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Magalie Roman Salas, Secretary
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Portals II, 445 12th Street S.W.
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re: In the Matter of Application by Verizon New England, Inc., for Authorization Under
Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the
State of Massachusetts (CC Docket No. 01-9).

Dear Ms. Salas:

Enclosed for filing in the above matter please find one original and seven hard copies and
one 3.5 inch computer diskette containing the Massachusetts Attorney General's Comments in
the above-referenced proceeding. Please stamp one hard copy and return it to us in the enclosed
prepaid, self-addressed envelope. I have filed a copy of the comments electronically with the
Commission's ECFS service (proceeding number 01-9) and, as directed in the January 16, 2001
Public Notice, have sent twelve copies to Susan Pié of the Common Carrier Bureau and one copy
each to ITS, Cathy Carpino of the Massachusetts Department of Telecommunications and
Energy, and Josh Walls of the U.S. Department of Justice, Antitrust Division,
Telecommunications Task Force.

Sincerely,

Karlen J. Reed
Assistant Attorney General
Regulated Industries Division

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Enc.

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Before the
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In the Matter of Application by Verizon New England Inc.)
for Authorization Under Section 271 of the)
Communications Act To Provide In-Region, InterLATA)
Service in the State of Massachusetts)

CC Docket 01-9

**MASSACHUSETTS ATTORNEY GENERAL'S COMMENTS ON
VERIZON NEW ENGLAND, INC.'S JANUARY 16, 2001 SUPPLEMENTAL
APPLICATION FOR AUTHORIZATION UNDER SECTION 271 OF THE
COMMUNICATIONS ACT TO PROVIDE IN-REGION, INTERLATA SERVICE IN
THE STATE OF MASSACHUSETTS**

Respectfully submitted,

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Washington, D.C. 20554**

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THE STATE OF MASSACHUSETTS**

The Attorney General of the Commonwealth of Massachusetts, Thomas F. Reilly ("Massachusetts Attorney General"), urges the Federal Communications Commission ("FCC" or "Commission") to withhold approval of the January 16, 2001, supplemental Application ("Supplemental Application" or "Application") filed by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. (collectively, "Verizon" or "the Company"), with the Commission for authority to provide in-region interLATA service in the Commonwealth of Massachusetts pursuant to Section 271 of the Telecommunications Act of 1996.¹

The Commission should deny the Application because Verizon has not demonstrated that it has satisfied Checklist Item Number 2, Unbundled Network Elements ("UNE") since its New York-based UNE prices are not interim, subject to refund, and because Verizon's performance assurance plan ("PAP") does not yet contain sufficient DTE-approved digital subscriber line

¹ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("the Act").

(“DSL”) measures to ensure continued compliance with the Act.²

In accordance with the Commission’s January 16, 2001 Public Notice, the Massachusetts Attorney General respectfully requests that the Commission incorporate into the record for CC Docket 01-9 all portions of the Massachusetts Attorney General’s comments and reply comments filed with the FCC on October 16, 2000, and November 3, 2000, respectively, in CC Docket 00-176, Verizon’s original Section 271 application to enter the Massachusetts long distance market.

I. SUMMARY OF ARGUMENT

The Commission should not approve Verizon’s Application at this time because Verizon has not demonstrated satisfaction of Checklist Item Number 2, nondiscriminatory access to unbundled network elements (“UNE”) as to the pricing of its UNEs. Contrary to precedent set by the Commission in its recent New York, Texas, and Kansas/Oklahoma Section 271 Approval Orders, Verizon’s UNE prices are not based on Massachusetts-specific costs, have not been investigated by the Massachusetts Department of Telecommunications and Energy (“DTE”), and are not interim, subject to refund pending completion of the new UNE docket opened by the DTE on January 12, 2001.³ Furthermore, until Verizon’s revised Performance Assurance Plan (“PAP”) filed with the DTE on January 30, 2001, is reviewed and approved by the DTE, the

² Checklist Item Number 2 is codified as 47 U.S.C. § 271(c)(2)(B)(ii) of the Act.

³ *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a into Verizon Massachusetts’ Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20, Vote and Order to Open Investigation (January 12, 2001) (“DTE UNE Docket”). Verizon Supplemental Application, Appendix B, Volume 3, tab 4(d).

Massachusetts PAP may not contain sufficient protections to assure that Verizon does not discriminate against its data competitors in favor of its separate data affiliate, VADI, in providing digital subscriber line (“DSL”) service to Massachusetts customers.

II. ARGUMENT

A. Verizon Still Has Not Complied With Checklist Item Number 2

Verizon has failed to demonstrate in its Supplemental Application that it has opened the local market to competition as measured by Checklist Item Number 2 regarding pricing for unbundled network elements (“UNE”). The Massachusetts Attorney General asserted in his previous comments, and continues to assert that, based on past Commission precedent on the resolution of pricing disputes, the Commission should not find that the Company has demonstrated satisfaction of Checklist Item Number 2 unless and until Verizon can demonstrate that the Massachusetts Department of Telecommunications and Energy (“DTE”) has established either: (1) permanent rates for unbundled network elements (UNEs) that are calculated using a forward looking, total element long-run incremental cost (TELRIC) methodology based upon recent Massachusetts-specific data and inputs, or (2) interim UNE rates that are subject to refund.⁴ Neither condition has been met; consequently, Verizon has not demonstrated compliance with this Checklist Item.

⁴ Massachusetts Attorney General October 16, 2000 Initial Comments at 2-5; Massachusetts Attorney General November 3, 2000 Reply Comments at 2-8.

1. The Commission has created a Section 271 pricing dispute standard

Verizon contends that its DTE-approved October 13, 2000 permanent UNE rates which are based on Verizon New York's UNE rates,⁵ combined with the prospect of new Massachusetts-specific permanent UNE rates being set through the DTE UNE Docket, are enough to satisfy this part of Checklist Item Number 2.⁶ This contention is without merit: Verizon has misconstrued the standard for evaluating pricing disputes as it has evolved in the Commission's recent New York, Texas, and Kansas/Oklahoma Approval Orders.⁷ The correct standard is as follows: First, the Section 271 applicant must "provide UNEs at rates and terms

⁵ Verizon Supplemental Application, Appendix B, Volume 3, tab E, tariff revisions filed October 13, 2000, to take effect November 12, 2000. These tariff revisions were modified on October 18, 2000, as shown in tab F, for effect October 13, 2000. In addition to correcting a typographical error in the original filing, the October 18, 2000 tariff revision also revised the revisions' effective date, retroactive to October 13, 2000. The Massachusetts Attorney General is unaware of any DTE regulation or procedure cited by Verizon to justify placing these tariff revisions into effect less than thirty days after filing with the DTE, as required by DTE regulation 220 CMR 5.02(4).

⁶ Verizon Supplemental Application, Brief at 37, 39, 41.

⁷ *In the Matter of 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*, Memorandum Opinion and Order, CC Docket No. 99-295, (rel. December 22, 1999) ("New York Approval Order"); *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc d/b/a Southwestern Bell Long Distance*, Memorandum Opinion and Order, CC Docket No. 00-65 (rel. June 30, 2000) ("Texas Approval Order"); *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217 (rel. January 22, 2001) ("Kansas/Oklahoma Approval Order").

that are just, reasonable, and nondiscriminatory.”⁸ Second, interim pricing is acceptable so long as: (1) the state commission is currently considering the matter; (2) interim rates are in place pending resolution of the dispute; (3) the state commission demonstrates a commitment to following the FCC’s TELRIC pricing rules; and (4) the interim rates provide for refunds or true-ups once permanent rates are set.⁹ Third, a Section 271 applicant can use prices from one state to support its application in an adjoining state so long as the imputed rates are based on recent state-specific data examined in an open docket, are promotional for an extended length of time, or are used as interim, not permanent, rates.¹⁰

2. Verizon’s UNE prices do not meet the FCC’s pricing dispute standard

Verizon’s UNE rates fail all three prongs of the FCC’s pricing dispute standard because the Company has not demonstrated that its Massachusetts UNE prices (based on its UNE prices

⁸ Kansas/Oklahoma Approval Order at ¶ 65; 47 U.S.C. § 271(2)(B)(ii); 47 U.S.C. §§ 251(c)(3) and 252(d)(1).

⁹ New York Approval Order at ¶¶ 250, 257-260; Texas Approval Order at ¶¶ 236, 237, 241; Kansas/Oklahoma Approval Order at ¶ 238.

¹⁰ In its Kansas/Oklahoma Approval Order, the Commission reviewed SBC’s use of Texas collocation rates to support its Oklahoma 271 application and held “We believe that the rates contained within the Texas 271 application, including those that are interim, are reasonable starting points for *interim* rates for the same carrier in an adjoining state.” Kansas/Oklahoma Approval Order at ¶ 239 (Emphasis added). The Kansas Corporation Commission approved permanent recurring UNE rates in September 1999, and permanent nonrecurring UNE rates in November 2000 using Kansas data, SBC’s Texas TELRIC cost model, and input from competitors in open dockets. *Id.* at ¶¶ 49-50. The Oklahoma Corporation Commission (“OCC”) approved permanent recurring and nonrecurring UNE rates in 1998, and approved a stipulation among SBC, the OCC, and various competitive local exchange carriers (“CLECs”) to use promotional rates at a 25% discount over the existing UNE rates from June 2000 to June 2005. The FCC approved both UNE rate structures despite having “serious doubts as to whether the [Oklahoma] permanent rates set forth in the O2A are at TELRIC-based levels.” *Id.* at ¶ 73.

for New York) are reasonable, the UNE rates were not subjected to examination by the DTE or competitors, the UNE rates are not promotional in nature or the result of negotiation with multiple competitors, and the UNE rates are not interim rates subject to refund.¹¹ The Commission should not allow Verizon to lower the three-part pricing dispute standard set and repeatedly emphasized by the Commission; to do otherwise will discourage local voice and data telecommunications competition and inhibit the development of the UNE and UNE platform (“UNE-P”) markets in Massachusetts. Moreover, these rates may very well fall outside the range that a reasonable application of TELRIC principles would produce, thus supporting their rejection for Section 271 purposes by the FCC.¹² Because the DTE did not allow an investigation of the October 13, 2000 UNE recurring rates prior to their adoption, this uncertainty remains.

¹¹ The DTE’s UNE Docket Order opened an investigation into Verizon’s recurring and nonrecurring UNE charges, but did not revoke Verizon’s October 13, 2000 UNE rates or require those New York-based rates to be interim rates, subject to refund. The October 13, 2000 UNE rates were filed by Verizon and approved by the DTE on the same day without any investigation. Verizon has not yet agreed to revise its UNE rates to be interim, subject to refund.

¹² Kansas/Oklahoma Approval Order at ¶ 74. The evidence presented by WorldCom and AT&T in CC Docket 00-176, and in the current CC Docket 01-9, is some indicia that New York’s rates should not serve as Massachusetts’ permanent UNE rates, even for the duration of the DTE’s UNE docket. *See* WorldCom’s January 30, 2001 ex parte, CC Docket 01-9. AT&T and WorldCom have urged the DTE in the DTE UNE Docket to use negotiated rates or interim UNE prices as ceiling prices to encourage market entry and to develop sustainable competition without the prospect that permanent prices would exceed the interim prices. AT&T Motion at 4; WorldCom Motion at 1. The Commission addressed similar concerns expressed by Sprint in the Kansas/Oklahoma Approval Order by noting that both states had committed to completing their interim pricing dockets in the near future. Kansas/Oklahoma Approval Order at ¶ 240. However, there is no such commitment by the DTE to conclude its UNE Docket before the end of this year.

B. Verizon's PAP Does Not Yet Contain Enough DSL Measures Sufficient To Assure Verizon's Continued Compliance With Checklist Items

In his previous comments, the Massachusetts Attorney General emphasized the importance of considering the presence of related state enforcement mechanisms in evaluating an applicant's satisfaction of the 14-point Checklist.¹³ Since that time, the DTE ordered Verizon to strengthen its performance assurance plan ("PAP") with additional digital subscriber line ("DSL") metrics, a new Mode of Entry ("MOE") for DSL, increased bill credits for the DSL metrics, and additional DSL metrics for the Critical Measures portion of the Massachusetts PAP.¹⁴ Verizon revised its PAP on January 30, 2001, to include additional proposed DSL metrics, DSL MOE, and DSL Critical Measures that are also under consideration by the New York State Public Service Commission, but the DTE has not yet approved these proposed modifications. This leaves a gap in the Massachusetts PAP which significantly reduces the effectiveness of the PAP in enforcing parity compliance on DSL matters as required by the Act's 14-point Checklist.

1. Verizon's separate data affiliate, VADI, is fully functional but not subject to sufficient PAP enforcement

Verizon's separate data affiliate, Verizon Advanced Data, Inc. ("VADI"), has been

¹³ Massachusetts Attorney General October 16, 2000 Comment at 2, 8; Massachusetts Attorney General November 3, 2000 Reply comment at 10.

¹⁴ *Verizon Section 271 Application to enter the long distance market*, D.T.E. 99-271, Order on Motions for Clarification and Reconsideration - Performance Assurance Plan (November 21, 2000) ("DTE PAP Order") at 5-6; Verizon Supplemental Application, Appendix B, Volume 3, tab 4(b).

functional and operating in Massachusetts since November 2000,¹⁵ which increases the incentive for Verizon to provide its competitors with poor DSL service in favor of its affiliate. Given that there are almost no DTE-approved DSL metrics in the Massachusetts PAP now to recompense competitors for discriminatory treatment, Verizon may already be eluding enforcement for poor service quality to its competitors. The Commission should not allow Verizon to enter the long distance market without having enforceable PAP provisions in place that monitor and enforce Verizon's wholesale DSL services to its CLEC competitors.

2. DSL competition is dwindling in Massachusetts

Having a substantial PAP which includes more DSL metrics, a DSL Mode of Entry, and DSL metrics in the Critical Measures portion is even more important now because market forces appear to be deterring or eliminating competition from other DSL providers. Within the past two months, four DSL providers who provided residential and/or business DSL service in Massachusetts have either folded, filed for bankruptcy protection, eliminated their residential service, or are actively soliciting a buyer for their assets.¹⁶ This significantly reduces

¹⁵ Verizon Advanced Data, Inc. ("VADI") became operational in Massachusetts in November 2000 and is currently providing DSL service to Massachusetts customers. Verizon Supplemental Application, Appendix A, Volume 2, tab 4, Supplemental Declaration of George Dowell, page 3.

¹⁶ Votts Networks was reportedly ceasing operations as of March 1, 2001. Digital Broadband Communications and NorthPoint have filed for Chapter 11 bankruptcy protection, and HarvardNet has stopped offering DSL service. See New Hampshire Public Utilities Commission, DT 01-013, Order of Notice (January 30, 2001) (requiring a public hearing on Votts' notice of cessation of operations); "Demise of Votts Networks Seen Near" Boston Globe, January 23, 2001, page D3; "Etc.," Boston Globe, January 24, 2001, page D10; Digital Broadband Communications, Inc., Chapter 11 bankruptcy petition # 00-04650-PJW (Delaware); Northpoint Communications, Inc., Chapter 11 bankruptcy petition #01-30126, Northern District
(continued...)

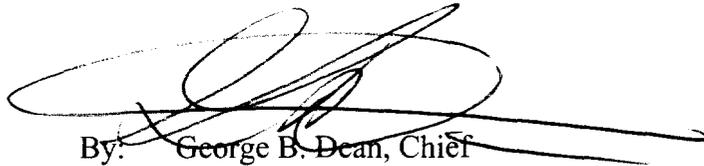
Massachusetts consumers' choice for DSL and, correspondingly, significantly increases the need to monitor and remedy poor DSL performance by Verizon to its CLEC customers/competitors.

III. CONCLUSION

The Commission should not approve the application by Verizon to enter the long distance Massachusetts market at this time because it has not demonstrated compliance with Checklist Item Number 2 (UNE pricing) and has not incorporated enough DTE-approved DSL metrics, DSL Mode of Entry, and increased bill credits for DSL metrics into its Performance Assurance Plan to enforce continued compliance with the Act's 14-point Checklist.

Respectfully submitted,

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Dated: February 6, 2001

¹⁶(...continued)
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CC Docket 01-9

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