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

REPLY COMMENTS OF VERIZON MASSACHUSETTS

Dated: March 28, 2003

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<u>REPLY COMMENTS OF VERIZON MASSACHUSETTS</u>

On February 13, 2003, Verizon MA filed its Compliance Filing in the above-referenced proceeding. The filing, which was supplemented on February 27, 2003, was made in accordance with the Department's July 11, 2002 Order ("*Order*") and the Department's subsequent January 14, 2003 Order on Reconsideration ("*Reconsideration Order*"). The Compliance Filing consisted of seven volumes and contained recurring and nonrecurring cost studies, tariffs and supporting documentation designed to reflect the TELRIC study modifications required by the *Order* and *Reconsideration Order*. The Department conducted technical sessions on the Compliance Filing on March 5 and March 6, 2003, and accepted comments on March 18, 2003. In accordance with the Department's procedural schedule, Verizon MA files these Reply Comments.

It is noteworthy that only five parties or limited participants in the proceeding, the Attorney General, AT&T, Conversent, RCN, and WorldCom, filed comments,[1/] and that, as

[1/] In addition, comments were apparently filed by Brahmacom, Inc. Verizon MA was not served with the comments and discovered them only recently on the Department's website. In any event, the comments are completely without merit because they fail to show any failure by Verizon MA to comply with the

(footnote continued…)

described below, many of the comments are attempts to relitigate issues already decided by the Department or raise issues not properly the subject of this compliance phase of the proceeding. Most other comments are without merit, and, as discussed below, a few minor corrections or clarifications may be appropriate.

I. VERIZON MA'S FORWARD-LOOKING-TO-CURRENT FACTOR ("FLC") COMPLIES FULLY WITH THE DEPARTMENT'S ORDERS.

At the close of the initial phase of this proceeding, the Department specifically ordered Verizon MA to recalculate the 80 percent FLC Verizon MA had used as a placeholder in its initial, proposed rates. As the Department noted, the Department's "directives to Verizon to revise its network assumptions or input values in other sections of [the] Order (e.g., proportion of copper/IDLC/UDLC) may lead to a forward-looking investment different from what Verizon proposed." *Order*, at 98. The Department recognized that changes in the forward-looking investment levels would lead to "a FLC factor different from Verizon MA's proposed 80 percent FLC factor." *Id.* The Department accordingly required Verizon MA to "file a new FLC with supporting documentation that shows in detail how the level of investment in each plant account has changed and how it calculated a new FLC." *Id.* at 91. The Department also acknowledged that Verizon MA's recalculation was likely to reduce the FLC considerably. It observed that in surrebuttal testimony, Verizon MA had contended that the original 80 percent FLC was a "conservative estimate," and that even Verizon MA's own TELRIC proposals ? prior to reductions by the Department ? would produce a FLC of "65 percent." *Id.* at 92-93.

(…footnote continued)

Department's directives. Instead, the comments appear to take issue with certain Department findings and complain about the rates resulting from the application of those findings.

In its Compliance Filing, Verizon MA did precisely what the Department's *Order* directed. Verizon MA recalculated the FLC to be 59 percent, and explained how it arrived at this new FLC.[2/] Verizon MA's recalculation used the same methodology detailed in Verizon MA's surrebuttal, which, as the Department had observed, produced a FLC of 65 percent even before accounting for the various investment adjustments made by the Department. The resulting 59 percent FLC is thus fully consistent with the Department's directives.

In response, AT&T has submitted a rash of criticisms concerning the new FLC, none of which is valid, and many of which are patently disingenuous. For example, AT&T's primary argument is that Verizon MA used some unprecedented methodology to recalculate the FLC (AT&T Comments, at 4-5). In fact, however, as noted above and as AT&T well knows, Verizon MA's recalculation uses the same basic methodology that Verizon MA employed in the FLC analysis submitted with its surrebuttal testimony,[3/] the same methodology Verizon submitted in the New York UNE case, and the same methodology that the New York PSC used in its own calculation of the FLC.[4/]

But even leaving aside the specific flaws in AT&T's arguments, it is clear that AT&T's objection to Verizon MA's recalculated FLC is nothing more than an effort to achieve here what AT&T failed to achieve in the case in chief ? a decision by the Department that "if a FLC factor

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2/ *See* Verizon Compliance Filing, Mass - FLC Development Backup.xls (directory Part G-Factors, subdirectory Part G-10 FLC Development on CD no. 2) (Feb. 13, 2003). Verizon MA explained how it "revised MA-Specific investments based on the DTE's order," and "compared the new Forward-looking investments to those provided in Verizon's Sur-Rebuttal Testimony, calculating a MA-specific FLC calculation." *Id.* Verizon MA also, pursuant to the Department's *Order*, recalculated the annual cost factors to which the FLC is applied. *See Order*, at 98.

3/ *See* Exhibit VZ-38, Verizon MA's Panel Surrebuttal Testimony on Recurring Costs at 5-11 (Dec. 17, 2001).

4/ Order on Unbundled Network Element Rates, N.Y.P.S.C. Case 98-C-1357, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements* (Jan. 28, 2002) ("N.Y.P.S.C. Order on Unbundled Network Element Rates").

were accepted it should be higher [or at least no lower] than 80%" (AT&T Comments, at 4). Not surprisingly, then, AT&T's comments at times read like a petition for reconsideration: in AT&T's own words, AT&T would like "the Department to reconsider its prior order and adopt a FLC factor of 80%" (*id.* at 5-6). But the time for reconsideration is well past. And more important, as shown below, AT&T has demonstrated no basis for the Department to question Verizon MA's recalculated FLC, and even less reason that the Department should adopt the 80 percent FLC, which clearly has *no* relationship to the actual investment relationships in this case (*id.* at 2). The Department thus should reject AT&T's objections out of hand.

A. In Recalculating the FLC Pursuant to the Department's *Order*, Verizon MA Used the Methodology Described in Its Surrebuttal Testimony and Used in the New York UNE Case.

AT&T contends that by using the Department's inputs in Verizon MA's recurring cost models to calculate new forward-looking investment, comparing those to booked investment, and calculating a MA-specific FLC factor, "Verizon undert[ook] a calculation very different from that which the Department was led to believe could be made" (AT&T Comments, at 8). Although AT&T concedes, as it must, that the Department ordered Verizon MA to recalculate the FLC to account for "how the level of investment in each plant account has changed" (*Order*, at 98), AT&T apparently believes the Department made this decision with no understanding of what it meant, how it would be implemented, or how the underlying Verizon MA recurring cost models it had adopted worked.

With no support whatsoever from the record, AT&T argues that "[t]he Department believed that the FLC factor could be adjusted" to reflect the revisions in network assumptions and input values decided by the Department "in a mechanical, mathematical way" (AT&T Comments, at 4). Apparently, in AT&T's view, after a case lasting more than 26 months, the Department entirely misunderstood Verizon MA's recurring cost models, and believed them to be simplistic formulas into which the myriad input decisions the Department had made in its 520 page *Order* and 185 page *Reconsideration Order* could simply be entered to produce a final total forward-looking investment figure. Indeed, despite the clear testimony concerning Verizon MA's unit capacity costing approach for loop and IOF costs, some of which *AT&T itself cites in its Comments*,[5/] AT&T contends that the "Department was misled" about whether "Verizon's recurring cost models, when revised to reflect the Department's orders regarding network design or inputs, could produce 'a forward-looking investment' that could be compared to 'what Verizon proposed' in its original filing" (AT&T Comments, at 4-5 (citations omitted)).

That AT&T would presume to tell the Department what the Department did or did not expect or did or did not understand is startling enough; that it would do so out of whole cloth, in the face of the Department's lengthy and detailed analysis of both parties' models and all the relevant inputs ? and in the face of the Department's clear directive to Verizon MA to recalculate the FLC precisely as Verizon MA has done ? defies belief. Thus, while AT&T repeatedly insists that the Department would be surprised to learn that "Verizon's recurring cost models for the most part estimate costs for particular units of capacity, but never calculate total forward-looking investment" (*id.* at 5),[6/] this statement cannot be reconciled with the record. To cite only one example, the Department's *Order* specifically notes that AT&T criticized Verizon MA's model because "Verizon estimates the cost of individual facilities that a CLEC might order, rather than estimating the cost of the total Massachusetts network and then dividing by the entire demand for particular UNEs in order to determine per-unit UNE costs." *Order*, at 34-35.

5/ *See* AT&T Comments, at 6 (citing Verizon MA's testimony that its loop and IOF models use "a capacity-costing approach . . . . It doesn't try to estimate the cost of the total network.") (citing Tr. 3258, 2/6/02).

6/ *See also* AT&T Comments, at 6 ("Department's order . . . was based on the mistaken premise that Verizon's models produce a total forward-looking investment for the entire network.").

It is clearly wrong to contend that the Department failed to understand the Verizon MA models that it specifically approved for use in calculating recurring rates. Further discussion of that question cannot be warranted.

AT&T's related suggestion that Verizon MA somehow misled the Department concerning the precise methodology Verizon MA would use to calculate the FLC is equally erroneous, and similarly rests on the presumption that the Department did not understand the record or pleadings before it. The methodology Verizon MA used to recalculate the FLC in its Compliance Filing is precisely the same methodology Verizon MA used for its FLC analysis submitted with its surrebuttal testimony.[7/] As explained below, certain inputs were corrected and updated, but the approach itself used in the surrebuttal and compliance runs was identical. Thus, while AT&T criticizes Verizon MA for taking its loop and IOF unit costs and multiplying those by demand assumptions to obtain total demand for those facilities (AT&T Comments, at 7), this is precisely the approach Verizon MA detailed in the hearing testimony,[8/] in Verizon MA's workpaper responding to Record Request 87,[9/] and in its surrebuttal testimony.[10/] And while AT&T claims that the necessary demand "assumptions . . . have never been reviewed by the Department," and "are not in the record" (AT&T Comments, at 5), the end-of-year 2000 demand assumptions used in Verizon MA's compliance runs were in fact the *precise* demand assumptions used in Verizon MA's surrebuttal runs of the FLC and identified in Verizon MA's

7/ *See* Exhibit VZ-38, Verizon MA's Panel Surrebuttal Testimony on Recurring Costs at 5-11.

8/ *See* Tr. 1701, 1/25/2002; Tr. 3382-3385, 2/7/2002.

9/ *See* RR-DTE-87 (attached hereto as Attachment A) (Tab WP2 - Link; Tab WP3 - IOF).

10/ *See* Exhibit VZ-38, Verizon MA's Panel Surrebuttal Testimony on Recurring Costs at 8 and Attachment (FLC MA 1217Results.xls, Tab WP2 - Link; Tab WP3 - IOF) (same as Attachment A).

discovery responses.[11/] There is likewise no merit to AT&T's claim that Verizon MA here for the first time decided to use 1999 embedded investment as a surrogate for categories of investment that were not accounted for by the recurring cost inputs at issue in the case (AT&T Comments, at 7); this, too, was precisely the approach Verizon MA used in its surrebuttal calculations. AT&T's effort to portray this methodology as new apparently relies on its failure to have studied what Verizon MA filed on the record in this case. Again, AT&T has failed to establish any failure by Verizon MA to comply with Department's directives, but reveals only it own lack of understanding of the record.

AT&T's claim that it was surprised by the methodology Verizon MA used to adjust the FLC factor is further belied as well by the fact that in the New York UNE rate case, to which AT&T was a party, Verizon used precisely the same approach. *See* N.Y.P.S.C. Order on Unbundled Network Element Rates. In that case, AT&T made precisely the same criticisms of Verizon's FLC recalculations. There, like here, as the New York PSC noted, "AT&T object[ed] to what it considers to be Verizon's uninvited recalculation of the FLC on the basis of extra-record information." *Id.* at 59. Those arguments were rejected by the New York PSC, as they should be by the Department. The New York PSC termed the FLC "a proper methodological refinement," and denied all exceptions to Verizon's recalculation and application of the FLC. *Id.* at 61. Indeed, using the methodology proposed by Verizon, the New York PSC reduced Verizon's suggested 66 percent to 65 percent. *Id.* Thus, AT&T's claims that Verizon MA's FLC calculations here are unprecedented and "brand new" (AT&T Comments, at 5) and that

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11/ *See* RR-DTE-87 (Tab WP2 - Link; Tab WP3 - IOF); Verizon MA's Panel Surrebuttal Testimony on Recurring Costs at 8 and Attachment (FLC MA 1217Results.xls, Tab WP2 - Link; Tab WP3 - IOF).

either the Department or AT&T was "misled by Verizon" (*id.*) are demonstrably false, and should be rejected.

That Verizon MA's methodology is not new raises another important point: AT&T could have objected to Verizon MA's methodology for recalculating the FLC at the time of Verizon MA's surrebuttal filing, or in its reconsideration pleadings. It did not. It should not be permitted to do so now. However, even if the Department were inclined to consider AT&T's belated methodological criticisms, as shown below, they are invalid, and thus Verizon MA's recalculated FLC should be approved.

B. AT&T'S Argument That Forward-Looking Demand Must Be Factored into the FLC Calculation Makes No Sense.

AT&T claims that Verizon MA's FLC calculation is improper because it uses year-end 2000 demand, rather than expected demand in 2004, to calculate forward-looking investment. But projected demand has absolutely no relevance to the FLC or to annual cost factor development, and thus AT&T's argument is without merit.

As AT&T well knows, expected growth is accounted for in Verizon MA's recurring studies through the application of the utilization factors; indeed, this is one of AT&T's chief arguments concerning the fill levels that should be adopted in a TELRIC study.[12/] The overall expected demand leads to the aggressive utilization factors used in the studies, which produces the significantly reduced investment levels resulting from the Department's *Order*. Any assumed growth therefore would achieve such utilization levels, not exceed them. And growth would not effect the FLC or the annual cost factors ("ACFs"). The ACFs are designed to estimate the *per unit* expenses relating to a unit of capacity, evaluated at the aggressive

[12/] *See, e.g.*, AT&T's Post-Hearing Reply Brief at 92 (Mar. 29, 2002).

utilization levels. They are applied to each unit of investment to produce the correct unit expenses. The ACFs, therefore, do not determine ? nor are they concerned with ? how *many* units of investment there are.[13/] And the FLC is used merely to ensure that, since the investment in the denominator of the ACF ratio represents existing investment levels, the ACF continues to produce the correct *unit* expense when applied to the forward-looking unit investment. Demand growth ? *i.e.*, the number of "units" to which the ACF will be applied ? is not relevant to either the development of the factor or the FLC calculation.

Of course, it bears noting that this is yet a third effort by AT&T ? albeit one that makes even less sense than the previous ones ? to insist that forward-looking investment should be increased to reflect expected demand. AT&T argued first in its initial pleadings and then in its Petition for Reconsideration that forward-looking loop investment should be based upon demand levels that assume steady future growth for several years rather than current demand.[14/] Verizon MA explained in its Reply to AT&T's Motion for Reconsideration, "AT&T's 'projection' of . . . consecutive years of steady growth is unsubstantiated and grossly speculative, particularly in light of current economic conditions. Indeed, during the proceeding, Mr. Livecchi testified that Verizon MA experienced negative growth in 2001. Tr. 9 at 1738."[15/] Thus, even if it would have been sensible to apply expected demand in calculating forward-looking investment, that

13/ AT&T itself cites Verizon MA's testimony making precisely this point, though AT&T appears not to understand it. *See* AT&T Comments at 10 (citing Tr. 1673, 1/24/2002 (explaining that while the per line investment may change, the unit expenses will not)).

14/ *See* AT&T's Initial Post-Hearing Brief at 8-9 (Mar. 5, 2002); AT&T's Motion for Partial Reconsideration and Clarification at 15-16 (Aug. 14, 2002).

15/ Verizon MA's Reply to Motions for Reconsideration at 26 (Aug. 29, 2002); *see also id.* at 5-6 (negative line growth).

likely would have *decreased*, not increased the numerator in the FLC recalculation, resulting in a *lower*, not a higher, FLC.

Second, of course, even if demand growth *were* positive, AT&T's calculation, "Adjusting New FLC for Demand Growth" (AT&T Comments, at 11), makes the entirely disingenuous assumption that *all* investment is demand sensitive: *i.e.*, that if there is 1.5 percent growth, *all* investment must be increased by that percentage. This is demonstrably false. For example, the mere fact that 1,000 new lines are added to the network does not mean Verizon MA would necessarily have to increase the number of telephone poles (or the pole investment in its studies). Even where investment is demand sensitive, it does not necessarily increase in a linear relationship to demand growth.

Finally, it should be emphasized that, as previously stated, demand growth should be assumed to *fill in* the existing capacity to attain the assumed aggressive utilization levels, not to exceed it. It makes no sense to assume that growth assumptions should automatically trigger additional construction of new investment; the assumption of growth is *already* factored into the unit cost of the forward-looking investment, as required under the FCC's rules. *See* 47 C.F.R. § 51.511 (a) ("The forward-looking economic cost per unit" must reflect "a reasonable projection of the total number of units of the element that the incumbent LEC is likely to provide . . . during a reasonable measuring period."). There is no basis for concluding that AT&T's calculation is in any way an accurate estimate of how to factor demand growth into a forward-looking investment calculation.

In short, demand growth has no relevance to the FLC, and AT&T's argument makes no sense. Accordingly, the Department should reject AT&T's claim.

II. VERIZON MA'S COMPLIANCE FILING PROPERLY MEASURES BOTH EMBEDDED AND FORWARD-LOOKING INVESTMENT.

AT&T claims that Verizon MA improperly excluded several categories of physical plant from its calculation of forward-looking investment (AT&T Comments, at 12-18). AT&T raises several different arguments, all of which are without merit. Of course, Verizon MA does agree with AT&T's central premise, that is, to the extent a category of investment is included in the denominator of the FLC — booked investment for Verizon MA plant in 1999 — that same category of investment should be accounted for in the numerator of the FLC — forward-looking investment. Because not all assets that were on Verizon MA's books in 1999 were accounted for in the UNE case, in certain cases Verizon MA had to back the costs of those assets out of the 1999 figures in the FLC denominator. In other cases, Verizon MA instead employed a surrogate "forward-looking investment" figure for the missing asset based on 1999 costs, and added this figure to the *numerator* of the FLC. In either case, the result is that the investment figures in the numerator and the denominator of the FLC are designed to account for the same assets ? the "apples-to-apples comparison" that AT&T acknowledges is "suitable for calculating a new FLC factor" (AT&T Comments, at 12). In contrast, in making almost every one of its arguments concerning how Verizon MA's FLC should be recalculated, AT&T violates the precise principle it advocates.

A. Net Booked Investment Is Irrelevant for Calculating the FLC.

AT&T first points out that the 1999 book investment used in the denominator of the FLC "does not reflect any depreciation, but rather reflects the original cost (the book value) of all network assets" (AT&T Comments, at 12). It is entirely unclear what point that observation is intended to make. It is correct that the denominator of the FLC does not use net booked investment. But for that matter, neither does the denominator of the ACFs to which the FLC is applied. Surely, even AT&T would agree that the FLC and the ACFs should be using the same category of investment, since the FLC is designed to calibrate the investment used in the ACF denominator to make it forward-looking in nature. In any event, it is unclear what significance AT&T believes the use of net booked investment would have in this context, even if it were used. The argument, such as it is, proves nothing.

B. Support Investment Is Properly Included

AT&T argues that Verizon MA improperly changed the FLC by adding new categories of investment to the embedded investment figures Verizon MA used in its surrebuttal testimony (AT&T Comments, at 17). Yet as AT&T itself notes, Verizon MA's surrebuttal FLC calculations were "incomplete" in that they inadvertently failed to account for the support investment (*e.g.*, motor vehicles, computer equipment) that is included in all forward-looking UNE studies (*id.* at 4). Verizon MA's compliance filing properly accounts for that omitted support investment in both the denominator and the numerator of the FLC. Moreover, it is unclear why AT&T objects because by adding support investment to its FLC calculations, Verizon MA actually *increases* the FLC. The forward-looking support investments are substantially higher than the 1999 booked support investments. Thus, including the higher level of support investment in the numerator (forward-looking investment) results in a substantially higher FLC. If, holding all other variables constant, the support investments were removed from both the numerator and denominator, as AT&T apparently contends they should be, the FLC would drop from the current 59 percent to 47.4 percent.

C. Verizon MA Properly Excluded Right-to-Use ("RTU") Fees from Both the Numerator and the Denominator of the FLC.

AT&T argues that the Department should recalculate the FLC to include RTU fees (adjusted, of course, by AT&T's proposed demand growth) in the forward-looking investment in the numerator of the FLC. AT&T bases this argument on its observation that RTU fees are not included in Verizon MA's estimate of forward-looking investment (AT&T Comments, at 13). According to AT&T, adjusting for this would raise the FLC as high as 74.3 percent.

AT&T's argument is entirely misguided, because what it fails to acknowledge is that *Verizon MA excluded RTU fees from* ***both*** *the numerator* ***and*** *the denominator of the FLC*. While AT&T *claims* that Verizon MA included RTU fees in its 1999 embedded network investment when calculating the FLC, that simply is not the case. Since Network RTU investment (USOA Account 2690 - Intangible Assets) is not used in the development of the ACFs to which the FLC is applied, Network RTU investment is irrelevant for the determination of the FLC. Thus, Verizon MA ensured that neither the forward-looking investment in the FLC numerator, nor the 1999 embedded investment in the FLC denominator, included Network RTU investment (Account 2690). AT&T's proposed readjustment, which includes RTU investment exclusively in the *numerator* of the FLC, violates AT&T's apples-to-apples comparison principle and of course produces an entirely distorted FLC. If there were some valid reason to include RTU fees in the FLC calculation, the impact would be minimal ? holding all other variables constant, including forward-looking Switch RTU investment in the denominator would change the FLC from 59.0 percent to 59.43 percent.

D. AT&T Is Wrong that Verizon MA's FLC Is Distorted Because E911, DSL and Other Such Investment Is Excluded.

AT&T faults Verizon MA for not including the costs of various equipment in its FLC calculation, including E911 and other specialized equipment that were not studied in Verizon MA's UNE studies. Once again, however, AT&T's argument fails, for the simple reason that such equipment was excluded from *both* the numerator *and* the denominator of the FLC. Thus, including such equipment in the FLC calculation would require that both the numerator *and* the denominator be adjusted. The resulting effect on the FLC would be negligible, and nowhere near the 3 or 5 percent shift AT&T suggests (AT&T Comments, at 14). Indeed, if Verizon MA were to include the E911 book investments in the denominator, and, because there is no forward-looking E911 investment figures, include that same 1999 amount as a forward-looking surrogate in the numerator, there would be no change in the 59 percent FLC. Since there are no forward-looking investments for Virtual Private Networks and the other services that AT&T identifies, including the few million dollars Verizon MA incurred in connection with such investment should similarly have little impact.

AT&T similarly faults Verizon MA for not including DSL-related splitter and router investment in the FLC numerator. Verizon MA acknowledges that DSL-related splitter and router investment was included in the 1999 booked investment in the FLC denominator, and thus should have been accounted for in the numerator. Verizon MA inadvertently included only the wideband test equipment investment for DSL in the FLC numerator, because this is the only DSL-related investment for which Verizon MA's studies produce recurring costs.

However, correcting this error has a minimal effect on the FLC. An amount of approximately $41 million should be added to the FLC numerator ? this represents the result of a 1999/2000 cost study Verizon MA performed with respect to investment relating to DSL services (attributable primarily to routers, splitters, and ATM equipment). Adding this additional $41 million to the numerator would cause the FLC to increase from 59.0 percent to 59.4 percent. Verizon MA has no objection to resubmitting a recalculated FLC to account for this error if the Department so requests. The impact on the individual expense factors would, however, be minimal. For example, the other support factor would decrease from 0.0712 to 0.0708, about a 0.5 percent change (about half of a percent). And since the FLC change does not affect any capital factors, the impact on total costs would be about 50 percent of the 0.5 percent, or 0.25 percent.

E. AT&T's Reference to the 1999 NYNEX Audit Reports Is Not Relevant.

AT&T suggests that the NYNEX audit performed by FCC staff in the 1990s somehow demonstrates that Verizon MA's 1999 embedded investment figure is too high, because it allegedly accounts for "categories of missing investment" (AT&T Comments, at 17) that AT&T estimates as being "in the neighborhood of $900 million" (*id.* at 16). AT&T's claims should have been raised well before the compliance phase. AT&T could have made these arguments earlier in this proceeding, and certainly after Verizon MA filed its surrebuttal testimony outlining precisely how it intended to calculate the FLC and what data was included in this calculation. AT&T's belated attempt to cast doubt on Verizon MA's underlying FLC data should be rejected.

In any event, as AT&T knows, the audit never found that these "missing categories" of investment did not exist. Rather, the audit concluded merely that that the company could not, in the time provided, account for certain assets *at the locations where they were recorded,* and it therefore assumed that such equipment was "missing."[16/] However, Bell Atlantic (Verizon's predecessor) was later able to account for almost all such assets.[17/] Notably, the FCC has never ordered Verizon to remove these assets from its books. It is unclear why AT&T presumes that it has some right to insist nonetheless that these investments should be excluded. There is no basis whatsoever for AT&T's suggestion that $900 million should be backed out of Verizon MA's 1999 booked investment calculation, and the Department should dismiss this entirely speculative objection.

[16/] Bell Atlantic Reply Comments on Notice of Inquiry at 6-7 (filed with FCC in CC Docket No. 99-117, Sept. 23, 1999).

III. VERIZON MA PROPERLY REMOVED RETAIL-RELATED EXPENSES.

In its *Order*, the Department directed Verizon MA to "revise its ACFs to exclude all retail-related expenses to the extent required by the *Consolidated Arbitrations*." *Order*, at 116. AT&T claims that "Verizon has deliberately misinterpreted the Department's order with respect to the exclusion of retail-related expenses" (AT&T Comments, at 19). AT&T is simply misinformed.

First, AT&T argues that the Department accepted all of AT&T's criticisms of Verizon MA's avoided cost calculation (*id.* at 20). To the contrary, the Department accepted only AT&T's argument that retail-related expenses should be determined based on the "avoidable" cost standard applied by the Department in the *Consolidated Arbitrations*, rather than an "avoided" cost standard. Accordingly, the Department concluded that "the same status quo should be maintained" — that is, that Verizon MA should "exclude all retail-related expenses to the extent required by the *Consolidated Arbitrations*." *Order*, at 116. This is precisely what Verizon MA has done in its Compliance Filing.

Second, AT&T claims that Verizon MA improperly "calculate[d] avoidable retail percentages based on old 1995 expenses, rather than on 1999 expenses" (AT&T Comments, at 20). In the *Consolidated Arbitrations*, the Department calculated absolute dollar amounts of retail-related expenses to be excluded, not percentages reflecting the ratio of avoidable costs to total costs. Thus, Verizon MA first had to determine the corresponding avoidable retail percentages from the *Consolidated Arbitrations*, using 1995 expenses, and then Verizon MA appropriately applied these same percentages to 1999 expenses to determine retail-related costs

(…footnote continued)

17/ *See* Bell Atlantic Reply Comments on Notice of Inquiry at 1.

(*see* Technical Session Tr. at 53 (March 5, 2003)). This step is necessary to implement the Department's *Order* to exclude retail costs "to the extent required by the *Consolidated Arbitrations*." *Order*, at 116. Thus, to the extent the Department ordered Verizon MA to exclude an entire account, Verizon MA calculated the percentage as 100% and therefore excluded the entire account in calculating 1999 expenses. If, however, the Department ordered Verizon MA to exclude, for example, $8 million from an account with a total of $12 million, Verizon MA calculated the percentage as 75 percent, and therefore excluded 75 percent of the expenses from the same account in 1999.[18/] AT&T fails to explain *how* Verizon MA could have calculated "avoidable retail percentages . . . based on 1999 expenses" and still comply with the Department's *Order* (AT&T Comments, at 20).[19/]

Third, AT&T asserts that Verizon MA improperly included depreciation expense in its calculation of total direct expenses (without treating any of that expense as avoided), which, according to AT&T, "has the effect of improperly and substantially decreasing the calculation of avoidable retail expense" (AT&T Comments, at 21). AT&T claims that "in the cost model approved by the Department…Verizon did not include depreciation expense (or uncollectibles)" (AT&T Comments, at 20). AT&T again misses the point. The Department did *not* "approve[]" the Verizon MA cost model — it rejected it and ordered Verizon MA to go back to the "avoidable" cost analysis used by the Department in the *Consolidated Arbitrations*. In that *Consolidated Arbitrations* cost analysis, the Department explicitly directed Verizon MA to

18/ In fact, Verizon MA's methodology benefits the CLECs if the overall amount of expenses in a certain account increased from 1995 to 1999. If, for example, the total expenses in the account increased to $16 million, Verizon MA excluded $12 million, not the $8 million ordered in 1997.

19/ Verizon MA also applies the same percentage reduction, 18.75 percent, to indirect expenses the Department ordered in 1997. AT&T's criticisms regarding Verizon MA's methodology for calculating indirect expenses should therefore be disregarded (AT&T Comments, at 20).

include Depreciation and Amortization in Verizon MA's total direct costs and to treat none of that expense as avoided.[20/]

Finally, contrary to AT&T's assertions, the Department did *not* order Verizon MA to "increas[e]" the amount of avoidable retail-related expenses from its cost studies (AT&T Comments, at 19). Nor did the Department adopt AT&T's hybrid restatement of Verizon MA's cost study, in which AT&T selectively borrowed from Verizon MA's cost study and the *Consolidated Arbitrations* to inflate Verizon MA's retail-related expenses. Rather, the Department simply ordered Verizon MA to employ the *same methodology* used by the Department in the *Consolidated Arbitrations* to maintain the "status quo." *Order*, at 116. Verizon MA complied fully with this directive. Accordingly, AT&T's criticisms of Verizon MA's cost calculations should be rejected.

IV. VERIZON MA PROPERLY IMPLEMENTED THE DEPARTMENT'S ORDERS RELATING TO NON-RECURRING COSTS.

A. Verizon MA Properly Increased the Timeframe for Calculating Labor Rates and the Resulting Rates Are Consistent with the Department's *Order*.

AT&T argues that Verizon MA unilaterally adopted different labor rates than those previously approved by the Department (AT&T Comments, at 22). The argument is without merit and reflects a misunderstanding of the issue. The Department previously approved labor rates trended through the year 2002; Verizon MA did not change any of these rates. Instead, in order to comply with the Department's directive that Verizon MA base its recurring and NRC

20/ *See* New England Telephone and Telegraph Company, d/b/a NYNEX's Phase 2 and Phase 4 Compliance Filing, D.P.U. 96-73/74 — NYNEX/Teleport Arbitration, et al. (*Consolidated Arbitrations*), at Section II Page 4, 6, February 14, 1997 (including Account 6560 (Depreciation and Amortization) in Total Direct costs and not treating expenses in Account 6560 as avoided). Relevant excerpts from that filing are attached hereto Attachment B.

models on consistent network assumptions, Verizon MA increased the timeframe for calculating labor rates through 2004 and calculated labor rates for the additional years.

Employing consistent network assumptions obliges Verizon MA to assume the same technology mix and underlying assumptions in both its recurring and NRC models. Accordingly, the Department's decision ordering Verizon MA to apply a productivity offset to its recurring cost model for a time frame extending through 2004 necessarily required Verizon MA also to increase its timeframe for calculating labor rates in its NRC model through that time. Verizon MA calculated the labor rates for the years 2003 and 2004 using the same trending factor previously approved by the Department for determining labor rates between 1999 and 2002. The trending factor assumes an average 4 percent annual growth in the pay given to the labor force (Tr. at 610, 1/17/02). As a result, the labor rates calculated for the years 2003 and 2004 are higher than the labor rates calculated for 1999, 2000, 2001, and 2002.

AT&T simplistically argues that consistency between recurring and NRC models is not a proper basis for the new labor rates because such consistency applies only to technology assumptions (AT&T Comments, at 23). This argument ignores the fact that basing the recurring and NRC models on consistent technology assumptions necessarily requires that the models also employ consistent assumptions relating to planning periods. If the planning periods for the recurring and NRC models are inconsistent, then the assumptions relating to underlying network and productivity-enabling technologies would be inconsistent in contravention of the Department's *Order*.

AT&T also argues that maintaining consistent network assumptions is not a proper justification for the new labor rates in the NRC model because Verizon MA's recurring cost model does not include any labor rates. This argument further underscores AT&T's

misunderstanding of this issue. Employing consistent network assumptions required that Verizon MA increase its *timeframe* for calculating labor rates. The fact that Verizon MA's recurring cost model does not explicitly include labor rates is, therefore, irrelevant because Verizon MA does not seek to conform the labor rates in its NRC model to labor rates in the recurring cost model, but rather to conform the timeframe for calculating costs in its NRC model to the timeframe utilized in the recurring cost model. Likewise, the fact that the productivity offset to the recurring cost model does not directly affect or apply to the NRC model is immaterial because it is the timeframe for calculating the productivity offset that must be applied to the NRC model in order to keep the two models "in sync." For these reasons, the Department should reject AT&T's baseless argument that Verizon MA unilaterally inflated labor rates.

B. Verizon MA Properly Implemented the Department's Order to Remove Field Dispatch and Loop Maintenance Costs From Its Non-Recurring Cost Model.

Contrary to AT&T's accusation (AT&T Comments, at 24), Verizon MA did not fail to comply with the Department's *Order* with regard to field dispatches and loop maintenance. The Department ordered Verizon MA to recover the costs of field dispatches and loop maintenance through its ACFs instead of non-recurring rates. *Order*, at 452-453 ("equitable cost recovery [] should not shift the field dispatch cost to the CLEC as an NRC" and "Verizon should recover loop maintenance costs through its ACF."). Verizon MA complied with these directives to not recover loop maintenance and field dispatch costs through its NRCs by removing, where appropriate, those costs from its tariffs. Verizon MA merely left field dispatch costs as a placeholder in its NRC model. As AT&T well knows, CLECs are charged NRCs according to tariffs, not according to models, which merely represent what Verizon MA views as the proper forward-looking costs. Thus, by removing the appropriate field dispatch and loop maintenance costs from its proposed tariff, Verizon MA has fully complied with the Department's order to *recover* field dispatch and loop maintenance costs through ACFs, rather than NRCs.

AT&T contends that Verizon MA failed to fully remove field work-related costs because it allegedly did not remove tasks related to coordination that take place inside Verizon MA's offices (AT&T Comments, at 25). But Verizon MA removed all tasks from its model that exist solely as a result of field work or loop maintenance. Indeed, the $35 million Verizon MA includes in its recurring costs covers only required fieldwork and loop maintenance itself. If Verizon MA were forced to remove from its NRC Model costs for other tasks that it did not previously count as field dispatch or loop maintenance, it would need to recover more than that $35 million through ACFs. CO Frame tasks 17 and 18, for example, concern activities inside the central office and include activities other than coordinating with field workers. While Verizon MA complied with the Department's specific directive to remove these tasks from hotcuts, Verizon MA did not remove them from any other UNEs, because they are not solely "fieldwork-related tasks."

Contrary to AT&T's claims, Verizon MA was not obligated to remove any tasks from the RCCC, the RCMAC, or any other work groups to account for field dispatch or loop maintenance activities. The RCCC, for example, coordinates work efforts to make sure an order is provisioned as it should be, and that all work groups perform as anticipated. It has nothing to do with field dispatch. Likewise, the RCMAC is responsible for sending instructions to the switch to make sure it has the correct translations to correctly provision an order.[21/] All of the RCMAC's work efforts relate to the *switch*, not the *loop*. Thus, RCMAC activities cannot in any

21/ An example of such work is ensuring that the switch correctly forwards a call when there is no answer.

reasonable way be considered related to loop maintenance. NRC elements 84 through 95 also include work other than coordinating with field workers, such as providing support for all aspects of the CLEC's order, including ordering and billing, and thus are not solely related to fieldwork. Finally, NRC elements 62, 63, and 64 recover costs Verizon MA incurs when CLECs request dispatches for field work or maintenance, but Verizon MA discovers no problems that require work. Charges for those costs thus recover costs Verizon MA incurs for false dispatches because of CLECs' mistakes. Since in such cases Verizon MA will not have performed any field work or maintenance, these costs do not fall within the scope of the Department's directive to recover field dispatch and maintenance costs through recurring charges.

C. Verizon MA Properly Applied the Department's Ordered Fallout Rate to the Nonrecurring Cost Model.

1. Verizon MA Appropriately Applied the Department's 2 percent Fallout Rate to TISOC Activities.

Verizon MA followed the Department's directive to assume a global fallout rate of 2 percent, applying that fallout rate to the MLAC and the RCMAC in its compliance filing. Consistent with the Department's *Order*, Verizon MA also assumed a 2 percent fallout rate for two TISOC tasks for hotcut orders.[22/] AT&T argues that Verizon MA should have applied that 2 percent fallout rate for TISOC tasks 1 and 3 to all other UNEs (AT&T Comments, at 26). AT&T's claim is wrong. The Department did not direct Verizon MA to blindly apply a 2 percent fallout rate and could not have intended such an absurd result.

[22/] As AT&T notes, the Department's discussion of hotcuts evaluates TISOC tasks 1 and 3, and orders Verizon MA to assume a 2 percent fallout rate for tasks 1 and 3 (AT&T Comments, at 26). However, the Executive Summary indicates that Verizon MA should assume a 2 percent fallout rate for tasks 1 and *2*. *See Order,* at IX. Based on this, Verizon MA mistakenly adjusted TISOC tasks 1 and 2 rather than 1 and 3. Verizon MA will re-run its model to correct this error.

The Department's order to assume a global fallout rate of 2 percent could not logically apply to the TISOC, because the TISOC does not experience "fallout," but rather performs front-end work that was never designed to be performed by systems. The Department, of course, understood this, because it specifically ordered Verizon MA to assume a 2 percent fallout rate only for two TISOC tasks, and then only in the context of hotcuts. Had the Department intended the 2 percent global fallout rate to apply to the TISOC, its order to assume 2 percent fallout for two specific hotcut TISOC tasks would have been redundant and unnecessary. Even AT&T does not argue that Verizon MA should have reduced *all* TISOC times to reflect 2 percent fallout, but merely tasks 1 and 3, the tasks the Department discussed in the context of hotcuts.

It makes no sense to assume that the Department intended that the adjustments to tasks 1 and 3 would apply outside the context of hotcuts. With all tasks other than TISOC tasks 1 and 3, the Department ordered Verizon MA to adjust its FLAFs, not its levels of "fallout." Moreover, the Department addressed specific FLAF adjustments *only* in the context of hotcuts, and then specifically ordered Verizon MA to apply those adjustments to other UNEs. By contrast, the Department addressed the 2 percent fallout rate outside the context of hotcuts. Had the Department intended that the 2 percent fallout rate apply to TISOC tasks 1 and 3 for all UNEs, it would have done so in its discussion of fallout, not of hotcuts.

Verizon MA's fallout adjustments for TISOC tasks are correct for the additional reason that a flat 2 percent fallout rate simply makes no sense in the context of the TISOC. Indeed, the Department recognized that "fallout" does not apply to the TISOC by not applying the 2 percent fallout level to that work group. Because the TISOC handles pre-ordering steps that are not intended to flow through mechanized systems, orders handled by the TISOC require manual handling by definition. For this reason, Verizon MA models different levels of manual handling for different tasks, and does not simply assume that some flat percentage will fall out of the system.[23/] Verizon MA complied with the Department's specific order to model a 2 percent fallout rate for TISOC tasks in the context of hotcuts. However, because the concept of fallout does not even apply to the TISOC, there is no basis to carry through this erroneous assumption to UNEs other than hotcuts.

Finally, because the work required for TISOC tasks 1 and 3 differs between elements. there is no reason to assume that, even if a 2 percent fallout rate were proper for TISOC tasks 1 and 3 in the context of hotcuts, that same 2 percent fallout rate would apply to other UNEs. For the TISOC, Verizon MA breaks down UNEs into four product categories ? Unbundled Loop and Port, Platform, Digital Services, and Specials (*see* Verizon NRC Model). Because each category of UNE involves different order work and manual handling, Verizon MA applies different typical occurrence factors and forward-looking adjustment factors for each of the four categories of UNEs (*see* Verizon NRC Model). Those four categories are then further broken down into individual UNEs. For example, the Loop/Port category includes UNEs such as hotcuts, unbundled loops, unbundled subloops, standalone NIDs, unbundled line ports, unbundled trunk ports, unbundled end office ports, and unbundled tandem ports ? all clearly very different elements for which one would expect different levels of manual handling. Within each category, the times, typical occurrence factors, and forward-looking adjustment factors are merely averages designed to capture the cost of UNEs that fall within that category.

Consistent with this approach, Verizon MA averages fallout levels for TISOC tasks 1 and 3 across hotcuts and other UNEs. But TISOC tasks 1 and 3 involve very different work for each

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23/ This contrasts with the MLAC, for which Verizon MA assumed a 4 percent fallout rate for all activities.

UNE. For example, a hotcut order requires less TISOC work than a single 2 wire loop order. While for a hotcut there is already a working loop in place, for a single 2 wire loop order there is no loop in place, so the TISOC needs to check databases and verify information to ensure that the loop is compatible with the order ? work that is not required for a hotcut order. The fact that Verizon MA applies different forward-looking adjustment factors and typical occurrence factors to the same tasks depending on the category of UNE ordered demonstrates that, while TISOC tasks 1 and 3 apply to different UNEs, they actually involve different levels of manual handling. Even where the manual handling assumptions are constant for a category of UNEs, those assumptions represent only an average of the manual handling required for many UNEs. In light of the difference in work required for different UNEs, the Department's directive to apply 2 percent fallout to two TISOC tasks for a single UNE in no way implies that all other tasks encompassed in the average manual handling rate should deviate in the same manner. Because hotcuts involve different TISOC work activities than other UNEs, is simply makes no sense to blindly apply the 2 percent fallout to other all other UNEs.

2. Verizon MA Correctly Applied the Department's Specific Adjustments to Verizon MA's Forward-Looking Adjustment Factors for MLAC and RCMAC tasks.

The Department should also reject AT&T's baseless argument that Verizon MA should be required to apply the general 2 percent fallout rate instead of specific adjustments to the forward-looking adjustment factor ordered by the Department where the 2 percent fallout rate produces lower times (AT&T Comments, at 27). While AT&T accuses Verizon MA of "picking and choosing" among the Department's directives, it is AT&T that wishes to selectively pull from the *Order* to produce the lowest costs, even where the Department specifically ordered otherwise. Verizon MA fully complied with the Department's *Order* to model specific adjustments ordered by the Department in lieu of general adjustments.

The Department made clear its intention that its specific adjustments to Verizon MA's model trump its general adjustments. As the Department stated: "Furthermore, where we direct changes to particular FLAFs for individual work group tasks, Verizon shall not also make the general FLAF adjustments that we discuss above. On the other hand, where we do not address specific FLAFs, Verizon shall apply these general adjustments" *Order*, at 494.[24/] Accordingly, Verizon MA applied the specific adjustments to FLAFs the Department ordered for hotcuts instead of the general 2 percent fallout rate.

Although the Department did not specifically state that its specific adjustments to FLAFs should be applied over its general adjustment to fallout, the Department's order that specific FLAF adjustments should trump the general FLAF adjustment should apply equally to "fallout." Indeed, requiring a 2 percent fallout rate is merely a different way of stating that Verizon MA is required to apply a general adjustment to its FLAFs to reflect a flat 2 percent fallout rate. Thus, the Department's "general adjustment" to Verizon MA's fallout rate should not apply to hotcut tasks for which the Department ordered a more specific adjustment to the FLAF, regardless of the times produced by those assumptions.

24/ *See also Order*, at 499 ("Also, the general directive regarding adjustments to FLAFs shall apply to those tasks *that we do not address specifically*.") (emphasis added).

D. Verizon MA Properly Interpreted the Department's Order to Adjust FLAFs.

1. Verizon MA Properly Carried Through Adjustments to Hotcut Tasks.[25/]

AT&T objects to the method by which Verizon MA applied the Department-ordered adjustments to FLAFs for hotcut activities to other NRCs, arguing that Verizon MA was obligated to blindly apply the Department's adjustments to other UNEs (AT&T Comments, at 27). But that interpretation is not consistent with the wording or the intent of the Department's *Order*. Verizon MA adjusted its fallout rates and FLAFs consistent with both the plain language and the intent of the Department's *Order*.

In the context of its hotcut discussion, the Department required Verizon MA to make various adjustments to its FLAFs. As AT&T notes, the Department directed Verizon MA to apply the FLAF modifications it ordered for the hotcut cost study to other portions of Verizon MA's NRC model. However, the Department carefully limited its order to carry over hotcut adjustments to only the "relevant" portions of Verizon MA's model and only "where applicable," which the Department defined as "where the same task is required to provide the other UNEs." *Order*, at 494. Thus, contrary to AT&T's argument, Verizon MA was not required to apply the adjustments ordered in the context of hotcuts to all other similarly-named tasks performed to provision other UNEs, regardless of whether the same tasks are involved. Indeed, AT&T points

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25/ Conversent spends a lot of time in its comments complaining about the Department-approved hotcut rates and the fact that UNE-P providers do not incur these charges (Conversent Comments, at 2-3). Of course, the fact that the new hotcut rates are higher than current rates simply shows that Verizon MA has been grossly under-recovering its costs for many years. Nonetheless, although Verizon MA agrees that UNE-P providers discourage competition from facilities-based carriers like Conversent, Conversent's claims are not relevant to this compliance proceeding. And, in the end, Conversent's point is simply that the Department should review other hotcut alternatives in a separate docket. The Department has already announced its intention to review Verizon MA's proposed alternative hotcut process filed as required by the *Order*; Conversent will have every opportunity to raise its concerns in that proceeding. In the meantime, for purposes of reviewing the compliance filing, the Department should disregard Conversent's hot cut comments.

to only one activity, RCCC task 3, for which Verizon MA allegedly failed to comply with the Department's order to apply hotcut adjustments to other elements (AT&T Comments, at 27).

AT&T mistakenly assumes that tasks included in other portions of Verizon MA's NRC model are "the same" simply because they share the same label. But, as explained above, while the activities adjusted by the Department have the same generic description, the work effort and designed manual handling required is fundamentally different for other UNEs. Thus, it makes no sense to blindly apply a fallout rate ordered for one task to tasks that share the same label when that task is not "the same task required to provide other UNEs." This is evident by examining RCCC Task 3, the only task to which AT&T points in support of its argument. RCCC Task 3 recovers costs for removing roadblocks, but the roadblocks that must be removed, and therefore the work required, will be different depending on the type of order. Moreover, hotcut orders often encounter fewer roadblocks than orders for new loops, because there is already a working loop in place for which most roadblocks to providing the service requested were removed prior to the hotcut. Thus, there is no reason that a 2 percent fallout rate for this task in the context of a hotcut should be applied for all other elements.

2. Verizon MA Applied Specific Adjustments to its FLAFs Consistent with the Department's *Order.*

In the guise of seeking "clarification," AT&T asks the Department to "clarify" the *Order* to say precisely the opposite of what it clearly says (AT&T Comments, at 28). As noted above, the Department specifically and repeatedly ordered Verizon MA to apply specific adjustments to FLAFs rather than the general 20 percent reduction to all FLAFs where the Department ordered such specific adjustments. Despite this, AT&T now argues that what the Department *really* meant to say was that Verizon MA should follow its *Order except where* the specific adjustment results in higher task times than the general adjustment. The Department, of course, was aware that its specific adjustments to FLAFs would result in some times that were lower than the times lowered by 20 percent, and some that were higher. Anticipating this, as explained above, the Department ordered Verizon MA to apply specific adjustments over the general adjustment, regardless of the result of that assumption. The Department should reject AT&T's attempt to relitigate this issue.

E. Verizon MA Presented Properly Calculated Confidence Intervals to the Department.

Verizon MA is in full compliance with the Department's order to calculate and use the lower limit of a 95 percent confidence interval for the non-recurring work times. AT&T misrepresents Verizon MA's approach to calculating this lower limit, claiming that Verizon MA used a "trimmed means" approach to establishing the work times ? an approach that AT&T contends was rejected by the Department (AT&T Comments, at 28-29). Contrary to AT&T's claim, Verizon MA did not trim the highest and lowest data points prior to calculating the mean (average) work times, as Verizon MA requested to do (and the Department denied) in its motion for reconsideration (AT&T Comments, at 29). Rather, Verizon MA calculated the mean work times using all the data points, and then "trimmed" only to properly compute the confidence interval required by the Department.

The Department explicitly ordered Verizon MA to calculate 95 percent confidence intervals around the average work times (calculated using all the data points), and to use the lower limits of these intervals as the work times. During the Department's compliance hearings, Mr. Goldrick explained that, for data that are naturally asymmetric (like the work times), the basic "Statistics 101" confidence interval formula does not yield the 95 percent coverage probability ordered by the Department. Due to the significant asymmetry in the underlying work times, the basic confidence interval formula produces: (1) an interval that is "too wide;" (2) a lower limit that is too low; and, most importantly, (3) a coverage probability that is more than 95 percent. In order to more closely approximate the 95 percent coverage probability ordered by the Department, Verizon MA "symmetrized" the distribution of work times prior to calculating the standard deviations which, along with the mean work times, are input into the confidence interval formula (Tr. at 572-573). Verizon MA trimmed data points merely for the purpose of calculating a correct standard deviation ? one that yields an interval (and lower limit) with 95 percent coverage probability. As Mr. Goldrick explained at the Technical Session: "If you don't do it, the standard formula that people tend to use for confidence intervals is wrong. It's wrong in a very specific sense. It's wrong in the sense that it doesn't give you 95 percent coverage probability, which is what was specified by the order" (Technical Session Tr. at 190 (March 6, 2003)).

Verizon MA thus did not repeat the approach it argued for on reconsideration, which was to simply use the trimmed mean as the work time. Rather, Verizon MA fully complied with the Department's order to: (1) use all data points to determine the mean, (2) compute 95 percent confidence intervals around those mean times, and (3) use the lower limit of that interval.

F. "Modification" and "Service Date Change" Are Properly Included in Tariff 17 as NRCs.

The Department also should reject AT&T's argument that Verizon MA remove the "Modification" and "Service Date Change" NRCs from its illustrative tariff. AT&T contends that these NRCs are improper because the Department never reviewed them and they are duplicative of NRCs being recovered for TISOC tasks 2 and 3 (AT&T Comments, at 30).

Contrary to AT&T's assertions, the Department previously reviewed and approved NRCs for "Modification" and "Service Date Change" as they are included in existing tariff 17, issued November 26, 2000 (AT&T Comments, at 30). By approving the costs associated with these elements in earlier proceedings, the Department acknowledged their validity as rate elements subject to cost recovery. Additionally, Verizon MA filed a Rate Summary in the instant proceeding in May 2001 that included a NRC for each of these items.[26/] Accordingly, these are not brand new charges that AT&T or the Department is now seeing for the first time.

AT&T's argument that the NRCs for "Modification" and "Service Date Change" are duplicative of the NRCs for TISOC tasks 1, 2, and 3 appears to be based on a simple error in Verizon MA's Rate Summary. Specifically, the summary maps the NRCs for "Modification" and "Service Date Change" to the NRCs for "Record Change" and "Design Change." This is inconsistent because Verizon MA used the costs associated with "Modification" and "Service Date Change" in its calculation of the average service charge for TISOC tasks 1, 2, and 3. As a result, the average service charge for these tasks should be applied to both "Modification" and "Service Date Change." Verizon MA can easily rectify this error, however, by mapping the NRCs for "Modification" and "Service Date Change" to the average service charge that applies to the orders encompassed by TISOC tasks 1, 2, and 3. Alternatively, Verizon MA could retain its current NRCs for "Modification" and "Service Date Change" and simply recalculate the average service charge so that it does not account for these two items.[27/] In either case, the resulting NRCs for "Modification" and "Service Date Change" would not be duplicative of the NRCs for TISOC tasks 1, 2, and 3, because they would be recovered either as an average service charge or as a specific charge, calculated outside of the average (AT&T Comments, at 30).

26/ *See* Exhibit 1 to Exhibit VZ-14, Bruce Meacham's Direct Testimony.

27/ Under this alternative, Verizon MA would need to recalculate the NRCs for "Modification" and "Service Date Change" to take into account an updated service activity time of 7.66 minutes. *See infra* Part G.

G. The 2 Percent Fallout Rate Does Not Apply to the NRCs Contained in Verizon MA's Exhibit M.

Verizon MA's "Exhibit M" contains NRCs for record changes, design changes, data entry searches, and duplicate bills. The NRC for each of these four items was based on the 15 minutes of work time originally assumed in Verizon MA's NRC for TISOC task 2 for UNE-P 2-Wire New Initial Orders. AT&T contends that Verizon MA should be required to recalculate the NRCs for these four items taking into account: (i) Verizon MA's reduction in time from 15 minutes to 7.66 minutes; and (ii) the Department's order requiring "a global fallout rate of two percent" in certain instances (AT&T Comments, at 31).

Verizon MA acknowledges that it inadvertently failed to take into account the adjusted common overhead factor and the change in time to 7.66 minutes in the NRCs for record changes, design changes, and duplicate bills. Accordingly, Verizon MA will recalculate the NRCs for these three activities. Verizon MA also will recalculate the NRC for data entry searches taking into account only the adjusted common overhead factor. Because Verizon MA charges for data-entry services on a "per quarterly hour basis," and not on a "per event" basis, it is proper for Verizon MA to continue to base the NRC for this item on the 15 minute work time.

AT&T is incorrect, however, when it asserts that the NRCs for these four activities also should take into account the 2 percent fallout rate (AT&T Comments, at 31). The Department did not order Verizon MA to apply a 2 percent fallout rate to these activities. Verizon MA filed the NRCs for these four items in an exhibit separate from Verizon MA's NRC model spreadsheet and did not use a 2 percent fallout rate in the filed NRCs for these activities (*see* NRC Exhibit M). The Department reviewed Verizon MA's NRC study and did not object to Verizon MA's decision to not make a forward-looking adjustment to these four activities. Accordingly, Verizon MA's decision to not apply the 2 percent fallout rate to these activities was entirely consistent with the Department's *Order*. In any case, the 2 percent fallout rate simply does not apply to these activities. These activities are not intended to flow through the system, and therefore require manual handling whenever they are performed. The 7.66 work time correctly represents this manual work.

V. AT&T'S REMAINING CONCERNS ABOUT VERIZON MA'S COMPLIANCE FILING AND TARIFF HAVE BEEN ADDRESSED.

A. Verizon MA Corrected Its Error in the Meet Point A Rate.

AT&T points to an error in Verizon MA's original compliance filing in which Verizon MA erroneously stated that Meet Point A arrangements would be $0.002069 per minute, when in reality they should be $0.001195 per minute (AT&T Comments, at 31-32). However, several days before the hearing, Verizon MA filed with the Department a letter and a corrected tariff which, among other things, explained Verizon MA's mistake and changed the rate for Meet Point A - end office from $0.002069 per minute of use to $0.001195 per minute. No additional adjustments to this rate should be required.

B. Verizon MA Has Already Identified Errors With Respect to Asset Lives and Depreciation.

AT&T argues that Verizon MA should be required to fix errors to the asset lives that Verizon MA used in its compliance filing (AT&T Comments, at 32). But, as AT&T notes, Verizon MA has already acknowledged its error in response to TS Request-1. In that response, Verizon MA also listed the corrected values. Verizon MA will make the necessary revisions when recalculating its costs.

C. Verizon MA Has Agreed to the Clarification to its Tariff Language for Feature Changes.

As AT&T notes, Verizon MA agreed at the hearing that its feature change rate is to be applied only for orders to change features for an existing UNE-P customer, and will not be applied to a new UNE-P order or to a UNE-P migration (AT&T Comments, at 32-33). Verizon MA will incorporate this agreed-upon change into its tariff.

D. Verizon MA's Tariff Language with Regard to Optional Field Dispatches Is Consistent with the Department's *Order.*

In response to the Department's *Order*, Verizon MA removed all mandatory field dispatch costs from its tariff, but left in costs for optional field dispatches, as permitted by the Department. Specifically, Part A, Section 3.3.2.A.6 of Verizon MA's proposed tariff states: "Applies when a technician is dispatched *at the specific request of a TC* to perform work outside of the normal routine work associated with service installation and maintenance, *e.g.* tagging of NIDs, circuit identification at a demarcation point." AT&T's argues that Verizon MA has inappropriately left open-ended these optional field dispatch charges through the use of the term "*e.g.*" before "tagging of NIDs" and "circuit identification at a demarcation point" (AT&T Comments, at 33). AT&T asks the Department to require that the tariff state that the work will apply "either for" tagging of NIDs "or for" circuit identification at a demarcation point (*id.* at 33-34).

Verizon MA's proposed language complies with the limiting intent of the Department's *Order*, and the Department should not alter it as AT&T requests. Verizon MA's language specifically states that the costs will apply "at the specific request of a TC" to perform work outside of the normal routine work of service installation and maintenance. Verizon MA also included language in the rate application sections of various UNEs in D.T.E. 17, Part B that refers to this limiting language. Thus, the plain language of the tariff makes clear that these costs will apply only when the CLEC requests more than the normal work. The use of "e.g." is both reasonable and appropriate, and does not undermine the fact that the work will only be charged when it is requested by the CLEC. While Verizon MA identified two instances in the proposed tariff, there may similar instances where the CLECs may request work. For example, CLECs may request a field dispatch for a line-sharing or line-splitting arrangement for various reasons, including, but not limited to, tagging the NID and DMARC identification. In addition, CLECs sometimes ask Verizon MA to do special projects involving dispatching and tagging facilities because their inventories are incomplete. This work is associated with CLEC record-keeping problems and migrations from one provider to another, not installation of a loop. Finally, Verizon MA may be introducing new services in the future that may allow for an optional dispatch after a working loop is installed. AT&T's proposed language would not allow Verizon MA to recover for such optional and unnecessary work. Verizon MA's proposed language, by contrast, ensures recovery from the cost-causer and maintains flexibility, while fully addressing the CLECs' and the Department's concerns that these costs only be charged when CLECs request the relevant work.

VI. VERIZON MA WILL CLARIFY THE TARIFF TO ADDRESS RCN'S CONCERNS ABOUT THE APPLICATION OF TELRIC RATES TO IOF TRANSPORT.

RCN makes two arguments regarding the manner by which unbundled IOF Transport rates will be applied. The first argument is that Part C, Section 1.5.1.A.2 of the DTE MA No. 17 compliance tariff filed Verizon MA improperly incorporates the rates and terms of the intrastate access tariff (DTE MA No. 15) and thereby limits the circumstances in which TELRIC-based IOF Transport rates would apply (RCN Comments, at 2-7). RCN's second argument contends that the definition in Part B, Section 2.1.1.B of the DTE MA No. 17 compliance tariff places impermissible restrictions on the types of interconnection arrangements that would permit the application of IOF Transport rates (RCN Comments, at 7-12). In both instances, Verizon MA offers clarifying language for the tariff to address RCN's concerns.

Regarding the first issue, Verizon MA recognizes that the FCC has determined that ILECs may not require that dedicated transport be purchased only from their access tariffs,[28/] and must also allow dedicated transport to be purchased from their UNE tariffs for the purpose of interconnection. In addition, the terms of the intrastate access tariffs must apply when the traffic being transported is used to carry access traffic. Therefore, a CLEC can order dedicated transport from the DTE MA No. 17 (*i.e.*, TELRIC-based rates) or from the intrastate access tariff. Because the appropriate tariff application depends on the type of traffic being carried and what the CLEC orders, Verizon MA proposes the following clarifying language to replace the proposed language in Part C, Section 1.5.1.A.2 of the DTE MA No. 17 compliance tariff:

> **Transport** will be provided by the Telephone Company from the CLEC's premises to the Telephone Company end office (meet points A and C) or access tandem (meet point B) under the terms and conditions of the applicable Telephone Company tariff.

This clarified tariff language addresses the concerns expressed by RCN in that an eligible CLEC may order transport from the DTE MA No. 17 or DTE MA No. 15.

RCN's second issue relates to the description, as set forth in Part B, Section 2.1.1.B of the DTE MA No. 17 compliance tariff, of the transmission paths within a LATA for which unbundled dedicated IOF transport would apply. RCN argues that the proposed language is overly restrictive because it would require that a CLEC have a collocation arrangement at a Verizon MA central office and a switch at one end of the transport facility to be eligible for transport (RCN Comments, at 8). Verizon MA acknowledges the three circumstances listed in Part B, Section 2.1.1.B of the DTE MA No. 17 compliance tariff may be overly restrictive. To

28/ Of course, the parties to individual interconnection agreements could agree to apply the terms of the access tariff for certain interconnection arrangements. If so specified by the provisions of an interconnection agreement, those terms would be binding on the parties.

respond to RCN's desire that a CLEC collocation arrangement and a CLEC switch not be required to be entitled to dedicated transport, Verizon MA proposes to add the following additional language in Part B, Section 2.1.1.B of the DTE MA No. 17 compliance tariff:

> 4. A CLEC designated central office premises or collocation arrangement and a Telephone Company central office switch when used solely as an interconnection transport facility under a Meet Point A or B Reciprocal Traffic Exchange Trunk arrangement, as defined in Part C Section 1.

This additional provision addresses RCN's concern because it would permit the dedicated IOF transport under a Meet Point A or B arrangement from a "CLEC designated central office premises" (not necessarily a collocation arrangement) and without the need for a CLEC switch at the end of the transport facility.

Accordingly, the clarifying language set forth above for Part C, Section 1.5.1.A.2 and Part B, Section 2.1.1.B of the DTE MA No. 17 compliance tariff addresses RCN's comments regarding the application of TELRIC rates to IOF transport and will be included in Verizon MA's final compliance tariff if approved by the Department.

VII. VERIZON MA SHOULD NOT BE REQUIRED TO PROVIDE A SEPARATE RATE FOR CALLING NAME ("CNAM") DATABASE QUERIES.

RCN requests that the Department require Verizon MA to offer a separate rate for CLEC queries to the CNAM database (RCN Comments, at 12-14). As explained in Verizon MA's response to Technical Session Request No. 2, this is not a separate offering that Verizon makes available under tariff in any of its jurisdictions, and it has not been requested up to now in this proceeding, but Verizon MA will make it available under a separate contract upon request by a CLEC. For the reasons set forth below, the Department should not require that a separate rate for CNAM queries be included in DTE MA No. 17.

As an initial matter, the issue of providing a separate unbundled CNAM query service has never been raised in this proceeding by any party and cannot be fairly raised at this time by RCN as a limited participant. In granting RCN limited participant status, the Department ruled that "RCN will be permitted only to clarify issues of Verizon's compliance and to seek understanding of the compliance filing."[29/] Thus, the request to include a new purported UNE at this late stage of the case should be dismissed as untimely.

Even if the Department were to consider the request ? which it should not ? the request should be denied. A CNAM-only service offering for CLECs with switching capability, as requested by RCN, is not required by the FCC. In fact, the FCC recently indicated that: "When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases, including, but not limited to, . . . Calling Name (CNAM) database"[30/] CNAM-only service, as requested by RCN, is not offered in any Verizon jurisdiction in a UNE tariff.

Finally, as stated in the response to Technical Session Request No. 2, Verizon MA is willing to negotiate in good faith with RCN (or other CLECs) to make the service available, through separate contract, under mutually agreed terms. In fact, Verizon MA has made this offer to RCN, but RCN has yet to enter into an agreement.

Accordingly, RCN's tardy proposal for Verizon MA to offer a new UNE service by tariff should be denied.

29/ Hearing Officer Ruling at 5 (Feb. 28, 2003). The Department also found that RCN had not established the presence of "'good cause' for its extremely late filing." *Id*. at 4.

30/ Detailed Summary attached to FCC Press Release (announcing adoption of new UNE rules) (Feb. 20, 2003).

VIII. THE DEPARTMENT SHOULD REJECT CONVERSENT'S ATTEMPT TO RELITIGATE THE CROSS CONNECT RATE STRUCTURE ADOPTED BY THE DEPARTMENT.

In the February 28, 2003 Scope Ruling, the Hearing Officer was unequivocal that "attempts to relitigate decided issues will not be permitted." Scope Ruling, at 2. But Conversent's comments regarding the cross connect restructuring go not to the *transition plan*, consideration of which the Department deferred until this compliance stage, but rather to the new *rate structure* (*see* Conversent Comments, at 4-5), which the Department approved almost a year ago. *Order*, at 403. Indeed, Conversent does not even mention the transition plan, which provides among other things that (i) Verizon MA will waive the NRCs for all cross connects in use prior to August 5, 2002, even though the recurring charges Verizon MA has collected on those cross connects to date do not come close to recovering Verizon MA's approved costs, and (ii) the CLECs will have 30 days from the effective date of the compliance tariff to return any number of their unused cross connects for *free*, thus avoiding *any* charges.

Instead, Conversent complains that the new rate structure will include non-recurring charges, will require payment of (dramatically lower) monthly recurring charges from the provision date, and will require that DS-1 cross connects be ordered in complements of 28 (Conversent Comments, at 4-5). But these aspects of Verizon MA's new rate structure were part of Verizon MA's proposed cost studies and thus have already been adopted by the Department.[31] Conversent's attempt to relitigate these issues should be rejected.

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[31] *See* Exhibit VZ-28, Direct Testimony of Dinell Clark, Exhibit Part CA, WP 11.0, at 1, filed in D.T.E. 01-20 (May 4, 2001) (showing that Verizon MA will bill non-recurring charges, and will charge for DS-1 cross connects based on complements of 28 circuits); *Order*, at 401; Exhibit ATT-16, Turner Rebuttal, at 53 (demonstrating that the CLECs understood that recurring charges would be billed from the date the cross connects are made available to the CLECs, rather than from when the CLECs begin using them).

In any event, Verizon MA's proposed rate structure is reasonable, consistent with how Verizon MA prepared its cost studies, and necessary to close the order-without-paying loophole that Conversent and other CLECs have exploited to force Verizon MA to make massive unnecessary expenditures. Specifically, under the current structure, CLECs are not required to pay for cross connects until they begin using them to provide service and have thus ordered, but not used, large numbers of cross connects.[32/] This practice causes Verizon MA to under-recover its costs significantly and has led to inefficient congestion on Verizon MA's central office frames. By allowing Verizon MA to recover a portion of its cross connect costs at the time the cross connects are purchased, the new rate structure eliminates the incentive that the CLECs currently have to over-order cross connects.[33/]

Importantly, CLECs will reap enormous benefits under the new rate structure because Verizon MA has agreed to begin charging the drastically lower recurring charges immediately, without regard to whether doing so will result in under-recovery of costs. Moreover, the CLECs can benefit from these lower recurring rates without having to incur any up-front costs, unless they choose to keep cross connects that they were not using as of August 5, 2002. Thus, Verizon

32/ By the end of 2000, Massachusetts CLECs had ordered 1.96 million voice grade cross connects, but were using only 69,753 of them. By the end of 2001, the number ordered had grown to over 2.12 million, while the number in use remained shy of 120,000. And by the end of the second quarter of 2002, Massachusetts CLECs had ordered 2.22 million voice grade cross connects, but were using only 121,074 of them (a utilization rate of less than 5.5 percent). Verizon MA's Reply to the Motions for Reconsideration at 49 n.22 (Aug. 29, 2002).

33/ Moreover, Conversent's proposal would require a new cost study because Verizon MA would have to include a utilization rate to account for the fact that CLECs order, but never use, a significant number of cross connects. Given past experience, this utilization rate would be very high and would significantly increase costs. The prudent solution is to avoid creating the incentive in the first place for CLECs to over-order cross connects they will never use.

MA, will bear the enormous stranded investment costs associated with the returned cross connects.[34/]

The requirement that CLECs order DS-1 circuits in complements of 28 is likewise reasonable. The physical cables that carry the DS-1 circuits each contain 28 such circuits, and all 28 circuits are terminated whenever the cable is terminated. It therefore makes sense for the CLECs to buy the entire cable, rather than individual circuits contained in that cable. In addition, Conversent's proposal would require a brand new cost study, because the current study assumes that all 28 circuits contained in a single cable would be ordered concurrently.[35/]

Finally, Conversent neglects to mention that the Department-approved rate structure was specifically proposed by the *CLECs* in other proceedings, and it has been approved and implemented (including the transition plan Verizon MA proposes here) in 10 Verizon jurisdictions and by the FCC.[36/] Verizon MA's rate structure and transition plan are therefore reasonable and should be adopted by the Department.

IX. THE ATTORNEY GENERAL'S CONCERNS REGARDING WIRE CENTER RECLASSIFICATIONS ARE UNFOUNDED.

The Attorney General asserts that Verizon MA could attempt to reduce the level of competition in a certain area at any time by simply reclassifying wire centers (Attorney General Comments, at 3). As Verizon MA explained at the technical conference, however, it has no

34/ That stranded investment includes, for example, the numerous POT Bay frames and terminations, distribution frame terminations and digital cross connect bays (DSX bays), as well as the associated cabling required for each, purchased and installed by Verizon MA to serve the CLECs' inflated cross connect requirements. In some extreme cases, Verizon MA was required to expand the main distribution frame or even the central office to accommodate the CLECs' overstated capacity requirements.

35/ *See, e.g.*, Exhibit VZ-28, Direct Testimony of Dinell Clark, Exhibit Part CA, WP 11.0, at 1.

36/ *See* Exhibit VZ-35; *see also, e.g.*, F.C.C. Tariff Nos. 11 § 28, 1 § 19.

intention at this time of reclassifying wire centers until the Department's next UNE rate review (Technical Session Tr. at 62 (March 5, 2003)). In the unlikely event that Verizon MA decides it is necessary before that time to reclassify wire centers, it will first seek the permission from the Department. The Attorney General's concerns should therefore be disregarded.

X. CONCLUSION

For the foregoing reasons, the Department should find that, with the minor corrections and clarifications described above, Verizon MA's compliance filing complies fully with the requirements of the *Order* and the *Reconsideration Order*.

Respectfully submitted,

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