

**STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
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January 30, 2004

Hon. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals II  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Reply Comments of the New York State Department of Public Service in the Matter of the Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers; WC Docket No. 03-173.

Dear Secretary Dortch:

The New York State Department of Public Service (NYDPS) submits these reply comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking (NPRM) published in the October 17, 2003 Federal Register.

Various parties have questioned the appropriateness of the pricing methodology for Unbundled Network Elements (UNEs) known as Total Element Long Run Incremental Cost (TELRIC). However, there is one issue that requires further comment. The Verizon Telephone Companies (Verizon) state in their comments that their study "demonstrates that UNE rates in place between 1997 and 2002 have already resulted in a substantial shortfall between the wholesale revenues Verizon has received for the UNEs it provided to CLECs and Verizon's historical investment in, and the associated operating expenses for, the facilities it has to provide those UNEs."<sup>1</sup> Verizon states further that from 1997 through 2003, in New York, Verizon

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<sup>1</sup> Verizon's comments, page 95.

Honorable Marlene H. Dortch  
Secretary, FCC  
January 30, 2004

incurred approximately \$2.4 billion in costs to provide UNEs that were not recovered by TELRIC rates.<sup>2</sup>

The NYDPS would need substantial time to audit and render an opinion on Verizon's study results. The \$2.4 billion is claimed to be the losses on UNE leases during 1997-2003 as a result of using TELRIC rather than Verizon's actual (or embedded) costs. To the extent that Verizon contends that its UNE rates do not recover its full cost of service, as the Commission is aware, the Supreme Court concluded that recovery of embedded costs was not envisioned as part of TELRIC.<sup>3</sup>

Until there is a fuller understanding of the underpinnings of Verizon's claims, the Commission should not make national policy based on Verizon's filing.<sup>4</sup>

Very truly yours,

Dawn Jablonski Ryman  
General Counsel  
New York State Public Service Commission  
3 Empire State Plaza  
Albany, New York 12223-1350

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<sup>2</sup> A cursory review of the exhibits appended to Verizon's comments indicates that the Verizon study appears to include a number of assumptions that would need to be examined.

<sup>3</sup> Verizon Communications Inc., et al. v. Federal Communications Commission, et al.; Nos. 00-511, 00-555, 00-587, 00-90, and 00-602 535 U.S. 467; 122 S. Ct. 1646; 152 L. Ed. 2d 701; 2002 U.S. LEXIS 3559; 70 U.S.L.W. 4396 (May 13, 2002).

<sup>4</sup> Verizon also indicates the shortfall between TELRIC and Verizon's actual forward-looking costs during 2002-2005 will be \$1.2 billion. However, this appears to be the difference between the UNE rates proposed by Verizon and the rates allowed by the New York Public Service Commission (NYPSC) in the most recent UNE rate proceeding. As noted in the NYDPS' initial comments, the NYPSC adopted Verizon's cost model, which, in large part, relied on historical data and forward-looking estimates by Verizon's engineers.