

**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 11th day of December, 2002.

CASE NO. 02-1005-T-PC

VERIZON WEST VIRGINIA INC.

Petition for consent and approval for streamlined authorization for certain affiliate transaction agreements with Bell Atlantic Communications, Inc., doing business as Verizon Long Distance; Verizon Global Networks, Inc.; NYNEX Long Distance Company, doing business as Verizon Enterprise Solutions; and Verizon Select Services, Inc.; and other certain Verizon affiliates.

COMMISSION ORDER

On July 15, 2002, Verizon West Virginia Inc. (Verizon-WV) filed a petition seeking Commission consent and approval, pursuant to West Virginia Code § 24-2-12, for authorization of certain transactions with affiliated companies. Verizon-WV requested that the proposed transactions be processed in accordance with the streamlined procedure established in Section 20 of Verizon-WV's current incentive regulation plan (IRP), approved by the Commission in Case Nos. 00-0318-T-GI and 00-0705-T-PC. Under that procedure, Commission Staff (Staff) and the Commission's Consumer Advocate Division (CAD) have 30 days to review a proposed transaction and, if no recommendation to the contrary is filed, Staff, CAD, and Verizon-WV will jointly recommend that the Commission issue an order within an additional 15 days. As Verizon-WV noted in its petition, however, "the Commission is not bound by that review period but has stated that the 'period . . . is a goal, and the Commission shall, when feasible endeavor to meet that goal'". Petition, at 2.

The proposed transactions are between Verizon-WV, on the one hand, and Bell Atlantic Communications, Inc., dba Verizon Long Distance (BAC), Verizon Global Networks Inc. (GNI), NYNEX Long Distance Company, dba Verizon Enterprise Solutions (VES) and Verizon Select Services Inc. (VSSI). According to the petition, these affiliates are those established for the provision of in-region, interLATA telecommunications services, as required by Section 272 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 272. Id. at 1.

By an "Initial Joint Staff Memorandum" filed August 21, 2002, Staff argued the following:

Attached is a copy of the Utilities Division's initial recommendation in the proceeding, prepared on July 17, 2002. The Utilities Division noted that 2 of the affiliates involved -- BAC and VES -- currently have certificate applications pending (Case Nos. 02-0722-T-CN and 02-0723-T-CN, respectively) -- and that those certificate applications have been protested by North County Communications Corporation (NCC), which has requested a hearing on those applications. The Utilities Division has also noted the sheer bulk of Verizon- WV's filing -- 8 inches worth of papers -- in its initial recommendation. The Utilities Division noted that it would file a final recommendation within the remainder of the 30-day time period established in the IRP. That has not happened.

In light of the multitude of issues raised by Verizon-WV's filing, Legal Staff recommends that the Commission process these affiliated transactions outside the streamlined procedure approved in the IRP. In Legal Staff's opinion, the proposed transactions exceed the scope of the parties' intent and understandings reached in the IRP. In support of its opinion, Legal Staff notes the following: (1) Verizon-WV has submitted proposed transactions with not 1, but 4 affiliates; (2) the sheer bulk of the filing makes it impractical for the Utilities Division and Legal Division to complete their review process in 30 days or less; (3) the certificate applications of 2 of the affiliates -- VES and BAC -- are the subject of challenge currently; (4) the current Section 271 proceeding underway (Case No. 02-0809-T-P) will determine whether any of this review is necessary (if the Commission finds that Verizon-WV has not satisfied the 14-point checklist and other elements of Section 271 of the Act, none of the affiliates will be able to provide service); and (5) expedited review of these agreements will sap limited Staff resources that are being devoted to the proceedings in Case No. 02-0809-T-P.

Moreover, not only does Legal Staff recommend that the streamlined process not be followed in this proceeding, but Legal Staff further recommends that the Commission hold consideration of the proposed affiliate transactions in abeyance until after the conclusion of the proceedings in Case No. 02-0809-T-P. Under the Commission's procedural schedule in that proceeding, a hearing is currently scheduled for October 22-23, 2002, and even allowing for briefing, final action by the Commission is probably likely by the end of November, 2002. This relatively short delay should not prejudice Verizon-WV or the affiliates involved -- especially in light of their currently uncertificated status.

On September 3, 2002, Verizon-WV filed a letter stating that it was requesting the Commission's authorization to enter into the underlying transaction subject to any later comments or issues raised by the Staff, the CAD, or the Commission, without binding the Commission, the Staff, or the CAD to any particular items or conditions.

However, Verizon stated that if the Commission is inclined to await grant of authorization until the time frames suggested by the Staff then Verizon-WV would respectfully ask the Commission at least to grant its authorization now (without approving any terms and conditions and without prejudice to the Staff), for the parties to begin work under the Technical Services Agreement and Amendment. Verizon-WV noted that the Commission had previously approved similar technical services agreements for similar preparatory work.

Commission Staff filed a "Further Joint Staff Memorandum" on September 6, 2002. Therein, Staff stated:

On September 3, 2002, Verizon West Virginia Inc. (Verizon-WV) filed a letter with the Commission in response to Commission's Staff's (Staff) Initial Joint Staff Memorandum filed on August 21, 2002. Verizon-WV characterizes the nature of its filing for approval of various transactions with affiliates as being limited, noting that Commission authorization to enter into those transactions is subject to any later comments or issues raised by Staff, Commission's Consumer Advocate Division (CAD), or the Commission, without binding them to any particular terms or conditions. Alternately, Verizon-WV requests that the Commission at least grant authorization now, without approving any terms and conditions, and without prejudice to Staff, for the parties to the transactions to begin work under the Technical Services Agreement and Amendment, attached as Exhibit C to Verizon-WV's July 15, 2002, petition. Verizon-WV notes that limited authorization by the Commission to start work under this agreement and amendment is essential in order for necessary operational readiness testing to begin prior to any entry of Verizon long distance companies in West Virginia.

Legal Staff has considered Verizon-WV's request, and has no objection to the limited authorization allowing the parties to begin work under the Technical Services Agreement and

Amendment attached as Exhibit C to Verizon- WV's petition. Staff recommends that an order be entered to this effect. However, the order should specifically note that the remainder of the agreements between the parties continue to be held in abeyance pending the Commission's determinations in the proceedings related to Verizon-WV's application to the Federal Communications Commission for authority to provide in-region, interLATA operating authority, pursuant to Section 271 of the Communication's Act of 1934 as amended.

Verizon-WV filed a letter on December 3, 2002, requesting limited, immediate relief stating, among other things, the following.

Today we are writing the Commission again to ask respectfully for at least preliminary relief. Unless the Commission allows Verizon WV to begin preliminary programming and related technical work under the Technical Services Agreement and, now, under certain of the other agreements, the Verizon long distance affiliates will likely be delayed from entering the long distance market, even if the Commission were to act immediately on Verizon WV's petition in Case No. 02-0809-T-P. We respectfully urge the Commission to grant limited preliminary relief in this proceeding as soon as possible, preferably by December 11, 2002. This request is being made approximately five months after the filing of the Petition. The limited, immediate relief would only be to begin preliminary technical and programming work, without prejudice to the Staff or any other party to this proceeding.

DISCUSSION

The Commission has before it the record in the 271 Case (Case No. 02-0809-T-P). Pending the final order in that case the Commission, based on the review of Staff's recommendation herein, shall grant preliminary relief to Verizon-WV herein. Specifically, the Commission shall allow the parties to begin work under the Technical Services Agreement and Amendment attached as Exhibit C to Verizon-WV's petition in this case. However, the remainder of the agreements between the parties to this matter shall continue to be held in abeyance pending the Commission's determinations in the 271 Case.

The order in this case does not in any way create a presumption regarding the outcome in the 271 Case.

FINDINGS OF FACT

1. On July 15, 2002, Verizon West Virginia Inc. (Verizon-WV) filed a petition seeking Commission consent and approval, pursuant to West Virginia Code § 24-2-12, for authorization of certain transactions with affiliated companies.

2. The proposed transactions are between Verizon-WV, on the one hand, and Bell Atlantic Communications, Inc., dba Verizon Long Distance, Verizon Global Networks Inc., NYNEX Long Distance Company, dba Verizon Enterprise Solutions, and Verizon Select Services Inc. According to the petition, these affiliates are those established for the provision of in-region, interLATA telecommunications services, as required by Section 272 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 272. Id. at 1.

3. Commission Staff filed a "Further Joint Staff Memorandum" on September 6, 2002. Legal Staff has considered Verizon-WV's request, and has no objection to the limited authorization allowing the parties to begin work under the Technical Services Agreement and Amendment attached as Exhibit C to Verizon-WV's petition. Staff recommends that an order be entered to this effect. However, the order should specifically note that the remainder of the agreements between the parties continue to be held in abeyance pending the Commission's determinations in the proceedings related to Verizon-WV's

application to the Federal Communications Commission for authority to provide in-region, interLATA operating authority, pursuant to Section 271 of the Communication's Act of 1934 as amended.

CONCLUSIONS OF LAW

It is reasonable for the Commission to allow the parties to begin work under the Technical Services Agreement and Amendment attached as Exhibit C to Verizon-WV's petition. Provided, however, the remainder of the agreements between the parties continue to be held in abeyance pending the Commission's determinations in the proceedings related to Verizon-WV's application to the Federal Communications Commission for authority to provide in-region, interLATA operating authority, pursuant to Section 271 of the Communication's Act of 1934 as amended.

ORDER

IT IS THEREFORE ORDERED that the parties may begin work under the portion of the Technical Services Agreement and Amendment attached as Exhibit C to Verizon-WV's petition. However, the remainder of the Technical Services Agreement and Amendment shall continue to be held in abeyance pending the Commission's determinations in the proceedings related to Verizon-WV's application to the Federal Communications Commission for authority to provide in-region, interLATA operating authority, pursuant to Section 271 of the Communication's Act of 1934 as amended. This approval does not specifically approve any portion of the terms and conditions of the Technical Services Agreement and Amendment, nor shall this order constrain the Commission in any future order.

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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