Before the

Department of Telecommunications & Energy

Commonwealth of Massachusetts

Investigation by the Department of Telecommunications & Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company, d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the rate policy for operator service providers.	**))))))))))))**	**D.P.U./D.T.E. 97-88/97-18 (Phase II)**
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INITIAL COMMENTS OF THE NEW ENGLAND PUBLIC COMMUNICATIONS COUNCIL, INC.

Comes now the New England Public Communications Council, Inc. ("NEPCC"), acting through counsel and in accordance with the Memorandum of Hearing Officer, dated February 6, 2001, as amended ("HO Memorandum"), and files its Initial Comments with respect to the Total Service Long Run Incremental Cost ("TSLRIC") study submitted to the Department by Verizon Massachusetts ("VM") on January 29, 2001 in this proceeding ("Study"). In support of its Initial Comments the NEPCC states as follows:

I. INTRODUCTION AND SUMMARY

1. Not surprisingly, VM has manipulated the results of the Study to increase the direct costs supposedly attributable to the Public Access Line ("PAL") service it provides to independent payphone service providers ("PSP"), thereby hoping to justify VM's existing rates for that service. Nevertheless, the Study fails to comply with either the requirements of the Federal Communications Commission ("FCC" or "Commission") or the Department's explicit directives in this proceeding. Therefore, the Department cannot accept the Study results.
2. First, to determine PAL loop costs VM employs a universe of 47,508 "pay phone Network Access Lines", which includes all of its own Public Access Smart-Pay Line ("PASL") installations. In this apples and oranges mix, VM cannot even specify how many PALs it may have studied; yet VM clearly has the means to do so. Use of such a PASL-weighted grouping clearly invalidates the Study conclusion that the monthly unloaded TSLRIC direct cost of PAL loops is now $12.01. VM must be sent back to the drawing board to do the analysis of PAL service loop costs that the Department directed and the FCC's rules require.
3. Second, to justify a 100% increase in the cost of PAL ports from what it previously advanced, VM now divines a new theory. VM argues that to be "consistent" with the Department's 1996 decision on network design for Unbundled Network Elements ("UNE"), all PAL ports are now assumed to be digital and must be costed on that basis. This theory, suddenly uncovered while preparing responses to the NEPCC's latest Information Requests, is totally inconsistent with factual reality. VM's very own service offerings, reflected in its responses to those Information Requests, undermine this "all-digital-port-cost" theory. The Department can give it no credence. Indeed, those very service offerings support the conclusion that, at most, $4.61 should be set as the fully-loaded PAL port cost.
4. Third, VM has failed to justify its overhead loading for Direct Dialed Screening ("DDS") in accordance with FCC requirements. The mere application of cost/rate ratios and a comparison of those ratios to other approved services do not meet the FCC mandate that VM justify its overhead loading methodology. VM relies principally on a FCC order that approved overhead loadings for different services at much lower monthly rates.
5.
6. Fourth, VM's Study is defective because it fails to address local usage charges paid to VM by PSPs as part of PAL service. Recognizing that the Department for the moment has erroneously concluded that local usage is not subject to the relevant FCC requirements, the NEPCC, supported by both FCC and other state commission decisions, maintains that the Study must include local usage.
7. The defects in the Study with respect to PAL loops are so glaring that a further hearing at this point is not warranted. VM must produce a study which truly assesses PAL loops, not the PASL-dominated mixture that it has employed here. As for PAL port costs, the NEPCC maintains that no additional hearing is necessary to properly determine that a reasonable PAL port cost, fully loaded, is at maximum $4.61, which is very close to the figure

previously proposed by the NEPCC in this proceeding. Finally, no hearing is required to determine that VM's overhead allocation for DDS service is unreasonable and unjustified.

II. PROCEDURAL HISTORY

1. It has been some 18 months since the briefs were filed in this proceeding. The Study is, at this point, VM's latest weak effort to comply with the relevant standards set by the FCC and this Department. Therefore, a brief revisiting of the evolution and content of those standards is, in the NEPCC's view, appropriate to set the context for its initial comments on the Study.

A. Telecommunications Act of 1996

2. The ultimate precipitating event for this proceeding was the passage of the Telecommunications Act of 1996, which generally sought "to promote competition and … secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications technologies." The 1996 Act, among many other targets, sought to rectify the decided competitive imbalance in the pay telephone industry by proscribing, among other things, the continued subsidization and discrimination in favor of Bell Operating Company ("BOC") payphone services. In adding a new Section 276 to the Communications Act of 1934 ("Act"), Congress directed the FCC to issue new regulations designed "to promote competition among payphone services providers and promote the widespread deployment of payphone services to the benefit of the general public.…" The FCC's implementing regulations were to preempt any inconsistent state rules or standards.

A. The FCC Payphone Orders

3. Starting in the fall of 1996, the FCC issued a series of orders implementing Section 276. Therein the FCC tasked state regulatory bodies, such as the Department, with ensuring that basic payphone services and certain unbundled features were accessible to payphone service providers on terms and conditions consistent with the principles of Section 276. These FCC requirements were applicable to existing tariffed payphone services and features as well as new offerings. The FCC retained jurisdiction over these matters to ensure that the state regulators properly did their job.
4. The Payphone Orders prescribed a four-part standard for determining whether local exchange carrier intrastate services met the requirements of Section 276 as implemented by the Commission.

   The FCC initially dictated that "the tariffs for these LEC payphone services must be: (1) cost-based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) non-discriminatory." The Commission added that "[s]tates must apply these requirements and the Computer III guidelines for tariffing such intrastate services." The FCC specifically relied "on the states to ensure that the basic payphone line is tariffed in accordance with the requirements of Section 276."

5. The Commission's Common Carrier Bureau, in reinforcing that the requirements of Section 276 must be applied to existing, previously-tariffed, intrastate payphone services, succinctly encapsulated the FCC's analytical framework into a four-part standard ("FCC Standard").

"Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, non-discriminatory and consistent with Computer III tariffing guidelines [(i.e., the new services test)]."

There is no disagreement on the applicability of this FCC Standard to the issues now before the Department.

A. The Department's Initial Actions

6. In response to the FCC's initial Payphone Orders, the Department initiated this proceeding in January of 1997. The initial phase focused on the rates for VM's PASL service and an increase in the Company's local coin rate. On March 31, 1997, the Department allowed the VM tariff provisions, including those rates, to go into effect. On April 14, 1997, the Department explained its decision in an order which opened an investigation of "the Public Access Smartline Service, entry and exit barriers and public interest payphones", which it docketed as D.P.U./D.T.E. 97-88/97-18 (Phase II).

7. On December 12, 1997, the Department initiated this segment of the Phase II proceeding. Specifically, the Department sought written comments "on whether Bell Atlantic's PAL and PASL services (and their respective tariffs) comply with FCC requirements, as set forth in the Payphone Orders.…" Only the NEPCC and VM submitted initial comments. Thereafter, the NEPCC filed in the record relevant decisions rendered in Pennsylvania, West Virginia, Delaware and Maryland.

8. In light of these decisions and the paucity of the Department's record on this critical economic issue, on December 7, 1998, the NEPCC filed a motion to reopen the record to permit discovery and evidentiary hearings on the key question posed by the Department's initiating order of the year before. VM opposed the motion to reopen. However, on May 14, 1999, the presiding Hearing Officer granted the motion, noting, among other things, that "[w]hile Bell Atlantic has presented information relative to the underlying cost of their … rates, this evidence was never fully litigated in this docket, and evidence of decisions from foreign jurisdictions raises a question as to the legitimacy of those rates that merits further investigation." A procedural schedule was set; discovery ensued; and an evidentiary hearing was held by the Department on September 13, 1999. Mr. Peter Shepherd testified for VM. Mr. Don J. Wood testified for the NEPCC. Briefing was completed by November 1, 1999.

A. VM'S Initial Demonstrations Of Compliance With the FCC Standard

9. Starting in May of 1997, VM made a series of filings with the Department designed to demonstrate that its PAL charges to PSPs satisfied the FCC Standard based on a comparison of the "Tariffed Rate", "TELRIC Cost" and "TELRIC Ratio." These submissions, including, Exhibit IV to its January 26, 1998 Comments in this Phase II proceeding, were based on the costs associated with the development of UNE rates in proceedings before this Department. The same costs/rates, with minor corrections, were included in Exhibit 1 to Mr. Shepherd's Direct Testimony in this proceeding. As reflected therein, VM's figures for the "TELRIC Direct Cost" of a PAL loop and port were \$11.21 (loop) and \$3.42 (port) for a total of \$14.63. Again, these same costs were reflected in NEPCC's Exhibit 40 and VM's direct testimony. Both were based on the statewide average TELRIC costs for (a) two-wire analog voice grade loops and (b) switch line ports compatible with two-wire analog voice grade loops. Since introducing these figures VM has made no adjustments or claims that somehow these estimates were in error or otherwise inconsistent with any Department directives or orders. It was those original VM cost justifications which formed the basis for the Department's November 28, 2000 order in this proceeding ("November Order").

A. <u>The Department's November Order</u>

10. In its November Order, the Department addressed first "the issue of whether PAL rates should be based on a PAL-specific cost study." Noting that PSPs had previously "recommended that the Department establish a separate class for PAL service," and VM's "lack of interest in establishing this separate class of service," the Department agreed that the current PAL rate "was not payphone specific, and is, therefore, not in compliance with the FCC requirement that payphone rates be cost-based." Therefore, VM was directed to prepare the Study with respect to the rates being paid to VM by PSPs for PAL service.
11. The Department further noted that VM provided "no demonstration of the reasonableness of the overhead cost for payphone features and functions." The Department stipulated that VM "may not justify overhead loading for payphone features and functions by reference to the overhead loading on other tariffed services such as other business services."

III. <u>VM'S STUDY OF PAL LOOP COSTS DOES NOT COMPLY WITH THE DEPARTMENT'S NOVEMBER ORDER</u>

1. Since its inception, the purpose of this segment of the Phase II proceeding has been to determine whether the PAL rates paid by PSPs comply with the FCC Standard. As VM well knows, PAL rates are the charges that PSPs have always paid (and continue to pay) for basic payphone access, not PASL or any other rates.
2. In its November Order, the Department directed VM to do a TSLRIC study of the basic payphone access service (i.e., PAL service) used by PSPs. The Department's direction could hardly have been clearer or more precise. What is equally clear is that VM's Study did not follow that direction.
3. In its prior attempts to demonstrate compliance with the FCC standard, VM proferred an unloaded TELRIC direct cost for PAL loops of \$11.21, based on the statewide average from the Department's UNE proceeding for two-

wire analog voice grade loops. VM's Study now arrives at an unloaded TSLRIC direct cost of $12.01 for the two-wire analog loops used by PSPs (i.e., PALs). This represents an increase of $0.80 over the TELRIC statewide average previously used to justify VM's PAL rates.

4. In arriving at this new figure, VM concedes that it employed a much larger group of loops (47,508) than those that exist in Massachusetts for all PALs. It included the loops for all of VM's own PASL payphones. VM does not even know how many PAL loops were examined in its study.
5. Such a PASL-dominated mix renders the Study fatally flawed. Without a study focused on the costs of PAL loops using PAL characteristics, it is impossible to draw any meaningful conclusion as to what PAL monthly line rate meets the FCC Standard.
6. VM's failure to do such analysis is not the result of its inability to conduct such a review. VM concedes as such, but offers the excuse that the information is not "readily available" and "would require a special study." Yet that is exactly what the Department required in its November Order. Moreover, VM certainly knows how many PALs there are in service at any one time, including when it did the Study. For example, VM's response to NEPCC Record Request No. 4 in this proceeding, dated September 13, 1999, indicated that there were 10,237 PALs in Massachusetts for the August 1999 billing period. And VM can match those PALs with the various density areas in which they are located; on pages 102 and 103 of the hearing transcript in this proceeding Mr. Shepherd testified that VM could do so.
7. VM, on the other hand, is perfectly content to use a 47,508 loop study, knowing full well that the great bulk of the loops examined have nothing to do with PAL service. As noted above, VM is clearly aware that there are nowhere near 47,508 PALs in use in Massachusetts.
8. VM's analysis confirms that the loop length figures for the statewide average of all loops are less for payphone services. But one does not have to be a cost expert to conclude that an analysis largely weighted to non-PAL loops, with their own density distribution and other characteristics, will not be representative of PAL loop characteristics and costs. It will, in fact, be weighted to exactly the opposite.
9. VM takes the position that PASLs and PALs are "interchangeable forms of basic pay phone lines used to provide basic service to" PSPs. Since when? The intelligent payphones deployed by PSPs do not use and will not operate on PASLs; VM's "dumb" payphones will not operate on PALs. The only sense in which they are interchangeable is if PSPs scrap all of their existing equipment to acquire PASL-based phones. VM cannot seriously contend that it is acceptable to base a Study of the appropriate rates for PALs on that assumption. Therefore, VM cannot just lump PALs and PASLs together to come up with a cost estimate for PAL loops.
10. In any case, VM once again employs the use of a mere "cost/rate ratio" analysis to justify its overhead loading for PAL loops. There is no justification of any overhead loading methodology, as required by the FCC Standard.
11. Finally, VM no doubt would also contend that any increase in direct costs for loops now reflected in the Study would in any event be explained as a result

of marketing and other expenses of a retail service not considered as part of the TELRIC analysis for UNE rate costs. The NEPCC demonstrated at hearing and on brief that this is a specious argument, since the same "costs" apply in connection with VM's administration and marketing of what it calls wholesale services.

12. VM has not performed the TSLRIC study for PAL loops directed by the Department. VM clearly has the ability to do so; it should be directed to go back to the drawing board and do what it was told to do.

IV. <u>VM'S STUDY OF PAL PORT COSTS IS BASED ON AN UNFOUNDED ASSUMPTION</u>

1. The fruits of VM's Study of the unloaded direct cost of PAL ports is a 100%+ increase (to $6.90) over the $3.42 unloaded TELRIC direct cost previously used to justify VM's PAL rate, despite the fact that there is no difference in the end office port investments between the two studies. VM claims that it should have used this figure earlier (i.e., 18 months ago), but it just discovered its "error" when it started to do the Study. To justify this dramatically increased figure, VM's current theory is that (a) since the network design approved by the Department in the December 1996 Phase 4 TELRIC Order ("TELRIC Order") is based on a digital loop technology, analog loops and ports as a practical matter do not exist and, therefore, digital service port costs must be applied to all PALs. A closer examination of VM's new-found theory establishes that it cannot be taken seriously.
2. First, VM asserts in several of its responses to Information Requestions that application of this theory is necessary for the Study to "maintain consistency" with the TELRIC Order. Yet VM does not contend that the TELRIC Order mandates such an "all-digital" requirement in this context of determining whether PAL rates meet the FCC Standard. Certainly the Department in its November Order did not require the TSLRIC analysis to incorporate that assumption. The incorporation of Digital Loop Carrier ("DLC") technology in a TELRIC study does not magically convert VM's network to "all digital" for purposes of the analysis required here.
3. Second, as a factual matter, the argument is technically confused. While DLC technology, including integrated DLC ("IDLC"), is a digital means of transmission, its use does not convert an analog loop into a digital loop thus requiring a digital service port as costed by VM in the 1996 UNE proceeding. Every Tier 1 incumbent local exchange carrier, including VM, incorporates DLC technology as a part of its forward-looking network design in providing two-wire analog loops for UNEs or retail services. Like POTS, PAL service does not require use of a digital loop; it works on an analog loop (which may or may not consist of digital components, such as DLC). The use of digital switching technology likewise does not change the fact that the PAL loop is analog. As VM well knows, analog loops, even those with DLC technology, connect with analog service ports, not digital service ports (even when the switch itself is a digital switch). So there is clearly a factual and technical disconnect in VM's latest theory.
4. Third, VM's responses to the NEPCC's Information Requests do not support VM's own theory. VM concedes that the investment associated with the line port used to provide PAL and other services is the same and

concedes that the costs of a PAL port are the same as the cost of a port to provide any other two-wire service. In responding to NEPCC Information Request Nos. 1-13 and 1-14, VM admits that both PAL and POTS lines are analog and that the difference between the loop cost for the TELRIC cost study ($11.21) and the TSLRIC cost study ($12.01) is the use of payphone specific characteristics, not a requirement to assume an "all digital" loop structure. As VM states in its response to NEPCC Information Request No. 1-14:

"The 2-wire analog link from the TELRIC study referenced in Exhibit IV of the Company's 1998 Comments also used the digital loop carrier technology design to establish loop costs for <u>analog source lines</u>, such as POTs and payphone access lines. Both the TSLRIC study for 2-wire loop UNEs and the January 29, 2001, TSLRIC study specifically for payphone loops use digital loop carrier on fiber optic transmission. facilities in the feeder portion of the loop. However, the payphone specific TSLRIC uses payphone specific loop length characteristics rather than the average for all 2-wire <u>analog loops</u>. (emphasis supplied).

So PAL lines are analog loops with some digital characteristics. If that is the case, the assumption that PAL ports all must be assumed to be digital service ports for TSLRIC costing purposes is a total non-sequitur.

5. Finally, VM's own October 13, 2000 adjustments to its UNE rates do not support its "only-digital-ports" theory. The attachment to VM's response to NEPCC's Information Request No. 1-1 shows <u>existing UNE rates</u>. If VM was correct in its argument that the approved TELRIC network design is all DLC and therefore all digital, there would be no analog loops, which were repriced but not eliminated in 2000, and no analog ports, which were repriced but not eliminated in 2000. None of the rate elements associated with analog loop or ports exist if VM's argument is correct that use of DLC means a network whose costs are only represented by the cost of the "digital" service rate element.
6. In fact, VM still shows specific rates for PAL ports themselves, which would also not exist under VM's new theory. These rates match those contained in NEPCC Exhibit 40 in this docket. VM did not find it necessary to change these rates to "maintain consistency" with the TELRIC Order. Application of these rates, even using the PASL-skewed payphone characteristics from the Study, supports the NEPCC's previously-recommended port cost (including reasonable overhead loading) of appropriately $4.61 per month. Any adjustments resulting from use of a true PAL universe would have to be applied to the calculation of these PAL port costs.
7. In the final analysis, VM's theory to support a 100% increase in port costs for PALs is unsustainable and must be rejected. At the maximum, the Department should use a figure of $4.61 per month per port (fully loaded) for PAL port costs.

V. THE ALLOCATION OF OVERHEAD FOR DIRECT DIALED SCREENING DOES NOT COMPLY WITH THE FCC STANDARD

1. Direct Dialed Screening ("DDS") is a VM-offered feature that blocks all directly dialed +1 calls placed from the subscriber's line, except calls to 800/877/888 toll free services and calls made to a number in a local calling area that is reached by dialing 1+ an area code. VM now estimates the TSLRIC cost for DDS is $.89; the monthly rate for the feature is $2.50. Therefore, VM's markup over direct costs, to cover a reasonable allocation of joint and common costs, is 181% (i.e., cost to rate ratio of 2.81).
2. VM asserts that this contribution to overhead is reasonable because (a) the rate (numerator) is less than the FCC-approved rate for the same service, and (b) the result (the ratio) is less than the rates approved by the FCC for other payphone features.
3. Throughout this proceeding the NEPCC has consistently challenged the use of such mechanical cost-to-rate ratios to assess the reasonableness of overhead loadings. Employing such a simplistic mathematical device does not satisfy the requirements of the FCC Standard. VM is required to demonstrate and justify its <u>methodology</u> for setting this overhead allocation. It has not done so here. Indeed, the Department, in its November Order, concluded that such an approach in the earlier stages of this proceeding was not a "demonstration of the reasonableness of the overhead cost for the payphone features and functions." VM has done nothing more in the Study with respect to the rate for DDS so it must fail to meet the FCC Standard and the Department's directive.
4. VM claims that two 1997 FCC Orders support its assertion that the 2.81 cost-to-rate ratio meets the FCC Standard. With respect to the 1997 Common Carrier Bureau Order On Reconsideration, there is no indication therein that the Common Carrier Bureau even considered the costs and rates for the DDS service at issue here.
5. With respect to the 1997 Commission Memorandum Opinion and Order, VM purposefully ignores the limitations and distinctions expressly pointed out in that decision. <u>First</u>, the Commission specifically noted that the services at issue were provided "either at very low rates or at no charge." Indeed, the highest charge approved as part of the rates examined therein was $0.15 per month, less than 10% of the $2.50 per month rate at issue here. <u>Second</u>, the Commission expressly stated that its determination with respect to these very low level rates would not "necessarily be determinative in evaluating overhead loadings for other services." <u>Third</u>, the Commission refused to find the tariffs reasonable merely by reference to similar tariffs filed, in that case, at the state level. In light of the foregoing, VM's reliance on these FCC rulings is totally misplaced and does not justify the 181% markup over direct costs for DDS. At most the markup should be a percentage comparable to that authorized by the Department in setting NET rates (i.e., roughly 35%).

VI. THE STUDY IS DEFECTIVE AND INCOMPLETE BECAUSE IT FAILS TO ADDRESS LOCAL USAGE

1. The Department erroneously concluded that the FCC Standard did not apply to the local usage component of Verizon's payphone service rates to PSPs. The NEPCC has sought reconsideration of that finding. Consistent with that

reconsideration request, the NEPCC finds the Study defective and incomplete because it fails to address the local usage component.

2. The FCC has stated that to demonstrate compliance with its Standard, an incumbent local exchange carrier like VM should file "supporting information … (e.g., usage-sensitive elements whether specified in the payphone line tariff or cross-referenced to another tariff as well as flat rate elements) and should provide cost support for each rate element in accordance with the cost support requirements described below."

3. The application of the FCC Standard to local usage has only recently been confirmed in Maryland, another Verizon state. The Maryland Public Service Commission held:

   "We agree with the Hearing Examiner's findings and require that usage and measured service rates be priced in accordance with the requirements of the NST [new services test]. As an initial point we recognize that the primary goal of §276 is to encourage and promote competition within the payphone industry. To permit BA-MD to price a necessary payphone element contrary to the mandates of the FCC's Payphone Reclassification Proceeding would be contrary to the purposes of the Act. Our finding is supported by the formal interpretation of §276 provided by the Common Carrier Bureau of the FCC to the Office of the New Jersey Attorney General. The Common Carrier Bureau addressed the proposed question of whether it was the FCC's intention to require message units to meet the New Services Test for the tariff filed with the state utility commission. The Common Carrier Bureau indicated that:

   [t]he Commission drew no distinctions based on rate structure, nor did it make any other exceptions to the cost requirements. Thus, ***any*** payphone service rate, flat or usage based, must be justified by cost support material as prescribed in 47 C.F.R. §61.49(g), and must satisfy the price cap new services test.

   BA-MD on appeal specifically requested that the Commission withhold deciding this issue until the above response was issued. The Commission has done as requested. The Common Carrier Bureau's interpretation of the FCC's Payphone Order is consistent with the Hearing Examiner's findings in the Proposed Order. As such, the Hearing Examiner's findings that usage and measured service rates are to be subject to the NST are affirmed."

4. For the foregoing reasons, as well as those set out by the NEPCC elsewhere in the record of this proceeding, the Study is defective and incomplete because it fails to address the local usage charges paid by PSPs to VM.

VII. <u>MASSACHUSETTS PSPS ARE ENTITLED TO REFUNDS</u>

1. If, as the NEPCC demonstrates is the case, VM rates must be reduced to meet the FCC's Standard, then the PSPs who have been paying those rates are entitled to refunds. The <u>Payphone Orders</u> were very explicit as to the nature of the bargain. To be eligible for dial-around compensation on its

payphones, VM (then New England Telephone and Telegraph) had to have in effect PAL rates complying with the requirements of those Orders. The tariffs were to be in effect by April 15, 1997. Otherwise, the LEC could only retains its eligibility for compensation by reimbursing its customers or providing credits from April 15, 1997 for charges exceeding complying rates. Although the Department allowed VM's existing PAL rates to remain in effect, it made no final finding that they were in compliance with the Payphone Orders. That was the very purpose of this investigation. Therefore, the Department should follow the orders issued in Delaware, South Carolina, Kentucky and Tennessee, and require refunds of the difference between complying rates and the rates paid. Indeed, VM should be required to pay a reasonable rate of interest on the refund amounts, just as it is required to do when holding a subscribers service deposit. Otherwise, BA-MA will have had use of these funds, to which it was not entitled under the Payphone Orders, without charge, placing independent providers of payphone service at a further competitive disadvantage.

VIII. THERE IS NO PURPOSE FOR A HEARING AT THE PRESENT TIME

1. In the HO Memorandum, the parties are asked to indicate in their comments "whether further evidentiary hearings are requested and … specifically for what purpose the parties wish to conduct hearing." The NEPCC's position is that the Study, as outlined previously herein, with respect to PAL loop costs and local usage is so fatally flawed and incomplete that hearings at this juncture would be a waste of the Department's and the NEPCC's resources. In addition, with respect to the issues raised by the NEPCC with respect to port and Direct Dialed Screening costs, the Departments has sufficient facts and information before it to make a decision. Therefore, no hearing should be required on those issues.
2. In the event that the Department concludes, however, that a further hearing is required, the NEPCC strongly requests that it be scheduled promptly (i.e., within 30 days) and that any materials to be submitted in connection with the hearing be due 15 days after the order establishing such a hearing date. This case has gone on for almost 4 years since the Department conditionally permitted VM's PAL rates to remain in effect and it is the NEPCC's view that during that time its members have continued to pay rates that do not comply with the FCC Standard in violation of Section 276 of the Communications Act of 1934, as amended, and the Payphone Orders.

IX. CONCLUSION

1. The VM study is fatally defective. The analysis of PAL loop costs is based on a universe that is unrepresentative of PALs in Massachusetts. The analysis of PAL port costs is founded on a blatantly false assumption. The analysis of DDS overhead does not meet the FCC Standard or the Dependants November Order. There is no analysis of local usage. Until the Study is completed correctly, a further hearing is unwarranted.
2. This proceeding has dragged on for nearly four years since the FCC mandates reflected in the Payphone Orders. It is high time for the Department to require VM to comply with those Orders in the fashion urged by the NEPCC and required by the FCC Standard.

Respectfully submitted,

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/s/

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Dated: April 12, 2001