

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking by the Department of Telecommunications )

and Energy, pursuant to 220 CMR sections 2.00 et seq., )

to promulgate regulations governing an expedited dispute ) D.T.E 00-39

resolution process for complaints involving competing )

telecommunications carriers as 220 C.M.R. section )

15.00 et seq. )

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**RHYTHMS LINKS INC. AND COVAD COMMUNICATIONS COMPANY  
COMMENTS ON PROPOSED EXPEDITED DISPUTE RESOLUTION PROCESS**

Pursuant to the Department's Order Instituting Rulemaking, dated June 5, 2000,

Rhythms Links Inc. ("Rhythms") and Covad Communications Company

("Covad") submit these comments on the expedited dispute resolution procedures

proposed in the rulemaking. Rhythms and Covad commend the Department

for opening a proceeding to establish expedited dispute resolution procedures for disputes

between competing telecommunications carriers and agrees that delays inherent in formal

complaint procedures can unfairly advantage certain providers. While Rhythms and Covad support the establishment of expedited dispute procedures in Massachusetts, the timeframes set forth in the proposed regulations must be shortened to allow for swift resolution of disputes. As proposed, the expedited dispute resolution procedures require an aggrieved carrier to wait at least 38 days before its claim is heard. As explained in greater detail below, the time periods specified in the regulations can be shortened to provide for timely resolution of disputes.

## **I. INTRODUCTION**

On June 5, 2000, the Department of Telecommunications and Energy ("Department") issued an Order Instituting Rulemaking ("Order"), whereby it opened a proceeding to establish expedited dispute resolution procedures for disputes between competing telecommunications carriers and to "facilitate increased competition for telecommunications services by offering an option for prompt resolution of disputes between carriers." Order at p. 1. The proposed rules create an Accelerated Docket wherein dispute procedures are subject to shorter pleading deadlines than other formal complaint proceedings before the Department. The rulemaking proposes the following pleading deadlines for the Accelerated Docket:

Pre-Filing Mediation with Staff 20 days

Complaint Filed anytime after acceptance into docket

Respondent Answer 7 days after Complaint

Initial Status Conference 9 days after Answer

Expedited Hearing 31-34 days after Complaint

(15 days after Answer)

Parties' Statements 3 days after Hearing

Staff Recommended Decision 52 days after Complaint

Appeal to Commission 5 days after Recommended Decision

Final Decision 5-10 days after RD

Total Time: approximately 77 days

## **II. DISCUSSION**

The time intervals set forth in the proposed rules can be reduced to provide for swifter resolution of disputes. The proposed rules require that an aggrieved carrier wait almost 50 days before a hearing is held on its complaint (20 days to mediate plus 30 days after complaint set for hearing), and an additional 12 days before a recommended decision is issued. Thus, under the proposed procedures, a carrier must wait almost two months before obtaining relief from the Department. While the proposed rules include shorter deadlines than the traditional complaint proceedings, they include time intervals that contribute to unnecessary delay.

In order to achieve the goal of facilitating increased competition by offering a process for prompt resolution of disputes between carriers, the Department should reduce the intervals in the proposed rules as follows:

Pre-Filing Mediation with Staff no more than 7 days

Complaint Filed anytime after acceptance into docket

Respondent Answer 5 days after Complaint

Initial Status Conference 5 days after Answer

Expedited Hearing 3 days after Status Conference

Parties' Statements 3 days after Hearing

Staff Recommended Decision 7 days after Hearing

Appeal to Commission 3 days after RD

Final Decision 3-5 days after RD

Total Time: approximately 36 days

The Department will go a long way at addressing carriers' disputes if it revises the proposed rules to include the time intervals set forth above. Rhythms' and Covad's proposed schedule eliminates the unnecessary delay inherent in the proposed rules. First, the pre-filing mediation contemplated under the proposed rules can be held within seven days. There is no reason that parties should be required to participate in mediation for twenty days.

There may be some instances where mediation will produce a result that all parties' support, however, the Department should not require that carriers mediate for twenty days. The pre-filing mediation requirement should be flexible enough to allow disputes to move forward if it becomes apparent that mediation will not produce a result acceptable to the carriers involved.

Second, the Respondent does not need seven days to respond to a complaint. The Respondent's answer comes several weeks after negotiation and mediation. At this point in the process, the parties' should be very familiar with their respective positions and do not need such a long time to respond. Rhythms and Covad propose to shorten the time interval for the Respondent to answer from seven days to five days.

Third, the initial status conference should be held within five days of the Respondent's answer. The proposed rules require a status conference nine days after the answer. This time interval can be easily shortened by four days.

Fourth, the expedited hearing should be held no longer than three days after the status conference. Again, at this point in the process, all involved are familiar with the issues and should be prepared to go to hearing. The proposed rules require a hearing be held 31-34 days after the complaint is filed, which is approximately 15 days after the Respondent's answer. The extra time allotted contributes to unnecessary delay that can be avoided.

Fifth, the procedures should provide for issuance of a recommended decision within seven days of the hearing. The proposed rules require that a recommended decision be issued approximately 20 days after the hearing. Because the parties' will have already submitted statements outlining the factual and legal arguments surrounding the issue and will have participated in a hearing, it is possible for Staff to issue a recommended decision within seven days of the decision. Establishing a tighter timeframe for issuance of the recommended decision will help reduce the overall time intervals in the Accelerated Docket.

Finally, Rhythms and Covad request that the time period for appealing the decision be three days as opposed to five.

### **III. CONCLUSION**

Rhythms and Covad support the establishment of an Accelerated Docket for disputes involving competing telecommunications carriers, however the proposed dispute resolution procedures include deadlines that are too lengthily and will contribute to unnecessary delay in the process. The Department should revise the proposed rules to comply with the intervals outlined above. If the proposed rulemaking is revised accordingly, Rhythms and Covad believe it will go a long way toward resolving disputes between carriers in a timely fashion.

Respectfully submitted,

RHYTHMS LINKS INC.

By its attorney,

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Dated: June 28, 2000