STATEMENT OF
COMMISSIONER KEVIN J . MARTIN, APPROVING IN PART AND CONCURRING IN PART

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*, Memorandum Opinion and Order, CC Docket No. 01-324

Today we grant Verizon authority to provide in-region, interLATA service originating in the State of Rhode Island. I am pleased to support this Order and commend the Rhode Island Public Utilities Commission, Verizon, and this Commission's staff for their hard work.

Nevertheless, I concur in this Order because of concerns I have with two issues: application of our complete-as-filed requirement and observations concerning the validity of superseded rates that are no longer at issue in this proceeding.

The complete-as-filed requirement provides that "when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight." *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6247 ¶ 21 (2001), *aff'd in part*, *remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001). Here, based on truly unique circumstances, we waive the complete-as-filed requirement and rely on data filed by the applicant well after the comment date.

The unique circumstances at issue arise because a core element of Verizon's evidence in support of its section 271 application changed outside of its control. When Verizon filed its application, it relied on UNE rates in Rhode Island – described in the Order as the "April 11 rates" – that Verizon supported based on a benchmark with rates then in effect in New York. On day 63 of our review, however, the New York Public Service Commission altered Verizon's rates, among other things lowering Verizon's New York switching rate by approximately 50 percent. Commenters urged Verizon to use the new New York switching rate as a benchmark, and Verizon submitted new Rhode Island rates that did so. Commenters were then given an opportunity – albeit a brief one – to comment on Verizon's limited rate changes, which were consistent with what many of them had advocated.

I wish to emphasize that, absent the kind of extremely unique circumstances at issue here, the Commission should avoid relying on late-filed information. We have begun to take such information into account with more frequency, and I fear that we may be moving in the wrong direction. In particular, I am concerned that relying on this information may burden commenters – particularly those opposing an application. Commenters need adequate time to evaluate and analyze new information, especially if it affects significant aspects of an application. When we accept late-filed information, we create additional burdens for them.

In my view, we would be better served by emphasizing the importance of having all of an applicant's supporting information in the record when the application is filed rather than granting the

waivers that have become more frequent recently. While I acknowledge that any rule will probably necessitate some exceptions, we can and should make significant improvements in this area.

Also troubling to me are this Order's observations concerning Verizon's superseded April 11 rates. As explained above, the Order grants Verizon's 271 application based on new rates, which we find valid under a benchmark comparison with the rates recently established by the New York Public Service Commission. Although this analysis definitively resolves the issue of the validity of Verizon's rates, the Order also makes several observations about the validity of the superseded April 11 rates, suggesting that several of them were "questionable."

In my view, this dicta is unnecessary. Once the Commission concludes that a section 271 application meets the statutory requirements, the Commission should not offer dicta on a different set of rates no longer before it. I believe that such observations extend the Commission beyond a proper adjudicatory role and suggest limitations on states conducting their own rate proceedings. States should have the opportunity to have their rate decisions judged on a clean slate, without the burden of such disapproving dicta.

For these reasons, I concur in this Order.