

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Application by Verizon New England)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company) CC Docket No. 01-324
(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)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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January 4, 2002

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AT&T Comments	Comments of AT&T Corp. in Opposition to Verizon Section 271 Application for Rhode Island, <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 (Dec. 17, 2001).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by Verizon for Authorization to Provide In-Region, InterLATA Services in Rhode Island, <i>In re: Application by Verizon for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Rhode Island and Providence Plantations</i> , FCC CC Docket No. 01-324 (Dec. 17, 2001).

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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 November 26, 2001, to provide in-region, interLATA services in Rhode Island.

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 Rhode Island, 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 concludes that Verizon has generally succeeded in opening its local markets in Rhode Island to competition and recommends approval of Verizon’s application for Section 271 authority in Rhode Island, subject to the Commission satisfying itself as to the pricing issues mentioned below.

I. Rhode Island PUC Review

For the most part, conditions in the Rhode Island local communications market appear favorable to fostering competition. The Rhode Island Public Utilities Commission (“PUC”), with the input of the Rhode Island Division of Public Utilities and Carriers, has facilitated the development of these conditions by establishing carrier-to-carrier wholesale performance measurements and a performance assurance plan for Rhode Island, both of which incorporate regional improvements;³ conducting an extended pricing proceeding since 1997 that resulted in orders issued in November and December 2001;⁴ and taking steps to resolve competitive local exchange carrier (“CLEC”) complaints

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

³ See Rhode Island PUC Report at 4-8, 191-92; see also Verizon Br. at 16-17.

⁴ See Rhode Island PUC Pricing Order I; Rhode Island PUC Pricing Order II; Rhode Island PUC Pricing Order III.

about Verizon's wholesale performance.⁵ The Rhode Island PUC voted to support Verizon's application in November 2001.⁶

The Rhode Island PUC's review of Verizon's state Section 271 filing included a third-party test by KPMG Consulting designed to determine whether the operations support systems ("OSS") that Verizon uses in Rhode Island are the same as those it uses in Massachusetts.⁷ KPMG also performed stand-alone testing in three areas -- line sharing, line loss, and electronic jeopardy -- that were not included in KPMG's test of Verizon's OSS in Massachusetts.⁸ Following the Rhode Island testing, KPMG concluded that had it "conducted a full-scale OSS evaluation on the magnitude of the Massachusetts test, Verizon-RI would have demonstrated equivalent or superior results."⁹

II. The Department's Evaluation

⁵ See, e.g., Rhode Island PUC Report at 145 (noting PUC order requiring Verizon to adopt substantially the same procedures for dark fiber offering as exist in Massachusetts, in response to CLEC concerns).

⁶ See *id.* at 191-92.

⁷ *KPMG Final Report* at 5. In addition to its operational sameness test, KPMG conducted transaction-based tests to provide additional support for its sameness results. *Id.* at 7. KPMG conducted its test of Verizon-Massachusetts' OSS between August 1999 and September 2000. *Id.* at 10.

⁸ *Id.* at 5.

⁹ *Id.* at 13. At the conclusion of its sameness evaluation, KPMG confirmed that "[i]n general, . . . the Rhode Island test results confirm a high-degree of sameness between the operating elements in Massachusetts and Rhode Island across all five functional domains." *Id.* The five functional domains, for purposes of the test, were: Pre-ordering, Ordering, and Provisioning; Maintenance and Repair; Billing; Relationship Management and Infrastructure; and Performance Metrics Reporting. *Id.* at 7. KPMG found significant differences only in the area of Metrics Change Management, where it found that the "observed differences reflected enhancements to the process evaluated during the Massachusetts test." *Id.* at 13. In the stand-alone testing areas, KPMG gave Verizon a "satisfied" rating for line loss and line sharing; in electronic jeopardies, KPMG found the results "inconclusive" due to the small number of jeopardies available for analysis. See *id.*

In addition, PricewaterhouseCoopers, which was engaged by Verizon, has attested to the comparability of Verizon's Massachusetts systems with its systems in other New England states, including Rhode Island. See *PwC Report* ¶¶ 6, 16.

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 -- may be open on the basis of an aggregate level of entry alone.¹¹

Together, Verizon and CLECs serve a total of approximately 750,000 lines in Rhode Island.¹² Of the total lines in Rhode Island, 35 percent, or approximately 264,000, serve businesses, and 65 percent, or approximately 485,000, serve residential customers.¹³ For business and residential customers combined, Verizon estimates that CLECs using all modes of entry serve approximately 119,000 lines, or nearly 16 percent of all lines in the state.¹⁴

Competitors have made substantial progress in penetrating the business market in Rhode Island. CLECs serve approximately 28 percent of all business lines in the state.¹⁵ CLECs serve approximately

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 Local Competition in Rhode Island ¶ 3.

¹³ See Verizon Br. Tab A, Ex. 4; Local Competition in Rhode Island ¶ 3; Verizon Line Counts *Ex Parte* at 1.

¹⁴ See Local Competition in Rhode Island ¶ 3; Verizon Line Counts *Ex Parte* at 1.

¹⁵ See Verizon Br. Tab A, Ex. 4; Local Competition in Rhode Island ¶ 3; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 74,000 business lines).

19.3 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 7.4 percent of all business lines.¹⁷ CLECs use the UNE-platform (a combination of loop, switch, and transport elements) to serve 1.3 percent of such lines.¹⁸

CLECs serve approximately 9.2 percent of all residential lines in Rhode Island.¹⁹ Most CLEC service to residential customers in Rhode Island is facilities-based, including that provided over the cable television facilities of Cox Communications.²⁰ Cox's cable telephony service is available to between 75 and 95 percent of homes in the state.²¹ The wide-spread availability of facilities-based competition, which is the type of competitive entry best able to ensure healthy ongoing competition and deregulation, counts heavily in favor of granting Verizon's application.²² Other CLECs serve

¹⁶ See Verizon Br. Tab A, Ex. 4; Local Competition in Rhode Island ¶ 3; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 51,000 business lines using at least some of their own facilities).

¹⁷ See Verizon Br. Tab A, Ex. 4; Local Competition in Rhode Island ¶ 3; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 19,000 business lines via resale).

¹⁸ See Verizon Br. Tab A, Ex. 4; Local Competition in Rhode Island ¶ 3; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 3,500 business lines through the UNE-platform).

¹⁹ See Verizon Br. Tab A, Ex. 4; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 45,000 residential lines).

²⁰ See Local Competition in Rhode Island ¶ 5; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 39,000 residential customers using at least some of their own facilities).

²¹ See Local Competition in Rhode Island ¶ 5.

²² See FCC Chairman Powell Statement at 2 (“[F]acilities-based competition is the mode of market entry most likely to foster simultaneously and sustainably the Act’s mandates of competition, deregulation and innovation.”).

approximately 1.1 percent of all residential lines through resale, and less than one-tenth of 1 percent of such lines by means of the UNE-platform.²³

The amount of entry by competitive facilities-based carriers and resellers in Rhode Island, as well as the absence of complaints regarding these modes of entry, leads the Department to conclude that in Rhode Island, opportunities to serve business and residential customers by fully facilities-based carriers and resellers are available.

While there is significantly less competition to serve customers by means of the UNE-platform, the Department does not believe there are any material non-price obstacles to competition in Rhode Island. Verizon has submitted evidence to show that its OSS in Rhode Island are the same as those in Massachusetts, and that aspects of its OSS that were not tested in Massachusetts are generally satisfactory in Rhode Island.²⁴ Moreover, there have been few complaints regarding Verizon's Rhode Island OSS.

Although the non-price aspects of Verizon's UNE offering in Rhode Island do not appear to raise concerns, the Department notes several complaints from commenters regarding the pricing of UNEs in Rhode Island.²⁵ The Department urges the Commission to look carefully at these comments in determining whether Verizon's prices are cost-based. 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."²⁶

²³ See Verizon Br. Tab A, Ex. 4; Verizon Line Counts *Ex Parte* at 1 (CLECs serve approximately 5,400 residential lines via resale and 430 residential lines through the UNE-platform).

²⁴ See *supra* note 9.

²⁵ See AT&T Comments at 1-17; WorldCom Comments at 4-12; ASCENT Comments at 2-10.

²⁶ DOJ Kansas/Oklahoma Evaluation at 11.

III. Conclusion

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.

Respectfully submitted,

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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 January 4, 2002.

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