COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

PETITION OF CHOICE ONE	:	**D.T.C. 10-2**
COMMUNICATIONS OF	:	
MASSACHUSETTS, INC., CTC	:	
COMMUNICATIONS CORP. AND	:	
LIGHTSHIP TELECOM LLC FOR	:	
EXEMPTION FROM PRICE CAP	:	
ON INTRASTATE SWITCHED ACCESS	:	
RATES AS ESTABLISHED IN D.T.C. 07-9	:	

REPLY BRIEF OF

COMCAST PHONE OF MASSACHUSETTS, INC.

Submitted by:

John A. Poakeart
Robinson & Cole LLP
1055 Washington Boulevard
Stamford, CT 06901
Tel. No.: (203) 462-7500
Fax No.: (203) 462-7599
jpoakeart@rc.com

Counsel for Comcast Phone
of Massachusetts, Inc.

Dated: March 11, 2011

TABLE OF CONTENTS

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

PETITION OF CHOICE ONE COMMUNICATIONS OF MASSACHUSETTS, INC., CTC COMMUNICATIONS CORP. AND LIGHTSHIP TELECOM LLC FOR EXEMPTION FROM PRICE CAP ON INTRASTATE SWITCHED ACCESS RATES AS ESTABLISHED IN D.T.C. 07-9	:	**D.T.C. 10-2**

REPLY BRIEF OF COMCAST PHONE OF MASSACHUSETTS, INC.

I. INTRODUCTION

Comcast Phone of Massachusetts, Inc. ("Comcast Phone") hereby submits this Reply Brief to the Department of Telecommunications and Cable ("Department") in connection with the above-captioned proceeding. For the reasons set forth more fully below and as set forth in Comcast Phone's Initial Brief dated February 18, 2011, Comcast Phone respectfully submits that the evidence presented during the course of this proceeding shows that the Department should not grant the Petition of Choice One Communications of Massachusetts, Inc., CTC Communications Corp., and Lightship Telecom LLC (collectively, "One Communications" or "OneComm") for an exemption from the cap on intrastate switched access rates established by the Department in D.T.C. 07-9, *Petition of Verizon New England, Inc., MCI metro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter*

159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers.[1] The arguments presented in OneComm's Initial Brief dated February 18, 2011 do not diminish this conclusion. This Reply Brief addresses some of the factual inaccuracies, unsubstantiated assumptions, and misguided conclusions contained in OneComm's Initial Brief.

II. ARGUMENT

A. OneComm Has Not Measured its Cost to Provide Switched Access Service

As discussed in Comcast Phone's Initial Brief, a competitive local exchange carrier ("CLEC") requesting an exemption from the intrastate switching rate cap must show, through an industry-standard cost study, its specific cost of providing switched access service, and that those costs are justifiable and incurred prudently.[2] OneComm has failed to meet this standard.

OneComm's Network Usage Cost Assessment ("NUCA") Model – Massachusetts cost study is not a total service long-run incremental cost ("TSLRIC") cost study – in fact, it is not an incremental cost study at all. Thus, as an initial matter, OneComm has failed to meet the Department's standard because OneComm has not even measured its incremental cost of providing switched access service. OneComm claims that the "increment of output for which costs are identified is total switched usage on the network . . . ."[3] However, the NUCA measures the usage for *all voice services on OneComm's*

[1] *See* Order (June 22, 2009) ("CLEC Access Order"); *see also* D.T.C. 07-9, Order on Motion for Reconsideration and Clarification (Dec. 7, 2009) ("Reconsideration Order").
[2] *See* Comcast Phone Initial Brief at 5-6. OneComm agrees with this standard. *See* OneComm Initial Brief at 6-7.
[3] OneComm Initial Brief at 13.

network – it is not limited to switched access usage.[4] Moreover, the purported "increment of usage" is not incremental at all, regardless of how OneComm chooses to label it. The NUCA treats all volume of usage on the network as the "increment."[5] This produces a calculation of average costs – it does not measure the incremental cost of providing switched access service, i.e., "the additional costs . . . that a firm will incur as a result of expanding the output of a good or service by producing an additional quantity of the good or service."[6]

OneComm attempts to justify the methodology used in the NUCA study by advancing a novel "minute is a minute" approach to the costing and pricing of network services. Although the cost to telecommunications networks of handling a minute of traffic is the same regardless of the category of the traffic, this does not imply that all of the costs of the network are caused by (or should be recovered from) usage. OneComm claims that "to the extent that various types of calls (e.g., local, toll, access) use the same network functionalities, their respective per minute of use costs are the same."[7] Again, even assuming this to be true, it does not justify taking all of OneComm's costs and dividing those costs by the total minutes of use. This simply describes an average cost study.

OneComm tries to deflect the intervenors' criticism of the NUCA study by raising specious arguments regarding the appropriate measure of incremental usage (despite the fact that the NUCA does not produce an incremental measure of usage in the first place).

---

[4] *See* Comcast Phone Initial Brief at 9-10; Jan. 24, 2011 Transcript ("Tr.") at 141:22-24, 142:1; Jan. 25, 2011 Tr. at 302:14-19.
[5] *Id.*
[6] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al.*, FCC 96-325, CC Docket No. 96-98 *et al.* at ¶ 675 (Rel. Aug. 8, 1996) ("FCC Local Competition Order").
[7] OneComm Initial Brief at 14.

For example, OneComm claims that "the intervenors in this case have advocated cost approaches that are effectively tantamount to short run marginal cost pricing . . . ."[8] The record does not support this assertion. First, it is unclear what an approach that is "effectively tantamount" to short run means. Does OneComm claim that the intervenors have advocated a short run or not? Regardless of the intended meaning, Comcast Phone has not advocated for short run marginal cost pricing or anything "tantamount" to a short run increment.[9]

In order to bolster its position, OneComm mischaracterized Dr. Pelcovits' testimony to arrive at the absurd conclusion that Comcast Phone seeks to remove the "long run" from Long-Run Incremental Cost ("LRIC") (or TSLRIC).[10] There is no basis for this claim except OneComm's apparent desire to rewrite Dr. Pelcovits' testimony to suit OneComm's needs. Specifically, OneComm quotes from page 15 of Dr. Pelcovits' Pre-Filed Testimony:

> **Q. What is the right measure of incremental cost to use for terminating access?**
> A. The long run incremental cost of <u>*additional usage*</u>. Specifically, how much in additional resources must the CLEC expend to handle <u>*additional terminating traffic*</u>. This is the relevant cost for setting the price of terminating access. And while there are legitimate questions pertaining to the time period (<u>*short-run or long-run*</u>) and size of increment (<u>*one minute*</u>, or large increments) to be used in the study, the principle of incremental cost should be applied to <u>*an increment of usage - not the increment of a service*</u>, which is not incremental with respect to any decision by an economic actor.[11]

---

[8] *Id.* at 20.
[9] *See, e.g.*, Comcast Phone Initial Brief at 12.
[10] *See* OneComm Initial Brief at 22-23.
[11] OneComm Brief at 22 (emphasis in original) (quoting Pre-Filed Testimony of Michael D. Pelcovits, Ph.D (Nov. 1, 2010) at 15 ("Pelcovits PFT")). It should be noted that OneComm conveniently chose to emphasize certain words, and not others. For example, OneComm chose to emphasize the words "one minute," but not "large increments" in Dr. Pelcovits' testimony.

One need only look at the first sentence of Dr. Pelcovits' response to see that he said the right measure of incremental cost is the "**<u>long run incremental cost</u>** of additional usage."[12] Even if there were some uncertainty as to what Dr. Pelcovits meant, one need only read a few words more to gain clarity – Dr. Pelcovits acknowledged that whether a long run or short run should be employed is a question to be considered ("while there are legitimate questions pertaining to the time period (short-run or long-run) and size of increment (one minute, or large increments)," but he did not endorse a short run increment.[13]

OneComm's unfounded dispersions aside, the conclusion is the same – OneComm simply failed to present its switched access-specific costs in an industry-standard cost study. OneComm states that "the Department's objective should be to review OneComm's costs and determine what rate levels would sufficiently compensate OneComm when it provides service to IXCs in terminating and/or originating their switched access traffic in Massachusetts."[14] Ironically, in order to conduct such a review, it would be necessary to measure incremental cost – that is, the total cost with switched access service minus total cost without switched access. OneComm's cost study is simply not designed to do this. As such, OneComm's costs cannot be said to be justifiable or prudently incurred; thus, the Department should deny its Petition.[15]

---

[12] Pelcovits PFT at 15:9 (emphasis added).
[13] In fact, Dr. Pelcovits endorses a long run increment throughout his Pre-Filed testimony. *See, e.g.*, Pelcovits PFT at 10:5-6, 11:10-11, 12:3, 9.
[14] OneComm Initial Brief at 20.
[15] OneComm argues that the intervenors should be held to the same standard of review as OneComm. *See* OneComm Initial Brief at 7. Apart from being wholly unsupported by the record in this case or the Department's Orders in D.T.C. 07-9, OneComm's position is untenable as a practical matter. The intervenors have not submitted cost studies, and they have not requested an exemption from the rate cap. The standards imposed by the Department are reserved solely for those CLECs that request an exemption from the rate cap. Even if the Department were to disagree with the intervenors' various recommendations, that would not somehow validate OneComm's cost study, as OneComm suggests.

B. OneComm's Cost Study Ignores Cost Causation Principles

OneComm's "minute is a minute" approach to costing leads to an average costing methodology and is inconsistent with the concept of establishing cost causation. OneComm claims that if all usage was not treated the same, it would be necessary "to make arbitrary allocations based on outmoded legacy, regulatory-based distinctions that have no foundation in technology or cost causation."[16] This is patently false. The issue is not whether all usage should be treated the same, but whether all costs should be ascribed to usage, rather than to other cost drivers, such as the number of customers served by a network. On the contrary, the exercise of establishing cost causation does not require "arbitrary allocations," but rather an analysis of cost causation. This cannot be done properly using OneComm's "minute is a minute" theory because that approach does not consider cost causation.

To illustrate, OneComm states "when service X represents five percent of the traffic on OneComm's network, service X picks up its proportional share (i.e., five percent) of the costs of those shared network facilities."[17] Since OneComm's view is that all shared network facility costs are to be spread based on usage, it ignores the principle of cost causation. According to OneComm, service X picks up its proportional share of the costs for its five percent of usage – this represents nothing but a straight recovery of costs, *without any analysis for the costs that service X actually caused.* This basic flaw underlies OneComm's entire approach to its cost study, and is a fundamental reason for the Department to reject it. In addition, OneComm claims that the costs calculated by the NUCA study "are calculated based on cost causation. The only costs included are

[16] OneComm Initial Brief at 14-15.
[17] *Id.* at 15.

those associated with facilities and operations that are actually used in the provision of switched access."[18] This cannot be so.

First, it is wholly unclear what OneComm means when it claims that the costs included are those "associated with" facilities and operations used to provide switched access. That costs are "associated with" the provision of a service is not a concept that is used in terms of cost causation – either costs are caused by the provision of a service or they are not. To say costs are "associated with" switched access says nothing about cost causation, but sheds light on OneComm's flawed methodology. Even assuming that OneComm's cost study includes those costs that are "associated with" the provision of switched access service, that does not mean those costs are solely "associated with" the provision of switched access service, or in other words, are incremental to switched access service. Indeed, that costs are "associated with" a service leaves open the possibility (and in OneComm's case, the reality) that the NUCA cost study includes costs that are "associated with" switched access and other services, such as retail services. This does not indicate a proper analysis of cost causation and in turn, does not show the incremental usage of switched access service.

OneComm's treatment of non-traffic sensitive ("NTS") costs also shows that OneComm's professed adherence to cost causation principles is a fallacy. OneComm claims that "All companies operate with significant fixed and non-traffic/non-usage sensitive costs, which they must recover from their customers in aggregate, lest they go out of business. If OneComm is not allowed to recoup these costs, there will be both subsidies flowing to the IXCs and confiscation suffered by OneComm, neither of which

---

[18] *Id.* at 13.

is desirable, nor long sustainable."[19] This is incorrect, because OneComm is of course free to recoup the costs from its retail customers – the cost causers – as opposed to other carriers, OneComm's captive wholesale customers and in turn, other carriers' retail customers. If OneComm was truly interested in addressing cost causation, it would seek to recover its costs from its retail customers. As a result, subsidies would not flow to the IXCs and confiscation would not be imposed upon OneComm. By seeking to recover its costs from other carriers instead of the cost causers, it becomes clear that OneComm's professed focus on cost causation is nothing but a ruse.

Thus, it is clear that OneComm did not consider cost causation in developing its cost study because it is impossible to do so using a "minute is a minute" approach. Therefore, OneComm's apparent disregard for cost causation principles also shows that its NUCA cost study does not comport with industry standards, and should be rejected.

C. Non-Traffic Sensitive Costs and Fixed Costs are Not the Same

OneComm's treatment of shared and common costs also highlights its flawed methodology. As explained in Comcast Phone's Initial Brief, OneComm's motivation here appears to be to have other carriers and other carriers' customers subsidize OneComm and its retail customers.[20] OneComm's treatment of shared and common costs ignores the fact that OneComm's rate for switched access service is paid by captive wholesale customers, and in turn, those carriers' retail end-users. OneComm argues that "where the goal of this proceeding is to determine a compensatory rate for OneComm, inclusion of shared and common costs is necessary."[21] Again, OneComm is mistaken. The goal of this proceeding is not simply to determine a compensatory rate for

[19] OneComm Initial Brief at 27.
[20] *See* Comcast Phone Initial Brief at 17-20.
[21] OneComm Initial Brief at 25.

OneComm. The goal of this proceeding is to determine whether OneComm incurs justifiable and prudently incurred costs that are in excess of the rate cap. OneComm repeatedly and mistakenly assumes that the point of this docket is to make sure that OneComm is able to charge a higher, and thus, from OneComm's perspective, "compensatory," rate.

OneComm tries to discredit Dr. Pelcovits' position on shared and common costs in this docket through his past testimony in other cases outside Massachusetts, which were based on different cost studies and involved different parties. For example, OneComm suggests that Dr. Pelcovits has taken a different position with regard to shared and common costs in this docket than he did in a Connecticut case, Docket No. 02-05-17.[22] However, what OneComm fails to acknowledge is that, unlike in the present case, Dr. Pelcovits advocated for a TSLRIC methodology and markup for joint and common costs in the Connecticut case *because the Connecticut DPUC adopted that standard.* Dr. Pelcovits made this point clear at the evidentiary hearing:

> 'This recommendation is consistent with the Department's decision in Docket No. 00-11- 11, in which it directed SBC and Verizon to file annual intrastate access charge reductions 'until such time as costs and rates are equal.'' So I am adding the fact that I am doing this consistent with the commission's requirement.[23]

In contrast, the Department has not endorsed any particular methodology for cost studies that are presented to support exemption requests.[24] Moreover, while Dr. Pelcovits has endorsed LRIC methodology in this case, he has testified that regardless of the

[22] OneComm Initial Brief at 25.
[23] Jan. 25, 2011 Tr. at 350:24-24, 351:1-3.
[24] OneComm Initial Brief at 25.

particular methodology, OneComm has failed to produce an incremental cost study; therefore, as a practical matter, the specific methodology is of no consequence here.[25]

In another attempt to discredit Dr. Pelcovits' position based on unrelated prior testimony, OneComm has equated NTS costs with capital costs. This is improper. OneComm cites yet another Connecticut case in an attempt to show that AT&T included NTS costs in the cost study produced in that case, while it has advocated against the inclusion of NTS costs in OneComm's cost study.[26] Specifically, OneComm points to Dr. Pelcovits' testimony in a Connecticut case, by which he noted that AT&T included land and building costs, plant operations, and capital costs of switches and interoffice facilities in its cost studies.[27] OneComm's point is unavailing because the costs cited, land and building costs, plant operations, and capital costs of switches and interoffice facilities, are not NTS costs – they are capital costs. The two are not the same, something OneComm should know.

Undaunted, OneComm quotes Dr. Pelcovits' testimony from Connecticut Docket No. 02-05-17 yet again, this time to support OneComm's assertion that NTS costs should be included in OneComm's cost study.[28] Once again, OneComm is wrong. The problem is that OneComm obviously thinks that NTS costs are the same as fixed costs when, in fact, they are not. Thus, it makes perfect sense for Dr. Pelcovits to suggest that fixed switch costs should be recovered from users of the switch – but this does not include NTS costs. Dr. Pelcovits' prior testimony does not contradict Comcast Phone's position in the present case, and certainly does not validate OneComm's position.

---

[25] *See* Jan. 25, 2011 Tr. at 364:16-24, 365:1.
[26] *See* OneComm Initial Brief at 28.
[27] *Id.*
[28] *Id.* at 44.

III. CONCLUSION

The record evidence in this proceeding shows that OneComm has simply failed to meet the Department's standard for granting an exemption from the interstate switched access rate cap. Despite the Department's clear mandate to show, using cost-specific data presented in an industry-standard cost study, that OneComm's costs of providing switched access service are justifiable and prudently incurred, OneComm has presented a cost study that is simply not designed to do that. Instead, OneComm would have the Department ignore industry standards, legal precedent, and common sense and accept its fundamentally flawed cost study. OneComm has failed even to show its cost of providing intrastate switched access service, let alone that such costs are justifiable or prudently incurred. Therefore, for the reasons set out above and as discussed in Comcast Phone's Initial Brief, the Department should deny OneComm's request for an exemption from the established rate cap.

Respectfully submitted,

COMCAST PHONE OF
MASSACHUSETTS, INC.

By: John A. Poakeart

John A. Poakeart
Robinson & Cole LLP
1055 Washington Boulevard
Stamford, CT 06901
Tel. No.: (203) 462-7500
Fax No.: (203) 462-7599
jpoakeart@rc.com

CERTIFICATE OF SERVICE

I certify that a copy hereof has been sent on this 11th day of March 2011 to all parties, intervenors, and participants of record as reflected on the Department's service list as of this date, via first class mail, postage prepaid.

John A. Poakeart