

**Separate Statement of
Commissioner Michael J. Copps,
Concurring**

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 (CC Docket No. 01-324)

I write separately to explain the reasons that I concur in this Order granting Verizon's application to provide long-distance services in Rhode Island. One of the principal objectives of the Telecommunications Act of 1996 is to promote competition in all telecommunications markets. At the core of this effort is section 271, pursuant to which Bell companies could enter the long-distance market, but only after they have opened their local markets to competition. In my evaluation of section 271 applications, I have voted to grant certain applications and to deny others, ever mindful of Congress' directive that a Bell company must meet all the checklist items, and that the grant of an application must serve the public interest.

Verizon has done a great deal to open its local markets to competition in Rhode Island. I also commend the Rhode Island Commission for its significant efforts to ensure competition in its local markets. Indeed, several problems at issue in prior applications were not raised by commenters here. The major issue in this proceeding has been the pricing of network elements. Parties raised serious concerns about both the original rates adopted in Rhode Island and reduced rates implemented in November prior to the filing of this application. As the Order indicates, the Commission "strongly question[s]" whether the original rates complied with the statutory requirements.

This Order, however, grants Verizon a waiver of our rules and accepts new rate reductions filed by Verizon on day 80 of the 90-day statutory period. The Order permits Verizon to prove compliance with the checklist by comparing these reduced rates to those adopted by the New York Commission on January 28. I am pleased that Verizon reduced its prices to levels in line with the corrected New York rates. I further support the clear statement in this Order that "it would be inappropriate to evaluate Verizon's Rhode Island rates based on a benchmark comparison to superseded New York rates." As I indicated in my dissent to the *Verizon Pennsylvania* Order, I do not believe that this Commission should evaluate rates in one state based on prices in another state -- in that instance as well, New York -- that had been called into question by an Administrative Law Judge and that the state commission was in the process of revising. Nonetheless, I only concur in this decision, because these last-minute rate changes might not have been necessary had the Commission not previously indicated its willingness to allow comparisons to such outdated rates.

I am further troubled by the waiver of our procedural rules barring late-filed information. Since the first application, this Commission has stated, and reiterated

numerous times, that an application must be complete on the date it is filed. This rule is critical to a fair and orderly process. Reaching a decision within 90 days in a proceeding that involves an enormous record and numerous complex issues would be difficult, if not impossible, if we are faced with a moving target. Such late-filed evidence prejudices the ability of other parties, the Department of Justice, and the relevant State commission to evaluate an application. Yet, time and again, this Commission waives this procedural rule.

Although I am troubled by the extent to which we accept late-filed information, in this instance, I concur due to the unique circumstances present here. Verizon lowered its rates in response to a decision in a neighboring state that occurred during the pendency of the application. Thus, as the Order indicates, Verizon could not have known the timing of the New York decision nor the exact rates that would be adopted. This is different than the situation in which a party withholds evidence to game the process.

Due to these extenuating circumstances, I concur in the extraordinary step of granting a waiver. Notwithstanding our limited decision here, I believe the Commission should state firmly that the strong presumption is that late-filed information will not be accepted and that the bar for a waiver will be set high. The section 271 process is central to Congress' statutory framework. Allowing companies to violate our procedural rules without penalty is tantamount to shirking our responsibility to implement the law Congress gave us.