

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. 02-7
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in Vermont	)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Charles A. James
Assistant Attorney General
Antitrust Division

R. Hewitt Pate
Deputy Assistant Attorney General

Margaret A. Ward
Counsel to the Assistant Attorney General

Michael L. Katz
Deputy Assistant Attorney General

Communications with respect to this document should be addressed to:

Nancy M. Goodman
Chief

W. Robert Majure
Assistant Chief

Benjamin D. Brown
Katherine E. Brown
J. Parker Erkmann
Lauren J. Fishbein

John Henly
Jeffrey Primbrey
Economists
Economic Regulatory Section

Attorneys
Telecommunications and Media
Enforcement Section

February 21, 2002

Table of Contents

Table of Contents ii

Index of Full Citations iii

Introduction and Summary 1

I. Vermont Public Service Board Review 2

II. The Department’s Evaluation 4

III. Conclusion 8

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
DOJ Evaluations and Related Materials	
DOJ Arkansas/Missouri Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: 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 Arkansas and Missouri</i> , FCC CC Docket No. 01-194 (Sept. 24, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Georgia/Louisiana Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 01-277 (Nov. 6, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Kansas/Oklahoma Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: 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</i> , FCC CC Docket No. 00-217 (Dec. 4, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Local Competition Comments	Comments of the U.S. Department of Justice, <i>In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</i> , FCC CC Docket No. 96-98 (May 16, 1996).
DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of 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 Missouri</i> , FCC CC Docket No. 01-88 (May 9, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
DOJ New Jersey Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey</i> , FCC CC Docket No. 01-347 (Jan. 28, 2002), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Pennsylvania Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , FCC CC Docket No. 01-138 (July 26, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Rhode Island Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island</i> , FCC CC Docket No. 01-324 (Jan. 4, 2002), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/ >.
FCC Orders, Reports, and Related Materials	
<i>FCC Connecticut Order</i>	Memorandum Opinion and Order, <i>In re: Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut</i> , 16 FCC Rcd 14,147 (July 20, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/ >.
<i>FCC Massachusetts Order</i>	Memorandum Opinion and Order, <i>In re: Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts</i> , 16 FCC Rcd 8988 (Apr. 16, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/ >.

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
<i>FCC New York Order</i>	Memorandum Opinion and Order, <i>In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York</i> , 15 FCC Rcd 75 (Dec. 22, 1999), <i>aff'd</i> , <i>AT&T Corp. v. FCC</i> , 220 F.3d 607 (D.C. Cir. 2000), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/ >.
<i>FCC Pennsylvania Order</i>	Memorandum Opinion and Order, <i>In re: Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , 16 FCC Rcd 17,419 (Sept. 19, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/ >.
FCC Request for Comments	Comments Requested in Connection with Verizon's Section 271 Application for Rhode Island, FCC CC Docket No. 01-324, Public Notice DA 02-356 (Feb. 14, 2002).
Vermont State Commission Orders and Related Materials	
Vermont PSB Section 271 Compliance Letter	Letter from Vermont Public Service Board to V. Louise McCarren, Verizon New England, <i>In re: Application of Verizon New England Inc., d/b/a Verizon Vermont, for a Favorable Recommendation to Offer InterLATA Service Under 47 U.S.C. § 271</i> , Vermont PSB Docket No. 6533 (Jan. 16, 2002).
Vermont PSB Comments	Comments on Federal Proceeding, <i>In re: Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. § 271</i> , Vermont PSB Docket No. 6533 (Feb. 6, 2002).
Vermont PSB C2C Guidelines Order	Order Approving Carrier-to-Carrier Standards, <i>In re: Investigation into the Establishment of Wholesale Service Quality Standards for providers of Telecommunications Services in re: Phase I (Standards)</i> , Vermont PSB Docket No. 6255 (Dec. 12, 2002), attached to Verizon Br. App. I as Tab 3.
Vermont PSB Pricing Order I	Order Allowing SGAT to Take Effect, Addressing Future Procedures, Correcting February 4, 2000 Order and Closing Investigation, <i>In re: Investigation into New England Telephone and Telegraph Company's (NET's) tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks in re: Phase II, Module 2 -- Cost Studies</i> , Vermont PSB Docket No. 5713, (Aug. 23, 2000), attached to Verizon Br. App. E as Tab 8.

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
Vermont PSB Pricing Order II	Order re: Geographic Deaveraging of Unbundled Network Elements, <i>In re: Investigation of Geographically Deaveraged Unbundled Network Prices</i> , Vermont PSB Docket No. 6318 (Oct. 12, 2000), <i>attached to</i> Verizon Br. App. H as Tab 2.
Verizon's Application and Related Filings	
PwC Sapienza/Bluvol Decl.	Joint Declaration of Russell J. Sapienza and Catherine (Kate) Bluvol, <i>attached to</i> Verizon Br. App. C as Tab 1.
Verizon Br.	Application by Verizon New England for Authorization to Provide In-Region, InterLATA Services in Vermont, <i>In re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont</i> , FCC CC Docket No. 02-7 (Jan. 17, 2002).
Verizon Brown Decl.	Declaration of Paula L. Brown, <i>attached to</i> Verizon Br. App. A as Tab F.
Verizon Line Counts <i>Ex Parte</i>	Verizon Communications, Verizon Business and Residential Line Counts as of November 2001, Verizon <i>Ex Parte</i> Submission, FCC CC Docket No. 02-7 (Feb. 7, 2002).
Verizon Line Counts Calculations <i>Ex Parte</i>	Verizon Communications, Verizon Calculations of Business and Residential Line Counts, Verizon <i>Ex Parte</i> Submission, FCC CC Docket No. 02-7 (Feb. 11, 2002).
Verizon McCarren/Garzillo/Anglin Decl.	Joint Declaration of V. Louise McCarren, Patrick A. Garzillo, and Michael J. Anglin, <i>attached to</i> Verizon Br. App. A as Tab D.
Verizon McLean/Wierzbicki Decl.	Joint Declaration of Kathleen McLean and Raymond Wierzbicki, <i>attached to</i> Verizon Br. App. A as Tab B.
Verizon RI Switching Rates <i>Ex Parte</i>	Verizon Communications, Verizon Proposed Reductions in Rhode Island Switching Rates, Verizon <i>Ex Parte</i> Submission, FCC CC Docket No. 01-324 (Feb. 14, 2002).
Third-Party Comments and Affidavits/Declarations	

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
ABS Comments	Comments of Adelphia Business Solutions, Inc. and Adelphia Business Solutions of Vermont, Inc., <i>In re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont</i> , FCC CC Docket No. 02-7 (Feb. 6, 2002).
AT&T Comments	Comments of AT&T Corp., <i>In re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont</i> , FCC CC Docket No. 02-7 (Feb. 6, 2002).
CTC Comments	Comments of CTC Communications Corp., <i>In re: Application by Verizon New England Inc., et al., for Authorization to Provide In-region, InterLATA Services in Vermont</i> , FCC CC Docket No. 02-7 (Feb. 6, 2002).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by Verizon for Authorization to Provide In-Region, InterLATA Services in Vermont, <i>In re: Application by Verizon for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in Vermont</i> , FCC CC Docket No. 02-7 (Feb. 6, 2002).
Yipes PA Comments	Comments of Yipes Transmission, Inc., <i>In re: Application by Verizon Pennsylvania, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Pennsylvania</i> , FCC CC Docket No. 01-138 (July 11, 2001).

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. 02-7
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in Vermont	)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this evaluation of the application filed by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., on January 17, 2002, to provide in-region, interLATA services in Vermont.

¹

Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

This application to the Federal Communications Commission (“FCC” or “Commission”) is Verizon’s first for the state of Vermont, and follows its successful application for long distance entry in Massachusetts, another state in its New England region, as well as successful applications for Pennsylvania, Connecticut, and New York.² The Department has also recommended that the FCC approve Verizon’s recently filed applications for Section 271 authority in Rhode Island and New Jersey, subject to the Commission’s satisfaction with respect to certain pricing issues.³ The Department concludes that Verizon has generally succeeded in opening its local markets in Vermont to competition and recommends approval of Verizon’s application for Section 271 authority in Vermont, subject to the Commission satisfying itself as to the pricing issues mentioned below.

I. Vermont Public Service Board Review

For the most part, conditions in the Vermont local telecommunications market appear favorable to fostering competition. The Vermont Public Service Board (“Vermont PSB”), with the input of the Vermont Department of Public Service, has facilitated the development of these conditions by establishing carrier-to-carrier wholesale performance measurements, which incorporate improvements

² See *FCC Massachusetts Order*; *FCC Pennsylvania Order*; *FCC Connecticut Order*; *FCC New York Order*.

³ See DOJ Rhode Island Evaluation at 6-7 (“Evidence available to the Department indicates that Verizon has generally succeeded in opening its local markets in Rhode Island to competition. Subject to the Commission satisfying itself as to the pricing issues mentioned above, the Department recommends approval of Verizon’s application for Section 271 authority in Rhode Island.”); DOJ New Jersey Evaluation at 8-9 (“The record in this matter suggests that Verizon has succeeded in opening its local markets in New Jersey to competition in most respects. Subject to the Commission satisfying itself as to the pricing issues discussed above, the Department recommends approval of Verizon’s application for Section 271 authority in New Jersey.”). The FCC was originally due to issue an order addressing Verizon’s Rhode Island application by February 24, 2002, *see infra* note 23, and another addressing Verizon’s New Jersey application by March 20, 2002.

from New York⁴; conducting pricing proceedings that established rates for unbundled network elements (“UNEs”)⁵; and adopting a Performance Assurance Plan intended to ensure that an appropriate level of wholesale performance is maintained once Verizon’s Section 271 application is approved.⁶ The Vermont PSB’s review of Verizon’s state Section 271 filing included an independent third-party test by PricewaterhouseCoopers (“PwC”) designed to determine whether the operations support systems (“OSS”) that Verizon uses in Vermont are the same as those it uses in Massachusetts.⁷ PwC concluded that Verizon’s assertions regarding the “sameness” of its “New England region Operational Support Systems (specifically the pre-order, order, provisioning, maintenance & repair, relationship management infrastructure, and billing domains) and Performance Metrics Reporting” are fairly stated.⁸ On January 16, the Vermont PSB voted to recommend that the FCC approve Verizon’s Section 271 application.⁹

⁴ See Vermont PSB C2C Guidelines Order at 2-6; *see also* Vermont PSB Section 271 Compliance Letter at 4 (noting adoption “in Vermont [of] the same carrier-to-carrier performance guidelines as are in effect in New York, with a few state-specific modifications”).

⁵ See Vermont PSB Pricing Order I at 2; Vermont PSB Pricing Order II at 33 (requiring Verizon to deaverage UNE loop rates); Vermont PSB Comments at 20 (in response to Vermont PSB’s condition for recommendation that FCC approve Verizon’s application, Verizon has reduced by 25 percent non-recurring charges related to the provision of DSL services, including those for removal of load coils, removal of bridged taps, engineering query, and engineering work order).

⁶ See Vermont PSB Section 271 Compliance Letter at 4-7 (adopting Verizon’s proposed PAP with modifications and conditions); *see also* Vermont PSB Comments at 6-17 (explaining PAP provisions).

⁷ Verizon McLean/Wierzbicki Decl. ¶ 9; *see also* FCC Massachusetts Order ¶¶ 43-181 (in Massachusetts Verizon provides CLECs non-discriminatory access to its OSS, including unbundled loops).

⁸ PwC Sapienza/Bluvol Decl. ¶¶ 12-16.

⁹ Vermont PSB Section 271 Compliance Letter at 1, 8; *see also* Vermont PSB Comments at 28 (“[T]he Vermont Public Service Board supports Verizon’s application . . . All conditions imposed by the Board have already been complied with by Verizon.”).

II. The Department's Evaluation

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹⁰ But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements ("UNEs"), and resale -- are open or closed on the basis of an aggregate level of entry alone.¹¹

Together, Verizon and CLECs serve a total of approximately 373,900 lines in Verizon's Vermont service area.¹² Of the total lines in Verizon's service area in Vermont, 34.3 percent, or approximately 128,400, serve businesses, and 65.7 percent, or approximately 245,500, serve residential customers.¹³ For business and residential customers combined, Verizon reports that CLECs using all modes of entry serve approximately 21,500 lines, or 5.7 percent of all lines in Verizon's service area in the state.¹⁴

¹⁰ See DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state." (footnote omitted)).

¹¹ See, e.g., DOJ Georgia/Louisiana Evaluation at 7 ("Although the Department presumes that fully facilities-based competition is not hindered in a competitively significant manner based on the entry recorded in Georgia, the amount of entry does not justify extending such a presumption to other modes of entry in Georgia."); DOJ Missouri I Evaluation at 6-7 ("The Department presumes that opportunities to serve business customers by fully facilities-based carriers and resellers are available in Missouri, based on the entry efforts reflected in SBC's application. There is significantly less competition to serve residential customers. There also is less competition by firms seeking to use UNEs, including the UNE-platform, and there are some indications that a failure by SBC to satisfy all of its obligations may have constrained this type of competition." (footnotes omitted)).

¹² See Verizon Line Counts *Ex Parte* at 1; Verizon Brown Decl. Attach 1 ¶ 6 tbl.1. There are several incumbent local exchange carriers other than Verizon in Vermont.

¹³ See *id.*

¹⁴ See *id.*

Competitors have made progress in penetrating the business market in Vermont. CLECs serve approximately 16.2 percent of all business lines in Verizon's Vermont service area.¹⁵ CLECs serve approximately 3.5 percent of all business lines using primarily their own fiber optic networks that are either connected directly to the customer premises or connected through loops leased from Verizon.¹⁶ CLECs resell Verizon's services to serve approximately 12.1 percent of all business lines.¹⁷ CLECs use the UNE-platform (a combination of loop, switch, and transport elements) to serve less than 1 percent of such lines.¹⁸

Using all modes of entry combined, CLECs serve less than one-half of 1 percent of all residential lines in Verizon's Vermont service area.¹⁹

The amount of entry by competitive facilities-based carriers and resellers serving business customers in Vermont and the absence of complaints regarding Verizon's fulfillment of its obligations to open its markets to these modes of entry, lead the Department to conclude that opportunities to serve business customers via the facilities-based and resale modes of entry are available in Vermont.²⁰

¹⁵ See *id.* (CLECs serve approximately 20,800 business lines).

¹⁶ See *id.* (CLECs serve approximately 4,500 business lines using at least some of their own facilities).

¹⁷ See *id.* (CLECs serve approximately 15,600 business lines via resale).

¹⁸ See *id.* (CLECs serve approximately 730 business lines through the UNE-platform).

¹⁹ See *id.* (CLECs serve approximately 690 residential lines, 290 residential lines using at least some of their own facilities, 340 through resale, and 60 through the UNE-platform). However, it appears that a non-trivial number of those lines reported by Verizon as facilities-based residential may be serving businesses. ABS Comments at 2 (claiming to serve only "small businesses where the business is located at the owner's home" and "certain . . . customers [that] may have [PBX's] that serve senior living center situations"). But see Verizon Line Counts Calculations *Ex Parte* at 2 (asserting that end-users in senior living center situations are residential customers).

²⁰ CTC raises concerns about the terms, conditions, and practices of Verizon's provision of dark fiber in Vermont. CTC Comments at 16-35. The Vermont PSB acknowledges that "Verizon does provide substantially better dark fiber service in some other nearby states," but asserts that "[o]n most dark fiber issues we conclude that there are still important policy and factual questions that cannot be resolved from evidence directly on this record"

Although there is significantly less competition to serve residential customers, the Department does not believe there are any material non-price obstacles to competition in Vermont created by Verizon.²¹

Verizon has submitted evidence to show that its Vermont OSS are the same as those that the Commission found satisfactory in Massachusetts.²² Moreover, the record indicates few complaints regarding Verizon's Vermont OSS.

Although the non-price aspects of Verizon's UNE offering in Vermont do not appear to raise concerns, the Department notes several complaints from commenters regarding the pricing of UNEs in Vermont.²³ The Department urges the Commission to look carefully at these comments in determining

and points out that Verizon's offerings in Vermont are "the same as or similar to those in New York and Pennsylvania," as to which Verizon has been granted Section 271 authority. Vermont PSB Comments at 24, 25, 26. With respect to Verizon's Pennsylvania application, the FCC addressed complaints pertaining to the provision of dark fiber similar to those raised here by CTC, concluding that "[such] concerns are best resolved through the section 252 negotiation and arbitration process . . . or through the section 208 complaint process." *FCC Pennsylvania Order* ¶ 113 (addressing Yipes PA Comments at 2-3); *see also* Vermont PSB Comments at 26 ("We also note that CTC and Verizon are in negotiations for a new interconnection agreement. If the parties are unable to reach agreement, the Board may be able to address many of these dark fiber issues soon in an arbitration proceeding under the terms of the federal act." (footnotes omitted)); *id.* at 25 (raising possibility of a separate PSB proceeding to pursue policy questions regarding dark fiber pursuant to state law).

²¹ The Vermont PSB concluded that concerns raised by the Vermont Department of Public Service and at least one CLEC "concerning the accuracy and timeliness of Verizon's billing process are valid and could, in some instances, present significant problems for competitors." Vermont PSB Comments at 18. In response to these concerns, "Verizon has already begun or has agreed to put in place measures to correct many of these problems[.]" namely, incorporating two additional billing metrics in the revised Vermont PAP and implementing a document retention policy pursuant to which communications regarding billing disputes will be retained and retrievable for five years. *Id.* at 8, 18.

²² *See supra* note 8.

²³ *See* AT&T Comments at 10-16 (arguing that Verizon's switching rates in Vermont are not TELRIC-compliant); WorldCom Comments at 2-7 (same).

Commenters raised similar issues with respect to Verizon's application for Section 271 authority in Rhode Island, which may be discussed by the FCC in its order addressing that application, originally due by February 24. In response to those comments and to the New York PSC's adoption on January 28 of new switching rates that are more than 50 percent lower than those relied upon as benchmarks in Verizon's Rhode Island application, Verizon filed significant rate reductions with the Rhode Island PUC on February 14. *See* Verizon RI Switching Rates *Ex Parte* at 1-2; *see also* FCC Request for Comments at 1-2 (seeking comments on whether the modified rates are TELRIC-compliant by February 19 and "retain[ing] the discretion to waive its procedural rules and consider the evidence, to start the 90-day review process anew, or to accord such evidence no weight"). This application for Section 271 authority in Vermont also relies on benchmark comparisons to the old New York switching rates and to

whether Verizon's prices are cost-based.²⁴ As the Department has stated previously, "[b]ecause of the Commission's experience and expertise in rate-making issues . . . the Department will not attempt to make its own independent determination whether prices are appropriately cost-based."²⁵

Massachusetts rates based on those New York rates. Verizon McCarren/Garzillo/Anglin Decl. ¶¶ 28-30 ("Massachusetts, New York and Vermont together form a contiguous block. . . . Verizon employs a similar rate structure in the three states.").

²⁴ The Department notes once more that "[p]ricing based on forward-looking costs 'simulates the prices for network elements that would result if there were a competitive market for the provision of such elements to other carriers' and 'will result in the creation of the "right" investment incentives for competitive facilities-based entry, rather than distorting the entrant's "make or buy" decision with respect to the network element.'" DOJ Arkansas/Missouri Evaluation at 6 n.19 (quoting DOJ Local Competition Comments at 28-29)). "Prices that are set either above or below the element's true economic cost can distort entry decisions and may impede the development of competition on the merits." *Id.* (citing DOJ Local Competition Comments at 29).

²⁵ DOJ Kansas/Oklahoma Evaluation at 11; *see also* DOJ Rhode Island Evaluation at 6.

III. Conclusion

The record in this matter suggests that Verizon has succeeded in opening its local markets in Vermont to competition in most respects. Subject to the Commission satisfying itself as to the pricing issues mentioned above, the Department recommends approval of Verizon's application for Section 271 authority in Vermont.

Respectfully submitted,

Charles A. James
Assistant Attorney General
Antitrust Division

R. Hewitt Pate
Deputy Assistant Attorney General
Antitrust Division

Michael L. Katz
Deputy Assistant Attorney General
Antitrust Division

Margaret A. Ward
Counsel to the Assistant Attorney General
Antitrust Division

W. Robert Majure
Assistant Chief

John Henly
Jeffrey Primbrey
Economists
Economic Regulatory Section

_____/s/_____
Nancy M. Goodman
Chief

Benjamin D. Brown
Katherine E. Brown
J. Parker Erkmann
Lauren J. Fishbein

Attorneys
Telecommunications and Media
Enforcement Section

Antitrust Division
U.S. Department of Justice
1401 H Street, NW, Suite 8000
Washington, DC 20530
(202) 514-5621

February 21, 2002

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on February 21, 2002.

Lauren J. Fishbein
Attorney
Telecommunications and Media
Enforcement Section
Antitrust Division
U.S. Department of Justice

Service List

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

William Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
TW-B204
Washington, DC 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C327
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Julie Veach
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael H. Dworkin, Chairman
David C. Coen, Board Member
John D. Burke, Board Member
Vermont Public Service Board
112 State Street (Chittenden Bank Building)
Drawer 20

Montpelier, VT 05620-2701

Susan Hudson
Clerk
Vermont Public Service Board
112 State Street (Chittenden Bank Building)
Drawer 20
Montpelier, VT 05620-2701

Peter Bluhm
Director of Regulatory Policy
Vermont Public Service Board
112 State Street (Chittenden Bank Building)
Drawer 20
Montpelier, VT 05620-2701

Michael E. Glover
Senior Vice President and
Deputy General Counsel
Verizon
1515 North Court House Road
Suite 500
Arlington, VA 22201

Lori Wright
Associate Counsel
Federal Advocacy
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Pamela Hintz
Vice President
Regulatory and Legal Affairs
CTC Communications Corp.
360 Second Avenue
Waltham, MA 02451

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP

3000 K Street, NW
Suite 300
Washington, DC 20007

Marybeth M. Banks
H. Richard Juhnke
Sprint Corporation
401 9th Street, NW
Suite 400
Washington, DC 20004

Mark C. Rosenblum
Lawrence J. Lafaro
James J.R. Talbot
AT&T Corporation
295 North Maple Avenue
Basking Ridge, NJ 07920

John Glicksman
Terry Romine
Adelphia Business Solutions, Inc.
1 N. Main Street
Coudersport, PA 16915

Cynthia Heslen
National Mobile Communications, Corp.
d/b/a SoVerNet Communications
P.O. Box 495
Bellows Falls, VT 05101

Andrew D. Lipman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007