

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

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<b>Investigation by the Department on its own motion as to</b>	)	<b>D.T.E. 98-57</b>
<b>The propriety of the rates and charges set forth in the</b>	)	<b>Phase IV</b>
<b>following tariff: M.D.T.E. No. 17, filed with the</b>	)	
<b>Department on October 5, 2000, by Verizon New</b>	)	
<b>England, Inc., d/b/a Verizon Massachusetts.</b>	)	
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**SETTLEMENT AGREEMENT**

This Settlement Agreement, inclusive of Exhibit 1, which is incorporated herein (collectively, the "Agreement"), is made this 20th day of December, 2001, by and between Sprint Communications Company, L.P., a Delaware limited partnership having an office at 8140 Ward Parkway, Kansas City, Missouri 64114 and its affiliates operating in the jurisdictions covered by this Agreement ("Sprint"); DIECA Communications, Inc. d/b/a Covad Communications Company, a Virginia corporation having an office at 3420 Central Expressway, Santa Clara, CA 95051 and its affiliates operating in the jurisdictions covered by this Agreement ("Covad"); Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon"), a New York corporation having its principal office at 185 Franklin Street, Boston, MA 02110, Verizon Services Corp., a Delaware corporation with its principal office at 1095 Avenue of the Americas, New York, New York, and their affiliates operating in the jurisdictions covered by this Agreement ("Verizon"), (collectively "the Parties"). For purposes of this Agreement, "Verizon Affiliates" include any incumbent local exchange carrier controlled by or affiliated with Verizon's corporate parents, including Verizon Communications. This includes any former GTE incumbent affiliate.

## **BACKGROUND**

WHEREAS, on April 6, 2001, Verizon filed with the Department revisions (Revisions, Part E, Section 2) to its tariff M.D.T.E. No. 17 relating to DC power provided to collocation arrangements, including DC Power audits, inspections, enforcement and penalties; and

WHEREAS, by Memorandum dated May 2, 2001 from Hearing Officer Tina Chin, the Department permitted the April 6, 2001 revisions to Tariff No. 17 to take effect as of May 6, 2001, pending further investigation of the filing in D.T.E. 98-57 (Phase IV), and subject to true-up; and

WHEREAS, by Memorandum dated May 25, 2001 from Hearing Officer Tina Chin, the Department clarified that the scope of issues in Phase IV of D.T.E. 98-57 is limited to collocation power issues raised by Verizon's April 6<sup>th</sup> filing, and to access to IOF transport from a mid-span meet, and pre-filed testimony should address those issues pursuant to the Procedural Schedule issued May 25, 2001; and

WHEREAS, on July 10, 2001, Verizon and AT&T filed with the Department a joint Motion Pursuant to the Motion for Entry of Order According to the Terms as Stipulated by the Parties ("Motion"), requesting the Department to approve language for Tariff No. 17 that relates to access to interoffice transport facilities from mid-span meet arrangements; and

WHEREAS, on July 11, 2001, the Hearing Officer notified all parties to D.T.E. 98-57 (Phase IV) that Department approval of the Motion would remove the issue of

access to interoffice transport facilities from a mid-span meet arrangement from further consideration in this proceeding; and

WHEREAS, on July 20, 2001, the Department granted the Motion and approved the illustrative tariff; and

WHEREAS, the Department's policy is to encourage parties to seek negotiated settlements of contested proceedings; and

WHEREAS, the Parties desire to resolve amicably all of their disputes and differences regarding the issues raised in D.T.E. 98-57, Phase IV, recognizing the costs and uncertainty of litigation and acknowledging that this Agreement is not an admission of liability on the part of any of the Parties and the same being expressly denied; and

WHEREAS, certain Verizon Affiliates outside of Massachusetts have either filed or are contemplating filing tariffs with auditing and penalty terms for CLEC power consumption substantially similar to the terms at issue in D.T.E. 98-57, Phase IV; and

WHEREAS, the Parties intend that the settlement reached herein be used in all states where Verizon Affiliates operate such that the terms and conditions in Verizon Affiliates' tariffs (currently filed or to be filed in the future) related to CLEC power consumption in collocation arrangements are substantially similar to the tariff terms and conditions contained in Exhibit 1.

NOW, THEREFORE, intending to be legally bound hereby, the Parties stipulate and agree as follows:

1. Upon approval of this Agreement by the Department, Verizon will file revised tariff language with the Department for Part E, Section 2 of DTE MA No. 17, as reflected on Exhibit 1 to this Settlement Agreement.

2. If in the future a Verizon Affiliate seeks to implement tariff language or requirements addressing issues substantially similar to those raised in D.T.E. 98-57, Phase IV, it must use the tariff language contained in Exhibit 1 hereto as the template for its filing and the substantive requirements of such a tariff must be substantially similar to those in Exhibit 1. Within a reasonable time after such filing has been made, Verizon will send letter notice to the persons designated in paragraph 18 of the fact that such a tariff has been filed.

3. Verizon and Verizon Affiliates agree not to oppose the use of terms and conditions substantially similar to those in Exhibit 1.

4. This Agreement resolves, with prejudice, all of the issues specifically addressed in the Actions and precludes the asserting of contrary positions with respect to any such issue during subsequent litigation before the Department, including individual arbitration proceedings instituted under Section 252(a)(1) of the Communications Act of 1934, as amended. 47 U.S.C. § 252(a)(1).

5. This Agreement is expressly conditioned upon the Department's approval of all of the specific terms and conditions contained herein without modification. If the Department should fail to grant such approval, or should modify adversely any material term or condition within the Agreement, any party may elect to withdraw, in whole or in part, from this Agreement, upon written notice to the Department and the other parties

within 20 calendar days of the issuance of an adverse final Department order. In that event, the parties to this Agreement shall have all legal rights that they may have waived by entering into this Agreement, including the right to seek Department approval of their original proposed terms and conditions.

6. If a court grants a legal challenge to the Department's approval of this Agreement and issues a final order which prevents or precludes implementation of any material term(s) of this Agreement, then any Party to this Agreement may withdraw, in whole or in part, from this Agreement upon written notice filed within 20 calendar days of service of the Court's order. The Parties to this Agreement shall have all legal rights that they may have waived by entering into this Agreement.

7. It is expressly understood and agreed that this Agreement constitutes a negotiated resolution of the tariff dispute before the Department, with bargained-for concessions only supporting and being consideration for the conditions contained herein. The Parties agree not to use documents produced during the course of negotiations and agree that all such documents shall remain confidential and not available for purposes of litigation or public disclosure. This Agreement is a product of compromise and is proposed by the Parties to settle the Actions. This Agreement shall not be used as an admission against, or prejudice to, any Party in this or any other proceeding. This Agreement shall not be construed as precedent in any other proceeding, or in any appeal from any other proceeding, except to effectuate the terms and conditions of this Agreement.

8. This Agreement does not constitute an agreement under Section 252(a)(1)

of the Communications Act of 1934, as amended. 47 U.S.C. § 252(a)(1).

9. This Agreement constitutes the entire agreement among the Parties on the matters raised herein, and the Parties agree that it supersedes and controls all prior communications, correspondence, memorialization of agreement, or prior agreement among the Parties or their representatives relative to the matters contained herein.

10. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements, whether oral, written or expressed or implied, that in any way affect or condition the validity of this Agreement or alter its terms.

11. This Agreement is a compromise and settlement of disputed issues and claims and is a product of arms-length negotiations and the drafting of all the parties. Ambiguities in this Agreement are not to be construed by operation of law against any Party.

12. This Agreement may be modified only by a written document signed by all of the Parties.

13. This Agreement shall be binding upon and shall inure to the benefit of the Parties thereto, their successors, parents, subsidiaries, affiliates, assigns, agents, directors, officers, employees and shareholders.

14. Each Party hereby represents and warrants to each of the other Parties that: (a) it has full legal right, power and authority to enter into and perform this Agreement; and (b) the execution and delivery of this Agreement by it and the consummation by it of the transactions contemplated hereby have been duly authorized by it.

15. Each Party hereby warrants to each of the other Parties that the execution, delivery and performance of this Agreement and the consummation by it of the transactions contemplated hereby will not result in a violation of its certificate of incorporation, partnership agreement or by-laws, or any law, rule, regulation, order, judgment or decree applicable to it or by which any of its properties or assets is bound or affected; or require the consent, authorization or order of, or filing or registration with, any governmental authority, other than state Public Utility Commissions, or any other person for the execution, delivery and performance by it of this Agreement.

16. Each Party certifies that it is represented by competent legal counsel, it has read this Agreement and understands its terms and effects, and it has entered into it voluntarily, with authority to do so and with full knowledge of its significance and binding effect; and that it authorizes and directs its attorneys to execute such papers and to take such other action as is necessary and appropriate to effectuate the terms of this Agreement.

17. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflicts of law.

18. Any notices under this agreement shall be sent to the following persons:

For Verizon: Bruce Lear  
2980 Fairview Park Dr., 10th Floor  
Falls Church, VA 22042

For Sprint: Ken S. Ross  
Director, Local Market Development  
Sprint Communications Company, L.P.  
7301 College Boulevard  
Mailstop: KSOPKV0212  
Overland Park, KS 66210

For Covad: Dhruv Khanna  
Vice President and Secretary  
Covad Communications Company  
3420 Central Expressway  
Santa Clara, CA 95051

19. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one and the same instrument and shall be effective on the latest date signed.

December 20, 2001



Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Caldwell  
Vice President  
Verizon Services Corp.  
125 High Street, Room 0579  
Boston, MA 02110

Dated: \_\_\_\_\_

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W. Richard Morris  
Vice President, State External Affairs  
Sprint Communications Company, L.P.  
7301 College Boulevard  
Mailstop: KSOPKV0214  
Overland Park, KS 66210

Dated: \_\_\_\_\_

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Dhruv Khanna  
Vice President and Secretary  
Covad Communications Company  
3420 Central Expressway  
Santa Clara, CA 95051