

031359coma123103.wpd

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 31st day of December, 2003.

CASE NO. 03-1359-T-GI

Institution of General Investigation into the Certification of Competitive Telecommunications Services pursuant to W. Va. Code §11-13B-2(b)(5).

COMMISSION ORDER

Effective July 1, 1987, an annual privilege tax was imposed on telecommunications business engaged in or carried on within the State of West Virginia. The amount of taxes due is determined by applying the tax rate against gross income. W. Va. Code §11-13B-3.

As defined in the W. Va. Code §11-13B-2(b)(5), after July 1, 1988, gross income from the provision of commodities or services subject to competition is excluded from taxation. Further, this same provision requires the Public Service Commission of West Virginia to submit on or before the thirty-first day of December of each calendar year to the Tax Commissioner a listing of those commodities or services which the PSC had determined to be subject to competition.

On December 30, 2002, the Commission entered a final order in Case Number 02- 0959-T-GI, which certified certain telecommunications services as competitive telecommunications services for the 2002 tax year pursuant to W. Va. Code §11-13B- 2(b). On March 5, 2003, the Commission denied petitions to reconsider part of the order and to reopen that proceeding.

By Order issued August 20, 2003, the Commission instituted a general investigation into the competitive nature of telecommunications services for the 2003 tax year and served notice on the following: (1) local exchange carriers and interexchange carriers subject to the telecommunications tax pursuant to W. Va. Code §11-13B-2(b)(5); (2) the Commission's Consumer Advocate Division; and (3) the Department of Tax and Revenue.

The Commission established an initial comment period which expired on October 9, 2003, and a reply comment period which expired on October 23, 2002. The Commission requested that interested parties provide the following:

1. A list of commodities or services provided by telephone utilities which should be determined by the PSC to be subject to competition.
2. A statement explaining why the filing party believes each listed service or commodity is subject to competition.

3. A statement indicating whether such commodities or services were certified by the Commission for the year 2002.

The Consumer Advocate Division petitioned to intervene. Initial comments were filed by AT&T Wireless Services, Inc.; AT&T Communications of West Virginia, Inc.; Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia; and Verizon West Virginia Inc. Reply comments were filed by the CAD. After the close of the comment periods, the Commission Staff filed its Final Joint Staff Memorandum.

Thereafter, Verizon responded to the CAD's comments. Frontier, CAD and Verizon responded to Staff's memo. The CAD supplemented its comments. And, Frontier moved for leave to reply to the CAD's response to the Staff memo.

DISCUSSION

Procedural Matters

Taking procedural matters first, the Commission shall grant the CAD's petition to intervene. The Commission shall also consider all of the responsive pleadings filed after Staff's final memo.

AT&T Wireless

AT&T Communications

Turning now to the particular telecommunications services at issue, AT&T Wireless and AT&T Communications requested that the Commission certify the same services as last year. Staff and the CAD supported these requests, and the Commission agrees.

Verizon

Same Services as Last Year:

Verizon asked the Commission to certify the same services as last year and to certify 1) certain additional business services and 2) new packages of telecommunications services. Staff and the CAD supported the requests to certify the same services as last year and opposed both of the requests to certify additional services. The Commission agrees with the request to certify the same services as last year. The requests to certify additional services are separately handled below.

Additional Business Services:

Local business service, including any associated vertical [See FootNote 1](#) service, is now offered competitively by numerous, growing competitive local exchange carriers (CLECs), Verizon said. Verizon's Initial Comments Att. B p. 1 (Oct. 9, 2003). Verizon states that the Commission has certificated more than 100 CLECs to provide service with their own facilities, unbundled network elements (UNEs), or the resale of Verizon's facilities.

In addition to the certification provided last year, Verizon asked the Commission to certify lines in

central offices [See FootNote 2](#) where CLECs have taken more than 10% of the business lines. Id. Where business service lines are more than 10% of the market “far exceeds any common sense definition of 'subject to competition' test,” Verizon said. Id. pp. 1-2. Such a certification for tax purposes would not bind the Commission for other purposes. Id. p. 2.

For the 2002 tax year, the Commission granted Verizon's request that local business service in central offices with collocated [See FootNote 3](#) competitors be “subject to

competition.” CAD's Reply Comments p. 13 (Oct. 28, 2003). The CAD opposes Verizon's request to certify additional business service for the 2003 tax year, concluding that it violates the terms of Verizon's Incentive Regulation Plan. Id. p. 14. CAD said local business service was categorized as a Category I(a) service, or a basic service, under the IRP, where it must stay until the IRP expires on December 31, 2005, or the Commission grants a petition that finds local business service subject to workable competition, pursuant to W. Va. Code § 24-2-3c. Id. pp. 14-15. Staff agrees with the CAD. Final Joint Staff Memo p. 2 & Utilities Division Final Recommendation p. 2. (Nov. 7, 2003).

In response to the CAD, Verizon said that last year it voluntarily limited its request to those central offices where competitors actually had facilities, although the evidence would have supported a statewide declaration. Verizon's Response to CAD p. 4 (Nov. 7, 2003). This year, to continue the phase-in and “in a perhaps mistaken effort to make a proposal along the lines of [Staff's] views,” Verizon asked the Commission to also certify those central offices where competitors had actually taken 10% or more of the business lines. Id.

In response to Staff, Verizon said it did not want to change the category of any services in the IRP. Verizon's Response to Staff p. 1 (Nov. 18, 2003). The provisions in the IRP regulating services, such as pricing and notice, will remain the same. And, the services will remain in the same categories for regulation under the IRP, until and unless moved to another category in accordance with the terms of the IRP. Id., citing IRP ¶ 11. The only thing that will change, Verizon wrote, is that the services will no longer be subject to the Telecommunications Tax under W. Va. Code § 11-13B-2(b)(5). Id.

The Commission believes there is a difference between the business market being opened to competition, and business services and commodities being subject to competition. While many CLECs have been certified, not all of those CLECs are operating, and the Commission has seen many CLECs leave this state. The Commission has received several requests for interim relief from businesses when CLECs withdraw their services. The Commission has established a task force to develop a plan to deal with unexpected withdrawals from service by competitive local exchange carriers. See Case Number 01-1552-T-GI. That group is working on its final report. Further, the Commission processes several petition cases each year, in which CLECs seek approval of corporate reorganizations due to financial difficulties, and some of those involve bankruptcies. Considering the present status of telecommunications competition in West Virginia, the Commission is not persuaded that it should expand the certification of business competition beyond the 2002 order. Accordingly, the Commission will deny Verizon's request to certify additional business services as subject to competition.

New Packages of Telecommunications Services

The Commission has previously designated certain packages of services as subject to competition. These packages involved vertical services and/or long distance services. Verizon asks the Commission to designate those packages this year, as well as packages which bundle local telephone service with vertical and long distance services. [See FootNote 4](#)

It is offering the new packages in response to competitive threats, such as MCI's "The Neighborhood," Verizon said. Initial Comments Att. B p. 2. Verizon said new and varied packages would likely continue to be developed. Id.

The CAD said that Verizon's request violated the IRP, which is effective until December 31, 2005. Verizon's Initial Comments Att. B p. 3 (Oct. 9, 2003). The IRP places Verizon's services into 4 groups: Category I for basic services, i.e. most notably local exchange and access services; Category II for discretionary services; Category III for services subject to competition under W. Va. Code § 11-13B-2 (b)(5), and thus exempt from taxation; and Category IV for services the Commission determines are subject to workable competition, pursuant to W. Va. Code § 24-2-3c, and thus are not rate regulated. Id. pp. 3-4.

The parties agreed that Verizon could petition the Commission to declare business service as subject to workable competition, i.e., Category IV, during the IRP, the CAD said. Id. p. 4. However, they did not agree that basic local service, both business and residential, could be moved to subject to competition, or Category III. Id. The Stipulation expressly stated, "the classification of a service, including, but not limited to, Local Exchange Service, as a Category I(a) Basic Service is being done solely for the purpose of regulating the price of such service during the term of this Joint Stipulation," the CAD wrote. Therefore, Verizon seeks to evade its obligations under the IRP by "packaging" basic local service with toll and other features, the CAD said. Id.

Further, Verizon is using Commission decisions regarding competition in the long distance market to bootstrap most of its basic local service revenues into a similar, tax- exempt determination, the CAD said. Id. p. 8. Verizon's in-state revenues are basically from local service offerings, coupled with vertical services. Id. p. 8. Verizon's local service gross revenues exceeded \$352 million, compared to \$16 million for long distance. Id. pp. 8-9 & n. 11.

There is precious little competition in the local market, despite Verizon's refrain, the CAD said. Id. p. 10. FiberNet, by far Verizon's largest competitor, has 5% of the access lines. Yet FiberNet has only 125 residential access lines, less than a fraction of 1% of Verizon's share of the local residential market. Id. Verizon's new packages are targeted to residential, the CAD said. NTELOS is the next largest competitor, with 5,800 access lines, the CAD wrote. It serves no residential. Id. p. 10. Gateway has

2,000 customers and 675 are residential. Id. ComScape has 496 lines and no residential. Id. pp. 10-11.

For CLECs with local and long distance bundles, the picture is no better. MCIWorldCom served only 925 West Virginia residential customers as of September 30, 2003, even though it has been marketing since February 2003, the CAD wrote. Id. p. 11.

The CAD argued that Verizon's packaged services were not so much a response to competition, but an effort to leverage Verizon's dominance. Id.

The Commission should also bear in mind the number of CLECs that have failed, said CAD. Id. pp. 12-13.

Staff agrees with the CAD. Final Joint Staff Memo p. 2 & Utilities Division Final Recommendation p. 2. (Nov. 7, 2003).

In response to the CAD, Verizon again said that its packages were in heated competition with plans of other carriers which combined local and long distance service for one rate. Verizon's Response to CAD p. 3 (Nov. 17, 2003). It referred the Commission to attachments provided to Verizon's Initial Comments regarding competing plans.

In response to Staff, Verizon said it was not asking to change the category of any services for purposes of the IRP. The services would remain in the same categories for regulation under the IRP, until and unless moved to another category in accordance with the terms of the IRP. Verizon's Response to Staff p. 1, citing IRP ¶ 11. The only thing that would change is that the services would no longer be subject to the Telecommunications Tax under W. Va. Code § 11-13B-2(b)(5). Id.

Taking first the CAD's position that Verizon's request violates the IRP, the Commission has reviewed all of the paragraph which the CAD cited, which is as follows, with the emphasis as provided by the CAD:

The Parties agree that *the classification of a service, including, but not limited to, Local Exchange Service, as a Category I(a) Basic Service is being done solely for the purpose of regulating the price of such service during the term of this Joint Stipulation*. Such classification shall not be deemed to be an agreement or acknowledgment by the Parties that such service is or is not now competitive, or will or will not become competitive during the term of this Joint Stipulation.

The Commission does not agree with the CAD's interpretation. This paragraph expressly states that the categorization of services is made solely for the regulation of price. Further, the parties expressly state that the classification cannot be used for an agreement or an acknowledgment that a service is competitive. Thus, the CAD's reliance upon this IRP provision is misplaced.

However, the Commission is not yet ready to certify that bundled services which combine local and long distance services are subject to competition. Only Verizon and Frontier (see the discussion below) have requested such a classification, and Frontier has since withdrawn its request. Verizon requests the classification in this year's proceeding, and Verizon has not been authorized to provide long distance service for a year yet. While Verizon referred the Commission to other companies' bundles, the other companies have not requested such a certification. As the Commission stated above, there is a difference between a market being opened to competition and services in that market being subject to competition.

Request for proprietary treatment

Verizon filed a request for proprietary treatment and certain information under seal. Verizon-WV's proprietary information was not necessary to decide this matter and was not reviewed by the Commission. It shall be returned to Verizon.

Citizens dba Frontier

Same Services as Last Year:

Frontier asked the Commission to certify the same services as last year. Staff and the CAD supported the requests to certify the same services as last year. The Commission agrees with the request to certify the same services as last year. (Oct. 9, 2004).

Frontier also asked that 14 services be certified, being services that were listed as competitive in Frontier's IRP. Initial Comments pp. 4-5 (Oct. 9, 2004). Frontier said some of the services were already on the list, but they were not clearly identified because they appeared under Verizon's trade names. Id. p. 5. So that there is no question which services are subject to competition, Frontier asks the Commission to add the services, using Frontier's trade names. The Commission will address those 14 items separately below.

14 items from Frontier's IRP

- 1) 800 Service: toll free service

Staff and the CAD did not object to this request. This service appears as item 21 under services the Commission has previously certified. The Commission will not add a new item, but will add the description "800 service" to item 21.

- 2) Bill Number Screening: provides automatic blocking of incoming 3d number billed/collect calls

Staff and the CAD did not object to this request. However, the Commission does not agree that call blocking is a service that is subject to competition. Accordingly, the Commission will not, at present, add this service to the list.

- 3) Bundled Services: Frontier Choices, Citizens Select, Frontier Feature5 Pack, ValuLine, Citizens Business Bundle and other plans for business and residential customers, which include a combination of telcom services for one monthly rate

Staff opposed Bundled Services for Frontier, for the same reasons as it opposed Bundled Services for Verizon. Final Joint Staff Memo p. 3 & Utilities Memo p. 3 (Nov. 7, 2003). The CAD also objected to this request by Frontier. CAD's Response to Staff p. 2 (Nov. 18, 2003). After initially maintaining its request for certification of its bundled services, on December 1, 2003, Frontier moved to withdraw its request. Frontier's Response to Staff p. 3 (Nov. 17, 2003) & Frontier's Reply to CAD's Response to Staff pp. 1, 6 (Dec. 1, 2003, as corrected Dec. 8, 2003).

The Commission will grant Frontier's motion to withdraw its request for certification of its bundled services.

- 4) InterLATA Call Completion/Operator Services: enables customers to arrange for the setup, completion or billing of interLATA calls from any phone

Staff and the CAD did not object to this request. This service appears as item 20 under previously certified services. The Commission will not add a new item, but will add the description "interLATA call completion/operator services" to item 20.

-
- 5) Channel Conditioning Agreements: special conditioning of local Private Line circuits

Staff and the CAD did not object to this request. However, there has not been a sufficient showing that local private line circuit channel conditioning is subject to competition. Accordingly, the Commission will not add this item to the list.

- 6) Channel Services: dedicated loop or transport facilities running between points

determined by the customer

Staff and the CAD did not object to this request. This service appears as item 38 under previously certified services. The Commission will not add a new item, but will add the description "including dedicated loop or transportation facilities running between points determined by the customer" to item 38.

7) Digital Channel Service: dedicated loop or transport facilities running between points determined by the customer, plus electronics necessary to digitize signals transmitted over the facilities

Staff and the CAD did not object to this request. This service appears as item 38 under previously certified services. The Commission will not add a new item, but will add the description "including electronics necessary to digitize signals transmitted over the digital channels" to item 38.

8) Duplicate Bill Charges: charges to provide duplicate copies of bills

Staff and the CAD did not object to this request. However, the Commission does not agree that providing duplicate bills to a customer is a service that is subject to competition. Accordingly, the Commission shall not add this item to the list of telecommunications services subject to competition.

9) Multi-Line Fixed Call Forwarding: call forwarding service provided to multi-line business customers that enables customers to forward calls only to a single, pre-determined telephone number

Staff and the CAD did not object to this request. This service appears as item 4 under previously certified services. Therefore, it is not necessary for the Commission to address this item further.

10) Premium Installation Appointment Service: installing service outside normal work schedule at customer's request

Staff did not oppose Commission designation of Premium Installation Appointment Service, as this service could be offered by competitors. Final Joint Staff Memo p. 3 & Utilities Memo p. 3 (Nov. 7, 2003). The CAD supported this request. CAD's Response to Staff pp. 1-2 (Nov. 18, 2003).

The Commission has already designated certain services, such as inside wiring, customer premises equipment, and jacks and network interface devices, as subject to competition. It should be clear that the installation of any such designated services is included in the Commission's list of services subject to competition. Whether such installation service is provided during normal working hours makes no difference. Accordingly, the Commission concludes that it is not necessary to differentiate between services provided during or outside of normal working hours.

11) Service Connection Charge (for competitive services): non-recurring charges for initially connecting competitive services

Staff and the CAD did not object to this request. However, the Commission does not agree that initial service connections are subject to competition.

12) Telephone Service Priority: priority provisioning and/or restoration of telcom services

Staff and the CAD did not object to this request. However, there appears to be little difference between this request and item 10 above. To the extent that a service is included in the Commission's

designations as subject to competition, a differentiation regarding the priority of service is not necessary.

13) Three-Way Calling: enables customers to add a third party to an existing two-party call

Staff and the CAD did not object to this request. The Commission has previously designated multi-line three-way calling as being subject to competition in item 27. The Commission does not agree that single-line customers have comparable competitive options for three-way calling. Accordingly, the Commission shall not modify item 27.

14) VersaLine Service

Frontier asked the Commission to certify its VersaLine service as competitive. VersaLine is a digital central office-based switching system that provides premium, versatile, and advanced communications features and service to multi-line business customers. Initial Comments p. 5 (Oct. 9, 2003). VersaLine service is the same as digital Centrex service. Final Joint Staff Memo pp. 2-3 & Utilities Memo p. 3 (Nov. 7, 2003). Staff and the CAD supported this request. *Id.* & CAD's Response to Staff pp. 1-2 (Nov. 18, 2003).

Since it is the same as digital Centrex service, the Commission shall not add a new item to the list of competitive services, but shall add the name VersaLine to item 24 for Centrex services.

Local *business* service when CLEC competes with owned/leased loops & switching equipment

Local *residential* service when CLEC competes with owned/leased loops & switching equipment

Frontier also asked that local service, residential and business, be certified as competitive, when a CLEC competes with loops and switching equipment that the CLEC owns or leases. Initial Comments p. 6 (Oct. 9, 2003). In Moorefield where Frontier is the incumbent telephone provider, Hardy Telephone Cooperative provides residential and business local exchange service with central office switches and loops that it owns or leases from an affiliate. *Id.* p. 6. "As a result of this network architecture, Hardy does not require collocation in any of Frontier's central offices . . . This CLEC therefore is a full facilities-based competitor," said Frontier. *Id.* pp. 6-7. Competitors using collocation arrangements are limited by the costs and processes of collocation with the ILEC, and by the availability of spare loops within the ILEC's network, Frontier wrote. *Id.* p. 7. Facilities-based competitors are not constrained by these factors and can service ILEC customers even if the ILEC lacks sufficient spare loop facilities to provide the voice and data services that the CLEC wishes to offer. *Id.* p. 7. "[Facilities-based competitors] have made substantial outside plant investments and must recover the costs thereof to be profitable." *Id.*

Accordingly, Frontier said that certifying local residential and business services as subject to competition where a CLEC offers similar services using its own or leased switching and loops was consistent with the Commission's prior finding that local business services were subject to competition where a CLEC offered such services through collocation. *Id.* p. 8.

Staff supported Frontier's request, writing, "Since such is the very definition of competition in telecommunications, I have no problem with exemption status being conferred upon local residential and business services where a CLEC actually provides local service using its own or leased switching equipment and its own or leased local loop plant." Utilities Memo p. 4 & Final Joint Staff Memo p. 3.

The CAD's position was not clear. On page 1 it said it supported Staff's position, and Staff supported the designation of these services as subject to competition. CAD's Response to Staff p. 1 (Nov. 18, 2003). However, the CAD also said it opposed designating these services as competitive. Id. pp. 3-4. When the CAD wrote against the designation, the CAD's references were to its arguments to reject Verizon's request to extend this year's certification of business services to additional business services. Id. Frontier also noted this discrepancy in CAD's position. See Frontier's Reply to CAD's Response to Staff (Dec. 1, 2003, as corrected Dec. 8, 2003).

As the Commission has already set forth, there is a difference between a market being opened to competition, and services and commodities being declared as subject to competition. Conditions in West Virginia's telecommunications market have not yet changed sufficiently to justify further services as being designated as subject to competition.

Local business service when wireless carrier has been designated ETC

Local residential service when wireless carrier has been designated ETC

An ALJ has recommended that a cellular carrier be designated an eligible telecommunications carrier (ETC) in Frontier's service area and, thus, would be a competitor to Frontier. Initial Comments pp. 9-10 (footnote omitted) (Oct. 9, 2003). "If the Commission finds, as the ALJ recommended, that designating wireless carriers as ETCs is in the public interest because it creates competition, the Commission logically must find in the context of this proceeding that wireline carriers' services are subject to competition throughout any portion of a wireline carriers' service area for which a wireless ETC has been designated," Frontier wrote. Id. Thus, local residential service should be designated as a competitive service where a wireless carrier has been designated as an ETC. Id. p. 10.

Staff opposed a tax exemption for local business and residential services in areas where a wireless carrier has been designated an ETC. Final Joint Staff Memo p. 3. "Wireless service is not adequately competitive with wireline service for it to be a basis for tax exemption status for local wireline service," Staff wrote. "Mr. Walker expounds that even Frontier, in its arguments in the Highland Cellular ETC case (03-0764-T-PC),

argued that wireless service is generally merely ancillary or complementary to wireline service." Id. p. 3. In the attached Utilities Division Final Recommendation, Mr. Walker wrote, "Such certainly is my experience as a telecommunications professional of long standing. Due to the significant limitations of wireless service, most wireless subscribers have wireless service as well." Utilities Division Final Recommendation p. 4.

In response, Frontier said Staff correctly stated that Frontier said in Highland Cellular that wireless service complements wireline service but does not compete with it. Frontier's Response to Staff p. 3 (Nov. 17, 2003). Frontier continues to believe that wireless service is neither a substitute for, nor a competitor to wireline service. Id. However, W. Va. Code § 11-13B-2(b)(5) requires only that a service be subject to competition; it does not require any particular level of competition. Id. p. 3 n. 2. Further, in Highland Cellular, Staff took precisely the opposite position and argued that designating wireless carriers as ETCs promotes competition. Id. The Recommended Decision adopted that view. Id. pp. 3-4.

The CAD characterized Frontier's request ". . . to put it mildly, [as] an overreach." CAD's Response to Staff p. 4 (Nov. 18, 2003). The CAD said Frontier's request was based on *dicta* in an ALJ's recommended decision that was not supported by the record, but which was not challenged by the parties because the case was settled. Id.

Frontier replied that the ALJ's finding in Highland that wireless ETCs compete was not supported by the record. Frontier's Reply to CAD's Response to Staff p. 7 (Dec. 1, 2003, as corrected Dec. 8, 2003). The CAD was completely incorrect, though, that the ALJ's finding was mere dicta; the ALJ's finding was the very foundation of the Recommended Decision. Id.

Ultimately, Frontier said it agrees with the CAD that the Recommended Decision is wrong with respect to its findings about competition from wireless ETCs and that the record does not support those findings. Id. p. 8. Indeed, the Commission should overturn it. Id. To the extent, however, that the Commission upholds it, the Commission cannot help but to find that Frontier's local services are subject to competition, Frontier wrote. Id.

The Commission will not, in this case, prejudice the ETC proceedings. Whether ETC status encourages, fosters, or promotes competition is not an issue in this case. In this annual proceeding to certify to the Tax Commissioner a list of telecommunications services which are subject to competition, Frontier cannot support its request to certify both its local business and its local residential services simply because ETC status has

been recommended for a wireless carrier that overlaps Frontier's service territories. Accordingly, the Commission will deny these requests by Frontier.

FINDINGS OF FACT

1. In Case Number 02-0959-T-GI, the following services were certified as being subject to competition:

- (1) single or multi-line speed calling;
- (2) multi-line conference calling;
- (3) multi-line call waiting;
- (4) multi-line call forwarding;
- (5) time and temperature;
- (6) directory advertising;
- (7) inside wiring services;
- (8) customer premises equipment;
- (9) alarm couplers;
- (10) apartment door answering service;
- (11) paging services;
- (12) telephone booths;
- (13) 911 equipment;
- (14) jacks and network interface devices other than demarcation point devices;
- (15) mobile and portable telephone service, including all services provided by cellular and personal communications service (PCS) carriers (also known as commercial mobile radio service (CMRS) carriers) as such carriers are defined by the Federal Communications Commission (FCC);
- (16) power station protection equipment;
- (17) billing and collecting;
- (18) select-a-station service;
- (19) telemetry alarm bridge service;
- (20) interLATA toll services;
- (21) intraLATA toll services including message toll, operator assistance, private line, LD conference, toll-free INWATS, special reverse charge, OUTWATS and channel conditioning;
- (22) residence service variety package;
- (23) interstate, intraLATA toll services;

- (24) CENTREX services (excluding access)
 - (25) coin telephone services (excluding access-related revenues);
 - (26) repeat call;
 - (27) multi-line three-way calling;
-
- (28) frame relay service;
 - (29) prepaid calling service;
 - (30) "Call54" Service ("reverse directory assistance");
 - (31) Connect Request Service;
 - (32) IntelliLinQ PRI;
 - (33) directory assistance (intrastate only);
 - (34) national directory assistance ("NDA" or National "411");
 - (35) PBX Trunks (including associated local usage and features);
 - (36) digital data services and high capacity services (DS1, DS2, DS3 and T-1);
 - (37) CENTREX service (including access);
 - (38) Private Line Local Service;
 - (39) Asynchronous Transfer Mode (ATM) Service;
 - (40) Internet Protocol Routing Service (IPRS);
 - (41) Big Deal;
 - (42) Bonus Discount Plan;
 - (43) Business Link Rewards;
 - (44) Call Gate;
 - (45) Conference Service (Local);
 - (46) Direct Inward Dialing (DID);
 - (47) Easy Voice Dialing (Speech Recognition);
 - (48) Home Intercom;
 - (49) Intercom Extra;
 - (50) ISDN BRI;
 - (51) Residential ISDN;
 - (52) Rewarding Connections;
 - (53) Special Billing Number Service;
 - (54) Switched Multi-megabit Data Service (SMDS);
 - (55) Switched Redirect Service;
 - (56) Uniform Call Distribution Services;
 - (57) Usage Charges associated with PTNL Lines;
 - (58) Virtual Private Network Service (VPN);
 - (59) Wired Music;
 - (60) WorkSmart;
 - (61) List Service
 - (62) Three-Way Call Transfer
 - (63) Local Business Service _ Collocated Central Offices.

The Commission further ordered that the certification of service (63) _ Local Business Service _ Collocated Central Offices was limited and only certified to be

subject to competition for those central offices where CLECs have collocated equipment and provide competitive local service.

2. On August 20, 2002, the Commission instituted a general investigation, pursuant to W. Va. Code § 11-13B-2(b), into the certification of competitive telecommunications services for the 2003 tax year.

3. AT&T Wireless and AT&T Communications requested that the Commission certify the same services as last year. Staff and the CAD supported these requests.

4. Verizon asked the Commission to certify 1) the same services as last year, 2) additional business services, specifically lines in central offices where CLECs have taken more than 10% of the business lines, and 3) new packages of telecommunications services which bundled local service with vertical services and long distance services. Staff and the CAD supported certification of the same services as last year. Staff and the CAD did not support certification of the additional business services or the new packages.

5. Verizon filed a request for proprietary treatment and certain information under seal.

6. Frontier asked the Commission to certify the same services as last year. Staff and the CAD supported the request.

7. Frontier also asked that 14 services that were listed as competitive in its IRP be certified. Initial Comments pp. 4-5 (Oct. 9, 2004). Frontier said some of the services were already on the list, but were not clearly identified because the services appeared under Verizon's trade names. Id. p. 5. Frontier asked the Commission to add these services, using Frontier's trade names:

- 1) 800 Service
 - 2) Bill Number Screening
 - 3) Bundled Services
 - 4) InterLATA Call Completion/Operator Services
 - 5) Channel Conditioning Agreements
 - 6) Channel Services
 - 7) Digital Channel Service
 - 8) Duplicate Bill Charges
 - 9) Multi-Line Fixed Call Forwarding
 - 10) Premium Installation Appointment Service
-
- 11) Service Connection Charge (for competitive services)
 - 12) Telephone Service Priority
 - 13) Three-Way Calling
 - 14) VersaLine Service

8. Staff opposed certification of Frontier's Bundled Services. Final Joint Staff Memo p. 3 & Utilities Memo p. 3 (Nov. 7, 2003). The CAD also objected to this request by Frontier. CAD's Response to Staff p. 2 (Nov. 18, 2003). Staff and the CAD did not object to the remaining requests.

9. Frontier moved to withdraw its request for certification of Bundled Services. Frontier's Response to Staff p. 3 (Nov. 17, 2003) & Frontier's Reply to CAD's Response to Staff pp. 1, 6 (Dec. 1, 2003, as corrected Dec. 8, 2003).

10. Frontier also asked the Commission to certify 1) local *business* service when a CLEC competes with owned or leased loops and switching equipment, and 2) local *residential* service when a CLEC competes with owned or leased loops and switching equipment. Initial Comments pp. 6-7 (Oct. 9, 2003).

11. Staff supported Frontier's request to certify local business and residential service when a

CLEC competes with owned or leased loops and switching equipment. Utilities Memo p. 4 & Final Joint Staff Memo p. 3. The CAD's position was not clear. CAD's Response to Staff pp. 1, 3-4 (Nov. 18, 2003).

12. Frontier also asked the Commission to certify local *business* and *residential* service when a wireless carrier has been designated an ETC. Initial Comments pp. 9-10 (footnote omitted) (Oct. 9, 2003). Staff opposed the request. Final Joint Staff Memo p. 3. See also Utilities Division Final Recommendation p. 4, attached to Final Joint Staff Memo. The CAD opposed the request. CAD's Response to Staff p. 4 (Nov. 18, 2003).

CONCLUSIONS OF LAW

1. The CAD's petition to intervene should be granted.

2. The requests to file pleadings after the close of comments should be granted.

3. The 63 telecommunications services that were certified as competitive services for the 2002 tax year should be certified again this year. Conditions in the

telecommunications industry have not changed sufficiently to merit a redesignation of these services.

4. Verizon's request to add lines in central offices where CLECs have taken more than 10% of the business lines should be denied because there is a difference between the business market being opened to competition, and business services and commodities being subject to competition. Considering the present status of telecommunications competition in West Virginia, the Commission is not persuaded that it should expand the certification of business competition beyond the 2002 order.

5. Verizon's request to certify new packaged services does not violate the terms of Verizon's IRP. The IRP states that the categorization of services is made solely for the regulation of price. Further, in that document, the parties agreed that the classification cannot be used for an agreement or an acknowledgment that a service is competitive.

6. The Commission is not ready to certify that bundles which combine local and long distance services are subject to competition. Verizon has not been authorized to provide long distance service for a year yet. While Verizon referred the Commission to other companies' bundles, the other companies have not requested such a certification. There is a difference between a market being opened to competition, and services in that market being subject to competition. Therefore, Verizon's request to add packages which bundle local telephone service with vertical and long distance services should be denied.

7. Verizon's proprietary information was not necessary to decide this matter and was not reviewed by the Commission. Accordingly, it should be returned to Verizon.

8. 800 service appears on the Commission's list as item 21. Therefore, the Commission should not add a new item, but should add Frontier's description, which is "800 service," to item 21.

9. Although Staff and the CAD did not object to Frontier's request, the Commission does not agree that Bill Number Screening, which provides automatic call blocking, is a service that is subject to competition.

10. The Commission should grant Frontier's motion to withdraw its request for certification of its

bundled services.

11. InterLATA call completion/operator services appears on the Commission's list as item 20. Therefore, the Commission should not add a new item, but should add Frontier's description to item 20.
12. Although Staff and the CAD did not object, the Commission concludes that there has not been a sufficient showing that local private line circuit channel conditioning is subject to competition.
13. The Commission should not add a new item, but should add Frontier's description, which is "including dedicated loop or transportation facilities running between points determined by the customer," to item 38.
14. The Commission should not add a new item, but should add Frontier's description, which is "including electronics necessary to digitize signals transmitted over the digital channels," to item 38.
15. Although Staff and the CAD did not object, the Commission does not agree that providing duplicate bills to a customer is a service that is subject to competition.
16. Multi-Line Call Forwarding appears as item 4 under previously certified services. Therefore, it is not necessary for the Commission to further address Frontier's request to add Multi-Line Fixed Call Forwarding to the list.
17. For services which the Commission has already designated, it should be clear that the installation of those designated services is included in the Commission's list of services subject to competition. It is not necessary to differentiate between services provided during, or outside of, normal working hours.
18. Although Staff and the CAD did not object to Frontier's request, the Commission does not agree that initial service connections are subject to competition.
19. Frontier also requested that priority provisioning and/or restoration of telecommunications services be certified. This request is similar to the one discussed in Conclusion of Law Number 17. To the extent that a service is included in the Commission's designations as subject to competition, a differentiation regarding the priority of service is not necessary.
20. Although Staff and the CAD did not object to Frontier's request to add three-way calling, the Commission has previously designated multi-line three-way calling as being subject to competition in item 27. The Commission does not agree that single-line customers have comparable competitive options for three-way calling.
21. Frontier's VersaLine Service is the same as digital Centrex service. The Commission should not add a new item to the list, but should add Frontier's description to the list.
22. Although Frontier also asked that local service, residential and business, be certified as competitive, when a CLEC competes with loops and switching equipment that the CLEC owns or leases, the Commission concludes that there is a difference between a market being opened to competition, and services and commodities being declared as subject to competition. Conditions in West Virginia's telecommunications market have not yet changed sufficiently to justify further services as

being designated as subject to competition.

23. Frontier also asked that local business and local residential service be certified when a wireless carrier has been designated an ETC. However, the Commission should not, in this case, prejudge the ETC proceedings. In this annual proceeding to certify to the Tax Commissioner a list of telecommunications services which are subject to competition, Frontier cannot support its request to certify both its local business and its local residential services simply because ETC status has been recommended for a wireless carrier that overlaps Frontier's service territories.

ORDER

IT IS, THEREFORE, ORDERED that the CAD's petition to intervene is granted.

IT IS FURTHER ORDERED that the requests to file pleadings after the close of comments are granted.

IT IS FURTHER ORDERED that Frontier's motion to withdraw its request to certify its bundled services is granted.

IT IS FURTHER ORDERED that Verizon's motion for protective treatment is moot. The Executive Secretary shall return the materials filed under seal to Verizon.

IT IS FURTHER ORDERED that the following telecommunications services be certified as competitive telecommunications services for the 2003 tax year and that a list of such services be submitted to the West Virginia Tax Commissioner pursuant to W. Va. Code § 11-13B-2(b)(5). This year, no new services were added. However, additional

descriptions of services were provided for some of the items in the list. Thus, for convenience, the Commission provides the new descriptions in underscored type:

- (1) single or multi-line speed calling;
- (2) multi-line conference calling;
- (3) multi-line call waiting;
- (4) multi-line call forwarding;
- (5) time and temperature;
- (6) directory advertising;
- (7) inside wiring services;
- (8) customer premises equipment;
- (9) alarm couplers;
- (10) apartment door answering service;
- (11) paging services;
- (12) telephone booths;
- (13) 911 equipment;
- (14) jacks and network interface devices other than demarcation point devices;
- (15) mobile and portable telephone service, including all services provided by cellular and personal communications service (PCS) carriers (also known as commercial mobile radio service (CMRS) carriers) as such carriers are defined by the Federal Communications Commission (FCC);
- (16) power station protection equipment;
- (17) billing and collecting;
- (18) select-a-station service;

- (19) telemetry alarm bridge service;
 - (20) interLATA toll services, including interLATA call completion/operator services;
 - (21) intraLATA toll services including message toll, operator assistance, private line, LD conference, 800 service, toll-free INWATS, special reverse charge, OUTWATS and channel conditioning;
 - (22) residence service variety package;
 - (23) interstate, intraLATA toll services;
 - (24) CENTREX and VersaLine services (excluding Access)
 - (25) coin telephone services (excluding access-related revenues);
 - (26) repeat call;
 - (27) multi-line three-way calling;
 - (28) frame relay service;
 - (29) prepaid calling service;
 - (30) "Call54" service ("reverse directory assistance");
 - (31) connect request service;
-
- (32) IntelliLinQ PRI;
 - (33) directory assistance (intrastate only);
 - (34) national directory assistance ("NDA" or National "411");
 - (35) PBX Trunks (including associated local usage and features);
 - (36) digital data services and high capacity services (DS1, DS2, DS3 and T-1);
 - (37) CENTREX service (including access);
 - (38) Private Line Local Service, including dedicated loop or transportation facilities running between points determined by the customer, including electronics necessary to digitize signals transmitted over the digital channels;
 - (39) Asynchronous Transfer Mode (ATM) Service; and
 - (40) Internet Protocol Routing Service (IPRS).
 - (41) Big Deal
 - (42) Bonus Discount Plan
 - (43) Business Link Rewards
 - (44) Call Gate
 - (45) Conference Service (Local)
 - (46) Direct Inward Dialing (DID)
 - (47) Easy Voice Dialing (Speech Recognition)
 - (48) Home Intercom
 - (49) Intercom Extra
 - (50) ISDN BRI
 - (51) Residential ISDN
 - (52) Rewarding Connections
 - (53) Special Billing Number Service
 - (54) Switched Multi-megabit Data Service (SMDS)
 - (55) Switched Redirect Service
 - (56) Uniform Call Distribution Services
 - (57) Usage Charges associated with PTNL Lines
 - (58) Virtual Private Network Service (VPN)
 - (59) Wired Music
 - (60) WorkSmart
 - (61) List Service
 - (62) Three-Way Call Transfer
 - (63) Local Business Service _ Collocated Central Offices. The certification of local business service is limited to those central offices where CLECs have collocated equipment and provide

competitive local service.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's docket of active cases.

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

ARC

CLW/sek/lfg
031359ca.wpd

Footnote: 1 ¹

Vertical features are optional services, such as three-way calling, Caller ID, or call waiting, which can be ordered to enhance basic service.

Footnote: 2 ²

A place where subscribers' lines are joined to switching equipment. Sometimes it is a building. Sometimes it is a switch or a collection of switches. Newton's Telecom Dictionary (16th ed.) (2000) (Central Office entry).

Footnote: 3 ³

A competing local phone company locates its switches, transmission or Internet equipment within an incumbent local exchange company's central office. Newton's Telecom Dictionary (16th ed.) (2000) (Collocation & Virtual Collation entries).

Footnote: 4 ⁴

Verizon asked that the following packages be certified this year:

a) The Local Package, in two variations (the Standard version, which allows up to 3 custom calling features, and the Premium version, which allows 4 or more.)

*Community Plus Caller Service
Unlimited local Directory Assistance
Waiver of the Line Connection Charge and Order Processing Charge
Verizon Calling Card*

*Choice of Call Block, Call Forwarding, Call Waiting, Caller ID, Distinctive Ring, Fixed Call Forwarding, Intercom Extra, Repeat Dialing, *69, Speed Dialing-30, Three-Way Calling, Ultra Forward, Voice Dialing*

b) The Local Package Basic (Freedom)

*Frequent Caller Service (unlimited local)
Unlimited IntraLATA toll*

Choice of Fixed Call Forwarding, Call Waiting, Caller ID, Speed Dialing-8, Three-Way Calling, Anonymous Call Rejection

Home Voice Mail

Waiver of the non-recurring service charges

InterLATA long distance for \$15 per month

c) The Local Package Plus (Freedom Plus)

Frequent Caller Service (unlimited local)

Unlimited IntraLATA toll

Unlimited directly dialed local Directory Assistance

Choice of Call Block, Call Forwarding, Call Waiting, Caller ID, Speed Dialing- 30,

*Distinctive Ring, Fixed Call Forwarding, Intercom Extra, Busy Redial, *69, Speed Dialing-30, Three-Way Calling, Ultra Forward, Select Call Forward, Anonymous Call Rejection, Fixed Call Forwarding, Home Intercom, Priority Call, Call Intercept, Voice Dialing Service*

Home Voice Mail

Waiver of the non-recurring service charges

InterLATA long distance for \$15 per month