D.T.E. 03-60-A March 31, 2006

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers

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ORDER ON VERIZON MASSACHUSETTS' HOT CUT PROCESSES

APPEARANCES: Bruce P. Beausejour, Esq.
Victor Del Vecchio, Esq.
Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, MA 02110
FOR: VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS
Intervenor

Jay E. Gruber, Esq.
AT&T Communications of New England, Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111

-and-

Jeffrey J. Jones, Esq.
Kenneth W. Salinger, Esq.
Palmer & Dodge, LLP
111 Huntington Avenue
Boston, MA 02199
FOR: AT&T COMMUNICATIONS OF NEW ENGLAND, INC.
Intervenor

Robert J. Munnelly, Jr., Esq.
Murtha Cullina LLP
99 High Street – 20th Floor
Boston, MA 02110
FOR: DSCI CORPORATION
Intervenor

Steven A. Augustino, Esq.
Andrew M. Klein, Esq.
Kelley Drye & Warren
1200 19th Street, Suite 500
Washington, DC 20036
FOR: BRIDGECOM INTERNATIONAL, INC.;
BROADVIEW NETWORKS, INC.;
CHOICE ONE COMMUNICATIONS OF MASSACHUSETTS, INC.;
FOCAL COMMUNICATIONS CORPORATION OF MASSACHUSETTS;
XO MASSACHUSETTS, INC.
Intervenors

Genevieve Morelli, Esq.
Michael B. Hazzard, Esq.
Kelley Drye & Warren
1200 Nineteenth Street, Suite 500
Washington, DC 20036
FOR: BROADVIEW NETWORKS, INC.;
BULLSEYE TELECOM, INC.;
INFOHIGHWAY COMMUNICATIONS CORPORATION;
MCGRAW COMMUNICATIONS, INC.;
METTEL;
TALK AMERICA, INC.
Intervenors

Mark A. Stachiw, Esq.
Jeffrey J. Binder, Esq.
Allegiance Telecom, Inc.
9201 Central Expressway
Dallas, TX 75231
FOR: ALLEGIANCE TELECOM, INC.
Intervenor

Robert A. Ganton, Esq.
U.S. Army Legal Service Agency
901 N. Stuart Street, Suite 525
Arlington, VA 22203-1837

-and-

Harry Gildea, Esq.
Snavely, King, Majoros, O'Connor & Lee
1220 L. Street, NW, Suite 410
Washington, DC 20005
FOR: UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL AGENCIES
Intervenor

Jason Spinnard, Esq.
Granite Telecommunications, LLC
234 Copeland Street
Quincy, MA 02169
FOR: GRANITE TELECOMMUNICATIONS, LLC
Intervenor

Anthony Hansel, Esq.
Covad Communications Company
600 14th Street, NW
Suite 750
Washington, DC 20005
FOR: COVAD COMMUNICATIONS COMPANY
Intervenor

Patrick J. Donovan, Esq.
Philip J. Macres, Esq.
Swidler Berlin Shereff Freidman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
FOR: LIGHTSHIP TELECOM, LLC
Intervenor

Schula Hobbs
DSLnet Communications, LLC
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511

-and-

Richard M. Rindler, Esq.
Paul B. Hudson, Esq.
Swidler Berlin Shereff Friedman LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
FOR: DSLNET COMMUNICATIONS, LLC
Intervenor

Joseph O. Kahl
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540

-and-

Patrick J. Donovan, Esq.
Philip J. Macres, Esq.
Swidler Berlin Shereff Freidman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
FOR: RCN-BECOCOM, LLC
Intervenor

Craig D. Dingwall, Esq.
Director/General Attorney, State Regulatory
Sprint Corporation
401 9th Street, NW, Suite 400
Washington, DC 20004
FOR: SPRINT CORPORATION
Intervenor

Richard C. Fipphen, Esq.
MCI
100 Park Avenue, 13th Floor
New York, NY 10017
FOR: MCI
Intervenor

Thomas F. Reilly
Attorney General of the Commonwealth of Massachusetts
By: Karlen J. Reed, Esq.
Assistant Attorney General
Utilities Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114
Intervenor

Scott Sawyer, Esq.
Vice President of Regulatory Affairs & Counsel
Conversent Communications of Massachusetts, LLC
222 Richmond Street, Suite 301
Providence, RI 02903
FOR: CONVERSENT COMMUNICATIONS OF MASSACHUSETTS, LLC
Intervenor

Douglas Denny-Brown, Esq.
General Counsel and V.P. Regulatory Affairs
RNK, Inc. d/b/a RNK Telecom
333 Elm Street
Dedham, MA 02026
FOR: RNK, INC. D/B/A RNK TELECOM
Intervenor

Eric Krathwolh, Esq.
Rich May
176 Federal Street
Boston, MA 02110
FOR: UNITED SYSTEMS ACCESS TELECOM, INC.
Intervenor

Lawrence G. Malone, Esq.
Steven Buhr, Esq.
Couch White, LLP
540 Broadway, P.O. Box 22222
Albany, NY 12201

-and-

Tom Koutsky, Esq.
Peggy Rubino, Esq.
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd.
Tampa, FL 33602
FOR: Z-TEL COMMUNICATIONS, INC.
Intervenor

Eric Nelsen, Esq.
Huber Lawrence & Abell
605 Third Avenue, 27th Floor
New York, NY 10158
FOR: RICHMOND CONNECTIONS, INC. D/B/A RICHMOND NETWORX
Intervenor

James Norton, Esq.
Paven & Norton
15 Foster Street
Quincy, MA 02169
phone (617) 847-1719
FOR: COMMUNICATIONS WORKERS OF AMERICA, DISTRICT 1
Limited Participant

ORDER ON VERIZON MASSACHUSETTS' HOT CUT PROCESSES

I. INTRODUCTION

As part of this proceeding, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") proposed batch and large job hot cut processes[1] in response to requirements contained in the Federal Communications Commission's ("FCC's") Triennial Review Order.[2] Also as part of this proceeding, the Massachusetts Department of Telecommunications and Energy ("Department") instructed Verizon to propose a Wholesale Provisioning Tracking System ("WPTS") process for individual hot cuts to be included in the Department's hot cuts investigation.[3] In Consolidated Order, D.T.E. 03-60/04-73, at 36 (December 15, 2004), the Department closed its investigation of Verizon's batch and large job hot cut processes, finding that the D.C. Circuit Court's decision in USTA II eliminated Verizon's obligation to submit

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1 A hot cut is the process whereby Verizon disconnects the customer's loop from Verizon's switch and rewires it to a competitive local exchange carrier's ("CLEC's") collocated equiment.

2 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 Act of 1996, CC Docket No.98-96; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 01-36 (rel. August 21, 2003) ("Triennial Review Order"), vacated in part and remanded in part, United States Telecom Ass'n v. Federal Communications Comm'n, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II").

3 See D.T.E. 03-60, Hearing Officer Memorandum at 2 (Nov. 24, 2003). WPTS is an automated system used by Verizon to deliver information to CLECs relating to the status of hot cut orders. WPTS also receives information from CLECs regarding hot cut orders and retrieves information from other Verizon systems. For basic hot cuts, Verizon employs a WPTS-based process as an alternative to its manual hot cut process.

batch and large job hot cut proposals under the Triennial Review Order. However, given both Verizon's and AT&T Communications of New England, Inc's ("AT&T's") recommendations that the Department adopt for use in Massachusetts the processes and rates for batch and large job hot cuts developed by the New York Public Service Commission ("NYPSC"),[4] the Department agreed to investigate the possibility further. D.T.E. 03-60/04-73, at 36. To that end, the Department requested that all interested carriers confer and propose a joint recommendation regarding the Department's adoption for use in Massachusetts of the NYPSC's August 2004 order approving permanent rates for batch and large job hot cuts. The Department also indicated that it would continue to investigate Verizon's proposed WPTS basic hot cut process given that Verizon's obligation to provide hot cuts using WPTS was independent from any obligations arising under the Triennial Review Order. D.T.E. 03-60/04-73, at 35.[5]

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[4] See Proceeding on Motion of the Commission to Examine the Process and Related Costs of Performing Loop Migrations on a More Streamlined (*e.g.*, Bulk) Basis, Case 02-C-1425, Order Setting Permanent Hot Cut Rates (N.Y.P.S.C. August 25, 2004).

[5] Verizon first proposed its WPTS process as part of the Department's UNE Rates Proceeding, D.T.E. 01-20. In expectation of the imminent release of the FCC's Triennial Review Order, which would include additional guidance to state commissions on hot cut issues, the Department deferred review of Verizon's WPTS process to D.T.E. 03-60. See UNE Rates Proceeding, D.T.E. 01-20, at 3 n.4, Letter Order on Conversent Communications' Motion for Reconsideration (August 6, 2003); D.T.E. 01-20, Hearing Officer Notice (March 4, 2003). The Department also determined that until its review of WPTS was completed, Verizon was precluded from charging the new rates the Department approved in D.T.E. 01-20 for Verizon's non-WPTS basic hot cuts. D.T.E. 01-20-Part A-A at 146, Order on Reconsideration (January 14, 2003).

On January 21, 2005, the NYPSC issued an order which, inter alia, clarified that the basic hot cut rates approved in the NYPSC's August 2004 order included Verizon hot cuts using WPTS.[6] On February 4, 2005, Verizon filed with the Department a recommendation that the Department allow Verizon to make batch and large job hot cut processes available to CLECs in Massachusetts on the same basis and at the same rates as in New York upon request by a CLEC and execution of an amendment to the CLEC's interconnection agreement ("ICA").[7] On February 24, 2005, Verizon filed with the Department a description of its proposed WPTS offering.[8] As with batch and large job hot cuts, Verizon offered to charge CLECs in Massachusetts the same rates for hot cuts using WPTS as the rates approved by the NYPSC in its August 2004 order "[t]o save the Department and all parties from expending resources to litigate rates."[9] Also as with batch and large job hot cuts, Verizon proposed to provide hot cuts using WPTS to CLECs in Massachusetts upon CLEC request and execution of an ICA amendment.[10]

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6 The NYPSC also clarified that Verizon could provide a non-WPTS hot cut process at a non-WPTS rate. Proceeding on Motion of the Commission to Examine the Process and Related Costs of Performing Loop Migrations on a More Streamlined (*e.g.*, Bulk) Basis, Case 02-C-1425, at 46-47, Order on Rehearing (N.Y.P.S.C. January 21, 2005).

7 Letter from Bruce P. Beausejour, Verizon, to Mary L. Cottrell, Secretary, D.T.E. 03-60/04-73 (February 4, 2005).

8 Letter from Bruce P. Beausejour, Verizon, to Mary L. Cottrell, Secretary, D.T.E. 03-60/04-73 (February 24, 2005).

9 Id. at 2.

10 Id.

On March 11, 2005, the Department requested comments on Verizon's proposals. On April 5, 2005, AT&T, Conversent Communications ("Conversent"), Covad Communications Company ("Covad"), and MCI filed comments. On April 19, 2005, Verizon filed reply comments.

II. POSITIONS OF THE PARTIES

A. CLECs

AT&T states that it does not oppose Verizon's proposal to make hot cuts available in Massachusetts on the same terms as in New York, but suggests that there is some ambiguity in Verizon's New York tariff regarding the application of Verizon's Integrated Digital Loop Carrier ("IDLC") Copper surcharge and additional dispatch charge (AT&T Comments at 1). Conversent similarly seeks clarification of the proposed IDLC-Copper surcharge (Conversent Comments at 2).

Conversent would accept Verizon's proposal, provided that Massachusetts hot cut rates are calculated using Massachusetts labor rates, which Conversent contends should reduce the New York rates between twelve to 22 percent (id. at 1). MCI does not oppose the availability of the new hot cuts processes in Massachusetts, as long as the New York rates are put into effect on an interim basis, with the understanding that they will be included in Verizon's next TELRIC cost proceeding[11] (MCI Comments at 1-2). MCI claims that the New York rates are

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[11] TELRIC is Total Element Long-Run Incremental Cost, a cost-based calculation for setting the price of unbundled network elements ("UNEs") required by the FCC. See Verizon Communications, Inc. v. Federal Communications Comm'n, 535 U.S. 467 (2002).

not TELRIC-compliant and should not be adopted by the Department on a permanent basis (id. at 1).

Covad also agrees that the hot cut processes approved by the NYPSC are appropriate for use in Massachusetts, provided that the Department clarifies that the hot cut processes apply equally to voice and data loops, and that the hot cut processes should be updated and tariffed (Covad Comments at 1). Covad argues that hot cut processes should be tariffed in Massachusetts, as in New York, because Verizon intends to charge carriers for hot cuts, and Massachusetts law requires all rates to be tariffed (id. at 2). Covad also argues that there is no basis for Verizon's proposal that CLECs must "execute an appropriate [ICA] amendment" as a precondition to taking advantage of the new hot cut processes (id.). Covad claims that because these processes and rate changes are uncontested, they are appropriately implemented through tariffs (id.). Finally, Covad urges the Department to prevent discrimination between users of loops for voice and data, and require Verizon to migrate xDSL loops being used to provide a voice service, as well as line sharing, line splitting, and loop sharing arrangements, using the same processes and at the same rates for voice loops (id. at 3). Covad notes that issues related to xDSL loops are undergoing evaluation in the Verizon-CLEC Change Management process (id. at 4). Covad states that the existence of a migration process for stand-alone xDSL loops is necessary to accommodate new and evolving competitive technologies such as Voice over Internet Protocol ("VoIP") (id.).

B. Verizon

Verizon responds by clarifying that it intends to apply the IDLC-Copper surcharge only in situations in which a CLEC orders a hot cut from a loop provisioned on IDLC and the CLEC specifically requests that it be migrated to an all-copper loop facility, or any type of loop facility that is available only on copper, instead of a Universal Digital Loop Carrier ("UDLC") facility (Verizon Reply Comments at 1). Verizon states that if it must migrate an IDLC loop to another facility and the CLEC is indifferent as to whether it is provisioned on copper or UDLC, no surcharge applies; however, if the CLEC specifically requests that it be provisioned on a copper loop, the surcharge applies (id. at 1-2).

Verizon argues that Conversent's proposal to use the lower, Massachusetts-specific labor rates ignores other inputs that would provide an offsetting charge (id. at 2). Verizon claims that if it were to file a cost analysis for Massachusetts, it would propose substantially higher rates than those adopted in New York (id.). Verizon states that its proposal to use rates approved by the NYPSC is a "compromise position" intended to make the hot cut options available now without the need for protracted litigation (id.). Verizon responds to MCI's argument regarding permanent rates by agreeing that it will file Massachusetts-specific rates in its next TELRIC cost filing and will apply the New York rates only until the Department approves new rates for use in Massachusetts (id.).

In response to Covad's comments, Verizon counters that its proposal is not discriminatory as Covad alleges (id.). Verizon states that the migration of xDSL loops is being addressed in the New York Carrier Working Group and Verizon's Change Management

process (id. at 3). Verizon argues that there is no reason for the Department to take any action while the issues are being addressed in the industry collaboratives (id.). Finally, Verizon argues that while in the past it has tariffed UNEs required by the FCC under § 251 of the Telecommunications Act pursuant to Department directives, courts have found that state tariffing requirements are preempted because they "interfere with the procedures established by the federal act" (id., citing Wisconsin Bell, Inc. v. Bie, 340 F.3d 441, 444 (7th Cir. 2003); Verizon North, Inc. v. Strand, 367 F.3d 577 (6th Cir. 2004); Verizon North, Inc. v. Strand, 309 F.3d 935 (6th Cir. 2002); Illinois Bell Telephone Company, Inc. v. Wright, 2004 U.S. District LEXIS 16757 (US Dist. Ct., N.D. Ill. 2004)). Instead, Verizon argues that the Department need not take action unless the Department is asked by a carrier to arbitrate a dispute in accordance with § 252 of the Telecommunications Act (id. at 4).

III. ANALYSIS AND FINDINGS

A. Introduction

As noted above, in D.T.E. 03-60/04-73, at 35-36, the Department requested that the parties present a joint recommendation regarding the Department's adoption of the NYPSC's August 2004 determinations regarding the rates and processes for batch and large job hot cuts, and indicated that the Department would continue its independent investigation of Verizon's WPTS proposal. In response, Verizon submitted a proposal that it would offer the NYPSC-approved rates and processes for batch, large job, and WPTS hot cuts in Massachusetts, subject to the following conditions: (1) the processes and rates for batch, large job and WPTS hot cuts would be made available to CLECs only through amendments to interconnection

agreements and not tariffs; and (2) there would be no litigation by the Department of hot cuts rates in Massachusetts until Verizon's next TELRIC proceeding (see Verizon Reply Comments at 2, 3-4). While the CLECs are in favor of Verizon making batch, large job, and WPTS hot cut processes available in Massachusetts, they object in part to the conditions Verizon seeks to place on their availability in Massachusetts, as well as raise certain additional issues regarding the rates, terms, and conditions of the three proposed hot cut processes. As discussed below, we agree in part with Verizon's proposal.

B. Adoption of the NYPSC-Approved Hot Cut Processes

In the Triennial Review Remand Order[12] at ¶ 210, the FCC reversed its prior finding of impairment for mass market local switching because newly developed batch and large job hot cut processes significantly addressed the difficulties in then-existing hot cut procedures.[13] The FCC found that these new hot cut procedures sufficiently responded to the concerns it expressed in the Triennial Review Order, specifically noting the Verizon hot cut processes approved by the NYPSC in August 2004. Id. at ¶¶ 211 & n.569, 213 & n.572, 214. In addition, in Consolidated Order, D.T.E. 03-60/04-73, at 36, when discussing its hot cuts

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[12] 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; Order on Remand, FCC 04-290 (rel. February 4, 2005) ("Triennial Review Remand Order").

[13] In the Triennial Review Order at ¶¶ 466-69, the FCC found that then-existing hot cut procedures gave rise to operational impairment due to the disruption in end-users' service and the inability of the processes to handle the necessary volume of hot cuts. The FCC also found that economic impairment arose from the non-recurring costs paid by CLECs to have hot cuts performed. Id. at ¶¶ 470-71.

investigation, the Department noted that carriers can benefit from regulatory requirements that are similar in neighboring states.[14] Moreover, although the parties did not submit a joint proposal on adoption of the NYPSC hot cut rates and processes, evaluation of the CLECs' individually-filed comments shows that they uniformly concur that the NYPSC determinations, at a minimum, provide a good starting point for the Department's consideration.[15]

Given the above, we determine that adoption in Massachusetts of the NYPSC determinations regarding the processes for Verizon's batch, large job, and WPTS hot cuts will be beneficial to Massachusetts carriers and will result in increased efficiencies. Our adoption of the NYPSC-approved hot cut processes is consistent with the FCC's determinations in the Triennial Review Remand Order, our prior practice, and, in most part, the recommendations of the parties themselves. Therefore, Verizon shall make available to CLECs in Massachusetts the NYPSC-approved hot cut processes in the manner we detail in the following sections.

C. Rate Issues

In adopting for use in Massachusetts the NYPSC-approved processes for batch, large job, and WPTS hot cuts, we note that both Conversent and MCI have raised concerns regarding the rates for these processes established by the NYPSC. For example, Conversent

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[14] In the past, the Department has, on occasion, found it reasonable to adopt other state commissions' initiatives, notably the Mass Migration Guidelines and Verizon's Performance Assurance Plan, both originally developed by the NYPSC. See Mass Migration Guidelines, D.T.E. 02-28 (August 7, 2002); Verizon § 271 Application, D.T.E. 99-271, Order Adopting Performance Assurance Plan (September 5, 2000).

[15] See AT&T Comments at 1; Conversent Comments at 1; MCI Comments at 2; Covad Comments at 1.

argues that Massachusetts labor rates should be used in the rate calculation for hot cuts, rather than New York labor rates. While we agree that, ideally, Massachusetts-specific costs should be used for all of the inputs used to calculate Massachusetts wholesale rates, here, in an effort to streamline and coordinate the availability of hot cut processes between two neighboring jurisdictions, we conclude that the use of the labor rates included in the NYPSC determination is reasonable. We agree with Verizon that it would be illogical to alter the labor rate input, without taking into account other inputs that would have an offsetting effect. Further, as Verizon submits, there are correlations between the New York hot cut processes and the proposed Massachusetts hot cut processes which support direct application of the NYPSC rates in Massachusetts. For example, Verizon states that Massachusetts labor rates were used for a number of hot cut related activities in the NYPSC cost study because the Verizon work groups performing those activities are located in Massachusetts (Verizon Reply Comments at 2).[16] In addition, the New York rates were subject to extensive litigation and the application of the NYPSC-approved rates in Massachusetts will obviate the need for costly and time-consuming litigation in Massachusetts on the same issues.[17] Turning to MCI's request that the hot cut

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[16] We distinguish Verizon California, Inc. v. Peevey, No. C03-2838 (N.D. Ca. December 5, 2005) on this basis. In Verizon California, the Court determined that the interim UNE rates established by the California Public Utility Commission were not TELRIC-compliant because they did not contain any California-specific costs, rather they were based on New Jersey UNE rates adjusted using the FCC's Synthesis Model. Slip op. at 10. Here, we are approving UNE rates which include Massachusetts-specific components and therefore do not run afoul of any potential prohibition on interstate rate adoption under the TELRIC pricing standard.

[17] We also note that Verizon has indicated that, if hot cut rates are subject to litigation

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rates as adopted by the Department will be interim in nature, Verizon has provided assurance that it will include hot cut rates in its next Massachusetts TELRIC proceeding (Verizon Reply Comments at 2), and we determine that this assurance adequately addresses MCI's concern.[18]

In addition, now that we have adopted WPTS rates and processes for use in Massachusetts, we allow the non-WPTS basic hot cut rates approved by the Department in UNE Rates Proceeding, D.T.E. 01-20, to go into effect. See D.T.E. 01-20-Part A-A at 146 (January 14, 2003).[19] We note that permitting this UNE pricing change is not a violation of the FCC's Verizon/MCI Merger Order because the Department's determination to defer application of the new non-WPTS rates until conclusion of our WPTS investigation was made well in advance of the Verizon/MCI merger closing date.

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[17](…continued)
requiring Verizon to file a cost analysis for Massachusetts, Verizon intends to propose substantially higher rates for hot cuts in Massachusetts than those approved by the NYPSC (Verizon Reply Comments at 2).

[18] See In the Matter of Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, FCC 05-184, at ¶ 215, App. G (rel. November 17, 2005) (FCC accepts as condition of merger approval that Verizon will not seek UNE rate increases for two years from Verizon/MCI merger closing date) ("Verizon/MCI Merger Order"). The Verizon/MCI merger closed on January 6, 2006. See Press Release, Verizon and MCI Close Merger (January 6, 2006) (available at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93131&PROACTIVE_ID=cecdc7cccac8c8c8c7c5cecfcfcfc5cecdcfcfcfc6cec9c8cac5cf).

[19] See also D.T.E. 01-20, at 7, Compliance Letter Order (July 14, 2003) ("Verizon may not charge the new rates for its manual hot cut process until the Department has completed its review of the WPTS process").

D. IDLC-Copper Surcharge and xDSL Loops

In this section, we address AT&T's and Conversent's concerns regarding Verizon's IDLC-Copper surcharge and Covad's concerns regarding the applicability of the NYPSC-approved rates and processes for hot cuts to xDSL loops. We determine that Verizon's explanation of the applicability of the IDLC-Copper surcharge is consistent with the plain language of Verizon's New York Tariff, PSC NY No. 10, §§ 5.5.5.3(a)(4) and 5.5.5.4(a)(4), which provide that the surcharge applies "only if the [requesting carrier] specifically requests that an all-copper facility, or any type of loop facility that is available only on copper, be used instead of a UDLC facility." This clarification adequately addresses AT&T's and Conversent's concern.

With regard to Covad's argument regarding xDSL loops, we note that separate hot cut processes are being developed for xDSL loops through industry fora. Covad does not allege that the industry collaboratives are failing to address these issues. Therefore, in the interests of interstate uniformity, we decline to impose any separate hot cut requirements with regard to xDSL loops at this time. Parties may inform the Department if they wish to have the Department adopt any further requirements upon conclusion of the industry collaboratives' efforts.

E. State Wholesale Tariffing Requirements

While we agree that Verizon may make available to CLECs in Massachusetts the NYPSC-approved rates and processes for batch, large job, and WPTS hot cuts, we do not agree with Verizon that it need not tariff the services. Verizon's provision of hot cuts at the

rates, terms, and conditions approved above to all CLECs that seek to receive the services in Massachusetts constitutes common carriage as we and the FCC have defined the term.[20] Intrastate services, including wholesale services, provided as common carriage must be tariffed pursuant to G.L. c. 159, § 19.[21]

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[20] In the Triennial Review Order at ¶ 152, the FCC outlined the following common carrier test:

> Generally stated, a common carrier holds itself out to provide service on a nondiscriminatory basis. A private carrier, on the other hand, decides for itself with whom and on what terms to deal. Common carrier status has been assessed by the [FCC] and the courts by the application of the two-part NARUC test: (1) whether the carrier "holds himself out to serve indifferently all potential users"; and (2) whether the carrier allows customers to "transmit intelligence of their own design and choosing" [quoting National Ass'n. of Regulatory Util. Commrs. v. Federal Communications Comm., 533 F.2d 601, 608-609 (D.C. Cir. 1976) ("NARUC II"); National Ass'n of Regulatory Util. Commrs. v. Federal Communications Comm., 525 F.2d 630, 644 (D.C. Cir. 1976) ("NARUC I")].

The Department has also relied on the NARUC framework and has stated that "[t]he Department believes that the common carrier test applied in the NARUC I line of cases provides a rational analysis that is consistent with Massachusetts common law and with the Department's enabling statute . . . ." Memorandum from Mike Isenberg, Director, Telecommunications Division to Massachusetts Telecommunications Carriers re: Clarification of Wholesale Tariff Requirements at 6 (August 12, 2003) ("Wholesale Tariff Memo").

[21] Consolidated Order, D.T.E. 03-60/04-73, at 56-57, 71 (2004); Enterprise Switching, D.T.E. 03-59-B at 7-9 (2004), D.T.E. 03-59-A at 8 n.9 (2004); Wholesale Tariff Memo at 8; see also Reply Comments of the Massachusetts Department of Telecommunications and Energy, WC Docket No.04-313, CC Docket No. 01-338, at 13-15 (filed with the FCC October 19, 2004) (stating that FCC should clarify that the FCC's authority to determine the conditions for incumbent carriers to enter, and continue to serve, the interLATA market does not preempt the authority of state

(continued…)

Although the Department has addressed Verizon's obligations to file wholesale tariffs in several proceedings (see n.21 above), Verizon presents a new argument in this proceeding in opposition to the Department's requirement for wholesale tariffs. Verizon argues that while in the past it has filed tariffs under DTE MA No. 17 for § 251 UNEs, such state tariffs are in fact contrary to 47 U.S.C. § 252, and therefore, Verizon argues that it has no obligation to file tariffs in Massachusetts implementing hot cut provisions (or, as is implied by extension, any § 251 element or wholesale service).[22] However, we are not convinced that the cases cited by Verizon support such a reversal in its longstanding tariffing obligations. In contrast with the state commission-imposed tariffing obligations in those cases, Verizon's obligation to file tariffs for wholesale services under DTE MA No. 17, arising from state law under G.L. c. 159, § 19, does not "bypass" the process for negotiation and arbitration of interconnection agreements established under the Telecommunications Act.[23] Where hot cuts are within the scope of the parties' interconnection agreements, such carriers may not resort to tariffed terms.[24] In such cases, in order to obtain the benefit of the new hot cut processes, these

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[21](…continued)
commissions to enforce the obligations of common carriers to file tariffs under state law).

[22] More specifically, Verizon argues that Covad's argument in favor of wholesale tariffing requirements is an attempt to evade entirely the negotiation and arbitration process established under § 252 and that ordering the tariffing of hot cut processes is not a lawful prerogative of the Department (Verizon Reply Comments at 4).

[23] Cf. Wisconsin Bell, Inc. v. Bie, 340 F.3d at 444-45; Verizon North, Inc. v. Strand, 367 F.3d at 585; Verizon North, Inc. v. Strand, 309 F.3d at 941.

[24] A carrier cannot avoid the terms of its interconnection agreement by purchasing out of (continued…)

CLECs must initiate negotiations to amend their interconnection agreements under § 252. In addition, the filing by Verizon of DTE MA No. 17 under G.L. c. 159, § 19, is consistent with the filing of a "statement of generally available terms" under § 252(f). The filing of such a statement "shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251." 47 U.S.C. § 252(f). Thus, the terms and conditions tariffed under DTE MA No. 17 pursuant to state law, including hot cut processes, remain subject to negotiations between requesting CLECs and Verizon. Thus, Verizon's filing of tariffs for batch, large job, and WPTS hot cuts does not allow the parties to bypass the procedure provided under § 252.[25]

Moreover, a recent case by the United States District Court for the District of Maine, when addressing Verizon's wholesale tariffing requirements, has found that the Maine Public Utility Commission is not preempted from requiring Verizon to file wholesale tariffs.[26] The

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[24](…continued)
a tariff when the interconnection agreement addresses access to the services sought to be purchased from the tariff. See CTC Communications Corp., D.T.E. 04-87, at 2-3 (2005).

[25] If batch, large job or WPTS hot cuts are not within the scope of the carrier's interconnection agreement, then the carrier may purchase hot cuts from the tariffs we require Verizon to file. The Department has held that the terms and conditions of Verizon wholesale tariff represent a supplement to interconnection agreements from which carriers may choose to purchase services not addressed in their interconnection agreements, or as a template for those carriers who choose not to develop negotiation positions. M.D.T.E. No. 17, D.T.E. 98-57, at 21 (March 24, 2000).

[26] Verizon New England, Inc. v. Maine Pub. Utils. Comm'n, Civil No. 05-53-B-C (D. Me. November 30, 2005) (denying request from Verizon for injunctive relief from orders of the Maine Public Utilities Commission which required that Verizon file
(continued…)

parties have not brought to our attention any other court decision within the First Circuit which addresses this issue. Lastly, Verizon's argument that it need not tariff terms for hot cuts is particularly unconvincing given that the rates, terms, and conditions for hot cuts approved by the NYPSC, which Verizon has proposed be adopted by the Department for use in Massachusetts, are themselves tariffed in New York. See PSC NY No. 10, §§ 5.5.5.3, 5.5.5.4. For all these reasons, we require Verizon to file tariffs for batch, large job, and WPTS hot cuts consistent with the NYPSC-approved rates and processes we have agreed to adopt for use in Massachusetts within 30 days of the date of this Order.

IV. ORDER

After due notice and consideration, it is hereby

ORDERED: That the rates and processes for batch, large job, and WPTS hot cuts approved by the NYPSC in its August 2004 order are adopted for use in Massachusetts; and it is

FURTHER ORDERED: That Verizon shall submit tariffs for the batch, large job, and WPTS hot cuts processes as described herein for Department review within 30 days of the date of this Order; and it is

FURTHER ORDERED: That the rates approved by the Department in D.T.E. 01-20 for Verizon's non-WPTS basic hot cuts may go into effect as of the date of this Order; and it is

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[26](…continued)
wholesale tariffs for the services provided to CLECs pursuant to § 271).

FURTHER ORDERED: That the parties shall comply with all other provisions herein.

By Order of the Department,

_____/s/_____
Judith F. Judson, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Paul G. Afonso, Commissioner

_____/s/_____
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.