

**DECLARATION OF  
B. KELLY KISER**

I, B. Kelly Kiser, hereby declare under penalty of perjury of the laws of the United States of America, that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am the Vice President – Legal and Regulatory Affairs for Digital Broadband Communications, Inc. (“Digital Broadband”). I am authorized to make this declaration on behalf of Digital Broadband.

2. Digital Broadband, whose principal place of business is in Waltham, Massachusetts, is a Broadband Communications Provider that provides retail high-speed, broadband access to small-to-medium size businesses and to enterprise corporations seeking a broadband solution for their employee teleworkers. Unlike many other CLECs that offer Digital Subscriber Service (“DSL”), we do not provide wholesale services.

3. I am responsible for all of Digital Broadband’s federal, state, and local regulatory affairs, and for legal issues affecting the company’s operations. As a result, I have regular interaction with Verizon New England, Inc. (“Verizon”) on a variety of matters relevant to this Declaration.

4. Digital Broadband is participating in this proceeding in order to provide the Federal Communications Commission with evidence responding to certain claims and statements made by Verizon in its application for authorization under Section 271 of the Communications Act to provide in-region, interLATA service in the state of Massachusetts (the “Application”), filed September 22, 2000. This evidence supports Digital Broadband’s conclusion that Verizon’s

Application should be denied, because Verizon has not fully satisfied all of its obligations under Section 271.

5. As set forth in the accompanying Declarations of Theresa M. Landers, Vice President – Network Services, Steve Melanson, Vice President – Customer Operations, and John McMillan, Vice President – Field Operations, Digital Broadband has conducted an extensive review of its data regarding Verizon’s provisioning of interconnection and unbundled network elements (“UNEs”) as requested by Digital Broadband. For the periods reviewed by Digital Broadband, that evidence shows the following:

**Verizon Routinely Misses Its Committed Dates for Provisioning Local Loops.** As set forth in the Declaration of Mr. Melanson,

- Only 33% of DSL loop orders get FOC responses from Verizon within the standard interval, and nearly 25% of the orders received FOC responses three or more weeks beyond the standard interval. Moreover, Verizon delivered only about 65% of DSL orders on its committed date. *See* Declaration of Steve Melanson, Attachment 1.
- Verizon’s performance provisioning DS1 orders is even worse than its provisioning of DSL orders. Less than 10% of DS1 orders received FOC responses within the standard interval and less than 50% of orders delivered on the committed date. *See* Declaration of Steve Melanson, Attachment 2.

**Verizon Provisions Loops and IOF that Are of Poor Quality.** As set forth in the Declarations of Mr. McMillan and Ms. Landers,

- Nearly 20% of DSL loop orders pass initial testing but fail subsequent testing, and more than 50% of those failures are due to Verizon. *See* Declaration of John McMillan, Attachment 1.
- The failure rate for DS1s has been even higher than for DSL loops, with more than 50% not passing initial testing. *See* Declaration of John McMillan, Attachment 1.
- A large number of loop orders fail at the time Digital Broadband installs equipment at the customer premises, and in more than 50% of these instances the failures are due to Verizon. This often happens because the loop as initially tested is altered by Verizon

in such a manner that the loop as initially tested no longer is available. *See* Declaration of John McMillan, p. 3.

- Nearly all DS3s provisioned by Verizon in Massachusetts since April did not work properly on the turnover date, and orders frequently require multiple dispatches before Verizon completes the order and delivers a working DS3 connection. *See* Declaration of Theresa M. Landers, Attachment 1.

**Verizon Routinely Misses Its Committed Dates for Provisioning IOF.** As set forth in the Declaration of Ms. Landers,

- In Massachusetts, Verizon has completed less than 25% DS3 IOF orders by the committed date. *See* Declaration of Theresa M. Landers, Attachment 1.
- Verizon routinely gives FOC dates far beyond the standard provisioning interval – in some cases, up to 15 months after the order date – and just as routinely changes FOC dates, with delays of up to three or four months not unusual. And, Verizon refuses to dispatch to correct a non-functioning DS3 circuit unless Digital Broadband agrees to move the due date out at least five days. As a result, Digital Broadband is forced to accept the circuit and then call in a trouble, because Verizon will respond to a trouble request on an installed circuit within a four-hour interval, rather than five days. In this manner, Verizon is able to manipulate performance reports it files with regulators. *See* Declaration of Theresa M. Landers, p. 5.

6. Clearly, Verizon’s claims of compliance with both its local loop and IOF obligations (*see* Verizon Application at pp. 16-30) are greatly exaggerated. In light of substantial evidence of Verizon’s poor performance on these critical Checklist items, Verizon cannot be found to be in compliance with its Section 271 obligations.

**Verizon’s Provision of OSS Is Discriminatory and OSS Quality Is Poor.** As set forth in the Declarations of Mr. Melanson and Ms. Landers,

- A substantial number of loops cannot be qualified for DSL service because the databases Verizon makes available to its competitors are inferior to data in Verizon’s possession. Declaration of Steve Melanson, p. 4; Declaration of Theresa M. Landers, p. 6.
- Verizon refuses to make available Operations Support Systems – including the Loop Facilities Automated Control System (“LFACS”) in the same time and manner as it available to Verizon.

Verizon Refuses to Make Available Its OSS in the Same Time and Manner as that Information Is Available to Verizon.

7. Digital Broadband testified before the Massachusetts Department of Telecommunications and Energy (“DTE”) in DTE Docket No. 98-57 (Phase III) and DTE Docket No. 99-271<sup>1</sup> regarding Verizon’s failure to make available OSS – specifically, databases containing loop qualification information – in the same time and manner as that information is available to Verizon, as well as the poor quality of Verizon’s OSS generally. This evidence is relevant to Verizon’s claims of checklist compliance, and Digital Broadband urges the Commission to review the complete record in DTE 98-57 Phase III, in which the DTE investigated Verizon’s proposed rates, terms, and conditions for line sharing and xDSL in Massachusetts. Verizon has placed that evidence before the Commission in connection with its Application.<sup>2</sup>

8. Checklist Item 2<sup>3</sup> requires Verizon to provide unbundled access to certain network elements, including OSS.<sup>4</sup> Among other things, OSS consists of pre-ordering and ordering

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<sup>1</sup> See Verizon Application, Appendix E, Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding), Vol. 212, Tab 1 (Direct Testimony of Digital Broadband Communications, Inc.; see also generally id. at Vol. 24, Tab 1 (Transcript of Hearing Aug. 1 and Aug. 2, 2000; Transcript of Oral Argument Held Sept. 8, 2000 (omitted from Verizon’s Appendix B, Record of DTE Docket No. 99-271).

<sup>2</sup> See Verizon Application, Appendix E, Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding).

<sup>3</sup> 47 U.S.C. § 271(c)(2)(B)(ii),

<sup>4</sup> 47 C.F.R. § 51.313(c).

functions supported by an ILEC's databases and information.<sup>5</sup> Based on its record of providing access to its pre-ordering OSS, Verizon has not satisfied Checklist Item 2.

9. The FCC's definition of "pre-ordering information" specifically includes "loop qualification information," which includes "the composition of the loop material..., location and type of any electronics or any other equipment on the loop..., the loop length..., the wire gauge(s) of the loop; and the electrical parameters of the loop, [all of] which may determine the suitability of the loop for various technologies."<sup>6</sup> "Nondiscriminatory"<sup>7</sup> access means the information must be provided within the same time and manner that it is made available to Verizon's personnel,<sup>8</sup> and that "the quality of both the network element and access to the element

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<sup>5</sup> 47 C.F.R. § 51.319(g).

<sup>6</sup> 47 C.F.R. § 51 defines "pre-ordering" and "ordering" as including "the exchange of information between telecommunications carriers about: current or proposed customer products and services; or unbundled network elements, or some combination thereof. *This information includes loop qualification information, such as the composition of the loop material, including but not limited to: fiber optics or copper; the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.*"

<sup>7</sup> 47 U.S.C. § 251(c)(3).

<sup>8</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order*, 15 FCC Rcd 3696, 3886-87 ¶¶ 430-31 (1999) ("UNE Remand Order").

must be (1) equal as between all carriers requesting access to that element,<sup>9</sup> and (2) to the extent technically feasible, at least equal in quality as the ILEC provides to itself.<sup>10</sup>

10. Verizon is required to “provide ... access to *the same detailed information about the loop that is available to [it]*,” so that [a CLEC] can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the [CLEC] intends to install.... [A]t a minimum, [Verizon] must provide [CLECs] the same underlying information that [Verizon] has in any of its own databases or other internal records,” including the information listed in the definition of “pre-ordering and ordering.”<sup>11</sup> Verizon may not “filter or digest” its loop qualification information.<sup>12</sup>

11. Verizon has discriminated and continues to discriminate against CLECs in the information it makes available. Specifically, Verizon refuses to make its LFACS database directly available to CLECs. However, Verizon has *admitted* that LFACS contains substantial information CLECs need to determine whether an individual loop is qualified.<sup>13</sup> Adding insult to injury is that when Digital Broadband resorts to manual loop ordering, as Mr. Melanson

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<sup>9</sup> 47 C.F.R. § 51.311(a).

<sup>10</sup> 47 C.F.R. § 51.311(b).

<sup>11</sup> *UNE Remand Order*, 15 FCC Rcd 3885, ¶ 427.

<sup>12</sup> *Id.* ¶¶ 427-28.

<sup>13</sup> See Verizon Application, Appendix E, *Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding)*, Vol. 24, Tab 1, Transcript of Hearing Held August 2, 2000 (Mr. White), p. 493; see also *id.* at Vol. 19, Tab 1, BA-MA’s Responses to Rhythms/Covad Information Requests (submitted 6/22/00); see also Ex. 29, BA-MA Reply to RL/CVD 1-33 (listing information contained in LFACS, including location and type of electronics, location of bridged taps, spare pair availability, cable and pair identification, and other information).

described in his Declaration – which it must frequently do because of the unreliability of the mechanized databases – part of the “manual” procedure Verizon performs is a check of the mechanized LFACS database. Verizon admits this.<sup>14</sup> Moreover, Verizon, in the line sharing and xDSL tariff proceeding before the DTE (DTE Docket No. 98-57, Phase III), attempted to impose substantially higher charges for so-called “manual” procedures than for mechanized procedures – charges the DTE rejected.<sup>15</sup>

12. Verizon has claimed that “[t]he loop qualification database [it makes available to CLECs] is distinguishable from the LFACS database.”<sup>16</sup> This just states the obvious fact that there are two databases. Verizon has ignored the more pertinent point, which is that it is required to make available the information in LFACS in the same time and manner as that information is available to Verizon. While Verizon *could* do so by giving CLECs direct access to LFACS, and without having to enter into the LQD the same information that is in LFACS, it need not do so. However, it must *either* make LFACS, *or* the information that is in LFACS, available in order to comply with its OSS obligations. It refuses to do either.

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<sup>14</sup> See Verizon Application, Appendix E, *Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding)*, Vol. 24, Tab 1, Transcript of Hearing Held August 2, 2000 (Mr. White), pp. 496-497 (stating that LFACS is not directly available to CLECs, but is “indirectly” available through manual qualifications and engineering queries).

<sup>15</sup> See Verizon Application, Appendix L, Selected Documents, Vol. 1, Tab 1, DTE Tariff No. 17; see Order released September 29, 2000 by the Massachusetts Department of Telecommunications and Energy, Investigation by the Department on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in M.D.T.E. No. 17, DTE 98-57 Phase III.

<sup>16</sup> See Verizon Application, Appendix K, *Supplemental Materials from Appendices B through H*, Vol. 6, Tab 1, Supplement to Appendix E (submitted September 1, 2000) (DTE 98-57 Phase III, Verizon Reply Brief), p. 17 n.2.

13. Verizon has not complied with its obligation to provide access to loop qualification information, which requires non-discriminatory access to the same information that is available to Verizon, in “substantially the same time and manner.”<sup>17</sup> Verizon’s stark refusal to allow access to the automated LFACS and other databases with information that is needed to determine whether a loop is capable of providing services Digital Broadband may offer clearly violates the Communications Act and the Commission’s rules.<sup>18</sup>

14. The Commission has found that “the provision of access to OSS functions and the information they contain is integral to the ability of competing carriers to enter the local exchange market,” and that a CLEC that lacks access to an ILEC’s OSS “will be severely disadvantaged ... from fairly competing.”<sup>19</sup> Digital Broadband must have access to this information in order to determine whether it is possible to provide a particular service to a particular customer. Moreover, Verizon **requires** CLECs to pre-qualify a loop before placing an order. Therefore, timely access to accurate information is critically important, because of the cost and delay associated with inaccurate information. Verizon’s loop qualification access performance and its denial of LFACS therefore are directly relevant to the Commission’s

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<sup>17</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Third Report and Order*, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Fourth Report and Order*, 14 FCC Rcd 20912, 20986 ¶ 172 (1999) (“*Line Sharing Order*”).

<sup>18</sup> Before the DTE, Verizon asserted that “the principal loop qualification information that is available from the [loop qualification] database and would be of interest to CLECs is the total metallic loop length....” DTE 98-57 Phase III, Initial Brief of Verizon at 48. In fact, as Verizon has stated, LFACS contains other information that is useful in determining whether certain services may be provided. See DTE 98-57 Phase III, Direct Testimony of Bruce F. Meacham at pp. 18-20.

<sup>19</sup> *UNE Remand Order*, 15 FCC Rcd 3923-24 ¶¶ 516-518.



consideration of Verizon’s Application, and warrant a conclusion that Verizon has not satisfied Checklist Item 2.<sup>20</sup>

The Poor Quality of Verizon’s OSS Was Not Detected by KPMG

15. In the DTE’s Section 271 proceeding, KPMG’s testing of GUI availability and performance was extremely limited.<sup>21</sup> In fact, KPMG reviewed only 155 pre-order transactions using the GUI – just 4% of the total pre-order transactions it tested. Nor did KPMG break these down by transaction types, such as number of DSL loop orders.<sup>22</sup> Nonetheless, KPMG concluded that it was “satisfied” with both the availability and performance of the GUI.<sup>23</sup>

16. KPMG’s conclusion appears to be flawed with respect to pre-ordering OSS access, because KPMG tested for *responses*, not for *accuracy of the responses*. In particular, KPMG deemed *any* response – including all “error” responses – sufficient as a measure of

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<sup>20</sup> A separate basis for finding that Verizon’s OSS is not in compliance with Checklist Item 2 is the fact that Verizon has failed to modify its OSS in Massachusetts to accommodate line sharing. In the *Line Sharing Order*, the Commission explicitly found that an ILEC’s failure to modify its OSS to accommodate line sharing may support a finding that the ILEC is failing to provide nondiscriminatory access to UNEs, and that such evidence is relevant in the context of a Section 271 proceeding. *Line Sharing Order* at 20986, ¶ 173. Significantly, the Commission clearly stated that “incumbent LECs can implement suitable OSS modifications within the time frame we establish for implementation of this obligation.” *Id.* at 20970, ¶ 126 and n.300. Furthermore, the Commission found that ILECs “have already modified their OSS systems to accommodate their own xDSL products, and ... those modifications and those required for line sharing are substantially similar.” *Id.* at 20971, ¶ 127. The anti-competitive effects of Verizon’s denial of access to LFACS thus is evident.

<sup>21</sup> See Verizon Application, Appendix B, *Record of Massachusetts DTE Docket No. 99-0271 (Section 271 Proceeding)*, Vol. 46, Tab 545, Transcript of Technical Session Held 8/28/00, at 3130; 3184.

<sup>22</sup> See *id.* at Vol. 46, Tab 547, Transcript of Technical Session Held 8/29/00 (Testimony of Mr. Dellatorre), at 3264-67.

<sup>23</sup> See *id.* at Vol. 49, Tab 565, KPMG’s OSS Evaluation Final Report, Version 1.4 for BA-MA, at 96-103.

whether the GUI was functioning.<sup>24</sup> Therefore, the GUI, when used for pre-ordering, received a 100% rating for “Presence of Functionality,” simply because it gave either an “error message” or a “valid response.”<sup>25</sup> Without knowing whether these responses were accurate, however, that rating cannot be relied upon as a validation of Verizon’s OSS performance, as proved by Digital Broadband’s experience with the GUI.

17. KPMG also did no follow up testing to determine whether an error message should have been received – that is, whether the LQD in fact contained wrong information, or was simply incomplete. It has been Digital Broadband’s experience that error messages often are the result of failures by Verizon either to include information in the database, or to enter information in the database correctly. *See* Declaration of Steve Melanson, pp. 3-4. KPMG simply did not test these “false negatives.”

18. Digital Broadband’s experience is fully supported by the experience of other CLECs, as is clear from the testimony of Mr. Katzman on behalf of Covad at the DTE’s Technical Sessions in DTE 99-271. Mr. Katzman pointed out other inadequacies of the GUI, including its inability to handle large volumes and the fact that it only responds to one error on a single query. ALTS and Nextlink also pointed out that “[t]he [KPMG] observations clearly

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<sup>24</sup> *See id.* at 43 (“A transaction was deemed complete if one of the following was received: a positive pre-order response, a local service confirmation (‘LSC’), or an error message.”).

<sup>25</sup> *See id.* at 97.

document that [Verizon] continues to . . . provide[] CLECs with inaccurate and false end-user information,” and that even “determining how to correctly place an order is nearly impossible.”<sup>26</sup>

19. As the Pennsylvania Public Utility Commission recognized when it ordered Verizon to make available “real-time access” to LFACS and other electronic databases, holding that Verizon’s proposal “for giving access to loop data through a Web GUI is inadequate”<sup>27</sup>:

Real-time electronic access to loop make-up information is important for several reasons. First, such electronic access will allow CLECs to determine quickly whether a customer’s loop is suitable for DSL in response to customer inquiries. Second, electronic access allows CLECs greater flexibility in structuring their workforce, because on-line systems could be used 24 hours per day to research the suitability of customer loops to support DSL. Third, electronic systems can support much greater volumes of inquiries than will manual systems. Finally, ILECs may have internal electronic pre-ordering and ordering systems available, thereby giving them an advantage in serving customers over CLECs. Time is of the essence in providing pre-ordering information, because the market for high-speed data services, in particular DSL-based services, is growing larger and more competitive every day.<sup>28</sup>

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<sup>26</sup> See Verizon Application, Appendix B, *Record of Massachusetts DTE Docket No. 99-271 (Section 271 Proceeding)*, Vol. 46, Tab 533, Transcript of Technical Session Held 8/21/00, at 2756-59; see also *id.* at Vol. 38, Tab 458 (submitted 7/19/00), at 4.

<sup>27</sup> Pennsylvania Public Utilities Commission, P-00991648, P-00991649, *Opinion and Order*, at Section VII, p. 10 (Aug. 26, 1999) (“*Pennsylvania Global Telephone Order*”).

<sup>28</sup> *Pennsylvania Global Telephone Order*, at Section VII, p. 11.

20. Verizon is fully aware of the substantial market demand for high-speed data services. By providing access to inferior quality information, and denying real-time access to other data, it is acting anti-competitively. Its actions should not be rewarded with Section 271 authority.

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