

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE LLC (F/K/A BELL)
ATLANTIC-DELAWARE, INC.), FOR) PSC DOCKET NO. 96-324
APPROVAL OF ITS STATEMENT OF TERMS) PHASE II
AND CONDITIONS UNDER SECTION 252(f))
OF THE TELECOMMUNICATIONS ACT OF)
1996 (FILED DECEMBER 16, 1996;)
REOPENED JUNE 5, 2001))

FINDINGS, OPINION, AND ORDER NO. 7166

This 24th day of April, 2007, the Commission finds, determines,
and Orders the following:

I. INTRODUCTION AND SUMMARY

1. In this Order, the Commission seeks to bring some final resolution to a long-lingering dispute over the charges that Verizon Delaware LLC ("VZ-DE") may impose for performing "hot cuts." In industry parlance, a "hot cut" encompasses the ordering, provisioning, and central office wiring activities that surround disconnecting a customer's working line (loop) from its connection to an incumbent local exchange carrier's switch (such as VZ-DE's) and rerouting the connection so that the loop can be served by a switch operated by a competitive local exchange carrier ("CLEC"). And because the line to be "cut over" is usually "hot," coordination between the CLEC and the incumbent is generally required so that the customer's service is not disrupted.¹

¹See Findings and Recommendations of the Hearing Examiner ("HE Rpt.") at ¶ 1 & n. 1 (Oct. 12, 2006) (describing in general terms the "hot cut" process.

2. In this Order, the Commission sets charges for such "hot cuts" under the three different processes that VZ-DE has proposed. In doing so, the Commission does not pretend that the rates it now directs are the perfect price points under the "TELRIC" pricing methodology that governs in this matter.² Indeed, the Commission's general conclusion is that the record developed in this proceeding precludes divining any such "true" TELRIC prices. Rather, the Commission's rate determinations represent its "common sense" resolution (constrained by time and this Commission's limited resources) based on a record where uncertainties, rather than answers, persist.

II. BACKGROUND

3. Almost from the first implementation of the commands of the 1996 federal Telecommunications Act, this Commission has struggled in the effort to price, under the TELRIC pricing standards, the "non-recurring charges" (of which "hot cut" charges are a subset) that might surround the leasing of an unbundled network element, such as a local loop.³ Thus, when the Commission returned to those charges in 2002, it decided to use the theoretical construct of VZ-DE's "Non-Recurring Cost Model" ("NRCM") as a process to determine "forward-

²See 47 C.F.R. § 51.505. See also HE Rpt. at ¶ 91 & n. 5. The Commission will assume that the reader has a working familiarity with both the "unbundled network element" ("UNE") regime instituted by the 1996 federal Telecommunications Act and the TELRIC "forward-looking, most efficient network" pricing methodology that is to be used to determine the appropriate level of costs to be charged for leasing such UNES. See Verizon Communications, Inc. v. FCC, 535 U.S. 467, 489-528 (2002).

³See Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2d. 218, 250-51 (D. Del. 2000) (faulting the Commission's determinations related to non-recurring charges under the TELRIC pricing methodology).

looking, most efficient network" TELRIC prices for such non-recurring charges, but did so without the need to "pronounce VZ-DE's model to be the very best way of calculating non-recurring rates."⁴ But the Commission also declined to adopt the rates that VZ-DE had proposed under its model, questioning the validity or reliability of the "more important" data points and inputs fed into the model and, in particular, the inputs related to various work activity times.⁵ It thus directed that changes be made to the time inputs for such work activities, and only thereafter accepted the results of the model as reflecting TELRIC-compliant non-recurring charges.⁶

4. Even then the Commission did not implement the model's rate results (\$113-\$156) for the activities allocated with differing types of loop "hot cuts." Instead, it adopted - for a two-year period - the flat \$35 "promotional" "hot cut" rate that Verizon was then charging CLECs in both New York and New Jersey.⁷ The Commission (acknowledging the wide gap between the TELRIC-compliant rates and the promotional

⁴See PSC Findings, Opinion, and Order No. 5967 at ¶ 85 (June 4, 2002) ("Order No. 5967").

⁵Order No. 5967 at ¶¶ 84-91. In refusing to accept VZ-DE's proposed results, the Commission noted that other parties had been critical of both the survey methodology used by VZ-DE to determine these initial activity times and its subsequent failure to document the process its "subject matter experts" had used to calculate the "forward-looking adjustments" made to the initial averaged work times. Id. at ¶ 85.

⁶Order No. 5967 at ¶¶ 87-91. In directing various recalculations of the time survey results, the Commission noted that it "ha[d] more confidence in an independent study" of work times, even over a Verizon-conducted study that might have been reviewed later and validated by an independent consultant. Id. at ¶ 90(a).

⁷The \$35 rate would apply to four types of "hot cuts:" two-wire; four-wire; IDLC to copper; and line port. The same rate also applied to "initial" as well as "additional" orders. Order No. 5967 at ¶ 95.

rate) thought that the two-year period - while the \$35 rate governed - would allow the industry players the opportunity to resolve their differences about the hot cut process, its costs, and the rates to be charged.⁸

III. PRESENT FILING

A. VZ-DE's Initial Filing

5. When the two-year "promotional" period expired in 2004, VZ-DE eventually returned with a new menu for its "hot cut" services.⁹ Now, VZ-DE offered CLECs three options for "hot cuts:"

- (a) the "basic" (default) two-wire or four-wire;
- (b) the "project" or "large job" (where an aggregated number of hot cuts from a single CLEC in a particular central office are "cut-over" on an agreed-upon due date); and
- (c) the "batch" (where a "critical" mass of aggregated hot cuts from several CLECs are performed under a timetable and process largely managed by VZ-DE).¹⁰

⁸Order No. 5967 at ¶¶ 93-94. A short time later, when the Federal Communications Commission granted VZ-DE the authority to offer interLATA long distance services from Delaware, the FCC focused on the \$35 hot cut rate, not the \$113 figure generated by VZ-DE's model, to satisfy itself that the Delaware "hot cut" charge fell within the range that a reasonable application of TELRIC principles would produce. 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, 18 Fcc Rcd. 18,660 at ¶ 91 (FCC 2002).

⁹See HE Rpt. at ¶¶ 4-11 (describing procedural history of filings occurring at the expiration of the two-year promotional period).

¹⁰See HE Rpt. at ¶¶ 46-50 ("basic" "hot-cut"); 51-57 ("project"); 60-62 ("batch"). Under each category, VZ-DE proposed one rate for the "initial" line in a service order, and a differing rate for the "additional" lines in the order.

Moreover, the rates for each of these three options - derived under VZ-DE's NRCM - were significantly lower than the "TELRIC-compliant" rates that had resulted from the use of VZ-DE's similar NRCM in 2002.¹¹ This difference, VZ-DE said, largely resulted because its new "hot cut" processes relied on a CLEC's use of Verizon's "Wholesale Provisioning and Tracking System" ("WPTS"); a computer interface. According to VZ-DE, WPTS eliminates the need for many of the manually-performed coordination efforts that its earlier model had assumed to be part of the hot cut process.¹²

6. VZ-DE offered CLECs, and the Commission, a choice for rates under each of these three new "hot cut" processes. If VZ-DE had to litigate "hot cut" rates in Delaware, it would seek approval of the rate levels pronounced by its "Standard Cost Study" NCRM. However, if no litigation over hot cut rates was necessary, VZ-DE would choose to charge rates under a "New York PSC-adjusted" NCRM. In this latter cost study, VZ-DE would, in calculating its final Delaware rates, incorporate the "adjustments" to task activity times and typical occurrence and forward-looking factors that the New York Public Service Commission had recently commanded when it reviewed Verizon's

¹¹See HE Rpt. at ¶¶ 4 (2002 TELRIC-compliant rates), 12 (new "non-litigation rates"), & 13 (new "litigation rates"). VZ-DE's present NRCM shares the same theoretical construct as its 2002 model. Current mean work times for identified tasks (as determined mostly by employee surveys) are adjusted by a "Typical Occurrence Factor" ("TOF") and then made forward-looking by applying a "Forward-Looking Adjustment Factor" ("FLAF"). After that, trended Delaware labor rates, as well as factors representing common overhead costs and "gross-revenue loading," are applied to the adjusted forward-looking mean work activity times to produce final costs in dollar and cents amounts. See HE Rpt. at ¶¶ 16-19 (more fully explaining construct). Compare Order No. 5967 at ¶ 84 n. 14 (outlining construct of 2002 NRCM).

¹²See HE Rpt. at ¶ 11 & n. 8 (describing WPTS).

same NCRM in setting "hot cut" rates for that jurisdiction.¹³ The price gap between the two alternatives was not insignificant: e.g., \$57.51 for a two-wire initial "basic" under the litigation version compared to \$33.34 under the New York PSC-adjusted non-litigation model.¹⁴

B. Proceedings Before the Hearing Examiner

7. When Cavalier Telephone Mid-Atlantic, LLC ("Cavalier"), a CLEC, objected to VZ-DE's proposed hot cut rates - even at the non-litigation levels - the Commission sent the matter to a Hearing Examiner for further proceedings.¹⁵ True to what it had said with its filing, VZ-DE then sought to justify (and implement) hot cut rates priced at the "litigation" cost study levels. During two days of evidentiary hearings, the Hearing Examiner heard multi-witness "panels" presented by both VZ-DE and Cavalier. In both pre-filed testimony (with accompanying exhibits) and oral examinations, VZ-DE's two-person team provided an overview of the three "types" of hot cut processes now to be offered in conjunction with a CLEC's use of WPTS.

¹³See "Order Setting Permanent Hot Cut Rates," Case 02-C-1425, Proceeding on Motion of the Commission to Examine the Process and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basis (New York Public Service Commission Aug. 25, 2004) ("NY PSC HC Order") & "Order Denying Reconsideration," Case 02-C-1425 (NY PSC Jan 21, 2005) ("NY Recon. Order"). For both its New York and Delaware costing models, Verizon determined its mean work times by looking to "time surveys" completed by employees in several New York central offices and other "regional" work centers during several weeks in September, 2003.

¹⁴See HE Rpt. at ¶¶ 11-13, 85-88 (explaining VZ-DE's litigation/non-litigation rate proposals). See Letter Filing by VZ-DE (Sept. 24, 2004).

¹⁵Cavalier is the State's primary CLEC offering local exchange services. As Cavalier explained it, it was participating in the proceeding, in part, to protect, and appropriately price, what it identified as the particular "Cavalier/Verizon" hot cut process currently being used in Delaware.

The two witnesses also explained the structure of VZ-DE's NRCM, and how it developed forward-looking TELRIC costs for particular task activities. They outlined how VZ-DE had identified and collected the inputs for the NCRM - and particularly how the task times for the particular activities had been developed.¹⁶ And they summarized how VZ-DE had analyzed and, in some cases, adjusted, those inputs for use in determining costs related to cutting over an "additional" line under each process, and performing the more efficient "project" and "batch" options. Additionally, the VZ-DE panel outlined the costs underlying two new rates proposed by VZ-DE: the "IDLC hot cut surcharge" (\$81.10) and the "expedited service charge" (\$56.38). And finally, the VZ-DE panel announced that VZ-DE intended to move forward with charging "disconnect fees" (at the rate levels determined in Order No. 5967) when a CLEC sought disconnection of a previously "cut-over" local line. Finally, the VZ-DE panel disputed Cavalier's assertion that the process the two carriers had been utilizing for their "hot cuts" brought efficiencies - and cost savings - to VZ-DE that would call for lower hot cut rates either generally or for Cavalier in particular.¹⁷

¹⁶The hot cut process outlined by VZ-DE involves activities at several centers and sites: the National Market Center ("NMC") (ordering); the Assignment Processing Center ("APC") (facilities survey); the Regional CLEC Coordination Center ("RCCC") (coordination with CLEC); the Central Office ("CO") Frame (wiring activities); and the Recent Change Memory Administration Center ("RCMAC") (Verizon switch translation). See HE Rpt. at ¶ 22 & nn. 10-12. The task times for activities at the NMC, RCCC, and CO Frame were developed using employee surveys completed in September, 2003. For the APC and RCMAC activities, the task times were imported from work times approved in an earlier New York UNE proceeding. Id.

¹⁷See HE Rpt. at ¶¶ 15-72 (summarizing VZ-DE's presentation). The Commission adopts the Hearing Examiner's summary of VZ-DE's evidentiary presentation.

8. Cavalier countered with pre-filed or oral testimony from its two member panel drawn from its management. They offered that the unique "Cavalier-Verizon process," used in Delaware since 2001, provides efficiencies and economies, as well as operational certainty, to both VZ-DE and Cavalier, and those savings were not captured in VZ-DE's NCRM, but should be reflected in Delaware's "hot cut" rates. The Cavalier panel questioned the reliability, and statistical validity, of the time surveys used by VZ-DE for its task time inputs at the NMC, RCCC, and Central Office frame, emphasizing the imprecise criteria for selecting the sampled central offices, the small number of survey responses, and the large (and differing) ranges of times reported for similar tasks. The Cavalier panel also challenged VZ-DE's decision to use an "average" from the divergent times (even if first "trimmed" at each end) to determine the mean task time. The average or mean of times, they said, would be inconsistent with TELRIC's focus on the costs that would be borne by an "efficient" network provider. The Cavalier witnesses offered their opinions for changes to the task time inputs in VZ-DE's NRCM, particularly in the "connect" tasks performed at the Central Office frame. With such changes, the panel said, the appropriate price for the individual basic hot cut would settle out at \$13.83 for the "initial" line and \$8.25 for "additional" lines. Those price levels would be consistent with the hot cut rates in use in other neighboring jurisdictions where Cavalier operates. The Cavalier panel also challenged VZ-DE's proposed "disconnect fee" asserting that even if its imposition was limited to those situations where the customer was leaving the network entirely, the charge would result in

double-recovery by VZ-DE when a new customer pays a connection fee for the same loop.¹⁸

C. Hearing Examiner's Proposed Findings and Recommendations

9. After reviewing the evidence and receiving briefing, the Hearing Examiner recommended that the Commission reject all the hot cut rates (under all three processes) that VZ-DE had advanced. She found that the "basic," "project," and "batch" hot cut processes had sound bases looking to capture various levels of scale, economy, and efficiency, and thus represented reasonable service offerings by VZ-DE.¹⁹ But, in her analysis, VZ-DE had failed to produce sufficient evidence, consistent with TELRIC-pricing principles, to justify the "litigation-level" rates it proposed to attach to each of these "hot cut" processes. She proposed that the Commission find VZ-DE's NCRM, and its rate results, non-compliant with TELRIC because VZ-DE had failed to carry its burden to establish that the inputs utilized, and the adjustments made to inputted data, were sufficiently valid and reliable to lead to "forward-looking" costs (and rates).²⁰ As she saw

¹⁸See HE Rpt. at ¶¶ 73-84 (summarizing Cavalier presentation). The Commission adopts the Hearing Examiner's summary of Cavalier's evidence. In addition, in its testimony, Cavalier also challenged the newly proposed "IDLC hot cut surcharge." It argued that this additional rate to be collected for a cut-over of an IDLC loop would (particularly when combined with a field visit charge) impose a barrier to entry, and likely foreclose Cavalier from seeking to sign up customers served by such type of loop. Cavalier said that such surcharge had not been approved in the New York Hot Cut order. Moreover, during the hearings, Cavalier questioned the reliability of the estimates of the task times for the work to be done at the Serving Area Interface.

¹⁹See HE Rpt. at ¶ 90. The Commission adopts this finding and approves use of the various types of hot cut processes.

²⁰See HE Rpt. at ¶ 91. See also HE Rpt. at ¶¶ 95-98 (detailing Verizon witnesses' limited areas of knowledge).

it, VZ-DE's choice to make its evidentiary presentation with two witnesses who did not carry with them "second-level" knowledge about the details of the cost study precluded any meaningful testing of the underlying data and assumptions fed into, or utilized, in the NCRM.²¹ As an example, the Hearing Examiner pointed out that the record left largely unanswered questions about the reliability and statistical validity of the employee survey forms distributed in various New York central offices to identify task work times for various central office activities related to hot cuts.²² Similarly, the Hearing Examiner also questioned the adequacy of the record to support VZ-DE's "gross revenue loading factor" ("GRL") used in the last step of the NRCM (along with labor rates and common overhead factor) to turn the adjusted mean task times into quantifiable costs to be recovered in the hot cut charges.²³ Again, she found VZ-DE's witnesses unable to offer details related to the GRL factor that would provide confidence that the GRL factor sought to be used was reasonable and appropriate.²⁴ Given these gaps in the record developed, the Hearing Examiner recommended that the Commission find that VZ-DE failed to establish

²¹See HE Rpt. at ¶ 88.

²²See HE Rpt. at ¶¶ 93-95. The Hearing Examiner also questioned the absence of a convincing statistical explanation related to VZ-DE's regression analysis that was applied to allocate task times between the "initial" and "additional" categories in multi-line activities. See HE Rpt. at ¶ 98.

²³See HE Rpt. at ¶ 17 (describing the application of costing factors, both common overhead and gross revenue loading, in the NRCM methodology). See also n. 11 above (detailing application of loading factors in last stage of NRCM cost calculation process). The gross revenue loading factor is meant to collect state and federal assessments and "uncollectibles."

²⁴See HE Rpt. at ¶ 100.

that its NRCM is TELRIC-compliant.²⁵ In lieu of the unsupported VZ-DE litigation rates, the Hearing Examiner recommended that the Commission adopt hot cut rates for Delaware consistent with the levels that Verizon can charge in several neighboring jurisdictions. Those hot cut rates, she proposed, should, in almost all instances, be no larger than \$5.00: e.g., \$5.00 (basic with WPTS; two-wire initial); \$7.58 (basic with WPTS; four-wire initial); \$2.50 (project with WPTS, initial); and \$3.95 (batch, initial).²⁶

10. At the same time, the Hearing Examiner recommended that the Commission find that Cavalier had not demonstrated that the "Cavalier/Verizon" hot cut process was sufficiently different, or unique, so as to provide cost-saving efficiencies to VZ-DE that would call for a specific rate for such process or compel adjustments to be made to VZ-DE's NRCM.²⁷

11. As to VZ-DE's proposed new "expedited service charge," the Hearing Examiner recommended that the Commission find that VZ-DE had failed to establish that such fee, and its \$56.38 level, were appropriate. While acknowledging that an additional charge for an expedited "hot cut" was proper, the Hearing Examiner concluded that VZ-DE had failed to provide sufficient evidence to identify the frequency of such requests or the amount of discrete additional costs

²⁵See HE Rpt. at ¶ 104 A., B.

²⁶See HE Rpt. at ¶¶ 99, 104 G. The Hearing Examiner also proposed lesser rates under each category of hot cut options for "additional" lines.

²⁷See HE Rpt. at ¶¶ 101, 104 F. The Commission adopts this finding.

required to handle such requests for an expedited hot cut.²⁸ As to VZ-DE's request to charge "disconnect fees" - to be imposed when a loop customer leaves the network entirely - the Hearing Examiner recommended that the Commission not endorse Cavalier's proposal to bar all tail-end disconnect charges. Rather, she recommended that the Commission further suspend VZ-DE from imposing such fees until the Commission could undertake further investigations into the costs attributable to the disconnect fees, and whether VZ-DE could appropriately identify those instances (the customer leaving the network) when such fees might be validly applied.²⁹

D. Commission Deliberations

12. Both VZ-DE and Cavalier excepted to the Hearing Examiner's findings and recommendations. VZ-DE argued that the Hearing Examiner had recommended hot cut charges far below TELRIC forward-looking costs (and without record support) by looking to stale or outdated rates in use in a minority of neighboring jurisdictions that had been premised on the "current availability" of highly automated hot cut processes. Those low rates, VZ-DE said, had been brought into question by the higher hot cut rates adopted in New York, Massachusetts, Florida, and several other States. Also, VZ-DE asserted that the Hearing Examiner's criticisms of its presentation had inappropriately focused on the details of the NRCM rather than the real issue of the reasonability of the resulting rates. In addition, VZ-DE said, in reaching her conclusions (and criticizing VZ-DE's witnesses'

²⁸See HE Rpt. at ¶¶ 103, 104 E.

²⁹See HE Rpt. at ¶¶ 102, 104 D.

knowledge), she had unreasonably shifted to VZ-DE the inefficient burden to produce witnesses able to speak in detail about every facet of the underlying data and inputs.³⁰ As to the disconnect fees, VZ-DE asserted that there was no need for further investigations as suggested by the Examiner. Given that such fees would only apply in the "leave the network" situation and given that VZ-DE (for the large part) relied upon Cavalier's reports to identify those instances, there was no reason to now disallow VZ-DE charging such fees at the price levels previously endorsed in 2002. Finally, VZ-DE urged that, contrary to the Hearing Examiner's conclusion, it had established the costs associated with an expedited service request where all ordering and coordination would have to be done manually. In fact, the expedited charge it now proposed - when added to its proposed basic hot cut charge - would be comparable to the \$113 charge for an "all-manually processed" hot cut that the Commission had found TELRIC-compliant in 2002.

13. As might be expected, Cavalier endorsed both the Hearing Examiner's findings about VZ-DE's evidentiary presentation and her recommended hot cut rates. However, Cavalier also asked that the Commission find her rates to be applicable beginning in November, 2004. If that was done, then VZ-DE would have to credit back and refund for past hot cut orders the differences between the non-

³⁰VZ-DE suggested that Cavalier had the obligation to seek the underlying data and statistical information by either pre-hearing discovery or requests for VZ-DE to produce particular witnesses or information at the hearing. VZ-DE also proffered that the Hearing Examiner's rejection of the gross revenue loading factor used in its NCRM gave too short a shrift to VZ-DE's reasonable efforts to mitigate anomalies by using a three-year period to determine "uncollectibles."

litigation rates previously allowed to go into effect and these new final rates. Second, Cavalier asked the Commission to explicitly determine that the "Cavalier/Verizon" hot cut process falls within VZ-DE's "project" hot cut option so that Cavalier's hot cuts can only be charged the "project" rate levels recommended by the Examiner.

14. After hearing from the parties on November 21, 2006, the Commission came to a similar conclusion as the Hearing Examiner: that the record developed in this proceeding was not adequate enough for the Commission to confidently say that VZ-DE's proposed "litigation-level" hot cut rates are reasonable under the called-for TELRIC pricing methodology. Accordingly, the Commission could not approve the proposed hot cut rates at those "litigation" levels. At the same time, the Commission declined to accept the Hearing Examiner's proposed alternative rates which were based on significantly lower hot cut rates used in several neighboring jurisdictions. Nor was the Commission prepared to use Cavalier's proposed rates (derived from Cavalier's rework of imputed times in the VZ-DE NRCM) as the appropriate "final" rates. Rather, the Commission chose to apply to the record a "common sense" solution that priced VZ-DE's hot cuts at levels at a mid-way point between the New York-adjusted VZ-DE NCRM results and Cavalier's lesser hot cut rage figures. For the initial basic two-wire cut, the rate would thus be \$23.64.³¹

³¹See Tr. 3041-48. See ¶¶ 17-22 hereafter. This choice of a hot cut rate made unnecessary any explicit Commission decision about the reasonableness of the gross revenue loading factor proposed by VZ-DE's NRCM.

15. The Commission did not endorse VZ-DE's proposed "IDLC loop hot cut surcharge" of \$81.00.³² Similarly, the Commission, following the Hearing Examiner's recommendation, decided not to allow VZ-DE's separate "expedited service charge."³³ However, the Commission chose not to accept the Hearing Examiner's recommendation to suspend use of VZ-DE's resurrected "disconnect fees" pending further continued investigation. Instead, the Commission allowed VZ-DE's use of such fees, but limited their application (as stipulated by VZ-DE) to only those instances where an end-user customer, previously linked by means of a cut-over loop, terminates service and leaves VZ-DE's network entirely.³⁴

16. Finally, the Commission determined that the hot cut rates it now set would apply going forward and that the Commission would no longer require a "true-up" reconciliation between these new rates and the hot cut payments previously paid by carriers under the (now higher) interim rates allowed to go into effect in 2004 by PSC Order No. 6507 (Nov. 9, 2004).³⁵

V. OPINION

A. Overall Level of Hot Cut Rates

17. In the end, the Commission declines to adopt VZ-DE's proposed "litigation-level" hot cut rates produced by its "Standard Cost Study" NRCM. The Commission does so for much the same reasons as

³²See Tr. 3060-3062. See ¶ 24 hereafter.

³³See Tr. 3063-3066; HE Rpt. at ¶ 103. See ¶ 25 hereafter.

³⁴See Tr. 3070-74. See ¶ 26 hereafter.

³⁵See Tr. 3077-78. See ¶ 23 hereafter.

articulated by the Hearing Examiner. The record developed in this matter is not sufficient to give the Commission confidence that the end results of VZ-DE's model represent rates within a range of TELRIC reasonableness. Just as in 2002, the Commission need not reject the theoretical construct of VZ-DE's NRCM; the model can be capable, at some level, of producing appropriate forward-looking TELRIC-compliant rates. Rather, the main difficulty now, just as it was in 2002, is being fully confident of the reliability of the inputs fed into that construct. The Hearing Examiner framed the issue of whether VZ-DE carried its burden of production or proof.³⁶ We need not delve into how trial type processes apply in TELRIC-costing proceedings. It is enough to say that the record developed here does not give the Commission confidence that VZ-DE's litigation-level rates reflect TELRIC-compliant costs.

18. The Hearing Examiner criticized VZ-DE's presentation concerning the "employee task time" survey process utilized by VZ-DE to establish the mean average task times that form the baseline for its NCRM subsequent forward-looking cost calculations. The Hearing Examiner questioned whether the work survey process used sufficient sample numbers in terms of its surveyed orders, employees, or offices.³⁷

³⁶See 47 C.F.R. § 51.505(e). See also Illinois Bell Tel. Co. v. Wright, 245 F. Supp.2d. 900, 908 (N.D. Ill. 2003) ("Under FCC rules, [the incumbent] bore the burden of proof that the cost study was TELRIC compliant").

³⁷See HE Rpt. ¶¶ 92-97. For example, it appears that in the case of CO frame and RCCC task activities related to "individual" hot cuts, the eventual mean average task times were derived from 68 (CO) and 33 (RCCC) surveys completed by employees during one month in 2003. In addition, it appears that the number of reported times for particular tasks varied: some tasks had more

19. The Hearing Examiner is not alone in being skeptical about the reliability and validity of the work survey process utilized in VZ-DE's NRCM. Before the hearings in this matter, the New York Public Service Commission had criticized the work time survey process as containing "flaws" in its mechanics, sample sizes, and its ability to reflect statistically valid, reliable results. NY HC Order at 28-38.³⁸ Indeed, it is these prior criticisms that drive, in large part, the Commission's lack of confidence in the inputs and cost numbers proposed by VZ-DE here. Verizon was aware of the earlier criticisms (developed on a full record) of its NCRM that had come in New York. One could expect that when VZ-DE had to make its case in Delaware months later, it would be ready to build a record that would offer convincing counters to the earlier New York criticisms or would contain additional testimony or information explaining or mitigating

reported times; others had a much smaller number of reported times. And within a particular activity task, the reported times could cover a wide range.

Moreover, the record does not provide details about the mechanics of the task time survey or any later adjustments to task times. As the Examiner noted, VZ-DE's panel could not point to the existence of any pre-determined criteria that was applied to choose the particular central offices surveyed, except that the company wanted a mix of urban, metropolitan, and rural offices. Tr. 2580, 2687-2688. The VZ-DE witnesses also could not explain why, or what number of, surveys may have been initially discarded from the eventual sample used. Tr. 2662. Nor could they provide elaboration about the choice and application of the 10 percent top and bottom "trim" applied to the reported times for each task. Tr. 2599-2614. Similarly, in the case of the "typical occurrence factors" and "forward-looking adjustments" made to the CO frame average task times, the VZ-DE panel was unaware of the existence of any criteria that might have been used to guide such adjustments, except that each manager applied his own subjective judgment based on his or her experience. In addition, the panel could not point to any documentation that would reflect the reasons for any of these particular adjustments made by the managers. Tr. 2665-2668.

³⁸Id. at 4 ("The record supports a finding that the survey was poorly done: insufficient numbers of orders were surveyed, the questions were vague, and employees were told it was to be used for non-recurring cost recovery).")

what had earlier been seen as "flaws." But, as the Hearing Examiner and the Commission read the present record, VZ-DE did not do that; instead, it simply presented a case without much further detail about the reliability of the task time surveys and its mean average task times.³⁹ With questions about the reliability of the survey unanswered in this record, and with those survey times driving a large portion of the resulting hot cut rates, the Commission simply lacks sufficient confidence to now endorse VZ-DE's proposed "litigation-level" hot cut rates.⁴⁰

20. In New York, the Commission responded to what it viewed as deficiencies in the task time survey process by looking to its own expertise, and a subsequent statistical analysis, to divine what it saw as appropriate "mean work times" to be used as inputs in Verizon's NRCM.⁴¹ Here, unlike New York, this Commission has neither the expertise, nor the resources, to undertake its own extensive re-

³⁹For example, here VZ-DE argued that its confidence interval analysis on its eventual hot cut cost figures demonstrated the reliability of its work time survey to produce accurate mean task times. However, the same contention had been made in New York, and found unconvincing there. See NY PSC HC Order at 30-31, 36 n. 133. VZ-DE did not bring to the Delaware proceeding a statistician, or anyone else, to explain why the New York Public Service Commission's rejection of this contention was mistaken.

⁴⁰Cf. Verizon Pennsylvania, Inc. v. Pa. Public Utility Comm'n., 380 F. Supp.2d 627, 650-51 (E.D. Pa. 2005) (state commission could appropriately decline to use an earlier Verizon NRCM because Verizon had not identified the participants in the time surveys, had not disclosed bases for forward-looking adjustments, and had not brought forward witnesses capable of speaking to the time adjustments and statistical review of the time surveys).

⁴¹See NY PSC HC Order at 34-38. In addition to a general eight percent reduction in the survey's mean work times, the New York commission also made adjustments to particular task times performed at central offices or in regional centers. It also changed the typical occurrence factors in several situations to mirror a 95 percent "flow-through" of orders under electronic, rather than manual, processing.

working of the task times proffered by VZ-DE on this record. So too, while the Commission does not completely discount the proposed alternative work times offered by Cavalier (that result in a \$13.83 basic rate), the Commission cannot accord them a level of confidence that would allow those times to set the eventual hot cut rates. At the same time, the Commission suspects that neither VZ-DE nor Cavalier is, at this point, eager to have a remand to re-litigate the task time surveys and other inputs. For VZ-DE, such a remand might entail it to either attempt to rehabilitate task activity time surveys (and indeed an NRCM) now almost 3-1/2 years old or being forced to do another, more formal work time study (and probably an entirely new NRCM).⁴² For the less-resourced Cavalier (the only CLEC seemingly still interested in hot cut rates), a remand might entail the expenditure of more litigation dollars.⁴³

21. Given these constraints, the Commission applies its discretion, and based on the entire record, determines "final" - at

⁴²VZ-DE said that not only was its work time surveys done in September, 2003 but the "typical occurrence factors" and "forward-looking adjustment factors" were also determined in that same year. Tr. 2908. If so, the three-year planning period that VZ-DE used for its managers' predictions of forward-looking improvements to its hot cut processes has now expired.

⁴³The Commission does not adopt the Hearing Examiner's resolution to import the \$5.00 and under hot cut rates that currently prevail in some neighboring States. The Commission is reluctant to import final rate numbers from other jurisdictions without any full appreciation of the record developed before other commissions to support the final charges. In particular, it has been represented that the much lower rates cited by the Examiner are a direct result of those other jurisdictions accepting a view that a highly automated "hot cut" process is "currently available" technology. Such an alternative more-fully automated model was not presented or included in the record in this matter. In light of that, the Commission is hesitant to adopt rates based on such a model. For much the same reasons, the Commission does not rotely adopt the task time and other adjustments made in New York to determine the hot cut rates to be applicable here.

least for this proceeding - hot cut rates. For a basic two-wire hot cut (with use of the WPTS interface), the final rate will be:

\$23.64 basic two-wire initial with WPTS

\$15.66 basic two-wire additional with WPTS.

22. As noted earlier, the Commission arrives at these rates by applying a common sense determination of rates based upon balancing Cavalier's proffered rates and the New York-adjusted "non-litigation" rates produced under VZ-DE's New York-adjusted NRCM. Using these "basic" two-wire rates as benchmarks, the Commission now also adopts rates for the "basic" four-wire hot cut, as well as the project (large), and batch processes. These other rates are set forth in Ordering paragraph 4 below. Much like the method utilized by the Hearing Examiner, the Commission determines the level of these other rates by having them bear the same proportional relationship to the basic two-wire rate set forth above as these other rates under VZ-DE's non-litigation proposal bore to its basic two-wire rate (\$33.44).⁴⁴ The Commission appreciates that such a method might be criticized. The Commission leaves it open to petitions for reconsideration for parties to assert such criticisms and proffer other methods for determining four-wire, project and batch rates, while continuing to assume the validity of the basic two-wire hot cut rate levels determined above.

⁴⁴In like fashion, the "additional" line rates are set by applying the same proportion that such additional line rates bore to the associated "initial" rate under VZ-DE's "non-litigation" rates proposal.

B. Reconciliation of Hot Cut Payments Under Previously Adopted Interim Rates

23. In PSC Order No. 6507 (Nov. 9, 2004), the Commission adopted New York-adjusted hot cut rates for use in Delaware, pending the determination of final hot cut rates for this jurisdiction. In doing so, the Commission also determined that such interim rates would be subject to a "true-up" mechanism when final rates were determined; with carriers' reconciling prior payments depending on whether the final hot cut rates were greater or lesser than the interim rates allowed under Order No. 6507.⁴⁵ Here, the Commission has now set those final rates, at levels below the interim rates. However, since the new rates reflect a common sense accommodation (based on the lack of confidence in the record), the Commission does not believe that it is now appropriate to require any "true-up" reconciliation of prior post November 9, 2004 hot cut payments. The hot cut rates now adopted here will apply going forward; the interim rates previously allowed by Order No. 6507 will apply to the past transactions prior to the effective date of the new rates. The Commission does not require carriers to undertake a "true-up" of their prior "hot cut" payments paid under those earlier interim rates in light of the adoption of new hot cut rates.

C. IDLC Hot Cut Surcharge

24. VZ-DE also proposes an additional IDLC surcharge for hot cuts of loops served by Integrated Digital Loop Carriers ("IDLC"). According to VZ-DE, the surcharge seeks to recover the costs of the

⁴⁵See Order No. 6507 at ¶ 8 & Ord. ¶ 1.

additional tasks needed for such types of hot cuts. In particular, the surcharge amount reflects the work performed at the outside plant Serving Area Interface ("SAI") to move the customer's IDLC loop to a spare or swapped UDLC loop or copper pair, so that a cut-over can be made at the central office's frame.⁴⁶ According to VZ-DE, to identify the task times associated with these wire transfers at the SAI, it polled or questioned one or more of its outside plant management engineers asking for estimates of the times associated with these outside plant tasks.⁴⁷ Yet once again, the Commission lacks confidence that such plant engineer estimates, without more documentation, can be relied on (without more) to justify the additional IDLC cut-over costs.⁴⁸ In addition, the Commission cannot ignore that in other jurisdictions, Verizon has been less than successful in having its IDLC hot cut surcharge approved across-the-board. It might be that the rejections elsewhere have been based on differing conceptions of the "currently available" technology than can be utilized in this

⁴⁶See HE Rpt. at ¶¶ 53-54 & n. 22; 58. It appears that about \$61.00 of the \$81.00 IDLC surcharge amount is attributed to the wiring tasks to be done at the SAI. Tr. 2768-2774 (VZ-DE cross-exam.).

⁴⁷See HE Rpt. at ¶ 59. The outside plant manager or managers provided estimates of the times for both a move to an unused spare or a swap of IDLC and UDLC loops. The engineer or engineers also apparently provided views of the frequency or moves to spares versus the frequency of swaps. Tr. 2768-2770 (VZ-DE cross-exam.).

⁴⁸VZ-DE could not, in the record here, identify the number of plant engineers that had been asked to provide such estimates, their work locations, or the reasons for their selection. Also, VZ-DE admitted that it could not report the form of questions or instructions involved in the polling nor the exact responses coming from any of the polled engineers (besides the estimates input into the NRCM). Finally, VZ-DE emphasized that the times were estimates provided by those with experience in the tasks and that it was unaware of any work papers, surveys, or summaries that might speak to how those estimates were determined. Tr. 2755-2760, 2768-2774 (VZ-DE cross-exam.).

context.⁴⁹ However, this Commission is reluctant to move to the forefront, and now allow the IDLC surcharge, where it is unsure that the record provides solid evidence of the time (and costs) associated with the additional tasks.⁵⁰

D. Expedited Service Charge

25. The Hearing Examiner recommended that the Commission reject VZ-DE's proposed "expedited service charge," to be billed when a CLEC asks VZ-DE to expedite an order (and hot cut). The Commission accepts that recommendation. Like the Hearing Examiner, the Commission acknowledges that an "expedited service charge" can be an appropriate charge to be collected for performing requested extraordinary service. But the Commission adopts the Hearing Examiner's conclusion and reasoning that, in this record, VZ-DE has not presented enough evidence that provides a cost basis for allowing the \$56.38 additional charge sought for processing such expedited requests.⁵¹

E. Disconnect Fees

26. In 2002, the Commission accepted VZ-DE's position that it should be able to charge "tail-end" (but not "front-end") "disconnect" fees to CLECs. VZ-DE now asks to resurrect such fees, but limit their applicability to a particular circumstance: when a customer previously

⁴⁹See e.g., NY PSC HC Order at 57-59; NY Recon. Order at 35-38 (disallowing IDLC surcharge in case of hot cut involving IDLC to UDLC move or swap, but allowing some level of additional surcharge where CLEC asks that IDLC loop be moved to "all copper" pair).

⁵⁰The Commission also notes that the \$35.00 promotional rate for hot cuts - which prevailed for two years - applied not just to basic hot cuts but also to "IDLC to copper" hot cuts. See Order No. 5967 at ¶ 95.

⁵¹See HE Rpt. at ¶¶ 65, 103.

served by a CLEC under a cut-over loop leaves VZ-DE's network "completely" or "entirely" (such as by moving or changing to an alternative telephone platform).⁵² The Commission acknowledges the Hearing Examiner's (and Cavalier's) concern that, even if limited as VZ-DE proposes, difficulties may exist in accurately identifying "the leave the network" situation. And the Commission realizes that some might still argue that the possibilities for double recovery exist even in such limited situation.⁵³ However, rather than prolong this matter for further investigation, the Commission will allow the disconnect fee to be charged (effective on the same date as the new hot cut rates) but restrict their applicability to "the customer leaves the network" scenario.

Now, therefore, **IT IS ORDERED:**

1. That the Findings and Recommendations of the Hearing Examiner (Oct. 12, 2006) are attached hereto as Exhibit "A" for purposes of reference. The Commission adopts portions of those Findings and Recommendations as identified in the body of this Order.

⁵²See HE Rpt. at ¶ 102. See also Tr. 2861-2863, 3072 (description by VZ-DE lawyers of proposed limited application for disconnect fees). In contrast to 2002, VZ-DE does not propose to charge the CLEC a disconnect fee in "win-back" situations, where the customer with the cut-over loop may move his service to another CLEC or return to VZ-DE's retail service.

⁵³See HE Rpt. at ¶ 102. Cf. NY PSC HC Order at 57 (suggesting that in the "leave network" disconnect scenario, possibility of over-recovery might remain if new customer at same premises served by the same loop promptly chooses service by the same or another CLEC, but also suggesting disconnect fee might be appropriate if new customer on same loop takes Verizon's retail services). Compare Tr. 2865-2866 (outlining VZ-DE's view of the scope of the "leave the network" situation).

2. That the "basic," "project" (or large), and "batch" hot cut processes as described by Verizon Delaware LLC in this matter (and as summarized in its filings dated September 27, 2004 and November 5, 2004) are hereby endorsed by the Commission as reasonable wholesale offerings related to Verizon Delaware LLC's leasing of unbundled loop network elements.

3. That the "litigation-level" rates for the various hot cut processes as set forth in the "Standard Cost Study" filed by Verizon Delaware LLC with its letter of September 27, 2004 (and as advanced by Verizon Delaware LLC in the record in this matter) are not accepted.

4. That the following shall constitute the rates charged by Verizon Delaware LLC for its various hot cut processes:

| | "Initial" Line | "Additional" Line |
|------------------------------|-------------------|----------------------|
| Two-Wire-Basic | \$23.64 | \$15.66 |
| Four-Wire-Basic | \$37.44 | \$23.79 |
| Large (Project) with WPTS | \$18.49 | \$14.04 |
| Batch | \$15.00 | \$12.00 |

Such rates, where noted above, shall apply only with the use of the "Wholesale Provisioning and Tracking System" ("WPTS") computer interface.

5. That the hot cut rates set forth in Ordering paragraph 4 shall become effective twenty days from the date of this Order.

6. That Verizon Delaware LLC and other local exchange carriers need not undertake a "true-up" reconciliation of the prior payments for hot cuts charged under the interim hot cut rates allowed to go into effect by PSC Order No. 6507 (Nov. 9, 2004) and the rates now adopted in Ordering paragraph 4. The requirement of a true-up reconciliation ordered in PSC Order No. 6507 (Nov. 9, 2004) at ¶ 8 and Ordering ¶ 1 is now rescinded. The interim rates allowed to go into effect in PSC Order No.6507 (Nov. 9, 2004) shall be deemed the lawful rate for hot cuts performed before the effective date (set forth in Ordering ¶ 5) of the new hot cut rates.

7. That Verizon Delaware LLC's proposal to impose an "IDLC Loop Surcharge" of \$81.10 (as set forth in the "Standard Cost Study" filed by Verizon Delaware LLC with its letter of September 27, 2004 and as advanced by Verizon Delaware LLC in the record in this matter) is rejected for the reasons set forth in the body of this Order.

8. That Verizon Delaware LLC's proposal to charge an "Expedited Service Charge" or "Full-Mechanized Coordination Expedite" charge in the amount of \$56.38 (as set forth in the "Standard Cost Study" filed by Verizon Delaware LLC with its letter of September 27, 2004 and as advanced by Verizon Delaware LLC in the record in this matter) is rejected for the reasons set forth in the body of this Order.

9. That Verizon Delaware LLC's proposal to collect "disconnect fees" when a customer served by a loop previously cut-over to another

carrier leaves Verizon Delaware LLC's network entirely is approved. The "disconnect fees" to be charged in such limited situations shall be at the rate levels permitted in PSC Findings, Opinion, and Order No. 5967 (June 4, 2002). Such "disconnect fees" shall be applicable on and after the effective date of the new hot cut rates as set forth in Ordering ¶ 5 above.

10. 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/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

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) PSC DOCKET NO. 96-324,
APPROVAL OF ITS STATEMENT OF TERMS) (PHASE II)
AND CONDITIONS UNDER SECTION 252(f))
OF THE TELECOMMUNICATIONS ACT OF)
1996 (FILED DECEMBER 16, 1996;)
REOPENED JUNE 5, 2001))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

EXPURGATED (PUBLIC) VERSION

DATED: October 12, 2006

RUTH ANN PRICE
HEARING EXAMINER

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Ruth Ann Price, duly appointed Hearing Examiner in this docket pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* ch. 101, by Commission Order No. 6507, dated November 9, 2004 (as reassigned by Senior Hearing Examiner William F. O'Brien) reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Verizon Delaware Inc. ("Verizon" or "the Company"):

ANTHONY E. GAY, ESQUIRE, Assistant General Counsel

Wilmer Cutler Pickering Hale and Dorr, LLP

By: CATHERINE KANE RONIS, ESQUIRE

On behalf of Cavalier Telephone Mid-Atlantic, LLC ("Cavalier")

STEPHEN T. PERKINS, ESQUIRE, Senior Counsel

RICHARD U. STUBBS, ESQUIRE, General Counsel

On behalf of the Public Service Commission Staff ("Staff"):
Constance Welde, Public Utilities Analyst III

II. BACKGROUND

A. PROCEDURAL HISTORY

1. This case involves determining the appropriate rate Verizon should charge a competing local exchange carrier ("CLEC"), primarily Cavalier, for various types of "hot cuts" in Delaware. A "hot cut" is the transfer of a customer's line from its connection in an incumbent local exchange carrier's ("ILEC") switch, such as Verizon, to a CLEC's switch. If this transfer is performed manually, a break occurs in the customer's service causing the customer to be out of service for a period of time. In order to avoid a service disruption for the customer, the hot cut process requires that an ILEC continue a customer's service in its switch while it makes a simultaneous connection of the customer's service to a CLEC's switch. In this way, when the ILEC disconnects service from its switch, the customer still has service, now with a new carrier. The hot cut process includes all the administrative activities, line conditioning and coordination between carriers necessary to result in transfer of service. A hot cut is successful when there is no service interruption and the transfer from one carrier to another is transparent to the customer.¹

2. In PSC Order No. 5967 (June 4, 2002),² the Commission approved a promotional hot cut rate of \$35 for four types of hot cuts³

¹To transfer a customer's service from one carrier (ILEC or CLEC) to another carrier also requires that the customer's telephone number be "ported" to the new carrier.

²In 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, Phase II, Findings, Opinion and Order No. 5967, June 4, 2002 (hereinafter referred to as "PSC Order No. 5967").

for a two-year period from the date of the Order until June 4, 2004. Order No. 5967 at ¶95. The Commission noted that the New York and New Jersey commissions had approved a \$35 rate after determining that the actual forward-looking costs to perform a hot cut were considerably higher than \$35. In fact, this Commission found that the TELRIC-compliant two-wire initial hot cut cost was \$113.71. At the expiration of the promotional period, the TELRIC-compliant rate then in effect for each element would be the effective rate.

3. PSC Order No. 5967 further specified that an additional charge would apply if the "CLEC request[ed] manual treatment or if a premises visit was required." *Id.*

4. On June 4, 2004, the promotional period expired. The Commission previously ordered that the rate for hot cuts would revert to the applicable TELRIC rate then in effect for each element of a hot cut. At the expiration of the promotional period, the two-wire TELRIC-compliant rate in effect was \$113.71. PSC Order No. 5967, ¶95. The TELRIC-compliant rate in effect at the expiration of the promotional period for other types of hot cuts was as follows:

| | | |
|----------------------|---|----------|
| Basic 4-wire hot cut | - | \$148.77 |
| IDLC to copper | - | \$131.72 |
| Line port hot cuts | - | \$156.81 |

See fn. 1 of Letter of Anthony E. Gay, counsel for Verizon Delaware to Ms. Karen Nickerson, Secretary, Delaware Public Service Commission dated September 27, 2004.

³The Commission ordered the promotional hot cut rate effective for 2-wire loop hot cuts, 4-wire loop hot cuts, IDLC to copper loop hot cuts, and line port hot cuts.

5. By electronic mail dated July 12, 2004, Commission Staff inquired whether any carrier intended to make a filing regarding the revision of the hot cut rate to the Commission-approved TELRIC rates. On July 22, 2004, in response to Staff's inquiry, Cavalier filed a motion to extend indefinitely the promotional hot cut rate of \$35 (beginning retroactively to June 4, 2004). Despite the expiration of the promotional period, Verizon continued to charge Cavalier the promotional rate. Cavalier requested that this Commission extend the \$35 rate just as other commissions, such as Maryland, New Jersey, and New York, had done. Motion of Cavalier Telephone Mid-Atlantic LLC for Extension of the Two-Year Promotional Hot Cut Rate of \$35. Cavalier argued that to allow the hot cut rate to jump from the promotional rate of \$35 to the \$113.71 rate in effect pursuant to PSC Order No. 5967 would have a chilling effect on competition in Delaware.

6. On August 5, 2004, Verizon replied to Cavalier's motion by voluntarily agreeing to extend the promotional hot cut rate for a period of up to sixty days after the New York Commission entered an order in its batch hot cut proceeding.⁴ However, Verizon provided the further caveat that it would not extend the promotional rate beyond calendar year 2004.

7. Verizon noted that as soon as practicable after the New York Commission order was entered it would file new hot cut rates in Delaware reflecting the results of the New York proceeding in Delaware.

⁴Proceeding on Motion of the Commission to Examine the Process and Related Costs of Performing Loop Migrations on a More Streamlined (e.g. Bulk) Basis, Case 02-C-1425 (NY PSC) ("New York Batch Case" or "New York order").

8. As is the norm with these parties, Cavalier, by letter dated August 12, 2004, opposed Verizon's proposed extension of the promotional rate. Cavalier's objection cited the FCC's then on going proceeding involving defining new interim and final revised rules for unbundling. That proceeding, Cavalier argued, could change the rates that the Commission would order for hot cuts, thereby requiring the Commission and the parties to do unnecessary and duplicative work. Cavalier also noted that it was uncertain what, if any, ramifications (*i.e.* appeals) there might be from the New York Commission's decision. To set, presumably, "permanent" rates at this juncture would be premature, Cavalier argued.⁵

9. On August 25, 2004, the New York Commission issued an order setting permanent rates for hot cuts. The TELRIC-compliant rates approved by this Commission in PSC Order No. 5967 were considerably higher than the TELRIC rates approved by the New York Commission. For example, this Commission authorized a two-wire hot cut rate of \$113.71; whereas, the New York Commission's TELRIC-compliant rate for a two-wire hot cut was \$42.36.⁶

⁵Not to let an argument die peacefully, Verizon responded to Cavalier's objection by letter of August 18, 2004 reiterating its reasons for a limited extension of the hot cut promotional rate. Letter of Anthony E. Gay, Assistant General Counsel for Verizon, to Karen Nickerson, Secretary of the Delaware Public Service Commission, dated August 18, 2004.

⁶The TELRIC-compliant rates approved by the Delaware Commission (Order No. 5867,) and the TELRIC rates ordered by the New York Commission in its "batch hot cut" proceeding (Case 02-C-1425, August 25, 2004) are compared as shown:

| <u>Delaware</u> | | <u>New York</u> | |
|-----------------|-----------|-----------------|----------|
| Basic 2-wire | -\$113.71 | Basic 2-wire- | \$42.36 |
| Basic 4-wire | -\$148.77 | Basic 4-wire- | \$69.60 |
| IDLC to copper | -\$131.72 | Project | -\$33.84 |
| Line port | -\$156.81 | Batch | -\$28.17 |
| | | Add'l | \$29.42 |
| | | Add'l | \$45.09 |
| | | Add'l | \$27.92 |
| | | Add'l | \$23.72 |

10. At its meeting on August 31, 2004, the Commission extended the promotional hot cut rate of \$35 from June 4, 2004 through October 25, 2005 under the terms and conditions that Verizon had requested in its August 5, 2004 letter. See PSC Order No. 6473 (Sept. 14, 2004). The Commission further ordered Verizon to file no later than September 27, 2004, its proposal for new hot cut rates and procedures in light of the New York Public Service Commission's Order of August 25, 2004 in its batch hot cut case.

11. Verizon asserted that its proposal, filed with the Commission on September 27, 2005, provided for adjustments to its cost study required by the New York Commission's order, using Delaware appropriate costs.⁷ Verizon announced that since the Commission's order (PSC Order No. 5967) setting Delaware TELRIC compliant rates, the Company had instituted three new hot cut processes-basic, project, and batch. The new processes utilized Verizon's automated Wholesale Provisioning and Tracking System ("WPTS") which streamlined the coordination and communication between Verizon and the CLECs. WPTS automatically retrieves data on hot cut orders from Verizon's Operations Support System and acts as a clearinghouse for data regarding the progress of those orders. At the appropriate stage in the process, WPTS automatically sends information to the CLEC for review and verification of the order.⁸

⁷ In its September 27, 2004 filing, Verizon submitted two cost studies: (1) a nonrecurring cost study with adjustments based upon the New York Order; and (2) its nonrecurring cost standard cost study.

⁸ The WPTS system takes much of the "leg work" and manual handling out of processing hot cut orders. Verizon describes the system as:

12. By Order No. 6507 (Nov. 9, 2004), the Commission adopted new, interim "hot cut" rates as reflected in the Company's filing on September 27, 2004. The interim rates adopted by the Commission on November 9, 2004, are as follows:

- Basic with WPTS: \$33.44 (2-Wire Initial), \$23.07 (2-Wire Additional), \$52.96 (4-Wire Initial), \$33.65 (4-Wire Additional);
- Project: \$26.16 (Initial), \$19.86 (Additional); and
- Batch \$21.33 (Initial), \$16.97 (Additional).

These rates (which do not include a premises visit), according to Verizon, reflect the "hot cut" rates set by the New York Public Service Commission for Verizon in New York, as adjusted by Verizon to reflect appropriate Delaware costs. As a settlement offer, Verizon agreed to accept these rates and have them approved by the Delaware Commission in order to avoid protracted litigation regarding "hot cut" rates. (See Verizon's proposal for hot cut rates, dated September 27, 2004.) The interim rates are to be subject to a reciprocal true-up after a final Order.

13. In the event that the Commission did not accept these rates and the matter proceeded to litigation, which is the case, Verizon

WPTS also provides a secure web site on which a CLEC (and authorized Verizon personnel) can view (and download) status information and a platform for the delivery of messages between Verizon and the CLEC, eliminating the need for telephone calls between the teams working on the hot cut. The system helps to ensure that all key steps of the hot cut process are properly completed and that all necessary communications between the CLEC and Verizon work teams occur effectively and at a minimum cost. Letter of Anthony E. Gay, Assistant General Counsel for Verizon, to Karen Nickerson, Secretary of the Delaware Public Service Commission, dated September 27, 2004 at p.2.

presented cost studies purporting to support the following proposed rates, which it refers to as "litigation rates":

- Basic with WPTS: \$57.51 (2-Wire Initial), \$31.09 (2-Wire Additional), \$87.15 (4-Wire Initial), \$43.81 (4-Wire Additional);
- Project: \$46.99 (Initial), \$29.22 (Additional); and
- Batch \$39.53 (Initial), \$25.46 (Additional).

Verizon's settlement and litigation rates above exclude any applicable premise visit and are conditioned on the CLEC's use of Verizon's Wholesale Provisioning and Tracking System ("WPTS").

14. On May 25 and 26, 2005, evidentiary hearings were held at the Carvel State Office Building in Wilmington. The record, as developed at the hearing, consists of 437-page verbatim transcript and 21 exhibits (some with subparts). Briefs were filed simultaneously by the parties on July 26, 2005.

III. SUMMARY OF THE EVIDENCE

A. VERIZON'S TESTIMONY

15. Verizon presented the panel testimony of Thomas Maguire, Senior Vice President for the ordering, provisioning, and maintenance of the wholesale services that Verizon provides to CLECs and Larry Richter, Senior Staff Consultant - Witness. Mr. Richter is primarily responsible for testifying in support of Verizon's nonrecurring wholesale, retail, access, and collocation cost studies. In that capacity, he worked directly with Verizon's Service Cost group, which prepares the Company's cost studies. Ex. 3.⁹

⁹Exhibits will be cited as "Ex. __ at __" and references to the hearing transcript will be cited as "Tr. at__."

1. VERIZON'S NONRECURRING COST MODEL

16. Messrs. Maguire and Richter testified that Verizon's nonrecurring cost (also referred to as "NRC") model is designed to identify and measure all of the activities involved in fulfilling a CLEC's request for a hot cut. *Id.* at 25. Messrs. Maguire and Richter represented that the New York Public Service Commission used Verizon's model as a basis for establishing permanent hot cut rates. *Id.* at 26 (citing New York Batch Order at 27). Further, the witnesses testified that the model is also similar to the NRC model that this Commission used to set nonrecurring rates in Order No. 5967. *Id.* at 26.

17. Messrs. Maguire and Richter explained that there are four major steps in calculating the costs for the NRC model. *Id.* at 27-28. First, Verizon determined the average amount of time currently required to perform each activity. Verizon adjusted these times, applying several factors, to reflect work times in a forward-looking environment. *Id.* at 31. These forward-looking work activity times were multiplied by the applicable labor rates in order to calculate the total nonrecurring costs. *Id.* at 31-33, 35. Verizon then applied overhead loadings (common overhead and gross revenue loadings) to determine a final rate. *Id.* at 37.

18. Verizon's witnesses emphasized that the Company employed a forward-looking cost analysis taking into account all anticipated efficiencies over a three-year planning period resulting from the deployment of forward-looking technology and improved processes. *Id.* at 37. Verizon contends that in performing the studies, it identified productive work times and reflected the savings due to projected

system improvements and methods. The nonrecurring cost model includes Verizon's forward-looking wholesale Operating Support System ("OSS") costs and process improvements, which rely upon electronic ordering interfaces for the carrier; flow through service order and work order distribution processes; and mechanized coordination and communication through WPTS.

19. Messrs. Maguire and Richter described the process of determining forward-looking work times for the NRC study. These processes involve capturing the costs by identifying the relevant organizations and determining the nonrecurring ordering, wiring, and provisioning activities necessary for hot cuts. Verizon determines the average amount of work time required to perform each work activity when it is performed and, thereafter, applies what it calls a "Typical Occurrence Factor" (the frequency, in percentage terms, with which an activity is performed currently) to the estimate of the average work time determined in the preceding step. Ex. 3 at 31. Verizon contends that this calculation equals the total average time (in minutes) consumed on a specific day for the work activity, taking into account the fact that not all applications will require the specific activity. Verizon then applies a "forward-looking adjustment factor" ("FLAF"); a percentage that reflects the reduction in frequency with which an activity is expected to be performed and/or a reduction in the time needed to complete the activity by the end of the forward-looking three-year planning period, resulting in a forward-looking work time. Ex. 3 at 28. The FLAF reflects "anticipated improvements in processes, productivity, and mechanization, including enhancements to

the OSS resulting in reduced work times and/or increased electronic "flow-through" in Verizon's automated systems." *Id.* at 32. The FLAF takes into consideration the anticipated reductions in the frequency with which an activity must be performed and reductions in the time needed to perform the activity in the future. *Id.*

20. Regarding the typical occurrence factor, Mr. Richter testified that Verizon used actual service order flow-through data from the Performance Assurance Plan ("PAP"). Tr. 2669; *see also* Ex. 3 at Exhibit III-A. This is the flow-through data contained in Verizon's carrier to carrier reports. Tr. 2670.

2. Identification of Relevant Activities

21. Verizon's witnesses explained the process of identifying relevant activities for the NRC cost study. The Panel explained that relevant activities were those performed in each functional organization within Verizon associated with the ordering, provisioning, and wiring of hot cuts to requesting CLECs. *Id.* at 28. Verizon developed the list of activities from feedback obtained from work center personnel who are engaged in the day-to-day work activities needed to satisfy CLEC hot cut service orders. *Id.* at 29. Verizon maintains that it designed this process to identify a comprehensive list of the individual work steps involved in fulfilling CLEC requests for hot cuts.

3. Determination of Current Work Times

22. The current average work times for activities that take place in the National Market Center ("NMC"), Central Office Frame organization, and the Regional CLEC Coordination Center ("RCCC") are

based upon a survey of the personnel involved in the relevant work functions. Ex. 3 at 29. For the Assignment Provisioning Center¹⁰ ("APC") and the Recent Change Memory Administration Center ("RCMAC"),¹¹ Verizon contends that it used the same times that the New York Public Service Commission approved in the New York UNE case.¹² *Id.*

4. The Survey Process

23. The Panel testified that in order to determine the time to complete various activities for completion of hot cuts, Verizon's Service Cost personnel consulted supervisors in the relevant work centers and created workflows to develop surveys. Ex. 3 at 29. The Panel testified that "Verizon distributed surveys with instructions tailored to avoid soliciting biased answers, to those employees actually involved with wiring and provisioning hot cuts for Verizon's CLEC customers." *Id.* at 29-30. Verizon represented that the surveys instructed employees to record the actual time it took them to complete various tasks at the same time they were performing the jobs.

¹⁰The APC handles facility issues for a customer migration request. For example, the APC determines whether there is a suitable facility available for a copper to UDLC request.

¹¹The RCMAC handles the removal of translations from Verizon's switch once the hot cut is complete. The RCMAC completes the process of terminating Verizon's dial-tone to the customer.

¹²Verizon contends that it is reasonable to use the work times for the APC and the RCMAC that were approved in the New York case because the use of improved technology, such as WPTS, will have only a "minimal impact" on the APC and the RCMAC. Therefore, Verizon argues that the times, occurrences, and adjustments that were approved in New York are still valid for this NRC model. Further, Verizon contends that "the RCMAC and APC are regional work centers that do not perform work in Delaware, and that perform the same tasks with the same frequency regardless of where the hot cut occurs." Ex. 3 at 29. In any event, Verizon contends that the cost of the work of these two organizations is minimal and; therefore, has little impact on the outcomes of the study. *Id.*

Id. Completion of the surveys was monitored by the Service Cost group to ensure that they were collected from employees in all work groups. *Id.* 30-31.

24. The Panel asserted that the reported work times were reviewed to ensure their accuracy. The supervisor-contact in each department who distributed and collected the survey forms reviewed the responses and, when necessary, returned incomplete forms to employees for completion. In addition, the service cost analysts reviewed the answers and if answers were incomplete or ambiguous, the analyst obtained clarification. The Panel noted that in a "handful of cases, the survey form was disregarded entirely because it was either blank or had incorrectly populated entries and the point of contact was unable to obtain a valid response." Ex. 3 at 30.

25. Verizon maintained that the surveys were scrutinized based upon "the amount of time that the value of each response appeared for each work activity on a per-unit basis." *Id.* The Panel testified that the data was culled by eliminating 10% of responses with the highest time estimates and the 10% of responses with the lowest time estimates. Ex. 3 at 30-31.¹³

26. On cross-examination, Mr. Richter stated that the cost study team wanted to survey a mix of urban, suburban, and rural central offices where hot cuts were performed. Tr. 2572. However, Mr. Richter did not supervise or control the cost study team. Tr. 2570; Ex. 5. Mr. Richter asserted that he believed it was the collective

¹³Exhibit III-B of Verizon's Direct Testimony (Ex. 3) provides the statistical basis for the "trimmed mean calculations" for each activity.

decision of the field supervisors who knew what information the cost study team was soliciting that decided which central offices would receive the surveys. Tr. 2571.

27. Mr. Richter stated that he believed that any central office in Verizon that performed hot cuts would have been eligible to be a part of the survey; however, he did not know how many central offices in the Verizon footprint performed hot cuts.¹⁴ Tr. 2573, 1.11-19. Subsequently, Mr. Richter clarified his statement that the central office survey forms used in the cost study were collected from central offices in New York in 2003. Tr. 2574, 1. 7-8, 2581.

28. Richter explained that in 2003 when the central office surveys were collected, New York had the majority of hot cut activity. Therefore, it was logical for the surveys to be distributed in New York where employees were actually doing hot cuts and those employees could record the time it took them to perform the various activities. Tr. 2581-2582.

29. Further, the Verizon Panel testified that Cavalier's criticism of the cost study's use of data from New York central offices was unfounded. Verizon claimed that Cavalier's allegation that New York's central offices are unlike Delaware central offices was spurious. Cavalier argued that the central offices surveyed in New York were massive structures with termination frames that spanned multiple floors. Ex. 4 at 18; Ex. 5 at 13. Verizon responded that

¹⁴ Mr. Richter asserted that although the central office survey forms used in this study came from surveys of New York central offices, there are apparently other surveys for other work groups that come from other states. Tr. 2574.

only one (36th Street) of the New York central offices surveyed in the cost study is on multiple floors, whereas two Delaware central offices (Dover and Georgetown) are spread over two floors. Ex. 4 at 18.

30. Verizon's Panel contended that it is unnecessary for Verizon to collect data from every central office in its footprint. The cost study captured work times from a cross-section of environments; therefore, it necessarily captured Verizon's experience in Delaware. The Panel asserted that the work to perform hot cuts is the same throughout the Verizon region. Consequently, a hot cut in an urban office in New York will take about the same amount of time as a hot cut in Delaware. Ex. 4 at 18. As Mr. Maguire summarized, "a CO is a CO is a CO." Tr. 2586. However, Mr. Maguire acknowledged that Verizon's survey process does not include data to support his assertion. *Id.*

31. Verizon's Panel witness Richter testified that a Verizon statistician, Gene Goldrick, performed the calculations for the 10% "trimmed means" confidence factor that was applied to data collected from the central offices. Tr. 2602. Mr. Richter testified that he was not a statistician and that he was not involved in choosing any of the algorithms or the statistical analysis associated with survey results. Tr. 2601-2602. Mr. Richter testified that the analysis was performed using a statistical software program called "SATA." Exs. 6-7. Further, Mr. Richter opined that if, for example, 61 surveys were handed out for completion, but only 56 completed, then the trimming process (performed by the SATA program) would be applied only to the 56 responses. Tr. 2619. However, neither Mr. Maguire nor Mr. Richter

was certain whether the trimming process was applied by order, by line, or in an aggregate manner. Tr. 2620. Further, Mr. Richter stated that he was not sufficiently familiar with the SATA program to know whether the trimming process took 5% from the high times and 5% from the lowest times or some other combination of percentages to derive the 10% trimming process. Tr. 2625-2626. However, in the Panel's direct testimony, they stated, "the frequency distribution of the responses (*i.e.*, the amount of time that the value of each response appeared) underwent review for each work activity on a per-unit basis. Verizon then trimmed the data set by eliminating the 10% of responses with the highest time estimates and the 10% of responses with the lowest time estimates." Ex. 4 at 30-31.

32. Mr. Maguire testified that the surveys were designed to capture time expended by Verizon's personnel as well as the CLEC's employees. Tr. 2634. Mr. Maguire also admitted that the hot cut price with WPTS could, in part, be based upon data from central offices not having WPTS. Tr. 2637. Although the use of WPTS does not reduce pre-wiring time or the time necessary to analyze a hot cut order, it does decrease the interaction between Verizon (*i.e.* telephone calls and e-mails) and the CLEC and it does allow the frame to communicate directly with the CLEC. Tr. 2643. Mr. Maguire stated that all of the hot cuts in Delaware rely on WPTS processing. Tr. 2638.

33. Mr. Richter stated he did not have any role in designing the surveys.¹⁵ Further, he did not know the names of the survey design

¹⁵Mr. Richter testified that when he is not testifying concerning Verizon's nonrecurring hot cut costs, he is assisting in other cost studies. Tr. 2695. He also answers questions concerning previous cases, gathers data for

team, except for two people, the head of the team and the statistician. Tr. 2648-2649. Regarding the survey design team, Mr. Richter did not know the names of the individuals that developed the form or the names of the individuals who prepared the instructions for the survey. *Id.* He stated that perhaps in addition to the written instructions, oral instructions were given to the supervisors of the technicians. Ex. 9. Verizon did not review its surveys with an outside organization having expertise in designing surveys to determine the validity or precision of the survey. Tr. 2653.

34. Mr. Maguire acknowledged that Verizon did not have a test group or control group for this study. Tr. 2655. He stated that for about three weeks in September 2003 all personnel in the designated New York central offices that worked on hot cuts were asked to record the actual time they performed work on orders. Tr. 2659. A survey was supposed to be completed each time an employee worked on any phase of the process of completing a hot cut. *Id.* Some of the data responses were discarded but neither of the Panel witnesses knew the criteria for removing responses. Tr. 2662. Verizon did not have an independent third party conduct an audit of the survey results to determine their accuracy. Tr. 2687.

35. Verizon's witnesses did not know which central offices were deemed to be urban, suburban, or rural for purposes of the study. Tr. 2690.

specific items for other cost studies, writes testimony, and answers data requests. Tr. 2695-2696. However, Mr. Richter stated that he did not participate in gathering data for this cost study which was performed in 2003. *Id.*

36. Mr. Richter testified that the cost study filed in this case does not reflect any of the adjustments made by the New York Commission in its case. Tr. 2700. However, changes and updates to the cost study filed here were made in the NMC portion of the study for project or batch hot cuts removing the various work activities because the job is currently performed electronically. Tr. 2700. Further, the labor rates in the study were updated to reflect actual current rates. *Id.*

37. On cross-examination, Mr. Richter testified that he was not responsible for development of the surveys, he was not responsible for the robust regression analysis underlying the Verizon nonrecurring cost model, and that he was not responsible for testifying to the confidence level that Verizon asserts in the accuracy of the data. Tr. 2740-2741.

38. Mr. Richter stated that his responsibility was to *testify* to the cost study itself and the numbers in the cost study. Tr. 2741. However, Verizon's employee Chuck Holmberg's (who was not a witness in this case) job was the creation and development of the cost studies that were filed. Tr. 2742. However, Verizon did not assign Mr. Holmberg to be the witness for the studies. Mr. Richter maintained that he did not know the underlying data-gathering method for the alleged PAP data contained in the NMC portion of Verizon's "Forward Looking Work Activities, Times and Cost" section of the cost study. Tr. 2742; see also Ex. 4 at Exhibit III-A, p. 3 of 35. He also did not know the source of the data that produced the figures stated in the NMC portion of the study. Tr. 2742. Mr. Richter could not vouch for

the actual occurrence factor that supported the data. Tr. 2743. In summary, regarding the NMC portion of the study, Mr. Richter stated:

BY MR. STUBBS:

Q. Mr. Richter, is it true you have absolutely no understanding about the methodology, the criteria, the standards, the employee selection, the sample size, the number of observations, the varied data, data-gathering calculation, summaries, work papers, and anything else related to line item 4 in the NMC section of the Verizon Exhibit III-A, page 3 of 35, I believe?

A. (Richter) That is correct, because the person, Chuck Holmberg, who put the cost study together, it was his responsibility to gather the information. Tr. 2745.

39. With respect to determining the amount of the IDLC surcharge, the Verizon Panel, on direct, testified that its outside plant managers were polled to ascertain the time required to perform the wire transfer at the outside plant SAI.¹⁶ On cross-examination, Mr. Richter stated that he did not know the names of any of the engineers polled and that nowhere in his testimony, exhibits, or work papers were the outside plant engineers identified. Tr. 2756. Further, Mr. Maguire testified that nowhere in the documents filed in this case did Verizon identify the questions that were asked to the engineers, provide the instructions that were given to them regarding completing the surveys, the answers that the engineers gave to the surveys, how the outside plant managers were selected for the surveys, whether there were observations of the managers, and whether there is

¹⁶The IDLC portion of the cost study is found at Ex. 4, Exhibit III-A, p. 3-32.

any actual data of work times supporting the proposed rate for the IDLC surcharge. In addition, there was no identification of where the outside plant managers who completed the poll were assigned. Tr. 2759. Mr. Maguire testified that an employee, Michael Nawrocki, an experienced outside plant engineer, assisted in drafting portions of the pre-filed direct testimony in this case, but Verizon did not assign him to be a witness in this case. Tr. 2758. However, nowhere in the testimony, workpapers, or exhibits is Mr. Nawrocki identified, or anyone else associated with creation of the proposed IDLC surcharge of \$81.10. Tr. 2758.

40. For an IDLC hot cut, Messrs. Richter and Maguire stated that if a copper pair or UDLC already exists at the SAI, it takes 60 minutes for the IDLC to be placed on the available copper or UDLC. But, if there is not already a spare copper pair or UDLC, it takes 90 minutes for the technician to switch the IDLC customer to copper and put the copper customer on IDLC. Tr. 2772-2773. In Delaware, Mr. Maguire asserted that **[BEGIN PROPRIETARY] XX% [END PROPRIETARY]** of the working lines are IDLC lines. Tr. 2773. The IDLC surcharge of \$81.10 covers the work (transferring the IDLC to a copper pair) and the premise dispatch charge of \$110.02 covers the costs to send the technician out to the SAI remote terminal. Tr. 2775-2777.

41. Mr. Maguire testified that there are a number of states and the District of Columbia that have hot cut rates that are under \$10.00. For example, the Commonwealth of Pennsylvania charges \$1.50

for a hot cut.¹⁷ Tr. 2781. The Wireline Bureau of the Federal Communications Commission established Virginia's hot cut rate at \$5.00 per hot cut. Tr. 2788. The rate in the District of Columbia is \$2.18 per hot cut.

42. Mr. Maguire provided a brief overview of the origin of the \$35.00 rate. Tr. 2790-91. In an effort to settle a case in New York involving its retail service quality plan, Verizon "went to the industry" and came up with the \$35 hot cut rate as an interim offering.

5. Verizon's Hot Cut Processes

43. Messrs. Maguire and Richter testified that based upon Verizon's nonrecurring cost study, Verizon is proposing the following rates for two-wire hot cuts:

Basic with WPTS \$57.51;

Project \$45.47; and

Batch \$39.53.

Ex. 3 at Exhibit III-E.

¹⁷Counsel for Verizon, Catherine Ronis, Esquire, contended that the Pennsylvania rate of \$1.50 (which is actually \$1.49) was originally established in a case where the Company presented a cost study for a variety of nonrecurring activities. Tr. 2782. See *Generic Investigation re: Verizon Pennsylvania Inc.'s Unbundled Network Element Rates*, Docket No. R-00016683, Commission Tentative Order entered November 4, 2003, Final Order entered December 11, 2003, Compliance Order entered July 16, 2004 (the "Generic UNE Investigation"). Ms. Ronis explained that the Pennsylvania Public Utilities Commission *rejected* the entire nonrecurring cost model. Tr. 2782,1.4-5. According to Ms. Ronis, the nonrecurring cost model Verizon submitted in the Pennsylvania case is different than the one filed in this case. Tr. 2782.

Verizon subsequently filed a case in Pennsylvania addressing only hot cut costs entitled, *Development of an Efficient Loop Migration Process*, Pa. P.U.C., Docket No. M-00031754. On April 13, 2006, the Administrative Law Judge in this case recommended that the hot cut rates established in the *Generic UNE Investigation*, Docket No. 00016683, proceeding remain in effect. Therefore, the ALJ recommended that the rate of \$1.49 for all hot cuts continue in the Commonwealth of Pennsylvania.

44. Verizon's witnesses noted that unlike in PSC Order No. 5967, Verizon in this case is offering three hot cut service offerings - basic, project, and batch. These service offerings will be supported by Verizon's mechanized WPTS system to streamline the service order process. Ex. 3 at 9.

45. Verizon's witness Maguire testified that without exception, all hot cuts require pre-wiring. Tr. 2618. Before the due date of the hot cut (regardless of the type), central office personnel run a wire from the CLEC's collocation facility to Verizon's main distribution frame. *Id.* The wire remains in place and unused until the due date of the hot cut at which time Verizon does what it calls a "lift and lay." The wire is disconnected from the main frame and activated at the CLEC's appearance at the central office. *Id.*

5a. Basic Hot Cut

46. The Panel testified that the basic hot cut is the default hot cut process for which the Commission approved rates in PSC Order No. 5967. Ex. 3 at 9. See also Paragraph 7 of this Report and Recommendation. Messrs. Maguire and Richter stated that should a CLEC choose not to avail itself of the WPTS system, Verizon would charge \$113.71 for an initial hot cut and \$94.54 for each additional hot cut as approved in PSC Docket No. 5967. Verizon's witnesses contended that although the basic hot cut is referred to as the individual hot cut process, it is not limited to orders for a single loop or even for a small number of loops. Ex. 3 at Exhibit II-C.

5b. Four Wire Hot Cuts

47. In this case, the Panel witnesses stated that Verizon proposes to charge \$57.51 for a two wire hot cut with WPTS. For 4-wire hot cuts, the proposed charge is \$87.15 for a 4-wire initial hot cut and \$43.81 for each additional four line (4-Wire additional line).

48. Messrs. Maguire and Richter testified that most of the relevant activities require the same work time regardless of whether the circuit to be converted is a two-wire or a four-wire circuit. Ex. 3 at 33. The witnesses explained that for those activities that vary linearly with the number of pairs (*e.g.*, physical wiring work on the frame), the activity time calculated for the two-wire hot cut was simply doubled for the four-wire hot cut. *Id.*

49. The witnesses stated that for those activities that Verizon anticipated performing in the same fashion regardless of the number of lines (*e.g.*, those in the NMC); the time related to the activity was assigned to the initial line and zeroed out for the additional line. For activities in the RCCC and the CO Frame, Verizon performed a robust linear regression analysis¹⁸ on the data to identify any activities that were not variables. Any time related to the non-variable component was totally attributed to the initial line. The variable component was then included on the initial line and on all additional lines. Ex. 3 at 34; Tr. 2588.

¹⁸ The witness opined that for those activities with a sufficient number of samples, Verizon used the "a + b x" results where the t-statistic for both the intercept (non-variable component) and slope (variable component) were "high enough to indicate a strong relationship in the data." Ex. 3 at 34.

50. The witnesses stated that for technicians travel time to unmanned central offices, Verizon isolated the travel time as a percentage of the total central office technician time. This amount was added to the cost studies for the appropriate type of hot cut. Ex. 3 at 34.

5c. Project Hot Cuts

51. Verizon has proposed the rate of \$45.47 for initial line project hot cuts and \$29.22 for each additional line for project hot cuts. Ex. 3 at Exhibit III-E. Messrs. Maguire and Richter testified that the project process is designed for CLECs who are willing to aggregate their orders by central office and due date.¹⁹ Ex. 3 at 15. A CLEC initiates the project process by contacting Verizon to request project treatment for a group of orders. The NMC and RCCC negotiate a due date, a "fall-out" date,²⁰ and a means to identify the orders in the project with the CLEC and the frame organization. The parties usually agree upon these dates within a week of the initial request. All orders in the project group that is identified by the CLEC and is in the same central office, and has the same due date, is assigned to a single RCCC coordinator. See Ex. 3 at Exhibit II-D.

52. The Panel testified that in many respects the basic process and the project process are identical. Ex. 3 at 16. The witnesses identified the principal differences between the basic process and the project hot cut process. First, in the project process, there are a

¹⁹The project hot cut process has also been termed the "bulk" process.

²⁰The "fall out" date is described as the fallback due date for lines that have dial tone problems that cannot be resolved on the day before the primary due date. Ex. 3 at 16.

minimum number of lines cutover, allowing for the efficient use of CLEC and Verizon resources. The due date for the cut over for the project process is negotiated rather than a standard interval. This procedure allows Verizon and the CLEC to schedule project work more efficiently depending upon their resources.²¹ For the project process, the CLEC LSRs are unique thereby facilitating identification of all orders included in the project. Verizon telephones the CLEC after completing each group of hot cuts in the project. Lastly, typically, the loops in the project process are cut over after normal business hours. Ex. 3 at 16.

5d. PROJECT IDLC HOT CUTS

53. For IDLC hot cuts, Verizon has proposed to charge the project rate of \$45.47 for an initial line and \$29.22 for each additional line plus an IDLC surcharge of \$81.10. Ex. 3 at Exhibit III-E. The total charge for an IDLC hot cut (without field dispatch charges) would be \$126.54 for the initial IDLC line and \$110.32 for each additional IDLC charge. The Panel testified that IDLC hot cuts require special provisioning because for customers served by IDLC equipped loops there is no direct appearance of an individual, analog voice-grade loop terminating at the central office frame. Ex. 3 at 7. In IDLC-equipped loops, the electrical signal generated at the customer's premise is converted into a channelized, digital DS0 format at a remote terminal. The DS0 channels in groups of 24 into DS1

²¹In testimony, the witnesses emphasized the coordination and streamlined procedure that accompanies the project process. The CLECs, RCCC, and frame technicians coordinate by calling the CLEC on the telephone after each group of approximately 20 lines in the project is cut over. Ex. 3 at 17. The CLEC and Verizon follow the same order for the lines to be cut over.

signal and transported (via fiber optic cable or some other high-speed digital feeder) to the central office. The IDLC traffic is broken into voice-grade DS1 signals directly to the digital line ports at the switch. Therefore, before a customer serviced by an IDLC-equipped loop can be cut over to a CLEC's switch, the customer must be moved to an all-copper loop or a Universal Digital Loop Carrier ("IDLC") loop. Ex. 3 at 7-8.

54. Messrs. Maguire and Richter testified that in order to switch the customer from IDLC technology to copper or UDLC, Verizon initiates a field dispatch to a technician to go to the Serving Area Interface ("SAI") where the copper distribution pair for the customer is located. To perform a hot cut, the distribution pair must be moved to the SAI to allow it to be manually cross-connected to either an individual copper pair or a sub-feeder pair associated with a UDLC system.²² Ex. 3 at 8; Ex. 3 at Exhibit II-B-1. The witnesses asserted that it generally takes two field dispatches for a hot cut on an IDLC-equipped loop. The first dispatch requires the technician to confirm that there are available replacement facilities (copper pair or UDLC). The second dispatch is on the due date for the hot cut when the technician moves the customer's service to the new facilities. Ex. 3 at 8-9. Verizon witnesses testified that because of workshops conducted during the pendency of the New York Commission's proceeding regarding the hot cut process, Verizon had decided to handle IDLC hot cuts as basic hot cut orders. Ex. 3 at 17.

²²Where there is no spare copper or UDLC facilities available at the SAI, the witnesses testified that Verizon must attempt a "pair swap" (also called a

55. The Panel witnesses explained that it is Verizon's customary practice to cut over a hot cut project in one central office for each manager's area²³ and two projects for a geographic area on a negotiated due date. Ex. 3 at 17. Currently, there is only one manager's area in Delaware. Verizon project hot cut guidelines provide that a minimum of 25 lines and a maximum of 150 lines be cut over per central office per due date. The Panel also stated that Verizon would discuss using a lower number of minimum lines for the project process in Delaware. Ex. 3 at 18. However, the Panel cautioned that there must be a reasonable minimum number of lines for the project process to be cost effective for both Verizon and the CLECs and to create efficiencies. Ex. 18.

56. As stated by Verizon's Panel witnesses, the efficiencies of the project process are derived from the streamlined working relationship that develops over time between Verizon and a CLEC as they learn together to coordinate the various tasks required before the due date for a large number of orders. The predictability of managing a relatively constant amount of work creates efficiencies in the work force process. Ex. 3 at 18.

57. Verizon's witnesses emphasized that even though the project process undertakes cutting over a larger number of lines than the basic process, the work involved for a project hot cut is not less (on a per line basis) than that for a basic hot cut. This is because physical wiring work is the majority of the work required for hot cut

"line and station transfer"). The Verizon technician at the SAI "swaps" the IDLC-equipped loop with another customer's copper pair loop. Ex. 3 at 8.

orders. The same amount of wiring is needed for each line regardless of whether orders are processed on a basic basis or as part of a project hot cut. Also, the project process includes steps, such as negotiation of the ordering interval that is not part of the basic process. Ex. 3 at 19.

IDLC Surcharge

58. In this case, Verizon proposes an IDLC surcharge of \$81.10 for each IDLC line in addition to any field installation or dispatch charges. Ex. 3 at Exhibit III-E. Verizon's witnesses stated that in order to produce the surcharge for IDLC lines, Verizon looked to its RCCC and SPC to identify all the relevant activities for this type of hot cut. Further, for an IDLC hot cut a new line for the loop must be placed at the distribution frame in the central office enabled for a cross-connect. A manual cross-connect must be performed once if a spare copper or UDLC facility to the SAI has already been established. Ex. 3 at 35. However, if neither a spare copper pair nor a UDLC facility to the SAI has not been constructed, cross-connect must be performed twice (once to move an established customer to a new facility and once to move the customer for whom the CLEC has requested a hot cut).

59. Messrs. Maguire and Richter further explained that the time to do the actual hot cut itself in the central office frame is not included in the cost study. *Id.* In order to find the time needed to do the wire transfer at the outside plant SAI, Verizon polled its plant engineers. Since sometimes a spare copper pair is available or

²³Verizon defines a "manager's area" as the region that includes the central

a UDLC facility is present, Verizon estimated how often such facilities were not present for a IDLC hot cut at the outside plant SAI. *Id.*

Batch Hot Cuts

60. The batch hot cut process, unlike the project process, provides efficiencies even when a CLEC is unable to aggregate orders by central office.²⁴ The batch process aggregates the orders of multiple CLECs for cut over in a single central office, whereas the project process aggregates multiple orders for a single CLEC in a particular central office. However, Verizon's witnesses contended that the real efficiencies of the batch process were derived from the fact it eliminates coordination costs. Ex. 3 at 19. Verizon manages the entire process from acceptance of a hot cut order to port activation. Verizon's witnesses contend that since Verizon manages the entire process the result is seamless migrations and lower costs to the CLECs. *Id.*

The Batch Hot Cut Process

61. For batch hot cuts, Verizon proposes the rate of \$35.53 for the initial batch line and \$25.46 for each additional batch line. Ex. 3 at Exhibit III-E. Messrs. Maguire and Richter testified that under the batch process, a CLEC can flag specified hot cut orders for batch processing. Each central office holds hot cut orders (usually between

offices a particular Verizon manager supervises. Ex. 3 at 17.

²⁴Verizon witnesses stated that the Company developed the batch process as the result of issues raised by the FCC concerning hot cuts in the *Triennial Review Order* and first submitted the process in the New York hot cut case. Ex. 3 at 19.

at least six but no more than twenty-six business days)²⁵ submitted for batch processing until a "critical mass" of orders is reached (i.e. the central office has a "batch" of orders).²⁶ The CLECs can use the WPTS system to determine the pending batch cut date before submitting their LSRs. Ex. at 19-20. When a number of orders have accumulated (the "critical mass"), the "batch" of hot cut orders are cut over at a single time. *Id.* at 20. Once there is a batch, Verizon re-dates the orders to reflect the new due date (generally, about six days after creation of the batch), sends the CLEC notification of the cutover date, and begins preparing for the cutover. Further, as a condition of using Verizon's "batch process," CLECs must authorize Verizon to submit the final number-port activation order to NPAC. Therefore, the need for Verizon and the CLEC to coordinate activities at cutover is eliminated. Ex. 3 at 20. See Ex. 3 at Exhibit II-E.

62. Messrs. Maguire and Richter testified that the advantages of the batch process is that it reduces the need for CLECs to coordinate with Verizon personnel in activating the port as with other hot cuts, thereby saving costs to the CLECs. For Verizon, the hot cut is processed during the technician's regularly scheduled visit thereby saving the Company additional costs for a dispatch to the central office. Since Verizon handles the entire cut over, the CLEC does not

²⁵Generally, Verizon technicians visit each central office every twenty-six days. The holding period is timed to coordinate the holding period with the scheduled technician's visit. Therefore, Verizon obviates the need to send out technicians for unscheduled visits. Ex. 3 at 21.

²⁶The \$64,000 question is how many orders are in a batch? Verizon's witnesses do not have a fixed number, rather they assert that in busy offices the batch can accumulate quickly, but in offices that are not busy it may take up to twenty-six business days for the batch to be processed. Ex. 3 at 19-20.

need to know the exact order in which the lines will be cut over. Therefore, Verizon's central office personnel have the flexibility to arrange the lines in a fashion that allows them to go between one cut and the next in a manner that makes sense for them at the time. This process somewhat reduces the amount of time spent on the cutovers. Ex. 3 at 21. However, the batch process does not apply to IDLC lines and to certain other loop types. Further, CLECs must have the ability to use WPTS in order to use the batch process. Ex. 3 at. 22-23.

63. The Panel witnesses observed that forward-looking work times were converted into forward-looking costs by multiplying the forward-looking work times by the applicable trended labor rates. The labor rates for the nonrecurring costs were based on the 2002 basic wage expense for each Job Function Code, divided by the total productive hours for employees within that Code. Ex. 3 at 35-36.

64. The witness noted that employees' responses from the nonrecurring time surveys were used to calculate the average times and variances for the nonrecurring work activities. Ex. 3 at 38. These results were included with the other NRC Model inputs, such as the Typical Occurrence Factors, FLAFs, and labor rates, to calculate the precision with which the nonrecurring costs are estimated. See Ex. at Exhibit III-D.

Expedited Service

65. In this case, Verizon proposes to charge CLECs a fee of \$56.38 for each expedited hot cut in addition to any other applicable

charges. Ex. 3 at Exhibit III-E, l. 10.²⁷ Verizon did not include any testimony in either its direct or reply testimonies concerning the need for this charge. Verizon does not currently charge for expedited service. Tr. 2791. For example, under Verizon's proposals, expedited service for two-wire hot cuts would be:

| <u>Initial Line</u> | <u>Add'l Line</u> | | <u>Expedited</u> | = | <u>Total</u> |
|-----------------------|-----------------------|---|------------------|---|--------------|
| Basic w/ WPTS \$57.51 | | + | \$56.38 | = | \$113.89 |
| Basic | \$31.09 | + | \$56.38 | = | \$ 87.97 |
| Project \$45.47 | | + | \$56.38 | = | \$101.85 |
| Project | \$29.22 | + | \$56.38 | = | \$ 85.60 |
| Batch \$39.53 | | + | \$56.38 | = | \$ 95.91 |
| Batch | \$25.46 | + | \$56.38 | = | \$ 81.84 |

66. For an IDLC, the charges for an expedited basic hot cut would be:

| <u>Initial Line</u> | <u>IDLC Surcharge</u> | <u>Expedited</u> | <u>Dispatch</u> | = | <u>Total</u> |
|----------------------|---------------------------|------------------|-----------------|---|--------------|
| Basic w/WPTS \$57.51 | +\$81.10 | + | \$56.38 | + | \$110.02 |
| | | | | = | \$305.01 |

67. Mr. Maguire articulated Verizon's rationale for the charge which is that currently Verizon performs the service without a charge. Since expediting an order requires Verizon "to rush around and process the orders," Verizon asserts that it should be compensated. Tr. 2794. Verizon's witnesses did not know how often CLECs requested expedited service. Tr. 2796-2797. At present, Verizon does not track the

²⁷ The cost model inputs that develop the expedited rate of \$56.38 are found

request for expedited service because it does not charge for them. Tr. 2797. The witness stated that to develop the rate they used the cost data that was already in the study and, rather than conduct additional time surveys, they used an approved New York rate for the times relating to associated activities. Tr. 2800-2801.

Disconnect Costs

68. The Panel asserted that disconnect costs in the context of a hot cut refer to an existing retail, UNE-P, or resold line, or a CLEC UNE-L line that is transferred to a requesting CLEC's UNE-L arrangement so that an end-user can receive service through the CLEC's switch. Ex. 3 at 40. When the end-user begins to receive service through the CLEC's switch, Verizon must physically disconnect the loop from its frame. *Id.* The witnesses clarified that in this case Verizon has not included any proposal for disconnect cost in this nonrecurring cost study. Rather, the witness stated that "Verizon proposes that the disconnect costs approved by the Commission in the UNE proceeding apply when the CLEC requests disconnection of the UNE-L it acquired through the hot cut." Ex. 3 at 40; *see also* PSC Order 5967. Therefore, when the requesting CLEC serving a customer using UNE-L arrangements requests disconnection of Verizon's service, "Verizon will charge the CLEC the applicable Delaware disconnect rate." *Id.*

at Ex. 3 at Exhibit III-A, p. 29 of 35.

The VERIZON-CAVALIER HOT CUT PROCESS

69. Messrs. Maguire and Richter vehemently disputed Cavalier's allegation that the hot cut process Verizon uses with Cavalier is specially crafted for Cavalier. Ex. 3 at 41. Cavalier contends that the "Cavalier Process" (as Cavalier has named it) is not any of the processes - basic, project, or batch - that have been previously described. Verizon objects to Cavalier's assertion the "Cavalier process" provides Verizon with service efficiencies that translate into decreased costs for Verizon. Verizon testified that the so-called "Cavalier process" is that Cavalier issues an LSR requesting the standard five-day interval to which Verizon responds with a Firm Order Confirmation ("FOC"). *Id.* Verizon also posts the order on WPTS. *Id.* Verizon contends that the only unique feature of the process that Cavalier has ever identified is that all of Cavalier's orders are worked on a daily basis at a set time chosen by Cavalier. Verizon contends that the process it uses with Cavalier is its basic hot cut process. *Id.*

70. In fact, Verizon's witnesses stated that Cavalier submits basic hot cut LSRs with the same due date and frame due time. The Panel contended that Verizon does not provide any special treatment for Cavalier's orders, but processes the orders as it would with any basic hot cut request. *Id.* The witnesses asserted that Verizon works Cavalier's hot cut orders just as it would any other CLEC ordering basic hot cuts. Ex. 3 at 42. Verizon maintains that simply because the orders are submitted by a single CLEC, that fact alone has no impact on the processing of the orders and the work that has

to be done to complete the orders. Verizon notes that if Cavalier submitted orders for all of the 33 Delaware central offices, it would have to dispatch 33 technicians just as it would if Cavalier requested different dates or frame due time for each of the orders in the 33 central offices. Verizon's witnesses opined that:

The only economies of scale achieved by Cavalier's batching of its orders benefit Cavalier, not Verizon, because Cavalier knows to activate all the ports for its pending hot cut orders at a single time. Thus, Cavalier's current hot cut process does not achieve the same efficiencies (and associated costs) reflected in Verizon's cost study for additional lines included in the same order. Rather, Verizon must work each line as an individual order in the applicable work centers. Cavalier's own decision to batch its own orders and lower its own costs by porting all the hot cut orders it submits in Delaware at a single time does nothing to change Verizon's costs. The basic hot cut rate proposed by Verizon therefore should apply to the "Cavalier" process. To the extent Cavalier wishes to lower its hot cut costs, Verizon is also open to discussing Cavalier's use of the project process. Ex. 3 at 42.

71. Verizon's witnesses emphasized that the "Cavalier-Verizon Process" is simply Verizon's basic hot cut process. Verizon maintains that other CLECs will get the same service from Verizon depending on the type of hot cut they order and Cavalier will continue to receive the same service from Verizon that it has always received. Ex. 3 at 43.

The Interim \$35 Hot Cut Rate

72. Mr. Richter testified that the nonrecurring costs submitted in this case were higher than the \$35 interim rate ordered by the Commission in PSC Order No. 5967 (June 4, 2002) because the interim

rate was based upon the New York Commission's Order which applied an 8% reduction across-the-board to all costs.

B. Cavalier's Testimony

73. Cavalier submitted the pre-filed direct testimony of its panel members, Larry Sims, Vice President of Operations, and Martin W. Clift, Jr., Vice President of Regulatory Affairs. Ex. 18. The purpose of Messrs. Sims and Clift's testimonies was to demonstrate that none of Verizon's proposed processes (basic, project, and batch) fit the Cavalier-Verizon hot cut model, the price of a 2-wire initial hot cut should be \$13.83, the price for each additional hot cut should be \$8.25, and the hot cut price of \$13.83 is consistent with prices in neighboring states.²⁸ Ex. 18 at 3-4. Messrs. Sims and Clift testified that Cavalier is one of the largest UNE-Loop purchasers in the Verizon footprint and it is the largest CLEC operating in Delaware. Ex. 18 at 17. The Panel related that Cavalier has been performing hot cuts in Delaware since 2001. Currently, Cavalier installs **[BEGIN PROPRIETARY] XXXXXX [END PROPRIETARY]** lines per month across Verizon's territory of which approximately **[BEGIN PROPRIETARY] XXXXX [END PROPRIETARY]** lines are per month Delaware installations. Ex. 18 at 17.

74. Cavalier contends that underlying the nonrecurring costs proposed by Verizon is its assumptions regarding disconnect costs. Ex. 18 at 3-4. Cavalier asserts that disconnect costs should be applied in a non-discriminatory manner. Cavalier argues that it does

²⁸The pre-filed testimonies of Messrs. Simms and Clift provide the price of \$14.40 for a 2-wire initial hot cut and \$8.77 for each additional line. At the evidentiary hearings, these figures were changed to \$13.83 and \$8.25, respectively. Tr. 2918.

not charge disconnect costs to its retail customers and that Verizon should not impose such charges on its wholesale UNE-L customers, such as Cavalier. According to Cavalier, the functions Verizon performs for retail customers is virtually identical to those it performs for its wholesale customers. In addition, Cavalier asserts that Verizon has not met its burden of showing which services these charges are levied against, in what amounts, and for what work functions. Ex. 18 at 4. Cavalier contends that Verizon discriminates against Cavalier for "stand-alone" orders and asserts that "Verizon's disconnect costs should not be included in any connection or disconnection fees assessed upon Cavalier, until the discriminatory practices are corrected." *Id.*

75. Cavalier contends that the arrangement it has with Verizon, the so-called "Cavalier-Verizon Process," is a hot cut process not used by any other CLEC in Delaware. *Id.* The unique feature of the arrangement is that Cavalier and Verizon perform hot cuts all over the State of Delaware at a prearranged time each day (e.g., 10:00 a.m.) *Id.* at 5. Cavalier contends that the Cavalier-Verizon Process provides certainty and predictability to Verizon because it is better able "to manage the flow of information and its work teams." *Id.* at 6. Cavalier asserts that the benefits that inure to Verizon allow it to economize its RCCC time and central office time. The Cavalier and Verizon employees who perform these cutovers work with each other daily thereby learning the areas where problems may arise and how to correct them. The process facilitates day to day communication between the companies and smoother installation of hot cuts. Cavalier

contends that "[t]hese economies have not been accounted for on a micro basis, compared to any specific Verizon work function, but rather [they have been] expressed in an overall estimate of the hot cut installation costs." *Id.* at 6.

76. Cavalier's witnesses noted that in PSC Order No. 6507, this Commission approved the "New York adjusted rates" which reduced Verizon's proposed rates by 8 percent. *Id.* at 7. Cavalier's Panel testified that its proposed rates (\$13.83 per 2-wire initial order and \$8.25 for each additional line) are a refinement of the Commission's rates approved in PSC Order No. 6507.²⁹ Cavalier's most significant refinement to Verizon's cost study is the reassessment of the "connect time."

77. Cavalier contends that Verizon's surveys are not valid. The surveys were based on responses of Verizon employees who completed the survey forms in New York, Massachusetts, and Maryland in September 2003. Cavalier asserts the surveys are inherently unreliable, biased, and the times are not based on forward-looking technology. Cavalier contends that Verizon's practice of averaging the work times "hard wires" the inefficiencies into the cost model in a manner that violates TELRIC principles. Ex. 18 at 10. Further, Cavalier notes that there were 68 individual survey forms completed by 20 people. One person completed 13 forms and one person completed only one form. *Id.* Therefore, averaging the survey results skews the time reported in favor of the experience of one individual whose time represents 20

²⁹Cavalier's pre-filed direct testimony contains a summary of its revisions to Verizon's cost study at Ex. 18 at 7.

percent of the total. The survey time recorded here may not reflect the time produced by a broader sample of respondents.

78. The results for the central office functions "analyze, pre-wire, perform hot cut, complete and pull disconnect" demonstrate a 300% to 1300% variance. Cavalier contends that even if Verizon has applied a "trimmed mean" analysis to its results it is not adequate to capture the most efficient processes. Cavalier maintains that only those times that reflect the most efficient work processes should be used to calculate costs because any manual processing should be based upon the most efficient employees' work times.

79. Cavalier contends that the respondents' reported times were unreliable because the survey process provided time results that were valid. For example, one technician reported 6 times out of 7 that pre-wiring took exactly 8 minutes, whereas another technician reported that pre-wiring work took exactly 20 minutes on 4 out of 7 responses. Ex. 18 at 12. The responses from these two individuals represent one-third of the survey responses. Ex. 18 at 19.

80. Cavalier argues that the central offices surveyed in Verizon's cost study (45 surveys from 4 central offices in New York state) have very little similarity to Delaware's central offices where Cavalier is collated in **[BEGIN PROPRIETARY] XX [END PROPRIETARY]** offices. Ex. 18 at 13. Unlike the Delaware central offices, the New York central offices included in the survey have termination frames that encompass multiple floors which adds to the cost of activities associated with performing hot cuts. Ex. 18 at 13.

81. Cavalier also criticized the results of Verizon's survey results for its RCCC. The RCCC coordinates the work between the Verizon central office frame technicians and Cavalier's team. Ex. 18 at 14. Most of the RCCC's work has been computerized using WPTS. There were 33 survey forms completed by 22 technicians in September 2003 who were located in Boston, Massachusetts and in Hunt Valley, Maryland. The Hunt Valley technicians consistently reported substantially higher work times than the technicians in Boston. For example, the Hunt Valley respondents reported work time ranging from 19.67 minutes to 86 minutes per line. Ex. 18 at 14.

82. Cavalier impugns Verizon's cost study as not being TELRIC compliant because practically every activity for which there is a cost is based on averaged work times. Cavalier contends that averaging employees "bloats" the reported times leading to an inflated cost. Ex. 18 at 15. Cavalier's argument regarding Verizon's use of statistics to support its cost model can be summarized in this observation:

[A]ccompanying the time estimates is a supposedly "Robust Regression Analysis" that attempts to statistically dazzle the reader into believing its [Verizon's] survey meets statistical standards. But Verizon's use of dynamic adjectives, such as "Rigorous" and "Robust," does not make it so. (Indeed, one of the more humorous chapters of Verizon's NRC model history is that, after the Pennsylvania PUC criticized Verizon for relying on employee surveys instead of a true "time and motion study," Verizon's response was to continue using employee surveys but this time, putting the proverbial lipstick on the pig, labeling it a "self-directed time and motion study.") Ex. 18 at 15.

Cavalier asserts that Verizon's costs are premised upon a "means test" of averaging the work time for various functions. A means analysis does not encourage efficiencies and new operating processes.

83. Cavalier contends that its estimates of work times used to develop its proposed rates (2 wire \$13.83 initial and \$8.25 additional) are more reasonable than Verizon's because they are more consistent with the rates actually in place in other jurisdictions where Verizon operates. Ex. 18 at 18. Cavalier notes that the rate in Virginia is \$5.01, in the District of Columbia it is \$2.18, and in Pennsylvania it is \$1.49. Further, the witnesses stated that Verizon's cost model had been rejected by the FCC's Wireline Competition Bureau because it was statistically invalid, relied heavily on manual processes, and was based upon inconsistent assumptions. Ex. 18 at 19. Instead, the FCC reiterated its principle that hot cut nonrecurring costs should be based upon a forward-looking model such as the AT&T/WorldCom NRC model. Ex. 18 at 19-20.

84. Contrary to Verizon's representation, Cavalier asserts that Verizon's proposed rates do include disconnect costs. Ex. 18 at 20. Further, Cavalier contends that Verizon intends to charge it disconnect costs in all disconnections *except* when the disconnect is the result of a Winback, *i.e.* Cavalier loses the customer to Verizon or to another CLEC. Ex. 18 at 21. Cavalier contends that it is unfair to charge it disconnect costs in any situation, particularly when Verizon could use the loop for some other purpose just one day later after it was disconnected. *Id.* Cavalier maintains that Verizon "double recovers" the cost associated with disconnection because: (1)

it charges Cavalier a disconnection fee when a Cavalier customer disconnects a line to move away from the area; and (2) it recovers a disconnection charge (in the connection charges) when that loop is reused to service a Verizon retail customer. Ex. 18 at 20-21. Cavalier contends that it should not be charged any disconnection fees because any loop returned to Verizon is available for connection through which Verizon will recover a disconnect fee in the new customer's connection fee. Ex. 18 at 20-23.

IV. DISCUSSION

85. The Commission has jurisdiction in this matter pursuant to 26 Del. C. § 303(b).

1. *Let's Make A Deal*

86. This Commission should never forget that in response to PSC Order No. 6473, which required Verizon to submit new permanent hot cut rates, the Company invited the Commission to "make a deal." Basically, Verizon's deal to the Commission was that if the Company was not made to "prove" the basis for its proposed rates by an examination of them in litigation, the Company would offer rates that were slightly below the \$35.00 promotional rate. The bargain rates were approved as interim rates pursuant to PSC Order No. 6473 on September 27, 2004.

- Basic with WPTS: \$33.44 (2-Wire Initial), \$23.07 (2-Wire Additional), \$52.96 (4-Wire Initial), \$33.65 (4-Wire Additional);
- Project: \$26.16 (Initial), \$19.86 (Additional); and
- Batch \$21.33 (Initial), \$16.97 (Additional).

87. However, should the Commission send the case to litigation, which it did, Verizon would stand firm on its assertion that its nonrecurring costs supported its higher "litigation rates" which are:

- Basic with WPTS: \$57.51 (2-Wire Initial), \$31.09 (2-Wire Additional), \$87.15 (4-Wire Initial), \$43.81 (4-Wire Additional);
- Project: \$46.99 (Initial), \$29.22 (Additional); and
- Batch \$39.53 (Initial), \$25.46 (Additional).

Therefore, it is Verizon's self-styled "litigation rates" that are the subject of the Commission's deliberation. Its nonrecurring cost study, which has been reviewed during the course of this litigation, is the foundation upon which these rates are based.

88. As a general observation, Verizon proffered the testimony of two witnesses who did not participate in managing, designing, data gathering, analyzing or calculating the costs for its NRC. On cross-examination, these witnesses repeatedly admitted that they did not have the "second level" knowledge necessary to answer specific questions about the cost study. Their lack of detailed knowledge deprived the examiner of learning much beyond the statements contained in the prefiled testimony. It was therefore virtually impossible to undertake a meaningful test of the assumptions and data underlying the results found in the cost study.

89. Further, I find that it strains the bounds of reason for Verizon to assert that since 2002 it has charged either \$35.00 or some slightly less figure (\$33.44) for all types of hot cuts but now proposes to this Commission that it approve rates that are higher than the \$35 interim rate. To accept Verizon's proposed rates would require the Commission to believe that over the last four years the

Company has not instituted any technological improvements or enhancements to the Company's internal processes which have produced efficiencies in performing hot cuts. This is simply not true. Verizon would have this Commission believe that in the last four years its employees are not faster and more efficient at cutting over hot cuts; rather, its employees are in fact slower and more incompetent. The record in this case does not in any way support this ludicrous conclusion. The evidence overwhelmingly demonstrates that Verizon's managers and employees consider the provision of hot cuts to CLECs to be a valuable part of its wholesale business and that it is constantly exploring ways to improve the process and to reduce costs. In fact, Verizon's witness Thomas Maguire, Senior Vice President for Ordering, Provisioning and Service to CLECs carried a "PDA" that gave him the number of hot cuts that were performed in Delaware each day. Mr. Maguire testified that in the year 2004, there were **[BEGIN PROPRIETARY] XXXX [END PROPRIETARY]**hot cuts performed in Delaware and that the number was rising. Tr. 2875-2876. The record of this case demonstrates beyond any scintilla of doubt that it is essential for CLECs to have reasonable terms and conditions by which they can obtain hot cuts. The ability of CLECs to have competitive rates for hot cuts is a crucial component to nurturing and fostering telecommunications competition in Delaware.

90. **Verizon's Hot Cut Processes.** Verizon is uniquely poised to arrange its service offerings in a manner that it believes is user-friendly for its customers as well as utilizes the resources of its employees and its network in a manner that is safe, efficient, and

cost-effective. The reasons provided for its hot cut groupings appear to have a sound basis designed to capture various levels of scale, economy, and efficiency. For example, it is entirely appropriate that Verizon should offer a project process in which a CLEC has the opportunity to aggregate hot cut orders for a particular central office for a date certain cut over. Therefore, I find that the basic, project, and batch hot cut processes are reasonable service offerings. For those CLECs that do not have a sufficient number of orders to qualify for the project process in a specified central office, and there is no particular urgency for the cutover, the batch process is a reasonable service offering with an applicable discount per line. However, the rates proposed for these services are a product of Verizon's cost model in this case with which I find many deficiencies. These will be discussed below.

2. Verizon's Nonrecurring Cost Model

91. Verizon has the burden of proving, by a preponderance of the evidence, that the nonrecurring costs filed in this case support the rates it has submitted for the Commission's approval. Under the FCC's TELRIC pricing standard, the costs must be forward-looking based on "the use of the most efficient telecommunications technology currently available and the lowest cost network configuration."³⁰ Verizon contends that its so-called time and motion study (*i.e.* the surveys completed by its employees) methodology "is designed to capture how long it takes workers to perform hot cut tasks currently, not how long it should take them to perform those tasks in a forward-

looking environment." Verizon's Post-Hearing Brief at 11. Verizon maintains that its process of using averaged times, applying its so-called forward-looking factors and applying its overhead loadings results in forward-looking costs. The forward-looking factors are the typical occurrence factors (TOF) and the forward-looking adjustment factor (FLAF). On cross-examination, Verizon's Panel witnesses stated that they were not aware of any statistical data, criteria, or analysis that supported the FLAF. Tr. 2667-2668. The most forward-looking characteristic about the forward-looking cost is Verizon's repeated, almost mantra-like use of the term "forward-looking."³¹ However, saying it repeatedly does not make it so.

92. Verizon has not demonstrated that the components of its purported time and motion study takes into account the most efficient telecommunications technology currently available or that it is based upon the lowest cost network configuration. Verizon merely asserts that "[a]verage work times are the best measure" of how long tasks associated with hot cuts should take to perform. However, mere assertion does not establish that the cost study is forward-looking. While I am mindful that many of the activities related to performing hot cuts are manual tasks, Verizon has not demonstrated the times on which its costs are based represent the next increment of time for the associated tasks.

³⁰Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2d 218, 250 (D. Del 2000) (citing 47 U.S.C. §252(d) and 47 C. F. R. §51.505(b)(1)).

³¹ Other than its use of its WPTS system, which is admirable, there is no other specific technology component identified as forward-looking technology that is associated with the hot cut process.

93. Verizon's witness Richter did not appear to be familiar with many of the details of the cost study. For the central office portion of the study, Mr. Richter admitted that he did not know how many New York central offices were surveyed. Further, he did not know whether Verizon had any written criteria upon which it selected the central offices to be surveyed. Tr. 2580. However, he stated that there were instructions provided with the surveys as to how to complete them. Tr. 2575, 2580. Richter did not know whether any statistical calculations to determine the statistical validity of the same size were performed prior to sending the surveys to the central offices. Tr. 2576, l. 17-18. He also did not know how many central offices responded to the survey. Tr.2576. Nevertheless, he asserted that it was a sufficient number of surveys to provide a reliable sampling. Tr. 2575, 2576. Mr. Richter also admitted that, other than the relationship between time and the number of lines, Verizon did not test whether any other variables had a statistically significant impact on the time spent in performing hot cuts in the central office. Tr. 2593-2594.

94. Mr. Richter believed that the sampling was statistically relevant according to the statisticians who performed the confidence level checks. Tr. 2577. Verizon's witness was able to provide how many central offices there were in New York from which the central offices surveyed were a subset. Tr. 2687. Mr. Richter admitted that there was no information in the cost study concerning the statistical validity of the sample size other than the confidence levels of the costs actually derived from the study. Tr. 2578, l. 9-16.

95. Throughout the course of his cross-examination, Verizon's Witness, Larry Richter, testified that he could not answer many of the questions asked of him because he was not a statistician and that he did not have an adequate statistical background to respond to the questions. However, Cavalier elicited testimony that Mr. Richter was Verizon's witness in the Pennsylvania hot cut case that was held approximately two months before the evidentiary hearing in this case. During the Pennsylvania case, he was asked many of the same questions or questions of the same subject matter for which he testified that he was unqualified to answer because of his lack of statistical background. Tr. 2701-2707. I note that despite Verizon's knowledge of, and participation in, the Pennsylvania hot cut case, the fact that one of their counsel (Ms. Ronis) represented the Company in that case and in the instant case, and the fact that the same counsel from Cavalier (Messrs. Perkins and Stubbs) were in both cases, Verizon never requested to submit supplemental testimony in this case concerning its cost model, including its survey process. Further, Verizon never asked to provide an additional witness, presumably a statistician, who could answer the statistically based questions that were explored in both jurisdictions. Verizon should have reasonably expected to face in this case the same questioning about the statistical aspects of its cost model that it faced in the Pennsylvania case. For the above reasons, I find that Verizon has failed to prove by a preponderance of the evidence that its cost study is statistically valid.

96. After the Pennsylvania case, Mr. Richter described his follow-up efforts to gain further knowledge of the matters he was asked in Pennsylvania as follows:

Q. Mr. Richter, please name one thing you now know about those surveys that you did not know at that time [of the Pennsylvania evidentiary hearings]?

A. (Richter) Which particular surveys? Any of them, or just the central office portion?

MS. RONIS: Anything.

MR. RICHTER: I have spent time going through each and every one of the surveys looking for different items, that being did we make any notes on any of these sheets that would tell us that some of the numbers were changed. I went through to make sure that every one of the sheets were initialed off on, that they were looked at. I've looked at the sheets that we have excluded to see if there was anything I could come up with to -- just to make sure that the reason for the exclusion was valid. I went through the sheets to look at the inputs to make sure I could read them. Tr. 2708-2709.

97. However, when asked whether Mr. Richter had sought the advice of Verizon's statisticians concerning the surveys, he responded that one of the statisticians *could be produced* to answer questions in this proceeding. Tr. 2709. Mr. Richter implied that Verizon had statisticians available to attend the hearing *if anyone wanted to talk to them*. Verizon's attitude concerning supporting its proposed rates is most curious. Verizon alone carries the burden of proving the reasonableness of its proposed hot cut rates. Not once throughout this proceeding did its counsel ever request leave to produce a statistician. Cavalier would have no reason whatsoever to request

Verizon's statistician to testify since in doing so it would expose itself to the risk that information supporting Verizon's proposals could be elicited to Cavalier's detriment.

98. In order to identify activities and assign costs for such activities in the RCCC and the central office frame that may have variable and non-variable components, Verizon's witnesses testified that a robust regression analysis was applied to the data.³² The witness opined that for those activities with a sufficient number of samples, Verizon used the "a + b x" results where the t-statistic for both the intercept (non-variable component) and slope (variable component) were "high enough to indicate a strong relationship in the data." Ex. 3 at 34. While I understand and accept that utilizing a robust regression analysis is a legitimate form of data analysis, Verizon has failed to provide an intelligent interpretation of the results except to assert that its nonrecurring cost study is within statistically acceptable precision levels. There is no evidence supporting why the t-statistic used by Verizon is relevant or in the appropriate range. Further, there is no discussion about the appropriateness of the sample size. Therefore, Verizon's bald assertion, without more, does not support the conclusion that its nonrecurring cost study is a statistically relevant regression. I find that Verizon has failed to establish by a preponderance of the evidence that its regression analysis is based upon statistically

³² Verizon's testimony regarding its regression analysis is found at Ex. 3 at p. 43 and in the transcript at Tr. 2587, 1.22- 2594, 1.20. Verizon states that it provided Cavalier with all of the statistical information used to compute its regression analysis. Tr. 2589. However, Verizon did not request that this data to be placed into evidence in this case.

relevant and appropriate data and that its robust regression analysis is valid.

99. In reviewing the hot cut rates of neighboring jurisdictions, Verizon's counsel cautioned that the rates in Pennsylvania (\$1.49), Virginia (\$5.00), and the District of Columbia (2.18) were all established in cases that did not specifically involve hot cuts. Tr. 2787-2788. The point is that for the last two to three years, Verizon has charged CLECs in the mid-Atlantic region low rates for hot cuts. Verizon's history amply demonstrates that hot cuts can be performed for these rates. At least in Pennsylvania, Verizon did not obtain any better result in its hot cut specific case than it did in its global nonrecurring costs case. In both cases, its cost model was rejected.

3. Gross Revenue Loading Factor ("GRL")

100. The GRL is the factor that Verizon applies to its costs representing expense loadings related to regulatory assessment fees, uncollectible revenues, and gross receipts tax. The cost study filed in this case provides a GRL of [BEGIN PROPRIETARY] XXXX%.[END PROPRIETARY] Except for noting that billing related to WorldCom and 9/11 had been removed from the uncollectible amount, Mr. Richter was unable to provide any further details concerning the sources of data comprising the uncollectibles. Tr. 2839. In fact, Verizon's data underlying the uncollectible portion of the cost study reveals that for the year 2003 Verizon did not have any bad debt. Tr. 2844. I find for the above-stated reasons, that Verizon has not established by

a preponderance of the evidence presented that its GRL is reasonable and appropriate.

4. Cavalier-Verizon Process

101. Cavalier contends that its so-called "Cavalier-Verizon Process" produces greater efficiencies and cost-savings for Verizon because the process assures Verizon of certainty and predictability. The so-called "Process" is an arrangement with Verizon whereby Cavalier and Verizon perform hot cuts throughout the State of Delaware at 10:00 a.m. each day. I have no doubt that since Cavalier is the largest purchaser of UNE-L loops in Delaware the two companies have formed a close working relationship that is efficient and produces cost-savings for both companies. As an intuitive axiom, this statement must be true. However, I do not agree with Cavalier that this arrangement in itself has produced demonstrated cost savings that should be (or can be) translated into the prices charged by Verizon for hot cuts. The record does not contain any exhibits, studies or data that empirically support Cavalier's assertion. I am not impressed by the so-called "uniqueness" of the Process. It appears that the Cavalier-Verizon Process is a modified "project process" (as termed by Verizon) designed to suit the needs of Verizon's largest and best wholesale customer in the state. Under Verizon's definition, a Project Process aggregates all orders requested by a single CLEC for cutover in a particular central office on a specified due date. With the Cavalier-Verizon Process, the single CLEC is Cavalier, the central office is expanded to be all central offices in the state, and the due date for cutovers is 10:00 a.m. on the fifth day. Verizon must still

perform the same LSR order processing, tracking, pre-wiring, and "lift and lay" procedure that it does with every hot cut order requested by a CLEC. For the reasons stated, I find that Cavalier has not established by a preponderance of the record evidence that the "Cavalier-Verizon Process" provides Verizon with any quantifiable cost-savings that should be reflected in Verizon's nonrecurring cost study.

5. Disconnect Costs

102. The disconnect costs referred to in this case relate to the end-user customer who leaves the network entirely. Tr. 2861-2862. The customer may die, move to another state, obtain wireless service, migrate to cable telephony, use VoIP service or, in some other manner, leave the network.³³ In this case, Verizon intends to charge a disconnect fee in accordance with the rates established by the Commission in PSC Order No. 5967 (June 4, 2002). Ex. 3 at. 40. Since Verizon did not make any proposal to change or modify the disconnect rate established in PSC Docket No. 5967 relating to customers who completely leave the network, I find that there is no evidence squarely presented in this case on which to review the Commission-approved rate. I note that Verizon does not intend to charge disconnect costs for Winbacks; that is customer migration from Cavalier to Verizon or Cavalier to another CLEC. However, I suggest

³³The disconnect charges that Verizon intends to impose are not related to Winback cases where a customer returns to either Verizon or a CLEC from whom it previously was a customer. Tr. 2864. Verizon emphatically represented that the disconnect charges involved here are not those related to Winbacks. Further, the position taken by Verizon in this case is not intended to impact or effect in any way a settlement that has been reached between Verizon and Cavalier concerning Winbacks.

that the Commission explore the issue that Verizon is double recovering disconnect by including the charge in its up-front installation costs and then charging it on the back end for all line terminations that are not Winbacks. Cavalier requests that the Commission deny Verizon the ability to charge disconnect fees until it demonstrates which services these charges are levied against, in what amounts, and for what work functions. Ex. 18 at 4. I do recommend to the Commission that the disconnect charge appears to have the potential to be used discriminatorily because on its face it does not appear that Verizon would know whether a migration was a CLEC to CLEC migration or the customer was leaving the network. In the first instance, Verizon would not charge a disconnect fee (how could it?) but if the customer was supposedly leaving the network then a disconnect charge would apply, despite the fact that Verizon does not know if the customer is leaving the network entirely. For these reasons, I recommend that the Commission suspend indefinitely Verizon's ability to charge a disconnect fee in accordance with the rates established by the Commission in PSC Order No. 5967 (June 4, 2002) pending a review of the charge and the manner in which it is applied.

6. Proposed Expedited Service Charge of \$56.38

103. Verizon has failed to demonstrate by a preponderance of the evidence that an expedited service offering is warranted or that the charge proposed for the service offering is just and reasonable. I do not disagree with Verizon's witnesses that requests for expedited service causes Verizon's employees to rearrange orders, commit

additional personnel to complete tasks and generally, "to rush around and process the orders." Tr. 2794. Further, I believe that it may be reasonable to assess some sort of charge when a CLEC orders a cutover for a particular time and then decides it is needed at an earlier date. Tr. 2793. Nevertheless, there has been no evidence in this case concerning the number of requests, the frequency of these requests and whether there is any discrete cost associated with the expedited request. Simply requiring a technician who is already on the job to finish an additional one or ten service orders does not make the case that there should be a charge for expedited service. I find therefore that there is not sufficient evidence on this record to support a charge for expedited service.

V. SUMMARY OF RECOMMENDATIONS

104. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

A. That the Commission reject Verizon's nonrecurring cost model as it has failed to demonstrate by a preponderance of the evidence that its model is just and reasonable;

B. That the Commission find that Verizon has failed to establish that its nonrecurring cost model is TELRIC-compliant, based upon a valid time and motion study, that its gross revenue loading factor ("GRL") is reasonable, or that the model is otherwise statistically valid;

C. That the Commission find that Verizon has failed to demonstrate by a preponderance of the evidence that either its litigation rates or its settlement rates are just and reasonable;

D. That the Commission reject, based upon the evidence presented in this case, Cavalier's proposal to change Verizon's disconnect charge, as set by this Commission in PSC Order No. 5967 (June 4, 2002);

E. That the Commission reject Verizon's proposal to charge an expedited service fee of \$56.38;

F. That the Commission find that Cavalier has not demonstrated that its so-called "Cavalier-Verizon Process" has provided Verizon any additional quantifiable efficiencies. I recommend therefore that the Commission reject Cavalier's proposal for Cavalier-specific hot cut rates and

G. That the Commission find that Verizon has offered hot cut rates in neighboring jurisdictions, such as the Commonwealth of Pennsylvania in the amount of \$1.50, in the Commonwealth of Virginia in the amount of \$5.00 per hot cut, in the District of Columbia for \$2.18 per hot cut and in the State of Maryland for the amount of \$35. I recommend that the rate for all hot cuts in the State of Delaware should be no more than \$5.00 for an initial basic hot cut, \$2.50 for an initial project hot cut, and \$3.75 for an

initial batch hot cut. Further, I recommend that rates for each additional line for all categories of hot cut be discounted in the same proportion as for Verizon's proposed "litigation rates" which are at issue in this case. Accordingly, I recommend that the Commission approve hot cut rates as follows:

- Basic with WPTS: \$5.00 (2-Wire Initial), \$2.70 (2-Wire Additional), \$7.58 (4-Wire Initial), \$3.81 (4-Wire Additional);
- Project: \$2.50(Initial), \$1.55 (Additional); and
- Batch \$3.75 (Initial), \$2.42 (Additional).

Respectfully submitted,

Dated: October 12, 2006

/s/ Ruth Ann Price
Ruth Ann Price
Hearing Examiner