COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc., d/b/a Verizon Massachusetts' provision of Special Access Services	)	**D.T.E. 01-34**

INITIAL BRIEF OF

VERIZON MASSACHUSETTS

Barbara Anne Sousa
Regulatory Counsel
Verizon Massachusetts
185 Franklin Street, Rm. 1403
Boston, Massachusetts 02110-1585

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TABLE OF CONTENTS

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In this Initial Brief, Verizon Massachusetts ("Verizon MA") clearly demonstrates that there is absolutely no justification for the Department to impose compulsory intrastate special access performance reporting requirements, audits, and/or enforcement mechanisms on Verizon MA. Such new regulatory obligations would be burdensome, intrusive, and unfair to Verizon MA based on the competitive nature of the special access market. They are also unnecessary given the fact that fewer than *one-half of one percent* of Verizon MA's special access circuits are intrastate. Exh. VZ MA 3, at 12. Accordingly, the Department should reject the parties' recommendation to establish intrastate special access performance metrics in Massachusetts.[1]

[1] Although 17 carriers have intervened in this proceeding, AT&T Communications of New England, Inc. and WorldCom, Inc. ("WorldCom") have been the only active carrier participants. Therefore, in the context of Verizon MA's Initial Brief, the term "parties" refers collectively to AT&T and WorldCom.

I. INTRODUCTION AND SUMMARY

"Special access services" are dedicated circuits that connect an end-user customer's location to a carrier's network (*e.g.*, point of presence or "POP") within the LATA.[2] ***See* RR DTE-VZ 1; Tr. 51-52, 59-61; *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, FCC 00-183, CC Docket No. 96-98, ¶ 10 n.36 (rel. June 2, 2000) (*"Supplemental Order Clarification")*. They include voice grade services (simpler, low speed, analog circuits), digital services (low speed 56 kbps, DS0 digital services), and high-capacity services (high speed 1.544 mbps, DS1 and DS3 services). Exh. VZ MA 1, at 2; DTE Tariff No. 15, Section 7.2.**

Special access services are deemed "special" because, unlike regular telephone service, they are specifically designed to meet an individual customer's unique needs. Tr. 95-96. The provisioning of special access services is a complex process that requires a customized design for each circuit and, for high capacity services, special facilities. Exh. VZ MA 1, at 2. Indeed, the complexity of provisioning special access services increases as the requirements for speed of the communications to be carried on the circuit increases. For example, digital services are more complicated to provision than voice grade services, and DS3 special access services are more complicated to provision than DS1 services. Exh. VZ MA 1, at 2.

Special access circuits may be ordered from Verizon MA by either the carrier (*i.e.*, wholesale) customer or end-user (*i.e.*, retail) customer pursuant to the Company's intrastate, interLATA tariff (DTE MA Tariff No. 15) and interstate tariff (FCC Tariff No. 11).[3] Exh. VZ MA 1, at 2. The jurisdictional nature of the special access circuit is determined by the customer based use of the circuit. In the case of a "mixed use" special access circuit, the Federal Communications Commission ("FCC") has declared that if ten percent or more of the traffic that rides on that circuit is interstate, then the circuit is considered interstate regardless of whether the circuit is physically located entirely within the LATA. Tr. 51-52, 189-90; *see In the Matter of*

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[2] The POP is the physical plant where an interexchange carrier connects its network with Verizon's network. Exh. VZ MA 1, at 1-2.

[3] By contrast, "special services" or "private lines services" refer to non-access, dedicated circuits that originate from an end-user premises and terminate to another end-user premises within the LATA. Those intrastate services are provided under Verizon MA's local exchange tariff (DTE MA Tariff No. 10), and are not comparable to special access services.

MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, FCC 89-224, CC Docket Nos. 78-72 & 80-286, 4 FCC Rcd 5660 (rel. July 20, 1989).

The FCC has consistently found the special access services market competitive and eligible for pricing flexibility in certain areas, including Massachusetts.[4] Interexchange carriers ("IXCs"), competitive access providers ("CAPs"), competitive local exchange carriers ("CLECs"), incumbent local exchange carriers ("ILECs"), and end users themselves (many of whom can and do build their own dedicated facilities) currently compete with one another in providing special access services. The presence of competition disciplines the provision of such services by all suppliers.

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[4] *In the Matter of Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, DA 01-663, CCB/CPD Nos.00-24, 00-28 (rel. March 14, 2001) ("*Verizon 2001 Pricing Flexibility Order*"); *In the Matter of Petition of Verizon for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, DA 02-706, CCB/CPD Nos.01-27, 00-28 (rel. March 22, 2002) ("*Verizon 2002 Pricing Flexibility Order*").

In Massachusetts, approximately 99.6 percent of special access circuits provided by Verizon MA have been designated by the customer as interstate special access services under the FCC's "ten percent" rule and, therefore, are governed by FCC Tariff No. 11. Exh. VZ MA 3, at 12. As a result, fewer than *one-half of one percent* of Verizon MA's special access circuits in Massachusetts are intrastate subject to the Department's jurisdiction.

In this proceeding, Verizon MA has shown that it strives to provide the highest quality service to all of its special access customers, both carriers and end users. In response to market demand, Verizon MA currently provides a number of detailed, special access service quality reports to more than 50 carriers in Massachusetts on a voluntary basis. Exh. VZ MA 3, at 43; Exh. DTE-VZ 5-43. Because these reports are tailored to the individual customer's need, they are a more effective and useful mechanism than mandatory regulatory reports. This carrier-specific performance reporting, coupled with Verizon MA's own internal measurements for routine monitoring of its special access services and its root-cause analysis undertaken on an as-needed basis, provide substantial means for the customer and the Company to review regularly the quality of its special access services.

Verizon MA's recent strong performance results for provisioning of special access services further demonstrate that no additional metrics are warranted in Massachusetts. Contrary to some parties' claims, Verizon MA has not engaged in any discriminatory conduct in providing special access circuits to carrier versus end-user customers in Massachusetts.

As discussed below, the Department has already recognized that it does not have the authority to establish reporting requirements that would include Verizon MA's interstate special access services because the FCC – not the Department - regulates those services. The FCC has already undertaken its own investigation to examine interstate special access performance.[5] Exh. VZ MA 3, at 1. That pending FCC proceeding is the appropriate forum for addressing any issues regarding the quality of Verizon's provision of *interstate* special access services. Moreover, with the small number of intrastate special access circuits in Massachusetts, there is no need for the Department to develop reporting measures that may ultimately conflict with the FCC's final decision in their investigation. There is no legal basis for the Department to circumvent the FCC's "safe harbor" rules[6]

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5 *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, FCC 01-339, CC Docket No. 01-321, (rel. November 19, 2001) ("*NPRM*"). In addition, the FCC currently requires monitoring and reporting of special access services through the Automated Reporting Management Information System ("ARMIS"). ARMIS tracks state-specific information relating to on-time provisioning, installation intervals, trouble reports, and repair intervals (*i.e.*, mean time to restore) for interstate special access circuits. *See* Exh. DTE-VZ 5-30; Exh. ATT-VZ 2-7; Exh. DTE-VZ 4-31; and Exh. WCOM/ATT 4-30.

6 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("*UNE Remand Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, FCC 99-370, CC Docket No. 96-98 (rel. Nov. 24, 1999) ("*Supplemental Remand Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,*

prohibiting the conversion of special access circuits to unbundled network elements ("UNEs") under the Telecommunications Act of 1996 (the "Act"), as some parties falsely allege.

Accordingly, the Department should reject the parties' proposals and refrain from imposing any regulatory-mandated reporting requirements on Verizon MA's minimal number of intrastate special access circuits in Massachusetts. As explained below, such action would not only unfairly and unreasonably burden one service provider (*i.e.*, Verizon MA) in this competitive market, but is unnecessary to ensure the high quality of Verizon MA's special access services in Massachusetts.

II. BACKGROUND REGARDING THE DEPARTMENT'S SPECIAL ACCESS SERVICES INVESTIGATION

The Department opened this investigation in its March 14, 2001, Order ("*Order*"), as the result of informal complaints by some carriers. *Order*, at 2. In that Order, the Department stated that this investigation would examine Verizon MA's provision of special access services in Massachusetts pursuant to DTE MA Tariff No. 15. *Order*, at 1. The Department further indicated that "[t]he purpose of this investigation is to determine through presentation of evidence: (1) whether Verizon's special access services are unreasonable under G.L. c. 159, § 16; and (2) if so, what steps Verizon should be required to take to improve its special access services." *Order*, at 3. In accordance with the Department's directives, Verizon MA filed an intrastate special access services report on May 24, 2001, ("May 24th Report") containing "data on Verizon's provisioning, and maintenance and repair performance over the past year." *Order*, at 3; Exh. VZ MA 1.

In its Order issued August 9, 2001, ("*August Order*"), the Department rejected AT&T's motion to expand this investigation to include jurisdictionally interstate special access circuits provided by Verizon MA in Massachusetts. The Department found that the FCC has exclusive jurisdiction over the quality of service of federally tariffed special access services regulated at the federal level. *August Order*, at 10-11. Accordingly, the Department properly concluded "that it is preempted from investigating and regulating quality of service for federally tariffed special access services," and summarily denied AT&T's motion. *August Order*, at 11.

Notwithstanding its findings in that Order, the Department directed Verizon MA to supplement its May 24th Report and submit interstate special access services performance data for the same period. *August Order*, at 12. The Department based its decision on the fact that more than 99 percent of special access circuits provided by Verizon MA in Massachusetts are jurisdictionally interstate. The Department indicated that it "will use data related to the provision of interstate special access services as evidence relevant to findings we may make regarding the reasonableness of intrastate special access services," but that it "will not apply any findings or potential remedies to interstate services." *August Order*, at 12; *see also* D.T.E. 01-34, Order dated October 25, 2001, at 8 ("*October*

Supplemental Order Clarification, FCC 00-183, CC Docket No. 96-98 (rel. June 2, 2000) ("*Supplemental Order Clarification*").

***Order"*). In compliance with these subsequent Department Orders, Verizon MA submitted its supplemental special access service report on September 9, 2001, which contained information relating to Verizon MA's provision of interstate special access services in Massachusetts. Exh. VZ MA 2.**

A. The Applicable Legal Standard

Section 16 of Chapter 159 of the Massachusetts General Laws states, in pertinent part, that:

> [i]f the department is of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby…. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public….

As set forth below, the legal standard in Section 16 has <u>not</u> been met in this proceeding.

No evidence has been presented that shows Verizon MA's provision of intrastate special access services is "unjust, unreasonable, unsafe, improper or inadequate." To the contrary, the record demonstrates that Verizon MA is providing high quality service and has taken reasonable and prudent steps to improve special access performance for all customers in Massachusetts and elsewhere.[7]

During this proceeding, Verizon MA has produced extensive raw data relating to its provision of special access services on an intrastate and interstate basis. Verizon MA developed that data based on the specific criteria established by AT&T and WorldCom in their instructions to discovery requests.[8] **AT&T and WorldCom may claim that such data**

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[7] As explained below, extenuating circumstances accounted for Verizon MA's special access performance levels in 2000 and 2001. The sudden increase in special access service orders, combined with the labor strike in August 2000, produced a considerable backlog, from which Verizon MA did not fully recover until mid-2001. Exh. VZ MA 3, at 38-39. Therefore, these service results are anomalous and not representative of Verizon MA's performance levels.

[8] That data is not normally tracked nor captured by Verizon MA in the form requested in the normal course of

demonstrates inferior and discriminatory performance by Verizon MA in its provision of special access services to carriers. They are wrong.

As addressed below, AT&T and WorldCom attempt to manipulate the data to support their claims. However, the raw data requested by AT&T and WorldCom are simply data points that do not provide sufficient information from which to develop performance results, as parties falsely suggest. Tr. 217. The only exception is on-time provisioning, which can be derived from that raw data. Tr. 264, 305.

Based on the most recent figures, Verizon MA's on-time provisioning for special access services is consistently in the 93 to 94 percent range for carrier customers[9] for the first quarter of 2002. This exceeds Verizon MA's on-time provisioning results for end-user customers purchasing comparable services, which range from 78 percent to 91 percent during the same period.[10] Therefore, to the extent that this raw data can be used to draw any conclusions about Verizon MA's special access services performance, it demonstrates that Verizon MA is currently providing high quality special access service to carrier customers in Massachusetts, and is not discriminating in favor of end-user customers.

Finally, it is inappropriate and unreasonable for the Department to consider interstate special access service data as evidence of Verizon MA's performance levels for intrastate special access services pursuant to Mass. General Laws Chapter 159, Section 16. Although data relating to interstate special access circuits may inform the Department's decision, it cannot be considered evidence on which to base a finding regarding the reasonableness of Verizon MA's provision of *intrastate* special access circuits. The fact that the *actual* volume of intrastate special access circuits is very small (*i.e.*, less than one-half of

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business. Nor does such data reflect any internal or external measurements derived by Verizon in Massachusetts or any other states within its operating territory. Therefore, the development of this data on a state-specific, disaggregated basis required a very labor-intensive, time-consuming, and burdensome manual work effort to complete. This exercise was further complicated by the events of September 11, 2001, in New York, where much of the data resides.

9 This figure was calculated based on carrier (wholesale) data for DS1 (special access) circuits during the first quarter of 2002. For this calculation, the numerator is the sum of the total number of DS1 circuits completed on-time by Verizon MA (Exh. DTE-VZ 5-1, updating WCOM/ATT-VZ 1-4) and the total number of DS1 circuits not met (or missed) for customer reasons (Exh. DTE-VZ 5-1, updating WCOM/ATT-VZ 1-5). The denominator is the total number of DS1 circuits completed per month (Exh. DTE-VZ 5-1, updating WCOM/ATT-VZ 1-2). This is consistent with the methodology used by Verizon to derive on-time provisioning results for internal measurements, as well as external performance metrics. Tr. 227-28.

10 Using the same methodology described above, Verizon MA calculated the on-time provisioning for end-user (retail) data for DS1 (special access) circuits during the first quarter of 2002. This appropriately compares "like" services. Contrary to AT&T's claims, it is inappropriate to derive this calculation using only retail *non-access* data. Exh. ATT 2, at 13-14; Tr. 469-71. Non-access special services include a different mix of products and service characteristics from special access services. Exh. DTE-VZ 5-13. Therefore, to include only non-access retail service data would unfairly skew the service results, and grossly inflate the on-time percentages for retail services, making it appear that Verizon MA is favoring its end-user customers in support of AT&T's allegations. Moreover, as explained below, if the calculation were to include retail *access* and *non-access* data, as AT&T's witness subsequently admitted it should, the on-time provisioning percentage for Verizon MA's end-user customers would only slightly exceed the carrier customer results, ranging from 95 to 97 percent for the 2002 period. Tr. 495. This is clearly not evidence of undue or unreasonable discrimination.

one percent of the total number of combined interstate and intrastate circuits provided in Massachusetts) merely supports Verizon MA's position that the Department should not adopt any intrastate special access reporting requirements.

The FCC – not the Department – is the appropriate regulatory agency to determine whether and to what extent performance metrics should apply to the 99.6 percent of interstate special access circuits provisioned by Verizon in Massachusetts. The FCC will make that determination in its pending proceeding (CC Docket No. 01-321), in which Verizon, AT&T, WorldCom, and numerous other carriers are active participants. In the meantime, the Department should not be persuaded by AT&T's and WorldCom's arguments to use interstate special access data points as the basis for adopting intrastate performance metrics in Massachusetts. This would contravene Section 16 and would be inconsistent with Department precedent.[11]

III. ARGUMENT

J. Reporting of Special Access Service Results Is Not Required Because of the Competitive Nature of Such Services.

Special access competition began even before divestiture and developed rapidly following the FCC's *Expanded Interconnection* and *Transport Rate Restructure* decisions.[12] As recognized by the FCC, the special access services market is highly competitive, with numerous facilities-based and resale competitors vying to serve sophisticated customers who wield considerable bargaining power. Exh. VZ MA 3, at 9. Because of this vigorous competition and the resultant market-based checks on pricing and performance, the FCC has taken steps to reduce progressively the degree of price regulation for ILEC's provision of special access services.[13] Based on those FCC findings - and the availability of

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[11] The Department correctly ruled that the review and regulation of interstate services is beyond its scope of authority. The mere fact that the provisioning process for interstate and intrastate special access services may be the same is not adequate grounds for the Department to consider combined data in assessing Verizon MA's provision of intrastate special access services.

[12] *See Expanded Interconnection with Local Telephone Company Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs*, 7 FCC Rcd 7369 (1992) ("*Special Access Expanded Interconnection Order*"), *vacated and remanded in part*, Bell Atlantic et al v. FCC et al, 24 F.3d 1441 (D.C.Cir. 1994); *Transport Rate Structure and Pricing Petition for Waiver of the Transport Rules Filed by GTE Service Corporation*, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006 (1992).

[13] *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7454, 7463 (allowing volume and term discounts and density zone pricing based upon certain competitive showings); *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21487 (1996) (eliminating the lower service band indices); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominate Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*") (granting the ability to file contract

alternatives to Verizon MA's special access facilities in Massachusetts, the Department should decline to impose any special access performance repo rting requirements on Verizon MA.

1. FCC Decisions Granting Special Access Pricing Flexibility

In its *Pricing Flexibility Order*, the FCC established the parameters for granting pricing flexibility for special access and dedicated transport services. The FCC substantially relaxed regulation of ILEC special access rates in areas meeting the test for Phase I relief, and essentially deregulated these rates in areas granted Phase II relief.[14] **That approach is intended to ensure that the FCC's "own regulations do not unduly interfere with the development and operation of these markets as competition develops."**[15]

The strict tests needed to secure Phase I and Phase II relief demonstrate that pricing flexibility is truly predicated on substantial competition by facilities-based providers within a geographic, Metropolitan Statistical Area ("MSA"). Based on such a showing, the FCC would conclude that "competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period."[16]

To obtain Phase I relief for special access transport services, a LEC must show either: (a) that at least one facilities-based collocator[17] **is present in at least 15 percent of the LEC's wire centers in the relevant MSA; or (b) that at least one facilities-based competitor is collocated in wire centers accounting for 30 percent of the petitioner's special access revenues (other than from channel terminations) in the MSA. *See* 47 C.F.R. §§ 69.709, 69.711 (2000); Exh. VZ MA 3, at 10. To obtain Phase II relief for transport services, a facilities-based collocator must be present either in 50 percent of the**

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tariffs and remove special access services from price cap regulation upon specific competitive showings), *aff'd*, *WorldCom, Inc. et al. v. FCC et al*., 238 F.3d 449 (D.C. Cir. 2001).

[14] Phase I relief allows a local exchange carrier ("LEC") to offer volume and term discounts on special access services to customers, as well as providing contract authority. Phase II relief provides for the elimination of price cap requirements and the filing of tariff revisions on one day's notice. *See* 47 CFR 69.727.

[15] *Pricing Flexibility Order*, 14 FCC Rcd at 14357, *quoting Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, 16094 (1997).

[16] *Pricing Flexibility Order*, 14 FCC Rcd at 14235. Moreover, the FCC found that, under the market conditions justifying Phase II relief, "the availability of alternative providers will ensure that rates are just and reasonable." *Id*. at 14258.

[17] A facilities-based collocator is defined as a collocator using transport facilities owned by a transport provider other than the ILEC to transport traffic from the wire center. *See* 47 C.F.R. 1.774(a)(3)(iii).

wire centers or in wire centers accounting for 65 percent of the LEC's non-channel termination special access revenues. *See* 47 C.F.R. §§ 69.709, 69.711 (2000).

For channel terminations, the pricing flexibility triggers are even higher. The test for Phase I relief requires that a facilities-based collocator must be present either in 50 percent of wire centers or wire centers accounting for 65 percent of channel termination revenues. Exh. VZ MA 3, at 11. To obtain Phase II relief, such a collocator must be present either in 65 percent of wire centers or wire centers accounting for 85 percent of the petitioner's channel termination revenues. *See* 47 C.F.R. §§ 69.709, 69.711 (2000).

In affirming the FCC's pricing flexibility rules for special access services, the D.C. Circuit explained that the collocation-based triggers "reasonably serve as a measure of competition in a given market and predictor of competitive constraints on future LEC behavior." *See WorldCom et al. v. FCC*, 238 F.3d 449, 459 (D.C. Circuit 2001). This is true because the rules make pricing flexibility available only where facilities-based competitors have collocated either in a large number of wire centers or in wire centers accounting for a substantial portion of the ILEC's special access revenue in an MSA. Exh.VZ MA 3, at 11. However, because the FCC's pricing flexibility criteria focuses on collocation, it *understates* the degree of competition in that the FCC's triggers do not take into account competition for special access services from entities that bypass the ILEC, connecting end users directly to fiber rings that, in turn, connect to IXCs and Internet service providers ("ISPs"). Exh. VZ MA 3, at 11.

A competitive market clearly exists in Massachusetts as evidenced by the FCC's granting of Verizon's request for Phase I and II relief for dedicated transport and special access services. Exh. VZ MA 3, at 11-12. On November 17, 2000, Verizon filed with the FCC for Phase II relief for the Springfield MSA and Phase I for the Boston MSA for dedicated transport. The FCC found that the data submitted by Verizon met the applicable triggers for each of the various services and MSAs for which it requested relief, and approved these petitions on March 14, 2001. *Verizon 2001 Pricing Flexibility Order*, ¶ 20.

On November 29, 2001, Verizon filed with the FCC for Phase I relief for end-user channel termination for the Boston, Worcester and Springfield MSAs. In addition, Verizon also filed for the more stringent Phase II relief for the Boston and Worcester MSAs for dedicated transport. The FCC similarly ruled that Verizon qualified for the requested relief in those Massachusetts MSAs in its order released March 22, 2002. *Verizon 2002 Pricing Flexibility Order*, ¶¶ 20, 25. These filings clearly demonstrate the competitiveness of special access services in each of the major MSAs in Massachusetts.

2. Availability of Alternative Special Access Providers

Contrary to AT&T and WorldCom's initial claims, Verizon is not the "only game in town" in providing special access services in Massachusetts. Exh. VZ MA 3, at 13. There are numerous CAPs with filed tariffs in Massachusetts. AT&T and WorldCom also have extensive facilities-based networks that can perform special access functionality.[18] Exh. VZ MA 3, at 13-14.

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[18] For example, contrary to AT&T's claims, AT&T Broadband does link or connect its existing plant to business

Indeed, WorldCom admits that it self-provisions circuits (*e.g.*, DS1's, etc.), but will not disclose the percentage of circuits or customers served "on-net" in Massachusetts, except to say that is less than 50 percent.[19] Exh. DTE-WCOM 1-4; Tr. 444-47. WorldCom also states that it "has periodically provided special access-type services to three CLECs in total in Massachusetts."[20] RR VZ-WCOM 3.

During the first quarter of 2002, WorldCom purchased "off-net" special access connectivity from at least one CLEC in Massachusetts. Exh. DTE-WCOM 1-4; Tr. 439-40; RR VZ-WCOM 1. Although WorldCom will not confirm the total number of CLECs from which it has purchased special access connectivity before that time, WorldCom does indicate that alternative carriers provide special access facilities in 7.1 percent of the Massachusetts-specific buildings serving WorldCom's end-user customers. Exh. VZ-WCOM 2-2; Tr. 446-47. However, WorldCom will not disclose what percentage of its total "off-net" circuits - or what percentage of its customer base or special access revenues earned - are derived from those buildings. Tr. 446-47.

While AT&T and WorldCom may argue that Verizon MA has market share, the parties have presented no evidence to support those claims. Nor have they demonstrated that market share is a reliable indicator of market power for special access services.[21] Nor can they.

Major facilities-based carriers, such as WorldCom and AT&T, have the ability to construct facilities, as part of their own or an affiliate's network, to self-provision special access services.[22] They also can - and do - choose CAPs or CLECs for their special access

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customers in Massachusetts. Exh. ATT 2, at 22 n.7. Verizon purchases cable services from AT&T Broadband in at least two commercial locations (*i.e.*, 125 High Street, a downtown Boston office building, and an office park on Locke Drive in Marlboro, Massachusetts), as evidenced by Verizon's recent monthly bills from AT&T Broadband. Exh.VZ MA 4; Tr. 478-80 The fact AT&T Broadband has a physical presence (*e.g.*, cable plant facilities) at those business locations could enable AT&T to utilize those facilities to provision special access services to end-user, business customers at those same locations, if it chose to do so.

19 Given WorldCom's acquisition over the years of MFS, MCI (including mciMetro), Brooks Fiber, and other CAPs, it is reasonable to assume that a large number of WorldCom's special access circuits – and an even larger proportion of its special access revenues – are "on-net." *See Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18138 (1998) ("the merged entity will be able to expand its operations and enter into new local markets more quickly than either party alone could absent the merger. For example, the Applicants claim that mciMetro and Brooks Fiber will accelerate local city network deployment in secondary markets by 1-2 years."). Exh. VZ-MA 3, at 15-16.

20 For purposes of this Brief, record request responses will be abbreviated as "RR," followed by the respondent's and the proponent's abbreviated names, respectively.

21 In fact, the FCC has specifically refused to use market share as an indicator of the level of competition. The FCC recognized in its determination of pricing flexibility for special access services that a reliance on market share "is problematic because market share determinations are unreliable in the absence of verifiable data regarding competitors' revenues." *In the Matter of Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket 96-262, 14 FCC Rcd. 14,221 (rel. August 27, 1999) at ¶ 103.

22 **In fact, WorldCom already has fiber to some 50,000 office buildings or campuses in more than 100 markets in the United States, and has stated publicly that "[a] lot of what we do today is simply extend**

connectivity needs. Even on specific individual routes where Verizon MA may currently be the principal or sole provider of special access, there are no insurmountable obstacles to deployment of competitive facilities; rather, it is purely a matter of economic and business choice. Exh. VZ-MA 3, at 14-15. Further, it seems incredulous that a competitive carrier would not find it worthwhile to deploy its own facilities - even in a particular location where alternative facilities are not already in place - if doing so would enable it to retain or win the overall telecommunications business of a regional, national, or multi-national customer.

While carriers may, for a number of good reasons, *choose* to use Verizon MA's facilities to reach "off-net" locations, they are not *compelled* to do so - particularly for buildings and wire centers serving the most significant sources of special access demand. Exh. VZ MA 3, at 14-15. Indeed, the nature of demand for special access services - large, sophisticated customers who are geographically concentrated - enables carriers to address a large portion of the potential customer base (and an even greater portion of potential revenues) with targeted investments. *See e.g.*, *Pricing Flexibility Order*, ¶¶ 97, 106, 142.

Because the special access market is generally more geographically concentrated, the buildings served by competitive carriers, such as AT&T and WorldCom, are likely to represent the majority of special access demand. This is true for Verizon in Massachusetts, where approximately 84 percent of Verizon MA's interstate special access revenues are earned in areas served by just 20 percent of its central offices. Exh. VZ MA 3, at 17. The level of concentration is likely to be even higher on a building-by-building basis - that is, 20 percent of the buildings served represent far more than 84 percent of the special access revenues earned. Therefore, while Verizon MA has no firsthand knowledge of AT&T and WorldCom's investment plans, it would seem likely that they and other CLECs would target their investments in those locations where there is the highest concentration of demand for special access services and, therefore, the greatest potential revenues, *i.e.*, return on their investments. Exh. VZ MA 3, at 17.

Despite the availability of alternative special access providers, parties contend that the Department should give considerable weight to the New York Public Service Commission's ("NYPSC") determination that Verizon New York ("Verizon NY") is the "dominant" provider in the special services market.[23] Exh. ATT 1, at 17-18. Their

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the capability we may already have in an existing metro market." Exh. VZ-MA 3, Attachment A [Eric Krapf, "Fiber Access: The Slog Continues; Industry Tent or Event," *Business Communications Review*, Aug. 1, 2001, at 38 (quoting Fred Briggs, WorldCom's Chief Technical Officer)]. Since such existing alternative fiber networks already serve - or are within striking distance of - buildings housing the vast majority of tenants with special access demand, extending those networks to reach or connect to additional building locations becomes that much easier.

[23] *See Opinion and Order Modifying Special Services Guidelines for Verizon New York, Conforming Tariff, and Requiring Performance Reporting*, Case Nos. 00-C-2051 & 92-C-0665 (rel. June 15, 2001) ("*June 15th NYPSC Order*"); *see also Order Denying Petitions for Rehearing and Clarifying Applicability of Special Access Guidelines*, Case Nos. 00-C-2051 & 92-C-0665, at 15 (rel. Dec. 20, 2001) ("*December 20th NYPSC Order*"). Unlike the Department's investigation, the NYPSC case was an informal collaborative, not a formal adjudicatory proceeding. Thus, the NYPSC reached its decision on market share without the benefit of

contentions are fallacious. The NYPSC's analysis cannot be relied upon as a credible demonstration of the actual competitiveness of the special access market in New York, and certainly has no bearing on the competitiveness of the Massachusetts marketplace.

First, the NYPSC's finding is flawed because it is based on data relating to fiber route miles, number of buildings passed, and number of buildings actually connected to non-ILECs, not whether competitive carriers serve those buildings where tenants demand special access services. Exh. VZ MA 3, at 16. Second, the NYPSC's determination of market share is erroneously based on a *simple* count of all circuits, with single-line DS0's counting the same as very high-capacity OCn-48's. *June 15th NYPSC Order*, at 6-7. This is grossly misleading because the CLECs generally use higher bandwidth circuits that account for a much greater proportion of capacity (and of actual traffic carried) than the raw circuit numbers indicate. Exh. VZ MA 3, at 17-18.

In conclusion, the FCC's determination of pricing flexibility for Verizon MA's special access services and the availability of alternative suppliers of "on-net" and "off-net" special access facilities in Massachusetts should compel a determination by the Department that there is no need to adopt special access performance measures. *See e.g., NPRM,* ¶ 14. Because of the demands of a highly sophisticated customer base for high quality service, the marketplace creates powerful incentives for all suppliers, including Verizon MA to provide the best possible service. Under these conditions, there is no justification for the Department to adopt intrusive, new mandatory special access requirements, much less apply it exclusively to one service provider (*i.e.*, Verizon MA). This would impede competition and be detrimental to consumers' interests.

K. Reporting of Special Access Service Results Is Unwarranted Because of the FCC's Jurisdiction Over Interstate Circuits and the Minimal Level of Intrastate Circuits Provided by Verizon in Massachusetts.

As discussed above, the FCC has jurisdiction over approximately 99.6 percent of the special access circuits provided by Verizon in Massachusetts. While the Department recognized in its *August Order* that it has no authority over the regulation or performance of interstate special access circuits, it nonetheless required that Verizon MA supplement its Massachusetts special access service report to include performance data regarding those interstate circuits. *August Order*, at 12; Exh. VZ MA 2. Although Verizon MA complied with the Department's directives in producing that interstate data, Verizon MA does not believe that it should be required to regularly report interstate special access services results in Massachusetts for the following reasons.

First, the Department has no authority to assess interstate special access service performance results. Second, the Department should not determine whether and to what extent performance metrics should apply to *intrastate* services based on those *interstate* results. Because the vast majority of special access circuits provisioned by Verizon MA in Massachusetts are interstate and governed by federal tariffs and FCC regulations, the FCC – not the Department - should determine whether any special access reporting by Verizon

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evidentiary hearings, discovery, sworn witness testimony, and written transcripts. Exh. VZ MA 3, 19.

is appropriate. Thus, the Department should find that the FCC's pending proceeding on special access performance reporting (CC Docket No. 01-321) is the proper forum to decide this matter, not this Massachusetts investigation.

Although the number of intrastate special access circuits is *de minimis,* AT&T and WorldCom have, through discovery, engaged in a massive fishing expedition far beyond the intended scope of this proceeding. This exercise has required Verizon MA to expend substantial time and resources to develop extensive, customized data that has little or no application to the development of any internal or external performance measurements utilized by Verizon. This is clearly an abuse of the regulatory process and a not-so-subtle attempt by competitive carriers to burden unnecessarily Verizon MA in a competitive marketplace.

Likewise, to suggest that intrastate special access reporting and even auditing should be established for this minimal number of intrastate special access circuits is senseless. But, that is exactly what AT&T and WorldCom would propose.

The Department should reject parties' efforts to impose unnecessary and one-sided reporting requirements on Verizon MA.[24] The record evidence does not support such regulatory action. Instead, the Department should defer to the FCC's current *NPRM* in CC Docket No. 01-321 to determine the proper treatment of interstate special access services. Should the FCC require performance reports, Verizon MA would agree to provide the Department with whatever Massachusetts-specific, interstate special access service results are filed with the FCC. This will enable the Department to monitor nearly all of Verizon MA's special access circuits in Massachusetts.

L. Reporting of Special Access Service Results Is Unnecessary Based on Verizon MA's Existing Performance Levels and Internal Measurement Used to Track Service Improvement.

In its *Order,* the Department stated that it would consider whether Verizon MA's provision of intrastate special access services is just, reasonable and adequate. *Order,* at 3. As a result of service initiatives implemented in 2001, Verizon MA has demonstrated strong performance in provisioning and maintaining special access circuits in Massachusetts, particularly during the first quarter of 2002. Exh. VZ MA 3, at 41. Verizon MA has also taken reasonable steps to review and continue to improve its performance. Exh. VZ MA 3, at 39-42. Therefore, intrastate special access performance reporting to the Department is not warranted.

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[24] For instance, although AT&T supports the imposition of the NYPSC performance metrics in Massachusetts, AT&T opposes the application of those reporting requirements on carriers other than Verizon. Tr. 483-85. This contradicts the NYPSC's December 2001 decision in the *Special Services Guidelines* proceeding, in which the NYPSC found that all facilities-based providers should be treated the same regarding special services performance reporting requirements. Exh. VZ MA 3, at 48; *See Order Denying Petitions for Rehearing and Clarifying Applicability of Special Access Guidelines*, Case Nos. 00-C-2051 & 92-C-0665, at 15 (rel. Dec. 20, 2001). Having any such requirement apply to all providers is an evenhanded approach, and one that the Department should adopt if it establishes special access performance reporting requirements in Massachusetts.

1. Verizon's Implementation of Special Access Service Initiatives

As discussed above, competition in the marketplace already creates powerful incentives for all special access providers, including Verizon MA, to provide the best possible service. Customers of special access services are highly sophisticated users who demand high quality service, closely monitor service quality, and make their quality expectations known to Verizon MA - either formally in requests for proposal or informally in meetings with their account teams. To satisfy those customer expectations and exact improvements in performance of special access services, Verizon MA initiated various service improvement and performance assurance strategies during 2001. [25]

Verizon's first initiative was a front-end process improvement. It was two-pronged: (1) to analyze queries and cancel, if necessary, those older than 10 days; and (2) to examine and improve FOC performance. Exh. VZ MA 3, at 39.

The second initiative was to reduce the total number of backlogged orders, *i.e.*, special access service orders past their due date. Tr. 259-60. This modified Verizon's initial approach, which was to reduce the average age of backlogged orders to 15 days or less. Exh. VZ MA 3, at 39-40. To achieve its objective of minimizing future backlogs, Verizon tracks and analyzes the backlogged orders by type, *e.g.*, facility jobs not complete, Verizon due date misses, or Customer Not Ready "(CNR") and escalates, where necessary, to facilitate timely completion and correct any identifiable problems. Exh. VZ MA 3, at 40; Tr. 259-60.

Verizon's third initiative was to reduce the overall number of Verizon due date misses. Verizon analyzed each due date miss to determine the root cause and, on a going-forward basis, established the practice of "closing the cash register," *i.e.*, tracking daily the number of orders due, as well as their status during and at the end of the day. Exh. VZ MA 3, at 40. In addition to instituting daily Director-level conference calls, an internal escalation process was implemented to address any roadblocks. Exh. VZ MA 3, at 40.

The fourth initiative was to reduce the number of CNR orders. It has been Verizon's policy that "CNRs should not be older than thirty days." Exh. VZ MA 3, at 40. As a result of this initiative, Verizon now enforces its existing policy and either turns the circuit over to the customer *(i.e.*, end user) or cancels the order, if the customer no longer wants the circuit. Tr. 242-43. Verizon continues to develop procedures to minimize and prevent CNRs, such as ensuring that accurate end-user information is provided and contacting customers prior to a dispatch. Exh. VZ MA 3, at 40; Tr. 243-44.

In addition to the above ordering and provisioning initiatives, Verizon has a maintenance-related strategy to track the dispatch and restoral of special access services. Exh. VZ MA 3, at 40. Commonly referred to as Mean Time to Restore ("MTTR"), it consists of the following elements: (1) Serving Bureau Time ("SVB"), *i.e.*, the time that the Verizon Carrier Account Team Center ("CATC")[26] has the repair ticket; (2) Dispatch In

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[25] Those Company initiatives include, but are not limited to, areas of improvement that Verizon examined as part of Project ACE ("Access Centers of Excellence"). Exh. VZ MA 1, at 10-11. As Verizon's witnesses explained, Project ACE was established in early 2001 and disbanded in mid-2001, at which time some of its strategies were incorporated into Verizon's existing internal, service-related measurements. Tr. 260, 337-41.

[26] The CATC handles the ordering, provisioning and maintenance for special access services and is the carrier

("DI") time, *i.e.*, the time that the Verizon Central Office ("CO") has the repair ticket; and (3) Dispatch Out ("DO") time, *i.e.*, the time that the repair ticket is with the outside service technicians. This initiative addresses Verizon's need to know the status of a repair ticket (or request) at each stage of the process to ensure that repair tickets will be handled in a timely efficient manner and escalated, when necessary. Exh. VZ MA 3, at 40-41.

To capture these intermediate triggers at various times in the repair process, the Verizon CATCs required new testing technology, including the Network Management Architecture ("NMA") used in the central office. Exh. VZ MA 3, at 41. However, because of the unfortunate events of September 11, 2001, Verizon CATC resources were diverted, and Verizon was unable to deploy that technology to implement this maintenance initiative until November 2001. Exh. VZ MA 3, at 41.

2. Verizon MA's Strong Special Access Service Results

As a result of the above initiatives, Verizon MA has shown steady and sustained improvement in critical areas of special access performance. Exh. VZ MA 3, at 41. For example, Verizon MA's on-time provisioning for special access services in Massachusetts is consistently in the 93 to 94 percent range for carrier customers [27] for the first quarter of 2002. This is an increase of nearly six percentage points - up from 88.2 percent for Verizon MA's on-time provisioning results from one year ago (January 2001). Exh. VZ MA 3, at 41. Thus, the record evidence clearly shows that Verizon MA's provision of special access service to carrier customers in Massachusetts is of high quality based on current service levels and, therefore, is reasonable and adequate under the Department's statutory standard. Mass. General Laws c. 159, § 16.

Even though AT&T and WorldCom may acknowledge Verizon MA's improved performance in 2002, they will presumably allege that Verizon MA's action is disciplined by the ongoing Department investigation, thus supporting the need for immediate regulatory intervention. Such a claim is without merit.

Verizon MA's performance in provisioning special access services prior to 2002 was directly and adversely affected by certain extenuating circumstances. Exh. VZ MA 1, at 5-8. For a period beginning in 2000 and ending in early 2001, two events beyond Verizon's control impeded its ability to provision special access orders in a timely manner. The first event was the sudden surge in demand for special access services that began in the latter

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customer's primary contact.

[27] The methodology used by Verizon MA to calculate this measurement is based on carrier (wholesale) DS1 special access data provided in Exh. DTE-VZ 5-1, updating WCOM/ATT-VZ 1-2, 1-4, and 1-5, as follows:

$$\frac{\text{(DS1 circuits VZ completed on-time) + (completed DS1 circuits not met - for customer reasons)}}{\text{Total number of DS1 circuits completed during the month}}$$

This is consistent with the methodology used by Verizon to derive on-time provisioning results for internal measurements, and is the only performance metric result that can be derived from the extensive raw data supplied by Verizon MA in response to AT&T and WorldCom discovery requests in this proceeding. Tr. 227-28, 264, 305. It should be noted that Verizon's on-time provisioning results for the New England area (including Massachusetts) is approximately 93 percent based on the Company's most recent internal measures. Tr. 224.

half of 1999 and accelerated into 2000 (but which has since subsided). Exh. VZ MA 3, at 38. The second event was the work stoppage Verizon experienced in August 2000.

During 2001, Verizon worked diligently and successfully to eliminate the backlog that resulted from these two converging events. As described above, Verizon even implemented a service initiative in 2001 to address directly this issue. However, because this backlog was temporary and impacted all of Verizon's customers (whether end users or carriers), Verizon's performance during this period was anomalous. Therefore, it should not be relied upon as a reason to institute special access performance reporting. Exh. VZ MA 3, at 38-39.

Likewise, WorldCom's conclusory statement that Verizon MA's performance levels are below those of CLEC providers of special access provider must be disregarded. Exh. DTE-WCOM 1-4. That contention is misleading and unjustifiable.

WorldCom bases its claim on the alleged service results of one of its CLEC providers during calendar year 2001 and the first quarter of 2002. WorldCom chose "CLEC X" for comparison purposes because that CLEC is "electronically bonded" to WorldCom. Exh. DTE-WCOM 1-4. WorldCom's proposed benchmarking is erroneous because of the disparities between Verizon MA's and CLEC X's provision of special access services in Massachusetts.

For example, WorldCom confirms that CLEC X's provisioning of special access facilities in Massachusetts involved no build-out or construction of facilities during calendar year 2001 and the first quarter of 2002. RR VZ-WCOM 1. WorldCom also states that it is "highly unlikely that any CLEC provisioning special access circuits would be doing so over copper-based loops." RR VZ-WCOM 2; Tr. 440-41. Those service characteristics (*e.g.*, no facility construction and 100 percent fiber loops) are atypical of Verizon MA's provision of special access services. Accordingly, WorldCom's alleged analysis is not a "like-for-like" comparison. As a result, the Department should reject WorldCom's argument that Verizon MA's provision of special access services is inferior to those offered by CLECs.

3. Verizon's Internal Measures To Track Special Access Services

In addition to implementing the above performance initiatives and demonstrating service improvements, Verizon regularly monitors its performance results for special access services provided to all carriers through various internal measurements. Those measurements are as follows:

1. **<u>Firm Order Confirmation Timeliness</u> – Measures the timeliness of the firm order confirmation notice;**

2. **<u>On-Time Provisioning</u> – Measures the percent of circuits completed on or before the due date returned on the firm order confirmation;**

3. **<u>New Circuit Failure Rate</u> – Measures the rate in which circuits fail, for Verizon network reasons, within their first 30 days in service;**

4. **Failure Frequency Rate – Measures the rate, compared to the embedded base of circuits, in which circuits fail for Verizon network reasons;**

5. **Repeat Failure Rate – Measures the rate of multiple Verizon network failures associated with special circuits that occur within a 30-day period, compared to the total volume of failures; and**

6. **Mean Time to Restore – Measures the average hours between receipt of a trouble ticket and restoral of service for Verizon network failures.**

Exh. DTE-VZ 5-34. Verizon tracks these internal measurements on a combined interstate and intrastate basis for the New England area (including Massachusetts). Tr. 265; 303-04. Verizon may also conduct a root-cause analysis in certain cases to address particular service-related issues, where necessary.[28]

Likewise, Verizon voluntarily offers its carrier customers detailed special access performance reports tailored to meet the needs of the individual carriers requesting such reports. Those voluntary reports contain a wide variety of data in various combinations and for varying periods (*e.g.*, on a daily, weekly, and monthly basis). Exh. DTE-VZ 5-43. More than 50 carrier customers, including AT&T and WorldCom, receive such reports for Massachusetts. Exh. DTE-VZ 5-43; Exh. VZ MA 3, at 43.

Providing these carrier-requested reports is more efficient and meaningful to customers than mandated regulatory reports because they address the specific criteria identified by the individual customer as most important. Exh. VZ MA 3, at 37. Superimposing any kind of mandatory regulatory reporting is, therefore, unnecessary and counter-productive. Any "one-size-fits-all" reporting would likely be *less* responsive and informative than the performance reports Verizon MA already provides to its carrier customers.

In an effort to meet customer demand, Verizon MA also communicates constantly with its carrier customers by regularly participating in periodic conference calls and face-to-face meetings to discuss special access provisioning. Exh. VZ MA 3, at 37. Verizon MA strives to meet or exceed the expectations of all of its carrier customers by implementing changes to address their expressed concerns, when appropriate. Exh. VZ MA 3, at 37-38. In fact, Verizon MA has expended considerable resources to enhance its ordering and provisioning processes, and made significant investments to expand capacity for special access facilities in Massachusetts, as discussed below.

Accordingly, based on the competitiveness of the market and Verizon MA's own internal benchmarks and extensive carrier-specific reporting, there is no justification for

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[28] For example, if there appears to be a pattern of performance – or an inexplicable dip in performance levels for a particular measurement – then Verizon MA will investigate the matter and establish an action plan to rectify the problem.

the Department to impose additional regulatory requirements on Verizon MA's provisioning of intrastate special access services. Verizon MA's current performance data shows a high level of service to carrier customers. Thus, regulatory intervention is not needed to ensure that Verizon MA will maintain high-quality service results in Massachusetts.

M. There Is No Showing of Verizon's Alleged Discriminatory Conduct in Providing Special Access Services to Carrier versus End-User Customers in Massachusetts.

AT&T and WorldCom allege that Verizon MA in its provision of special access services has favorably treated end-user customers, as compared with competitive carriers. These allegations are false and unsubstantiated. AT&T and WorldCom have presented no evidence in this proceeding that demonstrates any undue or unreasonable discrimination by Verizon MA in its provision of "like" services to carrier versus end-user customers. Therefore, AT&T and WorldCom fail to satisfy the statutory standard required to prove a discrimination claim.

Far from discriminating against carrier customers, Verizon MA installs and maintains service for all of its customers on a nondiscriminatory basis. While ordering process procedures differ because of the distinct demands of carriers and end users – and those procedural differences may create the misleading appearance that one group is receiving better service, the reality is that Verizon MA's performance is strictly neutral. Exh. VZ MA 3, at 19. In order to refute AT&T's and WorldCom's claims of discrimination, it is necessary to examine the critical differences in Verizon's ordering process for carrier and end-user customers and the effects on how Verizon MA's performance results should be analyzed.

1. Provision of "Like" Services

The special access services provided to Verizon's carrier and end-user customers differ based on the complexity of the product mix and variations in the ordering process that are tailored to meet the unique requirements of each customer group. Exh. DTE-VZ 5-31. Those process differences are reasonable – and indeed are warranted based on the customer involved. Because of these significant, performance-affecting differences in the product mix and the flexibility in the initial ordering process between Verizon's end-user and carrier customers, the special access services provided to these categories of customers should not be considered "like" services. Exh. VZ MA 3, at 21.

First, the product mix provided to Verizon MA's end-user customers consists predominantly of DS0 circuits, of which the vast majority are analog. Exh. DTE-VZ 5-1 (updating WCOM/ATT 1-3); Exh. DTE-VZ 5-13. By contrast, Verizon MA's carrier customers overwhelmingly order high capacity circuits, which are in very large part digital. Exh. DTE-VZ 5-1 (updating WCOM/ATT 1-3); Exh. DTE-VZ 5-13. The mix of services provided to Verizon MA's carrier customers is more complicated and, therefore, more time-consuming to provision and more often subject to delays than the less complex services typically ordered by Verizon MA's end-user customers. Exh. VZ MA 1, at 2. Thus, the product mix varies in a manner that affects measured performance.

Second, services are not necessarily "like" because they may utilize similar facilities. Exh. VZ MA 3, at 21. For example, in *AT&T Communications Revisions to Tariff FCC No. 12,* the FCC evaluated whether services ordered pursuant to AT&T Tariff 12 were the same as the individually tariffed services provided by AT&T on a disaggregated basis.[29] The FCC concluded that, for purposes of Section 202(a), the services were not "like" because AT&T maintained flexibility under Tariff 12 to use any combination of technologies or network components to provide service, and because AT&T performed such extensive service and facility provisioning only for its Tariff 12 customers. In addition, the FCC noted that "the fact that the provisioning changes take place unbeknownst to the customer does not in any way reduce or negate the materiality of this factor." 6 FCC Rcd, at 7044. Thus, even though the customers were

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[29] *See AT&T Communications Revisions to Tariff FCC No. 12*, 6 FCC Rcd 7039, 7043-44 (1991) *aff'd. Competitive Telecommunications Association v. FCC*, 998 F.2d 1058, 1062 (D.C. Cir. 1993).

purchasing functionally similar services and the customers were unaware of the provisioning differences, the FCC found that the two services were not "like" for purposes of Section 202(a).

A similar finding is warranted here. Verizon MA has tailored its special access ordering and provisioning to accommodate the distinct preferences and needs of its end-user and carrier customers. Those differences, as described below, confirm that the special access services provided to these different customer groups are not "like." One service is not better than the other; rather, each is intended optimally to meet the specific demands of the particular customer group. Exh. VZ MA 3, at 21.

2. Description of Ordering and Provisioning Process

Verizon MA's processes are designed to assure that all special access orders are provisioned in a nondiscriminatory manner, regardless of the identity of the customer. This is illustrated in Verizon MA's charts displaying its process flow for ordering and provisioning special access services for its carrier and end-user customers. Exh. VZ MA 3, at Attachment B. Those charts show that special access orders from carrier customers are coordinated by the CATC, while special access orders from end-user customers are coordinated by the Overall Control Office ("OCO"). Exh. VZ MA 3, at 22. Because Verizon MA provides special access services on a first-come, first-served basis, there is no opportunity for unreasonable discrimination. Tr. 112.

While all special access orders are functionally provisioned in the same way,[30] the pre-ordering processes are different for carrier and end-user customers. Exh. DTE-VZ 5-31. In

[30] The functions performed by Verizon MA in provisioning a special access service include building the facilities (or determining that spare facilities are available); designing the circuit; completing central office wiring to connect the facilities; and testing the circuits to ensure all connections are completed and working. Exh. VZ

particular, the "application date" used by Verizon MA to trigger the provisioning process and the service "due date" are determined differently. Those differences affect how Verizon MA's performance data should be analyzed. Exh. VZ MA 3, at 22.

The "application date" is the date on which a special circuit is ordered through the provisioning process. For Verizon MA's carrier customers, the application date occurs when Verizon's CATC receives what is referred to as a "clean" or valid Access Service Request[31] ("ASR") from the carrier for a particular circuit, such as a DS3, DS1 or DS0. Exh. VZ MA 3, at 22; Tr. 91-92. If Verizon receives a clean ASR before 5:00 p.m., the receipt of the ASR is the application date and Day "0" in the provisioning interval for carrier customers. If a clean ASR is received after 5:00, the next day is Day "0." Exh. VZ MA 3, at 22.

MA 3, Attachment B. While the work involved for these functions is essentially the same for carrier and end-user customers, the complexity may vary. Exh. VZ MA 1, at 2. Once testing is complete, the order is dispatched to install the equipment and connections at the end user's premises. Although different internal groups may perform some of these provisioning functions for end-user and carrier customers, the Circuit Provisioning Centers do not know the identity of the customer for whom the circuit is being provisioned. Exh. VZ MA 3, at 19, Attachment B.

[31] The ASR is a standard mechanized form (*i.e.*, ATIS/OBF-ASR-001) developed by the Telecommunications Service Ordering Request ("TOR") Committee of the Ordering and Billing Forum and adopted by the telecommunications industry through the OBF of the Alliance for Telecommunications Industry Solutions ("ATIS"). The form, together with instructions on how it should be completed, is widely available, including in the Carrier Handbook and on Verizon's website. Verizon also provides its own ASR training, which many carriers have attended, to ensure that carriers are familiar with the form's requirements. Exh. VZ MA 3, at 22.

Upon receipt of an ASR, Verizon sends the carrier an electronic verification that the ASR has been received and then checks to ensure that all required data fields have been populated. This electronic verification of receipt of the ASR is not a confirmation that all required fields have been populated and that the ASR is "clean" or valid. Exh. VZ MA 3, at 23. Required fields include Request Type, Network Channel/Network Interface Codes ("NC/NCI"), Connecting Facility Assignment ("CFA"), the end-user customer's address, a local contact number, and the customer's desired due date ("DDD"), *i.e.*, when the customer would like to have the circuit installed and turned up. Although customers may indicate a DDD, the ASR form includes a disclaimer that "the actual due date may be different … because of factors such as availability of facilities and the quantity, complexity, and impact on local service of the circuit(s) involved." Exh. VZ MA 3, at 23.

If any of the required information has not been provided or is inaccurate, Verizon contacts the carrier customer and requests the required information. The order is then placed "in-query" until the carrier provides this information. Once the carrier supplements the ASR with the required information, Verizon has a "clean" ASR that can be processed in Verizon's ordering and provisioning system. Exh. VZ MA 3, at 23.

After a clean ASR has been received and entered into Verizon's ordering and provisioning system, the "application date" is set, even if a carrier customer later supplements the ASR to request a change in the desired due date. Exh. VZ MA 3, at 24. Depending on the change requested, a supplement to the ASR may extend the provisioning interval. Thus, for carrier customers, the provisioning interval starts when Verizon receives a clean ASR, but may be affected by subsequent carrier changes to the ASR. Exh. VZ MA 3, at 24.

By contrast, Verizon MA's end-user customers do not use the electronic ASR ordering process and, therefore, the application date for their orders is established very differently. End-user customers begin the pre-ordering process for special access services by contacting a Verizon customer service representative to discuss their telecommunications needs. Exh. VZ MA 3, at 24. The Verizon representative then works with the end user to determine the type of service required – including bandwidth and speed – and its compatibility with the end user's telecommunications equipment, and to coordinate with any third-party vendors whose work may affect the service ordered**.** Carrier customers have presumably undertaken a similar review process with their own end users before submitting their ASRs to Verizon. Exh. VZ MA 3, at 25; Exh. ATT 2, at 7 n.2.

Typically, Verizon MA's end-user customers are not as sophisticated users of telecommunications services as carrier customers and, therefore, do not always know what services to request to satisfy their telecommunications requirements. Exh. VZ MA 3, at 24. As a result, end users often need to engage in *lengthy* pre-order negotiations with Verizon's service representatives. Tr. 124; 172-73. Once a decision is made about the service to be ordered, Verizon conducts a facilities check through the RequestNet system to ensure that facilities are

available to provision the circuit. If facilities are available, the Verizon representative then calculates the minimum standard interval, verifies the availability of field technicians to install the circuit on that date, and communicates the projected "due date" with the end user. Exh. VZ MA 3, at 25.

For end-user customers, the "application date" for special access circuits is the date when the Verizon representative enters the customer's circuit order into the ordering and provisioning system to begin processing after facilities are verified. This occurs much later in the process than for carrier customers, and only after Verizon has completed a significant amount of preparatory work – including a facilities check, workload verification, and even the actual building of facilities, if needed. Exh. VZ MA 3, at 25, Attachment B. This work is not done for carrier customers until after the application has been set and the provisioning interval has begun.

Verizon MA calculates the provisioning interval for *both* customer groups as the time from the application date to the completion date. For Verizon MA's end-user customers, the provisioning interval may *appear* shorter than for its carrier customers. Exh. VZ MA 3, at 25-26. This is because the "application date" for end users occurs much later in the ordering and provisioning process - and much closer to the service "due date" than it does for carrier customers. Exh. VZ MA 3, at 25.

As with the application date, the service "due date" for special access orders is established for Verizon's carrier and end-user customer very differently based on their different needs and ordering processes. Exh. VZ MA 3, at 26. Verizon MA establishes an estimated "due date" for the carrier customer when a firm order for service is received through a "clean" ASR. Exh. VZ MA 3, at 26. The ASR requires a carrier customer to populate a field labeled "DDD" –

desired due date – to indicate the date by which the carrier desires to have the service completed. The RequestNet system and Verizon engineers then conduct a facilities check and, if facilities exist to provision the service as requested, calculates a due date. That due date is based on Verizon's standard minimum provisioning intervals for the type of circuit ordered and the carrier customer's desired date if it is longer than the minimum standard interval.[32] Exh. VZ MA 3, at 26.

Where facilities do not exist to provision the service (DS1 or DS3) to Verizon MA's carrier customer, as requested, the RequestNet system and/or Verizon engineers check to determine when Verizon MA expects to complete construction or repair of facilities necessary to provision the circuit – *i.e.*, the estimated construction completion date ("ECCD"). Exh. VZ MA 3, at 26-27. A projected service due date is then calculated for carrier customers by adding the minimum standard provisioning interval to the estimated ECCD. Regardless of whether or not facilities exist,[33] Verizon MA's standard practice is to return a FOC with the projected due date to the carrier customer within five and seven business days for DS1 and DS3 services,

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[32] Depending on the service requested, Verizon's carrier customers often will request a due date consistent with the minimum provisioning intervals referred to in Verizon MA's tariff. They also may indicate longer intervals in accordance with the individual customer's needs. Tr. 100. Based on a recent Massachusetts study conducted from January through April 2002, the due date requested by Verizon MA's seven largest special access carrier customers ranges between 12 and 46 days. Tr. 199.

Where facilities are available, Verizon MA's standard intervals sets forth the minimum number of business days Verizon requires to provision special access services based on the type and quantity of circuits ordered. For eight or less DS-1 circuits, Verizon MA's minimum provisioning interval is nine business days. For four or less DS-3s circuits, the interval is 20 business days. The due date is negotiated for quantities above these amounts. Intervals for Optical Carrier network ("OCn") services are always negotiated with the customer. These standard minimum provisioning intervals apply equally to orders from end-user customers. Exh. VZ MA 3, at 26.

[33] In some cases, the FOC is issued before Verizon engineers are able to complete thoroughly the facilities check to determine when the repairs or construction will be completed. Exh. VZ MA 3, at 28. Because of the considerable preliminary work involved to engineer and construct the facilities, unforeseen circumstances *(e.g.*, vendor delay in delivering equipment or placing cable or fiber facilities) can arise that adversely affect the

respectively, of receiving a clean ASR. Tr. 94, 198, 266; Exh. VZ MA 3, at 27. Once that due date is entered in Verizon's provisioning system, it can only be changed at the carrier customer's request.

Because Verizon MA's end-user customers do not use the ASR process, they receive neither a FOC with the projected due date, nor any other comparable form of due date confirmation. Instead, the due date is established only after Verizon consults with the end-user customer and after Verizon verifies that facilities exist and field technicians are available to provision the service as requested. Exh. VZ MA 3, at 29. If facilities exist to provision the service as requested, the Verizon service representative determines the due date based on the minimum standard interval and availability of a field technician on that date or the soonest date thereafter, and then contacts the customer with a projected due date. Once the end-user customer accepts the due date, the end-user customer's order is entered into the ordering and provisioning system. Exh. VZ MA 3, at 29.

Where facilities do not exist to provision the service (DS1 or DS3) to Verizon MA's end-user customer as requested, the RequestNet system generates an ECCD based on when the construction of facilities necessary to provision the service will be completed. Although the Verizon representative informs the end-user customer of the estimated date when the service will be available, the customer may or may not request the order to be established. Exh. VZ MA 3, at 29-30. This is in contrast to the process used with carrier customer orders, which involve an intermediate milestone for Verizon MA, *i.e.*, returning a FOC with a projected due date within a standard time period. Tr. 198, 266.

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provisioning process by the estimated due date. Exh. VZ MA 3, at 28.

If the end-customer chooses to wait until the construction of facilities is completed, then no service order is initiated to start the provisioning interval. Instead, the end user customers may be advised that they will be contacted to establish a due date when facilities construction is complete.[34] Hence, because the due date for an end-user customer may be determined *later* in the process – sometimes even months later – when Verizon MA has verified that construction of facilities is completed, it is presumably more reliable and more likely to be met. Exh. VZ MA 3, at 33. Once a due date is confirmed with the end user customer and is entered into the ordering and provisioning system, the date may only be changed at the customer's request. Exh. VZ MA , at 29-30.

Verizon MA is able to establish a more reliable due date for end-user customers because that date can be determined *later* in the process based on more current – and thus more accurate - information. Unlike the carrier customer situation, Verizon MA is not artificially constrained by a FOC deadline that requires an ECCD by a certain date when facilities do not even exist. Tr. 121. Moreover, because end-user customers tend to be more flexible than carrier customers in setting a mutually acceptable due date, Verizon MA is in a *better* position to meet the due date for end-user customers.

For instance, Verizon MA's end-user customer may decide to change the due date after being notified that Verizon MA is likely to miss the original due date.[35] Therefore, Verizon

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[34] In some instances beginning in June 2001, service orders for end user customers were submitted and the installation interval began after Verizon determined an ECCD, but before facilities were actually built. Exh. DTE-VZ 5-31. In other instances, the service order was entered, and the provisioning interval began only after the needed construction was complete and the Verizon representative was able to verify the availability of field technicians to complete the work and confirm a due date with the end-user customer. Exh. VZ MA 3, at 29 n.18.

[35] Verizon MA uses the same practices for notifying carrier customers and end-user customers when it appears

MA's failure to meet the original due date is not counted as a "miss."[36] Exh. VZ MA 3, at 31-32. This contrasts with the process for carrier customers, who rarely decide to change the due date. Even if the carrier customer subsequently agrees to change the service due date, and Verizon MA provisions service by that later negotiated date, Verizon MA reflects its failure to complete the work as a "missed" appointment as against the original due date. Exh. VZ MA 3, at 30-31. Therefore, Verizon MA is able to establish the end-user customer's due date at a *later* point in the process.

As a result of the added flexibility in the upfront negotiation and ordering stage with end-user customers and the lack of a FOC deadline to establish a projected due date, it may appear that Verizon MA's end user customers receive service by their due date more often that carrier customers do. However, the perceived difference in performance is simply a product of the fundamentally different requirements of end-user versus carrier customers. Exh. VZ MA 3, at 32. The differing, underlying process used in setting the application date and the due date for Verizon MA's end user customers consistent with facilities availability, in turn, affects Verizon MA's provisioning interval.

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that meeting the established due date is in jeopardy. Exh. VZ MA 3, at 30. When Verizon learns, prior to the due date, that it will not be able to provision the circuit on that date, it is Verizon's practice to inform the customer via a call from the CATC or OCO. The Verizon representative explains why Verizon may not be able to provision service on the due date, provides the customer with a projected date or time when the problem will be resolved (if available), and gives the customer a name and contact number to follow up on the status of the order. In the case of carrier customers, it is not Verizon's practice to issue another FOC with the new due date, unless the customer requests it. Exh. VZ MA 3, at 30-31.

[36] A "miss" occurs when Verizon MA fails to complete its work to provide the service to the carrier or end-user customer by the due date, and the failure to meet the due date is within Verizon MA's control. Exh. VZ MA 3, at 30.

Because of these significant differences in the ordering and provisioning for end-user and carrier customers, the special access services provided to these customer groups are not "like." Accordingly, the parties' claims of discrimination are unfounded..

3. Processes and Performance Results Are Not Comparable

As explained above, while Verizon MA may perform comparable functions for end user and carrier customers, there are fundamental differences in how the customer groups interact with Verizon MA and the sequence of events in Verizon MA's ordering and provisioning processes for each customer group. As a result, it is difficult to determine a true "apples-to-apples" comparison of carrier versus end-user installation performance levels. Exh. DTE-VZ 5-31.

AT&T contends that merely adding seven days to the provisioning interval for end-user customers would adequately account for such process differences. Exh. ATT 7. That contention is fallacious and arbitrary.

For example, a fundamental process difference is the fact that ongoing negotiations occur between Verizon MA and its end-user customers even after the CLLI, OSP, IOF assignments are completed. Tr. 94, 111, 245-46. The undefined time for end-user customer negotiations – coupled with the fact that negotiations can occur even right before the Service Order Create Date - shows that there is nothing comparable to a "clean ASR" before the end user request is ultimately submitted to the ordering and provisioning system. Tr. 91-92, 172-74. Further, an end-user customer can modify its request immediately before the service order create date. Exh. VZ MA 3, Attachment B. This contrasts with the carrier provisioning process, whereby subsequent changes to a "clean" ASR may result in a *new* ASR, thus re-starting the entire

process or "clock." Exh. DTE-VZ 5-31. Accordingly, Verizon MA establishes the "application date" as post-RequestNet for end users and pre-RequestNet for carriers. Exh. VZ MA 3, Attachment B; Exh. DTE-VZ 5-31.

There are also fundamental process differences during the up-front negotiation and ordering process for end-user customers, during which time Verizon MA works directly with the customer to assess the end user's needs, verify its network, and construct facilities, if necessary, *prior* to placing the end-user order into the ordering and provisioning system. As described above, the application date or start date is not established until Verizon MA enters the end-user customer's order into the ordering and provisioning system. By contrast, the application or start date for carrier customers occurs when Verizon MA accepts the carrier's clean ASR, which is much earlier in Verizon MA's overall provisioning process. Exh. VZ MA 3, Attachment; Exh. DTE-VZ 5-31. Because the application date – which is the earliest data point for both the retail and wholesale provisioning processes – is set at different times for end-user circuits than for carrier circuits, an "apples-to-apples" comparison is <u>not</u> possible. Exh. DTE-V 5-31.

A means of getting closer to an "apples-to-apples" comparison would be to find a point in the ordering/provisioning processes for end-user orders that more directly corresponds to the application date for carrier orders. This would be earlier than the current application date for end-user customers. Ideally, one would find a time-stamped date earlier in the processes used for end user. Verizon's existing system design does not, however, routinely capture such a time-stamped date in an integrated mechanized fashion for all end-user orders. Exh. DTE-VZ 5-31.

Nevertheless, during 2001, Verizon MA made two changes to the underlying provisioning processes that created some additional uniformity between the carrier and end-user

provisioning processes. Although these process changes do not enable a direct comparison between these customer groups, they provide further information about Verizon MA's recent performance results.

First, Verizon MA modified its procedures for changing due dates in the event that Verizon MA determines that it expects to miss the due date for reasons other than customer-caused reasons in November 2001. Exh. DTE-VZ 5-31. Prior to November of 2001, if a problem was found with Verizon MA's network during the turn-up of end-user circuits that could not be corrected before the due date, the Company would contact the end user to negotiate a change in due date. The end user usually agreed to the new due date, which was subsequently changed by overwriting the original due date with a later date.[37] Exh. DTE-VZ 5-31. The effect on measured performance of changing due dates for end-user customers would be a higher percent of end-user circuits completed by the due date.

Beginning in November 2001, Verizon MA changed this end-user customer procedure that applies when Verizon MA expects to miss the due date. Under that missed process, Verizon MA directly contacts end-user customers to notify them of a jeopardy situation, but does not negotiate with end-user customers to change the due date. As a result, if Verizon MA does not complete the order by the original due date, it is counted as a missed due date for Verizon reasons. Exh. DTE-VZ 5-31; Tr. 228-29. This is consistent with Verizon MA's current treatment of carrier customer orders.

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[37] Although Verizon MA would also notify carrier customers of a jeopardy situation, and give them an opportunity to supplement the original ASR with a new due date, carriers generally declined to do so. Thus, the original due date remained, and the circuit subsequently was logged as a miss. Because of this process difference, Verizon MA's reported on-time performance results may have *appeared* lower for carriers, even though the actual performance may have been comparable or better for carrier customers than for end-user

Second, Verizon MA made a change involving service order entry for end-user customers where facilities are not available. Prior to June 2001, if there were no facilities available for a specific DS1 or DS3 service request from an end-user customer, the service order was not entered into the service order system until facilities were made available. Tr. 90-91. In this situation, the application date, from which the installation interval is measured, did not begin for end-user requests until after Verizon MA had completed whatever work was necessary to ensure that the required facilities were available. Exh. DTE-VZ 5-31.

In June 2001, an upgrade was made to the RequestNet system that enabled the functionality to provide end-user customers with a due date for their service requests based on an ECCD, prior to completion of the work needed to ensure that facilities were available.[38] Exh. DTE-VZ 5-31; Tr. 90-92. This functionality of basing the due date on an ECCD had always existed for carrier customers throughout year 2001. Accordingly, for reported results prior to this change, the end user intervals may appear shorter for end-user customers, as compared with carrier customers, although the actual performance was comparable. Exh. DTE-VZ 5-31. This is partly due to the fact that the application data for end-user customer requests where facilities work needed to be performed was not established until *after* facilities were available. Tr. 90-91.

Although these changes for end-user customers– *i.e.*, not revising the due date and establishing an application date using estimated construction facilities for non-project orders – may mitigate differences between the carrier and end-user provisioning processes, they do not

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customers. Exh. DTE-VZ 5-31.

[38] This functionality applies to end-user customer service requests that are <u>not</u> part of a project. Exh. DTE-VZ 5-31. Although Verizon's systems do not track the number of project orders, it is estimated that "projects" can account for 50 percent of the work in a given month. Tr. 182-84, 229-30.

eliminate all of the relevant process and product differences in carrier versus end-user performance. Tr. 185. To present a true "apples-to-apples" comparison of special access provisioning performance, one would have to normalize the special access ordering data for a large number of distinct characteristics of special access circuits, process differences and underlying network conditions, some of which are not currently tracked in Verizon's existing systems. Some of these characteristics include:

- The complexity of different specific special access orders
- Different specific locations of the circuit(s) requested
- The different time during which orders are placed (seasonal or cyclical industry demand fluctuations affect installation performance)
- Whether the customer requested service in a location where Verizon already has all of the facilities and equipment necessary to provision the order
- Whether a site survey is required to complete the design of the order
- Whether the customer made a supplemental change or numerous supplemental changes to the original order after Verizon began processing the request for service
- Whether the customer originally (or subsequently) requested a due date that is significantly longer that the standard minimum intervals used by Verizon when facilities exist
- Whether the order is part of an overall project where the customer will work cooperatively with Verizon to manage and rearrange the due dates on individual circuits or groups of circuits based on the evolution of the overall project, and the overall length of time needed to complete the project
- The extent to which individual circuits were held in a "customer not ready status" for some portion of time during the

overall installation interval and subsequently released for further work by Verizon before the estimated due date

?? Whether the end user location contact and the necessary end user equipment and the carrier location contact and the necessary carrier equipment (for carrier orders only) are ready and accessible as needed for testing when Verizon needs to perform on-premises testing and acceptance

Exh. DTE-VZ 5-31. Accordingly, to ensure an accurate comparison, there would have to be a sufficiently high volume of orders that held virtually all of these varied characteristics constant, and those orders would have to be handled through processes that essentially are identical for the customer groups.

A related concern is to ensure consistency of data sources for carrier and end-user customers.[39] Because of slight differences in the timing and measurement of installation performance, data from those various sources are not entirely comparable. Exh. DTE-VZ 5-31. Likewise, to develop an appropriate means of comparing carrier versus end-user order performance would require that Verizon MA exclude from its calculations those orders that have characteristics that are significantly different from other more routine special access orders.[40]

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[39] For instance, in this proceeding, the data source for Verizon MA's carrier customer installation performance is the WFA and TIRKS legacy systems, which is consistent with special access services data provided by Verizon to the FCC. However, the data source for special services data for end-user customers is SORD, which is also Verizon MA's data source for retail special services in its Carrier-to-Carrier ("C2C") reports. Exh. DTE-VZ 5-31.

[40] For example, the following types of orders should probably be excluded from any sample of orders used to perform comparisons between carrier and end-user installation interval performance: (1) orders where the customer requested a significantly longer due date than the standard minimum interval; (2) orders where Verizon MA will have to build facilities or order and install equipment that is not in stock to provide the services requested; (3) orders that will be managed by Verizon MA and the customer as a project, *i.e.*, those project orders for which the customer and Verizon MA have agreed to flexible due dates; (4) all OCn orders; and (5) orders where the installation was delayed because the customer was not ready to provide access to its premises or where the customer did not provide the necessary site preparation, power, equipment installation or other needed customer-provided assistance. Exh. DTE-VZ 5-31.

Verizon's existing systems do not, however, currently track all of the above information so that all the necessary exclusions are made to enable a direct comparison.

Finally, Verizon MA also identified some fundamental differences in the maintenance of end-user versus carrier customer's special access services that make a comparison problematic on the maintenance side. For example, with carrier customers, if Verizon MA has handed-off the circuit as complete and a trouble is found, this would be reflected in the new circuit failure rate. Tr. 269. By contrast, there is a period (*e.g.*, between five and ten days) following a newly installed circuit for an end-user customer when a reported trouble would not be declared a new circuit failure. Tr. 269-70.

Another example in the maintenance area concerns the treatment of "test OKs" and "no troubles found" codes. Tr. 276-77. Verizon excludes those code categories from its internal maintenance measurements (*i.e.*, MTTR, repeat failure rate, and failure frequency rate) for special access carrier customers because they do not reflect troubles within Verizon MA's network. Tr. 276. However, those codes are captured in Verizon's internal end-user customer measurements, which would change the results. Tr. 276.

4. Allegations of Discriminatory Conduct

Contrary to AT&T's and WorldCom's claims, Verizon MA does not discriminate in its provision of special access services to carrier and end-user customers in Massachusetts. Although certain data suggests different levels of service, this is a function of differences in processes for carrier and end-user special access service customers, as described above. Exh. VZ MA 3, at 33.

AT&T and WorldCom ignore the critical differences in Verizon's ordering process when comparing special services performance results for Verizon MA's carrier and end-user customers. For example, AT&T attempts to compare the difference between monthly average provisioning intervals for carrier and end-user customers. Exh. ATT 2, at 10. AT&T alleges that the difference in "Interval Performance" results are the product of discriminatory treatment by Verizon MA. This is untrue.

As Verizon MA explained, the starting point used to determine the provisioning interval differs for carrier and end-user customers. The fact that the provisioning clock begins much earlier for carrier customers than for end-user customers directly affects the differences in interval results for special access circuits. It does not mean, as AT&T and WorldCom allege, that the level of service afforded to end-user customers is better than that given to carrier customers. In fact, no conclusion regarding the comparable level of service provided to these customer groups can be drawn from Verizon MA's performance results. Exh. VZ MA 3, at 34.

In an effort to devise an "apples-to-apples" comparison of interval results, AT&T arbitrarily adds seven days to the provisioning interval for end-user customers. Exh. ATT 2, at 11. AT&T further limits its analysis to include only non-access retail (end-user) data. Exh. ATT 7. This is unreasonable and unsubstantiated.

Verizon MA engages in lengthy negotiations with its end-user customers at various stages during the pre-ordering, ordering and provisioning process. Tr. 174.. Indeed, it could require weeks or even months of discussions before an order is placed. Such negotiations may continue even after the CCLI, OSP and IOF facilities are assigned. Exh. VZ MA 3, Attachment B. This is significantly different from Verizon MA's contacts with carrier customers. Thus, there is no basis for AT&T's claim that such negotiations would require only an average of seven additional days.

Likewise, Verizon MA indicated that comparing interval data can be misleading because of the range of requested due dates among customers. Tr. 199. For instance, among Verizon MA's seven largest carrier customers in Massachusetts, the range of requested due dates was recently between 12 and 46 days. Tr. 199. Moreover, interval data would include customer not ready orders, project orders and build-outs (when facilities do not exist or are defective), which would invariably extend the duration of time required for provisioning. Therefore, an average interval measurement is meaningless. Tr. 97, 199.

The Department should also disregard AT&T's "average interval offered and completed" analysis because it unjustifiably includes only non-access retail results for

comparison purposes. Tr. 468. AT&T used this same methodology for all of its wholesale and retail comparison charts, *e.g.*, on-time provisioning, installation reports. Tr. 471. Even AT&T admits that, at least, combined (*i.e.*, access and non-access) retail data should have been used. Tr. 494-95. The obvious reason for excluding retail access data is to skew unfairly the service results, making it appear that Verizon MA is favoring end users over carrier customers in support of AT&T's allegations.

For example, AT&T's erroneous manipulation of the on-time provisioning percentage using only retail *non-access* data shows a wider disparity with the wholesale *access* data. Exh. ATT 2, at 13-14. If the calculation were to include retail *access* data, the result would actually be reversed. For each month since January 2001, the retail on-time provisioning percentage for special access services is below the wholesale percentage and sometimes by a considerable margin (*e.g.*, more than 30 percent). This is clearly not evidence of undue or unreasonable discrimination in favor of providing special access services to end-user customers.

In particular, during 2002, Verizon MA's on-time provisioning for carrier customers of special access services in Massachusettts is 93 to 94 percent, as compared with a range of 78 percent to 91 percent for end-user special access customers during the same period. Therefore, to the extent that this raw data can be used to draw any conclusions about Verizon MA's special access services performance, it shows that Verizon MA provides excellent service to carrier customers in Massachusetts and exceeds the service levels provided to end-user customers.

While Verizon MA does not agree that a comparison of "on-time provisioning" is appropriate because of the substantive differences in the ordering and provisioning processes for these customer groups, it is *completely* wrong to manipulate the data, as AT&T has done. To include only retail (end-user) non-access data grossly inflates the retail "on-time" percentage - in some cases by as much as 45 percent for a given month, which AT&T then uses incorrectly to support its unfounded discrimination claim.[41]

In addition, AT&T and WorldCom offer baseless anecdotal testimony regarding two isolated incidents - one in Woburn, Massachusetts and one in New York – which occurred more than two years ago - as examples of disparate treatment by Verizon. Exh. WCOM 1, Attachment C. Not only is this irrelevant, but it distorts the facts.

For example, WorldCom claims that Bloomberg Financial Services reported alleged disparate treatment when ordering special services through WorldCom and later directly from Verizon NY. WorldCom offers that declaration as proof of Verizon's discriminatory practices involving carrier and end-user customers. Exh. VZ MA 3, at 35-36. That declaration has no bearing on the case in Massachusetts.

WorldCom's allegations involve Verizon NY not Verizon MA and have no relevance to this Department investigation. Nevertheless, upon investigating this matter,

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41 Likewise, AT&T utilizes incorrect data for Installation Reports and asserts that maintenance results also demonstrate that Verizon MA's performance to carrier customers is inferior to end-user customers. AT&T similarly based its erroneous conclusions on retail *non-access* data, and once again ignored the critical differences between the ordering, provisioning and maintenance processes that are tailored to met the unique requirements of each customer groups.

Verizon MA discovered that the delays in provisioning special access services to the carrier customer was, for the most part, attributable to that customer, and not Verizon. Exh. VZ-WCOM 1-1. Accordingly, the fact that WorldCom (or its predecessor companies) caused the delay undermines WorldCom's allegation that Verizon NY somehow engaged in discriminatory conduct by providing better service directly to the end-user customer. Exh. WCOM 1, at Attachment C. Accordingly, the Department should disregard WorldCom's self-serving and inaccurate declaration.

Finally, AT&T and WorldCom point to the NYPSC's findings. This cannot be relied upon because of the nature of the proceeding. First, the NYPSC's statements relate to Verizon NY's alleged discrimination in provisioning special services to carrier and end-user customers in New York. Second, although the NYPSC stated that "the record suggests Verizon treats other carriers less favorably than its own end-users," that statement was not based on the record of a full evidentiary hearing. *June 15th NYPSC Order*, at 9-10. Rather, the NYPSC proceeding was a collaborative at which no evidence was presented to support such a conclusion. The NYPSC simply examined three months' worth of selected data without considering the compelling reasons why that data cannot be used to demonstrate discrimination. Accordingly, the Department should not accept at face value the NYPSC's unsubstantiated conclusions in this regard, but rather must reach its own conclusions based on the evidentiary record. Exh. VZ MA 3, at 38.

N. Verizon MA's Capital Investments and Growth Plans Reasonably Account for Construction of Facilities for Special Access Services.

The availability of suitable facilities is required for Verizon MA's provisioning of special access services. As part of the FOC process, Verizon MA's Engineering Department verifies if suitable spare facilities are available to support the service ordered or, if no spare facilities are available, what work would be required to provide them.[42]

[42] It should be noted that the RequestNet system used to assess whether spare facilities exist does not indicate whether those spare facilities are defective and in need of repair. Tr. 236, 362-63. This is not usually detected until the actual site visit to install the special access circuits. Therefore, Verizon MA could rely on information that spare facilities are available in determining a FOC date for the carrier customer, and subsequently find that that due date cannot be met because of unforeseen facility defects that must be repaired before the circuits can

Rather than reject orders where no facilities exist, Verizon MA will undertake the construction of facilities, which requires significantly longer time frames to complete. That time frame can range from days to weeks (or even months) depending on the nature of the construction work involved.[43]

AT&T and WorldCom contend that facilities are not available to meet special access service requests because Verizon MA does not adequately consider projected customer needs in its growth plans, particularly IOF facilities. Their contentions are wrong. Verizon MA has voluntarily taken measures that are intended to meet future demand for special access services and improve its ordering and provisioning processes.

For instance, Verizon MA continues to invest aggressively in the IOF portion of the local network. In 1998, IOF investment in Massachusetts totaled $65 million; two years later it had increased four-fold to $264 million (in 2000). Exh. VZ MA 1, at 11. In fact, over the past two years alone, Verizon MA's investments have *doubled* the capacity of the IOF network. Exh. VZ MA 1, at 11. Likewise, Verizon MA expects to double the size of its IOF network again over the next two to three years. Exh. VZ MA 1, at 11.

Driven by the competitive marketplace, Verizon has also invested in the latest technologies and deployed additional facilities in an effort to meet anticipated special access service demand. Exh. VZ MA 3, at 42. Since the early 1990's, Verizon MA's IOF growth

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be provisioned.

[43] For example, the construction of facilities for special access circuits is a location and service specific task that can range from placing simple copper cable rearrangements to more complex placement of fiber cable and electronics. Exh. VZ MA 1, at 8. Constructing local facilities for high-speed services typically involves placing fiber cable and electronics into the end user's location. This can take several weeks or more, and the timing can be impacted by several factors, such as the availability of the electronics, availability of cable entrance conduit, and customer provided space and power. Exh. VZ MA 1, at 8.

In the interoffice facilities ("IOF") network, the facility used to route a service is a spare channel on a SONET ring. Exh. VZ MA 1, at 8. These SONET facilities are utilized in the IOF network because they offer a high level of reliability and are able to route traffic from different offices. The building of IOF SONET rings, however, is a very time-consuming and complex undertaking. These rings typically pass through 4 to 6 (or more) central offices and building a SONET ring requires placing fiber cable through all of the offices, equipping the offices with the necessary electronics and interfaces, and coordinating ring turn-up through all of the offices. Exh. VZ MA 1, at 9. If all of these activities had to start from scratch, building an IOF ring could take in excess of 24 months. Therefore, Verizon MA's practice is to begin planning IOF rings and building fiber cable routes well before they are needed. Exh. VZ MA 1, at 9. As a result, when special access service requests are held for IOF facilities, this means that there are *temporarily* no spare channels available through the network. In almost all cases, however, Verizon MA is already working to complete the associated IOF

strategy has been to deploy SONET rings.[44] In the mid 1990's, Verizon MA would typically activate between 10 and 20 new SONET rings at the capacity of OC-12 (8064 equivalent voice conversations or DS0's) or OC-24 (16,128 equivalent DS0's). Exh. VZ MA 1, at 11. By comparison, Verizon MA completed 72 OCn-48 rings (32,256 equivalent DS0's) in 1999 and an additional 101 OCn-48 rings in 2000. Exh. VZ MA 1, at 11. Verizon MA increased the deployment of OCn-48 rings in 2001 by an additional 50 percent. Exh. VZ MA 1, at 11.

By increasing the number of SONET rings, Verizon MA has increased its high speed SONET capacity, thereby enabling the Company to better meet special access demand in Massachusetts. Exh. VZ MA 3, at 42. While there will inevitably be situations where facilities are not readily available,[45] thereby affecting carrier and end-user customers alike, Verizon MA's investment strategy demonstrates its commitment, as a matter of sound business practice, to serve all of its customers as promptly as possible. Exh. VZ MA 3, at 42.

Contrary to AT&T and WorldCom's claims, Verizon does consider forecasts provided by carriers as an input into Verizon MA's overall forecasting decisions. Exh. DTE-VZ 4-12. However, based on Verizon MA's actual experience, carriers fail to provide useful forecasting information regarding special access services.[46] Exh. VZ MA 1, at 11. This deficiency in carrier-provided forecasts was also recognized by the Washington

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growth project. Exh. VZ MA 1, at 9.

44 Synchronous Optical Network ("SONET") is an interoffice signal transport design approach that uses optic fiber cables and various levels of high speed digital signaling. SONET system optic fibers are configured in rings that pass through multiple central office buildings. Verizon has also installed higher capacity rings (mostly OCN-48) and electronics that increase the signal-carrying capacity of installed optic fiber facilities, and has expedited its expansion of capacity on IOF SONET routes. Exh. VZ MA 3, at 42.

45 For example, during the 2000-2001 time frame, there was unprecedented, increased demand for special access services in Massachusetts. In 2000, the average monthly order volume was approximately 1400, which increased by 75 percent in 2001, to over 2400 orders per month. Exh. VZ MA 2, at 2. This affected Verizon MA's installation intervals, as well as facility availability.

46 Verizon MA is also not privy to the individual carrier's underlying forecasting assumptions. For example, multiple carriers may provide Verizon MA with individual forecasts that presume that each carrier will obtain the business of a single large business customer in a specific area. It would not be prudent for Verizon MA to build *four times* the capacity in its IOF and/or loop network to meet each carrier's forecast because the same customer is being served. Exh. DTE-VZ 4-12.

Utilities and Transportation Commission in its May 18, 2000, Decision in Docket No. UT-9991292 ("*WUTC Decision*") regarding Qwest's provisioning of special access services.[47] Exh. VZ-WCOM 2-6, *WUTC Decision*, at 11.

In the past, Verizon MA has either received *minimal* information from carriers or no carrier forecasts at all. Because special access circuits are location and service-specific, Verizon MA would need to know the exact end-to-end points of the circuits to factor this into its construction plans. While carriers may provide special access information relating to entrance facilities into their POPS, they do not provide information regarding the customer's end of the circuit. Exh. VZ MA 1, at 11; Exh. DTE-VZ 4-12. This is crucial if Verizon MA is to properly plan for these services in its forecasts and pre-provision the necessary facilities. However, carriers do not typically provide Verizon with special access demand forecasts.

For example, carrier customers requesting high capacity IOF facilities (DS3 and above) would need to provide route-specific (*i.e.*, "A to Z" locations) demand forecasts, as well as end-user location to serving wire center forecasts. Unless carriers provide reliable and timely forecasts with this level of specificity, Verizon MA cannot anticipate and plan for facility build-outs in advance. Accordingly, AT&T and WorldCom's allegations that Verizon MA fails to consider anticipated or forecasted special access demand are unfounded and must be rejected by the Department.

O. Requiring an Audit of Special Access Service Results Is Unjustified For Both Interstate and Intrastate Circuits in Massachusetts.

AT&T and WorldCom recommend that they be given the right to audit Verizon MA's provision of special access services in Massachusetts. Verizon MA has already explained at length why there is no need for performance reports in the first place. If the Department nonetheless adopts reporting requirements, it must not adopt auditing requirements as well. Doing so is unnecessary and would be unduly burdensome.

To establish audit rights for the few intrastate circuits is totally inappropriate. Audits can be extremely expensive, and a considerable drain on a company's resources. Giving carriers a right to request periodic audits provides yet another means for these competitive providers to increase Verizon MA's costs and tie up resources that would be better spent responding to customers and investing in the network.

If special access customers believe that there is a discrepancy or inaccuracy in their records and/or Verizon MA's reports, they should try to resolve the matter by directly contacting Verizon MA. If they remain dissatisfied, they can bring the matter to the Department.

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[47] The WUTC indicated that "the only forecasts submitted to US WEST by AT&T refer to entrance facilities and mutiplexing equipment." *WUTC Decision*, at 11. The WUTC found that "AT&T's argument that US WEST alone must bear the risk of investing in its network to meet speculative and unforecasted demand in an increasingly competitive market for access services is not persuasive. AT&T did not produce sufficient evidence to support its claim that US West's unreasonably plans and provisions facilities to meet AT&T's unforecasted requirements." *Id*.

P. The FCC's Safe Harbor Rules Legally Prohibit the Conversion of Special Access Services to Unbundled Network Elements ("UNE"), As Proposed by Some Parties.

AT&T proposes that the Department does not need to adopt special access performance metrics at all if it allows the expanded use of UNEs to provide special access services. Exh. ATT 1, at 14-16. That proposal is in direct violation of the FCC's "safe harbor" rules established to preserve the *status quo* while the FCC considers the issue of whether to permit IXCs to employ UNEs solely to provide exchange access service in its *UNE Remand* proceeding.[48]

Verizon MA has no legal obligation under the Act or current FCC regulations to allow the conversion of special access services to UNEs at this time and, therefore, the Department cannot require Verizon MA to do so. In its *Supplemental Order Clarification*, the FCC stated that:

> **… section 251(d)(2) [of the Act] does not compel us, once we determine that any network element meets the "impair" standard for one market, to grant competitors automatic access to that same network element solely or primarily for use in a different market. That provision asks whether denial of access to network elements "would impair the ability of the telecommunications carrier seeking access to provide *the services that it seeks to offer*." Although ambiguous, that language is reasonably construed to mean that we may consider the markets in which a competitor "seeks to offer" services and, at an appropriate level of generality, ground the unbundling obligation on the competitor's entry into those markets in which denial of the requested elements would in fact impair the competitor's ability to offer services.**

***Supplemental Order Clarification*, at ¶ 15 (emphasis added). This is consistent with the U. S. Supreme Court's decision on the FCC's unbundling rules in *Iowa Utilities Board*.**

In *Iowa Utilities Board*, the Court held that section 251(c)(3) of the Act does not itself create "some underlying duty" for an ILEC to "provide all network elements for which it is technically feasible to provide access." 119 S. Ct. at 736. Instead, the Court found that it is section 251(d)(2) that directs the FCC to issue legislative rules imposing unbundling obligations on ILECs, and permits the FCC to consider criteria that include "the services that [the requesting carrier] seeks to offer." Accordingly, the FCC is plainly entitled to

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[48] *See UNE Remand Order*, ¶¶ 483-89. The FCC adopted the *UNE Remand Order* in response to the U. S. Supreme Court's decision to reevaluate its unbundling obligations under section 251 of the Act. *AT&T v. Iowa Utilities Board*, 119 S. Ct. 721 (1999) ("*Iowa Utilities Board*"). The FCC modified the *UNE Remand Order* in its *Supplemental Remand Order* to constrain IXCs from "convert[ing] special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties)." *Supplemental Remand Order* , ¶ 4.

inquire – *before* making UNEs available for the sole or primary purpose of providing special access services – as to whether denying competitors access to that UNE combination would in fact impair their ability to provide those services. *Supplemental Order Clarification*, at ¶ 15.

Until the FCC resolves the legal and policy issues raised by permitting the use of combinations of UNEs in lieu of special access services in the *UNE Remand* proceeding, the FCC 's "safe harbor" rules would apply. Those rules prohibit IXCs from substituting an ILEC's unbundled loop-transport combinations for special access services *unless* they provide a "significant amount of local exchange service, in addition to local exchange access service to a particular customer." *Supplemental Remand Order*, at ¶¶ 4-5; *Supplemental Order Clarification*, at ¶ 8. The IXC must meet one of three circumstances to qualify under the FCC's "safe harbor" requirements. *Supplemental Order Clarification*, at ¶ 22.

AT&T blatantly seeks to circumvent the FCC's "safe harbor" rules by suggesting that the Department affect a change in the FCC's findings. It cannot.

***See Supplemental Order Clarification*, ¶ 23. The Department is <u>not</u> the appropriate legal or regulatory authority to rule on this matter, and this investigation of intrastate special access services is <u>not</u> the appropriate forum for such a debate. Accordingly, the Department should reject AT&T's recommendation outright because it is irrelevant and beyond the scope of this proceeding.**

Q. Should the Department Determine that Some Reporting of Special Access Services Is Required, This Should be Limited to Certain Measurements and Apply to Intrastate Circuits Only.

Even if there were a need for reporting on Verizon MA's intrastate special access performance, which there is not, the parties' proposed reporting requirements and enforcement mechanisms do not merit serious consideration. As discussed below, the NYPSC metrics recommended by AT&T are seriously flawed. Exh. ATT 1, at 17. Likewise, the Joint Competitive Industry Group ("JCIG") metrics proposed by WorldCom are duplicative, overly disaggregated, uninformative, misleading, and engineered to trigger the greatest possible level of penalties. Both parties also unfairly contend that any performance reporting requirements should apply only to Verizon MA. Accordingly, AT&T's and WorldCom's proposals are unreasonable and unnecessary, and should be rejected by the Department.

1. AT&T's Proposal for NYPSC Metrics

AT&T argues for the adoption of the special access metrics and standards adopted by the NYPSC in its *Special Services Guidelines* proceeding, with some modifications.[49] Exh. ATT 1, at 17. AT&T identified the following as the applicable NYPSC metrics: (1)

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[49] It is ironic that although AT&T argues for adoption of the NYPSC metrics, AT&T opposes the application of those reporting requirements on all carriers, as mandated by the NYPSC based on certain qualifying criteria. Tr. 483-85. That position is grossly unfair and exposes the true motives of AT&T, which is to burden its competitor - Verizon MA - with onerous reporting requirements. Should the Department find that the NYPSC metrics are appropriate, then the Department should create a level playing field and requires that all carriers meet the stated criteria and submit monthly reports.

percent on time ASR response; (2) provisioning on-time performance met commitments; (3) average delay days on missed installation orders; (4) installation quality; (5) percent missed appointments due to a lack of facilities; (6) percent jeopardies; (7) customer trouble report rate; (8) trouble duration intervals; and (9) installation intervals. AT&T, however, mischaracterizes some of the metrics.

First, Verizon NY does not provide percent jeopardies and jeopardy reports because no jeopardy notices are issued to carrier customers for special access services. Exh. DTE-VZ 5-4; Exh. DTE-VZ 5-62; Tr. 303-04. Verizon may contact the carrier customer directly by telephone to provide jeopardy notification, which is not tracked. Tr. 231. Alternatively, Verizon provides "proactive notification" on a carrier-specific basis through a customer-service gateway on the Verizon website. Tr. 231. In the latter case, the individual carrier customer would have electronic access to the same jeopardy notification available to Verizon relating to the plant test date and the due date for that carrier's orders. Tr. 232.

Second, Verizon NY is not required to provide installation interval results as part of the NYPSC metrics. Rather, in accordance with NYPSC's directives, Verizon NY must "routinely update the standard minimum installation intervals" and provide that list, as shown on Appendix 3 of the NYPSC's December 20th Order in the *Special Services Guidelines* proceeding. Exh. ATT 1, at Attachment B, Appendix 3 (Attachment 3), at 22. Therefore, contrary to AT&T's claims, "installation intervals" are not reflected as a measurement in the NYPSC metrics.

Finally, AT&T proposes a material change in the NYPSC metric for Percent On-Time ASR Response (SS-PR-1). The NYPSC defines this metric as measuring "Response Timeliness in terms of the percentage of responses within the agreed upon timeframes as specified in the Performance Standards with either a firm in-service date or an estimated in-service date where facilities are not currently available." *NYPSC December 20th Order*, Appendix 3, at 14. The established time frames for returning a FOC after a clean ASR is submitted are five and seven business days for DS1 and DS3 services, respectively, and are negotiated for OCn's. Tr. 198, 266.

AT&T recommends that the Department modify the NYPSC's criteria for this metric by requiring that "Verizon provide a firm order commitment (FOC) at day 3 and not allow an estimated due date (EDD) to be confirmed or changed later." Exh. ATT 1, at 17 n.12. That proposal is unwarranted and is inconsistent with the existing FOC time frames in Massachusetts. Accordingly, there is no rational basis for making this change to this NYPSC metric.

Notwithstanding the fact that Verizon is providing monthly reports in accordance with the NYPSC metrics, and has also agreed to do so in New Hampshire and Maine in the context of Section 271 proceedings, Verizon MA objects to the Department's adoption of these reporting requirements in Massachusetts. RR ATT-VZ 9. As previously discussed, the competitiveness of the special access market and the minimal number of intrastate special access circuits provided by Verizon MA in Massachusetts obviate the need for such measurements. In addition, Verizon MA demonstrates that its current performance for combined interstate and intrastate special access circuits in Massachusetts is of high quality, and thus does not warrant the establishment of any performance metrics. Verizon

MA further opposes the application of the NYPSC metrics in Massachusetts because they are inherently flawed and are not a reliable indicator of special access performance. Tr. 287.

For example, the NYPSC metric Percent Missed Appointment Due to a Lack of Facilities (SS-PR-4) is a misnomer. *NYPSC December 20th Order*, Appendix 3, at 18. Verizon's systems classify misses due to lack of facilities and misses due to defective facilities in the same "N" or "no facilities" category. Tr. 126-30; 234-36. As a result, the "N" coded data currently used to develop this NYPSC metric contains misses for lack of and defective facilities.

The functionality performed by Verizon's RequestNet system is also limited in that it simply checks existing databases for spare facilities that can be used to provision the circuits requested. Tr. 362. That system is not capable of determining whether existing spare facilities are in working order and usable, or are defective and in need of repair or replacement. Tr. 236, 362. This means that although the RequestNet system may initially assign available facilities - on a first-come, first-served basis - to satisfy a customer request, Verizon may later find that those facilities are defective and require either conditioning or new construction, resulting in a provisioning delay. Tr. 240. Accordingly, because of systems limitations, Verizon cannot truly isolate on-time provisioning of all circuits where "full builds" of facilities are required.[50]

Likewise, Verizon MA believes that the NYPSC metric for Average Delay Days for Missed Installation Orders (SS-PR-2) does not provide useful information. *NYPSC December 20th Order*, Appendix 3, at 16; Tr. 199, 232. Verizon MA often cannot install services on a given due date for reasons beyond its control. A primary reason is the CNR situation,[51] whereby a customer is not able to accept circuit delivery, and thus causes Verizon MA to "miss" the due date even though Verizon MA is ready to install service.[52] Tr. 232. Accordingly, because the NYPSC metric only reflects average delay days for Company (Verizon) reasons, and does not report the corollary, *i.e.*, a sub-metric for the average number of delay days for installation orders missed due to *customer* reasons, it is a useless measurement. *NYPSC December 20th Order*, Appendix 3, at 16.

Other NYPSC metrics are deficient because they fail to differentiate between Verizon and customer-caused occurrences. For instance, as currently defined, the NYPSC

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50 In Exh. DTE 3-31 (updating ATT-VZ 2-3A & B), Verizon MA was asked to provide on-time completed circuits - excluding circuits requiring facility builds. Verizon clarified that the special study undertaken to "exclude circuits for which facilities had to be built" was based on data from the RequestNet system. Tr. 234-38. That data did not capture those cases described above where facilities were first identified by RequestNet as available or spare, but were subsequently found to be defective and/or required a full-build. Tr. 238.

51 A customer may not be ready to accept the special access service that it ordered for the following reasons: (1) necessary equipment that the customer planned to install or that third-party vendor was to install on behalf of the customer is not yet installed; (2) the customer ordered the service well in advance of its need and is not willing to accept the beginning of billing for the service; or (3) the customer has decided to cancel the order with Verizon, but had not yet notified Verizon. Exh. VZ MA 3, at 45 n.22.

52 The data shows that for Verizon MA's special access carrier customers, the CNR code occurs more than 50 percent of the time as the reason for installation delays in Massachusetts. Exh. DTE-VZ 5-1, updating WCOM/ATT 1-7.

metrics for Installation Quality SS-PR-3 (*i.e.*, Percent Installation Troubles Reported within 30 Days), Customer Trouble Report Rate SS-MR-1 (*i.e.*, Network Trouble Report Rate), and Trouble Duration SS-MR-2 (*i.e.*, Mean Time to Repair) include, *inter alia*, the disposition code categories for "test OK" and "found OK." *NYPSC December 20th Order*, Appendix 3, at 17, 20, 21. Those code categories refer to circuit "trouble reports" that are not associated with Verizon network failures. In other words, the customer *reports* a "trouble," but Verizon testing is completed successfully with no network-related trouble found on the circuit.

Removal of those trouble code categories from the metrics would be consistent with Verizon's calculation of its internal measurements for New Circuit Failure Rate, Failure Frequency Rate, Repeat Failure Rate, and MTTR. Exh. DTE-VZ 5-34; Tr. 276, 279, 287-88. Tr. 279. To do otherwise unjustly distorts Verizon's performance results.[53] Tr. 281. Indeed, these trouble code categories would be more appropriately captured as separate sub-metrics for Installation Quality and Customer Trouble Report Rate that would identify circuits for which customers reported a "trouble," but no failure was found in Verizon's network. Tr. 279-80.

2. WorldCom's Proposal for JCIG Metrics

Verizon MA also strongly opposes the JCIG metrics proposed by WorldCom because they are onerous, duplicative, misleading, and designed to maximize the potential for penalty payments. Exh. VZ MA 3, at 44. The JCIG metrics would, in large part, be burdensome and costly to implement because of their high level of disaggregation. By WorldCom's own admission, no state or federal regulatory commission has adopted the JCIG metrics as proposed in this proceeding.[54] Tr. 450. And the Department should decline to adopt them here as well.

If adopted, the JCIG proposal would require Verizon MA to report on over 7,800 measures every month.[55] Exh. VZ MA 3, at 44; Exh. DTE-VZ 5-35. This "slice and dice" approach is extreme and unnecessary to ensure that the reports are meaningful and that the quality of special access services is maintained. It is also absurd to require reporting of

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53 By defining these metrics in this manner, carrier customers are incented to report all troubles to Verizon, rather than conduct testing to isolate non-Verizon network related troubles. Tr. 276-77. This would inflate the total number of troubles reported and distort the Company's performance results. For instance, while including "test OKs" and "found OKs" will typically show a lower MTTR because the trouble tickets are of short duration, there would be more trouble tickets added into the equation. Tr. 276. This would inappropriately inflate the failure frequency rate and, in some cases, the repeat failure rate as well. Tr. 277. Because of the distorting effect of these code categories on MTTR results, Verizon changed its criteria and similarly modified its objective for MTTR to reflect that change. Tr. 266, 280-81.

54 Likewise, WorldCom has only identified one state - Tennessee - that has adopted any comparable JCIG metrics. Tr. 450; RR DTE-WCOM 5.

55 The proposed JCIG metrics would require Verizon to report 7,800 measures each month. This estimate is based on the JCIG proposal for 25 measurements (20 provisioning and 5 maintenance), disaggregated into up to 6 bandwidths (DSO to OCN-48), separated by Verizon/Verizon affiliates aggregate and CLEC/IXC aggregate (2), and separate reports by carrier (extremely conservative estimate of 30 in Massachusetts). This equates to the following calculation [(2 x 6 x 20) + (2 x 2 x 5) = 260 per carrier x 30 carriers = 7800]. Exh. VZ MA 3, at 44 n.21.

7800 measures in light of the *minimal* number of intrastate special access circuits provided by Verizon MA (*i.e.*, approximately 100 new circuits per year). Hence, the intent is clear; to increase the burden on Verizon MA and enhance the opportunity for carriers to receive damages by multiplying the number of metrics and sub-metrics as much as possible.

Aside from the absurd level of disaggregation, the JCIG measures themselves are duplicative and thus would unreasonably increase the burden on Verizon MA. For example, the proposed FOC Receipt measure (JIP-SA-1) and the FOC Receipt Past Due measure (JIP-SA-2) are mirror images of each other. Exh. VZ MA 3, at 44. The same is true for the On-Time Performance to FOC Due Date (JIP-SA-4) and entire Days Late (JIP-SA-5) measures. Exh. VZ MA 3, at 45. Such duplication would have punitive effects since a miss on one of these measures inevitably would produce a miss on the other, thereby maximizing potential penalty payments from Verizon MA, if applicable. Exh. VZ MA 3, at 45.

In addition, there are serious flaws in several JCIG metrics. For example, the On-Time Performance to FOC Due Date (JIP-SA-4) does not allow for performance problems resulting from forces beyond Verizon MA's control. Exh. VZ MA 3, at 45. This would include the residual effects of a major labor strike in August 2000, as well as the aftermath of the events of September 11, 2001, each of which impaired Verizon's performance through no fault of its own. That metric would also exclude from on-time performance those situations where Verizon MA is ready to install service but the carrier's end-user customer is unavailable or otherwise not ready. Exh. VZ MA 3 at 45.

It would be unreasonable and unfair to prohibit Verizon MA from counting its performance as "on-time" in CNR situations because Verizon MA stands ready to perform, even though it is prevented from doing so because of circumstances outside of its control. This is also inconsistent with how Verizon determines "on-time provisioning" both for internal measurement purposes, as well as for external performance metrics, including the NYPSC metrics. Structuring the JCIG metrics to decrease the number of "successful" installations by excluding CNRs from on-time performance would unfairly skew the performance results so that Verizon MA misses the relevant metrics.[56] The Department cannot sanction such an approach.

The JCIG metrics are also seriously flawed in other respects. For example, the JCIG metrics do not take into account the different product mixes that Verizon MA provides to end-user versus carrier customers of special access service, and the distinct needs and preferences of the respective customer groups. Exh. VZ MA 3, at 46. As explained earlier, those differences directly affect the ordering process used by Verizon

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[56] The fact that the JCIG metrics include projects, which frequently change due dates at the customer's request because of the large volume of orders involved, would further skew the on-time provisioning results. Exh. VZ MA 3, at 46. Likewise, the Entire Days Late metric (JIP-SA-5) would inaccurately reflect Verizon MA's performance because it does not consider factors outside Verizon's control that can delay rescheduling the due date. These include situations where the carrier is not ready for re-testing; the equipment vendor is not available; Verizon MA has to renegotiate access to the end user's premise; or the end user may request a new date beyond Verizon's normal intervals. Exh.VZ MA 3, at 46 n.23.

MA to provide special access services to those customer groups, and thus would affect measured performance. Exh. VZ MA 3, at 46.

Likewise, some JCIG metrics, such as offered due date and requested due date, do not acknowledge the fact that service results can be a function of customer demand. Tr. 199. For instance, requested due dates vary considerably based on the differing needs of the individual special access customer. Tr. 100. A recent Massachusetts study shows that for January through April 2002, the due date requested by Verizon MA's seven largest special access carrier customers ranges between 12 and 46 days. Tr. 199. This huge swing in the requested due date would render any such reporting metric meaningless. Tr. 199.

Accordingly, as stated previously, there is no need for performance measures in Massachusetts, and there is certainly no basis for adopting the extreme JCIG metrics proposed by WorldCom.

3. Alternative Reporting Methods

Verizon MA has demonstrated why performance measures for intrastate special access services should not be required. Likewise, Verizon MA has shown why the NYPSC and JCIG metrics are not only unnecessary, but also unreasonable and unfair.

Should the Department determine, however, that some reporting is appropriate, Verizon MA recommends, in the alternative, that the following measurements apply: (1) on-time provisioning; and (2) mean time to restore. These are the principal provisioning and maintenance measurements used internally by Verizon, and thus would provide the Department with a reasonable means of monitoring Verizon MA's special access performance.

In its *August Order*, the Department properly recognized that it could no more regulate the terms and conditions (including the service quality) of Verizon MA's interstate access services than it could regulate the rates of those services. *August Order*, at 13. Accordingly, Verizon MA believes that any reporting should be limited to intrastate special access circuits only. Verizon MA would, however, be willing to agree to provide combined interstate and intrastate special access circuits results for those two measurements under the following conditions.

First, the Department should affirm that those combined (interstate and intrastate) performance results would *not* be used to determine the quality of Verizon MA's intrastate special access services. Second, no objectives would be established, nor penalties imposed, based on those combined reporting results. Third, any performance metrics should apply equally to all facilities-based providers of intrastate special access services.

Applying performance reporting requirements to all facilities-based providers is critical to avoid distorting competition[57] and perpetuating disparate regulation. Indeed, if AT&T and WorldCom are really proposing performance metrics as benchmarks to discipline Verizon MA's provision of just and reasonable service, then the same benchmarks should also apply to all carriers that are offering the services. This is

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[57] For instance, customers may draw incorrect inferences about the relative service quality of different service providers if Verizon MA is the only carrier obligated to adhere to performance reporting requirements. This would unfairly reflect on Verizon MA's performance in providing special access services. Exh. VZ MA 3, at 48.

consistent with the NYPSC's finding in its *Special Services Guidelines* proceeding. *December 20th Order*, Appendix 3, at 15.

It should be understood that by making this alternative proposal, Verizon MA is not advocating performance metrics *per se*, or conceding that any such metrics are needed. Indeed, Verizon MA believes that the better approach is to maintain the *status quo*, under which buyers and sellers of special access service voluntarily exchange service quality information on terms that are most useful to the buyer while being least burdensome to the seller. Nevertheless, given the competitiveness of the special access market, all carriers should be treated similarly.

R. Imposing Penalties Based on Verizon MA's Special Access Service Results Is Unfounded and Punitive.

There is no reasonable basis for the Department to impose penalties for Verizon MA's provision of intrastate special access services. As demonstrated above, Verizon MA's most recent performance results are strong and do not warrant the establishment of penalties. Moreover, such action is unnecessary because of the minimal number of intrastate special access circuits (less than one-half of one percent) provided by Verizon MA in Massachusetts.

***No other* regulatory commission (state or federal) has mandated penalties for the provisioning of special access services. Indeed, because of the fundamental customer-driven differences in Verizon MA's ordering and provisioning processes for carrier and end-user customers, it is virtually impossible to produce a direct and accurate comparison on which to base any penalties. Verizon MA also vigorously opposes determination of penalties based on NYPSC or JCIG-like metrics, which are seriously flawed.**

Applying enforcement mechanisms that produce potentially excessive damages is also unjustified because of the competitiveness of the special access service environment and its deterrent effect on facilities-based competition. Inadequate service will result in real marketplace consequences, both as a result of credit allowances contained in carriers' tariffs and, more importantly, the ability of special access customers to take their business to an alternative provider. In addition, the regulatory complaint process provides a further, effective backstop against unlawful behavior.[58]

Finally, the Department lacks authority to impose a self-effectuating enforcement mechanism involving automatic payment of liquidated damages to competitors. The Department further has no authority to base any penalties or damages on combined

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[58] Because 99.6 percent of the special access services are jurisdictionally interstate, the FCC's section 208 complaint procedures would act as a check against carriers allegedly engaging in unlawful conduct or unreasonable discrimination. The FCC recognized that aggrieved parties may pursue remedies under section 208 of the Act in its *Pricing Flexibility Order*, 14241-42, 14256, 14267.

interstate and intrastate special access service results and, therefore, should reject any parties' proposals to do so.

IV. CONCLUSION

Verizon MA is providing the most responsive, highest quality special access services possible. For example, Verizon MA has implemented comprehensive voluntary reports, established internal procedures to assure open and regular communications with customers and enhance the service ordering and provisioning process, and detailed its continuing investment in expanded special access facilities. Those measures were undertaken to better serve carrier and end-user customers alike and respond to competitive pressures, not because of any legal or regulatory imperative.

Adopting special access performance measures, reporting requirements, and enforcement mechanisms is unnecessary and would distort competition and harm consumers, particularly if applied disparately to Verizon MA. Parties fail to show that Verizon MA has provided poor service or engaged in discriminatory conduct in providing special access services to end-user and carrier customers in Massachusetts. Therefore, the Department should dismiss those claims and reject parties' proposals for imposing performance metrics on Verizon MA's intrastate special access services, which comprise a minimal number (*i.e.*, less than one-half of one percent) of the Company's total circuits in Massachusetts. The Department must also reject AT&T's attempt to overturn the FCC's "safe harbor" rules for converting special access services to UNEs.

The Department should defer taking any action in this investigation until the FCC's pending proceeding on special access performance is decided. This is prudent because the vast majority of Verizon MA's special access services in Massachusetts are interstate and thus regulated by FCC. In the alternative, should the Department determine that some measurements

are appropriate, Verizon MA would propose limited special access metrics on-time provisioning and MTTR on an intrastate, Massachusetts-only basis.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorney,

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Barbara Anne Sousa
185 Franklin Street, 13th Floor
Boston, Massachusetts 02110-1585
(617) 743-7331

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