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

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.'S RESPONSE TO THE MOTIONS TO DISMISS FILED BY THE CLEC COALITION AND SPRINT

Introduction

AT&T Communications of New England, Inc. ("AT&T")[1] responds to the motions to dismiss filed by the Competitive Carrier Coalition (the "Coalition") and Sprint on March 16, 2004 and March 15, 2004, respectively. In their motions, both the Coalition and Sprint argue that Verizon has failed to comply with the procedural requirements of 42 U.S.C. § 252 and, as a result, its petition for arbitration of its proposed amendment to its interconnection agreement must be dismissed. The Coalition also argues that the petition is premature because there has been no "change of law" effectuated by a final and "non-appealable" order.

[1] AT&T's current affiliates Teleport Communications Group ("TCG") and ACC National Telecom Corp. ("ACC") have previously negotiated interconnection agreements with Verizon and are therefore also parties to this proceeding. Collectively, AT&T, TCG, and ACC are referred to herein as "AT&T."

AT&T takes no position as to whether Verizon has complied with Section 252's pre-arbitration procedural requirements with respect to other CLECs. AT&T does agree with the Coalition that the Bell Atlantic/GTE merger conditions prohibit Verizon from amending the ICAs to discontinue any UNEs or combinations. However, certain issues presented in Verizon's petition for arbitration are ripe with respect to AT&T. Further, in AT&T's view, the *Triennial Review Order ("TRO")* does represent a change of law that requires amendment of AT&T's interconnection agreement with Verizon in certain respects.[2] As a result, AT&T respectfully requests that the Department conduct an arbitration proceeding between AT&T and Verizon concerning the ripe issues contained in Verizon's proposed *TRO* Amendment to their interconnection agreement.[3]

Verizon's Petition for Arbitration with AT&T Should Proceed

I. VERIZON AND AT&T HAVE MET SECTION 252'S REQUIREMENTS.

The Department has jurisdiction over Verizon's petition pursuant to the *TRO* and 47 U.S.C. § 252(b)(1). The *TRO* requires that parties follow the procedures set out in Section 252 when amending interconnection agreements to reflect the TRO. In practice, Section 252 requires the parties to move quickly and often to initiate arbitration while their good faith negotiations are continuing. Under Section 252(b)(1), the request for arbitration may be made at any time during the period from the 135th to the 160th day (inclusive) after the date on which a request for

[2] What is premature is Verizon's attempt in several states to amend its petition for arbitration based on the decision in *United States Telecom Association v. FCC*, No. 00-1012 (D.C.Cir. March 2, 2004) (*USTA II*). Since that decision has not yet taken effect, but rather is stayed by its own terms, it cannot constitute a change of law. In its Response to Verizon's Petition, AT&T explained in some detail why *USTA II* does not effect this arbitration.

[3] AT&T believes it would be helpful, after resolution of the motions to dismiss, for the parties to file a statement of issues, identifying the issues that are ripe for review and indicating which issues require resolution of fact questions (and thus the taking of testimony) and which are issues of law (requiring only briefing by the parties).

negotiation is made under Section 251 of the Act. The open issues must be resolved no later than nine months after the request for negotiations. 47 U.S.C. §252(b)(4)(C).

AT&T and Verizon followed the Section 252 procedure prior to the initiation of arbitration. On October 2, 2003, Verizon posted a proposed amendment to all of its interconnection agreements on its website (Verizon's "proposed *TRO* Amendment") and it simultaneously sent a letter to AT&T seeking negotiation of the proposed TRO Amendment. AT&T timely responded to Verizon's proposed changes by letter dated October 14, 2003. That letter detailed AT&T's significant concerns with Verizon's proposal and suggested negotiation. A month later, on November 7, 2003, Verizon requested that AT&T provide a redline version showing all of its proposed changes to the Verizon proposed TRO Amendment. AT&T agreed to undertake that detailed process and provided Verizon with a redline of Verizon's proposed amendment on February 6, 2004. AT&T and Verizon have had subsequent phone conversations and continue to discuss the negotiation of the issues presented by Verizon's petition. Verizon timely filed its petition for arbitration on February 20, 2004 (within Section 252's window between the 135th and 160th day), and AT&T received a copy from Verizon. AT&T timely filed its response on March 16, 2004. The petition and response set forth the positions of the parties and identify the issues needing resolution. Thus, with respect to AT&T, Verizon's petition does not suffer from any of the defects identified by the Coalition and Sprint.

II. THE VERIZON PETITION IS NOT PREMATURE

The Coalition argues that Verizon's legal duty to offer UNEs has not yet been modified by the *TRO* because it is not a "final and non-appealable" order and therefore the petition is

premature.[4] AT&T agrees with the Coalition that Verizon's duty to offer UNEs is affected by the Bell Atlantic/GTE merger conditions and Verizon cannot amend its ICA with AT&T to discontinue any available UNEs or combinations. However, that does not make this arbitration moot because there are several issues presented in the TRO amendment which do not involve Verizon's discontinuation of UNEs or combinations. Those issues are ripe for arbitration.

III. AT&T WILL BE HARMED BY A DISMISSAL OF THE PETITION

Many of the issues that are ripe for arbitration concern requirements of the *TRO* (and prior law) that Verizon has wrongfully refused to implement. AT&T will suffer significant harm if the petition is dismissed because Verizon's failure to abide by the *TRO* is costing AT&T millions of dollars in overcharges. For example, the *TRO* (consistent with prior FCC orders) requires Verizon to provide Enhanced Extended Links or "EELs" upon the *TRO's* effective date, and to permit CLECs to order new circuits as EELs or to convert existing special access circuits to EELs, so long as the requesting CLEC meets certain criteria.[5] AT&T has met the required criteria yet Verizon has, unlawfully, refused to provide EELs and instead is forcing AT&T to pay special access fees. AT&T seeks in the arbitration (1) a contractual mandate that Verizon provide EELs, consistent with its obligation to do so under portions of the *TRO* that would not be affected by the D.C. Circuit's decision in *USTA II* even if it someday took effect, and (2) a remittance by Verizon of the excess fees AT&T has paid since the *TRO's* effective date as a result of Verizon's wrongful failure to provide EELs. Thus, AT&T is eager to commence the arbitration to resolve this and other issues that are ripe for review.

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4 Coalition Motion to Dismiss, pp. 2-3.

5 *TRO*, ¶ 579.

Conclusion

AT&T respectfully requests the Department to proceed with an arbitration between Verizon and AT&T concerning Verizon's proposed TRO amendment.

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