

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

NYNEX/Teleport Arbitration)	D.P.U./D.T.E. 96-73/74
NYNEX/Brooks Fiber Arbitration)	D.P.U./D.T.E. 96-75
NYNEX/AT&T Arbitration)	D.P.U./D.T.E. 96-80/81
NYNEX/MCI Arbitration)	D.P.U./D.T.E. 96-83
NYNEX/Sprint Arbitration)	D.P.U./D.T.E. 96-94

INITIAL COMMENTS OF VERIZON MASSACHUSETTS

On January 22, 2004, the Department issued a Memorandum requesting comments that address whether the Department should terminate the obligations of Verizon Massachusetts (“Verizon MA”) under the *Consolidated Arbitrations* performance plan in favor of the performance standards and remedies set out in the Department’s Carrier-to-Carrier (“C2C”) Guidelines and the Performance Assurance Plan (“PAP”) (“*Request for Comments*”). According to the Request for Comments, “[a]t this point in time, administering two performance standards plans may be an unnecessary burden on Department Staff, the CLEC community, as well as Verizon [MA]” *Request for Comments*, at 3. As explained below, Verizon MA agrees fully with this assessment and recommends that the Department terminate Verizon MA’s obligations under the *Consolidated Arbitrations* performance plan.

I. PROCEDURAL BACKGROUND

As part of the *Consolidated Arbitrations*, the Department initiated its first review of, among other issues, appropriate wholesale performance standards for Verizon MA.

Consolidated Arbitrations, Phase 3 (1996). A variety of specific performance “metrics” were litigated and ultimately established by the Department in *Consolidated Arbitrations*, Phase 3-E (1998), including remedies for failure to meet those standards.

In May 1999, Verizon MA filed a draft Section 271 application with the Department, requesting that the Department recommend that the FCC grant its application to provide long distance services in Massachusetts. *Verizon MA*, D.T.E. 99-271 (2000) (“Section 271 Proceeding”). On January 14, 2000, the Department adopted the New York C2C Guidelines as the “set of metrics used by the Department for purposes of the Master Test Plan and for evaluating [Verizon MA’s] compliance with the requirements contained in Section 271.” *Verizon MA*, D.T.E. 99-271, at 2, *Order Adopting Performance Assurance Plan*, D.T.E. 99-271 (September 5, 2000), citing *January 14, 2000 Department Letter Order on Final OSS Master Test Plan, Attach. A*.

On September 5, 2000, the Department adopted in Verizon MA’s Section 271 Proceeding a comprehensive PAP for Verizon MA, which was modeled after the New York PAP and contained measurements, standards, and reporting requirements from the New York C2C Guidelines. The PAP establishes an automatic process under which affected competitors receive bill credits if Verizon MA fails to satisfy pre-determined performance standards on a group of the C2C reporting metrics. In voting to approve Verizon MA’s application to provide in-region, interLATA service originating in Massachusetts, the FCC concluded that Verizon MA’s PAP will serve the public interest and deter backsliding. *Massachusetts 271 Order* at ¶¶237-247.

Notably, Verizon MA’s coterminous efforts to develop additional performance measures as part of the *Consolidated Arbitrations* (e.g., flow through), led to a

Department acknowledgment that events had overtaken the Department's evaluation of performance measures developed in the *Consolidated Arbitrations*. Phase 3-G, at 3-4 (June 12, 2000).

Our investigation of C2C guidelines and flow-through measurements in the Section 271 proceeding provides the most up-to-date and appropriate forum for resolving these issues. The Department has already adopted the C2C guidelines, which are in place now, and those guidelines include a percent flow-through metric. In addition, the Department is currently addressing penalties and remedies in the Section 271 proceeding, D.T.E. 99-271, where it is developing a performance assurance plan for [Verizon].

Phase 3-G, at 4 (June 12, 2000). As a result, the Department closed the *Consolidated Arbitration* phase dedicated to addressing performance standards.

II. DESCRIPTION OF THE PERFORMANCE ASSURANCE PLAN AND CONSOLIDATED ARBITRATIONS PERFORMANCE MEASURES

A. The Performance Assurance Plan

The Massachusetts PAP, based on measurements, standards and reporting requirements from the New York C2C Performance Guidelines, has three major components: (1) the metrics used to report performance; (2) the methodology used to determine billing credits (including service segmentation, scoring method, and other rules); and (3) the dollars at risk. As described above, the measures and standards in the Massachusetts PAP have been taken directly from the current version of Guidelines for C2C Performance Standards and Reports ("Guidelines"), which cover hundreds of individual data points on performance in the areas of Pre-ordering, Ordering, Provisioning, Maintenance and Repair, Billing and Network Performance.

The PAP calls for the use of two interrelated methods to monitor Verizon MA's wholesale performance to CLECs on the performance measurements. The first method,

known as the Mode of Entry (“MOE”) Measurements method, is designed to measure Verizon MA’s overall Section 271 performance to the entire CLEC industry in five categories that correspond to the five methods or modes that CLECs use to enter the local exchange market: (1) Resale; (2) UNE-Platform; (3) UNE-Loop; (4) Trunks; and (5) DSL. A total of \$39.68 million in annual bill credits is available to CLECs in the five MOE categories (with the potential for double this amount). Each month one-twelfth (1/12) of this annual amount is available for bill credits.

The second method, referred to as Critical Measures, measures Verizon MA’s performance in critical areas on both a CLEC-specific and CLEC-aggregate basis. The Critical Measures provides a mechanism to assure that CLECs, on an individual basis, are receiving service on a non-discriminatory basis. The Critical Measures are also grouped by the five categories used in MOE and, in addition, include measures for Specials, Collocation and the Resolution Process. A total of \$52.37 million in annual bill credits is available to CLECs for all Critical Measures.¹ An analogous principle to the 1/12 monthly amounts is applicable to the \$52.37 million.

Each measure is evaluated under one of two standards. For measures where a Verizon MA analog exists, a “parity” standard is applied. Where no Verizon MA retail analog is available, an “absolute standard” has been developed as a surrogate to determine whether Verizon MA is providing non-discriminatory service to the CLECs. Under the Massachusetts PAP, a CLEC that is currently being provided with performance

¹ In addition, the PAP includes a “Special Provisions” segment that focuses on a number of UNE measures of key components (*e.g.*, flow through and hot cuts). An amount of \$17.99 million is made available by Verizon MA to CLECs in addition to the \$92.05 million available under the MOE and Critical Measures for unsatisfactory service in these key areas. A further amount of \$12.7 million is available for certain UNE ordering measures, to be paid from the MOE dollars at risk, if Verizon MA does not meet service standards and has not reached the cap level for MOE.

reports and credits under the Department's *Consolidated Arbitrations* plan will receive the higher of the credits calculated under the two plans on a quarterly basis. *See Order on Motions for Clarification and Reconsideration Performance Assurance Plan*, D.T.E. 99-271, at 13 (November 21, 2000).

B. The Consolidated Arbitrations Performance Plan

The *Consolidated Arbitrations* standards approved by the Department to measure the wholesale performance of Verizon MA were established in the Phase 3 *Consolidated Arbitrations* proceedings. Phase 3 (1996) through Phase 3-G (2000). The Department concluded that two types of metrics are appropriate in measuring service-quality parity between Verizon MA and CLECs: (1) the "internal process standard," which would record and compare the time it takes for the Company's repair and installation staff *to begin* to act on a request from a Company customer service representative with the time it takes for the Company repair and installation staff to begin to act on a similar request from a competitive carrier; and (2) the "retail process standard," which would record and compare the time it takes for Verizon MA *to complete* a service call for its customer with the time it takes for Verizon MA to complete a similar service call for a competitive supplier. Phase 3 Order, at 22-23. The Department also adopted a "no-change-in-parity test," under which the operating standards that Verizon MA meets for its own internal processes and for ultimate delivery services to retail customers would be memorialized in the interconnection agreements. Two forms of bill credits are applied to CLECs pursuant to the *Consolidated Arbitrations*. Incident-based credits are made for failure to meet certain appointments, and performance credits for failure to meet parity over a stated period of time.

III. THE PAP IS SUPERIOR FOR ASSESSING AND ASSURING VERIZON MA'S WHOLESALE PERFORMANCE AND THE CONSOLIDATED ARBITRATIONS PLAN IS UNNECESSARY.

The performance measures adopted in the *Consolidated Arbitrations* were the first early steps by the Department to establish measures of Verizon MA's wholesale performance as a result of the then-recently enacted Telecommunications Act of 1996 ("Act"). This early effort to define performance guidelines has been effectively superseded by the Department's ongoing efforts to address Verizon MA's wholesale performance requirements on a more universal and comprehensive basis in the context of Verizon MA's ongoing responsibilities under Section 271 of the Act, which led to the adoption of the C2C Guidelines and PAP.

The Department's *Request for Comments* notes several important advantages of the C2C standards over those developed in the *Consolidated Arbitrations*. *Request for Comments*, at 3. First, the standards in the C2C and PAP are more comprehensive than those in the *Consolidated Arbitrations*, and virtually all of the metrics in the *Consolidated Arbitrations* plan are fully covered in the PAP. Attachment A to these Comments is a detailed comparison of the metrics in the PAP and the *Consolidated Arbitrations* plan. The "comments" column indicates any differences between the analogous metrics. As shown in the Attachment, the PAP contains considerably more metrics than the *Consolidated Arbitrations* plan thereby providing the Department and CLECs with a significantly greatly ability to gauge Verizon MA's wholesale performance.

In total, there are over 200 separate performance metrics included in the Massachusetts PAP, which measure the overall level of service on an industry-wide basis for each method or mode by which CLECs can enter the local exchange market under the Act (*i.e.*, Resale, Unbundled Network Elements-Platform ("UNE-P"), Unbundled

Network Elements-Loop (“UNE-L”), Interconnection (“Trunks”) and Digital Subscriber Line (“DSL”). For each of the five performance areas of Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, and Billing, Verizon MA measures 42 individual metrics for Resale, 45 metrics for UNE-P, 35 metrics for UNE-L, 18 metrics for Trunks and 61 metrics for DSL. Notably, although there are nine sub-metrics used for PO-1, Response Time OSS Pre-Ordering Interface, some portion of each of these same nine metrics is applied more than once to Resale, UNE-P, UNE-L, and DSL, resulting in a total of 19 actual PO-1 metrics. This same process of using submetrics more than once to Resale, UNE-P, UNE-L, Trunks and DSL leads to over 200 separate performance metrics adopted in the PAP.

The Massachusetts PAP metrics reflect the identical performance areas (*i.e.*, pre-ordering, ordering, provisioning, maintenance and repair) included in the *Consolidated Arbitrations* metrics, and add other comprehensive performance areas not covered by the *Consolidated Arbitrations*, such as network performance, billing and operator services. The PAP metrics, unlike the *Consolidated Arbitrations* metrics, reflect up-to-date measures that are relevant to the current product and process changes in the industry that have occurred since 1998 (*e.g.*, DSL provisioning). As described above, the PAP metrics also adopt a more detailed, granular analysis of Verizon MA’s performance by evaluating the performance areas separately for each method-of-entry: Resale, UNE-P, UNE-L, Trunks and DSL.

By comparison, the *Consolidated Arbitrations*’ 68 total metrics include three Pre-Ordering metrics, nine Ordering metrics, 27 Provisioning metrics, and 29 Maintenance and Repair metrics. These metrics do not typically limit their analysis to a specific

method or mode by which CLECs can enter the local exchange market under the Act (e.g., UNE-P or DSL). Although there are individual differences between metrics between the two sets of performance measures, these distinctions almost are exclusively attributable to differences in the disaggregation of functions or the elimination by design in the C2C. For example, there are 16 separate measures of missed repair in the PAP that have been disaggregated from the three measures contained in the *Consolidated Arbitrations* for Missed Repair Appointments (“MR-3”): (1) MR-3-01 (loop); (2) MR-3-02 (Central Office); and (3) MR-3-03 (Total). The increased number of metrics included in the PAP reflects the more granular application of metrics to individual modes of entry. As a result, effectively every metric included in the *Consolidated Arbitrations* is covered by the PAP, but in a more precise, detailed and granular manner.

The level of detail included in the PAP enables the Department and CLECs to better assess Verizon MA’s performance for specific product lines which is simply unavailable in the *Consolidated Arbitrations* plan. Indeed, CLECs have demanded greater disaggregation of metrics to product lines precisely because it enables them to get a better picture of Verizon MA’s performance for the particular products they may be ordering. Requiring that Verizon MA continue to report the highly aggregated measures in the *Consolidated Arbitrations* does not provide any greater information about Verizon MA’s performance than that available in the PAP and instead imposes on Verizon MA an unnecessary and costly reporting requirement.

Second, the measurements contained in the *Consolidated Arbitrations* performance plan are old versions of the measures contained in the C2C and PAP. The C2C, already more up-to-date than the *Consolidated Arbitrations* plan when first adopted

in January 2000, has further evolved as a result of over six years of collaborative effort. Since the January 2000 adoption of the New York C2C Guidelines in Massachusetts, six orders by the New York Public Service Commission have been issued with modifications adding, deleting or modifying metrics.² These updates have not been reflected in the *Consolidated Arbitrations* plan. In fact, one of the advantages of adopting the C2C Guidelines for PAP metrics is that they are subject to ongoing assessment and updating through the Carrier Working Group in New York. In short, the *Consolidated Arbitrations* plan does not reflect the considerable experience of the industry that has produced refinements in metrics that better measure wholesale performance.

Third, CLECs will not be significantly affected if the *Consolidated Arbitrations* plan is eliminated. The total bill credits for all CLECs during the first nine months of calendar year 2003³ calculated under the Massachusetts PAP were nearly \$2 million. Using the *Consolidated Arbitrations* structure, CLEC bill credits totaled only \$0.6 million. As explained above, the actual bill credits depend on a CLEC-specific evaluation to determine the higher of the “credits.” Because the payments are not cumulative, CLECs receive payments based on the *Consolidated Arbitrations* only when they exceed the payments due under the PAP.⁴ These relatively small incremental payments are made under a system that duplicates metrics already included (more effectively) in the PAP and cannot justify the expense and administrative burden of maintaining an outdated system of metrics.

² NY PSC Case 97-C-0139 orders dated: February 16, 2000; December 13, 2000; October 29, 2001; April 29, 2002; October 23, 2002 and October 29, 2003.

³ The PAP payments for 2003 have been finalized only through October and the payments under the *Consolidated Arbitrations* are computed on a quarterly basis.

⁴ During the first nine months of 2003, CLECs received only about \$130,000 in additional penalty payments that were made when the *Consolidated Arbitrations* amount exceeded the PAP amount.

In short, there is no sound basis for continuing the *Consolidated Arbitrations* performance plan since the PAP is a more appropriate performance measurement and penalty system than that adopted in the *Consolidated Arbitrations*. No public policy is advanced by requiring that Verizon MA continue to report its performance under two plans – one of which (the PAP) is comprehensive and state-of-the-art, while the other is stale. Accordingly, the Department should terminate Verizon MA’s obligations under the *Consolidated Arbitrations* performance plan.

IV. DEPARTMENT QUESTIONS

1. Are there strong reasons to maintain a separate set of performance standards and remedies under the *Consolidated Arbitrations* plan?

There are no valid reasons to maintain two separate sets of performance standards and remedies. In fact, as discussed above, there are strong reasons to eliminate the performance standards established by the *Consolidated Arbitrations* and rely exclusively on the more comprehensive standards developed in the Massachusetts PAP. The Department itself previously concluded that its investigation of C2C guidelines in the Section 271 proceeding provided the most up-to-date and appropriate forum for resolving ongoing performance issues. There is simply no sound policy reason to continue to subject Verizon MA to two plans that are effectively measuring the same activities associated with the provision of wholesale services.

The PAP sets forth in great detail, the processes by which Verizon MA’s performance is measured and evaluated, the method for determining compliance and noncompliance with respect to individual metrics, and the manner in which noncompliance with individual metrics will translate into bill credits. Indeed, the FCC noted in approving Verizon MA’s 271 application that “the Massachusetts Department

established a PAP that discourages anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business.” Where there is an effective plan in place, it makes no sense and is unreasonable to maintain a duplicative, less effective measurement and incentive scheme. Indeed, all that results from such duplication is the unnecessary waste of Verizon’s resources to administer two plans that are attempting to achieve the same objective.

2. Are there any legal or practical impediments to eliminating the separate *Consolidated Arbitrations* performance plan?

There are no legal or practical impediments to eliminating the *Consolidated Arbitrations* performance plan. Nothing in the Act prevents the Department from modifying the framework it has adopted for evaluating Verizon MA’s wholesale performance and for providing incentives to Verizon MA through monetary penalties to continue providing non-discriminatory wholesale services.

3. What procedure should be established to phase out the *Consolidated Arbitrations* performance standards, if the Department determines that this is the appropriate approach?

Elimination of the *Consolidated Arbitrations* plan does not require any special procedures or transition. If the *Consolidated Arbitrations* plan is simply terminated by the Department, there will be no lapse in the measurement of Verizon MA’s wholesale performance or penalty credits available to CLECs because the C2C and PAP are effective mechanisms that are already in place. Elimination of the *Consolidated Arbitrations* performance plan has no impact on Verizon MA’s obligations to report performance under the C2C and PAP and will not affect the timing of the filing of any of those reports or billing credits under the PAP.

V. CONCLUSION

The Department should terminate Verizon MA's obligations under the *Consolidated Arbitrations* performance standards. The application of the PAP is a more appropriate performance measurement and penalty system than that adopted in the *Consolidated Arbitrations*. The PAP system, which has become the industry performance standard, measures the same performance criteria, but does it in a more granular and systematic way. The PAP structure is under continual review and can be adjusted when circumstances warrant change. Because the penalties are higher in aggregate, the termination of the structure put into place under the *Consolidated Arbitrations* will not materially affect the amount of payments received by CLECs.

Respectfully submitted,

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