

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Complaint of Covad Communications and)	
AT&T Communications of New England, Inc.)	D.T.E. 01-39
Regarding Collocations Power Charges Assessed)	
By Verizon New England Inc.)	
)	

AMENDMENT TO ANSWER OF VERIZON MASSACHUSETTS

Verizon Massachusetts (“Verizon MA”) hereby files this Amendment to its Answer to the Complaint of Covad Communications Company (“Covad”) and AT&T Communications of New England, Inc. and its affiliated companies (collectively referred to as “AT&T”) filed with the Department on March 15, 2001.¹ In addition to their previous allegations regarding alleged violations of D.T.E. Tariff 17, Complainants now assert similar allegations with respect to D.T.E. Tariff 15. Specifically, Complainants assert that Verizon MA has charged Complainants a rate for DC power that exceeds that which it is entitled to charge pursuant to D.T.E. Tariff 15, that Verizon MA has applied D.T.E. Tariff 17’s DC power charges to Complainants collocation arrangements provisioned under D.T.E. Tariff 15, and that these alleged actions by Verizon MA constitute violations of the filed rate doctrine. Like their initial claims, Complainants allegations are without merit and should be dismissed. In response to the specific allegations asserted in the Amendment to Complaint, Verizon MA generally denies that it has violated the filed rate doctrine in its assessment of DC power charges to Complainants under D.T.E. Tariff 15, or that it improperly imposed charges for collocation on AT&T or Covad under D.T.E. Tariff 15 or D.T.E. Tariff 17 as Complainants allege.

¹ On October 12, 2001, AT&T and Covad filed a Motion for Leave to amend their Complaint in this proceeding and at that time submitted a proposed amendment. Verizon MA did not oppose the motion, and the Department granted the motion on October 24, 2001. This amendment to Verizon MA’s answer is submitted in response to the Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

Complainants' claims should be dismissed for failure to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Complainants' claims are barred by *laches*.

THIRD AFFIRMATIVE DEFENSE

Complainants' claims are barred by *res judicata* as those claims have already been decided by the Department in prior proceedings.

FOURTH AFFIRMATIVE DEFENSE

Complainants are collaterally estopped from asserting the claims contained in the Complaint because prior Department rulings have already addressed those issues and determined that they are without merit.

FIFTH AFFIRMATIVE DEFENSE

Complainants' claims should be barred by principles of equitable estoppel.

Therefore, for the reasons set forth above, Verizon MA respectfully requests that the Department dismiss AT&T and Covad's Amended Complaint.

Respectfully submitted,

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

By its attorneys,

/s/Keefe B. Clemons

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DATED: October 24, 2001

answerofvztocovad&attdcpowercomplaint(amend)