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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Application 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., for Authorization to Provide )  
In-Region, InterLATA Services in Massachusetts )  
\_\_\_\_\_ )

CC Docket No. 01-9

**REPLY COMMENTS OF WORLDCOM, INC. ON THE  
SUPPLEMENTAL FILING BY VERIZON FOR AUTHORIZATION TO  
PROVIDE IN-REGION, INTERLATA SERVICES IN MASSACHUSETTS**

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**INTRODUCTION AND EXECUTIVE SUMMARY**

Commenters agree that little has changed since Verizon was forced to withdraw its first legally-insufficient Massachusetts application last December. Most comments focus on Verizon's poor DSL performance, and they demonstrate that since its first application Verizon has not substantially improved its performance, but merely has devised new methods to mask its inadequacies. Commenters, including many who have no commercial interest in Verizon's desired entry into the long-distance market, uniformly agree that its DSL performance does not yet satisfy its checklist obligation to provide non-discriminatory access to loops.<sup>1/</sup> Presumably, additional DSL providers would have described their problems with Verizon's performance,

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<sup>1/</sup> See, e.g., DOJ Eval.; Covad Comments; Rhythms Comments; Network Access Solutions Comments; Sprint Comments at 1-8; Winstar Comments at 14-17; Commonwealth Internet Exchange Ass'n Comments; Ass'n of Communications Enterprises Comments at 1-11.

except that they have already been driven out of the market.<sup>2/</sup> In any event, it is clear that Verizon has spent the last several months trying to improve its image rather than trying to improve its services.

There is little new information on pricing because, as the Department of Justice (“DOJ”) concluded in its Evaluation, Verizon chose to re-file its application without addressing in any way its deficient unbundled network element (“UNE”) pricing, DOJ Eval. at 3 n.9, and therefore continues to maintain a local residential market largely closed to competition.

Most of all, Verizon charges CLECs twice as much for switching in Massachusetts as it does in Pennsylvania, or as does SBC or Ameritech. These companies purchase the same switches from the same vendors: Verizon is not paying twice as much as everyone else for its switches in Massachusetts. If, as the FCC has recently concluded, SBC’s switch prices are cost-based, then Verizon-Massachusetts’ are not. No legally defensible construction of an acceptable “reasonable range” of TELRIC rates can be stretched so far as to accommodate rates that vary by 100%.

When commenters point out that Verizon does not even attempt to show that its switching rates are based on its costs, they are not making some nuanced procedural objection to Verizon’s filings. Verizon declines to discuss the relationship between its rates and its costs because it well understands that its switching rates are not in fact based on the cost of providing switching to CLECs. Verizon’s sole defense of its rates is that they are similar to those that are about to be replaced in New York. But in New York, even Verizon candidly acknowledges that

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<sup>2/</sup> See Mass. AG Eval. at 11 n.16 (listing bankrupt Massachusetts DSL providers).

“over three years of regulatory evolution, additional data, and thoughtful consideration of alternate approaches” render those the old switching rates unreliable. See n.7, infra. It was not reasonable for Verizon to adopt a New York rate it itself acknowledges to be outdated and unreliable, especially when many other jurisdictions have more recently adopted far more reliable switching rates that are cost-based or close to it and that have allowed real commercial entry by competitors including WorldCom.

By adopting UNE rates that are grossly in excess of its costs, Verizon has managed to stop any UNE-based competition in the state, and its most recent evidence submitted in this docket clearly shows no development of UNE-based competition.<sup>3/</sup> Except for the minority of residents in the Boston suburbs fortunate enough to have a line to their home that provides cable-based telephone service, Verizon maintains a monopoly strangle-hold on Massachusetts’ residential market. This application should be denied because by failing to comply with the checklist requirement of cost-based rates, Verizon has effectively maintained a closed market in Massachusetts.

Nor are these the only problems with Verizon’s application. In addition to Verizon’s failure adequately to provision access services or to provide reciprocal compensation as discussed by other commenters, in these comments WorldCom shows that Verizon has failed to make line-splitting available either as a legal or a practical matter. As a result, even if cost-based pricing permitted competition to develop in the state, voice carriers like WorldCom would be

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<sup>3/</sup> Verizon apparently is also now targeting the few resale customers in the state by seeking a huge increase in the resale price. See Verizon Resale Avoided Cost Study and Direct Testimony of Louis D. Minion in DTE 01-20 (Feb. 12, 2001).

unable to offer consumers DSL-based advanced services by teaming with a DSL provider, severely limiting carriers' ability to compete with Verizon. In this way as well, Verizon fails to satisfy the competitive checklist.<sup>4/</sup>

### **ARGUMENT**

#### **A. Verizon's Pricing Is Not Based on Cost and Therefore Prevents Residential Competition from Developing in Massachusetts.**

Virtually all commenters that address pricing join WorldCom in condemning Massachusetts' UNE pricing as not being cost-based, thereby creating an impassable barrier to entry into the local residential market in Massachusetts. AT&T joins WorldCom in providing a detailed discussion of pricing, and its analysis powerfully corroborates WorldCom's. The most basic and conclusive point is that the price of switching is grossly in excess of its true cost.<sup>5/</sup>

All of the ILECs purchase the same switches from the same switch vendors in a very competitive market, and the wholesale cost of switching is closely tied to the ILEC's cost of purchasing switches. Since switching prices are required to be based on switch costs, cost-based switching prices should vary hardly at all across the country. The Commission just recently

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<sup>4/</sup> WorldCom will not here reiterate other points made in its initial comments (and incorporated in those comments from comments filed in response to Verizon's first Massachusetts' application). Unfortunately, problems identified there have not abated. Verizon still is unable to provide required OSS notifiers on a predictable basis, see Joint Supplemental Reply Declaration of Sherry Lichtenberg and Mindy Chapman; it continues to refuse to meet its obligation to pay reciprocal compensation for ISP traffic; and it continues to provide unacceptable access services.

<sup>5/</sup> As we demonstrated in our opening comments, Massachusetts' loop rates also are not cost-based. None of the other opening rounds comments made arguments addressed to loop costs that call for response here.

approved switch usage rates in Kansas and Oklahoma that translate into CLEC costs of approximately \$5.00/line/month.<sup>6/</sup> Roughly similar wholesale switching prices exist in Texas, Pennsylvania, and elsewhere in the Verizon territory, and even lower prices have been set in the Ameritech region. Massachusetts' rate is double that \$5.00 rate. If the rates approved by the Commission in Kansas, Oklahoma and Texas, and by state commissions elsewhere across the country are cost-based, then Massachusetts' rate is not. No legally defensible concept of "reasonable range" can accommodate prices that inexplicably vary by 100% or more.

The sole defense Verizon makes of its rates is that they are the same as the outdated New York rate. But as WorldCom has stressed repeatedly, that rate was the result of intentionally withheld evidence by Bell Atlantic of its true switching costs. The New York Commission is about to replace that flawed rate based on new and more accurate information that has been developed since the New York rates were set. The new rate will be accompanied by a refund. See AT&T Comments at 8-11. Even Verizon acknowledges that the New York rates are no longer reliable because they are based on cost studies that "were prepared in a very short period of time and were filed less than two months after the FCC's TELRIC regulations were issued. . . . It is not surprising that over three years of regulatory evolution, additional data, and thoughtful

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<sup>6/</sup> Switching usage rates are reflected in tariffs and contracts that charge CLECs a specified rate per minute of switch usage. Transport charges are calculated in a similar manner, and the switching rates referred to in text include both switching and transport usage rates. To discuss the impact of these rates, commenters translate this into a figure representing the amount CLECs pay for switching and transport for each line for each month. The principal variable needed to make such a translation is the number of minutes the typical customer spends on the phone each month. As WorldCom has explained, the slightly different minutes-of-use assumptions made by the parties to this proceeding do not materially affect any of the conclusions that WorldCom draws from the per-minute prices tariffed in Massachusetts.

consideration of alternative approaches since that time would lead to the development of improved cost estimation approaches.”<sup>7/</sup>

While WorldCom would be willing to accept in Massachusetts the soon-to-be-set New York switching rates, and has in fact requested the DTE accept those rates as soon as they are set,<sup>8/</sup> Verizon has notably declined to accept this proposal. The truth of the matter is that although Verizon purports to rely on the FCC’s suggestion that “states with limited resources take advantage of the efforts devoted by New York and Texas in establishing TELRIC-compliant prices,” KS-OK Order ¶ 83 n.244, Verizon has no interest whatever in fidelity to this principle. Verizon simply wishes to make use of an anachronistic rate because it well understands that rate is approximately double a true cost-based rate, and so will stifle its competitors in Massachusetts.

AT&T also joins WorldCom in demonstrating the devastating effect non-cost-based rates are having on the Massachusetts residential market. AT&T Comments at 11-15. It demonstrates that even the most efficient competitors using Verizon leased elements could not begin to compete with Verizon for residential customers. Id. Given that Massachusetts’ retail rates are relatively high (when compared with states other than New York), this analysis is powerful corroborating evidence that the wholesale rates are not cost-based. Id. Nor has Verizon or the DTE provided any other plausible explanation for this competitive failure.

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<sup>7/</sup> Initial Post-Hearing Brief of Verizon-New York, Inc., in Case 98-C-1357 (NYPSC, Feb. 16, 2001) at 33.

<sup>8/</sup> See Feb. 15, 2001, letter from Christopher McDonald to Mary L. Cottrell (attached as Tab A).

Other commenters are equally critical of Verizon's pricing for similar reasons to those set out by WorldCom and AT&T.<sup>9/</sup> Notably, both the DOJ and the Massachusetts Attorney General continue to voice their concerns about the anticompetitive effect of Verizon's pricing.

The Massachusetts Attorney General properly recommends that Verizon's application be denied because its pricing violates TELRIC principles. It notes that Verizon continues to refuse to make any effort to "demonstrate [] that its Massachusetts UNE prices . . . are reasonable," Mass. AG Eval. at 8, that the DTE has never even evaluated the rates, *id.*, and that the rates are not subject to a true up. Approval of this application therefore "will discourage local voice and data telecommunications competition and inhibit the development of the UNE and UNE platform markets in Massachusetts." *Id.* at 8-9.

The DOJ similarly declines to find that Verizon's new pricing satisfied either its checklist obligations or the public interest test. Instead, it notes that "[s]ince Verizon's current application provides little additional information about pricing issues," it rests on its analysis of pricing in the previous withdrawn application. DOJ Eval. at 3 n.9. There, the DOJ concludes that in sharp contrast with New York and Texas, there is little use of UNE-P in Massachusetts, DOJ 10/27 Eval. at 7-8, and that there is "substantial reason to believe" that this is caused by Verizon's failure "to make certain network elements available to competitors at cost-based prices." *Id.* at 17. DOJ is especially critical of the fact that "there is no underlying documentation to show that the listed rate reductions are, in fact, based on cost studies relied upon by the NY PSC or, more importantly, to show that the new rates are cost based in Massachusetts." *Id.* at 20. Of course, as

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<sup>9/</sup> See Sprint Comments at 8-11; Ass'n of Communication Enterprises Comments at 13-15.

WorldCom noted in its initial submission here, Verizon continues to refuse to put such evidence on the record.

Only two things of note have changed since Verizon' withdrew its initial application, and neither corrects the evident problems that led Verizon to withdraw that application:

1. DTE's New Cost Proceeding Provides No Ground to Accept Verizon's Prices.

First, DTE recently has opened a cost proceeding to set new UNE rates in Massachusetts. This is insufficient to solve Verizon's manifest checklist problems, for several reasons. To begin, as the Commission has noted on several occasions, see, e.g., TX Order ¶ 88, rates and other terms always will be subject to change in this manner. Just as the prospect of such a proceeding does not operate to the detriment of the BOC applicant on the theory that existing rates are in that sense "provisional," see id., so too the BOC hardly can rely on the prospect of new rates to divert attention from existing permanent rates.

In any event, the Commission can not assume that the new rates will be an improvement on the existing rates. To the contrary, they are likely to be worse. Verizon is likely to request rates that are higher than, not lower than, existing rates, just as it has in New York. But unlike New York, the DTE has made clear that its understanding of TELRIC calls for rates that are grossly in excess of the existing rates. Thus Massachusetts' previous cost proceeding produced rates that are more than double the existing non-cost-based rates, and DTE has once again in its comments made clear its position that those rates – the highest in the country – are in its view TELRIC-compliant. DTE Eval. at 20 (reaffirming pricing arguments made in initial Evaluation). Rates in Massachusetts may well rise.

As the Massachusetts Attorney General correctly argues, the situation in Massachusetts today therefore is starkly different from that in New York or in any other state in which the FCC has accepted applications based on “provisional” rates that are subject to substantial challenge. Mass. AG Eval. at 7-8 & nn.10, 11. To begin with, as we just explained, existing rates are not provisional. In any event, in its Kansas-Oklahoma Order the FCC made clear that interim rates may be relied upon only where they are “(1) . . . reasonable under the circumstances; (2) the state commission has demonstrated its commitment to [the FCC’s] pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.” KS-OK Order at ¶ 238. Here, as the Massachusetts’ Attorney General concludes, “Verizon’s UNE rates fail all three prongs of the FCC’s pricing dispute standard.” Mass AG Eval. at 8. It was unreasonable to pick the soon-to-be-replaced New York rates as a model, the DTE did no evaluation whatsoever before accepting these rates, and there is no provision for a refund. Id.

2. New Evidence that Existing UNE Prices Prevent Wide-Scale Residential Competition Corroborates that the Rates are Above-Cost.

The second new development is that several months have now passed since Verizon began lowering its switching rates, so there is record evidence of the effect of the rate reductions on the prospects for UNE-P residential competition. That evidence supports the pricing evidence submitted by both AT&T and WorldCom in this docket: the new rates are every bit as anticompetitive as the old rates. According to Verizon’s own submissions, UNE-P residential competition within Massachusetts is virtually non-existent and is not growing. There were only about 8,000 residential UNE-P customers in the state when Verizon filed its initial application

last September, and there were only about 9,000 by the end of the year.<sup>10/</sup> Most of these customers are presumably Z-Tel's, which offers only a high-end niche product. That Verizon's much publicized new prices have had no effect on the market corroborates the fact that the rates still are greatly in excess of the cost of providing service.

The undisputed evidence, then, is that most households in the state have no choice of local telephone provider and have no prospect of having a choice because of unlawful wholesale prices. While some of the state's residents have the ability to choose cable-based telephone service as an alternative to Verizon, such service is heavily concentrated in the suburban Boston area. Kelley/Nugent Decl. ¶¶ 6-7 & attachment. Almost three-quarters of the state's cable service areas have not been upgraded for cable telephone services, and even in the service areas that have been upgraded, only a fraction of the households actually can receive cable telephony service. *Id.* Moreover, there is no record evidence – and no reason to believe – that cable telephony's footprint will grow in the foreseeable future.<sup>11/</sup> Indeed, as AT&T itself acknowledges, cable telephony build-out is an expensive and time-consuming process, AT&T Comments in MA I, CC Docket No. 00-176, 8-12. Certainly cable telephony does not hold the promise of providing ubiquitous residential service in Massachusetts that UNE-P would if prices were cost-based. And, while some customers at least have a choice, it is a choice between two competitors only, while competition through leased elements permits multiple competitors. In

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<sup>10/</sup> See Verizon Feb. 15, 2001 *ex parte*, at 5. Verizon declined in this *ex parte* to reveal its January numbers, although it provides other January numbers in the *ex parte*. *Id.*

<sup>11/</sup> See AT&T's Comments at 25 n.40.

sum, a grant now would cement in place a market which is for most a monopoly and for some a duopoly. It would remove any incentive for Verizon to make changes that might loosen its monopoly grip on the residential market. It would spell disaster for local residential competition in Massachusetts.

B. Verizon Fails to Make Line-Splitting Available Either as a Legal or a Practical Matter.

WorldCom intends to provide high-speed advanced services to its local customers through UNE-P line-splitting arrangements with data CLECs who specialize in providing high-speed services over the high-frequency portion of the copper loop. Its business plan thus depends upon ILEC adherence to FCC requirements, which have consistently made clear that line-splitting is a legal obligation of the ILECs, and one that must be satisfied before any BOC obtains section 271 authority. At the time of its supplemental application, Verizon did not make line-splitting either legally or practically available. It was obviously not in compliance with section 251(c), and not in compliance with checklist item 2.

The DTE now acknowledges that Verizon does not make line-splitting available either as a practical or as a legal matter. It nevertheless “urge[s] the FCC to take into account the recent nature of both its and the Department’s clarifying Orders on line splitting when reviewing VZ-MA’s compliance with its legal obligation,” and to rely on Verizon’s claim that in the future it “will comply with the FCC’s requirements.” DTE Eval. at 41 (citing Verizon filing).

But the FCC Order to which the DTE refers expressly anticipates and rejects the argument that the line-splitting obligation is new and that therefore BOCs should be excused from meeting their long-standing obligation to comply with the law. As the FCC said,

“[b]ecause line-splitting is an existing legal obligation, incumbent LECs must allow competitors to order line splitting immediately.” Line Sharing Reconsideration Order ¶ 20 n.36. Lest there be any doubt how this obligation translated into the context of section 271 applications, the Commission went on to specify that “Bell Operating Companies [must] demonstrate, in the context of section 271 applications, that they permit line splitting.” Id. Thus the Commission rejected Verizon’s chosen method of dealing with this and other legal obligations which it wishes to avoid: Verizon files a “petition for clarification” and then relies on the existence of the petition as proof that the nature of the underlying obligation is unclear; when the regulator denies the petition and restates the obligation, Verizon then asserts that the re-stated obligation is “new,” and for that reason it would be unfair to enforce it “retroactively” against Verizon.

That is precisely how Verizon is proceeding here. Rather than file a tariff permitting line-splitting, Verizon has filed with the DTE a “motion for clarification.” It is then suggested that it would be unfair to penalize Verizon while it seeks clarification of the nature of its “new” duty. But neither the policy nor Verizon’s decision to disobey it are new. Because Verizon declines to make line-splitting available either as a legal or a practical matter, it is not in compliance with the checklist.

Verizon’s February 14<sup>th</sup> “statement of policy” concerning line-splitting merely adds a meaningless grace note to Verizon’s effort to show paper compliance without actually complying with the requirements of the law. To begin, the statement should be disregarded for purposes of this application because it was filed after Verizon’s supplemental application and so its consideration would violate the Commission’s “complete when filed” rule. But even if the

Commission honors this rule only in the breach,<sup>12/</sup> the “statement” falls far short of proof that Verizon is making line-splitting available as a legal and practical matter.

The statement is remarkable mostly for what it does not state. Verizon still refuses to file a tariff for line-splitting as required by the DTE. It still has not priced line-splitting, and by stating that line-splitting requires that elements of the platform be purchased singly, Verizon suggests that it intends to charge a series of non-recurring charges associated with each element to its line-splitting customers that it does not charge to its platform customers. It still has not made the basic legal commitment to allow CLECs who provide voice service using UNE-P to team with a data CLEC to provide DSL-based services in the least disruptive manner possible. It still has not made clear whether it intends to allow a customer with Verizon voice and a data CLEC DSL to switch to WorldCom voice service without any disruption of the circuit, so that the customer does not needlessly lose dialtone.

Indeed, by suggesting in its statement that “collocator-to-collocator” connections are necessary for line splitting, Verizon apparently still takes the position that UNE-P providers may not line split, and that only voice providers that are collocated may team with collocated DSL-providers to provide service. And, the statement’s vague reference to “existing OSS” for ordering UNEs suggests that Verizon still intends to require UNE-P providers separately to order loop, transport, switching and cross-connects if they wish to line-split, rather than to use the simple and less expensive one-step order process involved in UNE-P ordering. Nor does

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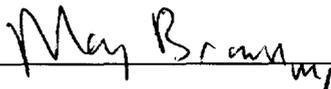
<sup>12/</sup> See KS-OK Order ¶ 27. But see DOJ Eval. at 15 n.61 (urging strict compliance with the “complete when filed” rule).

Verizon explain how it intends to coordinate the multiple orders it requires for a single line split. Indeed, since many UNE-P providers have constructed electronic OSS that allows them to order the entire platform, but have not constructed OSS that would allow them to order each piece part singly, Verizon's proposal would require CLECs needlessly to develop costly new OSS. In other words, Verizon continues to refuse to provide line-splitting either as a legal or practical matter, and evidently believes that the Commission is not going to require that it do so as a precondition to section 271 entry, notwithstanding the direct command to the contrary in the Line Sharing Reconsideration Order.

**CONCLUSION**

Verizon's Massachusetts application should be denied.

Respectfully submitted,



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February 28, 2001

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I, Mark D. Schneider, hereby certify that I have this 28th day of February, 2001, caused a true copy of Reply Comments of WORLDCOM, Inc. and Appendices to be served on the following parties:

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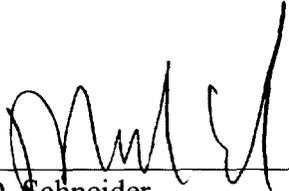
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February 15, 2001

**By Email & Overnight Courier**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
Commonwealth of Massachusetts  
One South Station  
Boston, MA 02110

***Re: D.T.E. 01-20 - WorldCom's Proposed Modification of the Scope and  
Schedule of Part A, Development of UNE Rates***

Dear Secretary Cottrell,

WorldCom respectfully urges the Department to adopt the following schedule and method for proceeding with setting UNE rates in Massachusetts. We urge the Department to expedite the schedule set by Hearing Officer Chin on February 8 by 1) adopting the switching, transport, and port rates currently being litigated in New York in Case No. 98-C-1357 once those rates are established; and 2) limit this proceeding only to the establishment of Massachusetts' loop and remaining UNE rates.

With this proceeding limited to state specific loop and remaining UNE rates, WCOM urges the Department to establish an aggressive but doable schedule that begins with the filing of rate proposals on March 23 and concludes by early to mid-Summer, 2001. This proposed time frame would coincide with the schedule for resolution of switching, transport, and port rates in the ongoing New York proceeding, also scheduled to conclude early to mid-Summer. By combining the good work being done in New York with Massachusetts-specific loop rate determinations, competition may finally have the opportunity to develop in the Commonwealth without further delay. WorldCom has repeatedly made clear to the Department that it stands ready to enter Massachusetts' residential local market so long as UNE prices are set at cost based levels, rates that will therefore allow competition to develop. The current proposal would expedite the development of competition in Massachusetts without needless, repetitive litigation.

We anticipate Verizon will agree to this proposal because it filed current NY switching, transport, and port rates in Massachusetts and has presented those rates to the FCC in the context of Verizon's 271 application for long distance authority. Adopting in Massachusetts soon-to-be-established New York switching, transport, and port rates is appropriate because: 1) New York is fixing its current rates—the ones Verizon has imported into Massachusetts—upon discovering those rates were established on a record flawed by Verizon's misstatement of its switching costs; 2) the evidentiary record developed in New York on Verizon's costs, including its regional switch vendor

Page 2 of 2  
Mary L. Cottrell  
February 15, 2001

contracts, is voluminous and developed over several months; there is no reason to repeat that lengthy and complicated evidentiary process here; and 3) the Massachusetts Department has communicated to competitors in the past that it is resource constrained to conduct lengthy cost dockets.

Finally, the Department has already signaled its willingness to adopt the results of the work done in New York to implement the Telecommunications Act by adopting in Massachusetts the New York Performance Assurance Plan.

Residential consumers in Massachusetts have been waiting for statewide local competition for years. We urge the Department to adopt the above proposal as the most expeditious way to establish cost based UNE rates and finally make competition a reality here.

Sincerely,

A handwritten signature in cursive script that reads "Christopher McDonald" with a small circled mark at the end.

Christopher McDonald

cc: Service List (by email & U.S. Mail)



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

In the Matter of )  
 )  
Application by Verizon New England Inc., )  
Bell Atlantic Communications, Inc., )  
(d/b/a Verizon Long Distance), NYNEX ) CC Docket No. 01-9  
Long Distance Company (d/b/a Verizon )  
Enterprise Solutions), and Verizon Global )  
Networks Inc., for Authorization to Provide )  
In-Region, InterLATA Services in Massachusetts )

**SUPPLEMENTAL REPLY DECLARATION OF  
A. DANIEL KELLEY AND DAVID M. NUGENT**

**February 28, 2000**

## **Reply Declaration of A. Daniel Kelley and David M. Nugent**

### **I. INTRODUCTION**

1. We have been asked by WorldCom, Inc. to comment on an *ex parte* filing Made by Verizon in this proceeding on February 15, 2001. We show that Verizon's claims about cable telephony competition are overstated. A large proportion of the residential consumers in Massachusetts do not have a facilities-based alternative to the local services provided by Verizon.

### **II. QUALIFICATIONS**

2. Daniel Kelley filed a Declaration on behalf of WorldCom in the previous Verizon New England section 271 proceeding, CC Docket No. 00-176, on October 16, 2000. ("Kelley 10/16/00 Declaration") His qualifications are summarized there. David Nugent is a Senior Consultant at HAI Consulting, Inc. He holds a B.S. degree in Computer Science from Ohio University and an M.S. in Telecommunications from the University of Colorado. At HAI he has been engaged in extensive analysis of cable telephony technology and competition. He was the principal developer of the cable telephony sections of Enduring Local Bottleneck II<sup>1</sup> and has performed competitive analysis of the local telephone market for both wireline and wireless clients.

### **III. THE TRUE EXTENT OF RESIDENTIAL FACILITIES-BASED COMPETITION IN MASSACHUSETTS**

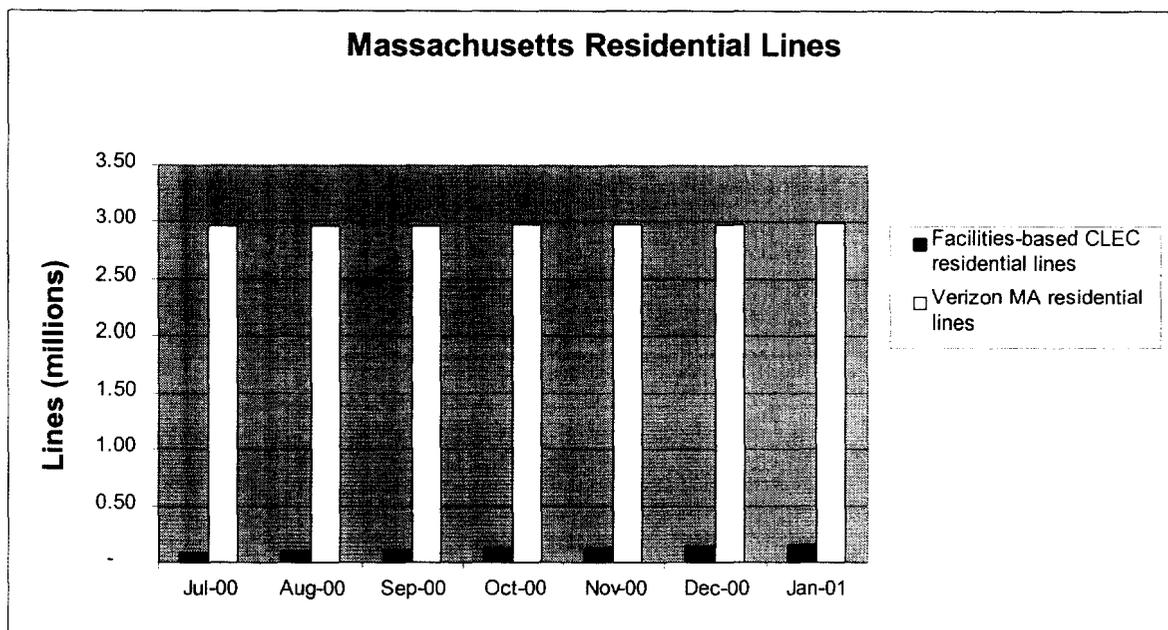
3. Verizon claims that competitors' facilities-based residential lines increased from approximately 90,000 lines in July of 2000 to approximately 155,000 lines in January of 2001. Comparing the number of competitive lines to Verizon's total

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<sup>1</sup> Hatfield Associates, Inc., The Enduring Local Bottleneck II, April 30, 1997.

residential lines in service demonstrates the small proportion of residential lines actually served by facilities-based providers. Even using Verizon's estimate of facilities-based lines, CLECs were serving less than 5 percent of Massachusetts residential lines in January of 2001. The proportionally small number of CLEC facilities-based residential lines is shown in Figure 1.<sup>2</sup>

Figure 1



4. The majority of households in Massachusetts do not have a choice of providers for local telephone service. AT&T, the largest competitive facilities-based provider of residential telephone service in Massachusetts, is currently serving

<sup>2</sup> Verizon monthly line counts are estimated by grossing up 1999 New England Telephone Massachusetts ("NET") total residential lines by the compounded annual growth rate of NET residential lines from 1996 to 1999. Residential line counts are taken from ARMIS report 43-08. CLEC facilities-based residential lines are from Verizon's February 15<sup>th</sup> *ex parte*.

communities that include approximately 40 percent of the households in the state.<sup>3</sup> This does not mean that all of the households in these communities actually have a choice of providers. The cable plant in these communities does not necessarily pass every household. Plant upgrade status or other factors may prevent AT&T from offering cable telephone service to every home within the community. As a result, only a fraction of the households in these service areas will typically be eligible for service. As discussed in Daniel Kelley's 10/16/00 Declaration, the cable telephony upgrades needed to allow telephony service are expensive and time-consuming.<sup>4</sup>

5. RCN is another provider of facilities-based residential telephone service in Massachusetts.<sup>5</sup> RCN's networks are relatively new and likely to be incomplete, so it is extremely unlikely that all households in the areas served by RCN are actually eligible for telephone service from RCN.<sup>6</sup> In sum, the majority of the households in Massachusetts have no choice of telephone service providers.

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<sup>3</sup> AT&T cable telephony service area availability is available at: [http://www.mediaone.com/countrywide/products\\_services/telephone/teleph10.htm](http://www.mediaone.com/countrywide/products_services/telephone/teleph10.htm), viewed February 23, 2001. Massachusetts population data were gathered from the Rand McNally 2001 Commercial Atlas and Marketing Guide. Households were estimated by dividing MA population by the average MA persons per household. Persons per household data were taken from US Census Bureau document (ST-98-46), "Estimates of Housing Units, Households, Households by Age of Householder, and Persons per Household," July 1, 1998.

<sup>4</sup> Kelley 10/16/00 Declaration, p. 14.

<sup>5</sup> RCN Service communities are available at: [http://www.rcn.com/cable/channel\\_lineups/index.html](http://www.rcn.com/cable/channel_lineups/index.html), viewed February 24, 2001.

<sup>6</sup> RCN reports that it serves only 83,000 facilities-based telephone lines nationwide, even though it serves several large metropolitan areas. See, Securities and Exchange Commission ("SEC"), RCN Form 10-Q, for the quarterly period ended September 30, 2000. RCN operates established fiber optic networks in the Boston to Washington, D.C. corridor, including New York City, and also in the San Francisco Bay area. See, SEC, RCN Form 10-K for the fiscal year ended December 31, 1999, filed March 30, 2000.

6. Verizon has not identified any other cable service providers in Massachusetts that are providing cable telephony service, nor could we identify any such companies that were offering a commercial product.<sup>7</sup>

7. AT&T's residential facilities-based telephone service is concentrated around the Boston metropolitan area. This is illustrated in the attached Map. RCN is providing service in the same part of the state. Therefore, residential consumers in large portions of the state do not have a cable-based telephone alternative.

#### IV. POLICY IMPLICATIONS

8. As demonstrated in Section III of this Declaration, most consumers in Massachusetts do not have any facilities-based alternative to Verizon services. Even where there is a cable telephony alternative, consumers are often left with a choice of only two carriers. As discussed in Daniel Kelley's Declaration, a cable/telephone duopoly cannot be expected to generate the competitive benefits that the developers of the 1996 Act intended.<sup>8</sup> Meaningful UNE-platform competition would provide substantial additional competitive benefits. As discussed in Daniel Kelley's Supplemental Declaration in this docket, UNE-platform competition for residential consumers in Massachusetts is precluded by UNE rates that substantially exceed cost.<sup>9</sup>

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<sup>7</sup> In parts of Massachusetts there may be cable telephony trials.

<sup>8</sup> Kelley 10/16/00 Declaration, pp. 14-15.

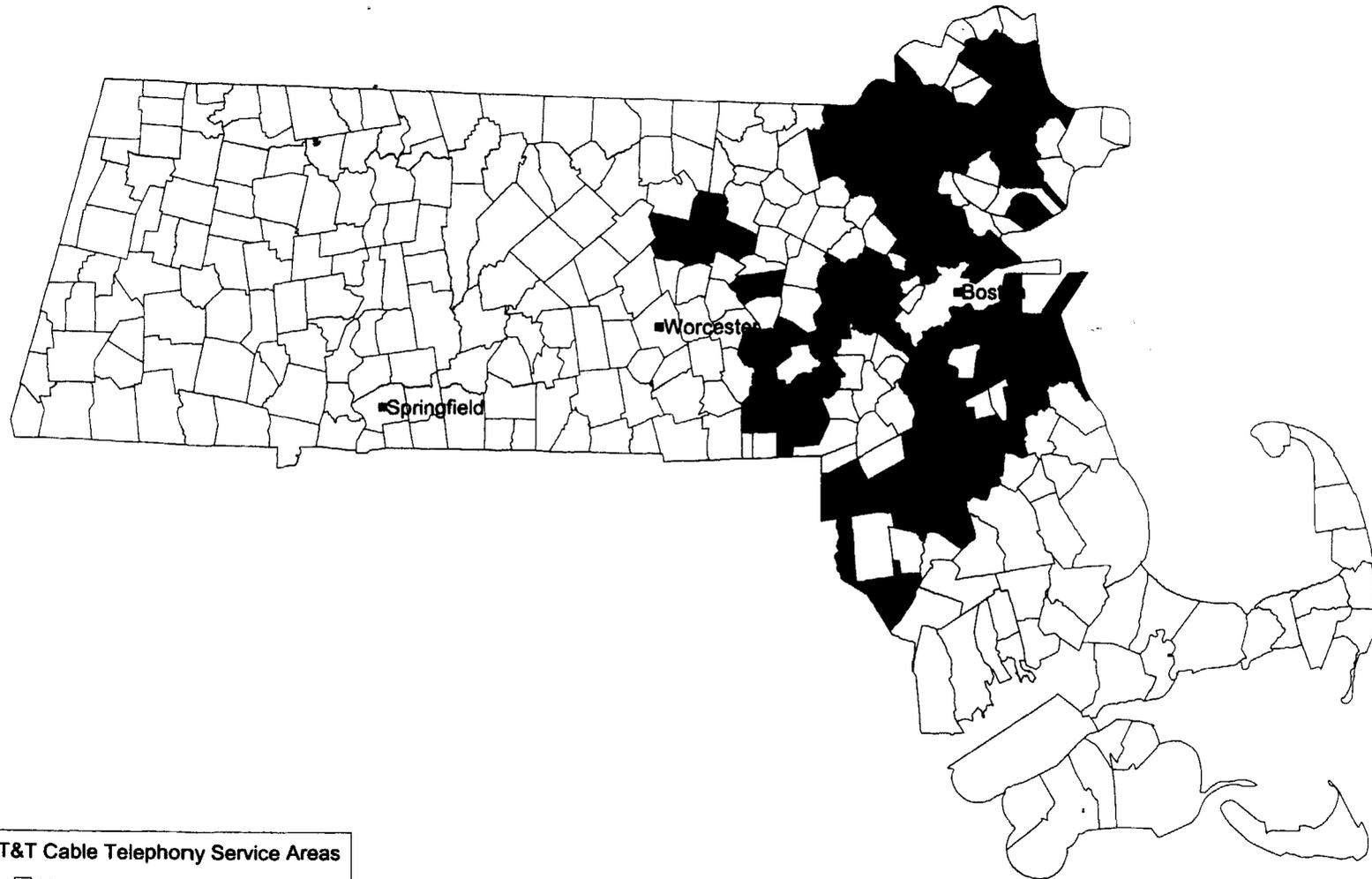
<sup>9</sup> Supplemental Declaration of A. Daniel Kelley, on Behalf of WorldCom, Inc, February 6, 2001, pp 2-4.

V. CONCLUSION

9. Cable competition is likely more developed in Massachusetts than in any other state. Nevertheless, the majority of households do not have a cable telephony alternative available to them. Cable telephone service is not available in vast portions of the state. This makes it essential that all checklist items, including those related to pricing, are satisfied prior to the grant of section 271 authority.



# AT&T Cable Telephony Service Areas



## AT&T Cable Telephony Service Areas

□ Unserved	(303)
■ Sept. 2000 Service Areas	(77)
■ Feb. 2001 Service Areas	(17)



C



**FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
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Application by Verizon New England Inc. )  
Bell Atlantic Communications, Inc. )  
(d/b/a Verizon Long Distance), NYNEX ) CC Docket No. 01-9  
Long Distance Company (d/b/a Verizon )  
Enterprise Solutions), and Verizon Global )  
Networks Inc., for Authorization to Provide )  
In-Region, InterLATA Services in Massachusetts )  
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**JOINT SUPPLEMENTAL REPLY DECLARATION  
OF SHERRY LICHTENBERG AND MINDY CHAPMAN  
ON BEHALF OF WORLDCOM, INC.**

Based on our personal knowledge and on information learned in the course of our duties, we, Sherry Lichtenberg and Mindy Chapman, declare as follows:

1. We are the same Sherry Lichtenberg and Mindy Chapman who previously filed a declaration in this proceeding. In that declaration, as well as in filings in response to Verizon's first section 271 application for Massachusetts, WorldCom discussed the problems we have experienced with Verizon's OSS in New York and Pennsylvania, where WorldCom is providing local residential service using UNE-P. The purpose of this declaration is to briefly update the status of the one problem – missing notifiers - that has changed somewhat since we filed our prior declaration. We will not repeat our prior discussion concerning the other problems WorldCom has experienced; nor will we reiterate WorldCom's discussion as to why Verizon's evidence of OSS readiness is inadequate.

2. In our prior declaration, we discussed the problem WorldCom has experienced with missing notifiers in New York and Pennsylvania – both of the states in which WorldCom has launched UNE-P service in the Verizon region. Indeed, in Pennsylvania, WorldCom calculated that it has submitted trouble tickets with missing notifiers for approximately 18% of the purchase order numbers (“PONs”) it has transmitted. The number of billing completion notices (“BCNs”) WorldCom was missing in Pennsylvania reached 6,876 on February 6, 2001. Not only is this a high number, but it represents an increase of over 4,000 from the number on January 29, 2001.

3. We explained that the most disturbing part of the problem was Verizon’s failure to take reasonable steps to resolve that problem for many months. We noted that in New York, Verizon appeared to take such steps only once the New York Commission’s staff became involved in January 2001. Moreover, once the New York staff did become involved and the number of missing notifiers began to decrease in New York, the number of missing notifiers began to increase rapidly in Pennsylvania. We expressed our suspicion that Verizon was reducing the problem in New York by transferring manual resources previously dedicated to Pennsylvania, thus demonstrating the difficulty of over-reliance on manual processes.

4. Subsequent to submission of our declaration, we learned that there was additional reason for our suspicion. In a meeting, Verizon indicated that one of the causes of the missing notifier problem in Pennsylvania was low flow through. Verizon added that it would reduce the number of missing notifiers in Pennsylvania by processing some of the Pennsylvania orders in the Massachusetts ordering center. This again underscores the problem with reliance on

manual processes. If Verizon can only resolve problems by shifting manual resources from one state to another to focus on the problem that is of highest priority at the moment, Verizon will remain unable to respond effectively to multiple problems simultaneously. Moreover, the heavy dependence on manual resources to resolve problems leaves Verizon vulnerable to any significant increase in the volume of orders anywhere in its region – such as would occur if CLECs began entering the Massachusetts market and placing commercial volumes of orders.

5. Soon after we filed our declaration in this proceeding, as the number of missing notifiers in New York continued to decrease, Verizon apparently managed to take some steps to reduce the problem in Pennsylvania – perhaps through use of the Massachusetts ordering center or through rededication of resources that had previously been used to respond to the New York problem. By February 16, the number of missing BCNs in Pennsylvania had decreased to 1,148 (with 359 missing provisioning completion notices (“PCNs”). Verizon indicated that it had identified a software glitch that was one cause of the problem and that it had fixed that glitch by replacing the software. However, Verizon’s ostensible fix does not appear to have worked more than temporarily.

6. By February 22, the number of missing BCNs in Pennsylvania had again increased to 3,408 (with 861 missing PCNs), a level that has remained relatively constant subsequently. As of February 26, the number of missing BCNs was 3,349 with 514 missing PCNs. In New York, the number of missing notifiers also increased between February 16 and 22. The number of missing PCNs increased from 913 to 974 during this time period and the

number of missing BCNs increased from 252 to 1109. As of February 26, the numbers in New York had again diminished, however, leaving 929 missing PCNs and 224 missing BCNs.

7. The high number of missing notifiers in Pennsylvania coupled with the rapid variance in the number of missing notifiers in both Pennsylvania and New York demonstrate the existence of an ongoing problem. It thus appears that even with the involvement of the New York staff and a pending section 271 application in Pennsylvania, Verizon has not yet been able to identify the root causes of the missing notifier problem and to eliminate them.

8. Nonetheless, at least Verizon appears to be making some effort to limit the scope of the missing notifier problem at the present time. But there is no assurance that Verizon will continue to devote attention – including manual resources – to the problem in the future or that it will be able to keep the problem in check if order volumes significantly increase – as they would with commercial entry in Massachusetts. Because the missing notifier problem has appeared in both Verizon states in which WorldCom has transmitted significant volumes of orders, there is every reason to expect that it will appear in other Verizon states as well once ordering volumes are significant. Moreover, Verizon's failure to resolve the problem once again demonstrates the inadequate technical assistance that Verizon provides.

#### **CONCLUSION**

9. This concludes our joint declaration on behalf of WorldCom.

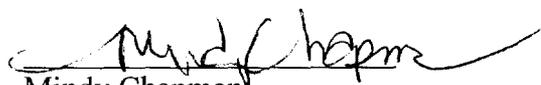
I declare under penalty of perjury that the foregoing Declaration on behalf of MCI

WorldCom, Communications, Inc. is true and correct.

  
Sherry Lichtenberg

Executed on: 2/28/01

I declare under penalty of perjury that the foregoing Declaration on behalf of MCI  
WorldCom, Communications, Inc. is true and correct.

  
Mindy Chapman

Executed on: 2/27/01