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

VERIZON MASSACHUSETTS' REPLY TO COMMENTS FILED ON ITS MOTION FOR RECONSIDERATION AND CLARIFICATION

Dated: September 6, 2002

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I. INTRODUCTION

In accordance with the schedule established by the Hearing Officer, Verizon MA submits this Reply to the comments filed by intervenors in this proceeding on Verizon MA's Motion for Reconsideration and Clarification of the Department's July 11, 2002 *Order*. As described in Verizon MA's Motion, a number of issues decided by the Department in the *Order* resulted from mistake or inadvertence, and, therefore, meet the Department's standard for reconsideration. These mistakes in the *Order*, if left uncorrected, would lead to UNE rates in Massachusetts that would be well below lawful levels, would stifle facilities-based competition and would prevent Verizon MA from being adequately compensated for its services. In this Reply, Verizon MA will address many of the arguments in intervenors' comments, but silence on any issue should not be construed as agreement with any statement made by another party.

II. ARGUMENT

A. The Department Neglected To Consider the Effect of Its Ruling on Switch Material Prices in Reducing Verizon MA's Switch EF&I Factor to 29 percent.

Neither AT&T nor WorldCom, the two parties opposing Verizon MA's argument with respect to the Department's decision to impose an EF&I factor of 29 percent, has addressed the substance of the Department's clear methodological mistake with respect to this issue. AT&T Response at 7-10; WorldCom Response at 2-5.

The mistake by the Department identified by Verizon MA in its Motion for Reconsideration is simple and unrebutted. "EF&I" is a cost component that consists of the expenditures that must be made for work by the ILEC and work by the vendor in engineering, furnishing and installing switches, together with the sales tax that is assessed on the purchase. Of those components, only the sales tax varies with the discount given on the price of the switch.[1/] Expenditures for (1) company materials and labor and (2) vendor materials and labor do not vary with the discount given on the price of the switch. Thus, if the ILEC's EF&I costs amount to $25.00 ($10.00 for ILEC engineering, furnishing and installation services, $10.00 for vendor services and $5.00 for sales tax) and the ILEC pays full list price of $100.00 for the switch, the EF&I factor is 25 percent. If that same switch were discounted by 90 percent, the ILEC would still pay $10.00 for ILEC services, and $10.00 for vendor services, but only $0.50 for sales tax on the purchase price of $10.00--EF&I costs would thus total $20.50. The EF&I factor, given the 90 percent discount, would therefore be 205 percent.

[1/] There is no evidence whatsoever that the costs Verizon MA will incur for engineering, furnishing and installing will go *down* in the forward-looking network as ordered by the Department.

Thus, in calculating forward-looking costs, the extent of the switch discount assumed has an enormous effect on the EF&I factor. The Department did not take this effect into account in arriving at its EF&I factor. AT&T and WorldCom do not respond in their briefs to the fact of this anomaly.

The Department computes the vendor component of EF&I at 12 percent and the ILEC component of EF&I at 12 percent. The vendor component of 12 percent purportedly derives from the SCIS Model. That 12 percent, however, assumes a much higher reflection of Verizon MA's material switch investment cost than the Department has allowed in this proceeding. To the extent that material investment cost decreases per the Department's *Order*, the 12 percent vendor component must increase. Similarly, the Department purports to derive the 12 percent ILEC component of the EF&I factor from a study made ten years ago, before there were UNEs and before there was a "forward looking" TELRIC network. The ILEC component in 1992 was based on actual costs, not a hypothetical forward-looking investment incorporating a presumed future discount on presumed new switches. If that ILEC component had been based on the Department's forward-looking material switch investment costs rather than the actual costs from a decade ago, it would have been much higher than 12 percent.

The Department changed its assumptions with respect to material switch investment costs. It was thus logically compelled to change the EF&I percentage factor commensurately. Its failure to do so was mistaken and should be reconsidered.

B. The Department Determined an Inaccurate Busy Hour to Annual Conversion Factor

AT&T, WorldCom and Z-Tel Communications, Inc. ("Z-Tel") responded to Verizon MA's Motion for Reconsideration concerning the busy hour to annual

conversion factor. All parties appear to be in agreement that there are two issues to be considered in determining the proper conversion factor: (1) the appropriate number of days to be used and (2) the appropriate BH/AHD factor to be used. AT&T Response at 10-11; WorldCom Response at 5-8; Z-Tel Response at 2-5. The calculation works from a sample busy hour. The first determination seeks to convert *the day the sample was taken* to *an average day of the year*, while the second determination seeks to convert *the hour of the day of the sample* to *an average hour of the day*.

1. The Appropriate Number of Days

All three responding parties base their arguments concerning the appropriate number of days on the erroneous premise that Verizon MA chose the number 251 because it represents the number of business days in the year and the busy hour sample was taken on a typical business day. If that were true, according to these parties, the procedure allegedly would totally neglect the traffic volumes occurring on weekends and holidays. *See* AT&T Response at 10-11; WorldCom Response at 6-7; Z-Tel Response at 4. If Verizon MA divided by too small a number, it would inflate the cost of a minute of use. *Order* at 304.

Such an argument makes sense only if Verizon MA's methodology distinguishes between two levels of traffic: business day traffic and non-business day traffic. But Verizon MA did *not* use such a methodology. Its witness, Nancy Matt, made this clear — repeatedly — at the hearings. Ms. Matt twice explained Verizon MA's procedure in selecting its sample from a particularly busy day (outlined in Verizon MA's Motion for Reconsideration at 8-11) in response to questions by Ms. Baldwin. Tr. 12 at 2313-2315 and Tr. 12 at 2329-2332. Neither AT&T, WorldCom nor Z-Tel, who were present at that proceeding, sought to challenge Ms. Matt with respect to this procedure.

Now, having avoided the issue at the hearings, they pretend that Ms. Matt never said what she said and that Verizon MA's use of 251 days is based upon an error in arithmetic.

All three parties share the same fallacy. Z-Tel, in particular, referring to the testimony of its witness George Ford, states that "algebra does not lie." Z-Tel Response at 2. Z-Tel is correct that properly applied mathematics yields results that are indisputable. But algebra is connected to the real world in that the literal numbers it employs stand for concepts. When those concepts are wrong, the results are wrong. And Z-Tel's concepts are dead wrong. Ignoring Ms. Matt's testimony and ignoring the methodology of the Synthesis and HAI Models, which is conceptually similar[2/] to what Verizon MA is doing here, Z-Tel pretends that Verizon MA has "forgotten" to account for 114 days. But while Z-Tel may simply have ignored the testimony at the hearings, AT&T and WorldCom are more disingenuous. These parties jointly sponsored the HAI Model, which utilizes the number of days in the same manner as Verizon MA does here. The HAI Model uses 270 days, not because its creators believe that there are 270 days in the year, but because they believe that 270 days properly converts the business day selected for the MOU sample — which is *always* a *particularly busy* day — to an average day of the year.

The Department's so-called "compromise" solution of 308 days — half way between 251 days and 365 days — makes sense only if it is assumed that Ms. Matt, the

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2/ The methodology of the Synthesis Model is the same as Verizon MA's methodology here, because the MOUs are gathered for the same purpose in both cases. The numbers are slightly different. The Synthesis Model — and the HAI Model on which AT&T and WorldCom relied in this proceeding — use 270 days. Verizon MA uses 251 days. On the other hand, the Synthesis Model uses 0.10 for the BH/AHD ratio, while Verizon MA uses 0.083, which is less favorable to itself.

AT&T and WorldCom witnesses who have sponsored the Synthesis Model for years (including Ms. Pitts) and the AT&T and WorldCom witnesses who have sponsored the HAI model for years have all forgotten that there is traffic every day of the year.[3/] Unless there has been such a universal blunder, made not only by Verizon MA, but also by AT&T, WorldCom and the FCC persistently for half a decade, the purported basis for the use of 308 days in the formula is not correct and based on the Department's mistaken interpretation of the record evidence.

2. The BH/AHD Computation

The parties in opposition argue that the Department's adoption of a 0.07 BH/AHD ratio is supported by record evidence. AT&T Response at 11-13; WorldCom Response at 7-8; Z-Tel Response at 5. It is not. The Department based its reduction of the BH/AHD ratio from Verizon MA's proposed 0.083 to 0.07 on the undocumented expectation that "increasing use of the Internet" will "spread traffic more evenly throughout the day." *Order* at 305. There was no study or data presented by any party showing that the Internet has had such an effect, or that such a purported effect could be expected to continue.[4/] There was no basis articulated by the Department for the reduction to 0.07 other than a trending from the 0.10 factor used in the 1995 cost study in the *Consolidated Arbitrations* (RR-DTE-61) – the a trending that the Department itself admitted does not make sense if carried out to the present. *Order* at 306, n.127. The only other source for a ratio of 0.07 came from the testimony of Ms. Pitts, who said "I would say probably a 1%

[3/] Ms. Matt would have "forgotten" 114 days and everyone else would have "forgotten" 95 days if Z-Tel's position were to be credited.

[4/] Even if there had been such an effect, the increasing use of cable modems for accessing the Internet would likely have altered or reversed it.

decline -- excuse me, a one percentage point decline, from the 8.3 percent down to maybe 7, 7.3,[5/] something like that. But that's just a guesstimate on my part."[6/] Tr. 11 at 2059. That is insufficient evidence on which to base usage costs, in contradiction of the clear evidence presented by Verizon MA from 1997, which is *lower* than the 0.10 ratio in the Synthesis Model sponsored by AT&T and WorldCom as recently as 2001.

3. The DEM Comparison

AT&T and Z-Tel took issue with Verizon MA's comparison of the MOU calculation from the Department's *Order* to DEMs. AT&T Response at 12-13; Z-Tel Response at 4-5. But since the Department adopted a position that no party to the case proposed, and the recommendation was seen for the first time in the *Order*, Verizon MA concluded that the use of publicly available data to show the unreasonableness of the Department's proposal was appropriate.

Verizon MA's comparison of the numerical implications of the Department's decision to the most recent DEM figures from ARMIS was presented as a reality check, to demonstrate how estranged the Department's determination is from actual experience. No precise comparison was intended; the enormity of the difference tells the tale. The use of DEMs from 2000 as a proxy, however, is reasonable. As Exh. ATT-VZ-4-49 shows, there is negative growth projected in most network sections over the next five years, and

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5/ Ms. Pitts' "guesstimate" at the hearing contradicted the much *higher* rate of 0.10 she had sponsored simultaneously in Maryland. Exh. VZ-49 at 14.

6/ Indeed, in calculating the annual conversion factor, the Department considered two kinds of evidence it refused to consider in making other switching determinations. It considered the evidence of the *Consolidated Arbitrations*, which it refused to consider for Verizon MA in determining the proper RTU costs. And it apparently considered the "guesstimate," or net opinion, of a single expert witness (Ms. Pitts), which it refused to consider for Verizon MA in determining costs for feature port additives.

negative overall growth for 2001 and 2002. The increasing use of cable and wireless may well perpetuate this trend.

For all the above reasons, the Department's decision with respect to the conversion factor was based on a mistake and, at a minimum, the Department should order the use of 251 days in the formula, as proposed by Verizon MA (or, at a minimum, 270 days, as proposed by AT&T and WorldCom in the HAI Model in this proceeding, and as used in the Synthesis Model contemporaneously endorsed by AT&T and WorldCom's switch witness Ms. Pitts). The Department should also utilize Verizon MA's 0.083 BH/AHD ratio in the formula as the only ratio presented with clear support in the record.[7]

C. The Department Failed To Take Into Consideration the Right-to-Use Fees To Be Incurred by Verizon MA in View of Its Ruling That 90 Percent of the Switch Investment in the Forward-Looking Network Must Be Based on "New" Switch Discounts

In its Motion for Reconsideration, Verizon MA made it clear that it had estimated RTU costs in this proceeding based on an extrapolation from its existing network, which consists overwhelmingly of previously deployed switches, *i.e.*, switches that are not new. The Department, after making two changes not pertinent to the argument here,[8] did the same thing. However, the Department's approach is mistaken because Verizon MA's methodology was based on previously deployed switches, not new switches. The Department ordered 90 percent new switches. *Order* at 281. Therefore, the methodology employed by Verizon MA does not adequately capture the RTU costs that must be

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[7] The 0.083 ratio is also *less* favorable to Verizon MA than the 0.10 ratio that has been endorsed by AT&T and WorldCom and witness Pitts in the Synthesis Model.

[8] The Department rejected the "spike" in RTU costs for the year 1999, and allocated all RTU costs to the port rather than to usage. *Order* at 333-335.

incurred in the 90 percent new switch forward-looking network ordered by the Department.

Neither AT&T nor WorldCom, the two parties that replied to Verizon MA's argument concerning RTU fees, directly challenges this argument. The Department should have determined RTU costs based on the network that it ordered, not the network that Verizon MA proposed. The arguments of both AT&T and WorldCom instead boil down to this: Verizon MA had its chance to submit a new RTU study based upon what the Department *might* order with respect to material switch investments and did not do so. AT&T Response at 16 (citing *Order* at 308); WorldCom Response at 9. Having "missed its chance" by failing to divine what the Department might decide, Verizon MA and its investors should, according to AT&T and WorldCom, incur a penalty of more than $200 million, in the form of having to *pay* these substantial RTU fees *on behalf of* the CLECs. WorldCom, in particular, takes satisfaction from what it sees as the justice of litigative strategy: Verizon MA did not hedge its bets, it says in effect, and so it must take the consequences. WorldCom Response at 9.

The Department should reject their claim. Rates should not be determined by gamesmanship or perverse consequences. The Department had ample record evidence to order the correct RTU costs. Verizon MA's Cost Panel explicitly incorporated by reference the finding from the 1995 document presented in the *Consolidated Arbitrations* that initial or "fixed" RTU fees amount to $1,880,683.00 per switch. Exh. VZ-38A at 73. Although Verizon MA did not commission yet another new study or task force in 2001 to update this evidence, none of the other parties contradicted it and there is no contrary evidence on the record. For the Department to ignore this evidence, when it took pains to

collect and analyze 1992 evidence in order to obtain the ILEC component of its EF&I factor, is mistaken. The uncontradicted evidence, which Verizon MA explicitly referred to in this proceeding, shows that the level of RTU costs for new switches should have been incorporated into the Department's decision.

D. Contrary to the Assertions of AT&T and WorldCom, the Record Supports a Finding That Originating and Terminating Charges Should Apply to Intra-Switched Calls; Alternatively, the Department Should Remove From the Switching per Minute of Use Calculation the Minutes Associated with Terminating Those Calls.

The Verizon MA SCIS Model adopted by the Department to develop end office switching UNEs calculates both originating and terminating costs for intra-switch calls. In its Motion for Reconsideration, Verizon MA requested that the Department reconsider its decision precluding Verizon MA from recovering its intra-switch call costs through separate originating and terminating charges. Verizon MA Motion at 14-17. Alternatively, Verizon MA explained that if the Department does not reconsider its decision, it will be necessary for the Department to order Verizon MA to remove intra-switch terminating minutes of use ("MOU") from the per MOU cost calculation in the Verizon MA study.

AT&T and WorldCom oppose Verizon MA's request for reconsideration on the basis that Verizon MA has reiterated arguments previously rejected by the Department. AT&T Response at 13-14, WorldCom Response at 11. However, Verizon MA's request for reconsideration is based, in part, on the fact that the Department relied exclusively upon information in the *Consolidated Proceedings* (Tariff No. 17 Order at 219) rather than considering the switching cost study presented by Verizon MA in this proceeding. Verizon MA Motion at 15-16. The Verizon MA SCIS Model documentation shows that separate originating CCS costs and terminating CCS costs are incurred for intra-switch

calls because such calls require the performance of separate originating and terminating functions. *See* Verizon MA Motion at 16-17.

The switching cost study properly assumes that every call involves "originating" and "terminating" switching activities, regardless of whether the call is: (1) from one end-user to another served by the same switch, or (2) between end-users served by two different switches. *See* Verizon MA Reply Brief at 89. On the originating end of a call, the switch provides dial tone to the caller, collects the dialed digits from the caller, and routes the call to the called party. On the terminating end, the switch provides ringing to the customer, detects the off-hook from the customer, and connects the terminating customer to the originating customer. Each of these activities requires switch processing, and therefore each is costed out separately and divided into separate originating and terminating elements. Verizon MA Reply Brief at 89.

By proscribing Verizon MA from charging for originating and terminating functions, the Department is depriving Verizon MA of its right to recover approximately one-half of the costs associated with intra-switch calls.

In their Responses, neither WorldCom nor AT&T challenges Verizon MA's assertion that separate and distinct costs are incurred for originating and terminating intra-switch calls. Instead, they limit their arguments primarily to claims that Verizon MA failed to sustain its burden of proof that originating and terminating costs are incurred for intra-switch calls. WorldCom also infers improperly that there are no terminating costs associated with an intra-switch call because inter-switch calls, unlike intra-switch calls, require the "seizing [of] an appropriate trunk" to route a call. WorldCom Response at 11. That is a red herring. The Local Switching UNE does not

include any interoffice trunk port costs that are recovered in a separate rate element (*i.e.*, end office trunk port minute of use). Based on the Department's *Order*, the only cost remaining in the Local Switching UNE category is the Line CCS (originating and terminating).

The Verizon MA cost study adopted by the Department and evidence in the record establishes that separate originating and terminating functions must be performed for completing a call regardless of whether the call is an inter- or intra-switch call. The Department decision on this issue is based on mistake or inadvertence. The Department should therefore reconsider its decision and allow Verizon MA to impose separate originating and terminating charges for intra switch calls.

AT&T and WorldCom also argue that, in the event the Department does not reconsider its decision, it should also reject Verizon MA's request that the Department eliminate intra-switch terminating MOUs from the switching cost calculations. As set forth in Verizon MA's Motion, because the Department's *Order* enables Verizon MA to impose charges only for the originating portion of an intra-switch call, while the total MOUs in the Verizon MA switch UNE cost calculation include MOUs for originating *and* terminating inter- and intra-switch calls, it is necessary to eliminate the intra-office terminating MOUs from the calculations in the cost study.

Rather than attempting to challenge the rationale supporting Verizon MA's assertion that the Department should eliminate terminating MOUs from the per MOU switch cost calculation, AT&T and WorldCom argue that the Department should not correct the calculation because Verizon MA did not raise the request during the hearing. AT&T Response at 15; WorldCom Response at 11-12. That argument ignores the fact

that the Verizon MA's request that the Department removes terminating minutes from the single charge calculation is necessitated by the Department's decision to exclude charges for terminating minutes. Verizon MA's alternative recommendation is a necessary response to the Department's decision. If the Department determines that there are no separate costs for terminating intra-switch calls (and thus correspondingly no time associated with such functions), in order to be consistent it is necessary to eliminate intra-switch terminating calls from the total minutes used to calculate the total per minute charges necessary to recover switching investment. If an excessive amount of minutes is used to calculate total per minute costs, Verizon MA will not recover its switching investment.

The following example illustrates the fact that if the amount of minutes is overstated, the result will be an under recovery.

Assume a cost study determines that $10 of switching investment is required. Assume also that 100 minutes of the traffic to be carried over that investment is as follows:

- 45 minutes of end office terminating minutes inter-switch calls
- 45 minutes of end office originating minutes for inter-switch calls
- 5 minutes of end office originating minutes for intra-switch calls
- 5 minutes of end office terminating minutes intra-switch calls

If the $10 switching investment is recovered over 100 minutes, then the per unit cost is $0.10. However, if it is determined that the company can only charge for 95 minutes of use (*i.e.*, no charge is allowed for terminating inter-switch calls) then the investment that needs to be recovered must be spread over 95 minutes. Thus, the per

minute charge is $0.105. If the correct minute of use is not utilized, the investment will not be recovered.

Accordingly, if the Department does not reconsider its decision to limit intra-switch call charges to originating charges only, the Department should direct Verizon MA to re-run its cost studies to exclude terminating intra-switch minutes that are currently included in the cost study calculations.

E. Verizon MA Should Be Compensated For the Feature Port Additive Costs It Incurs

As a matter of law, UNE rates must be based upon the costs incurred by the ILEC to provide them. *Local Competition Order* ¶ 622.[9/] No party to this proceeding disputes that Verizon MA incurs costs for feature port additives. No party to this proceeding has taken issue with the extremely low monthly costs ($0.03 to $1.48)[10/] that Verizon MA had proposed.[11/] Neither AT&T nor WorldCom has raised an objection to the reasonableness of the levels of the specific feature port additive costs addressed in Verizon MA's Motion for Reconsideration at 18-21, or, indeed, of the levels of the other feature port additive costs that were proposed.

The sole basis for the Department's determination to give away feature port additives to CLECs at no cost was that Verizon MA's proposed feature costs had components that were based upon *estimates* by its product managers. Despite the fact

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9/ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 622 ("*Local Competition Order*").

10/ *Order* at 315.

11/ AT&T/WorldCom witness Pitts did not argue that any one of the feature port additive costs proposed by Verizon MA was unreasonably high. Ms. Pitts argued that there should be a general reduction in these costs commensurate with her proposed reduction of switch material investment costs. Exh. ATT-20 at 28-31.

that these estimates were *substantively* uncontested—and no one has suggested that any of the estimate levels is unreasonable—the Department chose to make a finding that feature port additives should cost the CLECs nothing. The Department appears to be penalizing Verizon MA for failing to perform a study that (as Verizon MA contended and no party disputed) would cost more to perform than Verizon MA would recover based upon its probable results.

In view of the evidentiary bases contained in the *Order* as a whole, the Department's categorical rejection of Verizon MA's product managers' expert opinions is in error. Nonrecurring cost task times and forward-looking adjustment factors are of necessity founded on estimates (or net opinions) made by workers and managers based upon their *experience*. Indeed, AT&T submitted studies here or made recommendations that are based upon net opinions. For example, the Department has relied on such opinion evidence when making decisions regarding work times for House and Riser cable installations. *Order* at 204-207. In this proceeding, much of the testimony regarding the appropriate assumptions for outside plant inputs is based exclusively on expert opinion. *See, e.g., Order* at 181-185 (addressing distribution fill factors); *id.* at 162-163 (addressing DLC concentration ratios).

Where competing positions have been espoused by various parties in this proceeding, the Department has sometimes applied a numerical weighting in order to arrive at its decision. *Order* at 72-73, 82, 111-113. The Department, at a bare minimum, should have applied that method here, weighing an uncontroverted usage estimate provided by a manager with decades of experience against an assumption of *no usage at*

all. Such a weighting, although inadequate, at least would have avoided the manifest injustice imposed on Verizon MA here.

F. Verizon MA Has Provided More Than Ample Bases for the Department To Reconsider Its Decision with Respect to Allocating Getting Started and EPHC Costs to Non-Traffic Sensitive Rates.

In their Responses, AT&T and WorldCom argue that Verizon MA's request that the Department reconsider its decision regarding the allocation of "getting started" costs and equivalent POTS half calls ("EPHC") costs to non-traffic sensitive rates should be denied because Verizon MA merely reiterated arguments that already had been considered and rejected by the Department. AT&T Response at 4; WorldCom Response at 13. Also, AT&T and WorldCom allege that Verizon MA's Motion for Reconsideration should be denied because Verizon MA has "admitted" that the Department has discretion to determine that shared costs should be recovered through either traffic or non-traffic sensitive charges. AT&T Response at 5; WorldCom Response at 13.

AT&T's and WorldCom's arguments are baseless. First, Verizon MA's request for reconsideration relies primarily upon arguments and evidence not considered by the Department. Specifically, Verizon MA showed that the Department mistakenly failed to consider the testimony of Verizon MA's SCIS Model expert, David Garfield. Verizon MA Motion at 22. Indeed, nowhere in its *Order* does the Department make reference to Mr. Garfield's testimony in reaching its determination that "getting started" and EPHC costs are non-traffic sensitive costs. Mr. Garfield testified in detail that these costs are traffic-sensitive because: (1) non-port resources on a switch will be consumed and exhausted by usage and will have to be supplemented; (2) the amount of investment in "getting started" and EPHC resources is greater when more usage is expected; and (3) the

processor complex of a switch is inherently traffic sensitive because usage determines ultimate exhaust. *See* Verizon MA Motion at 22-23 (citing Exh. VZ-38 at 67-71, Exh. VZ-42 at 10-20).

Second, AT&T and WorldCom mistake Verizon MA's policy argument that the Department should use its discretion to avoid a low volume user subsidization of high volume users for an "admission" by Verizon MA that the Department was justified in allocating "getting started" and EPHC costs to non-traffic sensitive rates. In its Motion, Verizon MA argued that: "The FCC has recognized that whether the costs of shared facilities (*e.g.*, getting started costs) are recovered through traffic sensitive or non-traffic sensitive rates is a *policy issue* that rests within the Department's discretion…" Verizon Motion at 24 (emphasis added). The Department should exercise its discretion to change a discriminatory policy that is neither just nor reasonable — a subsidization of high volume users by low volume (*i.e.*, residential) users.

Finally, WorldCom, seeking to undermine Mr. Garfield's expert opinion that switch processing is "ultimately limited by usage" (*see* Verizon MA Motion at 23) argues that Verizon MA has acknowledged that "getting started" costs are "fixed" costs. WorldCom Response at 14 (citing Tr. 8 at 1615-1616). WorldCom additionally alleges that Verizon MA has ignored the fact that switch-processing equipment is port limited, and not minute-of-use capacity constrained. *Id.* (citing Exh. ATT-20 at Exh. CP-4).

WorldCom's argument is premised upon a mischaracterization of Verizon MA's testimony. WorldCom selectively quotes the hearing testimony of Verizon MA witness Nancy Matt. Ms. Matt's full statement with respect to the nature of "getting started" costs is as follows:

> Q. I take it that your position is that the getting-started costs…are not, quote, "additional costs," close quote, within the meaning of this statute because they do not vary with the level of traffic; in other words, they're not traffic sensitive?
> A. [MATT] No, they're fixed costs. *We believe they're traffic sensitive*, but they're fixed costs. They're fixed in the sense that they don't vary when you're looking at it from a cost study perspective.

Tr. 8 at 1615-1616 (emphasis added). Second, WorldCom misunderstands how and why "getting started" and EPHC costs are incurred. As explained by Verizon MA's expert witnesses, these costs are traffic sensitive because, even though they are incurred generally at the time of switch installation (*i.e.*, "fixed"), the amount of these costs is affected by anticipated switch usage volume. Tr. 12 at 2339-2340; Tr. 11 at 2085-2086; Exh. VZ-42A at 15-19. Moreover, the non-port resources on a switch will be consumed and exhausted by usage and will have to be supplemented, *whether or not ports are available*. Exh. VZ-38A at 67-71; Exh. VZ-42A at 10-20.

For the foregoing reasons, AT&T's and WorldCom's arguments in opposition to Verizon MA's request for the Department to reconsider its allocation of "getting started" costs and EHPC costs should be rejected.

G. AT&T's and WorldCom's Argument That the Department Should Not Reconsider Its Assumption That 90 Percent of Switching Investment in a Forward-Looking Environment Could Be Purchased at the "New" Switch Discount Level Should Be Rejected.

Verizon MA has requested that the Department reconsider its decision that 90 percent of all the switching equipment necessary to reconstruct the entire network could be purchased at the steep "discount" level that was available for a limited number of switches sold at the end of their life cycle. Verizon MA Motion at 25-30. The thrust of Verizon MA's request on this issue is that the use of such an extraordinary high discount level violates TELRIC because it substantially understates the costs that Verizon MA

could be expected to incur in connection with the provision of UNEs.[12/] Indeed, the Department erred by assuming that a "dropped in place TELRIC" network requires the assumption that virtually all of Verizon MA's switching equipment could be purchased at discount levels that may have been available in the past for a limited number of switches acquired at the end of the product's life cycle. Although hypothetical, TELRIC requires a realistic assessment of the forward looking costs that an ILEC could be expected to incur to "reconstruct" the local network. *Id*.

The substantial "new" switch discounts that the Department has determined should apply to virtually all of Verizon MA's forward looking switching investment are possible *only* because vendors realize that a switch purchaser will buy growth additions over the life of the switch at a much lower discount level. If switching capacity were obtained only through the purchase of totally new switches, it is clear that vendors would need to change their discount policies dramatically in order to recover sufficient revenue to maintain their businesses. Vendor pricing strategy, which out of economic necessity would have to change if all switch purchases were for new switches, have been recognized by the FCC: "The reason why growth additions are sometimes more expensive than new switches" is because "vendors have an incentive to sell new switches to telephone companies in the expectation that telephone companies . . . will then become reliant on that vendor's technology to update the switch."[13/] The FCC accordingly noted:

12/ As the FCC has stated, UNE rates should capture the "incremental costs that incumbents actually expect to incur in making network elements available to new entrants." First Report and Order, *I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 685 (1996) ("*Local Competition Order*").

13/ Oral Argument Tr. at 33-34, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000) (argued Apr. 24, 2000).

"In an ideal world where vendors can't lock telephone companies into their product" there would not necessarily be a discount between new switches and growth additions.[14/]

The Department's assumption that 90 percent of all switch equipment should be "new" and that the entire network should be "dropped in place" would severely alter the "supply and demand" in the switch marketplace. Such an assumption directly contravenes the actual supply and demand in the switch marketplace because the majority of today's demand is for equipment sold at the additional ("growth") equipment discount. It is extraordinarily speculative, and indeed erroneous, to assume as the Department has, that the switch discount level that may have been available under a pricing scheme where the majority of sales are at the "additional" equipment discount level would continue to exist where the supply and demand in the switch marketplace is turned upside down by a "dropped in place" market.

For the reasons set forth in Verizon MA's Motion, there is no reasonable basis to conclude that Verizon MA could purchase virtually all of its switching equipment at the Lucent vendor discount level adopted by the Department. Verizon MA Motion at 26-27.

Neither AT&T nor WorldCom in their Responses challenge Verizon MA's assertion that it is unrealistic to assume that in a forward-looking environment vendors would price virtually all of their equipment at the "new" discount level adopted by the Department. Instead, AT&T and WorldCom allege that Verizon MA's Motion should be denied because the Department has already considered and rejected Verizon MA's arguments. AT&T Response at 2; WorldCom Response at 15.

14/ *Id.* at 35. The D.C. Circuit agreed with the FCC stating that "growth additions to existing switches cost more than new switches *only because* vendors offer substantial new switch discounts in order to make telephone companies dependent on the vendors' technology to update the switches." *AT&T Corp. v. FCC*, 220 F.3d 607, 618 (D.C. Cir. 2000) (emphasis added).

However, as discussed above and in our Motion for Reconsideration, the Department has misconstrued TELRIC by assuming that a "dropped in place" network mandates the use of "new" switch discounts that may have been available at one point in the past for a limited number of switches. Because of the Department's mistaken interpretation of TELRIC, reconsideration is appropriate.

Furthermore, WorldCom's assertion that the NYNEX "Megabid" contract shows that it is possible to "obtain deep discounts" for large volumes of new switches does not undermine Verizon MA's assertion that it is unrealistic to assume that a company could replace its entire network within a State at the "new" discount level adopted by the Department. WorldCom Response at 15. The "Megabid" contract is a ten-year agreement that made certain one-time discounts available for the periodic replacement of analog switches with digital switches. This long-term (not "instantaneous" TELRIC approach) switch replacement program was applicable to switches throughout the entire NYNEX region. It clearly did not involve the "replacement" of the majority of lines throughout the region, and it certainly did not involve the replacement of an entire State's network, such as that contemplated by the "dropped in place" assumption adopted by the Department. There is no evidence in this proceeding which suggests that the "new" switch discounts that were the product of particular historical conditions would be available under the totally different circumstances that assumed under the Department's interpretation of the TELRIC theory.

In the event that the Department does not reconsider its discount level assumption, Verizon MA's Motion requests that the Department revise the mix of "new" and "additional" equipment discounts based upon the life-cycle analysis presented by

Verizon MA. Verizon MA Motion at 28-30. Verizon MA's request is based on (1) recognition that the Department has determined that a mix of "new' and "additional" equipment should be assumed for the purposes of developing a vendor discount, and (2) that the "life-cycle" approach introduced by Verizon MA is superior to the methodology recommended by AT&T. Alternatively, Verizon MA recommended that the Department require the submission of additional data so that it could develop a more comprehensive and detailed life-cycle analysis. AT&T opposes Verizon MA's request on the basis that Verizon MA did not meet its "burden of proof" and that it should not have a "second bite at the apple". AT&T Response at 3-4. Rather than have the Department develop a discount level that more realistically assess forward-looking costs, AT&T would prefer that the Department ignore Verizon MA's valid recommendations. However, the Department's objective is to develop a discount level that realistically reflects discounts that could be realized in a forward-looking environment and, in order to do that, it is necessary to revise its discount assumption or, at minimum, adopt a life-cycle analysis that more reasonably reflects realistic forward looking discount levels.

Ironically, WorldCom's reference to the discounts available under the Megabid contract for "hundreds" of switches, as alleged by WorldCom, supports Verizon MA's contention that its life-cycle analysis is a far superior estimator of forward looking discounts than the AT&T "projection", based exclusively on a speculative "growth" projection and only a limited discount information (*i.e.*, one discount for "new" and one discount for "additional" based upon 12 months of data). In contrast, the life-cycle analysis presented by Verizon MA properly recognizes that over the *long run* switch equipment is purchased at various discount levels throughout the *life cycle* of a given

technology.[15/] Indeed, Verizon MA life-cycle discount analysis, which reflects the mix of new and additional equipment for the very same technology that is assumed in Verizon MA's cost study, is based upon actual data, *including* the actual discounts made available under the Megabid contract. A life-cycle analysis that reflects actual discounts made available during a technology's life-cycle is clearly a superior method of estimating *long run* forward looking costs than the speculative "growth" projection analysis adopted by the Department.

For the foregoing reasons and the reasons set forth in Verizon MA's Motion, the Department should modify its switch discount assumption based upon the discount proposed by Verizon MA or, alternatively, should adopt the life-cycle analysis presented by Verizon MA.

H. The Department's Adjustment to Verizon MA's Task Times Is Inconsistent with Its Findings, and Should Be Reconsidered.

The CLECs collectively oppose Verizon MA's motion to allow Verizon MA to use a trimmed mean approach as a method of addressing the Department's concerns about the randomness of Verizon MA's sample and to avoid the anomalous results that would stem from the Department's order to use the low end of the 95 percent confidence interval for each task time. The CLECs' oppositions all rest on the same misunderstanding of the Department's mandate: that the Department ordered the use of the low end of the confidence intervals to account for an alleged upward bias, not to account for concerns about the statistical reliability of Verizon MA's survey. Verizon

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15/ As Verizon MA showed, based on available data for five years, the breakdown between new switch lines and growth lines was approximately 50/50 — that is, Verizon MA had purchased new switch equipment to serve about 50 percent of its lines and purchased growth equipment to serve the other 50 percent. RR-DTE-66; *see also* RR-DTE VZ-49 (VZ-VA 29).

MA's proposed approach both answers the Department's concerns and avoids the anomalies that would result because the low end of the confidence interval for a task sometimes is a *negative* time or a time below the *minimum* time produced by Verizon MA's survey for that task.

The CLECs contend that the Department found Verizon MA's survey methodology to be biased, and ordered the use of the low end of the confidence interval to correct for that bias. *See* AT&T Response at 23; CLEC Coalition Response at 5; WorldCom Response at 17. But the Department never found Verizon MA's task times to be overstated or that Verizon MA conducted its survey in a biased manner. To be sure, the Department mentioned the *potential* for bias, *Order* at 462-463, but it then rejected the CLEC Coalition's proposed solution to that alleged potential for bias, *i.e.*, use of the minimum times produced by Verizon MA's survey. The Department then went on to consider the CLECs' *independent* concerns about Verizon MA's statistical analysis, and ordered Verizon MA to use the low end of the 95 percent confidence intervals "to remedy the weaknesses in Verizon MA's survey methodology," in particular the concern that the survey sample may in some cases have been unrepresentative or otherwise unreliable. *Order* at 469.

As such, Verizon MA's alternative proposal to use the trimmed mean approach is entirely consistent with the Department's concerns, because it removes "outliers" and

thus accounts for unrepresentatively high *and* low times.[16/] Moreover, to the extent the Department *is* concerned about upward bias, Verizon MA's trimmed mean approach results in generally lower times, so it addresses those concerns as well.

Finally, Verizon MA's alternative proposal to use the low end of the 90 percent confidence interval, rather than the 95 percent confidence interval, is a reasonable approach that would also account for the Department's concerns.[17/] Verizon MA Motion at 33-34. Contrary to AT&T's argument that there is "no basis" for this proposal, AT&T Response at 25, as even WorldCom concedes, some adjustment to the Department's approach is clearly necessary.[18/] Otherwise, Verizon MA would be required to use negative task times and times below the minimum time it takes *any* worker to perform a

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16/ There is no merit to the CLEC Coalition's argument that trimming the lowest 10 percent of times (along with the highest 10 percent) would result in eliminating the "most efficient" and reliable task times or that the negative task times that result from the use of the low end of the 95 percent confidence interval undermines Verizon MA's study. *See* CLEC Coalition Response at 6-7. Dispersion in task times can be attributed to many factors other than efficiency. There is thus no reason to suppose that the lowest task times are the "most efficient," as opposed to merely a reflection of the particular environment and circumstances in which that particular respondent has worked. *See Order* at 456 (discussing Verizon MA's explanation of dispersion in task times).

17/ Verizon MA does not seek to include more "biased and overstated" task times, as the CLEC Coalition suggests, CLEC Coalition Response at 7, but to employ a more *representative* sample that strikes a balance between the Department's concerns and the risk of adopting a methodology that produces anomalous results.

18/ WorldCom proposes that, to avoid the use of negative task times or times below the minimum response from a survey respondent, the Department should require Verizon MA to use the *higher* of the minimum time or the low end of the 95 percent confidence interval. WorldCom Response at 17. Although Verizon MA believes that its two alternative proposals are preferable for the reasons described above, the Department should at minimum adopt WorldCom's proposed adjustment.

task in *any* setting. *Id.* Such an unjustifiable result demonstrates the fundamental flaw of the Department's approach, and the need to adopt Verizon MA's proposed alternative.[19/]

I. The Department Should Grant Verizon MA's Motion To Reconsider Its Ruling Regarding Collocation Power Cable Lengths Because the 121-Foot Length Is the Only Length Consistent with the Massachusetts Data Proffered in this Proceeding.

The only Massachusetts data regarding collocation power cable lengths produced in this proceeding came from Verizon MA's extensive study of cable lengths, which surveyed 70 percent of all collocation jobs performed in 2000. AT&T showed that this study "calculates the average one-way cable length for the metro density zone to be 121 feet." *Order* at 422 (citing Exh. ATT-VZ 5-12). The Department recognized as much: "Verizon provided data showing an average one-way distribution cable length of 121 feet for its metro COs." *Id.* at 425. However, as Verizon MA admitted in its Motion, Verizon MA initially interpreted this data incorrectly to show an average cable length of 60.5 feet. Verizon MA Motion at 34. And the Department relied on that erroneous interpretation in finding an average distribution length of 60.5 feet to be supported by the evidence adduced in this proceeding. *Order* at 425-426. Because the Department's decision was the result of manifest error, reconsideration of that finding is appropriate. It is irrelevant that Verizon MA's mistake led to the Department's erroneous conclusion.. *See Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81 96-83, 96-94, at 5 (June 16, 1999) ("*Phase 4-M Order*").

19/ Moreover, contrary to the CLEC's arguments, Verizon MA's support for the use of a 95 percent confidence interval in this and other proceedings in no way undermines the use of a 90 percent confidence interval here. *See* AT&T Response at 25; CLEC Coalition Response at 7. Verizon MA believes that confidence intervals are a good basis on which to judge statistical reliability. However, Verizon MA has not previously used confidence intervals in the manner ordered by the Department here, and thus has never needed to confront the anomalous results of using the lower bound of a confidence interval as an input into its studies. To minimize such results, use of a 90 percent confidence interval is entirely appropriate.

There is no question that the 60.5-foot cable length finding is erroneous. Indeed, none of the CLECs even attempts to show that the Department (and Verizon MA, in its initial explanation of its study) *correctly* interpreted Verizon MA's cable length study. *See* AT&T Response at 20-21; WorldCom Response at 18-19; CLEC Coalition Response at 8-11. Nor does any party point to alternative data that could support a cable length of 60.5 feet. *See* AT&T Response at 20-21; WorldCom Response at 18-19; CLEC Coalition Response at 8-11. Rather, AT&T, WorldCom and the CLEC Coalition simply argue that because Verizon MA recognized its error late in the game, the Department should assess collocation rates based on data that *all* parties recognize is flawed and without any factual underpinning ? and in so doing, deny Verizon MA recovery of the TELRIC costs of a full half of its collocation power cables. *See, e.g.*, AT&T Response at 21 ("[Verizon MA] is bound by its admissions on this issue"); WorldCom Response at 18 (arguing that the Department should "draw the line on when mistakes may be corrected"); CLEC Coalition Response at 9 (arguing that reconsideration should be denied because the Department's error was "based on Verizon's mistake"). The Department's goal here is to set rates that cover Verizon MA's TELRIC costs. There is no plausible way to square that objective with the proposal that the Department turn a blind eye to the accuracy of the data it uses to set those rates. That Verizon MA is responsible for the inaccuracy, or learned of the inaccuracy only belatedly, does not alter the need for the Department to use accurate data.

AT&T alternatively suggests that Verizon MA is "bound by its admissions on this issue," AT&T Response at 21, but this contention cannot withstand logical analysis. Although Verizon MA stated in testimony that its survey yielded average cable lengths of

60.5 feet, its own survey indicated ? as AT&T pointed out in its cross-examination of Ms. Clark, Tr. 6 at 1048-1053, and in its brief, AT&T Brief at 228-230 ? that those lengths actually averaged 121 feet. Thus, the record is clear as to the cable lengths identified in the survey, and AT&T suggests no defensible basis for arguing that Verizon MA should be bound by one statement when the record is otherwise clear on the issue.

WorldCom adds its argument that the 121-foot metro zone length is considerably greater than the Massachusetts urban zone, suburban zone or rural zone lengths, or the lengths set by the Texas PUC. *See* WorldCom Response at 18-19. But Verizon MA's extensive survey used real-world data that have not been undermined in any way; if they show that metro zone lengths are longer than others, that simply reflects an engineering reality within the Massachusetts network. Moreover, the Department's decision to "not rely simply on the results found in other states," *Order* at 425, is clearly correct and has not been challenged by any party. WorldCom, like every other party to this proceeding, had every opportunity to introduce its own cable length data and chose not to do so ? it should not now be heard to argue that the Department may not correct its ruling so that it comports with the extensive and persuasive data that *was* introduced in this proceeding.

Finally, the CLEC Coalition's argument that Verizon MA is seeking to "reopen[] the record," CLEC Coalition Response at 8, or have the Department "consider updated information," *id.* at 9, on this issue is incorrect and misses the point. The record before the Department is complete; Verizon MA's "extensive study of 70 percent of the collocation distribution jobs for year 2000," *Order* at 421, is in the record. Verizon MA simply seeks to have the Department recognize the only possible conclusion that can be

derived from the data in that record, and correct the erroneous interpretation of the record evidence that Verizon MA previously had suggested. *See* Verizon MA Motion at 34-35.

There is, accordingly, no sound basis for the Department to refuse to correct its erroneous factual finding and to set collocation power cable lengths based on the only valid reading of the record evidence.

J. Daily Usage File ("DUF")

In opposing Verizon MA's Motion for Reconsideration of the Department's decision to deny Verizon MA *any* recovery of the costs it incurs to provide DUF to CLECs, AT&T and WorldCom miss the point of Verizon MA's request. As Verizon MA explained, the Department's decision to completely deny DUF costs inappropriately leaves Verizon MA no mechanism to recover these costs from the 60 percent of CLECs that elect to receive DUF. *See* Verizon MA Motion at 36. Verizon MA does not seek to relitigate DUF rates or to continue litigation on this issue,[20/] as AT&T and WorldCom allege, *see* AT&T Response at 29; WorldCom Response at 20, but rather to point the Department to its mistake in declining all DUF costs.

The Department's primary rationale for denying *any* recovery of Verizon MA's DUF costs was its concern that Verizon MA would double recover these costs through its ACFs. *See* Verizon MA Motion at 35-36; *Order* at 515-517. Thus, while AT&T suggests that to prevail on its motion, Verizon MA would have to address the Department's other concern regarding the *amount* of DUF costs, AT&T Response at 29;

20/ Specifically, Verizon MA does not seek to continue to litigate the merits of its proposed DUF costs through its compliance filing, as WorldCom claims. *See* WorldCom Response at 19. Rather, Verizon MA has offered to specifically address the Department's concern regarding double counting by delineating, in its compliance filing, the process by which DUF costs are removed from ACFs. *See* Verizon MA Motion at 36 n.34.

see Order at 516-517, this is simply not the case. Verizon MA is not taking issue here with the Department's evaluation of the level of DUF costs that should be recovered, but only with the Department's belief that any reasonable costs *are* recovered through Verizon MA's ACFs, and thus do not need to be recovered through a separate DUF charge.

As Verizon MA explained, the Department inappropriately overlooked the impact of Verizon MA's adjustment to the Other Support and Common Overhead ACFs, which were specifically designed to *remove* DUF costs and thus to ensure that only Verizon MA's proposed DUF charge, and not the ACFs, recovered Verizon MA's DUF costs. *See* Verizon MA Motion at 35; *see also* Exh. VZ-36 at 188; Verizon MA Reply Brief at 87. Even if the Department's conclusion that Verizon MA's ACF adjustments were not adequate to guard against double counting were correct ? which Verizon MA does not believe ? the appropriate response would be to adjust the ACFs, not to deny *any* separate DUF charges. The result of the Department's decision that the ACFs, and not a separate charge, recover Verizon MA's DUF costs is that the 40 percent of CLECs opting not to receive DUF would partially subsidize the 60 percent of CLECs that do receive DUF. There is no principled basis for this outcome. Accordingly, Verizon MA requests that the Department reconsider its decision and, although Verizon MA believes that its proposed DUF costs are accurate, recommend specific modifications to remove any DUF costs that the Department perceives remain in Verizon MA's ACFs. Such action will ensure equitable recovery of the costs Verizon MA incurs providing DUF.

K. Verizon MA's Proposed Ongoing OSS Costs Are Forward-Looking and Do Not Benefit Verizon MA's Retail Operations.

In opposing Verizon MA's Motion for Reconsideration with respect to Access to OSS costs, AT&T and WorldCom incorrectly contend that Verizon MA should not be entitled to recover *any* computer hardware costs because such costs are "historical" costs. AT&T Response at 26-27; WorldCom Response at 20. But the mere fact that such computer hardware costs already have been incurred does not mean that they are not forward-looking, and thus properly recoverable, costs.[21/] There are unquestionably legitimate forward-looking capital recovery/depreciation costs associated with the computer hardware, and those costs are clearly part of the costs of providing CLECs with the Access to OSS UNE. Because computer hardware has an economic life of five to six years, the relevant computer hardware likely will need to be replaced prior to the Department's next examination of UNE rates.[22/] Recovering the relevant depreciation costs in connection with the existing hardware is necessary in order to ensure that, when it is necessary to replace that equipment with the next generation of equipment, sufficient capital is available. As a result, it is important that the forward-looking rates properly include the capital recovery associated with computer hardware purchased to provide the Access to OSS UNE.

21/ As Verizon MA explained in its Motion for Reconsideration, these costs were incurred after the Act solely to provide CLECs with access to Verizon MA's OSS, and thus are historical in nature only because this cost proceeding is being held in 2002, rather than before these expenses were incurred. The expenses were forward-looking at the time they were incurred, and Verizon MA was required to incur them at that time in order to comply with federal law. *See* Tr. 5 at 950; *Local Competition Order* ¶ 516.

22/ As Verizon MA explained, *see* Verizon MA Brief at 135, Verizon MA does not anticipate supplementing its existing computer hardware with *additional* hardware, but obviously the existing hardware will have to be *replaced* with newer equipment at the end of its useful life.

Indeed, no party here disputes that a forward-looking network requires expenditures for computer hardware in order to provide the Access to OSS UNE. Thus, the only question is the appropriate measure of forward-looking computer hardware costs. As Verizon MA has explained, Verizon MA properly adjusted its actual (*i.e.*, "historical") computer hardware costs to be forward-looking by assessing the costs of Access to OSS-related computer hardware purchases, which were made during the period from 1996 to 1999, as if they were purchased at 1999 prices — the lowest prices during that period. Verizon MA Brief at 134-135; Verizon MA Reply Brief at 160-161. In any event, Verizon MA should at the very least be entitled to recover its computer hardware costs based on the even lower 2002 prices, as AT&T argued in its testimony and briefs.[23/] AT&T certainly never suggested (and indeed would have no principled basis for asserting) that computer hardware costs would not be incurred at all in providing Access to OSS in the forward-looking network. The Department should therefore reconsider its finding that Verizon MA is not entitled to recover any such costs at all.

AT&T also opposes reconsideration of the Department's finding that Access to OSS costs should be borne by all end users because Verizon MA allegedly failed to prove that it does not benefit from Access to OSS expenditures.[24/] In fact, however, the *only* evidence on the record is that Verizon MA *does not* benefit from these expenditures. The Department's *Order* cites to AT&T's brief (at 167) to support its finding that "the record shows that Verizon benefits in a number of ways, including when it uses the OSS

23/ In its briefs, AT&T for the first time suggested that the Department should use speculative 2004 prices, rather than 2002 prices. *See* AT&T Brief at 166; *see also* Verizon MA Reply Brief at 160-161 n.137.

24/ Notably, AT&T does not say that the record evidence in this proceeding shows that Verizon MA's retail operations benefit from Access to OSS expenditures. Instead, AT&T merely argues that Verizon MA has not met its burden of proving that it does not benefit. AT&T Response at 27.

functionality to win back customers from CLECs." *Order* at 511. But neither that cited page nor any other page of AT&T's brief contains any discussion of any record evidence in support of the contention that Verizon MA benefits from its Access to OSS expenditures — because there is no such evidence on the record, merely pure speculation by AT&T. In contrast, Verizon MA's witness, Mr. Minion, provided undisputed testimony that Access to OSS costs were incurred *solely* to benefit CLECs and do *not* benefit Verizon MA's retail operations in any manner — including through allegedly more efficient win-back procedures. *See* Tr. 5 at 934-938, 972-976; Exh. VZ-26 at 14; Exh. VZ-27 at 105-107.

WorldCom, implicitly acknowledging that there is no evidence that Verizon MA benefits from Access to OSS expenditures, makes the more theoretical argument that such costs are properly allocated to all end users because, in some indirect sense, "[*a*]*ll* end-users in the Commonwealth 'benefit' from the presence of competition for local phone service." WorldCom Response at 21. But this argument proves far too much. The same argument could be advanced for requiring Verizon MA to pay a CLEC's costs for *any* UNE. And, more importantly, Congress already has declared that CLECs, not Verizon MA, must pay for the costs of Access to OSS and other UNEs.[25/]

In sum, the Department's rejection of Verizon MA's proposed Access to OSS costs is based on a mistaken understanding of what the record actually demonstrates and is not supported by the applicable law. Accordingly, it should be reconsidered and reversed.

[25/] *See* 47 U.S.C. § 252(d)(1); *see also Local Competition Order* ¶ 314 ("[T]he 1996 Act requires a requesting carrier to pay the costs of unbundling, and thus incumbent LECs *will be* fully compensated for any efforts they make to increase the *quality of access* or elements within their own network.") (emphasis added).

L. As Verizon MA Has Shown, the Department Should Reconsider or at Minimum Clarify Its Ruling Concerning DCS Costs, and No Party Has Shown Any Principled Basis for the Department Not To Do So.

Verizon MA's request that the Department revisit its DCS cost ruling made two points. First, Verizon MA sought clarification that the Department did not intend to require Verizon MA to provide unbundled DCS as a standalone UNE, regardless of whether the CLEC has ordered unbundled transport or whether Verizon MA has installed a DCS at a particular location. *See* Verizon MA Motion at 40-42. As Verizon MA explained, the creation of this new UNE did not appear to be the Department's intention, and Verizon MA simply sought clarification that this was the case. Neither AT&T nor WorldCom has disputed Verizon MA's position on this first issue; indeed, AT&T concedes that "the Department's order may not have required DCS to be provided on a stand-alone basis." AT&T Response at 20 (stating as well that the order "does not mean that Verizon must provide DCS on a stand-alone basis."). WorldCom does not address the point, and focuses solely on the argument that transport should be available with or without DCS, as opposed to the independent issue concerning whether DCS must be offered with or without transport — the issue that Verizon MA understands that the Department did not intend to reach. *See* WorldCom Response at 21-22. There accordingly should be no need to discuss this further, and the Department should formalize the parties' apparently unanimous understanding and clarify that its *Order* created no such UNE.

Verizon MA also sought reconsideration of the Department's decision to create two dedicated transport UNEs: one with DCS functionality at the terminating end of a circuit and one without. *See* Verizon MA Motion at 38-40. In an effort to respond to this request, AT&T and WorldCom have distorted the record and clouded the issues, but they

have not provided any basis for the Department to reject the reconsideration Verizon MA seeks. As Verizon MA explained, the Department's ruling fails to account for the fact that Verizon MA did *not* include the costs of *optional* DCS functionality in its IOF cost studies; the only DCS costs that are included are associated with interconnection, multiplexing, and other functions that are *essential* to providing the dedicated transport UNEs, even when Verizon MA performs those functions at the terminating ends of a transport circuit.

AT&T argues that even these DCS costs are not properly imposed on the CLECs as part of the transport UNE rate, because, it alleges, "[w]here dedicated facilities can be brought directly to a CLEC's collocation cage, no DCS functionality is required by Verizon to terminate IOF to the CLEC's facilities and, therefore, no DCS costs should be included." AT&T Response at 17. WorldCom similarly contends that, in central office locations where a CLEC has installed "multiplexing or other equipment in [its] collocation cage," the DCS equipment could be "bypassed . . . altogether." WorldCom Response at 22. These claims are wrong. DCS equipment, when used at some terminating central offices, performs at least two functions that indeed are essential (and thus cannot be "bypassed altogether") in connection with transport of DS1 circuits physical cross-connection of circuits and aggregating (*i.e.*, multiplexing) multiple circuits so that they can travel on high capacity transport systems. Exh. VZ-38A at 90. With respect to cross-connection, Verizon MA has explained that all "element[s] and system[s] in an efficient network are connected" through a physical connection frame, *id.*, and the ability to perform physical cross-connections efficiently lies at the core of *all* types of DCS systems, including those used at the terminating points of transport

circuits.[26/] Collocated CLEC equipment cannot provide this functionality for Verizon MA, just as collocated CLEC equipment could not replace the functions provided by a main distribution frame that Verizon MA uses to physically connect loops to CLEC collocation cages at a central office.

With respect to multiplexing lower capacity circuits, Verizon MA installs DCS equipment instead of the traditional multiplexors that otherwise would be required to perform this function. Though it is true that a CLEC can perform its own multiplexing to aggregate multiple DS1 circuits into a single DS3 circuit, doing so would mean that a CLEC would no longer be ordering the transport UNE (*i.e.*, DS1 transport) that uses DCS equipment at certain terminating central offices; instead, the CLEC would be ordering DS3 transport that does not include such DCS equipment at terminating central offices.[27/] Thus, the mere fact that a CLEC has decided to aggregate its own circuits to the DS3 level before delivering them to Verizon MA does not justify removing DCS costs from the DS1 UNE transport rates, which, by definition, apply only where a CLEC has chosen *not* to multiplex its own circuits to the DS3 level.

The only alternative to using DCS systems at terminating central offices for these essential cross-connection and multiplexing functions would involve "inefficient, manual processes" and standalone multiplexing equipment that, in many cases, would increase

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[26/] As Verizon MA explained in its Surrebuttal Testimony, this is true even of the wideband DCS ("WDCS")) equipment that would be used at the terminating ends of some DS1 circuits. *Id.* at 89-90.

[27/] The two types of DCS equipment used at the terminating ends of transport circuits are narrowband DCS ("NDCS") and WDCS. *See id.* at 90-91. NDCS and WDCS are used for cross-connections that involve DS0 and DS1 circuits. *See id.* By contrast, Verizon MA's DS3 transport cost studies include the costs of DCS systems that are used to cross-connect circuits at "large transport hub offices" to "support interconnections among very high capacity backbone transport systems." *Id.* at 90.

the cost of providing DS1 transport UNEs. *Id.* at 91. AT&T attempts to refute this by arguing that Verizon MA has conceded that it "does not use DCS in all instances." AT&T Response at 19; *see also id.* at 18-20. According to AT&T, that demonstrates that Verizon MA indeed *can* provide transport without DCS functionality. *See id.* at 19-20. But Verizon MA has not disputed that it *can* provide transport without DCS; the point is that in many cases, providing transport *with* DCS is the most efficient, cost-effective option. Verizon MA's studies already account for the fact that, in some cases, it does not make sense to use DCS to provide transport by using a weighted average in its studies of the costs of transport options that do and do not use DCS. This is no different from basing the cost of the loop on a weighted average of those cases where fiber feeder is more efficient and those where copper feeder is more efficient. Since in many cases, Verizon MA has made the efficiency-enhancing choice of using wideband DCS equipment to perform the mandatory core functions that it *must* perform, even at the termination ends of a circuit, Exh. VZ-38A at 90, to provide dedicated DS1 transport to a CLEC (such as physical cross-connection and multiplexing), the TELRIC costs of providing that transport UNE should reflect the related DCS costs. This is especially so given that, unless Verizon MA were going to incur the added (and entirely unnecessary) costs of installing redundant standalone multiplexors, Verizon MA would have to use its DCS equipment to provide both DS1 transport options, whether the CLEC "ordered" DCS or not. *See* Verizon MA Motion at 40.

It is significant to note that neither AT&T nor WorldCom –nor the Department– has suggested that the DCS-free transport UNE "option" that AT&T and WorldCom seek may reflect the additional costs of the standalone multiplexors and manual processes that

Verizon MA (not CLECs) would have to provide if DCS equipment at the terminating end of transport circuits were required to be bypassed. Exh. VZ-38A at 90-91. Consequently, the Department's *Order* (and AT&T and WorldCom's position) would result in a significant underrecovery of Verizon MA's indisputably efficient, forward-looking costs of providing the transport UNE to CLECs. Yet, ultimately, this is precisely what AT&T and WorldCom want the Department to do: As AT&T explicitly says, even if "use of DCS is a more efficient way for [Verizon MA] to manage its own network," AT&T Response at 18, the Department should give CLECs the choice not to bear *any* of its costs.

For these reasons and the reasons explained in Verizon MA's Motion, the Department should grant Verizon MA's request for reconsideration and eliminate the requirement that Verizon MA provide a separate dedicated transport option that excludes the costs of DCS equipment used at the terminating ends of certain DS1 circuits.

M. The Department Should Grant Verizon MA's Motion for Clarification That Verizon MA Should Be Permitted To Charge for Unnecessary Field Dispatches.

Contrary to AT&T's contentions, Verizon MA does not seek to "relitigate" the issue of whether field dispatches should be charged as non-recurring costs. *See* AT&T Response at 21. Rather, Verizon MA seeks clarification that the Department intended to disallow Verizon MA's proposed non-recurring costs *only* when a field dispatch is *necessary* to provision a loop – *i.e.*, when it is necessary to place a cross connect at the Feeder Distribution Interface ("FDI") or to repair a loop in order to provision a CLEC's request for service. Verizon MA's motion seeks to clarify that when a CLEC *requests* that Verizon MA engage in a field dispatch for the CLEC's own reasons (as CLECs

sometimes do), the CLEC should be required to pay the non-recurring costs of that dispatch. Any other result would mean that CLECs could request optional field dispatches for any reason without incurring any additional costs, even if such a dispatch is inefficient, which would raise costs for all CLECs that do not request such inefficient services.[28/] Verizon MA Motion at 42-43.

The Department's analysis and findings make clear that this is the result the Department intended. The Department reasoned that "the field *installation* costs that Verizon MA incurs to fulfill a CLEC order" may benefit future customers. *Order* at 451 (emphasis added). The Department clearly spoke only to occasions when Verizon MA "must" remedy defective plant, *id.*, not to optional services requested by CLECs that involve field dispatches. This only makes sense: the Department sought to prevent penalizing a CLEC "which, by circumstances that it cannot control, happens to be the carrier that requests a UNE where a field dispatch occurs." *Id.* at 452. By implication, therefore, the Department did not intend to prevent Verizon MA from imposing a non-recurring charge for field dispatches when circumstances *are* within a CLEC's control, and it requests a field dispatch because it desires an optional service or for some other reason. AT&T is simply wrong when it states that the Department did not distinguish regarding the reason for the field dispatch (AT&T Response at 22); the Department's

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[28/] Notably, WorldCom and the CLEC Coalition concur with the substance of Verizon MA's Motion. WorldCom argues that the Department should adopt a test in which Verizon MA would be permitted to assess a non-recurring charge for field dispatches if the task would be unnecessary (*i.e.*, optional) in an efficient forward-looking environment. WorldCom Response at 23-24. Verizon MA seeks to impose a non-recurring charge for field dispatches in precisely such circumstances. The CLEC Coalition argues that the Department should clarify its order to specify that Verizon MA may not assess a field dispatch non-recurring charge when Verizon MA "has" to dispatch a technician to provision a loop. *See* CLEC Coalition Response at 12-13. As Verizon MA explicitly noted in its Motion, Verizon MA does not seek reconsideration of the Department's determination that Verizon MA must recover field dispatches *required* for installation and maintenance in ACFs rather than through non-recurring charges. Verizon MA Motion at 42.

entire analysis is focused on field dispatches that are *necessary* to provision a loop, whether because there is not already a cross-connect in place or because some other maintenance is required.[29/]

Thus, Verizon MA seeks only to clarify that the Department's decision allows Verizon MA to continue to impose a non-recurring charge for optional field dispatches that it performs at a CLEC's request.[30/] Doing so will not take the Department down a "dangerous path," *see* AT&T Response at 22, because it would impose a bright-line rule and confirm what the Department's reasoning makes clear: that Verizon MA may impose a non-recurring charge for optional field dispatches requested by CLECs, while it recovers the costs of field dispatches that are necessary to provision a loop through recurring charges.

29/ For the same reasons, the CLEC Coalition is mistaken when it claims that this is a "new controversial issue[]," or is "untested." CLEC Coalition Response at 12.

30/ AT&T's argument that Verizon MA's recurring charges already include the costs of unnecessary and optional field dispatches is disingenuous and incorrect. AT&T's entire basis for opposing Verizon's decision to charge field dispatches as non-recurring costs is that they are "part of building a loop." *See Order* at 445. It cannot reasonably be said that the cost of a loop includes activities that are not at all necessary to provision that loop.

III. CONCLUSION

For these reasons and the reasons explained in Verizon MA's Motion, the Department should grant Verizon MA's Motion for Reconsideration and Clarification.

Respectfully submitted,
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