D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-S

Consolidated Petitions of Verizon New England, Inc. d/b/a Verizon Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Verizon and the aforementioned companies.

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I. INTRODUCTION

This is an Order on a compliance filing submitted by Verizon New England, Inc. d/b/a Verizon Massachusetts (formerly, New England Telephone and Telegraph Company d/b/a Bell Atlantic – Massachusetts) ("Verizon") as part of a consolidated arbitration proceeding being held in accordance with the Telecommunications Act of 1996.[1] On October 14, 1999, the Department of Telecommunications and Energy ("Department") issued an Order setting forth the requirements for establishing the non-recurring costs ("NRCs") that Verizon will be entitled to charge competing local exchange carriers ("CLECs") for the provisioning of unbundled network elements ("UNEs"). D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-L (October 14, 1999) ("Phase 4-L Order"). A subsequent Order, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-O (January 10, 2000) ("Phase 4-O Order") was issued by the Department in response to requests by Verizon and WorldCom, Inc. ("WorldCom") for partial reconsideration of the Phase 4-L Order.

Verizon first submitted a compliance filing on February 9, 2000, although several revisions were made during subsequent weeks. A technical session was held on March 2, 2000, and formal evidentiary hearings were held June 20 and June 23, 2000. Michael Anglin and Amy Stern testified for Verizon. WorldCom presented the testimony of Richard Walsh. AT&T Communications of New England, Inc. ("AT&T") and WorldCom submitted briefs on Verizon's filing on August 4, 2000. Verizon filed a reply brief on August 18, 2000. AT&T

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[1] 47 U.S.C. § 252.

responded to Verizon's Reply Brief on August 30, 2000, and WorldCom responded on August 31, 2000. We address the issues raised by the parties below.

II. DISPUTED ISSUES

A. Coordination Bureau Costs

In the Phase 4-L Order, the Department devoted substantial discussion to the "fallout rate" used by Verizon in its NRC study. This rate reflects the degree to which service provisioning orders are not able to flow through the electronic ordering systems ("Operations Support Systems" or "OSS") without manual intervention. The Department determined that a forward-looking NRC study should use a two percent fallout rate, a rate lower than that proposed by Verizon. Phase 4-L Order at 16. Recognizing that this lower rate would result in less manual intervention, the Department also directed Verizon to modify the costs of the Coordination Bureau[2] that were included in Verizon's NRC study. Id. at 30. Alert to the degree of controversy over Coordination Bureau costs in general during the hearings leading to this Order, the Department stated, "[i]n the absence of a persuasive presentation on this issue in its compliance filing, we will exclude all such costs from the NRC study." Id.

AT&T and WorldCom claim that Verizon's compliance filing does not contain any justification for inclusion of Coordination Bureau costs, much less a persuasive presentation (AT&T Brief at 2-4; WorldCom Brief at 2-3). They assert that Verizon has not met its burden of proof, and therefore all such costs should be eliminated from the NRC study (AT&T Brief at

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[2] The Coordination Bureau helps to manually process loop and switching orders that do not flow through electronically.

2-4; WorldCom Brief at 2-3). Verizon replies that it has met its required burden of proof (Verizon Reply Brief at 3-4). Verizon first notes that all Coordination Bureau costs have been removed from orders that are processed automatically (id.). For those orders, Verizon explains, it actually used an assumed fallout rate of zero, rather than the two percent approved by the Department, obviating the need for a "persuasive presentation" (id.). In contrast, Verizon argues, for those orders that always require manual coordination (e.g., hot cuts), the costs relating to the Coordination Bureau are properly included (id.).

Our directive in the Phase 4-L Order concerned the inclusion of Coordination Bureau costs that were associated with orders that are processed automatically. We wanted to ensure that the lower fallout rate we adopted would be reflected in a diminution in costs associated with manual intervention for these orders. Verizon has, in fact, gone further than we directed, in that Verizon has totally eliminated Coordination Bureau costs from that type of order. We did not expect Verizon to remove Coordination Bureau costs from orders that would normally be handled manually, such as hot cuts. Phase 4-L Order at 29. Accordingly, Verizon's filing is in compliance with our directive.

B. CATC and CPC Work Group Costs

AT&T and WorldCom argue that Verizon has improperly included costs for two additional service centers, the carrier account team center ("CATC") and circuit provisioning center ("CPC"),[3] which they claim to be analogous to the Coordination Bureau (WorldCom

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[3] Both the CATC and the CPC Work Groups help process orders other than for loops and switching. These groups would, for example, perform coordination functions for

Brief at 3; AT&T Brief at 3-4). WorldCom states that the CATC is essentially a business office that has responsibility for orders that Verizon's OSS cannot process automatically (WorldCom Brief at 3). WorldCom notes that the CPC works directly from service order fallout, too, and reducing the fallout rate to two percent concomitantly reduces the amount of fallout work performed by the CATC and CPC (id.). Verizon replies that the CATC and CPC activities were not addressed by the Department in the Phase 4-L Order and that WorldCom's arguments should be dismissed as an untimely motion for reconsideration (Verizon Reply Brief at 4-5). Verizon also notes that, on the merits, costs for CATC and CPC are only included for those orders in which manual activities are required (id.).

In this instance, the Department set no additional burden of proof on Verizon, and so we did not expect a detailed presentation for the inclusion of CATC and CPC costs in the compliance study. In any event, though, we find that the CLECs' assumption that there is a concomitant decrease in these centers' costs, resulting from a change in the fallout rate, is not supported by the evidence. As Mr. Anglin testified, there are many steps in order processing at the CATC and CPC that rely on manual intervention resulting from fallout from OSS (Tr. 45, at 6-9). In other cases, where OSS are involved, Verizon's NRC study had assumed no fallout whatsoever in CATC functions (id.). Thus, the two percent fallout figure we used for switch and loop provisioning is not applicable to the CATC and CPC functions. No adjustment is required to the cost study on this point.

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interoffice transport and other special services.

C. Central Office Wiring Costs

In our earlier Order, we required that there be consistency between the technology assumptions used in Verizon's recurring cost study and its NRC study. Phase 4-O Order at 12. A specific result of this requirement was a finding that, consistent with our use of a network based on 100 percent fiber feeders in the loop plant, Verizon should "eliminate the use of the manual cross connection at the main distribution frame." Id.

AT&T and WorldCom argue that Verizon has failed to comply with this requirement (AT&T Brief at 5; WorldCom Brief at 5). AT&T and WorldCom assert that, while Verizon has eliminated the central office wiring charge associated with a DS-0 (i.e., single, two-wire loop) cross connection, Verizon has added an entirely new charge for a DS-1 (i.e., digital circuit with a capacity equivalent of 24 DS-0s) cross connection (AT&T Brief at 5; WorldCom Brief at 5). AT&T and WorldCom state that this DS-1 cost was never included in Verizon's original filing and should be removed (AT&T Brief at 5; WorldCom Brief at 5). Verizon replies that the cost is "new" only in that it is intended to comply with an express directive of the Department and is consistent with the technology assumptions resulting therefrom (Verizon Reply Brief at 6-7).

The Department did order the removal of DS-0 central office wiring charges, corresponding to our determination that such wiring was inconsistent with the DS-1 network assumed in the NRC study. Verizon properly removed such charges. The parties do not dispute the technical requirement that installation of DS-1s involves some central office wiring (Tr. 45, at 13). Verizon has allocated 1/24th of the cost of such wiring to each DS-0 equivalent circuit in the cost study (Tr. 45, at 25-26, 85-86). It should not be a surprise that this amount was not included in the original NRC filing, as that type of circuit was not the one being modeled in that cost study (Tr. 45, at 24). Here, Verizon has properly included the relevant cost and divided it appropriately by 24 to apply a portion of the cost to each DS-0 level loop. No further adjustment to the compliance filing is required.

D. Charges for UNE-P Arrangements

The UNE-platform, or UNE-P, arrangement is one in which the CLEC purchases a combination of the loop and switch (and perhaps other) UNEs from Verizon. In D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-P (January 10, 2000) ("Phase 4-P Order"), the Department directed Verizon to provide UNE-P arrangements under the terms and conditions proposed by the company in a filing dated December 1, 1999. Phase 4-P Order at 9, 14. In that filing, Verizon stated that it would provide new UNE-P orders under the same terms and conditions as for in-place, or migration, UNE-P orders (id.).

In its compliance filing, Verizon proposes different NRCs for new UNE-P orders from migration UNE-P orders. AT&T asserts that this proposal violates the Phase 4-P Order (AT&T Brief at 5-6). AT&T suggests that Verizon should be ordered to reduce its proposed NRCs for new UNE-P orders to the level set for migration UNE-P orders (id.). Verizon replies that its commitment to provide new UNE-P orders under the same terms as migration UNE-P orders referred to the types of customers who would be offered this service and the time frame over which UNE-P would be offered (Verizon Reply Brief at 7-8). Verizon asserts that this commitment did not equate to an agreement to forego the appropriate costs associated with providing such service (id.). If there is a difference in the NRCs associated with the two types of service, Verizon states, the terms of service remain the same, i.e., non-recurring charges are collected where NRCs are incurred (id.).

We agree with Verizon that its commitment with regard to new and migration UNE-P service was made in relation to the types of customers to be served and other such matters. It was not a commitment to charge all customers the same price for the two types of services. It is undisputed that there are cost differences in NRCs between new UNE-P orders and migration UNE-P orders. The question before us, then, is whether those cost differences should be reflected in the two types of orders, or whether all UNE-P orders should be charged an average non-recurring charge, reflecting a mix of new UNE-P orders and migration UNE-P orders. If we could be reasonably sure of the relative percentages of the two forms of orders, we could use that ratio to design an overall NRC rate. However, there is no evidence on this point. Accordingly, Verizon's proposal makes pricing sense, in that each form of order will be charged a rate based on the NRC appropriate to it. No adjustment to the compliance filing is necessary on this issue.

E. Field Dispatch Charge

AT&T and WorldCom assert that Verizon has inappropriately included a new and improper field dispatch charge to certain UNE-P and UNE-L[4] orders (AT&T Brief at 6-9; WorldCom Brief at 5-6). AT&T and WorldCom note that such a charge was never proposed

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[4] Loop plus Network Interface Device ("NID").

in earlier Verizon filings and that, in any case, it would be wrong to apply the charge in the kinds of instances described by Verizon's witnesses (AT&T Brief at 6-9; WorldCom Brief at 5-6). Verizon replies that it has not proposed a new charge for dispatch personnel (Verizon Reply Brief at 7-8). Instead, Verizon has computed a cost for such services and will charge a CLEC when such work is performed (id.).

We need not reach the issue of whether the description of the application of the dispatch charges proposed by Verizon is appropriate; the charges themselves are not appropriate. No mention of such a charge has been included in earlier submissions by Verizon. There were numerous opportunities to include cost elements in Verizon's NRC study in the earlier phase of this proceeding, when it would have been subject to cross-examination or rebuttal evidence. The addition of a new cost element during the compliance filing is beyond the scope of the filing, and we will not approve it. This is distinguishable from the issue discussed in section II.C., above, where we permit the modification of the cost study to maintain consistency with our earlier ruling. Accordingly, Verizon shall remove the dispatch charge from its terms and conditions of service.

F. Ten-Plus Link Charge

The Verizon NRC study reflects a CATC for ten or more links to check for available facilities. WorldCom argues that this task is purely administrative and that, in rearranging facilities to meet CLEC needs, Verizon uses maintenance dollars, which are more appropriately recoverable as recurring charges (WorldCom Brief at 3-4). Mr. Anglin testified that the costs associated with these functions are incurred only as a request for service, are one-time in nature, and are therefore properly accounted for as NRCs (Tr. 45, at 9).

We agree with Verizon's characterization of these costs. For the reasons stated, they are properly included as NRCs. No adjustment to the NRC study is necessary for this item.

G. Work Times

In the Phase 4-L Order, the Department rejected a number of Verizon's work time estimates and directed the company to resubmit its cost study using the minimum work time estimates in those cases in which a range of estimates was provided. Phase 4-L Order at 24-25. Verizon did so in the compliance filing.

WorldCom argues that Verizon should be directed, in those cases in which there was only one work time estimate for a given task, to reduce its time estimates to bring the NRCs into compliance with the Department's Phase 4-L Order (WorldCom Brief at 4-5). To do otherwise, suggests WorldCom, would be to engage in an overly narrow reading of the Order (id.). Verizon replies that its filing is in compliance with the Phase 4-L Order, and that nowhere in the Order is there a requirement to reduce work time estimates in those cases in which only one estimate was offered (Verizon Reply Brief at 9-10).

Verizon is correct. We did not order Verizon to reduce those work times estimates in dispute here. WorldCom's request amounts to a motion for reconsideration of this point and is untimely. No adjustment to the compliance filing is required.

H. UNE-P Disconnect Costs

WorldCom argues that Verizon should remove nine cents in NRCs from migration UNE-Ps, because it "would be unreasonable to charge a CLEC for disconnect costs" (WorldCom Brief at 7). WorldCom states that a customer that has moved from Verizon to a CLEC has presumably paid those costs already (id.). Verizon replies that WorldCom has misunderstood the filing, citing Mr. Anglin's testimony at Tr. 45, at 42, that the nine cents reflects only connection costs and that no disconnect costs are included in the calculation of the charge for migration orders (Verizon Reply Brief at 10-11).

The evidence indicates that Verizon's characterization is correct. No adjustment to the compliance filing is required.

I. Application of NRCs

WorldCom urges the Department to review the Rate Application Tables prepared by Verizon during the course of this proceeding, stating that the Tables are confusing (WorldCom Brief at 7-8). WorldCom requests the Department review the record on this issue and remove all unwarranted charges (id.). Verizon did not reply on this matter.

In that WorldCom's comments are somewhat general in nature, we respond in kind. To the extent, if any, that Verizon's Rate Application Tables are inconsistent with any of the findings in this Order, Verizon shall modify them to reflect such findings.

III. CONCLUSION

Accordingly, Verizon's NRC cost study is approved in part and denied in part. Verizon shall file a compliance filing incorporating directives from this Order 14 days from the date of this Order. In addition, Verizon shall update its Tariff No. 17, to be submitted 14 days from the date of this Order, to reflect the compliance filing. Verizon is also required to serve a copy of the compliance filing on the service list from D.T.E. 98-57 Phase I.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That Verizon's NRC Cost Study dated February 9, 2000 is hereby APPROVED, in part, and DENIED, in part, as noted herein; and it is

FURTHER ORDERED: That Verizon shall make a compliance filing 14 days from the date of this Order; and it is

FURTHER ORDERED: That Verizon comply with all directives herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner