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June 21, 2006

VIA ELECTRONIC FILING AND UPS

Ms. Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, Second Floor
Boston, Massachusetts 02110

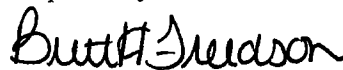
Re: *D.T.E. 04-33: Petition of Verizon New England Inc. for Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts, Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*

Dear Ms. Cottrell:

Please find enclosed for filing with the Massachusetts Department of Telecommunications and Energy the comments of DIECA Communications, Inc. d/b/a Covad Communications on revisions to Verizon's tariff M.D.T.E. No. 17, dated June 8, 2006. Enclosed please also find seven (7) copies of this filing, a duplicate and self-addressed, postage-paid envelope. Please date-stamp the duplicate on receipt and return it in the envelope provided.

Please feel free to contact the undersigned counsel at (202) 887-1211 if you have any questions or require further information.

Respectfully submitted,



Brett Heather Freedson

cc: Service List Parties (via email)

**Before the
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Verizon New England Inc. for)
Arbitration of an Amendment to Interconnection)
Agreements with Competitive Local Exchange) D.T.E. 04-33
Carriers and Commercial Mobile Radio Service)
Providers in Massachusetts Pursuant to Section)
252 of the Communications Act of 1934, as)
Amended, and the *Triennial Review Order*)

COMMENTS OF COVAD COMMUNICATIONS COMPANY

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), through counsel and pursuant to the Procedural Notice of the Massachusetts Department of Telecommunications and Energy (the "Department"),¹ submits the following comments on the tariff revisions proposed by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") to comply with the rulings of the Department in the above-captioned arbitration proceeding. By its Order on Compliance, the Department directed Verizon to submit for its review a "compliance tariff," including revisions to Verizon's tariff M.D.T.E. No. 17 consistent with the Department's Arbitration Order,² Reconsideration Order³ and Order on Compliance⁴ (together, the "D.T.E. 04-33 Orders"). The revised tariff pages submitted by Verizon fail to incorporate express rulings by the Department that preclude nonrecurring charges for routine network modifications that Verizon is obligated to perform, under Section 251(c)(3) of the 1996 Act,⁵ as necessary to provision DS1 capacity loops ("Routine Network Modifications"). Therefore, the Department should order that Verizon submit additional

¹ Procedural Notice, D.T.E. 04-33 (Jun. 14, 2006).

² Arbitration Order, D.T.E. 04-33 (Jul. 14, 2005).

³ Reconsideration Order, D.T.E. 04-33 (Dec. 16, 2005).

⁴ Order on Compliance, D.T.E. 04-33 (May 5, 2006).

⁵ 47 U.S.C. § 251(c)(3).

revisions to its tariff M.D.T.E. No. 17, deleting its nonrecurring charges for Routine Network Modifications set forth at Part B, § 5.3.4(A)(33) and (34), page 6.1.

The Department repeatedly has confirmed that certain nonrecurring charges imposed by Verizon for modifications that it performs on DS0 capacity loops, including those charges imposed for removing bridged taps and load coils, as necessary to provision line sharing, do not apply for Routine Network Modifications that Verizon is obligated to perform for DS1 high capacity loops.⁶ In its UNE Cost Proceeding, the Department reviewed loop conditioning and loop qualification issues under a section designated, and strictly related to rates and charges for DSL-compatible loops.⁷ Importantly, the first paragraph of the Department's discussion states that "[l]oop conditioning charges seek to recover the costs of removing load coils and bridged taps from both aerial and underground copper cables to provide CLECs with DSL-compatible loops."⁸ Now, Verizon seeks to unilaterally apply such charges to DS1 high capacity loops, without a cost proceeding, and without additional evidence that such charges are TELRIC-compliant. Because competitive carriers, including Covad, pay higher rates for DS1 loops than for DS0 loops, there exists a serious risk that Verizon's nonrecurring charges for Routine Network Modifications will permit double-recovery of its costs for provisioning such facilities.

⁶ Order on Compliance at 42. The Order on Compliance expressly confirms that "Verizon is currently only allowed to assess engineering query and work order charges with respect to routine network modifications for line sharing," and that "if, and when the Department approves charges for other routine network modifications, [it] will also address the issue of whether engineering charges apply to those routine network modifications." *Id.*

⁷ *Investigation by the Department of Telecommunications and Energy on its Own Motion into the Appropriate Pricing, Based Upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided-Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20, Order (Jul. 11, 2002). DSL-compatible loops are DS0 loops, and not DS1 high capacity loops.

⁸ *Id.* at 246.

In this proceeding, the Department declined even to consider whether Verizon's proposed nonrecurring charges for Routine Network Modifications are permitted by the *Triennial Review Order*, because Verizon chose to defer submitting a TELRIC cost study to support that such nonrecurring charges are both reasonable, and do not permit double-recovery of costs that Verizon already recovers through its existing, TELRIC-compliant rates.⁹ Thus, the Arbitration Order clearly prohibits nonrecurring charges for Routine Network Modifications performed by Verizon on DS1 capacity loops. Verizon did not request reconsideration or clarification of the Department's rulings addressing nonrecurring charges for Routine Network Modifications, as set forth in the Arbitration Order.¹⁰

The tariff M.D.T.E. No. 17 on file with Department includes nonrecurring charges for Routine Network Modifications that do not comply with the D.T.E. 04-33 Orders, as required by the Order on Compliance.¹¹ Specifically, Verizon's tariff M.D.T.E. No. 17 refers to nonrecurring charges for removal of bridged taps and load coils **on DS1 capacity loops**.¹² The nonrecurring charges for those services performed on DS1 loops, as set forth in Verizon's current tariff M.D.T.E. No. 17, directly contradict the D.T.E 04-33 Orders, which expressly prohibit such nonrecurring charges for Routine Network Modifications. Therefore, consistent with the Order on Compliance, such nonrecurring charges must be removed through additional tariff revisions to be submitted by Verizon.

⁹ Arbitration Order at 266.

¹⁰ See Motion of Verizon Massachusetts for Partial Clarification and/or Reconsideration of the Arbitration Order, D.T.E. 04-33 (Aug. 24, 2005). Verizon did not seek reconsideration or clarification of any Department ruling in the Order on Compliance.

¹¹ The tariffed nonrecurring charges referred to herein were submitted by Verizon on February 22, 2005, and therefore pre-date the D.T.E. 04-33 Orders that preclude such charges for Routine Network Modifications. As discussed more fully above, Verizon's nonrecurring charges for loop modifications were approved by the Department only for services performed by Verizon on DS0 capacity loops.

¹² M.D.T.E. No. 17, Part B, § 5.3.4(A)(33) and (34), page 6.1.

CONCLUSION

For the reasons set forth herein, Covad respectfully requests that the Department order Verizon to submit additional revisions to its tariff M.D.T.E. No. 17, deleting its nonrecurring charges for Routine Network Modifications, set forth at Part B, § 5.3.4(A)(33) and (34), page 6.1, that do not comply with the D.T.E. 04-33 Orders.

Respectfully submitted,



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Dated: June 21, 2006