COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

Investigation by the Department on its own Motion as to the propriety of the rates and charges set forth in M.D.T.E No. 17, filed with the Department on May 5, 2000 to become effective June 4 and June 6, 2000 by New England Telephone and Telegraph Company d/b/a Bell Atlantic – Massachusetts	)	**D.T.E. 98-57, Phase III**

VERIZON MASSACHUSETTS'
MOTION FOR CLARIFICATION

Verizon Massachusetts ("Verizon MA") seeks clarification of three aspects of the Department's January 8, 2001, Order in this phase of the proceeding. They are: (1) whether the ruling allows Verizon MA to charge for conditioning copper distribution facilities for xDSL services when a CLEC requests conditioning of a loop that meets Carrier Serving Area standards; (2) the Department's finding that Verizon MA keep a UNE-P arrangement intact when CLECs use line splitting to provide voice and data services over the same, Verizon-leased line; and (3) whether the Department's ruling was intended to modify the *Phase III Order*[1] regarding Verizon MA's obligation to provide so-called plug and play arrangements at remote terminals. As discussed below, the Department should grant the requested clarification on each of these matters.

[1] D.T.E. 98-57 Phase III (September 29, 2000)

ARGUMENT

A. The Department Should Clarify that Verizon MA May Charge to Condition the Copper Portion of Loops to Provide xDSL Services in Certain Circumstances.

In the *January 8th Order*, the Department confirmed its ruling in the *Phase III Order* that Verizon MA may not charge for conditioning loops to provide xDSL services because the conditioning costs for xDSL services assumed an all copper network that differed from the network assumption of a fiber feeder network used in the TELRIC studies approved in the *Consolidated Arbitrations*. *January 8th Order* at 34-35. Regarding Verizon MA's claim that there was copper distribution plant that would have to be conditioned even in a fiber-feeder network, the Department also rejected Verizon's request for reconsideration.

On this latter issue, there was no question that copper facilities comprised a portion of the loop plant in the approved TELRIC studies and that copper loops contain bridge tap. However, the Department denied Verizon MA's request to recover conditioning costs even for these copper facilities based on Covad's claim that CLECs would not need conditioning on this portion of the loop. Specifically, the Department relied on Covad's assertion that, if Verizon MA followed Carrier Serving Area ("CSA") standards for its copper distribution plant, there would be no more than 2,500 feet in total bridged tap on each loop and no single bridged tap longer than 2,000 feet. *January 8th Order* at 30, 36. According to Covad, this amount of bridged tap would not affect xDSL services, and CLECs would have no reason to seek conditioning or loop make-up information. *Id.*, at 30. The Department noted that, since the record indicated Verizon MA engineered its copper distribution plant to the CSA standards, conditioning would therefore be unnecessary for xDSL service. *Id.*, at 36-37.

Left unanswered by the *January 8th Order* is whether Verizon MA may charge if a CLEC requests conditioning on CSA-compliant copper loop distribution, *i.e.*, those that have less than

2,500 feet in total bridged tap on each loop and no single bridged tap longer than 2,000 feet. This requires clarification because the possibility that a CLEC will request conditioning on these facilities is more than theoretical. Despite Covad's claim to the contrary, Verizon MA expects that CLECs will request conditioning even when distribution loops are CSA-compliant. Indeed, one CLEC in particular is now requesting that Verizon MA remove *all* bridged tap on xDSL loops, even those under 2500 feet. The simple fact is that CLECs have an incentive to require that Verizon MA "clean" all loops if conditioning is free. The Department's *January 8th Order* cannot reasonably be read to deny Verizon MA the ability to charge in these circumstances. If such loops are fully capable of supporting xDSL service, as the Department found based on Covad's representation, a CLEC may use them without any conditioning. However, if a CLEC requests conditioning, it should pay for this work. Authorizing Verizon MA to charge to condition CSA-compliant loops upon CLEC request is consistent with the Department's ruling. The Department should, accordingly, clarify that Verizon MA may recover its costs from CLECs when they request conditioning on CSA-compliant loops.

B The Department Should Clarify Its Ruling Concerning UNE-P Line Splitting.

The *January 8th Order* granted WorldCom's request that the Department reconsider its determination in the *Phase III Order* that Verizon MA was not required to provide line splitting on UNE-P arrangements. Based on a reexamination of the FCC ruling in the *SBC Texas Order,*[2] the Department concluded that its initial interpretation of that order was incorrect and that the FCC required Verizon to "keep the UNE-P arrangement intact when CLECs use line splitting to provide voice and data services over the same, Verizon-leased line." *January 8th Order* at 52.

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2 *Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwester Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354.

Verizon MA requests that the Department clarify that its ruling concerning line splitting is intended to require that the Company provide line splitting pursuant to FCC requirements and that the Department was not imposing a different or additional requirement on Verizon MA. The Department addressed the issue solely on the basis of the parties' claims concerning the meaning of various FCC rulings, and the *January 8th Order* rests solely on a reexamination by the Department of the *SBC Texas Order*. The Department noted: "While the FCC's intention in the *SBC Texas Order* could be clearer, a careful second review of this Order, and particularly paragraph 330, convinces us that we erred in our original interpretation. The issue here is not whether Verizon must offer line splitting, but whether the FCC requires ILECs to keep the UNE-P intact for CLEC line splitting." *January 8th Order* at 52. The Department's understanding of FCC requirements is thus the only basis for the ruling.

The source of the line-splitting obligation is important. The FCC continues to clarify its line splitting requirements, and in fact, issued an order within the last week that clarified both its *Line Sharing Order* and the *SBC Texas Order* on the line splitting arrangement. In its *Order on Reconsideration*[3] in CC Docket No. 98-147 and CC Docket No. 96-98, the FCC clarified that, while incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop, a UNE-P arrangement does not remain "intact" as the Department indicated the FCC had previously ruled. Rather, the FCC stated that once line splitting is added into the mix, a UNE-P configuration is replaced with a configuration of elements that allows for both voice and data services. The FCC ruled that a CLEC can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching

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3 *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98 (January 19, 2001).

combined with shared transport *to replace* its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services. *Order on Reconsideration* at ¶ 19. The FCC recognized that an "incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement." *Id.*, at 20. And, the FCC urged incumbent LECs and CLECs to work together to develop processes and systems to support competing carrier ordering and provisioning of unbundled loops and switching necessary for line splitting. *Id.* Thus, the FCC's *Order on Reconsideration* clarifies that line splitting constitutes a new configuration of loop, splitter and switching elements that enables a CLEC alone or with another CLEC to provide voice and data services over a single loop, but it is not a configuration in which the UNE-P arrangement remains intact.

The Department should clarify that the *January 8th Order* is intended only to reflect FCC requirements regarding line splitting. Verizon MA will comply with the FCC's requirement as most recently clarified in its *Order on Reconsideration*.

C. The Department Should Clarify That It Has Not Yet Determined Whether to Require Verizon MA To Make Plug and Play Arrangements Available.

In the *Phase III Order*, the Department directed that Verizon file a proposed tariff to "enable CLECs to place or have Verizon place CLEC-purchased line cards in Verizon's DLC electronics at the RT (options 2 and 3 proposed by Covad)." *Phase III Order* at 86. These are referred to as so-called plug and play arrangements. The Department recognized that Verizon MA does not today deploy line cards in DLC at RTs and that such technology does not exist in Verizon MA's network. *Id.*, at 88. Consequently, the Department stated that it "will not direct Verizon to make available equipment not currently found in its network for CLEC use or to purchase equipment solely for use of CLECs." *Id.* The Department also recognized that the four

conditions set forth in 47 C.F.R. §51.319(c)(3)(b) must be met before Verizon MA could be ordered to offer the "plug and play" options proposed by Covad. *Phase III Order* at 88.

Despite these factors, the Department decided to begin investigating plug and play arrangements in advance of deployment of the technology by having Verizon MA file a proposed tariff. The Department took this action to prevent any head start Verizon MA's data affiliate may have if the technology was deployed in the future. *Id.*, at 88-89. However, the Department clearly stated that, although requiring Verizon MA to file a proposal, it was not thereby precluding the Company from raising legal, technical, or operational issues associated with plug and play arrangements during the investigation but would examine and address those claims when presented. *Id.*, at 89.

Verizon MA sought reconsideration of the Department's ruling. It requested that instead of preparing a plug and play tariff, the Company be permitted to develop a service that meets the CLECs' needs while taking into account our network infrastructure and FCC requirements. The *January 8th Order* denied that motion. The Department ruled that, while Verizon MA could file an alternative proposal, it would not relieve the company of the obligation to file a plug and play proposal. *January 8th Order* at 43.

At least two CLECs have publicly stated that the *January 8th Order* decided that Verizon MA has an affirmative obligation to provide plug and play arrangements. In a press release concerning the Order, Rhythms claimed that "[t]he decision … ensures Rhythms' right to place its own line cards in upgrading Verizon remote terminals." (A copy of the press release is attached.) Likewise, at an industry meeting held in Maryland on January 17, 2001, counsel for Covad asserted that the *January 8th Order* mandated that Verizon MA provide CLECs with such

arrangements. These claims are simply wrong, and their erroneous interpretation of the Order provides cause for the Department to clarify its ruling.

In the *January 8th Order*, the Department understandably did not repeat the discussion in the *Phase III Order* regarding its reasons for ordering Verizon MA to file a plug and play proposal. The Department also did not restate its finding that it would address any legal, technical, or operational issues raised by Verizon MA in the investigation of the proposal and that based upon its review may *not* require Verizon MA to implement plug and play arrangements. *Phase III Order* at 89. The fact that the *January 8th Order* did not repeat all of the findings contained in the *Phase III Order* cannot be interpreted, as Rhythms and Covad have, as modifying the Department's earlier ruling. Rather, the Department dealt only with the limited issue before it, namely, Verizon MA's request to propose for consideration a different serving arrangement than plug and play.

The *Phase III Order* is clear that the Department has not reached any decision regarding plug and play arrangements and ultimately may not order such arrangements based on its further investigation. There can be no reasonable dispute regarding the Department's intent. In fact, in arguing against Verizon MA's request for reconsideration, Rhythms noted that the *Phase III Order* did not require that Verizon MA offer a plug and play option but provided only for further investigation of such arrangements. Opposition of Rhythms Links Inc. To Verizon Massachusetts' Motion for Partial Reconsideration at 8 (dated November 9, 2000). Nothing in the *January 8th Order* affects that ruling. To avoid any confusion, and further public posturing by Rhythms and Covad, the Department should clarify that *January 8th Order* did not modify what is clear in the *Phase III Order* – the Department has made no decision at this time regarding

any legal, technical, or operational issue associated with plug and play arrangements but will address these in its investigation of Verizon MA's proposals.

CONCLUSION

For the foregoing reasons, Verizon MA's requests that the Department grant this Motion for Clarification.

Respectfully submitted,

VERIZON MASSSACHUSETTS

By its attorney,

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