COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	)	D.T.E. 01-20

VERIZON MA'S OPPOSITION TO AT&T'S MOTION TO STRIKE VERIZON MA'S PROPOSED "AC AMPS PER DC AMPS" RATE OR, IN THE ALTERNATIVE, TO REOPEN THE RECORD

INTRODUCTION

In its latest motion, AT&T asserts that Verizon Massachusetts' ("Verizon MA") reply to RR-DTE-40, which was filed on February 26, 2002, improperly goes beyond the scope of the Department's request, and impermissibly proposes a new rate for which there is no record evidence. Both assertions are incorrect. To the contrary, Verizon MA's reply to this request is directly responsive to the Department's request for Verizon MA to express its emergency generators in terms of DC amps, rather than AC amps, and "proposes" a new rate element only for the limited purpose of responding to the theoretical nature of the Department's record request. AT&T's claims are merely a pretext to raise arguments attacking Verizon MA's power costs that AT&T failed to raise in a timely manner while the record in the underlying proceeding was open – or even during post-hearing briefing.

The Department should reject AT&T's improper attempts to take a second bite at the apple, and deny the pending motion. If the Department finds, as it should, that Verizon MA's

method of expressing the emergency generators in DC amps is appropriate, then AT&T's motion is moot. If, however, the Department rules against Verizon MA and finds that the emergency generator should be expressed in terms of AC amps, it can then address AT&T's claims regarding Verizon MA's AC rate element and permit Verizon MA to respond in a compliance proceeding. In the alternative, Verizon MA asks that the Department reopen the proceeding and permit the parties to supplement the record. It is patently unfair to permit AT&T to respond on the merits to Verizon MA's response to the Department's record request without giving Verizon MA an opportunity for discovery and for additional comments.

ARGUMENT

I. VERIZON MA'S REPLY TO RR-DTE-40 WAS DIRECTLY RESPONSIVE AND WITHIN THE SCOPE OF THE DEPARTMENT'S REQUEST.

Contrary to AT&T's arguments, Verizon MA's reply to RR-DTE-40 is directly responsive to, and within the scope of, the Department's request. The Department plainly did not, as AT&T alleges, merely ask Verizon MA to express its power consumption rate in DC amps. Rather, the Department sought, as an additional matter, an explanation of why such an expression is inadequate to describe the realities of the network. A review of the Department's request makes this abundantly clear:

> Please have the power consumption cost study calculated with an Emergency engine amp capacity converted into DC amps, *with an explanation of why it is not a viable option to calculate it that way.*

(Emphasis added). In its motion, AT&T conveniently ignores this critical aspect of the Department's request and wrongly claims that Verizon MA's response goes beyond the scope of RR-DTE-40 because it includes a discussion of an AC rate element. However, as discussed below, the inclusion of an AC rate element is crucial to a meaningful discussion of the costs

associated with Verizon MA's emergency engines. AT&T's claims to the contrary are a pretext to supplement the record with arguments it could have made earlier in this proceeding.

As Verizon MA explained in its response, it is incoherent to express the emergency engine capacity in terms of DC amps alone (s*ee, e.g.*, RR-DTE-40; Verizon MA Initial Brief, at 258-260). The emergency engines at issue produce only AC amps. Some of these AC amps are converted into DC amps to power the telecommunications plant – which runs only on DC amps. The rest of these AC amps *are never* converted to DC amps. Rather, these AC amps are used to power the environmental plant within the central office, which includes lighting and HVAC that support Verizon MA's and the collocators' equipment – and which runs *only* on AC amps. As a result of this central-office reality, the power facilities in the central office are equipped to turn only a fraction of the total AC output of the emergency engines into DC power. As Verizon MA explained in its record request response, there is no way that any conceivable configuration of power facilities installed in any Verizon MA central office could turn the entire AC output from the emergency engines into DC power.

Thus, to respond fully and coherently to the Department's request, it was necessary for Verizon MA to describe the power consumption cost study in terms of two components – (1) a DC power element and (2) an AC power element. This latter element is not a "new rate" that Verizon MA proposes be applied to CLECs, as AT&T suggests; rather, it is a theoretical exposition used to answer the Department's request as thoroughly as could be done. Indeed, Verizon MA continues to assert that the Department should adopt Verizon MA's method of expressing the emergency generators in terms of DC, not AC amps. Accordingly, there was nothing procedurally improper about Verizon MA's response.

II. AT&T'S MOTION IS NOTHING MORE THAN A PRETEXT FOR ATTACKING VERIZON MA'S POWER COSTS AFTER THE RECORD HAS BEEN CLOSED AND BRIEFING CONCLUDED.

AT&T uses its motion as an excuse to buttress the record with arguments against the AC rate element and sizing of the emergency generators that it should have raised during the underlying proceedings. This is improper and should not be permitted.

For example, AT&T asserts that Verizon MA has not demonstrated that it needs 1069 AC amps to power the environmental equipment in the central office. AT&T speculates that this number is artificially inflated because Verizon MA's emergency engines are oversized. AT&T, after having argued *throughout this proceeding* that Verizon MA's emergency engines were *undersized*, changed its mind after the close of the record and argued for the first time on brief that Verizon MA's engines were *oversized*, without citing any evidence (s*ee* AT&T Initial Brief, at 222). Now AT&T seeks to rely on this unproven assertion to strike Verizon MA's response to the Department's record request. AT&T has been aware since Ms. Clark's surrebuttal (December 17, 2001) of how big Verizon MA's emergency engines are, and were then put on notice that their claims about Verizon MA's undersized engines were specious (s*ee* Exh. VZ-29, at 40-41).

AT&T now claims that Verizon MA has inadequately responded to its unsubstantiated claims that its engines were *oversized*, without bothering to mention that those latter claims were made *only* after the record had closed. Verizon MA stands by its testimony and evidence submitted during the hearing, which responded fully, when the record was open, to any charges levied against its studies. However, AT&T's motion is not an appropriate vehicle to pursue such fact-intensive claims. Assertions, especially those unsubstantiated by fact, made after the record

is closed must be rejected. As AT&T points out itself, "[t]he record cannot be changed after the record is closed. . . ." AT&T's motion should therefore be denied.

Likewise, AT&T improperly uses its pending motion as a pretext for challenging Verizon MA's "AC Amp per DC Amp" rate element. In support of its contentions, AT&T makes a number of highly technical factual assertions about the conversion rate between AC and DC amps, and the related costs associated with this rate.

III. AT&T'S EFFORT TO INTERJECT NEW CLAIMS THROUGH ITS MOTIONS SHOULD BE REJECTED.

Not only should AT&T's motion to strike Verizon MA's AC rate element be denied, but its new arguments should be stricken as untimely. As Verizon MA notes above, if the Department decides to reject Verizon MA's proposed method of expressing the emergency generator on a DC, rather than AC amp basis, it can conduct further proceedings to address AT&T's claims as part of a compliance proceeding.[1] The Department should not resolve the parties' competing claims on the basis of contentions that were not developed on the record.

In the alternative, Verizon MA requests that the Department reopen the record so that evidence may be presented regarding AT&T's new factual claims concerning the AC rate element set forth in the response to RR-DTE-40. Verizon MA is entitled to discovery and to provide further comments addressing AT&T's untimely claims. Denying Verizon MA this right would unduly prejudice Verizon MA and reward AT&T for its untimely motion, which is nothing more than a pretext to submit additional (and unsubstantiated) attacks on Verizon MA's power costs.

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[1] Similarly, as Verizon MA noted in its reply brief, if the Department decides, contrary to established precedent, that it is inappropriate for Verizon MA to apply an installation factor to determine power costs, it should conduct further proceedings and require the parties to submit complete power plant installation data as part of a compliance filing (Verizon MA Reply Brief, at 225).

WHEREFORE, Verizon MA respectfully requests that the Department deny AT&T's Motion or in the alternative reopen the record.

Respectfully submitted,

VERIZON MASSACHUSETTS

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