴⁰

If the information sought by the requesting CLEC is not present in the LiveWire database,⁴¹ or if that carrier seeks additional information beyond that provided in this enhanced database, it may request that VZ-MA perform a manual loop qualification, which is VZ-MA's second offered means of obtaining loop qualification information.⁴² The information that VZ-

³⁸ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 57, Attach. Q (Lacouture/Ruesterholz Supp. Decl.). In this letter, VZ-MA indicated that it would circulate its proposals at the January 2001 Change Management meeting in New York.

³⁹ VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 8 (Phase III-A Reconsideration Order).

⁴⁰ Appdx. 5 (Summary of Verizon Change Management Proposal, Released 1/31/01).

⁴¹ In our Evaluation, we noted that this database included over 90 percent of VZ-MA's central offices with collocation arrangements in place. D.T.E. Evaluation at 292. In its most recent filing, VZ-MA states that it has populated this database with over 91 percent of the access lines in Massachusetts. VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 30 (Lacouture/Ruesterholz Supp. Decl.).

⁴² The third option available to CLECs is to request an engineering query. While we conclude that there is no need to address this option in our Supplemental Evaluation (continued...)

MA gathers and what processes it uses to perform this function have been well documented in VZ-MA's past filings and in its supplemental application; thus, we need not repeat those details here.⁴³ However, we find that some additional background will be instructive to address a concern raised by some carriers regarding the means used by CLECs to request a manual loop qualification.

Briefly, to make a manual loop qualification request, a CLEC (or VADI if it chose to use this form of loop qualification, which, to date, it has not) would submit a local service request ("LSR") to VZ-MA, using either the web-based Graphical User Interface, the Electronic Data Interchange, or the Common Object Request Broker Architecture interface, indicating in the appropriate field that a manual loop qualification is needed.⁴⁴ Pursuant to business rules, VZ-MA has two days to complete a manual loop qualification and one day to return this information to the requesting CLEC via the same interface used by the CLEC to place the LSR. Since, technically speaking, this CLEC request is made through an ordering transaction, and not through a pre-ordering transaction, some CLECs argue that VZ-MA is not meeting either its UNE Remand Order or its § 271 obligations. However, as mentioned above,

⁴²(...continued)

because no commenter raised concerns about engineering queries in CC Docket No. 00-176, VZ-MA has provided details about this process in other filings. See e.g., VZ-MA Application, Appdx. E (VZ-MA Direct Testimony of Meacham, D.T.E. 98-57-Phase III, at 24-27, Filed 6/15/00).

⁴³ See e.g., VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 34-37, Attachs. G, H (Lacouture/Ruesterholz Supp. Decl.).

⁴⁴ Id. at ¶ 34, Attach. G.

Verizon is working toward a solution that it anticipates will be available later this year to enable CLECs and, presumably, VADI to request, through a pre-ordering transaction, loop qualification information that is unavailable in the database.⁴⁵ The Department is confident that this VZ-MA initiative will satisfy commenters' criticism about VZ-MA's current practice of having CLECs submit requests for manual loop qualifications through an ordering and not pre-ordering process. Since, however, the implementation date for the VZ-MA proposals is scheduled for October 2001, it is helpful to discuss the current practical effect on CLECs of making this request in the ordering phase as opposed to pre-ordering.

Regardless of which ordering phase a carrier makes the manual loop qualification request in (*i.e.*, pre-ordering or ordering), to date VZ-MA would still be permitted several days to return that information to the requesting CLEC as per the business rules. In addition, as mentioned above, the Department will soon investigate precisely how long VZ-MA's personnel require to obtain information from LFACS (though, of course, to perform a manual loop qualification, VZ-MA's technicians perform steps beyond checking LFACS).⁴⁶ We further note that there would be no practical distinction in cost to a CLEC in making this request

⁴⁵ See Appdx. 5. According to Verizon's proposal, the CLEC would first attempt to pre-qualify the loop through the database. If the request is returned as "not qualified" because the information is not contained in the database, the CLEC could then request VZ-MA to create loop qualification information for a particular loop through the so-called "Pre-Order xDSL Loop Qualification - Extended" transaction. VZ-MA would return an electronic response to the CLEC with the loop length or indicate the reasons why the loop is not qualified.

⁴⁶ See VZ-MA Application, Appdx. E (VZ-MA Direct Testimony of Meacham, D.T.E. 98-57-Phase III, at 18-24, Filed 6/15/00).

through one transaction and not the other. Specifically, the Department has denied VZ-MA's proposed loop qualification charges, determining that in a fiber-fed network, CLECs would have no need to qualify loops.⁴⁷ Since we disallowed such charges, if a CLEC submits an LSR simply to request a manual loop qualification, it only follows that VZ-MA not be permitted to assess a service order charge for this request. If any further clarification on this point is required by the Department, we will do so in our continuing Phase III proceeding. In sum, we conclude that not only is there no time differential between a CLEC requesting a manual loop qualification in the ordering phase as opposed to making the request in the pre-ordering stage, there is also no cost differential. In Massachusetts, we perceive no negative consequences to a CLEC for placing its request for a manual loop qualification through an LSR. Based upon our record, it appears that the difference is in name only and, thus, we would urge the FCC to accord little, if any, weight to CLEC criticism on this point, should the FCC choose not to consider Verizon's recently proposed pre-order transaction mechanism.

Finally, in its supplemental application, VZ-MA indicates that CLECs, and VADI, currently have the ability to perform bulk loop qualifications, an added functionality that the Department expects will speed broadband deployment in our state.⁴⁸ Moreover, VZ-MA states

⁴⁷ See D.T.E. Evaluation, Appdx. E, at 103-106. See also VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 34-37 (Phase III-A Reconsideration Order) (upholding our earlier ruling denying VZ-MA's proposed loop qualification and conditioning charges).

⁴⁸ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 33 (Lacouture/Ruesterholz Supp. Decl.).

that it will soon increase the information available to CLECs and VADI for bulk qualifications by adding loop lengths that correspond to the working telephone numbers.⁴⁹ In our comments last year, we noted that one carrier argued that the information contained in VZ-MA's loop qualification database was inaccurate.⁵⁰ As mentioned above, in response to such claims, the Department directed VZ-MA and the carrier, DBC, to exchange relevant documentation in an attempt to reconcile the data. The results of the discussions and analyses of the two carriers, along with the Department's findings, are summarized in the Simon affidavit and in VZ-MA's supplemental application.⁵¹

B. Pricing

1. Standard of Review

In its Bell Atlantic New York Order,⁵² the FCC stated that:

In reviewing state pricing decisions in the context of section 271 applications, we will not reject an application because isolated factual findings by a state commission might be different from what we might have found if we were arbitrating the matter under section 252(e)(5). Rather, we will reject the application only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result

⁴⁹ Id.

⁵⁰ D.T.E. Evaluation at 292-293, 295-296.

⁵¹ See Appdx. 1 at ¶¶ 5-11; VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 41-44, Attach. M (Lacouture/Ruesterholz Supp. Decl.).

⁵² Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, FCC 99-404 (1999) ("Bell Atlantic New York Order").

falls outside the range that the reasonable application of TELRIC principles would produce.⁵³

More recently in its SWBT Kansas and Oklahoma Order, the FCC noted that, in determining whether UNE rates are within the range that reasonable application of TELRIC principles would produce, it may, in appropriate circumstances, consider rates from other states that it has already found to be based on TELRIC principles.⁵⁴ The FCC cited the following factors in deciding whether to consider a comparison of rates from other states: (a) whether the states are adjoining; (b) whether the states have similar, if not identical, rate structures; and (c) whether the FCC has already found rates in one of the states to be reasonable.⁵⁵ In that Order, the FCC also stated that

[I]ncumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin. In order to comply with checklist item 2 of section 271, incumbent LECs must provide UNEs at rates and terms that are just, reasonable, and nondiscriminatory, and that allow the incumbent LEC to recover a reasonable profit.⁵⁶

2. Discussion and Conclusions

In its Evaluation, the Department stated that “VZ-MA is in compliance with the terms of checklist item 2 in terms of pricing for network elements. VZ-MA’s network element prices in

⁵³ Id. at ¶ 244.

⁵⁴ SWBT Kansas and Oklahoma Order at ¶¶ 81-82.

⁵⁵ Id. at ¶ 82.

⁵⁶ Id. at ¶ 65.

Massachusetts unquestionably are based on the TELRIC of providing those elements.”⁵⁷ For all of the reasons stated in our Evaluation and in our Reply Comments, many of which were echoed by the FCC in its SWBT Kansas and Oklahoma Order, we reaffirm our conclusion that VZ-MA’s UNE rates are in compliance with checklist requirements.

In terms of pricing of network elements, VZ-MA supplemented its application by providing “new” information related to a change in prices for local switching, which was approved by the Department on October 13, 2000. In our Evaluation, the Department found that the new switching rates “are virtually identical to those same costs for New York, which the FCC already found to be reasonable and in compliance with TELRIC in the Bell Atlantic New York Order.”⁵⁸

The timing of the change in switching prices was questioned on what has been labeled “procedural grounds” by a number of parties, but VZ-MA correctly notes in its supplemental application that “procedural concerns about [VZ-MA’s] new switching rates are now moot because the revised rates are in place at the time of this application’s filing.”⁵⁹ Also, the question about whether it is appropriate for the FCC to rely on the previously-determined reasonableness of one state’s UNE rates when evaluating another state’s rates has now been addressed by the FCC in its most recent § 271 Order. As noted above, the FCC stated that it

⁵⁷ D.T.E. Evaluation at 213.

⁵⁸ Id. at 223.

⁵⁹ VZ-MA Supplemental Brief at 38 (footnote omitted).

may, in appropriate circumstances, consider rates from other states that it has already found to be based on TELRIC principles.⁶⁰ In its consideration of whether VZ-MA's new switching rates are reasonable, the FCC should take into account the following facts: (a) Massachusetts and New York are adjoining states; (b) in Massachusetts and New York, Verizon has similar rate structures for local switching; and (c) the FCC already has found that Verizon's local switching rates in New York are reasonable. These facts lead to the inescapable conclusion that VZ-MA's rates for local switching are reasonable and are in within a range that application of TELRIC principles would produce.

Another issue that has now been definitively addressed by the FCC is whether it is appropriate to judge the reasonableness of UNE rates by comparing them to expected retail revenues in order to ensure that there is a sufficient margin between wholesale costs and retail revenues to make entry profitable for certain carriers. In our Evaluation, the Department did not concede that there is a problem with margins in Massachusetts, but stated that "such an analysis is not relevant to determining compliance with the checklist."⁶¹ The Department's conclusion that a margin analysis is irrelevant to checklist compliance was assailed by several commenters, including AT&T Communications of New England, Inc.; WorldCom Inc., and the Massachusetts Attorney General. The FCC, however, in its SWBT Kansas and Oklahoma Order found that:

⁶⁰ SWBT Kansas and Oklahoma Order at ¶¶ 81-82.

⁶¹ D.T.E. Evaluation at 220 (footnote omitted); see also, D.T.E. Reply Comments at 47 n.149.

Such an argument [i.e., that UNE rates are so high that no CLEC could afford to use the UNE-platform to offer local residential service on a statewide basis] is irrelevant. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market. Were we to focus on profitability, we would have to consider the level of a state's retail rates, something which is within the state's jurisdictional authority, not the Commission's.⁶²

Given this precedent, there is simply no need to discuss margins in the instant proceeding any further.

Finally, as VZ-MA noted, the Department recently opened an investigation into VZ-MA's rates for UNEs and its wholesale discount for resale.⁶³ This investigation is the scheduled five-year review of VZ-MA's UNE and resale rates.⁶⁴ The Department intends to have new rates in effect by December of this year.

III. CHECKLIST ITEM 4 - UNBUNDLED LOCAL LOOPS

As a general matter, in evaluating a BOC's overall performance, the FCC will look for "patterns of systematic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete."⁶⁵ Specifically, the FCC will examine a BOC's performance in the following areas as they apply to different types of unbundled local loops: percent firm order commitments ("FOCs") returned within "x"

⁶² SWBT Kansas and Oklahoma Order at ¶ 92 (footnote omitted).

⁶³ See VZ-MA Supplemental Application, Appdx. B, Tab 4D (D.T.E. Order Opening Investigation, D.T.E. 01-20, Issued January 12, 2001).

⁶⁴ See D.T.E. Reply Comments at 50-51.

⁶⁵ SWBT Kansas and Oklahoma Order at ¶ 179.

hours,⁶⁶ average installation interval, missed installation due dates, percentage of trouble reports within 30 days of installation, mean time to restore, trouble report rate, and repeat trouble report rate.⁶⁷

A. xDSL-Capable Loops

1. Provisioning

a. Standard of Review

In its recently released SWBT Kansas and Oklahoma Order, the FCC noted that it continues to rely on the performance metrics it identified in the Bell Atlantic New York Order and the SWBT Texas Order (i.e., average installation intervals and missed installation due dates) for the appropriate standard in reviewing a BOC's xDSL provisioning performance.⁶⁸

b. Discussion and Conclusions

i. Average Installation Intervals

VZ-MA supplemented its application by providing additional information for the following two related performance measurements: average completion interval (PR-2-01 and

⁶⁶ See D.T.E. Evaluation at 295 n. 936, 297 for a discussion of VZ-MA's performance captured by this metric, OR-1-04.

⁶⁷ SWBT Kansas and Oklahoma Order at ¶ 181 n.516.

⁶⁸ Id. at ¶ 185. See D.T.E. Evaluation at 256, 260-261 for the definitions of these two metrics.

PR-2-02) and percentage of xDSL orders (1-5 lines) completed within six days (PR-3-10). Properly corrected by VZ-MA (and verified by PwC) to account for weekends, holidays and orders received after 5:00 p.m., VZ-MA's performance data from September through November 2000 demonstrate that VZ-MA provisions xDSL loops to CLECs in approximately the same amount of time that it provisions xDSL loops for its own retail service.⁶⁹ As noted by the FCC in its SWBT Kansas and Oklahoma Order, SWBT missed the applicable benchmark (five days to provision a stand-alone xDSL loop not requiring conditioning) in both states by more than a day. Indeed, SWBT missed the benchmark in Kansas by almost two days, or 25 percent longer than the benchmark provides.⁷⁰ Although SWBT was not meeting the agreed-upon level of service, as reported by the relevant performance measurement, the FCC stated that it was persuaded by SWBT's apparent improvement as the volumes of orders increased.⁷¹ VZ-MA's installation interval performance for CLECs has also improved, decreasing more than two days from September to November 2000.

As we noted in our comments filed last year, the performance measurements reported

⁶⁹ From September through November 2000, the average completed interval for CLECs requiring a dispatch (PR-2-02) was: 9.7, 7.75, and 7.33 days (for a weighted average of 8.32 days). During the same period, the average completed interval for VZ-MA was: 11.44, 7.63, and 5.17 days (for a weighted average of 8.48 days). According to VZ-MA, its September results were affected by the work stoppage, an assertion we find persuasive based upon VZ-MA's performance in subsequent months. VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 74-75, Attach. W (Lacouture/Ruesterholz Supp. Decl.).

⁷⁰ SWBT Kansas and Oklahoma Order at ¶ 187.

⁷¹ Id.

by VZ-MA are developed and refined in a collaborative manner, under the auspices of the NYPSC, and it should surprise no one that some factors outside of VZ-MA's control that might skew VZ-MA's performance would not be apparent when those metrics were first proposed and approved.⁷² In recognition of several flaws in one metric (PR-3-10), which became apparent after VZ-MA began reporting it, carriers in the New York collaborative have agreed to calculate this metric in the following revised manner: (a) exclude orders where the CLEC failed to pre-qualify the loop; (b) exclude orders that should have been "X-coded" (*i.e.*, the CLEC should have indicated on the order that it was requesting a longer interval than the standard offered interval); (c) exclude loops that are missed due to facility delays; and (d) set a benchmark of 95 percent rather than using second residential POTS lines as the retail analogue.⁷³ We note that these modifications corroborate our findings set forth in our earlier comments (*e.g.*, concluding that VZ-MA's performance was affected by such matters as CLECs requesting longer due dates but failing to code their orders with an "X," CLECs requesting manual loop qualifications whereas VZ-MA's retail representatives did not).⁷⁴

Although VZ-MA was required to begin reporting the modified metric in January 2001 on a going-forward basis, for purposes of its supplemental application, it had Lexecon recalculate its PR-3-10 performance in Massachusetts during September through November

⁷² D.T.E. Reply Comments at 87-88.

⁷³ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 77-80 (Lacouture/Ruesterholz Supp. Decl.).

⁷⁴ D.T.E. Evaluation at 299-300, 305-306; D.T.E. Reply Comments at 75.

2000 using the new business rules.⁷⁵ In addition and at the request of VZ-MA, Lexecon removed orders that were affected by the strike and compared the results for CLECs to the results for VZ-MA's retail ADSL orders.⁷⁶ Using these exclusions and modifications, Lexecon determined that, averaged over three months, VZ-MA's performance for CLECs was superior than its performance for its retail ADSL service (83.50 percent to 75.74 percent).⁷⁷ Finally, Lexecon found that the overwhelming majority of CLEC orders not completed within six days were completed within seven days (i.e., approximately 95 percent).⁷⁸

Lexecon's study also establishes a conclusion emphasized by the Department in our

⁷⁵ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 81 (Lacouture/Ruesterholz Supp. Decl.). As mentioned earlier, like PwC, Lexecon corrected this metric to account for VZ-MA's inadvertent calculation of orders placed on weekends and holidays, and orders received after 5:00 p.m., in its September through November 2000 data. See VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶ 12 (Gertner/Bamberger Supp. Decl.).

⁷⁶ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 81 (Lacouture/Ruesterholz Supp. Decl.). According to Lexecon, it treats an order as being "strike affected" if the order was initiated between August 6 and August 22, 2000 or if VZ-MA promised completion between August 6 and August 25, 2000, or if the missed appointment code equals "CC" (i.e., "Company Crisis"). VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶ 13 n.6 (Gertner/Bamberger Supp. Decl.). At the request of the Department, VZ-MA provided Lexecon's analysis of PR-3-10 that includes the strike affected data. See Appdx. 2.

⁷⁷ During the months of September through November 2000, the percent of 1-5 xDSL lines that VZ-MA provisioned for CLECs in six days (PR-3-10) was: 89.12%; 80.00%; and 82.24%. During the same period, VZ-MA's performance for its retail ADSL service was: 69.71%; 75.69%; and 89.91%. VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶¶ 11-16, Attach. C (Gertner/Bamberger Supp. Decl.).

⁷⁸ Id. at ¶ 17.

filings last year: VZ-MA provisions xDSL loops to CLECs when CLECs request them.⁷⁹

Specifically, Lexecon determined that most CLECs request due dates beyond the standard six-day offer. In fact, during the three-month period reviewed by Lexecon, more than 80 percent of the orders requested due dates in excess of six days (and, thus, under the revised business rules, would be excluded from the metric).⁸⁰ Lexecon analyzed VZ-MA's responsiveness in assigning the CLEC-requested due date and determined that when CLECs requested a provisioning interval greater than six days (which, as noted above, appears to be most of the time), VZ-MA gave CLECs their requested due dates over 99 percent of the time.⁸¹

ii. Percent Missed Installation Due Dates

In our earlier Evaluation, we noted that although VZ-MA missed a higher percentage of installation appointments for CLECs than for its retail service, its performance was improving and the difference (approximately 1.5 percent in the more recent months) did not deny an efficient competitor a meaningful opportunity to compete.⁸² VZ-MA's recent data support this

⁷⁹ D.T.E. Evaluation at 306 ("When VZ-MA obliges a CLEC's request for a provisioning interval of greater than six days, it shows up in the [pre-January 2001] performance measures as violating the standard, but this does not equal discrimination. Rather, VZ-MA is performing as a wholesale provider should. It gives CLEC customers the service they request."); D.T.E. Reply Comments at 74.

⁸⁰ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶ 18, Attach. B (Gertner/Bamberger Supp. Decl.).

⁸¹ Id. We note that VZ-MA reported this level of service, i.e., approximately 99 percent, in its § 271 application filed last year. See D.T.E. Evaluation at 306.

⁸² D.T.E. Evaluation at 307.

conclusion: the difference has decreased from 1.5 percent from our earlier Evaluation to 0.5 percent in October, and in November, VZ-MA missed approximately 2 percent more appointments for its own retail customers than for CLEC customers (PR-4-04). In addition, according to VZ-MA and verified by PwC, the September data not affected by the strike also show parity.⁸³

iii. Provisioning Quality

Validating several of the reporting difficulties cited by VZ-MA in its first application, and which we discussed in our Evaluation, the NYPSC approved the following modifications to PR-6-01, percent installation troubles reported within 30 days (the so-called “I-Code” rate): exclude trouble reports filed by CLECs that do not participate in cooperative testing from the numerator, and use as the retail comparison the I-Code rate on VZ-MA’s retail POTS lines instead of xDSL lines.⁸⁴ VZ-MA had Lexecon recalculate VZ-MA’s data for this metric using the approved exclusions for the months of September through November 2000. In VZ-MA’s earlier application, the I-Code rate for CLECs ranged from over 6 percent to almost 8.5

⁸³ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 72, Attachs. T, U (Lacouture/Ruesterholz Supp. Decl.); VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 76-84 (Sapienza/Mulcahy Supp. Decl.).

⁸⁴ D.T.E. Evaluation at 311, 313; D.T.E. Reply Comments at 79-84; VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 92-93 (Lacouture/Ruesterholz Supp. Decl.). While there may be some concern that certain CLEC orders are removed only from the numerator, we would note that these revisions were made in a collaborative setting and the carriers agreed to these stated revisions.

percent, whereas VZ-MA's I-Code rate for its retail service hovered around 3 percent.⁸⁵ In its supplemental application, Lexecon determined that VZ-MA's I-Code rate for its retail POTS service was around 3 percent. However, under the revised business rules, the I-Code rate for CLECs decreased to an average of 4.81 percent over a three-month period.⁸⁶

In the SWBT Kansas and Oklahoma Order, the FCC noted with approval that SWBT generally met its six percent benchmark and that its performance is steadily improving.⁸⁷ Similarly, we find that VZ-MA's performance continues to improve⁸⁸ and that the information contained in VZ-MA's supplemental application only affirms our earlier conclusion that VZ-MA provides CLECs an installation quality sufficient to afford them a meaningful opportunity to compete. We agree with VZ-MA that there remains a question whether this metric, PR-6-01, accurately captures VZ-MA's ability to provision a quality xDSL loop, even after the revisions to the metric.⁸⁹ Indeed, VZ-MA's review of its maintenance logs together with the high percentage of trouble reports closed without any trouble found show that at least some

⁸⁵ D.T.E. Evaluation at 311 n.972.

⁸⁶ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 3, at ¶¶ 4-6, Attach. A (Gertner/Bamberger Supp. Decl.).

⁸⁷ SWBT Kansas and Oklahoma Order at ¶ 191.

⁸⁸ In the months covered by our Evaluation, April through July 2000, CLECs made the following percentage of trouble reports within 30 days of a loop's provisioning: 6.58%, 7.94%, 6.20%, and 8.46%.

⁸⁹ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 90, 96-100 (Lacouture/Ruesterholz Supp. Decl.).

CLECs are unable or unwilling to perform basic acceptance testing.⁹⁰

In an effort to decrease the CLECs' I-Code rates that are attributable to inadequate acceptance testing, since it filed its § 271 application last September, VZ-MA has taken the following steps to assist CLECs: (a) on-site visits to CLEC testing centers by VZ-MA's managers to view CLEC testing processes and recommend appropriate improvements; (b) provide detailed information about CLECs' I-Codes to enable the CLECs to evaluate and correct their acceptance testing weaknesses; (c) "sync testing" trials with CLECs to determine whether particular loops can support xDSL signals; (d) on-going effort to provide VZ-MA technicians with remote access to a CLEC's acceptance testing equipment via a voice response unit; and (e) tagging xDSL loops at the network interface device and the cross-connect box with a special services marker.⁹¹ The Department finds that these initiatives are consistent with the high level of cooperation evidenced by VZ-MA in our § 271 proceeding and only reinforce VZ-MA's commitment to provide its competitors with excellent service.

2. Maintenance and Repair

a. Standard of Review

The performance measurements reviewed by the FCC to determine whether a BOC provides maintenance and repair of unbundled xDSL-capable loops in a manner that affords an efficient competitor a meaningful opportunity to compete continue to be those identified in the

⁹⁰ Id. at ¶¶ 97-100, 105, Attachs. Y, BB.

⁹¹ Id. at ¶¶ 106-110.

FCC's Bell Atlantic New York Order and SWBT Texas Order, and include the mean time to repair ("MTTR"), the overall trouble report rate,⁹² and the repeat trouble report rate.⁹³

b. Discussion and Conclusions

As we noted in our Evaluation and Reply Comments, factors outside of VZ-MA's control, including CLECs rejecting offered weekend appointments, negatively affect several of VZ-MA's maintenance and repair metrics, including the MTTR metric (MR-4-01).⁹⁴ In our Evaluation, we reported that VZ-MA's data show that it requires more time to repair CLEC xDSL-capable loops than it does to repair its own retail loops.⁹⁵ However, VZ-MA argued persuasively in our proceeding that CLEC behavior skewed certain performance measurements

⁹² In its supplemental application, VZ-MA reports that the weighted average total trouble report rate for CLECs from September through November 2000, as verified by PwC, is approximately three percent and that this rate for VZ-MA's retail xDSL service during the same period of time was approximately two percent. *Id.* at ¶¶ 87-88, Attachs. C, X. We conclude that this slight disparity is competitively insignificant and, absent some CLEC evidence of competitive harm, we would urge the FCC to conclude that this level of performance by VZ-MA does not deny an efficient competitor a meaningful opportunity to compete.

⁹³ SWBT Kansas and Oklahoma Order at ¶ 193. During the months covered by our initial Evaluation, April through July 2000, CLECs filed fewer repeat trouble reports for xDSL-capable loops than did VZ-MA's retail service. *See* D.T.E. Evaluation at 314. VZ-MA's more current data (September through November 2000) demonstrate that this level of service continues to be true; thus, we find that it is unnecessary to comment further on this metric (MR-5-01).

⁹⁴ D.T.E. Evaluation at 314-322; D.T.E. Reply Comments at 86-91; Letter from James Connelly, Chairman, D.T.E. to Chairman and Commissioners, Federal Communications Commission, CC Docket No. 00-176, at 2-3 (filed December 1, 2000).

⁹⁵ D.T.E. Evaluation at 314 n.982.

and we concluded that an evaluation of VZ-MA's true performance with respect to the maintenance and repair of CLEC xDSL-capable loops required more than simply looking at VZ-MA's numbers for MR-4-04, for example.⁹⁶ The totality of the evidence contained in our record convincingly established that VZ-MA maintains and repairs CLEC xDSL loops in substantially the same time and manner as it does for its retail customers.

Last year, VZ-MA presented evidence before the Department demonstrating that CLECs reject offered weekend repair appointments.⁹⁷ In its supplemental application, VZ-MA produces additional evidence, confirmed by PwC, that documents this CLEC practice.⁹⁸ According to VZ-MA, if it took into account CLEC-rejected weekend appointments (i.e., by appropriately reducing the time to close a trouble ticket), the difference between VZ-MA's performance for itself and its performance for CLECs for the MTTR metric from September through November 2000 would have decreased by almost 50 percent.⁹⁹ These data demonstrate that CLECs reject approximately 50 percent of offered weekend appointments,

⁹⁶ Id. at 319-322; D.T.E. Reply Comments at 86-91.

⁹⁷ D.T.E. Evaluation at 315; D.T.E. Reply Comments at 89.

⁹⁸ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶¶ 121-122, Attachs. GG, HH (Lacouture/Ruesterholz Supp. Decl.); VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 108-119 (Sapienza/Mulcahy Supp. Decl.).

⁹⁹ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 122, Attach. HH (Lacouture/Ruesterholz Supp. Decl.).

adding approximately 4.35 hours to VZ-MA's average repair interval for CLECs.¹⁰⁰ VZ-MA argues that there is some justification for stopping the clock, as is done by SWBT for Texas, when a CLEC rejects a weekend appointment.¹⁰¹ We support such a modification but, in the interim, would urge the FCC to afford substantial weight to the findings of this verified study about the effect of CLEC behavior on the MTTR metric. Finally, absent any modification to this metric, VZ-MA's data demonstrate a solid trend of improvement in VZ-MA's performance since its last application -- a trend that affirms our earlier conclusions.

B. Line Sharing

1. Standard of Review

In its SWBT Kansas and Oklahoma Order, the FCC noted that it intends to review the following performance measurements in its evaluation of a BOC's line sharing performance: missed installation due dates, average installation intervals, trouble reports within 30 days of installation, MTTR, trouble report rates, and repeat trouble report rates.¹⁰² In addition, the BOC should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing, and that it provides nondiscriminatory access to the OSS functions associated with line sharing.¹⁰³ Finally, if a BOC relies upon commercial data from

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² SWBT Kansas and Oklahoma Order at ¶ 215.

¹⁰³ See D.T.E. Supplemental Evaluation at Section II.A, above, for a discussion about VZ-
(continued...)

another state, it should provide evidence that the OSS and provisioning processes are identical.¹⁰⁴

In addition to providing a detailed description of what OSS and processes VADI uses to order line-shared loops capable of supporting xDSL,¹⁰⁵ VZ-MA's supplemental application contains an independent evaluation verifying the information contained in the Dowell supplemental declaration, and documenting the comparability of the OSS and processes used to order line-shared loops in both Massachusetts and New York.¹⁰⁶ As we noted above, although we have not tested the validity of the findings contained in Sapienza/Mulcahy supplemental declaration, we can find nothing in our record that would contradict the statements made either in the PwC (i.e., Sapienza/Mulcahy) supplemental declaration or the Dowell supplemental declaration. Thus, we recommend that the FCC afford substantial weight to VZ-MA's assertion that it offers nondiscriminatory service to its OSS functions necessary to order and provide line sharing, and that such systems and processes in Massachusetts are comparable to, indeed the very same as, those found in New York. However, if a commenter produces sufficient evidence tending, in the FCC's view, to refute PwC's findings, the Department

¹⁰³(...continued)

MA's nondiscriminatory access to its OSS.

¹⁰⁴ SWBT Kansas and Oklahoma Order at ¶ 215.

¹⁰⁵ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 4 (Dowell Supp. Decl.).

¹⁰⁶ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 26-73 (Sapienza/Mulcahy Supp. Decl.).

would, at the FCC's request, endeavor to reconcile any discrepancy in a timely manner.

2. Discussion and Conclusions

Although not required by the NYPSC to begin reporting disaggregated line sharing data until 2001, VZ-MA reviewed its xDSL data from September through November 2000 and included line sharing-specific performance measurements in its supplemental application.¹⁰⁷ Because of the small number of line sharing orders in Massachusetts, VZ-MA also included these data for New York. According to PwC, it replicated 99 line sharing measurements using VZ-MA's October 2000 data, the results of which are included in the Sapienza/Mulcahy supplemental declaration.¹⁰⁸

a. Provisioning

VZ-MA's line sharing data for the month of November, the first month in which VADI was operational, show that VZ-MA provisions line-shared loops, not requiring a dispatch, for CLECs faster than it does for VADI (6.40 days to 7.53 days).¹⁰⁹ While there is no basis for

¹⁰⁷ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 145, Attach. JJ (Lacouture/Ruesterholz Supp. Decl.).

¹⁰⁸ VZ-MA Supplemental Application, Appdx. A, Vol. 2, Tab 2, at ¶¶ 19-25, Table 1 (Sapienza/Mulcahy Supp. Decl.) (finding that for the majority of the measurements, PwC's numbers matched VZ-MA's exactly and that for the remaining measurements, the number of observations was identical and the reported performance was within one percent).

¹⁰⁹ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 159, Attach. NN (Lacouture/Ruesterholz Supp. Decl.).

comparison during the months of September or October, VZ-MA's data for this metric, PR-2-01, demonstrate that it required slightly more than six days to provision line-shared loops to CLECs (6.47 days in September; 6.29 days in October).¹¹⁰

In addition, although VADI did not submit any I-Code reports in the month of November (i.e., reports captured in the PR-6-01 metric), the CLEC I-Code rate was only 1 percent, and, in the two previous months, CLECs did not file any trouble reports within 30 days of installation.¹¹¹ Finally, in November, VZ-MA did not miss any installation appointments for CLECs when a dispatch was not required (in the same month, it missed one-tenth of one percent of its installation appointments for VADI). This level of performance for CLECs is also true for September and October. However, in its supplemental filing, VZ-MA states that this metric, PR-4-05, may not have included those instances where VZ-MA's technician performed the central office work typically required for xDSL loops but failed to confirm that a splitter, a piece of equipment that is unnecessary for an unbundled xDSL loop,

¹¹⁰ Id. As noted by VZ-MA in its supplemental application, the Department directed VZ-MA to reduce the provisioning interval for line-shared loops from six business days to five. VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 164, citing Phase III Order (Lacouture/Ruesterholz Supp. Decl.). The Department expects VZ-MA to comply with this shorter interval, which went into effect on November 27, 2000. We also would point out that this interval will be reduced further to four business days in a few months. Phase III Order at 51-52.

¹¹¹ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 167, Attach. SS (Lacouture/Ruesterholz Supp. Decl.).

was functioning on the line.¹¹² VZ-MA indicates that it has since remedied this situation, but that its data from September through November may have been affected.

Since we cannot conclusively determine whether these reported data were unintentionally skewed in VZ-MA's favor, we will not consider this measurement as evidence of parity in VZ-MA's line sharing performance. However, based on VZ-MA's other reported provisioning metrics (e.g., average interval completed, percent completed within six days, installation quality), as replicated by PwC, we conclude that reliance on VZ-MA's missed installation appointment performance is unnecessary to find that VZ-MA is provisioning line-shared loops in a nondiscriminatory manner.¹¹³

b. Maintenance and Repair

According to VZ-MA's data, the total trouble report rate for VADI was 0.09 percent in November, and 1.44 percent for CLECs (a weighted average over a three-month period).¹¹⁴ Although VZ-MA's data show a slight lack of parity, we note that VZ-MA's performance for CLECs is far superior than that provided by SWBT to CLECs in Texas (i.e., 18.4 percent in September, and 11 percent in October).¹¹⁵ We agree with VZ-MA that this slight difference (1.35 percent) is de minimis and would not deny an efficient competitor a meaningful

¹¹² Id. at ¶ 156.

¹¹³ See id. at Attach. JJ.

¹¹⁴ Id. at ¶ 166, Attach. RR.

¹¹⁵ SWBT Kansas and Oklahoma Order at ¶ 218 n.630.

opportunity to compete in Massachusetts.

In November, the only month for which VZ-MA provided such data, VZ-MA repaired CLEC line-shared loops in just over three hours. In contrast, VZ-MA required over 25 hours to repair VADI's loops. While the number of observations is small, VZ-MA clearly met the performance standard (parity) for this metric (MR-4-03).¹¹⁶ Finally, VZ-MA reported the percentage of repeat trouble reports (MR-5-01) for both CLECs and VADI during November 2000. Again, VZ-MA's performance for CLECs exceeded its performance for VADI. CLECs did not submit any repeat trouble reports for the month of November whereas VADI filed repeat trouble reports for over 25 percent of its lines.¹¹⁷ As we found with VZ-MA's provisioning performance, we conclude that VZ-MA is meeting the maintenance and repair line sharing standards set forth in the FCC's § 271 Orders.

c. Operational Readiness

In its supplemental application, VZ-MA describes the steps it has taken both before and after implementation of the FCC's Line Sharing Order. VZ-MA's statements are consistent with the Department's record in both our § 271 and line sharing proceedings and demonstrate that VZ-MA is, and has been, operationally ready to process commercial volumes of line sharing orders. In addition, VZ-MA has taken several steps designed to improve its line sharing service, such as: (a) reinspecting its central offices to ensure its work was performed

¹¹⁶ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at Attach. JJ (Lacouture/Ruesterholz Supp. Decl.).

¹¹⁷ Id.

properly; (b) modifying its collocation inspection process to incorporate line sharing-specific collocation builds;¹¹⁸ (c) implementing flow-through capability for line sharing orders;¹¹⁹ (d) staffing at levels capable of processing over 60,000 line sharing and unbundled xDSL orders from New England and New York per month;¹²⁰ and (e) performing a “splitter signature test” to determine whether the splitter, which is necessary for line sharing, is functioning on the line.¹²¹

C. Line Splitting

Since the date that the Department filed Reply Comments last year, we directed VZ-MA to make line splitting¹²² available in Massachusetts, a decision we note is consistent with the FCC’s most recent ruling on line splitting.¹²³ In its SWBT Kansas and Oklahoma Order, the

¹¹⁸ VZ-MA Supplemental Application, Appdx. A, Vol. 1, Tab 1, at ¶ 138 (Lacouture/Ruesterholz Supp. Decl.).

¹¹⁹ Id. at ¶ 134.

¹²⁰ Id. at ¶ 141.

¹²¹ Id. at ¶ 157.

¹²² The FCC has defined “line splitting” as requiring an incumbent LEC to permit a CLEC that provides voice service using the UNE-platform (“UNE-P”) to either self-provision necessary equipment or partner with a competitive data carrier to provide xDSL service on the same line. Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 & 96-98, FCC 01-26, at ¶ 16 (rel. Jan. 19, 2001) (“Line Sharing Reconsideration Order”).

¹²³ VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 52 (Phase III-A Reconsideration Order); Line Sharing Reconsideration Order at ¶¶ 16-21.

FCC notes with approval SWBT's demonstration of a legal obligation to provide line splitting.¹²⁴ While the Department concluded that VZ-MA also has a legal obligation to make line splitting available, as clarified in both the Line Sharing Reconsideration Order and the FCC's most recent § 271 Order, we reached this decision only one month ago, prior to the issuance of both of these FCC Orders. Indeed, we reversed a ruling we made in September, in which we found that VZ-MA met its line splitting obligations and was not required to permit CLECs to line split in a UNE-P environment, a ruling that clearly would, if left standing, have been at odds with these later FCC rulings.¹²⁵

When the Department issued its Phase III-A Reconsideration Order, we expressly noted that the FCC's intentions in its SWBT Texas Order could be clearer with respect to line splitting.¹²⁶ Because of the ambiguity contained in that FCC Order coupled with our recent decision to reverse ourselves on the issue of line splitting and UNE-P, we recommend that the FCC not find that VZ-MA fails to meet its § 271 obligations with respect to line splitting. Indeed, on January 29, 2001, VZ-MA submitted to the Department a motion for clarification of our Phase III-A Reconsideration Order, requesting that the Department make clear that our line splitting ruling is "intended only to reflect FCC requirements regarding line splitting. [VZ-MA] will comply with the FCC's requirement as most recently clarified in its [Line Sharing

¹²⁴ SWBT Kansas and Oklahoma Order at ¶ 220.

¹²⁵ See D.T.E. Evaluation, Appdx. E at 39-41 (Phase III Order).

¹²⁶ VZ-MA Supplemental Application, Appdx. B, Tab 4C, at 52 (Phase III-A Reconsideration Order).

Reconsideration Order].”¹²⁷ We urge the FCC to take into account the recent nature of both its and the Department’s clarifying Orders on line splitting when reviewing VZ-MA’s compliance with its legal obligations.

¹²⁷ See Appdx. 6 at 5 (VZ-MA’s Motion for Clarification of the Phase III-A Reconsideration Order, Filed 1/29/01). This motion remains pending before the Department and is, thus, an open proceeding.