

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
VERIZON DELAWARE INC. (F/K/A BELL )  
ATLANTIC-DELAWARE, INC.) FOR )  
APPROVAL OF ITS STATEMENT OF TERMS ) PSC DOCKET NO. 96-324,  
PHASE II  
AND CONDITIONS UNDER SECTION 252(f) )  
OF THE TELECOMMUNICATIONS ACT OF )  
1996 (FILED DECEMBER 16, 1996; )  
REOPENED JUNE 5, 2001) )

**ORDER NO. 5735**

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This 5th day of June, 2001, the Commission determines and Orders the following:

1. In December, 1996, Verizon Delaware Inc. (f/k/a Bell Atlantic-Delaware, Inc.)<sup>[1]</sup> asked this Commission to approve its proposed "Statement of Generally Available Terms" ("SGAT"). An SGAT is a document (created by the provisions of 47 U.S.C. § 251(f)) by which an incumbent local exchange carrier, such as VZ DE, may set forth the terms and conditions that it will generally offer within this particular State to comply with the obligations imposed on it by 47 U.S.C. § 251. A state commission, like this one, cannot approve an SGAT unless it determines that the pricing elements in the document comply with the pricing standards announced in 47 U.S.C. § 252(d) and implementing regulations promulgated by the Federal Communications Commission ("FCC"). See 47 U.S.C. § 252(f)(2).

2. In July, 1997, after expedited proceedings, the Commission rejected the SGAT proposed by VZ DE. See PSC Order No. 4542 (July 8, 1997). In so doing, the Commission adopted certain just and reasonable rates for the various Unbundled Network Elements ("UNEs") which had been included in VZ DE's submission. The Commission also adopted specific levels of discounts to govern the wholesale sale of VZ DE's retail

services to competing local exchange carriers. Finally, the Commission made specific rulings concerning other various terms which were, or should have been included, in VZ DE's SGAT. The Commission directed that if VZ DE decided to refile an SGAT, such new document had to conform to the pricing and other determinations made by the Commission. On a later reconsideration application, the Commission clarified the role for rates adopted in PSC Order No. 4542: even if VZ DE did not refile an SGAT, the Commission would utilize the prices and discounts adopted in the earlier Order as permanent generic rates to be applied in arbitrations or other similar procedures brought under the provisions of 47 U.S.C. §§ 251 and 252. PSC Order No. 4577 (Aug. 19, 1997).<sup>[2]</sup>

3. VZ DE did not then file any revised SGAT. Rather, first VZ DE, and then other competing carriers, brought legal proceedings in the federal District Court to challenge many of the determinations made by the Commission in the SGAT proceeding. After lengthy litigation, the District Court, in January 2000, rejected most of the carriers' challenges to the Commission's pricing determinations.<sup>[3]</sup> However, the District Court "remanded" two issues to the Commission for further proceedings. One involved VZ DE's Operation Support System ("OSS") Access charges and the second related to the Non-Recurring Charges ("NRCs") which the Commission had approved. Concerning the former, the Court concluded that separate charges to access VZ DE's OSS system are permissible, even in the context of wholesale sales of retail services. However, as the Court saw it, the Commission's adoption of particular OSS Access charges in Order 4542 was flawed because the Commission had not cogently addressed how VZ DE had arrived at its OSS Access costs or how the costs attributed to OSS Access charges differed from the costs already included in calculating the wholesale discount rates.<sup>[4]</sup> Concerning the Commission's approval of NRCs related to UNEs, the Court directed the Commission to hold renewed evidentiary hearings. In the Court's view, the Commission had erred when it had accepted rates for

NRCs which had been premised, in part, on VZ DE's continued use, over the short term, of a manual processing system to fulfill competitors' orders for UNEs. As the Court saw it, the Commission, by utilizing costs attributable to VZ DE's manual processing system, had failed to heed a major principle of the FCC's TELRIC pricing standard: that network element rates are to be based on the use of the most efficient telecommunications technology currently available.<sup>[5]</sup>

4. On May 24, 2001, VZ DE filed a document entitled, "Revised UNE Rate Filing."<sup>[6]</sup> In that document, VZ DE sets forth rates for NRCs related to VZ DE's offering of UNEs. In many instances, these NRC rates differ from those adopted in PSC Order No. 4542. Also, in the new filing, VZ DE reiterates OSS Access charges. In several instances, these new OSS Access charges are lower than those adopted in 1997. According to VZ DE, these revised rates have been included in the filing to comply with the District Court's remand directives. However, the new filing also includes recurring (and non-recurring) charges for various UNEs which had not been included in VZ DE's earlier SGAT or scrutinized in the 1997 SGAT proceeding. For example, the new filing proposes rates for digital 4 wire loops, subloops, dark fiber, various ports, several versions of xDSL loops (including conditioning), various entrance facilities, new forms of transport, new usage file offerings, and "line sharing." It also includes a placeholder for rates to be developed for the relatively new UNE of "line splitting." According to VZ DE, the rates for these "new" UNEs are being proposed to satisfy a demand from competitors for such UNEs and in order to comply with FCC UNE directives issues since the 1997 SGAT Order.<sup>[7]</sup>

5. VZ DE represents that the Revised UNE Rate filing is a prelude to its application to obtain authorization to provide interLATA services from Delaware. Because it contemplates initiating that application process by the end of this year, it asks for prompt review of its Revised UNE Rate filing.

6. The Commission will now undertake a Phase II in this docket. Such Phase II will allow the Commission to accomplish three things. First, it will allow the Commission to review the NRC rates and OSS Access charges now being proposed by VZ DE in light of the earlier rulings of the federal District Court and any subsequent rulings by the FCC and other courts. Second, in this Phase II, the Commission will undertake a review of the other rates, terms, and conditions proposed in VZ DE's new Revised UNE Rate filing, including those rates for the "new" UNEs which VZ DE now proposes to offer. Finally, this Phase II will allow the Commission to determine whether Order No. 4542 needs to be "updated" in light of legal directives or other changed circumstances occurring since the date of that earlier Order. In Phase II interested parties will have the opportunity to point out whether intervening legal directives or other significantly changed circumstances have in some way made the Commission's earlier determinations either legally wrong or manifestly unreasonable. Of course, this opportunity should not be viewed as a solicitation for the parties to ask the Commission to simply relitigate one or all of its earlier determinations. Rather, the opportunity being made available is a narrow one: it will allow the Staff and the parties to inform the Commission whether legal or other significant, material changes occurring since July, 1997, have now made any of the determinations in Order 4542 wrong or no longer reasonable.

7. VZ DE has asked for expedited review of its new UNE Rate filing. At this time, given the sparse nature of the present record, the Commission cannot make an adequate appraisal of the complexity of the issues and, hence, the ability to arrive at just and fair results in a very short time frame. At the same time, the Commission does not want to impede the ability of new competitors to purchase these new UNEs nor VZ DE's ability to apply for interLATA authority from this State. The Commission asks the Hearing Examiner appointed to hear this Phase II to endeavor to pursue a procedural schedule which will allow the Commission

to take final action in Phase II by December 1, 2001. To that end, the Commission has set, and will notice, a mandatory pre-hearing conference for June 28, 2001. At that time, the Hearing Examiner should endeavor to set a procedural schedule for Phase II. However, if at a later time, the Hearing Examiner should determine that a fair proceeding leading to accurate and just results cannot be completed within that time frame, he should make such position known to the Commission. The Commission can then determine the appropriate course of the proceedings in this Phase II.

8. VZ DE, in its letter accompanying the revised filing, asks that its proposed UNE rates (both recurring and non-recurring) be considered effective as interim rates subject to the Commission's further review. The Commission declines to make such rates "effective" at this time. First, VZ DE did not submit any supporting cost material with its filing. Accordingly, at this time, the Commission Staff has nothing upon which to make any recommendations about the reasonableness of the proposed new UNE rates. Secondly, the provisions of 47 U.S.C. § 252(f)(3) generally permit a state commission a period of sixty days to act upon an SGAT or allow such document to go into effect. The Commission believes that given the present unavailability of any supporting documentation, it would be precipitous for the Commission to now direct that the proposed UNE rates be "effective," even on an interim basis. Of course, VZ DE and competitive local exchange carriers remain free to negotiate bilateral interconnection terms which contractually adopt these proposed UNE rates as either the permanent governing rates for those carriers or as interim rates subject to some agreed-upon true-up mechanism.<sup>[8]</sup>

Now, therefore, **IT IS ORDERED:**

1. That the Commission now establishes Phase II of this docket for the purposes described in this Order.

2. That Robert P. Haynes is designated, pursuant to the terms of 26 Del. C. § 502 and 29 Del. C. ch. 101, as the Hearing Examiner for Phase II of this docket. Hearing Examiner Haynes shall schedule and conduct such proceedings and public hearing, as may be required or appropriate, to develop a full record in this matter. Thereafter, Hearing Examiner Haynes shall submit a Report to the Commission concerning his proposed findings and recommendations. Hearing Examiner Haynes is specifically delegated the authority to identify issues which are appropriate for consideration in this Phase II of the docket consistent with the parameters described in this Order. Hearing Examiner Haynes shall hold a pre-hearing conference on Phase II on June 28, 2001, beginning at 10:00 AM in the Commission's Dover office. At that time, Hearing Examiner Haynes shall endeavor to set a procedural schedule for the conduct of proceedings and the submission of his report that will allow the Commission to take final action in this Phase II of the docket by December 1, 2001. If Hearing Examiner Haynes, at any later time, determines that a fair proceeding leading to accurate and just results cannot be completed by the above date, he shall so advise the Commission, setting forth his reasons for that determination and an alternative procedural schedule. Pursuant to Rule 21 of the Commission's Rules of Practice and Procedure, Hearing Examiner Haynes is granted the authority to grant or deny petitions to intervene. Hearing Examiner Haynes is also delegated the authority, under 26 Del. C. § 102A, to determine the timing, manner, and content of any further public notice that may be appropriate in this matter.

3. That a person or entity that previously was granted leave to intervene in this docket need not file any additional petition to intervene if such person or entity serves and files with the Commission a statement that it wishes to participate in Phase II of this docket. Such notice shall be served and filed on or before June 26, 2001. If a present party does not file such notice by that date, the person or

entity will not be deemed a party to Phase II of this docket. A person or entity filing such notice shall, without any further action, continue as a party to Phase II of this docket.

4. That, on or before June 6, 2001, the Secretary shall send a copy of this Order and accompanying notice to the Public Advocate and the parties listed on the current Service List in this docket.

5. That Francis J. Murphy, Jr., Esquire, is designated Rate Counsel for Phase II in this docket. Verizon Delaware Inc. is put on notice that it will be charged the costs incurred in connection with this proceeding under the provisions of 26 Del. C. § 114(b).

6. That, because of the unique procedural circumstances in this matter, the Commission's "Guidelines for Negotiations, Mediation, Arbitration, and Approval of Agreements Between Local Exchange Telecommunications Carriers," including time limitations set forth therein, are waived for Phase II of this docket.

7. That Verizon Delaware Inc. shall provide public notice of the filing of this Phase II of this docket by publishing notice, in the form attached as Exhibit "A," in the legal classified sections of The News Journal and the Delaware State News newspapers (in two-column format outlined in black) on the following date:

Wednesday, June 6, 2001

Proof of such publication shall be filed with the Commission as soon as practical but not later than June 28, 2001.

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Robert J. McMahon  
Chairman

/s/ Joshua M. Twilley  
Vice Chairman

/s/ Arnetta McRae Commissioner

/s/ Donald J. Puglisi  
Commissioner

/s/ John R. McClelland  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary

**E X H I B I T "A"**

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**OF THE STATE OF DELAWARE**

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VERIZON DELAWARE INC. (F/K/A BELL )  
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APPROVAL OF ITS STATEMENT OF TERMS ) PSC DOCKET NO. 96-324,  
PHASE II )  
AND CONDITIONS UNDER SECTION 252(f) )  
OF THE TELECOMMUNICATIONS ACT OF )  
1996 (FILED DECEMBER 16, 1996; )  
REOPENED JUNE 5, 2001) )

**PUBLIC NOTICE**

**TO: ALL TELECOMMUNICATIONS CARRIERS AND OTHER INTERESTED PERSONS**

On May 24, 2001, Verizon Delaware Inc. ("VZ DE") filed with the Delaware Public Service Commission ("the Commission") a revised schedule of Unbundled Network Elements' ("UNEs") rates. According to VZ DE, the filing, in part, contains recurring and non-recurring rates for a variety of UNEs that were not offered in the Statement of Generally Available Terms which the Commission reviewed in PSC Orders Nos. 4542 (July 8, 1997). Included in this additional listings of UNEs are subloops, xDSL loops (and conditioning), UNE

platforms, “line” sharing, and other port and transport UNEs, as well as a placeholder for a new UNE known as “line-splitting.” In the same filing, VZ DE also proposes Non-Recurring Charges (“NRCs”) for all its UNEs and new OSS Access charges. VZ DE has submitted such revised NRCs and OSS Access charges in light of rulings made by the United States District Court for the District of Delaware in Bell Atlantic-Delaware, Inc., v. McMahon, 80 F. Supp.2d 218 (D. Del. 2000).

The Commission has initiated a Phase II of this docket: (1) to review the NRCs and OSS Access Charges in light of the rulings made by the United States District Court in Bell Atlantic-Delaware, Inc., v. McMahon; (2) to review, approve, modify, or reject the proposed recurring and non-recurring rates, terms, and conditions for the UNEs listed in VZ DE’s Revised UNE Rate filing of May 24, 2001; and (3) to allow a narrow opportunity for any party to bring to the Commission’s attention any legal directives or changed circumstances occurring since the entry of PSC Order No. 4542 (July 8, 1997), which may have now rendered any determination in that Order either legally erroneous or manifestly unreasonable.

If you wish to participate in this matter, you should file a petition to intervene under Rule 21 of the Commission’s Rules of Practice and Procedure. You must file your petition to intervene with the Commission on or before June 26, 2001. You must also serve two copies of your petition and comments on VZ DE. The addresses for filing and service are as follows:

DE Public Service Commission	Verizon Delaware Inc.
Attn: PSC Docket No. 96-324,	Susan Paiva, Esquire
Phase II	901 Tatnall Street
861 Silver Lake Boulevard	Second Floor
Cannon Building, Suite 100	Wilmington, Delaware 19801
Dover, Delaware 19904	FAX No.: (302) 576-1132
FAX No.: (302) 739-4849	

If you were already granted leave to intervene in the earlier proceedings in this docket, you need not file a petition to intervene if you wish to participate in Phase II. You must, however, on or before June 26, 2001, serve and file a statement indicating you wish to participate as a party in Phase II. If you do not file and serve such a statement, you will not be deemed a party in Phase II and will not receive further notice of the proceedings. Hearing Examiner Robert P. Haynes will conduct a mandatory Pre-hearing Conference in Phase II beginning at 10:00 AM on June 28, 2001 at the Commission’s Dover office. The purpose of such conference is to set a procedural schedule for Phase II.

You may review and copy VZ DE’s UNE filing and the supporting application during normal business hours at the Commission’s office at the address set forth above. If you are disabled and need auxiliary aids or services to help you participate in these proceedings or to review the filings, you should contact the Commission

Staff either in person, in writing, or by telephone to discuss those aids or services. The Commission Staff is available to answer questions about this matter and to provide assistance. The Commission's toll-free telephone number in Delaware is 1-800-282-8574. You can also reach the Commission Staff by telephone at (302) 739-4247 (voice), or (302) 739-4333 (text). You can also submit inquiries by Internet e-mail to [cmcdowell@state.de.us](mailto:cmcdowell@state.de.us).

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[1] Here both Verizon Delaware Inc. and its corporate predecessor, Bell Atlantic-Delaware, Inc., will be referred to as "VZ DE."

[2] Subsequently, the Commission confirmed the use of VZ DE's three-tiered retail "density cell" structure as the appropriate model for deaveraging the rates for local loop UNEs. PSC Order No. 5208 (Aug. 31, 1999). In addition, in a separate proceeding relating to VZ DE's obligation to allow collocation by competing carriers, the Commission accepted various rates for services involved in that process. Several of those rates differed from the rates for such services adopted in Order No. 4542. See PSC Order No. 5695 (Apr. 10, 2001).

[3] Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2<sup>nd</sup> 218 (D. Del. 2000).

[4] 80 F. Supp. 2d at 249-50.

[5] 80 F. Supp. 2d at 250. The Commission notes that the Court of Appeals for the Eighth Circuit has, since the District Court's ruling, found this most efficient technology element of the TELRIC pricing standards contrary to the statutory pricing standard of 47 U.S.C. § 252 (d)(1). See Iowa Utilities Bd. v. FCC, 219 F.3d 744, 749-50 (8<sup>th</sup> Cir. 2000), cert. granted sub nom. Verizon Communications, Inc., v. FCC, 121 S.Ct. 877 (2001). However, the TELRIC standard, including this hypothetical network principle, remains in effect, pending a Supreme Court decision on the Court of Appeals' ruling. On the other hand, perhaps VZ DE's processing system is now different from that used, or even contemplated, during the SGAT proceeding in 1997.

[6] VZ DE originally submitted a similarly-titled document on April 26, 2001.

[7] See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, 15 FCC Rcd. 3696 (1999) (UNE Remand Order); Deployment of Wireline Services Offering Advanced Telecommunications Capabilities, Third Report and Order, etc., 14 FCC Rcd. 20912 (1999) (line sharing); and Deployment of Wireline Services Offering Advanced Telecommunications Capabilities, Third Report and Order on Recon., etc., FCC 01-26 (rel. Jan. 19, 2001) (line splitting). The Commission does note that the revised filing does, in a few instances,

propose differing rates for elements considered in 1997 which were not subject to Court challenge. See, e.g., "Network Interface Device" and "Customized Routing Per Line."

[8] Finally, the Commission includes this footnote at the request of the Deputy Attorney General assigned to the Commission. The Commission, as an arm of the State of Delaware, has earlier in this matter (and in other court proceedings) continuously asserted the view that principles of state sovereign immunity preclude the Commission, or its Commissioners, from being sued in federal court concerning the decisions the Commission makes in adjudicating disputes arising under the provisions of 47 U.S.C. §§ 251 and 252. The General Assembly has granted the Commission the authority to adjudicate disputes arising under the provisions added by the 1996 federal Telecommunications Act. See 26 Del. C. § 703(4). However, that statute does not contain any language which waives the State's immunity from suit with regard to those proceedings. Thus, the Commission has no authority, either by its words or actions, to waive the State's sovereign immunity. Consequently, the actions directed by this Order should not, and cannot, be construed as some consent by the State of Delaware to have the Commission be subject to suit in federal court.