

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

AT&T's Appeal of Ruling on Scope of Compliance Phase, With Respect to the Need for Investigation and Review of Verizon's Brand-New Alternative Hot Cut Proposal

Introduction.

AT&T hereby appeals from the "Hearing Officer Ruling on Scope of Compliance Issues" dated February 28, 2003, to the extent that it bars investigation of or introduction of evidence concerning Verizon's brand new proposal for an alternative hot cut process. In describing the scope of the upcoming technical sessions, the Hearing Officer stated that "there will be no further opportunity for presenting further evidence or relitigating issues" during the compliance phase of this proceeding. In addition, the Hearing Officer ruled for the first time that the proposed hot cut alternative process would be addressed at the technical session on May 6, which seems to indicate that the Hearing Officer intends to address the new hot cut alternative during this same compliance review process rather than in a separate investigation.

In sum, the Hearing Officer's ruling appears to preclude any opportunity for parties to conduct focused discovery, cross-examine a Verizon witness, and present rebuttal testimony

regarding Verizon's proposal for a new hot cut alternative. This is improper, and would violate G.L. c. 30A.

AT&T does not seek any protracted process. To the contrary, it looks forward to being able to avail itself of a new, more efficient hot cut process that best meets the objectives enumerated in the Department's February 12, 2003, letter order. But investigation is needed to ensure that the Department's directives are fully implemented, and that the final alternative hot cut process is properly priced in accord with TELRIC.

Argument.

Verizon's proposal for an alternative hot cut process is for a brand new process that relies upon systems and process improvements not previously considered by the Department. It has never been litigated, in any state, not even once. Quite simply, there is no evidentiary record upon which the Department can evaluate the proposed hot cut alternative or the rates that Verizon proposes to charge for it.

In order to evaluate the proposal, the Department will need to investigate the feasibility and adequacy of the proposed alternative process, the appropriate TELRIC pricing of that alternative, and the tariffed terms and conditions by which appropriate TELRIC rates would be applied. The current hot cut process was developed over time with substantial work and input by all affected parties. A streamlined, less costly hot cut alternative will require changes to a CLEC's internal processes, modifications to its systems, and changes to the way in which the CLEC interacts with Verizon, which need to be understood. Before the Department can determine whether the hot cut alternative proposed by Verizon should be adopted, and whether the NRCs and rate application proposed by Verizon are proper, the Department will need to conduct a factual investigation of the new proposal.

Though AT&T did not receive Verizon's full submission regarding its proposal for an alternative hot cut process until Thursday, February 27 – and AT&T is in the middle of trying to understand Verizon's voluminous compliance filing in preparation for the upcoming technical sessions – the need for factual investigation of Verizon's hot cut alternative proposal is apparent. For example, it will be necessary to understand the full capabilities of Verizon's new WPTS system – including not only how it streamlines communications between Verizon and CLECs, but also how it does the same for internal Verizon communications – and to determine whether those capabilities are fully taken into account in the proposed new hot cut process. It will also be necessary to understand whether there are other available process improvements – such as using MLT testing to do automated dial tone checks and cutover verifications, rather than doing such tasks manually with C.O. Frame technicians. In addition, Verizon's proposed non-recurring charges for this brand new process cannot be evaluated by the Department until other parties have had an opportunity to test whether those rates fully reflect the forward-looking cost savings available from a more streamlined approach to hot cuts, especially but not limited to the NRCs proposed for so-called “additional” hot cuts. Verizon's entire explanation for the NRCs it is proposing consists of a single paragraph on page 5 of the narrative explanation found in Book 1, Tab 3, Item 4 of Verizon's submission, which raises more questions than it answers.

Thus, proper investigation of Verizon's new proposal will require that CLECs be given an opportunity to conduct discovery, to cross-examine an appropriate Verizon witness on the record, to present rebuttal testimony on contested issues, and to brief the issues. That is the process that the Department, quite properly, has followed in the past when Verizon makes a tariff proposal that could result in substantial changes in how Verizon prices and conducts its

wholesale business. The same process is needed to evaluate a brand new alternative to the current hot cut process.

Conclusion.

For these reasons, AT&T respectfully urges the Department to reverse the Hearing Officer's ruling to the extent that it requires that Verizon's proposal for an alternative hot cut process be evaluated in the current compliance process with only an opportunity for written comments by other parties. It would be unfair, and indeed unlawful, for the Department to take any action on this proposal without first conducting a factual investigation of it, and basing its decision on record evidence developed through an appropriately focused adjudicatory process.

Respectfully submitted,

Jeffrey F. Jones
Kenneth W. Salinger
PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02199-7613
(617) 239-0561

Jay E. Gruber
AT&T Communications of New England, Inc.
99 Bedford Street
Boston, MA
(617-574-3149

March 3, 2003.