Verizon New England Inc.
d/b/a Verizon Massachusetts

Commonwealth of Massachusetts

D.T.E. Docket No. 06-61

Respondent: Joseph S. Williams
Title: Specialist Financial Planning & Analysis – Service Costs

REQUEST: Department of Telecommunications and Energy, Set #1

DATED: September 5, 2006

ITEM: DTE-VZ 1-4 Please explain if Verizon's decision to file its petition to revise its resale discount comports with the Department's findings in Interlocutory Order on Part B Motions, D.T.E. 01-20 (April 4, 2001) concerning postponing the development of a new resale discount until the FCC issues its new "avoided cost" rules on remand from the Eighth Circuit's July, 2000 decision, and why.

REPLY: Verizon's decision to file its petition comports with the Department's findings in the Interlocutory Order on the Part B Motions. The Interlocutory Order recognized that a degree of regulatory uncertainty had been removed and that there was no doubt that the Eighth Circuit's decision to vacate the "avoidable" cost methodology was final. The Interlocutory Order, issued principally for administrative efficiency, was predicated on the common belief of all parties and the Department at the time that the FCC would soon issue 47 CFR §51.609 avoided cost resale discount rules to comport with the Eighth Circuit's decision. Indeed, in Network Plus' Motion to Hold Part B of Proceeding in Abeyance, which was the subject of the Interlocutory Order, it argued that since the FCC's new rules should be forthcoming in a "few short months," it would be "prudent for the Department to wait the *few* months for the FCC to act." *See* Network Plus Motion, dated February 26, 2001, at 9-10 (emphasis added).

The belief that that the FCC's new rules would be issued shortly was noted by the Department in the Interlocutory Order as a ground for its ruling. The Department stated that uncertainty existed as to the "FCC's *forthcoming* rules on remand" and thus deferred action on Verizon's avoided cost study. Interlocutory Order at 13 (emphasis added). And, because the Department fully expected those rules to

REPLY: DTE-VZ 1-4 (Cont'd.)

be issued shortly, it ordered Verizon "to use calendar-year 2000 data when Verizon resubmits its cost study" following the FCC's issuance of the rules. *Id.* at 14-15. Put simply, the predicate for the Department's action in April 2001 did not materialize because the FCC has not promulgated new rules. Proceeding now to set rates under the proper legal standard is warranted and does not conflict with the Interlocutory Order.

Moreover, action now is consistent with the Department recognition that delay would allow resellers to continue to obtain discounts established under the rules the Eighth Circuit had found illegal. When it issued the Interlocutory Order, the Department, as well as the parties, expected only a short delay. However, given the inordinate time that has passed and the sense that the FCC may *never* act to codify the principles clearly set forth by the Eighth Circuit (and not since reversed or challenged in any other court), the Department's original concern over administrative efficiency pending new rules that were then soon to be expected, is now outweighed by the continued application of a discount methodology not in compliance with federal law.

This approach is consistent with the action of the Pennsylvania PUC in setting a new avoided cost discount rate, notwithstanding its recognition that the FCC has still not amended § 51.609. As that Commission held, *"Further, a state commission is not prevented from setting a resale rate in the absence of a FCC standard, assuming it is otherwise consistent with federal law."* (See the Reply to DTE-VZ 1-1, Attachment IVa at page 4)

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ITEM: DTE-VZ 1-5 Please provide information on the status of the FCC's resale discount remand proceeding. Has the FCC given any indication that it will not complete this rulemaking and that state commissions should implement the avoided cost methodology in advance of completion of that rulemaking?

REPLY: It is Verizon's understanding that the FCC has not opened a remand or new rulemaking proceeding because the Eighth Circuit's No. 96-3321 (and consolidated cases) July 18, 2000, ruling vacated, in total 47 C.F.R. §§ 51.609 and 51.611 (see Conclusion at p. 36). That ruling struck down the FCC "avoidable" cost standard as contrary to the statute, establishing that *"The plain meaning of the statute is that costs that are actually avoided, not those that could be or might be avoided, should be excluded from the wholesale rates"* is the statutory standard.

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ITEM: DTE-VZ 1-18 Please see Exhibit 2, page 7. How does Verizon's treatment of revenues compare with the treatment of revenues in Verizon's proposal in D.P.U. 96/73, 96-75, 96-80/81, 96-83, 96-94 – Phase II, and the Department's findings regarding the treatment of revenues in that case? If there is a difference in Verizon's proposal in this proceeding relative to the findings in that case, please explain the reason for the difference.

REPLY: Verizon's treatment of revenue in the instant case and the D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 - Phase 2 compliance are not dissimilar. In both instances the revenue consists of intrastate regulated retail telecommunications services that are subject to resale at an avoided cost discount. In the Phase 2 compliance, NYNEX identified the retail service revenue subject to wholesale resale rates starting with total revenue and deducting revenue that would not be subject to the resale requirement. In its current avoided cost study, Verizon directly identifies by account its intrastate regulated retail telecommunications services that are subject to resale at an avoided cost discount. In D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 - Phase 2, with respect to the treatment of revenue, the Department clarified by its February 5, 1997 Phase 2-A Order, that subscriber line EUCL revenue should not be included in the avoided cost study. Verizon has not included EUCL revenue in this proceeding.

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ITEM: DTE-VZ 1-21 Would Verizon's proposed discounts apply to the resale of CSPs?

REPLY: Not necessarily. To the extent a CSP agreement provides services subject to resale, it is governed by existing provisions of the Resale Services Tariff MA No.14, Section 5.3.4.A, page 5, which provides: "Services that the Telephone Company provides to its end users on a customer specific basis under DTE MA No. 12, will be made available for resale, and upon request of the reseller, the Telephone Company shall determine (for the customer specific service configuration that is the subject of the request), wholesale rates that reflect the Telephone Company's avoided costs associated with the customer specific arrangement."