

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**COMPLAINT OF
CTC COMMUNICATIONS CORP.
CONCERNING UNLAWFUL REFUSAL
BY VERIZON MASSACHUSETTS
TO PROVIDE UNBUNDLED NETWORK
ELEMENTS AT TARIFFED RATES**

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DTE NO. _____

**FORMAL COMPLAINT FOR UNLAWFUL REFUSAL TO PROVIDE
UNBUNDLED NETWORK ELEMENTS AT TARIFFED RATES**

COMPLAINANT:

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Dated: September 24, 2004

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CTC Communications Corp. (“CTC” or “Complainant”) hereby states its Formal Complaint against Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon”), pursuant to 220 CMR § 1.04. For the reasons stated below, CTC requests that the Massachusetts Department of Telecommunications and Energy (“Department” or “DTE”) order Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon”) to continue to provide certain combinations of unbundled loops, switching, shared transport, multiplexing and other network elements (“UNE-P”) to enterprise customers and customers with four or more lines on existing rates and terms reflected in its UNE tariffs, unless and until amendments to Verizon’s Massachusetts resale tariffs that seek to impose surcharges compliant with the resale requirements of Section 251(c)(4) of the federal Communications Act are filed and approved by the Department, and the Department alters Verizon’s UNE obligations under its effective UNE tariffs. Further, CTC requests that the Department order Verizon to credit CTC for any rates or surcharges not contained in approved tariffs that have been billed to CTC to date, or that are so billed during the pendency of this Complaint; and order Verizon not to disconnect, terminate, or impair any service to CTC on account of non-payment of the charges disputed in this Complaint.

I. PARTIES AND JURISDICTION

1. Complainant, CTC Communications Corp., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with principal offices located at 220 Bear Hill Road, Waltham, MA 02451-1101.

2. CTC is authorized to operate as a common carrier in the Commonwealth of Massachusetts, and purchases unbundled network elements from Verizon for use in providing CTC's common carrier services.

3. Defendant, Verizon New England, Inc. d/b/a Verizon Massachusetts, is a corporation having its principal place of business at 185 Franklin Street, Boston, MA 02110-1585.

4. Verizon is authorized to operate as a common carrier in the Commonwealth of Massachusetts, and provides intrastate telecommunications services pursuant to a variety of tariffs filed with the Department. Verizon is also an "incumbent local exchange carrier" for purposes of sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251, 252.

5. The Department has regulatory jurisdiction over the intrastate telecommunications services and charges that are the subject of this Complaint pursuant to, *inter alia*, the General Laws of Massachusetts ("Mass. G.L."), Chapter 159, Sections 10, 12, 13, 19, and 20.¹

¹ Section 12 of the statute provides that the Department has the power of "general supervision and regulation of, and jurisdiction and control" over the "transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication Mass. G.L. c. 159, § 12(d).

II. STATEMENT OF FACTS

A. Verizon Intends To Unilaterally Impose Unlawful Surcharges on Enterprise UNE-P And Four Line UNE-P Services Provided To CTC

6. CTC purchases a variety of Unbundled Network Elements from Verizon in Massachusetts, including certain combinations of network elements commonly known as the “UNE Platform,” consisting of unbundled loop, and circuit switching elements. CTC uses these network elements to provide local exchange services to its customers in Massachusetts. Many of CTC’s customers are small to medium-sized businesses that purchase multiple local exchange lines.

7. The rates, terms, and conditions for Unbundled Network Elements offered by Verizon are set forth in Tariff D.T.E. No. 17, Part M, Section 2.1 to 2.22.

8. On May 18, 2004, Verizon sent a letter to CTC stating that “after August 22, 2004, Verizon will no longer provide, under section 251(c)(3) of the Act, either: (i) unbundled Enterprise Switching, whether alone or in combination with any other network element ..., or (ii) unbundled shared transport for use with Enterprise Switching.”² The letter stated that, after August 22, 2004, Verizon would “continue to make Enterprise level services available on a resale basis ... under Section 251(c)(4) of the Act.” However, Verizon asserted that it would “begin billing any Enterprise UNE-P arrangements that remain in place after August 22, 2004 *at a rate equivalent to the Section 251(c)(4)*

² Letter from Verizon’s Jeffery A. Masoner, Vice President, Verizon Wholesale Marketing, dated May 18, 2004, *Notice of Discontinuance of Unbundled Network Elements*, at 1 (“*Enterprise UNE-P Letter*,” Exhibit 1). The FCC has defined “Enterprise Switching” as local circuit switching used “for the purpose of serving end-user customers using DS1 capacity and above loops[.]” 47 CFR § 51.319(d)(3) (vacated on other grounds in *USTA II*).

resale rate for business service.”³ Verizon’s May 18 letter did not specify the amount of these purported “equivalent” resale rates for Enterprise Switching.⁴

9. On July 2, 2004, Verizon sent a letter to many CLECs, including CTC, that listed the “surcharges” that Verizon intended to add to the UNE Port monthly recurring rate in each state in its operating territory, above and beyond the tariffed rate for these services, allegedly to bring the applicable Enterprise UNE-P rate to what Verizon views as “a rate equivalent to the Section 251(c)(4) resale rate for business service applicable in that jurisdiction.”⁵ In Massachusetts, Verizon declared that it intended to impose a DS1 Port Surcharge of \$802.14 and an ISDN Primary Rate Interface (“PRI”) Port Surcharge of \$901.52 on top of the tariffed UNE rates for these services.⁶

10. On May 18, 2004, Verizon sent another letter to CLECs, including CTC, stating that after August 22, 2004, Verizon would no longer provide unbundled access under Section 251(c)(3) of the Act to either: “(i) unbundled local switching subject to the Four Lines Carve-Out Rule,⁷ whether alone or in combination with any other network

³ Exhibit 1, Enterprise UNE-P Letter, at 2.

⁴ Verizon’s letter describes “Enterprise Switching” as “local circuit switching that if provided to a requesting telecommunications carrier would be used for the purpose of serving the requesting telecommunications carrier’s customers using DS-1 or above capacity loops. Exhibit 1, *Enterprise UNE-P Letter*, at 1.

⁵ Letter from Verizon’s Jeffrey A. Masoner, Vice President, Verizon Wholesale Marketing, dated July 2, 2004, *Notice of Discontinuance of Unbundled Network Elements*, at 1 and Attachment 1 (“*Enterprise UNE-P Rate Letter*,” Exhibit 2).

⁶ *Id.* at Attachment 1.

⁷ The FCC’s so-called four line carve-out rule provided that notwithstanding its general duty to unbundled local switching, an ILEC “shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, and the ILEC has local circuit switches located in:” (1) the top 50 Metropolitan Statistical Areas, and (2) in

(Cont’d)

element ... or (ii) unbundled shared transport for use with unbundled local circuit switching subject to the Four Lines Carve-Out Rule.”⁸ Further, Verizon stated it would continue to make local dialtone services available for resale to end users with four or more lines after that date pursuant to the resale provisions of section 251(c)(4) of the Act. Moreover, Verizon stated that after August 22, 2004, it would begin “billing any Four Lines or More UNE-P arrangements that remain in place after August 22, 2004 at a rate equivalent to the Section 251(c)(4) resale rate for business services applicable in that jurisdiction.”⁹

11. On June 23, 2004, Verizon submitted to the Department a Transmittal Letter and proposed Amendments to its UNE tariff in Massachusetts (DTE MA Tariff No. 17) to discontinue provisioning enterprise switching, switching subject to the FCC’s four line carve-out rule, and associated shared transport and related combinations of UNEs, purportedly to effectuate changes in law under the FCC’s *Triennial Review Order*.¹⁰ More specifically, Verizon stated that:

Density Zone 1, as defined on January 1, 1999, and on condition that the ILEC offers Enhanced Extended Loops to requesting carriers. 47 C.F.R. § 51.317(c)(1999); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696, Third Report and Order and Further Notice of Proposed Rulemaking (Nov. 5, 1999) (“*UNE Remand Order*”).

⁸ Letter from Verizon’s Jeffrey A. Masoner, Vice President, Verizon Wholesale Marketing, dated June 18, 2004, *Notice of Discontinuance of Unbundled Network Elements*, at 1 and Attachment 1 (“*Four Line UNE-P Letter*,” Exhibit 3).

⁹ *Id.* at 2.

¹⁰ Transmittal Letter TT 04-49, from Verizon’s John Conroy, Vice President Regulatory Massachusetts, to Mary Cottrell, Secretary Massachusetts DTE, June 23, 2004 (“*Verizon Tariff Transmittal Letter*”). *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36, 18 FCC Rcd. 16,978, Report Order and Order on Remand and Further Notice of Proposed Rulemak-

(Cont’d)

based on the proposed tariff modifications, after August 22, 2004, Verizon MA will no longer provision new orders for Primary Rate ISBN Port, DS1 DID/DOD/PBX Port, unbundled local circuit switching line ports that are subject to the FCC's Four Lines Carve-Out Rule, Local Switched Usage, including Common (Shared) IOF Transport, for use with these ports, or combinations or platforms that include these ports, except as otherwise required under an effective interconnection agreement between Verizon and a CLEC. Existing Primary Rate ISBN Port, DS1 DID/DOD/PBX Port, unbundled local circuit switching line ports that are subject to the FCC's Four Lines Carve-Out Rule, Local Switched Usage, including Common (Shared) IOF Transport, for use with these ports, and combinations and platforms that include these ports, after August 22, 2004, will be replaced with alternative arrangements, except as otherwise required under an effective interconnection agreement between Verizon and a CLEC.¹¹

12. On July 2, 2004, Verizon sent a follow-up letter to CTC and other CLECs regarding its intentions to impose a surcharge on the applicable rates for four lines or more UNE-P.¹² In this letter, Verizon identified the rate centers by 8-digit CLLI code that it believes are included in the FCC's four line carve out within Massachusetts and other states.¹³ Most importantly, Verizon provided a listing of the surcharges that it intends to add to the tariffed four lines UNE-P port monthly recurring rates. The surcharges imposed by Verizon in Massachusetts range from \$12.45 at CLLI BSTNMABE to \$7.85 for CLLI NTCKMAEC, above the tariffed rates for these services.¹⁴ In many

ing (August 21, 2003) ("*Triennial Review Order*"), *vacated and remanded in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

¹¹ Verizon Tariff Transmittal Letter, at 2.

¹² Letter from Verizon's Jeffry A. Masoner, Vice President, Verizon Wholesale Marketing, dated July 2, 2004, *Notice of Discontinuance of Unbundled Network Elements*, at 1 and Attachment 4 ("*Four Lines UNE-P Rate Letter*," Exhibit 4). Verizon's *Four Lines UNE-P Rate Letter* described Four Lines UNE-P as involving "[l]ocal circuit switching that, if provided to a requesting telecommunications carrier would be used for the purpose of serving customers with four or more DS0 loops in density zone one of the top fifty metropolitan statistical areas."

¹³ Exhibit 4, *Four Lines UNE-P Rate Letter*, at 1, and Attachment 1.

¹⁴ *Id.* at Attachment 1.

cases, the surcharge would result in a price that is nearly double the applicable UNE-P rate that would necessarily be passed onto small businesses and other customers in Massachusetts.

13. On July 22, 2004, the Department on its own motion, “after review, consideration and study of” Verizon’s proposed tariff amendments, “determined that further investigation is necessary” and ordered that “the operation of the rates and charges” in Verizon’s proposed tariff amendments “be suspended and the use thereof deferred until January 23, 2005.”¹⁵ In short, Verizon’s proposed amendments to its tariff intended to discontinue access to enterprise UNE-P and four line UNE-P at existing rates have been suspended and are inoperable until at least January 23, 2005.

14. Verizon’s Tariff MA DTE No. 17 that was in effect prior to Verizon’s submission of its proposed amendments on June 23, 2004 remains in effect and CLECs may continue to obtain enterprise UNE-P and four line UNE-P and related services pursuant to this Department-approved and effective tariff.¹⁶

¹⁵ *Investigation by the Department of Telecommunications and Energy on its own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariff: M.D.T.E No. 17, Filed With the Department on June 23, 2004 by Verizon New England, Inc. d/b/a Verizon Massachusetts, Suspension Order, DTE 04-73, at 1 (Issued July 22).*

¹⁶ Even if Verizon were not obligated to continue offering UNEs pursuant to its tariff, it would have a continuing, independent duty to do so under the *Bell Atlantic-GTE Merger Order*, GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control, CC Docket 98-184, Memorandum Opinion and Order, FCC 00-221, Appendix D ¶ 39 (2000) (“Bell Atlantic-GTE Merger Order”) (“Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNEs and UNE combinations required in [the UNE Remand and Line Sharing Orders] ... in accordance with those Orders until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area.”), and CTC’s interconnection agreement. *See Petition for an Expedited Order that Verizon Remains Required to Provision Unbundled Network Elements on Existing Rates and Terms Pending the Effective Date of Amendments to the* (Cont’d)

15. On August 18, 2004, CTC responded to Verizon's May 18th and July 2nd letters and reminded Verizon that pursuant to the Parties' interconnection agreement, Verizon is prohibited from making unilateral changes to the agreement.¹⁷ Specifically, pursuant to Section 8 of CTC's Massachusetts agreement, Verizon is prohibited from making unilateral changes to the agreement and the parties must negotiate an amendment that conforms to any change in law. Any dispute regarding such an amendment is governed by Section 16 of the agreement. In its August 19th response, Verizon insisted that it had the right "to cease providing delisted UNEs with no specified notice" and it would impose the surcharges on Enterprise UNE-P and four lines UNE-P on August 22nd as stated in its earlier May 18th and July 2nd letters.¹⁸

B. Verizon Erroneously Claims That It Need Not Tariff Its Purported Resale Equivalent Surcharge Rates Or Obtain Department Approval Of Its Surcharges

16. On September 3, 2004, CTC asserted in a letter to Verizon that it disagreed with Verizon's position that Verizon had the right to unilaterally, and without Department approval, add an untariffed and unsubstantiated surcharge to its Enterprise UNE-P and four line UNE-P monthly recurring charges. Moreover, CTC cautioned Verizon that under Massachusetts law the rates that it may charge for resale services,

Parties' Interconnection Agreements, Docket No. DTE 03-60, Petition for Expedited Relief, at 1-2 and Exhibit 1 (May 27, 2004).

¹⁷ CTC adopted the MCI Metro Interconnection Agreement on July 4, 2001 for its Massachusetts local interconnection arrangements ("Agreement"). CTC asserted its interpretation the Parties' Agreement in a letter on August 18, 2004. Letter from CTC's Pamela Hintz, Vice President Regulatory Affairs, to Verizon's Michael D. Tinyk, at 1, dated August 18, 2004 (Exhibit 5).

¹⁸ Letter from Verizon's Srinivasan Soundararajan, Assistant General Counsel, Verizon Wholesale Marketing, dated August 19, 2004, at 1-2 (Exhibit 6).

including its surcharges, are subject to approval by the Department. Further, CTC noted that “Verizon has not provided any supporting documentation or a cost study demonstrating that its proposed rates” reflect its avoided costs as required under Section 251(c)(4) of the Act, FCC rules and Massachusetts law.¹⁹

17. Finally, in a September 17th Letter, Verizon’s Mr. Soundararajan unequivocally stated that Verizon need not obtain approval from the Department of the rates embodied in its surcharges imposed on UNE-P services. Specifically Verizon stated:

Verizon has added a surcharge to *once-applicable* UNE rates in order to migrate CTC to the respective Commission approved resale rates without incurring service disruptions to the extent CTC has failed to arrange for replacement services or to request termination of the services prior to the dates specified in Verizon’s prior notices. Because both the DTE and NYPSC have already approved the applicable resale rates, *no further approvals are required*.²⁰

As demonstrated below, Verizon’s statement that it need not obtain approval of its surcharges misconstrues Massachusetts General Laws chapter 159, section 19 and Section 251(c)(4) of the Act. Further, Verizon’s position that the Department approved rates for UNE-P in its tariff are no longer applicable ignores the fact that on July 22, 2004, the Department suspended Verizon’s proposed amendments to its UNE tariff.

18. CTC continues to purchase from Verizon various network element combinations serving customers with four or more lines, and therefore that are subject to

¹⁹ Letter from CTC’s Pamela L. Hintz, Vice President of Regulatory Affairs, dated September 3, 2004, at 1 (Exhibit 7).

²⁰ Letter from Verizon’s Srinivasan Soundararajan, Assistant General Counsel, Verizon Wholesale Marketing, dated September 17, 2004, at 1-2 (Exhibit 8, hereinafter “*Verizon’s September 17th Letter*”) (emphasis added).

Verizon's threatened surcharge effective August 22, 2004. As of the date of this Complaint, CTC has not yet received a bill from Verizon that reflects the disputed surcharges.

III. ARGUMENT

A. Verizon Must Continue to Provide UNEs at Tariffed Rates

19. Chapter 159, Section 19 of the General Laws of Massachusetts provides in pertinent part as follows:

Every common carrier shall file with the department and shall plainly print and keep open to public inspection schedules showing all rates, joint rates, fares, telephone rentals, tolls, classifications and charges for any service, of every kind rendered or furnished, or to be rendered or furnished, by it within the commonwealth, and all conditions and limitations, rules and regulations and forms of contracts or agreements in any manner affecting the same[.] ... No common carrier shall, except as otherwise provided in this chapter, charge, demand, exact, receive or collect a different rate, joint rate, fare, telephone rental, toll or charge for any service rendered or furnished by it, or to be rendered or furnished, from that applicable to such service as specified in its schedule filed with the department and in effect at the time. ... Unless the department otherwise orders, no change shall be made in any rate, joint rate, fare, telephone rental, toll, classification or charge, or in any rule or regulation or form of contract or agreement in any manner affecting the same as shown upon the schedules filed in accordance with this chapter, except after thirty days from the date of filing a statement with the department setting forth the changes proposed to be made in the schedule then in force and the time when such changes shall take effect[.]

20. Rate schedules filed with the Department under section 19 create binding obligations upon both the carrier and its customer.²¹ In particular, the carrier is legally obligated to offer service indiscriminately to all customers under the rates, terms, and conditions set forth in the filed schedule.

²¹ See, e.g., *Panatronic USA v. AT&T Corporation*, 287 F.3d 840, 843 (9th Cir. 2002) ("Once a tariff is approved by the FCC, it carries the force of law and is binding on both the carrier and the subscriber"), citing *Brown v. MCI Worldcom Network Services Inc.*, 277 F3d 1166, 1170 (9th Cir 2002). The same principle applies under Massachusetts law, since its terms regarding tariffing are virtually identical to those of the federal Communications Act.

21. By its letters of August 19 and September 17, 2004, Verizon has unequivocally stated that, it will refuse to provide UNE-P including Enterprise Switching and/or Four-Line Switching elements to CTC and that all such arrangements in place subsequent to August 23rd would be subject to rates that Verizon claims are equivalent to Section 251(c)(4) resale rates. Notwithstanding the fact that the Department has suspended the tariff amendments under which Verizon proposed to discontinue Enterprise Switching and Four-Line Switching elements, Verizon has indicated that it will only provide such services at rates different than, and in excess of, the rate for such elements set forth in the filed UNE tariff. Instead, Verizon intends to impose its surcharges even though, to date, it has failed to demonstrate in any fashion how the proposed surcharges comport to the Section 251(c)(4) resale rates.

22. Verizon's refusal to provide Unbundled Network Elements at the rates set forth in its filed tariff is unlawful.

B. Verizon Cannot Impose Its Proposed UNE-P Surcharges without First Tariffing and Obtaining Department Approval of Its Surcharges

23. Section 19, as set forth above, prohibits Verizon from billing or collecting any rate or surcharge that is not contained in a filed schedule. As the Department recently underscored in a Memorandum, Section 19 requires every common carrier to file tariffs containing all intrastate rates and "does not give the Department discretion to waive that requirement."²² In its *Wholesale Tariff Memorandum*, the Department underscored that:

all carriers must file tariffs, within 90 days, for all intrastate, *i.e.*, rendered or furnished within the commonwealth, wholesale telecommunications

²² Memorandum, Michael Isenberg, Director Telecommunications Division, *Clarification of Wholesale Tariffing Requirements*, at 8 (August 12, 2003) ("*Wholesale Tariff Memorandum*").

services that they are offering as common carriage, *i.e.*, (1) offered indiscriminately to all potential users of the service and (2) allowing customers to transmit intelligence of their own design and choosing.²³

The requirement to tariff all rates for intrastate services offered on a common carrier basis in Massachusetts, does not depend “upon whether the service is wholesale or retail or upon the carrier’s dominant or nondominant status.”²⁴

24. Verizon may not lawfully impose any UNE-P surcharges unless and until it has filed such surcharges with the Department, accompanied by a Transmittal Letter and a Letter of Explanation at the time of filing that sets forth, among other items, “the total amount of the increase or reduction in charges proposed by the new schedule and the effect by comparison with customer’s charges under the existing rate schedule.”²⁵ The tariff must be submitted such that “sufficient time” is available for review before the tariff becomes effective.²⁶ Moreover, Verizon must support its proposed rates with an avoided cost study that conforms to Section 251(d)(3) of the Act, FCC rules 51.605, 51.607, 51.609, and Massachusetts law regarding resale rates.²⁷

25. Verizon has not filed a tariff containing its proposed UNE-P surcharges, nor has any such filing become effective.

26. Therefore, Verizon’s billing of UNE-P surcharges is unlawful.

²³ *Wholesale Tariff Memorandum*, at 8 (citations omitted).

²⁴ *Wholesale Tariff Memorandum*, at 9.

²⁵ Code of Massachusetts Regulations, 220 CMR 5.03 (1) (a)-(b).

²⁶ 220 CMR 502(4) (a).

²⁷ 47 U.S.C. § 251(d)(3); 47 C.F.R. §§ 51.605, 51.607, 51.609. *See, e.g.*, Mass. G.L. c. 159, §§ 14, 19 and 20; *Re: New England Telephone and Telegraph Co. d/b/a NYNEX*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 Phase 2, 1996 WL 773774 (Dec. 03, 1996).

C. Verizon's Surcharges are Unlawful Even if They are Characterized as Wholesale Rates Rather Than UNE-P Rates

27. Verizon asserts in its *September 17th Letter* and other correspondence that “to the extent CTC has failed to migrate any UNE-P arrangements in question to alternative services, Verizon will bill any such arrangements that remain in place at a rate *equivalent to the Section 251(c)(4) resale rate for business service.*”²⁸ Although Verizon’s rationale is unclear, it appears to be suggesting that the surcharges should be construed as a surrogate for wholesale rates under Section 251(c)(4), rather than as additional rates for Unbundled Network Elements under Section 251(c)(3).

28. This distinction is both erroneous and, in any event, irrelevant. CTC has not converted its UNE-P arrangements to wholesale local exchange service. Verizon cannot lawfully bill CTC for a service it has not ordered.

29. Even if CTC had ordered Section 251(c)(4) wholesale local exchange services, Verizon’s purported surcharges are unlawful because they are not contained in the filed tariff schedule governing those services.

30. Verizon has not demonstrated that its surcharges are “equivalent to the Section 251(c)(4) rates” because it has failed to submit to the Department an avoided cost study and other documentation demonstrating that its rates were developed using the avoided cost discount methodology of Section 251(d)(3) of the Act, the FCC’s implementing regulations, and requirements of Massachusetts law. Accordingly, Verizon’s proposed rates are unreasonable, do not conform to the avoided cost methodology and

²⁸ *Id.*

violate Section 251(d)(3) of the Act, FCC rules 51.605, 51.607, 51.609, Massachusetts General Laws chapter 159 sections 14, 19 and 20, and other provisions of state law.²⁹

31. Moreover, Verizon's purported equivalent resale rates for UNE-P services are unjust and unreasonable and violate state and federal law. For example, under Verizon's purported surcharge regime the equivalent monthly recurring rate for a Business dial tone line in the Metro UNE density zone (*e.g.*, rate center CLLI BSTNMABE) would nearly double (*i.e.*, increase by 96%) from the applicable UNE-P rate of \$13.03³⁰ to \$25.48.³¹ In fact, Verizon's purported "equivalent" resale rate of \$25.48 will exceed its own retail rate of \$16.25 for the equivalent service by approximately 57%.³² It is difficult to reconcile how Verizon's purported rates can be based upon an avoided cost discount rate of either 24.99% or 29.47% from the retail rate when the surcharged rates actually exceed Verizon's retail rate of \$16.25. Moreover, Verizon's purported "equivalent" resale rate will exceed the Commission approved wholesale discounted resale rates currently available to CLECs for a business line of \$12.19 per line (applying the 24.99% wholesale discount) and \$11.46 per line (applying the 29.47% wholesale discount) by

²⁹ 47 U.S.C. § 251(d)(3); 47 C.F.R. §§ 51.605, 51.607, 51.609; Mass. G.L. c. 159, §§ 14, 19 and 20; *Re: New England Telephone and Telegraph Co. d/b/a NYNEX*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 Phase 2, 1996 WL 773774 (Dec. 03, 1996).

³⁰ The UNE-P rate for metro wire centers used for this comparison consists of the tariffed monthly Metro analog basic loop charge of \$10.81, plus the monthly analog port charge of \$2.22, for a total monthly recurring charge of \$13.03. Other incidental costs associated with OSS access, 911 and number portability may also apply. Verizon Massachusetts Tariff DTE MA No. 17, Miscellaneous Network Services, Part M, Section 2, at 5, 7.

³¹ Verizon proposes to add a surcharge of \$12.45 to the UNE-P rate of \$13.03 in metro rate centers.

³² Verizon Massachusetts Tariff DTE MA No. 10, Part M, Section 1, at 14.

109% and 122% respectively.³³ Obviously, these dramatic rate increases will have the effect of drastically reducing competition in the local services market in Massachusetts and raising the prices paid by small businesses and other consumers. Verizon has provided no cost study and justification for so dramatically increasing the prices that it charges CLECs and ultimately small business customers and other consumers in Massachusetts. Nor may it lawfully effectuate such an increase without complying with the Department's tariff amendment process.

IV. CONCLUSION AND RELIEF SOUGHT

WHEREFORE, CTC requests that the Department investigate this Complaint, and enter an Order granting the following relief:

- (a) requiring Verizon to continue to provide Unbundled Network Elements to CTC at the rates, terms, and conditions set forth in Tariff DTE No. 17;
- (b) prohibiting Verizon from billing CTC any surcharge or rate element for Unbundled Network Elements that is not contained in the aforementioned tariff;
- (c) requiring Verizon to credit CTC's account for any non-tariffed rates or surcharges billed by it to date, or during the pendency of this Complaint;
- (d) prohibiting Verizon from terminating, disconnecting, or in any way impairing its service to CTC due to CTC's refusal to pay the disputed surcharges that are the subject of this Complaint; and

³³ The avoided cost discount in Massachusetts is 29.47% without Verizon's operator services and directory assistance and 24.99% with these services provided by Verizon. Verizon Massachusetts Tariff DTE MA No. 14, Resale Services, Section 10, at 5.

(e) granting such other and further relief as may be just and equitable in the circumstances.

Respectfully submitted,

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September 24, 2004