COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELCOMMUNICATIONS AND ENERGY

Complaint of DSCI Corporation	)	
For Declaratory Orders to Ensure	)	Docket No. 05-28
Verizon-Massachusetts Compliance	)	
With Resale Obligations with Respect	)	
To Customer Specific Pricing Contracts	)	

PREFILED TESTIMONY OF SEAN DANDLEY
ON BEHALF OF PETITIONER DSCI CORPORATION

Introduction

Q. Mr. Dandley, please state your name, title and business address, educational background and related experience for the record.

A. My name is Sean Dandley. I am President and Chief Executive Officer of DSCI Corporation ("DSCI"). My business address is 1050 Waltham Street, Lexington, Massachusetts 02421. DSCI is a competitive local exchange carrier ("CLEC") operating in most states in the Northeast, with offices in Lexington, Massachusetts, and Tilton, New Hampshire. DSCI offers a suite of local, long distance, Internet and data solutions to commercial, nonprofit and other organizations. I have a Bachelor of Administration degree from the University of Massachusetts and a Master of Business Administration from Bentley College. My current responsibilities include overall management and leadership of DSCI's telecommunications business and related sales, marketing, business development, product development and regulatory activities. Prior to joining DSCI, I was Senior Vice President for Digital Broadband Communications, Vice President of Sales for Eastern Telecom, and Operations Manager for Protocol Communications. I also have 11 years of service with the Massachusetts National Guard, attaining the rank of Captain.

Q. Can you generally describe DSCI's approach to serving Massachusetts telecommunications customers?

A. DSCI serves business customers in all density zones across Massachusetts and offers a bundle of telecommunications and data services using a customer-friendly single bill format. Local voice services – the largest portion of our offerings – are procured via wholesale agreements through a variety of providers such as Sprint, Qwest, Global Crossing, PaeTec, Lightship and Verizon. Analog voice services purchased from Verizon are generally provisioned using unbundled network elements ("UNEs") purchased from the incumbent local exchange carrier ("ILEC" or "Verizon"), especially the UNE-Platform ("UNE-P") offerings over both digital and analog loops. DSCI is also in the process of building an integrated Voice-Over-Internet-Protocol network in Eastern Massachusetts that will allow it to provide voice, data and Internet services to commercial accounts via DSCI's own switching platform. DSCI presently has a very substantial base of commercial customers in Massachusetts, totaling well over 25,000 access lines.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to assist the Department of Telecommunications and Energy ("Department" or "DTE") in reviewing whether Verizon is fully complying with its legal obligations to allow DSCI and other CLECs to resell Verizon "customer specific pricing" and other similar arrangements (collectively referred to herein as "CSPs").[1] To date, due to lack of experience with handling CSP resale requests, bureaucratic inertia, a disinclination to encourage a potentially important new form of resale activity, or all of the above, Verizon's performance in handling DSCI's requests to resell two large CSPs and several smaller ones has been execrable. Department intervention is needed to ensure that the rights of DSCI and other CLECs are adhered to by Verizon.

Specifically, the Department should (1) issue an order forbidding Verizon from imposing customer class or other limitations on resale of CSPs that are not either expressly authorized by federal law or based on legitimate cost of service considerations specific to the a CSP in question; and (2) adopt procedures that would ensure timely and complete responses by Verizon to CSP resale requests made by DSCI and other CLECs. In particular, Verizon's unilateral decision to impose a customer class limitation banning resale of a CSP that Verizon entered into with its state at local agency customers and a limited set of other eligible providers -- namely Verizon's CSP with the

[1] CSPs are also referred to as "Contract Services Arrangements," "Special Pricing Arrangements," or "Individual Case Basis Rates." As used herein, CSP refers to all such special contract arrangements.

Commonwealth of Massachusetts ("COMA Contract") -- to any CLEC customer other than the categories of customers Verizon has deemed eligible to participate in its contract is contrary to federal law, unreasonable and anti-competitive.

Q. What is the current role of CSP resale in the marketplace and what is its potential importance in the future of telecommunications competition in the Commonwealth?

A. To my knowledge there has been little, if any, CSP resale activity to date in Massachusetts or even elsewhere nationally. Accordingly, apart from the few precedents that make clear that ILECs must permit resale of CSPs at a wholesale discount, no precedents address the specific issues raised in this Complaint. This lack of activity likely is attributable to the historic availability of attractively priced UNE-P offerings for CLEC business and institutional customers. Now that recent FCC orders have limited the availability of UNE-P to new customers and have established a transition period that will result in UNE-P for existing customers becoming unavailable in 2006, CLECs such as DSCI need to consider alternative approaches to serving their existing and new telecommunications customers, including resale of CSPs. Verizon has urged CLECs to consider resale alternatives to serve customers currently served by UNE-P. Accordingly, DSCI has identified CSPs that can be resold to its customer base on favorable terms, compared to alternative options, and has been actively discussing resale of these CSPs with Verizon for more than nine months. DSCI's complete lack of any success in these discussions has lead to the instant Complaint.

Q. Please provide a brief summary of DSCI's claims against Verizon in this proceeding.

A. In July of 2004, DSCI began discussions with Verizon in order to secure an agreement to resell Verizon's COMA Contract and other CSPs to DSCI's end user customers. To date, more than nine months later, DSCI still has not received sufficient information from Verizon necessary to resell any CSPs to DSCI's customers.

Specifically, DSCI initially held discussions with Verizon during the summer of 2004 with respect to alternatives for transitioning DSCI's existing customer base, including the use of resale of the COMA Contract. In October 2004, DSCI began serious discussions in order to secure agreement to resell the COMA Contract and other CSPs. After an initial denial in November and submission of follow up information provided by DSCI, Verizon approved its resale of the COMA Contract in December 2004. Verizon personnel did not object to DSCI's stated intentions, following up on the Summer of 2004 discussions, that it would use the COMA Contract to serve all of DSCI's existing UNE-P customer base. After additional months of planning regarding the transitioning of substantial portions of DSCI's customer base to the new serving arrangements, Verizon Legal notified DSCI in early March

2005 that all orders processed under the COMA contract would be limited to "eligible entities" as defined by Verizon based on Verizon Retail's arrangements with its own customer--namely, state and local agencies and certain other enumerated eligible entities. In denying DSCI's request to resell the COMA Contract to DSCI's business customers, Verizon has arbitrarily limited its resale based on Verizon's own internal customer class considerations. Verizon's proposed class limitations on resale are not authorized by federal law and are not based on cost of service considerations, and therefore violate both state and federal law and constitute an unreasonable restriction on resale.

With respect to the Customer 38 CSP Contract with the Commonwealth of Massachusetts ("Customer 38 CSP"), which involves enhanced services that are mixed and matched with the COMA Contract to meet customer needs. DSCI requested to resell the CSP in December 2004 and early January 2005. Verizon first failed to provide any information regarding this CSP for a period of several months. Verizon then refused to provide any data regarding these volume commitments that would apply to this CSP. Finally, immediately before DSCI filed the instant complaint, Verizon provided certain information on volume commitments under the Customer 38 Contract but then failed to disclose the pricing that would apply in the event DSCI failed to meet those volume commitments. Verizon said that the pricing would "revert to tariff" but to date has refused repeated requests by DSCI to specify the particular "tariff" rates that Verizon intended to apply. Without having information to discuss with DSCI's customers as to the cost consequences in the event volume commitments are not met, DSCI cannot resell the Customer 38 Contract. Additionally, since Verizon requires the COMA Contract and Customer 38 Contract to be purchased in tandem, Verizon's intransigence has prevented DSCI from reselling the COMA Contract and Customer 38 Contract even to those limited classes of customers that Verizon agrees are eligible for resale under the COMA Contract.

Additionally, pending a decision of Customer 38 usage pricing, DSCI requested that Verizon allow for the combination of COMA Contract monthly recurring charges with the retail usage offering which Verizon calls "Corporate Rewards." Verizon initially agreed to allow for the combination of COMA Contract plus Corporate Rewards. In late March, when DSCI attempted to begin processing orders for those "eligible entities" as identified by Verizon as being able to be resold the COMA Contract, Verizon retracted this offer. Nothing in Verizon's tariffs precludes this combination (except that DSCI agrees it cannot take advantage of the access line discount elements in Corporate Rewards). This denial of service is also unreasonable and in violation of state and federal law.

With respect to the Colonial and Cape Cod CSPs which DSCI has also requested to resell, Verizon stated that certain conditions relevant to specific site locations nullify Verizon's obligation to provide this CSP pricing to DSCI. However, Verizon at no time has fully identified the nature of these alleged conditions or otherwise demonstrated that the conditions are based on legitimate grounds.

Verizon's actions with respect to these specific CSPs and the procedures (or lack thereof) that it has applied in reviewing these CSP resale requests are unreasonable and anti-competitive, in violation of federal and state law.

Customer Class Limitations

Q. Please discuss the customer class limitations issue as applied to the COMA Contract.

A. In general, for CSP Resale to work, DSCI and other CLECs must identify a particular CSP pricing arrangement and match it to appropriate customers or aggregated groups of customers of the CLEC that meet the terms of service identified in a particular CSP. As discussed in DSCI's Complaint, federal regulations expressly authorize an ILEC to impose customer class restrictions only insofar as residential products cannot be resold to commercial customers and vice versa. No other customer class restrictions are expressly authorized and any restrictions cannot be allowed to stand unless found by the state utility agency to be both reasonable and nondiscriminatory. Verizon's proposed limitation on resale of the COMA Contract only to a limited subset of commercial customers – namely state and local agencies and other "eligible entities" defined in the COMA Contract – is not reasonable or permissible.

Q. Why isn't Verizon's proposed customer class limitation reasonable and nondiscriminatory?

A. Verizon has identified no reason why state or local agency customers as a category should be treated any differently from other types of non-residential customers. A Verizon CSP with the Commonwealth of Massachusetts is just like a CSP with any other large multi-location commercial customer, such as the Bank of America or Fidelity. In each case, the Verizon Retail customer takes advantage of its substantial buying power to get favorable CSP rates and terms from Verizon. In this case, the COMA Contract rates are 50-62% below standard retail pricing, figures not disputed in Verizon's Answer to the DSCI Complaint. So long as the CLEC can meets the volume requirements and other specified service terms, it is entitled to resell the CSP to its commercial customers at a discounted rate that reflects Verizon's avoided costs. Indeed, from a Verizon cost to serve standpoint, the Commonwealth of Massachusetts is also materially identical to DSCI's overall customer base. Each includes tens of thousands of access lines at hundreds of locations across the Commonwealth that are aggregated together for billing purposes. Consequently, unless Verizon can identify a CSP-specific cost consideration that renders inappropriate resale of the CSP, it is not reasonable or permissible for Verizon's decisions regarding the types of entities that it chooses to group together under a single CSP to limit the options of a CLEC seeking to resell the CSP.

Q. What other concerns do you have regarding customer class limitation?

A. A failure to prevent Verizon from limiting resale of CSPs to its own customer categories in the COMA Contract will invite Verizon to make further class limitations or distinctions that have nothing to do with cost of service considerations and impose those on CLECs, further limiting the availability of CSP resale as entry option.

Verizon Processes for Handling CSP Resale Requests

Q. Please describe your concerns with the procedures employed by Verizon once it receives a request to resell a particular CSP.

A. A main concern is that Verizon appears to have no practices or procedures in place to ensure a timely and complete response to CLEC requests to resell a CSP. This is critical because even though Verizon is required to tariff CSPs under applicable law, the tariffs ordinarily do not include complete detail on the terms and conditions insisted upon by Verizon, necessitating time-sensitive inquiries to Verizon to disclose or clarify the remaining terms. As discussed in detail in our Complaint, DSCI's requests to identify and finalize resale arrangements were typically responded to in any of four unsatisfactory ways: (1) they would not be responded to for weeks or even months, apparently while Verizon staff researched the request; (2) responses would be provided but would fail to contain complete information needed for DSCI to evaluate whether to pursue the resale opportunity, necessitating requests for follow-up information and attendant delays; (3) Verizon personnel would give the go ahead on the terms proposed by DSCI and plans would proceed for weeks or months, only to have other personnel within Verizon (i.e., Legal) reveal additional limitations or objections prior to final hand off of customers; or (4) the response would seek to impose unreasonable and impermissible limitations on DSCI's ability to resell the CSP. The end result was a lengthy game of "Go Fish" with DSCI repeatedly forced to keep picking cards out of Verizon's hands and hoping to finally get a match. This process is not consistent with reasonable commercial practices or with Verizon's clear obligation to make CSPs available for resale under federal and Massachusetts law.

Q. Can you provide examples of the types of incomplete or partial answers you have received form Verizon with respect to specific CSPs?

A. Yes. With respect to the COMA Contract, in mid-November, 2004, Verizon first responded by providing no information and asserting that DSCI "could not meet the requirements for that contract in its totality." DSCI was then forced to assert it was serious about meeting applicable requirements and that its Massachusetts customer base was capable of meeting any possible requirement based on numbers of access lines. On December 17, 2004 Verizon confirmed that DSCI qualified for COMA Contract pricing and, on

January 5, 2005, forwarded an agreement for DSCI to sign in order to begin to resell the COMA Contract. On January 10, 2005, DSCI attempted to confirm that DSCI would receive COMA services subject only to the restrictions that (1) DSCI "cannot sell to any organization that is already under contract for these rates" and that (2) DSCI's "access to these rates expires when the [CSP] expires," and did not give a negative response from any of the Verizon personnel. DSCI was not allowed to review the COMA Contract materials until February 18, 2005, at which time DSCI signed the resale agreement. On March 3, 2005, after weeks of planning the service-related cutovers to effectuate the transition to the new serving arrangements, Verizon notified DSCI that all orders processed under the COMA Contract would be limited to "eligible entities" under the contract as defined by Verizon that were not already secured by Verizon.

With respect to the Customer 38 CSP, DSCI's initial request for relevant information on this CSP was made on December 15, 2004 and was clarified on January 10, 2005. Verizon responded to DSCI's requests by claiming it was trying to obtain a copy of the contract, a process that took several months. In March, Verizon finally responded by stating that there are volume commitments for Customer 38 CSP resale that DSCI may or may not be able to meet, but Verizon did not provide any specifics. Following repeated DSCI requests, Verizon did provide volume information in late March, at about the time the Complaint was being filed, but then said in the event the volume restrictions were not met, pricing would "revert to tariff." DSCI asked the obvious follow up question concerning which tariffed rates would apply in the event of such default, but Verizon declined to take a position on this issue pending the outcome of this proceeding. Just this week Verizon provided some additional Customer 38 CSP information and offered to execute a CSP resale agreement. DSCI plans to review the Agreement and, if it is acceptable, will seek to resell the services covered under the Customer 38 CSP.

With respect to the Colonial and Cape Cod CSPs, DSCI first observed on November 10, 2004 that Verizon Retail had approved ICB pricing for DSCI's existing client, Colonial, at a very substantial discount off of standard retail rates and asked for resale on the same terms. After Verizon declined that request, DSCI on November 15 identified a CSP with materially identical pricing terms (Cape Cod) and asked to resell that CSP to Colonial. Following an initial approval in mid-December and request to DSCI to forward the site locations for Colonial, Verizon informed DSCI in late December that the Cape Cod CSP had conditions relevant to specific site locations that limited Verizon's obligation to resell that CSP, but failed to disclose any details. On January 6, 2005, DSCI pointed out a host of other CSPs that employed the same pricing mechanisms as in the new Verizon Retail offer to Colonial and in the existing Cape Cod CSP, and requested that approval for resale be forthcoming. Verizon has never responded to this January 6 resale request.

Q. Do you have recommended procedures that would allow Verizon to comply with its obligations in this area?

A. Yes. The Department needs to establish a defined period of time, such as not more than two weeks from the date of the request, for Verizon to provide a complete response to a CSP resale request. The response should list in clear and specific terms all applicable requirements and limitations that the CLEC must meet in order to resell the CSP and include a draft resale agreement. If there are CSP-specific issues requiring additional research time, Verizon should have not more than one additional limited time period (such as up to another two weeks) to prepare its response. Verizon cannot be allowed to handle CLEC resale requests on its own schedule, as that will continue to lead to unacceptable delays. Additionally, Verizon cannot be allowed to give partial responses that require additional rounds of follow up questions.

Q. Are there any existing Verizon processes that could be followed or adapted in developing a CSP resale request response process?

A. Yes. The process should not require any more time than the existing process by which Verizon Retail requests internal Verizon authority to offer customer specific pricing to an end user. My understanding, based on the experience of DSCI managers (including myself) who worked at Verizon or its predecessor companies or at companies closely affiliated with Verizon, and based on reports from DSCI customers who have been solicited by Verizon Retail, is that the Verizon Retail procedure for CSP approval is a straightforward process that results in an internal approval, an individual case basis contract number and a draft contract in a short period of time, often less than two weeks. The basic elements are as follows: (1) Verizon Retail prepares a situation analysis that describes the customer requirements (type of services), volume and location; (2) Verizon Retail forwards the request to an internal group (sometimes referred to as the "FPO Group") which reviews the request, surveys existing similar CSPs for pricing information, and provides a prompt pricing recommendation; alternatively, if the customer characteristics are not similar to any existing contracts, the request is referred to engineering for a cost review and recommendation as to proposed pricing; and (3) a final Contract containing the pricing is generated.

A CLEC request to resell a CSP should be subject to a comparably short turnaround, such as the two-week period with not more than one extension referenced above. The request could be referred immediately to the FPO Group for preparation of the list of applicable terms and conditions to the CSP in question, including any site-specific cost requirements that might limit resale of the agreement, and then be forwarded to Verizon Legal for final review and approval and preparation of a draft Contract. Alternatively, Verizon Wholesale could prepare the situation analysis and draft terms and conditions for resale that would then be reviewed and approved by Legal. In either event, Verizon must be required to provide the CLEC complete information on the applicable terms and conditions for resale by a date certain.

It cannot respond by saying in conclusory fashion that there are "geographic limitations" or "volume restrictions" or that "pricing reverts to tariff" that require further inquiries and attendant delays. These incomplete responses answers to business-critical questions prevent the CLEC from determining whether it would make sense to resell a CSP to the CLEC's end users. It also raises an unacceptable risk that a customer will accept Verizon Retail's offer of CSP pricing while the CLEC is waiting for final approvals from Verizon to offer the same customer a CSP resale offering. Verizon's actions, therefore, hamper the ability of DSCI and other CLECs to respond efficiently and effectively in the competitive marketplace.

Requests for Relief

Q: What relief does DSCI seek from the Department as a result of this proceeding?

A: First, unless Verizon can demonstrate additional costs associated with DSCI's end user(s) that would prohibit DSCI from obtaining the same pricing available in the CSPs which DSCI has requested to resell, the resale restrictions which Verizon has applied must be found to be unreasonable and discriminatory. Since DSCI is prepared to meet the volume requirements with respect to the COMA CSP, it must be permitted to resell COMA Contract services to its business customers. Therefore, the Department should order that DSCI is qualified to resell the COMA CSP to all of its business customers, just not those decreed by Verizon to be "eligible."

Second, with respect to the Customer 38 Tariff, the Department should order Verizon to provide complete volume and size qualifying information necessary for DSCI to resell this CSP to its end user customers, including a final position on the important question of the particular rates that will apply in the event that DSCI is unable to meet the contractual volume requirements.

Third, with respect to combining Corporate Rewards usage with COMA Contract pricing, the Department should conclude that the plain language of the Corporate Rewards tariff allows for this, and direct Verizon to process service requests from DSCI that combine these two products except for the access line discounts, which DSCI agrees are not applicable.

Fourth, the Department should also order Verizon to permit DSCI to resell the Colonial and/or Cape Cod CSPs. Alternatively, Verizon should immediately identify the cost-based qualifying information necessary for DSCI to determine whether it qualifies to resell these CSP contracts.

Finally, as discussed above, the Department should impose limits on the time within which Verizon must respond to CLECs' requests for information necessary to resell CSPs to their end user customers and require the responses to include all terms and conditions needed by the CLEC to determine whether to resell the CSP. DSCI recommends a complete response to a CSP resale request be made to the CLEC within 14 days, with an option for one additional extension of 14 days in special circumstances.

Q. **Do you request any additional form of relief other than confirming DSCI's resale rights and establishing going forward guidelines to ensure prompt and complete responses to CSP resale requests?**

A. Yes. As it sees fit, the Department should impose a monetary fine on Verizon, to be paid to DSCI, as reparation for the substantial delays and lack of response to DSCI's requests to provision services under relevant CSP terms and conditions. DSCI certainly understands that Verizon is new to CSP resale issues. Nevertheless, Verizon's demonstrated inability to provide complete and timely responses to DSCI's requests for CSP resale information, causing substantial inconvenience and business uncertainty to DSCI and its customers, should be subject to sanctions by the Department.

Q: **Does this conclude your testimony?**

A: Yes it does.