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

In the Matter of	)	
	)	
Application by Verizon Pennsylvania Inc.,	)	
Verizon Long Distance, Verizon Enterprise	)	
Solutions, Verizon Global Networks, Inc.,	)	CC Docket No. 01-138
and Verizon Select Services Inc., for	)	
Authorization to Provide In-Region,	)	
InterLATA Services in Pennsylvania	)	

EVALUATION OF THE UNITED STATES DEPARTMENT OF JUSTICE

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Table of Contents

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
DOJ Evaluations and Related Materials	
DOJ Massachusetts I Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by Verizon New England, 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*, FCC CC Docket No. 00-176 (Oct. 27, 2000), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Massachusetts II Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by Verizon New England, 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*, FCC CC Docket No. 01-9 (Feb. 21, 2001), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ New York Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, FCC CC Docket No. 99-295 (Nov. 1, 1999), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Oklahoma I Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application of SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, FCC CC Docket No. 97-121 (May 16, 1997), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Schwartz Aff.	Affidavit of Dr. Marius Schwartz on behalf of the U.S. Department of Justice (May 14, 1997), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/bellatlantic/3813_exhibits.htm>, and *attached to* DOJ New York Evaluation as Ex. 1.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
DOJ Schwartz Suppl. Aff.	Supplemental Affidavit of Dr. Marius Schwartz on behalf of the U.S. Department of Justice (Nov. 3, 1997), *available at* <http://www.usdoj.gov/atr/public/ comments/sec271/bellatlantic/3813_exhibits.htm>, and *attached to* DOJ New York Evaluation as Ex. 2.
DOJ South Carolina Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina*, FCC CC Docket No. 97-208 (Nov. 4, 1997), *available at* <http://www.usdoj.gov/atr/public/ comments/sec271/sec271.htm>.
FCC Orders, Reports, and Related Materials	
FCC Local Competition Report Release	FCC, Federal Communications Commission Releases Latest Data on Local Telephone Competition (May 21, 2001), *available at* <http://www.fcc.gov/Bureaus/ Common_Carrier/News_Releases/2001/nrcc0120.txt>.
FCC Michigan Order	Memorandum Opinion and Order, *In re: 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 FCC Rcd 20,543 (Aug. 19, 1997), *available at* <http://www.fcc.gov/Bureaus/Common_Carrier/ in-region_ applications>.
FCC New York Order	Memorandum Opinion and Order, *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*, 15 FCC Rcd 75 (Dec. 22, 1999), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000), *available at* <http://www.fcc.gov/Bureaus/Common_Carrier/ in-region_ applications>.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
Pennsylvania State Commission Orders and Related Materials	
PAPUC Apr. Tr.	Transcript of Proceedings, *In re: Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania*, PAPUC Docket No. M-00001435; *Pennsylvania PUC v. Verizon Pennsylvania, Inc.*, Docket No. R-00994696; and *Further Pricing of Verizon Pennsylvania, Inc.'s Unbundled Network Elements*, Docket No. R-00005261 (Apr. 25, 2001), *attached to* Verizon Br. App. B as Tab C-26.
PAPUC Consultative Report	Consultative Report of the Pennsylvania Public Utility Commission, *In re: Application of Verizon Pennsylvania, Inc., et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Pennsylvania*, FCC CC Docket No. 01-138 (June 25, 2001).
PAPUC Decision	Letter from James J. McNulty, PAPUC Secretary, to Julia A. Conover, Verizon General Counsel, *In re: Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania*, PAPUC Docket No. M-00001435 (June 6, 2001), *attached to* PAPUC Consultative Report as App. I.
PAPUC Mar. Tr.	Transcript of Proceedings, *In re: Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania*, PAPUC Docket No. M-00001435; *Pennsylvania PUC v. Verizon Pennsylvania, Inc.*, Docket No. R-00994696; and *Further Pricing of Verizon Pennsylvania, Inc.'s Unbundled Network Elements*, Docket No. R-00005261 (Mar. 7, 2001), *attached to* Verizon Br. App. B as Tab C-15.
Pennsylvania PAP	Pennsylvania PUC Performance Assurance Plan for Verizon--Pennsylvania, Inc., *attached to* Letter from Julia A. Conover, Verizon General Counsel, to James J. McNulty, PAPUC Secretary (May 23, 2001), *In re: Structural Separation of Verizon Pennsylvania Inc. Retail and Wholesale Operations*, PAPUC Docket No. M-00001353, *attached to* Verizon Br. App. B as Tab P-12.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
Verizon's Application and Related Filings	
KPMG OSS Report	KPMG, *Verizon Pennsylvania Inc. OSS Evaluation Project Final Report* (Dec. 22, 2000), *attached to* Verizon Br. App. B as Tab F-2.
Verizon Billing Adjustment *Ex Parte*	Verizon Communications, *PricewaterhouseCoopers Report on the Examination of Pennsylvania Bill Data Tape Manual Adjustments During the Periods April 20 to May 13, 2001 and May 20 to June 13, 2001*, Verizon *Ex Parte* Submission, FCC CC Docket No. 01-138 (July 3, 2001).
Verizon Billing Metrics *Ex Parte*	Verizon Communications, Letter from Julia A. Conover, Verizon General Counsel, to James J. McNulty, PAPUC Secretary, Re: Performance Standards and Remedies, *In re: Joint Petition of NEXTLINK, et al., for Order Establishing Formal Investigation of Performance Standards, Remedies and Operations Support Systems Testing*, PAPUC Docket No. P-00991643 (July 18, 2001), Verizon *Ex Parte* Submission, FCC Docket No. 01-138 (July 20, 2001).
Verizon Bluvol/Kumar Decl.	Joint Declaration of Catherine Bluvol and Sameer Kumar, *attached to* Verizon Br. App. A as Tab C.
Verizon Br.	Brief in Support of Application by Verizon Pennsylvania for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, *In re: 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*, FCC CC Docket No. 01-138 (June 21, 2001).
Verizon Business/Residential Lines *Ex Parte*	Verizon Communications, Statistics on Business and Residential Lines in Pennsylvania, Verizon Corrected *Ex Parte* Submission, FCC Docket No. 01-138 (July 20, 2001).
Verizon Gertner/Bamberger/Bandow Decl.	Joint Declaration of Robert H. Gertner, Gustavo E. Bamberger, and Michael P. Bandow, *attached to* Verizon Br. App. A as Tab E.
Verizon Guerard/Canny/DeVito Decl.	Joint Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito, *attached to* Verizon Br. App. A as Tab D.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
Verizon McLean/Wierzbicki/Webster Decl.	Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster, *attached to* Verizon Br. App. A as Tab B.
Verizon Taylor Decl.	Declaration of William E. Taylor, *attached to* Verizon Br. App. A as Tab H.
Third-Party Comments and Affidavits/Declarations	
AT&T Comments	Comments of AT&T Corp. in Opposition to Verizon Pennsylvania's Section 271 Application for Pennsylvania, FCC CC Docket No. 01-138 (July 11, 2001).
AT&T Fawzi/Kirchberger Decl.	Joint Declaration of Mason Fawzi and Robert J. Kirchberger on Behalf of AT&T Corp. (July 10, 2001), *attached to* AT&T Comments as Tab C.
CompTel Lazzara Decl.	Declaration of Frank Lazzara (July 11, 2001), *attached to* Opposition of the Competitive Telecommunications Association, FCC CC Docket No. 01-138 (July 11, 2001).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by Verizon for Authority to Provide In-Region InterLATA Services in Pennsylvania, FCC CC Docket No. 01-138 (July 11, 2001).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg on Behalf of WorldCom, Inc. (July 11, 2001), *attached to* WorldCom Comments as Tab A.
Z-Tel Comments	Comments of Z-Tel Communications, Inc., FCC CC Docket No. 01-138 (July 11, 2001).
Z-Tel Rubino Decl.	Declaration of Margaret Rubino on Behalf of Z-Tel Communications, Inc. (July 11, 2001), *attached to* Z-Tel Comments as Attach. 1.

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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 1996[1] ("the 1996 Act") submits this evaluation of the application filed by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. on June 21, 2001, to provide in-region, interLATA services in Pennsylvania.

This application to the Federal Communications Commission ("FCC" or "Commission") is Verizon's first for a state in its "southern" region.[2] The Pennsylvania Public Utility Commission ("PAPUC") conducted extensive proceedings to review Verizon's state filing. The PAPUC's

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

2 For purposes of section 271 of the 1996 Act, Verizon's "southern" region consists of the former Bell Atlantic service area. Verizon's applications for section 271 approval in New York and Massachusetts were for states in its "northern" region, which consists of the former NYNEX service area.

process included a third-party test followed by an evaluation of a three-month period of commercial availability. Throughout the process, the PAPUC has shown a commitment to implementing market-opening measures and has taken significant steps to introduce ongoing procedures designed to ensure that Pennsylvania consumers will continue to reap the benefits of entry in their state.[3]

As the Department has previously explained, in-region, interLATA entry by a Bell Operating Company ("BOC") should be permitted only when the local markets in a state have been "fully and irreversibly" opened to competition.[4] This standard seeks to measure whether the barriers to competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competing carriers will continue to have nondiscriminatory access to the facilities and services they will need from the BOC.

Verizon has made significant progress toward opening its local markets in Pennsylvania to competition. Local markets in Pennsylvania show a substantial amount of competitive entry, and the Department notes that a significant amount of that entry is facilities-based. In applying its standard, the Department will consider whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC's network, and resale of the BOC's services -- are fully and irreversibly open to competitive entry to serve both business and residential customers. Although Verizon has satisfied this standard in most respects and the record with respect to entry is encouraging, one important issue remains unresolved.

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[3] On June 6, 2001, the PAPUC issued its decision, in the form of a secretarial letter, approving Verizon's section 271 application with certain conditions attached. PAPUC Decision. One commissioner dissented from the decision, and another concurred and dissented. *Id.*

[4] *See* DOJ Oklahoma I Evaluation at vi-vii, 36-51.

Verizon filed its Pennsylvania application with the FCC without sufficient evidence to show that numerous problems with its wholesale billing systems have been corrected.[5] As a general matter, the Department notes that adequate billing support is important to successful entry, and a failure to resolve billing problems could impede such entry. Consequently, the Department is unable fully to endorse Verizon's application based upon the current record because insufficient time has elapsed to determine whether Verizon's proposed fixes to its billing problems will be effective. The Department realizes, however, that the Commission is likely to have further information prior to reaching a decision in this matter. Accordingly, we do not foreclose the possibility that the Commission may be able to approve Verizon's application at the culmination of these proceedings.

I. Entry into the Local Telecommunications Markets in Pennsylvania

To determine whether Verizon has fully and irreversibly opened the local telecommunications markets in Pennsylvania to competition for both business and residential customers, the Department examines the three modes of entry contemplated by the 1996 Act: facilities-based entry, which is least dependent on the incumbent's wholesale inputs and cooperation; use of the incumbent's unbundled network elements; and resale of the incumbent's services.[6] 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

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[5] The importance of having a complete application at the FCC for third parties to evaluate cannot be overemphasized. As the Department has urged the Commission in the past, "[g]iven 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 . . . ." DOJ Massachusetts II Evaluation at 15 n.61; *cf. FCC Michigan Order* ¶¶ 160-61, 221 (emphasizing the importance of evidence that billing problems had been addressed and resolved by the date of an application's filing).

[6] *See* DOJ Schwartz Aff. ¶¶ 149-192; DOJ Schwartz Suppl. Aff. ¶¶ 26-60; DOJ Oklahoma I Evaluation at vi-vii, 36-51.

or absence of artificial barriers to entry.[7] 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.

If actual, broad-based entry through each of the entry paths contemplated by Congress is occurring, this will provide invaluable evidence supporting a strong presumption that a BOC's markets have been opened.[8] The lack of competitive entry into local markets, however, suggests that local markets are not yet fully open, and it will be necessary to ask why entry is not occurring.[9] Where no substantial entry has occurred, this will not necessarily foreclose the possibility of a successful section 271 application, but careful and demanding review by the Commission is particularly appropriate.

For business and residential customers combined, Verizon estimates that competitive local exchange carriers ("CLECs") using all modes of entry serve approximately 990,000 lines, or nearly 14 percent of the total number of lines in Verizon's service area in Pennsylvania.[10] Although this aggregate level of CLEC penetration is lower than the level of penetration in New York today,[11] it is greater than the level in New York and Massachusetts at the time applications for those states were filed.[12] By entry mode, approximately 61 percent of all CLEC lines are

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[7] *See, e.g.*, DOJ Oklahoma I Evaluation at vi-vii, 41-42.

[8] *Id.* at 43; DOJ Schwartz Aff. ¶¶ 24, 170-82.

[9] DOJ Oklahoma I Evaluation at 43-44.

[10] *See* Verizon Taylor Decl. at ii & Attach. 1 ¶ 1. The reported lines in Verizon's Pennsylvania service area include only those Verizon and CLEC lines in the former Bell Atlantic service area and do not include lines served at retail by Verizon or CLECs that were formerly GTE lines. *Id.* at ii.

[11] FCC Local Competition Report Release ¶ 2 (indicating CLECs had captured a 20 percent market share in New York as of December 2000).

[12] CLECs served approximately 8.9 percent of the total lines in New York and 11 percent in Massachusetts. *See* DOJ New York Evaluation at 9; DOJ Massachusetts I Evaluation at 4.

facilities-based and 22 percent are provided as unbundled network elements ("UNEs").[13] The least common path of entry in Pennsylvania is entry through resale, which accounts for 17 percent of CLEC lines.[14]

Competitors have made substantial headway in penetrating the business market in Pennsylvania. CLECs serve approximately 23 percent of all business lines.[15] CLECs serve approximately 18 percent of all business lines using primarily their own fiber optic networks that either are connected to the customer premises or use loops provisioned by Verizon to connect customers to the CLEC networks.[16] CLECs have used resale to serve nearly 5 percent of all business lines.[17] CLECs have used the UNE-platform (a combination of loop, switch port, and transport elements) to serve less than 1 percent of business lines.[18]

CLECs' success in competing with Verizon for residential customers in its Pennsylvania territory has been considerably less substantial than that in the business market. CLECs serve almost 8 percent of all such lines.[19] The UNE-platform comprises the majority of CLEC service

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13 Verizon Taylor Decl. Attach. 1 ¶ 1.

14 *Id.*

15 *See id.*; Verizon Business/Residential Lines *Ex Parte* at 1. CLECs serve approximately 661,000 business lines. Verizon Taylor Decl. Attach. 1 ¶ 1.

16 *Id.* ¶¶ 1, 16-39; Verizon Business/Residential Lines *Ex Parte* at 1. CLECs serve approximately 508,000 business lines using at least some of their own facilities. Verizon Taylor Decl. Attach 1 ¶ 1.

17 *See id.* (CLECs serve approximately 128,000 business lines via resale); Verizon Business/Residential Lines *Ex Parte* at 1.

18 *See* Verizon Taylor Decl. Attach 1 ¶ 1 (CLECs serve approximately 25,000 business lines through the UNE-platform); Verizon Business/Residential Lines *Ex Parte* at 1.

19 *See* Verizon Taylor Decl. Attach. 1 ¶ 1 (CLECs serve approximately 329,000 residential lines); Verizon Business/Residential Lines *Ex Parte* at 1.

to residential customers, accounting for about 5 percent of all residential lines.[20] The remainder of CLEC residential lines are served primarily by cable television facilities that have been equipped to provide telephone service, by fiber optic networks that can sometimes be extended economically into the most densely populated areas, and by resale.[21] Some of the cable plant in Pennsylvania has been upgraded to potentially provide telephony service to a significant number of residential customers, but the extent to which cable telephony will be an economically feasible alternative for local phone service remains to be seen.

Although the development of facilities-based competition for residential customers has the potential to provide consumers with the benefits of competition without requiring extensive access to Verizon's network in the long run, presently only a minority of residential customers live in areas where they have access to the alternative services of a facilities-based competitor.[22] CLEC access to the incumbent's unbundled elements, therefore, remains important if consumers are to have a competitive choice for local service now. Accordingly, we have focused on the performance of all of the Verizon systems and wholesale products that CLECs require to provide competitive service, especially those needed to serve mass market residential customers for which high order volumes require reliable automated systems that involve a minimum of manual intervention. Although most of Verizon's systems appear to be adequately supporting its

[20] *See* Verizon Taylor Decl. Attach. 1 ¶ 1 (CLECs serve approximately 197,000 residential lines through the UNE-platform); Verizon Business/Residential Lines *Ex Parte* at 1.

[21] *See* AT&T Comments at 72; Verizon Taylor Decl. Attach. 1 ¶¶ 15, 21-39. CLECs serve approximately 95,000 residential customers using at least some of their own facilities and 36,000 residential lines via resale. Verizon Taylor Decl. Attach. 1 ¶ 1.

[22] *See* AT&T Comments at 72 (AT&T's Pittsburgh cable systems constitute the vast majority of facilities-based residential competition in Pennsylvania). AT&T's cable telephony lines in Pittsburgh represent 74 percent of the residential facilities-based CLEC lines in Pennsylvania. *See* Verizon Taylor Decl. Attach. 1 ¶¶ 1, 16.

wholesale obligations, the record in this application raises substantial questions about the adequacy of Verizon's wholesale billing systems, deficiencies which have had a negative impact on the ability of CLECs to compete in the Pennsylvania market.

II. Whether Verizon Has Resolved Wholesale Billing Problems Remains Unclear

A. History of Billing Problems in Pennsylvania

Until May of this year, Verizon's official wholesale bills in Pennsylvania were the paper bills it provided to CLECs. CLECs were required to rely on the paper bills to resolve payment disputes with Verizon.[23] CLECs claimed that the paper bills were so voluminous that they were unable, due to resource and time constraints, to audit those bills fully or effectively, and thus may not have fully determined any inaccuracies contained in the paper bills.[24] During a third-party operations support systems ("OSS") test, which culminated in a final report issued in December 2000, KPMG found that the paper wholesale bills it received from Verizon were accurate.[25] Despite KPMG's conclusions, however, CLECs have contested the accuracy of the paper bills

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[23] *See* Verizon McLean/Wierzbicki/Webster Decl. Attach. 29 at 1 (CLECs pay Verizon based on the bill of record).

[24] One month of WorldCom's bills can amount to more than 150 boxes of paper. WorldCom Lichtenberg Decl. ¶ 11. WorldCom also pointed out during PAPUC technical conferences that it had stopped even attempting to audit its paper bills. PAPUC Apr. Tr. at 140; *see also* CompTel Lazzara Decl. ¶ 6 ("MetTel receives approximately 34,000 pages of bills each month."); Z-Tel Rubino Decl. ¶ 11 (Z-Tel's most recent paper bill comprised 22 boxes (280,000 pages) of paper.); PAPUC Mar. Tr. at 137 ("[W]e are not able to at all audit the boxes of paper bills that come to us. There are just too many boxes and too much paper for a company like Z-Tel to deal with.").

[25] *KPMG OSS Report* at 565-72.

they received both before and after KPMG's test,[26] and Verizon has acknowledged some of these inaccuracies.[27]

Recognizing the importance of electronic billing,[28] Verizon has worked to implement it in Pennsylvania since before January 2000, when Verizon first introduced electronic bills in the Billing Output Specification Bill Data Tape ("BOS BDT") format.[29] Verizon's introduction of electronic billing was fraught with difficulties, forcing Verizon to suspend electronic billing after four months.[30] After reintroduction of electronic billing in October 2000, Verizon and its competitors identified a large number of problems that had to be corrected.[31] To address these problems, Verizon recently implemented a series of modifications to its billing systems.[32] The results of a number of fixes that Verizon implemented shortly before filing its application in June

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[26] It is not clear why the test did not capture the billing accuracy issues raised by CLECs. KPMG reviewed only the bills submitted to it as a test CLEC; it did not review any bills of actual CLECs in Pennsylvania. *See id.* at 559. In March 2001, Z-Tel testified: "Our experience has not been what KPMG reported . . . . We continue to have billing problems. . . . [E]ven the paper bills continue to have incorrect usage, incorrect rates, incorrect [USOCs], [USOCs] for things we shouldn't be seeing on our bills, incorrect interexchange carrier charges that don't belong on our bills. So the information even in the paper bills, even if we were able to go through and audit those, is not correct." PAPUC Mar. Tr. at 137, 138; *see also* CompTel Lazzara Decl. ¶ 6 (MetTel problems with paper bill).

[27] *See, e.g.*, Verizon McLean/Wierzbicki/Webster Decl. ¶ 158 (acknowledging incorrect taxation of wholesale accounts), ¶ 160 (describing "out-of-sync" condition resulting from two-step process of migrating Verizon customers to CLECs).

[28] *See* PAPUC Mar. Tr. at 74-75 ("I do recognize, and Verizon does recognize, that the volume of paper bills that are generated by Verizon can be somewhat unmanageable by CLECs. We do recognize that an electronic bill is most assuredly a desirable [medium] for our customers. . . . We fully understand the importance of this bill to help facilitate a more expeditious review and settlement of the inter-company charges of the CLEC back to Verizon."); *see also* PAPUC Apr. Tr. at 130 (Verizon representative stating that he "fully recognize[s] and accept[s] the advantage of having an electronic bill for validation purposes.").

[29] PAPUC Apr. Tr. at 144.

[30] *Id.* at 144-45.

[31] *Id.* at 145; Verizon McLean/Wierzbicki/Webster Decl. ¶ 133. By April 2001, Verizon had identified 66 problems that had to be corrected; an additional 15 problems were subsequently raised by CLECs. Verizon McLean/Wierzbicki/Webster Decl. ¶ 133.

[32] *Id.* ¶ 135.

2001,[33] however, would not have become apparent until the June or July bills. Despite the fact that all of the fixes to the BOS BDT had not yet been implemented, Verizon notified CLECs on May 22 that it would treat both paper bills and BOS BDT electronic bills as bills of record.[34]

To address some of the electronic billing inaccuracies while implementing fixes to the billing systems, Verizon began a manual review and adjustment process in April of this year designed to ensure that the electronic bills match the paper bills and to reconcile internal inconsistencies in the electronic bills.[35] In its application, Verizon relies on this manual review and adjustment process, coupled with an attestation by PricewaterhouseCoopers LLP ("PwC"), and KPMG's conclusions in December 2000 concerning the paper bills' accuracy as support for its claim that the electronic bills are accurate and auditable.[36] PwC analyzed samples of paper and electronic bills to confirm their "comparability" and examined the internal consistency and auditability of the electronic bills.[37] Verizon did not ask PwC to test the completeness or accuracy

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[33] *See id.* Attach. 28 (table listing billing problems and status of fixes designed to resolve them). Verizon states that only 3 of the 81 problems remain unresolved. *Id.* ¶ 133. Verizon has apparently scheduled additional system changes for July and August to resolve the remaining problems. *See id.* ¶ 152.

[34] *Id.* Attach. 29 at 1. Verizon had claimed at the end of April that, after it implemented fixes to the billing system, it would need to run several billing cycles to see whether additional adjustments were needed before it would be prepared to consider the electronic bill the "bill of record." PAPUC Apr. Tr. at 126 ("At such time that we ran through several cycles, Verizon would like to use those cycles to see if any other issues materialized. Our expectation is that they will not, and at that point in time we would look to opt to make the BDT an official bill.").

[35] Verizon McLean/Wierzbicki/Webster Decl. ¶¶ 135-141 (describing the manual review process). In its application, Verizon states that it plans to keep the manual adjustment process in place "until it has confirmed that the software fixes are effective in producing balanced BOS BDTs for CLECs." *Id.* ¶ 142.

[36] Verizon Br. at 66. Verizon also points out, apparently referring to the billing metrics, that it "had only negligible billing adjustments for CLECs from February through April in Pennsylvania." *Id.* at 65-66; Verizon McLean/Wierzbicki/Webster Decl. ¶ 154. *But see infra* notes 53-54 and accompanying text.

[37] *See* Verizon Bluvol/Kumar Decl. ¶ 6. Verizon submitted several assertions to PwC concerning the electronic bills, and PwC verified their accuracy through work performed between April and June of this year. *Id.* ¶¶ 6-9. Although PwC found all of Verizon's assertions to be "fairly stated," *id.* ¶ 8, each of Verizon's assertions was clarified by exceptions to account for known discrepancies. For example, Assertion 2 stated that the BOS BDT and the paper bill have the same dollar value for certain key elements, except for the manual adjustment

of the billing information on the BOS BDT.[38] Rather, Verizon relies on KPMG's findings confirming the accuracy of the paper bills sent to KPMG during its test.[39]

Although third-party testing can be a helpful indication of the state of OSS readiness, both the Department and the FCC have repeatedly observed that "[t]he most probative evidence that OSS functions are operationally ready is actual commercial usage."[40] Verizon itself has recognized the value of commercial usage for observing the results of its attempts to resolve billing problems.[41] The experience in Pennsylvania highlights the weaknesses 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.[42] This

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made to the BOS BDT to reconcile it with the paper bill. *Id.* ¶ 29. The adjustment causes "certain BDT billing elements and summarization points to be different from similar billing elements and summarization points on the Paper Bill." *Id.* ¶ 29. Similarly, PwC verified Verizon's assertion that a third party could recalculate elements in the BOS BDT, except for, among other factors, the "manual adjustments to the BDT . . . which do not provide detailed information to allow recalculation of the adjustment." *Id.* ¶ 36. Eighteen out of the 29 sample BOS BDT files (62 percent) examined by PwC during its audit contained manual adjustments. *Id.* ¶ 38.

PwC later reviewed Verizon's manual adjustments on 80 BOS BDT files for 31 CLECs both before and after May system fixes were put into place. Verizon Billing Adjustment *Ex Parte* at 1. Before the May fixes, manual adjustments of 1.77 percent (of total charges billed) were made for the 31 CLECs as a group. *Id.* After the May fixes, PwC ascertained that manual adjustments for those same CLECs had dropped to 0.89 percent. *Id.*

38 Verizon McLean/Wierzbicki/Webster Decl. ¶ 143; Verizon Bluvol/Kumar Decl. ¶ 14.

39 *See* Verizon McLean/Wierzbicki/Webster Decl. ¶ 143; Verizon Bluvol/Kumar Decl. ¶ 14.

40 *FCC New York Order* ¶ 89 (Absent commercial usage, "the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS."); *see also FCC Michigan Order* ¶ 138 ("We agree with the Department of Justice that the most probative evidence that OSS functions are operationally ready is actual commercial usage."); DOJ South Carolina Evaluation App. A at A-3 ("The Commission has agreed that the 'most probative evidence' of operational readiness is actual commercial usage and that carrier-to-carrier testing, independent third-party testing, and internal testing, while they can provide valuable evidence, 'are less reliable indicators of actual performance than commercial usage.'" (citing *FCC Michigan Order* ¶ 138)).

41 *See* PAPUC Apr. Tr. at 146; *see supra* note 34.

42 In addition to concerns about the accuracy of the paper bills, *see supra* notes 26-27 and accompanying text, CLECs have documented inaccuracies in the electronic bills, as well as problems they have experienced in attempting to audit those bills. *See* WorldCom Lichtenberg Decl. ¶¶ 18-26 (Between November 2000 and June 2001, almost all of WorldCom's electronic bills had significant formatting errors, and those that could be audited contained numerous billing errors.); AT&T Fawzi/Kirchberger Decl. ¶¶ 71-72 (detailing

experience is described in detail in the CLEC comments on Verizon's application. Because several of Verizon's billing system fixes immediately preceded its application, CLECs have been unable to assess the effectiveness of the fixes implemented on June 16. Several CLECs have not even been able, due to continuing problems with the electronic bill formatting, to confirm Verizon's assertion that prior fixes have been fully effective.[43]

B. Impact on Competition in Pennsylvania

Accurate and auditable electronic bills are an important factor in making local telecommunications markets fully and irreversibly open to competition. Indeed, CLECs have indicated that the lack of auditable and accurate electronic bills in Pennsylvania is a serious competitive issue. Without functional electronic bills, CLECs have no practical way to determine whether Verizon is charging them correctly for services they have ordered.[44] CLECs have documented that the inability to access accurate and auditable electronic bills has raised their costs of doing business in Pennsylvania. Not only are CLECs spending additional hours in attempts to reconcile their bills,[45] but, during the time between initiation of a dispute and its resolution, they

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inaccuracies in electronic bills), ¶¶ 74, 92 (AT&T June bill was missing information needed for auditing); CompTel Lazzara Decl. ¶ 6 (detailing inaccuracies in MetTel's electronic bill, which cannot be reconciled because it does not conform to industry standards).

[43] *See, e.g.,* WorldCom Comments at 4 ("[T]he June bill, which arrived shortly after Verizon filed this application, . . . re-introduced some old problems that Verizon claimed to have already solved . . . ."); WorldCom Lichtenberg Decl. ¶¶ 24-26 (May bill appeared to be improved and could be partially audited, but June bill again contained formatting errors, precluding audit); AT&T Fawzi/Kirchberger Decl. ¶ 94 (experience with June bill contradicts Verizon's assertion that April system fixes were effective).

[44] *See, e.g.,* WorldCom Lichtenberg Decl. ¶ 57 ("[B]ecause of the inauditable bills WorldCom has received, [it] has been unable to assess whether Verizon is properly crediting WorldCom for switch port charges on the bills."); *see generally* Z-Tel Rubino Decl. ¶ 21 (explaining how Z-Tel performs an audit with a usable electronic bill); PAPUC Apr. Tr. at 137 (explaining how AT&T audits its electronic bill in New York).

[45] *See* Z-Tel Rubino Decl. ¶ 8 ("Z-Tel is required to expend more resources to document and pursue disputes in Pennsylvania than it is in other states. Z-Tel estimates that it dedicates one full time equivalent week per month to the reconciliation of the Pennsylvania bill. For New York, Massachusetts, and Texas, one full time equivalent spends no more than two days per month per state on bill reconciliation, even though Z-Tel's customer base in New York dwarfs that in Pennsylvania."); WorldCom Lichtenberg Decl. ¶¶ 18-19, 22 (WorldCom spends

do not have access to funds that they have paid to Verizon under dispute.[46] The lack of auditable electronic bills also increases CLECs' uncertainty about their business plans, by making it difficult to predict costs and revenues.[47] This lack of information impedes not only efficient provisioning of new services, but also the raising of capital.[48]

As evidenced by the progress of CLECs attempting to enter the Pennsylvania market, the numerous problems with Verizon's billing systems have not entirely precluded CLEC entry. CLECs have, however, documented that billing problems have had an effect on their ability to compete, and these problems reasonably may be expected to impede competition in the future. Not only is it questionable whether Verizon's systems are currently able to support the billing needs of numerous CLEC customers, given the problems that have already surfaced, but an increase in competition will depend on Verizon's systems and, in turn, CLECs' ability to serve growing numbers of customers efficiently. The lack of functional electronic billing is likely to impair CLECs' ability to do so.

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significant time attempting to reformat its electronic bills for auditing.); *see also* Z-Tel Rubino Decl. ¶ 22 (If Z-Tel were to devote the resources to attempting a full audit of charges based on a paper bill, "the margin between Z-Tel's wholesale costs and the retail rate we are able to charge for our product in Pennsylvania would evaporate . . . ."); AT&T Fawzi/Kirchberger Decl. ¶ 94 (AT&T incurs administrative costs to research which telephone numbers should be matched to certain USOCs.).

[46] *See* Z-Tel Comments at 11 (Z-Tel pays its bill in full and waits to receive credits for amounts disputed.); *see also* Z-Tel Rubino Decl. ¶ 12 (Z-Tel received 100 percent of the amount it disputed in 2000 from Verizon, more than six months after initiation of the dispute.).

[47] *See* Z-Tel Rubino Decl. ¶ 7 ("[T]he fact that the ultimate cost of goods sold may not be known for several months injects a level of uncertainty that CLECs should not be required to tolerate."). As the PAPUC acknowledged, "Verizon PA needs to issue timely, accurate, auditable bills to be paid and to give its CLEC customers a meaningful and realistic opportunity to accurately assess their operational costs." PAPUC Consultative Report at 102.

[48] *See* CompTel Lazzara Decl. ¶ 9 ("MetTel is negatively impacted by billing errors generated by Verizon in most aspects of its business, not the least of which are the problems that these errors create in MetTel's interaction with its current and potential investors.").

The PAPUC recognized the importance of electronic billing, noting that "[w]ithout adequate electronic billing, CLECs are unable to verify the accuracy of Verizon PA's wholesale bills in a timely manner."[49] To ensure that Verizon continues to focus its attention on this area, the PAPUC directed it to include in the Performance Assurance Plan ("PAP") increased penalties related to the billing metrics.[50] The PAPUC found Verizon's commitment to electronic billing, coupled with these new incentives, sufficient for the purposes of granting section 271 approval.[51] Although the PAPUC's efforts to craft an effective PAP are laudable, the Department believes that it is preferable to rely on the more powerful incentives created by section 271 to ensure that Verizon's electronic wholesale billing mechanisms are adequate to support an open market.[52]

Moreover, reliance on the incentive of remedies is problematic in this case because the billing metrics reported by Verizon do not appear to capture all of the billing problems identified by CLECs. It is therefore unlikely that the metrics necessarily would constitute a fully effective means of ensuring that the electronic billing problems are resolved. The billing accuracy metrics, which until this month addressed only Verizon's paper billing performance, have not reflected the CLECs' actual commercial experience with billing, as they do not appear to measure properly the

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[49] PAPUC Consultative Report at 102.

[50] PAPUC Decision at 4. The PAPUC also directed Verizon to develop metrics to measure the timeliness and accuracy of the electronic bills effective this month. *Id.*; *see* Verizon Billing Metrics *Ex Parte* at 2-3 (explaining modification of metrics to pertain to electronic billing).

[51] PAPUC Decision at 4; *see also* PAPUC Consultative Report at 102-03.

[52] *See generally* DOJ New York Evaluation at 36-40 ("[I]t would [not] be wise to rely solely on [PAPs], rather than the more powerful incentives created by section 271, to ensure rapid completion of necessary market opening measures.").

adjustments made by Verizon to resolve billing accuracy disputes.[53] In addition, the metrics are not designed to reflect outstanding CLEC billing disputes, regardless of the amount disputed.[54]

Verizon's electronic billing problems have been extensive, and the record contains little evidence that they have been fully resolved. Given the impact of these problems on competitors in the market, the Department believes that the Commission should carefully examine whether, in the Commission's judgment, it can be determined that billing problems have been addressed sufficiently to alleviate these concerns before Verizon's application is granted. The Commission should take care to avoid a precedent that would permit the requirements of section 271 to be satisfied merely by promises of future compliance. Although the Department is unable to endorse Verizon's application on the existing record, the Department acknowledges that in the event the Commission can assure itself that billing problems are adequately resolved, the Commission may be in a position to approve Verizon's application at the culmination of these proceedings.

III. Concerns Regarding the Structure of the Pennsylvania PAP

Although the Department believes it is unwise to rely on post-entry remedies to open a market, an appropriately structured, self-executing PAP can be a useful tool to help prevent backsliding and to ensure that problems arising after section 271 approval are addressed quickly and effectively.[55] The Department does not advocate any particular structure for such a plan, but it is concerned that the effectiveness of the Pennsylvania PAP may be compromised not only by

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[53] For instance, Z-Tel claims to have received a credit from Verizon for the full amount disputed between May and December of 2000. Z-Tel Rubino Decl. ¶ 12. The credit, however, does not appear to be reflected in Verizon's billing accuracy metrics.

[54] *See* Verizon Billing Metrics *Ex Parte* Attach. 2 (defining BI-3 (Billing Accuracy) as "[t]he percentage of carrier bill VZ charges *adjusted* due to billing errors" (emphasis added)).

[55] DOJ Massachusetts I Evaluation at 22.

the lack of effective billing metrics,[56] but also by its structural defects. The Pennsylvania PAP does not appear to align Verizon's incentives to perform in a nondiscriminatory fashion with the amount of competitive harm that could be caused by discriminatory performance.[57] Most notably, the PAP's financial penalties do not reflect the relative importance of particular metrics to competition,[58] nor do they closely correlate to the severity of poor performance.[59] Further, the remedy payments appear to be insufficient in a variety of ways to deter discriminatory conduct.[60]

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[56] AT&T also points out that the Pennsylvania PAP is incomplete because it omits key measures that are essential to proof of nondiscriminatory performance. AT&T Comments at 54; *see also* WorldCom Comments at 10-12 (key metrics are missing from the PAP or are inadequate to accurately report performance). Verizon and the CLECs have agreed to use in Pennsylvania the metrics approved in New York. Verizon Br. at 85; PAPUC Decision at 4 & n.4.

A promise of future changes to the metrics does not affect our analysis here. *See FCC New York Order* ¶ 37 ("[A] BOC's promises of *future* performance . . . have no probative value in demonstrating its *present* [section 271] compliance."). However, the prospect of such changes highlights the importance of establishing an appropriate metrics change management process. KPMG evaluated Verizon's metrics change management processes in its OSS test and found that Verizon did not adhere to procedures regarding the implementation of metrics changes, did not notify the PAPUC or other parties of its metrics changes, and did not adequately track metrics changes. *KPMG OSS Report* at 646-49. These facts call into question whether a future migration to the New York metrics will occur smoothly.

[57] The PAPUC implicitly recognized inadequacies in the PAP when it conditioned its section 271 approval on Verizon's agreement to a rebuttable presumption in a future proceeding that the New York PAP would be modified and adopted in Pennsylvania. *See* PAPUC Decision at 4. The PAPUC will address metrics and remedies this year, but it is unclear how the PAP will be modified at this proceeding, if at all. Any attempt to ascertain the effect of this proceeding on the state of the PAP in Pennsylvania would be speculative. *See infra* note 63.

[58] For example, with the exception of the increased billing metrics remedies required by the PAPUC, *see* PAPUC Decision at 4, under the Pennsylvania PAP the size of the remedy is the same for every metric, Pennsylvania PAP at 5, regardless of its significance to competition.

[59] The Pennsylvania PAP remedies do not vary by volume (i.e., the penalties for performance deficiencies that affect hundreds of thousands of customers are the same as those for poor performance that affects only a few) or by the severity of the miss (i.e., the penalties are the same regardless of whether the level of performance is just under or dramatically below a benchmark). *See id.* at 5-6.

[60] Because Verizon pays penalties per CLEC per metric, Pennsylvania PAP at 5, its liability for failing to provide adequate performance is limited by the number of CLECs reporting data under a particular metric. Under the Pennsylvania PAP, Verizon can perform at a substandard level on a given metric for three consecutive months and pay only $8,000 per CLEC. *See id.* Three months of poor performance may be sufficient to negatively affect a CLEC's ability to attract and retain its customers. Even if, as Verizon points out, substandard performance on a single order could trigger penalties under as many as seven metrics, *see* Verizon Gertner/Bamberger/Bandow Decl. ¶ 21 (missing a UNE-platform repair appointment by more than one day because of loop trouble would trigger penalties under seven metrics), payments over three consecutive months on

The PAP also does not contain any provision to allow the PAPUC flexibility to shift potential payments to areas in which there are particular performance concerns, an attribute which enables a state regulator to target severely deficient performance.[61] The PAP may also fail to detect widespread discrimination, because it evaluates discrimination for most metrics only on a CLEC-specific basis.[62] Thus, the current PAP may not provide the necessary incentives to keep Verizon from backsliding in ways that would most harm competition in the Pennsylvania market.[63] The

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such a miss would amount to only $56,000 per CLEC. *See* Pennsylvania PAP at 5. Moreover, If Verizon boosts its performance on a metric for one month, the PAP payments shift back to $0 when Verizon misses the metric for the first month again. *See id.*

Verizon notes, in support of the Pennsylvania PAP, that there is no cap on the amount of damages for which it may be liable. Verizon Br. at 89. In addition, Verizon claims that "because the vast majority of payments under the Plan are made on a CLEC-specific basis, Verizon's liability will increase as competition increases in Pennsylvania." Verizon Guerard/Canny/DeVito Decl. ¶ 154. Although Verizon's liability would increase if the number of CLECs in Pennsylvania increased, the number of CLECs in a state does not necessarily indicate the amount of competition in that state. Furthermore, because Verizon's payments will decrease if the number of CLECs in Pennsylvania decreases, the PAP creates an incentive for Verizon to engage in behavior designed to reduce the number of CLECs in the state.

[61] *See* DOJ Massachusetts I Evaluation at 23 ("It was precisely this mechanism that permitted the NY PSC to react quickly when it realized that Verizon's post-entry OSS problems were not captured by the performance measures contained in the performance assurance plan.").

[62] Evaluating discrimination on a CLEC-specific basis may have the advantage of detecting discrimination against an individual CLEC where the level of discrimination or the number of observations for that CLEC is sufficiently large. However, there may be more statistical information in the aggregate CLEC data for a particular performance measure than in the sum of its parts. Incorporating tests of CLEC-aggregate performance into a PAP could take advantage of this additional statistical information.

[63] The Pennsylvania PAP also has a provision for Verizon to place payments in escrow instead of making them to CLECs under the following circumstances: "[l]ack of independence (or 'clustering' of data); CLEC action; *force majeure* events; exogenous events; and statistical invalidity." Pennsylvania PAP at 6. To place the funds in escrow, Verizon must notify the PAPUC within five days. *Id.* Upon being informed of Verizon's action, the affected CLEC has five days to request alternative dispute resolution, or the funds revert to Verizon. *Id.*

This provision is troublesome because it appears to grant so much discretion to Verizon to determine the circumstances under which Verizon can place the funds in escrow that it compromises the PAP's ability to provide an immediate, certain remedy, thereby minimizing the need for litigation. *See generally FCC New York Order* ¶ 433. In its application, Verizon points out that, although the five-day deadlines were established to ensure rapid resolution of any dispute, it would be willing to allow CLECs 30 calendar days to respond to a Verizon petition to place Tier II payments in escrow. Verizon Guerard/Canny/DeVito Decl. ¶ 175. However, the PAP has not yet been modified to reflect this proposal.

Moreover, Verizon appealed the PAPUC order to implement the current PAP, alleging that the PAPUC has no authority under Pennsylvania law to require Verizon to pay liquidated damages to the CLECs. *See*

Department encourages efforts by the Commission and the PAPUC to improve the Pennsylvania PAP and ensure that any post-entry backsliding in performance will be addressed quickly and effectively.

IV. Conclusion

CLECs have made significant inroads into the local markets in Pennsylvania. Electronic billing, however, may be an important factor with respect to whether entry will continue in the foreseeable future. Because of the timing of this application, Verizon has not been able to demonstrate that its billing system modifications have fully resolved its billing problems in actual commercial operations. Absent such evidence, the Department cannot support Verizon's application at this time. The Department notes, however, that the Commission may have additional information during its consideration of Verizon's application. The Commission may

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Pennsylvania PAP at 1 n.1. Although the PAPUC required Verizon to drop its appeal as a condition of its section 271 approval, *see* PAPUC Decision at 3, Verizon may oppose any changes to the existing PAP on similar grounds. The PAPUC relied on Verizon's agreement to the conditions imposed in its June 6 decision. *See* PAPUC Consultative Report at 268 ("In particular, we expressly rely upon . . . Verizon PA's withdrawal of its pending appeal . . . challenging the Commission's statutory authority to impose self-executing remedies for our conclusion and recommendation to the FCC that the Pennsylvania PAP is adequate and permanent for section 271 purposes. Moreover, having unconditionally accepted these terms for our positive recommendation to the FCC, we do not expect Verizon PA to seek to undo these terms in any subsequent litigation or proceeding.").

Finally, it is the Department's understanding that Verizon's contracts with CLECs in Pennsylvania do not contain self-enforcing liquidated damages clauses. Absent liquidated damages clauses or an effective PAP, CLEC interconnection agreements with Verizon may become contracts with effectively no remedy for breach.

therefore be able to assure itself that Verizon's billing problems have been resolved and may be in a position to approve Verizon's application by the close of these proceedings.

Respectfully submitted,

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July 26, 2001

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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 July 26, 2001.

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