



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 99-03-06 APPLICATION OF THE NEW YORK TELEPHONE
COMPANY FOR ALTERNATIVE RATE REGULATION

January 31, 2001

By the following Commissioners:

Jack R. Goldberg
Linda Kelly Arnold
John W. Betkoski, III

DECISION

DECISION

I. INTRODUCTION

A. SUMMARY

Verizon New York Inc. (Verizon or Company) submitted its proposed Alternative Regulation Plan, (Plan) with the Department of Public Utility Control (Department) on February 28, 1999. Verizon also submitted a Revised Alternative Regulation Plan, on October 19, 2000 (Revised Plan). The Revised Plan according to Verizon represents a joint effort between Verizon and the Office of Consumer Counsel (OCC). Verizon states that the Revised Plan is consistent with the statutory goals of Section 16-247k of the General Statutes of Connecticut (Conn. Gen. Stat.). The Revised Plan provides, inter alia, for a three-year term, the elimination of the \$2.07 Touch-tone Service charge, a further \$300,000 rate reduction, service quality requirements as proposed by the Department in Docket Nos. 99-07-28 and 99-07-27 and the authority for the Company to implement revenue-neutral rate restructuring during the term of the Revised Plan. The Revised Plan also contains a provision that would allow Verizon to classify all new services and new service packages, including packages that contain existing and or new services, as competitive services, as well as a provision requiring semiannual reporting for the first year of the Revised Plan.

While the Department finds that the majority of the Revised Plan is consistent with the statutory goals of Conn. Gen. Stat. Section 16-247k and is in the public interest, the Department can not approve the portion of the Revised Plan allowing the automatic reclassification of new services and service packages to the competitive services category. Therefore, the Department has determined that the reclassification portion of the Revised Plan must be deleted. The Department also will require Verizon to submit semiannual reports for the entire term of the Revised Plan. Accordingly, the Department hereby approves the Revised Plan subject to deletion of the reclassification portion of the Plan and revision of the filing requirements, as outlined in Section III. herein.

B. BACKGROUND OF THE PROCEEDING

Pursuant to the Department's August 26, 1998 Decision in Docket No. 97-06-02, Review of Quality of Service Provided by New York Telephone Company, Verizon¹ submitted its proposed Alternative Regulation Plan (Plan) on February 28, 1999.² The Company stated that the proposed Plan was developed in response to the concerns noted by the Department in its Decision in Docket No. 97-06-02. The Company also stated that the proposed Plan was fashioned in compliance with the statutory mandate of the General Statutes of Connecticut (Conn. Gen. Stat.) 16-247k(a). According to the Company, the proposed Plan was intended to replace traditional rate of return

¹ At the time application was filed, Verizon was operating in Connecticut as the New York Telephone Company, d/b/a Bell Atlantic – New York.

² The Company proposed that the Plan have a minimum five-year term and six months prior to the Plan's conclusion, the Company would file with the Department any further proposals relative to the form of regulation that should continue beyond the five-year term. Application, p. 1.

regulation with a simple and straightforward alternative form of regulation and to the extent practicable, was based on the Department's prior actions pertaining to Verizon and the Southern New England Telephone Company (SNET). The proposed Plan was also drawn from the Company's experience from its New York operations. Application, p. 1.

On October 19, 2000, Verizon submitted a revised Alternative Regulation Plan (Revised Plan) to the Department for its review and approval. Verizon states that the Revised Plan reflects a number of significant modifications to the February 28, 1999 Plan. The Company also states that the Revised Plan is the result of the joint efforts of Verizon and the OCC to develop an alternative regulatory regime that is consistent with the statutory goals of Conn. Gen. Stat. §16-247k.³

C. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated September 30, 1999, a public hearing on this matter was conducted in the Joseph Cone room, at the Greenwich Town Hall, 101 Field Point Road, Greenwich, Connecticut on November 15, 1999.

Pursuant to Notice of Written Exceptions dated November 7, 2000, the Department solicited written comments from admitted parties concerning the Revised Plan. In response to that Notice the Department received written comments from the OCC supporting the Revised Plan.

By Notice of Close of Hearing dated January 10, 2001, the hearing in this matter was closed. The Department issued a draft Decision in this docket on January 10, 2001. All parties and intervenors were provided an opportunity to file written exceptions to and present oral arguments on the draft Decision.

D. PARTIES

The Department recognized Verizon New York Inc., 1095 Avenue of the Americas, New York, New York 10036; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051 as parties to this proceeding.

II. REVISED PLAN

The Company maintains that the Revised Plan has been submitted in compliance with the Department's Decision in Docket No. 97-06-02 and is in compliance with Conn. Gen. Stat. §16-247k(a). Similar to the February 26, 1999 Plan, the Company proposes that the Revised Plan replace traditional rate of return regulation with an alternative form of regulation. However, the Revised Plan differs from the February 26, 1999 Plan in several respects, including the length of the term it would be in effect. In particular, the Company proposes that the term of the Revised Plan be

³ The OCC concurs that the Department should adopt and approve the Revised Plan. According to the OCC, the Revised Plan was developed after good faith discussions and represents an acceptable resolution to the issues raised in this Docket. OCC October 20, 2000 Letter, pp. 1 and 2.

three years instead of five years originally proposed in the February 26, 1999 Plan. Additionally, Verizon will notify the Department, no later than a year prior to the end of the Revised Plan's three-year term, of its intention to renew the Revised Plan or propose a different form of regulation. Verizon October 19, 2000 Letter, p. 1; Revised Plan, p. 1.

Verizon also proposes to eliminate the \$2.07 charge to residential customers for Touch-tone Service, within thirty days of the Department's approval of the Revised Plan. Verizon estimates that the elimination of the residential Touch-tone service charge will reduce its intrastate revenues by approximately \$530,000 annually. Further, Verizon will reduce its rates by approximately \$300,000 during the second and third years so that at the conclusion of the third year of the plan, the Company will have reduced its annual revenues by a total amount of \$830,000. Revised Plan, p. 1.

Relative to service quality, Verizon commits to complying with the service quality requirements proposed in Docket No. 99-07-27, DPUC Promulgation of Performance Standards and Performance Based Reporting Requirements Regulations for Connecticut Telephone Companies, and Docket No. 99-07-28, DPUC Promulgation of Quality of Service Regulations for Connecticut Telephone and Certified Telecommunications Providers.⁴ Until such time as the regulations from these proceedings have been approved and effective, Verizon commits to continuing to report service quality results as required in accordance with the Decision in Docket No. 97-06-02. Revised Plan, p. 2.

Additionally, the Revised Plan embodies the three service classifications, (i.e., competitive, noncompetitive and emerging competitive) established by Conn. Gen. Stat. §16-247(f).⁵ Verizon will also be free to petition the Department for approval to reclassify other services based on the Company's demonstration that each such classification is warranted. Revised Plan, p. 2.

As a result of the replacement of rate of return regulation with the pricing rules of the Revised Plan, changes in the price of services would no longer be based on the Company's overall financial performance, with Verizon's revenue requirement being allocated among different services. Rather, the Revised Plan provides for pricing flexibility allowing the Company to adjust service rates within a flexible rate schedule. Additionally, the Company intends to freeze all residential service rates in the noncompetitive classification for a period of one year after the Revised Plan is enacted.

⁴ On October 24, 2000, the Department's regulations promulgated in Docket No. 99-07-28 were adopted by the Legislative Regulation Review Committee and filed with the Secretary of State on November 8, 2000.

⁵ Conn. Gen. Stat. §16-247(b) provides that all telecommunications services be considered noncompetitive, with the exception of WATS, 800, Centrex and Digital Centrex, which are defined as competitive services. The Company proposes to add its toll service offerings to the competitive classification, since the Department has already determined this service to be competitive when the Department reviewed SNET's request to reclassify toll service. Verizon also proposes that any future Department Decisions permitting SNET to reclassify existing noncompetitive services as either emerging competitive or competitive and any emerging competitive service as competitive, would also be applicable to Verizon's Connecticut service offerings. Revised Plan, p. 2.

During the term of the Revised Plan, the Company will continue utilizing the minimum and maximum service rates that are currently in place.

The Revised Plan also permits the Company to implement revenue-neutral rate restructurings and rate reductions for all services. The Company states that it will submit supporting documentation that demonstrates that any rate changes will not increase revenues. The Company also proposes that any filings pursuant to this provision of the Revised Plan will become effective thirty days after the filing of supporting documentation. During the first year of the Revised Plan, no revenue-neutral restructuring will include any increases in rates for residential service in the non-competitive classification.

Furthermore, under the Revised Plan, all new services and new service packages, whether the packages consist of existing and/or new services, will be proposed as competitive, subject to the Department's acceptance of such classification as defined in Conn. Gen. Stat. §16-247a(3).⁶ Moreover, the Company proposes that any new service tariff filing that is held by the Department to be a "reclassification" of an existing service will be considered a petition for reclassification pursuant to Conn. Gen. Stat. §16-247f(f). In addition to a flexible rate schedule, customer-specific pricing may be sought for these new services and new service packages.

The Company further proposes that the price for all competitive services, noncompetitive services and any emerging competitive services be changed, within minimum and maximum rate ranges that may be established during the term of the Revised Plan. Standard tariff notice periods will apply. Additionally, on the first anniversary of the Revised Plan's approval and on each subsequent anniversary, the Company will be permitted to implement price changes as a result of certain exogenous events that took place in the prior twelve-month period. In calculating its annual price adjustment, Verizon indicated that it would provide positive or negative cost changes that are beyond the Company's control and that result from regulatory, judicial or legislative changes uniquely affecting regulated, local exchange telecommunications companies. Finally, any other rate changes that may be proposed by Verizon during the term of the Revised Plan would be subject to standard tariff review procedures. Revised Plan, pp. 2-4.

Additionally, Verizon proposes to continue filing quarterly financial statements with the Department demonstrating its earnings. The Company states that there will be no limit on the earnings it may achieve during the Revised Plan. Verizon also commits to submitting semiannual reports to the Department that summarize competition in Connecticut under proprietary status for the first year of the Revised Plan. Revised Plan, p. 4

Lastly, Verizon states that nothing in the Revised Plan precludes the Company, the OCC, or others from seeking legislative or regulatory changes of any sort including a modification of the Revised Plan during its term. Verizon notes that pursuant to Conn.

⁶ Conn. Gen. Stat. §16-247a(3) as amended by Public Act 99-222 states that it is the goal of the state to "utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market." Public Act 99-222, Section 2.

Gen. Stat. § 16-247k(e), the Department may modify a plan for an alternative form of regulation if it determines that such modification is required due to previously unforeseen circumstances. The Revised Plan would also permit Verizon to petition the Department to terminate the plan if the number of its retail customers falls 50% or more below the level of such customers at the beginning of the plan. Revised Plan, p. 4.

III. DEPARTMENT ANALYSIS

Verizon has submitted a revised alternative regulation plan that is consistent with the statutory goals of Conn. Gen. Stat. §16-247k and reflects the efforts of the Company and the OCC to develop an alternative regulation plan that would reasonably balance and accommodate their respective views. Verizon October 19, 2000 Letter, p. 1. The OCC supports the Revised Plan and maintains that it represents an acceptable resolution to the issues raised in this proceeding. The OCC notes that while the Revised Plan is not the ideal proposal for these issues, it is the most realistic settlement in light of the resources that would have been required to litigate this matter. The OCC also notes that the Revised Plan's provisions and existence is based on the premise that the human and financial resources of the Department and the parties would not have been prudently managed pursuing extensive regulatory litigation given the unique circumstances of the size and scope presented by Verizon's business in Connecticut. Lastly, the OCC states that while this proposal is acceptable in this situation, it would be wholly inappropriate for SNET. Therefore, the OCC urges the Department to adopt and approve the Revised Plan. OCC Written Comments, pp. 2 and 3.

The Department has reviewed the Revised Plan and finds the majority of that plan acceptable as filed. During the life of the three-year plan, the Company will eliminate its current residential Touch-tone Service charge following approval of the Revised Plan and further reduce service rates to produce a revenue reduction totaling \$300,000 during the second and third years of the plan. Pursuant to these provisions, customers will receive additional service value while Verizon will receive a reasonable reduction to its present earnings.

Verizon's has also committed to the service quality regulations promulgated by the Department in Dockets Nos. 99-07-27 and 99-07-28, which require the Company to adhere to same service quality standards imposed on SNET and other telecommunications service providers operating in Connecticut. Adherence to these requirements would, in the opinion of the Department, afford the Company's customers the same minimum service quality standards experienced by the state's other telecommunications service providers' (including SNET) customers.

While Verizon's residential customers will receive financial benefit from the Revised Plan during the first year due to the rate freeze for all noncompetitive residential services, the Company should also benefit from the pricing flexibility received as it is permitted to implement flexible service rate schedules. The Department will require however, that the Company establish a price floor at a level that is no lower than total service long run incremental cost (TSLRIC), which includes a reasonable level of contribution for all services. When the Company establishes the service's price floor, Verizon should present to the Department the results of the supporting TSLRIC analysis including a showing that common costs are included in that service's price floor.

Adoption of the Revised Plan will also permit the Company, on the first anniversary of the Revised Plan's approval and on each subsequent anniversary, to implement price changes resulting from certain exogenous events that took place in the prior twelve-month period. Verizon states that its definition of "exogenous events" is consistent with that adopted by the Department when it approved SNET's alternative regulation plan in Docket No. 95-03-01, Application of The Southern New England Telephone Company for Financial Review and Proposed Framework for Alternative Regulation, as these events are unique to local exchange telecommunications companies. Verizon Response to Interrogatory TE-20. In the March 13, 1996 Decision in that proceeding, the Department determined that exogenous costs must be uniquely applicable to regulated, local exchange telecommunications companies. March 13, 1996 Decision, Docket No. 95-03-01, p. 153. As Verizon's definition of exogenous costs is consistent with that adopted in Docket No. 95-03-01, the Department will approve the Company's use of exogenous events in the Revised Plan. Verizon will be required however, when filing its annual price changes with the Department, to follow the format employed by SNET in its annual rate filings in Docket No. 95-03-01.

Additionally, the Revised Plan proposes that Verizon continue filing quarterly financial statements with the Department. However, during the monitoring period, there will be no limit on the earnings Verizon may achieve. The Department accepts the Company's proposal to continue reporting financial data. The Department would normally be reluctant to consider a proposal that permitted no limits on earnings. However, the Revised Plan provides for three separate revenue reductions, all of which take place during the three-year term of the Revised Plan. Accordingly, the Department concludes that ratepayers are protected from funding excess Company earnings during that period. Furthermore, the Department is of the opinion that the exogenous cost provisions of the Revised Plan protect Verizon from experiencing any financial calamities that may occur.

Lastly, the Revised Plan proposes to allow the Company to petition the Department to terminate the plan if the number of retail customers falls 50% below the level of such customers at the commencement of the plan. The Revised Plan also permits the Department to modify the plan if it determines that modifications are necessary due to previously unforeseen circumstances. Nothing in the Revised Plan would preclude the Company, the OCC or others from seeking legislative or regulatory changes of any sort to the Revised Plan during its term. The Department concurs with these provisions and, accordingly, they are approved.

Although the above provisions are acceptable as proposed, the Department is concerned with the Revised Plan's proposal that all new services and new service packages be considered competitive when the Company seeks the Department's approval to offer them as general service offerings. The Department is also concerned with the Revised Plan's proposal that Verizon's toll service offerings be added to the competitive classification, because such services have already been determined to be competitive when the Department approved SNET's toll service reclassification. Moreover, the Department takes issue with the Revised Plan's proposal that any future Department Decisions permitting SNET to reclassify a noncompetitive service as either

emerging competitive or competitive and any emerging competitive service as competitive should be applicable to Verizon.

Section 16-247f(a) of the Conn. Gen. Stat., as amended by Public Act 99-222, An Act Concerning Competition in the Telecommunications Industry, directs the Department to “regulate the provision of telecommunications services in the state in a manner designed to foster competition and protect the public interest.” Conn. Gen. Stat. § 16-247f(a). In so doing, the Department may, after notice and hearing, reclassify a telecommunications service in accordance with the degree of competition which exists for that service in the marketplace. Conn. Gen. Stat. § 16-247f(c). Section 16-247f(d) of the Conn. Gen. Stat., as amended by PA 99-222, provides the criteria that the Department must consider in determining whether to reclassify a telecommunications service.

Additionally, in the May 5, 1995 Decision in Docket No. 94-07-02, Development of the Assumptions, Tests, Analysis and Review to Govern Telecommunications Service Reclassifications in Light of the 8 Criteria Set Forth in Section 6 of Public Act 94-83, the Department determined that while the statutory criteria are central to its review of a request for reclassification, two initial conditions must also be met before the Department will consider the criteria. Specifically, the petitioner must demonstrate to the Department that the telecommunications service submitted for reclassification is legally eligible for reclassification consideration. Additionally, if the telecommunications service submitted for reclassification as competitive or emerging competitive contains a noncompetitive or emerging competitive function of the petitioner’s local telecommunications network, the applicant must demonstrate that such function(s) are unbundled if reasonably capable of being tariffed and offered as a separate service(s). Reclassification Decision, p. 22.

Section §16-247f(a) of the Conn. Gen. Stat., as amended by Public Act 99-222 and the May 5, 1995 Decision in Docket No. 94-07-02 provide the criteria and the terms and conditions under which telecommunications services may be reclassified. While Conn. Gen. Stat. §16-247f(a) directs the Department to regulate the offering of telecommunications services in “a manner designed to foster competition and protect the public interest,” it is the opinion of the Department that the Company’s service classification proposal and its proposal to introduce new services as competitive are inconsistent with the above-noted statute and Decision. The Department believes that although Verizon’s presence in Connecticut is dwarfed by SNET’s presence, the Company is the incumbent local exchange carrier in the Byram and Greenwich areas and arguably, maintains the same presence as SNET when compared to the competitive local exchange companies offering services in its service territory. Acceptance of the Company’s service reclassification proposal circumvents the statutory requirements. In particular, Verizon has not provided any evidence in this proceeding detailing the status and level of competition in the Byram and Greenwich service territory. Absent this information, the Department questions how it could approve the Company’s request in light of Conn. Gen. Stat. §16-247a(3). Additionally, acceptance of these provisions would permit the Company to automatically reclassify services without demonstrating how the Conn. Gen. Stat. §16-247f(a) criteria had been satisfied in the Byram and Greenwich nor would Verizon be required to demonstrate how the requirements of the May 5, 1995 Decision in Docket No. 94-07-02 (i.e., if the

service is eligible for reclassification and if applicable, have all functions been unbundled) have been met. As proposed, these provisions of the Revised Plan are not in the public interest and are hereby rejected. It is for these reasons that the Department will also reject Verizon's Classification of Services proposal (i.e., adding toll service and any other service found to be competitive by the Department when approving SNET's proposed service classification requests). Revised Plan, p. 2. Therefore, the Department will require Verizon to modify the Revised Plan by deleting these provisions. Moreover, Verizon will also be required to follow the procedures outlined in the May 5, 1995 Decision in Docket No. 94-07-02 when seeking reclassification of its services from the noncompetitive to the emerging competitive classification and the noncompetitive and emerging competitive to the competitive service categories.

Lastly, while Verizon's proposal to submit semiannual reports summarizing competition in Connecticut for the first year of the Revised Plan is acceptable, the Department believes that this reporting requirement should continue throughout the three-year term of the plan. Accordingly, the Company should amend the Revised Plan to reflect this requirement.

IV. FINDINGS OF FACT

1. During the life of the three-year plan, the Company proposed to eliminate its current residential Touch-tone Service charge and further reduce service rates to produce a revenue reduction totaling \$830,000.
2. Verizon has also committed to the service quality regulations proposed by the Department in Dockets Nos. 99-07-27 and 99-07-28, which require the Company to adhere to same service quality standards imposed on SNET and other telecommunications service providers operating in Connecticut.
3. Section 16-247f(a) of the Conn. Gen. Stat., as amended by Public Act 99-222, directs the Department to "regulate the provision of telecommunications services in the state in a manner designed to foster competition and protect the public interest."
4. Section 16-247f(d) of the Conn. Gen. Stat., as amended by Public Act 99-222, provides the criteria that the Department must consider in determining whether to reclassify a telecommunications service.
5. The May 5, 1995 Decision in Docket No. 94-07-02, establishes two additional conditions which must also be met before the Department will consider the criteria. Specifically, the petitioner must demonstrate to the Department that the telecommunications service submitted for reclassification is legally eligible for reclassification consideration. Additionally, if the telecommunications service submitted for reclassification as competitive or emerging competitive contains a noncompetitive or emerging competitive function of the petitioner's local telecommunications network, the applicant must demonstrate that such function(s) are unbundled if reasonably capable of being tariffed and offered as a separate service(s).

6. Approval of Verizon's proposed service reclassification provisions would permit the Company to circumvent the statutory reclassification criteria in Conn. Gen. Stat. §16-247f(d) and the Department's Decision in Docket No. 94-07-02.

V. CONCLUSION AND ORDER

A. CONCLUSION

The Revised Plan as amended by Section III. above, is consistent with the statutory goals of Conn. Gen. Stat. §16-247k and is in the public interest. The Department will approve the Company's Revised Plan subject to Verizon's satisfactory compliance with the following orders.

B. ORDERS

For the following Orders, please submit an original and six copies of the requested material identified by Docket Number, Title and Order Number to the Executive Secretary.

1. No later than February 15, 2001, Verizon shall submit an amended Revised Plan that is consistent with Section III. above.
2. No later than 60 days prior to the anniversary date of this Decision, Verizon shall submit its proposed plan to the Department to reduce its revenues and implement any price changes for the following twelve-month period. The Company shall follow the format employed by SNET in its annual rate filings in Docket No. 95-03-01.
3. No later than twelve months prior to the conclusion of the Revised Plan's three-year term, the Company shall notify the Department of its intention to renew the Revised Plan or propose a different form of regulation.
4. No later than September 4, 2001, and semiannually thereafter, the Company shall submit its report to the Department summarizing the level of telecommunications competition in the Byram and Greenwich, Connecticut service area.

**DOCKET NO. 99-03-06 APPLICATION OF THE NEW YORK TELEPHONE
COMPANY FOR ALTERNATIVE RATE REGULATION**

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

Linda Kelly Arnold

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

2/2/01
Date