COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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 in the Commonwealth of Massachusetts.	)	D.T.E. 01-20

March 21, 2003

HEARING OFFICER RULING ONVERIZON MASSACHUSETTS' MOTION FOR EXTENSION TO FILE REPLY COMMENTS

I. INTRODUCTION

The Department of Telecommunications and Energy ("Department") opened the D.T.E. 01-20 docket on January 12, 2001 to establish new rates for unbundled network elements ("UNEs") and interconnection offered by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") to competitive local exchange carriers ("CLECs"). On July 11, 2002, after a comprehensive 18-month investigation, the Department issued its D.T.E. 01-20 Part A[1] order ("Order"). Verizon and several other parties filed motions for reconsideration and clarification of the Order on August 14, 2002. On January 14, 2003, the Department issued an order deciding those motions ("Reconsideration Order"). As directed in the Reconsideration Order, Verizon submitted its D.T.E. 01-20 Part A Compliance Filing on February 13, 2003. The Department established a procedural schedule for the compliance phase of the proceeding, involving technical sessions on March 5 and 6, CLEC comments on March 18, and Verizon reply comments on March 25, 2003. D.T.E. 01-20, Hearing Officer Memorandum Re: Procedural Schedule (February 11, 2003). AT&T Communications of New England, Inc. ("AT&T"); WorldCom, Inc.("WorldCom"); Conversent Communications of Massachusetts, LLC ("Conversent"); RCN-BecoCom, LLC ("RCN") and the Attorney General submitted initial comments on March 18. On March 20, Verizon filed a letter

[1] Part B remains in abeyance. UNE Rates, D.T.E. 01-20, Interlocutory Order on Part B Motions (April 4, 2001).

("Motion") requesting an extension of the due date for reply comments to March 28, 2003. AT&T objected in a March 21 letter ("Response").

II. POSITIONS OF THE PARTIES

A. Verizon

Verizon moves for a three-day extension, from March 25 to March 28, 2003, to file its reply comments in the compliance phase of this proceeding. In support of its motion, Verizon states that the extensive initial comments from other parties cover a broad spectrum of issues, including some not raised during the technical sessions. Verizon explains that its subject matter experts have a limited opportunity to review other parties' comments and assist in developing Verizon's response because of other commitments, and Verizon needs the requested additional time for its experts to review and prepare complete responsive comments to the technical issues that have been raised (Motion at 1).

Verizon further states that it contacted all parties that submitted comments on its compliance filing, and that the parties other than AT&T (i.e., the Attorney General, Conversent, RCN and WorldCom) have no objection to Verizon's extension request (id. at 2).

B. AT&T

AT&T argues that Verizon has failed to demonstrate any credible reason why it needs additional time. AT&T asserts that Verizon must limit its reply comments to a discussion of whether its compliance filing in fact complies with the Department's orders, and it may not now attempt to introduce new evidence – in the form of "backup" or anything else – to justify its compliance filing; hence, Verizon's reply comments must necessarily be limited in scope. The schedule for comments was set more than five weeks ago, and Verizon previously raised no objection to it; therefore, AT&T states, Verizon should have had the staff needed to prepare reply comments ready long ago (Response at 1-2).

Further, AT&T states, CLEC parties and the Department reviewed Verizon's voluminous compliance filing in less than three weeks. AT&T states that its receipt of electronic copies of Verizon's compliance filing models (on February 20 or 21) and backup for Verizon's proposed FLC factor (on March 3), was delayed, and therefore AT&T had substantially less time to review some aspects of the compliance filing (id. at 1). Thus, AT&T asserts, the time originally allotted by the Department for Verizon to prepare and file reply comments was and remains reasonable (id. at 2).

III. ANALYSIS AND FINDINGS

For good cause shown, the Department has discretion to extend time limits prescribed or allowed by its Procedural Rules. See 220 C.M.R. § 1.02(5). The Department's "good cause" standard provides that:

> Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Nunnally d/b/a L & R Enterprises, D.P.U. 92-34-A at 3 (1993), citing Boston Edison Company, D.P.U. 90-335-A at 4 (1992).

We find that Verizon has shown good cause for a three-day extension to file its reply comments. AT&T and RCN submitted extensive initial comments raising several complex technical issues that were not fully explored at the technical sessions. CLECs had twelve calendar days to prepare their initial comments; even with an extension Verizon will have fewer days to prepare its response. Although it did not previously object to the procedural schedule, Verizon could not necessarily have anticipated all of the issues to which it would need to respond until the technical session, or, in some cases, until parties filed initial comments.

Throughout this proceeding the Department has been flexible in accommodating the needs of all parties' subject matter experts to review materials and fully prepare testimony and responses. The purpose of this non-evidentiary phase, including parties' written comments, is for Verizon to give a full explanation of its compliance filing, and to limit Verizon's ability to do so would benefit no one. A three-day extension does not unduly delay this final phase of the proceeding. Hence, we grant Verizon's motion to extend the due date for its reply comments until March 28, 2003.

IV. RULING

Accordingly, after due consideration, Verizon's motion for a three-day extension to file reply comments in the compliance phase, from 4 p.m. March 25 to 4 p.m. March 28, 2003, is granted.

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by March 24, 2003 at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by March 25, 2003 at 5:00 p.m.

Date: March 21, 2003

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Marcella Hickey, Hearing Officer