DEPARTMENT OF TELECOMMUNICATIONS COMMONWEALTH OF MASSACHUSETTS

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Investigation by the Department on its own)

Motion as to the Propriety of the Rates and) D.T.E. 98-57

Charges Set Forth in M.D.T.E. Nos. 14 and 17) (Phase III)

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REPLY BRIEF OF MASSACHUSETTS CLEC ALLIANCE

ON PROPOSED TARIFF CHANGES FOR ADSL CAPABLE LOOPS

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Dated: September 1, 2000

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REPLY BRIEF OF MASSACHUSETTS CLEC ALLIANCE

ON PROPOSED TARIFF CHANGES FOR ADSL CAPABLE LOOPS

In accordance with the order of the Presiding Hearing Officer issued August 7, 2000, Massachusetts CLEC Alliance ("CLEC Alliance") submits its reply brief in this case on the proposed tariff changes for ADSL capable loops comments proposed by Verizon - Massachusetts ("Verizon-MA") on May 5 and June 14, 2000.(1) The CLEC Alliance will not repeat the arguments raised in its initial brief, as they are largely unchallenged. Instead, we will limit our comments to one issue - the question raised by the Department concerning the appropriateness of assessing charges for loop conditioning where the price of loops has been determined on the assumption of an all fiber feeder, DLC network.

The significance of the contradiction between the methodology underlying loop prices charged by Verizon-MA and its proposed recurring and non-recurring charges for x-DSL loops cannot be overstated. The CLEC industry has grown accustomed (if not fatigued by) the heated rhetoric of ILECs (including Verizon) who oppose UNE costs based on so-called "fantasy" networks and unrealistic efficiency constraints that purportedly preclude embedded cost recovery. In this instance - the 100 percent fiber feeder network construct under which the Department established prices for UNE loops - was adopted at the insistence of Verizon-MA (then Bell Atlantic-MA) over the united opposition of the CLECs.(2)

Having won the right to charge loop prices based on an all fiber feeder assumption, Verizon-MA now seeks to recover recurring and non-recurring charges that are avoided by a fiber feeder network. One of the many arguments advanced by the CLECs in opposition to the fiber-feeder based network assumption was that it allowed Verizon-MA to cross-subsidize its commercial forays into broadband video, graphics and data services. Verizon-MA countered, inter alia, that the greater up-front investment was outweighed by reduced maintenance costs. The Department accepted that argument, and rejected the CLECs' arguments, pointing out that an all fiber feeder network was the state of the art and establishing loop prices based on such a network would accelerate the provision of advanced services. Now, less than four years later, Verizon-MA returns to seek recovery for the very maintenance related costs it said would be avoided under its self-promoted fiber feeder network scenario -- such as loop qualification charges, loop conditioning, loop testing charges, ISDN electronics charges, and the like. In support of this regulatory bait-and-switch, Verizon-MA relies on abstract statements by the FCC orders that appear to allow for such recovery, without mentioning the fact the FCC was clearly referring to all copper loops that have been assumed away in the all fiber-feeder network advocated by Verizon-MA.

The Department has, in the past, recognized the need for methodological consistency in the administration of cost-based pricing. According to the Department, "[o]ur aim . . . is to maintain consistency between the assumptions used in the TELRIC recurring cost study and the NRC study . . . . This must be our goal, notwithstanding intervening changes in technology or regulatory decisions reached in other states."(3)

The need for just such consistency is easily demonstrated by turning the methodological tables. Assume, for example, that the CLECs had prevailed on the issue of the appropriate network assumption for costing loops, and loop prices had been determined based on an all copper network. Could the CLECs have now opposed recovery of loop conditioning, loop qualification and loop testing costs required to provide DSL service over copper loops? To ask the question is to answer it. Verizon-MA would now be contending that recovery of those costs is necessitated, per se, under an all copper network assumption. Consider another analogy. Assume again that loop prices were determined under an all copper network assumption; would Verizon-MA now offer fiber feeder, DLC loops without extra charges for the electronics and other equipment that is not necessary in the all-copper environment? Of course not.

In short, Verizon-MA now seeks nothing less than the best of both worlds: recovering the forward-looking capital costs of an advanced telecommunications network, while also recovering the higher maintenance and operating costs associated with the embedded network. The CLEC Alliance submits that the Department should preclude such double recovery.

CONCLUSION

For the foregoing reasons, the CLEC Alliance requests that the Department order Verizon-MA to: (1) eliminate the tariff restrictions imposed on the ability of CLECs to provide service over x-DSL loops; (2) reduce its proposed recurring and non-recurring charges for provisioning x-DSL to 0 or, in the alternative, substantially lower levels; and (3) modify BA-MA's proposal of lengthy and unnecessarily discriminatory intervals for provisioning x-DSL loops.

Respectfully submitted

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1. 1 The Massachusetts CLEC Alliance consists of Vitts Networks, Inc., CoreComm Massachusetts, Inc., MGC Communications, Inc. d/b/a/ Mpower Communications Corp., and Adelphia Business Solutions Operations, Inc.

2.

2 See New England Telephone and Telegraph Co., Phase 4 Order, 1996 WL 773716 at 8-9.

3.

3 Consolidated Petitions of New England Telephone and Telegraph, et al., DPU/DTE 96-73/74, Phase 4-L (October 14, 1999) at 19-21.