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December 28, 2010

Lindsay DeRoche, Hearing Officer  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, Massachusetts 02118-6500

***Re: DTC 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 Mr. DeRoche:

On behalf of Verizon, I am writing to request that the Hearing Officer afford the intervenors an opportunity to file responsive testimony in response to the “rebuttal” testimony filed by One Communications (“One Comm”) on December 15, 2010.

By way of background, the procedural schedule adopted by the Department on July 27, 2010 provided for the filing of 1) One Comm’s direct testimony on August 13, 2010, 2) intervenor direct testimony on November 1, 2010, and 3) One Comm’s rebuttal testimony on December 15, 2010. The procedural schedule also provided for a very brief period of time for the parties to conduct discovery on One Comm’s rebuttal testimony, with requests due only six days after the filing of the rebuttal testimony.

On December 15, 2010, One Comm filed rebuttal testimony for each of its three witnesses: Dr. August Ankum, Mr. James Webber, and Mr. Warren Fischer, all of QSI Consulting, Inc. Although a considerable portion of the “rebuttal” testimony purports to rebut the arguments offered by the intervenors in their direct testimony, a substantial portion of the December 15<sup>th</sup> filing goes well beyond rebuttal testimony and presents new evidence in support of One Comm’s petition. In fact, One Comm’s filing includes a revised cost study, reflecting “updates” to the NUCA model that One Comm/QSI have prepared since the filing of their original study on July 9, 2010. The “updates” or “revisions” to the NUCA model have resulted in a *material increase* in One Comm’s estimated cost of providing switched access service in Massachusetts.

Several parts of One Comm’s December 15<sup>th</sup> filing go well beyond the scope of permissible rebuttal testimony. For example, Mr. Fischer’s “rebuttal” testimony identifies three

cost factors that require corrections: the Capitalized Software Factor, Telco Installation Factors, and the Capitalized Leasehold Improvement Factor. Fischer Rebuttal, pp. 33-40. The net effect of these “corrections” appears to be an increase in One Comm’s claimed access costs. Mr. Fischer offered no explanation for why these “corrections” could not have been made earlier in the proceeding.

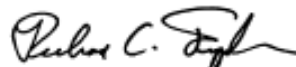
In addition to Mr. Fischer’s “updates,” Mr. Webber’s rebuttal testimony also includes revisions to several modules in the One Comm cost study, namely, the Network Element Database, Aggregation Module, Transport Module and Trunk-to-Trunk Switching Module. Webber Rebuttal, p. 2. Although Mr. Webber’s updates purport to be responsive to criticisms of the One Comm cost study made by intervenors, Mr. Webber went well beyond the presentation of rebuttal testimony. Most egregious is the new evidence offered by Mr. Webber on the percent voice/data allocator. After reviewing Verizon’s criticisms on this point, he undertook what he admits to be “additional research.” Mr. Webber’s direct testimony on this issue was based upon a representative central office. Subsequent to the filing of the original study, Mr. Webber conducted a study of all active DS0 level circuits in One Comm’s network to determine a new voice/data percentage. The updated percentage, not surprisingly, is higher than the percentage in the original study, resulting in higher costs. Webber Rebuttal, p. 7. Mr. Webber fails to explain why this new evidence could not have been offered in One Comm’s original filing.

Dr. Ankum’s “rebuttal” testimony likewise contains new material, on special access bypass (pages 25-29) and on the alleged similarities between One Comm’s network architecture and Verizon’s host/remote architecture (pages 75-78). Dr. Ankum failed to explain why these new arguments could not have been set forth in his direct testimony.

The problem, of course, with the introduction of new evidentiary material, in the form of “rebuttal” testimony, is that intervenors have no opportunity, under the current litigation schedule, to offer responsive testimony and a severely truncated opportunity to conduct discovery on this new material. Moreover, even if meaningful responses to discovery are provided by the January 5th deadline, intervenors have less than a week before the start of hearings to review and analyze the discovery responses.

In light of the obvious prejudice to the intervenors by One Comm’s flagrant gaming of the evidentiary process, Verizon respectfully requests that the Department grant an opportunity to intervenors to file written supplemental testimony in response to One Comm’s December 15<sup>th</sup> filing.

Respectfully submitted,



Richard C. Fipphen

cc: Catrice C. Williams, Secretary  
Kajal Chattopadhyay, General Counsel

