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

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, 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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ORDER ON VERIZON NEW ENGLAND, INC. d/b/a VERIZON MASSACHUSETTS' MOTION FOR RECONSIDERATION

- INTRODUCTION

On September 15, 2000, the Department of Telecommunications and Energy ("Department") issued its Order, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-S (2000) ("Phase 4-S Order"), on a compliance filing submitted by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") in response to the Department's orders setting forth the requirements for establishing the non-recurring charges ("NRCs") for certain unbundled network elements ("UNEs") that are provided to competitive local exchange carriers pursuant to the Telecommunications Act of 1996. On October 4, 2000, Verizon filed a Motion for Reconsideration of one issue -- field dispatch charges -- discussed in the Phase 4-S Order ("Motion for Reconsideration"). On October 19, 2000, WorldCom, Inc. ("WorldCom") and AT&T Communications of New England, Inc. ("AT&T") filed oppositions to Verizon's Motion for Reconsideration.

II. STANDARD OF REVIEW FOR RECONSIDERATION

The Department's procedural rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 588-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A

at 5 (1983).

III. FIELD DISPATCH CHARGE

Verizon seeks reconsideration of the Department's determination in Phase 4-S Order

at 7-8 that Verizon should remove the loop-related field dispatch charge for UNE-platform ("UNE-P") and UNE-L[(1)] orders from its terms and conditions of service (Motion for Reconsideration at 2). Verizon contends that the Department's findings on this issue were based on a mistake and inadvertent misreading of the record (id.). In particular, Verizon suggests that the Department's finding that "no mention of such a charge has been included in earlier submissions" by Verizon is contradicted by the record (id. at 2-3, quoting Phase 4-S Order at 8).

Verizon notes that the format and organization of the NRC study for field dispatch costs for loops has remained unchanged throughout the various phases of this proceeding (Motion for Reconsideration at 3). Verizon points to relevant pages from Verizon's original and revised NRC studies (id. at 3 and Apps. A-C). Verizon also points to submissions and transcript references to show that the cost elements were the subject of discovery and cross-examination by the parties in earlier phases of the case (id. at 3 and Apps. D, E).

AT&T argues that there is no merit to Verizon's claim (AT&T Opposition at 1). AT&T agrees that there have been a panoply of NRCs proposed for provisioning of loops, but that the NRC study never suggested that the UNE-P or UNE-L orders would, under some circumstances, be assessed an additional field dispatch charge (id. at 2). In fact, states AT&T, Verizon's witness, Mr. Anglin, expressly confirmed that the NRC study never indicated that UNE-L and UNE-P orders would be subject to a field dispatch charge (id. at 3). WorldCom states that even assuming for the sake of argument that Verizon is correct, that does not change the fact that the charges are improper (WorldCom Opposition at 1). WorldCom asserts that these costs are already recovered by Verizon's recurring charges (id.).

Upon review of the record, we find that we ruled in error. As cited by Verizon, it is clear from the evidence that the NRC study has always contained an element relating to dispatch costs for loops. As noted in the transcript, Verizon confirmed that this same cost would apply for a UNE loop by itself or a loop installed as part of a UNE-P combination

(Tr. 45, at 55-56). The testimony cited by AT&T in support of its position is admittedly confusing. We read it that Mr. Anglin was trying to distinguish between the inclusion of a cost element in the cost study and the description (not in the cost study) of how that charge would be applied (Tr. 45, at 54-55). With regard to WorldCom's arguments that Verizon's field dispatch charges are already recovered by Verizon's recurring charges, we have dealt with this general issue in the past and have made adjustments to proposed NRC charges where we have found evidence that there is a need to do so to avoid double-counting. See, e.g., D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-L at

48-49 (1999). There is no evidence of such in this case, and so that issue is not germane to the question of reconsideration.

IV. CONCLUSION

Therefore, Verizon's Motion for Reconsideration is granted and the proposed dispatch charge is approved as being in compliance with the Department's directives with regard to the design of the NRC study. On the billing issue, Verizon re-states that it intends to impose the dispatch charge only when dispatch is actually required. This is the correct application of such a charge.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That Verizon's Motion for Reconsideration dated October 4, 2000, is hereby GRANTED; and it is

FURTHER ORDERED: That Verizon's proposed field dispatch charge is hereby APPROVED.

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. Loop plus Network Interface Device ("NID").