

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

ORDER

March 7, 2002

FORMAL CASE NO. 962, IN THE MATTER OF THE IMPLEMENTATION OF THE DISTRICT OF COLUMBIA TELECOMMUNICATIONS COMPETITION ACT OF 1996 AND IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996, Order No. 12342

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") memorializes and expands upon the decisions made at a status conference held in the above-referenced proceeding on February 27, 2002. The Commission also amends Order No. 12287¹ to reschedule the hearing on unbundled network elements ("UNEs") and wholesale discount rates to April 5-11, 2002.

I. BACKGROUND

2. On January 4, 2002, the Commission released Order No. 12287, which scheduled the UNE and wholesale discount rate hearing for March 4-8, 2002. In preparation for this hearing, the parties were required to submit rebuttal testimony on January 11, 2002. On that date, Verizon DC, AT&T Communications of Washington D.C., Inc., and Covad Communications Company filed rebuttal testimony.²

3. The Commission released Order No. 12325 on February 14, 2002, describing in detail the procedure to be followed during the hearing.³ Verizon DC and the Office of the People's Counsel ("OPC") filed a Joint Motion for Reconsideration ("Motion for Reconsideration") of this Order, requesting the Commission to modify the

¹ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996, Order No. 12287, rel. January 4, 2002.*

² *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996, Verizon Washington DC, Inc.'s Revised Unbundled Network Element and Wholesale Discount Rate Cost Studies and Rebuttal Testimony ("Verizon DC Rebuttal Testimony"), filed January 11, 2002. AT&T and Covad filed joint rebuttal testimony. See, Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996, Rebuttal Testimony of Terry L. Murray on behalf of AT&T Communications of Washington D.C., Inc. and Covad Communications Company ("AT&T/Covad Rebuttal Testimony"), filed January 11, 2002.*

³ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996, Order No. 12325, rel. February 14, 2002.*

order in which the parties are to present their cases.⁴ In the Motion for Reconsideration, all four active parties, Verizon DC, OPC, AT&T, and Covad seek to reverse the Commission's decision to require witnesses to be present throughout the entire hearing.⁵ Moreover, Verizon DC seeks an extension of time to submit diagrams requested by the Commission.⁶ Verizon DC and OPC also request the Commission to schedule a status conference to discuss these issues.⁷

4. On February 19, 2002, AT&T and Covad filed a joint motion seeking additional time to seek discovery and prepare rebuttal testimony in light of Verizon DC's new and revised cost information submitted in Verizon DC's rebuttal testimony.⁸ AT&T and Covad request a postponement of the UNE and wholesale discount rate hearing until the end of April 2002.⁹ In its opposition filed February 20, 2002, Verizon DC contests this request, arguing that AT&T and Covad should have filed their joint motion earlier than two weeks before the dates scheduled for the hearing in Order No. 12287.¹⁰

5. The Commission released Order No. 12332 on February 21, 2002, scheduling a status conference for February 27, 2002 to discuss the issues raised in the Motion for Reconsideration, AT&T/Covad Joint Motion, and Opposition.¹¹ On February 27, 2002, the Commission held the status conference and resolved many of the issues in these filings from the bench. Through this Order, therefore, the Commission

⁴ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Joint Motion for Reconsideration of Order No. 12325 Extension of Time, Request for Procedural Conference and Expedited Ruling on Motion, filed February 20, 2002; Supplemental Filing to the Joint Motion for Reconsideration of Order No. 12325 Extension of Time, Request for Procedural Conference and Expedited Ruling on Motion ("Motion for Reconsideration") at 2, filed February 20, 2002. This filing was subsequently modified by *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Errata to Joint Motion for Reconsideration of Order No. 12325 Extension of Time, Request for Procedural Conference and Expedited Ruling on Motion, filed February 20, 2002; Supplemental Filing to the Joint Motion for Reconsideration of Order No. 12325 Extension of Time, Request for Procedural Conference and Expedited Ruling on Motion, filed February 20, 2002.

⁵ Joint Motion at 3.

⁶ *Id.*

⁷ *Id.*

⁸ AT&T/Covad Joint Motion at 2.

⁹ *Id.* at 3.

¹⁰ Verizon DC Opposition at 1.

¹¹ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Order No. 12332, rel. February 21, 2002.

memorializes the decisions announced from the bench and brings closures to any outstanding matters relating to this proceeding.

II. DISCUSSION

A. Motion for Reconsideration

1. Presentation of Evidence

6. In their Motion for Reconsideration, Verizon DC and OPC request the Commission to reconsider portions of Order No. 12325 that established the following order for the presentation of evidence at the hearing: recurring rates, non-recurring rates, wholesale discount rates, and miscellaneous rates.¹² Verizon DC and OPC propose the following order:

- Policy
- Economics
- Depreciation
- Cost of Capital
- Resale
- Cost study Factors
- Operations Support Systems ("OSS")
- Recurring Rates
- Loops (including Network Interface Device ("NID") and house and riser
- Inter-Office Transport
- Switching
- Signaling Networks and Call-Related Databases
- Line Sharing
- xDSL
- Non-Recurring Rates¹³

At the status conference, the Commission approved Verizon DC and OPC's proposed changes to the order of presentation of subjects at the hearing.¹⁴

2. Attendance of Witnesses

7. In the Motion for Reconsideration, all of the parties to this proceeding -- Verizon DC, OPC, AT&T, and Covad -- object to the Commission's requirement that all

¹² Order No. 12325, ¶ 4.

¹³ Motion for Reconsideration at 2.

¹⁴ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Transcript of February 27, 2002 Status Conference ("Tr.") at 7.

witnesses must be present throughout the entire hearing to be available for questioning. The parties argue that this requirement would be unduly expensive for the companies and OPC and burdensome on the witnesses, many of whom do not live in the Washington, D.C. metropolitan area.¹⁵ The parties reiterated their objections to this requirement during the status conference.¹⁶

8. In response, the Commissioners determined that all of the witnesses are not required to be present for the entire hearing. The Commission was particularly persuaded by the effect that such a requirement would have on the families of the witnesses that would be required to stay during the duration of the hearings. However, the Commissioners reminded the parties that they must have witnesses present at the hearing that are able to answer questions posed by the Commission or any party at any point during the hearing. The Commissioners indicated that if a party does not have a witness present at the hearing that can answer a particular question when it is asked, the Commission would recess the hearing until a witness who can answer the question is brought to the hearing.¹⁷

3. Date to File Diagrams

9. The Commission, through Order No. 12325, directed Verizon DC to file diagrams of its network by February 25, 2002, five business days before the hearing pursuant to Section 133.2 of the Commission's rules. In the Motion for Reconsideration, Verizon DC requested an extension of time to file the diagrams, until February 28, 2002, two business days before the hearing.¹⁸

10. Given the Commission's decision that it would postpone the hearing dates in this proceeding, it finds that Verizon DC's specific request for an extension of time to file the diagrams is moot.¹⁹ The Commission implied at the status conference, moreover, that Verizon DC is required to file these diagrams five business days before the rescheduled hearing begins. The Commission confirms this requirement in this Order and directs Verizon DC to file the diagrams five days prior to the newly adopted hearing dates pursuant to Section 133.2 of the Commission's rules.

¹⁵ Motion for Reconsideration at 3.

¹⁶ Tr. at 5-11.

¹⁷ *Id.* at 11-12.

¹⁸ Motion for Reconsideration at 3.

¹⁹ Tr. at 13.

4. Expedited Ruling and Procedural Conference

11. Verizon DC and OPC requested an expedited ruling on the issues raised in the Motion for Reconsideration and a procedural conference to discuss these issues.²⁰ In scheduling the status conference and resolving the issues in the Motion on Reconsideration at that status conference, the Commission has granted Verizon DC and OPC's request for expedited ruling and a status conference. As noted at the status conference, this portion of the Motion for Reconsideration was granted.²¹

B. AT&T/Covad Joint Motion

12. In its Joint Motion, AT&T and Covad requested a postponement of the hearing from March 4-8, 2002 to April 29-May 2, 2002. AT&T and Covad argue that they need additional time to review the rebuttal testimony submitted by Verizon DC on January 11, 2002. AT&T and Covad assert that since Verizon DC made substantial changes to the cost studies and added new cost studies in its rebuttal testimony, they need an extension of time to permit additional discovery and the opportunity to update AT&T's restatement of rates.²²

13. AT&T and Covad propose the following revised schedule in their Joint Motion:

March 1	Deadline for intervenors to serve data requests on Verizon DC
March 15	Deadline for Verizon DC responses to data requests
April 5	Deadline for intervenor testimony on Verizon DC rebuttal testimony
April 29 – May 3	Hearings
June 7	Post-hearing briefs
June 21	Post-hearing reply briefs ²³

AT&T and Covad assert that this procedural schedule is reasonable, since the intervenors previously had over two months to respond to Verizon DC's July 16, 2001 cost studies.²⁴

²⁰ Motion for Reconsideration at 3.

²¹ Tr. at 13.

²² AT&T/Covad Joint Motion at 2.

²³ *Id.* at 3.

²⁴ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Verizon Washington DC, Inc.'s Revised Unbundled Network Element and Wholesale Discount Rate Cost Studies and Testimony ("July 16 cost studies"), filed July 16, 2001.

AT&T and Covad assert that no party in the proceeding will be prejudiced by their request.²⁵

14. In its Opposition, Verizon DC argues that AT&T and Covad should not have waited until nine business days before the hearing to file their joint motion.²⁶ Verizon DC asserts that AT&T and Covad were aware of the changes to the July 16, 2001 cost studies in Verizon DC's January 11, 2002 rebuttal testimony, since Verizon DC identified these changes. Verizon DC contends that it has asked AT&T and Covad for their data requests, so that it can supply them with any clarifying information in a timely manner, but has not yet received any such request. Verizon DC maintains that AT&T's and Covad's request for a delay is unreasonable and should be denied. Verizon DC requests that the Commission resolve these issues at the status conference.²⁷

15. At the status conference, AT&T and Covad once again requested that the hearing be postponed, so that they could seek discovery from Verizon DC and submit rebuttal testimony on the new information presented in Verizon DC's January 11, 2002 rebuttal testimony. They reiterated their arguments that Verizon DC's January 11, 2002 rebuttal testimony contained substantial new information that required additional time to examine. AT&T proposed a new procedural schedule:

March 8	Deadline for intervenors to submit data requests to Verizon DC
March 20	First settlement conference
March 22	Deadline for Verizon DC responses to data requests
April 10	Deadline for submission of intervenor testimony
April 17	Second settlement conference
April 19-25	Hearing
May 24	Post-hearing briefs
June 10	Post-hearing reply briefs ²⁸

AT&T argued that it should be able to seek discovery on any of the rebuttal testimony that was changed from the July 16 cost studies.²⁹

16. For its part, Verizon DC indicated that the new information in the January 11, 2002 rebuttal testimony was clearly identified in that testimony. Verizon DC also indicated that some of the new testimony regarding the DSO feeder subloop element and the house and riser cable had been previously filed in response to Commission Orders

²⁵ AT&T/Covad Joint Motion at 3.

²⁶ Verizon DC Opposition at 1.

²⁷ Verizon DC Opposition at 2.

²⁸ Tr. at 23-25.

²⁹ *Id.* at 23-24.

No. 12106³⁰ and 12239,³¹ respectively, so that AT&T and Covad did not see these cost studies for the first time on January 11, 2002. Verizon DC contended that AT&T and Covad should not be able to obtain discovery on these two cost studies, since they already had the opportunity to seek discovery on these cost studies when they were submitted.³² Verizon DC indicates that discovery on the cost study information on reciprocal compensation was that was newly filed in its January 11, 2002 rebuttal testimony should be the only permissible discovery.³³ Verizon DC also contends that the intervenors should be limited to 50 data requests.³⁴

17. Verizon DC proposed the following procedural schedule at the status conference:

March 1	Deadline for intervenors to submit data requests to Verizon DC
March 6	Deadline for Verizon DC responses to data requests
March 11	Deadline for submission of intervenor testimony
March 13-19	Hearing
March 20	First settlement conference
April 2	Post-hearing briefs
April 16	Post-hearing reply briefs
April 17	Second settlement conference ³⁵

OPC indicated that it was prepared to present its case on the original hearing dates of March 4-8, 2002 and did not propose any changes to the procedural schedule.³⁶

18. During the status conference, the Commission decided to grant AT&T and Covad's Joint Motion but did not agree to any proposed procedural schedule. The Commission agreed with AT&T and Covad that Verizon DC submitted a great deal of new and revised information in its January 11, 2002 rebuttal testimony that required review and analysis by the parties and the Commission. Although Verizon DC argued that the changes were clearly identified in its rebuttal testimony, decreasing the amount of

³⁰ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Order No. 12106, rel. August 23, 2001.

³¹ *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Order No. 12239, rel. November 21, 2001.

³² Tr. at 19-20.

³³ *Id.* at 19.

³⁴ *Id.* at 21.

³⁵ *Id.* at 17-18.

³⁶ *Id.* at 22.

time necessary to review the changes,³⁷ the Commission still determined that additional time was necessary to review such a large submission.³⁸

19. The Commission then established the following procedural schedule:

March 6	Deadline for intervenors to submit data requests to Verizon DC
March 13	Deadline for Verizon DC responses to data requests
March 20	First settlement conference
April 1	Deadline for submission of intervenor testimony
April 5-11	Hearing
April 17	Second settlement conference
April 18	Deadline for submission of joint report on settlement conferences
April 25	Post-hearing briefs
May 2	Post-hearing reply briefs ³⁹

The Commission urged the parties to seek to resolve this case by settlement.⁴⁰ It is our belief that ratepayers are best served when they are able to enjoy the fruits of administrative efficiency and the final resolution that result from the settlement of a formal proceeding.

20. The Commission did not specifically address the scope and number of data requests to be permitted at the status conference. The Commission clarifies that the scope of the data requests is to be limited to questions regarding the new and revised testimony submitted in Verizon DC's January 11, 2002 rebuttal testimony, including the DSO feeder subloop element and the house and riser cable cost studies. We warn the parties to this proceeding that the Commission will strictly enforce this limitation. The Commission also determines that the intervenors may ask an unlimited number of data requests so long as they comport to the aforementioned limitation.

C. Establishment of Technical Conference

21. At the status conference, the Commission indicated a need for a technical conference at which Verizon DC would run its cost model. Upon agreement of the parties, the Commission established March 5-7, 2002 as the dates for the technical conference. The Commission clarified that all parties that had signed the appropriate confidentiality agreements could be present and participate in the technical conference. The Commission also scheduled a conference call to discuss the scope of the technical conference to be at 10:00 a.m. on March 1, 2002.⁴¹

³⁷ *Id.* at 32-35.

³⁸ *Id.* at 35-36.

³⁹ *Id.* at 44-45.

⁴⁰ *Id.* at 49.

⁴¹ *Id.* at 38-41.

THEREFORE, IT IS ORDERED THAT:

22. The Joint Motion for Reconsideration is **GRANTED** in part and **DENIED AS MOOT** in part;

23. The AT&T/Covad Joint Motion is **GRANTED** in part and **DENIED** in part;

24. Verizon DC's Opposition to the AT&T/Covad Joint Motion is **DENIED**;

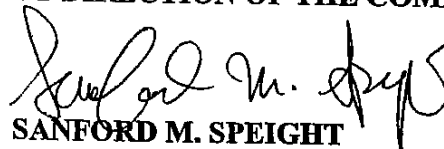
25. The procedural schedule established in paragraph 19 is **ADOPTED**; and

26. The technical conferences outlined in paragraph 21 are scheduled.

A TRUE COPY:

CHIEF CLERK

BY DIRECTION OF THE COMMISSION:



**SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY**