

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*

Docket No. 04-33

**MOTION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.¹
FOR RECONSIDERATION OF SCHEDULE IN DECEMBER 15, 2004
DEPARTMENT ORDER**

On December 15, 2004, the Federal Communications Commission (“FCC”) announced new rules governing the unbundling of network elements by incumbent local exchange carriers (“ILECs”) like Verizon. According to the FCC’s press release, questions regarding the availability of UNEs important to AT&T may be factually intensive and require additional discovery and testimony in this proceeding. In total, the new rules, which have not yet been published by the FCC, will affect numerous issues likely to arise in this proceeding.

On the same day, December 15, 2004, the Department of Telecommunications and Energy (“Department” or “DTE”) issued a decision in this docket ruling, *inter alia*, that a schedule be established requiring, among other things, negotiations to begin on December 27, 2004, a procedural conference to be held on January 5, 2005, and a joint stipulation of disputed issues to be filed on February 15, 2005. Based on the December 15 decision, it

¹ AT&T Communications of New England, Inc. files these comments on behalf of itself and all other AT&T entities in Massachusetts, including Teleport Communications – Boston (“TCG”) and ACC National Telecom Corp. (“ACC”).

does not appear that the Department had the opportunity to take into account the issuance of the FCC's press release on the same day announcing new rules governing UNEs.

AT&T respectfully moves that the schedule for this proceeding commence on the date the FCC releases its decision providing the details for its new unbundling rules. The FCC's press release provides some information regarding the new rules, but little specificity. Nevertheless, it provides some comfort, though no certainty, that the details will be issued within a reasonable timeframe. It makes little sense to establish a schedule for negotiating and arbitrating issues when many of the issues that will be presented in the arbitration are subject to specific rules that have not yet been made public. Moreover, although it is reasonable to assume that the rules will be issued within the next couple of months, we do not know precisely when that will occur. For this reason, it makes more sense for the Department to establish a schedule after the FCC's new rules are actually issued. AT&T therefore moves that the Department reconsider its decision regarding the schedule in this case and establish a schedule similar to the one issued, but commencing from the date that the FCC issues its new rules.² Specifically, AT&T proposes:

Day 0	FCC rules issued
Day 7	Negotiations begin
Day 15	Procedural conference
Day 36	Negotiation ends.
Day 56	Joint Stipulation of Disputed Issues due. Resumption of Section 252 arbitration "clock" as the 135 th day.

² AT&T files this motion for reconsideration of the schedule without waiving its right to seek reconsideration of other, substantive aspects of the Department's December 15 Order in this docket. AT&T files this motion separately and more quickly because it relates to the schedule for the proceeding, which requires quicker resolution in order to be relevant.

AT&T further requests that the Department's order delegate to the Hearing Officer authority to establish a schedule consistent with the above and subject to change as events may require. In that way, the Department would not be required to issue an order of the Commissioners amending a prior order of the Commissioners.

Argument

I. THE FCC HAS ANNOUNCED NEW RULES THAT WILL AFFECT THE ISSUES BEING ARBITRATED IN THIS PROCEEDING.

On December 15, 2004, the FCC announced its decision to establish permanent federal unbundling rules. (*See* Exhibit A, "FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers", FCC News Release, December 15, 2004 ("Press Release")). The FCC's Press Release is not a formal ruling and has no binding effect. The Press Release also is very brief and does not state many of the specific details of the FCC's decisions.

Nevertheless, the Press Release makes clear that Verizon will continue to have federal obligations to provide unbundled access to DS1 and DS3 enterprise loops and transport, based on wire center-specific data concerning the number of business lines and the number of fiber-based collocators in the Verizon wire centers.

As noted above, however, the Press Release did not include all of the details of the FCC's decision. In particular, both the criteria necessary to determine the areas where unbundled enterprise loops and transport will be available as UNEs and the data to which those criteria will be applied are not fully known. Moreover, the specifics of the unbundling criteria will not be available until the FCC's order is released.

The FCC's Press Release also indicates that the definition of "qualifying services", a concept that was announced in the *Triennial Review Order*³ but vacated in *USTA II*,⁴ has been "set aside." Other than a statement that the FCC's decision will prohibit the use of UNEs for the provision of telecommunications services in the mobile wireless and long distance markets, however, the Press Release provides no further details on what "set aside" means. Thus, the parties must await the FCC's Order to determine what, if any, use restrictions may apply to EELs combinations or to various commingled uses of UNEs and tariffed services.

The FCC's Press Release also identifies a different "transitional structure" than that provided for in the Interim Rules for CLECs using UNEs that Verizon may no longer be obligated to provide under federal law, including unbundled switching. The Press Release states there will be a transition period of at least twelve months, depending on the UNE, and identifies specific price increases that may be applied during that period, and states that the transition plan applies to the CLECs' embedded customer base. Many of the details of this transitional structure, however, remain unclear (*e.g.* what transition period applies to which UNEs; may a CLEC continue to add circuits and UNE-based services for existing customers during the transition).

Finally, the FCC's Press Release did not address a number of subjects on which the FCC sought comments in its August 20, 2004 Notice of Proposed Rulemaking, including

³ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Capability* (CC Docket No. 98-147), FCC No. 03-036, (rel. Aug. 21, 2003) (the "*Triennial Review Order*").

⁴ *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

requirements for cut-overs (*i.e.*, hot cuts) (*Order and NPRM*, ¶ 10);⁵ the FCC's view of the authority of state commissions to require unbundling under state law and to establish just and reasonable rates for network elements required to be offered pursuant to Section 271 (*Id.* at ¶ 12); and requirements for the state filing and approval of commercial agreements (*Id.* at ¶ 13). All of these issues, together with issues concerning enterprise loops, dedicated transport, qualifying services, and the transition period are likely issues in this proceeding and can only be efficiently and effectively addressed after the parties have had an opportunity to review the FCC's Order.

II. THE NEW SCHEDULE PROPOSED BY AT&T PROVIDES FOR PROMPT AND ORDERLY COMPLETION OF THE ARBITRATION PROCESS ONCE THE FCC'S NEW RULES ARE KNOWN.

The schedule AT&T proposes to address the FCC's new rules provides the flexibility required to manage an arbitration subject to ever changing rules. AT&T seeks to preserve the Department's intent when it established the schedule by providing for the same activities and approximately the same intervals as those initially ordered by the Department.

However, the schedule proposed by AT&T does not require parties to initiate a process under one set of rules, only to find that the rules have changed part of the way through the process.

It should also be noted that AT&T's proposed schedule is an aggressive schedule because it is keyed off of the date that the FCC's new rules are *issued*, not the date they become effective or even the date they are published in the Federal Register. Generally, the effective date of the FCC's rules is some time after they have been published in the Federal Register.

⁵ Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), FCC No. 04-179, (rel. Aug. 20, 2004) (the "*Order and NPRM*").

AT&T's proposed method for establishing the schedule also provides appropriate flexibility to amend the schedule as circumstances warrant. If the schedule is established by Hearing Officer ruling, it would not require an order from the Commissioners to revise it if future events merit a change in the schedule.

Conclusion

For the foregoing reasons, AT&T moves that the Department establish a schedule with sufficient flexibility to allow for the issuance of new FCC rules and any subsequent developments that may occur, all as set forth above.

Respectfully Submitted,

**AT&T COMMUNICATIONS OF NEW
ENGLAND, INC.**

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