

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 4th day of November, 2002.

CASE NO. 01-1696-T-PC

VERIZON WEST VIRGINIA INC.

Petition for declaratory ruling that pricing of certain additional unbundled network elements (UNEs) complies with Total Element Long-Run Incremental Cost (TELRIC) principles.

COMMISSION ORDER

The Commission held a hearing in this case on August 15, 2002. The parties filed briefs on September 3, 2002, and reply briefs on September 10, 2002. On October 24, 2002, a Joint Stipulation was filed by three, but not all of the parties to this case. The signatories to the Joint Stipulation recommend that non-signatory parties be provided with an opportunity to respond to the Joint Stipulation. The Commission agrees.

Background

Unbundled Network Elements (UNEs) are discreet parts or pieces of an existing local telephone company network that a competing local telephone service provider may lease to provide local telephone service to customers. In August of 1996, the Federal Communications Commission (FCC) issued its Unbundled Network Elements (UNE) or Total Element Long-Run Incremental Cost (TELRIC) Order requiring the unbundling of UNEs throughout the country. The FCC's August 1996, Order formed the basis of all the UNE determinations performed by all of the States, including a Statement of Generally Acceptable Terms and Conditions (SGAT) proceeding conducted by the West Virginia Public Service Commission, which concluded in 1997.

The instant case evolved from a number of later developments. First, in November 1999, the FCC issued its order on remand from the Eighth Circuit addressing certain issues in its prior TELRIC order, and in December of 1999, the FCC issued a line sharing order, which required further splitting of the existing network to allow line splitting and sharing. These orders resulted in new UNE rates covering loop, feeder and distribution, interoffice fiber, dark fiber, etc. ("Remand UNEs"). [See FootNote 1](#) Second, when the FCC approved the merger of Bell Atlantic and GTE in 2000, it required Verizon West Virginia Inc. (Verizon) to offer additional supplementary UNEs, such as bridge taps and load coils, to competitors ("merger UNEs"). Third, since the SGAT case, CLECs have requested and Verizon has decided to offer, additional UNE services ("Gap UNEs").

The Remand UNEs, merger UNEs and Gap UNEs are now the subject of this proceeding, filed by Verizon on December 21, 2001. Verizon seeks a declaratory ruling by this Commission that Verizon's

pricing of the Remand UNEs, merger UNEs and Gap UNEs complies with TELRIC principles established by the FCC and as further set forth in prior orders of this Commission. In support of its petition, Verizon explained that it is seeking a Commission ruling regarding its additional UNEs, in compliance with FCC orders, prior to applying to the FCC for long distance relief under Section 271 of the Telecommunications Act of 1996.

Verizon filed with its petition compact discs containing its cost studies, and requested that the Commission accord those compact discs proprietary treatment. Verizon stated that the information contained on the compact discs is voluminous, but has been provided to Commission Staff (Staff) and to the Consumer Advocate Division (CAD) in paper versions pursuant to a confidentiality agreement. Verizon also attached as Exhibit A, a list of the additional UNEs that Verizon has begun offering to Competitive Local Exchange Carriers (CLECs) in West Virginia. Furthermore, Verizon attached as Exhibit B the proposed prices for the various rate elements for the additional UNEs. Verizon asserted that the prices are based on TELRIC principles.

Verizon stated that by declaring the pricing of Verizon's additional UNEs to be TELRIC-compliant, the Commission would remain free in the future to adopt whatever specific appropriate UNE pricing methodology is consistent with then-existing law.

Verizon asserted that its participation in the long-distance market in other states has resulted in substantial savings for consumers and that the same will be true in West Virginia.

Verizon further asserted that its entry into the long distance market will further the Commission's goal of full and fair competition in all telecommunications markets.

By Order issued February 8, 2002, the Commission required Verizon to publish notice of the filing once, statewide. The notice provided a 30-day protest/intervention period.

On March 7, 2002, AT&T Communications of West Virginia, Inc. (AT&T) petitioned to intervene.

On March 8, 2002, Sprint Communications Company, L.P. (Sprint) and FiberNet, LLC (FiberNet) separately petitioned to intervene.

On March 11, 2002, the Commission's Consumer Advocate Division (CAD) petitioned to intervene.

On March 19, 2002, Verizon filed a Motion for a Procedural Schedule.

On March 22, 2002, Verizon filed affidavits of publication evidencing that statewide publication occurred on February 18, 2002.

On March 26, 2002, Staff filed a Further Joint Staff Memorandum recommending that the Commission grant the pending petitions to intervene. Staff recommended that the Commission defer ruling on Verizon's motion for a procedural schedule, until after a pending teleconference among the parties tentatively scheduled for March 29, 2002.

Staff disagreed with Verizon's attempt to limit the scope of this inquiry to “[w]hether pricing of additional UNEs complies with [TELRIC] principles.” (See Verizon's March 19, 2002, Motion for a Procedural Schedule, p. 2.) Staff disagreed on grounds that the TELRIC methodology for generating UNE rates has been out-of-date for some time.

Staff further recommended that the Commission consider requiring UNE prices to be incorporated in a wholesale tariff filed with the Commission for approval. Staff noted that it has previously endorsed such a requirement but that Verizon had generally opposed it.

By Order issued April 24, 2002, the Commission granted Verizon's request for proprietary treatment of the cost studies contained on the compact discs filed with its petition on December 21, 2002. The Commission ordered that the proprietary information be disclosed to the parties only under appropriate terms and conditions that prevent its use for marketing or other competitive purposes. The Commission also granted the petitions to intervene filed by AT&T, Sprint, FiberNet, and CAD. Finally, the Commission limited the

scope of this inquiry to whether pricing of additional UNEs complies with current TELRIC principles.

On June 3, 2002: (1) Verizon pre-filed the panel testimony of Rosemarie Clayton, Ann A. Dean, William J. Jones, and Gary E. Sanford; (2) Staff pre-filed the Direct Testimony of D. Todd Carden; and (3) AT&T pre-filed the Direct Testimony of Michael R. Baranowski.

On June 11, 2002, Verizon filed work papers related to its panel testimony as well as revisions to both the index for its panel testimony and Exhibit 17 to the panel testimony.

On June 12, 2002, Verizon filed affidavits of publication evidencing that notice of the June 26, 2002, had been properly published.

In response to a Motion by AT&T, [See FootNote 2](#) and after consideration of opposition thereto by Verizon, [See FootNote 3](#) and a subsequent response filed by AT&T, [See FootNote 4](#) the Commission, by Order issued June 14, 2002, cancelled the hearing scheduled to begin on June 26, 2002 and otherwise revised the procedural schedule in this case.

By Order issued June 28, 2002, the Commission rescheduled the cancelled hearing to begin 9:30 a.m. on August 15, 2002, at the Howard M. Cunningham Hearing Room, 201 Brooks Street, Charleston, West Virginia. The Commission further required Verizon to publish notice of the rescheduled hearing.

On July 1, 2002, AT&T filed the Supplemental Direct Testimony of Michael R. Baranowski. On July 2, 2002, AT&T re-filed the testimony with certain corrections.

On July 8, 2002, Verizon filed a Motion to Strike Supplemental Direct Testimony of AT&T. Verizon based its Motion on grounds that the testimony does not relate in any way to Verizon WV's recalculation of rates for three UNEs - the limited purpose for which the Commission permitted AT&T to file supplemental testimony. Verizon stated that rather than

addressing Verizon's proposed rate recalculations - something that AT&T mentions only once in passing (Baranowski Supp. at 3) - AT&T devotes nearly all of its 37 pages of supplemental testimony to issues that are entirely unrelated to that recalculation. AT&T instead raises additional criticisms of Verizon WV's original cost studies that AT&T has had since shortly after its intervention over four months ago, and that were filed with the Commission over seven months ago. Verizon argues that AT&T's testimony introduces extraneous issues that unnecessarily complicate and will potentially delay this case.

On July 10, 2002, Verizon WV filed its Rebuttal Panel Testimony and Staff filed Rebuttal Testimony of David T. Carden.

Also on July 10, 2002, AT&T filed a Response to Verizon's Motion to Strike Supplemental Direct Testimony of AT&T. AT&T argued that Verizon's efforts to exclude AT&T's testimony is unsupported by the Commission's order, not based on facts and not in the public interest. AT&T says that the Commission did not impose any limitation as to the content of the July 1, 2002, Supplemental testimony. AT&T further noted that it could have waited until the Rebuttal testimony date of July 10, 2002, to file the same testimony, but chose to file earlier to give AT&T a chance to respond in its rebuttal testimony. AT&T further noted that it did not receive Verizon WV's response to its data request until after 6 p.m. the evening before the Supplemental Testimony was due, and could not reasonably be expected to limit its testimony to the information supplied at that late hour.

Also on July 10, 2002, AT&T filed a letter stating that it did not intend to file rebuttal testimony due to the fact that a substantial part of the testimony it filed on July 1, 2002, could be considered to be in the nature of rebuttal to Verizon's direct testimony. AT&T further stated that the criticisms contained in Mr. Baranowski's direct and supplemental testimony are generally applicable to Verizon's latest cost studies.

On July 22, 2002, Verizon filed a letter explaining that its June 28th discovery responses were delivered to AT&T on the very day that AT&T requested that they be delivered, and in half of the time allowed by the Commission's Rules of Practice and Procedure.

The hearing was held as scheduled on August 15, 2002. Verizon WV, Staff, CAD, AT&T, Sprint, and FiberNet appeared at the hearing. After noting certain changes to the pre- filed panel testimony, the panel witnesses adopted their pre-filed direct and rebuttal testimony. (Verizon Exhs. 1, and 2). Verizon agreed to provide its cost-studies in support of its proposed UNE rates as a post-hearing Verizon Exh. 4.

On August 22, 2002, Verizon filed its Responses to certain Hearing data requests.

On August 27, 2002, AT&T filed another hearing data request response.

Initial briefs were filed September 3, 2002. Reply briefs were filed September 10, 2002.

On October 24, 2002, Verizon WV filed a Petition of Verizon WV, Staff and CAD for the Adoption of the Parties' Joint Stipulation. Neither AT&T, Sprint, nor FiberNet signed the Joint Stipulation. Included in the Stipulation was a recommendation that the Commission allow non-signatory parties to file a reply or response to the Joint Stipulation in the form of a reply brief. The cover letter to the Petition indicates that it was served on all parties of record.

The October 24, 2002, Petition stated that after the August 15, 2002, hearing, Verizon WV, Staff and CAD had agreed to certain reductions to the recurring and non-recurring rates proposed by Verizon WV in this proceeding. Furthermore, Verizon WV agreed to modify the terms and conditions under which it makes Wideband Test System (WTS) available to competitive local exchange carriers (CLECs), and will post on the Verizon Wholesale CLEC website a listing of commonly ordered expanded extended loops (EELs) in West Virginia, which will also be available on Verizon WV's website. Furthermore, the parties agreed not to propose any increase or decrease in Gap/Remand/Merger UNEs prior to the expiration of Verizon WV's Incentive Regulation Plan (IRP) scheduled for January 1, 2006, except as expressly permitted by the Joint Stipulation.

DISCUSSION

Upon consideration of the foregoing, the Commission finds it reasonable and appropriate to provide the parties to this proceeding who were not signatories to the Joint Stipulation, with twenty (20) days to file a reply or response.

FINDINGS OF FACT

1. A hearing was held on August 15, 2002, in this proceeding. Thereafter, briefs and reply briefs were filed.

2. Verizon WV, Staff and CAD have entered into a Joint Stipulation for resolution of the issues presented in this proceeding.

3. Verizon WV served a copy of the Joint Stipulation to all parties of record in this case, including the parties who were not signatories to the Joint Stipulation.

4. The Joint Stipulation recommends that the Commission provide non-signatory parties with time to file a reply or response to the Joint Stipulation in the nature of a reply brief.

CONCLUSIONS OF LAW

It is reasonable and appropriate to provide the parties to this proceeding who were not signatories to the Joint Stipulation, with twenty (20) days to file a reply or response to such Joint Stipulation.

ORDER

IT IS THEREFORE ORDERED that, within twenty (20) days of the date of this Order, any party to this proceeding who did not sign the Joint Stipulation filed by Verizon WV on October 24, 2002, may file a written reply or response to such Joint Stipulation.

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

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Footnote: 1 ¹The term "Remand UNEs" refers to the FCC's November 1999, order on remand addressing criticisms that the Eighth Circuit Court Federal Court of Appeals included in its order remanding the TELRIC Order to the FCC.

Footnote: 2 ²See Motion to Revise the Procedural Schedule filed by AT&T on June 7, 2002. CAD filed a letter indicating no objection to the Motion. Staff filed a Response suggesting less of a delay than that suggested by AT&T.

Footnote: 3 ³See Opposition of Verizon West Virginia Inc. to AT&T's Motion for Revision of Procedural Schedule, filed June 11, 2002.

Footnote: 4 ⁴See AT&T's Response to Verizon's Opposition to Motion for Revision of Procedural

Schedule, filed June 12, 2002.