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October 11, 2001

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

**Re: D.T.E. 01-31 – Alternative Regulation**

Dear Ms. Cottrell:

Pursuant to the Hearing Officer's Notice of October 4, 2001, Verizon Massachusetts ("Verizon MA") responds to the: (1) "Motion of AT&T Communications of New England, Inc. to File Surrebuttal Testimony in Response to the Rebuttal Testimony of William E. Taylor" ("Motion to File Surrebuttal") and (2) "Motion of AT&T Communications of New England, Inc. to Strike Parts of the 'Rebuttal' Testimony of Robert Mudge and Michael J. Doane, or, in the Alternative, for Leave to File Surrebuttal after Discovery, if Warranted" ("Motion to Strike," together, the "Motions").

First, as to the Motion to File Surrebuttal, Verizon MA takes issue with the allegations that Dr. Taylor has in any way mischaracterized Dr. Mayo's prefiled testimony in this proceeding or made an "incorrect analogy to Dr. Mayo's direct testimony in D.P.U. 91-79."[1] Dr. Taylor did neither. Given the importance of the issues before the Department, however, Verizon MA has no objection to permitting Dr. Mayo the opportunity to file surrebuttal testimony, provided Verizon MA has the opportunity to file rejoinder testimony to respond to the surrebuttal testimony.[2]

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1 Motion to File Surrebuttal, at 1.

2 Under the Department's regulations, Verizon MA has the right to "open and close" the adjudicatory proceeding. 220 C.M.R. 1.06(6)(f).

To the extent AT&T's Motion to File Surrebuttal is intended to suggest that Verizon MA should not be permitted the opportunity to provide rejoinder testimony in response to positions that AT&T and others may advance on the sufficiency of competition in Massachusetts, such a suggestion is unfair.[3] In fact, AT&T represented to the contrary at the procedural conference in this proceeding. At that time, Verizon MA asserted that it should have an opportunity to "file surrebuttal testimony based on whatever it is that the intervenors seek to introduce by way of their final testimony."[4] AT&T, in turn, recognized the availability of that opportunity.[5] As the Department ruled in adopting the present schedule, Verizon MA will have the opportunity to respond fully to the cases presented by other parties and will file the last round of testimony.[6] AT&T's Motion to File Surrebuttal should not undermine Verizon MA's ability to respond or the order of filing testimony.

Second, the Motion to Strike portions of the rebuttal testimony filed by Messrs. Mudge and Doane is even more problematic.[7] The Motion to Strike seems to rest on the proposition that it is impermissible for rebuttal testimony to include new facts.[8] This proposition is nonsensical, since the entire purpose of rebuttal testimony is to present new

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3 AT&T, in essence, reargues a position it raised earlier in this proceeding. In its "Motion of AT&T Communications of New England, Inc. ('AT&T') for Leave to Seek Reconsideration or Clarification of the Schedule of this Proceeding at the Time that AT&T Files its Testimony on August 24, 2001" ("Motion for Leave"), AT&T reiterated its current claim that, should Verizon MA respond to intervenor testimony by providing further details in support of meeting its burden of proof, such evidence represents "essentially a new direct case." Motion for Leave at 2, n.1. The Hearing Officer denied AT&T's request on procedural grounds. *See Hearing Officer Ruling* dated August 20, 2001, D.T.E. 01-31.

4 7/9/01 Tr. at 67 (Counsel for Verizon MA).

5 As AT&T explained at the procedural conference: "At one level, it's AT&T's view that the filing that Verizon made in the spring does not satisfy its burden of demonstrating sufficient competition, and we intend to set forth what we believe would satisfy it. *Verizon I suppose either has the choice of coming forward with evidence that it believes will satisfy its burden when it files its rebuttal testimony or filing rebuttal testimony that sticks by its initial position."* 7/9/01 Tr. at 71 (Counsel for AT&T), emphasis added. *See also* 7/9/01 Tr. at 65 (Counsel for AT&T) ("It's possible that the September 21st rebuttal testimony on the Attorney General's schedule would be too soon for Verizon. Well, I guess if what we're doing then is having Verizon respond to what statistics are appropriate to demonstrate competition, then that would be satisfactory. *But what we're talking about is at that point really ultimately an opportunity for Verizon to demonstrate competition with new and different statistics than the ones that it's presented")*, emphasis added.

6 The Department rejected that portion of the Attorney General's proposed schedule that allowed intervenors to file a final round of testimony. *See* for a discussion of the issue, 7/9/01 Tr. at 67, 69-70.

7 Verizon MA also incorporates by reference its arguments, discussed *supra*, against AT&T's renewed attempt to alter the order in which final testimony is filed, reiterated in AT&T's Motion to Strike.

8 Motion to Strike, at 4.

facts designed to rebut assertions contained in evidence presented by another party. By definition, rebuttal testimony *is* factual evidence. *Black's Law Dictionary, Abridged Sixth Edition* (1991) (rebuttal evidence defined as "[e]vidence given to explain, repel, counteract, or disprove facts given in evidence by the opposing party"). Moreover, if the testimony were not in any way "new," there would be no need to put it on the record.

In its initial filing, Verizon MA's direct, prefiled testimony described the level of competition that exists in the Massachusetts local exchange market and provided data quantifying the level of competition through resale, UNE and facilities-based service providers.[9] Indeed, the Department and parties propounded Information Requests aimed at developing additional details and back-up material with regard to Mr. Mudge's testimony on this subject.[10] The initial testimony of both Dr. Mayo and Dr. Selwyn challenged, among other things, the level of detail regarding the information cited by Mr. Mudge.[11] The evidence that AT&T seeks to strike from the record provides updated,

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9 *See, e.g., Direct Testimony of Robert Mudge*, at 7-13.

10 For examples of Information Requests asking Verizon MA to provide information on a wire center basis, *see*:

- *DTE-VZ 1-1* – Asking Verizon MA to provide maps indicating certain types of competition. These could not have been produced without relying on exchange specific competitive data.
- *DTE-VZ 1-2* – Asking Verizon MA to indicate (yes/no) by exchange where certain types of competitors were operating.
- *DTE-VZ 2-9* – Asking Verizon MA to provide a comparison of resold business lines to retail lines by central office.
- *AG-VZ 2-2* – Asking Verizon MA to provide the number of RCN competitive services by central office.
- *AG-VZ 2-10* – Asking Verizon MA to provide retail, resold, and UNE lines by central office.

For examples of Information Requests requiring use of detailed competitive data to respond (but not necessarily provided by central office), *see*:

- *AG-VZ 2-18* – Asking Verizon MA to provide a breakdown of resold lines by Class of Service.
- *AG-VZ 2-19* – Asking Verizon to provide competitors by exchange. (The response provided a statewide list with attached tariffs that defined the respective service area.)
- *AT&T-VZ 1-2* – Asking for a list of CLECs with E911 listings by class of service.
- *AG-VZ 4-6* – Asking for carrier-specific lines in service for AOL Time Warner, McLeod USA, Allegiance and XO. (The response to this Request is in the process of completion.)

11 *See, e.g., Testimony of John W. Mayo*, at 26-32; *Testimony of Lee L. Selwyn*, at 83-86 ("[t]he Department must instead require that data on competition in the local exchange market be provided and examined at the wire center level." *Selwyn Testimony*, at 85-86).

back-up detail of the type of data initially cited by Mr. Mudge[12] and, as noted, requested during discovery. After first complaining that it is necessary to review the detailed information, AT&T now objects to the introduction of the very information that it sought.

The detailed information and analysis contained in the rebuttal testimony of Mr. Mudge and Mr. Doane is designed to "explain, repel, counteract or disprove" the testimony filed by Dr. Mayo and Dr. Selwyn. It is therefore properly within the scope of rebuttal testimony, and there is no basis for striking it from the record.

In its Motion to Strike, AT&T argues, in the alternative, that it be granted the right to issue Information Requests on Verizon MA's rebuttal testimony[13] and that AT&T be permitted to file surrebuttal testimony. Verizon MA has no objection to either proposal, provided that Verizon MA also has the ability to conduct discovery and the opportunity to file rejoinder testimony, if necessary, consistent with its right to close, discussed *supra*. Verizon MA believes that this process will permit the Department and the parties to develop a complete record before evidentiary hearings begin and make those hearings more focussed and efficient.

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12 S*ee, e.g., Direct Testimony of Robert Mudge,* at:

- *Page 8, Lines 7-10:* "In fact, the evidence of competition across the state is compelling – in *every* Verizon MA central office in the state at least two of the three modes of entry are employed by carriers to serve customers, and in 88 percent of the central offices, all three modes of entry are currently employed" (emphasis in original).
- *Page 9, Lines 13-17:* "What is significant is that *every* exchange in the state has customers served by at least one Reseller. In fact, of the 272 central offices in Massachusetts, only two have less than three Resellers currently providing service to customers, and in 217 of our exchanges, there are 10 or more Resellers providing service to customers" (emphasis in original).
- *Page 9, lines 19-23 & page 10, line 1:* "Although statewide Resellers serve about 15 percent of the number of business lines served by Verizon MA, in 51 central offices Resellers serve over 20 percent of the number of business lines served by Verizon MA. And, the focus is not just large cities. In several of our smaller central offices, Resellers serve over 20 percent of the number of business lines served by Verizon MA. In several exchanges, that figure exceeds 30 percent."
- *Page 10, lines 21-23:* "As of January 2001, there were over 85,000 total UNE loops (the facility from the customer's premise to the CLEC collocation site) in service in 191 Verizon MA central offices."
- *Page 11, lines 1-4:* "Of the 272 central offices in the state, CLECs have UNE-P arrangements in at least 263 central offices. Said another way, CLECs are providing service to their customers using UNE-P in at least 97 percent of the central offices in the state."

13 Verizon MA has already received Information Requests on its rebuttal testimony and considers the discovery period to have begun.

Without knowing the scope of rebuttal testimony, it is difficult to predict the time necessary to prepare written rejoinder. If substantial rebuttal testimony is filed and discovery is required, it will likely require two weeks from the date that the final responses to information requests are received to prepare and file rejoinder testimony. Accordingly, Verizon MA proposes the following schedule:

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| October 15 | Discovery period on Verizon MA's rebuttal testimony closes |
| October 25 | Intervenor surrebuttal testimony |
| November 1 | Discovery period on surrebuttal testimony closes |
| November 30 | Verizon MA rejoinder testimony |

Verizon MA proposes that the Department convene a procedural conference after intervenor surrebuttal testimony is filed to establish the hearing dates. The length and scope of the surrebuttal testimony will likely have a significant bearing on how quickly the case can move to hearings and be briefed. Because hearings are likely to take place in December, it would be helpful to convene the parties to ensure that the hearing schedule will be compatible with witness availability.

Thank you for your attention to this matter.

Very truly yours,

/s/Victor D. Del Vecchio

Victor D. Del Vecchio

cc: Paula Foley, Esquire, Hearing Officer (2)
Michael Isenberg, Esquire, Director-Telecommunications Division
Attached Service List

mlc-01-31-10-11-01