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March 11, 2011

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 are an original and one (1) copy of the public, redacted version of Verizon's Reply Brief in the above-referenced matter.

The confidential version of the Reply Brief has been filed with Benedict Dobbs, Acting Director, Competition Division.

Thank you for your attention to this matter.

Respectfully submitted,

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

Richard C. Fipphen

cc: Benedict Dobbs, Acting Director, Competition Division
Lindsay DeRoche, Hearing Officer (2 copies)
Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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| of Massachusetts, Inc., Conversent |) | |
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VERIZON'S REPLY BRIEF

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Dated: March 11, 2011

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VERIZON'S REPLY BRIEF¹

I. INTRODUCTION

In its initial Brief, Verizon demonstrated that the cost study filed by One Communications (“One Comm”) is not an industry-standard TSLRIC study of One Comm’s costs of providing switched access services in Massachusetts, as required by Department precedent, but instead shows only One Comm’s purported average cost of providing *any of its voice services*. This failure alone requires Department rejection of One Comm’s Petition. Verizon also demonstrated in its initial Brief that, even on its own terms, One Comm’s cost study vastly overstates its purported costs. Adjusting the results of the study for just some of its errors shows that One Comm’s purported costs are less than the applicable rate cap. This provides a second, independent ground upon which One Comm’s Petition to exceed the access rate cap must be rejected.

¹ “Verizon” herein refers collectively to Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”), 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.

One Comm’s initial Brief avoids directly addressing the criticisms of the fundamental defects in its cost study, and it offers nothing to dissuade the Department from rejecting One Comm’s Petition.

II. ONE COMM MISREPRESENTS ITS COST MODEL AS A TSLRIC STUDY OF SWITCHED ACCESS SERVICE

A. NUCA Is Not a TSLRIC Study of Switched Access Service

One Comm’s initial Brief is littered with misrepresentations, distortions, half-truths and misleading arguments. Most glaring is the oft-repeated claim that One Comm’s Network Usage Cost Analysis (“NUCA”) model complies with the total-service long-run incremental cost (“TSLRIC”) methodology.² One Comm’s claim is patently false.

One Comm asserts that “OneComm’s cost study derives OneComm’s *cost of switched access...*”³ This statement is simply not true. The NUCA model makes no effort to isolate the costs One Comm incurs as a result of providing switched access service. Instead, NUCA purports to show One Comm’s costs of providing *any* voice service, based on the average costs of *all* of the voice services that One Comm provides. NUCA provides no evidence of the costs One Comm incurs in providing intrastate switched access service *in particular*, as opposed to other voice services.

One Comm defends this fatal defect in its cost methodology by arguing, in effect, that “usage” is the only service that One Comm offers and that all usage on a telecommunications network costs the same, *i.e.*, “a minute is a minute.” One Comm argues that “most of a

² One Comm Br. at 1 (“OneComm’s cost study is a Total Service Long Run Incremental Cost (‘TSLRIC’) study...”); 10 (“OneComm used the industry standard of TSLRIC”); 13 (“OneComm’s cost study employs not TELRIC but...TSLRIC”); and 21 (“OneComm’s cost study is a TSLRIC cost study”).

³ *Id.* at 2 (emphasis added).

telecommunications network is constructed to accommodate network usage, ... that usage traverses the same set of switches, transport facilities, *etc.*” and “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. Hence, the ‘a-minute-is-a-minute’ approach is justified.”⁴

Of course, One Comm’s “a-minute-is-a-minute” claim is *just an assumption*, and One Comm has failed to offer any evidence that this assumption is true. It has not even attempted to demonstrate that the costs of local usage, toll usage (both retail services), and switched access (a wholesale service) are the same. Just because different types of traffic *use* the same network functionalities does not mean that each service contributes equally in *causing* One Comm to incur the cost of each functionality. The industry-standard approach to determining the per-minute costs of usage services is to perform a TSLRIC study *specific to the service being studied*. One Comm has not done that.

To further defend its “a-minute-is-a-minute” approach, One Comm argues that “by accounting for all usage over the facilities and spreading the costs of shared network facilities over all usage, *all services pick up a proportionate share of the costs of those shared facilities.*”⁵ This claim underscores the real reason why One Comm has included the costs of all usage services, not just switched access service.

The suggestion that “all services” will now pick up a “proportionate share” of the costs of shared facilities ignores the fact that *One Comm’s intrastate switched access rates are the only One Comm rates at issue in this proceeding*. One Comm has not proposed to use the results of

⁴ One Comm Br. at 14.

⁵ One Comm Br. at 15 (emphasis added). One Comm also states that “the crux of OneComm’s cost study and the minute-is-a-minute” approach is to ensure that other customers have already been allocated their reasonable share of costs.” One Comm Br. at 19. There is no evidence in the record of this proceeding to support One Comm’s contention that its retail usage customers are today paying the same per-minute usage cost that One Comm proposes to charge for intrastate switched access service.

its cost study to re-price its retail local and toll usage services, which, of course, are not subject to any price regulation by the Department. One Comm’s argument that its “a-minute-is-a-minute” approach “ensures non-discriminatory treatment of all uses of the network (and avoids the creation of implicit subsidies) by avoiding the possibility that certain minutes (and customers) shoulder a greater cost burden than others”⁶ is completely wrong. By costing *all* usage services but proposing to re-price (*i.e.*, raise rates for) *only* switched access service, One Comm’s approach would allow it to shift costs appropriately borne by its end-user customers to its switched access customers, thereby creating a subsidy in favor of One Comm’s retail customers.

One Comm’s defense of its “total usage services” cost study underscores the real reason for taking this approach. A proper TSLRIC study for switched access service must be *service-specific*, but such a study would have produced per-minute costs well *below* the Department’s rate cap. Therefore, the key to inflating costs was to develop a study to include local exchange service costs in the costs of providing switched access, which NUCA accomplishes by costing *all* usage services, not just switched access, and assigning all local exchange costs (the “costs of shared facilities” in One Comm’s argument) to usage services. This approach generates a much higher per-minute cost than a proper TSLRIC study – *one limited specifically to switched access service* – would have done. It also ignores the principles of causation that define the costs to be included in a TSLRIC study.

B. NUCA Is Not an Incremental Cost Study

Verizon has demonstrated that One Comm’s cost study is not an incremental cost study because it includes costs that are not *caused* by the provisioning of switched access service, most

⁶ One Comm Br. at 13.

notably, One Comm's costs of providing basic network access to its end-user customers. Under the TSLRIC methodology, such costs must be excluded from the study because One Comm would incur these costs whether it provided switched access service or not.⁷ They are not an *incremental cost* of the provisioning of switched access service. Although One Comm's arguments to the contrary purposely confuse the issue, one point is very clear: One Comm cannot and does not cite a single federal or state commission decision that endorses the inclusion of local exchange (*i.e.*, loop) costs in an incremental cost study for switched access service.

1. The Department should follow its long-standing policy on exclusion of loop costs from an incremental cost study of switched access service.

One Comm argues that inclusion of loop costs in its switched access cost study follows industry practice.⁸ Yet it cites no federal or state commission decision explicitly on point. One Comm's reliance on the FCC's *Local Competition Order* for the proposition that the cost of the local loop should be shared between switched access service and other services using the loop⁹ is misplaced. The FCC's statement regarding allocation of loop costs referred to the results of the federal-state separations process under a *fully allocated cost model*, as that process has been used for the *pricing* of interstate switched access service, and has no relevance to the Department's consideration of whether One Comm's claimed *TSLRIC study* justifies a rate above the CLEC rate cap.¹⁰

⁷ Verizon Br. at 9-12, 13-19.

⁸ One Comm Br. at 69.

⁹ One Comm Br. at 69-70.

¹⁰ Verizon Direct at 33.

One Comm also argues that recovery of loop costs in switched access rates is industry practice and that “loop costs are routinely considered shared costs of switched access services.”¹¹ One Comm is confusing the issue by conflating the concepts of *costing* and *pricing* (i.e., ratemaking or cost recovery). Verizon does not dispute that ILEC access charges at both the federal and state level (including Massachusetts) had historically been used as a means of recovering a share of loop costs. However, that is no longer the case. This ratemaking history is described in Verizon’s panel testimony.¹² What is at issue in this proceeding, however, is the determination of the *incremental costs* of switched access service, as provided by One Comm in Massachusetts. That regulators had in the past included a “Carrier Common Line” element in Verizon MA’s switched access rates to contribute to the recovery of loop costs to promote universal service (by keeping down local exchange rates) has no bearing whatsoever on the narrow issue of whether loop costs are properly included in the calculation of the incremental costs of switched access.¹³ They are not. As the Department found in 1989 in D.P.U. 86-33-G, “[Network] [a]ccess is customer-related because it is the demand for lines connecting the customer’s premises with the central office that causes these costs to be incurred.”¹⁴ It could not be clearer – loop costs are not properly included in the incremental cost of switched access.

¹¹ One Comm Br. at 76.

¹² Verizon Direct at 36-39.

¹³ Once again confusing *costing* and *pricing*, One Comm suggests that Verizon may today “continue to earn revenues from switched access services that go toward recovery of loop costs.” One Comm Br. at 78. Setting aside the point that the Department has eliminated Verizon’s intrastate Carrier Common Line charge from its access rate structure, One Comm’s point proves nothing. Even if true, it would mean that the Department’s rate cap is set *above* Verizon’s TSLRIC for switched access, creating additional margin for One Comm to set its access rates without the cost justification the Department requires.

¹⁴ D.P.U. 86-33-G (1989) at 455.

One Comm argues that the Department’s finding in D.P.U. 86-33-G, which was reaffirmed in 2003,¹⁵ is rooted in “outdated regulatory practices” and “inconsistent with One Comm’s market realities” and that “telecommunications industry has changed since 1989.”¹⁶ One Comm argues that the Department “should not conclude that customers today buy loops...for local service.”¹⁷ Rather, One Comm argues, customers “obtain service to meet their telecommunications needs,” and that loops are “equipment that customers need for all of their calls.”¹⁸ But the Department last stated its policy on this issue in 2003, not 1989, and even in 1989, customers obtained service not just to make local calls but “to meet their telecommunications needs,” and loops carried all types of calls. That has not changed, and the Department’s long-standing precedent remains applicable and appropriate today.

Despite One Comm’s rhetoric, the allocation of loop costs to usage-based services is contrary not only to Department precedent but industry standards for a TSLRIC study. One Comm’s argument is misleading because it confuses *causation* and *use* as the appropriate basis for determining whether a given cost is incremental to a particular service. It is indisputable that a customer’s network access line can be *used* for a number of different services. But under the TSLRIC methodology, network access costs are *caused* by the end user’s decision to obtain a network access line, *not* by the end user’s decision to *use* that line, once in place, for a particular type of service. That is why One Comm can charge a customer for telephone service even if the

¹⁵ D.T.E. 01-31-Phase II (2003).

¹⁶ One Comm Br. at 77-78.

¹⁷ One Comm Br. at 77.

¹⁸ One Comm Br. at 77.

customer does not use the phone in a given month. One Comm has failed to offer a valid reason for the Department to depart from its precedent on this issue.¹⁹

2. Network access costs are caused by the provision of network access, not switched access service.

One Comm argues that the cost of the local loop should be shared between switched access service and other services that use the local loop. One Comm observes that carriers today market local and local distance services together as bundled offerings, to counter Verizon's point that loop costs are *caused* by the end user's decision to purchase local exchange service. One Comm further observes that a customer could establish "a telecommunications hook-up in order to make *only* long distance calls, in which case a 100% assignment of loop costs to switched access services would be proper."²⁰ These arguments miss the mark by a mile. First, that services are *marketed* as bundles is irrelevant to how the services are *costed*. There is a fundamental distinction between *network access* and *usage*. The rate structures of most, if not all, carriers reflect that distinction, even though carriers also may offer network access and usage services as part of a bundle. In fact, even One Comm witness Mr. Fischer believes that there is a distinction between network access and usage, and he argues that network access must exist prior to the provision of switched access: "...retail-related marketing or acquisition costs facilitate the growth of *the end user customer base that must exist before switched access services can be offered to IXCs. No access service can be provisioned unless there is a base of retail customers*

¹⁹ A Department decision to include loop costs in a TSLRIC cost study of switched access would have precedential effect on the rates of carriers other than One Comm, most notably, Verizon. Verizon Br. at 15, n.45. In addition, One Comm's attempt to compare the recovery of loop costs with the manner in which wireless carriers recover the costs of access to wireless networks is unavailing. One Comm Br. at 77-78. The issue in this proceeding is costing, not pricing. That wireless carriers typically discount the prices of their equipment and recover "network access" costs through usage charges has no bearing on how a TSLRIC cost study for switched access service should be performed.

²⁰ One Comm Br. at 70, 75-76.

to market toll services to.”²¹ One Comm’s own testimony thus confirms that One Comm incurs the costs of network access in order to establish connectivity between its customers and its network, not to provide switched access service to other carriers.

Further, the suggestion that a customer might establish a dial-tone line “in order to make *only* long distance calls,” thereby justifying assignment of 100% of loop costs to switched access, is grossly misleading. A customer *could* do just that, but nothing would prevent such a customer from making local calls over such a line, and, more importantly, One Comm would still charge its customer for a network connection if its customer made such a purchase decision, and it would charge its customer even if it made *no* long distance calls. One Comm’s frivolous example obscures the point: the process of procuring telecommunications services to a customer location requires, ahead of any decision about types of usages to be purchased, the establishment of network access. One Comm incurs the costs of establishing network access in order to provide dial tone to its customers, and it would incur those costs regardless of the types of usage services that its customers may choose to purchase in addition to network access.

3. Regardless of the names used to label the network functions, the costs of basic network access are not incremental to switched access service.

One Comm further argues that the transport facilities that One Comm leases from Verizon to carry calls from One Comm’s end-users to its switch do not meet the definition of a loop, as defined by the FCC and as defined by Verizon in its tariffs and interconnection agreements. One Comm further argues that Verizon’s tariffs define these facilities as transport.²²

This argument proves nothing.

²¹ Fischer Rebuttal at 10, lines 7-9 (emphasis added).

²² One Comm Br. at 60-61.

As One Comm notes, Verizon's tariffs define a loop as the facility connecting its end user and the Verizon central office. However, looking at function instead of names, the facility at issue connects an end user and a switch. This facility establishes basic network access for Verizon's end-user customers. It is ridiculous to suggest, as One Comm does, that *Verizon's* tariffs define *One Comm's* network components. Given the network architecture that One Comm chose to build, *One Comm's* "loops" are much longer than Verizon's loops, and consist of leased "Verizon loops" and leased "Verizon transport facilities," which One Comm uses together to connect its end users to its switch, *i.e.*, to provide network access. The "loop" facilities that One Comm leases from Verizon are not enough to establish basic network access for One Comm's customers. In order to reach its customers, One Comm has chosen to lease facilities from Verizon that are denominated as "transport" facilities. It matters not what the name is, but, rather, what the facilities are used for. One Comm uses the combination of leased Verizon loop and transport facilities to establish basic network access for its end users. As demonstrated above, the costs of establishing that access are not caused by and are not incremental to switched access services, and must be excluded from the cost study at issue here.

Finally, in its initial brief, One Comm repeats its claim that it should be allowed to include in its access cost study the costs of leased transport facilities that connect its collocation sites with its end users and the aggregation equipment located at its leased collocation sites. One Comm claims that its network is functionally equivalent to Verizon's network and that it should be allowed to charge the same charges that Verizon does for "comparable functionalities."²³ One Comm's argument is wrong. First, as even One Comm implicitly acknowledges, its "functional equivalency" argument is limited to situations where Verizon has deployed remote switches to

²³ One Comm Br. at 61-62, n.231.

serve less populated areas. Further, as Verizon demonstrated in its supplemental testimony, Verizon's remote switches, in the limited areas where they are deployed, are *not* functionally equivalent to the aggregation equipment deployed by One Comm at its collocation sites, the latter equipment being unable to switch telephone calls.²⁴ This fact alone destroys One Comm's "functional equivalence" argument. The function of One Comm's aggregation equipment is to connect the One Comm end user to a One Comm switch, providing network access for its customers. One Comm would incur the costs of this equipment even if it did not provide switched access service, so those costs are not caused by switched access service, and should be excluded from One Comm's cost study.

4. One Comm grossly misrepresents Verizon's position on costing of One Comm's leased transport facilities.

One Comm argues that since Verizon (and AT&T) recoup the costs of transport facilities used to carry switched access traffic in per-minute switched access charges, One Comm should be permitted to do the same.²⁵ This argument grossly misrepresents Verizon's testimony in this proceeding. Verizon's panel testimony noted that One Comm uses leased transport facilities to perform two different functions: (1) to connect its switches with its leased collocation facilities and thus establish network connections to its end users, and (2) to connect its switches with other One Comm switches and the switches of other carriers.²⁶ Verizon explicitly stated that the costs of the latter facilities *are* appropriately included in a TSLRIC cost study of switched access service (just as the costs of such inter-switch transport are included in Verizon's own switched access costs), but that One Comm's cost study fails to break down its leased transport expense

²⁴ Verizon Supplemental at 6-7.

²⁵ One Comm Br. at 57-58.

²⁶ Verizon Direct at 46-47.

between the facilities used to connect its switches to its collocations (network access) and the facilities used to connect its switches with other carriers.²⁷ Further, given the lack of record evidence on this point, Verizon did *not* propose an adjustment to the NUCA model to delete One Comm's leased transport expense, although an adjustment is clearly required to back out the expenses associated with facilities that are used to provide network access for One Comm's end users.²⁸

III. ONE COMM'S COST STUDY OVERSTATES THE COSTS IT INCURS IN ORDER TO PROVIDE SWITCHED ACCESS SERVICE

A. Verizon Has Properly Adjusted One Comm's Voice/Data Allocator

One Comm misunderstands Verizon's principal contention about the need for a voice/data allocator. One Comm argues that Verizon failed to explain why such an allocator is not necessary.²⁹ Verizon clearly testified that such an allocator would not have been necessary had One Comm properly limited its cost study to the incremental costs of switched access. The need for such an allocation arises only from One Comm's decision to include all costs of all services in its cost study, and then eliminate the costs of providing data services, rather than identifying from the beginning only those costs that are caused by the provision of switched access service, as the TSLRIC methodology requires.³⁰

One Comm further alleges that Verizon's restated allocator substantially underestimates the voice/data percentage and that Verizon did not revise its adjustment to reflect the data

²⁷ Verizon Direct at 46-47.

²⁸ Verizon Direct at 46-47.

²⁹ One Comm Br. at 51.

³⁰ Verizon Direct at 53.

submitted by One Comm in its rebuttal testimony.³¹ First, One Comm’s revised calculation of the voice/data allocator, based on “new” DS0/DSL data, is not credible and should be ignored. One Comm took six months (at least) to perform its cost study for its June 2010 petition, which it offered to the Department as accurate, proper and complete when filed. It is simply not plausible that One Comm has found new evidence to support a case *for even higher costs*, based on a *higher* voice/data allocator than the one used in the original filing. Second, One Comm’s claim that Verizon “simply got its math wrong”³² is unsupported. In his rebuttal testimony, Mr. Webber baldly claims that “even using Verizon’s own methodology **BEGIN CONFIDENTIAL**
END CONFIDENTIAL would be related to voice services.”³³ Mr. Webber did not explain the derivation of this number and failed to support this calculation with *any* explanation as to why Verizon “got its math wrong.” The Department cannot base a decision on this issue on the basis of such wholly unsupported claims.

Finally, the Department should not use One Comm’s “updated” data because One Comm has failed to make any showing that its various methods establish an appropriate *forward-looking* estimate of the use of One Comm’s network for voice and data services.³⁴

B. One Comm’s Failure to Provide a Study of Projected Future Demand for Switched Access Service Undermines the Credibility of its Switching Model and its Cost Study in General

The intervenors have criticized the NUCA model for its inappropriate mix (TDM vs. softswitch) and number of switches.³⁵ One Comm’s response is that QSI “reviewed One

³¹ One Comm Br. at 51-53.

³² One Comm Br. at 53.

³³ Webber Rebuttal at 9.

³⁴ Verizon Supplemental at 4.

Comm’s operations and found both the switch mix and number of switches (in terms of traffic loads accommodated) to be appropriate in light of industry practices.”³⁶

A properly done TSLRIC study must project demand for the service being studied, *i.e.*, in this case, switched access service.³⁷ One Comm, however, failed to do a demand study for switched access as part of its cost study in this case. Consequently, it has offered no appropriate evidence showing that the type and number of switches included in its study are appropriate to meet the expected future demand. One Comm’s position is, in essence, that the Department should just take QSI’s word for it, even though QSI’s opinion is not itself based on any demand study. Although Verizon has not proposed an adjustment to reflect this deficiency in the NUCA model,³⁸ this failure further illustrates One Comm’s failure to provide adequate support for the conclusions in its cost study.

C. The Department Should Eliminate the TPI Factor for Switching and Signaling Costs from One Comm’s Switching Module

One Comm has improperly increased its investment costs by applying a Telephone Plant Index (“TPI”) factor to the switching and signaling investments in the NUCA model, purportedly to convert One Comm’s booked (*i.e.*, embedded) investments into “forward-looking” investments. Verizon demonstrated that NUCA’s use of TPI factors of greater than 1.0 for switching equipment is contrary to the market reality that the costs of digital switching have been decreasing.³⁹ In response, One Comm presented a chart purporting to show that digital switching

(. . . continued)

³⁵ One Comm Br. at 30.

³⁶ One Comm Br. at 31.

³⁷ Verizon Br. at 22.

³⁸ Verizon Br. at 22.

³⁹ Verizon Br. at 23-24.

TPIs have been on the rise in recent years.⁴⁰ However, One Comm’s use of TPI data to illustrate long-term price trends for digital switching is meaningless. TPI factors are used to estimate reproduction costs, not forward-looking investment costs. In any event, even if One Comm’s data had any value, One Comm argues only that switching costs have increased slightly *in the short run* since it purchased some of its switches, but TSLRIC demands analysis of *long run* costs, and One Comm’s claim of a short-term blip does not contradict the undisputed evidence in this record that, over the long term, switching costs are declining.

One Comm also argued that the use of TPI factors “is an accepted industry practice and standard in forward-looking cost studies and was used by the FCC in its *Virginia Arbitration Order*.”⁴¹ However, One Comm fails to offer any evidence of the purported industry practice of using TPI factors in forward-looking cost studies. In fact, Verizon is unaware of any state commission that has approved use of TPI factors as a proxy for estimating forward-looking network investments. Further, One Comm’s reliance on the FCC’s *Virginia Arbitration Order* is misplaced. In that proceeding, the FCC’s Wireline Competition Bureau used CC/BC ratios to calculate a productivity *expense* adjustment, not forward-looking *investments*.

D. One Comm’s Defense of its Shared and Common Cost Factor Distorts the Record Evidence

One Comm argues that its shared and common cost factor is reasonable, based upon comparisons to shared and common cost information derived from an AT&T Connecticut cost study and Verizon cost studies from Pennsylvania and New Jersey. One Comm argues that “Verizon supports shared and common costs for its own companies in Pennsylvania and New

⁴⁰ One Comm Br. at 64-66.

⁴¹ One Comm Br. at 63.

Jersey that are significantly higher than OneComm’s proposed shared and common costs in this proceeding.”⁴²

But Verizon has not claimed that One Comm’s factor is unreasonable based on general comparisons with the factors used by other companies in other states, and such a comparison is irrelevant. Rather, Verizon has demonstrated that One Comm’s factor is unreasonable because it includes retail costs which are not caused by switched access, a wholesale service. Moreover, One Comm’s comparison of its shared and common cost factor to those used by Verizon in other states is misleading. One Comm presented Verizon’s shared and common costs in the New Jersey and Pennsylvania cost studies *as percentages of Verizon’s direct costs*. But Verizon’s switched access costs in those studies are relatively small, because the studies (like all proper TSLRIC studies of switched access) do not include loop costs in the calculation of direct costs. Consequently, Verizon’s shared and common costs are relatively large only as a percentage of the direct costs in the study. One Comm’s analysis is meaningless because it is not an “apples-to-apples” comparison.

IV. ONE COMM’S REFERENCE TO A POSSIBLE CONFISCATION CLAIM IS BASELESS

One Comm argues that “the imposition of below cost rates ... runs afoul of the Takings Clause and is confiscatory.”⁴³ But this observation simply begs the question being litigated in this proceeding: what are One Comm’s incremental costs of providing switched access service in Massachusetts? If the Department determines, as it should, that One Comm’s costs do not exceed its currently effective switched access rates, those rates are, by definition, compensatory,

⁴² One Comm Br. at 67-69.

⁴³ One Comm Br. at 20.

and not confiscatory. Denial of One Comm's attempt to cost justify higher rates does not constitute confiscation.

V. ONE COMM IS NOT ENTITLED TO INTERIM RATES AND A TRUE-UP

In its Brief, One Comm asks for Department leave to retroactively "true-up" the switched access rates in its tariff if the Department determines that One Comm's costs exceed the Department's rate cap. One Comm argues that "[t]rue-ups are a standard regulatory tool" that the Department has used to ensure that the regulated carrier neither over-collects or under-collects.⁴⁴

One Comm conveniently ignores that the Department has already denied the requested relief. On July 13, 2009, One Comm, 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 Comm 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 Comm. 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.⁴⁵

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*

⁴⁴ One Comm Br. at 81.

⁴⁵ D.T.C. 07-9, Motion for Reconsideration and in the Alternative for Clarification (July 13, 2009), at 16-17.

*Department issues an exemptive Order.*⁴⁶ Here, One Comm proposes to reverse this Department decision by allowing it to give retroactive effect (to June 22, 2010) to any new rates established in this proceeding in the unlikely event that One Comm is able to cost-justify higher rates to the satisfaction of the Department. Yet, One Comm 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 Comm offers no explanation for waiting until the last minute – the day before the compliance deadline – to file purported cost justification for higher rates. Had One Comm 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 Comm is ultimately able to justify higher rates, (which it has failed to do), any adverse financial consequences to One Comm resulting from the time required for Department review of its cost study are of its own making.

As Verizon noted in its objection to One Comm's motion for interim rates at the inception of this case,⁴⁷ the Department precedents cited by One Comm relate to *compliance filings*, and One Comm's cost study is not a compliance filing. Rather, One Comm's cost study is exactly the opposite – a proposed rate increase, subject to Department review and investigation.⁴⁸ A true-up mechanism is appropriate in the case of compliance filings because in such instances, the Department has already found that the rates in the current tariffs are inappropriate or improper, and a true-up ensures that appropriate rates are assessed as of the date

⁴⁶ Reconsideration Order at 21 (emphasis added).

⁴⁷ Verizon Opposition to Request for Temporary Rates, July 19, 2010.

⁴⁸ Not only is the One Comm 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 Comm has filed no tariff pages with proposed rates and has not otherwise publicly stated the proposed rates that it seeks to justify in this proceeding.

of such finding. Here, in contrast, the Department has made no finding that One Comm's current rates (*i.e.*, the rates filed in compliance with D.T.C. 07-9) are inappropriate (*i.e.* too high or too low), and there is no basis to allow One Comm to charge retroactive rates.

Further, One Comm's claims of prejudice resulting from delay in conducting this proceeding are unavailing, because *One Comm*, not the intervenors, controlled the timing of One Comm's filing. The Department adopted a rate cap in June 2009, yet One Comm waited over one year to file a cost study to support higher rates, and any claim of delay is baseless. The Department's schedule in reviewing One Comm's petition was shorter than the review applied to the issues in D.T.C. 07-9.

Finally, One Comm claims that even if Verizon is right that Department-ordered true-ups apply only to compliance filings, One Comm made it clear in its June 2010 compliance filing that its new rates were interim rates.⁴⁹ This argument is the height of arrogance: the Department's order in D.T.C. 07-9 did not authorize the filing of *interim* rates as a means of compliance with the rate cap. The Department, not One Comm, decides whether currently effective rates have the status of interim rates. Needless to say, One Comm cannot confer interim rate status upon its own rates.

⁴⁹ One Comm Br. at 82.

CONCLUSION

For the reasons stated above and in Verizon's initial Brief, One Comm has failed to comply with the Department's order in D.T.C. 07-9 to submit appropriate justification for intrastate access rates in excess of the Department's rate cap. One Comm's Petition for an exemption from the cap should be denied in all respects.

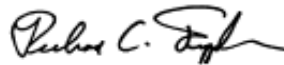
Respectfully submitted,

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Dated: March 11, 2011