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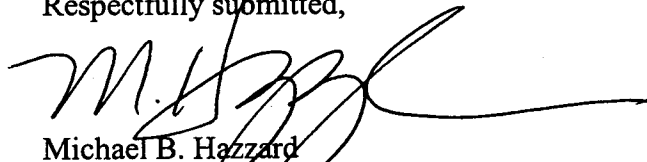
Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: Comment in Response to Verizon's Motion for Reconsideration of Z-Tel Communications, Inc.; MA DTE Case No. 01-20

Dear Secretary Cottrell:

Enclosed for filing please find the original and one (1) copy of the Response to Verizon's Motion for Reconsideration of Z-Tel Communications, Inc. in the above-captioned proceeding. Please date-stamp the enclosed duplicate copy and return it in the enclosed self-addressed stamped envelope.

Respectfully submitted,


Michael B. Hazzard
COUNSEL TO Z-TEL COMMUNICATIONS, INC.

Attachments

cc: Attached Service List

**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

**Z-TEL COMMUNICATIONS, INC.'S COMMENTS
IN RESPONSE TO VERIZON'S MOTION FOR RECONSIDERATION**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, submits its comments on Verizon New England, Inc.'s ("Verizon's") Motion for Reconsideration and Clarification ("Motion") of the Department's July 11, 2002 *Order* (the "*Order*") in this proceeding. In these comments, Z-Tel rebuts several erroneous arguments raised or modified in Verizon's Motion regarding the calculation of minutes of use ("MOUs") for switching costs. Specifically, Z-Tel addresses Verizon's assertions regarding (i) the appropriate number of days in a year to be used for MOU calculation and (ii) the BA/AHD factor.

I. CALCULATION OF MINUTES OF USE FOR SWITCHING COSTS

Verizon argues that the Department erred in adjusting the BH/AHD factor from Verizon's proposed value of 0.083 to 0.07 and that the use of total MOU, rather than just business MOU, will not allow Verizon to recover its switching costs. *See* Motion, 8-12. Both of Verizon's arguments are severely flawed, and nothing in their brief suggests the Department should alter its conclusions. Z-Tel agrees with the Department that "[t]he determination of the appropriate number of days is a separate matter from the determination of the BH/AHD factors."

Order, 326. While both inputs affect the rate for unbundled local switching, the two issues are entirely unique, as one can be altered without any effect on the other. In that light, the two issues are addressed separately.

A. The Appropriate Number of Days

From its initial filed testimony, Z-Tel has shown plainly that Verizon understated the number of days by considering only MOUs for business days, rather than all days. Proof of this proposition was provided in the form of an exact algebraic statement of the Verizon calculation. Algebra does not lie; and Verizon thus far has failed to respond in any meaningful way to this exact analysis. Moreover, we all know that the telephone system is used on all days, not just business days – this point is beyond obvious. Rather than address this issue head on, Verizon has attempted to obfuscate the issue with a number of irrelevant, specious, or incorrect arguments.

First, the most apparent flaw in Verizon's latest argument regarding the MOU calculation is that Verizon now argues that its calculation of MOUs is entirely arbitrary. *See* Motion, 8-9. Although Verizon plainly excludes weekend and holiday MOUs, Verizon's calculation is a sensible way to compute the number of business day MOUs. With a minor adjustment (changing the number of days from 251 to 308, assuming weekend/holiday traffic is one-half business day traffic), the computation of MOUs is a reasonable approximation of all MOUs to which the switching rate applies (for given assumptions about BH and AHD inputs). However, Verizon now contends that the inputs to the calculation are based on a "particularly busy month." Motion, 10. Yet, Verizon has provided no evidence that this is true. In the New York cost model, "the annual to busy hour ratio was developed using actual measured traffic data across the entire BA-NY switched network during the month of October 1997." Verizon New

York Panel Testimony, Case No. 98-C-1357, 231-2. That study produced the same 0.083 BH/AHD ratio as in Massachusetts. Further, Verizon admits that the traffic study needed for these computations requires a “tremendous effort.” *Order*, 328. Thus, there is good reason to suspect that October data was used in the Massachusetts model. In its response, Z-Tel showed using econometric analysis that October was not a particularly busy month. Verizon did not contest these findings. Indeed, there are no particularly busy months that would justify the substantial understatement of MOUs proposed by Verizon.

Additionally, Verizon asserts, “[t]o assume that the traffic (MOUs) experienced during the busy hour of the busy season is representative of the 251 business days of the year as a whole is entirely mistaken and not based on any record evidence.” Motion, 10. Yet, it is not the CLECs position that “traffic (MOUs) experienced during the busy hour of the busy season is representative of the 251 business days of the year,” but Verizon’s position! As stated in its Motion, “[i]n the Verizon MA cost study, the BHDR is divided by 251 to compute ... total traffic in a year.” Motion, 9. As shown plainly in Dr. Ford’s Reply Testimony (Equation 2), Verizon computes the number of minutes based on the assumption that “traffic (MOUs) experienced during the busy hour of the busy season is representative of the 251 business days of the year.”¹ Clearly, Verizon has rebutted itself, and now claims its own model “is entirely mistaken and not based on any record evidence.” Motion, 10. If the BH and AHD assumptions are computed using data from a “particularly busy month,” then there is no basis for using 251 days as Verizon has done. Verizon either was wrong when it developed its model (a position it has denied vociferously), or it is wrong now.

¹ Verizon’s computation of minutes simplifies to: $MOU = AHD \times 251$. See Rebuttal Testimony of George S. Ford, Equation (2).

Verizon's appeal to the FCC Synthesis Model is particularly disingenuous. As Z-Tel described in its Reply Brief, Verizon's own witnesses claim the Synthesis Model "ignores real-world considerations," has "fundamental errors in the switching and interoffice module," and is "incapable of accounting for significant attributes of a given carrier's network and the specific operating realities faced by that carrier." Z-Tel Reply Brief, 7. If Verizon wanted to have its costs determined with the FCC's Synthesis Model, then Verizon should have filed that model with its Direct Testimony. It did not.

Verizon's appeal to 2000 ARMIS data as evidence that the 308-day assumption is wrong is entirely extraneous. First, in its own testimony, Verizon states "usage investment was divided by the busy hour total switch MOU capacity (at the planning cycle midpoint) to arrive at a busy hour MOU investment for usage." Verizon Panel Testimony, 158 (emphasis added). So, unless the model's planning cycle is year 2000 (or 1999 to 2001), then 2000 DEMS are irrelevant to the forward-looking number of MOUs. Since such an assumption would be plainly backward-looking, the planning cycle of the Verizon model could not be year 2000. Further, the Department did not base its decision on MOUs calculated in 2000, but chose its inputs to be "appropriately forward-looking." Obviously, 2000 DEMS are not a reasonable proxy for forward-looking DEMS. Finally, conspicuously absent from Verizon's arguments using the DEMS data is the number of minutes estimated using their own assumptions (a BH/AHD of 0.083 and 251 days). Z-Tel estimates that number to be about 88 billion MOUs, which is about 15% less than 2000 DEMS. As Verizon itself has shown, using the 308 days assumption results in a difference between MOUs and 2000 DEMS of less than 5%. Clearly, the 308-days assumption is more reasonable (particularly since MOUs increase over time), even under Verizon's chosen MOU comparable.

Finally, the Department should consider why these calculations for MOUs are necessary in the first place. Because Verizon intends to base a portion of its switching costs on MOUs, then Verizon must be able to count MOUs without difficulty. A count of MOUs for CLECs is required for billing purposes, so MOUs must be readily measurable. Consequently, there is no reason for Verizon to employ what it admits to be a “mistaken” calculation to estimate MOUs when MOUs can be determined exactly.

Few things are more silly than arguing about the number of days in a year. Verizon, however, has much to gain from understating the number of MOUs – less competition and more profits for Verizon. Verizon’s arguments in support of its attempt to understate MOUs (and overstate switching costs) are amiss. The Department should rely on sound analysis, and retain its assumption of 308 (traffic equal) days a year.

B. The BH/AHD Computation

In addition to correcting the calculation of MOUs by including all traffic, the Department also reduced the BH/AHD factor from 0.083 to 0.07. Verizon’s sole argument against the Department’s decision is that the Department arrived at its decision “by discerning an historical trend in the value of the factor.” Motion, 11. This trend analysis, according to Verizon, is “pure speculation.” *Id.*

Verizon’s argument is irrelevant. First, there is nothing speculative about a trend analysis. Second, Verizon appears to have read carelessly the Department’s *Order*. The Department’s *Order* actually concludes, “[w]e are not persuaded ... that a simple trending analysis can be used to determine an appropriate level [of the BH/AHD] for today.” *Order*, 328-9. Verizon’s only argument against the 0.07 BH/AHD factor accuses the Department of something it did not do. Again, Verizon also argues that the use of 0.07 leads to too many

minutes relative to 2000 DEMS. As stated before, 2000 DEMS are irrelevant to the forward-looking cost model. Clearly, the Department intended to 0.07 to apply prospectively (or, "to determine the appropriate level... for today"), not historically.

II. CONCLUSION

Consistent with the foregoing, the Department should deny Verizon's Petition for Reconsideration.

Respectfully submitted,



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August 29, 2002

CERTIFICATE OF SERVICE

I, Charles "Chip" M. Hines III, hereby certify that a true and correct copy of the foregoing "**Z-Tel Comment in Response to Verizon's Motion for Reconsideration; MA DTE 01-20**" was delivered this 29th day of August 2002 to the individuals in the following list:

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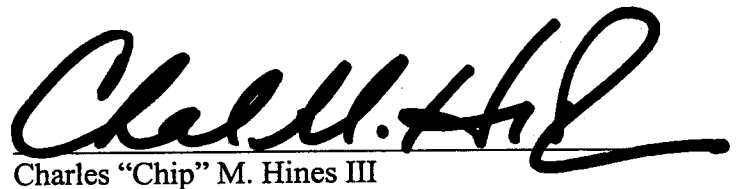
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