

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Order Instituting Rulemaking to Promulgate)

Regulations Governing an Expedited) D.T.E. 00-39

Dispute Resolution Process for Complaints)

Involving Telecommunications Carriers)

JOINT REPLY COMMENTS OF MGC COMMUNICATIONS, INC.

d/b/a MPOWER COMMUNICATIONS CORPORATION,

RCN TELECOM SERVICES, INC. AND VITTS NETWORKS

MGC Communications, Inc. d/b/a/ Mpower Communications Corporation, RCN Telecom Services, Inc., and Vitts Networks (collectively "Joint Commenters"), by their undersigned counsel and pursuant to the Public Notice dated June 5, 2000,⁽¹⁾

hereby respectfully submit the following reply comments in the captioned proceeding.

I. INTRODUCTION

The substantial majority of commenters responding to the *Public Notice* support the creation of an Accelerated Docket.⁽²⁾

Commenters have noted the need for,⁽³⁾

and the benefits that will flow from,⁽⁴⁾

the Department of Telecommunications and Energy's (D.T.E.'s) implementation of an expedited dispute resolution process for complaints involving competing telecommunications carriers. Joint Commenters urge the DTE to consider the following reply comments that respond principally to issues raised by Bell Atlantic.

II. THE D.T.E.'s PURPOSE FOR ESTABLISHING AN EXPEDITED DISPUTE RESOLUTION PROCESS WOULD BE FRUSTRATED BY A REQUIREMENT FOR BOTH PARTIES TO SHOW A GOOD FAITH ATTEMPT AT RESOLUTION OR FOR BOTH PARTIES TO "AGREE" TO USE THE EXPEDITED DISPUTE RESOLUTION PROCESS

Access to the expedited dispute resolution process should be automatic upon a showing by the requesting party that it has made a good faith attempt at resolution and a determination by the D.T.E. staff that the dispute meets the requirements of §15.04(2). Limiting access to the expedited dispute resolution process to cases in which both parties have made a good faith attempt at resolution or "agree," as Bell Atlantic suggests, that the issues are suitable for expedited resolution,⁽⁵⁾

would frustrate the D.T.E.'s purpose for initiating this rulemaking and would deny Massachusetts consumers the benefits they would otherwise accrue from an expedited dispute resolution process. The D.T.E. appropriately initiated this rulemaking as a result of its determination that the "delays inherent in the [formal complaint] process unfairly advantaged the incumbent provider."⁽⁶⁾

In light of their unfair advantage in the formal complaint process, incumbent providers will rarely have any incentive to engage in the accelerated dispute resolution process.

Making access to the expedited dispute resolution process contingent upon specified activity or agreement of both parties would give Bell Atlantic veto power over the expedited dispute resolution process. The expedited disputed process would be used only in cases in which Bell Atlantic voluntarily surrendered its "unfair advantage." This would frustrate the goals of the D.T.E. in undertaking this rulemaking, and force competitors to continue to seek relief in a process that the D.T.E has determined unfairly favors incumbents.⁽⁷⁾

III. ALL CARRIER DISPUTES SHOULD BE ELIGIBLE FOR THE EXPEDITED DISPUTE RESOLUTION PROCESS

Joint Commenters urge the D.T.E. to reject Bell Atlantic's proposal to block interconnection disputes from the accelerated docket.⁽⁸⁾ Today, most intra-state carrier disputes are related, either directly or indirectly, to interconnection agreements between incumbents and competitive providers under the federal Telecommunications Act of 1996. Most interconnection agreements provide a mechanism for seeking resolution of disputes related to the agreement through the state regulatory agency. Thus, excluding interconnection disputes from the expedited dispute resolution process would undercut the process by eliminating the majority of potential disputes from expedited consideration. The D.T.E. has a significant interest in hearing interconnection disputes on

an expedited basis in order to ensure that Massachusetts residents are able to reap the benefits of competition.

IV. THE D.T.E. SHOULD NOT FURTHER EXTEND THE PROPOSED TIME INTERVALS CONTAINED IN THE PROPOSED REGULATIONS

There is no need for the D.T.E. to further extend the time intervals contained in the proposed regulations as proposed by Bell Atlantic. In fact, the initial comments submitted in this proceeding suggest that the D.T.E. should shorten the proposed time intervals.⁽⁹⁾

Bell Atlantic's recommendation that the D.T.E. extend the proposed time intervals to match those of the FCC as "consistency between state and federal procedures would minimize confusion"⁽¹⁰⁾ is disingenuous. Such an extension would merely result in delays that favor the incumbent. Joint Commenters urge the D.T.E. to adopt time intervals which will ensure that disputes can be resolved in a commercially reasonable period without undue delays.

V. DECISIONS RENDERED IN EXPEDITED PROCEEDINGS ARE ENTITLED TO THE SAME PRECEDENTIAL EFFECT AS DECISIONS EMANATING FROM THE FORMAL COMPLAINT PROCESS

All D.T.E. decisions on intercarrier disputes, whether emanating from the formal complaint process or from the proposed expedited dispute resolution process, must be carefully reasoned and supported. Decisions that result from the accelerated dispute resolution procedures should not be considered inferior and entitled to lesser precedential effect. As the FCC stated in response to Bell Atlantic's efforts to limit the precedential effect of the FCC's Accelerated Docket rulings, "[t]he swift resolution of issues under the Accelerated Docket does not diminish the importance of these decisions."⁽¹¹⁾ Joint Commenters therefore urge the DTE to reject Bell Atlantic's proposal to limit the precedential effect of decisions emanating from the accelerated dispute resolution process.

VI. CONCLUSION

For the reasons stated above, Joint Commenters urge the D.T.E. to swiftly implement the proposed expedited dispute resolution procedures in accordance with the recommendations set forth above and in Joint Commenters' initial comments.

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1. ¹ *Notice of Public Hearing and Request for Comments by the Department of Telecommunications and Energy on Proposed Rules for the Creation of Accelerated Docket Procedures*, D.T.E. 00-39 June 5, 2000. ("*Public Notice*").

2. ² *See* Joint Comments of MGC Communications, Inc., d/b/a/ MPower Communications Corporation, RCN Telecom Services, Inc. and Votts Networks at 1 ("*Joint Comments*"); Comments of the Massachusetts Office of the Attorney General, Massachusetts at 1 ("*AG Comments*"); Letter from MediaOne Telecommunications of Massachusetts, Inc., to Mary L. Cottrell, Secretary, dated June 28, 2000, at 1 ("*MediaOne Letter*"); Comments of AT&T Communications of New England, Inc. at 1 ("*AT&T Comments*"); Letter from the New England Cable Television Association, Inc. to Mary L. Cottrell, Secretary dated June 28, 2000, at 1 ("*NECTA Letter*"); Comments of RNK Inc, d/b/a/ RNK Telecom at 1 ("*RNK Comments*"); Rhythms Links Inc. and Covad Communications Company Comments on Proposed Expedited Dispute Resolution Process at 1 ("*Rhythms/Covad Comments*").

3. ³ See, e.g., *Joint Comments* at 1; *MediaOne Letter* at 1 ("Carrier to carrier disputes that are not resolved in a timely manner may have a lasting and damaging effect on a competitor's ability to conduct its business . . .").

4. ⁴ See, e.g., *Joint Comments* at 2; *AG Comments* at 2.

5. ⁵ See Comments of Bell Atlantic-Massachusetts at 2 ("*Bell Atlantic Comments*").

6. ⁶ *Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 CMR §§ 2.00 et seq., to promulgate regulations governing an expedited dispute resolution process for complaints involving competing telecommunications carriers as 220 C.M.R. §§ 15.00 et seq.*, D.T.E 00-39, June 5, 2000.

7. ⁷ In its deliberations considering adoption of an accelerated dispute resolution process that FCC considered and rejected the idea of requiring agreement of both parties as a prerequisite to placing a matter on the accelerated docket. The FCC concluded that "[r]equiring mutual agreement of the parties as suggested by some commenters, would give either party veto power over the process and substantially reduce the docket's effectiveness at stimulating a competitive environment." *Implementation of the Telecommunications Act of 1996, Amendment of Rules governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Second Report & Order, CC Dkt 96-238, 13 FCC Rcd. 17,018, at 17,035 (rel. Jul. 14, 1998) ("*Second Report & Order*").

8. ⁸ See *BA Comments* at 4.

9. ⁹ See *AT&T Comments* at 3-4; *Rhythms/Covad Comments* at 2- 4.

10. ¹⁰ *Bell Atlantic Comments* at 5. Bell Atlantic only to seeks "minimize confusion" through "consistency between state and federal procedures" in those instances where the resulting regulations are favorable to Bell Atlantic. For instance, Bell Atlantic seeks to limit access to the expedited docket to cases in which both parties to "agree" that the dispute is suitable for the expedited dispute resolution process. There is no corresponding FCC requirement. In fact, the FCC specifically rejected this approach.

11. ¹¹ *Second Report and Order* at ¶ 95.