

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
VERIZON DELAWARE INC. (F/K/A BELL )  
ATLANTIC-DELAWARE, INC.), FOR APPROVAL ) PSC DOCKET NO. 96-324  
OF ITS STATEMENT OF TERMS AND ) PHASE II  
CONDITIONS UNDER SECTION 252(f) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )  
(FILED DECEMBER 16, 1996) )

**FINDINGS, OPINION AND ORDER NO. 5967**

**I. BACKGROUND**

1. Under the Telecommunications Act of 1996<sup>1</sup> ("the Act"), an Incumbent Local Exchange Carrier ("ILEC"), such as Verizon Delaware Inc. ("Verizon-DE"), must allow Competitive Local Exchange Carriers ("CLECs") to use its network under statutorily-defined conditions to provide competing local telephone service. 47 U.S.C. § 251(c). Among other alternatives, a CLEC may lease elements of the ILEC's network on an unbundled basis. This Order approves the charges for CLECs to lease certain unbundled network elements ("UNEs") from Verizon-DE.

2. An ILEC's charges for leasing its network elements must be based on the "cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the . . . network element," including a reasonable profit. 47 U.S.C. §252(d)(1). The Federal Communications Commission ("FCC") has promulgated regulations setting forth the methodology for calculating UNE rates under the Act. These regulations use a methodology first described in the FCC's *Local*

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<sup>1</sup>Pub. L. No. 104-104, 110 Stat. 56; 47 U.S.C. 251 et seq.

*Competition Order*,<sup>2</sup> and commonly referred to as the "Total Element Long-Run Incremental Cost" or "TELRIC" methodology. 47 C.F.R. § 51.501, *et seq.* The TELRIC methodology requires, among other things, that these UNE prices be "measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the [ILEC's] wire centers." 47 C.F.R. § 51.505(b)(1).

3. The United States Supreme Court has held that state commissions must follow the FCC's TELRIC regulations in setting UNE rates under the Act.<sup>3</sup> This Commission, in Phase I of this proceeding, independently adopted the TELRIC methodology as "the standard for determining just and reasonable rates under § 252(d)(1) for unbundled network elements and interconnection in Delaware."<sup>4</sup> The Commission has continued to apply the TELRIC pricing methodology in this Phase II proceeding.<sup>5</sup>

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<sup>2</sup>*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15844-15860 (§ 672 to 711) (Rel., Aug. 8, 1996) ("*Local Competition Order*").

<sup>3</sup>*AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

<sup>4</sup>*In the Matter of the Application of Bell Atlantic-Delaware, Inc. for Approval of Its Statement of Terms and Conditions under Section 252(f) Of The Telecommunications Act of 1996*, PSC Docket No. 96-324, Findings, Opinion and Order No. 4542, dated July 8, 1997 ("*Phase I Order No. 4542*"), paragraph 23.

<sup>5</sup>Last year, the Eighth Circuit vacated portions of the FCC's TELRIC regulations in *Iowa Utilities Commission v. FCC*, 219 F.3d 744 (8th Cir. 2000). The Eighth Circuit's mandate was stayed, however, pending appeal to the United States Supreme Court. This Phase II proceeding has been decided under the FCC's TELRIC regulations, as interpreted by this Commission in Phase I and affirmed by a federal district court. The Commission is aware that on May 13, 2002, the U.S.

4. In Phase I of this proceeding, the Commission considered certain issues, including Verizon-DE's rates for leasing the UNEs that existed at that time. The Commission evaluated Verizon-DE's proposed rates against the TELRIC pricing standard. In July 1997, this Commission issued its Phase I Order requiring Verizon-DE to modify its proposed rates, resulting in rates lower than Verizon-DE had proposed. The Commission found these rates to be consistent with the forward-looking TELRIC standard.<sup>6</sup>

5. Both Verizon-DE and AT&T Communications of Delaware, Inc. ("AT&T"), filed actions under 47 U.S.C. §252(e)(6) "appealing" the Commission's decision to the United States District Court for the District of Delaware. In January 2000, the District Court upheld most of the Commission's determinations.<sup>7</sup> The District Court specifically upheld as TELRIC-compliant the Commission's decisions regarding the Recurring Rates that were before the Commission at that time. These Recurring Rates are referred to as the "Phase I Rates."

6. The District Court did, however, remand two issues to the Commission for further proceedings. One involved Verizon-DE's charges

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Supreme Court issued its opinion in review of the Eighth Circuit decision in *Verizon Communications Inc. v. FCC*, No. 00-511. That opinion was issued after the Commission's final deliberations in this matter on April 30, 2002, and, therefore, has not been considered in connection with this Order. Given that the U.S. Supreme Court affirmed the validity of the TELRIC standard, this Commission believes that application of the U. S. Supreme Court decision would not lead to a different result in this proceeding.

<sup>6</sup>Phase I Order No. 4542, at paragraph 24.

<sup>7</sup>*Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F. Supp. 2<sup>nd</sup> 218 (D. Del. 2000).

for access to Operation Support Systems ("OSS") and the other related to the Non-Recurring Charges ("NRCs") for all of Verizon-DE's UNEs.

7. On May 24, 2001,<sup>8</sup> Verizon-DE filed an application for approval of rates for UNEs that did not exist at the time of Phase I, as well as rates for the issues remanded to the Commission by the District Court relating to NRCs and OSS access charges. As a result of the filing, the Commission initiated Phase II of this proceeding in order to accomplish three things:

First, it will allow the Commission to review the NRC rates and OSS Access charges now being proposed by Verizon-DE in light of the earlier rulings of the federal District Court and any subsequent rulings by the FCC and other courts. Second, in this Phase II, the Commission will undertake a review of the other rates, terms, and conditions proposed in Verizon-DE's new Revised UNE Rate filing, including those rates for the "new" UNEs which Verizon-DE now proposes to offer. Finally, this Phase II will allow the Commission to determine whether Order No. 4542 needs to be "updated" in light of legal directives or other changed circumstances occurring since the date of that earlier Order.

PSC Order No. 5735 (June 5, 2001), at 5-6.

8. By Commission Order No. 5742, dated July 3, 2001, the Commission appointed William F. O'Brien to act as Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, and to make a report and recommendation to the Commission.

9. In all, eight witnesses submitted pre-filed direct testimony and three Verizon-DE witnesses submitted pre-filed rebuttal

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<sup>8</sup>Verizon-DE's filing was originally made on April 26, 2001, but was revised on May 24, 2001, at Staff's request, to add the OSS rates and to make certain corrections.

testimony. In accordance with the approved schedule, duly noticed hearings were conducted in Wilmington on October 24 and 25, 2001. With two exceptions, the above-named witnesses appeared and were offered for cross-examination. By stipulation, the testimony of two witnesses was accepted into the record without their appearance at the hearing.

10. The Hearing Examiner granted permission for Verizon-DE to file supplemental testimony with its opening brief in order to respond to the oral surrebuttal of AT&T's and Staff's witnesses.

11. After accepting Verizon-DE's supplemental testimony into the record, the Hearing Examiner closed the initial Phase II evidentiary record, which consisted of twenty-six exhibits and a 472-page *verbatim* transcript of the proceedings. The parties then filed opening briefs and reply briefs. Sprint and CTA chose not to file briefs.

12. The Hearing Examiner on December 21, 2001 issued a 100-page Report with his findings and recommendations based on the testimony, evidence and arguments.<sup>9</sup>

13. The parties filed Exceptions on January 10, 2002. On January 18, 2002 Verizon-DE filed a Motion to Strike what it characterized as "Extra-Record and Misleading Material" from AT&T's Exceptions, or, in the alternative, for leave to Reply on the new issues raised in AT&T's Exceptions.

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<sup>9</sup>The Hearing Examiner's Report of December 21, 2001 will be referred to as "HER (Dec.) at (¶\_\_); the February 28, 2002 Hearing Examiner's Report will be referred to as "HER (Feb.) at (¶\_\_);"

14. At its public meeting on January 29, 2002, the Commission considered the December 21, 2001 Report, the written exceptions filed thereto, and the oral argument of the parties. The Commission also considered Verizon-DE's Motion to Strike. While voting on and resolving many of the issues in the case, the Commission decided to remand three issues to the Hearing Examiner for further development of the record. The remanded issues were: 1) the compliance of Verizon-DE's non-recurring cost model and the proposed NRC rates with TELRIC and the Federal District Court's Order; 2) the appropriate level of the NRC expedite premium; and 3) what further adjustment, if any, should be made to the common overhead factor to reflect savings from the GTE and NYNEX mergers. PSC Order No. 5896 (Feb. 19, 2002). The Commission directed the Hearing Examiner to develop a schedule that would allow the Commission to consider the remanded issues at its March 5, 2002 meeting.

15. On February 15, 2002, in accordance with the agreed upon schedule, Verizon-DE, Commission Staff, the Division of the Public Advocate ("DPA"), AT&T, and Cavalier Telephone Mid-Atlantic, LLC ("Cavalier"), made initial submissions. The submissions included briefs or comments, as well as new evidence. The evidence consisted of written testimony in the form of affidavits and supporting documentation. On February 21, 2002, the same parties filed reply briefing/evidence. In light of the abbreviated remand schedule, no hearings were conducted but the Hearing Examiner accepted the evidence into the record of this proceeding upon agreement of the parties.

16. The Hearing Examiner, on February 28, 2002, issued a 19-page Report with his findings and recommendations on the Remand issues based on the testimony, evidence and arguments (the "February 28, 2002 Report"). The parties agreed to waive the filing of formal Exceptions to the February 28, 2002 Report.

17. At its public meeting of March 5, 2002, the Commission, considering the February 28, 2002 Report and the oral argument of the parties, voted to resolve the second and third issues remanded to the Hearing Examiner. The Commission reached no decision on the first remanded issue at that meeting. Rather, the Commission directed Verizon-DE to file a matrix of several alternative rate runs generated with Verizon-DE's NRC Model, but changing certain of the inputs.

18. On April 9, 2002, Verizon-DE filed the matrix of alternative rate runs requested by the Commission. Verizon-DE amended the filing on April 16, 2002 to correct minor errors. On April 19 and 22, 2002, the Commission Staff, DPA, AT&T, and Cavalier filed comments regarding the matrix of alternative rate runs. Verizon-DE filed reply comments on April 25.

19. At its public meeting of April 30, 2002, the Commission considered the matrix of alternative rate runs, the comments and reply comments, and the oral argument of the parties. After deliberations, the Commission voted to establish TELRIC-compliant non-recurring rates based on information contained in the matrix of alternative rate runs.

20. This Final Order announces the Commission's determination on all substantive issues considered by the Commission during its deliberations of January 29, March 5, and April 30, 2002. It

summarizes the relevant evidence, provides the Commission's factual findings and legal conclusions, and approves recurring and non-recurring rates for the UNEs that were included in this Phase II proceeding.

## II. DISCUSSION

### **A. Verizon-DE's Motion to Strike "Extra-Record And Misleading" Material in AT&T's Exceptions Is Denied**

21. The Commission denies Verizon-DE's Motion to Strike "Extra-Record and Misleading Material" in AT&T's Exceptions. The Commission believes that the preferred procedural action is to consider all of the information put before it and give the information the weight it deserves based on the record before us. (Unanimous.)

### **B. The Phase I Rates Remain TELRIC-Compliant and the Commission Will Not Reconsider Them At This Time**

22. Verizon-DE's filing with this Commission did not include any proposed rates to replace the Phase I rates that this Commission had approved under TELRIC in July of 1997, and that the Federal District Court had affirmed as TELRIC-compliant in January 2000. Rather, Verizon-DE proposed that the Phase I rates remain in effect, and that the Commission approve the Phase II rates based largely on the inputs established in Phase I, so that Delaware could promptly have a full set of TELRIC-compliant UNE rates.

23. During the proceeding, AT&T contended that this Commission should re-open the Phase I rates and reconsider certain inputs that AT&T contended would have the tendency to reduce the Phase I rates. Verizon-DE countered that a full and fair consideration of all rate-impacting issues would be required, and that not only would this

considerably delay the proceeding, but the resulting rates might well be higher than those approved in Phase I.

24. The Commission finds Verizon-DE's arguments to be persuasive on this issue. The Hearing Examiner recommended that the Commission not reopen the Phase I rates, and that the Phase I rates approved in 1997 and affirmed by the Federal District Court in 2000 remain in effect. The Commission accepts the Hearing Examiner's recommendation and will not reopen the Phase I rates at this time. The Commission finds that the Phase I rates continue to be TELRIC-compliant.

25. The Commission agrees with the Hearing Examiner that there is nothing inherently wrong with having a full set of UNE rates, some of which were determined in 1997 in Phase I (and affirmed in 2000), and the remainder of which will be determined in this proceeding. The Commission need not endeavor to set all UNE rates at the same time using identical cost models. Moreover, while AT&T challenged the methodology and inputs used in Phase I, no party argued any specific Phase I rate as having been rendered manifestly unreasonable by changed circumstances. For these reasons, the Commission need not revisit the Phase I rates that were not included in Verizon-DE's application. (HER (Dec.) at 145-9.)

26. The Commission also agrees with the Hearing Examiner that both Verizon-DE and the CLECs have sufficient motivation to initiate future rate proceedings. The Commission also retains authority to initiate review of pricing issues, as circumstances require. Therefore, the Commission will not establish any specific timetable or

plan for periodic UNE rate evaluation in the future. (HER (Dec.) at 149.) (Unanimous.)

**C. Certain of the Phase I Inputs Used to Calculate Phase II Rates Should Be Modified**

27. In its Order No. 5735, which formally commenced this Phase II proceeding based on Verizon-DE's filing, this Commission held that this was to be an expedited and limited proceeding, taking as given the decisions made in Phase I, so that Delaware could have a comprehensive list of permanent approved rates for all UNEs, including the new UNEs developed since Phase I, and so that the Commission could resolve the open issues from the Federal District Court remand.

28. The Commission afforded the parties the opportunity to argue that any particular input from Phase I should be updated. Accordingly, although the Commission cautioned that this proceeding "should not be viewed as a solicitation for the parties to ask the Commission to simply relitigate one or all of its earlier determinations," the Commission did afford the opportunity for the parties to "point out whether intervening legal directives or other significantly changed circumstances have in some way made the Commission's earlier determinations either legally wrong or manifestly unreasonable."<sup>10</sup>

29. In calculating its proposed rates, Verizon-DE used the inputs established by the Commission in Phase I (except as discussed elsewhere in this Order). Where Verizon-DE used a Phase I input and

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<sup>10</sup>Order No. 5735, § 6.

no party argued that such input should be changed, the Commission concludes that the input is still reasonable and produces TELRIC-compliant rates.

30. The parties did argue that several inputs should be changed, and the Commission addresses each one individually as follows:

**(1) Cost of Capital**

31. In Phase I, the Commission adopted the recommendation of the Hearing Examiners in that Phase and established a cost of capital of 10.28%. The District Court upheld this decision as a reasonable exercise of this Commission's discretion.<sup>11</sup>

32. In Phase II, Verizon-DE argued that, rather than revisiting the issue, the Commission should continue to use the 10.28% cost of capital from Phase I. Verizon-DE pointed out that in other state UNE proceedings during this same time period, Verizon has advocated a cost of capital of 12.95%, but contended that there have been no changed circumstances from 1997 that would warrant reducing the cost of capital below 10.28%.

33. The Staff argued that the Commission should revisit the cost of capital calculation from Phase I, contending that the cost of debt and the cost of equity are now substantially different, due to changing financial market conditions. The Staff submitted the testimony of Don Wood, contending that under the DCF (discounted cash

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<sup>11</sup>80 F. Supp. 2d at 241.

flow) and CAPM (capital asset pricing) methods, an 8.30% cost of capital would be appropriate.

34. The Hearing Examiner concluded that Staff had shown no specific change in external circumstances that would justify reducing the Phase I cost of capital input of 10.28%, and that Mr. Wood's proposed reduction derived more from the methodology he employed than from any changes in financial conditions. (HER (Dec.) at 152.)

35. The Commission finds that the Staff did not establish that the 8.30% advanced by its witness, Mr. Wood, is a reasonable cost of capital for use in setting UNE rates for Verizon-DE at this time. There is no persuasive evidence in the record to demonstrate that the cost of borrowing to large corporations like Verizon has materially changed much since 1997, when the Commission established the 10.28% cost of capital.

36. The Commission therefore finds that there have been no "intervening legal directives or other significantly changed circumstances" rendering the Commission's earlier cost of capital determinations "either legally wrong or manifestly unreasonable." The Commission accepts the Hearing Examiner's recommendation to continue to utilize the cost of capital of 10.28% established in Phase I to calculate these Phase II rates. (HER (Dec.) at 150-152.) While the Commission does not adopt all of the elements of the Hearing Examiner's reasoning in reaching this result, the Commission finds that the Hearing Examiner's conclusion was correct for the reasons set forth above. (3-2.)

37. The Commission further concludes that Verizon-DE must use the 10.28% cost of capital throughout its Phase II studies, and adopts the Hearing Examiner's recommendation to disallow Verizon-DE's use of a regional cost of capital in certain instances in its studies. (HER (Dec.) at 165.) (Unanimous.)

## **(2) Common Overhead**

38. In Phase I, this Commission set a common overhead of 10% for use in calculating UNE rates. Verizon-DE used this 10% overhead value in its proposed rates here in Phase II, and contends that there have been no changed circumstances affecting the common overhead factor that would justify lowering the 10% determination from Phase I.

39. The Hearing Examiner recommended that the Commission adopt the DPA's proposal to reduce common overhead to 5.95% for purposes of calculating these Phase II rates. The Commission adopts the Hearing Examiner's recommendation. Unlike the considerations concerning the cost of capital, Verizon-DE clearly has been through significant changes (such as two major mergers) since the Phase I common overhead factor was determined. Moreover, it is completely appropriate to consider new common costs in light of the fact that Verizon-DE has calculated new annual cost factors for the proposed Phase II rates. Verizon-DE's own recalculation of the common overhead factor yields 8.5%, which alone shows that material changes since Phase I render the Phase I input no longer reasonable. Therefore, it is appropriate to revisit the common overhead factor utilizing Verizon-DE's updated calculation of 8.5% as the starting point.

40. In addition, Verizon-DE has not demonstrated that its embedded-to-forward-looking conversion factor is appropriate or that any factor is required to place the numerator and denominator on a common basis. It is the same type of conversion that Verizon-DE proposed in Phase I, and that was rejected in that case.<sup>12</sup> Therefore, Verizon-DE should recalculate its Phase II rates using a common overhead factor of 5.95%. (3-2.)

41. The Commission rejects, however, AT&T's argument that an additional reduction to common overhead is necessary to reflect "merger savings." AT&T argued that the common overhead should be reduced by an additional 2.6% to account for "savings" from the Bell Atlantic/NYNEX and Bell Atlantic/GTE mergers, on the basis of calculations performed for a proceeding in New York. This issue was considered on remand to the Hearing Examiner after the Commission had decided to reduce common overhead to 5.95%. The Hearing Examiner concluded that no further reduction of common overhead was necessary to account for merger savings, and the Commission adopts this recommendation. The Commission adopts the reasoning of the Hearing Examiner on this issue. (HER (Feb.) at 33-40.) (Unanimous.)

### **(3) Maximum Distance From DLC to Customer**

42. Staff argued that Verizon-DE should increase its assumption regarding the maximum distance assumed between the digital loop

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<sup>12</sup>See, Phase I Findings and Recommendations of the Hearing Examiners, April 7, 1997, ¶¶ 143, 150. The Commission adopted the Hearing Examiners' recommendation concerning common overhead. Phase I Order No. 4542 at paragraphs 35-36.

carrier ("DLC") and the customer (otherwise known as the "distribution" portion of the loop) from 9,000 to 18,000 feet, contending that equipment is now available that would permit voice transmission over 26-gauge copper wire across distances of 18,000 feet.

43. Verizon-DE did not dispute the theoretical ability to run DLC distribution facilities out to 18,000 feet, but contended that this would not necessarily be the most efficient network design assumption (under the TELRIC standard) because the copper "distribution" portion of the loop is generally more expensive per foot than the fiber "feeder" portion of the loop. Staff, moreover, was not able to establish that changing this input would have any material impact on the Phase II rates.

44. The Hearing Examiner recommended leaving this input unchanged. The Commission, however, rejects the Hearing Examiner's recommendation and requires Verizon-DE to assume a maximum distance of 18,000 feet from the DLC to the customer, to the extent this assumption has any impact on the Phase II rates. (3-2.)

#### **(4) IDLC/UDLC Mix**

45. AT&T and Staff challenge Verizon-DE's assumption regarding the percentage of the fiber-fed loops on Digital Loop Carrier ("DLC") systems that should be presumed to be Integrated Digital Loop Carrier ("IDLC"). In each of its recurring and non-recurring studies, Verizon-DE assumed that a portion of its fiber-fed loops would be Universal Digital Loop Carrier ("UDLC") and a portion would be IDLC.

The other parties contend that Verizon-DE should have assumed that 100% of the fiber-fed loops would use IDLC systems.

46. Although this issue has been discussed in the record both in connection with Verizon-DE's 56kd loop rate and with non-recurring costs, Staff correctly pointed out in oral argument that this is a general assumption that can affect several different aspects of Verizon-DE's cost studies. The Commission has considered its general impact, therefore, and the issue will be discussed in the general inputs section of this Order.

47. The TELRIC methodology requires that Verizon-DE's UNEs be priced assuming the "most efficient technology currently available." Verizon-DE contends that it could not assume 100% IDLC because IDLC is not cost-effective nor technically feasible for provisioning loops that must be unbundled on an individual basis, such as where a CLEC provides its own switching facilities and needs only the facilities connecting a particular end-user to the central office. Thus, IDLC is not "most efficient" or "currently available" for providing unbundled loops.

48. The Commission adopts the Hearing Examiner's recommendation and finds that the technology is not currently available to allow Verizon-DE to provide stand-alone UNE loops over IDLC, and, thus, there is no basis in the record to alter Verizon-DE's assumptions regarding the use of IDLC. (3-2.)

49. Staff's argument that the Commission should require Verizon-DE to assume 100% IDLC in order to provide an "incentive" for Verizon-DE to accelerate industry efforts to make this technology work

for unbundling stand-alone loops is contrary to the TELRIC standard this Commission is bound to apply. Since the record demonstrates that this technology is not "currently available," there is no basis to alter Verizon-DE's assumptions regarding the use of IDLC.

**C. Certain of Verizon-DE's Annual Cost Factors Must Be Modified**

**(1) Advertising Expenses**

50. In calculating its marketing factor for Phase II, Verizon-DE included a portion of its advertising costs for product advertising, which includes costs for items such as area code and dialing changes. Verizon-DE claims that these costs are a reasonable surrogate for the advertising costs Verizon-DE would still incur in a wholesale-only environment, and that such advertising would benefit CLECs.

51. The Hearing Examiner recommended that the Commission require Verizon-DE to recalculate its marketing factor without these advertising costs. The Hearing Examiner found that there is "conceptual merit" to the argument that a wholesale supplier's advertising would promote products and services in a way that stimulates overall demand, which CLECs will ultimately meet by leasing UNEs, or provide generally beneficial information (e.g., concerning area code changes). He concluded, however, that Verizon-DE failed to demonstrate that its proposal seeks only the expenses for such conceptually valid purposes, nor did Verizon-DE advance a suitable method for allocating only those types of advertising costs. (HER

(Dec.) at 172-4.) The Commission adopts the Hearing Examiner's recommendation (Unanimous.)

**(2) Regulatory Assessment Fees**

52. Verizon-DE calculated its Phase II rates using a regulatory assessment factor calculated by taking all assessments and dividing by all revenue in order to allocate only that portion attributable to wholesale products. Verizon-DE admits that it inadvertently left regulatory assessments out of its factors in Phase I, so the Commission never had occasion to consider if they were properly included.

53. The DPA argued that the factor should not be allowed because it was not included in Phase I and because 26 Del. C. § 115(c)(2) excludes wholesale sales from assessments for state purposes. The record reflected, however, that Verizon-DE does in fact pay assessments on the basis of both retail and wholesale revenue.

54. The Hearing Examiner concluded that the Commission should allow Verizon-DE to recover its wholesale regulatory assessments in these Phase II rates through the use of the regulatory assessment factor, because these are expenses Verizon-DE incurs when it provides UNEs to CLECs. So long as Verizon-DE actually pays these assessments on its revenues from leasing UNEs, they are an expense that should be included in the UNE rates under the TELRIC standard. The Commission adopts the Hearing Examiner's recommendation (HER (Dec.) at 172-9). (Unanimous.)

### **(3) Right To Use ("RTU") Expenditures**

55. The record showed that Verizon-DE now capitalizes right-to-use fees after a change in Financial Accounting Standards Board ("FASB") requirements, where such fees had before been expensed. AT&T sought clarification of where such fees were reflected by Verizon-DE, and Verizon-DE explained that RTU expense was now included in the total ACF factor for the appropriate accounts. The Hearing Examiner concluded that Verizon-DE had adequately explained the changed accounting requirements and provided an explanation of where such costs were now reflected, and that no change to the Verizon-DE studies need be performed as a result of this issue. The Commission adopts the Hearing Examiner's recommendation (HER (Dec.) at 181.) (Unanimous.)

### **(4) Y2K Expenses**

56. AT&T and DPA argued that Verizon-DE should be required to remove from its factor calculations any expenses associated with remedying the well-publicized "Y2K" computer problems resulting from the change in years from 1999 to 2000. Verizon-DE did not include a specific category of expenses called "Y2K" expenses in its study. Rather, the issue arises from the fact that Verizon-DE used 1999 data to compile the costs presented in this filing. As with any other year, the data from 1999 contains the annual Information Systems ("IS") budget. Verizon-DE conceded that in 1999, a significant part of that budget was spent on Y2K activities.

57. AT&T and DPA contend that these Y2K costs should be removed because they are "one-time" expenses and should not be expected to

recur in the future. Verizon-DE argued that the same budget that was spent in 1999 on Y2K related issues will be spent every other year on other computer-related issues, so that the 1999 IS budget was not expanded to accommodate Y2K work and still constitutes a reasonable surrogate for IS expenses going forward.

58. The Hearing Examiner concluded that simply excluding the Y2K expenses from the 1999 budget was problematic because those expenses likely would have been replaced, to some extent, by other projects that year. He recommended, therefore, that Verizon-DE recalculate the factors using 1998 IS costs. (HER (Dec.) at 184-5.) On Exceptions, it was argued that 1998 data might still contain Y2K costs.

59. The Commission sees some merit to Verizon-DE's argument that at least some of these funds would have been expended on other projects. However, the Hearing Examiner's recommendation does not appear to solve the problem. Given that this is a one-time issue arising from unique facts surrounding the use of data from the 1998 and 1999 time period and is not likely to recur in future UNE proceedings, the Commission finds that the best solution is for Verizon-DE to remove the Y2K related costs from the 1999 data in calculating its Phase II factors.

60. The Commission therefore modifies the Hearing Examiner's recommendation and requires Verizon-DE to use the 1999 data and remove the Y2K expenses. (Unanimous.)

**(5) EF&I Calculations**

61. AT&T argued that a forward-looking network would not require equipment-removal or rearrangement costs, because such a network would contemplate new equipment installed in a new building designed especially for that equipment. AT&T contended that the Verizon-DE Engineering, Furnishing, and Installation ("EF&I") factor would be lower if this forward-looking assumption were employed. Verizon-DE noted that its testimony made clear that removal and reconfiguration costs are not relevant to these factors. According to Verizon-DE, removal costs are part of the depreciation costs associated with old equipment, not investment costs associated with the new equipment, and that reconfiguration costs are also not included in the EF&I calculations.

62. The Commission adopts the Hearing Examiner's recommendation and finds that the evidence of record supports Verizon-DE's EF&I calculations. (Unanimous.) No adjustments for equipment removal, therefore, are necessary. (HER (Dec.) at 256.) (Unanimous.)

**(6) Power Calculations**

63. AT&T argued that Verizon-DE has not shown that it has made a collocation adjustment to its power factor, to reflect the fact that collocating CLECs purchase power from Verizon-DE. The Commission adopts the Hearing Examiner's recommendation that, although the evidence does not provide a basis for the AT&T argument, Verizon-DE's witness could not confirm that the correct adjustment was, in fact, made. Verizon-DE should therefore reduce the power factor to account for a collocation adjustment, unless Verizon-DE proves that such

adjustment has been made. (Unanimous.) Verizon-DE has agreed to remove any collocation power investment from the power factor, to the extent there were any such investments in the applicable year, and has performed this calculation in its Compliance Filing. Therefore, no further action is required on this issue.

**D. Certain Modifications Are Necessary To Verizon-DE's Calculation of its Phase II Recurring Rates**

**(1) The Appropriate Fill Factor for MTAU utilization in the DSL conditioning study**

64. The DPA criticized Verizon-DE's method for determining the fill factor for the Hekimian CopperMax/A MTAU, which is a material component of Verizon-DE's calculation of DSL conditioning charges. Verizon-DE recovers its cost of spare capacity by applying a fill factor for a particular facility in its cost study. Verizon-DE contended that the 60% utilization rate it had calculated by dividing the forecasted number of ADSL subscribers on December 31, 2000 by deployed MTAU capacity was an accurate approximation of the utilization to be expected when this equipment was fully ramped up. The other parties contended that Verizon-DE had understated the utilization that would actually apply on a forward-looking basis. The DPA and AT&T contended that the Commission should require Verizon-DE to use its much higher guidelines for determining when to reinforce the facilities in question (the "objective fill factor"), which is 90%.

65. The Hearing Examiner concluded that the higher fill factor used for reinforcement purposes, the short installation lead times, and the early stage of deployment for this equipment all demonstrate

that the use of a contemporaneous fill factor for this technology will significantly understate the utilization rate that Verizon-DE will be able to sustain on a forward-looking basis. He found that the 90% objective fill factor approximates the utilization rate for this equipment in an efficient, forward-looking network design more closely than Verizon-DE's calculation. He recommended that Verizon-DE be required to recalculate the DSL conditioning charge on the basis of the 90% objective fill factor for the MTAU. The Commission adopts the Hearing Examiner's recommendation (HER (Dec.) at 197.) (Unanimous.)

**(2) Verizon-DE must eliminate double-recovery on the mechanized loop qualification charge**

66. AT&T contended that Verizon-DE's new proposed recurring charge for maintaining the mechanized loop qualification database will "double-recover" certain Account 6724 - "Information Management" costs already included in the "Other Support Factor." Verizon-DE conceded that there was an "extremely minimal" double recovery potential. The Commission adopts the Hearing Examiner's recommendation that Verizon-DE should defer the collection of the new charge until it can demonstrate that it has eliminated the double recovery. (Unanimous.) Verizon-DE attached to its Exceptions a worksheet demonstrating that Verizon-DE has removed these costs from the other support factor, so that they would be borne solely by the cost-causer in the mechanized loop qualification charge. Since no party took issue with Verizon-DE's attachment, the Commission concludes that Verizon-DE has eliminated the double-recovery and can therefore apply the mechanized loop qualification charge.

**(3) Fiber Utilization Rates in DS3 Loop Study**

67. AT&T and DPA contend that Verizon-DE's DS3 loop study does not comply with the Phase I Order because it uses an improper fill factor. They contend the Phase I Order adopted a 100% fill factor for fiber cable, while Verizon-DE admits it used a 90% fill factor for fiber cable. Verizon-DE states that it interpreted the Phase I Order to require a 90% fill factor for fiber electronics and fiber cable.

68. The Hearing Examiner recommended that Verizon-DE be required to change its study to use a 100% fill factor for fiber cable, based on his conclusion that the Phase I Order required this utilization rate. The Commission adopts the Hearing Examiner's recommendation (Unanimous).

**(4) Verizon-DE's Daily Usage File (DUF) Port Charge is reasonable**

69. AT&T claims that Verizon-DE has failed to show that its change of Daily Usage Feed (DUF) port charges from non-recurring to recurring properly reflected costs previously recovered in the non-recurring DUF port charges or that the new recurring charge would cease when Verizon-DE's non-recurring costs are fully recovered. Verizon-DE argues that the Phase I DUF port charges contained two elements -- a recurring one to capture maintenance and operations costs, and a non-recurring one to capture capital administration and support costs. Verizon-DE asserted that it merely restated the non-recurring element to be a recurring one, as the FCC required. It argues, therefore, that there is no duplication with any Phase I charges.

70. The Hearing Examiner concluded that Verizon-DE provided sufficient support to demonstrate that its newly proposed DUF port charges have been calculated as the FCC requires, that they do not double recover any costs, and that they do not over-recover any costs, such as investment costs that previously were recovered through recurring charges. The Commission adopts the Hearing Examiner's recommendation. (Unanimous.)

**(5) Verizon-DE's customized routing charge is reasonable**

71. AT&T argues that Verizon-DE's Customized Routing service charges include costs already recovered through switch usage or signaling charges. Verizon-DE revised its calculations of the customized routing charge by eliminating switch usage charges from it, so this issue has been resolved.

72. In addition, AT&T argues that the number of calls assumed in the cost study for customized routing is inflated because it counts all call attempts rather than just OS/DA calls. AT&T argues that the costs of those other, non-OS/DA call attempts are already recovered by Verizon-DE elsewhere. Verizon-DE asserted that its method for providing customized routing requires that a query of an Advance Intelligent Network database take place for all call attempts, whether or not a call is completed. It would be inaccurate, therefore, to apply the cost per query only to completed OS/DA calls.

73. The Hearing Examiner concluded that Verizon-DE had eliminated double recovery concerns through its elimination of switch usage costs from the customized routing charge, and that no further action is required on this issue. The Hearing Examiner also

concluded, regarding the assumed number of OS/DA calls, that Verizon-DE provided substantial and un rebutted evidence to support its contention that each call attempt must involve a separate database query in order to implement customized OS/DA routing for CLECs, and that there is no evidence of record to support a claim that the same type of queries take place for other calls or that the cost of such queries are reflected in other charges imposed by Verizon-DE. He therefore concluded that there is no basis to require Verizon-DE to change its assumed number of OS/DA calls. The Commission adopts the Hearing Examiner's recommendations regarding customized routing. (HER (Dec.) at 220-1.) (Unanimous.)

**(6) Verizon-DE's line sharing OSS rates are reasonable**

74. Line Sharing is a new UNE developed to comply with an FCC requirement to allow some versions of DSL service to be provided simultaneously with analog voice service over a single copper loop. To allow CLECs to offer those DSL services over the high frequency portion of a loop, Verizon-DE offers Line Sharing in which the CLEC shares the loop over which Verizon-DE is already providing voice service, with the CLEC providing data service over the high frequency portion of that same loop. Verizon-DE proposes a recurring Line Sharing OSS rate.

75. AT&T contends that these OSS line sharing charges were already included in existing Verizon-DE annual cost factors. Verizon-DE asserts that this claim cannot be true because it developed the factors on the basis of 1999 data, which preceded line sharing OSS maintenance activity. AT&T also asks, in the alternative, that

investment costs be recovered over 10 years, not the 5 years that Verizon-DE proposed.

76. The Commission adopts the Hearing Examiner's recommendation to and approves Verizon-DE's Line Sharing OSS charge. The FCC's Line Sharing Order specifically authorizes the recovery by incumbent LEC's of "those reasonable incremental costs of OSS modification that are caused by the obligation to provide Line Sharing as an unbundled network element."<sup>13</sup> Verizon-DE's recently incurred OSS modification costs for line sharing were not included in 1999 costs, which formed the basis for the annual cost factor in this phase and, therefore, were not recovered in the factors. Moreover, AT&T did not present substantial evidence to support doubling Verizon-DE's investment recovery period from 5 to 10 years. A 5-year recovery period already substantially exceeds the duration of agreements that bind CLECs with respect to UNE purchases. It is reasonable for Verizon-DE to seek recovery over this period for development costs associated with relatively newer and less tested products or services. (HER (Dec.) at 233.) (Unanimous.)

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<sup>13</sup>Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) ("Line Sharing Order"), & 144.

**E. OSS**

- (1) Verizon-DE has satisfied the requirements of the District Court remand regarding its Access to OSS charges.**

77. One of the issues "remanded" to this Commission by the District Court was Verizon-DE's Access to OSS charge. This rate is designed to recover costs Verizon-DE incurs in providing competitors electronic access to Verizon-DE's systems to allow pre-ordering, ordering, provisioning, maintenance and repair, and billing information to the end user.

78. The District Court remanded only the question of whether Verizon DE's OSS access charges are already recovered through its wholesale rates. The District Court held that this Commission had not sufficiently described the evidence supporting its conclusion to reject AT&T's argument that the Access to OSS UNE rate "double charges" CLECs because, AT&T claimed, the same costs are also included in the wholesale discount.

79. The Commission adopts the Hearing Examiner's recommendation to reject the "double-counting" argument and approve the Access to OSS charge. (HER (Dec.) at 230-1.) Verizon-DE has presented sufficient evidence, including cost studies, to show that its OSS access charge does not reflect costs already included in the calculation of the wholesale discount, does not contain embedded costs already being recovered elsewhere, and does not include software upkeep charges that have been or should be recovered through annual cost factors. AT&T presented no evidence nor argument to rebut or dispute Verizon-DE's position, and AT&T did not except to the Hearing Examiner's conclusion that the "double counting" argument is baseless. AT&T's original

double-counting argument claimed that the costs used to calculate the recurring OSS access charges were already included in the "offset" used to calculate the wholesale discount in Phase I, and so were being "double counted." Verizon-DE has demonstrated that there was no double counting between the OSS Access rates and the offset to the wholesale discount. The costs used in the wholesale discount "offset" are different in character from those that are included in the Access to OSS recurring charges. Verizon-DE established that the costs included in the Access to OSS recurring rates are usage-driven type costs, such as costs related to electronic and manual interfaces and non-paper billing media. Costs associated with establishing the OSS systems themselves are not included in this rate. By contrast, the Cost Onset Recovery, or "offset," approved as a reduction to Delaware's Resale Discount, was designed to only pick up limited new costs that Verizon-DE would incur as a result of providing services for resale for all carriers. None of these costs were included in the recurring Access to OSS rates. Therefore, the Commission finds that Verizon-DE has adequately supported the reasonableness of its calculations of OSS access costs. (Unanimous.)

**(1) The Commission Rejects AT&T's proposal for a per line OSS charge spread across all users**

80. AT&T argued that, if the Commission does approve a charge for access to OSS, it is necessary to find a competitively neutral way to spread initial OSS development costs, which AT&T considers to be attributable to the transition to a competitive marketplace. Recovering such development costs exclusively from CLECs would, according to AT&T, create a "formidable" entry barrier that arises

solely from Verizon-DE's control over monopoly inputs to providing service. AT&T argues that it would have to pay for two gateways, while Verizon-DE is obliged to pay for none. AT&T also asserted that allowing for recovery of the costs would give Verizon-DE license to operate inefficiently.

81. AT&T proposed recovery of the costs through a per access line surcharge to be paid by all carriers, including Verizon-DE, on the grounds that all customers benefit from the existence of competition.

82. The Commission adopts the Hearing Examiner's recommendation to reject AT&T's proposal for a per-access line surcharge or other "competitively neutral" means for recovering OSS access costs. (HER (Dec.) at 231.) Verizon-DE did not need to make OSS modifications for its own benefit or for the benefit of its existing customers. CLEC requirements caused the need for the change and CLECs, therefore, should be responsible for paying the costs. Indeed, the Commission already rejected the AT&T approach in Phase I and rejected the same "competitive neutrality" argument that AT&T makes here. AT&T's arguments about adopting what it terms a "competitively neutral" means of recovering OSS costs also are not within the scope of this proceeding as they do not relate to the remand, nor do they raise any arguments that were not or could not have been raised in Phase I. (Unanimous.)

**F. Non-recurring rates**

- (1) The Non-recurring Rates produced by Verizon-DE's NRC Model, with the changed inputs directed in this Order, comply with the requirements of TELRIC and the District Court's order**

83. Because of the District Court remand, Verizon-DE has filed new proposed rates for the non-recurring charges associated with all of its UNEs, both the new UNEs and the ones that had been before the Commission in Phase I. Non-recurring rates are charged up front, and reflect the one-time activities necessary to process and provision CLEC requests for the initiation, change, or disconnection of UNEs and various services provided by Verizon-DE.

84. To calculate its proposed non-recurring rates, Verizon-DE used a new non-recurring cost model that was not used in Phase I (the "NRC Model").<sup>14</sup> The other parties have argued that Verizon-DE's NRC

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<sup>14</sup>Verizon-DE developed its NRC Model using several steps: (1) Verizon-DE undertook a workflow analysis to determine the tasks necessary to provide UNEs; (2) Verizon-DE conducted a survey of its employees and asked them to report their average work time in minutes for each task based on the respondent's entire range of experience; (3) the approximately 3,000 survey responses were reviewed by a statistician, who conducted a graphical and visual review of the frequency distribution of the responses and removed two statistical outliers that were abnormally high; (4) the statistician computed the average work times from the survey data for each UNE task; (5) a panel of internal Verizon subject matter experts reviewed the work activities and the times for reasonableness. They also determined how frequently the tasks need to be done for each UNE, to come up with a typical occurrence factor; (6) the average work times from the surveys were adjusted by the typical occurrence factor to represent the current Verizon experience in provisioning UNEs. For example, if the average time was 1 minute, but the typical occurrence was 50%, the current time would be 30 seconds; (7) Verizon-DE undertook to make the current times forward-looking by having the subject matter experts determine what kinds of expected worker productivity improvements, process improvements, and systems enhancements they believed, based on their experience and knowledge, would reasonably be expected; and (8) the current work times (as reduced by the typical occurrence factor

methodology is flawed. Specifically, the parties have criticized Verizon-DE's survey methodology and use of average times from those surveys, and suggested that the average times might be skewed high and that there were better and more accurate ways Verizon-DE could have conducted its surveys or otherwise undertook to measure current times. Also, the parties have criticized Verizon-DE's failure to document its process for calculating the forward-looking adjustment. Because of these flaws, the Commission will not approve the rates as proposed by Verizon-DE.

85. The Commission believes, however, that certain alterations to the inputs and assumptions of the model would allow the model to be used to produce TELRIC-compliant NRC rates. The Commission finds that it is not necessary to pronounce Verizon-DE's model to be the very best way of calculating non-recurring rates in order to still use the model, with input alterations, to calculate TELRIC-compliant rates.

86. The Commission's duty is to set TELRIC-compliant rates. As the Commission stated in Phase I:

Because we adopt the Hearing Examiners' recommendations concerning specific rates (and do not adopt any party's cost study), it is not necessary for us to reach the issue of whether BA-Del's cost study was conducted in conformance with TELRIC. Rather, we simply determine that the rates we are adopting, regardless of the cost study by which they were generated, appear to be within the range of just and reasonable TELRIC-based rates.<sup>15</sup>

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discussed above) were then reduced again by the forward-looking adjustment factor. The resulting time was multiplied by labor costs to calculate what Verizon-DE posited as the forward-looking cost of performing these non-recurring tasks.

<sup>15</sup>Phase I Order No. 4542, 96-324, ¶ 24.

Similarly, the New Jersey Commission explained that data points and inputs were more important to it than its actual selection of a "model," and that therefore it had used Verizon's model but made "suitable modifications as necessary to ensure that the output from the study produces proper forward-looking results based upon TELRIC principles."<sup>16</sup> The Commission will do the same here.

87. The Commission directed Verizon-DE to file several alternative rate runs with modified inputs, so that the Commission could review the resulting rates and determine if it could approve TELRIC-compliant rates. These runs were included in Verizon-DE's April 16, 2002 filing with the Commission entitled "Alternative Rate Calculations."

88. Verizon-DE performed a base run that reduced the proposed rates by making the global input changes required by the other portions of this Order, such as the lower common overhead, removal of expedite charges, and separation of connect and disconnect charges. At the Commission's direction, Verizon-DE also had its statistician take the survey responses and compute for each task, in addition to the average time which Verizon-DE had used in its study, the mode time (the most frequently occurring number in the sample), the minimum time and maximum time. Verizon-DE performed four alternative runs. For the times that were not gathered through Verizon-DE's survey process (the Telecom Industry Service Operating Center ("TISOC") times), each

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<sup>16</sup>*In the Matter of the Board's Review of Unbundled Network Element Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.*, No. TO 00060356 (Opinion and Order entered March 6, 2002) at 158.

of those runs used the shorter times that were obtained from a recently discovered Spring 2000 time and observation study by Andersen Consulting. For the times gathered through Verizon-DE's survey process, each of these runs used, respectively, the mean times, the minimum times, the mode times, and the maximum times. The Commission thus was able to review the rates produced by these different combinations of inputs. The Commission also had before it in the record the non-recurring rates recently approved using this NRC Model in New York and New Jersey.

89. The Commission rejects the use of the "minimum times" rate run. The rates produced by using the minimum times are clearly below Verizon-DE's forward-looking costs and thus are contrary to the requirements of TELRIC. The Commission also rejects Staff's proposal to reduce by 40% Verizon-DE's proposed rates with the Commission's global input changes. The record does not support this suggestion.

90. After reviewing the alternative rate runs filed on April 16, 2002, the Commission finds that Verizon-DE should make the following changes to its calculation of non-recurring rates:

- (a) Verizon-DE should use the results of the more recent Spring 2000 time and observation study of TISOC times conducted by Andersen Consulting, reflecting shorter times than those used by Verizon-DE to calculate its proposed rates. Verizon-DE's proposed rates used an earlier time and observation study conducted by Verizon and validated by Andersen Consulting. The Commission has more confidence in an independent study, and also prefers to err on the side of the shorter times in this instance.
- (b) Verizon-DE should, for each rate, use the lower of the rate produced by the run using the mode times and the run using the mean times. The Commission finds that this method of estimating the current time would produce the most accurate estimation (erring toward a

lower estimate) of the current time required to perform the UNE tasks, because it effectively eliminates any abnormally high survey responses.

- (c) Verizon-DE should reflect all of the other changes required by this Order (such as the lower common overhead, separation of disconnect charges, removal of expedite charges, etc.).

The Commission adopts the resulting rates as the non-recurring rates for Delaware. (4-1.)

91. The Commission specifically finds that the non-recurring rates it has just adopted for Delaware comply with the FCC's TELRIC methodology in that they reasonably reflect the cost of performing these non-recurring tasks using the "most efficient telecommunications technology currently available and the lowest cost network configuration," and not simply the cost to Verizon-DE of performing these tasks now or in the future.<sup>17</sup> (4-0.) (Twilley abstaining). The Commission also notes that, accounting for the impact of separating disconnect costs, these rates are reasonably within the range of the non-recurring rates recently adopted as TELRIC-compliant by New York and New Jersey.

**(2) The Commission adopts a \$35 promotional hot cut rate for a two-year period**

92. In New York and New Jersey, Verizon agreed to a \$35 promotional hot cut rate for a limited time. Both the New York and New Jersey commissions determined that the actual forward-looking costs to complete a hot cut are significantly higher than \$35.00. Under the non-recurring rates the Commission adopted for Delaware in

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<sup>17</sup>*Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F. Supp. 2d 218, 250-51 (D. Del. 2000) (citing 47 U.S.C. § 252(d) & 47 C.F.R. § 51.505(b)(1)).

the previous section, the TELRIC-compliant two-wire initial hot cut rate is \$113.71 for connect.

93. The CLECs complain that these TELRIC hot cut rates are too high. Verizon-DE argues that the New York, New Jersey, and Delaware TELRIC rates reflect the actual hot cut procedures that were designed through the collaborative process with CLECs, and reflect steps that were not included in calculating the rate approved by the Commission in Phase I. Verizon-DE contends that it must actually perform these steps, and TELRIC requires that it be compensated for them. It is apparent to the Commission that this is a problem the industry should attempt to resolve in the first instance.

94. The Commission believes that adopting a \$35 promotional hot cut rate for a two-year period will afford the members of the industry time to resolve their differences over this process, and will give both sides the incentive to come together and discuss this problem.

95. Therefore, this Commission will adopt a promotional hot cut rate of \$35 to apply to initial or additional orders for any of four types of hot cuts (2-wire loop hot cut, 4-wire loop hot cut, IDLC to copper loop hot cut, line port hot cut). As in the other states, an additional charge will apply if the CLEC requests manual treatment or if a premises visit is required. The promotion will have a duration of two years from the date of this Order. At the end of the two-year period, the rate will revert to the Commission-approved TELRIC rate for each element, as reflected on Verizon-DE's Compliance Filing, or whatever Commission-approved TELRIC rate is in effect at that time.

(4-1.)

**(2) There is no basis to change the non-recurring rates to reflect deployment of the wideband test system**

96. The DPA argues that Verizon-DE's non-recurring cost studies failed to reflect what DPA asserts would be significant time reductions that will occur from the deployment of the interactive wideband test system. Verizon-DE submitted testimony demonstrating that this new system will only affect operations and maintenance costs, which are included in recurring charges and which do not affect non-recurring charges.

97. The Commission adopts the Hearing Examiner's recommendation and finds that the evidence of record does not support a conclusion that the new testing system will affect activities whose costs are recovered through non-recurring charges, and adopts the Hearing Examiner's reasoning. (HER (Dec.) at 188.) (Unanimous.)

**(3) Verizon-DE must separate disconnect costs from the up-front NRC charges for originating service**

98. Verizon-DE's proposed NRC rates include an up-front charge (discounted to present value) to compensate Verizon-DE for the costs of disconnecting service. Verizon-DE argues that up-front recovery of disconnection costs is consistent with industry practice and that it would risk non-recovery of the costs if they are not paid in advance. Verizon-DE expressed concerns about the financial reliability of some of its CLEC customers. It also cited the fact that it recovers costs in advance from its retail customers, and noted that CLECs may pass those costs on to their retail customers.

99. All the other parties oppose this method of charging for disconnect costs, arguing that it disassociates costs and causation,

that it penalizes CLECs who keep customers long-term by providing good service, and that it poses an inappropriate barrier to CLECs who might wish to keep facilities even after losing the customer associated with the facilities. Staff also observed that there is a distinction between being able to collect cancellation charges from retail versus wholesale customers, because wholesale customers retain a business relationship with Verizon-DE even when they lose individual retail customers.

100. The Commission adopts the Hearing Examiner's recommendation and supporting reasoning to require Verizon-DE to propose separate installation and disconnection non-recurring rates. (HER (Dec.) at 192-3.) The rates adopted by this Commission reflect the separation of disconnect costs. (Unanimous.)

**(4) Verizon-DE has not supported its "expedite" charges as cost-based**

101. Verizon-DE proposed to assess an "expedite premium" for CLEC service orders that are requested by the CLEC to be processed on an accelerated basis. Though no one opposed Verizon-DE's right to assess a cost-based rate for expedited services, the parties challenged whether the rate proposed by Verizon-DE was in fact cost-based.

102. In calculating the cost of expediting the service order, Verizon-DE assumes that 100% of the work time spent on every expedited request will fall outside of its normal working hours. The proposed expedite charge, therefore, includes Verizon-DE's overtime labor rate for 100% of the work time spent on all expedite requests.

103. The Commission remanded this issue to the Hearing Examiner and afforded Verizon-DE the opportunity to provide evidence to support its rates. The Commission agrees with the Hearing Examiner's Report on Remand that Verizon-DE has failed to carry its burden of proving the reasonableness of its proposed expedite premium. Although it is clear that Verizon-DE will incur some costs in expediting CLEC orders, the Commission does not agree with Verizon-DE's assertion that 100% of the work time on expedited orders should be presumed to be at overtime rates. The Commission therefore adopts the Hearing Examiner's conclusion that the only alternative is to deny any expedite premium at this time. (HER (Feb.) at 30-2.) (Unanimous.) This finding is without prejudice to Verizon-DE's opportunity to present the appropriate evidence and secure Commission approval of an expedited premium rate at a later time.

**AND NOW, this 4th day of June, 2002, THE COMMISSION FINDS AND ORDERS:**

1. That the recurring UNE rates that were adopted in Phase I of this proceeding and affirmed by the District Court, and which Verizon-DE has not replaced with a proposed rate in Phase II, continue to be TELRIC-compliant and shall remain in effect;

2. That, on remand from the Phase I appeal, Verizon-DE has shown by substantial evidence that its OSS access charge is not a "double charge" for CLEC-resellers, and, therefore, Verizon-DE's OSS access charges are approved;

3. That Verizon-DE should recalculate its Phase II rates with the following input changes:

- (a) Assume a common overhead factor of 5.95%, rather than the Phase I factor of 10 percent;
- (b) Use the Phase I cost of capital of 10.28% throughout the Phase II cost studies, including the studies involving regional investments;
- (c) Remove any collocation power investment from the power factor, to the extent there were any such investments in the applicable year;
- (d) Assume a maximum distance between DLC and customer of 18,000 feet;
- (e) Exclude advertising costs from the marketing factor;
- (f) Exclude Y2K expenses from 1999 Information Systems costs in calculating factors;
- (g) Assume a utilization rate ("fill factor") for the MTU in DSL Conditioning of 90%;
- (h) Apply the Phase I utilization rate ("fill factor") of 100% fill for fiber strands for DS3 loops;
- (i) Use the TISOC times from the more recent 2000 Andersen Consulting study to calculate non-recurring rates, rather than the older vintage times originally used;
- (j) Provide separate non-recurring rates for connection and disconnection of service rather than the proposed combined rate;
- (k) For each non-recurring rate element for connect and disconnect, use the lower of the rates calculated using the mean time from Verizon-DE's survey results or the mode time from Verizon-DE's survey results, as provided to the Commission on Verizon-DE's April 16, 2002 matrix of alternative rate runs; and
- (l) Eliminate the expedite premium non-recurring charges.

4. That Verizon-DE's proposed treatment of the following assumptions, costs, and charges are appropriate and TELRIC-compliant, and should continue to be used when Verizon-DE recalculates its rates as directed herein:

- (a) Cost of capital of 10.28 percent;
- (b) No alteration to study assumptions regarding IDLC/UDLC mix;
- (c) Regulatory assessments on leased UNEs should be reflected;
- (d) Software right-to-use fees are properly accounted for; and
- (e) There are no effects of the interactive wideband test system that would require Verizon-DE to alter its own non-recurring costs;

5. That, with the changes to inputs required above, Verizon-DE's Phase II recurring rates for the new UNEs reasonably reflect Verizon-DE's costs assuming the "lowest cost network configuration and the most efficient technology currently available," and, therefore, comply with the requirements of the TELRIC methodology.

6. That, on remand from the Phase I appeal, Verizon-DE has shown by substantial evidence that its non-recurring rates calculated with Verizon-DE's cost model with the changes to inputs recommended above reasonably reflect the cost of performing these non-recurring tasks using the "lowest cost network configuration and the most efficient technology currently available," and, therefore, comply with the requirements of the TELRIC methodology.

7. That the just, reasonable and TELRIC-compliant recurring and non-recurring rates for the unbundled network elements before the Commission in this Phase II proceeding are those set forth in Exhibit "A" to the original Order hereof, which is the Compliance Filing made by Verizon DE on May 9, 2002, incorporating all of the input changes required by this Order. By this Order, the Commission approves these rates set forth in Exhibit "A."

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Donald J. Puqlisi  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary