



Gregory M. Kennan
Vice President, Regulatory Affairs
24 Albion Road, Suite 230
Lincoln, RI 02865
401-834-3326 Tel.
401-834-3350 Fax
gkennan@onecommunications.com

Via Overnight Mail & Electronic Mail

December 26, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Verizon Massachusetts' Performance Assurance Plan, D.T.E. 03-50

Dear Ms. Cottrell:

The Comments of One Communications Corp. are enclosed for filing.

In addition, would you please add to the service list as co-counsel for One Communications Corp.:

R. Edward Price
Senior Director, Regulatory Affairs
One Communications Corp.
100 Chestnut St., Suite 600
Rochester, NY 14604
585-530-2841 Tel.
585-530-2739 Fax
tprice@onecommunications.com

Please contact Ted Price or me if you have any questions. Thank you.

Very truly yours,

A handwritten signature in blue ink that reads "Gregory M. Kennan".

Gregory M. Kennan

Cc: Service List

Enclosure

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

Verizon Massachusetts' Performance Assurance
Plan

D.T.E. 03-50

COMMENTS OF ONE COMMUNICATIONS CORP.

One Communications Corp. (“One Communications”)¹ urges the Department to reject the Verizon proposal to amend the Verizon Performance Assurance Plan (“PAP”) by drastically reducing the overall amount at risk. This is precisely the situation that FCC Commissioner Michael Copps feared three years ago when he warned, “Now that we will no longer examine Verizon’s performance as part of a Section 271 application, we must be especially proactive and vigilant as we monitor and enforce all facets of Section 271 compliance.”² A sixty-five percent reduction in the dollars at risk will result in a PAP that fails to deter backsliding from the antidiscrimination standards that formed the basis for Verizon to obtain Section 271 authority in Massachusetts.

In addition, while the Department certainly should reallocate performance penalties away from metrics that are less significant to competition now than in 2000 when the PAP was adopted, the revised PAP does not go far enough in ensuring that Verizon provides non-

¹ One Communications is the company formed in the merger of the parent companies of Choice One Communications of Massachusetts Inc., Conversent Communications of Massachusetts, Inc., CTC Communications Corp., Lightship Telecom, LLC and PayPhone, LLC, all of which are certificated carriers in Massachusetts and do business under the name of One Communications.

² *In the Matter of Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-384, Memorandum Opinion and Order, FCC 03-57 (Mar. 19, 2003) (Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part) (“VZ MD-DC-WV 271 Order”).

discriminatory access to broadband-capable (xDSL, DS1, and DS3) loops. By all accounts, broadband will become an increasingly important feature of 21st century telecommunications. One reason among many is that voice over Internet protocol (“VOIP”) telephony requires a broadband connection. Without continued nondiscriminatory access to broadband-capable loops, however, competitors like One Communications will be hampered in their ability to provide Massachusetts end users, particularly small businesses, a competitive alternative to an ILEC/cable duopoly. Consistent with its strong commitment to maintain DSL competition, the Department should ensure that any reallocation of penalty dollars ensures the continued viability of competition reasonably into the future. To do so, instead of reducing the dollars at risk, the Department should reallocate those potential penalties to metrics associated with broadband loops.

Discussion

I. The Department Should Maintain the Current Amount at Risk.

The fundamental question posed by Verizon’s revised plan is whether to reduce the dollars at risk by two-thirds. The Department should reject that proposal. Such a severe reduction would be harmful to competition and to consumers in Massachusetts.

A. The Department Established and the FCC Endorsed the Current Level of Dollars at Risk to Deter Anticompetitive Conduct by Verizon.

In considering whether to alter the dollars at risk in the PAP, the Department should remind itself of the reasons why the PAP was adopted and why the total liability was set where it was.

When it approved the PAP in 2000, the Department noted the dollar amounts at risk for Verizon and said that it was “confident that the approved PAP in this proceeding provides a

sound a systematic means to report performance, deter anti-competitive behavior, and provide a reliable safeguard against backsliding.”³ In approving Verizon’s Section 271 application for Massachusetts, the FCC agreed that the PAP was “likely to provide incentives that are sufficient to foster post-entry checklist compliance” based, in part, on Verizon’s “total liability at risk.”⁴ It also noted 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.”⁵ Thus, both the Department and the FCC determined that the liability currently set forth in the PAP are necessary to ensure Verizon’s continued compliance with Section 271 and to ensure competition in the local exchange market in Massachusetts.

While Verizon’s PAP in Massachusetts is based on the one originally approved in New York, the DTE retains authority to make changes that are consistent with both the current status and trends of competition in Massachusetts. “The Department may assess the necessity and appropriateness of the New York changes in Massachusetts’ context.”⁶ The FCC also noted that the DTE would have authority to “determine whether changes should be made to improve the PAP.”⁷ As discussed below, while certain changes to the PAP may be warranted, Verizon has not demonstrated any need to change the overall potential liability under the PAP.

³ *In the Matter of the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts*, CC Docket No. 00-176, Evaluation of the Massachusetts Department of Telecommunications and Energy (Oct. 16, 2000), Appendix A, at 3, 9.

⁴ *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services In Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (Apr. 16, 2001), ¶¶ 241 (“VZ MA 271 Order”).

⁵ *Id.* ¶ 240.

⁶ *Order on Motions for Clarification and Reconsideration, Performance Assurance Plan*, D.T.E. 99-271 (Nov. 21, 2000), at 14 (“DTE PAP Order”).

⁷ *VZ MA 271 Order*, ¶ 247.

B. There is Insufficient Justification for the Proposed Drastic Reductions in the Dollars at Risk.

The Department set the dollars-at-risk level after careful consideration of the objective to be gained — ensuring that Verizon acts so as to ensure that wireline-based competition flourishes in Massachusetts — and of input from many parties. There is insufficient justification to reduce the dollars at risk by the amount that Verizon now proposes.

Verizon purports to justify the reduction by the fact that the FCC has substantially cut back on Verizon's obligations to unbundle network elements, such as local switching and UNE combinations involving switching (in particular, UNE-P). Such FCC action undoubtedly justifies a *reallocation* of payments among the remaining performance metrics. But it does not lead to the conclusion that a *reduction* in potential penalties is warranted. Importantly, both the Department and the FCC found that the dollars at risk were necessary to induce good service quality by Verizon. Neither the Department nor the FCC suggested that a penalty level drastically reduced from that level would be sufficient.

The Department must keep this precedent in mind as it considers any reductions in the dollars at risk under the PAP. Both the Department and the FCC made specific findings that the potential penalties were sufficient to ensure high quality wholesale service by Verizon. Further, both the Department and the FCC made these findings in light of vigorous argument that the penalty levels were too low.

In light of these precedents, the Department should ensure that any substantial reductions in the overall dollars at risk are well justified. That is not the case with the Verizon proposal. Simply because the FCC has eliminated Verizon's obligation to unbundle a number of network elements that were important to certain CLECs' entry strategies a number of years ago says nothing about the overall level of penalties to which Verizon should be subject. To the contrary,

the FCC's actions make the remaining network elements all the more important to competition. That being the case, the penalties potentially associated with each remaining metric should substantially increase. Overall, the total dollars at risk should stay the same.

Most important, the Department should not assume that because it found that the Massachusetts telecommunications market was open to competition several years ago, the Department may relax its efforts to ensure that the market remains open. Whatever the overall state of competition in Massachusetts, many areas remain where DTE vigilance is necessary to ensure that end users continue to enjoy the benefits of competitive choice.

One of these areas is the small business market. At present, and for the foreseeable future, the only meaningful competition to the ILECs for this market segment will be from wireline CLECs. Cable broadband and cable telephony providers generally do not serve the small business market. Fixed wireless broadband is unproven as yet. And, while small businesses certainly make considerable use of wireless communications services, wireless generally supplements but does not supplant wireline narrowband and broadband telecommunications services in this market.

FCC Commissioner Michael Copps envisioned just the situation in which the Department and parties find themselves in his remarks accompanying the FCC's grant of approval to Verizon's final Section 271 application. Commissioner Copps noted that the real work of the FCC and state commissions was just beginning:

Now that Verizon has the authority to provide long-distance services nationwide, the real challenge begins. The [FCC] looks closely at a Bell company's performance to ensure compliance with the statute at the time we consider a Section 271 application. We do not, however, always accord the same vigilance towards ensuring continued compliance. We must institute better follow-up on what happens following a successful application. Competition is not the result of some frantic one-time dash to check-list approval. It is a process over time. It is about — or should be about — creating and then sustaining the

reality of competition. Our present data on whether competition is taking hold is sketchy and non-integrated. We need better data to evaluate whether and how approved carriers are complying with their obligations after grant of the application, as Congress required.

In this effort, we must work closely with the State Commissions. Our expectation is that Verizon will work cooperatively with other carriers to resolve any issues that develop. To the extent that Verizon does not adequately address problems that occur, the [FCC] and the State Commissions have a shared obligation to enforce swiftly and effectively the market-opening obligations of the Act. Now that we will no longer examine Verizon's performance as part of a Section 271 application, we must be especially proactive and vigilant as we monitor and enforce all facets of Section 271 compliance. By taking this responsibility seriously, we can ensure that consumers continue to reap the benefits of enduring competition as envisioned by Congress in the 1996 Act — greater choice, lower prices, and better services.⁸

The Department should carefully heed Commissioner Copps' warnings. One Communications respectfully suggests that reducing potential penalties is not the way to “be especially proactive and vigilant as we monitor and enforce all facets of Section 271 compliance.” Particularly in light of the Department's recent decision to eliminate the Consolidated Arbitrations wholesale performance standards plan and rely solely on the PAP “to ensure that Verizon has adequate financial incentives to continue to meet its obligations after it has been approved to enter the long-distance market,”⁹ the proposed drastic reductions in potential penalties that the Verizon proposal contemplates will weaken the Department's ability to ensure continued compliance by Verizon with its obligations to its competitor/customers.

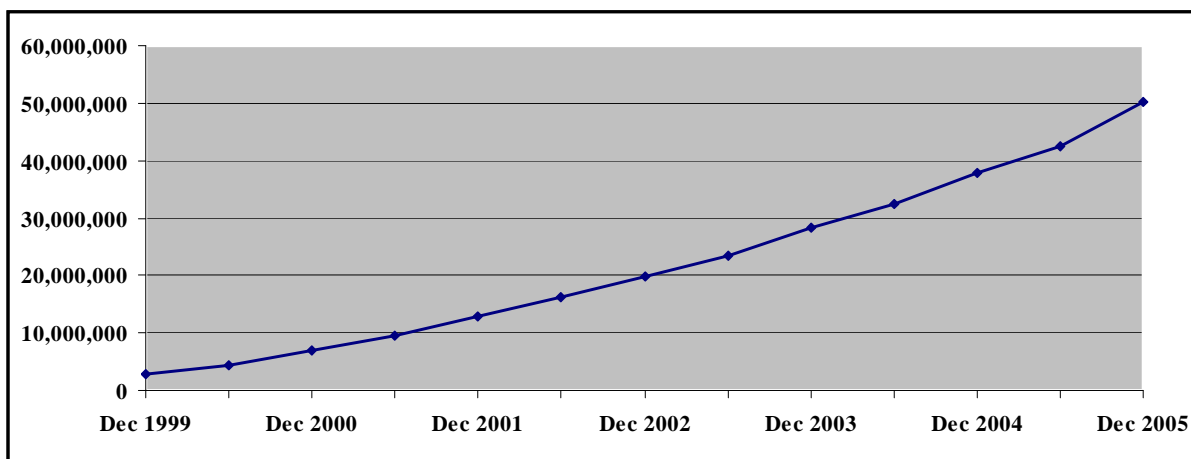
⁸ VZ MD-DC-WV 271 Order (Statement of Commissioner Copps).

⁹ *In re Proposal to Eliminate Wholesale Performance Standards Established in Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 3-F (1999) in Favor of the Carrier to Carrier Guidelines and the Performance Assurance Plan Standards*, D.T.E. 03-50, Letter Order at 4 (Dec. 22, 2006) (quoting *In Re Application of Verizon New England Inc. (d/b/a Verizon Long Distance)*, NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket 01-9, Evaluation of the Massachusetts Department of Telecommunications and Energy, Executive Summary (filed October 16, 2000)).

II. The Department Should Allocate PAP Penalties Toward Broadband Loops.

A. Broadband's Importance as a Means to Obtain Telecommunications Services Will Increase.

There is little question that broadband is becoming increasingly important as a means of obtaining telecommunications services. The number of broadband connections in the United States is increasing rapidly. FCC data show the continuing increase in the number of high-speed lines in the U.S.:



Source: FCC, High-Speed Services Status as of December 31, 2005, Chart 1

In Massachusetts the story is the same. As of December 31, 2005, there were over 1.4 million high-speed connections in Massachusetts.¹⁰ High-speed connections in Massachusetts increased from 114,116 in December 1999 to 1,431,759 as of December 2005.¹¹ From December 2004 through December 2005, the number of high-speed lines in Massachusetts grew

¹⁰ FCC, High-Speed Services for Internet Access: Status as of December 31, 2005 (July 2006), Table 10 ("FCC High-Speed Report").

¹¹ *Id.*

by over 25%.¹² This followed growth of nearly 24% from December 2003 through December 2004.¹³

Verizon echoes the broadband growth story. Verizon's DSL operations are doing very well and growing very fast. "We added 1.7 million new broadband connections, for a total of 5.1 million lines in service at December 31, 2005, an increase of 47.6% compared to 3.5 million lines in service as of December 31, 2004."¹⁴

B. The Department Must Preserve Wireline Broadband Competition to Prevent a Broadband Duopoly.

1. A Broadband Duopoly Will Result if Safeguards Are Inadequate.

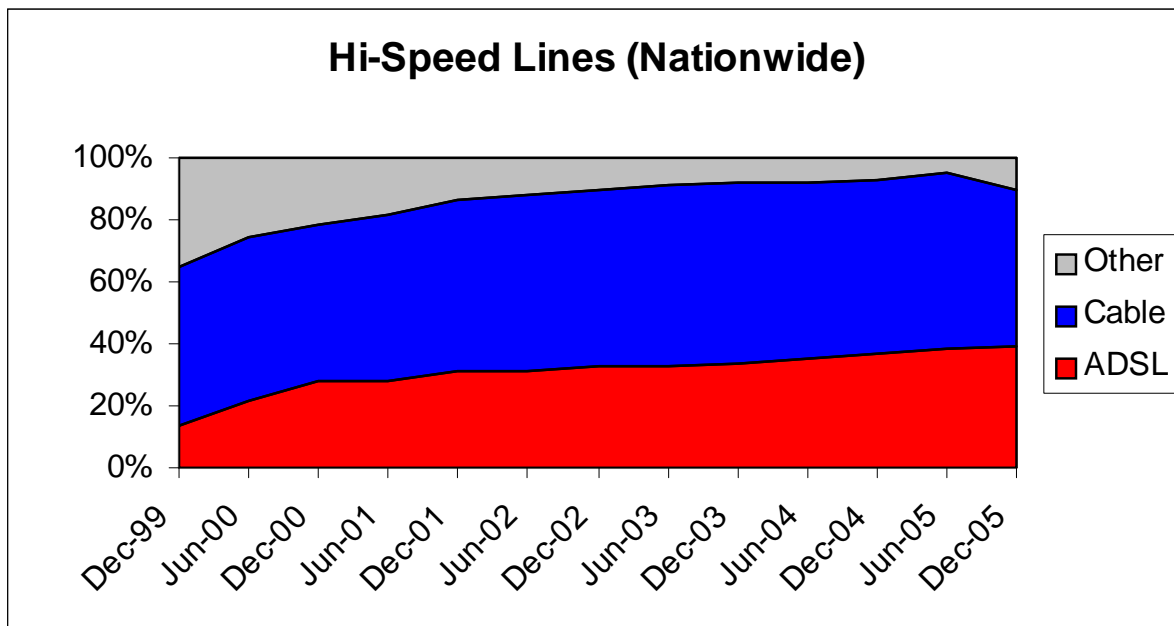
With the increased importance of broadband as a means to obtain telecommunications services comes the danger of monopolization or duopolization in the provision of those broadband services. The national trend is that high-speed services are provided through cable and DSL. Other means of obtaining high-speed services, such as wireline TDM-based broadband, are diminishing as a percentage of total high-speed lines.

¹² *See id.*

¹³ *See id.*

¹⁴ Verizon 2005 Annual Report at 16.

The following chart illustrates the trend:



Source: FCC High-Speed Services Status as of December 31, 2005, Tables 10-12

The dominance of cable and ADSL in the market for high-speed lines is even stronger in Massachusetts. As of December 31, 2004 (the last date for which FCC data are available), only about 5.5% of total high-speed lines were provided via technologies other than ADSL or cable modem, compared to 7.2% nationally.¹⁵

It is important to note that Verizon and the other RBOCs have benefited most from the success of DSL, throughout the country and in Massachusetts. CLECs, conversely, have seen little benefit. Over 82% of high-speed ADSL lines in the United States are provided by RBOCs, with another 14.1% being provided by other ILECs.¹⁶ Only 3.7% of ADSL lines are provided by

¹⁵ FCC High-Speed Report, Tables 10-12. The FCC data show that as of December 31, 2004, approximately 27% of the total high-speed lines in Massachusetts were ADSL (compared to approximately 36% nationally) and approximately 68% were cable modem (compared to about 56% nationwide). *Id.*

¹⁶ *Id.*, Table 6.

CLECs.¹⁷ Given that the non-ADSL wireline broadband technology (i.e., SDSL) is deployed largely by non-ILEC carriers,¹⁸ and that CLECs have only a tiny share of the ADSL market, options for consumers in Massachusetts for broadband access other than through the ILEC/cable duopoly are extremely limited.¹⁹

This issue is particularly acute for customers that are small businesses. Cable broadband is virtually non-existent in the small-business market. Accordingly, without competition from wireline CLECs, small businesses will be left with only one choice to obtain broadband services — the ILEC.

MCI — now, of course, part of Verizon — directly warned the FCC of the dangers posed by such monopoly or duopoly in broadband services:

VOIP is not intermodal competition — it is a software application that rides as a service on a broadband facility provided by either the incumbent LEC itself or the cable company. Consigning would-be competitors to the mercies of either a monopolist or a duopolist in control of all-important broadband loop will not bring robust competition to the mass market.

...

As for VOIP provided over cable, it at best establishes a duopoly, since VOIP providers are fully dependent on the unregulated bottleneck input provided by the cable company, and cable companies can readily undermine competition from independent VOIP providers once they begin providing VOIP themselves, simply by setting the price of stand-alone broadband very close to the price of broadband plus VOIP.²⁰

¹⁷ *Id.*

¹⁸ *Id.*, Table 6.

¹⁹ While the number of “other” high-speed lines increased between December 2004 and December 2005, the FCC report shows that a substantial portion of the increase is attributable to wireless broadband services. *See id.*, Table 1. And these too are dominated by the RBOCs and other ILECs, with only about 75,000 out of over 3.1 million mobile wireless high-speed lines — or 2.4% — being provided by non-ILECs. *Id.*, Table 6.

²⁰ *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, MCI Reply Comments at 2, 12 (filed Oct. 19, 2004).

2. The Department Should Ensure that Adequate PAP Dollars are Directed to Metrics Associated with Broadband Facilities and Services.

During its proceeding in 2000 to approve the PAP, the Department found that “the Massachusetts PAP should be strengthened with respect to DSL services. The demand for, and importance of, advanced services provided by DSL and line sharing by consumers is fast increasing, and the VZ-MA performance standards and remedies in the PAP should reflect this.”²¹ Moreover, in a letter to the FCC concerning Verizon’s Section 271 application, then-DTE Chairman James Connolly said the following:

The telephone was invented in Boston in 1875, and the Department has regulated Verizon and its predecessors for over 100 years. Whatever the outcome of the § 271 application, the Department is not going away. It will continue to promote the policy it adopted in 1985 — namely, to promote intra-LATA competition in order to benefit Massachusetts consumers and the State’s economy. DSL is a vital feature of that promotional effort. . . . [I]mproved DSL metrics will be a central part of that work. That is why we have expressly and directly linked the Massachusetts PAP’s enforcement measures to the continuing industry collaborative in New York. The Department has committed — and I repeat that commitment here and now — to adopt any and all enhanced New York metrics as Massachusetts’ own as soon as they are issued. . . . But — and this is an important additional pledge — the Department has further committed itself to develop its own enhanced DSL metrics and to amend our PAP accordingly, should the New York collaborative prove dilatory. You have my and my colleagues’ word on that.²²

The Department should not back down now from its strong commitment to ensure a competitive market for wireline broadband services in Massachusetts. At this important juncture, the Department should protect and promote telecommunications competition into the future by reallocating credits towards network elements and services that wireline CLECs use to provide broadband services. Thus, for example, the Department should not set the dollars at risk at zero for such measures as:

²¹ *DTE PAP Order* at 5.

²² Letter of DTE Chairman James Connolly to FCC, CC Docket No. 00-176 (Dec. 1, 2000), at 3.

PR-4-02-3510 Average Delay Days - Total - 2W xDSL Loop

PR-4-02-3510 Average Delay Days - Total – EEL

PR-8-01-3510 Open Orders in a Hold Status >30 Days –EEL

In addition, Verizon’s proposed reallocation would set credits for other critical measures relevant to CLEC provision of broadband services at levels that are essentially negligible. For example, the proposal sets bill credits for each of the following broadband-related measures at less than \$25,000 annually:

PR-4-01-1211 % Missed Appointment -VZ -DS1 -UNE/Resale

PR-4-01-1213 % Missed Appointment -VZ –DS3 -UNE/Resale

PR-4-14-3342 % Completed On Time - 2W xDSL Loops

PR-6-01-3342 % Installation Troubles – 2W xDSL Loops

MR-4-01-1217 Mean Time to Repair - DS1 & DS3 -UNE/Resale.

Each of the critical measures listed above should bear significantly greater dollars at risk. Each of the measures is relevant to CLECs’ provision of broadband services. Particularly in the small business market, where there is no appreciable competition from cable or other types of broadband pipe, these metrics cover the only significant means by which small business customers can access a choice of telecommunications providers. Without meaningful incentives for Verizon to provide high-caliber service to wireline CLECs, meaningful competition in this market segment is liable to disappear.

Therefore, instead of reducing the overall dollars at risk, the Department should reallocate the reduced penalties from certain areas to performance measures relevant to broadband loops. By doing so, the Department will help to ensure continued competition in this increasingly important product segment. Further, by taking measures to protect consumers from

being seduced to a duopolistic Hobson's choice between cable and ILEC providers of broadband access, the Department will help to foster the growth of other, future telecommunications methodologies, such as VOIP, that ride over those broadband loops.

Ensuring that end-users have a choice of providers will have another benefit for consumers in Massachusetts. A choice of providers also will foster consumers' choice of Internet applications and content. An increase in the number of providers will inevitably result in a greater variety of application and content offerings, as no one provider (or two) will be the gatekeeper to the Internet. The Department should ensure that a diversity of providers, and hence: application and content offerings, continue to be available to end users in the state. Consumers in Massachusetts deserve no less.

Conclusion

The Department should reject Verizon's proposal to cut the overall dollars at risk. Further, the Department should protect the continued viability of wireline broadband competition by real locating *the* proposed cuts to provisioning and maintenance and repair metrics related to broadband (xDSL, **DS 1**, and **DS3**) loops.

December 27,2006



R. Edward Price
Senior. Director, Regulatory Affairs
One Communications Corp.
100 Chestnut St., Suite 600
Rochester, NY 14604
585-530-2841 Tel.
585-530-2739 Fax
tprice@onecommunications.com

Respectfully submitted,



Gregory M. Kennan
Vice President, Regulatory Affairs
One Communications Corp.
24 Albion Rd., Suite 230
Lincoln, RI 02865
401-834-3326 Tel,
401-834-3350 Fax
gkennan@onecommunications.com