

September 5, 2000

D.T.E. 99-271

Investigation by the Department of Telecommunications and Energy upon its own motion pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Verizon New England Inc. d/b/a Verizon Massachusetts as part of its application to the Federal Communications Commission for entry into the in-region interLATA (long distance) telephone market.

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## I. INTRODUCTION AND PROCEDURAL HISTORY

Pursuant to the Department of Telecommunications and Energy's ("Department") Memorandum of March 28, 2000, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon")<sup>(1)</sup> filed a proposed Performance Assurance Plan ("PAP" or "the Plan") for Massachusetts. A PAP is a self-executing remedy plan to prevent so-called "backsliding" (i.e., serious degradation in the quality of wholesale service provided to competing carriers) by an incumbent local exchange carrier ("ILEC"), once the ILEC gains entry into the long distance market, pursuant to § 271 of the Telecommunications Act of 1996 ("Act"). Verizon's proposed PAP is based on the New York PAP adopted by the New York Public Service Commission ("NYPSC") and which the Federal Communications Commission ("FCC") found acceptable in ensuring that the local telephone service market remains open after Bell Atlantic New York ("BA-NY") received § 271 authorization.<sup>(2)</sup> Verizon proposes that the PAP take effect when Verizon enters the long distance market in Massachusetts (Verizon PAP at 5).

The New York PAP, created by Verizon New York Inc. ("Verizon-NY")<sup>(3)</sup>, is based on measurements, standards, and reporting requirements from the New York Carrier-to-Carrier Performance Guidelines ("Carrier-to-Carrier Performance Guidelines"). The New York PAP was adopted by the NYPSC in an order issued on November 3, 1999, and has been subsequently revised to take into consideration changes made to the Carrier-to-Carrier Performance Guidelines. In its December 22, 1999 Order approving Verizon-NY's § 271 application, the FCC found that the New York PAP was a comprehensive

plan containing key characteristics that will be effective in keeping the New York local market open to competition. Bell Atlantic New York Order at ¶ 433.

On January 14, 2000, the Department adopted the Carrier-to-Carrier Performance Guidelines (as amended on a going-forward basis) as the "set of metrics used by the Department for purposes of the Master Test Plan and for evaluating Bell Atlantic's compliance with the requirements contained in Section 271."<sup>(4)</sup> See January 14, 2000 DTE Letter Order on Final OSS Master Test Plan, Attach. A. On March 28, 2000, the Department issued a Memorandum directing Verizon -- and inviting other participants in D.T.E. 99-271 -- to file proposed comprehensive performance monitoring and enforcement plans. See March 28, 2000, Hearing Officers' Memorandum. Verizon, AT&T Communications of New England, Inc. ("AT&T"), and WorldCom Inc. ("WorldCom") filed proposed performance assurance

plans. Initial comments on the proposed plans were filed April 25, 2000.<sup>(5)</sup> Reply comments were filed May 23, 2000.<sup>(6)</sup>

On September 1, 2000, AT&T filed a Motion To Establish an Adjudicatory Process for the Purpose of Determining Appropriate Performance Metrics and Standards, as well as Adequate Penalties and Remedies for Their Violation ("AT&T Motion"). For the following reasons, the AT&T Motion is denied. First, the Carrier-to-Carrier Performance Guidelines and the PAP adopted in this Order are not replacements for the Consolidated Arbitrations performance standards and credits; therefore, there is no reason to establish an adjudicatory process in order to protect CLECs' due process, contract, and statutory rights, as AT&T contends (see AT&T Motion at 8). Verizon will continue to comply with the requirements of Phase 3 in the Consolidated Arbitrations. As will be discussed later in this Order, Verizon is required to pay CLECs whose interconnection agreements incorporate the performance standards and credits of the Department's Consolidated Arbitrations the higher of the Consolidated Arbitrations or the PAP credits. If AT&T or any other CLEC is concerned that participating in the PAP will undermine its due process, contract, and statutory rights, it can refuse to participate in the PAP and continue to receive its Consolidated Arbitrations credits only, even if those credits are lower than what it would have received under the PAP.

Second, AT&T has been aware that the Department was not using an adjudicatory process to develop a PAP since at least March 28, 2000, which is the date that the Department issued a Memorandum directing Verizon -- and inviting other participants in D.T.E. 99-271 -- to file proposed comprehensive performance monitoring and enforcement plans. In fact, as noted above, AT&T was one of the parties that filed a comprehensive performance monitoring and enforcement plan consistent with that directive. AT&T cannot legitimately object now -- over five months later and for the first time -- to a process in which AT&T has been an active and helpful participant.

## II. VERIZON'S PROPOSED PAP

In basic terms, Verizon's proposed Massachusetts PAP requires Verizon to meet a specified level of wholesale performance (as determined by performance metrics) or be subject to financial penalties (paid out in the form of bill credits to competing carriers). The proposed PAP has three major components: (1) the measures and standards used to evaluate performance; (2) the methodology used to determine penalties, including service segmentation, scoring method, and other key rules; and (3) financial liability (Verizon PAP at 1-23). These components are discussed in more detail below.

### A. Measures and Standards

As noted, the Department adopted the New York Carrier-to-Carrier Performance Guidelines for measuring Verizon's wholesale performance for purposes of its compliance with the requirements of § 271 (Verizon PAP at 2-3, 9). The Carrier-to-Carrier metrics include hundreds of individual data points for tracking and reporting performance (*id.* at 3). Verizon selected a subset of the Carrier-to-Carrier metrics for inclusion in the PAP; these are the same metrics that are included in the Verizon-NY PAP. Some metrics are based on analogous Verizon retail service standards to ensure parity and others, where no retail analog exists, are based on absolute standards (*id.*).

### B. Methodology

#### 1. Service Segmentation

Verizon's proposed PAP segments the metrics into three general groups, as was done in the New York plan: 1) Mode of Entry ("MOE"); 2) Critical Measures; and 3) Special Provisions (*id.*). Each group of measurements is intended to address a key aspect of Verizon wholesale performance (*id.*).

The MOE segment measures Verizon performance corresponding to the methods or modes competitive local exchange carriers ("CLECs") use to enter the local exchange market (*i.e.*, resale, unbundled network elements ("UNEs"), interconnection (trunks), and collocation) (*id.* at 9-10). The MOE measurements provide a mechanism to measure the overall level of Verizon service to the entire CLEC industry in the four MOE areas (*id.*). Bill credits generated in any one of these modes are allocated to competitors purchasing those types of services (*id.*).

The Critical Measures segment, a subset of the metrics included in the MOE segment, measures performance (on both a CLEC-specific and a CLEC-aggregate basis) for those 12 areas that are considered the most important in providing quality wholesale service (*id.* at 10). This component offers a mechanism so that carriers receive non-discriminatory service on an individual basis (*id.*).

The Special Provisions segment measures certain service quality items that are considered essential for a CLEC during the first year after Verizon gains entry into the interLATA market (e.g., flow-through, hot-cuts, local service request confirmations, and reject notices) (id.).

## 2. Statistical Tests and Scoring

The proposed Verizon PAP uses the statistical methodologies used in the New York PAP as one way to determine whether parity exists between Verizon's wholesale and retail performance. For measures where parity is the standard and a sufficient sample size exists, a modified statistic is used (id. at 4). Each of the measures within the MOE segment is graded with a 0, -1, or -2, based on the statistical analysis and the extent of the difference between the wholesale service level and the applicable standard (id. at 5).

While both the New York PAP and the proposed Massachusetts PAP use the same statistical tests, the scoring in New York of a "0, -1, -2" is based on the result of a statistical Z score<sup>(7)</sup>. In contrast, Verizon's Massachusetts Plan uses the Z score to determine the statistical validity of the differences in service levels. The scoring of a "0, -1, -2" is then based on the actual difference in service levels. When the difference between the wholesale and retail performance of a metric being evaluated is less than 5 percent, the performance score is -1. If the difference is greater than 5 percent, the performance score is -2. Because of the way the score will be utilized, Verizon's proposed PAP in Massachusetts does not require the offset of a -1 score in a specific month with improved performance (a "0" score) in a subsequent month (id. at 7).

The performance score for each metric is then weighted using the same weights as in the New York PAP (id. at 12). The weights were developed to reflect the importance of that metric in determining that the market is open to competition (id.). Critical Measures performance is scored against sliding scales based on the statistical score and the magnitude of the difference between wholesale service and the applicable standards (id. at 10). Special Provisions are scored against absolute standards of performance (id.).

### C. Change Control Assurance Plan

In New York, Verizon-NY is subject to a Change Control Assurance Plan ("CCAP") (id. at 4). The CCAP is designed to measure Bell Atlantic's performance in implementing revisions to its OSS interfaces and business rules that affect CLECs (id.). Because, according to Verizon, the change control process is common to CLECs operating in Massachusetts and New York, Verizon proposes to not provide duplicate payments for the same service quality failures to carriers that operate in both New York and Massachusetts (id.). However, for carriers that operate in Massachusetts but not New York, Verizon proposes to credit amounts that are equivalent to those paid under the New York CCAP for service below target levels (id.).

### D. Financial Liability

Each category of Verizon's proposed PAP (Mode of Entry, Critical Measures, and Special Provisions) has a Massachusetts-specific credit schedule (id. at 5). Similar to New York, Verizon's proposed PAP has a maximum dollar amount at risk. Verizon developed this amount by applying the New York cap of \$259 million and adjusting it downward to reflect the ratio of Massachusetts access lines to New York access lines (id. at 5-6). Verizon's proposed annual cap for Massachusetts is \$100 million<sup>(8)</sup> (id. at 6). The distribution of dollars-at-risk by category is as follows:

Dollars at Risk (in millions)

Mode of Entry

\$29

Doubling of MOE

\$29

Critical Measures

\$29

Special Provisions

Flow Through

\$3.8

Hot Cuts

\$9.2

Total

\$100

As the above table indicates, the penalties under the MOE category will be doubled if Verizon provides the maximum allowable unsatisfactory performance in all four MOE categories (id. at 9-10). Additionally, under Verizon's proposed PAP, a CLEC that is eligible for performance credits under the Department's Consolidated Arbitrations performance standards plan<sup>(9)</sup> would only receive the higher of the credits calculated under the two plans (id. at 8).<sup>(10)</sup>

#### E. Reporting, Timing of Credits

Under Verizon's proposed PAP, Verizon will report its performance on a monthly basis (id. at 5). Each month, Verizon will provide all CLECs operating in Massachusetts a seven-page report on its performance based on the PAP measures and will show those bill credits, if any, due to the CLECs (id. at 19-20). This report would be in addition to the aggregate and CLEC-specific comprehensive Carrier-to-Carrier metrics reports that Verizon currently provides to CLECs (id.).

Bill credits will appear on each CLEC's bill two months after the calendar quarter in which the unsatisfactory performance occurred (id.). This proposed quarterly payment of credits (based on the credit payment schedule used for the Consolidated Arbitrations performance payments) differs from the monthly credits schedule used in the New York PAP (id. at 7).<sup>(11)</sup>

#### 1. Waivers

Verizon proposes three separate conditions that would allow it to file with the Department petitions for waiver to modify monthly service quality results (id. at 21). The first condition involves the potential for "clustering" of data and the effect this clustering would have on the statistical models used in this Plan (id.). The second condition for



filing an exception would apply for unusual CLEC behavior (id.). Examples of unusual CLEC behavior include actions that cause excessive missed appointments, incorrect dispatch identification resulting in excessive multiple dispatch and repeat reports, inappropriate coding on orders, and delays in rescheduling appointments when Verizon missed an appointment (id.). The third condition for filing a waiver would apply to situations during periods of emergency, catastrophe, etc., that are beyond Verizon's control and that negatively affect Verizon's ability to satisfy those measures with absolute standards (id. at 22). The waiver process would not apply to those metrics where Verizon's wholesale performance is measured by a comparison to retail performance (*i.e.*, parity metrics) (id.). Verizon proposes that it would have to file a petition for waiver with the Department within 45 days from the end of the month in which the event occurred (id. at 22-23).

## 2. Audits

Verizon does not propose to have its calculation and reporting of the Carrier-to-Carrier metrics, a subset of which make up the PAP measures, verified by the Department or an independent auditor. Verizon states that KPMG has verified its metrics calculations and performance reporting as part of KPMG's test of Verizon's OSS (id. at 6, citing Attachment A to Department's Letter Order on Final OSS Master Test Plan at 2-3).

### F. Term of the Plan

As stated above, Verizon proposes that the PAP take effect on the first day of the month in which Verizon enters the interLATA market in Massachusetts (id. at 21). Verizon also proposes that the Department reevaluate the appropriateness of the PAP when Verizon eliminates its Section 272 affiliate.<sup>(12)</sup>

### G. Annual Review and Audit of the Plan

Verizon proposes that the Department and Verizon may review and audit the PAP each year to determine, based on current conditions, whether any modifications or additions should be made (id. at 8, 23). However, such a review and audit would not be mandatory, as it is under the New York PAP (id.).<sup>(13)</sup> All aspects of the Plan would be subject to review (id.). According to Verizon, the annual review process may be initiated no more than six months before the anniversary date of Verizon's entry into the long-distance market (id.).

### H. Wholesale Quality Assurance Program

Unlike the New York PAP, the Massachusetts PAP does not contain a Wholesale Quality Assurance Program ("WQAP") to certify data reliability, especially where items are coded manually (id. at 8). According to Verizon, the New York WQAP is a process that ensures that field organizations have in place a system to ensure data integrity (id.). According to Verizon, the same support centers that process New York orders for CLECs also process

Massachusetts orders, and, therefore, a separate WQAP for Massachusetts is not necessary (id.).

### III. POSITIONS OF THE COMMENTERS

#### A. Attorney General

The Attorney General recommends that the Department adopt a \$278 million cap (70.5 percent of Verizon's 1999 total net return) (AG Comments at 4). The Attorney General's recommendation is based on events in New York where, according to the Attorney General, the Verizon-NY cap was increased by the FCC by \$34 million annually (from \$269 million to \$303 million, or 41 percent of 1998 total net return) in response to Verizon-NY's OSS problems (id.).

In addition, the Attorney General proposes that the Department adopt a CCAP similar to the Verizon-NY CCAP to measure the ability of Verizon to implement and inform CLECs of software changes to Verizon's interface systems (id. at 6). The Attorney General also argues that the PAP should include a Quality Assurance Program to document and verify Verizon's data and should contain a mechanism to resolve CLEC disputes before bill credits for a given month are due (id. at 7). Finally, the Attorney General asserts that the Department should prevent Verizon from recovering any PAP-related lost revenue as an exogenous cost under Verizon's Massachusetts Price Cap Plan (id. at 8).

#### B. CLECS

##### 1. AT&T<sup>(14)</sup>

AT&T proposes that a Massachusetts PAP should include the most recent version of the New York Carrier-to-Carrier metrics (AT&T Proposal at 25-26). AT&T emphasizes that the metrics have changed since the Department's initial adoption of the Carrier-to-Carrier metrics and will continue to change (id.). AT&T also proposes that the PAP include the five OSS-related metrics contained in the FCC's Consent Decree Order (concerning Verizon-NY's lost or mishandled UNE orders in early 2000) as well as additional metrics proposed by WorldCom in New York and by AT&T in New Jersey (id., citing Attach. A; see In the Matter of New York Telephone Company (d/b/a Bell Atlantic-New York), FCC 00-92 (March 9, 2000), Consent Decree). In addition, AT&T contends that it is critical for the Massachusetts PAP to include the metrics proposed by AT&T in its December 20, 1999 comments on the Massachusetts OSS Master Test Plan in D.T.E. 99-271, as well as the hot-cut metrics proposed earlier in D.T.E. 99-271 (id. at 27-28).

AT&T contends that the only basis Verizon offers for its \$100 million cap is that it is proportionate to the \$269 million cap in New York based upon the number of access lines

(AT&T Reply Comments at 6). According to AT&T, if the Massachusetts cap is proportionately the same as the New York cap, then the amount is insufficient given the recent OSS performance problems in New York (id.). AT&T contends that if the Department does decide to adopt a cap, it should replace an absolute monetary cap with a procedural cap (id. at 20). Specifically, AT&T suggests that payments in excess of a monetary cap would trigger an administrative proceeding designed to try to resolve the service problem, rather than relieving Verizon of all further responsibility for the problem.

AT&T proposes, as "Tier I" payments for violations of individual performance metrics, monthly penalties payable to CLECs of \$2,500, \$5,000 or \$25,000, depending upon the extent of the violation (id. at 12). AT&T also proposes, as "Tier II" payments, additional penalties payable to the state treasury for poor performance to the entire CLEC industry, as measured by aggregate data (id. at 13).<sup>(15)</sup> In addition, AT&T maintains that the payment of bill credits instead of cash payments creates a "time divide" between the time of the poor performance and the time of the payment of penalties for that performance (id.).

With respect to Verizon's proposal establishing a confidence level of 95 percent, AT&T notes that the proposal would greatly increase the possibility that statistical tests will conclude no discriminatory treatment has occurred when in fact it may have occurred (id. at 26). The weighting and averaging of performance scores, AT&T argues, allows Verizon to avoid paying a bill credit even when it scores out of parity at the 95 percent confidence level for certain performance measures (id. at 27). AT&T also argues that Verizon has "arbitrarily" reduced certain benchmark standards for the Massachusetts PAP from performance benchmark standards in the Carrier-to-Carrier guidelines (id. at 30).

## 2. WorldCom

WorldCom argues that the Department should include in the Massachusetts PAP, with several modifications and additions, all of the Carrier-to-Carrier metrics (WorldCom Proposal at 1-2). As an alternative, WorldCom recommends that the Department adopt a Simplified Measurement of Performance and Liability ("SiMPL") plan that it has introduced in California to respond to regulators' concerns about the complexity of the Z score statistical method (id. at 29). According to WorldCom, the SiMPL plan establishes self-effectuating cash payments due upon the detection of apparent discrimination (id.). WorldCom states that there are two types of remedies: (1) remedies for less severe levels of discrimination, resulting in per occurrence penalties payable to the affected CLEC; and (2) remedies for more prolonged, severe, or systematic discrimination, resulting in the payment of additional per measure penalties to a state fund (id.).

WorldCom states that, unlike Verizon's proposed PAP, which establishes specific benchmark values for each measure, its SiMPL plan uses historical data to set a parity

benchmark (id. at 29). WorldCom contends that such an approach has the advantage of creating a firm expectation in advance of each month's performance, which allows Verizon to plan in order to satisfy that standard and allows CLECs to provide reliable answers to customer questions (id. at 30).

In critiquing Verizon's proposed PAP, WorldCom argues that the PAP suffers from two deficiencies: (1) the PAP improperly limits and distorts remedy calculations through a flawed and overly complex scoring system; and (2) the PAP and CCAP contain maximum remedy amounts that provide inadequate incentives to prevent discrimination (WorldCom Reply Comments at 3). WorldCom contends that the PAP lacks remedies for all but the "critical" individual measures (id.). In addition, WorldCom asserts that the elaborate scoring mechanism of the MOE provision permits Verizon to average out deficient performance on most metrics with adequate performance on others, even if unsatisfactory performance is severe or chronic (id. at 4). WorldCom argues that, like in New York, the Massachusetts PAP remedies should be in addition to contract remedies available to individual CLECs under the Consolidated Arbitrations performance standards (id. at 8).

WorldCom also maintains that the proposed CCAP for Massachusetts is deficient compared to the CCAP adopted in New York (id. at 8). According to WorldCom, Verizon is trying to curtail the CCAP's deterrent effect on discrimination by having payments made from the New York CCAP fund (id.). In arguing for a Massachusetts-specific fund, WorldCom notes that if the change control process is the same in Massachusetts and New York, a single incident of poor performance can cause even more harm to a CLEC by undermining its business in both states (id.). Finally, concerning the WQAP, WorldCom argues that if the Department relies on the New York WQAP, then the Department should first require KPMG to confirm that the New York WQAP will in fact ensure that Verizon properly reports service quality data for all domains (id. at 9).

### 3. ASCENT

ASCENT claims that if the annual cap is \$360 million, the quarterly cap should be greater than \$90 million since it is unlikely that Verizon will reach the quarterly caps every quarter (ASCENT Reply Comments at 3). In addition, ASCENT argues that CLECs should have the option of receiving cash payments rather than bill credits and that payments should be made more quickly than proposed under the Plan (id. at 4). ASCENT also contends that the Plan should include a measure for DSL provisioning and line-sharing (id.). Finally, ASCENT supports the use of a third-party audit of Verizon's performance data (id. at 5).

### 4. Covad/Rhythms

Covad/Rhythms argues that the Massachusetts PAP lacks metrics and remedies for inferior wholesale DSL services, including a measure for loop orders that drop out of Verizon's OSS because of facilities problems (Covad/Rhythms Reply Comments at 1). In

addition, Covad/Rhythms claims that the Department should develop specific intervals for resolving "facilities issues" and that the PAP should measure such things (id. at 1-2).

#### 5. Nextlink

Nextlink argues that the proposed \$100 million cap is insignificant when compared to the financial gain Verizon will realize once it enters the long-distance market in Massachusetts (Nextlink Comments at 5). Nextlink states that the use of billing credits, instead of cash payments, provides little incentive for Verizon to refrain from discriminatory behavior towards CLECs and that once CLECs have received discriminatory treatment, their credibility with customers cannot be easily restored (id. at 6). In addition, Nextlink contends that the PAP should include a measure to assess Verizon's performance in provisioning stand-alone special access circuits and not just special access circuits provisioned in combination with other UNEs (id. at 8). Finally, Nextlink asserts that the Department should require random third-party audits of Verizon's PAP reports for the first two years after Verizon's entry into the Massachusetts long-distance market and that CLECs should receive treble bill credits for each instance where an audit shows material misrepresentation of Verizon's performance (id. at 10).

#### 6. RCN

RCN contends that the cap should be set at \$394 million cap (i.e., 100 percent of Verizon's total net return from local exchange service in Massachusetts) (RCN Reply Comments at 4). RCN also states that Verizon's proposed method for calculating performance by "aggregating and averaging over a number of CLECS," while administratively efficient, does not take into account the differences in CLEC operations (id. at 7). In addition, RCN argues that Verizon should make cash payments instead of bill credits and that payments should be made monthly, not quarterly (id. at 5).

#### 7. RNK

RNK argues that the Department should designate a neutral third party to calculate Verizon's metrics, produce the performance reports, and calculate the bill credits (RNK Comments at 3). In the alternative, RNK calls for quarterly audits of this process at Verizon's own expense (id.). In addition, RNK recommends that Verizon's retail service be monitored by a neutral third party, since the wholesale performance monitoring and enforcement process is dependent on the accuracy of the retail reporting process (id. at 6).

#### 8. Teligent

Teligent contends that certain customer-affecting performance problems are not addressed by the PAP (Teligent Comments at 1). For example, Teligent claims that there needs to be a measure entitled "Customer-Affecting Service Outage Caused By Verizon" (id.).

#### C. Verizon

Verizon opposes the AT&T and WorldCom proposals, arguing that (1) neither plan has been adopted in any other state, (2) both plans include unnecessary measures that extend far beyond what the NYPSC adopted and what the FCC found reasonable, and (3) both plans impose excessive penalties on Verizon for failing to achieve "perfection" (Verizon Reply Comments at 19-22). Verizon argues that WorldCom's request to incorporate Pennsylvania metrics into the Massachusetts PAP is inconsistent with the Department's earlier directive adopting only Carrier-to-Carrier metrics for § 271 purposes (id. at 17).

Verizon opposes including in the PAP the new AT&T-recommended metrics (id. at 15). First, Verizon states that it has corrected the OSS problems that caused the lost or mishandled UNE orders in New York, and notes that its performance to CLECs in this area has improved to approximately 99 percent over the last three months (id.). Should a problem arise in the future, Verizon notes that the PAP allows for adding or modifying metrics (id., citing Verizon PAP at 23). Second, concerning AT&T's recommendation for five additional metrics that were proposed in state proceedings in New York and New Jersey, Verizon notes that these measures are the subject of ongoing negotiations that have not been concluded in either state (id.). Verizon also notes that the ordering and pre-ordering metrics filed by AT&T earlier in this case are part of ongoing discussions in a New York Carrier Working group on which no consensus has yet been reached (id.). If any of these measures are added to the New York Carrier-to-Carrier metrics, Verizon states that it will add these in Massachusetts as well (id.).

Regarding comments about the PAP's weighting of various standards, Verizon notes that the NYPSC changed weight dollars for the MOE weights on performance measures dealing with order confirmation and reject notices (id. at 10). Verizon argues that using New York's original MOE weights should be considered acceptable because Verizon has since taken appropriate measures to address the confirmation and notification problems in New York (id.). According to Verizon, changing the Massachusetts PAP to imitate these present weighting measurements in New York would create inappropriate incentives for Verizon to focus resources on systems and processes for ordering and notification that have already been corrected (id.). Verizon states that it expects that the NYPSC will return to the original weighting levels after it formally determines that the improvements in Verizon-NY's order confirmation and notification performance have been completed (id.). Verizon also asserts that altering the weights in Massachusetts would decrease the weighting for xDSL measures (a growing market in Massachusetts) (id.). Finally, Verizon notes that its proposed PAP includes a provision that provides for review of the PAP so that the Department can determine if modifications should be made in the measures and weighting for each PAP metric (id. at 11, citing Verizon PAP at 23). Verizon argues, therefore, that should a service problem arise, the Department could modify the weighting of specific MOE metrics to account for any service problems and increase the financial incentives to Verizon in the specific area of concern (id.).

Concerning comments about the CCAP, Verizon contends that it would be unreasonable and would constitute "double counting" for CLECs to receive billing credits in both New York and Massachusetts for the same change control events (id. at 13). In responding to Covad/Rhythms' request that the Massachusetts PAP include additional DSL metrics,

Verizon argues that it has addressed DSL measurements in the Critical Measures segment (id. at 18, citing Verizon PAP, Appendix B, # 12). Also, Verizon asserts that Teligent's "outage" proposal is unsupported and should be rejected by the Department (id. at 19).

#### IV. STANDARD OF REVIEW

While the FCC has not required a Bell Operating Company ("BOC") to demonstrate that it is subject to a performance monitoring and enforcement mechanism as a condition of § 271 approval, the FCC has "stated that the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest." Bell Atlantic New York Order at ¶ 429 (citation omitted). "As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6)." Id. at ¶ 429, n. 1316.

The FCC stated that "[w]here . . . a BOC relies on performance monitoring and enforcement mechanisms to provide assurance that it will continue to maintain market-opening performance after receiving section 271 authorization, [the FCC] will review the mechanisms involved to ensure that they are likely to perform as promised. Id. at ¶ 433. The FCC recognized that the details of these plans would vary by state but noted that it would review the key elements of a PAP "to determine whether they fall within a zone of reasonableness." Id.

Based on its review, the FCC concluded that the New York PAP "will be effective in practice" because the plan "has the following important characteristics:

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
  
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performances;
  
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;

- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal;

- and reasonable assurances that the reported data is accurate."

Id.

Finally, the FCC emphasized that it would "evaluate the benefits of these reporting and enforcement mechanisms in the context of other regulatory and legal processes that provide additional positive incentives to [the BOC]." Id. at ¶ 430. The FCC stated that "[it] is not necessary that the state mechanisms alone provide full protection against potential anti-competitive behavior by the incumbent, since there are additional mechanisms to ensure continuing compliance with § 271 obligations, including the FCC's enforcement authority under § 271(d)(6), liquidated damages through interconnection agreements, and potential liability through antitrust and other private causes of action." Id.

## V. ANALYSIS AND FINDINGS

### A. Introduction

The Department has reviewed the proposals and comments filed by the participants in D.T.E. 99-271, and, for the reasons discussed below, we adopt Verizon's proposed PAP, with certain enumerated modifications. Most of the modifications amount to rejections of differences between Verizon's proposed Massachusetts PAP and its New York PAP, which we conclude could weaken the Plan. With these modifications (discussed below), we find that Verizon's PAP satisfies the five-point criteria set forth by the FCC for determining whether a performance monitoring and enforcement plan will be effective in practice (see page 21).

The Verizon Plan is based on an established model that has found favor with both state and federal regulators. As noted above, Verizon's proposed PAP is very closely modeled after the PAP that the NYPSC approved for Verizon in New York and which the FCC found reasonable to prevent backsliding once Verizon entered the long-distance market in New York. More importantly, the Verizon model appears to be working well in practice, as demonstrated by its effectiveness since January 2000 in responding to backsliding in New York.<sup>(16)</sup> Thus, we do not find it necessary to discuss in detail the strengths and



weakness of the other proposals. Nor do we find it necessary, given the non-adjudicatory nature of this proceeding, to discuss all of the arguments raised by participants. Instead, in this Order we focus on those issues most important to our overall analysis.<sup>(17)</sup>

## B. Financial Liability

The FCC has stated that financial liability under a PAP is sufficient if it "represents a meaningful incentive for [a BOC] to maintain a high level of performance," [and] "a plan with relatively low potential liability would be unlikely to provide meaningful incentives to maintain service quality levels." Bell Atlantic New York Order at ¶ 436. In addition, the FCC found that liability under a PAP does not have to be the sole means of "counterbalanc[ing] [a BOC's] incentive to discriminate." Id. at ¶ 435.

In its PAP, Verizon proposes an overall financial cap of \$100 million. Many participants recommend having no maximum dollar amount or propose a significantly higher cap. For example, the Attorney General argues for a \$278 million cap, based upon his calculation of Verizon's total net return. We find it advisable, however, to follow the FCC's lead by adopting an amount equivalent to 36 percent of Verizon's total net return (i.e., profits) from Massachusetts local exchange service. Based on Automated Reporting Management Information System ("ARMIS") data,<sup>(18)</sup> 36 percent of Verizon's total net return for 1999 equals \$142 million.<sup>(19)</sup> The Department finds that \$142 million represents a substantial inducement for Verizon to maintain a high level of performance. Moreover, the FCC has found in both the

Verizon-NY and SBC Texas orders that a maximum penalty of 36 percent of the BOC's total profits is appropriate. Bell Atlantic New York Order at ¶ 436; SBC Texas Order at ¶ 424.

The Department is persuaded by certain CLECs that there should be a "trigger" mechanism for the Department to investigate service problems if Verizon's performance results in payments that reach (or would have exceeded) the monetary cap. We therefore establish a procedural trigger under which payments by Verizon that reach the monetary cap could trigger, at the Department's discretion, an administrative proceeding designed to resolve the underlying service problems. The Verizon-NY PAP does not contain such a mechanism, nor did Verizon propose one in this proceeding. However, we find that such a mechanism is needed to give CLECs a means of resolving unsatisfactory performance in situations where Verizon has reached its overall monetary penalty cap.<sup>(20)</sup> Finally, as the FCC noted in the Bell Atlantic New York Order at ¶ 435, there are other means of

ensuring that Verizon provides nondiscriminatory service to competing carriers, including: FCC enforcement action pursuant to § 271(d)(6); damages under existing interconnection agreements, where applicable; and remedies associated with antitrust and other legal actions.

### C. Measures and Standards

Performance measurements are intended to ensure that the reporting mechanism provides a "benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service rendered to new entrants." See Bell Atlantic New York Order at ¶ 438; SBC Texas Order at ¶ 425. The metrics in the Massachusetts PAP are the same metrics contained in the New York PAP (derived from the larger set of Carrier-to-Carrier metrics), which the FCC endorsed in the Bell Atlantic New York Order at ¶ 439 (finding that the "scope of performance covered by the [Carrier-to-Carrier metrics] is sufficiently comprehensive, and that the New York Commission reasonably selected key competition-affecting metrics from this list for inclusion in the enforcement plan" (footnotes omitted)). Certain CLECs argue that we should adopt additional metrics, but we decline to do so. Rather than repeat the comprehensive analysis that has gone into developing the NY Carrier-to-Carrier metrics, we believe a better approach, without limiting our right to evaluate potential changes or additions to the adopted metrics, is to incorporate into the Massachusetts PAP, whatever new metrics, if any, the NYPSC adopts for the New York PAP. This will maintain consistency between the Plans and will allow the Department, Verizon and Massachusetts carriers to continue to benefit from the NYPSC's expertise on this issue, without duplicating that effort.

The performance level that Verizon must operate under for carriers is equally important as the number of performance measures. The Carrier-to-Carrier parity measurements and Verizon's PAP specify a 95 percent confidence level before accepting the position that service to CLECs is essentially the same as service to Verizon's customers. The Department finds that adopting and maintaining a 95 percent confidence interval protects carriers from any likelihood of financial consequences for poor performance. First, the NY PAP approved by the FCC included a 95 percent confidence interval. Second, a 95 percent confidence level is generally accepted as an adequate statistical standard.<sup>(21)</sup>

AT&T argues that Verizon has "arbitrarily" reduced certain benchmark standards for the Massachusetts PAP from performance benchmark standards in the Carrier-to-Carrier guidelines, and that Verizon does not even acknowledge that it is doing so. Verizon does not respond to this contention, either to confirm or deny that it has reduced certain benchmark standards. For the same reasons that we adopt the NY Carrier-to-Carrier metrics (described above), we also adopt the NY Carrier-to-Carrier performance benchmarks. If Verizon has reduced any benchmark standards in its Massachusetts PAP, those standards shall be revised to be consistent with the NY Carrier-to-Carrier performance benchmarks.

### D. Methodology

Except for a few modifications (discussed below), the Verizon PAP uses the same methodology as the New York PAP. In the Bell Atlantic New York Order at ¶ 440, the FCC found that "the structural elements of the Plan appear reasonably designed to detect and sanction poor performance when it occurs. The [PAP] and the [CCAP] set forth, in great detail, the processes by which Bell Atlantic's performance is measured and evaluated, the method for determining compliance and non-compliance with respect to individual metrics, and the manner in which noncompliance with individual metrics will translate into bill credits" (footnote omitted).

As noted above, Verizon proposes to use the MOE weights that were in effect in New York at the time of Verizon's entry into the long-distance market (January 2000) rather than the modified weights for the UNE and Resale MOE domains that the NYPSC adopted in February 2000, in response to the much-publicized OSS problems in New York.<sup>(22)</sup> As demonstrated in New York, performance measures and weights are continually being adjusted and improved to mirror conditions and market requirements in the ever-changing telecommunications industry. The FCC has emphasized that the ability for metrics to evolve is an important feature of a PAP. SBC Texas Order at ¶ 425. Verizon has not persuaded us that market conditions are such that we should allow it to revert back to the original MOE weights. Moreover, the NYPSC has not allowed Verizon-NY to return to using the original weights. Should the NYPSC do so, we may reconsider this issue at that time. Therefore, we adopt for the Massachusetts PAP the modified MOE weights that the NYPSC adopted in February 2000 for the UNE and Resale MOE domains.

Verizon also proposes to make a change to its statistical methodology. Verizon characterizes this change as an "improvement," and, while we agree that it is an improvement in one respect, on balance it is not an improvement to the New York methodology. WorldCom correctly points out that Verizon's new proposal does prevent -1 scores from dropping out of the plan altogether (this is the one respect in which we agree that Verizon's proposal is an improvement). However, WorldCom and AT&T also correctly state that this improvement is more than offset by disadvantages because it also does not ensure that discriminatory treatment will always give rise to remedies. This is because Verizon's proposal eliminates remedies for Z scores in the range between -0.8225 and -1.645. In addition, WorldCom demonstrates that, under Verizon's proposed modifications, some Z scores above

-1.645 would receive a -1 rating, rather than the -2 rating they receive under the New York plan. Therefore, we reject Verizon's proposed change to the statistical methodology used in New York.

#### E. Self-executing Mechanism

The Massachusetts PAP's performance monitoring and enforcement mechanisms are self-executing and identical to the mechanisms the FCC has previously found satisfactory. See Bell Atlantic New York Order at ¶ 441; SBC Texas Order at ¶ 427. The method for calculating and making bill credit payments is similar to the method used in the New York PAP, with a few exceptions.

First, unlike in New York, Verizon proposes that CLECs whose interconnection agreements incorporate the performance standards and credits of the Department's Consolidated Arbitrations will receive the higher of the Consolidated Arbitrations or the PAP credits. CLECs oppose this, contending that in New York payments under the PAP are cumulative of the payments available to CLECs under their individual interconnection agreements, thereby making total monetary incentives for good performance higher. This is one instance where we agree with Verizon's proposed change. The Department's standards and credits under the Consolidated Arbitrations are more generic and comprehensive than the standards and penalties in individual agreements in New York. The Department's Consolidated Arbitrations performance standards and credits are, in effect, more similar to a comprehensive PAP than to the more limited contract provisions in the New York interconnection agreements.<sup>(23)</sup> Implementation of both penalty mechanisms in Massachusetts would result in significant double counting and would be unfair to Verizon. By providing the higher of the two credits under an interconnection agreement or the PAP, we believe Verizon's incentive to maintain a high level of performance will not be diminished. Thus, the Department finds that a CLEC whose interconnection agreement incorporates the performance standards and credits under the Department's Consolidated Arbitrations plan will receive the higher of the credits calculated under its interconnection agreement or the PAP, unless a CLEC chooses not to participate in the PAP, in which case that CLEC will continue to receive credits under the Department's Consolidated Arbitrations plan.

Verizon also proposes to change the timing of payment of bill credits from the process used in New York. Instead of calculating and paying credits monthly, Verizon proposes to mirror the quarterly approach used for the Consolidated Arbitrations credits, whereby credits appear on CLECs' bills two months after the calendar quarter in which the unsatisfactory performance occurred. CLECs call for much speedier payments. The issue of how quickly Verizon can process bill credits was litigated extensively in the Consolidated Arbitrations, and we found Verizon's existing process reasonable. Id. We agree with Verizon that the timing of credits should mirror the process used for the Consolidated Arbitrations credits. However, contrary to Verizon's claim, it is required to provide Consolidated Arbitrations credits to CLECs within 30 days of the close of the quarter in which performance is being reviewed. D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Consolidated Arbitrations, Phase 3-D, at 3 (1998). We therefore require Verizon to provide the same timeliness in payments under the PAP.

In the Bell Atlantic New York Order at ¶ 441, the FCC expressed concern about the possibility that the "'exceptions' or 'waiver' process built into [a PAP] could effectively destroy the self-executing aspect of the plan and open the door to extensive delay and litigation" (footnote omitted). However, the FCC found that the waiver process under the

New York PAP "appear[s] to be reasonable," because (1) the grounds for waivers were defined narrowly, (2) the NYPSC would only consider waiver requests in "limited, extraordinary circumstances," and (3) the PAP placed time limits on the resolution of waiver requests. Id. The FCC, nevertheless, was troubled with one of the waiver grounds, which allowed Verizon to seek a waiver for "unusual" or "inappropriate" CLEC behavior, because its was not defined narrowly. Id. at ¶ 441 n. 1355. The Massachusetts PAP waiver provisions are similar to those in New York, including the provision relating to CLEC behavior (see Verizon PAP at 21-22). Although this provision was not rejected outright by the FCC in the Bell Atlantic New York Order, the FCC's statements were less than a solid endorsement, and we believe that the FCC was sending a signal to states that future PAPs either should not contain such a provision or should have a more narrowly defined provision. Therefore, Verizon is directed to strike this provision or propose a more narrowly defined provision in its compliance filing.

In addition, the Verizon PAP contains a new waiver provision not found in the New York PAP related to work stoppages (Verizon PAP at 22). This new ground is included with a list of factors that relate "to situations beyond [Verizon's] control that negatively affect its ability to satisfy only those measure with absolute standards," including emergencies, catastrophes, natural disasters, and severe storms (id.). Because this waiver ground is narrowly defined and is related to a situation that it not entirely within Verizon's control, we conclude that it is reasonable.

#### F. Data Validation and Audit Procedures

In determining the reasonableness of a PAP, the FCC indicated that there must be "reasonable assurances that the reported data is accurate." Bell Atlantic New York Order at

¶ 442. The FCC found that the "review and monitoring mechanisms provide reasonable assurance that the [New York PAP] data will be reported in a consistent and reliable manner," because (1) the NYPSC had independently replicated Verizon's performance reports from raw data submitted by Verizon and committed to continue the replication for at least six months, and (2) the NYPSC will perform an annual audit of Verizon's data generation and performance reporting. Id.

In its Massachusetts PAP, Verizon proposes to make the annual audit optional, rather than mandatory, as it is in New York. We find this provision to be unreasonable because it does not provide a "reasonable assurance" that Verizon's data are being produced and reported in a "consistent and reasonable manner," and therefore does not meet the FCC's standards. Id. In addition, Verizon proposes that any audit could not be conducted sooner than six months after Verizon enters the long-distance market in Massachusetts. We find that this time limitation is reasonable in that logistics alone (described below) would likely prevent any audit from being conducted sooner.

The Department, because of staffing constraints, cannot conduct the same type of data replication being performed by the NYPSC. In addition, KPMG's OSS test in

Massachusetts has revealed problems with Verizon's own metrics calculations (i.e., KPMG could not replicate certain of Verizon's metrics using Verizon's established methods). See KPMG Draft Report, Version 1.3, p. 641 (August 9, 2000). Therefore, the Department finds that it is necessary that Verizon's data and reporting be audited on an annual basis, with the first audit beginning six months after Verizon enters the long-distance market in Massachusetts. All aspects of the plan will be subject to Department review. The audits shall be performed by an independent auditor, selected by the Department through a competitive bidding process, and will be paid for by Verizon.<sup>(24)</sup> Should changes in market conditions warrant, the Department may revise its directives concerning audits, and the Department will decide when it is no longer necessary for these audits to be conducted.

#### G. Accounting Requirements

In the Bell Atlantic New York Order at ¶ 443, the FCC found that Verizon could not recover the cost of service quality penalties through its interstate revenue requirement, since it would "seriously undermine the incentives meant to be created by the [PAP]." In addition, the NYPSC specifically precluded Verizon from recovering the costs of making performance credits from retail rates. Id., citing NYPSC Enforcement Plan Order at 31. The proposed Verizon Massachusetts PAP is silent on this issue. The Attorney General argues that the Department should declare that Verizon's wholesale performance penalties expenses are not

so-called "exogenous costs" under Verizon's Massachusetts Price Cap Plan. The FCC has cautioned that recovery of such expenses from retail ratepayers could undermine the incentives built into the PAP. However, we are also cognizant of the terms of Verizon's Price Cap Plan, which allow Verizon to petition the Department for recovery of exogenous costs. To provide the immediate recalculation in this docket on this record that the Attorney General requests would amount to pre-judging the issue in violation of Verizon's Price Cap Plan. Suffice it to say, the issue is raised, and we are cognizant of it.

#### H. Change Control Assurance Plan

As noted earlier, while the Massachusetts PAP includes the same CCAP as the New York PAP, Verizon proposes not to provide payments for the same change control service quality failures to carriers that operate in both New York and Massachusetts because, it argues, the change control process is the same in both jurisdictions. Those carriers operating in both states would be compensated once from a \$10 million fund established under the New York CCAP. CLECs operating in Massachusetts that are not covered by the New York CCAP would also receive bill credits from the New York fund for the same inferior change control performance.

We agree with WorldCom and AT&T that this is not appropriate. WorldCom and AT&T correctly point out that even though the change control process is the same across jurisdictions, the harm done to CLECs due to change control service quality failures is cumulative with each new market that is added to the New York market, and, therefore,

the payments related to the harm should be cumulative with each new market. Therefore, we reject Verizon's proposal and require Verizon to create a separate Massachusetts CCAP fund, modeled the same way as the New York CCAP fund but with a proportionate dollar figure. The Massachusetts monetary cap of \$142 million, established earlier in this Order, is 52.8 percent of the \$269 million monetary cap in New York; therefore, in order to maintain a consistent ratio and to keep the Massachusetts CCAP proportional to the New York CCAP, the Massachusetts CCAP fund shall be set at \$5.28 million (52.8 percent of the New York CCAP fund). The CCAP fund in Massachusetts is in addition to the \$142 million monetary cap, as it is in New York.

#### I. Wholesale Quality Assurance Program

As noted above, Verizon's proposed PAP does not contain a WQAP because, according to Verizon, the same support centers that process New York orders also process Massachusetts orders. WorldCom asks that the Department require KPMG to confirm that the New York WQAP will ensure that Verizon properly reports service quality data for all domains. We decline to do this, because it is beyond the scope of the OSS Master Test Plan. In addition, because the record is incomplete on this issue, we also decline to require Verizon to adopt a Massachusetts-specific WQAP. However, we will require that during the first annual audit, the auditor conduct a comprehensive examination of data reliability issues. The Department also may consider using its soon-to-be adopted Accelerated Dispute Resolution rules as a mechanism to resolve disputes over data reliability.

#### VI. ORDER

After due notice and consideration, it is hereby

ORDERED: That the Performance Assurance Plan, filed by Verizon Massachusetts with the Department on April 25, 2000, is APPROVED in part and DENIED in part; and it is

FURTHER ORDERED: That within 10 days of the date of this Order Verizon Massachusetts shall file a revised Performance Assurance Plan in compliance with the directives herein, to be effective upon Verizon's entry into the Massachusetts long-distance market; and it is

FURTHER ORDERED: That Verizon Massachusetts shall comply with all other directives herein.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr. Commissioner

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Deirdre K. Manning, Commissioner



1. Formerly New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.
2. <sup>2</sup> In the Matter of 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, CC Docket 99-295, Memorandum Opinion and Order, FCC 99-404, rel. December 22, 1999 ("Bell Atlantic New York Order").
3. Formerly New York Telephone and Telegraph Company d/b/a Bell Atlantic-New York.
4. As part of the Department's review of Bell Atlantic's compliance with § 271 requirements, the Department has overseen an independent, third-party test of Bell Atlantic's Operations Support Systems ("OSS"), conducted by KPMG Consulting. The OSS Master Test Plan is the document guiding that test.
5. Initial comments were filed by the Association of Communications Enterprises ("ASCENT") (formerly the Telecommunications Resellers Association), Attorney General of the Commonwealth ("Attorney General"), AT&T, Covad Communications Company and Rhythms Links Inc. ("Covad/Rhythms"), NEXTLINK Massachusetts, Inc. ("Nextlink"), RNK Telecom ("RNK"), Teligent Communications ("Teligent"), Verizon, and WorldCom.
6. Reply comments were filed by the ASCENT, Attorney General, AT&T, Covad/Rhythms, RCN-BecoCom, LLC ("RCN"), Verizon, WorldCom and Z-Tel Communications, Inc. ("Z-Tel").
7. The Z score is the number of standard deviations away from the mean and is used to measure confidence, at a specified level (commonly 95 percent), that an interval is correct.
8. Under the New York PAP, there is an additional \$25 million at risk for the CCAP. As noted above, Verizon proposes that CLECs that operate in both New York and Massachusetts would only be credited for unsatisfactory change control performance from the New York CCAP. However, CLECs that operate in Massachusetts but are not covered under the Verizon-NY CCAP would receive billing credits for unsatisfactory change control performance. These credits would be in addition to the \$100 million at risk under the Massachusetts cap and would be paid out of New York PAP funds (see discussion, infra).
9. In November, 1999, the Department adopted comprehensive performance standards and penalty credits to govern Verizon's wholesale performance to CLECs under interconnection Agreements. See D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Consolidated Arbitrations, Phase 3-F (1999).

10. In New York, the credits under the PAP and other remedies contained in interconnection agreements are cumulative (Verizon PAP at 8). According to Verizon, its proposed PAP in Massachusetts seeks to eliminate this "double counting" (id.)

11. Verizon states that the quarterly payment schedule for Verizon is equivalent to the New York plan because Verizon NY credits are calculated four months after the month being evaluated in order to determine if the offset provision applies (Verizon PAP at 8).

12. Pursuant to § 272(a)(2)(B) of the Act and the FCC's rules implementing that section, ILECs are required to establish a separate affiliate to provide in-region long-distance service upon gaining § 271 approval in a state. In fact, an ILEC's compliance with § 272 is a precondition to gaining § 271 approval from the FCC. Section 272(f)(1) of the Act provides that the separate affiliate requirement for long-distance service will sunset three years after the date the ILEC is authorized to provide in-region long distance service, unless the FCC extends the three-year period by rule or order.

13. The New York PAP mandates an annual review and audit, with the first one being held six months after Verizon enters the New York long-distance market. Verizon proposes to make the results of the annual review and audit conducted and by the NYPSC available for the Department to review (Verizon PAP at 8).

14. AT&T's and WorldCom's proposals are discussed within their respective comment sections.

15. According to AT&T, the penalty amount per violation would depend upon the extent of competitive penetration within the state (i.e., the greater the penetration, the smaller the penalty amount per violation).

16. Except for the OSS-related problems earlier this year, our record does not disclose other serious concerns about Verizon backsliding in New York. The Verizon-NY PAP (upon which the proposed Massachusetts PAP is based) evidently works well at preventing backsliding. This is not to downplay the seriousness of the OSS-related problems experienced by CLECs in New York earlier this year (concerning lost or mishandled UNE orders), and we are aware of the enforcement action that the FCC and the NYPSC had to take to fix the problems. However, rather than confirming, as some CLECs allege, the inadequacies of the Verizon PAP, we believe the service problems in New York and the regulatory responses show how the PAP brings to light and responds to performance issues as they arise (see discussion below where we reject Verizon's attempt to eliminate certain changes in the scoring put in place by the NYPSC in response to the OSS-related problems).

17. It is not necessary for us to analyze the PAP in detail relative to each FCC criterion, since that ground has already been covered by the FCC in finding favor with

Verizon-NY's PAP. The FCC's criteria inform our judgment in this matter however; and, in any event, the FCC will judge a PAP not on its skill at mimicry but on its falling "within a zone of reasonableness."

18. The FCC used ARMIS data to calculate Verizon's total net return. Bell Atlantic New York Order at ¶ 436.

19. Based on the total net return formula used by the FCC in the Bell Atlantic New York Order, the Department calculated Verizon's 1999 total net return to be \$394 million. See Bell Atlantic New York Order at ¶ 436, n. 1332; see also, Attorney General Comments at 3, n. 3; Verizon Reply Comments at 24, n. 25.

20. Of course, the Department retains the discretion to investigate extraordinary wholesale service performance issues and to take appropriate corrective action, as the NYPSC did in its February 11, 2000 Order.

21. See, e.g., Wonnacott, Thomas H. and Wonnacott, Ronald J., Introductory Statistics for Business and Economics: Third Edition, John Wiley & Sons, Inc. (New York), 1984, at 220.

22. The problem in New York involved the return of system notices that inform CLECs using the EDI ordering interface of the status of their orders. The notices included acknowledgments, confirmations, and completion notices.

23. AT&T points out that "the Department's early work in developing an initial set of performance metrics, standards and remedies laid the foundation for their further development in New York's carrier-to-carrier collaborative." See AT&T Motion at 2.

24. Verizon shall consult with Department staff about the parameters of the bidding and selection process.