May 24, 2001

D.T.E. 98-57 (Phase I-B)

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in revisions to M.D.T.E. No. 17 filed with the Department by Verizon New England, Inc. d/b/a Verizon-Massachusetts.

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ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 27, 1999, Verizon New England, Inc. d/b/a Verizon-Massachusetts ("Verizon") filed Tariff No. 17 with the Department of Telecommunications and Energy ("Department"). Tariff No. 17 set forth the terms, conditions, and pricing under which Verizon proposes to provide miscellaneous service offerings to Competitive Local Exchange Carriers ("CLECs") for interconnection. The Department docketed its investigation of Tariff No. 17 as D.T.E. 98-57.[1]

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[1] During the initial D.T.E. 98-57 proceedings, the following parties were granted full intervenor status: AT&T Communications of New England, Inc., WorldCom, Inc., Sprint Communications Company L.P., CTC Communications Corp. , AT&T Broadband, Inc. (formerly, MediaOne), Telecommunications Resellers Association, Network Plus, Inc., RNK, Inc., Rhythm Links, Inc., Global NAPs, Inc., and CoreComm Massachusetts, Inc. Limited participant status was granted to the following parties: Mr. J. Joseph Lydon; RCN-BeCoCom, L.L.C., Choice One Communications, Inc., Massachusetts Statewide Emergency Telecommunications Board Northpoint Communications, Inc., Covad Communications Company; Conversent Communications of Massachusetts, LLC, Vitts Network, Inc., Z-Tel

(continued...)

Evidentiary hearings were held in December 1999, and on March 24, 2000, the Department issued its first Order in D.T.E. 98-57 ("Tariff No. 17 Order"). Verizon filed a Motion for Reconsideration of the Tariff No. 17 Order on April 13, 2000,[2] and on September 7, 2000, the Department issued its Order on Reconsideration in Phase I of D.T.E. 98-57 ("Phase I Order").[3] The Phase I Order granted in part, and denied in part, Verizon's Motion for Reconsideration, and also included the Department's compliance review of Verizon's revisions to Tariff No. 17 submitted in response to the Tariff No. 17 Order. On September 27, 2000, Verizon filed a Motion for Partial Reconsideration of the Phase I Order. The Department granted Verizon's motion in its Phase I-A Order issued on November 17, 2000.

In response to the Department's Tariff No. 17 Order, Phase I Order, and Phase I-A Order, Verizon filed numerous revisions to Tariff No. 17. On September 21, 2000, Verizon filed a compliance tariff containing modifications to the security and escort regulations, and introducing shared collocation

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[1](...continued)
Communications, Inc., Digital Broadband Communications, Inc., and Net2000 Communication Services, Inc. Additionally, the Attorney General had filed a notice of intervention.

[2] Verizon also filed a Request to Defer the Date for Compliance and Extension of the Judicial Appeal Period, a Motion for Extension of Time, and a Motion to Reopen. On June 2, 2000, the Department issued its Order allowing Verizon's Motion for Extension of Time, denying, in part, and granting, in part, Verizon's Motion to Defer, and denying Verizon's Motion to Reopen.

[3] The Department also opened Phases II, III and IV in this docket. Phase II involved house and riser cable. The Phase II Order was issued on May 5, 2000. Phase III concern digital subscriber line and line sharing issues. The Phase III Order was issued on September 29, 2000, and the Phase III Reconsideration Order was issued on January 8, 2001. The Department's investigation in Phase III of this docket is continuing. On May 2, 2001, the Department commenced Phase IV, which involves the application of collocation power charges and enforcement provisions.

regulations. On October 5, 2000, Verizon filed a compliance tariff, which included previously-filed tariff revisions, to be reviewed in the on-going Phase I of this docket.[4] On October 12, November 2 and November 17, 2000, Verizon filed new provisions and additional revisions to Tariff No. 17 that were incorporated into the continuing Phase I review.[5] The October 12 filing contained tariff pages inadvertently excluded from the October 5 filing. The November 2 filing contained Verizon's unbundled feeder sub-loop tariff as well as other unbundled sub-loop arrangements. The November 17 filing contained tariff revisions in compliance with Federal Communications Commission ("FCC") orders.[6] Lastly, on December 21, 2000, Verizon filed a previously-approved modification to Tariff No. 17.[7]

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4 The October 5, 2000 tariff filing incorporated Verizon's previously-filed tariff provisions of April 21, May 5, May 17, May 19, May 25, June 9 and June 14, 2000.

5 Additionally, on November 14, 2000, Verizon filed revised tariff pages for its November 2 filing. The revisions were limited to the renumbering of subsections.

6 In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC No. 00-297, Order of Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, CC Docket Nos. 98-147 and 96-98 (rel. August 10, 2000) ("Collocation Remand Order"); In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, DA 00-2528, Memorandum Opinion and Order, CC Docket No. 98-147 (rel. November 7, 2000).

7 The tariff modification incorporated time and materials charges for maintaining house and riser cable that Verizon constructed for another carrier. Verizon asks the Department to take administrative notice of this filing, stating that the charges were approved by the Department in the Phase II Order in this docket, but were inadvertently omitted from its earlier compliance filing. See Exh. VZ-2, at 23; Verizon Brief at 1, fn.1. In the Phase II Order, the Department reviewed and approved Verizon's cost analysis for house and riser cable. The Department hereby approves the December 21, 2000 tariff modifications as being in compliance with our

(continued...)

On December 14 and 15, 2000, the Department held evidentiary hearings in Phase I of this docket. At the hearing, Verizon presented the testimony of Susan Fox, Bruce Lear, Dinell Clark and Amy Stern. AT&T presented the testimony of William Salvatore, Frank Lombardi, Syed. A. Saboor, and E. Christopher Nurse. Initial briefs were submitted on January 12, 2001 by Verizon, AT&T Communications of New England, Inc. ("AT&T"), Rhythms Links, Inc. ("Rhythms") and the Attorney General.[8]

On January 26, 2001, Verizon, Rhythms and AT&T filed reply briefs. Attached to its reply brief, Verizon presented the Declaration of Charles Kiederer,[9] which was filed with the FCC in the Collocation Remand proceeding.[10]

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[7](...continued)
Phase II Order.

[8] On January 22, 2001, AT&T file a Motion to Strike footnote 16 of Verizon's initial brief; AT&T maintained that footnote 16 of Verizon's initial brief referred to a statement that was made in the pre-filed direct testimony of AT&T witness Sayed A. Saboor, but that had been withdrawn by the witness at the December 14, 2000 evidentiary hearing. On January 26, 2001, Verizon informed the Department that AT&T had agreed to withdraw the Motion to Strike based on Verizon's agreement to delete the first sentence of footnote 16. Accordingly, no Department ruling is required.

[9] The Kiederer Declaration addresses technical issues relating to subloop unbundling and remote terminal collocation that are relevant to allegations made by Rhythms in its initial brief. Verizon requests that the Department take administrative notice of the facts presented in the declaration, and incorporate them by reference into the record. See Verizon Reply Brief at 11, and at fn. 11. We address this in Section III.G, infra.

[10] In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and On the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 00-297, Order on Reconsideration and Second Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 98-68, CC Docket Nos. 98-147 and 96-98 (rel.
(continued...)

II. STANDARD OF REVIEW

Section 251(c)(2) of the Telecommunications Act of 1996 ("Act") imposes a duty upon Verizon, as an incumbent local exchange carrier ("ILEC"):

> [T]o provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network–(A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

In addition, section 251(c)(3) of the Act imposes a duty on Verizon to provide unbundled network elements on a nondiscriminatory basis. Specifically, the Act states that ILECs are required:

> [T]o provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

The Act also requires ILECs, such as Verizon, to provide physical collocation on a nondiscriminatory basis. Section 251(c)(6) of the Act imposes a duty on Verizon:

> [T]o provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier

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[10](...continued)
August 10, 2000) ("Collocation Remand Order").

> demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

Last, in section 251(d)(3), the Act did not "preclude the enforcement of any regulation, order, or policy of a State commission that--(A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part."

The obligations imposed upon an ILEC are typically referenced in relation to the terms and conditions contained in interconnection agreements under the Act, but the obligations under the Act apply equally to an ILEC seeking to fulfill its obligations under the Act in part by filing a tariff.[11] Therefore, pursuant to G.L. c. 159 §§ 19 and 20, the Department must determine whether Verizon's proposed rates, terms, and conditions in its interconnection tariff are "just and reasonable." The right of a common carrier to make rules and regulations, subject to the approval of the Department and the requirement of reasonableness, has been long recognized. Wilkinson v. New England Telephone and Telegraph Company, 327 Mass. 132, 135 (1951).

III. ISSUES

A. Incorporation of Department-Arbitrated Decisions

1. Introduction

In the Tariff No. 17 Order, at 184, the Department directed Verizon to incorporate the

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[11] The Department notes that section 252(f) of the Act grants the Department authority to review and approve Verizon's statement of terms and conditions (SGAT) that it generally offers within Massachusetts to comply with the requirements of section 251. However, Verizon has declared that Tariff No. 17 is not a SGAT, and the Department has accepted Verizon's position. See Tariff No. 17 Order at 9.

arbitrated decisions from the MediaOne and Greater Media Arbitrations into Tariff No. 17, unless any of those decisions conflicted with our findings in the Tariff No. 17 Order. The Department granted Verizon's request for reconsideration of this issue, and continued its investigation of the issue of incorporation of specific provisions from arbitrated decisions. Phase I Order at 53-54. Thereafter, the Department requested that the parties identify specific provisions from arbitrated decisions appropriate for incorporation into Tariff No. 17, and to brief this issue (See RR-DTE-3; Hearing Officer Memorandum dated December 21, 2000).

2. Positions of the Parties

a. Verizon

Verizon believes that no additional arbitration rulings should be incorporated into Tariff No. 17, and notes that AT&T shares this view (Verizon Brief at 28-29). Verizon argues that an interconnection agreement is distinguishable from Tariff No. 17 in that an interconnection agreement reflects the specific relationship between Verizon and an individual CLEC, whereas the tariff sets forth general terms, conditions and rates for interconnection and access to UNEs which have been fashioned with the full participation of CLECs (RR-DTE-3). To the extent that the Department determines that a particular arbitrated decision raises broad public interest concerns, Verizon urges the Department to identify those provisions and provide Verizon and other CLECs an opportunity to comment on the effects of incorporating that provision into Tariff No. 17 (id.).

Additionally, Verizon contends that the Attorney General's suggestions to incorporate the terms and conditions for mutual reciprocal compensation and audit requirements set forth in the Department's

December 14, 2000 AT&T Broadband Arbitration Order only reflects the portion of the Department's reciprocal compensation rulings that apply to Verizon (Verizon Reply Brief at 23). Consequently, Verizon argues that the Attorney General's proposal is incomplete and distorts the full import of the Department's rulings on reciprocal compensation that were issued in D.T.E. 97-116. Furthermore, Verizon claims that the Department's orders in D.T.E. 97-116 fully set forth the respective rights and obligations of CLECs and the AT&T Broadband Arbitration Order only clarified rules issued in D.T.E. 97-116 (id. at 24). Thus, says Verizon, there is no need to reopen the issue by attempting to craft tariff language to repeat what the Department has already clearly decided (id.).

b. Attorney General

The Attorney General urges the Department to incorporate the terms and conditions for mutual reciprocal compensation and audit requirements set forth in the Department's AT&T Broadband Arbitration Order issued on December 14, 2000 (Attorney General Brief at 7). The Attorney General argues that including the mutual reciprocal compensation and audit requirements for terminating local traffic into Tariff No. 17 will further the tariff's purpose as a tariff of general applicability by extending these mutual provisions to all carriers (id.).

c. AT&T

AT&T did not identify any arbitrated provisions which should be incorporated into the tariff. Like Verizon, AT&T argues that the wholesale tariff and an interconnection agreement are two separate authorities under which a CLEC may obtain wholesale services from Verizon, and serve somewhat different purposes (RR-DTE-3; AT&T Brief at 36). AT&T explains that an interconnection agreement reflects the specific needs of a CLEC and often requires a time and resource intensive

process, whereas a tariff provides for services that are generally available and can be used by a CLEC which does not have the resources or interest in negotiating a unique arrangement with Verizon (id.).

3. Analysis and Findings

The Attorney General is the only party to identify a specific arbitrated provision for us to consider for incorporation into Tariff No. 17. We decline to adopt the Attorney General's proposal. We agree with Verizon that incorporation of the AT&T Broadband ruling on the 2:1 ratio for traffic that Verizon terminates to a CLEC would provide an incomplete rendition of the Department's policies on reciprocal compensation as outlined in the series of orders issued in D.T.E. 97-116.

Despite Verizon's and AT&T's arguments to the contrary, we find that there may be occasions where a specific arbitrated provision is appropriate for incorporation into Tariff No. 17. We will consider such situations as they arise. Moreover, although we do not incorporate any prior Department-arbitrated decisions into Tariff No. 17 at this time, we do not foreclose the possibility of doing so in the future. If such occasions arise, the Department will allow interested parties to comment on the Department's proposed action to incorporate an arbitrated decision into Tariff No. 17.

B. Adjacent On-Site Collocation[12]

1. Introduction

In the Tariff No. 17 Order, at 58, the Department directed Verizon to provide adjacent on-site collocation when space is legitimately exhausted in the central office. Tariff No. 17, Part E, Section 10

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[12] No CLEC opposed the rates, terms, or conditions of Verizon's adjacent off-site collocation offering or Verizon's virtual collocation lease arrangement. Accordingly, the Department approves these tariff offerings without modifications.

outlines the terms and conditions for Verizon's adjacent on-site collocation offering. AT&T challenges certain aspects of this offering.

2. Positions of the Parties

a. AT&T

AT&T disputes the reasonableness of Tariff No. 17, Part E, §10. 2.1.A, which provides that the sole method for connecting adjacent structures to the central office ("CO") is through a manhole breakout at Manhole Zero ("MH0") (AT&T Brief at 2). AT&T states that Verizon has attempted to justify that the MH0 requirement as the method that best suits CLEC needs, yet has provided no evidence of this (id. at 4). Likewise, AT&T claims that Verizon has not provided any evidence to support the suggestion that entrance to the CO through means other than MH0 is unsafe (AT&T Reply Brief at 3).

Contrary to Verizon, AT&T maintains that entrance through MH0 would be inefficient, and would unnecessarily increase a CLEC's costs by requiring longer cable runs which, in turn, may create the need for the installation of costly signal regeneration equipment; thus, AT&T maintains, making it less likely that CLECs will engage in adjacent on-site collocation (Exh. AT&T-32, at 4-5; AT&T Brief at 2-3). Although AT&T admits that it may be more expensive in some cases to enter the CO through an alternate route than through MH0, AT&T asserts that to require CLECs always to enter the CO through MH0 because it is sometimes the most cost-efficient manner is unreasonable and arbitrary (AT&T Reply Brief at 3).

AT&T contends that it has demonstrated that there are other technically feasible and safe means to enter the CO from an adjacent structure (Exh. AT&T-35; Exh VZ-4; AT&T Brief at 5).

AT&T points to Verizon's admission that alternative means of entrance to the CO are used in the case of microwave collocation (AT&T Brief at 5, citing Exh. VZ-2, at 4-5). Moreover, AT&T states that Verizon admitted that it has the capability to provide proper grounding and protective measures for non-microwave facilities (id., citing Tr. 1, at 170-172). Although Verizon indicated that it may be willing, on a case by case basis, to consider allowing a CLEC to enter the CO by means other than through MHO, AT&T notes that the tariff does not reflect this (id. at 6, citing Tr. 1, at 167-168). Accordingly, AT&T suggests that the tariff be modified to allow entrance through the most efficient means, whether that be through MH0 or otherwise (AT&T Reply Brief at 3).

AT&T also contends that the tariff singles out adjacent collocators as compared to physical collocators. First, AT&T maintains that in the case of adjacent on-site collocation, Part E, §10.3.4.B of the tariff proposes to shift onto the CLEC the responsibility for signal regeneration, if needed, on the cabling between the CLEC's point of termination located in the adjacent structure and Verizon's CO (Tr. 1, at 166; AT&T Brief at 3). However, in the case of physical collocation, AT&T states that Verizon is responsible for providing signal regeneration, if needed, on the cable between the CLEC's point of termination (the POT bay) and the main distribution frame (AT&T Brief at 3). Second, by requiring CLECs to contract directly with the local power company in Part E, §10. 3.1.B of the tariff, and thus refusing to provide adjacent collocators with the same access to Verizon's power facilities that traditional collocators have, AT&T argues that adjacent collocators will be required to build their own power plants, which could be prohibitively expensive (id. at 7). AT&T argues that since adjacent on-site collocation is necessary only when space in the CO has been exhausted, Verizon should be required to provide the CLECs with the same signal regeneration conditions as well as access to

power, and all other services and facilities that Verizon provides for physical collocation in the CO (AT&T Brief at 4, 7).

b. Verizon

Verizon states that AT&T's position would permit entry into the CO from virtually any point and, thus, is unreasonable (Verizon Reply Brief at 2). On the other hand, argues Verizon, requiring carriers' cables from a ground structure to enter and exit the CO through MH0 is not only standard practice, but is how Verizon routes its own facilities (Exh. VZ-2, at 3). Additionally, Verizon contends that the MH0 requirement reduces fire and safety risks, and best ensures the safety of all personnel and equipment (id.). Verizon explains that the cables entering the CO through MH0 are filtered through the cable vault, which serves as an effective barrier between the outside environment and the more controlled inside network environment (Verizon Reply Brief at 4).

Moreover, Verizon argues that AT&T provided no evidence of entrance facilities from a ground structure that is more efficient than entering the CO through MH0 (Exh. AT&T-32, at 4-5; Tr. 1, at 201-202; Verizon Brief at 5). Rather, Verizon notes that AT&T acknowledged that it relied on its experience in temporary situations where power cables are run from generator trucks into buildings next to where the trucks are parked, and the only other example provided by AT&T involved a building addition that adjoined and became a part of an existing structure; thus, the cable hauls were within a single structure (Exh. AT&T-34; Exh. AT&T-32, at 4-5; Tr. 1, at 201-202; Verizon Brief at 5; Verizon Reply Brief at 4).

Furthermore, Verizon asserts that its tariff was designed to apply only to adjacent ground structures, and would not be appropriate for rooftop applications (Verizon Reply Brief at 6).

Consequently, Verizon dismisses AT&T's use of microwave collocation as an example of how cables can be brought into a central office (Verizon Brief at 6). Verizon notes that, unlike for microwave collocation, there is a pre-established route for communications cables of ground-supported structures to enter the CO to the cable vault, and that to establish a new entrance to the cable vault would likely exceed the cost to reach MH0 (Exh. VZ-2, at 5; Verizon Brief at 6). Similarly, Verizon maintains that even if an adjacent structure is closer to the CO than to MH0, delivering cables to a newly constructed entrance may require longer cable runs if the adjacent structure is on the opposite side of the building from where cables terminate, making such a connection undesirable (Exh. VZ-2, at 5; Verizon Brief at 6-7).

Although Verizon states that AT&T failed to provide a reasonable basis for deviating from the MH0 requirement, Verizon is willing to explore alternative means of entering the cable vault of the CO for on-site arrangements in unique cases, subject to technical feasibility and satisfaction of all safety and technical specifications (Exh. VZ-2, at 4; Verizon Brief at 7).

Regarding power provided to an on-site adjacent structure, Verizon asserts there is no merit to AT&T's argument (Verizon Brief at 7). Verizon states that it does not provide DC power to its own structures on a permanent basis, and that there is no reliable evidence that bringing DC power into an outside structure is even technically feasible (id. at 7-8). Verizon notes that AT&T even admits that it does not externally place DC power to any of its own outside structures (Exh. VZ-6; Tr. 1, at 202). Furthermore, Verizon argues that the same safety concerns exist for copper cables providing DC power to adjacent on-site structures as the potential network safety and reliability issues that the

Department recognized in its MediaOne/Greater Media Arbitration Order[13] if carriers had been allowed to bring copper facilities into the CO (Verizon Brief at 8, citing MediaOne/Greater Media Arbitration Order at 45, 48). Hence, Verizon argues it should not be required to provide DC power to a CLEC's adjacent on-site structure.

With respect to signal regeneration, Verizon states that the CLEC is responsible for providing signal regeneration only if the distance exceeds distance limitations for signaling over digital facilities, and there is no evidence that the MH0 requirement would exceed those distance limitations (Verizon Reply Brief at 6). Additionally, Verizon notes that this is one of the factors that Verizon considers in determining the location of an on-site adjacent structure (Tr. 1, at 183).

Finally, Verizon states that AT&T's contention of disparate treatment between signal regeneration for physical collocation and for adjacent on-site collocation is wrong (Verizon Reply Brief at 6). Verizon asserts that providing a digital signal at a passive POT bay for physical collocation is not synonymous with providing signal regeneration (Tr. 1, at 156-166; Verizon Reply Brief at 6, fn. 5, citing In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, CC Docket No. 93-162, Second Report and Order, FCC 97-208, at ¶¶ 108-110 (rel. June 13, 1997)).

3. Analysis and Findings

Although there may be alternative, and sometimes more efficient, means to enter the CO from an adjacent structure than through MH0, the Department finds that requiring a standardized approach in

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[13] MediaOne/Greater Media Arbitration Order, D.T.E. 99-42/43, 99-52 (1999) ("MediaOne/Greater Media Arbitration Order").

its tariff for entering the CO -- namely, the MH0 requirement -- is reasonable given that this method is the standard practice used, and is how Verizon enters the CO from its own adjacent structures (Exh. VZ-2, at 3). Moreover, Verizon is willing, on a case-by-case basis, to explore alternative means of entering the CO, subject to technical feasibility and compliance with safety standards (Exh. VZ-2, at 4; Tr. 1, at 166-168); thus, concern that inefficient means of entry will be imposed upon a CLEC is reduced. Accordingly, the Department approves Verizon's MH0 requirement and directs Verizon to incorporate language into the tariff that it will, on a case-by-case basis, explore with a CLEC alternative means of entry into the CO for adjacent on-site structures. This directive, however, is not intended to imply that CLECs have the authority to dictate the means of entry in the CO; but, rather, that Verizon, with input from the CLEC, will determine the most efficient method to enter the CO, whether or not through MH0. The Department emphasizes that Verizon, not the CLEC, is the ultimate decision-maker as to the method of entering the CO from an adjacent on-site structure; however, the Department requires Verizon to provide the CLEC with a detailed explanation for its final determination as to which means of entry is chosen. If unsatisfied, the CLEC may appeal to the Department to resolve any dispute.

Additionally, to resolve any confusion concerning what constitutes an adjacent on-site structure, we clarify in this Order that our definition of adjacent on-site collocation in prior orders was not intended to include structures located on central office rooftops. Nor do we find any indication that the FCC contemplated a rooftop structure when it required ILECs to provide adjacent on-site collocation. We find no basis to modify our definition at this time.

With respect to signal regeneration, Verizon considers the need for signal regeneration, as well

as other factors, when determining the location of an adjacent on-site structure and Verizon has stated that there should rarely, if ever, be the need for signal regeneration (Tr. 1, at 183). Moreover, as we directed above, Verizon will explore alternative methods of entry to the CO if a CLEC so requests, including an alternative to the MH0 requirement that would not require signal regeneration; thus, the concern regarding the MH0 requirement and the need for signal regeneration is minimized. Accordingly, we approve Verizon's proposal for signal regeneration as it concerns adjacent on-site collocation.

Likewise, the Department finds Verizon's proposal on the provision of power to adjacent on-site structures to be reasonable. Notably, neither AT&T nor Verizon provides DC power to their own adjacent structures from a source outside the adjacent structure (Tr. 1, at 175, 202). Furthermore, the Department does not accept AT&T's analogy between an adjoining building addition and an adjacent on-site structure. Rather, the Department is persuaded that an adjacent on-site structure is more akin to outside plant because of the fact that adjacent on-site structures are separate and apart from the central office. On the other hand, a building addition, once completed, becomes part and parcel to the original structure to which it is adjoined. Hence, we approve Verizon's proposal regarding DC power to adjacent on-site structures.

C. Collocation at Remote Terminal Equipment Enclosures

1. Introduction

In the Tariff No. 17 Order, at 62, the Department directed Verizon to tariff its offering for collocation at remote terminals. Part E, Section 11 of Tariff No. 17 contains Verizon's offering.

AT&T challenges the reasonableness of Verizon's offering.[14]

2. Positions of the Parties

a. Verizon

Verizon argues that the time and materials charge for escorts to oversee CLEC technicians performing work or maintenance at the remote terminal is reasonable since there are no other adequate security measures available (Exh. VZ-2, at 15; Verizon Brief at 20-21). Verizon maintains that the risks at remote terminals are greater than in central offices because remote terminals are not typically monitored, and that, unlike at a central office where someone is close by, travel time must be considered to fix a problem at a remote terminal, which results in a longer service outage for end-users connected to remote terminals (Tr. 1, at 27-28). Moreover, Verizon states that the usual non-escort security arrangements used for CO-based collocation are not feasible or cost effective for remote terminals, and that the potentially greater risk of harm to all carriers' services in the remote terminal outweighs the added costs and time associated with the escort requirement (Verizon Reply Brief at 19). Verizon notes that CLECs did not suggest any alternatives, and that neither the Department nor the FCC prohibits this approach (Verizon Brief at 21). Additionally, Verizon notes that the FCC has recognized that security is a valid concern at central offices, and in Verizon's witness's opinion, security is an even more valid concern at a remote terminal given the travel time and distance to get someone out there to repair a problem if it occurs (Tr. 1, at 28).

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[14] Rhythms also challenges aspects of Verizon's remote terminal collocation offering as they relate to the TOPIC requirement and access to subloops. These issues are addressed, infra, at Section III.F and G, respectively.

b. AT&T[15]

AT&T raises concern with the security escort requirement.[16] AT&T challenges Verizon's security escort requirement as unnecessary and anti-competitive (Exh. AT&T-33, at 5; AT&T Brief at 12). AT&T states that the escort requirement requires coordination between ILEC and CLEC technicians, and that the additional costs and delays of escorts will hinder the development of facilities-based competition (Exh. AT&T-33, at 5; AT&T Brief at 13). Additionally, AT&T claims that Verizon fails to recognize the differences between a CO and the feeder distribution interface ("FDI") served by a remote terminal, and argues that the number of end-users connected to a single FDI is closer to the number of end-users connected to a house and riser cable terminal block in a large multi-dwelling unit ("MDU") rather than an MDF in a CO (Tr. 1, at 135-136; AT&T Reply Brief at 7). AT&T notes that in the MDU situation, the Department has denied Verizon's proposal for security escorts (AT&T Brief at 13, citing Tariff No. 17 Order at 27-28).

3. Analysis and Findings

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15 AT&T's dispute with the individual cost basis ("ICB") pricing of remote terminal collocation is discussed in Section III.J.1.

16 In its Initial Brief, AT&T also raised an issue with recovery of site preparation costs from a first-in CLEC, stating that the tariff, on its face, allows Verizon to recover all site preparation costs from a first-in CLEC (AT&T Brief at 16). In its Reply Brief, Verizon stated that, given the space limitations and CLEC interest in remote terminal collocation, that it would likely condition space for one remote terminal collocator at a time; however, if Verizon prepares space for more than one collocator, it will charge the first collocator only its pro-rata share, and agreed to modify its remote terminal tariff to reflect this (Verizon Brief at 20, 23). Because the tariff should clearly reflect that a first-in CLEC will be charged only its pro-rata share of site preparation costs to the extent Verizon prepares space for more than one collocator in the remote terminal, we direct Verizon to make this modification in its compliance filing.

The FCC stated that "incumbent LECs must allow collocating parties to access their equipment 24 hours a day, seven days a week, without requiring a security escort of any kind." Advanced Services Order[17] at ¶ 49. Furthermore, the FCC stated that its collocation rules "apply to collocation at any technically feasible point, from the largest central office to the most compact FDI." UNE Remand Order[18] at ¶ 221. Although in its Collocation Remand Order, the FCC invited comment on whether and to what extent its collocation rules should be modified to facilitate subloop unbundling, and whether physical collocation in remote terminals presents technical and security concerns that would warrant modification of the rules, until the FCC modifies its rules, if at all, the Department must continue to adhere to the collocation rules currently in place, including the prohibition of security escorts.

The Department recognizes that the unique circumstances of remote terminals may prevent security measures which are implemented at central offices, such as security cameras and badges with computerized tracking systems, from being reasonably deployed at remote terminals. In addition, even though the extent of harm for potential outages at a remote terminal is considerably less than at the central office because of the fewer number of end-users associated with a remote terminal in comparison to a central office, a potential risk of harm to the network and end-users does exist. But, the FCC's collocation rule concerning security escorts is unequivocal. Accordingly, the Department

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17 In the Matters of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999).

18 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. November 5, 1999) ("UNE Remand Order").

strikes Verizon's security escort requirement for remote terminal collocation as inconsistent with the FCC's collocation rules. We stress that if the FCC modifies its collocation rules pertaining to security for remote terminal collocation, we may need to revisit this issue.

D. Enhanced Extended Links

1. Special Access to EEL Conversion Interval

a. Introduction

In Tariff No. 17, Part A, Section 3.2.7.A.6, Verizon has proposed a 30-day provisioning interval for the conversion of Special Access arrangements to Extended Enhanced Links ("EEL"). In our Phase I Order, at 71, we recognized the objections of AT&T that a 30-day interval, without proper justification, was not reasonable for this conversion process. As such, the Department ordered Verizon to provide supporting documentation to justify its proposed interval as part of its compliance filing for the Phase I Order.

b. Positions of the Parties

i. Verizon

Verizon supports its proposed 30-day conversion interval on the grounds that it is a process that currently requires much manual intervention and argues that each CLEC conversion request must be addressed individually (Exh. VZ-1, at 41). Verizon further contends that the conversion process is often slowed by the need for Verizon and the CLEC to reconcile data related to the converted circuits (id. at 42). Verizon states that it is currently developing a mechanized process to handle Special Access-to-EEL conversions, and, upon implementation of that process, will amend the tariffed interval to reflect any efficiencies resulting from the mechanized conversion process (Exh. VZ-2, at 24-25).

Verizon estimates that it will have this mechanized process in place by the end of 2001 (Tr. 1, at 101-103). Finally, Verizon also argues that, under the current manual conversion process, CLECs do not experience any negative effects if Verizon is unable to meet the 30-day interval because Verizon has agreed to apply rate adjustments for conversions no later than day 30 of the conversion process (Exh. VZ-2, at 25; Tr. 1, at 78). Verizon contends that, because of this stipulation, it is not necessary for the Department to adopt any performance metrics or penalties with respect to Verizon's conversion of Special Access arrangements to EELs (Verizon Brief at 23).

ii. AT&T

AT&T contends that Verizon's reliance on a manual process for converting Special Access arrangements to EELs does not afford CLECs the most efficient means to convert their existing systems. While AT&T accepts Verizon's plan to begin billing converted arrangements at the end of the 30-day interval regardless of the completion date of the conversion, AT&T argues that it is imperative that Verizon implement a mechanized process to provide for scalability of CLEC conversion requests (AT&T Brief at 9-10). AT&T requests that the Department impose a July 4, 2001 deadline for Verizon's implementation of a mechanized conversion process (id. at 10). AT&T also argues that Verizon should be required to include language in its tariff that commits Verizon to making EEL rates effective no later than 30 days after the start of the conversion process (id. at 9).

c. Analysis and Findings

The Department finds Verizon's proposed 30-day interval for conversion of Special Access arrangements to EELs to be an adequate interval while Verizon is developing a mechanized conversion process. There is no evidence in the record that Verizon can perform the conversion any faster. We

also find Verizon's practice of applying EEL rates effective no later than day 30 of the conversion process to be acceptable in ensuring that CLECs are able to experience the rate benefits of Special Access-to-EEL conversions even if the conversion is not yet complete, and we find this arrangement to be an acceptable alternative to the development of performance measures and remedies to track Verizon's conversions. However, we do agree with AT&T that this arrangement, with the stated interval, should be included in Verizon's tariff offering. Therefore, the Department directs Verizon to include language in Tariff No. 17 stating that EEL rates will be applied to CLECs' converted Special Access arrangements no later than thirty days following the start of the conversion process.

As to Verizon's development of a mechanized conversion process, the Department finds no basis to adopt AT&T's proposed July 4, 2001 deadline for the implementation of such a process. Verizon has stated on the record that it plans to have a mechanized process in place by the close of 2001, and we find that time line to be reasonable. Further, once Verizon has completed the development and implementation of this mechanized process, we expect Verizon to make any necessary tariff modifications to reflect efficiencies gained through the new conversion process.

2. Provisioning and Billing of EEL Elements

a. Introduction

In our Tariff No. 17 Order, at 104-105, we directed Verizon to allow CLECs to order all elements of an EEL arrangement in a single service order. The Department based this directive on the premise that CLECs would be disadvantaged by potential processing delays and additional service order costs if they were required to submit separate service orders for the individual components of an EEL arrangement. The issue before the Department now is whether Verizon has the right to begin

billing for the backbone component of an EEL arrangement before the EEL loops have been provisioned.

b. Positions of the Parties

i. Verizon

Verizon argues that it is entitled to begin billing CLECs for interoffice ("IOF") backbone elements of EEL arrangements once those elements are "installed and turned up" (Exh. VZ-2, at 27; Verizon Brief at 24). Verizon contends that this entitlement is necessary because, otherwise, a CLEC could order IOF backbone as part of an EEL arrangement and then wait months to order the loops elements of that arrangement (Exh. VZ-2, at 27). Verizon states that if this were to occur in significant volumes, Verizon would effectively be spending considerable time and expense to provision elements for which it could not collect appropriate charges from the CLECs. Verizon further argues that the provisioning intervals for EEL elements are not an open issue in this proceeding, as the Department accepted Verizon's proposal to use the intervals of the individual EEL components in the Tariff No. 17 Order (id.).

During evidentiary hearings, Verizon testified that, because of technical limitations in its ordering systems, it has attempted to comply with the spirit of the Department's order to allow EEL arrangements to be ordered on a single service order by charging CLECs only one service order charge for the ordering of an EEL (Tr. 1, at 116-117). Verizon also agreed that an EEL order should not be considered complete until the IOF backbone and at least one subtending loop had been provisioned (id. at 120). Under this definition of an EEL arrangement, Verizon proposes that it will not bill CLECs for the EEL IOF backbone element until provisioning is completed on the subtending EEL

loops that are ordered concurrently with the backbone element (Verizon Reply Brief at 20-21).

ii. AT&T

AT&T contends that Verizon's method of provisioning new EEL arrangements is unreasonable because Verizon does not begin the provisioning of the EEL loops until it has completed the provisioning of the backbone elements of the arrangement (Exh. AT&T-32, at 9). Further, AT&T argues that Verizon is unjustifiably charging CLECs for the backbone elements of EEL arrangements prior to the completion of the provisioning on the loop elements of the same arrangement (id.). AT&T argues that this process is unreasonable because it requires CLECs to pay for products that they cannot use during the time Verizon takes to complete the provisioning of the EEL arrangement. AT&T further argues that Verizon's use of negotiated intervals for large volumes of high-capacity loops makes this scenario even more discriminatory because the CLEC does not have a defined interval on which to measure Verizon's performance (AT&T Brief at 10-11). Finally, AT&T contends that Verizon's process does not conform with the Department's ruling in the Tariff No. 17 Order that Verizon allow CLECs to order EELs on a single service order (id. at 11-12).

AT&T opposes Verizon's argument that it be allowed to charge for the EEL backbone elements prior to the completion of the EEL loops because the CLEC could otherwise wait months between ordering the backbone and loop elements, tying up Verizon resources. According to AT&T, this scenario is impossible because if a CLEC does not order the backbone and loop elements at the same time, then it is not ordering an EEL arrangement (AT&T Reply Brief at 11-12). As such, AT&T proposes that Verizon be required either to begin provisioning EEL loops prior to or concurrently with the provisioning of EEL backbone elements, or, at the very least, to refrain from charging CLECs for

EEL backbone elements until the completion of the entire EEL arrangement (AT&T Brief at 12).

c. Analysis and Findings

We find Verizon's current practice of billing CLECs for EEL backbone elements prior to the provisioning of the associated EEL loops to be at odds with our ruling in the Tariff No. 17 Order. In that order, we directed Verizon to make the necessary arrangements to allow CLECs to order all elements of an EEL arrangement in a single ordering process. This ruling served two purposes. First, we found that Verizon's proposed sequential ordering process had the potential of causing CLECs to experience provisioning delays associated with the submission of multiple service orders. Second, we found Verizon's proposed process placed an undue financial burden on CLECs by requiring them to pay multiple service order charges for what we viewed as a single arrangement. While we note that Verizon's practice of charging CLECs only one service order charge assuages our concerns of the financial burden on CLECs of a sequential ordering process, Verizon's practice of billing CLECs for provisioned components of an EEL arrangement prior to the completion of the entire arrangement negates any value experienced by the CLEC as a result of being required to pay only one service order charge.

As such, we agree with AT&T that Verizon can not begin billing CLECs for EEL backbone elements until the entire EEL arrangement, consisting of IOF backbone and at least one subtending loop ordered concurrently, has been installed and turned up to the CLEC. Further, we expect Verizon to adhere to our rulings in the Tariff No. 17 Order and the Phase I Order with respect to the CLECs' ability to order simultaneously all elements of an EEL arrangement.

With respect to AT&T's concerns regarding the uncertainty of the provisioning intervals for

individual EEL elements, we note that these intervals have already been approved in prior orders in this docket (see Tariff No. 17 Order at 105; see also Phase I Order at 70-71). However, we note that given our ruling above preventing Verizon from billing CLECs until the entire EEL arrangement is installed and turned up, we believe Verizon will have the incentive to complete the provisioning of the entire EEL arrangement and will not delay provisioning of EEL loops. As such, we will not readdress EEL provisioning intervals here, but affirm our prior rulings on this issue.

E. Access to UNE IOF Transport from a mid-span meet ("MSM")

1. Introduction

Verizon's Tariff No. 17, Part B, Section 2.1.1.A.2 states that unbundled dedicated IOF transport is not provided with mid-span meets. AT&T argues that this provision violates the FCC's Local Competition Order.[19]

2. Positions of the Parties

a. AT&T

AT&T contends that the Local Competition Order requires that Verizon offer IOF transport from any "technically feasible" point of interconnection, including a MSM (AT&T Brief at 20, 22). Although Verizon relies upon ¶ 553 of the Local Competition Order to support its claim that it is not required to provide access to IOF at a MSM,[20] AT&T asserts that ¶ 553 creates no exception to the

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19 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 96-325, First Report and Order, CC Docket No. 96-98 (released August 8, 1996) ("Local Competition Order").

20 Paragraph 553 of the Local Competition Order states:

(continued...)

general rule that access to UNEs must be provided at any technically feasible points, including MSM facilities (AT&T Brief at 19-23, citing Local Competition Order at ¶ 269).[21] AT&T argues that the

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[20](...continued)

> In a meet point arrangement [or mid-span meet], the "point" of interconnection for purposes of section 251(c)(2) and 251(c)(3) remains on the local exchange carrier's network (e.g., main distribution frame, trunk-side of switch), and the limited build out of facilities from that point may then constitute an accommodation of interconnection. In a meet point arrangement, each party pays its portion of the costs to build out the facilities to the meet point. We believe that, although the [FCC] has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) but not for unbundled access under section 251(c)(3). New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement.

[21] Paragraph 269 of the Local Competition Order states:

> We further conclude that "access" to an unbundled network element refers to the means by which requesting carriers to obtain an element's functionality in order to provide a telecommunications service. Just as section 251(c)(2) requires "interconnection ... at any technically feasible point," section 251(c)(3) requires access ... at any technically feasible point." We conclude, based on the terms of sections 251(c)(2), 251(c)(3), and section 251(c)(6), that an incumbent LEC's duty to provide access constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection (c)(2). Thus,

(continued...)

reference to "such an arrangement" in

¶ 553 refers to the method of financing the mid-span facility, not to any mid-span meet method of interconnection as Verizon argues (AT&T Brief at 22).

b. Verizon

Verizon argues that AT&T is seeking to expand the scope of this proceeding at the briefing stage by introducing a new issue relating to the application of transport charges under a mid-span meet arrangement (Verizon Reply Brief at 24). Verizon contends that since the issue is currently before the Department in AT&T/Verizon arbitration in D.T.E. 99-42/43, the Department must reject AT&T's arguments on this matter and decide the issue based on the evidentiary record in D.T.E. 99-42/43 (Verizon Reply Brief at 24).

3. Analysis and Findings

On March 15, 2001, the Department issued D.T.E. 99-42/43-A, the Department's Supplemental Order in D.T.E. 99-42/43 ("D.T.E. 99-42/43-A"), where the Department decided that Verizon is required to offer AT&T the IOF UNE from mid-span meets pursuant to the parties' interconnection agreement. Even though the Department indicated in D.T.E. 99-42/43-A, at n.13, that it "may find it desirable to re-examine the provisions of [Tariff No. 17] that Verizon claims prohibit a CLEC from accessing UNEs via a MSM," D.T.E. 99-42/43-A has no precedential value on Tariff No. 17. See also, infra, at Section III.A (where the Department finds that it will not require Verizon to

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[21](...continued)

such access must be provided under the rates, terms, and conditions that apply to unbundled elements.

incorporate the decisions from the Greater Media and AT&T Broadband arbitrations into Tariff No. 17, but rather will consider incorporating arbitration decisions into Tariff No. 17 on a case-by-case basis). Since we have already decided the issue for AT&T in its arbitration proceeding, it is not necessary that AT&T have this issue decided in this case at this time. We agree with Verizon that the issue was raised by AT&T late in the case and neither other parties nor the Department had proper notice. Thus, it would be procedurally improper to decide the issue now. Therefore, we will seek additional evidence from the parties before we determine whether the policy adopted in D.T.E. 99-42/43 concerning access to the IOF UNE from a MSM is appropriate for a wholesale tariff of general applicability. Accordingly, we will investigate this issue further in Phase IV of this docket.[22]

F. Unbundled Distribution Subloop Arrangements

1. Introduction

The FCC requires incumbent LECs to provide unbundled access to subloops, where technically feasible, at accessible terminals in the incumbent LEC's outside plant.[23] Accessible terminals include, but are not limited to, the network interface device ("NID"), pole or pedestal, and the feeder-distribution interface ("FDI"). See UNE Remand Order at ¶ 206.

Verizon filed tariff provisions for an unbundled distribution subloop arrangement ("USLA") providing access to the copper distribution subloop at the FDI. Part B, Section 18.1.2 of Verizon's

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22 On May 2, 2001, the Department commenced Phase IV of this docket to investigate revisions to Tariff No. 17 filed by Verizon on April 6, 2001.

23 The FCC defines an accessible terminal as a "point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within." UNE Remand Order at ¶ 206.

proposed Tariff No. 17 requires CLECs to build a telecommunications carrier outside plant interconnection cabinet ("TOPIC") when the FDI is located outside of the remote terminal, regardless of whether the CLEC is collocated within the remote terminal. Access to the distribution subloop is provided by interconnecting the TOPIC to Verizon's FDI. The parties differ on the following: 1) whether Verizon should be required to establish a single point of interconnection ("SPOI") for multi-unit premises[24] that are served by more than one FDI; 2) whether Verizon should be permitted to require CLECs to build a TOPIC when the FDI is located outside the remote terminal; and 3) whether Verizon should be permitted to restrict the definition of a subloop to metallic materials accessible at the FDI.[25]

2. Postitions of the Parties

a. Verizon

i. SPOI

At the evidentiary hearing, Verizon expressed some doubt that the FCC required incumbent LECs to retrofit the outside plant at multi-unit premises in order to provide a SPOI; however, Verizon stated that on a going-forward basis will be designing its outside plant with a SPOI (Tr. 1, at 180). Indeed, Verizon commits to establishing a SPOI when constructing new facilities (Verizon Reply Brief at 17).

ii. TOPIC

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[24] Examples of multi-unit premises include college campuses and courtyard-style apartment clusters.

[25] CLECs also objected to Verizon's proposed individual case basis ("ICB") pricing, which is dealt with separately in Section III.J.1.

Verizon argues that the TOPIC requirement is justified on the basis of network security concerns, because direct CLEC connections at the FDI create the potential for service-affecting network disruptions, where a CLEC's customers could be put out of service as a result of another CLEC working on its cross-connects (Exh. VZ-2, at 12; Tr. 1, at 22-23; Verizon Brief at 14). Verizon asserts that because the FDIs are not monitored, any service interruption would require a longer period of time to diagnose and repair (Exh. VZ-2, at 12; Tr. 1, at 27; Verizon Brief at 14). Verizon notes that in a New York proceeding, Covad expressed concerns regarding the "operational difficulties" of connecting directly at the FDI, and the possibility of other CLECs having access to Covad's customers (Exh. VZ-2, at 12; Tr. 1, at 28; Verizon Brief at 14). Verizon also suggests that the available space in the remote terminals should be saved for equipment, which requires the controlled conditions (i.e. HVAC and power) of a remote terminal, unlike cross-connect panels, which do not require controlled conditions and can be installed anywhere (Tr. 1, at 29-30).

b. CLECs

i. SPOI

AT&T argues that Verizon's distribution subloop offering should be rejected because it does not provide CLECs with a means to request the construction of a SPOI for property that is served by multiple FDIs, despite the clear requirement of the FCC (AT&T Brief at 17).

ii. TOPIC

AT&T argues that the TOPIC requirement is discriminatory and anti-competitive, in that it imposes an expense on CLECs that Verizon does not itself incur (Exh. AT&T-33, at 10). AT&T

further argues that, in most instances, construction of a TOPIC is unnecessary, and that any CLEC that is collocated in the remote terminal should be able to cross-connect directly at the FDI on the same basis as Verizon (id.).

Rhythms argues that the TOPIC is an intermediate interconnection point, and thus prohibited by FCC rules (Rhythms Brief at 11). Rhythms also contends that a proliferation of CLEC-constructed TOPICs outside of remote terminals will result in "significant outcry" from neighborhood groups, and will further complicate the easement and rights-of-way issues inherent in adjacent collocation (id. at 13). Rhythms rejects Verizon's claim that the TOPIC requirement is predicated upon overriding network security concerns, noting that a given FDI generally serves only a few hundred customers, and that, in any event, Verizon's security concerns do not rise to the level of technical unfeasibility, which would be the only justification for Verizon to deny CLECs a direct connection to Verizon's network (id. at 12).

3. Analysis and Findings

a. SPOI

The FCC's position on the responsibility of an incumbent LEC to provide a SPOI is clear:

> To the extent there is not currently a single point of interconnection that can be feasibly accessed by a requesting carrier, we encourage parties to cooperate in any reconfiguration of the network necessary to create one. If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, we require the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.

UNE Remand Order at ¶ 226.

Because the FCC clearly contemplates the reconfiguration of existing outside plant in order to

provide competitors with a SPOI, Verizon's commitment to establish SPOIs on a forward-looking basis when constructing new facilities is insufficient to satisfy the obligations placed on incumbent LECs. Therefore, consistent with the directives in the UNE Remand Order, Verizon is directed to submit tariff provisions providing for the request and construction of SPOIs that will be fully accessible and suitable for use by multiple carriers.

b. TOPIC

Contrary to the CLECs' arguments, the FCC did expressly contemplate network reliability among the determinants of technical feasibility:

> We find that the questions of technical feasibility, including the question of whether or not sufficient space exists to make interconnection feasible at assorted huts, vaults, and terminals, and whether such interconnection would pose a significant threat to the operation of the network, are fact specific. Such issues of technical feasibility are best determined by state commissions, because state commissions can examine the incumbent's specific architecture and the particular technology used over the loop, and thus determine whether, in reality, it is technically feasible to unbundle the subloop where the competing carrier requests.

UNE Remand Order at ¶ 224.

Network security thus being an aspect of technical feasibility, the Department must determine whether Verizon's asserted concerns regarding network security are justified. Verizon's USLA offering allows CLECs to interconnect at the FDI, without the construction of a TOPIC, when the FDI is located in the remote terminal *and* the CLEC is collocated within the remote terminal (Verizon Brief at 14; Verizon Reply Brief at 13). In such an instance, the collocated CLEC places its interconnection panel directly in the remote terminal (Tr. 1, at 32). The Department must determine, however, whether it is reasonable for Verizon to require CLECs to build a TOPIC: 1) when a CLEC is collocated in the

remote terminal, but the FDI is not located within the remote terminal; and 2) when a CLEC is not collocated within the remote terminal.

The FCC has adopted a rebuttable presumption that the subloop can be unbundled at any accessible terminal in the incumbent's outside plant.[26] It is thus Verizon's burden to prove that unbundling the distribution subloop at the FDI is not technically feasible (because of network security issues) without the construction of a TOPIC. Verizon has not met this burden.

While the Department does not discount the concerns over operational difficulty and network security raised by Covad in a New York proceeding, no carrier has raised similar concerns in the instant proceeding. And while the Department also does not discount Verizon's concerns over the security of the network and the reliability of service to end-users, the Department is not convinced that the only way to address these concerns is to require collocated CLECs to construct a TOPIC. Verizon's proposed USLA offering waives the TOPIC requirement for collocated CLECs when the FDI is located within the remote terminal, for reasons of parity. The Department is aware that the relative infrequency of FDIs being located within remote terminals may serve to limit the likelihood of this particular configuration occurring, thus limiting the potential for any adverse network consequences as a result of the parity configuration. However, it remains the case that the TOPIC requirement is waived in this circumstance for reasons of parity rather than because of the lack of a potential adverse impact on network security. The Department is confident that whatever measures Verizon employs to safeguard the network in the case of the parity configuration can be similarly employed on behalf of

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[26] UNE Remand Order at ¶ 223.

collocated CLECs when the FDI is located outside of the remote terminal. Verizon is free to ameliorate network security concerns by requiring collocated CLECs to install a cross-connect panel in the remote terminal; Verizon is not, however, free to require collocated CLECs to secure what is essentially a second collocation merely for the purpose of housing a cross-connect panel. And although Verizon's attempt to preserve space in the remote terminals for equipment that needs the controlled conditions by banning "dumb" cross-connect panels to a TOPIC may be grounded in practicality, it is not Verizon's prerogative to "triage" CLEC equipment out of a remote terminal. A comprehensive solution to the lack of space at remote terminals may need to be devised in the future, but it is unwise to attempt to address the issue in a piecemeal fashion by arbitrarily triaging certain pieces of CLEC equipment and requiring the construction of redundant structures.

When a CLEC chooses not to collocate at the remote terminal, or is not collocated within the remote terminal because of space limitations, the TOPIC requirement becomes one of semantics only; the CLEC must still construct or acquire space to house its equipment. Nothing in Verizon's testimony or proposed Tariff No. 17 suggests that a non-collocated CLEC will be required to construct two structures, one to house its equipment and one to house its interconnection panel. Verizon has stated that a carrier can build a structure large enough to house both its equipment and its interconnection panel, in which case the carrier does not need to collocate in the remote terminal (Tr. at 31, 33). Any carrier that is not collocated in the remote terminal is therefore free to place its interconnection panel in the same structure which houses its equipment, with no requirement that it must build a separate structure solely for the purpose of interconnection at the FDI. Verizon is directed to file tariff language providing a method for CLECs not collocated in the remote terminal to access the distribution subloop

at the FDI.

Nothing in this Order shall be construed as forbidding a CLEC from building a separate structure for its interconnection panel, in addition to its existing collocation arrangements, if it so chooses. However, Verizon may not require the construction of a TOPIC when a CLEC is collocated within the remote terminal, regardless of the location of the FDI. Verizon is directed to file revised tariff provisions consistent with this Order.

c. Definition of Subloop

Although Verizon has partially responded to AT&T's concerns by deleting the reference to metallic materials from its USLA offering, AT&T's stated concern regarding Verizon's attempt to limit the definition of a subloop to metallic materials accessed at the FDI appears to be based on a misreading of Verizon's proposed tariff provisions. Verizon must share a large part of the responsibility for this misreading. Despite the fact that Tariff No. 17 contains provisions for two subloop offerings, house and riser cable (Part B, Section 20) and distribution cable (Part B, Section 18), Verizon refers to the distribution cable offering as its "unbundled subloop arrangement." When an incumbent LEC refers to a discrete part of the subloop with the umbrella designation "unbundled subloop arrangement," the assumption that this particular part of the subloop is all that the incumbent planned to offer is understandable. Verizon does, however, offer access to unbundled subloops other than house and riser cable and distribution cable in Part B, Section 21.1 under the heading "Unbundled Subloop Arrangments - Other." In order to avoid further confusion of this sort, the Department directs Verizon to re-title its distribution subloop offering with a more specific description.

G. Unbundled Feeder Subloop Element ("UFSE")

1. Introduction

In compliance with the Phase III Order at 86, Verizon proposed tariff provisions to unbundle the loop and thereby make subloop elements available to CLECs as UNEs. Rhythms argues that Verizon has failed to fully unbundle the entire loop because it does not offer as a UNE the portion of the local loop between the FDI and the remote terminal.

2. Positions of the Parties

a. Rhythms

Rhythms argues that in the proposed tariff, Verizon only allows CLECs to purchase the subloop portions of the loop between the customer premises and the FDI, or between the remote terminal and the central office, but that there is no offering for the portion of the local loop between the FDI and the remote terminal (Rhythms Brief at 8-9). Rhythms contends that Verizon attempts to cloud this fundamental flaw in its tariff by vaguely suggesting that it will make available "special arrangements" to provide for this missing part of the loop (id. at 9, citing Exh. VZ-1, at 33).

b. Verizon

Verizon argues that the proposed definition of UFSE in the tariff[27] is accurate in the case where the FDI is located in the RTEE, but inaccurate in the cases where the FDI is located outside the RTEE (Verizon Reply Brief at 10). Verizon states that it will correct the definition to include the subloop portion between the FDI and the remote terminal in the case where the FDI is located outside the

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[27] Part B, Section 20.1.1.A. of Tariff No. 17 defines UFSE as a feeder facility between the end office and the remote terminal.

RTEE (id.). Verizon asserts that with the revised definition of UFSE[28], it will be providing all unbundled subloop offerings (id.).

Verizon clarifies that Rhythms' reference to "special arrangements" has nothing to do with Verizon's unbundled subloop offerings or UNEs, but rather relates to the cable facilities connecting a CLEC's DSLAM to the unbundled loop, which is the CLECs' responsibility to provide (id. at 12-13).

3. Analysis and Findings

As an initial matter, the Department notes that Rhythms raised these objections for the first time in its initial brief. Such a practice hinders the Department's ability to thoroughly investigate issues, and, under the ground rules of this case, Department's procedural rules, and the Massachusetts Administrative Procedures Act, we could properly refuse to address the issue. Nevertheless, we will address the substance of Rhythms argument.

We find that Verizon's revised tariff language fully responds to Rhythms' concern by including the missing portion of the loop, e.g., the portion of the loop between the FDI and the RTEE, and thereby provides continuity from the central office all the way to the end-user customer when the FDI is located outside the RTEE. The Department directs Verizon to replace the current definition of UFSE in Tariff No. 17 with the revised one provided in Exhibit A of its Reply Brief.[29]

H. Provisioning Intervals for OC-3 and OC-12 Unbundled Dedicated Transports

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[28] In Exhibit A of its Reply Brief, Verizon proposed a revised definition of UFSE as a feeder facility between the end office and the FDI or its functional equivalent.

[29] Given our conclusion here, we find no need to address Verizon's request that the Department take administrative notice of the facts presented in the Declaration of Charles Kiederer, which was attached to Verizon's Reply Brief.

1. Introduction

In the Tariff No. 17 Order, at 170, the Department directed Verizon to propose reasonable intervals for OC-3 and OC-12 facilities for quantities that Verizon currently is able to provision. Verizon proposed 60 business days for this provisioning interval in its compliance filing on May 25, 2000 (see Part A, Section 3.2.5.A.2 of Tariff No. 17).

2. Positions of the Parties

a. Verizon

Verizon maintains that the 60-day interval is based on a study performed during the fourth quarter of 1999 for comparable access services, which Verizon claims is the best information available (Verizon Brief at 21-22). Verizon asserts that each activity is necessary for the overall provisioning process and must be accomplished sequentially in the order described (Exh. VZ-1, at 35-40; Verizon Brief at 22).

b. CLECs

The CLECs raise no objections to Verizon's proposed interval.

3. Analysis and Findings

The Department finds that Verizon has provided sufficient evidence to support its proposed 60 business days provisioning interval for OC-3 and OC-12 transports. Therefore, the Department approves Verizon's proposed interval.

I. House and Riser Cable ("HARC")

1. Introduction

Verizon's proposal for HARC is contained in Part B, Section 12.2 of Tariff No. 17. The issues in dispute are: (1) the absence of a tariffed offering for stand-alone horizontal cable; (2) the absence of technical requirements and procedures for CLECs to follow when they perform cross connections; (3) assignment of responsibility for arranging building access when access to a customer's premises is not needed; and (4) rights over building space owned by the landlord.

2. Positions of the Parties

a. AT&T

AT&T argues that Part B, Section 12.2.1.A[30] of Tariff No. 17 allows CLECs to order either the riser and horizontal cable as a pair or stand-alone riser cable, but not stand-alone horizontal cable. AT&T maintains that this prevents a CLEC, who has its own riser cable, from directly cross connecting to Verizon's horizontal cable (AT&T Brief at 27). AT&T states that although it concurs with Verizon's proposal to provide the horizontal cable on an interim basis, to develop interim procedures for this service with AT&T, and then to incorporate permanent terms and conditions as well as cost-based rates in Tariff No. 17 at a later date, the Department should order the completion of both phases to be accomplished within specific time periods (id. at 28-29). AT&T proposes that interim procedures be implemented no later than February 15, 2001 and that the permanent tariff provisions be incorporated into Tariff No. 17 within three months of a final order in this proceeding (id.).

Regarding a related issue, AT&T argues that Verizon should not be permitted to delay a CLEC

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30 Part B, Section 12.2.1.A states that house and riser cable provides a [CLEC] with access to facilities between the network side of the network interface of the [Telecommunications Carrier's] end user and a point of interconnection on the same premises where the Telephone Company's subscriber facility and house and riser facilities terminates.

from obtaining immediate access to the landlord's horizontal cable just because there is a remote possibility that Verizon owns it (id. at 29). AT&T states that determining the ownership status of horizontal cable requires the manual research of paper records located in scattered locations, which can take weeks (id.). To avoid such a situation, AT&T suggests that a CLEC be permitted to immediately cross connect to the horizontal cable and Verizon can back bill the CLEC, if necessary, upon the completion of the cable research (Tr. 2, at 323-324). AT&T contends that the Department should order Verizon to make such a process available on an interim basis and incorporate it into the tariff provisions that Verizon will propose regarding access to the horizontal cable, until such time as Verizon can provide a list of buildings in which it owns the horizontal cable (AT&T Brief at 29-30; AT&T Reply Brief at 14-15).

Concerning the second issue under dispute, AT&T points out that Part B, Section 12.2.2.D[31] requires CLECs to follow technical requirements and procedures provided by Verizon when CLECs perform cross connections, but no such requirements and procedures have been proposed (AT&T Brief at 30-31; AT&T Reply Brief at 12-13). AT&T states that although Verizon indicated that it is in the process of developing procedures and requirements, there are no such requirements that can be used in the interim (AT&T Brief at 30-31, citing Exh. AT&T-39). AT&T urges the Department to require Verizon to develop and tariff interim procedures and technical requirements for cross connections immediately, and then to replace the interim procedures with permanent ones once they are

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[31] Part B, Section 12.2.2.D states that "[w]hen a [CLEC] notifies the Telephone Company of its intent to cross connect its facilities to the Telephone Company's house and riser, the Telephone Company will supply technical requirements and procedures the [CLEC] shall follow to perform these cross connections." See Exh. AT&T-39.

developed (AT&T Brief at 31).

Turning to the issue of building access, AT&T notes that Verizon requires that a CLEC obtain building access for Verizon technicians when there is a problem on Verizon's HARC that affects a CLEC's customer.[32] AT&T states that while it agrees that a CLEC should arrange access to the customer's premises if needed, Verizon should arrange access to other areas of the building because: (1) Verizon already has access to its own HARC within buildings; (2) restoration of service will be delayed further if a CLEC has to negotiate with the landlord for access by a Verizon technician; and (3) the outage stems from trouble with Verizon-owned HARC (AT&T Brief at 31-32).

AT&T disputes Verizon's contention that Verizon's technician may not know whether access to the customer's premises is needed until dispatched to fix the HARC trouble, arguing that in most cases the CLEC technician will already have isolated the problem and know whether access to the customer's premises is required (id. at 32). AT&T states that while the initial responsibility should be on Verizon to arrange building access for itself, if Verizon has made a good faith effort to obtain access and is still unable, AT&T would certainly step in to help (Tr. 1, at 316). In that respect, AT&T suggests that the following language be incorporated into Part B. Section 12.2.3.C:

> If the Telephone Company is unable to arrange access to the house and riser cable within a period of 12-hours from [CLEC] notification of the Telephone Company, the Telephone Company will notify the [CLEC] and, if requested, the [CLEC] will use reasonable efforts to assist in arranging access for the Telephone Company.

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[32] Part B, Section 12.2.1.A.1 of Tariff No. 17 states, in part, that "[w]here permission of building owner or another party is needed for [CLEC] or Telephone Company access to house and riser cable, obtaining such permission is the responsibility of the [CLEC]..." See Tr. 2, at 295-297.

(RR-AT&T-8).

Finally, AT&T argues that the language in Part B, Section 12.2.1.C.1.b, which states that the CLEC's "terminal block or equipment. . . cannot be installed in the path of Telephone Company growth," should be stricken because, when a CLEC wishes to install equipment in a building in a location outside of Verizon's right of access, it is the landlord, not Verizon, who has the authority to determine where the equipment may be installed (AT&T Brief at 35).

b. Attorney General

Concerning access to buildings, the Attorney General argues that Verizon already holds contractual leasehold rights of access to these multi-tenant buildings and requiring a CLEC to coordinate schedules with Verizon can delay repairs (Attorney General Brief at 5, citing Tr. 2, at 304-310). The Attorney General suggests that the more reasonable approach is for Verizon to arrange access for its technicians and for the CLECs to arrange access for their technicians (id. at 5).

c. Verizon

Verizon states that it is currently negotiating procedures for access to horizontal cable with AT&T, and that this obviates the need for Department involvement at this time (Verizon Reply Brief at 21). As an interim solution, Verizon suggests that until it files tariff provisions for rates, terms and conditions of this offering, Verizon will provide CLEC access to horizontal cable as a bona fide request for a new type of sub-loop and charge a NID fee subject to true-up upon the filing of a permanent rate (Tr. 2, at 259-262; Verizon Reply Brief at 21). Verizon argues that it owns very little horizontal cable, and it is burdensome to manually survey all 13,000 MDUs in Massachusetts where Verizon owns house and riser cable to provide the list of locations where Verizon owns horizontal cable (Tr. 2, at

255).

Verizon asserts that contrary to AT&T's claims, practices are already in place for ordering, provisioning, and cross-connecting HARC, and that the new procedures being developed in New York will be made available in Massachusetts once they are adopted (Tr. 2, at 286-287; Verizon Reply Brief at 21).

Contrary to AT&T and the Attorney General's claims, Verizon argues that CLECs should arrange access to the site where the HARC is located, whether it be in a basement, telephone closet, or the CLEC customer's premises, because: 1) CLECs also have relationships with the landlord since they have equipment located at the premises; 2) it is the CLEC's customer, not Verizon's, whose service needs to be restored, and a landlord may be more responsive to a customer's request on behalf of a carrier for access to a telephone closet or basement to restore the tenant's telephone service; and 3) in a number of cases in Massachusetts, Verizon must have direct access to the customer's premises for testing and repair purposes because the riser cable does not terminate in a telephone closet, but goes from the basement directly into the customer's premises (Verizon Brief at 27-28; Verizon Reply Brief at 21-22).

Verizon objects to AT&T's proposed language concerning access to buildings because it shifts responsibility from the CLEC to Verizon (Verizon Brief at 28, n.28). Verizon contends that if the Department determines that some sharing of responsibility is appropriate, the tariff should simply state that the CLEC is responsible for arranging access by Verizon to the location, provided that Verizon made reasonable efforts to arrange for access and was unable to do so (id.).

With respect to Part B, Section 12.2.1.C.1.b, Verizon clarifies that its intent is to avoid CLEC

construction in the path of Verizon's "planned growth," i.e., construction jobs already in progress, not merely forecasted work (Tr. 2, at 279; Verizon Reply Brief at 22-23). Verizon argues, therefore, that AT&T's recommendation is unreasonable and must be rejected by the Department (Verizon Reply Brief at 23).

3. Analysis and Findings

The Department notes that the tariff offering for access to a stand-alone horizontal cable is already under negotiation between Verizon and AT&T. As an interim solution, we adopt AT&T's suggestion that to minimize delay in a CLEC obtaining access to horizontal cable in a building, CLECs should be permitted to immediately cross connect to the horizontal cable and Verizon can back-bill the CLEC upon the completion of the cable research necessary to determine ownership of the cable.[33] As an interim rate, the Department finds reasonable Verizon's proposal to use the NID charge as a proxy, subject to true-up upon the Department's approval of a permanent rate. In addition, the Department orders Verizon to propose revised tariff provisions governing its horizontal cable offering within two months of the date of this Order, or upon completion of negotiation with AT&T, whichever occurs first.

With respect to procedures and requirements for cross-connections, we agree with AT&T that Verizon's tariff requires CLECs to follow certain procedures and requirements when CLECs perform

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[33] However, the Department finds that it is too burdensome for Verizon to undertake manual research of all MDU buildings where it owns house and riser cable to identify the few buildings in which it owns horizontal cable, particularly where AT&T has stated that such information is not necessary for AT&T to provide service to its customers as long as Verizon agrees to a back-billing method, which we have ordered here. Therefore, we will not require Verizon to provide a list of all building locations in which Verizon owns horizontal cable.

cross connections but fails to state what those procedures and requirements are. Therefore, the Department directs Verizon to provide interim terms and conditions with the compliance filing to this Order and to file permanent tariff language upon completion of the trial between RCN and Verizon in New York.

Concerning the issues of building access, the Department is not persuaded by Verizon's argument that it is more efficient for CLECs to arrange access for Verizon in situations where access to the customer's premises is not necessary. We agree with AT&T that, in such cases, restoration of service could be further delayed if CLECs have to interpose between Verizon and the building's landlord to arrange access for Verizon. Therefore, we adopt AT&T's proposed language that Verizon be responsible to arrange its own building access for the first twelve hours following notification by the CLEC to Verizon that the service trouble involves Verizon's HARC and access to the customer's premises is not needed. Verizon is directed to incorporate the language proposed by AT&T into Tariff No. 17.

However, AT&T's proposal is unclear as to who would be responsible to arrange access when Verizon's reasonable efforts fail or, after dispatch, it becomes evident that access to the customer's premises is needed. It is important that confusion over responsibility not prevent customers from having their service restored. Accordingly, the Department finds that if Verizon is unable to arrange building access within twelve hours, or if it discovers after a dispatch that access to the customer's premises is required, at that point responsibility will transfer to the CLEC to arrange access for Verizon to the building as well as the customer's premises. In addition, the time elapsed before the CLEC assumes responsibility to arrange building access or access to the customer's premises will not be counted

towards Verizon's performance metrics for maintenance and repair, and in the latter case (e.g., access to the customer's premises is found to be necessary after a dispatch) a false dispatch charge will apply. Verizon shall make revisions consistent with these directives.

Lastly, the Department is concerned that Part B, Section 12.2.1.C.1.b can be read to grant Verizon a blanket right to use a landlord's property, to the detriment of CLECs. Therefore, we direct Verizon to replace "growth" with "planned growth, i.e., construction jobs already in progress," and to include in its tariff a definition for "planned growth." In addition, we also direct Verizon to include a provision that when a CLEC disputes Verizon's use of building space owned by the landlord, Verizon will be required to provide proof of construction jobs in progress. We believe these revisions will be sufficient to address AT&T's concerns.

J. Cost Issues

1. ICB Pricing

a. Introduction

Verizon proposes that certain services be priced on an individual case basis ("ICB"). Specifically, Verizon requests ICB pricing for activities related to collocation at remote terminal equipment enclosures ("CRTEE") and unbundled sub-loop arrangements ("USLA").

b. Positions of the Parties

i. Verizon

Verizon states that, under the USLA offering, the Company provides the interconnecting cabling between the CLEC's TOPIC and Verizon's FDI, and places the termination block at the TOPIC (Verizon Brief at 15-16). The Company argues that it should be allowed to use ICB pricing

until it gains adequate experience in providing these services to meet CLECs' demands (id. at 16).

Verizon also requests ICB pricing for certain CRTEE-related activities (Verizon Brief at 18). Specifically, the Company request ICB pricing for the Remote Terminal Serving Address Inquiry and Preliminary Engineering Records Review, the CRTEE Site Survey for Space Availability Inquiry, and the CRTEE Site Preparation Fee and Engineering and Implementation Fee (id. at 18). Again, Verizon claims that it does not have sufficient information to develop a specific cost study because it has not received or processed any CRTEE requests (id.). The Company contends that CRTEE is like microwave collocation, for which the Department has allowed ICB pricing (id.). According to Verizon, CRTEE does not lend itself to uniform tariff arrangements because it must be tailored to specific interconnectors and to specific remote terminals (id.). The Company states that, contrary to AT&T's claims, ICB pricing does not contravene the Department's directives and would not produce arbitrary and discriminatory charges because the charges would be based on forward-looking costs consistent with Department approved standards and may be subject to the Department's review (Verizon Reply Brief at 17-18).

ii. Attorney General

The Attorney General recommends that the Department reject Verizon's ICB pricing and require the Company to submit a compliance filing for the ICB services, which includes rates for each service with their associated costs (Attorney General Brief at 3). The Attorney General indicates that ICB pricing creates unpredictability that may adversely affect the CLEC's business plans and may reduce competition (id.). According to the Attorney General, the FCC has not allowed ICB pricing for the TOPIC or CRTEE offerings which Verizon seeks in this proceeding (id. at 4).

iii. AT&T

AT&T contends that Verizon's ICB pricing hinders a CLEC's ability to predict and plan for a key cost of competing in the local services market (AT&T Brief at 13). AT&T also claims that ICB pricing is inconsistent with the Department's policy regarding the issue (id. at 14). According to AT&T, although collocation costs may vary from one remote terminal to another, a uniform rate that takes into account the cost variations can and should be developed to address the problem (id.). AT&T indicates that, contrary to Verizon's claim, the Department's review of ICB pricing on a case-by-case basis might force CLECs to simply accept the rates because such investigations consume large amounts of the Department's time and resources (id. at 14-15). Moreover, AT&T argues that, as opposed to fixed rate pricing, ICB pricing provides no protection to CLECs from cost overruns or project mismanagement, especially if it includes a true-up mechanism (AT&T Brief at 15-16). Accordingly, AT&T requests that the Department order the Company to develop specific costs and rates for its CRTEE offering (AT&T Reply Brief at 8).

iv. Rhythms

Rhythms indicates that it generally supports the positions of the Attorney General and AT&T opposing ICB pricing (Rhythms Reply Brief at 3).

c. Analysis and Findings

In the Tariff No. 17 Order, at 210, the Department found it inappropriate for Verizon to include ICB pricing in an interconnection tariff of general applicability. However, in the Phase I Order, at 43, the Department made an exception for microwave interconnection rates based on an FCC finding that microwave interconnection must be tailored to specific interconnectors and to specific central offices,

and that microwave interconnection does not readily lend itself to uniform tariff arrangements. Likewise, the record in this case demonstrates that CRTEE is similar to microwave collocation because it must be tailored to specific interconnectors and to specific remote terminals and, therefore, does not readily lend itself to uniform tariff arrangements (Exh. VZ-2, at 16-17; Tr. 1, at 47-48). Moreover, the record also demonstrates that Verizon has not received any orders for TOPIC and CRTEE-related activities to date (Exh. VZ-1, at 33).[34]

As a general matter, we reiterate that ICB pricing is inappropriate in a tariff of general applicability. Verizon has stated that it is requesting ICB pricing until it gains adequate experience in providing these services to meet CLECs demands. Moreover, the Company indicates that it is willing to conduct a true-up, if the temporary ICB rates are higher than the permanent rates (Tr. 1, at 66). Therefore, we will allow a temporary exception to our general policy against ICB pricing until Verizon gains experience in provisioning these services. The Department directs Verizon to propose permanent rates for these services within six months of the date of this order, or to provide a detailed request for continuation of the exception. Additionally, the ICB prices will be subject to true-up once permanent rates have been developed and approved by the Department.

2. CRTEE Application Fee

a. Introduction

Verizon proposes to charge $2,500 for a CRTEE application fee, which will be credited towards the customer's final non-recurring charges for the particular arrangement (Exh. VZ-2, at 16).

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[34] Contrary to the Attorney General's claim, the record also indicates that the issue of ICB pricing with regards to TOPIC and CRTEE-related activities is not before the FCC. See Tr. 1, at 65.

b. Positions of the Parties

i. Verizon

Verizon indicates that the $2,500 application fee is simply a portion of the total estimated engineering and administration fee of $3,133.47 that is due when the CLEC submits a CRTEE application (Exh. VZ-1, at 8-9). Verizon contends that, contrary to AT&T's claim that the fee is "guess work," the application fee is actually a reasonable estimate based on Verizon's experience with other forms of physical as well as virtual collocation arrangements, the costs of which typically exceed $2,500 for engineering and implementation work (Verizon Brief at 19). Moreover, Verizon indicates that it will refund the difference to the CLECs, if the charges are less than $2,500 (id.).

ii. AT&T

AT&T claims that Verizon's $2,500 application fee has no apparent support and is, at best, a guess (Exh. AT&T-33).

c. Analysis and Findings

Verizon supports the reasonableness of the CR TEE application fee by comparing it to application fees for other forms of collocation arrangements that we have approved in the past. AT&T has not provided any evidence to dispute the reasonableness of the charge. Therefore, we find Verizon's $2,500 CRTEE application fee to be reasonable. Moreover, Verizon will refund the difference to CLECs if actual charges are less than $2,500.

3. Miscellaneous Rates

a. Introduction

Verizon proposes, in Part M of Tariff No. 17, rates for various miscellaneous network services

now offered under the tariff. Specifically, Part M, Section 1, Pages 5, 5.1, 9, 9.1, 12, 12.1, 16, 16.1, and 17.1, include non-recurring charges ("NRCs") relating to unbundled feeder sub-loops. Part M Section 2, Pages 28, 29 and 30, includes revisions to the unbundled sub-loop arrangement tariff originally filed on May 25, 2000, and which are currently in effect, as well as new rates for access to feeder sub-loops. Verizon also includes substitute tariff pages, with an issue date of October 27, 2000, and an effective date of November 26, 2000. The substitute pages relate to issues addressed in the Department's Phase III Order, such as: (1) the monthly splitter administration and support charge adjusted to reflect the elimination of the installation investment; (2) the joint meet testing charge; and (3) the line sharing pair swap charge.

b. Positions of the Parties

No party challenged any of the miscellaneous rates referenced above.

c. Analysis and Findings

We have examined all of the above uncontested rates and based on our review, we conclude that these rates are consistent with both state and federal precedent. Therefore, we find that these rates are reasonable and approved as filed.

K. Miscellaneous Issues

1. Introduction

In prior orders in this docket, the Department directed Verizon to develop NRCs for various services and to provide supporting documentation for specific proposed rates or assumptions. Specifically, the Department directed Verizon to develop a NRC for EEL loop testing, and to redo its cost studies for the Link Test Charge (Tariff No. 17 Order, at 112-113); to propose a NRC for

specific services, which included dedicated cable transport, integrated digital loop carrier line port, and advanced intelligent network service creation environment (Tariff No. 17 Order at 207); and, to perform a cost study to support its proposed retention rate for billing and collection of information service calls, and to provide cost support for its proposed eleven square feet allocation for cageless collocation (Tariff No. 17 Order at 222; Phase I Order at 22-23). The above-referenced items were investigated in the continuing Phase I of this docket.

Additionally, during the course of the Phase I proceedings, Verizon committed to making a number of revisions to Tariff No. 17. AT&T urges the Department to order Verizon to make these changes.

2. Positions of the Parties

a. Verizon

In its Compliance Filings, Verizon provided documentation in support of its dedicated cable support charge, its link test charge, its non-recurring EEL loop testing charge, its proposed eleven square feet of space allocation for cageless collocation, its proposed retention rate for billing and collection of information service calls (see Exh. VZ-1, at 23-24, 26-28, 45-51; Exh. VZ-3, at Parts R, X, S, T, and U). Verizon claims that these rates are fully supported by cost studies consistent with Department-accepted methodology and should be approved (Verizon Brief at 25).

Additionally, Verizon states that minor tariff modifications were identified in Exh. AT&T-8, Exh. AT&T-24, Exh. DTE-51, Exh. AT&T-28, RR-DTE-6, and Exh. VZ-2, at 7 (Verizon Brief at 2, fn.4). Verizon also identifies minor tariff modifications to the house and riser cable provisions that were

discussed during the evidentiary hearings (id.).[35]

Verizon does not object to making these modifications (Verizon Reply Brief at 23).

b. AT&T

AT&T requests that the Department direct Verizon to make changes to various tariff provisions in accordance with Exh. AT&T 3, Exh. AT&T-39, Exh, AT&T-24, and with representations made at the evidentiary hearing (see Tr. 2, at 227-228).

3. Analysis and Findings

No party raised concerns with the dedicated cable support charge, the link test charge, the non-recurring EEL loop testing charge, the eleven square feet of space allocation for cageless collocation, or the proposed retention rate for billing and collection of information service calls. We have reviewed the supporting documentation submitted, and find that the rates proposed, and the terms and conditions for the lease arrangement, are reasonable. Therefore, we approve these items as filed.

Turning to Verizon's commitments to make various revisions to the tariff that were made in response to information requests and during the evidentiary hearings, we direct Verizon to follow through with these commitments. These revisions should be included in Verizon's compliance filing. In addition to the revisions noted by Verizon and AT&T, the Department directs Verizon to incorporate into the tariff the proposed changes regarding the refund of the application fee for adjacent on-site collocation in certain situations (see Tr. 1, at 160-161).

IV. OUTSTANDING COMPLIANCE ISSUES

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[35] See Tr. 2, at 227, 256, 279, 285, 292, 295 and 296.

Next, we address Verizon's compliance with outstanding issues from our Tariff No. 17 Order, Phase I Order, and our Phase I-A Order. For those issues not specifically discussed below, we find that Verizon has complied with our directives and approve those sections.[36]

A. Security Measures

In the Tariff No. 17 Order, at 29-30, the Department directed Verizon to replace "and/or" in its list of security measures, and to replace the stricken language with "or." Verizon requested reconsideration on this issue, and in the Phase I Order, at 15-16, the Department clarified that Verizon may not charge for duplicative security measures, and that Verizon has the burden to show that any additional security measures provide a necessary security benefit to justify added costs imposed on the

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[36] Namely, we approve Verizon's compliance filings on the following issues: security escorts (Part E, Section 2.2.5.A); shared cages, including removal of guest/host structure and split-billing for recurring rate elements associated with a shared cage (Part E, Section 7); removal of obsolete/unused equipment (Part E, Section 2.4.3.A); reservation of space (Part E, Section 2.2.2.C); space availability response (Part E, Sections 2.1.2.A and 2.1.2.C); removal of distinction between business and non-business hours for microwave collocation (Part E, Section 4.2.3); non-standard arrangements for virtual collocation (Part E, Section 3.3.3.A.1); service order processing for EELs (Part B, Section 13.4.1.B); significant local usage definition for EELs (Part B, Section 13.1.1.D); collocation requirement for EELs (Part B, Section 13.1.1.D); commingling of special access and EELs (Part B, Section 13.1.1); auditing provisions for EEL arrangements Part B, Section 13.4.1.E); rearrangement of facilities (Part A, Section 1.9.1); service terminations (Part A, Sections 1.6.6.A.2, 1.6.6.A.3 and 1.6.6.A.5); provisioning interval for OC-3 and OC-12 unbundled dedicated transport (Part A, Section 3.2.5.A.2); and dark fiber provisions (Part B, Section 17).

In addition, Verizon included in its compliance filing Part E, Section 8 on Subleasing Arrangements, which is essentially identical to the former provisions on shared cages. No CLEC raised concerns with these provisions. Because we approve the provisions on shared cages as being in compliance with our prior Orders, and because we find that the provisions for the Subleasing Arrangement provides additional collocation options for CLECs, we approve the Subleasing Arrangement provisions.

CLEC. Phase I Order at 15-16.

In its compliance filing, Verizon has not replaced the "and/or" language in Section E, Part 9.2.2.A. However, given our clarification in the Phase I Order, no revision is needed provided that Verizon includes the following language: "If the Telephone Company determines that more than a single form of security in a particular area of a central office is necessary to ensure the overall security of the network, a TC may challenge the need for the additional security measure by filing a complaint with the DTE. The Telephone Company has the burden to show that any additional security measures provide a necessary security benefit to justify added costs imposed on the CLEC." Verizon is directed to incorporate this language in its next compliance filing.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the revisions to Tariff No. 17, filed with the Department on October 5, 2000, October 12, 2000, November 2, 2000 and November 17, 2000, be and hereby are APPROVED, in part, and DENIED, in part, as noted herein;

FURTHER ORDERED: That the outstanding compliance issues, be and hereby are APPROVED, in part, and DENIED, in part, as noted herein; and it is

FURTHER ORDERED: That Verizon Massachusetts shall file, within four weeks of the date of this order, a compliance tariff consistent with the findings contained herein; and it is

FURTHER ORDERED: That the parties comply with all other directives contained 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

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 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. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).