

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 6th day of June, 2002.

CASE NO. 01-0526-T-PC

AT&T COMMUNICATIONS OF WEST VIRGINIA, INC.

Petition for consent and approval for the Public Service Commission to cease regulation of the rates charged by AT&T for all interexchange service rendered in West Virginia.

COMMISSION ORDER

On April 20, 2001, AT&T Communications of West Virginia, Inc. (AT&T), filed a petition for consent and approval, in which it requested the Commission to cease regulation of the rates charged by AT&T for all interexchange service rendered in West Virginia. AT&T noted that West Virginia Code § 24-2-3c permits the Commission, under certain circumstances, to cease its regulation of the rates charged by a “telephone utility for any commodity or service, except carrier access service, which the commission determines to be subject to workable competition.” AT&T further noted that West Virginia Code § 24-2-3c states that “[e]vidence of ease of market entry, the presence of other competitors and the availability of like or substitute services shall, for purposes of this section, be sufficient to show that a commodity or service is subject to workable competition.”

AT&T asserted that the fact that the Commission has, in recent years, certificated more than 300 interexchange carriers proves ease of market entry. AT&T further asserted that the fact that at least 50 carriers of the 300 interexchange carrier certificates granted by the Commission are actively engaged in the provision of interexchange service shows the presence of other competitors. Additionally, AT&T stated that the fact that the following competitors offer essentially the same interexchange services as AT&T shows that like or substitute services are readily available in West Virginia: MCI WORLDCOM, Sprint Communications, Var Tec Telecom, Excel Telecommunications, and Qwest Communications. Accordingly, AT&T requested that the Commission grant its petition to cease rate regulation of all of its interexchange services in West Virginia.

On May 14, 2001, the Commission's Consumer Advocate Division (CAD) filed a petition to intervene, in which it stated that AT&T's petition to cease rate regulation constitutes a proceeding which will directly impact intrastate toll rates paid by residential and business customers in West Virginia. Since the CAD is required by statute and rule to represent the interests of residential ratepayers in proceedings which may effect the rates paid by residential ratepayers, the CAD requested that the Commission grant its petition.

On May 16, 2001, Verizon West Virginia Inc. (Verizon_WV) filed a petition to intervene, in which it explained that it has pending before the Commission a petition to rate deregulate certain of its competitive services pursuant to West Virginia Code § 24-2- 3c. Verizon_WV noted that AT&T did not specifically identify those services which were included in the broad category of “interexchange” telecommunications services for which rate deregulation was being sought. Nevertheless, Verizon_WV asserted that its petition to intervene should be granted since AT&T's proceeding arises under the same statute and appears to involve several of the same services and, thus, could affect Verizon_WV's proceeding.

On November 27, 2001, Staff filed a Final Joint Staff Memorandum in which it stated:

In Case No. 01-0482-T-PC, the Commission approved, as part of a stipulation establishing a new Incentive Regulation Plan (IRP) for Verizon_WV, the rate deregulation of the following telecommunications services provided by Verizon_WV: (1) long distance (i.e., interexchange or toll) telephone service; (2) long distance conference service; (3) wide area telephone service, otherwise known as WATS; and (4) national directory assistance service. "Commission Order," GI re: Reductions in Intrastate Access Charges, Case Nos. 00-0318-T-GI, et al. (Oct. 3, 2001), at 3; see "Joint Stipulation and Agreement for Settlement," Case Nos. 00-0318-T-GI, et al., ¶¶ 11(d) & 21. In the Joint Stipulation approved by the Commission, the parties agreed that Verizon_WV would provide to Staff and the Consumer Advocate Division lists of current, non-customer specific prices for the aforementioned services (i.e., services contained in Category IV_workably competitive services). Further, any price changes for these services would be filed with the Commission within 10 days of the price change's effective date. Joint Stipulation, at ¶ 11(d). The parties also agreed to recommend to the Commission that any other carrier providing a service that has been rate deregulated, pursuant to W. Va. Code § 24-2-3(c) should also be required to submit and maintain such price lists. Id.

Accordingly, Staff recommends approval of AT&T's petition, consistent with the Commission's order approving Verizon_WV's IRP. The services provided by AT&T that should be rate deregulated are the same services set forth in Category IV of the Joint Stipulation. These services are all part of "interexchange service" for which AT&T sought rate deregulation. This clarification should resolve the concerns raised by Verizon_WV in its petition to intervene. In addition, the Commission should require AT&T to submit and maintain price lists for the rate deregulated services in the same manner as set forth in ¶ 11(d) of the Joint Stipulation approved by the Commission in its October 3, 2001, order. With respect to Verizon_WV's petition to intervene (which was never ruled upon), Staff recommends that the petition should be granted and suggests that the order approving AT&T's petition, consistent with Staff's recommendations, resolves any concerns that Verizon_WV may have had and therefore there is no need for further proceedings based on Verizon_WV's petition.

Final Joint Staff Memorandum at pp. 1-2.

On November 27, 2001, the Commission's Executive Secretary mailed a copy of Staff's Final Joint Staff Memorandum to the parties in this case with a cover letter which stated that if a party wished to respond to Staff's memorandum, a party may do so within ten (10) days. The time period within which a party was to respond to Staff's memorandum has expired without any party filing a written response.

On January 10, 2002, the Commission issued an order requiring AT&T to file a written statement within 30 days in which AT&T would explain what affect the Commission's decision to cease regulating the rates charged by AT&T for all interexchange services rendered in West Virginia would have in Case No. 00-0318-T-GI et al.

On February 19, 2002, AT&T requested an extension of its response time such request was granted by a Commission Order entered March 18, 2002.

On April 12, 2002, AT&T filed "AT&T Communications of West Virginia, Inc.'s Statement in Support of Its Petition Seeking Cessation of Regulation of Rates by Public Service Commission." Therein, AT&T argued that the decision to cease regulating the rates of AT&T would not have any effect on the Commission's ruling in Case Nos. 00- 0318-T-GI, et al. and that no hearing is necessary.

DISCUSSION

In addition to the reasons cited below, the Commission agrees with AT&T's assessment regarding the evidence of the ease of market entry, the presence of other competitors, and the availability of like or substitute services in support of AT&T's petition filed April 20, 2001.

The Commission notes that AT&T recognizes that if AT&T:

fails to flow through future access reductions, it risks regulatory actions that could stop any future access reductions or that could reverse the reductions that already have occurred. Beyond that, the Commission has a broad range of regulatory tools at its disposal to ensure that its intentions are met. Pricing deregulation under West Virginia Code §24-2-3c means only that AT&T will have flexibility to adjust its prices in response to market conditions. It does not mean that AT&T is released from regulatory oversight or Commission jurisdiction. [AT&T filing of April 12, 2002.]

The Commission concurs with Staff's recommendation to approve AT&T's petition, consistent with the Commission's order approving Verizon-WV's IRP. The Commission's October 30, 2001, order in Case No. 00-0318-T-GI, et al., approved a stipulation whereby Staff and the CAD agreed to support Verizon-WV's petition to end rate regulation for (i) long distance telephone service, (ii) long distance conference service, (iii) wide-area telephone service, and (iv) national directory assistance service. The stipulation required Verizon-WV to provide Staff and the CAD with lists of non- customer specific prices within ten (10) days of any price change. Likewise, the Commission shall require AT&T to provide Commission Staff and the CAD with lists of current, non-customer specific prices for all services enumerated above. Changes in prices shall be filed with the Commission within ten (10) days of the effective date of the price change.

The Commission notes that both the CAD and Verizon-WV filed petitions to intervene in this matter and that such petitions were not specifically approved. However, the Commission also notes that both of those entities were provided with copies of all filings made in this case and that neither Verizon-WV nor CAD filed any pleadings beyond their respective petitions to intervene.

FINDINGS OF FACT

1. On April 20, 2001, AT&T Communications of West Virginia, Inc., filed a petition for consent and approval, in which it requested the Commission to cease

regulation of the rates charged by AT&T for all interexchange service rendered in West Virginia.

2. AT&T asserted that the fact that the Commission has, in recent years, certificated more than 300 interexchange carriers proves ease of market entry.

3. AT&T further asserted that the fact that at least 50 carriers of the 300 interexchange carrier certificates granted by the Commission are actively engaged in the provision of interexchange service shows the presence of other competitors.

4. AT&T stated that the fact that the following competitors offer essentially the same interexchange services as AT&T shows that like or substitute services are readily available in West Virginia: MCI WORLDCOM, Sprint Communications, Var Tec Telecom, Excel Telecommunications, and Qwest Communications.

5. On May 14, 2001, the Commission's Consumer Advocate Division (CAD) filed a petition to

intervene, in which it stated that AT&T's petition to cease rate regulation constitutes a proceeding which will directly impact intrastate toll rates paid by residential and business customers in West Virginia.

6. On May 16, 2001, Verizon West Virginia Inc. (Verizon_WV) filed a petition to intervene, in which it explained that it has pending before the Commission a petition to rate deregulate certain of its competitive services pursuant to West Virginia Code § 24-2-3c. Verizon_WV noted that AT&T did not specifically identify those services which were included in the broad category of "interexchange" telecommunications services for which rate deregulation was being sought.

7. On November 27, 2001, Staff filed a Final Joint Staff Memorandum recommending approval of AT&T's petition in accordance with the approval provided a similar request by Verizon-WV in Case No. 00-0318-T-GI, et al.

8. On April 12, 2002, AT&T filed "AT&T Communications of West Virginia, Inc.'s Statement in Support of Its Petition Seeking Cessation of Regulation of Rates by Public Service Commission." Therein, AT&T argued that the decision to cease regulating the rates of AT&T would not have any effect on the Commission's ruling in Case No. 00- 0318-T-GI, et al., and that no hearing is necessary.

CONCLUSIONS OF LAW

1. The ease of market entry, presence of other competitors, and the availability of like or substitute services support a decision to grant AT&T's petition, as modified by

Staff's recommendation, to cease rate regulation of utility services that are subject to "workable competition" pursuant to West Virginia Code §24-2-3C.

2. It is reasonable to grant approval of AT&T's petition pursuant to the modification recommended by Commission Staff which provided that the approval in this case comports with the approval granted to Verizon-WV in the Commission's October 30, 2001, order in Case No. 00-0318-T-GI, et al. The Commission shall herein agree to cease rate regulation to AT&T in the area of (i) long distance telephone service, (ii) long distance conference service, (iii) wide-area telephone service, and (iv) national directory assistance service.

3. As required of Verizon-WV, in Case No. 00-0318-T-GI, et al., the Commission shall require AT&T to provide Commission Staff and CAD with lists of current, non-customer specific prices for all services enumerated in Conclusion of Law No. 2 above. Furthermore, it is reasonable for the Commission to require that changes in prices be filed with the Commission within ten (10) days of the effective date of any and all future price changes.

ORDER

IT IS THEREFORE ORDERED that the respective petitions to intervene by the CAD and by Verizon West Virginia Inc. are hereby granted.

IT IS FURTHER ORDERED that the Commission shall hereby approve the April 20, 2001, petition for consent and approval filed by AT&T Communications of West Virginia, Inc., to cease rate regulation for (i) long distance telephone service, (ii) long distance conference service, (iii) wide-area telephone service, and (iv) national directory assistance service. AT&T should note that this order does not release AT&T from the requirements to pass through access charges as required by Case No. 00-0318-T-GI, et al.

IT IS FURTHER ORDERED that AT&T shall provide Staff and the CAD with lists of current, non-customer specific prices for all services enumerated above within ten (10) days of the date of this order.

IT IS FURTHER ORDERED that future changes in prices shall be filed with the Commission within ten (10) days of the effective date of any and all future price changes of the above enumerated items.

IT IS FURTHER ORDERED that upon entry of this order, this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

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