

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 ) CC Docket No. 01-9  
Distance Company (d/b/a Verizon Enterprise )  
Solutions), and Verizon Global Networks )  
Inc., for Authorization to Provide In-Region, )  
InterLATA Services in Massachusetts )

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EVALUATION OF THE  
UNITED STATES DEPARTMENT OF JUSTICE

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<b>DOJ Evaluations and FCC Orders</b>	
DOJ Massachusetts I Evaluation	Evaluation of the United States 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), and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts</i> , CC Docket No. 00-176 (Oct. 27, 2000) (“DOJ Massachusetts I Evaluation”) < <a href="http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm">http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm</a> >.
<i>FCC Line Sharing Order</i>	Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, <i>In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability</i> , CC Docket No. 98-147, and <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , CC Docket No. 96-98, 14 FCC Rcd. 20,912 (Dec. 9, 1999) (“ <i>FCC Line Sharing Order</i> ”).
<i>FCC Kansas/Oklahoma Order</i>	Memorandum Opinion and Order, <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 No. 01-29 (Jan. 19, 2001) (“ <i>FCC Kansas/Oklahoma Order</i> ”) < <a href="http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications">http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications</a> >.
<i>FCC Texas Order</i>	Memorandum Opinion and Order, <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 Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas</i> , 15 FCC Rcd. 18354 (June 30, 2000) (“ <i>FCC Texas Order</i> ”) < <a href="http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications">http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications</a> >.
<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&amp;T Corp. v. FCC</i> , 220 F.3d 607 (D.C. Cir. 2000) (“ <i>FCC New York Order</i> ”) < <a href="http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications">http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications</a> >.

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<b>Verizon Filings</b>	
Verizon LFACS <i>Ex Parte</i>	Verizon New England Inc., Access to Loop Information for Qualification of DSL Loops, <i>Ex Parte</i> Submission to the FCC, CC Docket No. 01-9 (Feb. 2, 2001) (“ <i>Verizon LFACS Ex Parte</i> ”).
Verizon Dec. C2C <i>Ex Parte</i>	Verizon New England Inc., Massachusetts Carrier-to-Carrier Report for December 2000, <i>Ex Parte</i> Submission to the FCC, CC Docket No. 01-9 (Jan. 30, 2001) (“ <i>Verizon Dec. C2C Ex Parte</i> ”).
Verizon Supp. Brief	Supplemental Brief in Support of Application by Verizon New England, <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), and Verizon Global Networks Inc., for Authorization To Provide In-Region, InterLATA Services in Massachusetts</i> , CC Docket No. 01-9 (Jan. 16, 2001) (“ <i>Verizon Supp. Brief</i> ”).
<b>Affidavits/Declarations</b>	
Covad Clancy Decl.	Declaration of Michael Clancy <i>attached to</i> Comments of Covad Communications Company (“ <i>Covad Clancy Decl.</i> ”).
DOJ Schwartz Aff.	Affidavit of Dr. Marius Schwartz on behalf of the United States Department of Justice (May 14, 1997) (“ <i>DOJ Schwartz Aff.</i> ”) < <a href="http://www.usdoj.gov/atr/public/comments/sec271/bellatlantic/3813_exhibits.htm">http://www.usdoj.gov/atr/public/comments/sec271/bellatlantic/3813_exhibits.htm</a> >.
DOJ Schwartz Supp. Aff.	Supplemental Affidavit of Dr. Marius Schwartz on behalf of the United States Department of Justice (Nov. 3, 1997) (“ <i>DOJ Schwartz Supp. Aff.</i> ”) < <a href="http://www.usdoj.gov/atr/public/comments/sec271/bellatlantic/3813_exhibits.htm">http://www.usdoj.gov/atr/public/comments/sec271/bellatlantic/3813_exhibits.htm</a> >.

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<b>Short Citation</b>	<b>Full Citation</b>
Rhythms Williams Supp. Decl.	Supplemental Declaration of Robert Williams in Support of Rhythms Links Inc. Opposition to Verizon’s Supplemental Application for 271 Authority in the State of Massachusetts, <i>attached to</i> Rhythms Netconnections Inc. Comments in Opposition to Verizon’s Application for 271 Authority in the State of Massachusetts as Tab 1 (“Rhythms Williams Supp. Decl.”).
Verizon Dowell Supp. Decl.	Supplemental Declaration of George Dowell, <i>attached to</i> Verizon Supplemental Brief App A. as Tab 4 (“Verizon Dowell Supp. Decl.”).
Verizon Gertner/Bamberger Supp. Decl.	Joint Supplemental Declaration of Robert H. Gertner and Gustavo E. Bamberger, <i>attached to</i> Verizon Supplemental Brief App. A as Tab 3 (“Verizon Gertner/Bamberger Supp. Decl.”).
Verizon Lacouture/Ruesterholz Supp. Decl.	Joint Supplemental Declaration of Paul A. Lacouture and Virginia P. Ruesterholz, <i>attached to</i> Verizon Supplemental Brief App. A as Tab 1 (“Verizon Lacouture/Ruesterholz Supp. Decl.”).
Verizon Sapienza/Mulcahy Supp. Decl.	Joint Supplemental Declaration of Russell J. Sapienza and Gerard J. Mulcahy, <i>attached to</i> Verizon Supplemental Brief App. A as Tab 2 (“Verizon Sapienza/Mulcahy Supp. Decl.”).
<b>Initial Third Party Comments</b>	
Covad Comments	Comments of Covad Communications Company, CC Docket No. 01-9 (Feb. 6, 2001) (“Covad Comments”).
NAS Comments	Opposition of Network Access Solutions, CC Docket No. 01-9 (Feb. 6, 2001) (“NAS Comments”).
Rhythms Comments	Rhythms Netconnections Inc. Comments in Opposition to Verizon’s Application for 271 Authority in the State of Massachusetts, CC Docket No. 01-9 (Feb. 6, 2001) (“Rhythms Comments”).
<b>DOJ Exhibit</b>	
DOJ Exhibit 1	Verizon’s Recalculation of Revised PR-6-01 (Installation Trouble Reports) (“DOJ Exhibit 1”).

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**Introduction and Summary**

Verizon first filed an application for long distance authority in Massachusetts in September 2000. The Department of Justice (“Department”) Evaluation of that application focused principally on Verizon’s provision of unbundled digital subscriber line (“DSL”) loops to its competitors, noting that Verizon’s performance reports indicated a lack of parity with respect to certain aspects of its performance in providing access to DSL loops, and that based on the record at that time, the Department was not able to assess the validity of Verizon’s objections to the prescribed performance measures or of its suggested alternative methods of measuring performance. The Department also concluded that Verizon had not yet demonstrated that suitable performance measures with unambiguous benchmarks were in place to deter backsliding.<sup>1</sup>

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<sup>1</sup> DOJ Massachusetts I Evaluation at 10-17.

Verizon withdrew its initial Massachusetts application on December 18, 2000, and filed its present application on January 16, 2001. A number of changes have taken place since the Department filed its Evaluation of that initial Massachusetts application. Verizon and the competitive local exchange carriers (“CLECs”) agreed to modify the carrier-to-carrier (“C2C”) performance measures for DSL loop performance and to create a set of C2C performance measures for line sharing; the Massachusetts Department of Telecommunications and Energy (“MA DTE”) adopted these changes to the C2C performance measures;<sup>2</sup> Verizon submitted to the MA DTE changes to its performance assurance plan, proposing to add additional DSL-capable loop and line-sharing measurements and to make DSL a separate mode of entry;<sup>3</sup> Verizon’s separate data affiliate, Verizon Advanced Data, Inc. (“VADI”), is now fully operational in Massachusetts;<sup>4</sup> Verizon has agreed to proceed with the development and deployment of a mechanism to provide CLECs with electronic access to loop make-up information;<sup>5</sup> and Verizon conducted reinspections of line-sharing-related collocation work,<sup>6</sup> modified its order processing software to allow some line-sharing orders to flow through to the provisioning stage without manual intervention,<sup>7</sup> and established a wholesale service center dedicated to DSL loops and line sharing.<sup>8</sup>

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<sup>2</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 15.

<sup>3</sup> *Id.* ¶¶ 174, 176.

<sup>4</sup> Verizon Dowell Supp. Decl. ¶¶ 11-12.

<sup>5</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶¶ 53-54; *see also* Verizon LFACS *Ex Parte*.

<sup>6</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 138.

<sup>7</sup> *Id.* ¶ 134.

<sup>8</sup> Verizon Supp. Brief at 28; *see also* Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 141.

This Evaluation will briefly highlight some of the key disputed issues relating to access to DSL loops.<sup>9</sup> The current application shows improvement in some aspects of Verizon’s performance in providing access to DSL loops. There are still, however, factual disputes between Verizon and various commenters relating to the validity of the performance data and the quality of Verizon’s performance. In some areas, most notably with respect to line-shared DSL loops, there is very little evidence reflecting the results of commercial experience with Verizon’s provisioning process.

As explained below, Verizon’s current application relies on a substantial number of statistical analyses of its performance. These performance reports measure Verizon’s performance in a variety of ways. Each performance report is subject to important qualifications and/or exclusions of data -- in many cases the accuracy or validity of these reports is challenged by commenters -- and many of them indicate that Verizon has not provided nondiscriminatory access to DSL loops. While these additional submissions by Verizon make the current application stronger in some respects than the first Massachusetts application, the record still fails to provide a clear demonstration of nondiscriminatory performance. Accordingly, the Department remains unable to conclude on the current record that Verizon has adequately demonstrated its ability to provide nondiscriminatory access to DSL loops.

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<sup>9</sup> The Department’s Evaluation of the first Massachusetts application urged the Federal Communications Commission (“Commission”) to carefully examine the prices Verizon was charging to competitors for the use of unbundled elements, but did not express an opinion on the appropriateness of those prices. DOJ Massachusetts I Evaluation at 17-21. Since Verizon’s current application provides little additional information about pricing issues, the Department reiterates its earlier recommendation that the Commission should carefully examine the Massachusetts prices, and requests that its Evaluation of the initial application be incorporated into the record in this proceeding.



## **I. Verizon’s Demonstration of Its Ability to Provide Access to DSL Loops Merits Careful Examination**

### **A. Principles that Guide the Department’s Evaluation**

In evaluating whether local telecommunications markets are “fully and irreversibly open to competition,” the Department has placed considerable importance on an applicant’s demonstration that it has achieved an acceptable level of performance, i.e., that it has established a benchmark to which it can be held thereafter, based on objective data reflecting actual commercial experience.<sup>10</sup> The rapid and effective implementation of complex new access arrangements, in an environment in which incumbents lack commercial incentives to implement such arrangements, will depend to a significant degree on regulatory policies. Experience has shown that regulatory agencies are handicapped in deciding how best to resolve the many technical disputes that arise in this context, and in deciding how rapidly incumbents reasonably may be required to implement new access arrangements, by the absence of readily available and objective information on these issues.<sup>11</sup>

The Telecommunications Act of 1996<sup>12</sup> mitigates these difficulties by conditioning long-distance entry on a Bell operating company’s (“BOC”) effective implementation of market opening arrangements, thereby strengthening the BOC’s incentives to implement new access arrangements rapidly and effectively. By measuring a BOC’s implementation of access arrangements against objective performance benchmarks, regulatory agencies can to some extent reduce their involvement in complex disputes between incumbents and entrants concerning the

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<sup>10</sup> See generally DOJ Schwartz Aff.; DOJ Schwartz Supp. Aff.

<sup>11</sup> DOJ Schwartz Aff. ¶¶ 141-148; DOJ Schwartz Supp. Aff. ¶¶ 36-39.

<sup>12</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

technical means by which access should be provided, and focus instead on more tractable questions about the level of quality of wholesale performance that should be deemed acceptable and whether that level of quality has been achieved. Moreover, once it has been demonstrated through objective measures that a particular level of performance is feasible, it will be easier to impose contractual or regulatory sanctions if the performance is subsequently degraded. Thus, achieved performance benchmarks in a commercial environment serve not only as a demonstration that the market has been opened, but also as a tool to ensure that it will remain open.

In emphasizing these principles, the Department recognizes that careful judgments are required for several different types of questions. First, there are typically many dimensions on which to measure wholesale performance and room for reasonable disagreement about which dimensions have the greatest competitive significance.<sup>13</sup> Second, the level of performance that should be deemed acceptable or unacceptable on any single dimension of performance cannot be defined with scientific precision. As the Federal Communications Commission (“Commission”) has recognized, a requirement of “parity” is not a requirement of absolute equality of performance,<sup>14</sup> and any attempt to prescribe a required level of performance, like any line-drawing exercise, will be unavoidably arbitrary in distinguishing between performance just barely above the prescribed level and performance just barely below that level. Third, some judgment is required in assessing the amount of data and the duration of performance at an “acceptable” level that are

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<sup>13</sup> For example, the quality of performance in providing access to unbundled loops can be measured by average provisioning intervals, percentage of trouble reports on installed loops, percentage of missed appointments for maintenance and repairs, and a variety of other dimensions. *See FCC New York Order ¶¶ 270, 278*; *see also FCC Texas Order ¶¶ 303-306* (assessing the ILEC’s maintenance and repair of DSL loops by looking at multiple metrics); *FCC Kansas/Oklahoma Order ¶ 218* (examining multiple metrics in assessing line-sharing performance).

<sup>14</sup> *See, e.g., FCC Texas Order ¶ 58.*

needed to establish a suitable performance benchmark. For example, if performance data indicate little variability from month to month, one might conclude that a suitable benchmark had been achieved on the basis of a short period of acceptable performance. In another context, if performance data show substantial variability from month to month or a trend of declining performance, it would be prudent to require a longer period of acceptable performance. Finally, as the Commission has recognized, there should be some “play in the joints” of the section 271 process so that evolving obligations under section 251 do not operate, in practice, to keep approval of a section 271 application perpetually out of reach of the BOCs.<sup>15</sup>

With these important considerations in mind, the Department urges the Commission, in this and other section 271 proceedings, to pay particular attention to the importance of demonstrated achievement of adequate benchmarks of wholesale performance, measured by objective performance data. In particular, participants in the section 271 process (including applicants, state commissions and commenters) should work towards developing a record that will show whether such benchmarks have been achieved. Components of such a showing would include three types of evidence: (1) whether reliable systems for gathering, processing, reporting and ensuring the integrity of performance data have been implemented; (2) whether those systems measure the competitively significant aspects of a BOC’s wholesale performance; and (3) whether an “acceptable” level of performance has been defined and can be demonstrated through that performance measurement process. Attention to these principles will provide important competitive benefits, both in opening the markets for local telecommunications services and in facilitating proof that will permit additional long distance competition by the BOCs.

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<sup>15</sup> See *FCC New York Order* ¶¶ 316-336 (providing direction to 271 applicants regarding the provision of xDSL-capable loops).

## **B. Verizon’s Provisioning of DSL-Capable Loops**

### **1. Access to DSL-Capable Loops Generally**

Within the framework of these general principles, the Department turns to some of the specific questions raised by this particular application. In its current application, Verizon reports multiple versions of certain data to measure the adequacy of Verizon’s performance in providing stand-alone DSL loops and line-sharing loops to its competitors. First, Verizon provides its official C2C DSL performance reports for September, October, and November 2000 using the performance measures that were prescribed by the MA DTE at that time.<sup>16</sup> Similar performance data for December 2000 also has been added to the record.<sup>17</sup> Second, Verizon recalculated some of these performance reports by excluding certain data from its September and October reports because it claims those data reflected performance problems caused by a strike of Verizon employees.<sup>18</sup> Third, Verizon recalculated its performance under certain measures excluding data concerning performance problems that Verizon attributed to the failure of some CLECs to follow prescribed policies and procedures.<sup>19</sup> Some CLECs contest the appropriateness of these exclusions.<sup>20</sup> Fourth, in December 2000, the MA DTE adopted revisions to some of the C2C performance measures and a separate set of C2C performance measures for Verizon’s provision

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<sup>16</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3-5.

<sup>17</sup> Verizon Dec. C2C *Ex Parte*.

<sup>18</sup> *See, e.g.*, Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 66 & Attach. R; *id.* ¶ 69 & Attach. S; *id.* ¶ 72 & Attach. U.

<sup>19</sup> *See, e.g., id.* ¶ 95 & Attach. Z (adjusting for improper CLEC acceptance testing); Verizon Sapienza/Mulcahy Decl. ¶¶ 98-107.

<sup>20</sup> *See, e.g.*, Rhythms Comments at 18; Rhythms Williams Supp. Decl. ¶ 26 (questioning Verizon’s exclusions); Covad Clancy Decl. ¶¶ 10-23 (arguing problems should be attributed to Verizon).

of access to line-sharing DSL loops.<sup>21</sup> Verizon recalculated performance data for the September through November time period, retroactively applying the revised performance measures as well as the new line-sharing measures to its performance in that time period.<sup>22</sup>

Review of these data reveals that while Verizon's performance has improved since the time of its first application for Massachusetts, a number of questions and concerns remain as to whether Verizon has adequately demonstrated its ability to provide nondiscriminatory access to DSL loops. For certain important measures, Verizon's reported performance still falls below prescribed standards. In addition, some of Verizon's restatements of these measures do not provide a reliable alternative means of determining that Verizon is providing its competitors with adequate access to DSL loops, and significant questions remain as to other restatements. The Department notes the following particular concerns:

- *Percent DSL orders completed within six days (PR-3-10)*. The C2C reports show significantly fewer lines completed within six days for CLECs than for Verizon or its separate data affiliate, VADI,<sup>23</sup> although the percentage of orders completed within six days for both CLECs and VADI is increasing each month.<sup>24</sup> Verizon restated its performance using the revised performance measure, under which Verizon may exclude

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<sup>21</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 15. Verizon's updated C2C compliance filing, which describes the revised performance measures, can be found at Verizon Supp. Brief App. B as Tab 1B.

<sup>22</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 66 & Attach. R; *id.* Attach. JJ; *see also* Verizon Gertner/Bamberger Supp. Decl. at 4 tbl.1, 10 tbl.2, 11 tbl.3. Verizon also hired PricewaterhouseCoopers to verify certain aspects of Verizon's recalculated performance data and to review several aspects of Verizon's DSL business. Verizon Sapienza/Mulcahy Supp. Decl. ¶ 9.

<sup>23</sup> Parity measures in Verizon's September and October 2000 C2C performance reports compare Verizon's performance for CLECs to Verizon's retail performance. Verizon's separate data affiliate, VADI, began operations in November 2000. Parity measures in Verizon's November C2C performance report compare Verizon's performance for CLECs primarily to that for VADI, while parity measures in the December 2000 C2C performance report compare Verizon's performance for CLECs entirely to that for VADI.

<sup>24</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3-5 (PR-3-10); Verizon Dec. C2C *Ex Parte* at 13 (PR-3-10).

three types of orders: orders that require manual loop qualification, orders for which the requested provisioning interval is greater than six days, and orders for which Verizon did not have an available loop.<sup>25</sup> In addition, Verizon excluded strike-affected data.<sup>26</sup> CLECs question the accuracy of some of the exclusions and the assumptions under which Verizon excluded data.<sup>27</sup> Even with these exclusions, which collectively remove from the performance report more than 83 percent of CLEC orders, Verizon’s performance, while better, still falls substantially short of completing 95 percent of CLEC orders within six days, the revised prescribed standard.<sup>28</sup>

- *Percent DSL orders completed on time (PR-4-14 to -4-18)*. These C2C performance measurements show that Verizon’s on-time performance is improving, but remains below the 95 percent standard.<sup>29</sup> Verizon’s removal of strike-affected orders from these measures for September and October 2000 improves Verizon’s reported performance somewhat.<sup>30</sup> Verizon’s final data presentation of the revised on-time measure, which excludes orders for which Verizon cannot provide a loop and adjusts for strike-affected orders, shows on-time performance that exceeds the 95 percent standard only for November 2000.<sup>31</sup> One CLEC questions the reliability of these data, alleging that some of

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<sup>25</sup> Verizon Supp. Brief App. B, Tab 1B at 49 (definition of revised PR-3).

<sup>26</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 81; Verizon Gertner/Bamberger Supp. Decl. ¶ 13; *id.* at 10 tbl.2.

<sup>27</sup> Rhythms Comments at 14-16 (arguing that Verizon erroneously excluded orders as not within the six-day interval); Covad Comments at 23-24 (criticizing exclusion of strike data).

<sup>28</sup> Verizon Gertner/Bamberger Supp. Decl. at 10 tbl.2 (revised PR-3-01 performance data for CLECs: Sept. 2000: 89.12% of CLEC orders completed within 6 days; Oct. 2000: 80.00%; Nov. 2000: 82.24%); *id.* ¶ 18 & n.11 (for three-month period, 83.77% of DSL orders excluded from sample); Verizon Supp. Brief App. B, Tab 1B at 49 (performance standard for revised PR-3-10 (xDSL loops) is 95%).

<sup>29</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3-5 (PR-4-14 to -4-18); Verizon Dec. C2C *Ex Parte* at 13 (PR-4-14 to -4-18); NAS Comments at 7-8. In interpreting on-time metrics such as Verizon’s, it is important to recognize that, because they are calculated based on *completed* orders rather than all *submitted* orders, they will overstate the quality of the BOC’s performance if orders are canceled because the BOC takes too long to provision them (but not if cancellations are attributable to other factors). This is also true of a percent orders completed in “x” days measure, such as PR-3-10, which also is based on completed orders. The Department understands that the number of canceled DSL orders in Massachusetts may be significant, but the CLEC comments do not argue that this issue distorts the reported metrics in this application.

<sup>30</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 69 & Attach. S. NAS alleges that it took Verizon eight to eleven weeks after the strike ended to provision orders placed during the strike. NAS Comments at 10.

<sup>31</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 66 & Attach. R.

the loops counted by Verizon as completed were never properly provisioned.<sup>32</sup> In addition, Verizon’s average installation interval performance, a companion measure, is inconsistent, ranging from better than retail to 41.7 percent worse than retail.<sup>33</sup>

- *Percent installation troubles on DSL lines within 30 days (PR-6-01)*. The C2C reports show a substantial lack of parity.<sup>34</sup> The reported rate of installation troubles is lower in the revised performance measure, under which Verizon excludes troubles reported by CLECs that do not do joint acceptance testing of the loop at the time of installation, but the revised data still show a greater rate of installation troubles for CLECs than for Verizon retail or VADI.<sup>35</sup> Moreover, the revised measure appears to be flawed. While trouble reports from carriers that do not conduct acceptance tests are excluded from the numerator of this measure, orders from such carriers are not excluded from the denominator.<sup>36</sup> The result is to inappropriately lower the trouble report rate. When these orders are excluded from the denominator, the reported trouble rate is higher for October and November 2000 under the revised measure than as reported under the original C2C measure.<sup>37</sup> Contending that CLECs have inappropriately accepted nonworking loops, Verizon also modified both the C2C and revised measure results by excluding reported troubles for such loops from its data.<sup>38</sup> These modifications result in still lower reported rates of installation troubles, although none of these four sets of data shows parity performance. In addition, CLECs question whether Verizon may appropriately exclude some of these trouble tickets, a factual dispute that remains unresolved.<sup>39</sup>

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<sup>32</sup> Covad Comments at 26.

<sup>33</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3 (PR-2-02); Verizon Dec. C2C *Ex Parte* at 12 (PR-2-02).

<sup>34</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3-5 (PR-6-01); Verizon Dec. C2C *Ex Parte* at 13 (PR-6-01).

<sup>35</sup> Verizon Gertner/Bamberger Supp. Decl. ¶¶ 4-6; *id.* at 4 tbl.1; *see also* NAS Comments at 11.

<sup>36</sup> *See* Verizon Supp. Brief App. B, Tab 1B at 59.

<sup>37</sup> DOJ Exhibit 1 (Verizon’s recalculation of revised PR-6-01).

<sup>38</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 96 & Attach. Z (C2C PR-6-01 adjusted for acceptance testing issues); *id.* Attach. AA (revised C2C PR-6-01 adjusted for acceptance testing issues).

<sup>39</sup> Rhythms Williams Supp. Decl. ¶ 26; Covad Clancy Decl. ¶¶ 10-23. A review of Verizon’s methodology reveals that it generally infers improper acceptance from the nature of the trouble reported. Such an inference could reliably be made if the type of trouble reported: (1) could not occur post-acceptance, but rather must have existed at acceptance, *and* (2) would consistently be detected by the joint testing methods employed.

- *Percentage missed DSL repair appointments (MR-3-01)*. The C2C data show that from September through November 2000, Verizon met 85 percent of DSL repair appointments for CLECs compared to approximately 86 percent for Verizon retail DSL customers.<sup>40</sup> These aggregate data, however, blur the fact that Verizon’s performance has been inconsistent. Verizon performed worse for CLECs than for itself in October and November 2000 and then better for CLECs than for itself in December 2000.<sup>41</sup>
- *Mean time to repair (MR-4-01 & MR-4-02)*. The C2C reports show that the mean time to repair CLEC lines has decreased significantly over the past few months, but there still was a significant disparity between Verizon’s performance for itself or VADI and its performance for CLECs from September through November 2000. Although Verizon’s performance for CLECs improved substantially in December 2000, narrowing the gap, Verizon has not established a consistent record of improved performance.<sup>42</sup> Verizon’s alternative analysis excludes from the data instances in which Verizon contends that CLECs have refused weekend repair appointments. This alternative analysis reduces the disparity in performance between CLECs and Verizon’s retail business.<sup>43</sup> Unlike some of the other disputed measures, however, the definition of this C2C measure has not been revised to account for refused appointments. Therefore, the C2C reports for this measure will likely continue to be disputed in the future, and thus may have limited value as a benchmark of performance. The Department also notes that excluding only declined CLEC appointments, and not those declined by BOC customers, may create an analysis that is biased toward finding parity.<sup>44</sup>

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<sup>40</sup> Verizon Supp. Brief at 25; Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 115 & Attach. EE.

<sup>41</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 4-5 (MR-3-01); Verizon Dec. C2C *Ex Parte* at 15 (MR-3-01).

<sup>42</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3-5 (MR-4-01, MR-4-02); Verizon Dec. C2C *Ex Parte* at 15 (MR-4-01, MR-4-02).

<sup>43</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 118-122 & Attach. HH.

<sup>44</sup> Some CLEC DSL customers, which often are business customers, may not readily accept weekend repair appointments. By contrast, Verizon’s DSL customers, which primarily are residential customers, may prefer weekend repair appointments, which may limit Verizon’s ability to schedule *weekday* appointments for its customers. Excluding observations involving CLEC refusals of weekend appointments makes Verizon’s performance for CLECs look stronger, moving the apparent balance toward parity. Excluding observations involving refused *weekday* appointments -- an adjustment Verizon did not make -- could make Verizon’s performance to its retail unit or separate affiliate look better, moving the apparent balance away from parity.



- *Percentage out of service more than 24 hours (MR-4-08).* This C2C performance measurement demonstrates a lack of parity, although the percentages are falling for both Verizon and the CLECs, and the gap between the two is shrinking.<sup>45</sup>

## 2. Access to Line Sharing for DSL

In this application, Verizon has provided DSL line-sharing data that is distinct from its performance reports concerning DSL stand-alone loops. The Commission required incumbent local exchange carriers (“ILECs”) to implement line sharing by June 6, 2000.<sup>46</sup> Implementation of line sharing required central office modifications, including the installation of splitters. During the spring of 2000, in anticipation of the June 6<sup>th</sup> deadline, Verizon and the CLECs operating in the Verizon region, including Massachusetts, developed a plan to expedite the necessary implementation work.<sup>47</sup> As Verizon completed this work, CLECs began submitting a few line-sharing orders.

It subsequently became clear that the central office work had not been properly performed and that CLEC orders were not being properly completed.<sup>48</sup> To remedy these problems, Verizon conducted reinspections of all line-sharing-related central office work beginning December 1, 2000.<sup>49</sup> Verizon expected to finish these reinspections by the end of January 2001, and to finish

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<sup>45</sup> Verizon Lacouture/Ruesterholz Supp. Decl. Attach. C at 3-5 (MR-4-08); Verizon Dec. C2C *Ex Parte* at 15 (MR-4-08).

<sup>46</sup> *FCC Line Sharing Order* ¶¶ 130, 161.

<sup>47</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶¶ 135-136.

<sup>48</sup> Covad Comments at 6; Rhythms Comments at 8.

<sup>49</sup> *See* Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 138.

fixing the problems identified at the inspections thereafter.<sup>50</sup> The number of completed CLEC shared lines in service in Massachusetts so far is small, but growing.<sup>51</sup>

Verizon argues that it fully complies with the line-sharing requirements established by the Commission.<sup>52</sup> In support of this argument, Verizon reports on its line-sharing performance for September through November 2000 using recently adopted, consensus performance measures.<sup>53</sup> The value of these performance reports, however, is substantially undermined by Verizon’s statement that certain reports “may overstate” its performance because Verizon technicians marked some orders complete, even though splitter installation problems prevented line sharing over those loops.<sup>54</sup> Since Verizon’s application does not quantify the extent of this problem, it is impossible to reach any conclusions about the quality of Verizon’s performance with respect to line-sharing loops based on these data.

Further, some CLECs state that once they detected problems in a central office, they stopped submitting orders for that office.<sup>55</sup> Verizon’s reinspection process, begun in December 2000, appears to validate CLEC claims that Verizon was unable to process line-sharing orders in certain central offices during September, October and November 2000.<sup>56</sup> Because Verizon’s

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<sup>50</sup> *See id.*

<sup>51</sup> *Id.* Attach. JJ.

<sup>52</sup> Verizon Supp. Brief at 26.

<sup>53</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 145 & Attach. JJ.

<sup>54</sup> Verizon Supp. Brief at 30 n.25. This problem affected those performance measures calculated using the provisioning completion date: PR-2 (average interval completed); PR-3-10 (percent completed within x days); and PR-4 (missed appointments).

<sup>55</sup> *See, e.g.*, Rhythms Comments at 8.

<sup>56</sup> Rhythms Comments at 6-10; Rhythms Williams Supp. Decl. ¶¶ 9-15.

performance measuring system is not designed to measure problems that limit the ability of CLECs to submit orders, performance reports covering such time periods may not constitute reliable evidence of adequate performance.

Verizon is making efforts to resolve its line-sharing implementation difficulties. As noted above, Verizon has installed new software that permits it to verify that the loop is indeed working for data;<sup>57</sup> modified its collocation inspection procedure and reinspected CLEC DSL collocations;<sup>58</sup> automated order processing for some line-sharing orders;<sup>59</sup> and dedicated a wholesale service center to DSL orders.<sup>60</sup>

## II. Conclusion

The discussion above, which highlights some of the important issues raised by this application, indicates that there are a number of significant questions concerning Verizon's provision of access to DSL-capable loops that the Department has been unable to answer on the basis of its review of the record developed to date. These issues prevent the Department from concluding at this stage that Verizon has adequately demonstrated its ability to provide nondiscriminatory access to DSL loops. The Department urges the Commission to consider the full record in determining how it should ultimately resolve this application.<sup>61</sup>

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<sup>57</sup> Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 157.

<sup>58</sup> *Id.* ¶ 138.

<sup>59</sup> *Id.* ¶ 134.

<sup>60</sup> Verizon Supp. Brief at 28; *see also* Verizon Lacouture/Ruesterholz Supp. Decl. ¶ 141.

<sup>61</sup> The Department's current evaluation is necessarily based solely on the evidence contained in Verizon's application and in the comments of other parties. Reply comments and *ex parte* submissions undoubtedly will provide additional evidence concerning the questions that have been raised about Verizon's pre-application DSL performance. As to post-application performance, it is not clear to the

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Department whether additional evidence will be submitted to or accepted by the Commission. In prior decisions under section 271, the Commission has articulated in different ways the standards it will apply in deciding whether to consider such post-application evidence. *See, e.g., FCC Michigan Order* ¶¶ 49-54 (explicating the “complete as filed” rule: “[A] section 271 application, *as originally filed*, will include *all of the factual evidence* on which the applicant would have the Commission rely on making its findings thereon.”); *FCC Texas Order* ¶ 35 (setting forth the “freeze frame” rule: “The new evidence, however, must cover only the period placed in dispute by commenters and may, in no event, post-date the filing of the comments (*i.e.*, day 20).”); *FCC Kansas/Oklahoma Order* ¶¶ 20-27 (granting a waiver to admit evidence of a rate reduction made after day 20 of the application period). *But see id.* Statement of Commissioner Harold Furchtgott-Roth: (“Although there may be some circumstances in which it would be proper for the Commission to consider late-filed evidence, those circumstances are not present here.”). Given the strict time limits on section 271 proceedings and the complexity of the issues, the Commission should maintain rigorous procedures to ensure the completeness of initial applications and a fair and reasonable process through which all parties may adequately address all relevant issues, though the Commission has considerable discretion as to how best to achieve those goals. It is possible that the Commission’s decisions on these procedural issues could have an important bearing on the contents of the record on which this application is decided.

## 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, 2001.

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