

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Verizon Massachusetts - Pricing of)

Unbundled Network Elements and) D.T.E. 01-20

Resale Services Discounts)

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**COMMENTS OF VERIZON MASSACHUSETTS
CONCERNING APPEAL FROM HEARING OFFICERS' RULING**

Verizon Massachusetts ("Verizon MA") files these comments on the Appeal of the CLEC Coalition from the *Hearing Officers' Ruling* of May 18, 2001.⁽¹⁾ The CLEC Coalition requests that the Commission review the *Hearing Officers' Ruling* in its entirety which (a) rejected a CLEC Coalition Motion to Strike all the testimony and cost studies that Verizon MA filed in this case relating to collocation, or in the alternative, establish a separate track to evaluate such rates; (b) rejected a CLEC Coalition Motion to Strike all testimony and costs studies presented by Verizon MA relating to xDSL and Line Sharing; and (c) extended the schedule in the case for only a portion of the time requested by the CLEC Coalition. *See* CLEC Coalition Appeal at 1-2. As discussed below, the Commission should deny the appeal concerning collocation, xDSL, and Line Sharing. The CLEC Coalition has failed to establish that the Hearing Officers abused their discretion in refusing to exclude these issues from the case. Verizon MA does not, however, object to the CLEC Coalition's request to extend the date for parties to file rebuttal testimony to June 29, 2001, or four weeks after a Department decision on the Appeal, whichever is later, plus an additional two weeks if collocation or xDSL/Line

Sharing issues are included in the case. *See* CLEC Coalition Motion at 18. If such an extension were granted, the remainder of the schedule would have to be adjusted accordingly.

I. The Hearing Officers Did Not Abuse Their Discretion in Denying the CLEC Coalition's Motion to Strike Verizon MA's Collocation Cost Studies and Testimony.

The CLEC Coalition's argument concerning the Hearing Officers' ruling on collocation cost studies and testimony is the same as it presented with its Motion to Strike of May 14, 2001. It claims that the Department was not clear that collocation costs would be examined in this case, and hence asserts that it did not have official notice or actual knowledge that these would be at issue here. The Hearing Officers correctly rejected the Coalition's claim and did not abuse their discretion.

The CLEC Coalition is the only party that has professed any confusion regarding the fact that collocation costs are being investigated in the docket. Indeed, it is inconceivable that any party who has even a passing familiarity with the history of the Department's examination of TELRIC cost studies would be surprised that a collocation cost study was included in a comprehensive review of costs. In their decision, the Hearing Officers noted that the initial collocation cost study was investigated by the Department as part of the review of TELRIC rates in the *Consolidated Arbitrations* and that the Department has repeatedly stated its intention to review *all* rates as part of its five-year review of Verizon MA's costs. They also observed that the Department has stated publicly that a review of collocation rates would be included in this proceeding (*see* the Department's February 28, 2001, Reply Comments at 3 in FCC CC Docket No. 01-09) and that Verizon MA stated at the outset of the proceeding that collocation cost studies would be filed in the case. *See* Affidavit of Michael Anglin supporting Verizon MA's Appeal of Procedural Schedule dated February 15, 2001. Contrary to the CLEC Coalition's claim, Mr. Anglin expressly identified collocation cost studies among the many studies that Verizon MA was conducting for filing in this case (Anglin Affidavit at ¶¶ 10-11). In short, the Hearing Officers reviewed all of the relevant factors that clearly indicated that the Department intended collocation costs to be addressed in this investigation. The CLEC Coalition has failed to show that there was any abuse of discretion.

The Hearing Officers also fully addressed and rejected the CLEC Coalition's request that the Department establish a separate track for collocation costs. The Hearing Officers explained that, because of the interrelationship among the various TELRIC studies, the costs should not be examined in a piecemeal fashion but should be dealt with as a whole. *Hearing Officers' Ruling* at 7. This procedural decision concerning the conduct of the case hardly is unreasonable or an abuse of discretion that provides cause for the Commission to overturn the ruling.

II. The Hearing Officers Did Not Abuse Their Discretion in Denying the CLEC Coalition's Motion to Strike Verizon MA's xDSL and Line Sharing Cost Studies and Testimony.

The CLEC Coalition rests on its initial arguments set forth in its May 14th Motion to Strike in challenging the *Hearing Officers' Ruling* rejecting the attempt to remove xDSL and Line Sharing costs issues from this case. The gist of the claim is that the Department only recently set rates in D.T.E. 98-57 Phase III for xDSL and Line Sharing services and CLECs should not be forced to relitigate issues determined in that docket. The appeal of the *Hearing Officers' Ruling* should be denied.

The CLEC Coalition does not address the sound reasons given by the Hearing Officers for refusing to exclude xDSL and Line Sharing issues from the case. The Hearing Officers' noted that examining all rates was consistent with the Department's intention to conduct a five-year review of Verizon MA's costs. They also explained that considering all rates at this time, regardless of when initially set, was appropriate to ensure that rates were set using consistent cost methods and inputs. They explained:

... there is a logical basis for reviewing in this docket permanent rates established in Phase III. As noted above, our review, and ultimate adoption of, an updated TELRIC methodology would render the prior Department-approved methodology, on which the final Phase III rates were based, inappropriate on a going-forward basis. Maintaining categories of rates on two different methodologies is illogical and would be, at best, confusing. Rather, consistency requires updated cost analyses for all rates and arrangements, including xDSL and line sharing, in order for rates to be based on the same methodology, inputs and factors as for other services.

Hearing Officers' Ruling at 8.

The Hearing Officers reached a reasonable decision that certainly was not an abuse of discretion. As Verizon MA explained in its Comments on the CLEC Coalition's Motion to Strike, the Company's xDSL and Line Sharing analyses largely consist of updates to the analyses that the Department previously reviewed and approved in D.T.E. 98-57 Phase III with more current information, including updated cost factors being used in the current studies. For example, Verizon MA's cost analyses in its May 8th filing for wideband testing, splitter installation, and splitter monthly administrative support consist of updated data and factors. Thus, as the Hearing Officers found, Verizon MA properly included cost analyses for these arrangements in its filing here so that the rates going forward would be based on the same inputs and factors as the rates for other services. The CLEC Coalition presents no factors, which show that the *Hearing Officers' Ruling* was an abuse of discretion.

III. Conclusion

For the reasons stated above, the Hearing Officers did not abuse their discretion in denying the CLEC Coalition's Motions to Strike the collocation, xDSL, and Line Sharing analyses filed by Verizon MA. Accordingly, the Commission should deny its appeal. Verizon MA does not, however, object to the CLEC Coalition's requested extension of time for parties to file rebuttal testimony and a corresponding adjustment to the remaining schedule for the case.

Respectfully submitted,

Verizon Massachusetts

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¹ The Hearing Officer requested that comments on the CLEC Coalition's Appeal be filed by May 29, 2001. Verizon MA was permitted to file these comments one-day late.