

specific element, as well as the reasonable allocation of forward-looking common costs.”⁷⁴ Massachusetts has followed TELRIC pricing principles.⁷⁵ In the *Line Sharing Order*, the FCC concluded that the price of the unbundled high frequency portion of the local loop also should be cost-based and established in accordance with TELRIC. The FCC added that states may require ILECs to charge CLECs no more than the amount of loop costs that the ILEC allocates in its cost support for interstate ADSL retail rates.

Verizon, like other ILECs, attributes little or no loop cost to their interstate prices for xDSL services that they provide on loops that they also use for voice service.⁷⁶ In the absence of line sharing, CLECs must purchase an entire unbundled loop to provide the same type of xDSL service. This places CLECs at a severe competitive disadvantage, because the cost of the separate loop can approach the rate that the ILEC charges the customer for xDSL service. In those cases, it would be impossible for a CLEC to profitably offer xDSL service in competition with the ILEC’s xDSL service.

The FCC has stated repeatedly that ILECs may not use prohibitive, non-cost-based rates because of the harmful affects such charges pose to competition.⁷⁷ This concern applies with equal force to line sharing:

⁷⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, 15846 (1996), ¶ 679.

⁷⁵ See Consolidated Arbitrations, Phase 4 Order, D.T.E./D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Dec. 4, 1998).

⁷⁶ See *Line Sharing Order*, 14 FCC Rcd at 20973-74, ¶ 133.

⁷⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15846.

[L]ine sharing ... will not promote competition unless it is priced in a way that permits competitive LECs to enjoy the same economies of scale and scope as the incumbent LECs.... The Telecommunications Act of 1996 requires the states to set prices for unbundled network elements that are cost-based and nondiscriminatory, and that may include a reasonable profit.... By requiring line sharing, we are creating a new unbundled network element. We conclude that . . . the price of this new element should be set by states in the same manner as they set for other unbundled network elements.⁷⁸

Verizon's Proposed Tariff includes numerous recurring and non-recurring charges for services related to line sharing. However, notwithstanding its obligation to charge only cost-based rates, Verizon has made no attempt to justify the most significant of its proposed rates.⁷⁹ It has submitted no cost studies or other evidence sufficient to determine that the rates are in fact cost-based. In many instances, Verizon apparently relies on the Department's prior approval of rates identical to those proposed for line sharing.⁸⁰

Digital Broadband urges the Department to reject as unreasonable many of the rates proposed by Verizon, and instead establish interim rates that shall apply until Verizon (assuming it continues to advocate higher rates) has performed and made subject to review cost studies that are sufficient to determine whether its rates are in fact cost-based. Verizon cannot avoid its burden of proving that its proposed charges are just and reasonable.⁸¹

⁷⁸ *Line Sharing Order*, 14 FCC Rcd at 20973-74, ¶¶ 133-35.

⁷⁹ *See* Hearing Transcript, pp. 692-698.

⁸⁰ Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 32, ll. 12-14 & p. 33, ll. 1-3.

⁸¹ *See* MASS. G.L. c. 159 §§ 19, 20.

1. Loop Qualification and Database Charges

Verizon states that its Proposed Tariff does not include any recurring charge for use of the local loop, but it seeks to reserve the right to impose such charges at any time.⁸² However, as Digital Broadband's unrebutted testimony explains, certain charges in the Proposed Tariff are effectively hidden recurring loop charges.⁸³ For example, Verizon has proposed charging CLECs \$0.65 per month, per loop⁸⁴ to support the Line Qualification Database ("LQD"). However, the data is of no further use to the CLEC once the loop has been qualified for line sharing and therefore a CLEC should not be required to pay a recurring charge.⁸⁵ Moreover, Verizon already provides service on a line-shared loop, collecting access charges that fully fund the costs associated with providing that loop, including the cost of maintaining its databases.⁸⁶ Therefore there should be a zero charge for access.

Verizon also seeks to impose a non-recurring charge of \$113.67 for "manual" loop qualification.⁸⁷ The first step in the "manual" procedure, as Verizon describes it,⁸⁸ is a check of the LFACS database. According to Verizon, LFACS "inventories and assigns all loop facilities

⁸² Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 10 n.7; *see also* Proposed Tariff, Part M, Section 2.19.1, p. 31.

⁸³ *See* Ex. DBC-1, Direct Testimony of Terry Landers, p. 14, ll. 5-11

⁸⁴ Ex. VZ-MA-3, Direct Testimony of Amy Stern, Attachment 1, p. 3.

⁸⁵ *See* Ex. DTE-DBC-5, DBC Response to DTE Information Request 5.

⁸⁶ Ex. DBC-1, Direct Testimony of Terry Landers, pp. 12-15.

⁸⁷ *See* Proposed Tariff Part B, Section 5.4.7.C.1, p.11; *see also* Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 7, Attachment 1, p. 4.

from the serving terminal to the main distribution frame in the central office.”⁸⁹ Of course, an LFACS inquiry is needed only because Verizon has refused to provide direct access to databases that would allow Digital Broadband to more efficiently make the query itself. Access to the same information available to Verizon, in the same time and manner, as is required by the FCC’s rules,⁹⁰ would eliminate the need for both “manual” qualification and the associated non-recurring charge. In addition, Verizon regularly performs Mechanized Loop Testing (“MLT”) on all of its in-service loops.⁹¹ Therefore, for line shared loops Verizon likely already has this information in LFACS, and performing MLT is redundant for the purpose of manual loop qualification. Because Verizon should be providing direct access to LFACS, as Digital Broadband argues below, no manual loop qualification charge should apply when Verizon itself uses the information in LFACS to qualify a loop.

2. Augment Application Fee

Verizon takes the same “one size fits all” approach to the application fee for an “Augment – Rearrangement of Equipment”⁹² order as it does to the interval for processing the

(footnote continued from previous page)

⁸⁸ Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, pp. 18-20.

⁸⁹ According to Verizon, LFACS contains the following data on individual loops: cable length and gauge; FDI location and type; electronics, location and type; bridged taps, location, distance from central office, and design; spare pair availability; cable and pair identification and other information; and the presence and type of DLC plant information. Ex. 29, BA-MA Reply to RL/CVD 1-33.

⁹⁰ 47 C.F.R. § 51.313(c).

⁹¹ See Hearing Transcript (Mr. White), p. 497, ll.2-6.

⁹² Proposed Tariff, Part M, Section 5.3.1, p. 6.

order. The proposed fee of \$1,500, which is excessive on its face, does not take into account differences in the services actually ordered. Just as with the proposed interval, Verizon has arbitrarily ignored such differences. It has not proposed any exceptions or alternatives based on different types of augments or the actual work performed. Nor has it supported its proposed charge with any cost study or analysis.

Verizon has asserted that “most of the same steps and same expenses” are required to process both a line sharing augment order and an initial collocation order.⁹³ As discussed above, the testimony of Terry Landers and other witnesses demonstrates that collocation augments require minimal work, can be completed in a matter of minutes, and are substantially different from initial collocation orders.⁹⁴ In the face of this evidence, Verizon has conceded that the work is not, in fact, identical.⁹⁵ Verizon also has admitted that it has streamlined its augment application, but inexplicably claims that the streamlined order form will not reduce Verizon’s processing time.⁹⁶ As Rhythms and Covad point out, “[i]f there is substantively less information for BA-MA to process in the application, then the work required of BA-MA under TELRIC principles to process the application should be correspondingly less. The fact that BA-MA ...

⁹³ *Id.* (Mr. White) at p. 590, ll. 18-19.

⁹⁴ *See* Ex. 1, Panel Testimony of Rhythms/Covad, p. 172.

⁹⁵ Hearing Transcript (Mr. Virga) at p. 350, ll. 17-19 & p. 351, ll. 10-13.

⁹⁶ *See* Ex. VZ-MA-4, Panel Rebuttal Testimony, p. 57, ll. 10-11.

fails to streamline its processing procedures in an efficient manner consistent with the streamlined line sharing application is not the fault of the CLECs....”⁹⁷

The Proposed Tariff states that “Augment-Rearrangement of Equipment” charges for virtual collocation will apply when splitters are installed in existing physical collocation space.⁹⁸ As Digital Broadband has testified, the Proposed Tariff sets forth an augment application fee only for *virtual* collocation arrangements. As a result, it is not clear from the Proposed Tariff what augment charges apply to Option A arrangements, or even if augment charges should apply at all.⁹⁹ Of course, a \$1,500 charge for processing an order to “augment” an Option A arrangement cannot be unjustified. Verizon has admitted that the work required for augments under Option A consists of its own internal processes such as retraining personnel, updating databases, and updating facility records.¹⁰⁰ For physical collocation augments related to line sharing, the Department should set an interim rate of \$750 and require Verizon (should it continue to advocate any higher charge) to conduct a cost-based study supporting its proposed charge.

⁹⁷ Ex. 1, Panel Testimony of Rhythms/Covad, p. 173, ll. 4-10.

⁹⁸ Proposed Tariff, Part E, Section 2.6.12, p. 26.

⁹⁹ Ex. DBC-1, p. 7.

¹⁰⁰ Ex. DTE-BA-MA 2-16, Verizon Reply to DTE Request 2-16.

3. Loop Conditioning

The Proposed Tariff includes substantial charges for conditioning loops, including removing load coils and bridged taps.¹⁰¹

In the *Line Sharing Order*, the FCC determined that ILECs must generally condition loops¹⁰² in response to a CLEC request, to enable access to the high frequency portion of the local loop.¹⁰³ The presence of load coils and excessive bridged taps on a particular loop generally precludes the deployment of xDSL on that loop, whether on a stand-alone basis or through line sharing.¹⁰⁴ The FCC observed that it would be a rare occurrence, particularly on lines less than 18,000 feet long, when line conditioning would have a negative effect on voiceband services.¹⁰⁵ In addition, the FCC required ILECs to condition loops exceeding 18,000 feet, unless such conditioning would significantly degrade the ILEC's voice service.

Verizon has proposed loop conditioning rates for Massachusetts that are remarkably close to those that it proposed in New York.¹⁰⁶ The New York Public Service Commission recently determined, however, that conditioning charges for line sharing should be the same as for stand-

¹⁰¹ Proposed Tariff, Part B, Section 5.4.6.

¹⁰² Conditioning is the process of removing bridged taps, filters, range extenders, and similar devices that interfere with the transmission of certain frequencies, from a local loop.

¹⁰³ *Line Sharing Order*, 14 FCC Rcd 20952-53, ¶ 83.

¹⁰⁴ *Line Sharing Order*, 14 FCC Rcd at 20952-53, ¶¶ 83-84.

¹⁰⁵ See *Line Sharing Order*, 14 FCC Rcd at 20952 ¶ 83. See also *Local Competition Third Report and Order*, 15 FCC Rcd 3696, ¶¶ 190-195; Hearing Transcript, p. 743, ll. 9-15.

alone xDSL services.¹⁰⁷ In its decision to discount by 70% Verizon's conditioning charges for stand alone loops, the New York Commission determined that Verizon had been "clearly on notice . . . of what was expected of it by way of proof," that its cost support was extremely weak, and that it had not met its burden of proof.¹⁰⁸ The Department should apply a discount similar to that applied by the New York Commission, on an interim basis, in response to Verizon's failure to provide appropriately cost support for its proposed rates.

Verizon states that it will not impose the Load Coil Removal charge on loops that are less than 18,000 feet long.¹⁰⁹ Verizon also states that charges do not apply to the removal of bridged taps that are over 6,000 feet from loops that are over 18,000 feet. This proposal needs further clarification.¹¹⁰ In particular, the Department should make clear that loop conditioning charges must be based on the *finished* length of the loop, measured *after* the bridged taps have been removed.¹¹¹ Otherwise, Verizon could impose substantial and unpredictable conditioning charges for loops that, according to Verizon's own design criteria, should not need to be

(footnote continued from previous page)

¹⁰⁶ For example, Bell Atlantic-New York proposed non-recurring load coil removal charges of \$1,062 and \$1,410, depending on loop length. See New York Public Service Commission, Opinion and Order Concerning DSL Charges, Case 98-C-1357, Opinion No. 99-12, at 8, (Dec. 17, 1999).

¹⁰⁷ New York Public Service Commission, Opinion and Order Concerning Line Sharing, Case 98-C-1357, Opinion No. 00-07, at 39 (May 26, 2000).

¹⁰⁸ New York Public Service Commission, Opinion and Order Concerning DSL Charges, Case 98-C-1357, Opinion No. 99-12, at 41 (Dec. 17, 1999).

¹⁰⁹ See Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, p. 35.

¹¹⁰ See Ex. DBC-1, Direct Testimony of Terry Landers, p. 17, ll. 3-9.

conditioned.¹¹² For example, a CLEC could not easily predict if it will be liable for conditioning charges for a loop that initially appeared to be 22,000 feet, but had two 6,000-foot bridged taps and one loading coil that had to be removed. Since that loop should be only 10,000 feet when finished, no charge should apply. The Department should require Verizon to clearly establish in its Tariff that loop conditioning costs, if they apply at all, only apply to loops that exceed 18,000 feet after conditioning.

4. Cross-Connect Wiring Charges

Verizon proposes a non-recurring charge for “Service Connection – Central Office Wiring” of \$11.17 for “A First Link and an Additional Link” for cross-connects for line sharing access.¹¹³ In the *Line Sharing Order*, the FCC noted that cross-connects will be required to connect CLEC xDSL equipment to an ILEC’s facilities. The FCC determined that cross-connect charges will be substantially the same as collocation cross-connect charges where the splitter is mounted on the ILEC’s main distribution frame, and that the states may allow an ILEC to adjust the charge for cross connecting a CLEC’s splitter to the ILEC’s facilities to reflect the incremental additional cost attributable to that connection.¹¹⁴

(footnote continued from previous page)

¹¹¹ See Ex. DBC-1, Direct Testimony of Terry Landers, p. 17.

¹¹² See Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, p. 35.

¹¹³ Proposed Tariff, Part B, Section 19.2.1; Part M, Section 1.3.1.

¹¹⁴ *Line Sharing Order*, 14 FCC Rcd at 20977, ¶ 145.

Verizon seeks to impose twice the proposed non-recurring line sharing cross-connect charge (\$11.17 each) as the central office wiring charge for line sharing installations.¹¹⁵ However, although the cost of the second piece of wire that Verizon says it will install to bring the voiceband signal back from the CLEC POT bay to the MDF should be minimal, Verizon proposes to charge twice the full amount of its line sharing access “wiring and Installation-Other charges.”¹¹⁶

As Digital Broadband stated in its Direct Testimony, Verizon’s proposed charge does not reflect incremental additional costs.¹¹⁷ Verizon has not submitted information demonstrating that the proposed fee is an appropriate nonrecurring charge for line sharing. Consequently, there is no way to determine if this pricing scheme is truly cost-based. In particular, it is unclear how the Proposed Tariff charge accounts for the administration, materials, and labor required for the installation of the cross connect. Because both links are required for one line sharing request, it is reasonable to assume that the second link will generate an incremental administrative cost, rather than the same administrative cost as the first link.

¹¹⁵ Ex. VZ-MA-2, Direct Testimony of Bruce F. Meacham, pp. 18-21, Ex. VZ-MA-3, Direct Testimony of Amy Stern, Attachment 1, p. 3.

¹¹⁶ Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 10, Attachment 1, p.3. *Line Sharing Order*, 14 FCC Rcd at 20977, ¶ 145.

¹¹⁷ Ex. DBC-1, Direct Testimony of Terry Landers, p. 13, ll. 1-7.

5. Wideband Testing

The Proposed Tariff includes a \$1.90 monthly recurring per line charge for Wideband test access.¹¹⁸ As Terry Landers stated in her Direct Testimony, the proposed wideband test access charge is yet another form of hidden recurring loop charge.¹¹⁹ Because CLECs, including Digital Broadband, are able to conduct their own testing more efficiently, Verizon should not be permitted to impose this rate element.

In the *Line Sharing Order*, the FCC observed that little effort by an ILEC is required to ensure that CLECs have access to appropriate loop testing capability.¹²⁰ Consequently, the FCC required ILECs to provide physical loop access, either through a cross-connection at the CLEC's collocation space or through a standardized test head to enable CLECs to perform their own testing, maintenance, and repair activities.¹²¹ The New York Commission has determined that CLECs that deploy their own testing equipment should not also have to pay for ILEC-supplied testing services that they do not wish to purchase.¹²² Similarly, in Pennsylvania, the Arbitrator found in favor of Covad's own testing method because it minimized testing costs without

¹¹⁸ Proposed Tariff, Part B, Section 19.2.2 & Part M, Section 2.19.1.

¹¹⁹ Ex. DBC-1, Direct Testimony of Terry Landers, p. 15. See also Ex. VZ-MA-3, Direct Testimony of Amy Stern, p. 10, n.7; Proposed Tariff, Part M, Section 2.19.1, p. 31.

¹²⁰ *Line Sharing Order*, 14 FCC Rcd at 20967, ¶ 118.

¹²¹ *Id.*

¹²² State of New York Public Service Commission, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-C-1357, Opinion and Order Concerning Line Sharing Rates, Opinion No. 00-07, at 25-26.

degrading the quality of either the testing or the loop itself.¹²³ Verizon largely ignores these findings in arguing that wideband testing charges should be mandatory in Massachusetts.¹²⁴

The FCC also stressed that ILECs may not use their control over loop testing access points and mechanisms for anti-competitive or discriminatory purposes, yet Verizon's wideband testing proposal amounts to an anti-competitive and potentially discriminatory mechanism.¹²⁵ Specifically, the wideband testing requirement discriminates against "Option A" carriers such as Digital Broadband, and imposes redundant costs on CLECs that have invested in line-quality monitoring equipment, by imposing an additional cost for a testing service that these CLECs have no need for.¹²⁶ There appear to be no benefits or functions offered by Verizon's wideband testing proposal that are not already available from the Turnstone testing equipment that Digital Broadband normally includes in its collocation installations.¹²⁷ Moreover, Turnstone equipment has at least one important function beyond those that Verizon proposes to make available –

¹²³ Pennsylvania Arbitration Decision, pp. 30-34.

¹²⁴ Hearing Transcript (Mr. White), p. 692, ll. 12-15.

¹²⁵ *Line Sharing Order*, 14 FCC Rcd at 20967, ¶ 118.

¹²⁶ See Ex. DBC-1, Direct Testimony of Terry Landers, p. 14.

¹²⁷ Verizon uses Hekimian wideband testing equipment. See Ex. 68, Verizon Response to RL/CVD 1-75. Verizon reports that the Hekimian wideband testing equipment provides the following information: POTS supervision, CO noise, loop noise, dial tone, loop wiring, ADSL signal, and ATU-R detection. See Ex. 71, Verizon Response to RL/CVD 1-78. As Digital Broadband has shown, the Turnstone CX100 provides comprehensive loop management functionality, including remote loop qualification and testing, regardless of which access equipment is used, or which flavor of DSL service is deployed. Loop troubles can be quickly detected using the equipment's integrated test head, which facilitates a wide variety of tests, including electrical characteristics, noise measurements, and spectral analysis. See Ex. DTE-DBC-4, Digital Broadband Response to D.T.E. RR #4; Hearing Transcript (Ms. Landers), p. 150, ll. 18-22, p. 331, ll. 1-20. See also <http://www.turnstone.com/products/CX100/brochures/cx100.shtm>.

providing Digital Broadband immediate access to test results.¹²⁸ As it has testified, Digital Broadband is willing to share such results with Verizon.¹²⁹

E. Verizon's OSS Offerings Are Discriminatory

The Proposed Tariff requires that before Digital Broadband may order a loop from Verizon, it must “qualify” the loop, *i.e.*, determine whether the loop is capable of supporting DSL and other advanced technologies that Digital Broadband offers to its customers. Verizon has created a two-stage loop qualification process: (1) “mechanized” qualification, which involves use of an interactive computer database made available to CLECs, and (2) “manual” qualification, used when mechanized qualification does not yield a result.¹³⁰

As it has testified, Digital Broadband uses Verizon's Graphical User Interface (“GUI”) to access the Line Qualification Database created by Verizon especially for CLEC loop qualification¹³¹ Digital Broadband also has testified about the extremely poor performance and inaccurate results of the GUI and LQD made available by Verizon in Massachusetts.¹³² Verizon refuses to make available to CLECs its LFACS database, even though Verizon acknowledges that LFACS contains substantial information needed by CLECs to determine whether a loop will

¹²⁸ Ex. DTE-DBC-4.

¹²⁹ Hearing Transcript (Ms. Landers), p. 331, ll. 1-10.

¹³⁰ Proposed Tariff, Part M, Section 2.5.4.

¹³¹ Ex. DBC 1, Direct Testimony of Terry Landers, p. 10.

¹³² *Id.*

support advanced services,¹³³ and Verizon testimony before the DTE confirms that an integral part of the “manual” qualification procedure is a check of LFACS¹³⁴ (at substantially higher cost than the GUI).

FCC rules require Verizon to provide access to OSS as an unbundled network element.¹³⁵ The obligation to provide access to OSS includes loop qualification information.¹³⁶ Specifically, Verizon “must provide the requesting carrier nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install.... [A]t a minimum, [ILECs] must provide requesting carriers the same underlying information that the [ILEC] has in any of its own databases or other internal records,” including the information listed in the definition of “pre-

¹³³ See Hearing Transcript (Mr. White), p. 493; see also Ex. 29, BA-MA Reply to RL/CVD 1-33 (listing information contained in LFACS).

¹³⁴ See Hearing Transcript (Mr. White), pp. 496-497 (LFACS is not directly available to CLECs, but is “indirectly” available through manual qualifications and engineering queries).

¹³⁵ 47 C.F.R. § 51.313(c). The rules define OSS as “consist[ing] of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an [ILEC]’s databases and information.” 47 C.F.R. § 51.319(g).

¹³⁶ “Pre-ordering” and “ordering” are further defined as including “the exchange of information between telecommunications carriers about: current or proposed customer products and services; or unbundled network elements, or some combination thereof. *This information includes loop qualification information, such as the composition of the loop material, including but not limited to: fiber optics or copper; the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.*” 47 C.F.R. § 51.5 (emphasis added).

ordering and ordering.”¹³⁷ This information must be provided “within the same time frame” that any ILEC personnel are able to obtain the information.¹³⁸ Further, Verizon may not “filter or digest such information.”¹³⁹

It is undisputed that LFACS contains information needed by CLECs to determine whether a loop is capable of supporting advanced services. Nonetheless, Verizon refuses to make LFACS available, as it is required to do in the same time and manner as such information is available to Verizon. Therefore, Digital Broadband urges the Department to order Verizon to make LFACS available immediately, and to prohibit Verizon from imposing any charge for “manual” qualification when any part of the “manual” qualification procedure utilizes databases, such as LFACS, containing pre-ordering information that Verizon refuses to make available to CLECs.

When the FCC established line sharing obligations, it found no technical reasons why ILECs could not resolve operational issues related to line sharing, including modification of OSS by June 6, 2000.¹⁴⁰ The FCC also found that an ILEC’s failure to meet the June 6, 2000 target date could be grounds for finding that the ILEC is failing to provide nondiscriminatory access to UNEs in accord with Section 251(c)(3) of the Communications Act. and that such evidence is

¹³⁷ *Local Competition Third Report and Order*, 15 FCC Rcd 3885, ¶ 427.

¹³⁸ *Id.* at ¶¶ 430-31.

¹³⁹ *Id.* at ¶¶ 427-28.

¹⁴⁰ *Line Sharing Order*, 14 FCC Rcd at 20972-73, ¶ 130.

relevant in the context of a Section 271 proceeding.¹⁴¹ As Terry Landers has testified, Verizon did not make line sharing available by June 6, 2000, nor did it make its OSS available by that date. Instead, Verizon merely manipulated its systems in a manner that would allow competitors to *request* (by filing an augment application and paying a substantial fee) by that date.¹⁴²

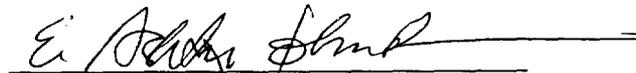
V. Conclusion

Digital Broadband respectfully requests that the Department issue an Order consistent with the foregoing and require Verizon to bring its proposed DTE Tariff No. 17 into compliance with the standards of the Department and federal law.

Respectfully submitted,

**DIGITAL BROADBAND
COMMUNICATIONS, INC.**

By:



E. Ashton Johnston
Vincent M. Paladini
Scott M. Perry
PIPER MARBURY RUDNICK & WOLFE LLP
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-3900
(202) 861-4160 (facsimile)

B. Kelly Kiser
Vice President, Legal and
Regulatory Affairs
Deputy General Counsel
DIGITAL BROADBAND
COMMUNICATIONS, INC.
200 West Street
Waltham, MA 02451

August 18, 2000

¹⁴¹ *Id.* at 20986, ¶ 173.

¹⁴² Hearing Transcript (Ms. Landers), p. 334, ll. 19-22:

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to)
the propriety of the rates and changes set forth in the)
following tariffs: M.D.T.E. Nos. 14 and 17, filed with)
the Department on August 27, to become effective))
September 27, 1999, by new England Telephone and)
Telegraph Company d/b/a Bell Atlantic-Massachusetts.)

SERVICE LIST

Alan D. Mandl
Mandl & Mandl, LLP
10 Post Office Square, 6th Floor
Boston, MA 02109

Ashton Johnston
Vincent Paladini
Piper Marbury Rudnick & Wolfe LLP
1200 19th Street, N.W.
Washington, DC 20036

Bruce P. Beausejour
Bell Atlantic - Massachusetts
185 Franklin Street
Boston, MA 02110-1585

Cathy Carpino
Massachusetts Department of
Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Christopher Moore
Sprint Communications Company LLP
1850 M Street, NW, Suite 1110
Washington, DC 20036

Antony Petrilla
Covad Communications, Inc.
600 14th Street NW, Suite 750
Washington, DC 20005

Barbara Anne Sousa
Bell Atlantic - Massachusetts
185 Franklin Street
Boston, MA 02110-1585

Cameron F. Kerry
Mintz Levin Cohn Ferris Glovsky and
Popeo, PC
One Financial Center
Boston, MA 02111

Christopher McDonald
WordCom, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166

Cynthia Carney Johnson
WorldCom, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166

Donald C. Davis
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Suite 220
Tampa, FL 33602

Douglas Denny-Brown
RNK Inc.
1044 Central Street
Stoughton, MA 02072

Enrico C. Soriano
Kelley, Drye & Warren LLP
1200 19th Street N.W.
Fifth Floor
Washington, DC 20036

Eric J. Krathwohl
Rich, May, Bilodeau & Flaherty, P.C.
294 Washington Street
Boston, MA 02108

Glenn A. Harris
NorthPoint Communications
222 Sutter Street, 7th Floor
San Francisco, CA 94108

J. Joseph Lydon
Beacon Strategies
11 Beacon Street, Suite 1030
Boston, MA 02108

Jay E. Gruber
Palmer & Dodge, LLP
One Beacon Street
Boston, MA 02108

Jeffrey Blumenfeld
Blumenfeld & Cohen
1625 Massachusetts Ave., N.W.
Suite 300
Washington, DC 20036

Donald S. Sussman
Network Access Solutions Corporation
100 Carpenter Drive, Suite 206
Sterling, VA 20164

Elise P.W. Kiely
Blumenfeld & Cohen
1625 Massachusetts Ave., NW
Suite 300
Washington, DC 20036

Eric Branfman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

George S. Ford
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Suite 220
Tampa, FL 33602

Helene J. Courard
Blumenfeld & Cohen
1625 Massachusetts Ave., NW
Suite 300
Washington, DC 20036

James R. Scheltema
Blumenfeld & Cohen
1625 Massachusetts Ave. NW
Suite 300
Washington, DC 20036

Jeesoo Hong
Massachusetts Department of
Telecommunications and Energy
One South Station
Boston, MA 02110

Jeffrey F. Jones
Palmer & Dodge, LLP
One Beacon Street
Boston, MA 02108-3190

John Farley
Network Plus, Inc.
1 World Trade Center, Suite 8121
New York, NY 10048

Karlen J. Reed
Thomas Reilly, Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114

Kelly Kiser
Digital Broadband
Communications, Inc.
200 West Street
Waltham, MA 02451

Kevin Hawley
Swidler Berlin Shereff
Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Mary Cottrell
Massachusetts Department of
Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Michael B. Hazzard
Kelley, Drye & Warren LLP
1200 19th Street, NW
Fifth Floor
Washington, DC 20036

Mike Isenberg
Massachusetts Department of
Telecommunications and Energy
One South Station 2nd Floor
Boston, MA 02110

Peggy Rubino
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Suite 220
Tampa, FL 33602

Jonathan E. Canis
Kelley, Drye & Warren LLP
1200 19th Street NW
Fifth Floor
Washington, DC 20036

Keefe B. Clemons
Bell Atlantic – Massachusetts
185 Franklin Street
Boston, MA 02110-1585

Kenneth W. Salinger
Palmer & Dodge, LLP
One Beacon Street
Boston, MA 02108-3190

Laurie Gill
Palmer & Dodge, LLP
One Beacon Street
Boston, MA 02108-3190

Melinda Milberg
AT&T Communications, Inc.
32 Avenue of the Americas
Room 2700
New York, NY 10013

Michael D'Angelo
NEXTLINK
45 Eisenhower Drive, 5th Floor
Paramus, NJ 07652

Patricia Jacobs, Ph.D.
AT&T Communications of New
England, Inc.
99 Bedford Street
Boston, MA 02111

Richard Rindler
Swidler Berlin Shereff
Friedman, LLP
300 K Street, NW, Suite 300
Washington, DC 20007-5116

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

Investigation by the Department on its own)
motion as to the propriety of the rates and)
charges set forth in M.D.T.E. No. 17, filed with) **D.T.E. 98-57, Phase III**
the Department on May 5, 2000 by New England)
Telephone and Telegraph Company d/b/a)
Bell Atlantic – Massachusetts)

**DIGITAL BROADBAND COMMUNICATIONS, INC.’S
MOTION FOR RECONSIDERATION**

Digital Broadband Communications, Inc. (“Digital Broadband”), by its attorneys and pursuant to Procedural Rule 220 C.M.R. § 1.11(10), respectfully seeks limited reconsideration by the Massachusetts Department of Telecommunications and Energy (“Department”) of its September 29, 2000 Order in the above-captioned proceeding (the “*Phase III Order*”).

I. Introduction

As an initial matter, Digital Broadband commends the Department for its comprehensive approach to the record evidence in this proceeding, and for expeditiously reaching a decision that Digital Broadband believes is, on balance, fair to all parties and comports with applicable law. That the *Phase III Order* is well-reasoned is evidenced by the fact that few of the decisions therein are likely to be plausibly subject to reconsideration.

For its part, Digital Broadband seeks reconsideration of just one aspect of the *Phase III Order*: the Department’s decision not to require Verizon New England, Inc. (“Verizon”) to make directly available its Loop Facilities Assignment and Control System (“LFACS”) database, which contains crucial information necessary to determine whether a particular loop is capable of providing advanced services. Specifically, the Department ruled that:

In the regional OSS collaborative, Verizon and CLECs continue to discuss access to loop information, one option of which is direct access to LFACS [citations omitted]. Because the decision on which option to obtain more information about loop and terminal make-up and system type is squarely before CLECs, we find it would be counter-productive to make that decision for the CLECs Therefore, we decline DBC's request to direct Verizon to make LFACS available immediately to CLECs.¹

II. Argument

A. Standard of Review

Procedural rule 220 CMR § 1.11(10) allows an aggrieved party to file a motion for reconsideration within 20 days of a final ruling. The Department will reconsider a decision if previously undisclosed evidence becomes available or if the Department's treatment of an issue was the result of mistake.² While the precise legal basis for the Department's ruling on access to loop qualification information is not clear, it appears that the decision not to require Verizon to provide direct access to LFACS may be based on mistake or inadvertence with respect to applicable law regarding Verizon's obligations. Consequently, this decision warrants reconsideration to conform the Department's decision with applicable federal law and Federal Communications Commission ("FCC") rulings.

¹ *Phase III Order* at 24.

² *See Investigation by the Department of Telecommunications and Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Tel. and Tel. Co. d/b/a NYNEX's Public Access Smart-pay Line Service and (4) the rate policy for operator services providers, D.T.E. 97-88/97-18 (Phase II-A).*

B. The Phase III Order Allows Verizon to Delay Complying with Its Legal Obligations

The *Phase III Order* allows Verizon to delay or possibly avoid entirely its obligation to provide non-discriminatory access to Operations Support Systems (“OSS”) – in particular, databases containing loop qualification information – and instead permits Verizon to await the outcome of the collaborative proceeding, in which Verizon has presented CLECs with different options for obtaining such information. The outcome of that proceeding, however, should play no role in the Department’s consideration of Verizon’s Tariff No. 17.

The statement in the *Phase III Order* that it “would be counter-productive to make that decision [about which access method provides more information] for the CLECs” is inapposite. No party disputes that information needed for loop qualification is contained in LFACS. CLECs therefore should not be forced to choose, when Verizon already is required to make the information in its databases available to CLECs as readily available as it is to Verizon. Regardless of which option is selected, Verizon has a *current* obligation to provide non-discriminatory access to loop qualification information. There is no basis in law or policy for allowing Verizon to postpone its legal obligation to provide non-discriminatory access by relying on the OSS collaborative.

C. Federal Law Requires Non-Discriminatory OSS Access

The Communications Act requires that Verizon provide non-discriminatory access to databases and other OSS as an unbundled element.³ The obligation to provide access to OSS

³ See 47 U.S.C. § 251(c)(3); *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3883, ¶ 423 (1999) (“*UNE Remand Order*”).

includes loop qualification information.⁴ The FCC's definition of "pre-ordering information" specifically includes "loop qualification information," which includes "the composition of the loop material..., location and type of any electronics or any other equipment on the loop..., the loop length..., the wire gauge(s) of the loop; and the electrical parameters of the loop, [all of] which may determine the suitability of the loop for various technologies."⁵

"Nondiscriminatory"⁶ access means the information must be provided within the same time and manner that it is made available to Verizon's personnel,⁷ and that "the quality of both the network element and access to the element must be (1) equal as between all carriers requesting access to that element,⁸ and (2) to the extent technically feasible, at least equal in quality as the ILEC provides to itself."⁹

⁴ See 47 C.F.R. §51.5.

⁵ 47 C.F.R. § 51 defines "pre-ordering" and "ordering" as including "the exchange of information between telecommunications carriers about: current or proposed customer products and services; or unbundled network elements, or some combination thereof. *This information includes loop qualification information, such as the composition of the loop material, including but not limited to: fiber optics or copper; the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.*"

⁶ 47 U.S.C. § 251(c)(3).

⁷ *UNE Remand Order* at 3886-87, ¶¶ 430-31.

⁸ 47 C.F.R. § 51.311(a).

⁹ 47 C.F.R. § 51.311(b).

The FCC, in implementing these requirements, has made abundantly clear that ILECs may not “filter” access to such information.¹⁰ Verizon must “provide the requesting carrier nondiscriminatory access to the same detailed information about the loop that is available to [it], so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install.... [A]t a minimum, [ILECs] must provide requesting carriers the same underlying information that the [ILEC] has in any of its own databases or other internal records.”¹¹ This information must be made available to competing carriers in “substantially the same time and manner” as that information is available to Verizon personnel.¹²

Verizon has not complied with its OSS obligations in Massachusetts, and the two-step loop qualification process embodied in Verizon’s Tariff perpetuates Verizon’s violation of applicable law.

¹⁰ *UNE Remand Order* at 3885, ¶¶ 427-28. Indeed, the FCC rejected precisely the type of filtering process that that Verizon’s Tariff mandates. The FCC specifically rejected SBC’s method of coding loop qualification responses as red, yellow or green. *Id.* at ¶ 428. The FCC held “the incumbent LEC must provide access to the underlying loop qualification information contained in engineering records, plant records, and other back office systems so that the requesting carriers can make their own judgments about whether . . . loops are suitable.” *Id.*

¹¹ *Id.* at ¶ 427.

¹² *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, *Third Report and Order*, CC Docket No. 96-98, *Fourth Report and Order*, 14 FCC Rcd 20912, 20986, ¶172 (1999).

There is no dispute in the record that LFACS contains substantial information CLECs need to determine whether an individual loop is qualified.¹³ Yet Verizon's Tariff, as approved,¹⁴ does not give CLECs direct access to LFACS. Instead, a CLEC must use a mechanized process – which *does not* include access to LFACS – *before* it may request a manual process, which *does* include access to the information that is in LFACS (but does give direct access to that information). This two-step process is discriminatory because Verizon itself does not follow it in order to gain access to loop information.

In defense of its position, Verizon has claimed that “[t]he loop qualification database [which it makes available to CLECs under the “mechanized” procedures] is distinguishable from the LFACS database.”¹⁵ This just states the obvious fact that there are two databases. Verizon has ignored the more pertinent point, that it is required to make the information that is contained in LFACS available in the same time and manner as that information is available to Verizon. While Verizon *could* do so by giving CLECs direct access to LFACS, thereby avoiding the requirement that CLECs enter the same information into the loop qualification database that Verizon makes available for mechanized loop qualification purposes, it need not do so. However, it must *either* make LFACS *or* the information that is in LFACS, available in order to comply with its OSS obligations. It refuses to do either.

¹³ See Transcript of Hearing Held August 2, 2000 (Mr. White), p. 493; see also BA-MA's Responses to Rhythms/Covad Information Requests (submitted 6/22/00); see also BA-MA Reply to RL/CVD 1-33 (listing information contained in LFACS, including location and type of electronics, location of bridged taps, spare pair availability, cable and pair identification, and other information).

¹⁴ Tariff No. 17, Section B, 5.4.2(B).

¹⁵ See Verizon Reply Brief, p. 17 n.2.

The Pennsylvania Public Utilities Commission, which ordered that Verizon provide direct access to LFACS information, made this abundantly clear:

Real-time electronic access to loop make-up information is important for several reasons. First, such electronic access will allow CLECs to determine quickly whether a customer's loop is suitable for DSL in response to customer inquiries. Second, electronic access allows CLECs greater flexibility in structuring their workforce, because on-line systems could be used 24 hours per day to research the suitability of customer loops to support DSL. Third, electronic systems can support much greater volumes of inquiries than will manual systems. Finally, ILECs may have internal electronic pre-ordering and ordering systems available, thereby giving them an advantage in serving customers over CLECs. Time is of the essence in providing pre-ordering information, because the market for high-speed data services, in particular DSL-based services, is growing larger and more competitive every day.¹⁶

Verizon's stark refusal to allow direct access to databases containing information that is needed to determine whether a loop is capable of providing services Digital Broadband may offer clearly violates the Communications Act and the FCC's rules. Digital Broadband notes that the Pennsylvania Commission, in the decision quoted above, ordered Verizon to make available "real-time access" to LFACS and other electronic databases that contain relevant information, and specifically found that Verizon's proposal "for giving access to loop data through a Web GUI is inadequate."

III. Conclusion

For the foregoing reasons, , Digital Broadband Communications, Inc. respectfully requests that the Department reconsider its decision and order Verizon to make its loop

¹⁶

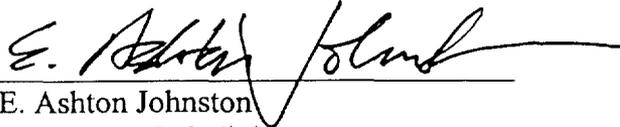
Pennsylvania Public Utilities Commission, P-00991648, P-00991649, *Opinion and Order*, at § VII, p. 11 (Aug. 26, 1999).

qualification databases available in the same time and manner that they are available to Verizon, without filtering or digesting the information.

Respectfully submitted,

**DIGITAL BROADBAND
COMMUNICATIONS, INC.**

By:



E. Ashton Johnston
Vincent M. Paladini
Scott M. Perry
PIPER MARBURY RUDNICK & WOLFE LLP
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-3900
(202) 861-4160 (facsimile)

B. Kelly Kiser
Vice President, Legal and
Regulatory Affairs
Deputy General Counsel
DIGITAL BROADBAND
COMMUNICATIONS, INC.
200 West Street
Waltham, MA 02451

October 19, 2000