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Via Overnight Delivery & Electronic Mail

April 28, 2009

Ms. Catrice C. Williams, Secretary
Department of Telecommunications and Cable
One South Station
4th Floor
Boston, MA 02110

**Re: Motions for Protective Treatment by Verizon Massachusetts
Regarding Customer Specific Pricing Contracts,
D.T.C. 08-11**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find the original and three (3) copies of One Communications' Reply.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paula", followed by a long, horizontal, slightly wavy line that extends to the right.

Paula W. Foley

cc: Alison Lackey, Hearing Officer
D.T.E. 08-11 Service List (electronic only)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**Motions for Protective Treatment by Verizon
Massachusetts Regarding Customer Specific
Pricing Contracts**

D.T.C. 08-11

ONE COMMUNICATIONS' REPLY

On April 10, 2009, One Communications filed a Petition to Intervene in this proceeding pursuant to the Department's March 20, 2009 Request for Comment and Notice of Public Hearing. At the procedural conference held on April 17, 2009, Verizon Massachusetts provided One Communications with Verizon's Opposition to One Communications' Petition to Intervene, in which Verizon urged the Department to deny in its entirety One Communications' request to intervene in this proceeding. On April 21, 2009, Verizon filed its Response to the Petition for Limited Participation Status of DSCI Corporation ("DSCI"), in which Verizon asked the Department to deny DSCI any participation in this matter other than being placed on the service list. Given that One Communications and DSCI are the only CLECs that sought to participate in this proceeding, Verizon seeks to eliminate all CLEC input into the issues raised in this case. As discussed in this Reply, Verizon's attempt to do so is both procedurally unwarranted and manifestly anti-competitive.

Pursuant to the schedule established by the Hearing Officer at the Procedural Conference, by this filing One Communications urges the Department to reject Verizon's Opposition, and to grant One Communications' intervention request. One Communications also requests that the Department establish a procedural schedule to allow all participants in this case to brief the legal

issues raised by Verizon's motions for protective treatment of information contained within Verizon's customer specific pricing ("CSP") contracts.

In Verizon's Opposition at 2, Verizon asserts that One Communications "has not claimed an interest in the continued public disclosure of the identities of Verizon MA's CSP customers, and it has no such interest." Verizon's assertion is puzzling for two reasons. First, One Communications did, in fact, claim in its Petition an interest in any potential changes to Department rules governing CSP contracts, which is what Verizon seeks here. Second, in its motions for confidential treatment in this docket, Verizon characterizes the issues it raises as matters of competitive significance; yet in its Opposition, Verizon argues conversely that competitors such as One Communications have no interest in this proceeding. For example, in Verizon's motions for protective treatment, Verizon argues that the Department must restrict access to information previously available publicly because "if [the information were] made public, it would likely create a competitive disadvantage for Verizon MA" Verizon September 24, 2008 Motion at 7.¹ If Verizon is correct that its competitors have no interest in this proceeding, it must also be true that there are no issues of competitive significance associated with this proceeding. Therefore, Verizon has fatally undercut the arguments it made in its own motions for protective treatment, and the Department should deny Verizon's pending motions as unsupported and close this docket.

Alternatively, the Department could reject Verizon's Opposition, and conclude that One Communications has an interest in this proceeding arising from, as stated in One Communications' intervention request, Massachusetts CLECs' ability under federal and state law to have access to Verizon's CSP contracts for purposes of resale. See One Communications

¹ See also Verizon Motion at 4 ("[T]he identity of Verizon MA's contract customers is competitively sensitive . . . "); and 7 ("[T]he identity of the customer for the CSP contract filed herewith is competitively sensitive information . . . ").

Petition to Intervene at 1; see also DSCI Petition for Limited Participant Status at 2. If the Department changes any aspect of the rules applicable to CSP contracts, including altering access to information contained in filings made with the Department that were previously publicly available, Massachusetts CLECs, including One Communications, and their ability to compete with Verizon as resellers, will necessarily be affected.

Also, Verizon argues in its Opposition that, because One Communications has no “interest” in this proceeding, there is no reason that the information Verizon seeks to be treated confidentially should be public. See Verizon Opposition at 2. However, Verizon has turned the standard of review for confidential treatment on its head – the standard of review does not require One Communications, or any other CLEC, to prove that the information should remain public, rather the standard of review for confidential treatment requires Verizon to prove that the harm to it is so great that the presumption in favor of continued public disclosure is unquestionably overcome. See G.L. c. 25C, § 5.

There are a number of legal issues raised by Verizon’s motions for protective treatment in this docket – issues that differ from those the Department deemed applicable to AT&T in D.T.E./D.T.C. 06-57. Quite simply, Verizon is not AT&T – AT&T operates as a non-dominant carrier and a CLEC; Verizon is a dominant carrier and an ILEC and RBOC.² There is a world of difference between Verizon and AT&T arising from these different regulatory classifications. Presumably, it is for this reason the Department initiated this case as an adjudicatory proceeding pursuant to G.L. c. 30A, and did not, as Verizon requested it to do, apply the AT&T holding to Verizon without additional inquiry. As the Department is aware, an adjudicatory proceeding

² See Order on Appeal of General Counsel Rulings Denying Motions for Confidential Treatment, D.T.E./D.T.C. 06-57, at 12-13 (August 6, 2008).

necessarily requires a record upon which to deliberate, and in this instance, One Communications suggests that the Department's deliberations would be served by the participants briefing the legal issues. Following submission of briefs, participants should have the option of requesting that the Department allow for further process if the Department agrees it is necessary. One Communications suggests that, following the Department's ruling on intervention, participants be allowed at least three weeks to submit briefs.

In sum, for all the above reasons, One Communications urges the Department to grant One Communications' Petition to Intervene, and establish a procedural schedule to allow for briefing by the participants on the legal issues raised by Verizon's motions for protective treatment of information contained within Verizon's CSP contracts filed with the Department.

April 28, 2009

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paula W. Foley", with a long horizontal flourish extending to the right.

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