BEFORE THE

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers	D.T.E. 03–60

COMMENTS

of

THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

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I. INTRODUCTION

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to herein as ("DOD/FEA") hereby submits its Comments in the above–captioned proceeding. DOD/FEA recommends that the Department of Telecommunications and Energy ("Department") adopt the procedures set forth below to conduct the inquiries concerning Mass Market customers mandated by the Federal Communications Commission ("FCC") in its *Triennial Review Order*.[1]

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[1] Review of the Section 251 Unbundling Obligations of Local Exchange Carriers, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03–36 (released Aug. 21, 2003) ("*Triennial Review Order*").

II. BACKGROUND

The Department of Telecommunications and Energy ("Department") instituted this proceeding on August 26, 2003 to address requirements in the *Triennial Review Order* concerning the unbundled network element ("UNE") local switching for "Mass Market" customers including residential and small business users. Among other provisions in the order, state regulatory agencies have nine months from its effective date to conduct a proceeding to allow rebuttal of the presumption that local switching continues to be required as a UNE for these customers.

There are many federal offices and military installations through Massachusetts, so that DOD/FEA is one of the largest consumers of telecommunications services in the state. End users such as DOD/FEA do not acquire unbundled network elements ("UNEs") from incumbent local exchange carriers ("LECs"). However, the availability, price, terms and conditions for UNEs are important to DOD/FEA because they will determine the prices, terms and conditions for services that DOD/FEA obtains from its vendors.

In the aggregate, DOD/FEA is a very large business user of telecom services. Consequently, DOD/FEA has submitted Comments and a letter describing its interests pursuant to the Department's directive in D.T.E. 03–59 concerning the "Enterprise Market." However, while DOD/FEA in the aggregate is a very large business user, at many locations Federal Agencies access the switched network with facilities below the DS–1 capacity level. Thus, DOD/FEA has a significant interest in the proceedings convened by the Department concerning the "Mass Market" for UNEs as well.

DOD/FEA confines these Comments to procedural matters, including scope and scheduling, and does not discuss the merits of the issues to be addressed.

III. DOD/FEA RECOMMENDATIONS FOR PROCEEDINGS

The nine–month proceeding will encompass a variety of UNEs for the "Mass Market" which is defined by the FCC as customers with access at less than DS–1 capacity. Moreover, states must follow a two–step process to determine whether or not there is "impairment" without the UNE in each defined market.

In this process, states first must apply specific triggers to determine whether further inquiry concerning impairment is necessary. The triggers focus on: (a) the degree of carrier self–provisioning and (b) whether wholesalers are offering independent network element capacity. If the triggers are satisfied, no further inquiry is required for that market. If they are not satisfied, the inquiry must proceed to the second step where relevant operational and economic criteria are employed to evaluate whether market conditions are conducive to competitive entry, and whether competition is impaired without access to the designated network element.

The analysis to be performed in the nine–month proceeding is further complicated by the fact that different triggers and evaluation criteria are specified for different UNEs. Moreover, the Department must consider a wide spectrum of conditions, and may reach different findings for different carriers, markets, and regions of the state.

Because of the scope of the proceedings, DOD/FEA recommends that the Department employ a generic proceeding addressing all competitive LECs and all parts of the Commonwealth. However, the Department must be prepared to make individualized determinations for the many different markets and many different incumbent LECs in Massachusetts.

For all of the UNEs in the "nine–month proceeding," the FCC has made a "presumptive finding" that there <u>is</u> impairment without the availability of the UNE. The proceeding conducted by the state must reach the <u>opposite</u> conclusion to have operational effect. Consistent with the presumption of impairment, DOD/FEA believes

that a party claiming that a UNE should not be available in any market or area should bear the burden of going forward with the introduction of evidence as well as the burden of proof.

In its Comments in D.T.E. 03–59, DOD/FEA recommended that the 90–day proceeding be conducted as a "paper proceeding" without evidentiary hearings. The inquiry to address the local switching and other UNE for the mass market has a more lenient schedule, but involves many elements and a very complex evaluation process. For this proceeding, therefore, DOD/FEA recommends three rounds of testimony, with concurrent pre–filing by all parties. DOD/FEA suggests that the Department limit hearings to approximately 15 days. Also, DOD/FEA recommends two briefing rounds, with a Proposed Order and Exceptions, before the Department releases its concluding order.

As a target, DOD/FEA proposes the following procedural schedule, with days measured from the start of the nine–month period:

Day	Activity
25	Deadline for responses to data requests
35	Direct testimony and other evidence submitted by all parties
70	Reply testimony and other evidence submitted by all parties
90	Rebuttal testimony submitted by all parties
125–143	Hearings
160	Initial post–hearing briefs
190	Post–hearing reply briefs
220	Proposed Order
240	Exceptions to proposed order
270	Final order by Department

Because of the procedural deadlines established by the FCC and the wide variety of issues to be addressed, strict adherence to deadlines established by the Department and effective use of pre–trial discovery will be critical.

IV. CONCLUSION

WHEREFORE, the premises considered, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Department to adopt the recommendations set forth in these Comments.

Respectfully submitted,

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