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May 4, 2009

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station
Boston, Massachusetts 02110-2212

Re: D.T.C. 07-9 – Petition for Investigation under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers

Dear Ms. Williams:

This letter responds to the letter filed by XO Communications and One Communications ("CLECs") on April 29, 2009, attaching two petitions the Verizon Telephone Companies ("Verizon Companies") filed last year with the FCC. In those petitions, the Verizon Companies sought forbearance from unbundling obligations and dominant-carrier regulations, including tariffing requirements for switched access services, in Rhode Island and Cox's service territory in Virginia Beach. The CLECs suggest that one passage from each of these FCC petitions — a reference to lifting dominant-carrier regulation for switched access — justifies allowing Massachusetts CLECs to keep charging whatever they want for intrastate switched access. The Department should disregard the CLECs' letter.

As a threshold matter, the CLECs' filing is an untimely and impermissible supplement to their briefs. The Verizon petitions submitted by the CLECs were filed with the FCC in February and March 2008, several months ***before*** the September 2008 hearing and subsequent briefing in this matter. Indeed, XO filed comments on these petitions with the FCC in March and May 2008. If the CLECs believed Verizon's FCC petitions were relevant to any issue in this proceeding, they had ample opportunity to address them at the hearings and in the briefs, but they chose not to do so. There is no justification for their presentation of additional argument now, when there is no opportunity for Verizon to test the CLECs' allegations on the record. For this reason alone, the Department must reject the CLECs' filing.

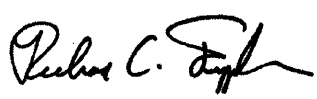
More importantly, the Verizon Companies' FCC forbearance petitions for Rhode Island and part of Virginia Beach have nothing to do with whether CLEC switched access rates should be capped in Massachusetts, or with the evidence here proving that such caps are necessary to ensure just and reasonable CLEC switched access rates. If anything, the forbearance petitions support Verizon's arguments in this case, not the CLECs' arguments. FCC forbearance relief would put the Verizon ILECs in Rhode Island and Virginia Beach in the same position as CLECs with

respect to their interstate switched access rates. The practical impact of forbearance is that the Verizon entities would be subject to the same detariffing regime applicable to CLECs under the FCC's benchmarking rule for CLEC access rates (47 C.F.R. § 61.26) — that is, the Verizon ILECs would have the option of not filing tariffs where their switched access rates are at or below the ILECs' benchmark rates or filing tariff changes on one day's notice, without cost support, where the proposed rates are at or below the ILECs' current rates.[1] Therefore, either way, the Verizon ILEC interstate access rates would be capped at the current level.

Thus, neither the passage the CLECs cite nor anything else in the FCC forbearance petitions in any way supports the CLECs' arguments in this proceeding. Verizon has not argued to the FCC that competitive retail markets warrant allowing Verizon to be completely deregulated with respect to interstate switched access rates, as the CLECs argue here. (In fact, this issue has not been the focus of the forbearance proceedings; the only switched access discussion appears in the single paragraph the CLECs reference.) In sharp contrast, the CLECs in this proceeding are arguing that retail competition is sufficient to justify *no regulatory constraint at all* on their intrastate switched access rates, while Verizon's ILEC switched access rates in Massachusetts continue to be regulated by the Department. The Department should reject this argument, as the FCC and over a dozen other states have, and it should issue an order benchmarking CLEC switched access rates to Verizon's rates.

Thank you for your attention to this matter.

Respectfully submitted,



Richard C. Fipphen

cc: Michael Isenberg, Director, Telecommunications Division
Lindsay DeRoche, Hearing Officer (2 copies)
Geoffrey Why, General Counsel
Service List, D.T.C. 07-9

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[1] The Verizon Companies sought the same relief from forbearance from the tariffing requirements and price cap regulation granted to Qwest in 2005 in the *Omaha Forbearance Order*. (*Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005).) There, the FCC specifically stated: "To ensure that our forbearance today does not result in rates that are unjust or unreasonable, and in light of the "unique nature" of the access market, we therefore condition this forbearance upon the same regime under which competitive LECs currently operate. Specifically, we extend to Qwest the current benchmark that applies to all of its competitors — Qwest's tariffed rate as of July 1, 2005 — which will also serve as the benchmark for other LECs operating within Qwest's service territory in the MSA." *Id.* ¶ 41.