

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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

INITIAL BRIEF OF VERIZON MASSACHUSETTS

I. INTRODUCTION

In this case, DSCI is seeking declaratory rulings concerning what it alleges are “unreasonable and unlawful practices” of Verizon Massachusetts (“Verizon MA”) “that have delayed, and to date prevented,” DSCI from reselling Verizon MA customer-specific pricing (“CSP”)¹ contracts and similar arrangements to DSCI end-user customers. There is no merit to DSCI’s claims. Verizon MA makes its CSPs available to DSCI and other competitive local exchange carriers (“CLECs”) for resale to the extent required by applicable federal and state law. The evidence in this proceeding shows that Verizon MA responded reasonably and in good faith to DSCI’s CSP resale requests and provided DSCI with the information necessary for it to identify and resell Verizon MA’s CSPs.

To the extent DSCI wishes to resell certain CSPs between Verizon MA and the Commonwealth of Massachusetts (“Commonwealth”), Verizon MA has properly sought to limit DSCI’s resale of those agreements to the “eligible entities” entitled to order services under those CSPs. The Commonwealth is a unique retail customer because of its negotiating leverage given the comprehensive mandatory legal requirements that the

¹ For ease of reference, references to “CSPs” in this brief shall include “Contract Services Arrangements,” “Individual Case Basis Rates,” or facility-based payment options (“FPOs”) described in DTE Tariff 12.

State imposes on all carriers that provide it with telecommunications services. Indeed, unlike private commercial businesses, the Commonwealth's procurement of services is governed by both a comprehensive statutory scheme and regulations adopted by a state agency that all vendors must satisfy. The scope of the mandatory requirements imposed on vendors governs basic contract terms and specifies a variety of non-governmental entities to whom the vendor must also provide services at those terms. Verizon MA's limitation of resale of Commonwealth CSPs to the "eligible entities" entitled to receive the services under those CSPs is reasonable since Verizon MA offers such terms only to the Commonwealth, and is not discriminatory to DSCI because DSCI can resell the services in those CSPs to the same set of customers Verizon MA serves under those agreements (provided it meets whatever other legal obligations it must meet). Indeed, allowing DSCI and other CLECs to resell the Commonwealth CSPs to entities not eligible to obtain services under the terms of those CSPs would be unfair to Verizon MA and likely jeopardize Verizon MA's ability to continue to offer the Commonwealth its currently favorable terms and conditions for the services covered by those CSPs.

If DSCI elects to resell Verizon MA's CSPs with the Commonwealth in accordance with their terms, the Department should reject DSCI's efforts to combine its usage under the Corporate Rewards tariff with the rates applicable under the Commonwealth CSP referred to by the parties in this proceeding as the "COMA CSP." Such a combination is prohibited by the terms of the applicable tariff.

The Department should also reject DSCI's attempts to resell Verizon "price quotes" that are not CSPs, or to resell Verizon MA's CSPs to customers in a manner that

is contrary to the material terms and conditions of those CSPs (as it seeks to do in the case of the Cape Cod Five CSP), since such resale is not required by the 1996 Act.

Finally, there is no need for the Department to impose an administrative process and specific time frames proposed by DSCI in this case, or to impose “penalties” on Verizon MA, as DSCI suggests. Penalties such as those sought by DSCI would exceed the scope of the Department’s authority, and are completely unwarranted since Verizon MA has addressed DSCI’s numerous resale requests in good faith. Moreover, Verizon MA has now developed and implemented a more formal process for handling CLEC requests to resell Verizon MA CSPs. This process that is designed to permit a CLEC to obtain information on CSPs within reasonable periods, while allowing Verizon MA to comply with its legal and contractual obligations.

II. BACKGROUND

A. Verizon MA Responds to DSCI’s Requests to Resell the COMA CSP

On October 6, 2004, DSCI sent a request to Verizon MA for “guidance on how DSCI would be allowed to utilize” its interconnection agreement “to order and provision services via a Retail CSP or FPO.” DSCI Complaint ¶ 12; Verizon MA Answer ¶ 12. Verizon MA and DSCI had numerous discussions regarding its inquiry, and Verizon MA provided DSCI with information regarding the circumstances under which a CLEC would generally be entitled to resell a CSP under the 1996 Act. DSCI Complaint ¶¶ 13-14; Verizon MA Answer ¶¶ 13-14.

In November of 2004, DSCI formally notified Verizon of its interest in reselling Verizon MA’s CSP with the Commonwealth of Massachusetts – the “COMA CSP.” DSCI Complaint ¶ 16. At the time DSCI made its request to resell the COMA CSP,

neither DSCI nor Verizon MA had any significant experience with the resale of CSPs. Exhs. VZ-2 at 2 (lines 8-10); DSCI-18 at 4. In fact, only one other CLEC had ever requested CSP terms and conditions from Verizon for purposes of resale.² VZ Exh. 2 at 2 (lines 10-12). As a result, Verizon MA did not have a formal process for handling such requests. *Id.* at 2 (lines 12-13). Verizon MA immediately began working with DSCI to determine its needs. Verizon MA also began developing a formal process to locate CSPs and to identify their principal terms for DSCI's consideration. *Id.*

Since CSPs are negotiated by Verizon's Retail lines of business, they are not readily accessible by Verizon's Wholesale organization. Exh. VZ-2 at 2. Therefore, DSCI's initial requests were forwarded to attorneys in Verizon's Legal Department who support its Wholesale line of business. Exh. VZ- 2 at 2. Those attorneys then coordinated retrieval of the contracts from Verizon's Retail line of business. *Id.*

The process of assembling the COMA CSP and providing DSCI the requested terms and conditions for the resale of that CSP proved to be quite involved, in no small part due to the unique complexity of the particular type of contract DSCI targeted for resale – a contract with the Commonwealth. Unlike Verizon MA's other contracts with large commercial customers, its CSPs with the Commonwealth are particularly complex and often voluminous, because as a matter of Commonwealth law, its contracts consist of numerous documents from multiple sources. Exhs. VZ-2 at 2; VZ-1 at 5.³ That was the case for the COMA CSP. As a result, it took Verizon MA a significant amount of time to

² See Verizon MA's proprietary response to RR-DTE/VZ-4.

³ In addition to the Standard Contract Form and Commonwealth Terms and Conditions, contracts with the Commonwealth generally consist of the RFR, with applicable attachments and the selected bidder's response, including any negotiated items and additional conditions. Exh. VZ-1 at 5. *See also*, Tr: 07/26/05 at 60 (Verizon MA's witness, Ms. Carolyn Jussaume, notes that "typically, Commonwealth contracts are very complex because there's lots of different documents...that reference other documents that are not all contained in the original document.")

not only assemble the terms and conditions of the COMA CSP, but also to secure necessary authorization from the Commonwealth itself to make the requested information available to DSCI. Meanwhile, Verizon MA continued to have discussions with DSCI regarding the resale of the COMA CSP and to address other issues raised by DSCI.

Despite the complexity of the COMA CSP, Verizon MA provided DSCI with the requested information it requested, and the parties executed an agreement to resell the COMA CSP on January 5, 2005, in which DSCI agreed to, among other things, “comply with all relevant terms and conditions” of that CSP. Exh. VZ-2 at 5.

Shortly after DSCI began reselling the COMA CSP, it became apparent that, contrary to its resale agreement with Verizon, DSCI was not reselling the COMA CSP to “eligible entities,”⁴ in accordance with its terms, but sought to use the COMA CSP to serve all of its customers – thereby greatly expanding the class of customers served under the CSP to a virtually unlimited group of customers that DSCI has described as “multi-location commercial customer[s].” Exh. DSCI-18 at 9. While DSCI suggests otherwise in its testimony, DSCI’s attempt to resell the COMA CSP to its entire customer base was surprising to Verizon MA. As DSCI’s witness, Mr. Sean Dandley, acknowledged at the hearing in this case, DSCI has a significant number of customers that meet the “eligible entities” requirement of the COMA CSP (Tr: 07/26/05 (DTE 05-28) at 40), a fact of

⁴ DTE MA No. 12, Part A, Section 4.8.1.A restricts the class of customers to which the COMA CSP is available as follows:

The Commonwealth of Massachusetts and its agencies are eligible to purchase services based on the statewide contract. Eligible entities include all constitutional offices, the legislature, and the judiciary; cities, towns, municipalities, counties and other political subdivisions of the Commonwealth including schools, and other service districts; authorities, commission, institutions of higher education, and quasi-public agencies, and eligible Not-For-Profit entities currently contracting with the Commonwealth to provide human and social services and other eligible entities designated in writing by the State Purchasing Agency.

which Verizon MA was well aware. Indeed, Verizon MA's earlier discussions with DSCI led Verizon MA to believe that DSCI intended to resell the COMA CSP only to those entities – since all of the representative customers it identified in earlier discussions with Verizon MA were entities that appeared to meet the “eligible entity” requirement.⁵ Verizon MA's counsel promptly contacted DSCI to remind it of its obligation to resell COMA only to “eligible entities” – the same class of customers to whom Verizon MA makes that CSP available. Exh. DSCI-10.

B. *Verizon MA Responds to DSCI's
Request to Resell the Customer 38 CSP*

On January 10, 2005, DSCI advised Verizon MA that it also wanted to resell another of Verizon MA's agreements with the Commonwealth, the “Customer 38 CSP.” Tr: 07/26/05 at 24 (DSCI witness, Mr. Dandley, acknowledges that DSCI notified Verizon MA by e-mail on January 10, 2005 after it became apparent that Verizon MA did not understand its earlier resale requests to have included the Customer 38 CSP). Verizon MA immediately began working with DSCI to resolve various issues, including whether DSCI could meet the minimum term and volume commitments in that CSP. *See* Exhs. DSCI-7; DSCI-8. At the same time, Verizon MA pursued authorization from the Commonwealth to provide information on the CSP (term and volume commitments) to DSCI. Verizon MA Complaint ¶ 30. Verizon MA provided what it believed to be the information responsive to the terms and volume issues DSCI had raised on March 21, 2005 (three days prior to DSCI's initiation of this case). Exh. VZ-2 at 6. Verizon MA also provided DSCI additional information, after DSCI had initiated this case, related to

⁵ In ¶ 20 of its Answer, Verizon MA stated that “Verizon MA believed, based on the information DSCI had provided to Verizon MA, that DSCI intended to comply with the terms of the COMA and Customer 38 CSPs and thus to resell only to eligible entities.” Neither DSCI's testimony nor any exhibit in this case disputes the veracity of this statement.

the resale of the Customer 38 CSP, including a copy of the terms and conditions of that CSP (741 pages in length) and a proposed resale agreement for that CSP. Tr: 07/26/05 at 27-28.

C. *Verizon MA Responds to DSCI's Requests to Resell Verizon MA's Colonial "Price Quote"*

In late October of 2004, DSCI expressed an interest in reselling a Verizon MA CSP to one of its customers, Colonial Automotive. DSCI Complaint ¶ 32; Exh. DSCI 12; Verizon MA Answer ¶ 32. However, rather than identifying a currently-effective Verizon MA CSP to resell to Colonial Automotive, DSCI requested that it be permitted to resell a price quote that Verizon MA had provided to Colonial Automotive. Exh. VZ-2 at 8. Verizon MA denied DSCI's request to resell the Colonial Automotive price quote, since it was not a valid CSP available for resale under the resale provisions of the 1996 Act.⁶ Therefore, Verizon MA requested that DSCI identify a currently-effective CSP for resale to Colonial Automotive.

D. *Verizon MA Responds to DSCI's Request to Resell Verizon MA's Cape Cod Five CSP*

Following the denial of its request to resell the Colonial Automotive price quote, DSCI expressed an interest in reselling Verizon MA's Cape Cod Five CSP.⁷ On March 23, 2005, Verizon MA advised DSCI that based on how prices were determined for the Cape Cod Five CSP, DSCI could resell frame relay services under that CSP only to customers in UNE Density Zone 3. Exh. DSCI-16 at 2. Verizon MA also provided DSCI with the minimum quantities of access lines that DSCI would need to meet to resell that CSP to Colonial Automotive. *Id.*

⁶ The price quote expired and Verizon MA never entered into a CSP with Colonial Automotive under those terms and conditions. Exh. VZ-2 at 8.

⁷ MA DTE No. 12, Part E, Section 2.244, Page 287.

III. PROCEDURAL HISTORY

On March 24, 2005, DSCI filed a Complaint with the Department seeking declaratory relief and expedited review. Verizon MA filed its Answer in this case on April 19, 2005. A public hearing and procedural conference were convened on May 17, 2005. DSCI filed its direct testimony on May 26, 2005.⁸ Verizon MA filed its direct testimony on June 21, 2005. Subsequently, on June 22, 2005, Verizon MA provided responses to data requests issued by DSCI and the Department. The Department held a hearing in this case on July 26, 2005. *See* Tr: 07/26/05.

IV. ARGUMENT

A. THE DEPARTMENT SHOULD REJECT DSCI'S REQUEST FOR A DECLARATORY RULING THAT IT CAN RESELL THE COMA CSP TO ALL OF ITS BUSINESS CUSTOMERS AND SHOULD FIND THAT VERIZON MA'S LIMITATION ON THE RESALE OF THAT CSP TO "ELIGIBLE ENTITIES" IS REASONABLE, NON-DISCRIMINATORY, AND CONSISTENT WITH THE 1996 ACT

Verizon MA's position is that the customers to whom DSCI may resells the COMA CSPs should be limited to the Commonwealth and other "eligible entities" – the same class of customers entitled to order services under the terms of that CSP. The COMA CSP defines "eligible entities" under that agreement as follows:

The Commonwealth of Massachusetts and its agencies are eligible to purchase services based on the statewide contract. Eligible entities include all constitutional offices, the legislature, and the judiciary; cities, towns, municipalities, counties and other political subdivisions of the Commonwealth including schools, and other service districts; authorities, commission, institutions of higher education, and quasi-public agencies, and eligible Not-For-Profit entities currently contracting with the Commonwealth to provide human and social services and other eligible entities designated in writing by the State Purchasing Agency.

⁸ DSCI filed the Pre-filed Testimony of Sean Dandley.

DTE MA Tariff 12, Part A, Section 4.8.1.A. DSCI argues that Verizon MA's proposed restriction is unreasonable and that the only possible justification for a resale restriction under the resale provisions of the 1996 Act is one that is based on cost differentials between the customers Verizon MA serves under the CSP and the customers to whom DSCI seeks to resell that CSP. Exh. DSCI-18 at 16 ("unless Verizon can demonstrate additional costs associated with DSCI's end user(s) that would prohibit DSCI from obtaining the same pricing available in the CSPs which DSCI has requested to resell, the resale restrictions which Verizon has applied must be found to be unreasonable and discriminatory.") DSCI's view is unduly restrictive and should not foreclose the imposition of the narrowly-tailored restriction Verizon MA seeks to impose in this case.

The 1996 Act's resale provisions require only that Verizon make available at resale those services it provides to its non-CLEC end-user user customers at retail. 47 U.S.C. § 251(c)(4). *See also, Southwestern Bell Telephone Company v. Ed Apple, et al.*, 309 F.3d 713, 718-19 (10th Cir. 2005). Thus, where a CLEC seeks to resell a CSP, it must do so consistent with the material terms and conditions set forth in the specific agreement. *See Bell Atlantic-Delaware, Inc. v. AT&T Communications of Delaware, Inc.*, 80 F. Supp. 2d 218, 245 (D. Del. 2000). In the case of a CSP, the "service" Verizon MA offers to its end-user is the *entire* CSP, and to the extent DSCI seeks to resell a CSP, it must resell the entire CSP.

As the evidence in the record makes clear, Verizon MA offers the rates, terms, and conditions in the COMA and Customer 38 CSPs only to the "eligible entities" defined in those agreements and does not offer those same terms to any of its other business customers. Exh. VZ-1 at 7 (lines 11-14). Given the state-mandated competitive

bidding process and procurement regulations that govern only contracts entered into with the Commonwealth, as well as its unique legal authority to require carriers with whom it does business to allow not just the Commonwealth, but other designated “eligible entities” to order under those agreements, the definition of “eligible entities” is plainly material to those agreements. It is reasonable to require CLECs seeking to resell those agreements to adhere to material provisions of the CSP limiting the sale of that CSP to the class of customers covered by those agreements. Indeed, a contrary conclusion would allow DSCI to resell a different service than the one which Verizon MA currently offers to its end-users in violation of the resale requirements under the 1996 Act, and would be unfair to Verizon MA, which does not allow its own salespersons to offer those terms and conditions to customers that do not meet the eligible entity requirements.

In clarifying the scope of carriers’ resale obligations under the 1996 Act, the FCC expressly recognized that “there may be reasonable restrictions on promotions and discounts” such as those provided under CSPs. *Local Competition Order*, 11 F.C.C.R. 15499, ¶ 952. Because the FCC could not predict what conditions or restrictions would be reasonable, the FCC concluded that the “substance and specificity of rules concerning discount and promotion restrictions may be applied to resellers in marketing their services to end-users is a decision best left to state commissions, which are more familiar with the particular business practices of their incumbent LECs and local market conditions.” *Id. Accord, Bell Atlantic-Delaware, Inc. v. AT&T Communications of Delaware, Inc.*, 80 F. Supp. 2d at 246. Consistent with this view, the applicable FCC regulation addressing the issue of resale restrictions – 47 C.F.R. § 51.613 – authorizes an incumbent local exchange carrier (“ILEC”), such as Verizon MA, to impose a class

restriction where it demonstrates to a state commission that such a restriction is “reasonable and nondiscriminatory.” 47 C.F.R. § 51.613(b). Verizon MA has demonstrated in this proceeding that its proposed restriction meets these criteria. The unique power of the Commonwealth in commercial negotiations in Massachusetts, as well as the numerous mandatory requirements applicable to the procurement and contracting process through which telecommunications services are provided to the Commonwealth make it clear that it is a unique customer class and that non-governmental commercial entities are not “similarly situated” to the Commonwealth.

First, as noted above, there are significant differences between the legal and policy framework applicable to a CSP entered into with the Commonwealth versus ones entered into with an ordinary business customer (those with multiple-locations or otherwise). As discussed in the Direct Testimony of Verizon MA witness Carolyn Jussaume, vendors doing business with the Commonwealth are subject to substantial state-mandated competitive bidding and procurement requirements contained in statutes and regulations that govern every phase of their business relationship – from contract creation to its implementation. Such state-mandate terms simply are not applicable when Verizon MA enters into CSPs with its non-governmental business customers. *See, generally*, Exh. VZ 1; Tr: 07/26/05 at 54-58. For example, a telecommunications carrier that seeks to provide services to the Commonwealth must comply with the State Procurement Regulations found at 801 CMR 21.00, *et seq.* (“State Procurement Regulations”), which provide the overall process by which contractual relationships for services to be provided to the Commonwealth are formed. *Id.* at 2-4. Section 21.06 of the State Procurement Regulations requires, subject to certain exceptions (identified at

801 CMR 21.05), that all state contracts for “Commodities or Services” be competitively bid. *Id.* at 2-3. In the context of this framework, telecommunications carriers seeking to do business with the State must comply with a significant number of requirements that are non-negotiable *as a matter of law*. Exh. VZ-1 at 4; Tr: 07/26/05, at 55, 57-58 (Verizon Witness Carolyn Jussaume describes that while the terms and conditions in contracts with the Commonwealth are mandated by law and non-negotiable, the terms and conditions of contracts with commercial customers are not generally legally mandated and almost always negotiable).⁹

Second, carriers providing services to the Commonwealth are also required to make those services available to a substantial number of “eligible entities” that would not, by themselves, be eligible to purchase such services at such rates. Exh. VZ-1 at 6. The Commonwealth, thus, acts as a “conduit” for the purchase by such entities of such telecommunications services. These entities include certain non-profit organizations, contractors and “entities contracting with the Commonwealth.” Verizon MA does not currently offer the same arrangements to its non-governmental commercial customers. Tr: 07/26/05, at 68 (lines 17-24)-69 (lines 1-3).

Third, the Commonwealth is a large and valuable customer to Verizon MA and other carriers that currently provide services to the Commonwealth. The Commonwealth’s legal ability to procure services not only on behalf of itself, but also on behalf of numerous other “eligible entities” that would not be able to obtain the favorable pricing, terms and conditions that an entity the size of the Commonwealth would warrant, uniquely positions it among the customers Verizon serves in Massachusetts. The rates

⁹ For example, the “Commonwealth Terms and Conditions” which must be a part of every Commonwealth agreement (VZ-1 at 4), *mandates* that all agreements with the Commonwealth may be terminated “without cause and without penalty.”

for many of the services provided under the Customer 38 and COMA CSPs (ITT09 and ITT18) are the lowest offered to any commercial customer in the state given its terms and conditions (*i.e.*, the absence of any termination liability). The pricing terms and conditions were developed in response to the unique position held by the Commonwealth as a result of the above described factors.

Fourth, the Commonwealth's procurement requirements impose unique requirements upon Verizon MA in its provision of telecommunications services to the Commonwealth. Thus, the COMA CSP reflects low rates and favorable terms and conditions — including, for example, the absence of termination liabilities — that are narrowly tailored to serve the needs of entities eligible to purchase telecommunications services under the CSP. Exh. VZ-1 at 7. Thus, it is not reasonable or appropriate to permit a CLEC to resell the services available under this CSP to a class of customers different from the eligible entities permitted to purchase such services under such CSP.

Fifth, Verizon MA's proposal that DSCI be limited to reselling the COMA CSP (as well as the Customer 38 CSP) to eligible entities (subject to any legal obligations to which such entities are subject – such as any requirement that such entities purchase telecommunications services only after a competitive bid process) is a narrowly tailored and non-discriminatory limitation that allows DSCI to provide services to such customers in competition with Verizon MA, while appropriately denying DSCI (or any other CLEC) the ability to unfairly expand the benefits contained in that CSP – which, again, arose out of a procurement process unique to state entities – to a class of customers (namely, business customers) that are not intended to receive the benefits of the Commonwealth's competitive procurement practices and bid requirements. The

Department should thus find that Verizon MA's limitations are reasonable and nondiscriminatory.

Finally, allowing DSCI and other CLECs to resell these CSPs to their commercial customers that are not eligible entities would also be unfair to Verizon MA and would likely jeopardize Verizon MA's ability to continue to offer the Commonwealth the favorable terms and conditions it currently enjoys. Exh. VZ 1 at 7; Tr: 07/26/05 at 79-81. The application of the reasonable restriction proposed by Verizon MA would mean nothing more than that DSCI would be able to resell those agreements to the same class of customers to whom Verizon MA provides those services. Exh. DSCI-VZ-9.¹⁰

In summary, given the uniqueness of the State as a customer and the presence of comprehensive state-mandated competitive bidding and procurement requirements, Verizon MA's proposed resale restriction – which would limit the resale of the COMA and Customer 38 CSPs only to eligible entities as that term is defined in the agreements – reasonable. Moreover, DSCI has no basis for any claim that Verizon MA's proposed restriction is discriminatory since it permits DSCI to resell the CSP to precisely the same class of customers to whom Verizon MA currently makes these services available to at retail.

B. THE DEPARTMENT SHOULD DENY DSCI'S REQUEST TO COMBINE ITS USAGE FROM THE CORPORATE REWARDS TARIFF WITH THE COMA CSP.

DSCI not only wishes to resell the COMA CSP, but it also wants to apply discounts available under the Corporate Rewards tariff to usage under the COMA CSP. Verizon MA properly rejected this request.

¹⁰ Moreover, if Verizon MA were to offer the terms of those CSPs to non-eligible entities in the future, DSCI would be able to resell those CSPs under the resale provisions of the 1996 Act.

While specific usage rates are not set forth in the COMA CSP, the only volume discount usage plan available to “eligible entities” under the COMA CSP is contained in the Customer 38 CSP. The Corporate Rewards Tariff expressly provides that it is “not available with the following usage: ... Any local, toll or circuit switched data optional calling plan/customer specific pricing (CSP) plan calls[.]” DTE MA 10, Part A, Section 15.10.2.B.1. In short, the tariff precludes usage being included that otherwise is contained in a CSP, as is the case here. Therefore, the Department should find that DSCI cannot combine the monthly recurring charges under the COMA CSP with the Corporate Rewards usage rates.

C. DSCI IS NOT ENTITLED TO RESELL VERIZON’S “PRICE QUOTES.”

DSCI seems to suggest that it should have been permitted to resell the terms in a price quote that Verizon MA had provided to Colonial Automotive. Exh. VZ-2 at 8; Verizon Answer ¶ 33. Verizon MA appropriately denied DSCI’s request to resell the Colonial Automotive price quote.

Section 251(c)(5) of the Act requires that Verizon MA make available for resale “any telecommunications service that the carrier provides at retail.” At the time the company gives a customer a price quote, it is not providing any telecommunications service to the customer receiving the quote. Rather, at that point, it is only seeking the customer’s business and may in fact never actually provide the service covered by the quote if the customer opts for another carrier. That is precisely what occurred in the case of Colonial Automotive; the price quote expired and Verizon MA never entered into a CSP with Colonial Automotive under those terms and conditions. Exh. VZ-2 at 8. Until Verizon MA actually provides a retail service to the prospective customer under a CSP,

there is nothing to resell because there is no telecommunications being provided at retail. DSCI's attempt to read the resale obligation in Section 251(c)(5) to encompass only services the Company may only potentially offer is completely unwarranted and beyond the plain meaning of the statute.

In addition to the fact that there is no legal requirement that Verizon MA make price quotes available for resale, even the resale provisions of DSCI's interconnection agreement addressing the issue of CSPs clearly specify that such resale encompasses only currently-effective CSPs.¹¹ DSCI is thus asking for a right that is neither covered by a legal obligation on Verizon or its interconnection agreement with the company.

The Department should therefore find that Verizon MA's refusal to allow DSCI to resell its now-expired price quote to Colonial Automotive was appropriate and deny DSCI's Complaint to the extent it seeks a declaratory ruling from the Department that it may resell such price quotes.

D. VERIZON APPROPRIATELY RESPONDED TO DSCI'S REQUEST TO RESELL THE CAPE COD FIVE CSP.

In his testimony at pages 7-8, DSCI's Witness, Mr. Dandley, states that Verizon MA refused to allow DSCI to resell the Cape Cod Five CSP because "certain conditions relevant to specific site locations nullify Verizon's obligation to provide [that] CSP pricing to DSCI" and contends that Verizon never "fully identified the nature of those alleged conditions." Exh. DSCI-18 at 7-8. DSCI's statements in this regard are not correct. In fact, Verizon clearly specified the conditions pursuant to which DSCI would

¹¹ In 2004, DSCI adopted the terms and conditions of Verizon MA's interconnection agreement with BullsEye Telecom Inc. DSCI Complaint ¶ 6. Section 3.3 of the Resale Attachment to that interconnection agreement provides that "[t]o the extent required by Applicable Law, the Verizon Telecommunications Services to be provided to [DSCI] for resale pursuant to this Attachment will include a Verizon Telecommunications Service customer-specific contract service arrangement ("CSA") (such as a customer specific pricing arrangement or individual case based pricing arrangement) that Verizon is providing to a Verizon Customer at the time the CSA is requested by [DSCI]."

be permitted to resell the Cape Cod Five CSP. Exh. VZ-2 at 7-8. Verizon Wholesale Legal sent an e-mail to Mr. Dandley on March 23, 2005, (*See* DSCI Complaint, Exhibit P) which stated, in relevant part, “Based on [Verizon’s] understanding of the way pricing was determined under the Cape Cod Five CSP, DSCI is eligible to resell frame relay services under the Cape Code Five CSP only to customers in UNE Density Zone 3 (as noted in the tariff). The CSP specifies minimum quantities of 3 Frame Relay Subscriber Network Access Lines at 384 kbps and 22 Frame Relay Subscriber Network Access Lines at 1.5 Mbps. Exh. VZ-2 at 7. If DSCI can meet the specified minimums (aggregating Colonial Automotive and other DSCI customer UNE Density Zone 3 volumes), then DSCI would be eligible to resell this CSP to Colonial Automotive.” Exh. VZ-2 at 7. *See also*, RR-DTE/VZ-5.

Verizon MA’s statement of the terms under which DSCI may resell the Cape Code Five CSP are consistent with the requirements of the resale provisions of the 1996 Act. Permitting DSCI to resell a CSP to a business customer that lacks the specific characteristics outlined in the contract would disadvantage Verizon MA because DSCI could bring discounted services to Verizon MA’s customers that otherwise would not qualify for them. *See Bell Atlantic-Delaware v. Robert J. McMahon*, 80 F. Supp. 2d at 245. Therefore, DSCI should only be able to resell CSPs where it is “willing and able” to “meet the material terms of the entire customer specific agreement involved.” *Id.* at 246.

The material terms identified by Verizon MA were completely consistent with those that at least one reviewing Court has found reasonable.¹² In short, Verizon MA

¹² *See Bell Atlantic-Delaware v. Robert J. McMahon*, 80 F. Supp. 2d at 246 (Court finds that language in an arbitrated interconnection agreement allowing a carrier to resell a CSP only if the customer meets “all of the material terms of the entire contract (including, but not limited to, the termination liability, contract term, and any material location or other usage factors that the contract explicitly addresses or that can be

appropriately advised DSCI that it may resell the Cape Cod Five CSP to its customers in accordance with its terms. Furthermore, while DSCI erroneously suggested that Verizon MA never provided it with any justification for the restrictions it identified with respect to the resale of this CSP, it *never* contended in the record of this proceeding that any of the identified restrictions were inconsistent with the resale provisions of the 1996 Act. The Department should find that Verizon MA appropriately responded to DSCI's request to resell the Cape Cod Five CSP.

E. THE DEPARTMENT SHOULD DENY DSCI'S REQUEST THAT VERIZON BE SUBJECT TO RIGID TIME TABLES FOR RESPONDING TO CLEC REQUESTS TO RESELL VERIZON CSPTS.

In its testimony, DSCI argues that Verizon MA should be required to respond to CLEC requests to resell CSPs within 14 days. Exh. DSCI-18 at 17-18. The Department should not adopt the rigid time frame proposed by DSCI.

First, DSCI's proposed 14-day time frame fails to consider the complexity of a particular CLEC request. Indeed, DSCI's proposal is based on the erroneous belief that the work effort required to respond to CLEC requests to resell CSPs is no different than that which would be required for Verizon MA to issue a price quote to one of its retail customers. Exh. DSCI-18 at 14-16. In fact, responding to CLEC requests to resell CSPs requires coordination between Verizon MA's Wholesale and Retail Organizations that is not required when Verizon MA generates a retail price quote. Exh. VZ-2 at 2.¹³

inferred with reasonable certainty from ascertainable customer characteristics) did not violate the resale provisions of the 1996 Act).

¹³ Furthermore, even the timeframes contained in Verizon MA's internal process for issuing price quotes to its retail customers are "dependent upon the product(s)/service(s) requested, and complexity of design." Exh. DSCI-VZ-6 Supp.

Second, a Department-imposed process is completely unnecessary since Verizon MA has already voluntarily implemented a formal process for addressing such requests that will, where possible, provide CLECs with requested terms and conditions for resale within 10 business days. Tr: 07/26/05, at 93-94.¹⁴ Verizon MA's newly-implemented process will help ensure that future CLEC requests to resell Verizon CSPs will be handled efficiently, but also appropriately recognizes that its ability to provide CLECs resale information will depend in part on the complexity of the CLEC's request.

Finally, DSCI need not rely on Verizon MA to obtain information regarding the terms and conditions of Verizon MA CSP. As DSCI acknowledged in its testimony, DSCI has access to Verizon MA's tariffed CSPs via an electronic database and has used it to obtain information regarding the terms and conditions of Verizon MA's CSPs. Tr: 07/26/05 at 35. Moreover, all CSPs are tariff with the Department and are available at the Department for review. DSCI's access to these sources of information should minimize DSCI's need to rely on Verizon MA to obtain terms and conditions. Accordingly, the Department should reject DSCI's attempt to impose a rigid time frames on Verizon MA for providing this information.

F. THE DEPARTMENT SHOULD DENY DSCI'S REQUEST THAT VERIZON BE SUBJECT TO "PENALTIES" IN THIS CASE.

DSCI argues that the Department should impose "penalties" on Verizon MA in connection with the issues DSCI raised in this case. Such penalties are plainly unwarranted, since the facts of this case show that Verizon MA attempted in good faith to address DSCI's resale requests in accordance with its obligations under the 1996 Act. Moreover, even if they were warranted, the grant of such relief – which would be

¹⁴ Verizon MA's formal process was described in the Direct Testimony of Pamela McCann at 3-5.

punitive in nature – is clearly outside the scope of the Department’s statutory authority to reward such reparations. *Whitinsville Water Company v. Sidney Covich*, 24 Mass. App. Ct. 925, 926 (1987). Therefore, the Department should deny DSCI’s request for such penalties.

V. **CONCLUSION**

WHEREFORE, for all of the forgoing reasons, the Department should: (1) deny DSCI the relief it seeks in its Complaint and (2) find that the reasonable restrictions on the COMA and Customer 38 CSPs proposed by Verizon MA are reasonable, non-discriminatory, and do not violate the resale provisions of the 1996 Act.

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