D.T.E. 98-57 - Phase I

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by Verizon New England, Inc. d/b/a Verizon-Massachusetts.

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TABLE OF CONTENTS

I. <u>BACKGROUND</u> Page 1

II. <u>STANDARD OF REVIEW FOR RECONSIDERATION AND CLARIFICATION</u>
Page 4

III. VERIZON'S MOTION FOR RECONSIDERATION AND CLARIFICATION Page 5

A. Collocation Security Issues Page 6

1. Position of the Parties Page 7

a. Verizon Page 7

b. RCN Page 9

c. AT&T Page 10

d. Rhythms and Covad Page 11

2. Analysis and Findings Page 12

B. Other Collocation Issues Page 16

1. Adjacent Off-site Collocation Page 16

a. Positions of the Parties Page 16

i. Verizon Page 16

ii. AT&T Page 17

iii. Rhythms, Covad and WorldCom Page 17

b. Analysis and Findings Page 17

2. Minimum Space Allocation for CCOE Page 19

a. Positions of the Parties Page 19

i. Verizon Page 19

ii. AT&T Page 20

iii. Rhythms and Covad Page 21

iv. WorldCom Page 21

b. Analysis and Findings Page 22

3. Shared Cages Page 23

a. Positions of the Parties Page 24

i. Verizon Page 24

ii. AT&T Page 24

iii. WorldCom, Rhythms and Covad Page 25

b. Analysis and Findings Page 25

4. Cable Racking Page 27

a. Positions of the Parties Page 27

i. Verizon Page 27

ii. AT&T Page 28

iii. WorldCom, Rhythms and Covad Page 28

b. Analysis and Findings Page 28

C. EEL Issues Page 29

1. Commingling of Special Access and EEL Arrangements Page 29

a. Positions of the Parties Page 30

i. Verizon Page 30

ii. CLECs Page 31

b. Analysis and Findings Page 32

2. Significant Local Usage, Audit Provisions, and Collocation Requirements for EEL Arrangements Page 33

a. Positions of the Parties Page 34

i. Verizon Page 34

ii. RCN Page 35

iii. AT&T Page 35

iv. WorldCom Page 36

b. Analysis and Findings Page 37

3. Separate and Sequential Ordering Provisions Page 39

a. Positions of the Parties Page 39

i. Verizon Page 39

ii. CLECs Page 40

b. Analysis and Findings Page 41

D. Rate Issues Page 42

1. ICB Pricing for Microwave Page 42

a. Positions of the Parties Page 42

i. Verizon Page 42

ii. AT&T Page 42

iii. WorldCom Page 43

b. Analysis and Findings Page 43

2. Unbundled Local Switching Charge ("ULSC") Page 43

a. Positions of the Parties Page 44

i. Verizon Page 44

ii. CLECs Page 45

b. Analysis and Findings Page 45

E. General Tariff and Miscellaneous Issues Page 46

1. Rearrangement of Facilities Page 46

a. Positions of the Parties Page 46

i. Verizon Page 46

ii. AT&T Page 48

b. Analysis and Findings Page 48

2. Interoffice Transmission Facilities Transport ("IOF Transport")
Page 48

a. Positions of the Parties Page 49

i. Verizon Page 49

ii. CLECs Page 49

b. Analysis and Finding Page 50

3. Incorporation of Department-Arbitrated Decisions Page 50

a. Positions of the Parties Page 51

i. Verizon Page 51

ii. CLECs Page 52

b. Analysis and Findings Page 53

IV. RNK'S MOTION FOR CLARIFICATION Page 54

A. Positions of the Parties Page 54

1. RNK Page 54

2. Verizon Page 55

B. Analysis and Findings Page 55

V. AT&T'S MOTION FOR CLARIFICATION Page 56

A. Positions of the Parties Page 56

1. AT&T Page 56

2. Verizon Page 57

B. Analysis and Findings Page 59

VI. NAS' LATE-FILED MOTION FOR LIMITED INTERVENTION Page 59

A. Background Page 59

B. Standard of Review Page 59

C. NAS' Position Page 61

D. Analysis and Findings Page 61

VII. COMPLIANCE REVIEW Page 62

A. Non-Cost Collocation Issues Page 63

1. Removal of Obsolete/Unused Equipment Page 63

2. Reservation of Space Page 63

3. Warehousing of Space Page 64

4. Space Availability Response Page 65

5. Adjacent On-Site Collocation Page 66

6. Collocation at Remote Terminals Page 66

7. Microwave Collocation Page 67

8. Provisioning Intervals Page 67

B. Extended Enhanced Links Page 70

1. Provisioning Intervals for New EEL Arrangements and Conversions of Special Access Arrangements to EELs Page 70

2. EEL Cost Issues Page 72

3. Other EEL Provisions Page 73

C. General Tariff and Miscellaneous Provisions Page 73

1. Service Terminations Page 73

D. Cost Provisions Page 74

1. Engineering and Implementation Costs for Virtual Collocation Page 74

2. ICB Page 75

3. Other Costs Page 75

E. Dark Fiber Page 76

XIV. ORDER Page 78

ORDER ON MOTION OF VERIZON FOR RECONSIDERATION
AND CLARIFICATION; MOTION OF AT&T FOR CLARIFICATION;
MOTION OF RNK FOR CLARIFICATION; LATE-FILED MOTION OF NAS FORLIMITED
INTERVENTION; AND REVIEW OF VERIZON'S COMPLIANCE FILINGS

I. BACKGROUND

On March 24, 2000, the Department of Telecommunications and Energy ("Department") issued its final Order in D.T.E. 98-57 ("Tariff No. 17 Order") which directed Verizon New England, Inc. d/b/a Verizon-Massachusetts[(1)] ("Verizon") to file, within four weeks, a Compliance Filing consistent with the findings contained therein. The Department noted in the Tariff No. 17 Order that the Court of Appeals for the D.C. Circuit had issued a decision in GTE Service Corporation v. Federal Communications Commission,[(2)] which vacated and remanded portions of the Federal Communications Commission's ("FCC") Advanced Services Order,[(3)] but that the Department had not analyzed the impact of the GTE decision prior to issuance of the Tariff No. 17 Order. See Tariff No. 17 Order at n.15. On August 10, 2000, the FCC issued its Collocation Remand Order.[(4)]

On April 13, 2000, Bell Atlantic filed four motions: 1) Request to Defer the Date for Compliance and Extension of the Judicial Appeal Period ("Request to Defer"); 2) Motion for Extension of Time; 3) Motion to Reopen; and 4) Motion for Reconsideration and Clarification ("Motion for Reconsideration"). On April 25, 2000, the Department received comments opposing Verizon's Request to Defer and Motion for Extension of Time from Rhythms Links, Inc. ("Rhythms") and Covad Communications Company ("Covad"), jointly, and from WorldCom, Inc. ("WorldCom"), individually. On May 1, 2000, RCN-BecoCom, LLC ("RCN") and AT&T Communications of New England, Inc. ("AT&T") filed comments in opposition to the Motion for Reconsideration, whereas WorldCom, individually, and Rhythms and Covad, jointly, filed comments in opposition to the Motion for Reconsideration and Motion to Reopen ("RCN Opposition," "AT&T Opposition," "WorldCom Opposition," and "Rhythms/Covad Opposition," respectively). Verizon responded to the comments in opposition to its Motion for Reconsideration on

May 8, 2000 ("Verizon Reply Letter"). On May 11, 2000, AT&T filed a response to the Verizon Reply Letter ("AT&T Reply Letter").

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 ("June 2 Order"). The Department did not address Verizon's Motion for Reconsideration in the June 2 Order.

In addition to the motions by Verizon, AT&T and RNK, Inc. d/b/a/ RNK Telecom ("RNK") both filed a Motion for Clarification on April 13, 2000. Verizon filed its opposition to AT&T and RNK's Motions for Clarification on May 1, 2000 ("Verizon Clarification Opposition"). AT&T filed a response to Verizon's opposition on May 8, 2000 ("AT&T Clarification Reply").

On April 21, May 5, May 17, May 19, May 25 and June 14, 2000, Verizon filed revised Tariff No. 17 provisions. The April 21, May 17 and May 19 filings were in response to the Tariff No. 17 Order. The May 5th filing was in response to the Tariff No. 17 Order and the FCC's Line Sharing Order.[(5)] Verizon's May 25th Filing was in response to the FCC's UNE Remand Order and UNE Remand Supplemental Order in CC Docket No. 96-98.[(6)] The June 14 Dark Fiber tariff filing is being addressed in Phase I and the June 14 Collocation filing is being addressed in Phase III of this docket, with the exception of the Lease Arrangement for Virtual Collocation which will also be addressed in Phase I.

In procedural memoranda issued on May 19 and June 24, 2000, the Department requested comments from competitive local exchange carriers ("CLECs") on Verizon's tariff filings to be addressed in Phase I of this docket. Comments on the April 21, May 17 and May 19, 2000 filings were received from AT&T, Rhythms/Covad, and WorldCom. Comments on the May 25 and June 14, 2000 filings were received from AT&T, RNK, and Rhythms. Verizon filed responses to the CLEC comments on June 19 and July 14, 2000.

On June 5, 2000, NAS submitted a Late-filed Motion for Limited Intervention ("Motion to Intervene") and attached its comments on Verizon's April 21, May 17 and May 19, 2000 filings. No parties submitted objections to NAS' motion.

Furthermore, on June 2, 2000, the FCC released its Supplemental Order Clarification.[(7)] In the Supplemental Order Clarification, the FCC clarifies its rules on Enhanced Extended Links ("EEL"). Verizon filed a letter addressing the Supplemental Order Clarification on July 7, 2000. AT&T and WorldCom filed responses to Verizon's letter on July 26, 2000.

II. STANDARD OF REVIEW FOR RECONSIDERATION AND CLARIFICATION

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

III. VERIZON'S MOTION FOR RECONSIDERATION AND CLARIFICATION

Verizon's Motion for Reconsideration and Clarification of the Department's Tariff No. 17 Order asks for Department action on the following issues: collocation security issues; other collocation issues; general tariff issues; rate issues; and issues related to EELs. We address these issues below.

A. Collocation Security Issues

Verizon claims that the following Tariff No. 17 Order directives violate the GTE decision: 1) the requirement that Verizon permit CLECs unescorted access to the entire central office, including access to rooftops for microwave arrangements; 2) the requirement that Verizon allow commingling of its equipment with CLEC equipment, including allowing virtual to cageless conversions; 3) the prohibition against construction of a separate room; and, 4) the requirement that Verizon revise language in its listing of alternative security measures (Verizon Motion for Reconsideration at 6). Verizon urges the Department to reconsider its ruling on these issues or, at a minimum, requests the Department to issue a stay pending the FCC's remand proceedings as a result of GTE (id. at 9).

Our directives in the Tariff No. 17 Order related to collocation security issues are as follows. Because the Department concluded that a CLEC's equipment is not necessarily limited to its collocation node, the Department directed Verizon to "permit a CLEC to access all its equipment, regardless of its location within the central office, without requiring a security escort of any kind." Tariff No. 17 Order at 28. In addition, the Department ordered Verizon to revise its tariff by listing the alternative security measures which Verizon could employ in its central offices with the disjunctive "or" rather than the "and/or" that was contained in the tariff. Id. at 29-30. The Department explained that implementing security measures over and above those needed to protect the network could lead to increased collocation costs without the concomitant benefit of providing necessary protection. Id.

Furthermore, the Department directed Verizon to strike the prohibition against the commingling of Verizon and CLEC equipment in the same line-up and, in limited circumstances, to allow the conversion of virtual collocation arrangements to Cageless Collocation Open Environment ("cageless" or "CCOE"). Tariff No. 17 Order at 34-35, 80-82. As a basis for striking Verizon's prohibition against commingling of equipment, the Department cited concerns with the efficient use of space within central offices. Id. at 34-35. In addition, the Department raised service outages as a factor in its decision to allow, in limited situations, in-place virtual to cageless conversions. Id. at 80-82.

Finally, the Department directed Verizon to remove language regarding the construction of a separate room for CLEC equipment. Tariff No. 17 Order at 76-78. The Department cited the FCC's prohibition against unreasonable segregation requirements. Id.

1. Position of the Parties

a. Verizon

Verizon urges the Department to reconsider or clarify the above collocation security issues based on GTE and on FCC precedent (Verizon Motion for Reconsideration at 4). Verizon states that security is a critical issue and argues that the Tariff No. 17 Order undermines the security and integrity of the network (id. at 6). First, Verizon contends that GTE puts to rest any doubt as to whether Verizon is entitled to separate its equipment and, thus, prevent commingling (id.). Verizon indicates that the Court in GTE found that ILECs are entitled to require collocators to place their equipment in a room or isolated space separate from the incumbent's own; therefore, Verizon claims that the Department must reconsider its ruling rejecting Verizon's less stringent measures, such as escorted access to areas outside the collocation node, as well as the Department's decision permitting commingling of Verizon and CLEC equipment (id. at 6-7).

Second, Verizon indicates that the FCC permits an ILEC to enclose its equipment in its own cage and argues that the Tariff No. 17 Order would make it virtually impossible for Verizon to separate its equipment with a cage or other separation (id. at 7). Verizon states that there are no reasonable security measures that would protect the network from unrestricted access by CLECs to the entire central office, or protect Verizon's equipment if the CLECs' equipment were commingled (id.). Verizon states that deploying widespread security measures throughout the entire central office would increase security costs and that a nominal escort charge makes more sense than requiring Verizon to secure the entire central office (id. at 7-8). Moreover, Verizon argues that the FCC intended that CLECs be permitted unescorted access only to their collocated equipment, yet the Tariff No. 17 Order allows for unescorted access to areas outside the collocation area where CLECs maintain no collocated equipment (Verizon Motion for Reconsideration at 8).

Third, Verizon indicates that the Tariff No. 17 Order implies that Verizon may only use a single form of security to secure its network in a cageless environment but that this is inconsistent with the Department's approval of Verizon's security costs, which were based on the use of multiple security measures as well as the CLECs' understanding of reasonable security measures (id.). Moreover, Verizon claims that there is no basis for the claim that the FCC intended that ILECs use only a single security measure. Rather, Verizon argues that the Advanced Services Order specifically contemplates that cages would be used in conjunction with other measures (id. at 9, citing Advanced Services Order ¶ 42). To the extent that the Tariff No. 17 Order permits Verizon to deploy only a single method of security, Verizon seeks reconsideration (id. at 8). In addition, Verizon urges the Department to clarify that Verizon is permitted to deploy the most efficient and effective blend of security measures to protect its network (id. at 9).

Lastly, in response to CLEC comments, Verizon agrees that the Department has the authority to decide collocation issues but argues that the Department should not ignore, as some CLECs have suggested, the GTE decision (Verizon Reply Letter at 1). Verizon indicates that the D.C. Circuit found several FCC rules, which the Department relied on in the Tariff No. 17 Order, to be inconsistent with the Telecommunications Act of 1996 ("Act") (id.). Moreover, Verizon points to the Ninth Circuit's decision in MCI v. U.S. West[(8)] which holds that states may not impose collocation requirements that are outside the Act or that are inconsistent with the Act (id. at 1-2). At a minimum, Verizon argues that the Department should issue a stay pending the FCC's remand proceedings (Motion for Reconsideration at 9).

b. RCN

RCN states that any escort requirements, including those involving CLEC payment for escorts, were rejected by the Advanced Services Order (RCN Opposition at 2, citing Advanced Services Order at ¶ 49). RCN argues that Verizon has offered no sound basis to alter the Department's ruling, and that Verizon's attempt to charge what it characterizes as a "nominal" escort fee is contrary to the Advanced Services Order (id.).

Likewise, RCN claims that Verizon has provided no justification to disturb the Department's ruling permitting a CLEC the right to unescorted access to all of its equipment within the central office and urges the Department to reject Verizon's request for reconsideration on this issue (id.).

c. AT&T

AT&T argues that neither reconsideration nor clarification is warranted and that Verizon is manufacturing ambiguity and seeking to reargue previously decided issues (AT&T Opposition at 1). In addition, AT&T contends that Verizon is asking the Department to subscribe to an overly broad reading of GTE even though the GTE decision does not have a significant impact on the Department's Tariff No. 17 Order (id. at 2).

AT&T insists that the only new information which Verizon presented in support of its Motion for Reconsideration is the D.C. Circuit's holding in GTE (id. at 4). AT&T maintains, however, that any previously unknown or disclosed facts contained in the GTE decision are not relevant to the Tariff No. 17 Order (id.). In fact, AT&T asserts that the GTE decision is silent on the issues of unescorted access to the entire central office, conversion of virtual to cageless collocation arrangements, and the types and number of security measures that are permissible (AT&T Opposition at 4-5). To the extent the GTE decision addressed security issues at all, AT&T claims that the Court affirmed the FCC's right to require ILECs to provide cageless collocation (id.).

Moreover, AT&T maintains that GTE does not support Verizon's contention that the Department may not prohibit Verizon from requiring separate line-ups for CLEC equipment to avoid commingling of equipment (id.). Rather, AT&T indicates that the Court merely stated that the FCC had not articulated a sufficient basis upon which to allow competitors to choose preferred space on the LEC's premises (AT&T Opposition at 5-6, citing GTE at 426). AT&T points out that the Court in GTE makes several statements indicating that the ILEC may not have unfettered freedom in the placement of equipment, and argues that the right of an ILEC to choose the location of CLEC equipment does not include carte blanche authority to waste scarce central office space (id. at 6).

d. Rhythms and Covad[9]

Rhythms and Covad contend that Verizon has misread or misapplied the GTE decision in an effort to sidestep the Department's standards governing reconsideration (Rhythms/Covad Opposition at 3). Rhythms and Covad argue that Verizon's claims regarding security issues were previously made during the evidentiary phase of this proceeding and do not bring to light any previously unknown or undisclosed facts that would have a significant impact upon the decision rendered (id. at 6-7). Rhythms and Covad state that GTE vacated and remanded the physical collocation rules in paragraph 42 of the Advanced Services Order on the selection of collocation space, a separate collocation room and a separate collocator entrance, but that the GTE decision does not reference escort requirements or duplicative security measures and, to the extent GTE addresses virtual to cageless conversions, it supports the FCC's requirement that ILECs provide cageless collocation (id. at 7-9).

Rhythms and Covad point to the Department's independent state authority to regulate the availability of collocation in Verizon's central office and Verizon's failure to acknowledge that all the collocation directives contained in the Tariff No. 17 Order are within the Department's authority, notwithstanding the GTE decision (id. at 9). Therefore, Rhythms and Covad note that the GTE decision does not void the Tariff No. 17 Order (id. at 10).

2. Analysis and Findings

We stress that our independent state authority (see G.L. c. 159) authorizes us to decide, among other things, collocation issues for Massachusetts. Furthermore, we find that our independent state authority does not preclude us from deciding issues that are not specifically discussed in the Act, provided that our decisions are consistent with the Act. In fact, the FCC has stated that "states should have the flexibility to apply additional collocation requirements that are otherwise consistent with the 1996 Act and our implementing regulations." Local Competition Order[10] at ¶ 558. See also MCI v. U.S. West at 1268; Advanced Services Order at ¶ 23.

We note, however, that the GTE decision vacated and remanded certain FCC rules contained in the Advanced Services Order that we had referred to in fashioning rules on collocation for Massachusetts. Because we may not make collocation decisions that are inconsistent with the Act, even solely based on Massachusetts law, we find that a review of the impact of GTE on our Tariff No. 17 Order is required. Accordingly, the Department determines that the D.C. Circuit Court's decision in GTE and the FCC's recent Collocation Remand Order constitutes the kind of extraordinary circumstances that permits us to take a fresh look at the record on collocation security-related issues with the possible outcome of substantively modifying our decision, if appropriate.

First, on the issue of escorts outside the collocation node and the "nominal charge" for such escorts, we find that modification of the Tariff No. 17 Order is unnecessary. Section 251(c)(6) requires ILECs to permit a competitor to install equipment necessary for interconnection or access to unbundled network elements on ILEC premises and gives competitors access to the ILEC central office to install, maintain, and repair this equipment. Although the FCC's rules defining equipment that is necessary for interconnection or access to unbundled network elements ("UNEs") was vacated and remanded by the GTE Court,[11] this does not affect the directive in the Tariff No. 17 Order that requires Verizon to permit unescorted access to all of a CLEC's equipment located in the central office. We agree with CLECs that GTE does not address the FCC's prohibition on the use of escorts for a CLEC to access its equipment.

Although the FCC may have contemplated that a CLEC would have access only to its equipment located in the designated collocation node, we find that requiring a CLEC to be escorted in order to access its equipment located outside the collocation node, which is directly related to the collocation-node equipment, and charging the CLEC for that escort, could impede a CLEC's ability to repair and maintain such equipment in a timely and cost-efficient manner. Moreover, we note that the FCC specifically requires ILECs to allow use of physical collocation for microwave transmission facilities. Local Competition Order at ¶ 582. Yet Verizon seeks to require an escort and to impose a charge on a CLEC who seeks access to the rooftop where such equipment may be located. Such restrictions, we conclude, would unduly impede a CLEC's access to its equipment and increase costs. Therefore, we affirm our prior decision on the use of escorts;[(12)] however, we clarify our directives regarding the extent of a CLEC's access.

Contrary to Verizon's claim, the Tariff No. 17 Order does not permit unfettered access throughout the entire central office. The Tariff No. 17 Order requires Verizon to permit a CLEC to access its equipment regardless of its location. Stated differently, the Commission finds that Verizon may prohibit a CLEC from access to any area of the central office where that CLEC does not have any equipment located. We further clarify that, should a CLEC have equipment installed outside its collocation node not directly related to its collocation-node equipment, and for which it does not have responsibility to maintain and repair, the CLEC's access may be reasonably restricted. Our intent is to ensure timely and unrestricted access to a CLEC's equipment that plays an integral role in a CLEC's ability to interconnect with Verizon's network and to access UNEs, subject only to reasonable security measures.

Second, while we disagree with Verizon's claim that GTE put to rest any doubt regarding an ILEC's right to separate its equipment, we acknowledge that Verizon's motion for reconsideration on the issues of commingling of Verizon and CLEC equipment, including virtual to cageless conversions, has merit. The Court in GTE agreed that the FCC's interpretations of physical collocation appeared to be impermissibly broad and vacated those portions of the Advanced Services Order that embraced the unduly broad definition of physical collocation. GTE at 419. The Court noted that the FCC offered no good reason why a CLEC should choose where to establish collocation on an ILEC's property, or why an ILEC is prohibited from requiring CLECs to use separate or isolated floors. Id. at 426. The Court indicated that the FCC will have the opportunity, on remand, to refine its regulatory requirements. Id.

The FCC has requested comment on this issue,[(13)] but, at the present time, it is uncertain as to how the FCC will refine its rules on separation of equipment. Therefore, we agree with Verizon that a stay of our directives is warranted regarding commingling of equipment, virtual to cageless conversions, and regarding Verizon's removal of the reference to the construction of a separate room. The stay is pending the FCC's final decision on this issue.

Third, we agree with Verizon that our directive in the Tariff No. 17 Order to replace the "and/or" in its list of alternative security measures with "or" appears inconsistent with our approval of Verizon's costs studies, which were based upon the deployment of a mix of security measures. Therefore, clarification is warranted to remove any ambiguity.

Our intent in the Tariff No. 17 Order was not to prohibit Verizon from deploying an efficient mix of the security measures within a single central office, but rather to prevent deployment of duplicative security measures that increase the costs of collocation without providing a *necessary* security benefit. We remain convinced that Verizon may not charge for *duplicative* security measures. We recognize that each central office, and even different areas within a single central office, are unique in terms of the type and level of security needed. However, should a CLEC challenge Verizon's decision to deploy multiple security measures in a particular central office or locations of central offices, Verizon has the burden to show that the additional security measures provide a necessary security benefit to justify added costs imposed on CLECs.

Security of facilities ultimately protects the consuming public, and we must not lose sight of that principle. But security concerns cannot be a reflexively accepted excuse for encumbering and impeding competitors, in whose commercial success the public also has some interest. As amended here, our Order strikes a proper balance between these interests.

B. Other Collocation Issues

1. Adjacent Off-site Collocation

In the Tariff No. 17 Order at 58, Verizon was directed to permit adjacent on-site and off-site collocation when space is legitimately exhausted in a central office. The Department noted that ILECs in other states offer adjacent off-site collocation. The Department acknowledged that adjacent off-site collocation does not mirror other forms of collocation but held that it was an "appropriate mean to an end by serving the ultimate goal of interconnecting networks." Tariff No. 17 Order at 59.

a. Positions of the Parties

i. Verizon

Verizon argues that the Department's ruling requiring adjacent off-site collocation is ambiguous and requires clarification (Motion for Reconsideration at 10). Verizon notes that no CLEC proposed terms and conditions for such an offering, and that the GTE decision clarifies that the type of off-site collocation arrangement contemplated by the Department would not constitute collocation (id.). Verizon contends that the Tariff No. 17 Order appears to expand the definition of collocation in violation of the Act and FCC rules (id. at 10-11).

ii. AT&T

AT&T argues that any ambiguity which may have existed in relation to the meaning of the word "premises" has been largely resolved by GTE (AT&T Opposition at 6). Specifically, AT&T notes that the D.C. Circuit upheld the FCC's requirement that ILECs provide adjacent collocation, holding that an ILEC's premises include areas beyond the central office (id., citing GTE at 425).

iii. Rhythms, Covad and WorldCom

Rhythms, Covad and WorldCom state that there is nothing ambiguous about the Department's ruling and that off-site adjacent collocation has been accepted by other states (WorldCom Opposition at 9; Rhythms/Covad Opposition at 11). Rhythms, Covad and WorldCom further state that the Department has full authority under Massachusetts law to require Verizon to provide the arrangements that the Department has labeled off-site adjacent collocation and note that the Department specifically left the development of rates, terms and conditions for off-site adjacent collocation up to Verizon (WorldCom Opposition at 9-10; Rhythms/Covad Opposition at 11-12).

b. Analysis and Findings

The FCC recently clarified that its definition of premises "includes all buildings and similar structures owned, leased, or otherwise controlled by the incumbent LEC that house its network facilities, all structures that house incumbent LEC facilities on public rights-of-way, and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these structures." Collocation Remand Order at ¶ 44. The FCC further clarified that its definition of premises "excludes land and buildings in which the incumbent LEC has no interest. In that circumstance, the incumbent LEC and its competitors have an equal opportunity to obtain space within which to locate their equipment." Id.

We are cognizant that neither the Act nor the FCC mandates an ILEC to provide off-site adjacent collocation;[(14)] but neither the Act nor the FCC prohibits a state from mandating such an arrangement so as long as the approach is not inconsistent with the Act or FCC rules. In fact, the FCC encourages state commissions to adopt additional requirements beyond those set forth by the FCC.[(15)] Adjacent off-site collocation is such an additional requirement in Massachusetts.

Our ruling requiring Verizon to offer adjacent off-site collocation is not inconsistent with the Act or FCC rules. We note that Verizon is required to offer adjacent off-site collocation only in limited circumstances, e.g. when space is legitimately exhausted in a particular central office. See Tariff No. 17 Order at 58. Should that circumstance arise, adjacent off-site collocation may be the only real option for a central office located in an urban area that cannot accommodate adjacent on-site collocation. Incumbent LECs and CLECs have an equal opportunity to obtain additional space to locate equipment on third-party property, but the FCC's "equal opportunity" exclusion does not apply to interconnection or access to UNEs once the CLEC has obtained space to locate its equipment in an off-site location. Verizon has the option of acquiring new space to locate its equipment and access its network facilities from that location.[(16)] But if a CLEC acquires space on third-party property, because no space exists in a particular central office, and yet is unable to interconnect or access UNEs under reasonable term and conditions, the CLEC's ability to compete effectively may be undermined. Thus, requiring Verizon to offer adjacent off-site collocation once a CLEC obtains an off-site location furthers the underlying goals of the Act and FCC rules.

Moreover, we find that our ruling regarding adjacent off-site collocation is clear and requires no clarification. We left the development of specific terms and conditions of adjacent off-site collocation, including reasonable distance limitations, to Verizon. Accordingly, Verizon shall comply with our directives regarding adjacent off-site collocation.

2. Minimum Space Allocation for CCOE

The Department directed Verizon to reduce the floor space allocation for cageless collocation arrangements to seven square feet. Tariff No. 17 Order at 50-51. The Department indicated that Verizon's proposed allocation of 15 square feet more than doubles the cost for cageless collocation on a square footage basis for those CLECs who choose not to enclose their equipment in a locked cabinet, and increases the likelihood of premature space exhaustion. Id.

a. Positions of the Parties

i. Verizon

Verizon alleges that the Department's conclusion that seven square feet of floor space in a cageless arrangement is sufficient to accommodate a 12 inch deep equipment bay is based on incorrect assumptions (Motion for Reconsideration at 12). Verizon asserts that no party introduced evidence regarding the square footage needed to accommodate equipment that is 12 inches deep, and that a 12 inch deep equipment bay uses 11 square feet of central office space (id.). Verizon asks the Department to clarify that Verizon is entitled to recover the costs of all of the square footage required to accommodate the smaller equipment (id.).

Verizon asserts that it charges virtual collocators for only seven square feet because it opted not to charge CLECs for additional spacing required to access a virtual arrangement since virtual collocators do not need to access the arrangement (id. at 13). However, Verizon notes that cageless collocators will enter Verizon's central offices to perform their own maintenance and other work and, thus, should bear the costs of the aisle spacing (id.). Verizon contends that basing costs on seven square feet would significantly understate its costs, and that denying it the ability to recover its costs constitutes an unconstitutional taking (Motion for Reconsideration at 13-14).

ii. AT&T

AT&T alleges that Verizon's request to clarify the Department's directive that Verizon offer cageless collocation in seven square feet increments is an effort by Verizon to reexamine the record (AT&T Opposition at 7). AT&T asserts that the Department rejected Verizon's argument made in the main case that the proposed 15 square foot minimum was required in part to ensure proper clearances and end aisle spacing and that the Department rejected Verizon's position (id. at 7-8). AT&T further states that neither GTE nor the Advanced Services Order provide a basis to challenge the Department's minimum space requirement for cageless collocation (id. at 8). AT&T notes that the Advanced Services Order specifically directs state commissions to ensure proper pricing of smaller collocation spaces based on "the amount of space in the ILEC's premises actually occupied by the new entrants," not the amount of space required to gain access to the space occupied (id., citing Advanced Services Order at ¶43). Moreover, AT&T states that GTE supports the FCC's right to prevent ILECs from placing "unreasonable minimum space requirements on collocating competitors" (id., citing GTE at 425).

iii. Rhythms and Covad

Rhythms and Covad urge the Department to deny Verizon's request that the minimum square footage should be set at 11 square feet (Rhythms/Covad Opposition at 13). Rhythms and Covad contend that the Department accepted Verizon's costs submission, except for the minimum amount of square footage, and that Verizon has not demonstrated that a taking has occurred (id.). Rhythms and Covad state that the test for confiscation is based upon the total revenues of Verizon, which are covered by the price cap form of regulation that the Department approved in D.P.U. 94-50 (1995) (id.).

iv. WorldCom

WorldCom states that Verizon is claiming for the first time on reconsideration that it needs 11 square feet to provide cageless collocation even where a 12 inch deep bay is used, and that the rates must be based on its "now preferred 11 square foot minimum" or an unconstitutional taking results (WorldCom Opposition at 11). WorldCom argues that Verizon's request does not meet the standards for reconsideration since Verizon is rearguing an issue that was fully considered; thus, the "taking" claim is not properly before the Department so need not be addressed (id.).

b. Analysis and Findings

Without addressing Verizon's takings claim, we conclude that our directive to reduce the space allocation for cageless collocation to seven square feet did not give sufficient weight to the space required to access equipment in a cageless arrangement. Although there was evidence in the record that Verizon's proposed 15 square foot allocation for cageless collocation incorporated access space,[(17)] Verizon's primary argument in support of its proposed 15 square foot allocation rested upon the possibility that a CLEC would install equipment that was more than 12 inches deep, or would choose to encase its equipment in a locked cabinet (see Tr. 3, at 480- 481; Tr. 5, at 978; Exh. BA-MA-6, at 10; Verizon Reply Brief at 35-36). Our decision focused upon that argument and inadvertently overlooked the issue of access space. See Tariff No. 17 Decision at 50-51. Collocation is worthless without ready access; and access entails spatial demands that necessarily impose costs. We conclude here that Verizon is entitled to recover the costs for space needed by a CLEC to access its equipment in a cageless arrangement. Thus, we clarify our directives as follows.

We do not disturb our finding that Verizon's proposed allocation of 15 square feet is unreasonable but direct Verizon to base its square footage allocation on the minimum amount of space needed for an unenclosed 12 inch deep equipment bay, taking into account the minimum floor space needed for access to such equipment. Although Bell Atlantic proposes an allocation of l1 square feet, there is no evidence properly before the Department regarding the appropriate square footage allocation that takes into account the equipment footprint and access space.[(18)] Thus, we direct Verizon to submit its work papers supporting the proposed 11 square foot space allocation in its next compliance filing.[(19)] We note that this clarification does not raise issues of premature space exhaust since the access space could not be used for any other purpose. Moreover, we find that our clarification is not inconsistent with the FCC's goals of ensuring minimum space allocations, because access space is part of the minimum amount of space required for a cageless arrangement.

3. Shared Cages

In the Tariff No. 17 Order at 67, we directed Verizon to provide for split-billing of recurring rate elements associated with a shared collocation cage. In addition, we indicated that the guest/host structure discourages CLECs from considering a shared collocation cage as an option, but we acknowledged that Verizon must be able to impose reasonable terms and conditions on shared arrangements. Tariff No. 17 Order at 68.

a. Positions of the Parties

i. Verizon

Verizon indicates that it offers two forms of shared collocation -- the guest/host arrangement and Secured Collocation Open Physical Environment ("SCOPE") (Verizon Motion for Reconsideration at 14). Verizon argues that its SCOPE offering satisfies the FCC's definition of a shared arrangement and requests that the Department clarify that the SCOPE offering complies with the FCC's requirement to offer a shared arrangement (id. at 15, citing Advanced Services Order at ¶ 41).

Verizon argues that it should not be responsible for split-billing charges when a CLEC opts for a guest/host structure arrangement, rather than SCOPE (id.). Verizon states that the host CLEC is charged a nonrecurring flat fee based on the size of the collocation cage ordered and is assessed the applicable recurring charge (id.). Because the host can sublease space in a shared cage, Verizon notes that it does not control the number of, or changes in, the occupying carriers and should not be required to recalculate conditioning and preparation charges at each change in occupancy, or to credit or collect amounts from the then-occupying CLECs (Verizon Motion for Reconsideration at 15-16).

ii. AT&T

AT&T states that the Department's Order on shared collocation cages requires no clarification (AT&T Opposition at 8). AT&T notes that Verizon made clear during the proceedings that it proposed two forms of shared collocation and that the guest/host proposal does not apply to SCOPE (id.). AT&T asserts that had the Department believed that SCOPE was sufficient to permit Verizon to refuse to split-bill and require the guest/host arrangement for non-SCOPE shared collocators, the Department would have ruled that such arrangements were permissible (id. at 9).

iii. WorldCom, Rhythms and Covad

The CLECs state that Verizon does not allege that the Department's ruling exceeded its authority in any respect and urge the Department to reject Verizon's request (WorldCom Opposition at 12; Rhythms/Covad Opposition at 14). The CLECs argue that Verizon's request is, in effect, seeking reconsideration not clarification, and that Verizon has not satisfied the Department's standard for reconsideration (WorldCom Opposition at 12; Rhythms/Covad Opposition at 14). Moreover, the CLECs ask that the Department reject Verizon's apparent attempt to limit shared collocation arrangements to SCOPE and states that CLECs should be able to enter into shared collocation arrangements in existing and new cages, not merely in space set aside by Verizon as SCOPE (WorldCom Opposition at 12; Rhythms/Covad Opposition at 14).

b. Analysis and Findings

The Department does not agree with Verizon's assertion that SCOPE meets the FCC's requirement for a shared collocation arrangement. A shared collocation cage allows for two or more CLECs to share caged collocation space pursuant to terms and conditions agreed to by the CLECs. Advanced Services Order at ¶ 41. Verizon's SCOPE offering neither allows for two or more CLECs to share space to the exclusion of other CLECs, nor does it afford CLECs the opportunity to determine the terms and conditions upon which they will share space.

The Department finds that a shared collocation arrangement encompasses, at a minimum, the ability to choose with whom to share space. However, under SCOPE, a CLEC shares collocation space with any and all CLECs choosing SCOPE, limited only by the number of CLECs which the designated SCOPE space will accommodate. Moreover, it is Verizon who determines the terms and conditions of the sharing of space in SCOPE, not the CLECs. For instance, any and all CLECs collocating in the SCOPE area are required to share the same SPOT bay which is, under the terms of the proposed tariff, always provided by Verizon. See Tariff No. 17, Part E, Sections 6.1.1.C and 6.1.1.B.2. We note that in a traditional cage, CLECs have several options for terminating their facilities. See Tariff No. 17 Part E, Section 2.2.3. In addition, Verizon designates the floor space location specific for each bay of equipment installed in SCOPE. See Tariff No. 17, Part E, Section 6.2.1.A. Two CLECs sharing a traditional cage would have more flexibility in determining the specific location of their equipment bays within the shared cage.

Furthermore, we find that Verizon's description of SCOPE as "a form of physical collocation in which CLECs can place their equipment in the Telephone Company central office without enclosing that equipment in a cage" is inconsistent with the intent of the FCC's definition that a shared collocation "cage" is a "caged" collocation space. Verizon's claim that SCOPE complies with the FCC's definition of shared cages would require us to find that the "secure, separated area" provided under SCOPE constitutes the "caged collocation space" under the FCC's definition. We refuse to adopt such a broad interpretation. Accordingly, the clarification Verizon requests is hereby denied. Verizon must file its compliance tariff on shared collocation in accordance with our original directives in the Tariff No. 17 Order.

4. Cable Racking

In the Tariff No. 17 Order at 71, we required Verizon to offer CLECs the option of utilizing Verizon's cable racking. We noted that the FCC required ILECs to permit cross-connects and that CLECs already utilize Verizon's cable racking for purposes other than CLEC-to-CLEC connections. Tariff No. 17 Order at 71.

a. Positions of the Parties

i. Verizon

Verizon argues that the GTE decision vacated the FCC's rules requiring ILECs to permit CLECs to interconnect to each other, which Verizon contends formed the foundation for the Department's ruling. Thus, Verizon asserts, the Department may not impose additional obligations on Verizon with respect to cross-connects (Verizon Motion for Reconsideration at 16-17). In response to CLEC arguments, Verizon argues that states may not impose collocation requirements outside or inconsistent with the Act (Verizon Reply Letter at 1-2, citing MCI v. U.S. West, at 1265-1268). Moreover, while Verizon has decided to permit CLECs to continue to interconnect with each other pending the FCC's decision on remand, it states that the Department may not require Verizon to share its cable racking given that the Act does not require it to permit CLEC-to-CLEC cross connects (Verizon Reply Letter at 2). At a minimum, Verizon urges the Department to stay the requirement that Verizon share its cable racking pending the outcome of the FCC's remand proceeding (Verizon Motion for Reconsideration at 17).

ii. AT&T

AT&T contends that the Department's requirement that Verizon share its cable racking for CLEC-to-CLEC connections remains permissible even in light of GTE, and that the Department need not reverse or reconsider its Order on that point (AT&T Opposition at 10). Citing MCI v. U.S. West at 1265-1268, AT&T states that the Department is within its rights to impose requirements on LECs in addition to those required by the FCC as long as those requirements are consistent with the Act (id. at 9-10). In fact, AT&T argues that, contrary to Verizon's assertion, MCI v. U.S. West stands for the proposition that states may impose requirements that go beyond those imposed by the Act, provided that they are consistent with the Act (AT&T Reply Letter at 1).

iii. WorldCom, Rhythms and Covad

The CLECs argue that Verizon has mischaracterized both the basis for the Department's ruling as well as the effect of the GTE decision (WorldCom Opposition at 13; Rhythms/Covad Opposition at 15). The CLECs state that the Department's ruling was expressly predicated upon findings that Verizon's refusal to share its cable racking was unreasonable (WorldCom Opposition at 13; Rhythms/Covad Opposition at 15).

b. Analysis and Findings

The D.C. Circuit Court criticized the FCC for its failure to show that CLEC cross-connects were necessary for interconnection or access to UNEs, and stated that anything beyond what is "necessary, required, or indispensable" to interconnection or access to UNEs "demanded a better explanation from the FCC...." GTE at 423-424. Accordingly, we are compelled to review the impact of the D.C. Circuit Court's decision on our decision requiring Verizon to share its cable racking with CLECs.

We conclude that shared cable racking is an issue distinct from the FCC's vacated rule on cross-connects, but find that our requirement that Verizon share its cable racking is meaningless outside the context of cross-connects since this issue was raised in this proceeding only in the context of CLEC-to-CLEC cross-connects. We note that the CLECs demonstrated during the evidentiary proceeding that Verizon permits CLECs to use Verizon's cable racking for purposes other than cross-connects. See Exh. MCIW-2, at 13; Exh. DTE-76. Thus, Verizon currently permits CLECs to share its cable racking and the issue before us is whether Verizon should be required to share its cable racking (e.g., for CLEC-to-CLEC cross- connects), which Verizon has no obligation to do under federal rules. In the Collocation Remand Order at ¶¶ 88-92, the FCC requested comment on the issue of cross-connects. Given the uncertainty of the FCC's final decision on cross-connects, we find that it would be inefficient to require Verizon to share its cable-racking for cross-connects. Accordingly, we stay our directive until the conclusion of the FCC's remand proceedings.

C. EEL Issues

1. Commingling of Special Access and EEL Arrangements

In its proposed EEL offering, Verizon had included a provision preventing CLECs from commingling their local exchange service-providing EELs with their tariffed Special Access arrangements (Tariff No. 17, Part B, Section 13.1.1.B). In the Tariff No. 17 Order at 90, the Department found this provision to be discriminatory in that it required CLECs to duplicate facilities and was not required on technical grounds. As such, the Department ordered Verizon to remove the prohibition on commingling from its tariff (id.). Verizon seeks reconsideration of the Department's ruling.

a. Positions of the Parties

i. Verizon

Verizon contends that the Department mistakenly relied on evidence submitted by WorldCom that does not support the CLECs' position (Verizon Motion for Reconsideration at 24-25). Verizon argues that since it does not combine Special Access and EEL facilities over its own network, it should not be required to allow CLECs to do so (id. at 25). Verizon points out that it will allow a CLEC to convert an entire Special Access arrangement to an EEL arrangement, and that under this conversion there will be no disruption to the end user's service (id.). Verizon also argues that CLECs who wish to provide a combination of access and local service over integrated facilities may do so by purchasing services through the Special Access tariff (id. at 26). Verizon contends that CLECs support commingling of Special Access and EEL arrangements only because it will allow them to obtain services at a lower price than they are currently paying (id.).

On June 2, 2000, the FCC released its Supplemental Order Clarification to "extend and clarify" the limitations that ILECs can place on the provisioning of EEL arrangements. Supplemental Order Clarification at ¶ 1. On July 7, 2000, Verizon filed a letter with the Department asking the Department to take administrative notice of the FCC's clarification order as it applies to Verizon's proposed EEL offering. With regard to the commingling of Special Access and EEL arrangements, Verizon points to ¶ 28 of the Supplemental Order Clarification, which states, "we further reject the suggestion that we eliminate the prohibition on 'commingling'. . . in the local usage options discussed above" (Verizon July 7 Letter at 2, citing Supplemental Order Clarification at ¶ 28). Based on this statement, Verizon argues that the Department should reconsider its original ruling and reinstate the provision prohibiting CLECs from commingling EEL and Special Access arrangements (Verizon July 7 Letter at 2).

ii. CLECs

In their comments opposing Verizon's motion, both AT&T and WorldCom argue that Verizon has not met the requirements for reconsideration of the Department's ruling. AT&T notes that Verizon has not provided evidence of "extraordinary circumstances that dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation" (AT&T Opposition at 17-18). Moreover, AT&T argues that Verizon's definition of a mistaken interpretation of evidence is an interpretation that differs from Verizon's interpretation (id.). AT&T further notes that the Department has the authority under state law to enforce requirements on Verizon that are not specifically required under federal law (id. at 18).

RCN also submitted comments in opposition to Verizon's motion. RCN argues that Verizon's claim that it does not commingle Special Access and EELs on its own network does not prevent the Department from requiring Verizon to allow CLECs to commingle Special Access and EEL arrangements in pursuit of the fundamental purpose of §251 of the Act, which is to establish a competitive regime (RCN Opposition at 4).

In a letter submitted to the Department on July 26, 2000, WorldCom argues that the FCC's statements regarding commingling refer only to the local usage options defined in the Supplemental Order Clarification, and do not affect the overall provisioning of EEL arrangements (WorldCom July 26 Opposition Letter at 1-2). WorldCom contends that it is possible to commingle EELs with Special Access arrangements while maintaining the local usage requirements, and reiterates its argument that prohibiting CLECs from commingling will require them to duplicate their network facilities (id. at 2).

AT&T also filed a letter with the Department on July 26, 2000 arguing that the FCC's Supplemental Order Clarification should not warrant granting Verizon's motion for reconsideration of the tariff's commingling provisions. AT&T argues that prohibiting commingling will impose unnecessary costs on CLECs, and states that if the Department were to reconsider its ruling on commingling, it should allow AT&T to present evidence of the cost impact such a restriction would have on CLECs (AT&T July 26 Opposition Letter at 3-5).

b. Analysis and Findings

The Department places significant weight on the FCC's statement on the commingling of Special Access and EEL arrangements. As pointed to by Verizon in its July 7, 2000 letter, the FCC stated explicitly in the Supplemental Order Clarification at ¶ 28 that it would not remove the prohibition on commingling with regard to the three local usage options it set out in that document.[20] However, as WorldCom notes, the FCC's statement was limited to those three local usage options. In addition, the FCC has stated affirmatively that there may be, at some point, additional definitions of local usage. Therefore, the Department instructs Verizon to revise the language of Part B, Section 13.1.1.B to state that commingling will not be allowed between Special Access and EEL arrangements except in such cases where it is specifically allowed in an FCC-approved local usage certification option.

2. Significant Local Usage, Audit Provisions, and Collocation Requirements for EEL Arrangements

In the Tariff No. 17 Order, the Department required Verizon to strike portions of its tariffed EEL offering that were found to be overly restrictive, burdensome, and discriminatory. Specifically, the Department found that Verizon did not have the unilateral right to define what constitutes the "significant amount of local exchange service" required by the FCC for the provisioning of an EEL arrangement, as was proposed in Part B, Section 13.3.1.A of the tariff. Tariff No. 17 Order at 101. The Department believed "the definition of what comprises a significant amount of local exchange service is best left to the FCC or, if the FCC chooses to go no further than its current position, to an industry collaborative." Id. at 101. The Department also found that Verizon's proposed provision giving it the right to conduct audits of CLEC EEL arrangements[21] was in conflict with the FCC's stated position that there was no need for "incumbent LECs and requesting carriers to undertake auditing processes to monitor whether or not requesting carriers are using unbundled network elements solely to provide exchange access service" and, thus, ordered Verizon to remove that provision from its tariff. Id. at 102, citing FCC's Supplemental Order at ¶ 5, n.9. Finally, the Department ordered Verizon to remove its requirement that newly provisioned EEL arrangements must terminate at a CLEC's collocation arrangement or at a Verizon switch.[22] Tariff No. 17 Order at 95. The Department found there to be no technical reason for such a provision, and further found the provision to be in conflict with prior Department rulings on facilities requirements. Id. at 95; see also Phase 4-K Order.

a. Positions of the Parties

i. Verizon

Verizon asks the Department to reverse its ruling on the collocation provision. Verizon argues that the Department was mistaken in stating that Verizon's proposed requirement was inconsistent with precedent (Verizon Motion for Reconsideration at 30). Verizon argues that the Department's Phase 4-K Order dealt only with Verizon's responsibility to avoid a facilities requirement in the provisioning of required offerings (id.). Verizon contends that since its offer to provision new EELs is voluntary, it does not need to abide by that decision (id.).

Verizon further argues for reinstatement of the significant usage definitions and the auditing provisions in light of the FCC's Supplemental Order Clarification. Verizon argues that the Supplemental Order Clarification gives it the right to require CLECs to terminate their EEL arrangements to collocation arrangements, and that it allows Verizon the right to conduct audits of CLEC EEL arrangements to determine if the EEL is being used consistent with the three local usage options set out by the FCC in the order (Verizon July 7 Letter at 2-4).

ii. RCN

RCN argues that the Department should not reverse its ruling on Verizon's proposed collocation requirement (RCN Opposition at 5-6). RCN claims that Verizon's requirement for collocation of new EEL arrangements will have the effect of delaying CLEC competition and increasing the CLECs' costs (id.). RCN further argues that Verizon's collocation requirement conflicts with the FCC's interpretation of §251(c)(2) of the Act, which allows CLECs the right to "deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points" (id.).

iii. AT&T

AT&T filed comments on May 1, 2000 opposing Verizon's Motion for Reconsideration, and submitted a letter to the Department on July 26, 2000 in response to Verizon's July 7 Letter on the Supplemental Order Clarification. In these filings, AT&T argues that the Department should uphold its Tariff No. 17 Order despite Verizon's arguments to the contrary. First, AT&T argues that the Department should not reverse its ruling on Verizon's collocation requirements based on either Verizon's Motion for Reconsideration or the FCC's ruling. AT&T argues that Verizon merely reargues the evidence of the proceeding and does not meet the requirements for reconsideration (AT&T Opposition at 20-21). AT&T further argues that the Department should base its ruling on the Supplemental Order Clarification because the FCC's reasoning for allowing collocation in that order does not disprove the Department's finding that a collocation requirement is discriminatory and burdensome (AT&T July 26 Letter at 2). As to the local usage requirements and audit provisions, AT&T argues that the Department should not reverse its decision based on the Supplemental Order Clarification because the rules set forth in that order are interim and should not provide the basis for the provisions of a permanent tariff (id. at 6-7).

iv. WorldCom

WorldCom also submitted comments opposing Verizon's Motion for Reconsideration on May 1, 2000 and a letter to the Department on July 26, 2000 in response to Verizon's July 7 Letter on the Supplemental Order Clarification. WorldCom argues that Verizon has not met its required burden in its Motion for Reconsideration (WorldCom Opposition at 5-6).

Further, in response to the Supplemental Order Clarification, WorldCom argues that if the Department accepts Verizon's offer to amend its tariff to reflect the FCC's language, then the Department should require Verizon to state explicitly in its tariff that its collocation requirements only apply to those CLECs who choose to certify they are meeting the local usage requirements under those options for which the FCC has adopted a collocation requirement (WorldCom July 26 Letter at 3).

WorldCom reiterates its position on the use of the Supplemental Order Clarification in its discussion of Verizon's proposal to adopt the FCC's language regarding significant local usage and auditing. WorldCom notes that the FCC has stated that the three defined options do not constitute a universal limit, and that there may be instances where a CLEC can prove it is providing significant local usage while not meeting the requirements of the three options. Thus, WorldCom suggests that the Department mandate Verizon to include a provision in its tariff that will require it to accept any alternative local usage definitions that are accepted by the FCC in the future (WorldCom July 26 Letter at 2-3). Finally, WorldCom argues that if the Department allows Verizon to reinstate its audit provisions, then the Department must instruct Verizon to state explicitly that it "may conduct *limited* audits only to the extent reasonably necessary to determine a requesting carrier's compliance with the local usage options" (WorldCom July 26 Letter at 3, citing Supplemental Order Clarification at ¶ 29) (emphasis added). WorldCom also asks the Department to require Verizon to adopt language that it will conduct any such audits under the guidelines set forth in the Supplemental Order Clarification (WorldCom July 26 Letter at 3).

b. Analysis and Findings

In the Tariff No. 17 Order at 101, the Department based its decision with respect to Verizon's significant local usage definition on the premise that "the definition of what comprises a significant amount of local exchange service is best left to the FCC or . . . to an industry collaborative." Therefore, the Department places significant weight on the FCC's Supplemental Order Clarification, which defines three options by which CLECs may certify that they are using EELs to provide a significant amount of local exchange service. Consistent with our previous Order, the Department instructs Verizon to adopt and explicitly state in its tariff the three options defined by the FCC in ¶ 22 of the Supplemental Order Clarification. Further, the Department recognizes WorldCom's concern that there may be a point in the future where the FCC accepts a certification of local usage other than the three options defined in the order. Therefore, the Department instructs Verizon to include a provision in its EEL offering stating that it will amend its tariff to include any future FCC-approved definitions of significant local usage.

As to the issues of audits and collocation requirements, the Department continues to be wary of the effects such provisions will have on the competitive market. However, the Department believes that the limited extent to which the FCC has allowed both audits and collocation requirements will not create an undue burden on CLECs' attempts to provide service to their end users through EEL arrangements. Therefore, the Department finds, consistent with FCC rules, that Verizon may include both auditing provisions and a collocation requirement in its EEL offering. The Department instructs Verizon to include in its collocation provision a statement ensuring that collocation will be required only to the extent that it is defined in an FCC-approved local usage certification option. The Department also instructs Verizon to include in its auditing provision the terms and conditions placed on the use of audits by the FCC, including the following provisions:

(1) audits may not be conducted prior to the provisioning of an EEL arrangement;

(2) audits may only be conducted when Verizon has reason to be concerned that a CLEC's EEL arrangement has not met the criteria for providing a significant amount of local exchange service under which the CLEC self-certified;

(3) Verizon shall be responsible for the hiring and compensation of an independent auditor to perform the audit, and the CLEC shall be responsible for reimbursing Verizon's expenses if the audit reveals non-compliance with the local usage options;

(4) Verizon must provide at least thirty (30) days written notice to the CLEC that it plans to conduct an audit, and Verizon must also notify the FCC of any audits it plans to conduct; and,

(5) no more than one audit may conducted on a CLEC within one calendar unless the first audit reveals non-compliance with the local usage options.

See Supplemental Order Clarification at ¶ 31.

The Department also notes that the FCC has stated that audits must not place an undue financial burden on CLECs by forcing them to supply more detailed records than they keep for their own business purposes. Thus, Verizon must conduct any audits by using the records the CLEC keeps as part of its normal course of business.[(23)]

3. Separate and Sequential Ordering Provisions

In its December 27, 1999 EEL offering, Verizon proposed to require CLECs to order individual elements of an EEL arrangement separately and in a sequential order from the backbone elements to the end loops. Verizon's proposed ordering process required each element to be "pre-positioned (completed and turned up)"[(24)] before the subsequent element could be ordered. In the Tariff No. 17 Order at 104-105, the Department found this proposed ordering process to be unreasonable and ordered Verizon to make the necessary changes to its ordering systems to allow for an EEL arrangement to be ordered in a single service order. a. Positions of the Parties

i. Verizon

In its Motion for Reconsideration, Verizon asks the Department to reconsider its decision regarding the separate and sequential ordering process. Verizon argues that the Department "fail[ed] to consider that [Verizon's] existing ordering systems utilize processes developed by the Alliance for Telecommunications Industry Solutions ("ATIS") on behalf of the ATIS-sponsored Ordering and Billing Forum ("OBF") - the Access Service Ordering Guidelines ("ASOG")" (Verizon Motion for Reconsideration at 27). Verizon further argues that it did not introduce the ASOG guidelines into evidence during the proceeding because ordering requirements were not addressed during the proceeding. Verizon filed a separate Motion to Reopen the record with the Department to include the ASOG guidelines as part of the evidentiary record in the proceeding.[(25)]

In addition, in its July 7, 2000 letter to the Department regarding the Supplemental Order Clarification, Verizon further addresses the issue of its proposed ordering provisions. Verizon contends that the FCC showed its support for the Access Service Request ("ASR") ordering process used in ordering access circuits, which Verizon proposes to apply to the ordering of EEL arrangements. Verizon argues that the FCC's "confidence in the existing provisioning procedures" should lead the Department to accept Verizon's Motion for Reconsideration of this issue (Verizon July 7 Letter at 5).

ii. CLECs

In comments filed separately with the Department on May 1, 2000, both WorldCom and RCN opposed Verizon's Motion for Reconsideration of the Department's order on the EEL ordering provisions. WorldCom argues that Verizon has not provided sufficient justification for the Department to reconsider its ruling, and that Verizon had simply reargued its previous case (WorldCom Opposition at 5-6). RCN argues that Verizon has no basis for its contention that CLECs will be better served by its proposed ordering provision since various CLECs opposed such provisions as being discriminatory during the proceeding (RCN Opposition at 5).

AT&T argues that Verizon has taken the FCC's statements in the Supplemental Order Clarification out of context to support Verizon's own proposed processes. AT&T contends that the FCC's comments with regard to provisioning processes addressed the obstacles that had been established by some ILECs to prevent CLECs from converting Special Access arrangements to EELs, specifically that some ILECs were requiring the use of two different ordering systems which "led to delays and apparently involved two different steps for a conversion that should be seamless" (AT&T July 26 Letter at 6). AT&T, therefore, asks the Department to uphold its original ruling with respect to the ordering and provisioning requirements.

b. Analysis and Findings

The Department continues to believe that CLECs must be able to have EEL arrangements provisioned in the most efficient manner, in terms of both time and cost. Verizon's proposed separate and sequential ordering process does not meet these requirements of efficiency. As we stated in our original order, Verizon did not demonstrate a need for individual EEL elements to be ordered on separate service orders. Tariff No. 17 Order at 104. We find that Verizon has not demonstrated any such need in its Motion for Reconsideration. Rather, we remain convinced that the proposal to require CLECs to submit multiple service order requests significantly increases the possibility of provisioning delays as CLECs must wait for notice of the provisioning completion of one element before submitting their service order for the subsequent elements of an EEL arrangement. In addition, we are still persuaded that a multiple service order process is unreasonable since it unnecessarily imposed multiple service order charges on CLECs wishing to order new EEL arrangements. Finally, we find that the FCC's statement of support for the ASR process does not preclude the use of an ordering process that enables CLECs to order an entire EEL arrangement on a single service order. Therefore, the Department denies Verizon's Motion for Reconsideration on this issue and directs Verizon to comply with the ruling of the Tariff No. 17 Order.

D. Rate Issues

1. ICB Pricing for Microwave

The Department found individual case basis ("ICB") pricing to be inappropriate in a tariff of general applicability. Tariff No. 17 Order at 207. Accordingly, the Department directed Verizon to file revised tariff provisions for various services which included microwave collocation. Id.

a. Positions of the Parties

i. Verizon

Verizon seeks reconsideration of the Department's Order concerning ICB pricing for microwave collocation stating that it is based on a mistaken conclusion concerning the FCC's position on ICB pricing (Verizon Motion for Reconsideration at 19). Verizon states that the FCC carved out an exception for microwave collocation in its Second Report and Order[(26)] in CC Docket No. 93-162 (id.).

ii. AT&T

AT&T urges the Department to reject Verizon's attempt to reargue this issue (AT&T Opposition at 13). AT&T contends that the issue of ICB pricing was explicitly addressed in the briefs of Verizon, AT&T and other CLECs, and that some briefs addressed the FCC's Order that Verizon now claims mandates reconsideration of this issue (id.). AT&T states that the Department evaluated all of the services for which ICB pricing was proposed, made one exception for cable and splice, and that the Department was well aware of the FCC Order and the parties' positions when it made its decision (id. at 13-14).

iii. WorldCom

WorldCom argues that Verizon made no argument in its Reply Brief to distinguish microwave arrangements from any other arrangements and cannot raise this argument on reconsideration (WorldCom Opposition at 7-8).

b. Analysis and Findings

After further review of the FCC's Second Order and Report, it is clear that the FCC specifically allows ICB pricing for microwave collocation. The FCC stated that "microwave interconnection must be tailored to specific interconnectors and to specific central offices and that it does not readily lend itself to uniform tariff arrangements." Second Report and Order at ¶ 38, citing Virtual Collocation Order, 9 FCC Rcd 5154 at ¶ 84 (1994). Thus, the Department's directive prohibiting ICB pricing for microwave collocation is inconsistent with the FCC's rules and warrants reconsideration. As a general matter, we reiterate that ICB pricing is inappropriate in a tariff of general applicability; however, we reconsider our directives with respect to microwave collocation in this case due to specific FCC directives. Accordingly, we modify the Tariff No. 17 Order by excluding microwave collocation from the list of services for which Verizon is required to file a tariffed rate.

2. Unbundled Local Switching Charge ("ULSC")

In the Tariff No. 17 Order at 219, the Department rejected Verizon's tariff proposal to apply a ULSC twice for intra-office calls -- once for originating a call, and once for terminating the call. The Department found that Verizon, as the proponent of the rate, had not met its burden of proof, for it failed to provide sufficient evidence showing that the cost of switching an intra-office call differs from switching the originating portion of an inter-office call. Id. In addition, we note that the Department denied Verizon's motion to defer the requirement that it file compliance tariffs on the ULSC charge pending this decision on reconsideration. See June 2 Order at 11. On June 9, 2000, Verizon filed its compliance filing relating to the USLC.

a. Positions of the Parties

i. Verizon

The Company asserts that, contrary to the Department's findings, Verizon did brief the issue and did provide sufficient evidence in support of its proposal (Verizon Motion for Reconsideration at 18, citing Verizon Reply Brief at 49-50; Tr. 4 at 677; Tr. 5 at 1062). Specifically, Verizon contends that its witness testified that the rate was appropriate because "it was developed so that it would apply once at the origination of a call and once at the termination of each call" (id., citing Tr. 4 at 677; Tr. 5 at 1062). In addition, Verizon asserts that if it only charged one ULSC for an intra-switch call, it would not recover its costs for the originating and terminating switching functions of an intra-switch call (id. at 18). Finally, Verizon argues that AT&T's own cost experts, after reviewing Verizon's cost model, agreed with the rate and AT&T incorporated the rate in its interconnection agreement in New York (id., citing Tr. 5 at 1062-1063).

ii. CLECs

WorldCom claims that Verizon has not met the Department's standard for reconsideration (WorldCom Opposition at 6). WorldCom argues that, despite the mistaken conclusion that Verizon had not briefed the issue, the Department nevertheless fully addressed all of Verizon's arguments and cites to the Department's finding that Verizon had not shown that the cost of switching an intra-office call differs from switching the originating portion of an inter-office call (id. at 6-7). WorldCom states that it is not material that the Department did not reference Verizon's testimony that a cost differential exists (id. at 7).

AT&T also contends that Verizon has failed to meet the Department's reconsideration standard by failing to show that the Department made a mistake (AT&T Opposition at 11-13). AT&T argues that the Department was correct in finding that Verizon failed to provide any analysis demonstrating that the cost of switching an intra-switch call is more than the cost of switching an inter-office call (id. at 12-13). In fact, AT&T notes that Verizon provided no evidence of its switching costs, except hearsay testimony from its witness (id. at 11-12).

b. Analysis and Findings

At the outset, we note that the Department was incorrect in stating that Verizon did not brief this issue (see Verizon Reply Brief at 49-50). We also note that our statement in the Tariff No. 17 Order, at 219, that "[Verizon] provided no evidence in this proceeding showing that the cost of switching an intra-office call differs from switching the originating portion of an inter-office call" was too broad. Verizon did provide testimony about the appropriateness of the rate (see Tr. 4 at 677; Tr. 5 at 1062-1063). Verizon, however, did not provide a cost study to support its contention that the two ULSCs were necessary to recover its costs for the originating and terminating switching functions of an intra-switch call, and it was the absence of a supporting cost study to which the Department was referring when it stated that "[Verizon] provided no evidence ....". Furthermore, the general and conclusory statements of Verizon's witness did not offer enough evidence to establish the claim (see id.). Thus, based on Verizon's failure to carry its burden of proof, the Department was justified in rejecting the proposed charge.

E. General Tariff and Miscellaneous Issues

1. Rearrangement of Facilities

Verizon proposed in its Tariff No. 17 to include provisions allowing the Company the unilateral authority to change or rearrange network facilities without regard to the effect such changes would have on CLECs that have interconnected with Verizon's network. In the Tariff No. 17 Order at 147-149, the Department found that Verizon had an obligation to provide all CLECs with advance notice of any planned network changes or upgrades, and ordered Verizon to revise its tariff to indicate that such notice would be provided in writing. The Department further ordered Verizon to provide a formal mechanism by which a CLEC could comment on the effects such planned network changes would have on its operations. Id.

a. Positions of the Parties

i. Verizon

Verizon seeks clarification of the Department's requirements for the process by which CLECs could submit comments on planned network changes (Verizon Motion for Reconsideration at 20-21). Verizon states that the Company is currently required under FCC rules[27] to provide up to twelve months notice of any network changes that:

(1) will affect a competing service provider's performance or ability to provide service; or

(2) will affect the ILEC's interoperability with other service providers.[28]

(Id. at 21).

Verizon also noted that the FCC set forth specific procedures for CLECs to submit comments on the ILEC's network change proposals (id. at 21-22). Verizon notes that CLECs have the opportunity to provide:

(1) specific reasons why the CLEC cannot accommodate the ILEC's changes by the date stated in the ILEC's public notice and any technical information that would enable the objector to accommodate those changes;

(2) a list of steps the CLEC is taking to accommodate the ILEC's changes on an expedited basis;

(3) the earliest possible date (not to exceed six months from the date of the public notice) by which the CLEC can accommodate the ILEC's changes; and,

(4) any other relevant information.[29]

(Id.). In its motion, Verizon seeks clarification from the Department as to whether these FCC rules satisfy the requirements of the Department's Tariff No. 17. Order.

In response to AT&T's argument (contained in AT&T's June 8 Compliance Comments) that Verizon did not include the FCC's rules on notification in its compliance filings, Verizon states that it did not do so since the Department had not yet ruled on its Motion for Reconsideration, and that if the Department should rule as such, Verizon would be willing to amend its tariff to include the FCC's language regarding notification of network changes (Verizon's Compliance Reply Comments at 9).

ii. AT&T

AT&T states that it agrees that the FCC rules regarding notification of network changes provide "a good starting point" for determining the notice and input requirements the Department ordered (AT&T Opposition at 14-15). AT&T notes, however, that despite Verizon's statement that it is already required to follow these rules, Verizon has not yet included these provisions in its proposed tariff, and that, at the least, the Department should require Verizon to include the federal rules explicitly within its tariff provisions (id. at 15).

Further, AT&T argues that Verizon's assurances that it will abide by these rules are not sufficient to ease CLEC fears that they will be denied the opportunity to comment on planned network changes (AT&T June 8 Compliance Comments at 6).

b. Analysis and Findings

The Department finds that Verizon's willingness to incorporate the FCC's rules on notification to CLECs of planned network changes is a sufficient way to comply with the Tariff No. 17 Order. As such, the Department orders Verizon to revise Part A, Section 1.9.1 of Tariff No. 17 to state that, in accordance with the rules established by the FCC in 47 C.F.R. §51.325 through §51.335, CLECs shall have the opportunity to provide comment to Verizon on planned network changes to Verizon's network.

2. Interoffice Transmission Facilities Transport ("IOF Transport")

In the Tariff No. 17 Order at 170, we found that maintaining unspecified intervals for the provisioning of IOF Transport would detrimentally affect a CLEC's ability to plan and, thus, we directed Verizon to propose provisioning intervals for OC-3 and OC-12 facilities for quantities that Verizon is able to provision.[(30)] We then proceeded to direct Verizon to propose construction intervals in situations when facilities were not available. Id. Verizon seeks reconsideration of the directive that it propose construction intervals when facilities do not exist.

a. Positions of the Parties

i. Verizon

Verizon points out that the FCC extends an ILEC's transport unbundling obligation to existing facilities only, and does not require ILECs to construct new facilities when facilities do not already exist (Verizon Motion for Reconsideration at 23; see UNE Remand Order at

¶ 324). Thus, Verizon argues that the Department's directive that Verizon propose construction intervals for facilities that are not available conflicts with the FCC's interpretation of the ILEC's unbundling obligation (id.). Verizon contends that the Department cannot require it to establish intervals for network elements that the FCC has determined need not be provided (id. at 24).

ii. CLECs

AT&T argues that the Department has long had the authority to require Verizon to make UNEs available under state law when the FCC's authority to do so is arguably unsettled, and therefore urges the Department to reject Verizon's position (AT&T Opposition at 16-17). WorldCom, Rhythms and Covad argue that the Department merely ruled that where transport facilities are provided by Verizon to CLECs, Verizon should do so pursuant to standard construction intervals instead of forcing CLECs to negotiate those intervals (WorldCom Opposition at 14; Rhythms/Covad Opposition at 16).

b. Analysis and Finding

We agree with AT&T that the Department has the authority to make decisions on issues that are still pending at the FCC; however, the issue of whether an ILEC is obligated to construct new transport facilities for CLECs is not an issue pending before the FCC. As Verizon correctly points out, the FCC clearly states that ILECs are required only to provide existing transport facilities, not to construct new facilities. Accordingly, requiring Verizon to construct new facilities would be inconsistent with FCC's rules.

The Department emphasizes that we did not intend to require Verizon to construct new facilities as a part of its unbundling obligation. Rather, consistent with the arguments of WorldCom, Rhythms and Covad, the Department merely sought to establish standard provisioning intervals when Verizon provides transport facilities. Our requirement for Verizon to propose construction intervals for situations where facilities are not available was based on a misconstruction of Verizon's proposal. Therefore, the Department grants Verizon's Motion for Reconsideration on this issue, and hereby vacates the directive that Verizon propose construction intervals where facilities are not available.

3. Incorporation of Department-Arbitrated Decisions

In the Tariff No. 17 Order, at 183-184, the Department directed Verizon to incorporate all of the rulings in the MediaOne and Greater Media arbitration Orders into Tariff No. 17, unless any of those decisions conflict with other findings in the Tariff No. 17 Order. The Department stated that "the [MediaOne and Greater Media decision], although based on evidence presented in those cases, took into account broader public policy considerations than just the parochial interests of the parties to the arbitrations. In making those determinations, the Department was well aware of the possibility, if not the likelihood, that other carriers would seek to avail themselves of the results of those arbitrations through the "pick and choose" rule. Id.

a. Positions of the Parties

i. Verizon

Verizon argues that this ruling violates its due process rights, the Massachusetts Administrative Procedure Act (G.L. c. 30A, § 11), and the Department's regulations for conducting adjudications (220 C.M.R. 1.06) because the Department did not provide Verizon with adequate notice that this issue would be decided and a reasonable opportunity to prepare and present evidence and argument (Verizon Motion for Reconsideration at 31, citing Re: Petition of CTC Communications Corp., D.T.E. 98-18-A at 2, 9 (1998)). Verizon contends that only the geographically relevant interconnection point ("GRIP") issue should be incorporated into Tariff No. 17, since it is the only issue common to both the arbitrations and the D.T.E. 98-57 tariff proceedings (id.).

Besides the alleged procedural infirmities, Verizon also claims that the Department's decision is wrong as a matter of policy (id. at 32). Verizon asserts that the Department did not direct the Company to include any other arbitration decisions, including the decisions in the Consolidated Arbitrations,[(31)] in their entirety into the tariff (id.). Moreover, according to Verizon, the better approach would be to allow CLECs interested in any of the decisions to opt into them through interconnection agreements (id.). This way, Verizon reasons, CLECs can accept the terms that they want, without having to take terms that they do not want (id).

Finally, Verizon argues that the Department's decision to incorporate the arbitration rulings in the tariff violates the Department's policy on the relationship between the tariff and interconnection agreements by "deliberately creat[ing] inconsistencies between its tariff and CLEC agreements"(id.).

ii. CLECs

Rhythms, Covad and WorldCom argue that the Department provided Verizon with adequate notice and opportunity to present evidence (Rhythms/Covad Opposition at 17-18; WorldCom Opposition at 16-17). The CLECs point to discovery questions issued by WorldCom and cross-examination of a Verizon witness concerning inconsistencies between the tariff and the arbitration rulings (Rhythms/Covad Opposition at 17-18; WorldCom Opposition at 16-17). According to Rhythms, Covad and WorldCom, the "Supreme Judicial Court has previously rejected [] claims of lack of notice where the Department's hearing notice and questions raised during the hearing process put a proposed tariff in question" (Rhythms/Covad Opposition at 18; WorldCom Opposition at 17, both citing New England Telephone & Telegraph Company v. Dept. of Pub. Utils., 372 Mass. 678 (1977)). In addition, the CLECs contend that reconsideration is not warranted because there is no conflict between the Department's directive for Verizon to incorporate the arbitration decisions in the tariff and the Department's policy on the relationship between tariffs and interconnection agreements (Rhythms/Covad Opposition at 18-19; WorldCom Opposition at 17-18).

While taking no position on whether Verizon should be required to incorporate the MediaOne/Greater Media rulings in the tariff, AT&T states that it would be inappropriate to require Tariff No. 17 automatically to incorporate every new arbitration decision and that AT&T believes that that was not the Department's intent (AT&T Opposition at 21-22).

b. Analysis and Findings

We find that broader public policy considerations taken into account in the Greater Media and MediaOne arbitration orders weigh in favor of incorporating provisions from these arbitration orders to ensure a comprehensive, and reasonable, tariff of general applicability. We admit, however, that requiring wholesale incorporation of the Greater Media and MediaOne Arbitration decisions into Tariff No. 17 was not the appropriate approach. Admittedly, the Department failed to consider in its final Order whether it is reasonable to include only the Greater Media and MediaOne arbitration decisions in the tariff, or whether other arbitration decisions, such as the Consolidated Arbitration decisions, also should be included in the tariff in their entirety. Accordingly, we grant reconsideration of our directive that Verizon include the MediaOne and Greater Media arbitration decisions in the tariff.

However, because we remain convinced that specific provisions from the Greater Media and MediaOne Arbitrations, and possibly from other arbitration orders, may be useful in Tariff No. 17, we will continue to investigate the issue of incorporation of specific provisions from arbitration orders in our ongoing review in Phase I of this docket. In our continuing review of this issue, we intend to take a selective approach towards provisions from the arbitration orders for incorporation into the tariff and will require CLECs to identify specifically those provisions of the Department's arbitration decisions which should be incorporated into Tariff No. 17. Moreover, we note that our decision here will not unreasonably impact CLECs that might want to opt into the Greater Media/MediaOne arbitration terms since neither the MediaOne nor the Greater Media agreement is currently in effect.[(32)]

IV. RNK'S MOTION FOR CLARIFICATION

A. Positions of the Parties

1. RNK

RNK seeks clarification of the Department's directives in the Tariff No. 17 Order regarding significant local usage. RNK asks the Department to clarify its ruling with respect to whether CLECs would be required to sign a letter signifying that they are using an EEL arrangement to provide a significant amount of local usage, and whether or not traffic terminating to an Internet Service Provider (ISP) would be included as local usage in an EEL arrangement (RNK Motion for Clarification at 2). RNK contends that since ISP traffic uses local telephone numbers, terminates locally, and is treated as local traffic for the purposes of charging service rates, ISP traffic should be considered local for the purpose of meeting a local usage definition for EEL arrangements (id. at 2-3).

2. Verizon

In its comments in opposition to RNK's motion, Verizon argues that there is no need for clarification on either of the issues raised by RNK. First, Verizon contends that the Department need not address the issue of self-certification because no party to the proceeding denied that it had an obligation to self-certify that it was providing a significant amount of local usage over an EEL arrangement (Verizon Clarification Opposition at 4). Verizon notes that the FCC stated explicitly in its Supplemental Order that CLECs would be expected to self-certify that they are providing significant local usage, and implicit in that order was the assumption that such self-certification would be in writing (id.). Second, Verizon argues that there is no need for clarification on the issue of ISP-bound traffic since this issue is the subject of ongoing federal and state proceedings. Verizon contends that the proper place for RNK to raise the question of whether ISP-bound traffic is local is within the FCC's Internet Traffic Order,[(33)] which was remanded back to the FCC by the U.S. Court of Appeals for the District of Columbia, or in the Department's proceedings in D.T.E. 97-116. Verizon argues that since the classification of Internet traffic is being addressed in those proceedings, it should not be addressed in this docket.

B. Analysis and Findings

First, during the evidentiary proceeding, no carrier disputed the requirement that CLECs would self-certify that they were providing a significant amount of local exchange service over EELs. As a result, the Department approved Verizon's tariff provision stating that a CLEC "must certify in writing that the EEL arrangement is being used to provide a significant amount of local exchange service and associated switched access services to a particular customer." Tariff No. 17, Part B, Section 13.3.1.A. Thus, there is no need to clarify the Department's already clear order on this issue.

With respect to the classification of ISP-bound traffic, this proceeding is not the appropriate forum to address this issue. There are other ongoing proceedings, both in Massachusetts and before the FCC, to address that question. RNK's motion is denied.

V. AT&T'S MOTION FOR CLARIFICATION

A. Positions of the Parties

1. AT&T

First, AT&T states that the lack of clarity in rate application was the subject of testimony and briefs in this docket[(34)] (AT&T Motion for Clarification at 2-3). AT&T notes that it requested, in its Initial Brief at 16, that the Department require Verizon to complete the table AT&T had provided in RR-29 (id. at 3). Verizon opposed this request in its Reply

Brief at 57 (id.). Despite this request and denial, AT&T argues that the Tariff No. 17 Order is silent on certain rate application issues raised in the proceeding, and that the issue of how Verizon will apply these rates is still uncertain (id.). Accordingly, AT&T contends that this case falls squarely within the Department's standards for granting a motion for clarification and suggests that a further ruling is in order (id. at 3-4).

AT&T states that it recognizes that the complex and technical nature of many of the rate application issues make them difficult to identify in a formal adjudicatory process, but notes that RR-29 highlights many of the rate application issues that are in doubt (AT&T Motion for Clarification at 4). AT&T requests that the Department order Verzion to complete the tables in RR-29 and to participate in a technical conference to identify remaining issues, if any, for resolution (id.). Thereafter, AT&T suggests that the Department resolve any disputed issues in a formal adjudicatory process (id. at 4).

Next, AT&T alleges that Verizon intends to apply certain rates in a discriminatory fashion (AT&T Motion for Clarification at 5). Specifically, AT&T asserts that Verizon intends to charge AT&T intrastate Terminating Access charges, instead of reciprocal compensation charges, when an AT&T customer places an intraLATA toll call that is terminated on Verizon's network, but that AT&T will not be allowed to charge similar access charges when the call is placed in the reverse direction (id.). AT&T states that such a discriminatory rate application would be unfair, is not explained in the tariff, and should be rejected (id.).

2. Verizon

Verizon opposes AT&T's request that the Department include rate tables in the tariff. Verizon notes that, when questions arise, the historical practice has been for CLECs to obtain such information from the Verizon account representative who is responsible for answering such questions (Verizon Clarification Opposition at 2). Verizon argues that AT&T has failed to demonstrate any need for the Department to rule on this matter because the information is readily available and more appropriately handled through direct Verizon-Carrier communications as questions arise (id.).

Furthermore, Verizon opposes completing the tables in RR-29 and holding technical sessions (id.). Verizon states that it was never requested to complete RR-29, and that AT&T presented entirely different rate-application scenarios in RR-29 than those which were set forth in RR-47,[35] which Verizon completed (id.). Moreover, Verizon indicates that the rate information sought in RR-29 is identical to the information filed by Verizon on April 28, 2000 in the Consolidated Arbitrations and which Verizon attaches to its Clarification Opposition (Verizon Clarification Opposition at 2-3). Verizon asserts that the attachment shows that the rate-application method is not overly complicated and that many of the rates shown do not apply; thus, Verizon states, no technical conference is necessary (id. at 3).

Last, Verizon contends that, although the application of intrastate terminating access charges is referenced in Tariff No. 17, the amount it will pay AT&T to terminate an intrastate toll call is, as AT&T recognizes, outside the tariff (id.). Verizon asserts that it is inappropriate to decide an issue relating to AT&T's rate application in Verizon's tariff investigation, particularly on an issue that the parties had no opportunity to brief (id.).

B. Analysis and Findings

We deny AT&T's Motion for Clarification for the following reasons. First, given the scope of Tariff No. 17, there is a multitude of possible scenarios under the tariff and, thus, there are bound to be issues that arise as to the charges that will apply under these various scenarios. We will not require Verizon to dissect each and every possible scenario to avoid issues that may or may not arise, and which may be CLEC-specific. It would be an idle exercise for present purposes. Rather, we agree with Verizon that direct communication between Verizon and a carrier is the best approach to resolve issues as they arise. Second, AT&T's claim of discriminatory application of rates that Verizon will pay "outside the tariff at issue" is a matter beyond the scope of this proceeding. No clarification is warranted.

VI. NAS' LATE-FILED MOTION FOR LIMITED INTERVENTION

A. Background

On April 15, 1999, the Department issued a notice of public hearing and procedural conference in this docket which set a May 10, 1999 deadline for the filing of petitions to intervene. The Department held evidentiary hearings in this docket in December 1999 and January 2000 and issued its final Order on March 24, 2000. On June 5, 2000, Network Access Solutions Corporation ("NAS") filed a motion for limited intervention ("Motion to Intervene") along with its comments on Verizon's April 21, May 17, and May 19 Tariff Compliance Filings in this docket. No objections were received from other parties on NAS' Motion to Intervene.

B. Standard of Review

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass.

at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. Boston Edison, 375 Mass. at 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings (id.).

In ruling on late-filed petitions to intervene, or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. § 1.01(4). While "good cause" may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause and may not reserve such a showing for a later appeal of the Hearing Officer's ruling. See Bay State Gas Company, D.P.U. 95-52, at 2 Interlocutory Order (July 21, 1995). Administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. If the Department finds that there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to conduct a proceeding in a complete, efficient and orderly fashion. When balancing, the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. Western Massachusetts Electric Company, D.P.U. 92-8C-A at 5 (1993); NYNEX, D.P.U. 94-50 at 3 (1994).

C. NAS' Position

NAS seeks permission to intervene in this proceeding for the limited purpose of submitting comments to Verizon's April 21, May 17, and May 19, 2000 compliance filings (NAS Motion to Intervene at 1). NAS asserts that it is a CLEC that provides digital subscriber line services in Massachusetts by obtaining UNEs and collocation from Verizon and that it will be directly affected by any decisions the Department makes with respect to Tariff No. 17 (id.). NAS argues that permitting its participation will not delay this proceeding since its comments will be based on the existing record (id.). NAS states that it was not reasonably possible for it to intervene earlier since it did not begin providing service in Massachusetts on a commercial basis until after this proceeding was well underway (id. at 1-2).

D. Analysis and Findings

NAS fails to provide any specifics to support its general statement regarding why its Motion to Intervene was filed over one year after the expiration of the deadline set for filing Motions to Intervene and nearly two and a half months after the March 24, 2000 final Order. Accordingly, there is insufficient information upon which we could determine whether good cause exists. NAS has not made a convincing showing of good cause for its late-filed Motion to Intervene, and we deny NAS' Motion to Intervene. Indeed, a year late is a lot to account for when it comes to an intervention petition.

VII. COMPLIANCE REVIEW

The Department has reviewed Verizon's filings for their compliance with our Tariff No. 17 Order, and we address Verizon's compliance below.[(36)] For those issues not specifically discussed below and that were not the subject of Verizon's Motion for Reconsideration, we find that Verizon has complied with our directives and approve those sections.[(37)] In addition, we approve those tariff provisions for which we had not expressed any concern or had not directed changes to in the Tariff No. 17 Order.[(38)] For those items which were the basis of Verizon's Motion for Reconsideration, we direct Verizon to comply with our directives contained in our review of Verizon's Motion for Reconsideration, above, and any additional directives outlined below.

A. Non-Cost Collocation Issues

1. Removal of Obsolete/Unused Equipment

In the Tariff No. 17 Order at 41, we directed Verizon to remove obsolete unused equipment in those central offices experiencing space constraints, and in any central offices where a CLEC is collocated or where applications have been received for collocation. The Tariff No. 17 compliance filing does not comply with this directive. Although we did not explicitly request that Verizon incorporate the above language into the tariff, we find that doing so is appropriate. Accordingly, we direct Verizon to replace Tariff No. 17 Part E, Section 2.4.3.A with the following provision:

The Telephone Company will promptly remove obsolete unused equipment in those central offices experiencing space constraints and in any central offices where a CLEC is collocated or where applications have been received for collocation. In addition, upon reasonable request of a CLEC or upon the order of the DTE, the Telephone Company will remove obsolete unused equipment.

2. Reservation of Space

Although we did not find Verizon's three-year space-reservation policy appropriate, we did state that we had no basis to shorten this interval and, thus, adopted a case by case approach. Tariff No. 17 Order at 44-47. In the April 21 compliance filing, an explicit three- year space-reservation policy is still included in Part E, Section 2.2.2.C, and there is no reference to our directive to adopt a case by case approach where space exhaust is an issue. In their comments to the April 21 compliance filing, Rhythms and Covad urge the Department to require Verizon to remove the three-year limit and to incorporate language regarding the case by case approach. In response, Verizon opposes removal of the three-year limit, but offers to clarify the tariff by incorporating the following language: "In central offices where space exhaust is an issue, the appropriateness of [Verizon's] reservation of space will be evaluated on a case by case basis."

We find that the three-year limit contained in the tariff is not inconsistent with our directives, provided that the additional language proposed by Verizon is also included in the tariff. Accordingly, we direct Verizon to include its proposed language in the tariff. Furthermore, should a CLEC dispute Verizon's evaluation of the appropriateness of its reservation of space and be unable to resolve the dispute through ordinary commercial discussions (the preferred approach, we note), the CLEC may raise this issue with the Department. In such instances, we may require Verizon to provide a detailed description, with supporting documentation, of its plans for use of the reserved space for the central office at issue.

3. Warehousing of Space

In the Tariff No. 17 Order at 48, we found Verizon's anti-warehousing provision to be reasonable and justified. However, we also directed Verizon to incorporate language stating that it must attempt to reach mutual agreement with CLECs regarding what is reasonable and necessary for initial equipment deployment when Verizon becomes aware that bays are not fully equipped. Id. In its April 21 compliance filing, Verizon revised Part E, Section 9.1.1.A.1 to indicate that it will "work cooperatively" with CLECs. Although Rhythms and Covad argue that this provision should be modified to state that Verizon will reach mutual agreement with the CLEC,[(39)] we find that Verizon's revision complies with our directive[(40)] and approve the revised tariff provision.

4. Space Availability Response

In the Tariff No. 17 Order at 53, we directed Verizon to remove the third possible response to a CLEC application for physical collocation space. The third possible response to a CLEC application was that there was "no readily available space, however, [Verizon] will determine whether space can be made available and will notify the CLEC within twenty business days." In its April 21 compliance filing, Verizon removed this provision and replaced it with the following: "If after denying applications for physical collocation at the central office, [Verizon] reduces or eliminates administrative space and converts it to space suitable for collocation, [Verizon] shall, within five business days, inform all CLECs previously denied of the status change." See Part E, Section 2.1.2.C.3. No CLECs commented on the revised wording.

We find that the substance of the language contained in revised Section 2.1.2.C.3 to be reasonable; however, we find that its location within the list of possible space availability responses to be a source of likely confusion. We direct Verizon to remove subsection 3 of Part E, Section 2.1.2.C from the list of possible responses so that it is clear that subsection 3 is not a possible response in lieu of the first two responses, but rather a continuing obligation on Verizon in the event it denies an application for physical collocation.

In addition, in the Collocation Remand Order, the FCC clarified that ILECs must provide a requesting telecommunications carrier with a report indicating the space available for collocation within ten calendar days, not ten business days, after the report is requested.

Collocation Remand Order at ¶ 64. Since Part E, Section E.2.1.2.A provides for business days, we direct Verizon to revise the tariff to indicate calendar days.

5. Adjacent On-Site Collocation

In compliance with our Tariff No. 17 Order at 58-59, Verizon included the rates, terms and conditions for adjacent on-site collocation when space is legitimately exhausted in a central office. See Tariff No. 17, Part E, Section 10. CLECs raised numerous concerns regarding these provisions (see, e.g., Rhythms/Covad's June 8 Compliance Comments at 17-18; and AT&T's June 8 Compliance Comments at 11-13). In response to the CLEC comments, Verizon indicated that it did not object to further investigation of its adjacent on-site collocation provisions, but noted that some of the issues raised by the CLECs concern provisions that had been a part of the original August 1999 tariff (Verizon June 19 Reply Comments at 14). Thus, Verizon argues, changes to these provisions are not necessary (id.).

We find that further investigation of the reasonableness of the terms, rates and conditions of the adjacent on-site collocation offering is appropriate, but emphasize that we will not address provisions that were a part of the original August 27, 1999 tariff since the opportunity to address those issues has passed.

6. Collocation at Remote Terminals

On May 17, 2000, Verizon complied with our directive in the Tariff No. 17 Order, at 61, to incorporate its offering on collocation at remote terminals. CLECs raised concerns in their June 8 Compliance Comments regarding the rates, terms and conditions of this offering. Since this issue had not been addressed previously, Verizon indicated that it had no objection to having this issue investigated (Verizon June 19 Compliance Reply Comments). Once again, we find that additional investigation is appropriate. We note that discovery was issued on July 21, 2000 by CLECs and the Department.

7. Microwave Collocation

We directed Verizon to remove the distinction between business and non-business hours for CLEC access to their equipment located on rooftops. Tariff No. 17 Order at 64-65.

Although Verizon's Motion for Reconsideration does not specifically refer to this issue, it appears that Verizon has indirectly requested reconsideration on this issue in the context of unescorted access in the central office (see April 21, 2000 Compliance Filing at Attachment B). We discussed the issues of separate rooms, security escorts and CLEC access above, and we address the remaining compliance issue as follows. In its comments, WorldCom correctly points out that Verizon failed to remove the distinction between business and non-business hours (WorldCom June 8 Compliance Comments at 5). Thus, Verizon has not complied with our directives. Verizon shall remove the distinction between business and non-business hours in its next compliance filing.

8. Provisioning Intervals

We directed Verizon to incorporate a 76 business day provisioning interval for all collocation forms, except adjacent, and to use a "stop clock" approach[41] for virtual collocation. Tariff No. 17 Order at 73-75. In addition, we directed Verizon to define what constitutes non-standard equipment for purposes of virtual collocation. Id.

In the compliance filing at Part E, Section 1.1.2.A, the provisioning interval of 76 business days has been added. Rhythms and Covad challenged Verizon's requirement of a forecast six months prior to the application in order to qualify for the standard provision interval (see Rhythms/Covad June 8 Compliance Comments at 4-5); however, our Tariff No. 17 Order permits Verizon to adopt the same restrictions that applied to New York's 76-day interval. Accordingly, we approve Part E, Section 1.1.2.A pertaining to provisioning intervals as compliant with our Tariff No. 17 Order.

We note that the 76 business day provisioning interval prescribed in our Tariff No. 17 Order is less stringent than the 90 calendar day interval that the FCC recently mandated as the national default standard for physical, caged or cageless, collocation.[42] Collocation Remand Order at ¶ 27. Moreover, the FCC has also invited comment on whether it should specify a collocation interval shorter than 90 calendar days. Id. at ¶ 114. The FCC adopted the national default standard of 90 calendar days subsequent to our issuance of the Tariff No. 17 Order; the FCC's "default" provisioning interval of 90 calendar days is not pre-emptive. We note that no parties have requested the Department to consider adopting the national standard in lieu of our 76 business day provisioning interval. Thus, we need not take any action now. However, should any party request the Department to consider modifying our standard collocation provisioning interval to conform with the FCC's national standard, we would be willing to consider the appropriateness of this modification.

With regard to other provisioning interval directives, we note that the compliance tariff includes a "stop clock" approach for both virtual and physical collocation forms. For virtual collocation, Part E Section 1.1.2.D provides for a "stop clock" for CLEC delivery of equipment and for coordinating training. We find that this revised provision complies with our Order. For physical collocation, Part E Section 1.1.2.C of the compliance tariff provides that the interval clock will stop, day for day, for each interim milestone a CLEC misses. This revised tariff provision also indicates that Verizon will attempt to negotiate a new interval when it becomes aware of vendor delays, and that, if Verizon and the CLEC cannot agree on a new interval, the dispute will be brought before the Department for resolution. We strike this revised provision in its entirety as non-compliant with our Order since the Tariff No. 17 Order only allows for a "stop clock" approach for virtual collocation.

Last, in Part E, Section 3.3.3.A, Verizon defines non-standard equipment, as it pertains to the training requirements, as "any equipment not previously installed by the Telephone Company in a central office within the specific geographical area of a single work group." Rhythms and Covad argue that this definition is too restrictive, penalizes CLECs, and allows Verizon to "manufacture islands of inefficiency" (Rhythms/Covad June 8 Compliance Comments at 8). Rhythms and Covad urge that the phrase "specific geographical area of a single work group" be replaced with "Commonwealth of Massachusetts" (id.). Verizon replies that training provisions for a specific geographical area of a single work group is consistent with Verizon's current practice and organizational structure (Verizon's June 19 Compliance Reply Comments at n.8). We find that Verizon has adequately defined non-standard equipment and that the training requirements are appropriate.

Rhythms and Covad also urge that the phrase "equipment the Telephone Company does not normally use to provide service either to itself or to another CLEC" in Part E, Section 3.3.3.A.1 be replaced with "non-standard arrangement" (Rhythms/Covad June 8 Opposition at 7-8). We agree with Rhythms and Covad that the suggested modification removes ambiguity and maintains consistency within the tariff. We direct Verizon to make this modification.

B. Extended Enhanced Links

1. Provisioning Intervals for New EEL Arrangements and Conversions of Special Access Arrangements to EELs

In the Tariff No. 17 Order at 105, the Department ordered Verizon to include standard provisioning intervals for both new EEL arrangements and for conversions of Special Access arrangements to EELs. With regard to the provisioning of new EEL arrangements, the Department instructed Verizon to use the standard provisioning intervals for the individual elements of the EEL arrangement, which Verizon had stated, during hearings, it planned to use. The Department also determined that CLECs should have a firm provisioning interval defined for the conversion of Special Access to EELs, and instructed Verizon to develop such an interval.

In its Compliance Filing, Verizon included EEL provisioning intervals for both new arrangements and conversions.(43) As ordered, Verizon used the standard provisioning intervals of the individual components, where available, in its development of intervals for new arrangements. For conversions to EEL arrangements, Verizon proposed an interval of thirty (30) days (Part A, Section 3.2.7.A.6). In comments filed on July 7, 2000, AT&T argues that Verizon's proposed interval for conversion is unreasonable. AT&T argues that there is no physical work necessary in converting a Special Access arrangement to an EEL arrangement, and that the conversion should consist only of a change in record-keeping information (AT&T July 7 Comments at 5). AT&T contends that a "[provisioning] interval of hours is more likely appropriate" (id.). AT&T further defends its argument by referencing the Supplemental Order Clarification, which states, in relevant part, that "upon receiving a conversion request that indicates that the circuits involved meet one of the three thresholds for significant local usage [] the incumbent

LEC should immediately process the conversion" (Supplemental Order Clarification at ¶ 31; referenced in AT&T July 7 Comments at 6).

The Department finds AT&T's opposition to Verizon's proposed conversion interval understandable for Verizon has not provided the Department with any workpapers demonstrating the reasonableness of the thirty-day interval. Therefore, the Department instructs Verizon to provide supporting documentation to show that its proposed thirty-day interval -- or some shorter interval -- is necessary. As to Verizon's proposed intervals for the provisioning of new EELs, the Department finds that Verizon has included these intervals as ordered and has complied with the Department's Tariff No. 17 Order in this respect.

2. EEL Cost Issues

In the Tariff No. 17 Order, the Department instructed Verizon to remove its proposed Link Test Charge from Tariff No. 17, and to resubmit a transaction-based non-recurring charge that was based on a forward looking cost methodology. The Department further ordered Verizon to exclude the cost of its Smart Jacks in the development of its revised Link Test Charge. Tariff No. 17 Order at 112-113. In its Compliance Tariff filing, Verizon has proposed a revised Link Test Charge supported by a TELRIC study. No CLEC has contested Verizon's revised Link Test Charge.[(44)] The Department reviewed the new charge and the supporting cost studies and finds that Verizon has complied with our directive.

We note that in comments filed on July 7, 2000, RNK argued that Verizon had proposed a new provision in its May 25 tariff filing that would aggregate the monthly charges for the individual elements of an EEL arrangement. RNK argued that the new provision was unreasonable and that Verizon must be required to show that no cost-savings are achieved by Verizon in the provisioning of an EEL arrangement if it is to be allowed to charge aggregated rates (RNK July 7 Comments at 11).

Verizon's provision for aggregated recurring rates of EEL elements was included in the Company's original tariff filing, and, contrary to RNK's claim, was not inserted for the first time in the May 25, 2000 filing. No parties raised an issue with this provision during the case, and the Department implicitly found this provision reasonable in the Tariff No 17 Order. Therefore, the Department rejects RNK's arguments.

3. Other EEL Provisions

In the Tariff No. 17 Order, the Department made rulings on a number of miscellaneous issues related to Verizon's proposed EEL offering. First, the Department ordered Verizon to revise its tariff to reflect that it will provision EELs across LATA boundaries in cases where the local calling area in which the EEL is provisioned crosses a LATA boundary. Tariff No. 17 Order at 92. Second, the Department ordered Verizon to state affirmatively in its tariff that EEL arrangements may be ordered on an expedited basis. Id. at 105. Finally, the Department upheld Verizon's right to assess applicable termination penalties on conversions of Special Access to EEL arrangements. Id. at 107. The Department has reviewed Verizon's Compliance Filing with respect to each of these issues and finds that Verizon has complied with the Department's order in each case.

C. General Tariff and Miscellaneous Provisions

1. Service Terminations

In the Tariff No. 17 Order at 156-157, we approved a 30-day notice provision prior to service terminations. But we stated that service terminations affect customers, and that, accordingly, if a carrier disputes Verizon's characterization of a violation with the Department, the termination provision will be stayed. Verizon did not incorporate language to this effect. We direct Verizon to incorporate the following language into Part A, Section 1.6.6: "In the event a carrier disputes the Telephone Company's characterization with the Department, the termination provision will be stayed until the dispute is resolved."

In addition, we stated that in cases of emergency conditions or court orders, Verizon is required to notify the Department and CLEC of the termination of service within 48 hours, and to provide the details upon which Verizon based its decision to terminate service. Tariff No. 17 Order at 157. While Verizon did comply with the 48 hours notice, see Part A, Section 1.6.6.A.2 and 3, Verizon did not incorporate language indicating that the details upon which it based its decision to terminate service would be provided in the notice. To comply with our directives, we order Verizon to revise the second sentences of Part A, Section 1.6.6.A.2 and 3 to read as follows: "When service is discontinued under this provision, the Telephone Company will notify the DTE and the CLEC of the Telephone Company's action within 48 hours and shall provide the details upon which the Telephone Company based its decision to terminate service."

D. Cost Provisions

1. Engineering and Implementation Costs for Virtual Collocation

In the Tariff No. 17 Order at 202, we directed Verizon to reduce its engineering and implementation costs for virtual collocation by 10 percent to account for future efficiencies. In its May 19, 2000 compliance filing, Verizon submitted revised cost studies for virtual collocation. After review, we note that Verizon has reduced its engineering and implementation costs by approximately 26 percent.[(45)] Thus, we conclude that Verizon has complied with our directives.

2. ICB

In the Tariff No. 17 Order at 207 and 210, we directed Verizon to propose rates for the services listed in Record Request 23, with the exception of time and material for cable splice and pull. In its May 19, 2000 compliance filing, Verizon complied with our directive by proposing non-recurring charges for the services listed in Record Request 23.

However, given that these are newly proposed rates, additional investigation as to the appropriateness of these rates is necessary and will be conducted in the continuing examination of Tariff No. 17 within Phase I of this docket.

3. Other Costs

In the Tariff No. 17 Order, we noted that two proposed charges were not supported -- the proposed collocation site survey report fee and the proposed $.05 retention rate for billing and collection of information service calls. We directed Verizon to recalculate the site survey report fee along with a breakdown of the number of hours for each function within each activity, and also noted that the charge should reflect economies of scale. Tariff No. 17 Order at 195. Id. In addition, we directed Verizon to provide cost support for its proposed $.05 retention rate for billing and collection of information service calls. Tariff No. 17 Order at 222.

In its May 19, 2000 compliance filing, Verizon complied with the above directives. However, since there has not been an opportunity to investigate the appropriateness of the cost studies, additional investigation is needed. We will continue our review of these charges in Phase I of this docket.

E. Dark Fiber

As a result of Orders issued by the Department, Verizon is required to offer dark fiber as a UNE to CLECs in Massachusetts. See Consolidated Arbitrations Phase 3 Order (December 4, 1996) ("Phase 3 Order") and Phase 4-N Order (December 13, 1999). On January 13, 2000, Verizon submitted its compliance filing in the Consolidated Arbitrations which consisted of a dark fiber service description and cost study. On June 14, 2000, Verizon filed a revised service description in the Consolidated Arbitrations and also filed Tariff No. 17 provisions for its dark fiber offering.

In this docket, discovery was allowed on Verizon's June 14, 2000 dark fiber tariff filing, but was limited to issues not raised in the review of dark fiber in the Consolidated Arbitrations. The hearing officer noted that Verizon would be required to incorporate the Department's directives pertaining to dark fiber from the Consolidated Arbitrations into Tariff No. 17 after the Department completed its review of dark fiber in the Consolidated Arbitrations. See July 12, 2000 Hearing Officer Memorandum.

Dark fiber continues to be litigated in the Consolidated Arbitrations. See Phase 4-R Order (August 17, 2000). In the Phase 4-R Order, the Department approved Verizon's January 13, 2000 dark fiber cost study, yet denied the service description contained in the June 14, 2000 dark fiber compliance filing.[46] The Phase 4-R Order requires Verizon to file a compliance filing within 14 days of that Order and to update Tariff No. 17. Id. at 9. On August 31, 2000, Verizon filed its compliance filing and updated Tariff No. 17.

Rhythms and Covad, jointly, and AT&T, individually, filed comments on Verizon's Tariff No. 17 dark fiber offering on July 7, 2000 in this docket. AT&T raised concerns regarding outstanding disputes in the Consolidated Arbitrations relating to the dark fiber service description (see AT&T July 7 Compliance Comments at 11). As to issues resolved in the Consolidated Arbitrations, AT&T contests the accuracy of Verizon's incorporation of the service description approved in the Consolidated Arbitrations into the tariff at Part B, Sections 17.4.1.A, 17.4.2.A.1 and 17.3.1.G (id. at 12-13). AT&T also states that Verizon has included an additional obligation on CLECs in Part B, Section 17.3.1.H. Rhythms questions whether Verizon will make dark fiber available if splicing is necessary (Rhythms July 7 Comments at 7).

As noted above, the Phase 4-R Order requires Verizon to update Tariff No. 17 in accordance with that Order and, thus, remedies AT&T's concern regarding outstanding issues in the Consolidated Arbitrations. As to AT&T's claims of inaccurate translation of the service description into the tariff, because Verizon only recently updated Tariff No. 17, there was not sufficient time to review these concerns. We will continue our review of dark fiber in the ongoing examination in Phase I along with the alleged additional obligation raised by AT&T. Finally, Rhythms' request for clarification can be explored by the parties in the ongoing investigation of the tariff in Phase I.

XIV. ORDER

Accordingly, after due consideration, it is

ORDERED: That Verizon New England, Inc. d/b/a/ Verizon Massachusetts' Motion for Reconsideration and Clarification be and hereby is granted, in part, and denied, in part; and it is

FURTHER ORDERED: That RNK's Motion for Clarification, AT&T's Motion for Clarification, and NAS's Late-Filed Motion for Limited Intervention be and hereby are denied; and it is

FURTHER ORDERED: That the Compliance Filings for Tariff No. 17 of Verizon Massachusetts, filed with the Department on April 21, 2000 and May 19, 2000, 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 herein; and it is

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

By Order of the Department,

James Connelly, Commissioner

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).

1. Formerly New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.

2. 205 F.3d 416 (D.C. Circuit, issued March 17, 2000) ("GTE")

3. Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999) ("Advanced Services Order").

4. 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, CC Docket Nos. 98-147 and 96-98, Order on 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, FCC 00-297 (rel. August 10, 2000) ("Collocation Remand Order").

5. Deployment of Wireline Services Offering Advance Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147; Fourth Report and Order in CC Docket No. 98-98, FCC 99-355 (rel. December 9, 1999) ("Line Sharing Order").

6. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238 (rel. November 5, 1999) ("UNE Remand Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. November 24, 1999) ("UNE Remand Supplemental Order")

7. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) ("Supplemental Order Clarification").

8. 204 F.2d 1268 (9th Cir. 2000).

9. WorldCom joined in the arguments presented by Rhythms and Covad. See WorldCom Opposition at 8.

10. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, FCC 96-325 (rel August 8, 1996) ("Local Competition Order").

11. The FCC has requested comments on the meaning of "necessary." Collocation Remand Order at ¶¶ 71-84.

12. Accumulated experience (evidence of serious misconduct by CLEC personnel on site; security concerns during work stoppages or lock-outs) or changed circumstances (witness the enhanced security measures taken by utilities at Federal behest during the recent Gulf War) may warrant later review of this decision. But the record now before us does not sustain Verizon's position.

13. Collocation Remand Order at ¶¶95-98.

14. Moreover, we are aware that the interconnection arrangement that we have referred to as adjacent off-site collocation would not constitute collocation under the FCC's definition of collocation. However, for lack of a more suitable title, we continue to refer to this type of interconnection arrangement as adjacent off-site collocation, particularly when there is a common understanding of what this type of arrangement entails.

15. See Advanced Services Order ¶ 23.

16. Should Verizon acquire new space, it would then be required to offer collocation to CLECs in that newly acquired space.

17. See BA-MA Exh. 185; see also BA-MA Exh. 182.

18. In our June 2 Order, the Department denied Verizon's Motion to Reopen the record to introduce similar evidence. We recognize that our current directive may to some appear inconsistent with our June 2 Order. We note that the prior refusal to allow this evidence into the record did not include a substantive review of the issue for which Verizon requested, and has now been granted, reconsideration. Rather, our consideration of Verizon's Motion to Reopen was based on an objective review of whether Verizon met the standards to reopen the record, which was not only closed but upon which a final decision had been rendered. Now that we have addressed the substantive issue and granted reconsideration, the appropriate course of action is to require the submission of

Verizon's workpapers and allow for additional investigation in our ongoing examination of the tariff in Phase I.

19. In addition, Verizon was previously required to recalculate its CCOE security costs based upon an allocation of seven square feet (see Tariff No. 17 Order at 192). Verizon must now recalculate its CCOE security costs consistent with this Order.

20. Generally, the three local usage options are: (1) when the requesting carrier certifies that it is the exclusive provider of an end user's local exchange service; (2) when the requesting carrier certifies that it provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer local dialtone lines; and for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 10 percent local voice traffic; and (3) when the requesting carrier certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service and at least 50 percent of the traffic on each of these local dialtone channels is local voice traffic and that the entire loop facility has at least 33 percent local voice traffic.

21. See Tariff No. 17, Part B, Section 13.2.1.B.

22. See Tariff No. 17, Part B, Section 13.1.1.E.

23. See Supplemental Order Clarification at ¶ 32.

24. Tariff No. 17, Part B, Section 13.4.1.B.

25. The Department denied Verizon's Motion to Reopen in the June 2 Order.

26. In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, FCC 97-208, Second Report and Order, CC Docket No. 93-162 (adopted June 9, 1998) ("Second Report and Order").

27. 47 C.F.R. §51.325 through §51.335.

28. 47 C.F.R. §51.325(b).

29. 47 C.F.R. §51.333(c).

30. In its May 25, 2000 compliance filing, Verizon proposes a 60 business day interval for provisioning facilities that currently exist. We will investigate the reasonableness of this proposed interval in subsequent proceedings.

31. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 ("Consolidated Arbitrations").

32. The Department is conducting additional review of the MediaOne and Verizon agreement on issues that surfaced after completion of the original arbitration. Greater Media, on the other hand, ceased operations after the arbitration and never completed an interconnection agreement with Verizon.

33. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffice, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38 (rel. February 26, 1999) ("Internet Traffic Order").

34. Specifically, AT&T points to the Surrebuttal Testimony of Thomas Lofrisco, RR-29, and Mr. Lofrisco's discussion of rate application uncertainty while on the stand. Mr. Lofrisco's Surrebuttal Testimony was marked and moved into evidence as Exh. AT&T-47. RR-29 was the Department's request that AT&T provide tables, in a format that would helpful to CLECs, for determining the application of miscellaneous and non-recurring charges. See Tr. 3, at 652-656. Mr. Lofrisco's discussion of rate application may be found in Tr. 3, at 643-645.

35. In its response to RR-47, Verizon completed tables on the costs for originating and terminating calls.

36. The Department's review of Tariff No. 17's provisions on xDSL-capable loops is contained in Phase III of this docket.

37. Namely, we approve Verizon's compliance filings on the following issues: the effect of the tariff on interconnection agreements; prior notice to enter; ten-foot separation between line-ups; technical standards for CLEC equipment/NEBS Level 1; space reclamation; removal of locked cabinet requirement for microwave collocation; CLEC tours of central offices; removal of geographically relevant interconnection points (GRIP); limitation of liability; limitation on expedite orders; bona fide request process; performance standards; dispute resolution process; CLEC forecasting requirements for interconnection trunks and EEL arrangements; call detail and calling party numbers; end-user notice concerning discontinuation of service; and the USLC (June 9 version).

38. Specifically, we reiterate our approval of the tariff provisions regarding separate entrances during work stoppages; relocation of equipment; Collocation Cost study methodology; SCOPE fill factor; Non-Recurring SCOPE charge; uncontested rates; cancellation charges; billing disputes; and, installment payments.

39. See Rhythms/Covad's June 8 Compliance Comments at 8-9.

40. We note that our directive only requires Verizon to "attempt to reach mutual agreement." Tariff No. 17 Order at 48.

41. In a "stop clock" approach for virtual collocation, after Verizon's notification to the CLEC that Verizon is able to begin installing the equipment or after Verizon's notification to the CLEC that training is need for non-standard equipment, the time period that it takes a CLEC to deliver the equipment to Verizon and the time period that it takes to coordinate training are not be counted towards the 76-day provisioning interval. See Tariff No. 17 Order at n.30.

42. Roughly, 76 business days equals 105 calendar days.

43. See Tariff No. 17, Part A, Section 3.2.7.

44. Both RNK and AT&T raised objections to the reappearance of Verizon's original monthly recurring Link Test Charge in the Company's May 25, 2000 Compliance Filing. However, Verizon has confirmed that this was erroneously included in that filing, and has since submitted a revised tariff page that does not include the monthly recurring charge. Consequently, it is not necessary to address the complaints of RNK and AT&T.

45. The engineering and implementation costs went from a total of $5238.95 to $3862.35. For individual engineering and implementation non-recurring charges, the reduction ranged from 10 percent to 57 percent.

46. Specifically, the Department accepted the CLECs' request that Verizon revise the dark fiber service description to provide access to dark fiber at hard termination points as well as splice points. Phase 4-R Order at 4. In addition, the Department required Verizon to provide estimates for the time required to develop a fiber layout map and the cost to CLECs for development of that map. Id. at 6.