COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Investigation by the Department on its own motion as to)

the propriety of the rates and charges set forth in the)

following tariffs: M.D.T.E. No. 17, filed with the) D.T.E. 98-57 - Phase I

the Department on October 5, 2000 by Verizon New)

England, Inc. d/b/a Verizon Massachusetts.)

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HEARING OFFICER RULING ON VERIZON MASSACHUSETTS'

MOTION TO AMEND PROCEDURAL SCHEDULE

I. BACKGROUND

On September 7, 2000, the Department of Telecommunications and Energy ("Department") issued an Order in D.T.E. 98-57 - Phase I ("Phase I Order"). The Phase I Order reviewed the various Compliance Filings filed by Verizon New England, Inc. d/b/a Verizon-Massachusetts(1) ("VZ-MA") as a result of the Department's original Order in this docket issued on March 24, 2000 ("Tariff No. 17 Order"), and directed VZ-MA to file, within four weeks, or by October 5, 2000, a Compliance Filing consistent with the findings contained in the Phase I Order. A procedural memorandum was issued on September 14, 2000 which set forth the schedule for the Department's review of VZ-MA's forthcoming Compliance Filing and of the remaining issues as outlined in the Phase I Order. On September 27, 2000, VZ-MA filed a Motion to Amend the Procedural Schedule ("Motion").(2) Rhythms Links, Inc. ("Rhythms") and AT&T Communications of New England, Inc. ("AT&T") filed their opposition to VZ-MA's Motion on October 6, 2000 and October 10, 2000, respectively. On October 17, 2000, a memorandum was issued to inform the parties that the procedural schedule issued on September 14, 2000 ("September 14 Schedule") would remain in effect until further notice. In accordance with the September 14 Schedule, Rhythms, AT&T and WorldCom, Inc. ("WorldCom") issued information requests to VZ-MA on October 20, 2000.

II. MOTION TO AMEND THE PROCEDURAL SCHEDULE

A. Standard of Review

The Department's procedural rule, 220 C.M.R. 1.06(6), authorizes the presiding officer to establish a detailed schedule for proceedings, including, but not limited to dates for the filing of information requests and responses, evidentiary hearings, and for the filing of testimony and briefs. In addition, 220 C.M.R. 1.06(6)

authorizes the presiding officer to address any procedural matters that will aid in the orderly disposition of the case.

B. Position of the Parties

1. VZ-MA

VZ-MA states that amendment of the September 14 Schedule is necessary to afford parties adequate time to conduct discovery, prepare testimony, and respond to record requests prior to briefing (Motion at 1). VZ-MA proposes four changes to the September 14 Schedule. First, VZ-MA proposes the elimination of VZ-MA's reply comments since VZ-MA can address parties' comments in its direct testimony (id. at 2). Second, VZ-MA proposes that discovery be allowed starting from the filing of VZ-MA's October 5th compliance filing (id.). Third, VZ-MA requests the opportunity to submit surrebuttal testimony to respond to arguments raised by intervenors in their rebuttal testimony (id.). Fourth, VZ-MA suggests incorporation of due dates for the filing of record request responses and reply briefs (id.). Furthermore, VZ-MA proposes a change to the hearing dates to eliminate a scheduling conflict for VZ-MA's counsel (id. at 1).

2. CLECs

Rhythms and AT&T oppose VZ-MA's Motion, arguing that VZ-MA's proposed schedule prejudices CLECs (AT&T Opposition at 2-3; Rhythms Opposition at 1). To begin, AT&T points out that VZ-MA misinterprets the purpose of the November 3, 20000 reply comments (AT&T Opposition at 1). Next, Rhythms and AT&T state that VZ-MA's proposed schedule collapses the interval for intervenors to file rebuttal testimony and thus does not provide sufficient time for intervenors to review the materials filed by VZ-MA (AT&T Opposition at 2-3; Rhythms Opposition at 2).

AT&T also requests that intervenors be provided with the opportunity to issue discovery on VZ-MA's pre-filed direct testimony (AT&T Opposition at 3-4). Rhythms concurs by incorporating a second round of discovery in its proposed schedule (Rhythms Opposition at 3). Finally, AT&T urges the Department to reject VZ-MA's request at this time to file surrebuttal testimony since, AT&T contends, VZ-MA uses the opportunity to file surrebuttal testimony as an opportunity to introduce new facts (AT&T Opposition at 3). If VZ-MA can establish a legitimate need for surrebuttal testimony and identify the specific issue it will address, AT&T suggests that the Department consider an adjustment to the schedule at that time (id.).

C. Analysis and Findings

As correctly noted by AT&T, the November 3, 2000 filing deadline for VZ-MA's reply comments pertains to VZ-MA's reply to intervenor comments on whether VZ-MA's revised tariffs, filed on October 5, 2000, complies with the Department's Phase I Order. Since no intervenor filed comments on any compliance issues, neither reply comments from VZ-MA nor a ruling on this issue is needed.

Second, Rhythms and AT&T's suggestion that discovery be permitted on VZ-MA's case, including direct testimony, is well taken. In fact, VZ-MA's proposed schedule anticipates such discovery. Accordingly, additional discovery will be permitted on a continuing basis through December 1, 2000. Responses to discovery must be filed with the Department and all parties, via e-mail and hard copy, within 10 calendar days from issuance.

Third, in proceedings before the Department, petitioners have been permitted to file rebuttal and surrebuttal testimony. Indeed, VZ-MA has been permitted to do so earlier in this docket. But the administrative rules only specifically provide for

prepared direct testimony at the presiding officer's discretion. See 220 C.M.R. 1.10(4). Nevertheless, pre-filed rebuttal and surrebuttal testimony serves a useful purpose in focusing issues for the evidentiary hearings. Thus, a deadline for the filing of VZ-MA surrebuttal testimony is incorporated into the revised procedural schedule at this time to avoid any the disruption and delay often associated with last minute scheduling adjustments. To respond to the concern raised by AT&T, the hearing officer emphasizes that surrebuttal testimony is not an opportunity to present facts for the first time in support of a position and cautions VZ-MA that inappropriate information included in surrebuttal may be stricken.

Last, due dates have been incorporated into the revised procedural schedule for record request responses and reply briefs. A revised procedural schedule is attached to this ruling.

III. RULING

Accordingly, after due consideration, the Hearing Officer hereby grants, in part, and denies, in part, the Motion to Amend the Procedural Schedule filed by Verizon New England, Inc. d/b/a Verizon Massachusetts. 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 November 9, 2000, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by November 16, 2000, at 5:00 p.m.

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Date Tina W. Chin, Hearing Officer

1. Formerly New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.

2. VZ-MA also filed a Motion for Partial Reconsideration and a Motion for Extension of the Judicial Appeal Period, which will be addressed in a subsequent Department Order.