

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: January 30, 2008
AT (OFFICE): NHPUC

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FROM: Lynn Fabrizio, Arbitrator 
SUBJECT: DT 08-001 Dark Fiber Arbitration
Arbitrator's Report and Recommendations
TO: Thomas B. Getz
Graham J. Morrison
Clifton C. Below
Debra A. Howland

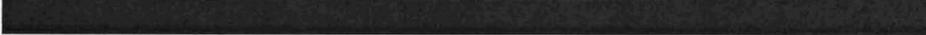
SYNOPSIS

REDNet and Verizon pursued dispute settlement in accordance with Section 1.12.1(A) of Tariff No. 84 with regard to Verizon's denial of certain requests by REDNet for dark fiber on the Candia-Raymond route. No agreement was reached.

REDNet subsequently sought fast track arbitration through the Commission.

Verizon provided the Arbitrator and Staff a report on the steps it took to review REDNet's request for fiber on the Candia-Raymond route.

Fiber availability along the route in question [BEGIN PROPRIETARY] 
 [END PROPRIETARY].

REDNet confirmed that [BEGIN PROPRIETARY] 
 [END PROPRIETARY].

In settlement of this arbitration, Verizon agrees to provide [BEGIN PROPRIETARY] 
 [END PROPRIETARY].

BACKGROUND

Rural Economic Development, Inc. (REDNet) was granted authority to operate as a CLEC in New Hampshire in Commission Order No. 24,334 (June 11, 2004). Prior to its request for arbitration in this docket, REDNet had requested the lease of dark fiber from Verizon New Hampshire (Verizon) along the Candia to Raymond route in eastern New Hampshire. Verizon denied REDNet's requests, citing the unavailability of spare fiber. REDNet requested fast track arbitration of its dispute.

Commission Order No. 22,942 (May 19, 1998) established a 20-day "fast track" arbitration as the appropriate process to resolve disputes concerning dark fiber availability.

Tariff No. 84, which sets forth terms and conditions for wholesale services, including dark fiber provisioning in New Hampshire, also sets forth a mechanism for dispute settlement to be invoked "prior to the submission of a dispute to the Commission for resolution." Section 1.12.1 of Tariff No. 84 (in effect since July 19, 2004) provides that a complaining carrier must present a one-page summary of the substance of the dispute to the responding carrier (in this instance, Verizon). Within 10 days, the responding carrier will respond with a written, one-page summary of its response, including a proposed resolution, if any. The same section refers to arbitration procedures as approved by the Commission in Order No. 22,433 (December 2, 1996), as well as those established by the FCC in the Bell Atlantic-GTE merger order (FCC Order 00-221, June 16, 2000), or "other reasonable alternative dispute resolution mechanism".

The Commission's secretarial letter of June 8, 2006, in Docket No. DT 06-044 requires Verizon to conduct dispute settlement efforts under Tariff No. 84 with the level of care exercised jointly by Verizon and Staff in that docket. Accordingly, Verizon's review of dark fiber availability in the course of dispute settlement under the tariff should include a review of cable plats as well as information in the TIRKS database, as well as a review of fiber availability on possible alternative routes.

PROCEDURAL HISTORY

On January 4, 2008, REDNet filed with the Commission a request for fast track arbitration of Verizon's denial of REDNet's requests for access to Verizon's dark fiber facilities from Candia to Raymond. Pursuant to RSA 363:17, the Commission appointed Staff Attorney Lynn Fabrizio as Arbitrator, to be assisted by the Telecommunications Division Staff, as needed. The Commission directed the Arbitrator to submit a report within 20 days of the initial receipt of REDNet's filing, in accordance with Commission Order No. 22,942, which established a fast track arbitration process for the resolution of

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disputes concerning dark fiber availability. On January 28, 2008, the Arbitrator filed a letter requesting an extension for filing of the report.

The Arbitrator conducted separate discussions with the two parties and on January 30, 2008, a conference call was held with representatives of REDNet, Verizon and Staff. Participants included: Justin Robinson and Sam Coleman of REDNet; Victor Del Vecchio, Esq. and Robert Meehan of Verizon; Kate Bailey of the Staff; and Lynn Fabrizio as Arbitrator.

The conference call resulted in discussion of the dark fiber inquiry process, customary cable configurations and maintenance of spare fiber, use of single strands versus pairs, and the current availability of existing fiber strands.

FACTUAL FINDINGS

Staff reviewed Verizon's report of verification of fiber availability along the Candia to Raymond route. In its verification, Verizon reviewed both the TIRKS database system and cable plats for the relevant span, as well as the availability of alternate routes, as required by the Commission in its secretarial letter of June 8, 2006, in Docket No. DT 06-044, Fast Track Arbitration for Dark Fiber Inquiries.

According to its records, Verizon has [BEGIN PROPRIETARY]

[END PROPRIETARY]

Pursuant to the January 30, 2008 conference call, REDNet confirmed that [BEGIN PROPRIETARY]

[END PROPRIETARY].

ANALYSIS

REDNet's request for dark fiber was satisfied during the course of this arbitration

[BEGIN PROPRIETARY]

[END PROPRIETARY].

In settlement of this arbitration, Verizon agrees to [BEGIN PROPRIETARY]

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[REDACTED]
[END PROPRIETARY].

For the record, clarifications achieved during the course of discussions in this proceeding include the following.

- (1) Although historically, it was “unusual” for an odd number of cable fiber strands to be in use at any given time, as REDNet states in its January 4, 2008 letter, the evolving market has changed. Certain customers, such as cable television providers, may use single strands for one-way transmissions. [BEGIN PROPRIETARY] [REDACTED] [END PROPRIETARY].

- (2) The process for requesting dark fiber from Verizon includes an initial inquiry, followed by an application for the requested fiber, in the event fiber is available. In the event no fiber is available, the request is denied and the CLEC may request documentation showing the details of fiber allocation along the requested route. Upon denial, a CLEC may request that Verizon conduct a field survey to confirm the plant configuration and availability in the field. The CLEC may also choose to pursue dispute settlement under the tariff. The initial inquiry, application, documentation request, and field survey request all involve fees applied in accordance with Verizon’s tariff.

RECOMMENDATION

Because both parties have confirmed their satisfaction with the results of the discussions held in the course of the arbitration, as designated Arbitrator, I recommend that the Commission close the docket.