August 17, 2006

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Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 04-33; M.D.T.E. No. 17 (TT 06-38)

Dear Secretary Cottrell:

Attached hereto for filing in the above-referenced proceeding is RCN-BecoCom, LLC and RCN Telecom Services of Massachusetts Inc.'s Opposition to Motion of Verizon Massachusetts for Partial Reconsideration of Letter Order.

An original and nine (9) additional copies of this filing are attached. Also attached is an extra copy of this filing. Please date-stamp it and return it in the attached, postage prepaid envelope provided. In addition, please note that a copy of this filing will be submitted to the Department in electronic format by E-mail attachment to dte.efiling@state.ma.us.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

Philip J. Macres

Enclosure

cc: Tina Chin, Arbitrator
Jesse Reyes, Arbitrator
DTE 04-33 Service List

BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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*	**D.T.E. 04-33**
Notice of Proposed Tariff Revisions to Verizon Tariff M.D.T.E. No. 17 (TT 06-38)	

RCN-BECOCOM, LLC AND RCN TELECOM SERVICES OF MASSACHUSETTS INC.'S OPPOSITION TO MOTION OF VERIZON MASSACHUSETTS FOR PARTIAL RECONSIDERATION OF LETTER ORDER

RCN-BecoCom, LLC and RCN Telecom Services of Massachusetts Inc. (collectively "RCN"), by its attorneys, hereby submit its Opposition to Motion of Verizon Massachusetts for Partial Reconsideration of the Department's July 7, 2006 Letter Order. As demonstrated below, Verizon's motion should be denied.

Discussion

I. The Department's Finding that § 251(c)(2) Interconnection Facilities (which includes Entrance Facilities and other Dedicated Transport) Remain Available to CLECs at TELRIC Rates is Correct.

Verizon contends that "as a factual statement", the Department's finding in the Letter Order is mistaken. It asserts that neither Verizon's revised language regarding entrance facilities nor any of the Department's orders in this proceeding reflects a determination that entrance facilities are available under Section 251(c)(2) at TELRIC rates. Contrary to Verizon's claims, the Letter Order is not factually incorrect or mistaken. Verizon fails to recognize that it is the Letter Order itself that clarifies the Department's interpretation of law and CLEC § 251(c)(2)

entitlements *under Verizon's tariff.* The Letter Order was perfectly clear that it was addressing "tariffed interconnection facilities at TELIRC rates" and explained that "for purposes of avoiding future disputes between Verizon and CLECs, that our adoption of Verizon's revised language, as well as our findings in the Arbitration Orders, reflects our determination that, although entrance facilities, including dedicated transport, are no longer available as UNEs, they remain available to CLECs at TELRIC rates for interconnection under § 251(c)(2)."[1]

II. The Finding in the Letter Order Is Not Contrary To Nor Inconsistent with the Department's Holding in the Arbitration Order.

Verizon further argues that "the Department's only finding on this issue is that it should not be litigated in this case" and therefore submits that the Department's conclusion in this tariff review "should be vacated" because it "rests solely on mistaken facts and is unsupported by actual facts or any legal analysis" and otherwise "contradicts and is inconsistent with the Arbitration Order." As discussed below, Verizon's contentions are misplaced and otherwise incorrect.

By way of background, the Department in its July 14, 2005 Arbitration Order held that because the *TRO* and *TRRO* did not change "the parties preexisting rights and responsibilities concerning interconnection facilities," "it is unnecessary to litigate any change in language in this proceeding and therefore it is unnecessary for parties to amend their agreements with respect to interconnection facilities." This Department decision was specifically addressing whether existing interconnection agreements needed to be amended to reflect the scope of Verizon's obligation to provision interconnection facilities. However, in its Letter Order, the Department *was not* addressing Verizon's obligation under its existing interconnection agreements with CLECs. Rather, as noted above above, it was specifically addressing Verizon's current obligation *under its tariff* and clarified that although entrance facilities, including dedicated transport,

[1] Letter Order at 7.

are no longer available as UNEs, Verizon remains obligated to offer them *under its tariff* to CLECs at TELRIC rates for interconnection under § 251(c)(2).

Further, for the reasons fully provided in RCN's June 21, 2006 comments and rather than repeat them, the Department's clarification in its Letter Order regarding the scope of Verizon's obligation to offer § 251(c)(2) interconnection facilities (which includes entrance facilities and other dedicated transport) *under its tariff* is abundantly necessary and proper.[2] Because of this, the Department correctly clarified that its earlier determinations in this proceeding with respect to interconnection facilities that a CLEC obtains under its interconnection agreement from Verizon does not "limit Verizon's obligation to offer *tariffed* interconnection facilities [(which includes entrance facilities and other dedicated transport)] at TELRIC-based rates...."[3] Contrary to Verizon's claims, the Letter Order does nothing to alter the terms upon which Verizon provides interconnection facilities under its existing interconnection agreements with CLECs but

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[2] Verizon's statement in footnote 1 of its June 26, 2006 Reply in Support of its Compliance Tariff provides additional justification for affirming the Letter Order. In its Reply, Verizon explained that despite the language in DTE MA No. 17, Part B Section 2.1.1.F.4. (which expressly states "Unbundled dedicated IOF transport provides a transmission path within a LATA between ....A CLEC designated central office premises or collocation arrangement and a Telephone Company central office switch when used solely as an interconnection transport facility under a Meet Point A or B Reciprocal Traffic Exchange Trunk arrangement, as defined in Part C Section 1"), CLECs are only entitled to transport arrangements offered under Verizon's intrastate or interstate access tariffs. This is flatly wrong and the FCC's Wireline Bureau explicitly rejected Verizon's position. *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, DA 02-1731, ¶ 217 (WCB 2002) (holding that "Verizon has no basis for requiring [CLEC] to order dedicated transport from its access tariffs."). Moreover, in DTE 01-20, Verizon expressly acknowledged that it had an obligation to make transport available at TELRIC rates for interconnection and proposed tariff language that the Department adopted. See DTE 01-20-Part A-B, Order on Verizon Massachusetts Compliance Filing, at 31 (May 29, 2003). Despite these orders and without the Letter Order's clarification, Verizon has announced that it will not permit CLECs to obtain interconnection facilities (which includes entrance facilities and other dedicated transport) at TELRIC rates under its No. 17 tariff. The Letter Order's clarification is therefore appropriate.

[3] Letter Order, at 7 (emphasis added).

rather specifically addresses Verizon's current obligation under its tariff. For this reason, the Letter Order does not contradict nor is it inconsistent with the Arbitration order.[4]

III. Verizon's Other Procedural and Substantive Arguments Do Not Justify Reconsideration.

Verizon further argues that it "reasonably" relied on the Arbitration Order "in responding to RCN's arguments with respect to compliance tariff filing and refrained from briefing the merits to demonstrate that entrance facilities are not available under Section 251(c)(2)." It contends that "before the Department made use of the tariff compliance filing as a vehicle to reverse its prior ruling and address the parties interconnection rights and duties," the Department "must give notice that it will do so and provide Verizon MA with an opportunity to address the issue either through comments or record evidence."

In this case, the Department has no such obligation. For the reasons discussed, the Department is not using the tariff compliance filing "as a vehicle to reverse its prior ruling." Verizon had sufficient notice of RCN's position and opportunity to address the issue in written comments. RCN even previously raised the issue in its September 13, 2005 comments to the Department in this proceeding.[5] Verizon's additional claim that it should also be given an opportunity to submit record evidence is nonsense because this is purely a legal issue (along with

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[4] Verizon's related argument that "the Department's decision not to address issues regarding interconnection is not now open to debate" and that RCN's position is a "collateral attack" on the Department's finding in the Arbitration Order is likewise erroneous. RCN is doing no such thing, rather RCN seeks to ensure that that in the process of relieving Verizon of its obligation to offer § 251(c)(3) entrance facilities and certain other dedicated transport under *its tariff*, such facilities remain available under Verizon's tariff for § 251(c)(2) interconnection.

[5] Because RCN did not have an opportunity to submit a rebuttal to Verizon's reply under the June comment cycle, RCN's June 21, 2006 comments anticipated many of the arguments that Verizon has made regarding this issue previously in this proceeding and in other jurisdictions.

all the other issues that were addressed in this proceeding). Therefore, Verizon's procedural arguments have no merit and should be rejected.

Verizon goes on to argue that if it were given an opportunity to submit comments or evidence, it would establish that RCN's claims are incorrect. Verizon quotes Section 251(c)(2) of the Act and based on its one sided interpretation of it, claims that ILECs are only required to enable CLECs to connect their own facilities to the ILEC's network at a "point" on an ILEC's network and that it is not obligated to provide transport to that point at TELRIC-based rates.[6]

Contrary to Verizon's contentions, the FCC does not interpret § 251(c)(2) in this manner and it is Verizon that "misrepresents" the FCC's orders by arguing otherwise. Indeed, Verizon's position is directly at odds with the FCC's unqualified statement that "all telecommunications carriers...will have the ability to *access transport facilities*...to interconnect for the transmission and routing of telephone exchange service and exchange access, pursuant to section 251(c)(2)."[7]

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[6] Verizon also argues that RCN's theory that § 251(c)(2) interconnection obligation enables CLECs to lease at TELRIC rates the entrance facilities that the FCC has de-listed as § 251(c)(3) UNEs would render the FCC's rulings on those § 251(c)(3) facilities meaningless.

[7] *TRO*, ¶ 368. Verizon also erroneously contends that its obligations under § 251(c)(2) is limited to a "point," such as "collocation and Point of Termination ("POT") bays." The FCC has explained that this reference to a "point" has a similar meaning to "at any technically feasible point" in the description of ILEC's obligation to provide unbundled network element facilities in § 251(c)(3). *See Local Competition Order,* ¶ 192. In both cases, the "point" is the location on an ILEC's network where the CLEC can obtain access to the facility; the "point" is not the entirety of the facilities the CLEC is entitled to obtain from an ILEC pursuant to § 251(c)(2).

In addition, Verizon submits that paragraph 176 of the FCC's *Local Competition Order* supports its contentions. Again, Verizon misinterprets and obfuscates the law. In this paragraph, the FCC was distinguishing between an ILEC's obligations pursuant to § 251(c)(2) and § 251(b)(5) with respect to (1) the "*facilities and equipment*" needed to 'physically link[]" two networks together for the mutual exchange of traffic and (2) reciprocal compensation arrangements associated with the transport and termination of telecommunications traffic between the two networks. The FCC indicated that the term "interconnection" under § 251(c)(2) refers to the physical facilities that link two networks together (which are obviously needed for the mutual exchange of traffic), and further explained that the "transport and termination of traffic" between the two networks falls within the meaning of § 251(b)(5) not § 251(c)(2). Contrary to Verizon's position, transport facilities are needed to "physically link" the two networks together and therefore are critical components of the facilities and equipment needed for § 251(c)(2) interconnection.

In addition, Verizon's position renders utterly meaningless the FCC's entire discussion in the *TRO* and *TRRO* about entrance facilities that CLECs could no longer obtain pursuant to § 251(c)(3) to "backhaul" traffic verses the entrance facilities ILECs must provision pursuant to § 251(c)(2) for interconnection.[8] Indeed, assuming *arguendo*, if it were the FCC's longstanding position that CLECs do not have access to ILEC entrance facilities and dedicated transport for § 251(c)(2) interconnection (which it is not), the FCC would have had no reason to clarify in the *TRO* and *TRRO* that even though such facilities may not be available as § 251(c)(3) UNEs for backhauling purposes, such facilities remain available for interconnection purposes under § 251(c)(2).[9]

Verizon's position really amounts to a misplaced and untimely complaint with the FCC for its interpretation of § 251(c)(2), not with RCN's position. Verizon should take the issue up with the FCC and not the Department. Here the Department is bound by law to strictly adhere to the FCC's interpretation of § 251(c)(2). Doing otherwise and limiting the scope of § 251(c)(2) as Verizon proposes to just "facilities at the point of interconnection" would be inconsistent with the savings clauses of §§ 251(d)(3), 252(e)(3), and 261, which explicitly preserve the Department's authority to render decisions that are consistent with the Act and the FCC's interpretation of it.

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[8] *See e.g., TRO,* ¶¶ 365, n.1113, 367-368, & *TRRO,* ¶ 140.

[9] RCN's June 21, 2006 comments fully demonstrate that Letter Order is perfectly sound and rather than repeat them, RCN incorporates them by reference.

Conclusion

Wherefore, RCN respectfully requests that the Department deny the Motion of Verizon Massachusetts for Partial Reconsideration of the Letter Order as discussed herein.

Respectfully submitted,

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Dated: August 17, 2006

CERTIFICATE OF SERVICE

I certify that on this 17th day of August, 2006, copies of RCN-BecoCom, LLC and RCN Telecom Services of Massachusetts' Inc.'s Opposition to Motion of Verizon Massachusetts for Partial Reconsideration Letter Order were sent via postage prepaid first class mail (or overnight mail if noted with an asterisk) and electronic mail to the Active Party Service List associated with Case No. 04-33.

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