

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Pricing for Unbundled Network Elements  
for Verizon New England,  
Inc. d/b/a Verizon Massachusetts

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D.T.E. 01-20 (Part A)

**SUPPLEMENT TO MOTION FOR PROTECTIVE TREATMENT  
AND REPLY OF VERIZON MASSACHUSETTS TO  
AT&T OPPOSITION TO MOTION FOR PROTECTIVE TREATMENT**

In accordance with the Hearing Officer's memorandum of December 7, 2001, Verizon Massachusetts ("Verizon MA" or "Company") submits this Supplement to Motion for Protective Treatment and Reply to AT&T's Opposition to Verizon's Motion for Protective Treatment ("AT&T Opposition") filed with the Department of Telecommunications and Energy ("Department") on November 30, 2001. AT&T objects to Verizon MA's Motion for Protective Treatment ("Motion") filed with the supplemental responses to information requests filed on November 26, 2001, insofar as it requests that the attachment to the second supplemental response to Information Request ATT-VZ 4-29 be provided only to the Department, the Attorney General and attorneys for competitors in this proceeding.<sup>1</sup> For the reasons included in the Motion and discussed below, the Department should grant the protected treatment requested in the Motion and reject the AT&T Opposition.

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<sup>1</sup> No party objected to the Motion with regard to confidential treatment for the responses to Information Requests ATT-VZ 14-10, ATT-VZ 14-11, ATT-VZ 14-14, ATT-VZ 14-15 and ATT-VZ 14-32.

## **ARGUMENT**

### **A. Supplement to Motion for Protective Treatment**

By memorandum dated December 7, 2001, the Hearing Officer directed Verizon MA to supplement its request for protective treatment for the responses to Information Requests ATT-VZ 14-10<sup>2</sup> and ATT-VZ 14-32 in order to “provide specifics to support its requests for confidential treatment of [those] responses.”

The attachments to Information Request ATT-VZ 14-10 include detailed information about the location, configuration and cost of investments for its network. If this information were made publicly available, competitors could use the information to gain insights into Verizon MA’s investment decisions, marketing strategies and cost advantages/disadvantages. Moreover, the information includes prices from third-party vendors, who would be competitively harmed if the prices charged to Verizon MA were disclosed. Thus, the public release of the requested information could create a competitive disadvantage for Verizon MA and its vendors, and be of value to other providers in developing competing marketing strategies. In short, disclosure of the competitively sensitive material will undermine Verizon MA’s ability to compete with other providers of like services.

Similarly, the maps, schematic drawings and associated records provided in response to Information Request ATT-VZ 4-32 divulges competitively sensitive information about the specific locations and capacity of Verizon MA’s feeder and distribution routes. This information would disclose both Verizon MA’s capability to serve new and existing customers and its planning or marketing strategies with respect to where it believes these facilities are needed.

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<sup>2</sup> The responses to Information Requests ATT-VZ 14-11, ATT-VZ 14-14 and ATT-VZ 14-15 reference the response to Information Request ATT-VZ 14-10.

Competitors with such specific information would be able to develop marketing strategies based on the knowledge of the location and capacity of Verizon MA's facilities. In addition, the public disclosure of Verizon MA's feeder and distribution routes would pose a public-safety threat. Possible disruption of vital public telecommunications service would be facilitated by unfettered access of the precise location of network routes, which would pinpoint the places where maximum damage could be inflicted. Security concerns have historically led Verizon MA to treat these types of materials as confidential, and the events of the past several months only heighten the need to protect the information.

Accordingly, the material provided in response to Information Requests ATT-VZ 14-10 and ATT-VZ 14-32 constitutes proprietary and confidential information within the meaning of G.L. c. 25, §5D. The information is routinely kept confidential by Verizon MA (for both competitive and security reasons), and the disclosure of the information for use outside of the context of this proceeding (and in compliance with the protective agreements in place) would cause harm to Verizon MA and its vendors, and could pose a threat to the public safety. For these reasons, the Department should grant the Motion with respect to the responses to Information Requests ATT-VZ 14-10 and ATT-VZ 14-32.

**B. Reply to AT&T Opposition**

As indicated in the Motion, the attachment to the second supplemental response to Information Request ATT-VZ 4-29 constitutes Verizon MA's disaggregated, access line forecast for Massachusetts for the years 2001 through 2006. The details of the forecast are used in the Company's Business Plan and represent Verizon MA's business forecast of the supply and demand for access lines within the Commonwealth. The forecast was developed with the input of, and is used by the Company's internal organizations, including marketing and engineering. Such disaggregated information, if revealed to competitors, would disclose key components of

Verizon MA's competitive strategies and assumptions over the next five years, and permit competitors to conform their investment and marketing strategies to respond. Thus, the disclosure of the information to competitors would be highly detrimental to Verizon MA's competitive position and disadvantage the development of competitive markets in Massachusetts.<sup>3</sup>

By releasing this information to individuals beyond the Department, the Attorney General, and the attorneys of Verizon MA's competitors in this proceeding, competitive companies would be able to determine characteristics of Verizon MA's marketing plans and assumptions. Competitors would thus have the ability to utilize this information in developing business strategies in direct competition with Verizon MA. There is no doubt that the material in question is the type of competitively sensitive information that qualifies for protective treatment. The only issue legitimately before the Department is whether the limited dissemination proposed in this case by Verizon MA is warranted.

Before addressing the justification for the proposed limitations on the distribution of the materials, it should be noted that, during this proceeding, Verizon MA has provided numerous responses that contain hundreds, if not thousands of pages of proprietary information. Verizon MA agrees that, for the other proprietary information, it has not sought restrictions over-and-above the normal terms of the non-disclosure agreements between parties. Special treatment is being requested for only this single, three-page attachment to the second supplemental response to Information Request ATT-VZ 4-29. This attachment is qualitatively different from

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<sup>3</sup> AT&T claims that the information might not be eligible for any level of protection if Verizon MA has shared this information with "financial analysts and consultants" (Opposition, at 7). This claim is totally unfounded. The detailed, disaggregated access-line forecast is closely held within the business and has not been shared with outside financial analysts.

information previously provided because it contains details about the Company's Business Plan forecast for access lines, which, if disclosed to CLEC personnel or consultants, would cause significant competitive harm to Verizon MA.

In determining whether the limitations proposed by Verizon MA are reasonable, the Department should consider both the harm that could result with the probative value of the information. AT&T argues that the protection afforded the existing protective agreements in this case are "adequate" because they limit the use of confidential information (Opposition, at 5). However, if CLEC employees or consultants who are involved in developing business, operational, regulatory or marketing strategies have knowledge about the information contained in the attachment, they will be unable to "unlearn" the confidential material about Verizon MA when they are developing their plans. Verizon MA does not imply that anyone would intentionally violate the requirements of the protective agreements, which prohibits use of the information outside of this case. However, once there is an understanding of Verizon MA's planning assumptions, no one would be able to eliminate consideration of that information when making other decisions or recommendations.<sup>4</sup> The potential harm to Verizon MA would be substantial, since competitors would be planning their marketing strategies with the knowledge of the assumptions regarding access lines contained in Verizon MA's Business Plan.

This competitive harm to Verizon MA must be weighed against the minimal injury to AT&T in this proceeding, if access to the attachment is limited to its attorneys.<sup>5</sup> As indicated in

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<sup>4</sup> Outside consultants doing work for a CLEC in this proceeding presumably are engaged by that CLEC or others for other purposes. It is the knowledge of Verizon MA's plans and assumptions, which would be carried to other engagements, that would harm Verizon MA's competitive position.

<sup>5</sup> Verizon MA offered to make the attachment to Information Request ATT-VZ 4-29 available to counsel to the AT&T, pending Department resolution of the Motion. As of this date, counsel for AT&T has not accepted this offer.

the supplemental response, the forecast contained in the attachment was *not* used by the Company in the development of the cost model. This isn't a case in which access to model inputs are being restricted, which could theoretically curtail the ability of subject matter experts to analyze the cost model. The Business Plan forecast is admittedly not used as an input to the cost model, and attorneys for AT&T can effectively cross-examine Verizon MA witnesses and make argument on brief about the significance of that fact. Moreover, changes in the forecast growth rate has only a small impact on the results of the model. *See*, Second Supplemental Response to ATT-VZ 4-29. Accordingly, limiting access to AT&T's attorneys will have little or no impact on AT&T's ability to participate in this case.<sup>6</sup>

AT&T and other CLECs have been furnished with literally thousands of pieces of documentary information and responses to information requests during the discovery process. They have been granted a full opportunity to present their case and challenge Verizon MA's case. The restrictions proposed on dissemination of this three-page attachment, *i.e.*, limiting disclosure to government parties and attorney's for CLECs, are reasonable and will cause minimal inconvenience to AT&T. Since the harm to Verizon MA greatly outweighs any possible injury to AT&T in this proceeding, the Department should limit dissemination of the attachment to Information Request ATT-VZ 4-29, as proposed by Verizon MA in the Motion.

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<sup>6</sup> The procedure of limiting distribution of highly confidential information to government parties in a case is not unprecedented for the Department. *See, e.g.*, Transcript in D.T.E. 00-68, at 8-9, dated November 14, 2000, attached hereto.

Therefore, Verizon MA requests that the Department grant the Motion and limit dissemination of the information.

Respectfully submitted,

Verizon Massachusetts

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Bruce P. Beausejour  
185 Franklin Street, Room 1403  
Boston, Massachusetts 02110-1585  
(617) 743-2445

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Robert N. Werlin  
Stephen H. August  
Keegan, Werlin & Pabian, LLP  
21 Custom House Street  
Boston, Massachusetts 02110  
(617) 951-1400

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