COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX'S Public Access Smart-Pay Line Service, and (4) the rate policy for operator service providers	)	**D.P.U./D.T.E. 97-88/18 (Phase II)**

MOTION TO EXTEND JUDICIAL APPEAL PERIOD

The New England Public Communications Council, Inc. ("NEPCC"), in accordance with Section 1.11(11) of the Department's Procedural Rules, 220 CMR 1.11(11), hereby requests that the judicial appeal period under Section 25 M.G.L. §5 be extended with respect to the Department's Order issued June 23, 2004 ("*Phase II Order*") in this proceeding solely with respect to the matters set forth below and described in greater detail in its Motion For Clarification, dated July 12, 2004. The grounds for this Motion are as follows:

1. The Department may grant extensions of the judicial appeal period on a showing of good cause, which is a relative term and depends on the circumstances of an individual case. *D.P.U./D.T.E. 97-88/97-18 (Phase II-A)*, October 8, 1999, at p. 4. Good cause is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party. *Id.*; *see also Boston Edison Company*, D.P.U. 90-355-A.

2. As outlined in its Motion For Clarification filed with respect to the *Phase II Order* filed on this date, the NEPCC, in good faith and for valid reasons, has requested clarification concerning a

fundamental aspect of the *Phase II Order* – the requirement for FCC-compliant payphone access rates and the applicable standard for setting those rates. These issues have been central to this proceeding for the last six and one-half years. They are issues central to the interests of the NEPCC. Certainly, there is no adverse effect on the end-user public, by a grant of this extension or on Verizon. Furthermore, the NEPCC seeks this extension only with respect to the issues addressed in its Motion For Clarification. The Department has long recognized that a party should not be required to sacrifice its appeal rights due to ambiguities in a long-awaited order issued by the Department itself. As a practical matter, a denial of this Motion will effectively require the NEPCC to file both an appeal and an extension request simultaneously in order to preserve its appellate rights in the event the Department does not issue a ruling on this Motion prior to the expiration of the appeal period.[1]

For the foregoing reasons, the NEPCC respectfully requests that the appeal period for the NEPCC under 25 M.G.L. §5 be extended on these issues until 20 days after the Department releases its order disposing of the NEPCC's Motion For Clarification.

Respectfully submitted,

NEW ENGLAND PUBLIC COMMUNICATIONS COUNCIL, INC.

By its attorney,

/s/ Paul C. Besozzi

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[1]As a practical matter, the Department should, at a minimum allow parties a reasonable period to prepare an appeal when a ruling comes after the expiration of the appeal period. *Nextel Communications, Inc.*, D.P.U. 99-59-B/95-80/ and Motion For Extension Of Appeal Period (June 7, 1999); *see also D.P.U./D.T.E. 97-88/97-18 (Phase II-A)*, October 8, 1999, at p. 13.