

DT 02-028

CTC COMMUNICATIONS CORPORATION

**Request for Arbitration
of Verizon's Denial of a Dark Fiber Request**

Ordering Additional Procedure

O R D E R N O. 23,969

May 10, 2002

I. PROCEDURAL HISTORY

In response to a February 13, 2002, request from CTC Communication Corporation (CTC) for fast track arbitration of a complaint against Verizon New Hampshire (Verizon), pursuant to *New England Telephone and Telegraph Co. (Dark Fiber Order)*, Order No. 22,942, 83 NH PUC 316 (1998), the New Hampshire Public Utilities Commission (Commission) appointed an arbitrator pursuant to RSA 363:17. The Arbitrator filed findings and a recommended resolution on March 1, 2002. The Commission granted the parties an opportunity to file exceptions to the Arbitrator's report by March 18, 2002. Verizon New England Inc., d/b/a Verizon New Hampshire (Verizon) filed its exceptions on that date and requested a hearing.

II. ARBITRATOR'S REPORT

After considering the information adduced by CTC and Verizon, including responses to data requests, the Arbitrator

recommended that the Commission overrule Verizon's denial of CTC's request for Dark Fiber. The Arbitrator recommended that the Commission require Verizon to provision CTC with Dark Fiber between Dover and Manchester by one of three alternate routing plans. The Arbitrator based that recommendation on the following three conclusions. First, she concluded that fiber strands held for future growth rather than maintenance and "loosely" scheduled for late 2002 are available for provisioning. Second, she found that Verizon's pending DWDM and SONET projects will not be finished within the second half of 2002 and therefore does not qualify as a short term service need as contemplated in the *Dark Fiber Order*. With regard to the DWDM and SONET projects, the Arbitrator further reasoned that Verizon's reported plans to augment certain routes in the foreseeable future (2003) enables the company to provide the Dark Fiber to CTC now and timely replenish that fiber for the later intended use via its scheduled build-outs. Third, she concluded that a single fiber strand reserved for maintenance is of limited use and should be re-designated as spare fiber.

III. VERIZON'S EXCEPTIONS TO ARBITRATOR'S REPORT

Verizon raised three objections to the Arbitrator's decision. First, Verizon claims that the decision is tantamount to requiring construction of new facilities for

CLECs, an activity not required by the Telecommunications Act of 1996 (TAct). Second, Verizon argues that the terms of the Interconnection Agreement between itself and CTC limits CTC's access to existing Dark Fiber so as to deny CTC the strands requested. Third, Verizon argues that its pending DWDM and SONET projects are legitimate, demonstrable short-term growth needs and are therefore unavailable to fill Dark Fiber requests pursuant to the Commission's *Dark Fiber Order*.

IV. COMMISSION ANALYSIS

As a result of the arguments put forth by Verizon, we find that two questions must be answered before accepting or rejecting the Arbitrator's Report in whole or in part. The first is whether the Amendment to the Interconnection Agreement (Amendment) between the parties, filed for our approval on February 25, 2002, applies to this dispute. The Amendment does not appear to have been in effect at the time CTC made its request or at the time Verizon issued its denial of the request. On this basis, it may be argued that the terms of the underlying Interconnection Agreement should govern the dispute. Since the underlying Interconnection Agreement is silent on the subject of Dark Fiber availability, the dispute would turn on whether or not Verizon's DWDM and SONET projects qualify as short term needs. On the other

hand, if the Amendment does apply, the dispute would be resolved by its terms.

The second question, raised by Verizon's objection to the Arbitrator's report, is a factual question as to when the DWDM project will be completed. On the basis of information obtained from Verizon, the Arbitrator concluded the project is not on track for completion in time to qualify as a short term need, i.e., by the second half of 2002 as claimed. However, Verizon states in its objection that Verizon "is implementing a 'turn up' date of September 20, 2002 for the second side of the existing DWDM system." Verizon similarly asserts that the SONET transport system is scheduled to be "turned up" on June 28, 2002 and should not be considered available for CLEC Dark Fiber requests.

We will order a hearing on these questions on June 21, 2002, and require that Verizon pre-file testimony regarding the DWDM and SONET projects' status. We will further provide for discovery regarding the pre-filed testimony prior to the hearing. The following schedule will pertain:

Pre-filed testimony	May 24, 2002
Data Requests to Verizon	May 31, 2002
Data Responses due	June 7, 2002

Based upon the foregoing, it is hereby

ORDERED, that a hearing on the petition shall be held on June 21, 2002 at the Public Utilities Commission at 8 Old Suncook Road, Concord, New Hampshire, commencing at 10:00 a.m.; and it is

FURTHER ORDERED, that the procedural schedule outlined above shall govern this proceeding.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary