

February 28, 2001

**SENT VIA E-MAIL, U.S. MAIL AND/OR  
FEDERAL EXPRESS**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Suite CY-B402  
Washington, DC 20554

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 please find one original and seven hard copies and one 3.5 inch computer diskette containing the Massachusetts Attorney General's Reply Comments. Please stamp one hard copy and return it to us in the enclosed prepaid, self-addressed envelope. I have filed a copy of the Reply 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 Joshua Walls of the U.S. Department of Justice, Antitrust Division, Telecommunications Task Force.

Sincerely,

Karlen J. Reed  
Assistant Attorney General  
Regulated Industries Division

KJR/kr

Enc.

cc: Attached Service List (w/enc.)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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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 )      CC Docket 01-9  
Service in the State of Massachusetts )  

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**MASSACHUSETTS ATTORNEY GENERAL'S  
REPLY COMMENTS**

Respectfully submitted,

**THOMAS F. REILLY  
MASSACHUSETTS ATTORNEY GENERAL**

By:     George B. Dean, Chief  
         Karlen J. Reed  
         Assistant Attorneys General  
         Regulated Industries Division  
         Public Protection Bureau  
         200 Portland Street, 4th Floor  
         Boston, MA 02114  
         (617) 727-2200

Dated: February 28, 2001

## TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT.....	Page 1
II.	ARGUMENT .....	Page 2
	A. Verizon’s Supplemental Application does not resolve problems with UNE pricing and DSL issues.....	Page 2
	1. UNE pricing issues remain .....	Page 2
	2. DSL issues remain .....	Page 4
	B. The Commission should not ignore other allegations that remain from Verizon’s first Application.....	Page 7
III.	CONCLUSION .....	Page 8

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**MASSACHUSETTS ATTORNEY GENERAL'S  
REPLY COMMENTS**

Pursuant to the procedural schedule set by the Federal Communications Commission (“Commission” or “FCC”) on January 16, 2001, the Attorney General of the Commonwealth of Massachusetts, Thomas F. Reilly (“Massachusetts Attorney General”), submits these Reply Comments. The Massachusetts Attorney General has reviewed more than 85 comments filed by competitive local exchange carriers (“CLECs”) and others, including the February 6, 2001, redacted report by the Massachusetts Department of Telecommunications and Energy (“DTE”) and the February 21, 2001 evaluation by the U. S. Department of Justice, Antitrust Division, Telecommunications Task Force (“Justice”). Unless specifically noted otherwise, this review has not caused any change in the positions set forth in the Massachusetts Attorney General’s February 6, 2001 Comments.<sup>1</sup>

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<sup>1</sup> No attempt has been made to respond to all of the arguments made and positions taken by the commenters. Silence regarding any specific argument raised in the commenters’ initial comments should not be taken as agreement by the Massachusetts Attorney General.

## **I. SUMMARY OF ARGUMENT**

The Massachusetts Attorney General continues to urge the Commission to withhold its approval of the Supplemental Application (“Supplemental Application”) filed with the Commission on January 16, 2001 by Verizon New England, Inc., et al. (collectively, “Verizon” or “the Company”), for authority to provide in-region interLATA service in the Commonwealth of Massachusetts pursuant to Section 271 of the Telecommunications Act of 1996.<sup>2</sup> The Commission should disregard the DTE’s finding that Verizon has satisfied all parts of the Competitive Checklist and should reject the Supplemental Application because Verizon’s UNE prices are not based on Massachusetts costs, because the DTE failed to investigate those prices before approving them, and because the New-York-based UNE prices at issue are not interim rates, subject to refund.

The Massachusetts Attorney General also joins Justice and other commenters who contend that various issues regarding digital subscriber line (“DSL”), pole attachments, interconnection trunking, merger and reciprocal compensation, special access and pay phone competition should be resolved prior to granting Verizon’s request to enter the Massachusetts long distance telephone market.

## **II. ARGUMENT**

### **A. Verizon’s Supplemental Application does not resolve problems with UNE pricing and DSL issues**

#### **1. UNE pricing issues remain**

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<sup>2</sup> The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“the Act”).

In his February 6, 2001 Comments, the Massachusetts Attorney General argued that the Commission should not find that Verizon had satisfied Checklist Item Number 2 because the Company had not demonstrated that it provides nondiscriminatory access to network elements in accordance with §§ 251(c)(3) and 252(d)(1) of the Act.<sup>3</sup> The Massachusetts Attorney General noted that the record evidence accumulated in this docket and in Verizon's previous application, CC Docket 00-176, support findings that the prices Verizon sets for its unbundled network elements were not investigated prior to approval, are not based on Massachusetts-specific costs, and, consequently, should not serve as permanent prices.<sup>4</sup> At best, the current UNE rates should

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<sup>3</sup> Massachusetts Attorney General's February 6, 2001 Comment ("OAG Comment") at 2,3.

<sup>4</sup> *Id.* at 6.

serve as interim rates, subject to refund pending completion of the DTE's UNE docket.<sup>5</sup>

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<sup>5</sup> *Investigation by the Department 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/ Verizon Massachusetts' Resale Services, D.T.E. 01-20.* The current procedural schedule envisions completion of briefing on Phase A, Development of UNE rates, by September 7, 2001.

The Massachusetts Attorney General renews these assertions and agrees with Justice's February 21, 2001 evaluation of Verizon's Supplemental Application that "Verizon's current application provides little additional information about pricing issues."<sup>6</sup> The Commission should reject Verizon's assertion that its UNE prices comply with the Act. The record does not contain sufficient evidence to demonstrate that the UNE prices comply with TELRIC standards that reflect Massachusetts-specific costs. The Massachusetts Attorney General agrees with CLEC contentions that the continued use of the current UNE prices will inhibit the development of local competition over the UNE-P Platform.<sup>7</sup> The Commission should not accord any weight to the DTE's Supplemental Evaluation because it erroneously discounted the evidence presented to the FCC that Verizon's UNE rates are not based on Massachusetts costs and do not comply with TELRIC standards. Furthermore, the Commission should disregard the DTE's support of Verizon's Supplemental Application because the DTE failed to investigate the UNE prices before approving them and because the UNE prices are not consistent with the Commission's pricing

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<sup>6</sup> Justice Evaluation at 3, fn. 9.

<sup>7</sup> CLEC commenters assert that: (1) Verizon's assertion that its current UNE prices comply with TELRIC standards is not supported by evidence; (2) CLEC competitors are prevented from serving residential customers through the use of the UNE platform because of their high cost, (3) Verizon's cost studies substantially overstate Verizon's UNE costs; (4) Verizon based its Massachusetts UNE rates on New York's UNE rates, yet the New York State Public Service Commission is expected to lower certain UNE rates substantially after examining evidence that challenges whether switching rates, transport rates, or loop rates are TELRIC compliant; and (5) Verizon's current rates create an impassible barrier to entry in the Massachusetts residential market. AT&T Comment at 4, 11, 15; WorldCom Comment at 10-23; Competitive Telecommunications Association Comment at 3, Sprint Communications Comment at 8-10; Massachusetts Coalition for Competitive Phone Service Comment at 2-3; Association of Communications Enterprises Comment at 7-10; and Global Crossing Comment at 3-5.

dispute standards.<sup>8</sup>

**2. DSL issues remain**

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<sup>8</sup> See OAG Comment at 4-6.

The Massachusetts Attorney General joins the positions raised by Justice, Covad, Rhythms, and others regarding unresolved DSL, DSL line sharing, and DSL line splitting issues and urges the Commission to reject the DTE's assertion that all DSL issues have been resolved.<sup>9</sup> Of the many DSL-related contentions regarding Checklist Items Numbers 2 and 4 raised by Justice, various CLEC commenters, and individual consumers in this proceeding, the Massachusetts Attorney General is particularly troubled by the assertions that: (1) Verizon excluded data or "restated" the raw data to portray Checklist compliance;<sup>10</sup> (2) even using this revised data, Verizon still does not meet the DTE's DSL performance measurements for order completion, on-time performance, CLEC installation troubles, missed repair appointments, repair

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<sup>9</sup> Sprint Communications Comment at 2-8, Network Access Solutions Comment at 1-11; ALTS Comment at 4-6; WorldCom Comment at 24; ARC Network, Inc. Comment at 7; Massachusetts Coalition for Competitive Phone Service Comment at 1-2; Association of Communications Enterprises Comment at 2-7; Winstar Communications Comment at 14-17; Commercial Internet eXchange Comment at 7-12, 20-25; Old Colony Library Network Comment at 1; and North of Boston Library Exchange Comment at 1.

<sup>10</sup> Justice Evaluation at 7-12.

times, and out-of-service intervals;<sup>11</sup> (3) Verizon has not completed the work to fix incorrectly installed line splitter arrangements in its central offices, which prevents CLECs from ordering line sharing UNEs;<sup>12</sup> and (4) Verizon is not meeting its line splitting obligations set by the FCC and the DTE, which deters line splitting in MA.<sup>13</sup>

The accumulated evidence demonstrates that Verizon's actions may have seriously retarded the deployment of DSL throughout Massachusetts and denied many Massachusetts consumers high speed access to data and other broadband services via the Internet, while giving Verizon an unfair advantage through its separate data affiliate over CLEC competitors. The Massachusetts Attorney General further recommends that the Commission, as it reviews the opinions expressed by Pricewaterhouse Coopers ("PWC") (who Verizon hired to oversee its DSL performance metric study for Verizon's Supplemental Application) keep in mind that PWC did not independently observe the accuracy or completeness of the source data.

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<sup>11</sup> *Id.*

<sup>12</sup> Covad Comment at 6-8; Rhythms Comment at 5, 6, 10.

<sup>13</sup> Covad Comment at 9-10; WorldCom Comment at 24-25.

The Commission should heed Justice's recommendation "to pay particular attention to the importance of demonstrated achievement of adequate benchmarks of wholesale performance, measured by objective performance data" because Verizon's Supplemental Application regarding DSL rests heavily on indications of future compliance, not on demonstrated performance.<sup>14</sup> The DTE's allegation that Verizon's DSL issues have been resolved lacks merit and should be disregarded because even the DTE acknowledged that its support is based not on observed performance but rather on Verizon's promises of future compliance. For example, the DTE's evaluation uses phrases such as the "issue should be investigated further," "Verizon is working toward a solution," and "Verizon's data demonstrate a trend of improvement."<sup>15</sup>

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<sup>14</sup> Justice Evaluation at 6.

<sup>15</sup> DTE Supplemental Evaluation at 13, 15, 33.

Moreover, the DTE supported Verizon's Supplemental Application even though the DTE acknowledged that: (1) Verizon is not meeting its DSL line sharing provisioning interval; (2) the amount of Massachusetts data used to justify Verizon's DSL performance is small and excludes certain types of orders; (3) the DTE did not test the validity of Verizon's findings; and (4) Verizon is not complying with the DTE's line splitting order.<sup>16</sup> The DTE's careful wording belies its assertion that Verizon has satisfied the 14-point Checklist. Indeed, it is difficult to interpret the DTE's Supplemental Evaluation as anything more than a carefully worded suggestions that Verizon's promises of future compliance should be considered more probative for purposes of evaluating its application than its failure to demonstrate current compliance.

Verizon's use of incomplete or revised DSL data, its reliance on promises of future DSL compliance rather than demonstrated DSL performance, its failure to meet DSL performance measurements, and its failure to comply with DTE DSL orders should disqualify Verizon from permission to enter the Massachusetts long distance market. The Massachusetts Attorney General urges the FCC to evaluate Verizon's unresolved DSL issues with these aspects in mind and reject Verizon's assertion of compliance with Checklist Items Numbers 2 and 4.

**B. The Commission should not ignore other allegations that remain from Verizon's first Application**

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<sup>16</sup> *Id.* at 34-36, 39.

Neither Verizon nor the DTE have addressed any of the outstanding issues that still remain from Verizon's first Application in CC Docket 00-176, as well as related issues that have arisen since the first Application. The Commission should consider the carry-over issues, including pole attachment issues,<sup>17</sup> interconnection trunking issues,<sup>18</sup> and merger and reciprocal compensation issues;<sup>19</sup> the related issues involve special access services and the lack of pay phone competition.<sup>20</sup>

### **III. CONCLUSION**

The Commission is charged with the obligation to evaluate whether a Section 271 application has met all 14 points of the Competitive Checklist. Clearly, Verizon still has failed to satisfy the Checklist relating to Verizon's UNE prices and DSL-related issues and has failed to resolve outstanding and related issues that arose during its first Application. As a result, the Commission should not grant Verizon's Supplemental Application to enter the Massachusetts long distance market at this time.

Respectfully submitted,

**THOMAS F. REILLY**

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<sup>17</sup> RCN Comments at 2-3; Fiber Technologies Comments at 3-5.

<sup>18</sup> Winstar Communications February 6, 2001 Comments at 1-12.

<sup>19</sup> ALTS, XO Communications, and Focal Communications Joint Comment at 6-8; Global NAPs Comment at 3-9; Conversent Communications of Massachusetts Comment at 1-6.

<sup>20</sup> Global Crossing Comment at 5-11; Competitive Telecommunications Association Comment at 2, 3; New England Public Communications Council Comment at 1-3. Special access services include providing high capacity trunks, like DS1 and DS3, and interoffice transport to high-volume customers.

**MASSACHUSETTS ATTORNEY GENERAL**

By: George B. Dean, Chief  
Karlen J. Reed  
Assistant Attorneys General  
Regulated Industries Division  
200 Portland Street, 4th Floor  
Boston, MA 02114  
(617) 727-2200

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**SERVICE LIST  
February 28, 2001**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Portals II, 445 12th Street S.W., CY-B402  
Suite TW-A325  
Washington, DC 20554

Susan Pié  
Common Carrier Bureau  
Federal Communications Commission  
Portals II, 445 12th Street S.W., Room 5-C224  
Washington, DC 20554

Dorothy Attwood, Chief  
Common Carrier Bureau  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Washington, DC 20554

Glenn T. Reynolds, Associate Chief  
Common Carrier Bureau  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Washington, DC 20554

Michelle Carey, Chief  
Policy and Program Planning Division, CCB  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Washington, DC 20554

Kathy Farroba, Deputy Chief  
Policy and Program Planning Division, CCB  
Federal Communications Commission

Portals II, 445 12th Street S.W.  
Washington, DC 20554

Eric Einhorn, Senior Attorney  
Policy and Program Planning Division, CCB  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Washington, DC 20554

Jane E. Jackson, Chief  
Renee Terry  
Competitive Pricing Division, CCB  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Washington, DC 20554

Richard K. Welch, Associate Chief  
Enforcement Bureau  
Federal Communications Commission  
Portals II, 445 12th Street S.W.  
Washington, DC 20554

Michael K. Powell, Chairman  
Federal Communications Commission  
Portals II, 445 12th Street S.W., 8th Floor  
Washington, DC 20554

Susan Ness, Commissioner  
Federal Communications Commission  
Portals II, 445 12th Street S.W., 8th Floor  
Washington, DC 20554

Harold W. Furchtgott-Roth, Commissioner  
Federal Communications Commission  
Portals II, 445 12th Street S.W., 8th Floor  
Washington, DC 20554

Gloria Tristani, Commissioner  
Federal Communications Commission  
Portals II, 445 12th Street S.W., 8th Floor  
Washington, DC 20554

International Transcription Service  
445 12th Street, S.W., Room CY-314  
Washington, DC 20554

Frances Marshall, Esq.  
Sherri Lynn Wolson, Esq.  
Susan Wittenberg, Esq.  
Joshua Walls

U.S. Department of Justice  
Antitrust Division  
Telecommunications Task Force  
1401 H Street, N.W., Suite 8000  
Washington, DC 20005

Chairman James Connelly  
Commissioner W. Robert Keating  
Commissioner Paul B. Vasington  
Commissioner Eugene J. Sullivan, Jr.  
Commissioner Deirdre K. Manning  
Hearing Officer Cathy Carpino  
Hearing Officer Tina Chin  
Mike Isenberg, Director, Telecommunications Division  
Paul G. Afonso, General Counsel  
William Agee, Assistant General Counsel  
Mary Cottrell, Secretary  
Massachusetts Department of Telecommunications and Energy  
One South Station, Second Floor  
Boston, MA 02110

Bruce P. Beausejour, Esq.  
Verizon Massachusetts  
185 Franklin Street  
Boston, MA 02110

Robert N. Werlin, Esq.  
Keegan, Werlin & Pabian LLP  
21 Custom House Street  
Boston, MA 02110

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

Jeffrey F. Jones, Esq.  
Kenneth W. Salinger, Esq.  
Laurie S. Gill, Esq.  
Jay E. Gruber, Esq.  
Palmer & Dodge, LLP  
One Beacon Street  
Boston, MA 02108-3190

James G. White, Esq.  
AT&T Broadband  
6 Campanelli Drive  
Andover, MA 01810

Christopher J. McDonald, Esq.  
Cynthia Carney Johnson, Esq.  
Evelyn Tsimis, Senior Manager, Government Affairs  
WorldCom, Inc.  
200 Park Avenue, 6<sup>th</sup> Floor  
New York, NY 10166

Christopher Moore, Esq.  
Sprint Communications Company L.P.  
401 9<sup>th</sup> Street, NW, Suite 400  
Washington, DC 20004

Alan D. Mandl, Esq.  
Mandl & Mandl, LLP  
10 Post Office Square, Suite 630  
Boston, MA 02109

Kimberly A. Scardino, Esq.  
Rhythms Links Inc.  
1625 Massachusetts Avenue, N.W.  
Suite 300  
Washington, D.C. 20036

Elise P. W. Kiely, Esq.  
Helene Courard, Esq.  
Blumenfeld & Cohen  
1625 Massachusetts Avenue, NW, Suite 300  
Washington, DC 20036

Susan Jin Davis, Esq.  
Antony Petrilla, Esq.  
Jason D. Oxman, Esq.  
Covad Communications Company  
600 14<sup>th</sup> Street, NW  
Suite 750  
Washington, DC 20005

William L. Fishman, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW Suite 300  
Washington, DC 20007

Scott A. Sawyer, Esq.  
Conversent Communications of Massachusetts, LLC  
222 Richmond Street, Suite 206  
Providence, RI 02903

Eric J. Krathwohl, Esq.  
Rich, May, Bilodeau & Flaherty, P.C.  
176 Federal Street, 6th Floor

Boston, MA 02110-2223

Andrew O. Isar  
Association of Communications Enterprises  
3220 Uddenberg Lane, Suite 4  
Gig Harbor, WA 98335-5128

Scott A. Samuels, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C.  
One Financial Center  
Boston, MA 02111

Terry Monroe  
Vice President, Industry and Government Relations  
Competitive Telecommunications Association (CompTel)  
1900 M Street, NW, Suite 800  
Washington, DC 20036

Linda L. Oliver, Esq.  
Yaron Dori, Esq.  
Jennifer A. Purvis, Esq.  
Margaret E. Kane, Esq.  
Hogan & Hartson LLP  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

Douglas Denny-Brown, Esq.  
RNK Telecom, Inc.  
33 Elm Street  
Dedham, MA 02026

Robert L. Dewees, Jr., Esq.  
Nixon Peabody LLP  
101 Federal Street  
Boston, MA 02110-1832

Michael D'Angelo, Esq.  
XO Massachusetts  
45 Eisenhower Drive  
Paramus, New Jersey 07652

Kim Robert Scovill, Esq.  
Choice One Communications, Inc.  
100 Chestnut Street, Suite 700  
Rochester, NY 14534

Donald C. Davis  
Peggy Rubino  
George S. Ford  
Z-Tel Communications, Inc.

601 South Harbor Island Boulevard  
Suite 220  
Tampa, FL 33602

Michael B. Hazzard, Esq.  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, N.W.,  
Suite 500  
Washington, D.C. 20036

E. Ashton Johnston, Esq.  
Vincent Paladini, Esq.  
Piper Marbury Rudnick & Wolfe LLP  
1200 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Gregg Rothschild  
Office of Senator John F. Kerry  
Russell Building, Room 300  
Washington, DC 20510

The Honorable Daniel E. Bosley  
Chairman, Joint Committee on Government Regulations  
Room 472, State House  
Boston, MA 02133

Terry Romine, Esq.  
Director of Legal and Regulatory Affairs  
Adelphia Business Solutions  
One North Main Street  
Coudersport, PA 16915