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November 19, 2010

Catrice C. Williams, Secretary
Department of Telecommunications & Cable
Commonwealth of Massachusetts
1000 Washington Street, Suite 820
Boston, Massachusetts 02110

**Re: D.T.C. 10-5 – Petition Filed, Pursuant to 220 CMR § 1.04, of Verizon
New England Inc. d/b/a Verizon Massachusetts, on March 1, 2010 to
Amend the Audit Requirements for its Performance Assurance Plan**

Dear Secretary Williams:

Enclosed for filing in the above-referenced matter are the Reply Comments of Verizon Massachusetts.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Moore", written over a horizontal line.

Alexander W. Moore

Enclosure

cc: Benedict Dobbs, DTC Competition Division
Patrick J. Tarmey, Office of the Attorney General
Paula Foley, One Communications Corp.
Michael Tenore, RNK Communications
John Ivanuska, XO Communications
William A. Haas, PAETEC Communications, Inc.
Katherine K. Mudge, Covad Communications Company

controls that Verizon MA has now had in place for a decade ensure the continuation of accurate and timely reporting of Verizon MA's performance under the PAP. Today, only three former Bell Atlantic states (Massachusetts, Pennsylvania and Maryland) have mandatory audit requirements in their PAPs.

Verizon MA also explained in its Petition that a regularly scheduled PAP audit is unnecessary in light of the other mechanisms available to the Department to monitor and ensure accurate PAP reporting, including: (1) the right of CLECs under the PAP to seek an audit of reported results on particular metrics; (2) PAP audits and similar proceedings conducted in other states; and (3) the WQAP process in New York under which Verizon samples and analyses the accuracy of its reported PAP results, which are generated by the same systems in both New York and Massachusetts. *See* Petition at 3-4. In sum, the accuracy Verizon's PAP reporting systems and procedures has been confirmed and validated over multiple audits and many years of operation, and other monitoring mechanisms in place are sufficient to ensure accurate reporting without the need for expensive audits every three years.

The CLECs and the AG offer four arguments against making the PAP audit discretionary, but these concerns are misplaced and unsupported by actual experience, as demonstrated below. Accordingly, the Department should grant Verizon MA's request.

I. In light of the consistently strong results of past PAP audits, future audits should be discretionary, on a credible showing by a CLEC of good cause to believe that such reporting is not in material compliance with the PAP.

The CLECs argue that a carrier could only show good cause for an audit if it has already been damaged "perhaps irreparably, as a result of Verizon's discriminatory treatment." CLEC Comments at 2. The Department should give little weight to this "sky is falling" conjecture. The fact is, the Department is not working on a blank slate. Verizon MA has demonstrated

beyond any rational doubt and over many years of operation, three Massachusetts PAP audits and audits in other states that its systems for recording and reporting PAP results are accurate and fully comply with all requirements. And as Verizon MA stated in its Petition, at 3, “[t]hese processes and procedures are well established and will not change as a result of the audit schedule being revised.” Consequently, there is virtually no likelihood that those systems will suddenly begin reporting inaccurate results, for example showing that Verizon MA is meeting PAP metrics when it is not. The Department should not continue to require Verizon MA to obtain PAP audits automatically every three years on the remote possibility that an audit might possibly show some inaccuracy in reporting results and the even more remote possibility that a CLEC might suffer actual damages as a result. On the contrary, because Verizon MA’s processes and procedures have passed PAP audits with flying colors time and again, the Department should not subject Verizon MA to the 100% certainty of incurring substantial audit expenses (in the form of auditor fees and lost Verizon personnel time devoted to the audit) in the absence of a CLEC demonstration of good cause to believe that the PAP reporting is no longer accurate in some respect.

The CLECs claim that it is “onerous and unfair” to require a CLEC to pay for a discretionary audit which it causes but which shows no material failure in Verizon MA’s compliance. *See* CLEC Comments at 3. However, such a system is good public policy since it discourages CLECs from bringing frivolous or groundless petitions for audits. It is also fair, since a CLEC should bear the costs of an audit it has foisted on Verizon MA even though the company’s reporting is accurate. Verizon MA’s Petition points out that Appendix F of the existing PAP already has such provisions, which allow a CLEC to obtain an audit of data related to any measure in the monthly PAP reports on a showing of good cause, subject to paying for the

audit in the event it finds no material errors in the data reporting. The CLECs assert that such provisions have prevented them from challenging Verizon's PAP reporting to date, *see id.*, but the Department can reasonably expect that a CLEC with a supportable, meritorious claim would not be so easily dissuaded. In truth, CLECs have not challenged Verizon MA's PAP reports because they are accurate, as multiple PAP audits have shown, and they afford the CLECs no grounds for a challenge.

II. Making the PAP audit discretionary would not change the self-executing nature of the PAP.

The CLECs argue that the PAP is intended to be self-executing, and that making future audits discretionary on a showing of good cause would "run counter to how an effective self-executing enforcement plan should operate." CLEC Comments at 3; *see also* AG Comments at 3 (arguing that "the PAP is self-executing). The "self-executing" nature of the PAP does not refer to the audit provisions, however, but to the terms of the PAP that require Verizon MA automatically to pay penalties to CLECs upon failing to meet the metric performance standards in a reporting period, thus affording compensation to CLECs for sub-standard wholesale service without requiring the CLECs to prosecute a separate proceeding in court or before a state public utilities commission. This is made amply clear in the very passage of the *Ameritech Michigan* decision quoted by the CLECs, Comments at 4, in which the FCC states its interest in "self-executing enforcement mechanisms that are sufficient to ensure compliance *with the established performance standards.*" (Emphasis added.)

In contrast, neither the FCC nor the Department has ever found that the PAP audit provisions are or must be "self-executing." Indeed, in approving the Massachusetts PAP, the FCC addressed the self-executing nature of the Plan and the audit provisions of the Plan in

separate paragraphs of its decision and as separate, unrelated issues,¹ confirming that its “self-executing” discussion refers to the PAP provisions requiring automatic compensation to CLECs without the need for Department action, in the event that Verizon MA’s monthly reports show that it has missed a performance metric, and does not mean that the Department must forever require Verizon MA to obtain PAP audits on a predetermined schedule.

The CLECs argue that the FCC relied on the audit provisions of the PAP in approving it. CLEC Comments at 4-5. That may be true, but it is irrelevant here. There is no basis for the CLECs’ apparent implication that the FCC specifically relied on the *alleged “self-executing” nature* of the audit provisions in approving the PAP. Nothing in the FCC’s order approving the PAP states or implies that the FCC gave any special significance to the mandatory nature of the audit, as opposed to an audit at the discretion of the Department as it deems necessary. Indeed, the FCC granted Verizon Section 271 authority in New York and Rhode Island even though the PAPs in those states do not provide for mandatory audits on a pre-set schedule.² Accordingly, there is no basis for the CLECs’ speculation that the FCC would not have approved the PAP if it had provided for discretionary audits.

The CLECs argue that Verizon MA has not justified its Petition with evidence of changed market conditions, citing the *Order Adopting Performance Assurance Plan*, D.T.E. 99-271, at 33. But the Department has never held that changes in market conditions are the sole possible

¹ See *In the Matter of Application of Verizon New England Inc. For Authorization to Provide In-Region, IntraLATA Services in Massachusetts*, CC Docket No. 01-9, FCC Docket 01-130, Memorandum and Order (April 16, 2001), ¶¶ 246, 247.

² See *In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket 99-295, FCC 99-404, Memorandum Opinion and Order dated December 22, 1999; *Application by Verizon New England Inc. for Authorization to Provide In-Region, InterLATA Services in Rhode Island*; CC Docket No. 01-324, FCC 02-63, Memorandum Opinion and Order dated February 22, 2002.

basis for changing the frequency of audits.³ The language from the order quoted by the CLECs, Comments at 5, contains two statements. In the first, the Department noted that it may “revise its directives concerning audits” generally in response to changes in market conditions. Separately, however, the Department stated, “and the Department will decide when it is no longer necessary for these audits to be conducted.” Thus, the Department left itself free to reconsider the frequency of audits on any grounds it deems worthy. Here, Verizon MA has demonstrated that regularly scheduled mandatory audits are no longer necessary or appropriate in light of its consistent history of strong results on multiple PAP audits over the years.

III. PAP audits in other states afford a sound means of ensuring the continued accuracy of Verizon MA’s PAP reporting, but they are only one such means.

The Department should make the PAP audit discretionary because it now has ample evidence that Verizon MA’s PAP processes and procedures result in accurate PAP reporting in compliance with the Department’s requirements, in the form of three successful PAP audits and successful audits in other states. In addition, the Department should give weight to the fact that most former Bell Atlantic states do not have mandatory PAP audit provisions, yet the sky has not fallen in those states – in other words, there is no evidence that the lack of mandatory audits has led to inaccurate PAP reporting. Verizon MA also pointed out in its Petition that the Department has other means of monitoring PAP reporting accuracy and compliance – including the current PAP provisions authorizing CLECs to challenge Verizon MA’s reporting for good cause, the audit provisions in other states and the New York WQAP.

³ Consequently, the CLECs’ cynical claim that market conditions have been more favorable to Verizon MA than to CLECs is immaterial. For a full refutation of the factual claim, however, the Department need only review Verizon MA’s most recent Massachusetts Competitive Profile (filed February 26, 2010) showing the continued growth in competitive access lines and loss of Verizon MA access lines.

The CLECs argue that the Department should not rely on the second of these alternate monitoring mechanisms, citing a Rhode Island decision declining to rely on the Massachusetts PAP audit provisions in certain respects. *See* CLEC Comments at 5-6. The CLECs and the AG also argue that if other states do away with their own mandatory audit provisions in the future, the Department would have nothing to rely on. *See id.*, at 7; AG Comments at 4. Neither of these arguments has merit.

First, the CLECs omit a critical fact concerning the Rhode Island decision. While the Public Utilities Commission did decide to retain for itself a role in any PAP audit, *it did not require mandatory PAP audits⁴ and has never required Verizon to obtain a PAP audit.* Thus, the Rhode Island PUC is one of many state commissions that have been content to rely on discretionary PAP audit provisions, and (presumably) monitoring in other jurisdictions as well, to ensure accurate PAP reporting.

Second, Verizon MA has not argued that the Department should rely solely on mandatory audits in other states on a going forward basis. After all, Verizon MA's Petition points out that only two other states have such requirements, and neither of these states has actually implemented audits on a regular schedule. *See* Petition at 4. Rather, Verizon MA suggests only that the benefits of a PAP audit in any former Bell Atlantic state (other than New Jersey) would flow through to Massachusetts, since its PAP processes and procedures in those states are so similar. This is equally true whether a PAP audit is undertaken pursuant to a pre-set schedule or pursuant to a decision by a state commission ordering a new audit. Even if the few states with

⁴ *See* Rhode Island Performance Assurance Plan, Appendix F, ¶ C.2.

mandatory audits were to make them discretionary,⁵ the Massachusetts PAP would still receive the benefits of any PAP audit undertaken in those states.

IV. The CLECs make no showing that a regularly scheduled audit is necessary to motivate Verizon MA to report accurate PAP results.

The CLECs assert that, “regularly scheduled audits provide a strong incentive for Verizon to maintain good performance” under the PAP. CLEC Comments at 3. They then speculate that Verizon’s strong record on PAP audits and the lack of CLEC challenges to Verizon PAP reporting “can both be explained by the fact that Verizon has performed well because it knew it would be audited.” *Id.*, at 7. The CLECs offer no facts or evidence in support of their conjecture, and there are none. To the contrary, the Department has substantial grounds to find that the absence of regularly scheduled PAP audits does not result in poor or inaccurate reporting by Verizon. That basis is found in the experiences of the majority of former Bell Atlantic jurisdictions. Delaware, the District of Columbia, New Jersey, New York, Rhode Island and Virginia apparently disagree with the CLECs’ amateur psychology and do not insist on mandatory audits, and the two states which do have such provisions (Maryland and Pennsylvania) have not felt compelled to conduct audits on a regular basis. More importantly, there is no evidence before the Department showing that the accuracy of Verizon’s PAP reporting has deteriorated in any jurisdiction where audits are discretionary, or even that any commission in such a jurisdiction has found sufficient cause to exercise that discretion and order Verizon to perform an audit. Thus, the uniform experience of other states demonstrates that the threat of a mandatory, regularly-scheduled PAP audit is unnecessary to ensure the continued accuracy of Verizon’s PAP reporting.

⁵ Contrary to the AG’s claim, Comments at 4, neither Verizon nor, to its knowledge, anyone else has petitioned any former Bell Atlantic state to eliminate the PAP audit requirements altogether.

Finally, the Department should ignore the CLECs' spurious claim that Verizon MA "is not in compliance with the PAP and has disregarded the Department's current audit requirements." CLEC Comments at 8. Contrary to the CLECs' misrepresentation, Verizon MA did not "acknowledge[] in its petition that the RFP for the 2011 audit was due in June 2010...." To the contrary, there is no such deadline, and Verizon MA specifically noted in the Petition, at 1, that the Department's April 24, 2006 Order in Docket 03-50 "is silent on the due date of the next Request for Proposal...." Nor has Verizon MA "indicated that it will not issue the required RFP until the Department rules on its Petition." See CLEC Comments at 8. Even under the current provisions of the PAP, the next scheduled audit would be based on 2011 data, so there is no need to "immediately require" Verizon MA to submit an RFP for another audit as the CLECs demand. This is especially so where Verizon MA has demonstrated that there is no need for such an audit and the Department has substantial grounds to move to a discretionary PAP audit model.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,



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Dated: November 19, 2010