August 17, 2000

D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-R

Consolidated Petitions of Verizon New England, Inc. d/b/a Verizon Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Verizon and the aforementioned companies.

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I. INTRODUCTION

This is an Order on a compliance filing submitted by New England Telephone and Telegraph Company d/b/a Verizon Massachusetts ("Verizon") as part of a consolidated arbitration proceeding being held in accordance with the Telecommunications Act of 1996.[(1)] As a result of Orders issued by the Department of Telecommunications and Energy ("Department"), Verizon is required to offer dark fiber as an unbundled network element ("UNE") to competitive local exchange carriers ("CLECs") in Massachusetts. D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3 (December 4, 1996) ("Phase 3 Order"); Phase 4-N Order (December 13, 1999).

On January 13, 2000, Verizon submitted a compliance filing consisting of a dark fiber service description and cost study. A technical conference was held on February 16, 2000 to review the compliance filing, and certain disagreements among the parties were noted at that session. The Arbitrator asked the parties to attempt to resolve their differences and to report back as to their ability to do so. On June 14, 2000, Verizon filed a revised service description, noting that a number of disagreements had been resolved, but pointing out that some disputes remained.

On June 22, 2000, AT&T Communications of New England, Inc. ("AT&T") and WorldCom, Inc. ("WorldCom") filed comments on Verizon's revised service description, and Verizon responded to those comments on June 30, 2000.

II. DARK FIBER COST STUDY

No party has offered a critique of Verizon's dark fiber cost study. The Department has reviewed the cost study and finds it in compliance with the Phase 4-N Order. Therefore, the cost study is approved. We now turn to the service description portion of the compliance filing.

III. SERVICE DESCRIPTION

A. Access to Fiber at Splice Points and Hard Termination Points

Verizon has proposed that its dark fiber will be made available to CLECs at existing splice points in its fiber network. Service Description, Section 1.1. AT&T notes that Verizon has refused to make its dark fiber available to CLECs at existing hard termination points[(2)] and that there is no reason that this UNE should not also be made available at these locations (AT&T Comments at 1-2). Verizon responds by saying that its proposal is fully consistent with the Phase 4-N Order, which only requires accessibility at splice points (Verizon Comments at 3-4).

Verizon's reliance on the strict wording of the Phase 4-N Order overlooks the context of those words. In that portion of this proceeding, Verizon had proposed that CLECs should only obtain access to dark fiber at points of collocation, and we found that the Company should also provide access at splice points. Phase 4-N Order at 33. As discussed below, if we were now to accept Verizon's interpretation of this section, the result would be unreasonable and, indeed, would conflict with the Company's own logic and presentation in this case.

Verizon originally proposed that a CLEC would have to purchase dark fiber from a point of collocation (Exh. BA-DF-1, Paragraph 1.4). In reply to questions from AT&T, the Company witnesses explained that the Company would not fulfill a request for service between two existing Verizon splice points or between a splice point and a customer's premises (Tr. 39, at 22-24). In response, WorldCom's witness explained that this requirement was unreasonably restrictive in terms of CLECs' potential use of dark fiber and was not warranted in terms of engineering requirements (Tr. 42, at 7-8). This latter point was confirmed by AT&T's witness, who also noted that the use of other hard termination points was also technically practical and appropriate (id. at 31-35). Indeed, in later questioning, the Verizon witness, too, noted the technical appropriateness of the use of hard termination points (id. at 68-71).

In the Phase 4-N Order, relying on this testimony, we found that Verizon's proposed restriction, requiring termination at collocation points, was unwarranted. Phase 4-N Order at 33, citing Phase 3 Order at 48-49. We stated that CLECs should have access to dark fiber at splice points. Id. In so doing, we admittedly did not also explicitly state that Verizon make dark fiber accessible at hard termination points, but that was because we did not believe that this method was in question. We had already found that the technical objections that might have concerned Verizon about the use of splice points (mainly the ability to test sections of dark fiber) were not valid. See Phase 3 Order at 48-49. Surely they are even less valid with regard to hard termination points, where even the Verizon witness concurred with the CLECs' technical analysis.

Accordingly, the CLECs' current request that the compliance filing be modified to permit CLEC access to dark fiber at hard termination points, as well as splice points, is fully consistent with the intent of the Phase 4-N Order, and is therefore granted.

B. Response Period

Section 1.4 of the service description states that Verizon has 15 business days from the date of a CLEC request for dark fiber to state whether a record search indicates that dark fiber may be available. AT&T argues that the 15-day period should be modified because it is inconsistent with its interconnection agreement, which contains a five-day interval (AT&T Comments at 2). Verizon replies that AT&T's proposal is without merit because the Department specifically found that the dark fiber request process, which included the 15-day interval, was consistent with interconnection agreements (Verizon Comments at 4-5, citing Phase 4-N Order at 15-16).

AT&T's proposed change comes too late. We fully addressed many aspects of the Company's service description, and, indeed, their relationship to the interconnection agreements, in the Phase 4-N Order. See, for example, Phase 4-N Order at 12-16. Verizon proposed the 15-day response period in its February 20, 1998 filing[(3)] that was the subject of the Phase 4-N Order, and no objections were raised at that time. While this requirement may be different from the original period contained in the interconnection agreement, that is not dispositive. Many provisions of the interconnection agreement have been modified as a result of specific findings and Orders during the pendency of this arbitration proceeding. This is one such provision. Therefore, the Department accepts Verizon's proposed language.

C. Fiber Layout Maps

In the earlier phase of this proceeding, the Department accepted a Verizon proposal concerning information a CLEC could request regarding the location of fiber facilities within a wire center. This information would consist of a "street-level detail" map identifying specific streets that have fiber sheaths running either below ground or above ground, based on Verizon's records as they exist at the time of a CLEC's request. Phase 4-N Order at 15-16. Verizon memorializes this description in Section 1.5 of the service description.

AT&T raises two objections. AT&T complains that the service description does not specify the type of data that will be on such a map, and AT&T offers a listing of the types of data that should be included. AT&T also argues that Verizon should be required to furnish an estimate of the time and cost to create the fiber map (AT&T Comments at 2-3). On the first point, Verizon replies that its proposal is aligned with its witness' proposal, which was adopted by the Department in the Phase 4-N Order. On the second point, Verizon claims that AT&T is inappropriately asking for a "new term" that was not addressed during the previous phase of the case and is inappropriate at the compliance phase of the proceeding (Verizon Comments at 7).

Regarding the type of data that should be included on a fiber layout map, we find that Verizon's proposal to provide a street-level detail map is consistent with the testimony provided by its witness, which was adopted by the Department in the Phase 4-N Order. Phase 4-N Order at 15-16. The witness clearly indicated the level of detail of that map, making clear what would be and would not be shown. While the information now requested by AT&T might be useful, we accepted Verizon's proposal as a "first order" indication of whether fiber existed in a given location based on the record presented in that phase of the proceeding. At the time, there was no objection by the CLECs. AT&T's current proposal goes beyond an initial assessment of the location of fiber, and we do not accept this modification of the compliance filing.

We turn now to the second point. While the CLECs' request for estimated time and costs was not addressed on brief in the earlier phase of this proceeding, we find Verizon's objection to it to be unfounded. We can see little reason for the Company to refuse to give its customer a sense of when it will provide the fiber layout map and how much it is

likely to cost. We understand that the actual time to prepare the map may vary widely (Tr. 43, at 21-23), but this situation offers even more reason for Verizon to provide the CLEC with the estimated time once it has had a chance to review its records. To be consistent with our earlier discussion, we require Verizon to modify the compliance filing to state that this estimate of time to provide the map and estimated cost will be provided within 15 business days of the CLEC's request.

D. Field Survey

Section 1.9 states that, upon request, Verizon will perform a field survey after a record search indicates that dark fiber may be available at a location. This survey will be undertaken to certify that the fiber is in fact available as spare and to test the fibers. Verizon would charge a CLEC for the time and materials involved in this survey, regardless of its outcome.

Both AT&T and WorldCom object to this provision, arguing that the CLECs should not have to pay for surveys in those cases where Verizon's records are found to be inaccurate and where fiber is not available where records indicate the existence of fiber (AT&T Comments at 3; WorldCom Comments at 2). Verizon replies that its filing is in compliance with the Phase 4-N Order. Further, Verizon notes that cable records are not always accurate and that, in its own operations, Verizon incurs the cost of verifying its facilities through physical inspection or testing (Verizon Comments at 8).

The evidence in this case indicates that the nature of dark fiber records is such that there should not necessarily be an expectation that a field survey will confirm that specific strands of dark fiber are available where a preliminary records search indicates that fiber exists (Tr. 43, at 19). Also, the record shows that Verizon would not ordinarily conduct field surveys in the general course of its business (id. at 25-26). We see no reason to make Verizon responsible for the cost of conducting a field survey if the results are not what was hoped for by the CLECs. Verizon's compliance filing is in accord with the Phase 4-N Order. AT&T's and WorldCom's proposal is denied.

E. Miscellaneous

WorldCom asks several questions in its comments. First, WorldCom seeks confirmation that during the process of lighting a dark fiber after ordering service from Verizon, the CLEC will not lose rights to that fiber (WorldCom Comments at 2). Verizon does not reply. Our intent is that a CLEC is responsible for payments on a fiber and has rights to it once the order process confirms that the transaction is completed. We have addressed this and related issues at length in the Phase 4-N Order at 25-32.

WorldCom asks what the standard is for defining whether a request is "voluminous" or whether a project is "large" and "complex" under paragraph 1.4 of the service description (the section dealing with CLEC record requests) (WorldCom Comments at 2). Verizon does not reply. We find that such questions are best left to the parties' determination

under common commercial practices, subject to the dispute resolution provisions of the interconnection agreements.

With regard to the non-disclosure provisions of paragraph 1.5, WorldCom requests that there be a single blanket non-disclosure agreement applicable to all requests by the CLECs' entering into the agreement (WorldCom Comments at 2). Verizon does not reply. As above, we find that this issue is best left to the parties' determination under common commercial practices, subject to the dispute resolution provisions of the interconnection agreements. Here, as above, we find no need to modify the compliance filing to satisfy the requirements of the Phase 4-N Order.

IV. CONCLUSION

Accordingly, Verizon's cost study for dark fiber dated January 13, 2000 is approved. Verizon's service description for dark fiber, dated June 14, 2000, is denied. Verizon shall file a compliance filing incorporating directives from this Order 14 days from the date of this Order. In addition, Verizon shall update its Tariff No. 17 to reflect the service description in the compliance filing to be submitted 14 days from the date of this Order. Verizon is required to serve a copy of this compliance filing on the service list from D.T.E. 98-57.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That Verizon's cost study for dark fiber dated January 13, 2000 is hereby approved; and it is

FURTHER ORDERED: That Verizon's Compliance Filing dated June 14, 2000 is hereby denied; and it is

FURTHER ORDERED: That Verizon shall make a compliance filing 14 days from the date of this Order; and it is

FURTHER ORDERED: That Verizon comply with all directives herein.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

1. 47 U.S.C. § 252.

2.

AT&T argues that Verizon should make dark fiber available at splice points and at "hard termination" points, i.e., where one of the ends of the fiber is a termination point (AT&T Comments at 2).

3. The Phase 4-N Order addressed Verizon's cost study filed August 26, 1998, and service description filed February 20, 1998.