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

Re: Application by Verizon Maryland Inc., Verizon Washington,D.C. Inc., Verizon West Virginia 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 Maryland, Washington, D.C., and West Virginia (WC Docket No. 02-384)

Today we grant Verizon authority to provide in-region, interLATA service originating in District of Columbia and the States of Maryland and West Virginia. I support this Order and commend the District of Columbia Public Service Commission, Maryland Public Service Commission, and the West Virginia Public Service Commission for their hard work.

I must concur, however, with the decision's statutory analysis on the standard for reviewing the pricing of individual unbundled network elements ("UNEs") in Section 271 applications. In today's action, the Commission finds that the statute does not require it to evaluate individually the checklist compliance of UNE TELRIC rates on an element-by-element basis. The Commission concludes that because the statute uses the plural term "elements," it has the discretion to ignore subsequent reference to prices for a particular "element" in the singular. As I have stated in the past, I disagree.[1]

Bell operating companies seeking to enter the long distance market must meet the requirements of the fourteen point checklist contained in section 271 of the Act.[2] The 271 process requires that the Commission ensure that the applicants comply with all of these checklist requirements. One of the items on the checklist requires that the Commission: (i) verify that the Bell operating company provides nondiscriminatory access to network elements; and (ii) ensure that rates are just and reasonable based on the cost of providing "the network element,"[3] in accordance with section 251(c)(3) of the Act.[4]

---

[1] See Statement of Commissioner Kevin J. Martin, *Application by Verizon New England Inc., Verizon Delaware 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 Hampshire and Delaware (WC Docket No. 02-157),* October 3, 2002 (*Approving in Part and Concurring in Part);* Statement of Commissioner Kevin J. Martin, *Application by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Virginia Enterprise Solutions Virginia Inc., Verizon Global Networks, Inc. and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia (WC Docket No. 02-214),* October 30, 2002 *(Approving in Part and Concurring in Part).*

[2] See 47 U.S.C. 271.

[3] See 47 U.S.C. 271(c)(2)(B)(ii) and 47 U.S.C. 252(d)(1).

[4] See 47 U.S.C. 251(c)(3). Requires that incumbent local exchange carriers provide "…nondiscriminatory

The pricing standard for network elements analyzed during the 271 checklist review process resides in Section 252. Under this section, states must set unbundled network element rates that are just and reasonable and "based on the cost of providing the network element."[5] The clearest reading of this section would seem to require that the Commission ensure that the rates charged for any particular element is based on that element's cost. Previously, the Commission has determined that this requirement is satisfied by compliance with TELRIC principles for pricing. Thus the most straightforward reading of our statutory obligation is to make sure that the price of every element—and particularly the price of any element that someone specifically alleges is not based on cost –is actually based on cost.

In defense of its statutory interpretation, the Commission argues that because the general statutory provisions refer to the term network elements in the plural, the Commission is not required "to perform a separate evaluation of the rate for each network element in isolation."[6]

Typical statutory construction requires specific directions in a statute take precedent over any general admonitions. Contrary to such accepted principles of statutory construction, the order suggests that general language referring to the network elements (in the plural form) in sections 252 and 271 trumps the language addressing the specific pricing standard in section 252 that requires a determination on the cost of providing the network element. In my view, such an interpretation runs contrary to those principles.

The decision attempts to find additional support for its statutory interpretation by noting that the only party that raised this legal issue on the record also takes the position that some degree of aggregation is appropriate in conducting a benchmark analysis. First, I am not sure that an outside party's inconsistency could absolve the Commission of its obligation under the Act--in this case-- to evaluate individually the checklist compliance of UNE TELRIC rates on an element-by-element basis.[7]

---

access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory…"

[5] Section 252(d)(1) states that in relevant part, that "[d]eterminations by a state commission of… the just and reasonable rate for network elements for purposes of [section 251(c)(3)]…shall be based on the cost…of providing the…*network element (emphasis added).*

[6] Section 271(c)(2)(B)(ii) requires that the Commission determine whether an applicant is providing "[n]ondiscriminatory access to network elements in accordance with the requirements of ..." the pricing standard enunciated in section 252(d)(1).

[7] Despite references in the decision to the Commission's long-standing practice of benchmarking and statements regarding rationale provided in prior orders to support the Commission's statutory interpretation - - this is the third time that the Commission has addressed whether it has the authority, under 252(d)(1) and 271, to permit rate benchmarking of nonloop prices in the aggregate rather than on an individual element-by-element basis.

Moreover, it is the Commission's failure to respond to specific allegations and facts regarding an individual element that fails to meet the statute's requirements. I appreciate that the Commission may be able to base an initial conclusion on the apparent compliance with its rules at a general level. When specific allegations to the contrary are presented, however, I believe the Commission has an obligation to do more than merely rely on those generalized findings. Rather it must respond to the specific facts raised.

I do not believe the Commission can meet its statutory duty—to make an affirmative finding that the rates are in compliance with Section 252—by merely relying again on generalized findings in the face of specific allegations to the contrary.

In circumstances where a party challenges the pricing of an individual element within an aggregated rate benchmark containing several elements, I do not believe that it would be overly burdensome for the Commission to review the compliance of those elements on an individual basis.

In my view, Section 252(d)(1) sets forth the pricing standard used for determining compliance in Section 271 applications. That standard explicitly requires that we examine UNE rates by each individual "network element." I believe we should not ignore such an explicit Congressional mandate.

For these reasons, I concur in this Order.