

ORIGINAL



PIPER  
MARBURY  
RUDNICK  
& WOLFE LLP

1200 Nineteenth Street, N.W.  
Washington, D.C. 20036-2412  
www.piperrudnick.com

PHONE (202) 861-3900  
FAX (202) 223-2085

E. ASHTON JOHNSTON

ashton.johnston@piperrudnick.com  
PHONE (202) 861-6665

EX PARTE OR LATE FILED

December 6, 2000

RECEIVED

DEC - 6 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**HAND DELIVERY**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: Ex Parte Communication, CC Docket No. 00-176,  
Application by Verizon New England Inc. for Authorization  
to Provide In-Region, InterLATA Services in Massachusetts

Dear Ms. Salas:

Enclosed for entry into the record of the above proceeding is a letter from Michael P. Duffy, Senior Vice President and General Counsel of Digital Broadband Communications, Inc. to Chairman Kennard, dated today.

Please contact me with any questions regarding this matter.

Sincerely,

E. Ashton Johnston

EAJ/jas

Enclosure

No. of Copies rec'd 041  
List ABCDE



Magalie Roman Salas, Secretary

December 6, 2000

Page 2

cc: Commissioner Michael Powell  
Commissioner Susan Ness  
Commissioner Harold Furchgott-Roth  
Commissioner Gloria Tristani  
Kathryn Brown  
Anna Gomez  
Kyle Dixon  
Jordan Goldstein  
Deena Shetler  
Rebecca Beynon  
Dorothy Attwood  
Glenn Reynolds  
Jared Carlson  
Michelle Carey  
Kathy Farroba  
Eric Einhorn  
Susan Pié  
Cathy Carpino, Massachusetts D.T.E.  
Josh Walls, U.S. Department of Justice, Antitrust Division

EX PARTE OF LATE FILED RECEIVED

DEC - 6 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 6, 2000

Hon. William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

EX PARTE OF LATE FILED

Re: CC Docket No. 00-176

Dear Chairman Kennard:

I write to respond to Mr. Edward D. Young's December 1, 2000 letter to you regarding Verizon's performance on one Section 271 checklist item – unbundled loops used to provide Digital Subscriber Line (“DSL”) service – that is of critical importance to carriers, such as my company, that seek to compete with Verizon in the delivery of advanced telecommunications services in Massachusetts.

Digital Broadband Communications, Inc. is a Massachusetts-based Broadband Communications Provider of retail high-speed access to small-to-medium size businesses and to enterprise corporations seeking a broadband solution for their employee teleworkers. Unlike many other CLECs that offer DSL, Digital Broadband does not provide wholesale services. We have undertaken an extensive buildout throughout the entire state of Massachusetts, and plan to be collocated in over 90% of Verizon's central offices in the state in 2001. At the end of this year, approximately 80% of Digital Broadband's installed broadband lines will be located in Massachusetts. Verizon is our sole vendor for those lines. Consequently, Digital Broadband has substantial daily experience with Verizon in Massachusetts and can state unequivocally that Verizon's actual performance shows that Verizon's markets are not open to competition in this state.

Although Mr. Young's letter, on the one hand, seeks to diminish the significance of DSL, and suggests that the Commission should give it a lower priority because it is a “subset” of unbundled loops, his letter, on the other hand, highlights the increasing investment that Verizon itself is making in this service. Indeed, Mr. Young concludes his letter by stating that Verizon's rollout of DSL in Massachusetts “is well ahead of schedule.” Industry-wide, Verizon and other incumbent LECs now control an overwhelming majority of DSL lines in service. Consequently, the Commission must be diligent in reviewing Verizon's treatment of competitors in order to ensure that the market is allowed to become irreversibly open to competition.

More specifically, Digital Broadband challenges Verizon's assertions that it has demonstrated compliance with its checklist obligations. In fact, Verizon's performance with respect to xDSL pre-ordering, installation and loop quality is measurably discriminatory and, in some cases, has not been subjected to accurate performance measurements. I will not address here all of Mr. Young's assertions because a substantial record contradicts Verizon's prior assertions, most of which are repeated in Mr. Young's letter. The record includes not just the Massachusetts Department of Telecommunications and Energy's investigation into Verizon's proposed rates, terms, and conditions for DSL service in Massachusetts, but also filings in this proceeding by the Department of Justice, the Association of Local Telecommunications Services, and numerous individual carriers in opposition to Verizon's application. Digital Broadband itself has submitted to the Commission detailed factual declarations that demonstrate Verizon's unacceptably poor performance in connection with its provisioning of unbundled xDSL loops and inter-office transport facilities.

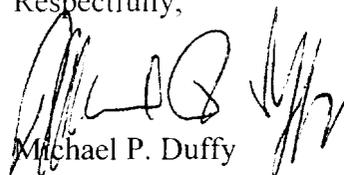
A brief summary of Digital Broadband's declarations illustrates the wide gulf between Verizon's assertions in this proceeding and its actual performance in Massachusetts:

- **Pre-Ordering Database Accuracy.** A substantial number of loops cannot be qualified for DSL service because the databases Verizon makes available to its competitors are inferior to data in Verizon's possession. In its December 1 letter, Verizon emphasizes the ability of its "electronic pre-qualification database" to respond quickly to queries. This is largely a useless measurement, however, and Verizon has not addressed the more important question of whether those responses are accurate and reliable – which our data conclusively shows is not the case and which was not tested by KPMG during the state proceeding. See Declarations of Mr. Melanson, Ms. Landers, and Mr. Kiser, submitted as Exhibit A to the Joint Comments of the ALTS Coalition.
- **OSS Availability.** Verizon also refuses to make available certain pre-ordering Operations Support Systems in the same time and manner as it is available to Verizon, in direct contravention of FCC rules. See Declaration of Mr. Kiser, submitted as Exhibit A to the Joint Comments of the ALTS Coalition.
- **FOC Dates and Installation.** Verizon touts the ability of its systems to timely return firm order confirmations ("FOCs") for loop provisioning. This is another largely meaningless measurement, because Verizon routinely misses its committed dates. See Declarations of Mr. Melanson and Mr. Kiser, submitted as Exhibit A to the Joint Comments of the ALTS Coalition. Verizon's failure to meet committed dates is a vastly more significant benchmark than whether it simply provides a FOC date.

- **Loop Quality.** A substantial number of loop orders pass initial testing but fail subsequent testing, or fail at the time Digital Broadband seeks to install the loop and equipment at the customer premises. See Declarations of Mr. McMillan and Mr. Kiser, submitted as Exhibit A to the Joint Comments of the ALTS Coalition.

In closing, I must point out that when the Commission granted Verizon's application for inter-LATA authority in New York, it pledged to take a hard look at Verizon's DSL provisioning in future Section 271 proceedings and warned Verizon that it would not get a "free pass" on DSL in the future. Digital Broadband respectfully urges this Commission to uphold that pledge by finding that Verizon has not yet satisfied its checklist obligations with respect to DSL and therefore is not entitled to Section 271 authority in Massachusetts.

Respectfully,



Michael P. Duffy

Senior Vice President  
and General Counsel