COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	**D.T.E. 01-20**

CLEC COALITION'S COMMENTS IN OPPOSITION TO VERIZON'S MOTION FOR RECONSIDERATION AND CLARIFICATION AND COMMENTS REGARDING AT&T'S REQUEST FOR CLARIFICATION

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In accordance with the Hearing Officer's schedule for filing comments regarding motions for reconsideration or clarification that were made on August 14, 2002 in this proceeding regarding the Department's July 11, 2002 Order ("Order"), Allegiance Telecom of Massachusetts, Inc. and Conversent Communications of Massachusetts, LLC (collectively the "CLEC Coalition") hereby submit their comments in opposition to Verizon's Massachusetts' ("Verizon") Motion for Reconsideration and Clarification ("Verizon's Motion") and comments regarding AT&T's request for clarification that a high volume UNE-P cutover process be established, as set forth in AT&T's Motion for Partial Reconsideration and Clarification.

I. SUMMARY

With respect to AT&T's request, the CLEC Coalition is very troubled by AT&T's request that the Department adopt a high volume UNE-P cutover process "instead of or in addition" to an alternative process that is fashioned after the frame-due-time process employed by SBC in Texas and Connecticut. The CLEC Coalition does not know why any clarification is needed. Nowhere in the Department's Order is there any mention of a UNE-P cutover

process. As facilities-based providers, Allegiance and Conversent do not rely on UNE-P as an entry strategy and have no desire to become more dependent on Verizon to perform switching. In short, Allegiance and Conversent do not use and would not benefit from a high volume UNE-P cutover process. In its Reply Brief, the CLEC Coalition described SBC's two hot-cut processes, one of which is a fully coordinated process that involves extensive manual processing and another process that is less manually intensive (the frame-due-time process). The Coalition suggested that the Department consider a less manually intensive process fashioned after the SBC Model, *which is not* designed around high volume UNE-P conversions, and the Department embraced idea. Therefore, any clarification should not substitute a high volume UNE-P conversion process for the less expensive alternative hot cut process fashioned after the SBC process, as envisioned by the Department in its Order, that facilities-based providers such as Allegiance and Conversent can employ.

With respect to Verizon's Motion, the CLEC Coalition specifically opposes Verizon's request that the Department reconsider the task times used in Verizon's non-recurring cost model ("NRCM") because Verizon's request, which asks that the Department consider understated task times, fails to recognize that the Department found that Verizon's task times were upwardly biased and overstated not understated. Furthermore, Verizon's suggestions on how the task times should be derived are inconsistent with this Department determination. The CLEC Coalition also opposes Verizon's request that the Department reconsider its decision to use 60.5 feet as the collocation power cable length. Verizon's request does not meet the standard for reconsideration or for reopening the record and, therefore, it must be denied. Finally, the CLEC Coalition opposes Verizon's request that the Department clarify that

Verizon may charge for a field dispatch if one is requested by a CLEC in connection with a new service order for reasons other than performing cross connects. There is no record evidence that supports Verizon's assertions and its request drastically dilutes the Department's decision that non-recurring field dispatch costs be recovered through recurring rates.

II. COMMENTS

A. AT&T'S Request That The Department Establish A High Volume Hot Cut Process Instead Of A Process That Is Fashioned After The SBC Model Must Be Denied.

Recognizing the magnitude of Verizon's proposed hot cut rates, the Department endorsed the suggestion made by the CLEC Coalition in its Reply Brief and directed Verizon to examine carefully the components of the hot cut process and to develop a less costly process modeled in Verizon's NRCM.[1] The Department expressly fashioned this alternative on the SBC model in Texas and stated that the two-tier approach will allow each CLEC to decide which hot cut process is appropriate given its resources and priorities.[2] AT&T now requests that the Department clarify that Verizon must work with AT&T and other interested CLECs to implement appropriate enhancements to the high volume UNE-P cut over process and develop forward looking TELRIC prices for this process.[3]

Unlike AT&T, which utilizes a UNE-P market entry strategy that may in the future entail converting customers to UNE-L once it has acquired a critical mass of customers, both Allegiance and Conversent provide their own switching now and currently rely on Verizon to perform hot-cuts to migrate their customers. Thus, a process that only encompasses high

[1] Order at 491 & 499-500.

[2] Order at 499-500.

volume UNE-P cutovers to UNE-L will not be a suitable less expensive alternative to the coordinated hot cut process used by Allegiance and Conversent. Indeed, in adopting the CLEC Coalition's recommendation, the Department directed Verizon to offer a less expensive alternative to the coordinated hot cut process that is fashioned after the Texas process, which notably is not designed around UNE-P and does not contemplate high volume UNE-P cutovers.

For the reasons stated above, the CLEC Coalition urges the Department to refrain from adopting the AT&T high volume UNE-P cutover process in place of a frame-due-time process similar to that used by SBC as the alternative to Verizon's existing coordinated hot cut process.

B. Verizon's Request That The Department Reconsider The Task Times Used In Its NRCM Must Be Denied Because The Department Found That Due To Bias Associated With The Survey, Task Times Were Overstated.

Verizon requests reconsideration of the Department's decision to used the low end of the 95 percent confidence interval for task times that Verizon uses in its NRCM.[4] Verizon contends that that the Department failed to recognize that the resulting work times are below the minimum reported work time in some cases and failed to consider that Verizon's reported work times may be understated.[5] Verizon fails, however, to recognize that the Department found the survey produced biased and overstated task times.

In particular, the Department ordered Verizon to use the low end of the 95 percent confidence interval due to flaws associated with the survey. Verizon claims that the this decision only eliminates any potentially overstated work times and fails to account for understated work

[3] AT&T's Motion for Partial Reconsideration and Clarification at 22-23 & 29-31.

[4] Verizon's Motion at 30-34.

times. In so arguing Verizon entirely overlooks the Department's conclusion that the survey resulted in biased and overstated time estimates – not understated time estimates. The Department even explained in the Order that "Although Verizon stated the 'survey respondents are much more likely to under-report their average time experience so as to avoid identifying themselves to their supervisor as being a particular unproductive individual,' we concur with the CLECs that the survey is more likely to result in over-estimates of task times because the results are used to compare costs that Verizon will charge to its competitors." The Department further held that,

> A potential for bias exists when a survey is compiled without independent oversight of the process. As the Department previously ruled, "[t]here is also a strong likelihood of bias when employees are instructed to provide estimates that they are told will be used to derive charges for their employer's competitors. Bell Atlantic failed to demonstrate that it acted to reduce the probability of such bias." Phase 4-L Order at 25. *Similar bias is inherent in Verizon's survey in this proceeding as well.*[6]

The Department did not, however, order the use of minimum average times to account for the upward bias that exists in the task time estimates, as it did in the *Phase 4-L Order*, "because no such figures exists in this proceeding."[7] As the Department explained, in the 1996 proceeding, Verizon surveyed its employees to determine the "minimum," "most likely," and "maximum" time necessary to complete a task. In this proceeding, by contrast, only actual time estimates provided in response to the surveys are available.[8] The Department consequently did "not have the option to order Verizon to use the average minimum times."[9] Instead, the Department ordered the use of the

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[5] Verizon's Motion at 30-31.

[6] Order at 463 (emphasis added, footnotes omitted).

[7] Order at 464.

[8] *Id*. at 463.

[9] *Id*.

low end of the 95 percent confidence interval, which is another method of achieving the objective of using the average minimum times given the data Verizon provided in this proceeding.

Verizon's reconsideration request therefore rests on the faulty notion that the Department did not consider understated work times. Furthermore, Verizon's request that the Department consider understated work times ignores the Department's conclusions that task times are upwardly biased and overstated, a conclusion for which Verizon did not seek reconsideration. Moreover, the request is unsupported because there is no record evidence that proves downward bias exists. For these reasons, Verizon's motion for reconsideration of this ruling must be denied.

Verizon's recommendation that the Department use a "trimmed mean" approach also fails to acknowledge the Department's findings that the task times are overstated and, therefore, does not warrant further consideration.[10] To elaborate, under the trimmed mean approach, Verizon asks that it be allowed to rank the survey responses for each work activity from lowest to highest, eliminate or "trim" the highest 10 percent of the work times and the lowest 10 percent of the work times for each activity, and then calculate the new average work time using the remaining responses.[11] The symmetry of Verizon's approach would do nothing to address the Department's finding that the task times are inherently biased and result in overstated task times. Moreover, trimming the lowest 10 percent of the work times would result in the trimming of the task times that are the most efficient and reliable and least likely to be biased and overstated.

Verizon further recommends that if the Department determines that it is still necessary to use confidence intervals, the Department should use a 90 percent confidence interval rather than the

[10] Verizon's Motion at 32-33.

[11] Verizon's Motion at 33.

95 percent confidence interval ordered by the Department.[12] According to Verizon, the lower bound of the 95 percent confidence interval results in negative task times in two cases and in task times that are less than the minimum work time for a task reported in a number of other cases.[13] Verizon explains that because the lower bound of the 95 percent confidence interval is equal to the time that is appropriately two standard errors below the mean, the Department's decision results in these anomalies.[14]

As a preliminary matter, Verizon's arguments contradict Verizon's own claims that its data is sound. In particular, Verizon has been touting throughout this proceeding that its sampling technique reflects a 95 percent precision level based on nonrecurring costs. As the Department noted, Verizon "'did not construct confidence intervals around the times."[15] Instead, Verizon constructed confidence intervals around nonrecurring costs because it deemed them to be more relevant than task times.[16] Now when required by the Department to find 95 percent precision in the task times, it cannot do so.

The anomalies that Verizon suggests stem from having small samples with wide variances between reporting times. Indeed, if the task times were clustered around the mean, the variances would not be wide and the standard deviation would be smaller. As a result, two standard errors below the mean would not equal task times that are less than a minimum time submitted or result in negative task times. What Verizon's conclusions prove is that dramatic upward bias (stemming

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[12] Verizon's Motion at 33-34.

[13] Verizon's Motion at 33-34.

[14] Verizon's Motion at 33.

[15] Order at 461 (citing Tr. at 628).

[16] Order at 461 (citing Tr. at 628).

from overstated work times) is causing the variances and the standard error to be huge resulting in the problems that Verizon mentions.

These results prove that Verizon's data sample of task times is entirely unreliable and should not be given any credence. Verizon's suggestion that the Department use a 90 percent confidence interval will not correct the inherent problems associated with the biased survey data. Notably, by suggesting that the Department use a 90 percent rather than a 95 percent confidence interval or a trimming approach, Verizon generally seeks to include more biased and overstated task times in its NRCM. Again, this request is inconsistent with the Department's effort to remove such task times and to use a method that achieves the objectives of employing average minimum times as it required in the *Phase-L Order*. For the above reasons, Verizon's request for reconsideration and its proposed modifications conflict with the Department's decision and must be denied.

As the CLEC Coalition requested in its Motion for Reconsideration and Clarification, Verizon should preferably use time and motion studies or, if it wishes to use employee surveys, it must take care not to give the respondents a reason to bias their results.[17] In addition, the problems that Verizon identifies further support rejection of Verizon's cost model and data until Verizon provides a model that is reliable and credible.[18] Until the new study is completed, reviewed, and approved, Verizon's present non-recurring rates should remain in effect. If the Department does not want to reject Verizon's cost model and task times outright, the Department should use

[17] Motion for Reconsideration and Clarification of the CLEC Coalition at 17.

[18] Motion for Reconsideration and Clarification of the CLEC Coalition at 17.

minimum times as requested by the CLEC Coalition, at least as an interim measure until Verizon provides data that is not corrupt and unreliable.[19]

C. Verizon's Request That The Department Reconsider Its Ruling Regarding Collocation Power Cable Length Must Be Denied Because Verizon Has Failed To Meet The Standard For Reconsideration Or Reopening The Record.

Over six months after the record has been closed in this proceeding, in which Verizon testified that its average one-way collocation power cable length is 60.5 feet rather than 121 feet, Verizon requests that the Department disregard its written and oral testimony and instead adopt an average cable length of 121 feet.[20] Department precedent requires that Verizon's motion for reconsideration and implicit request that the record be reopened and rectified be flatly denied.

Verizon's motion entirely fails to satisfy the standards for reconsideration. Moreover, Verizon's statement that, "Reconsideration of this issue is appropriate due to the Department's incorrect assumption, admittedly resulting from misstatements by Verizon MA, that Verizon MA's survey data produced average cable lengths of 60.5 feet"[21] turns the standard for reconsideration on its head. A motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence.[22] The Department's decision, however, is based on record evidence that 60.5 feet should be used.[23] Verizon made clear to the Department and the parties that the average one-way cable length is 60.5 feet. Based on this evidence, the Department's decision is not the result of the Department's mistake or inadvertence;

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[19] *See* Motion for Reconsideration and Clarification of the CLEC Coalition at 18-21.

[20] Verizon's Motion at 34.

[21] *See* Verizon's Motion at 35.

[22] *Massachusetts Electric Company*, D.P.U. 90-261-B at 7 (1991).

[23] Order at 425-426.

rather it allegedly is based on Verizon's mistake. Reconsideration on these grounds is not appropriate.

Further, Verizon's reconsideration request essentially asks the Department to consider updated information, which is improper given the record closed on February 15, 2002. The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration.[24] Notably, in *Western Massachusetts Electric Company*, the Department denied Western's reconsideration request to increase payroll expenses based on updated salary information after an Order was issued. In rejecting the request, the Department stated that,

> the line must be drawn somewhere [when accepting evidence after the record has been closed], and that somewhere occurs, at the latest, when the Order is issued.[25]

For similar reasons, the Department must deny Verizon's request to update the record because the Order has been issued and the record has been closed for over six months.

Further, as the Department noted in *Western Massachusetts Electric Company*, D.P.U. 86-280-A at 16-18 (1987), it will not reconsider a decision based on updated information. The Department explained that,

> This ruling is in keeping with the principle that the parties should be made aware of, and respond to, potential issues as early as possible in a case. Where a company is aware that it will propose the reliance on updated figures late in the case, it should…explicitly advise the parties of its intentions at the time it files its direct case or as soon as the need is identified during the conduct of the case. This provides intervenors with the opportunity to explore, to the extent possible, the reasonableness of that category of expenses and proposed adjustments, during the regular course of the proceedings.[26]

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[24] *Western Massachusetts Electric Company*, D.P.U. 85-270-C at 18-20 (1987).

[25] *Id*. at 20.

[26] *Western Massachusetts Electric Company*, D.P.U. 86-280-A at 16-18 (1987).

This precedent also compels denial of Verizon's request. Verizon never gave notice that it was going to update its testimony regarding its power cable length. Moreover, although Verizon had ample time prior to the close of the record to update its testimony, it never made an attempt to do so. The last date Verizon's collocation witness, Ms. Clark, testified was on January 23, 2002 and the record was not closed until February 15, 2002. Hearing transcripts were provided to parties within a 24 hour period. Verizon had more than enough time between January 23 and February 15 to call its witness back to fully correct and clarify the testimony and evidentiary record. It did not do so. If the Department considers Verizon's updated information, the other parties will be prejudiced because they will not have an opportunity to explore the reasonableness of the correction Verizon seeks to have the Department make. For these reasons, Verizon's motion must be denied.

In addition, denial of Verizon's request is appropriate based on an analysis that looks beyond the standards for reconsideration. In particular, if the Department deems Verizon's motion a request to reopen and correct the record, the Department must reject it. The Department's procedural rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." However, as the DTE stated in *Boston Gas Company*, D.P.U. 88-67 (Phase II) (1989),

> The familiar analogy that one cannot un-ring a bell is apt in these circumstances…. A party's presentation of extra-record evidence to the fact-finder long after the record has closed and after briefs have been filed is an unacceptable tactic, potentially prejudicial to the rights of other parties even when the evidence is ultimately excluded.[27]

[27] *Boston Gas Company*, D.P.U. 88-67 (Phase II) at 7(1989).

The record closed on February 15, 2002. Briefs were filed on March 5, 2002 and Reply Briefs were filed March 29, 2002. The Order was released on July 11, 2002. As indicated above, Verizon had more than adequate opportunity during the hearing to correct its own allegedly erroneous testimony but did not do so. Verizon's request for reconsideration and implicit request to reopen and change the record is entirely unacceptable, untimely and should be denied.[28]

D. Verizon's Request That The Department Clarify That Verizon May Charge For A Field Dispatch If One Is Requested By A CLEC In Connection With A New Order For Reasons Other Than Performing Cross Connects Is Not Supported By The Record And Inappropriately Limits The Recovery Of NRC Costs Through Recurring Charges.

In its Order, the Department held that Verizon must recover the costs associated with field dispatch in recurring rates rather than nonrecurring rates. Verizon requests that the Department clarify this decision and permit Verizon to assess a non-recurring field dispatch charge if a CLEC requests that Verizon dispatch a technician for purposes other than to perform a cross connect at the FDI in connection with a new service order,.[29] This clarification request should be denied because the basis for Verizon's request is unsupported and the request improperly dilutes the Department's decision to have field dispatch costs recovered through recurring rates.

Verizon argues that clarification is necessary because some CLECs, for example, ask Verizon to go to the field to place identification tags at the Network Interface Device ("NID") even where Verizon would not otherwise need to dispatch a technician.[30] Verizon contends that it should be allowed to assess a non-recurring charge on the CLECs for this optional service and that if there

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[28] Should the Department find that Verizon's motion meets the standards for reconsideration and reopening the hearing, the CLEC Coalition asks that the Department reconsider the arguments the CLEC Coalition made in its Brief and Reply brief in determining whether 121 feet is appropriate and TELRIC compliant.

[29] Verizon's Motion at 42.

[30] Verizon's Motion at 42.

is no such charge, the CLECs will have the incentive to request unwarranted and inefficient dispatches.[31] Verizon's assertion that field technician dispatches are only warranted to perform cross connects at the FDI and nothing more has no basis in the record.[32] In addition, Verizon claims that by incorporating field dispatch costs in the ACFs, some CLECs will be unfairly penalized because they would bear a portion of the costs associated with the unreasonable demands and inefficiencies of other CLECs.[33] In short, Verizon's request for clarification raises significant new controversial issues and its assertions are untested. Therefore, clarification is inappropriate.

Should the Department, however, find that it is appropriate to clarify its decision - which it should not - then the DTE should further clarify that Verizon may not assess a NRC for a field dispatch if Verizon would have had to dispatch a technician if it were providing service to the end user. Verizon's clarification request improperly limits the recovery of non-recurring costs through recurring charges and fails to recognize the numerous instances where the dispatch of a Verizon technician is necessary to establish service for reasons unrelated to performing cross connections at the FDI. For instance, there may be problems with locating the loops a CLEC has purchased, finding dial tone on the lines, fixing defective outside plant, or rectifying problems at a pole or a NID. Although these are just a few examples, in each of these instances, Verizon would likely have to send out a field technician to rectify such problems if it were trying to establish service for its end user. Thus, regardless of who is actually providing service to the end user (whether it be Verizon or a CLEC), the tasks are necessary to complete the order.[34] And "Verizon…will avoid

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[31] Verizon's Motion at 42.

[32] Verizon's Motion at 42-43.

[33] Verizon's Motion at 42-43.

[34] Order at 452.

incurring field installation and loop maintenance work as a direct result of having conducted such work to fulfill a CLEC order in the past."[35] Moreover, "[s]hould Verizon then directly serve the same end-user through its own retail offering, it will benefit from avoiding these costs."[36]

Therefore, CLEC requests that field technicians be dispatched in such instances are absolutely warranted and should be recovered though the ACF.

As the DTE previously stated, "Verizon's proposal to recover these costs in a nonrecurring manner unfairly penalizes the CLEC, which, by circumstances it cannot control, happens to be the carrier that requests a UNE where a field dispatch occurs."[37] Therefore, if the Department makes any clarification to its decision, it should be clarified as requested above which is far more reasonable and equitable than what Verizon proposed.

[35] Order at 451-452.

[36] Order at 451-452.

[37] Order at 452.

III. CONCLUSION

Wherefore, for the foregoing reasons, the CLEC Coalition respectfully requests that the Department deny Verizon's request for reconsideration and clarification of the Department's Order as specified herein and refrain from adopting the AT&T high volume UNE-P cutover process as a substitute for the frame due process similar to that used by SBC.

Respectfully submitted,

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