

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications  
and Energy on its own Motion into the Appropriate Pricing,  
based upon Total Element Long-Run Incremental Costs,  
for Unbundled Network Elements and Combinations of  
Unbundled Network Elements, and the Appropriate Avoided  
Cost Discount for Verizon New England, Inc.  
d/b/a Verizon Massachusetts' Resale Services in the  
Commonwealth of Massachusetts

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D.T.E. 01-20

**MOTION OF VERIZON MASSACHUSETTS**  
**TO STRIKE UNAUTHORIZED PLEADING OF AT&T**

Verizon Massachusetts (“Verizon MA”) respectfully requests that the Department strike in its entirety the unauthorized pleading filed in this proceeding by AT&T on March 31, 2003 (“March 31 Pleading”). As grounds therefore, Verizon MA states that the March 31 Pleading is an unauthorized pleading that was not permitted by the Procedural Schedule established by the Hearing Officer on February 11, 2003 (as later amended by the Hearing Officer on March 21, 2003). The Hearing Officer’s Procedural Schedule specified March 18, 2003, as the date for CLEC comments and March 28, 2003, as the date for Verizon MA’s reply. No additional reply or other “responsive” pleadings were either specified or authorized by the Hearing Officer. AT&T did not appeal the Procedural Schedule to the Commission.<sup>1</sup> Instead, AT&T acted

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<sup>1</sup> Pursuant to 220 C.M.R. 1.06(6)(d)2, the rulings of the hearing officer remain in full force and effect “unless and until set aside or modified by the Commission.”

unilaterally, improperly and without authorization by filing the March 31 Pleading contrary to the established procedural schedule.<sup>2</sup>

AT&T's conduct is particularly egregious because it did not first seek leave to file an additional pleading; it simply made the filing and requested that the Department consider it. The Department has previously noted the procedural impropriety of thrusting unauthorized pleadings before it and has rejected such behavior. "The familiar analogy that one cannot un-ring a bell is apt in these circumstances." *See Boston Gas Company*, D.P.U. 88-67 (Phase II), at 7 (1989). The damage cannot be undone and such a practice is an "unacceptable tactic" that is fundamentally unfair. *Id.* Indeed, the Department has consistently refused to consider any new arguments made in unauthorized pleadings. *Cambridge Electric Light Company*, D.P.U. 89-2B, at 5 (1989) (the Department refuses to consider new arguments made by the Attorney General in unauthorized pleadings); *Riverdale Mills Corporation*, D.P.U. 86-209, at 10 (1990) (the Department decides motion for partial summary judgment and motion to dismiss without consideration of "additional unauthorized pleadings"). *See also Boston Edison Company*, D.P.U. 92-130-B, at 11 *fn*.10 (1994) ("[t]he Department has warned parties of the procedural impropriety of thrusting extra-record facts upon the trier of fact without first submitting a motion to reopen the record").

Complex litigation, such as this proceeding, requires special attention to the established procedural requirements designed to ensure an orderly and fair process. AT&T's disregard of those requirements does a disservice to the Department and was intentionally done in a way designed to prejudice Verizon rights. Accordingly, AT&T's March 31 Pleading should be

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<sup>2</sup> AT&T does not merely respond to Verizon MA's arguments in total disregard of the Department's procedural rules, but also resorts to unwarranted pejorative language by stating that Verizon MA's Reply Comments include many "misrepresentations." *March 31 Pleading*, at 1.

rejected by the Department and stricken in this proceeding. Were the Department to permit AT&T to submit its unauthorized pleading, Verizon MA should be granted a full opportunity to reply to AT&T.

WHEREFORE, for the reasons set forth above, Verizon MA requests that the Department strike in its entirety the unauthorized pleading filed by AT&T on March 31, 2003, and to deny AT&T's request for leave to submit the unauthorized pleading that has already been filed improperly with the Department.

Respectfully submitted,

VERIZON MASSACHUSETTS

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