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1 December 2000

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Michael K. Powell, Commissioner  
Gloria Tristani, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Application by Verizon New England for Authorization under § 271  
of the Telecommunications Act of 1996, CC Docket No. 00-176

Dear Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell, and Tristani:

In less than three weeks, the Federal Communications Commission ("Commission") will rule on Verizon New England's § 271 application. That ruling will have a searching effect on Massachusetts consumers and on the telecommunications services available to them. Like the New York and Texas public service commissions before it, the Massachusetts Department of Telecommunications and Energy ("Department") awaits the Commission's ruling with keen interest. I dare say that the public service commissions in the other 47 states also will be avidly interested in how the Commission views the consultative evaluation that the Massachusetts Department filed with the FCC on October 16. I say so, because I know how eagerly our Department awaited the Commission's New York ruling last December as the first complete statement of what constituted an acceptable application. Our Department strictly followed your guidance in the New York ruling as we conducted our own investigation.

In the five years since the 1996 Act was passed, our Department has worked hard to put the Act's terms into effect—through case after case and arbitration after arbitration. Indeed, even a full decade before the 1996 Act, the Department had already, on its own, adopted a clear policy firmly in favor of intra-LATA competition. Intra-LATA Competition Investigation, D.P.U. 1731 (1985). As a result of the Department's initiative and of its unremitting regulatory pressure for

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the past fifteen years, Massachusetts today enjoys the benefits of one of the most competitive telecommunications markets in the United States.

The five years since passage of the 1996 Act have culminated in the Department's investigation—over the past eighteen months—of Verizon's compliance with the § 271 14-point checklist. Because of the importance that the 1996 Act and the Commission accord to a State's consultative role under § 271, the Department devoted extensive, State-funded resources to this effort. Both the Department's evaluation of Verizon's application and its recommendation of Commission approval rest on an extensive record. In the creation of that record, the Department accorded all carriers and any other interested person a full and fair opportunity to participate.

The Department has, since its October 16 report, reviewed all filings made with the FCC: Nothing presented since then changes the Department's conclusions and recommendations. The Department fully considered and addressed all matters presented to it during its thorough investigation. The record before this Department plainly warranted our findings and recommendations; and, I respectfully submit, the record now before the FCC also presents a clear and compelling case for approval.

A word about DSL: I gather from Department interchanges with the FCC that some lingering concern may remain about DSL performance. Let me note that, contrary to what may have been alleged in *ex partes*, CLECs had full opportunity to present their assertions of fact and their arguments to the Department. We actively solicited their views. Moreover, CLECs had the unfettered opportunity to seek—and had, in fact—any and all relevant information necessary to make their cases before the Department closed its investigative record to draft its evaluation. The Department evaluated every DSL issue raised by any participant in its investigation. If matters were withheld from being raised in our proceeding, only to be later raised with the FCC as unresolved, then Massachusetts, like any other state, must wonder what its § 271 consultative role is all about.

Furthermore, "metrics"—though very useful as a regulatory tool, especially in monitoring the future state of the market and protecting against backsliding—are not *themselves* what § 271 is about. *Actual* performance is the centerpiece of the enquiry. The Department would never disprize the importance of clear metrics as enforcement or evaluative tools, but we would differentiate between the measuring tools and the reality they measure—between, if you will, the thermometer and the ambient temperature. Our investigation shows that the ambient temperature of DSL lies in an acceptable range of parity, even though the thermometer may need recalibration. And so, I respectfully urge that you not heed counsel that would have you mistake the one for other.

Where DSL metrics seemed at first look to indicate disparity rather than parity, the Department looked deeper. We asked whether, or not, the metrics themselves captured the reality of actual performance. When we examined all the underlying facts (including CLEC

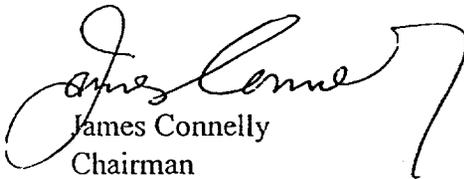
actions), any question of discriminatory treatment or of lack of true parity was resolved. Mere appearance yielded to fact. These deeper investigations by the Department and the conclusions we reached are spread on the record before you.

Finally on this point, it appears that some would argue that Commission conclusions should be based on the anomalous period in late summer when Verizon workers were out on strike. I would urge the Commission to be intensely skeptical of any argument that the stresses and strains on any business trying to serve consumers during a strike can really be said to represent the actual underlying market. This is a premise divorced from the reality of the world as it is lived.

The telephone was invented in Boston in 1875, and the Department has regulated Verizon and its predecessors for over 100 years. Whatever the outcome of the § 271 application, the Department is not going away. It will continue to promote the policy it adopted in 1985—namely, to promote intra-LATA competition in order to benefit Massachusetts consumers and the State's economy. DSL is a vital feature of that promotional effort. As I noted earlier, improved DSL metrics will be a central part of that work. That is why we have expressly and directly linked the Massachusetts PAP's enforcement measures to the continuing industry collaborative in New York. The Department has committed—and I repeat that commitment here and now—to adopt any and all enhanced New York metrics as Massachusetts' own as soon as they are issued. Like New York, Massachusetts is part of the former NYNEX system; and so it is administratively efficient to follow New York's lead in this matter. *But*—and this is an important additional pledge—the Department has further committed itself to develop its own enhanced DSL metrics and to amend our PAP accordingly, should the New York collaborative prove dilatory. You have my and my colleagues' word on that.

Let me close by thanking the FCC for the cordial cooperation the Department has enjoyed over this long process. I hope and trust that, in rendering your paramount statutory judgment on this application, you will be able to give due deference to the fact-finding and to the hard and good-faith work that the Massachusetts Department of Telecommunications and Energy has labored to put before you. I do not envy your task of doing in a bare 90 days what we—with a prior knowledge of our market stretching back a century—have taken 18 months to do. Thank you for your attention to the views expressed here and in the Department's earlier filings.

Very truly yours,



James Connelly  
Chairman