

February 28, 2001

**SENT VIA EXPRESS MAIL**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B-204  
Washington, D.C. 20554

Re: Department Reply Comments in CC Docket No. 01-9: Application by Verizon New England, Inc., et al., for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in Massachusetts

Dear Ms. Salas:

The Massachusetts Department of Telecommunications and Energy ("Department") has reviewed all of the initial comments filed in CC Docket No. 01-9, Verizon Massachusetts'<sup>1</sup> application to offer long distance service in Massachusetts, by interested parties. We will respond with additional comments on the following limited issues: collocation power charges; competitive local exchange carrier ("CLEC") access to digital loop carrier ("DLC") information; VZ-MA's line splitting and unbundled packet switching obligations imposed by the Department; and VZ-MA's Performance Assurance Plan ("PAP"). The other issues raised by the commenters were either already addressed by the Department in our previous filings (including those from CC Docket No. 00-176) or not presented before the Department during our investigation of VZ-MA's compliance with its § 271(c)(2)(B)<sup>2</sup> obligations.

A few carriers, Covad Communications Company ("Covad") and Rhythms NetConnections, Inc. ("Rhythms"), dispute VZ-MA's reported digital subscriber line ("xDSL") performance with respect to their service orders.<sup>3</sup> As we noted in our Supplemental Evaluation, should the Federal Communications Commission ("FCC") request our assistance, the Department is prepared to reconcile discrepancies between VZ-MA's and the CLECs' data.

I. CHECKLIST ITEMS

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<sup>1</sup> Verizon New England, Inc. d/b/a Verizon Massachusetts ("VZ-MA").

<sup>2</sup> 47 U.S.C. § 271(c)(2)(B).

<sup>3</sup> See e.g., Covad Comments at 13-16; Rhythms Comments, Williams Aff. at ¶ 26, Attach. B.

A. Checklist Item 1 - Collocation<sup>4</sup>

In its comments, Covad argues that VZ-MA improperly charges CLECs for the amount of power used by the CLECs in their collocation arrangements.<sup>5</sup> Although the Department addressed this issue in the CC Docket No. 00-176 filings we made last year,<sup>6</sup> an update may be helpful to the FCC and interested parties. On January 12, 2001, VZ-MA filed with the Department a proposed tariff modifying, among other things, how its collocation power charges are calculated. The Department approved this filing on February 15 and has attached a copy of this tariff to these reply comments.<sup>7</sup> Moreover, the Department opened a proceeding earlier this year, D.T.E. 01-20, to investigate all of VZ-MA's unbundled network element ("UNE") and resale rates, which will include its collocation power charges. Finally, we note that on February 22, 2001, Covad and AT&T Communications of New England, Inc. filed with the Department a complaint about VZ-MA's power charges. Pursuant to Department rules, VZ-MA must file a response to this complaint by March 8, 2001. The Department will take appropriate action after it reviews these filings.

B. Checklist Item 2 - OSS

One commenting carrier, Sprint Communications Company, L.P. ("Sprint"), argues that VZ-MA fails to meet its obligation to provide nondiscriminatory access to all of the loop data in VZ-MA's

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<sup>4</sup> Several carriers continue to raise VZ-MA's special access performance in the context of both checklist items 1 (trunking) and 5 (transport). See Global Crossing North America, Inc. Comments; Competitive Telecommunications Association Comments. Based upon our review of previous FCC § 271 Approval Orders, we disagree with those commenters that argue that VZ-MA must report its special access performance as a condition of § 271 approval or that this performance must be at a certain level to receive § 271 approval. Specifically, in response to a Global Crossing complaint raised in the Texas § 271 proceeding, the FCC held that "it does not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance." SWBT Texas Order at ¶ 335 (full citation provided below).

<sup>5</sup> Covad Comments at 35-39.

<sup>6</sup> See e.g., D.T.E. Evaluation at 40.

<sup>7</sup> See Appdx. A.

possession.<sup>8</sup> According to Sprint, VZ-MA has refused Sprint's request for the locations of, and other demographic information about, VZ-MA's DLC equipment.<sup>9</sup> In a Department arbitration proceeding, Sprint's request for information about VZ-MA's DLC data was slightly more specific. In that proceeding, Sprint sought the following: the technical parameters of the DLC; the technical parameters of the plant; and the potential number of customers that could be offered xDSL services.<sup>10</sup> The Department denied Sprint's request after determining that the information it sought went well beyond requirements imposed on incumbent local exchange carriers ("ILECs") by the FCC in its UNE Remand Order.<sup>11</sup> On January 2, 2001, Sprint filed a motion for reconsideration of the Sprint Arbitration Order; thus, this issue remains the subject of an open proceeding before the Department.

C. Checklist Item 4 - xDSL-Capable Loops

In addition to disputing some of VZ-MA's carrier-specific xDSL performance data, several carriers question whether VZ-MA is presently meeting its line splitting obligations.<sup>12</sup> The Department addressed this issue in its Supplemental Evaluation;<sup>13</sup> therefore, we will only update the information contained in that earlier filing. On February 21, 2001, the Department issued an Order clarifying VZ-MA's line splitting obligations.<sup>14</sup> We require VZ-MA to make line splitting available in Massachusetts

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<sup>8</sup> Sprint Comments at 4-8.

<sup>9</sup> Id. at 6.

<sup>10</sup> Petition of Sprint Communications Company L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Verizon Massachusetts, D.T.E. 00-54, at 12 (December 11, 2000) ("Sprint Arbitration Order").

<sup>11</sup> Id. at 14, citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, at ¶ 427 (rel. Nov. 5, 1999) ("UNE Remand Order") (requiring ILECs to provide information about the existence, location, and type of DLC on the loop).

<sup>12</sup> Covad Comments at 9-10; WorldCom, Inc. Comments at 24-28.

<sup>13</sup> See D.T.E. Supplemental Evaluation at 39-41.

<sup>14</sup> Appdx. B (Phase III-B Clarification Order, D.T.E. 98-57-Phase III, at 3 (February 21, 2001)) (continued...)

in accordance with relevant FCC Orders and clarify that our directives do not go beyond those set forth in the FCC's SWBT Texas Order and its Line Sharing Reconsideration Order.<sup>15</sup>

The Department also made clear in this Clarification Order that VZ-MA is required to file a proposed unbundled packet switching tariff for consideration but, that unless certain conditions are met, the Department will not require VZ-MA to make this offering available to CLECs.<sup>16</sup> Pursuant to an earlier Department Order, VZ-MA must file a so-called plug and play tariff by March 9, 2001.<sup>17</sup> Because we determined that certain findings must be made by the Department before we require VZ-MA to offer unbundled packet switching, absent an FCC ruling to the contrary,<sup>18</sup> we disagree with Rhythms' contention that we must approve this yet-to-be-proposed tariff before the FCC may grant VZ-MA's § 271 application.<sup>19</sup>

## II. PERFORMANCE ASSURANCE PLAN

A few commenters argue that absent Department approval of or modification to VZ-MA's proposed PAP, filed with the Department on January 30, 2001, the FCC cannot conclude that VZ-

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<sup>14</sup>(...continued)  
2001)).

<sup>15</sup> Id., citing Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (2000) ("SWBT Texas Order"); and Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, FCC 01-26 (rel. Jan. 19, 2001) (further citation omitted) ("Line Sharing Reconsideration Order").

<sup>16</sup> Appdx. B at 3-4.

<sup>17</sup> Phase III-A Reconsideration Order, D.T.E. 98-57-Phase III, at 45 (January 8, 2001).

<sup>18</sup> We note that the FCC recently sought comments on whether a requesting carrier may physically or virtually collocate its line card at the remote terminal by installing it in the ILEC's DLC for the purposes of line sharing. See Line Sharing Reconsideration Order at ¶ 56.

<sup>19</sup> Rhythms Comments at 21.

MA's application is complete.<sup>20</sup> As we noted in our Supplemental Evaluation, the Department sought comment on VZ-MA's January 30, 2001 PAP proposal. After consideration of these comments, the Department approved VZ-MA's proposed PAP revisions on February 23, 2001.<sup>21</sup>

### III. CONCLUSION

The Department began its investigation of VZ-MA's compliance with its § 271 obligations shortly after VZ-MA filed its pre-FCC application with the Department on May 24, 1999. To be clear, this earlier VZ-MA filing was a good start but, in retrospect, did not demonstrate that VZ-MA met all of the rigorous standards subsequently set by the FCC in its § 271 Approval Orders. The thousands of hours of work over the past 20 months by VZ-MA, the Department, interested parties, and KPMG Consulting, L.L.C., has pushed VZ-MA to file the most comprehensive and carefully reviewed § 271 application (together with its filings from CC Docket No. 00-176) that the FCC has received to date.

Our review of the extensive record from our § 271 proceeding enables us to conclude, without reservation, that VZ-MA is indeed providing competitors with an acceptable level of performance in accordance with the principles set forth in the U.S. Department of Justice's most recent filing in this proceeding.<sup>22</sup> As VZ-MA's supplemental application makes clear, Massachusetts customers are benefitting from competition in the local telephone markets and there is no reason for any further delay in giving Massachusetts customers the option of

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<sup>20</sup> Massachusetts Attorney General Comments at 7; WorldCom, Inc. Comments at 40 n.26.

<sup>21</sup> Appdx. C.

<sup>22</sup> Department of Justice Evaluation at 6-7.

choosing VZ-MA for interLATA long distance services. Consequently, the Department respectfully requests the FCC to grant VZ-MA's § 271 application.

By the Commission,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

cc: Susan Pie, Policy and Program Planning Division  
Common Carrier Bureau, Room 5-C224

Josh Walls, U.S. Department of Justice  
Antitrust Division