

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Application by Verizon New Jersey)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	WC Docket No. 02-67
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 New Jersey)	

**COMMENTS ON BEHALF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE
ON SUPPLEMENTAL FILING OF VERIZON NEW JERSEY**

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Dated: April 8, 2002

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The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby submits these comments in response to the Public Notice issued in this proceeding on March 26, 2002 (DA 02-718) requesting comment on the refiled 271 application (“Application”) filed by Verizon New Jersey, Inc. (“Verizon”).¹ Consistent with our comments filed with the Federal Communications Commission (“FCC” or “Commission”) in response to Verizon’s initial application (CC Dkt No. 01-347), it is the

¹ In the Matter of Application by Verizon New Jersey 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 New Jersey WC Docket No. 02-67 (March 26, 2002) (“Verizon Supplemental Filing”).

opinion of the Ratepayer Advocate that the refiled application does not demonstrate compliance with both Track A requirements and checklist item 2, and does not satisfy the public interest standard.²

I. VERIZON'S SUPPLEMENTAL DATA STILL FAILS TO MEET THE *DE MINIMIS* STANDARD UNDER TRACK A

The Ratepayer Advocate believes that Verizon's supplemental filing contains the same inconsistencies and infirmities as its initial application for 271 authority that was recently withdrawn by Verizon.

In its comments on Verizon's initial 271 filing with the FCC, the Ratepayer Advocate recommended that, consistent with the Commission's past practices, it should examine the two states (New York and Pennsylvania) that are contiguous to New Jersey to determine whether the level of residential facilities-based competition in New Jersey falls within a range of reasonableness to meet the *de minimis* standard under Track A; and consequently whether approval of 271 authority is in the public interest.³

The Commission determined that Verizon met the *de minimis* standard in New York and Pennsylvania where local residential facilities-based competition was at **1.5%**, and approximately **4.5%** respectively. In New Jersey, however, local residential facilities-based competition was dismally and significantly lower at **0.0196%**, as of Verizon's initial filing. At the very least, the *de minimis* standard for New Jersey should fall within the range between its two adjoining states, New York (the lowest) and

² The Ratepayer Advocate incorporates by reference its comments filed in the initial 271 proceeding with the FCC in CC Docket 01-34: Initial Comments (January 14, 2002); Reply Comments (February 1, 2002); Comments to Public Notice, DA 02-580) (March 13, 2002).

³ See Ratepayer Advocate Reply Comments at 9-10.

Pennsylvania (the highest).⁴ This is especially true given that no parties dispute the fact that New Jersey is a lucrative market for telecommunications services, and certainly no less lucrative a market than New York and Pennsylvania.

Since that time, Verizon has withdrawn its application at the FCC and recently refiled with updated data purporting to demonstrate growth in New Jersey residential markets. However, aside from the lack of verification for the updated data, the data itself does not yield results sufficient to meet the *de minimis* standard. In its supplemental filing, Verizon submits that “the number of residential lines served by competitors using facilities they have deployed themselves and using the UNE platform have each more than doubled”⁵ Even if we were to assume that the number of residential lines served by Verizon has not increased since its initial 271 filing, using Verizon’s updated data, CLECs still serve far less than 1% of the local residential market through their own facilities. In fact, the only change shown in Verizon’s updated filing reflects a minor reallocation among already existing CLEC residential lines.⁶ Interestingly, Verizon’s own data belies its statement that since the time Verizon filed its initial application, “competition has continued to increase rapidly in New Jersey.”⁷ Despite Verizon’s claims of s”significant growth, “ the overall level of competition in the local residential market has not increased since its initial filing and remains at a total of 57,000 CLEC lines.⁸

⁴ However, the Ratepayer Advocate contends that given NJ’s greater teledensity, than New York and Pennsylvania, it would be appropriate for the Commission to set NJ’s *de minimis* number at the higher end of the range, and even surpass that of Pennsylvania.

⁵ Verizon Supplemental Filing at 4.

⁶ While Verizon’s data shows an increase in the number of residential customers served by UNE Platform lines, there is also a decrease in the number of residential customers served by resale. Verizon fails to explain why both changes are of approximately the same magnitude. *See* Torre Supplemental Declaration, Attachment 1, Table 1.

⁷ *Id.*, *Torre Supplemental Declaration, Attachment 1* at ¶ 2.

⁸ *Id.* at Table 1.

Moreover, in its most recent filing in Rhode Island, Verizon itself engages in the range analysis that the Ratepayer Advocate recommends here. Specifically, Verizon states that:

“[a]ccording to Verizon’s internal data, competing carriers in Rhode Island are providing service to approximately 45,000 residential customers. Based on the number of residential switched access lines in each state, this is proportionately equivalent to approximately 280,000 lines in Massachusetts and approximately 730,000 lines in New York.”⁹

Using the same analysis as applied to New Jersey’s local residential competition, to be proportionately equal, CLECs would have to serve at least 65,000 (or 1.5% as in NY) and 195,300 (or 4.5% as in PA) of the total New Jersey local residential lines over their own facilities. As compared to New York and Pennsylvania, the total number of facilities based CLEC lines reported by Verizon in New Jersey pale in comparison and therefore, cannot reasonably meet the Commission’s *de minimis* standard. Based on this analysis alone, Verizon fails to demonstrate that in New Jersey, “actual commercial alternatives” are available to local residential consumers.

II. VERIZON-NJ DOES NOT MEET CHECKLIST ITEM 2 - NONDISCRIMINATORY ACCESS TO UNES

A. The FCC May Not Rely Upon The Board’s Final UNE Order In Determining TELRIC Compliance Due To The Errors And Omissions Raised In The Motions For Reconsideration.

On March 6, 2002, the New Jersey Board of Public Utilities (“Board”) issued its Final Unbundled Network Elements (“UNE”) Order.¹⁰ The Ratepayer Advocate submitted comments in response to the

⁹ *Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance (d/b/a Verizon Enterprise Solutions), Verizon Global Network Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, FCC 02-63, Memorandum Opinion and Order (rel. February 22, 2002) at ¶5. (hereinafter “*Rhode Island Order*”).

¹⁰ *I/M/O the Board’s Review of Unbundled Network Elements, Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.*, Docket No. TO00060356, Decision and Order (Mar. 6, 2002) (hereinafter *Final UNE Order*).

FCC Public Notice in CC Docket No. 01-347 (DA 02-580) on whether the Board's UNE Order demonstrated that the New Jersey UNE rates fall within the reasonable range that a correct application of TELRIC principles would produce, and thereby incorporates by reference its comments herein. Verizon has failed to show in its revised filing that its recurring and non-recurring rates in New Jersey were properly set by the Board and are otherwise TELRIC compliant. Although the only substantive rate change reflected in Verizon's refiling involves its voluntary reduction in the hot cut rates charged, the Ratepayer Advocate and other parties have filed motions for reconsideration with the Board that raise substantive problems with other recurring and non-recurring rates established by the Board in its UNE Final Order, outside of the hot cut rates.

1. The Non-Recurring Rates Established in the Board's UNE Order Are Fundamentally Flawed, and Result in Overstated Rates Outside of the Reasonable Range That TELRIC Would Permit.

The Board lacked substantial evidence to set permanent non-recurring rates in its Final UNE Order as a result of inadequate and unverifiable work times. The Board rejected the work times proposed by Verizon, based upon Verizon's surveys, which were "biased, arbitrary, and unreliable."¹¹ The Board also acknowledges that the cost drivers for non-recurring rates are labor rates and work times,¹² and recognized the concerns raised by the Ratepayer Advocate and others that (a) the work times offered by Verizon-NJ are not based upon forward-looking surveys, (b) the surveys included outliers, (c) the surveys have upward bias, and (d) the surveys utilized subjective estimates of work times.¹³ All of these deficiencies contribute in our opinion to the conclusion that the work times are not current, complete, or accurate for purposes of

¹¹ *Id.* at 158 and 166-67 (stating that Board agrees with the Ratepayer Advocate).

¹² *See Final UNE Order* at 155, 166, 167.

¹³ *Id.* at 136-38, 155-57

setting non-recurring rates. The Board clearly stated that the surveys were “biased, arbitrary, and unreliable.”¹⁴ The Board nevertheless proceeded to set final and permanent non-recurring rates based upon unverifiable reductions in work times. The Board’s unilateral reductions to compensate for these deficiencies is inadequate and should not be relied upon by the FCC.¹⁵

2. Improper Inputs Used by the Board in Establishing Local Switching Rates Result in Overstated Rates Outside of the Reasonable Range That TELRIC Would Permit.

Another example of the misapplication of TELRIC by the Board is the setting of local switching rates. As the following table demonstrates, Verizon-NJ’s switching rates are substantially higher than those in effect in Pennsylvania, New York, and Rhode Island. The Ratepayer Advocate submits that the Board’s improper reliance on the non-TELRIC compliant input for busy hours contributes to the disparity in rates. Verizon-NJ offered 251 days as the input for busy hours calculation, and the Board accepted that input. In New York, the state commission accepted the Administrative Law Judge’s recommendation of 308 days as being the TELRIC compliant input.¹⁶ If 308 days are used, then the switching rates would be reduced substantially, and would be more consistent with the New York switching rates.¹⁷

¹⁴ *Id.* at 158 and 166-67 (stating that Board agrees with the Ratepayer Advocate).

¹⁵ The Ratepayer Advocate would be less concerned about the Board’s approach if the Board had set interim non-recurring rates, subject to refund, pending further proceedings to determine work time through time and motion studies, audit of work orders, or cross-tracking. But, the Board’s action in setting permanent non-recurring rates is both arbitrary, unreliable, and inconsistent with reasoned decision making. *See New York Order* at paras. 257-61.

¹⁶ *NY UNE Order* at 34.

¹⁷ *See Final UNE Order* at 121, 122.

Comparison of Local Switching Rates

State	Originating Rate (MOU)	Terminating Rate (MOU)
New Jersey	\$0.002772	\$0.002508
New York ¹⁸	\$0.001147	\$0.001111
Pennsylvania	\$0.001802	\$0.001615
Rhode Island ¹⁹	\$0.001358	\$0.001192

The Board’s initial UNE order was deemed the result of arbitrary and capricious rulemaking when the Board substituted arbitrarily a 60/40 split in UNE inputs. The arbitrary substitution of busy day inputs by the Board is substantively no different, and casts question on the Final UNE Order.

B. Evidence Suggests That Verizon NJ Is Not Providing Nondiscriminatory Access to OSS Electronic Billing Functions

On August 29, 2001, Verizon announced to CLECs that it would be providing wholesale bills in the electronic, mechanized Billing Output Specification (“BOS”) Bill Data Type (“BDT”) format as the bill of record in New Jersey for bill periods with a full month of usage after September 1, 2001.²⁰ The

¹⁸ The superseded local switching rates in New York were \$0.003150 per minutes of use. The old rates were not deaveraged between originating and terminating. Instead, the old rates were usage based rates and time-of-day sensitive (day, evening, night). *See* New York Public Service Commission, *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework; Proceeding on Motion of the Commission to Examine Rates for Unbundled Network Elements*, Case Nos. 00-C-1945, 98-C-1357, Order Instituting Verizon Incentive Plan, Appendix A (Feb. 27, 2002).

¹⁹ Prior to the voluntary reduction of local switching rates by Verizon-Rhode Island to reflect New York’s lower UNE rates, local switching rates in Rhode Island were \$0.002921 for originating traffic and \$0.002563 for terminating traffic. *See* Rhode Island Public Utilities Commission, *Unbundled Local Switching And Analog Line Port Rates - Verizon Rhode Island’s Section 271 Compliance Filing*, Docket No. 3363, Order, Appendix A (Feb. 21, 2002).

²⁰ *See* Verizon Supplemental Filing, McLean/Wierzbicki/Webster Declaration at ¶ 114.

BOS BDT format would allow CLECs to use computer software to electronically and readily audit the billing data provided to them by Verizon. In order to verify that Verizon’s electronic wholesale bill was comparable to its paper wholesale bill, and that the electronic bill did not contain excess charges related to taxes, directory assistance, and resale usage on platform accounts, Verizon engaged the accounting firm of PricewaterhouseCoopers (“PWC”) in September 2001 to conduct reviews of the New Jersey production of BOS BDT bills for CLECs.²¹ The Board subsequently found that Verizon’s BOS BDT in New Jersey met the standard for section 271 billing compliance, however, it conditioned its finding of OSS and specifically Checklist item 2 compliance on the requirement that Verizon include electronic billing metrics in the New Jersey Carrier-to-Carrier Guidelines (“NJ C2C Guidelines”) and New Jersey Incentive Plan that were identical to those included in the Pennsylvania Guidelines.²² Although Verizon has complied with the Board’s request and has officially included the electronic billing metrics in its February 2002 Carrier-to-Carrier reports, it has not begun reporting performance data for these metrics, a necessary tool to gauge whether the electronic billing systems are functioning properly.

It is well established that accurate wholesale billing is essential to a competitive local exchange market. As a matter of record the FCC has stated that a “BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements

²¹ *Id.* at ¶ 115-117.

²² New Jersey Board of Public Utilities, *I/M/O the Consultative Report of the Application of Verizon New Jersey, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey*, Docket No. TO01090541, CC Docket No. 01-347, at 41 (Jan. 14, 2002) (“*Board Consultative Report*”). The two new electronic billing metrics include BI-2-02, Timeliness of Carrier Bill—Electronic Bills—BOS BDT format and BI-3-06, Billing Adjustments – Electronic Bills – BOS BDT format. The Board also conditioned its finding of checklist compliance on the requirement that Verizon retain the manual review and balancing procedures in New Jersey until the Board is satisfied that manual balancing records are no longer necessary to produce balanced electronic bills for CLECs.

under checklist item 2.”²³ The Board agrees with this fact and recognizes that “electronic billing is an essential component of the billing process . . . [and] [w]ithout adequate electronic billing, CLECs may be unable to verify the accuracy of Verizon NJ’s wholesale bills in a timely manner.”²⁴ In order to determine the adequacy of Verizon’s newly implemented electronic billing system, it must be subject to full commercial volumes so as to uncover possible flaws in the system. To date, Verizon’s electronic billing system has not been extensively utilized by CLECs and as such it is inappropriate for the Board to base their finding of Verizon’s 271 billing compliance on an “absence of specific CLEC claims of flaws in [the] electronic billing vehicle.”²⁵ The Ratepayer Advocate contends that CLEC claims have been seemingly absent not because there are no flaws in Verizon’s electronic billing system but simply because the system is not yet subject to high commercial volumes such that any flaws present in Verizon’s electronic billing system would be revealed .

In prior section 271 orders the FCC has relied on performance data that reflects actual commercial usage as a strong indicator of a BOC’s checklist compliance for OSS functions.²⁶ But how can the FCC determine whether Verizon’s newly implemented electronic billing system is serving CLECs adequately if performance data has yet to be released for the new electronic billing metrics.²⁷

²³ See *I/M/O Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. or Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order at ¶ 22, (Sep. 19, 2001 (“*PA 271 Order*”).

²⁴ See *Board Consultative Report* at 40.

²⁵ *Id.*

²⁶ *PA 271 Order* at ¶ 24, n.82.

²⁷ Pursuant to the Board’s Consultative Report, Verizon began including the new electronic billing metrics in its February 2002 Carrier-to-Carrier report but did not report data for these metrics. See Letter from Bruce D. Cohen, Vice President & General Counsel, Verizon, to Henry Ogden, Esq., Acting Board Secretary, New Jersey Board of Public Utilities Board (Jan. 18, 2002).

It is not enough to rely on the review conducted by PWC because the FCC has stated that a “third party test alone cannot outweigh reliable commercial data.”²⁸ In fact the FCC found that the PWC review in Pennsylvania was “not dispositive”²⁹ but was instead a supplement to Verizon’s commercial performance data in Pennsylvania. It is also noteworthy that in Pennsylvania, the FCC stated that Verizon had “limited” commercial performance data and they acknowledged that the evidentiary showing relied upon by Verizon made the electronic billing issue “a close call.”³⁰ The situation is even worse in New Jersey because while Pennsylvania had “limited” electronic billing performance data at the time of their section 271 application, New Jersey has *no data at all* due to the fact that Verizon most recently made electronic billing available to CLECs as the bill of record. The Ratepayer Advocate contends that in the absence of performance data the FCC must find the PWC review wholly insufficient to demonstrate that Verizon’s wholesale electronic bill is readable, accurate and auditable in compliance with checklist item 2.

Contrary to the Board’s assertions in its Consultative Report that there has been no specific CLEC claims of flaws with Verizon’s electronic billing vehicle, AT&T has recently submitted comments to the Board stating that Verizon NJ has failed to provide them with readable, auditable and accurate wholesale bills.³¹ Specifically, AT&T contends that the electronic wholesale bill is improperly formatted

²⁸ *PA 271 Order* at ¶ 33.

²⁹ *Id.* at ¶ 38.

³⁰ *Id.* at ¶ 39.

³¹ *See* AT&T Board Comments at 8.

which prevents them from using the electronic bills to verify the accuracy of VNJ's charges.³² The precise formatting problems encountered by AT&T include: (1) Verizon's failure to provide a telephone number for every charge that is listed on the bill, and (2) Verizon's inclusion of non-industry standard codes on the BOS BDT bills which precludes AT&T from auditing the bills and from easily converting Verizon's data into its own billing systems.³³ As a result, AT&T is not comfortable with designating Verizon's electronic bill as its bill of record nor do they have any faith in Verizon's manual procedure that allegedly corrects errors in the electronic bill because they would have no means of determining what manual adjustments are made by VNJ, or whether those manual adjustments are correct.³⁴

The electronic billing problems encountered by AT&T demonstrates that time is necessary to test Verizon's electronic billing systems in order to ferret out all the problems that might exist in the system and resolve CLEC billing issues. As AT&T's Declaration states, Verizon's own billing expert in Section 271 proceedings before the Pennsylvania Public Utility Commission agreed that "several cycles" of billing must be completed before any conclusive judgment can be made on whether newly implemented system changes have been successful.³⁵ Furthermore, Verizon, in an *ex parte* letter dated February 25, 2002 to the FCC, stated that "[i]t is Verizon's policy, before it makes the BOS BDT electronic bill format available as the bill of record in a particular state, to make sure that the BOS

³² *Id.*

³³ *Id.* at 9.

³⁴ *Id.* at 9-10. AT&T also asserts that Verizon does not even provide them with accurate wholesale paper bills because VNJ has engaged in the practice of including charges for retail services in wholesale bills, Verizon claims is due to a systematic problem in its OSS. *Id.* at 10.

³⁵ See Declaration of Mohammed K. Kamal on Behalf of AT&T at ¶ 19 (citing PA 271 Order at ¶ 37, n. 141).

BDT is accurate, that it balances (in other words, that it is internally consistent), and that CLECs can validate the charges appearing on the bill.”³⁶ It thus appears that Verizon went against its own policy in the case of New Jersey because there is evidence to suggest that there are serious flaws in the BOS BDT format which has led to at least one CLEC claiming the inaccuracy of Verizon’s electronic wholesale bills. AT&T may be the first in a line of CLECs who have valid electronic billing issues but the FCC will have no probative evidence of billing problems without reliable performance data. The Ratepayer Advocate urges the FCC to take a closer look at the electronic billing issue because it demonstrates yet again that Verizon has failed to provide adequate evidence of compliance with checklist item 2. The Ratepayer Advocate therefore maintains the position that Verizon’s section 271 filing is premature at this time insofar as Verizon is unable supply adequate evidence that it is providing CLECs with timely, accurate, and auditable electronic wholesale bills.

III. VERIZON’S PETITION FAILS THE PUBLIC INTEREST TEST BECAUSE RESIDENTIAL COMPETITION DOES NOT EXIST.

As noted in the Ratepayer Advocate’s comments on Verizon’s initial application, the lack of residential competition in New Jersey must be considered by the Commission in its determination as to whether approval of Verizon’s application is within the public interest. Our comments to that extent are incorporated herein. The lack of residential competition continues as a factor in Verizon’s refiled petition, as stated in Section I., *supra*, herein. The levels of residential competition remain far below the levels of any states where Verizon has received authority to provide long distance, as well as other

³⁶ *See Ex Parte* Letter from Clint E. Odom, Verizon, to William Caton, Acting Secretary, Federal Communications Commission at 4 (Feb. 25, 2002).

Regional Bell Operating Companies. (RBOCs).

The dismal levels of competition seen in the residential market clearly require an inquiry as to whether the New Jersey local exchange market is truly open to competition. We continue to urge the Commission to affirmatively analyze and weigh the public interest claims before it. We concur with the recommendations of the D.C. Circuit in its opinion in *Sprint v. FCC*, that “public interest claims regarding the lack of competition and their underlying rationales must be directly addressed by the Commission.”³⁷

IV. CONCLUSION

The facts show conclusively that Verizon-NJ's application is wholly insufficient and cannot be granted. Verizon's application fails to meet the de minimis standard under Track A. The evidence also demonstrates that a substantial number of the UNE rates are not TELRIC compliant, and therefore Verizon-NJ cannot satisfy checklist Item 2. Moreover, serious concerns remain regarding Verizon's provisioning of electronic billing. Finally, the lack of residential competition precludes the approval of Verizon's application at this time as being in the public interest.

Accordingly, the Ratepayer Advocate respectfully submits that Verizon's application be denied.

³⁷ *Sprint Communications Co., L.P. v. FCC*, 2001 U.S. App. LEXIS 27292, at *3-*4 (Dec 28, 2001).

Respectfully submitted,

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Dated: April 8, 2002