

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts

D.T.E. 01-20

**AT&T'S PARTIAL OPPOSITION TO VERIZON'S  
MOTION TO INCORPORATE BY REFERENCE AND  
TO FILE SUPPLEMENTAL TESTIMONY**

On January 22, 2002, Covad Communications Company ("Covad") moved the Department to incorporate evidence from D.T.E. 98-57 (Phase III) that had dealt with xDSL and line sharing issues. *See* Motion of Covad Communications Company to Incorporate Evidence From D.T.E. Phase III 98-57 Pursuant to 220 C.M.R. § 1.10(3) ("Covad's Motion"). Verizon responded on February 6, 2002, by filing its own motion to incorporate further evidence from the Phase III proceedings and by also seeking "to file supplemental testimony to update the record of D.T.E. 98-57 (Phase III) on the issues identified [in Covad's motion]." *See* Motion of Verizon Massachusetts to Incorporate by Reference and to File Supplemental Testimony ("Verizon's Motion"). AT&T hereby objects to that portion of Verizon's Motion which seeks leave to file supplemental testimony.

### **Argument.**

AT&T has no objection to Covad's Motion and does not object to that portion of Verizon's Motion which merely seeks to incorporate by reference materials that were part of D.T.E. 98-57 (Phase III). The information that those motions seek to incorporate has already been subjected to cross-examination and has already been reviewed by both the Department and the CLECs in connection with 98-57 (Phase III). AT&T does object, however, to Verizon's attempt to introduce, at this extremely late date, entirely new evidence which has not been subject to cross-examination or evaluation by any of the parties in the present case.

Verizon's attempts to introduce new testimony on the xDSL and line sharing issues should be rejected for two reasons. First, it should be rejected because it is extraordinarily untimely. When Verizon filed its direct testimony and cost studies in this case on May 8, 2002, it included cost studies and testimony supporting a variety of xDSL and line sharing rates. If Verizon had wished to file information that would update the Phase III record, it could have done so at that time. Instead, Verizon waited nine months, until the hearings in this docket were concluded and the parties had already expended considerable time and resources responding to Verizon's initial filings. To allow Verizon to file supplemental testimony at this late stage is patently unfair to the parties and to the Department. Verizon had numerous chances over the past nine months to provide support for its cost studies, but chose not to take advantage of those opportunities. Instead, it chose to wait until now, when the parties would have no opportunity for effective response, to request permission to file this supplemental testimony. Verizon is simply too late.

Equally important, it would be patently unfair to allow Verizon to introduce testimony that has not been subjected to cross-examination or addressed in responsive testimonies. Without cross-examination or responsive testimony, Verizon's filing would be mere unsupported and untested assertions. Thus, if the Department were inclined to allow Verizon to introduced wholly new testimony, it would also have to allow all other parties to both cross-examine

Verizon and to file testimony in response to Verizon's filing. Because this is simply not possible now that the hearings have concluded and the parties are in the process of drafting their briefs, Verizon's request must be rejected.

Finally, AT&T notes that, if Verizon is permitted to introduce new evidence which will lead to further responsive testimony and proceedings on selected DSL issues, the Department should not delay resolution of the other issues and the setting of new rates for all other UNEs in this case. Such a delay would harm competition in the local services market and, by extension, harm the consumers of Massachusetts.

### **Conclusion.**

For the reasons stated above, AT&T respectfully urges the Department to deny that portion of Verizon's Motion which seeks to file supplemental testimony in this docket. AT&T does not object to the remainder of Verizon's Motion or to Covad's Motion.

Respectfully submitted,

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Jeffrey F. Jones  
Kenneth W. Salinger  
Jay E. Gruber  
PALMER & DODGE LLP  
111 Huntington Avenue  
Boston, MA 02199-7613  
(617) 239-0100

Mary E. Burgess  
AT&T Communications of New England, Inc.  
111 Washington Avenue, Suite 706  
Albany, NY 12210-2213  
(518) 463-3148

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