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 Part A (UNE Rates)

REPLY COMMENTS IN SUPPORT OF AT&T'S MOTION FOR PARTIAL RECONSIDERATION AND CLARIFICATION

Jeffrey F. Jones
Kenneth W. Salinger
Laurie S. Gill
Jay E. Gruber
Kevin R. Prendergast
John T. Bennett
Katherine A. Davenport
PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02199-7613
(617) 239-0100

Mary E. Burgess
AT&T Communications of New England, Inc.
111 Washington Avenue
Albany, NY 12210-0000
(518) 463-3148

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Introduction.

In its motion for partial reconsideration and clarification, AT&T Communications of New England, Inc. ("AT&T") carefully analyzed specific record evidence to demonstrate that conclusions by the Department concerning five issues were the result of mistake or inadvertence. Although Verizon opposes AT&T's motion, Verizon's reply comments actually confirm the points that AT&T made regarding the record evidence, and thereby confirm that reconsideration is appropriate with respect to each of these issues. With respect to hot cuts, Verizon does not dispute the viability of and per unit cost savings from a high volume cutover process, and its naked desire to avoid TELRIC pricing for this more efficient alternative should not be rewarded.

Reply Argument.

I. COST OF CAPITAL.

A. Verizon Fails to Identify Any Evidence Showing a Material Risk of Stranded Investment.

AT&T demonstrated in its motion for partial reconsideration that the Department was mistaken when it assumed that facilities-based competition is likely to create a material risk of substantial stranded investment.[1] Verizon's response confirms AT&T's point: Verizon cannot identify any evidence of a likely risk of stranded investment, as distinguished from a mere threat to market share that would still permit Verizon to earn a return on its facilities. Verizon's suggestions that the Department simply ignore the inconsistency between the Department's assumption on this point and the record evidence are without merit. Furthermore, AT&T showed that not even the assumption that there could in principle be material levels of stranded investment in the telecommunications industry has been proven, and that technological, market, and other differences from the electricity and gas industries suggest that stranded plant will be rare or nonexistent even in the face of future facilities-based competition.[2] Verizon has no

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[1] *See* AT&T's Motion for Partial Reconsideration and Clarification, at 1-6.
[2] *See* AT&T's Motion for Partial Reconsideration and Clarification, at 4.

response to this important point.

Verizon first asserts that AT&T "erected [a] straw man" by focusing on the lack of risk of stranded investment.[3] But AT&T did no such thing. To the contrary, the Department expressly found that competitive risks would not increase Verizon's forward-looking cost of capital except to the extent that they carried a material risk of causing stranded investment.[4] The FCC confirms that this is correct.[5] Verizon did not seek reconsideration on this point, and there is no basis for Verizon's belated attempted to belittle the Department's (and the FCC's) conclusion as irrelevant or fabricated by AT&T. Verizon tries to defend its "straw man" contention by arguing that the Department should be looking at "existing competitive risks" and "also risks associated with the regulatory regime" to which Verizon is subject.[6] But "risks associated with the regulatory regime" is just another way of saying risks of future competition (as distinguished from risks of existing competition), and the Department has correctly found that such competitive risks would not increase the cost of capital unless they lead to a material risk of stranded investment. Verizon also asserts that "[i]n addition" it faces the risk that it may invest in facilities to provide UNEs only to see CLECs "abandon those facilities."[7] However, this is nothing more than a description of a theoretical risk of stranded investment, and Verizon's citation to Dr. Vander Weide's description of this same theoretical risk in his surrebuttal testimony[8] cannot change the fact that Verizon is unable to point to any evidence that it faces a meaningful risk of stranded investment.

AT&T showed that Verizon's reliance on such a purely theoretical possibilities cannot be squared with its own business forecasts, which demonstrate that Verizon itself expects the demand for its own facilities to continue to increase notwithstanding any competitive threats that could reduce Verizon's

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3 Verizon's Reply to the Motions for Reconsideration, at 7.
4 AT&T's Motion for Partial Reconsideration and Clarification, at 2-4, quoting *D.T.E. 01-20* at 59, 70-73.
5 *See* FCC's First Local Competition Order, ¶ 687 (where "growth in overall market demand" permits ILEC to use "displaced facilities for other purposes," competition will not create a "risk of stranded investment" and thus will not increase ILEC's cost of capital).
6 Verizon's Reply to Motions for Reconsideration, at 7.
7 Verizon's Reply to Motions for Reconsideration, at 8.
8 *Id.*, citing Ex. Vz-5, at 17-18 (Vander Weide Surrebuttal).

overall market share.[9] In response, Verizon falsely accuses AT&T of not raising this issue "during the prior phase of this proceeding" and of trying "to present entirely new arguments" for the first time in AT&T's motion for partial reconsideration.[10] This assertion is incorrect. AT&T raised this very argument, pointing to the same evidence of Verizon business forecasts, in both its initial brief and its reply brief.[11] Verizon's disregard for the facts is a powerful demonstration that its reply to AT&T's motion has no substance.

Verizon then struggles, unsuccessfully, to show that in theory its own assumption of 1.5 percent annual line growth could be consistent with the possibility of there being some stranded investment. For example, Verizon posits that "if fiber-to-the-home becomes a reality, copper facilities could become defunct."[12] This assertion cannot be squared with Verizon's own outside plant models, which the Department has adopted for the purpose of setting UNE rates in this proceeding. Those models explicitly assume that 100 percent of its distribution plant will use copper wire, and that there will be no fiber-to-the-home in a forward-looking network.[13] Furthermore, as AT&T explained in its motion (at page 7), retirement of equipment due to technological change is not an example of investment being stranded by competition,[14] and in any case it is fully accounted for in the shorter depreciation lives adopted by the Department.[15] Verizon also argues that not all lines will always be fully utilized as a result of "customer churn" or uneven growth (where demand grows in some geographic areas, but not others).[16] But these are fill factor issues, not examples of stranded investment, and Verizon is fully compensated for their effect through explicit adjustments to its outside plant fill factors.[17]

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[9] *See* AT&T's Motion for Partial Reconsideration and Clarification, at 5-6, citing Ex. ATT-Vz 4-29-2S, Att.-P at 3.

[10] Verizon's Reply to Motions for Reconsideration, at 8-9.

[11] *See* AT&T's Initial Brief at 21-22, and AT&T's Reply Brief at 39-40.

[12] Verizon's Reply to Motions for Reconsideration, at 9.

[13] Tr. 17, at 3322, 2/7/02 (Livecchi).

[14] *See, e.g.*, William Baumol, *Proper Investment Incentives, Stranded Cost Recovery and Differences Among Industries*, 2000 LAW REVIEW OF MICHIGAN STATE UNIVERSITY DETROIT COLLEGE OF LAW 139, at 146 ("[E]quipment scheduled to be replaced or abandoned due to technological change cannot possibly be stranded. It would have been disposed of whether or not competitive entry had been permitted or carried out.").

[15] *See* Section I.B, at page 5 below.

[16] Verizon's Reply to Motions for Reconsideration, at 9.

[17] *See* Ex. Vz-36 at 23-24 ("customer inward-outward movement," also "referred to as churn," and "random fluctuations in demand" are among the variables covered by the fill factors); *see also D.T.E. 01-20* at 182-183 (accepting a five percent fill factor adjustment for customer churn, and the assumption of two lines per living unit in

(continued...)

Finally, Verizon argues that its "line growth could be increasing dramatically, but Verizon MA could still be experiencing stranded dedicated transport facilities."[18] But not only is this conjecture also unsupported by any evidence, it flies in the face of the Department's finding that the only risk of stranded investment posed by alternative facilities is the possibility that they could be "used to bypass the local loop."[19] This finding makes good sense. After all, the dedicated transport and common transport in Verizon's cost models are merely two different pricing schemes for the same interoffice facilities ("IOF"). Dedicated transport is fixed monthly pricing for a fixed share of transport capacity within the IOF network,[20] while common transport takes the same underlying costs at the DS1 level and translates them into a minute-of-use rate.[21] As Verizon explained, "Common Transport uses the same physical interoffice facilities as Dedicated Transport."[22] Thus, if a CLEC orders dedicated transport and then later terminates that order, that capacity within Verizon's IOF network is not stranded but instead becomes available for use to serve other Verizon retail or wholesale customers. In sum, on this issue Verizon's reply comments serve only to confirm that there is no record evidence to support the assumption that Verizon faces a material risk of stranded investment, and that to the contrary Verizon's own forecasts show that it will most likely fully utilize its physical plant even if facilities-based competitors do capture a larger share of the overall market. If Verizon is able to utilize and thus earn a fair return on its facilities, as Verizon's own business forecasts confirm, then it will not be facing the kind of business risk that would tend to increase its cost of capital.[23]

B. Verizon Confirms that It is Already Compensated for the Possibility that Some Loops Could be Bypassed through Fill Factors and Depreciation Lives.

AT&T has also shown that Verizon is already fully compensated for any theoretical possibility

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(...continued)
part to cover the cost of building outside plant where customer demand may be uneven).

[18] Verizon's Reply to Motions for Reconsideration, at 9.

[19] *D.T.E. 01-20* at 73.

[20] Ex. Vz-36 at 169-170.

[21] Ex. Vz-36 at 173; *see also* Ex. Vz-37, Part D-6, Section 2.1 with Part C-2, Sections 4.1 and 4.2 (showing that dedicated transport costs for a DS1 channel and common transport costs are based on the identical DS1 fixed and per mile costs).

[22] Ex. Vz-36 at 173.

[23] *See D.T.E. 01-20* at 70-73; *see also* FCC's First Local Competition Order, ¶ 687 (where "growth in overall market demand" permits ILEC to use "displaced facilities for other purposes," competition will not create a "risk of stranded investment" and thus will not increase ILEC's cost of capital).

of stranded investment through lower fill factors and shorter depreciation lives.

[24] Verizon makes three points in response, but none of them has any substance. First, Verizon complains that although it "proposed an adjustment of 10 percent to the distribution fill" in order to compensate it for the loss of customers resulting in stranded investment, the Department "allowed a reduction of only 3 percent" and not the full 10 percent sought by Verizon.[25] Verizon asserts that "[a]ccordingly, the fill factor does not fully account for the loss of stranded investment."[26] This is nonsensical. The Department found that "Verizon has failed to make an affirmative showing that the ten percent estimate is a loss to facilities-based competitors or services that are not using Verizon's network."[27] The fact that the Department found that the risk of loop bypass was quite limited and thus reduced Verizon's fill factor adjustment from 10 to three percent does not mean that the fill factor fails to account fully for this limited risk. Rather, it is a finding that Verizon failed to prove that this risk was substantial, and that a three percent adjustment is sufficient to compensate Verizon fully.

Second, Verizon argues that this fill factor adjustment only applies to distribution facilities, and that it therefore fails to compensate Verizon for any risk of stranded investment in other facilities.[28] But there is a simple explanation why Verizon did not propose, and was not entitled to, any competitive bypass adjustment to fill factors for facilities other than loops. As noted in the preceding subsection, there is no evidence and indeed no theoretical likelihood of stranded investment for facilities other than local loops. The Department quite properly made clear that the only potential risk of stranded investment at issue here would be as a result of the bypass of loops.[29] Switching, interoffice facilities, and for that matter even the feeder portion of the loop are shared facilities, so that capacity freed up if a retail customer is served some other way by CLEC can and will instead be used for increased demand by other wholesale or retail customers of Verizon. It does not get stranded. Verizon does not identify any evidence to the contrary, because there is none.

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[24] AT&T's Motion for Partial Reconsideration and Clarification, at 6-7.
[25] Verizon's Reply to Motions for Reconsideration, at 9-10.
[26] *Id.* at 10.
[27] *D.T.E. 01-20* at 185.
[28] Verizon's Reply to Motions for Reconsideration, at 10.
[29] *D.T.E. 01-20* at 73.

Third, with respect to depreciation lives Verizon concedes that the Department "account[ed] for technological change and competition in estimating the forward-looking lives of Verizon MA's assets."[30] In other words, Verizon agrees with the point made by AT&T.[31] Verizon tries to argue, however, that this is irrelevant because the shorter depreciation lives adopted by the Department do not compensate Verizon for "unanticipated technological change" or "unanticipated changes in demand."[32] But entirely unsupported and thus "unanticipated" change can no more support an increase in the cost of capital than it could support further reductions in depreciation lives. As the Department has observed, TELRIC does not function "to insulate Verizon from all uncertainty."[33] Indeed, this argument by Verizon is nothing more than a concession that it cannot identify any evidence showing any likelihood of stranded investment. An increase of the cost of capital substantially above the level that would be appropriate in the absence of a risk of stranded investment cannot be based on conjecture.

C. Verizon Confirms that 9.56 Percent is the Proper Starting Point for the Weighted Average Cost of Capital.

AT&T concluded this portion of its motion by showing that, based on Verizon's own evidence that its cost of capital is about 1.75 percent lower today than in 1995, the proper starting point for the Department's analysis in this case is a weighted average cost of capital ("WACC") of 9.56 percent. [34] In response Verizon says that the 9.56 percent starting point would reflect the assumption that no competitive risk would cause a higher cost of capital.[35] But that was AT&T's point, and confirms that 9.56 is the proper starting point for the Department's analysis. Only if there were evidence of a material risk of stranded investment, which there is not for the reasons discussed above and in AT&T's motion, would there be any basis for adopting a WACC substantially higher than this.

AT&T's motion shows that the Department was mistaken in relying upon Dr. Vander Weide's cost of equity capital calculation as part of the starting point, because the Department had correctly found that

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30 Verizon's Reply to Motions for Reconsideration, at 10.
31 *See* AT&T's Motion for Partial Reconsideration and Clarification, at 7.
32 Verizon's Reply to Motions for Reconsideration, at 10.
33 *D.T.E. 01-20* at 182
34 AT&T's Motion for Partial Reconsideration and Clarification, at 8-11.
35 Verizon's Reply to Motions for Reconsideration, at 10-11.

his analysis was not credible.[36] Significantly, Verizon is unable to muster any response to this important point. Instead, Verizon asserts that the FCC made a "determination … that the appropriate starting place for the forward-looking cost of capital is 11.25 percent."[37] But, once again, that is not true. The FCC did not determine that 11.25 percent was the "appropriate starting place" for a forward-looking cost of capital under TELRIC. To the contrary, the FCC expressly said that it was not making any such finding, and that the determination of specific rate must be based on evidence in later UNE rate proceedings.[38] In this case Verizon has not presented any evidence showing any material risk of stranded investment, to the contrary the record evidence of Verizon's own business plan forecasts confirms that there is no such risk, and in any case Verizon has been fully compensated for the possibility of some marginal stranded investment through lower fill factors and shorter depreciation lives.

II. OUTSIDE PLANT INPUTS.

A. Verizon Confirms There Is No Evidence that More than 10 to 15 Percent of Fiber-Fed Loops Would Be on UDLC in a Forward-Looking Network.

AT&T asked the Department to reconsider is assumption that one-third of all fiber-fed loops would be served on universal digital loop carrier ("UDLC") in a forward looking network. AT&T demonstrated the following: (i) it is undisputed that integrated digital loop carrier ("IDLC") is much more efficient than UDLC;

[39] (ii) the evidence shows that no more than 10 percent of fiber-fed loops need to be on UDLC in order to provide capacity adequate for the provisioning of unbundled loops;[40] (iii) with respect to non-switched private lines, Verizon failed to present any evidence showing that the level of demand for such services is material;[41] (iv) with respect to variations among RTs, Verizon failed to present any evidence that such local variations would have any effect on the proper assumptions of UDLC proportions for each density zone;[42] and (v) in any case, even if some increase in the assumed share of UDLC were

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36 AT&T's Motion for Partial Reconsideration and Clarification, at 9.
37 Verizon's Reply to Motions for Reconsideration, at 11.
38 *First Local Competition Order*, ¶ 702.
39 AT&T's Motion for Partial Reconsideration and Clarification, at 14.
40 *Id.* at 12, citing AT&T's Reply Brief at 85-87.
41 AT&T's Motion for Partial Reconsideration and Clarification, at 13.
42 *Id.* at 13-14.

appropriate to account for non-switched private lines or variations among RTs, Verizon failed to prove that an adjustment of more than 50 percent (from 10 percent of fiber-fed loops assumed to be UDLC to 15 percent) would be required or appropriate.[43]

Verizon does not refute any of these points. To the contrary, Verizon explicitly concedes that it offered "no evidence in the record" to show that the amount of UDLC purportedly needed for reasons other than unbundled loops would be at all material.[44] Verizon has the burden of proving that something other than the most efficient technology would be used in a forward-looking network. By conceding that it presented "no evidence" showing the need for more than 10-15 percent of fiber-fed loops to be served by UDLC, Verizon has confirmed that the Department's assumption that fully one-third of all fiber-fed loops would be served on less efficient UDLC was mistaken.

B. Verizon Confirms that the Department's Order Will Not Properly Account for Expected Growth in Demand in Calculating Per Unit Loop Costs.

AT&T's motion notes that TELRIC expressly requires that per-unit UNE costs be derived by dividing total cost "by a reasonable projection of the actual total usage of the element,"[45] and demonstrates that the Department inadvertently failed to do so vis-à-vis loop costs. Verizon concedes that its outside plant model currently calculates per unit costs to reflect only current demand, but asserts that this is proper because the level of investment calculated by the Model is purportedly only "capable of serving existing demand."[46] Verizon claims that the fill factors adopted by the Department result in a network sized "to serve current demand levels," but it fails to cite any evidence at all.[47] Verizon's inability to find any supporting evidence is unsurprising, because this assertion is incorrect. In fact, the distribution fill factor adopted by the Department was specifically designed to size the outside plant network to handle anticipated demand levels, not just current demand. For example, the Department began with the assumption of two lines per living unit,[48] even though current demand is

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43 *Id.* at 14.
44 Verizon's Reply to Motions for Reconsideration, at 24.
45 *First Local Competition Order*, ¶ 682.
46 Verizon's Reply to Motions for Reconsideration, at 26.
47 *Id.*
48 *D.T.E. 01-20* at 182.

for only 1.2 lines per living unit.[49] Verizon's witness explained that its assumption of two lines per unit, adopted by the Department, serves to provide enough capacity to satisfy "ultimate requirements" and not just current demand.[50] In addition, the Department further reduced the distribution fill factor (thereby increasing the assumed amount of total investment) to account for anticipated future demand from new living units.[51] The Department stated that it was attempting to estimate the costs of a new, forward-looking network "to serve current demand and reasonably foreseeable capacity requirements,"[52] and it did just that with respect to outside plant.

According to Verizon, "[l]ogic and consistency require that if projected demand is utilized [to calculate per unit costs] then projected investment to serve projected demand would also have to be utilized."[53] AT&T's point, confirmed by the FCC's First Local Competition Order, is that the reverse is also true. Since the fact is that the distribution fill factor adopted by the Department will produce projected investment adequate to serve expected future demand and not just current demand, it necessarily follows that this must be taken into account in calculating per unit costs, with the adjustment recommended by AT&T. Finally, Verizon's further statement that it "experienced negative growth in 2001" is irrelevant.[54] These UNE rates will take effect as of August 5, 2002, and the Department properly found that Verizon's own evidence demonstrated that it should be expected to experience overall access line demand growth of 1.5 percent per year.[55] The Department was mistaken in inadvertently failing to take this into account with respect to the calculation of per unit loop costs.

III. SWITCHING – VERIZON CONFIRMS THAT ITS ACTUAL DISCOUNT FOR NEW SWITCHES RESULTS IN AN UNINSTALLED MATERIAL PRICE OF $36 PER LINE, NOT THE $82.62 PER LINE MISTAKENLY ASSUMED BY THE DEPARTMENT.

AT&T's motion demonstrated that the Department was mistaken in assuming a discounted material price for new Nortel switches that amounts to $82.62 per line, and that the evidence even as

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49 Ex. ATT-Vz 14-20; Ex. Vz-36 at 79; Tr. 13, at 2543-2544, 2/1/02.
50 Tr. 17, at 3347.
51 *D.T.E. 01-20* at 184.
52 *D.T.E. 01-20* at 22.
53 Verizon's Reply to Motions for Reconsideration, at 26.
54 *See* Verizon's Reply to Motions for Reconsideration, at 26.
55 *D.T.E. 01-20 at 302.*

adjusted in Verizon's reply brief showed that the correct price is almost 60 percent less than this amount.

[56] Significantly, Verizon now confirms that AT&T is correct. Verizon acknowledges that it actually pays $36.00 per line for new Nortel switches, including not only the Nortel switching hardware but also all "non-Nortel supplied hardware and certain one time bid adjustments," and that this represents the switch material price prior to the application of "loadings such as power, MDF and, particularly, EF&I."[57] This is exactly the point that AT&T was making in its motion: the Department was mistaken in concluding that the "much higher" figured alluded to but not specified in Verizon's reply brief represented the Nortel bid price, because that "much higher" figure would actually be the result of applying the power, installation, and other factors to gross up the material price bid by Nortel. In other words, Verizon has now confirmed that a switch material price of $36 per line reflects "the effective overall discount received in the bid," to use the Department's language.[58]

Verizon argues that the Department should ignore its inadvertent misreading of Verizon's reply brief, on the ground that this figure is not probative because it comes from "a single switch bid by Nortel."[59] In fact, this represents the ***highest*** per line price paid by Verizon for a new Nortel switch according to Verizon's own record evidence. Furthermore, Verizon had ample opportunity to prove that it typically pays more for new switches, but it failed to do so. As the Department observed, AT&T began seeking this information in a discovery request issued in May 2001, and Verizon failed to provide responsive information until February 2002, when it did so in response to a Department record request.[60] This is the only data that Verizon provided regarding the prices it actually pays for new Nortel switches. Verizon had the burden of proof on this issue. Its failure to produce any evidence that it actually pays more for new switches, especially after being asked repeatedly for any such information by AT&T as

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56 *See* AT&T's Motion for Partial Reconsideration and Clarification, at 17-21.
57 Verizon's Reply to Motions for Reconsideration, at 16.
58 *See D.T.E. 01-20* at 306.
59 Verizon's Reply to Motions for Reconsideration, at 15.
60 *D.T.E. 01-20* at 306.

well as by the Department, warrants the inference that no such evidence exists.[61] The $36 per line switch material price now confirmed by Verizon comes from Verizon itself, and is the best available evidence regarding what Verizon in fact pays for new switches.

AT&T's motion goes on to explain why a similar adjustment must be made for the Lucent new switch price discount.[62] Once again, Verizon confirms that AT&T is correct. Verizon explains that it purchases switches from both Lucent and Nortel in order "to insure that neither vendor will engage in unreasonable or non-competitive licensing practices," and stresses that "the main reason that Verizon MA realizes the switch discounts it does is the fact that Verizon MA has been successful in positioning one switch vendor against the other."[63] In other words, given Verizon's confirmation that it pays only $36 per line for new switches from Nortel, it would be unreasonable for the Department to assume that Verizon would pay more than that for new switches from Lucent. Instead, Verizon would be expected to position Nortel against Lucent, and get the competitive, market price from both vendors. Thus, the forward-looking discounted price for new switches from Lucent would be comparable to that from Nortel.

IV. STAND-ALONE HOT CUTS AND ALTERNATIVE LOOP PROVISIONING METHODS.

A. Verizon Fails to Rebut, or in 25 of 27 Instances Even to Respond to, AT&T's Demonstration that Further FLAF Reductions Are Needed to Make the One-at-a-Time Hot Cut Charge Consistent with the Department's Findings Regarding Forward-Looking NRCs.

AT&T's motion demonstrates that further reductions in the forward-looking adjustment factors ("FLAFs") in Verizon's non-recurring cost model ("NRCM") are needed to bring them into line with the Department's findings regarding efficient provisioning practices in a forward-looking network. AT&T analyzed 27 different FLAFs; the analysis of 25 of them was based directly on the Department's findings regarding the need for the NRCM to reflect a more automated forward-looking environment, and the other two concerned facially inefficient CO Frame tasks. Verizon ignores the first 25, and its

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61 *E.g., Auto. Insurers Bureau* v. *Comm'r of Ins.*, 430 Mass. 285, 291 (1999).
62 AT&T's Motion for Partial Reconsideration and Clarification, at 21-22.
63 Verizon's Reply to Motions for Reconsideration, at 17.

response with respect to the other two confirms that the current FLAFs of 100 percent for those two tasks are much too high in the context of efficient, forward-looking practices.

The Department found that the combined frequency and duration of the tasks underlying Verizon's NRCM must be consistent with the Department's requirement that the model "assume a state-of-the-art OSS system that is more efficient than that assumed by Verizon," including but not limited to the assumption of an OSS "fallout of two percent," and thus must reflect "an expectation of a more automated forward-looking environment" than that assumed in Verizon's NRCM.[64] Verizon has not sought reconsideration of these findings.

AT&T explained in detail why the FLAFs for 25 particular tasks – CO Frame tasks 1, 2, 15, 22; RCCC Tasks 1-6, 18, 19, 20-23, 25, 26, 33, 34, 37, 38; and RCMAC tasks 1, 2, 5 – needed to be reduced further in order to be consistent with these findings.[65] Contrary to Verizon's suggestion, AT&T did not "make this point up out of whole cloth."[66] To the contrary, the specific points that AT&T has made with respect to each of these 25 tasks are based directly on the Department's express findings regarding the need to reflect more efficient OSSs and a more automated environment in setting appropriate FLAFs.

Significantly, Verizon is unable to point to any record evidence supporting the current FLAFs for any of these 25 tasks, and does not otherwise demonstrate – or even attempt to demonstrate – any flaw in the analysis presented in AT&T's motion. Thus, Verizon has failed to rebut the need for further FLAF reductions with respect to these 25 tasks. The Department's effort to ensure that the NRCM reflected a fully automated environment using more efficient OSSs was inadvertently incomplete, as AT&T demonstrated.

The only two FLAFs on which Verizon tries to offer a substantive response are CO Frame tasks 5 and 7. Verizon's NRCM assumed that these two tasks should take a total of 9.75 minutes, or 585 seconds. AT&T has shown that this is facially unreasonable, and proposed that the Department apply

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64 *D.T.E. 01-20* at 495-497.
65 *See* AT&T's Motion for Partial Reconsideration and Clarification, at 24-28.
66 Verizon's Reply Comments to Motions for Reconsideration, at 39.

a FLAF of 10 percent, which would reduce the total time to just under one minute (based on the times as proposed by Verizon).[67] Verizon responds by: (i) stating that "[t]o perform these tasks, the frame tech must walk to the correct block of loops on the frame, count the block to identify the correct loop, take out the Butt-in test set, clip on the test set, check for dial tone, dial an access code, and listen to a 10-digit number;" and (ii) asserting these tasks cannot each "be completed in 20 or 30 seconds."[68] Verizon is unable to cite any record evidence for this assertion, which is significant because it is Verizon that has the burden of proof. Furthermore, Verizon's own description confirms the facial unreasonableness of its assumption that these tasks would take almost 10 minutes in total to complete. A competent frame tech should be able to find and test for dial tone on a particular copper pair quickly, and without wasting time. The Department has cautioned that Verizon may not "impos[e] a premium on CLECs to ensure that Verizon properly and accurately migrates customers."[69] But that is exactly what Verizon is trying to do with respect to CO Frame tasks 5 and 7, by assuming inefficient frame tech practices.

B. Verizon Should Be Directed to Explore an Additional Alternative to the Current, One-at-a-Time Hot Cut Process.

1. Verizon Provides No Basis for Ignoring the Efficiencies Achievable in a High Volume Customer Cutover Process.

The Department has found that "inappropriately high charges [for hot cuts] could impose a barrier to entry," and has determined that Verizon must provide CLECs with access to a less costly alternative.

[70] Verizon concedes this fact, as it must.[71]

AT&T's motion identifies a high volume customer cutover process as an additional alternative to the current one-at-a-time hot cuts, and to a frame due time process based on the one developed in Texas. AT&T points out that Verizon has been successfully implementing high volume cutovers in

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67 AT&T's Motion for Partial Reconsideration and Clarification, at
68 Verizon's Reply to Motions for Reconsideration, at 40.
69 *D.T.E. 01-20* at 493.
70 *D.T.E. 01-20* at 494, 499.
71 Verizon's Reply to Motions for Reconsideration, at 39 (acknowledging that the Department ordered Verizon to develop a "less costly alternative" to the current one-at-a-time hot cut process and pricing).

Massachusetts, New York, and elsewhere, and that the under this process the provisioning and coordination time on a per line basis is reduced dramatically from the old one-at-a-time hot cut process.[72] Thus, the forward-looking TELRIC charge on a per line basis should also be dramatically lower under the high volume cutover alternative.

Significantly, Verizon voices no disagreement with these facts, and musters no substantive objection whatsoever to the high volume cutover alternative.[73] It is therefore undisputed that the high volume cutover process is viable, and that it holds great promise of satisfying the Department's goal of ensuring that CLECs have the option of substantially less costly alternatives to the current one-at-a-time hot cut process.

Although Verizon is already performing high volume cutovers for some CLECs, it argues that it should not have to do at TELRIC prices. The only two justifications that it proffers for its intransigence are wholly insubstantial.

First, Verizon asserts that AT&T is attempting to have the Department compel the creation of "an entirely new hot cut ordering and provisioning process," and argues that consideration of the high volume customer cutover alternative is therefore "well outside the scope of the UNE *pricing* proceeding," and asserts that.[74] This makes no sense. To the contrary, AT&T is asking that Verizon be directed to work with CLECs to formalize the high volume process that is already operating and in place in Massachusetts and in other Verizon states, and to develop and obtain approval of TELRIC-based pricing for that alternative. Those issues go to the core of this proceeding, which is precisely why the Department has already concluded that less costly alternatives to one-at-a-time hot cuts must be offered to CLECs at TELRIC prices. Developing TELRIC prices for a high volume customer cutover alternative is no more outside the scope of this proceeding that developing TELRIC prices for a frame due time alternative, which the Department has already ordered and to which Verizon has voiced no objection.

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72 AT&T's Motion for Partial Reconsideration and Clarification, at 29-31.
73 *See* Verizon's Reply to Motions for Reconsideration, at 43-44.
74 Verizon's Reply to Motions for Reconsideration, at 43-44.

Second, Verizon asserts that AT&T's request is not properly styled as one for clarification of the Department's Inputs Order. AT&T respectfully disagrees, for the reasons stated in AT&T's motion. Alternatively, however, the Department may treat AT&T's request as one for reconsideration. Verizon acknowledges that reconsideration is appropriate where "previously unknown or undisclosed facts … would have a significant impact upon the decision already rendered."[75] By Verizon's own reckoning, the undisputed facts regarding the viability and greater efficiency of the high volume cutover option were unknown to the Department at the time it crafted its Inputs Order.

The concerns expressed by the CLEC Coalition are also unfounded.[76] AT&T did not ask the Department to explore the high volume customer cutover process "instead of" a frame due time option. To the contrary, AT&T expressly identified the high volume approach as an "additional alternative." Although in AT&T's experience the Texas frame due time process includes many inefficient steps, AT&T certainly has no objection an improved version of that process being offered in Massachusetts, especially in light of Verizon's agreement that it can and will do so promptly. But a new frame due time process does not provide any basis for denying CLECs access to the efficiencies inherent in a high volume cutover option similar to the one that Verizon has already been developing and implementing. In sum, the practical benefits of enabling CLECs to obtain a high volume customer cutover option at forward-looking, TELRIC prices are compelling. Neither Verizon nor any other party identifies a single substantive reason for the Department to reject AT&T's suggestion that this alternative be formalized and properly priced. Notwithstanding Verizon's strained procedural objections, there can be no doubt but that the Department has the power and discretion to ensure that the high volume process that Verizon has been developing and in fact implementing in Massachusetts and elsewhere be put into final form and offered at TELRIC rates. Verizon should not be permitted to insist on charging CLECs based on a more cumbersome and expensive way to provision loops for customers that are switching service from Verizon to a CLEC, when a more efficient, much less expensive process is available and is

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[75] Verizon's Reply to Motions for Reconsideration, at 1, quoting *Consolidated Arbitrations* Phase 4-M Order

[76] *See* CLEC Coalition's Comments Regarding AT&T's Request for Clarification, at 3.

actually being used in Massachusetts and other Verizon states.

2. The Department Has Already Ordered that Verizon May Not Increase its Hot Cut Charge Before Less Costly Alternatives Are Available at TELRIC Prices.

The Department has held that Verizon must offer less costly alternatives to the one-at-a-time hot cut process, so that each CLEC may "decide which hot cut process is appropriate given its resources and priorities."

[77] AT&T suggested in its motion that the current hot cut process be made available for $35 until an efficient high volume cutover alternative has been priced in accord with TELRIC.[78] This was a generous compromise suggestion, given that at present a CLEC may order a single hot cut for only $15.26 if no field dispatch is involved.[79] Verizon argues against this proposed compromise, on the ground that "$35 is not a cost-based rate" and is purportedly based on "some vague desire to punish" Verizon.[80]

Though AT&T disagrees with Verizon's assertions, it appears that the Department has already resolved this point. The Department has already ordered that no new hot cut rate may take effect until the less costly alternatives selected by the Department are made available to CLECs at TELRIC prices.[81] The Department explained that the intent of its directive concerning less costly alternatives would be undermined if Verizon were permitted to increase its charge for a coordinated, one-at-a-time hot cut (in accord with the Department's final ruling on the pending motions for reconsideration) prior to the time that CLECs may actually avail themselves of less costly alternatives.[82] Thus, the Department has already determined that the existing $15.26 hot cut charge must remain in place until the less costly alternatives have been finalized. AT&T merely asks that the Department clarify that this requirement applies to not only the frame due time alternative, but also to the high volume customer cutover

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77 *D.T.E. 01-20* at 500.
78 AT&T's Motion for Partial Reconsideration and Clarification, at 31-32.
79 *See* Verizon MA's Tariff D.T.E. No. 17, Part M, § 1.3.1.
80 Verizon's Reply to Motions for Reconsideration, at 42-43.
81 *See Extension Order*, Docket D.T.E. 01-20, dated July 30, 2002, at 19, 21; Letter Order dated August 23, 2002, at 2 fn. 1.
82 *See Extension Order*, Docket D.T.E. 01-20, dated July 30, 2002, at 19, 21.

alternative.

Conclusion.

AT&T respectfully requests that the Department allow AT&T's motion for reconsideration and clarification, for the reasons stated above and in AT&T's original brief.

Respectfully submitted,

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Jeffrey F. Jones
Kenneth W. Salinger
Laurie S. Gill
Jay E. Gruber
Kevin R. Prendergast
John T. Bennett
Katherine A. Davenport
PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02199-7613
(617) 239-0100

Mary E. Burgess
AT&T Communications of New England, Inc.
111 Washington Avenue, Suite 706
Albany, NY 12210-2213
(518) 463-3148

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