

140 West Street
27th Floor
New York, NY 10007
Tel (212) 321-8115
Fax (212) 962-1687
richard.fipphen@verizon.com

Richard C. Fipphen
Assistant General Counsel



July 19, 2010

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118-6500

***Re: D.T.C. 10-2 – Petition of Choice One Communications of Massachusetts Inc.,
Conversent 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***

Dear Ms. Williams:

Enclosed for filing in the above-referenced matter is Verizon's Opposition to One Communications' Request for Temporary Rates.

Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard C. Fipphen".

Richard C. Fipphen

cc: Lindsay DeRoche, Hearing Officer
Kajal Chattopadhyay, General Counsel
Michael Isenberg, Director, Competition Division
D.T.C. 07-9 Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Choice One Communications of Massachusetts)
Inc., Conversent 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

OPPOSITION TO REQUEST FOR TEMPORARY RATES

Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon Massachusetts”), MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Verizon Long Distance LLC, and Verizon Select Services, Inc. (collectively “Verizon” or “the Verizon companies”) hereby oppose the request of One Communications (“One Com”) that the Department establish the current intrastate switched access rates of several One Com operating companies as temporary rates, subject to “true-up” if the Department determines that One Com’s cost study supports rates that exceed the Department’s rate cap.

Background

On June 22, 2009, the Department issued its Final Order in D.T.C. 07-9 requiring that the intrastate switched access rates of competitive local exchange carriers (“CLECs”) operating in Massachusetts not exceed the rates of Verizon Massachusetts. The Department also established an exemption process if a “CLEC is able to demonstrate justifiable costs in excess of the proposed rate

cap with cost-specific data....”¹ In its December 7, 2009 Order on Motion for Reconsideration and Clarification, the Department stated that a “CLEC seeking an exemption may submit its cost justification to the Department at any time before or after the cap’s effective date.”² The Department further stated that a “CLEC’s cost justifications...will be subject to Department adjudication, and the CLEC must abide by the established rate cap until the Department issues an exemptive Order.”³

On June 15, 2010, the four One Com companies operating in Massachusetts — Conversent Communications of Massachusetts, Inc., Lightship Telecom, LLC, Choice One Communications of Massachusetts Inc., and CTC Communications Corp. — each filed tariff revisions with the Department to comply with the Department’s Order in D.T.C. 07-9, with a proposed effective date of June 22, 2010, the compliance deadline established by the Department.

On June 21, 2010, the four One Com companies filed a petition with the Department seeking an exemption from the rate cap established by the Department in D.T.C. 07-9. One Com did not file a cost study with its petition.⁴ In its petition, One Com requested that the Department (1) “designate the intrastate switched access rates that One Communications filed for effect June 22, 2010, in compliance with the orders in D.T.C. 07-9, as interim rates pending this cost review and reconciliation”; and (2) “allow One Communications to impose a charge on its intrastate switched access customers to collect the under-recovery of costs that are demonstrated by the cost study from June 22, 2010 until such time as the Department grants the approvals requested herein.”⁵

¹ D.T.C. 07-9, Final Order (June 22, 2009), at 27.

² D.T.C. 07-9, Order on Motion for Reconsideration and Clarification (December 7, 2009) (“Reconsideration Order”), at 21.

³ *Id.*

⁴ Upon the request of the Hearing Officer, One Com filed its cost study with the Department on July 9, 2010.

⁵ Petition at 1-2.

For the reasons set forth below, these requests should be denied by the Department.

Argument

I. THE DEPARTMENT HAS PREVIOUSLY DENIED THE REQUESTED RELIEF

On July 13, 2009, One Com, along with other parties, filed with the Department a Motion for Reconsideration and in the Alternative, for Clarification, of the Department's Final Order in D.T.C. 07-9. In that Motion, One Com and the other moving parties sought clarification from the Department on the process for seeking an exemption from the rate cap. The requested clarification sought effectively the same relief requested here by One Com. The Motion stated as follows:

CLECs also seek clarification that, if the CLEC submits its cost justification prior to the effective date of the rate cap, the CLEC's rates will not be subject to the cap while the Department completes its review of the cost justification. This approach would avoid the confiscatory revenue deprivation to CLECs, and would avoid rates bouncing down, then bouncing back up at the conclusion of the proceeding which would hurt competition and be confusing for customers.⁶

The Department rejected this request. In its Reconsideration Order, the Department unequivocally stated that the "*CLEC must abide by the established rate cap until the Department issues an exemptive Order.*"⁷ In its latest petition, One Com proposes to reverse this Department decision by allowing it to give retroactive effect (to June 22, 2010) to rates established in this proceeding, assuming, of course, that One Com is able to cost-justify higher rates to the satisfaction of the Department. Yet, One Com offers no new reasons to justify a departure from the Department's prior ruling on this issue, or why the Department should set aside its prior determination that rates set at or below the cap are lawful rates. Moreover, One Com offers no explanation for waiting until the last minute — the day before the compliance deadline — to file

⁶ D.T.C. 07-9, Motion for Reconsideration and in the Alternative for Clarification (July 13, 2009), at 16-17.

⁷ Reconsideration Order at 21 (emphasis added).

purported cost justification for higher rates. Had One Com desired to avoid the necessity to comply with the cap as of June 22, 2010, it had a year from the Department's June 22, 2009 Order to file a cost study. If One Com is ultimately able to justify higher rates, any adverse financial consequences to One Com resulting from the delay in Department review of its cost study are of its own making.

II. DEPARTMENT PRECEDENTS DO NOT SUPPORT THE PROPOSED "TRUE-UP" APPROACH

In its petition, One Com alleges that its proposed "true-up" approach is "consistent with long-standing Department precedent,"⁸ citing Department decisions on the establishment of rates for unbundled network elements as well as the Department's Order on Compliance Tariffs issued in D.T.C. 07-9 on June 16, 2010. These cases are clearly not on point, as they address "true-up" mechanisms for *compliance filings*.⁹ One Com's cost study is not a compliance filing. Rather, One Com's cost study is just the opposite — effectively a proposed rate increase, subject to Department review and investigation.¹⁰

Like any proposed rate increase, new rates for One Com would go into effect, if at all, after the Department completes its investigation. One Com may be required to make a compliance filing at the end of this investigation, but its filing initiating the investigation cannot in any way be compared with the compliance filings at issue in the Department cases it has cited. The Department's resolution of this issue in the Reconsideration Order demonstrates that One Com's

⁸ Petition at 5-6.

⁹ The citation to the Department's May 14, 2002 order in D.T.E. 98-57 Phase IV is also inappropriate. The April 6, 2001 tariff filing did not affect rates.

¹⁰ Not only is the One Com filing not a compliance filing, it is also not a tariff filing. Unlike a real tariff filing in which a regulated company proposes a rate increase, One Com has filed no tariff pages with proposed rates and has not otherwise publicly stated to the Department the proposed rates that it seeks to justify in this proceeding. Indeed, the Department should decline to proceed with this investigation until One Com puts its proposed rates on the public record, in compliance with M.G.L. Chapter 159, section 19.

cost study should not be treated as presumptively reasonable. If One Com can satisfy its burden of proof to cost-justify rates that are higher than the Department's cap, those new rates will go into effect on a compliance date to be established by the Department at the conclusion of this investigation.

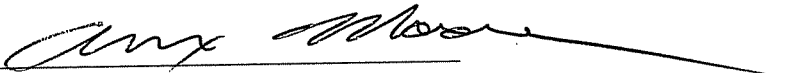
Conclusion

For the reasons set forth above, One Com's request to make its current intrastate switched access rates temporary should be denied in all respects.

Respectfully submitted,

VERIZON NEW ENGLAND INC., MCIMETRO
ACCESS TRANSMISSION SERVICES OF
MASSACHUSETTS, INC., MCI COMMUNICATIONS
SERVICES, INC., VERIZON LONG DISTANCE LLC,
and VERIZON SELECT SERVICES, INC.

By their Attorneys,



Alexander W. Moore
125 High Street, Oliver Tower, 7th Floor
Boston, Massachusetts 02110-1585
(617) 743-2265

Richard C. Fipphen
140 West Street – 27th Floor
New York, New York 10007
(212) 321-8115

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