DISSENTING OPINION OF COMMISSIONER MICHAEL J. COPPS

September 19, 2001

In the Matter of: 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 (CC Docket No. 01-138)

A primary purpose of the Telecommunications Act of 1996 was to eliminate barriers to competition in the local telecommunications market. One of the most important tools Congress created to achieve this goal was Section 271 of the Communications Act.[1] The combination of competitive BOC entry into the interLATA market and competitive local exchange carrier (CLEC) entry into the BOC's once-dominant local market, Congress believed, would lead to significant consumer benefits in the form of lower prices, better service, and investment in new technologies. Continued BOC dominance of a state's local market, however, could undermine consumer benefits if the BOC could leverage this dominance upon entering the interLATA market.

I voted to approve Verizon's application to provide interLATA service in Connecticut because I found that Verizon met its burden of proving that it complied with section 271. I believe that Verizon has made great strides in opening the local market in Pennsylvania as well. The company should be commended for its hard work. Despite these efforts, however, the record does not demonstrate that Verizon has satisfied the requirements of section 271 in Pennsylvania.

The Application reveals that Verizon has worked diligently and successfully on many of its section 271 responsibilities. We should all be pleased that Verizon has demonstrated that problems seen in several prior applications can be fixed. In Section 271, however, Congress did not provide us with a balancing test, where we look to the quality of a BOC's overall effort to meet its responsibilities. Congress insisted, as the Commission has noted in previous Orders, that a BOC must meet *each and every checklist item* before the Commission grants permission to offer interLATA service.[2] Additionally, we must not forget that the granting of an application must be in the public interest.

The record before us fails to prove that Verizon provides competitors with adequate wholesale bills. Verizon has therefore not yet met its burden of proving that it complies with item 2 of the "competitive checklist." Furthermore, the Commission's analysis and procedures related to UNE rates were troubling. Additionally, I agree with the United States Department of Justice's (DOJ) determination that "the effectiveness of the Pennsylvania PAP [Performance Assurance Plan] may be compromised not only by the lack of effective billing metrics, but also by its structural remedies."[3] This

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[1] The Telecommunication Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan*, 12 F.C.C. Rcd. 20, ¶ 9 (1997) (*Michigan 271*).

[3] Evaluation of the United States Department of Justice, In the Matter of 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, CC Docket No. 01-138, 14-15 (July 26, 2001) (citation omitted) (DOJ Evaluation).

lack of effectiveness leads me to conclude that the PAP does not provide adequate incentives to ensure continued compliance with checklist items.

I deem approval of the Application at this point to be premature. It may well be that with just a few months more time, and with additional information about procedures recently put in place and presently at work, this Application could gain my support. We are not quite there yet, however. Because we lack the option of taking this brief time to collect such additional information, I must respectfully, and somewhat reluctantly, dissent.

I. BACKGROUND ON SECTION 271

In 1996 Congress faced a telecommunications industry where local and long distance companies were barred from competing against each other by legal restrictions and economic forces. Judge Greene's Modified Final Judgement (MFJ) prohibited the BOCs from offering long distance services. The MFJ stated that the restriction was "clearly necessary to preserve free competition in the interexchange market."[4] Judge Greene's determination was based on the belief that BOCs could discriminate against their interexchange rivals and . . . cross-subsidize their interexchange ventures," if they offered interLATA services while maintaining control of the local exchange market.[5]

In order to promote competition in both the long distance and the local market in this legal and economic landscape, Congress passed the Telecommunications Act (the Act). In addition to the market-opening mechanisms and requirements found in Sections 251, 252 and 253 of the Act, Congress included Section 271. The Commission has stated that Congress included Section 271 because "the BOCs . . . have little, if any, incentive to assist new entrants in their efforts to secure a share of the BOCs' markets," and that Congress sought to create such an incentive by "requir[ing] BOCs to demonstrate that they have opened their local telecommunications markets to competition before they are authorized to provide in-region long distance services."[6]

In order to advance Congress's goal of promoting competition, the Commission must ensure that a BOC fully complies with Section 271's requirements before we approve an application to provide interLATA services. As we have stated before, "unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition," BOC entry into the long distance market "would be anticompetitive."[7] I agree that "[i]n order to effectuate Congress' intent, we must make certain that the BOCs have taken real, significant, and irreversible steps to open their markets."[8]

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4 *United States v. American Telegraph & Telephone Co*., 552 F. Supp. 131, 188 (D. D.C. 1982) (Modification of Final Judgement).

5 *See Michigan 271* at ¶ 10.

6 *Id.* at ¶ 14. *See also In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, 13 F.C.C. Rcd. 20, ¶ 3 (1998).

7 *Michigan 271* at ¶ 18.

8 *Id.* at ¶ 18.

The rewards for following Congress's direction by deregulating and opening the local markets are substantial – creation of consumer choice of carriers, one-stop shopping, the competing away of implicit subsidies, lower prices, better quality of service, and more technological innovation in both the long distance and local markets.

II. VERIZON HAS NOT DEMONSTRATED THAT IT SATISFIES COMPETITIVE CHECKLIST ITEM 2

In order to win approval of this Application Verizon must prove that it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B).[9] Section 271 states that, among fourteen other checklist items, "access or interconnection provided or generally offered by a Bell operating company to another telecommunications carrier [must] include[] . . . [n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[10] This is checklist item 2.

As the Majority states, "[u]nder checklist item 2, a BOC must demonstrate that it provides non-discriminatory access to . . . billing."[11] The Order also correctly states that "[i]n previous section 271 decisions, the Commission has held that, pursuant to checklist item 2, BOCs must provide competitive LECs with . . . complete, accurate and timely wholesale bills,"[12] and that "the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2."[13]

If Verizon's wholesale bills are not readable, auditable and accurate, we must deny the Application because of the critical role these bills play in local competition. The majority identifies four ways in which "[i]naccurate or untimely wholesale bills can impede a competitive LEC's ability to compete."[14]

> "First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper

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[9] *In the Matter of 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*, 16 F.C.C. Rcd. 8988, ¶ 11 (2001) (*Massachusetts 271*).

[10] 47 U.S.C. § 271(c)(2)(B).

[11] *In the Matter of 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*, (CC Docket No. 01-138), ¶ 12 (*Pennsylvania 271*). *See also Bell Atlantic New York Order*, 15 FCC Rcd at 3989, ¶ 82.

[12] *Pennsylvania 271* at ¶ 13.

[13] *Id.* at ¶ 22.

[14] *Id.* at ¶ 23 (citations omitted). *See also id*. at ¶ 13 ("Wholesale bills are essential [to competitors] because competitive LECs must monitor the costs they incur in providing services to their customers.").

> overcharges as current debts on its balance sheet until the changes are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from and incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT [electronic] formats thus represent a crucial component of OSS."[15]

Verizon has the burden of proving that it has provided competitors with adequate wholesale bills.[16] "The BOC at all times bears the burden of proof of compliance with section 271."[17] In determining whether Verizon has met its burden, the Commission uses a "preponderance of the evidence" standard.[18]

It is also worth noting that in the Commission's Public Notice announcing procedures governing BOC section 271 applications, we unequivocally stated that "[w]e expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon."[19]

The Order does not waive this rule with respect to the billing issue in the Verizon Application. The Commission must therefore rely only on information received before the Application was filed in June. This is particularly important with regard to billing, because it means that the Commission only had the benefit of the June billing cycle for its analysis of Verizon's last critical billing software fix. It also means that the Commission did not have the benefit of the July and August billing cycles, and that CLECs did not have adequate time to determine whether the June bills had actually been fixed, as Verizon asserted.

In addition, it is important to note that, "a BOC's promises of future performance to address particular concerns raised by commenters have no probative value in demonstrating its present compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof. In order to gain in-region, interLATA entry, a BOC must support its application with

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[15] *Id.* at ¶ 23 (citations omitted). "BOS-BDT" refers to the "Billing Output Specification (BOS) Bill Data Type (BDT) electronic billing format.

[16] *See Massachusetts 271* at ¶ 11.

[17] *Id*. Note that the Commission has found that "[i]n the first instance . . . a BOC must present a prima facie case in its application that all of the requirements of section 271 have been satisfied. Once the applicant has made such a showing, opponents of the BOC's entry must, as a practical matter, produce evidence and arguments necessary to show that the application does not satisfy the requirements of section 271 or risk a ruling in the BOC's favor. We emphasize, however, that the BOC applicant retains at all times the ultimate burden of proof that its application satisfies section 271." *Michigan 271* at 44.

[18] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc. D/B/A/ Southwestern Bell Long Distance,* 15 F.C.C. Rcd. 18, ¶ 48 (2000).

[19] *Procedures for Bell Operating company Applications Under New Section 271of the Communications Act*, 11 F.C.C. Rcd. 19 (Dec. 6, 1996).

actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior."[20] I cannot, therefore, give any weight to assertions that Verizon's billing practices will improve in the future.

CLECs have provided the Commission with evidence that Verizon's wholesale bills include substantial errors.[21] Errors include: charging for lines that were not provided; assessing retail charges where wholesale charges were appropriate; double billing; assessing taxes improperly; including charges where subtotaled amounts were inconsistent with totaled amounts; and miscrediting previous billing errors, or crediting in ways that could not be identified.[22]

The Majority admits that the question of whether Verizon's Application should be denied because of these billing problems "is a close call."[23] The record demonstrates that Verizon's wholesale billing system has serious flaws.[24] The Pennsylvania Commission found the presence of billing errors.[25] While the Majority of the Pennsylvania Commission approved the Application, two of the five Commissioners dissented, finding that wholesale billing was too flawed to meet the requirements of section 271. Commissioner Nora Mead Brownell stated that "Verizon must implement adjustments to its electronic billing systems to insure that CLECs are able to obtain timely and accurate electronic bills. . . . Without confidence that the billing systems are absolutely able to deliver adequate services and billing support to its customers, I cannot see how the market can work."[26] Commissioner Terrance J. Fitzpatrick added that even after Verizon designated its electronic bill as its bill of record that "the fact remains that the e-billing system is unreliable."[27]

As late as July 26, 2001, DOJ concluded that "the Department is unable fully to endorse Verizon's application based on the current record."[28] DOJ was unable to find that Verizon satisfied section 271 because "Verizon filed its Pennsylvania application with the FCC without sufficient evidence to show that numerous problems with its wholesale billing systems have been corrected." More than a month after Verizon submitted the last billing information on which the Commission may legally rely,

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[20] *Michigan 271* at ¶ 55.

[21] *See* Reply Comments of Z-Tel at ¶ 4 and footnote 1; *Ex Parte* Letter of Z-Tel at 3 (August 10, 2001); *Ex Parte* Letter of Z-Tel at 2-3 (August 17, 2001); WorldCom Reply Comments at 4-5; Lichtenberg Reply Declaration at ¶ 21, 23-28; Fawzi/Kirchberber Declaration at ¶¶ 93-95. It is important to note that these commenters indicate that problems with bills received after the software change relied upon by the majority. There is additional evidence that bills prior to June contained serious errors as well, including an admission by Verizon of billing errors. *See, e.g.,* Verizon McLean/Wierzbicki/Webster Declaration at ¶ 135.

[22] *See Pennsylvania 271* at ¶ 18 and footnote 55.

[23] *Id.* at ¶ 15.

[24] *See DOJ Evaluation* at 7-8.

[25] Consultative Report of the Pennsylvania Public Utilities Commission, 100-103 (June 25, 2001).

[26] Dissenting Statement of Commissioner Nora Mead Brownell, 1, (June 6, 2001).

[27] Dissenting Statement of Commissioner Terrance J. Fitzpatrick, 2 (June 6, 2001).

[28] *DOJ Evaluation* at 3.

DOJ found that "insufficient time has elapsed to determine whether Verizon's proposed fixes to its billing problems will be effective."[29]

The majority, nonetheless, finds that Verizon has proved that it provides competitors with wholesale bills that satisfy item 2 of the competitive checklist. They note that Verizon's evidentiary showing is "minimally sufficient."[30] I believe that the evidence that the majority relies on is inadequate. The Order states that "[i]n past section 271 orders, the Commission has determined checklist compliance for OSS functions primarily by relying on performance data that reflects actual commercial usage."[31] Performance data is not the primary source of evidence here, despite the fact that the Commission "has consistently held that commercial performance data is the most persuasive form of evidence."[32] The majority explains that it "cannot rely exclusively on past commercial performance data, because, among other things, Verizon has made significant changes to its wholesale billing systems in the most recent months leading up to this application."[33]

This means that Verizon's billing software update in May left the Commission with only the June bill to analyze. The only commercial performance data that the Majority relies on that satisfies checklist item 2, therefore, is the June bill. Prior bills did not satisfy item 2. Subsequent bills are not relied upon, because they are not part of the record under the Commission's "complete when filed" rule.

Apart from the June bill, the Commission has only the KPMG and PriceWaterhouseCoopers (PWC) studies as evidence that Verizon has actually satisfied section 271. The KPMG study did not relate to the electronic bill, only to the paper bill, and was completed months before Verizon made significant billing changes.[34] The PWC study was not open for participation by third parties, and did not include an assessment of billing accuracy.[35] In addition, even if these studies provided direct evidence of satisfactory billing practices, this type of evidence is less probative than commercial performance data. The Commission "has consistently held that commercial performance data is the most persuasive form of evidence."[36] DOJ points out that "[t]he experience in Pennsylvania highlights the weakness of third-party testing, as the CLECs' commercial experience with Verizon's billing in the past, both paper and electronic, has revealed numerous problems with both accuracy and auditability."[37]

This evidence does not convince me that Verizon has met its burden. Accurate and reliable bills, and the ability to uncover and dispute billing errors are critical to competition. Verizon admits that

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29 *Id.* at 3.

30 *Pennsylvania 271* at ¶ 37.

31 *Id.* at ¶ 24.

32 *Id.*

33 *Id.*

34 *See* KPMG, Verizon Pennsylvania Inc. OSS Evaluation Project Final Report (Dec. 22, 2000).

35 *See Pennsylvania 271* at ¶ 21.

36 *Id.* at ¶ 24.

37 *DOJ Evaluation* at 10.

billing problems existed before the June billing cycle.[38] These billing problems persuaded DOJ and two Pennsylvania Commissioners that they could not support the Application. While Verizon claims that software changes corrected billing problems by the June billing cycle, there is evidence that Verizon's software changes leave substantial billing problems uncorrected. AT&T, Z-Tel, and MCI/WorldCom all state that the June bill contained errors that negatively impacted their ability to compete.[39]

In addition, the software changes that are manifested in the June bills do not leave the Commission with the ability to collect enough evidence on whether Verizon successfully corrected billing problems. The June bill was sent to competitors just before our "complete when filed" deadline. That gave the Commission only one billing cycle to use in analyzing the software corrections. In this case, given the long history of billing problems, one billing cycle was not enough. Commissioner Nora Mead Brownell stated that "the system must complete at least two billing cycles [to provide] confidence that the billing systems are absolutely able to deliver adequate services and billing support to customers." Because of evidence of persistent billing problems, I believe that without several months of evidence on the record that Verizon's bills meet the requirements of section 271, the Commission should not approve the Application.

Verizon, while it has obviously worked hard and has made strides in correcting these problems, has not demonstrated that it has eliminated the problems to the point that it provides complete, accurate and timely wholesale bills, as section 271 requires.

I believe that the Commission is inviting future problems by relying so heavily on late filed evidence and the subsequent flurry of *Ex Parte* letters and meetings that were necessary to analyze this new information in an already very complicated application. I fear such a precedent when we are faced with multi-state 271 applications, or applications where more checklist items are in dispute. Reliance on this information could undermine the 271 process in the future and is an invitation to litigation.

III. THE COMMISSION'S PRICING ANALYSIS IS TROUBLING

Verizon must also prove that the pricing of network elements in Pennsylvania does not violate competitive checklist item 2. Pricing of network elements, like wholesale billing, is critical to BOC provision of "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[40]

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[38] *Pennsylvania 271* at ¶ 26 ("Verizon concedes past problems, particularly with the BOS BDT bill [but] contends that recent data show significantly improved performance.").

[39] *See* Reply Comments of Z-Tel at ¶ 4 and footnote 1; *Ex Parte* Letter of Z-Tel at 3 (August 10, 2001); *Ex Parte* Letter of Z-Tel at 2-3 (August 17, 2001); WorldCom Reply Comments at 4-5; Lichtenberg Reply Declaration at ¶ 21, 23-28; Fawzi/Kirchberber Declaration at ¶¶ 93-95. I note that in subsequent *Ex Parte* filings, these parties state that serious billing problems persist beyond the June bill, spilling into the July and August bills. While these *Ex Parte* communications occurred late in our process, to the extent that improvements in the July and August billing cycles give the Majority additional comfort in the decision that Verizon has complied with item 2, this evidence is important.

[40] 47 U.S.C. § 271(c)(2)(B).

Several commenters argued that Pennsylvania's cost methodology was not TELRIC compliant.[41] These commenters identified a long list of potential TELRIC violations.[42] The majority ignores much of this evidence and finds instead that "Verizon's charges for UNEs made available in Pennsylvania to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2."[43] The majority specifically addresses only the three allegations where they find no TELRIC violation, rejecting arguments related to the fill factors for copper cable, fiber cable, and digital loop carriers,[44] and switching costs.[45] It then, in a footnote, "note[s] that AT&T and WorldCom allege additional specific TELRIC violations" but strangely declines to analyze or even comment on why it reacts only to two TELRIC allegations and ignores the majority of allegations.[46] I am troubled by the majority's reluctance to deal with the full range of specific TELRIC issues.[47] The majority argues that it need not address the commenters' arguments because Pennsylvania's rate calculations result in rates that a reasonable application of TELRIC methodology would produce. If this is true, why reveal analysis on only the allegations that support the majority decision and ignore other allegations, leaving the question of pricing adequacy so confused?

Commission precedent holds that the TELRIC analysis is important to the 271 process. I believe that the Commission should address these potential TELRIC violations. And it should do so in a way that allows the parties to the proceeding and the Commissioners to analyze this information in an orderly and deliberate process, rather than in a last minute change to the Order.

It is also important to note that because it does not rely on a finding of TELRIC compliance, the majority turns to the Commission's practice of "look[ing] to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce," and bases its acceptance of Pennsylvania's rates on a comparison to New York's rates.[48] A New York Administrative Law Judge has found the New York rates were improper.[49] The Commission does not know the results of the process that will follow this determination, yet it relies on Pennsylvania's comparability to New York prices that are likely to be reduced. I therefore believe that the majority incorrectly relies so heavily on Pennsylvania's comparability to New York's current, uncorrected rates. The majority seems comfortable with this comparison, however, and curiously fails even to note that if New York's rates were reduced so that the comparison is no longer valid, Verizon

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41 AT&T Comments at 22-30; WorldCom Comments at 22-25.

42 *Id*.

43 *Pennsylvania 271* at ¶ 55.

44 *Id.* at ¶¶ 58-59.

45 *Id.* at ¶ 60.

46 *Id.* at ¶61 and footnote 242.

47 *Id.* at ¶ 58-60.

48 *Id.* at ¶ 63.

49 *See* Recommended Decision on Module 3 Issues, Administrative Law Judge Joel A. Linsider, Case 98-C-1357.

might no longer be in compliance with section 271. Our precedent holds that this would, in fact, be a subject for Commission scrutiny.[50]

IV. THE "PERFORMANCE ASSURANCE PLAN" DOES NOT ADEQUATELY DISINCENT BACKSLIDING

In addition to requiring a BOC to demonstrate that it has met all fourteen competitive checklist items, Section 271 requires the Commission to determine that a BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity.'[51] The majority notes that "[i]n prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market."[52] The Commission has previously stated that "[i]t is not enough that the BOC prove it is in compliance at the time of filing a section 271 application; it is essential that the BOC must also demonstrate that it can be relied upon to remain in compliance."[53] The Commission has therefore properly decided to consider the Pennsylvania PAP under section 271's public interest requirement.

The Majority concludes that the Pennsylvania PAP "provides incentives to foster post-entry checklist compliance" and therefore is consistent with the public interest.[54] I believe that while Pennsylvania has begun a process that may lead it to adopt a PAP that provides proper incentives for post-entry checklist compliance, the current plan does not do so.

DOJ found that "the effectiveness of the Pennsylvania PAP may be compromised not only by the lack of effective billing metrics, but also by its structural remedies."[55] The current PAP is quite different from the PAPs used in the states where the Commission has approved applications to provide interLATA service. First, performance incentives are not tailored to the level of competitive harm caused by types of performance failure or the gravity of the failure. Second, remedy payments are too low to be effective. Third, the PAP does not provide Pennsylvania State regulators with the flexibility needed to focus on particularly insufficient performance. Fourth, by measuring discrimination CLEC-by-CLEC instead of on a market-wide bass, the PAP unreasonably increases the potential that pervasive discrimination will be missed.

In response to arguments that the PAP is ineffective, the Majority states that "[w]e recognize that the development and implementation of metrics and inclusion in a PAP is an ongoing process," and that "Verizon has agreed to adapt the performance measurements and standards used in New York to Pennsylvania."" While Pennsylvania's process for altering the PAP may result in a plan that is effective,

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50 *See Massachusetts 271* at ¶¶ 29-30.

51 47 U.S.C. § 271(d)(3)(c).

52 *Pennsylvania 271* at ¶ 127.

53 *Michigan 271* at ¶ 22.

54 *Pennsylvania 271* at ¶ 129.

55 *DOJ Evaluation*, 14-15 (citation omitted).

the Commission has no assurance that this will be the case. While there is some evidence that Verizon has agreed that the PAP should follow the New York model, Verizon has also proposed two plans with the Pennsylvania PUC that are significantly different from the New York PAP in place when the Commission approved Verizon's 271 application in that state.[56] While the PAP that results from this process may satisfy our public interest standard, there is no guarantee that it will, despite Pennsylvania's "rebuttable presumption." Because I find that the current PAP does not provide adequate incentives to foster post-entry checklist compliance, and because we lack convincing evidence that Pennsylvania's PAP revision process will improve the situation, I must conclude that the PAP is inadequate.

V. CONCLUSION

The Commission has stated that:

> "Complying with the competitive checklist, ensuring that entry is consistent with the public interest, and meeting the other requirements of section 271 are realistic, necessary goals. That is not to say, however, that they are easy to meet or achievable overnight. Given the complexities of the task of opening these local markets to true, sustainable competition, it is not surprising that companies that are earnestly and in good faith cooperating in opening their local markets to competition have not yet completed the task. It is through such earnest, good faith efforts that BOCs will obtain authorization to provide in-region long distance service."[57]

I believe that Verizon has worked hard to comply with Section 271 in Pennsylvania. Continuing billing problems, and inadequate time and evidence to properly analyze potential billing improvements, however, mean that Verizon has not yet met its burden with respect to item 2 of the competitive checklist. This alone should result in the Commission denying this Application. In addition, troubling analysis and procedures related to UNE rates and the fact that Pennsylvania's PAP process is still unresolved add to my discomfort with this Order.

These are problems that can be solved. I believe that if the Commission denied this application, and Verizon refiled it in the next few months, the Commission would have access to critical new record evidence that could result in compliance with section 271. My colleagues have decided that there is enough evidence to approve the Application today, and that the Pennsylvania PAP and the Commission's 271(d)(6) authority are adequate to resolve any problems that may arise on the issues that are "close calls" in this Order. I do not agree that this Application justifies that confidence, nor do I believe that approving a "compliance in the making" arrangement will help us deal successfully with future 271 applications. Given the Majority's reliance on the PAP and 271(d)(6), I hope that the Commission will closely and carefully monitor and assess Verizon's continuing efforts to improve wholesale billing, the New York pricing proceeding, and Pennsylvania's PAP process, and be willing to act decisively if necessary to protect competition.

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[56] *See* Letter of William B. Petersen to James J. McNulty Re: Performance Measures Remedies, Doc. No. M-00011468, 1.

[57] *Michigan 271* at ¶ 23.