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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 24th day of February, 2004.

CASE NO. 01-1552-T-GI

GENERAL INVESTIGATION to develop a plan regarding the unexpected withdrawals from service by competitive local exchange carriers.

COMMISSION ORDER

The Task Force has reported substantial agreement on a plan to ensure that telephone customers have an opportunity to change to a new phone company without an interruption in service, when their competitive local exchange carrier (competitive LECs) [See FootNote 1](#) leaves the market. However, if customers do not select a new phone company, there is not a consensus on whether they must be provided the ability to call 911 for a limited period of time, or if the incumbent local exchange carrier (incumbent LEC) in that area automatically becomes their service provider. Accordingly, the Commission shall set a hearing in this matter.

BACKGROUND

This case is to plan what to do what a competitive LEC withdraws from the local exchange market and has customers who need to be provided local service by other carriers. Under the best of circumstances, sufficient notice will be provided so that all of the competitive LEC's customers can make well informed decisions and move to a different local carrier. When this happens, many customers will have to be moved to new carriers at

nearly the same time. Such a “mass migration” requires special cutover procedures, so that the customer transfers can be timely accomplished.

However, sometimes unexpected circumstances arise on the carrier's part. And, not every customer timely selects a new carrier. This proceeding also attempts to plan for these situations, to the extent that they can be anticipated.

Utility regulators in New York and Pennsylvania have adopted mass migration guidelines. The Task Force reviewed these and proposed to build West Virginia's plan from New York's rules. Task Force Progress Report p. 3 (July 8, 2002).

Mike Fletcher of Commission Staff, the Task Force chairman, advised that the Task Force completed its work [See FootNote 2](#) on November 12, 2003. Staff Memorandum p. 1, attached to Final Joint Staff Memorandum (Jan. 9, 2004). Substantial progress was made in developing a consensus plan, and the Task Force proposed guidelines for the Commission to review. Id. & “Mass Migration

Guidelines” attached to Staff Memorandum. However, the Task Force members did not reach agreement regarding Section IX, he said. Id.

Under the proposal, Section IX applies when no company has agreed to take over the customers of the competitive LEC that is leaving, and the competitive LEC has served its customers by reselling services of the incumbent LEC. Id. The guidelines characterize these provisions as “termination actions to apply, if normal migration procedures have failed.”

For the 10 days just prior to the complete shut off of local phone service, the Task Force proposal requires the incumbent LEC to provide, if possible, the ability to call 911 [See FootNote 3](#) to customers of the exiting competitive LEC who have not selected a new local phone company. Section IX.A.1, proposed WV Mass Migration Guidelines. The exiting competitive LEC must pay the incumbent LEC in advance for this service. Id.

If the competitive LEC has been providing service through UNE-Loop or through its own facilities, the competitive LEC is to provide this “soft dial tone” to customers who have

not chosen a new carrier by the cut-off date, if it is technically feasible. Id.

When neither the exiting competitive LEC, nor the incumbent LEC can provide 911- only dialing, the Task Force proposal makes the incumbent LEC the default carrier, or the new local carrier for customers who did not select another carrier. Section IX.B.1, proposed WV Mass Migration Guidelines.

There are conditions, or protections, for the default carrier: a) the default carrier does not have to accept customers who owe it debts for local service previously provided, until such debts are paid; b) if pre-existing debt is discovered after the default carrier takes transfer customers, the default carrier can shut-off service after providing 10-days notice and it does not have to offer a deferred payment plan; c) the default carrier may require a security deposit; d) the default carrier only has to provide local service; e) it does not have to provide vertical services, like Caller ID, or toll service, until the customer applies for such service; f) the exiting competitive LEC will pay the processing cost per migrating customer to the default carrier; g) if the Commission does not require the competitive LEC to pay the processing cost, then the migrating customer will pay those charges. Section IX.B.2, proposed WV Mass Migration Guidelines.

Mr. Fletcher advised that the majority of the Task Force supported the Mass Migration Guidelines, including Section IX. Staff Memo p. 1. Although Section IX.B.2 includes conditions to limit the financial risk and operational difficulty for default carriers, Verizon is generally opposed to the concept of a default carrier, he wrote. Id.

Further, although it appears that Frontier, as a default carrier, is able to allow customers to dial 911, Frontier is opposed to Section IX.A and possibly Section IX.B. Id.

Accordingly, Mr. Fletcher recommended that the Commission set a procedural schedule to allow comments and responses. Id. p. 2.

Mr. Fletcher said that the Task Force believed that the proposed guidelines should be of general, prospective effect _ governing the future conduct of all local exchange carriers. Id. The Task Force recommended that the Commission implement the guidelines via a General Order, so they could become effective as quickly as possible. The guidelines could be incorporated into the Commission's rules when the rules are next reviewed. Id.

On January 20, 2004, Verizon agreed with Staff's request for a comment schedule. Ltr. p. 1. Verizon also agreed with Mr. Fletcher's assessment that the Task Force was unable to reach a consensus on the "default carrier/soft dial tone" provisions of Section IX. Id.

DISCUSSION

The Commission appreciates the work done to date by the Task Force, including the compromises which have resulted in the consensus position in all parts of the proposed Mass Migration Guidelines except Section IX. The Commission commends these efforts.

Due to the divergent positions regarding Section IX, it will be beneficial to conduct a hearing, where the various positions may be fully explored. Since at least one incumbent carrier opposes being designated the default carrier, it is important that the interplay of the Section IX provisions be clearly understood. Thus, the Commission wishes the majority to clarify its position as to how these provisions are to be read together.

The Commission shall permit comments and replies to be filed, as the Task Force suggested. Moreover, the Commission requests comment on the following areas of Section IX.

Commission Question 1

Section IX recites that it applies when a competitive LEC provides service through resale of an incumbent LEC's services. Yet, Paragraph IX.A.1 requires a competitive LEC to provide 911 dialing if it serves via UNE-Platform, UNE-Loop or its own facilities. How can Paragraph IX.A.1 be reconciled with the limitation set forth in the Paragraph IX? For convenience, the pertinent language is italicized below.

IX. Termination Actions When Normal Migration Procedures Have Failed

The following shall apply when an exiting CLEC serves its customer through an underlying ILEC via resale of that ILEC's tariffed service offerings and when there is no acquiring carrier:

A. Provision of Soft Dial Tone

1. Where available, *when an exiting CLEC serves its customers through UNE-Platform or resale*, the CLEC must request the underlying ILEC to apply "soft dial tone" to customers who have not selected a new carrier by the cut-off date. . . If technically feasible, *exiting carriers serving customers by UNE-Loop and full facilities based arrangements* must provide "soft dial tone" to customers who have not chosen a new carrier by the cut-off date. . .

Commission Question 2

Section IX.A requires the exiting competitive LEC to tell its customers by letter that if they do not select a new carrier by the cut-off date, they will be converted to "soft dial tone" service for the 10 days prior to the final cut-off. It is not clear how this is explained in the sample letter. For convenience, the pertinent part of Section IX.A and all of Sample Letter #2 are provided below.

. . . The exiting CLEC must *indicate in its customer letter (sample letter #2)* that customers who fail to select a new carrier by the cut-off date will be converted to "soft dial tone" service for the final 10 days prior to the service termination date.

Letter # 2-Sample Customer Notification Letter (without an acquiring carrier)

[The type size for this letter must be 12 point or larger.]

XYZ Company
[XYZ Company West Virginia doing business as name]
XYZ Company address
XYZ Company Telephone Number
XYZ Company Fax Number]

Date (60 days prior to discontinuance of service date)

Customer Name

Address

West Virginia, zip

YOU MUST CHOOSE A NEW LOCAL TELEPHONE SERVICE PROVIDER BY (30 days prior to discontinuance of service date)

Dear Customer:

We regret to inform you that as of (discontinuance of service date) XYZ Company will no longer be providing your local telephone service in West Virginia. (Insert explanation of specific company circumstances and reasons for proposed termination of service.)

Your action is required! You must select a new local telephone provider as quickly as possible, but no later than (30 days prior to discontinuance of service date) or you may lose your local telephone service.

Please be aware that you are responsible for paying all bills rendered to you by XYZ Company during this transition. You may be subject to suspension or termination of your phone service in accordance with the Rules of the Public Service Commission of West Virginia if you fail to pay your telephone bill.

After selecting a new local telephone provider, you should also contact your current long distance provider to ensure that your current long distance calling plan is not changed as a result of your change in your local service. If you do not contact your long distance provider, you may be charged basic rates (non-calling plan rates) for long distance calls.

Generally, you can find a list of most local telephone service providers in your local telephone directory. If you require assistance, please contact XYZ Company at (toll free number). Finally, if you no longer want local service, please contact us to disconnect your service.

XYZ Company regrets any inconvenience this change may cause you.

Sincerely,

ADDITIONAL INFORMATION TO BE PROVIDED BY ENCLOSURE:

- (1) Plan for refund of customer deposits and/or prepayments.
- (2) Plan for transfer, removal or abandonment of any XYZ Company-owned equipment or facilities located on the customer's premises.]
- (3) Any other information required by applicable law, including, but not limited to, any other information required by the West Virginia Public Service Commission or the Federal Communications Commission.
- (4) XYZ Company was authorized to provide telecommunications service in West Virginia by the Public Service Commission of West Virginia. You may address questions about this letter to the Public Service Commission at [insert Commission address and toll free telephone number].

Commission Question 3

Under Section IX.A, during the last 30 days of local phone service, customers who do not select a new local carrier by the cut-off date will receive 20 days of full local service and 10 days when they can only dial 911, if it is possible for that type of dialing to be provided to them.

Section IX.B, captioned “Determination of Default Carrier,” makes the incumbent LEC serve customers who do not select a new local phone company by the cut-off date. However, this provision is limited by an introductory phrase _ when 911-only dialing cannot be provided.

Thus, when Section IX.A and IX.B are read together, one possible result is that when 911-only dialing is possible, customers who do not choose a new carrier by the cut-off date will receive 20 days of full local telephone service, 10 days of 911-only dialing, and then no local phone service at all. In contrast, when 911-only dialing is not available, customers who do not choose a new carrier will receive 30 days of full local telephone service, and then be automatically transferred to the incumbent LEC for continuing local phone service. The pertinent parts of Section IX are as follows:

A. Provision of Soft Dial Tone

1. *Where available*, when an exiting CLEC serves its customers through UNE-Platform or resale, the CLEC must request the underlying ILEC to apply “soft dial tone” to customers who have not selected a new carrier by the cut-off date. . . *If technically feasible*, exiting carriers serving customers by UNE-Loop and full facilities based arrangements must provide “soft dial tone” to customers who have not chosen a new carrier by the cut-off date. “Soft dial tone” is defined as the ability to call 911. “Soft dial tone” will be applied to the service of such customers 10 days prior to the service termination date. .

B. Default Carrier

1. Determination of Default Carrier

When neither the exiting CLEC nor the underlying ILEC have the capability to provide “soft dial tone” as provided for in Section IX.A.1. the underlying ILEC is the default carrier that is obligated to continue a customer's local service for customers who have not chosen another carrier by the cut-off date and when there is no acquiring carrier. . .

Commission Question 4

Section IX.B.1 makes the incumbent LEC the default carrier and requires the incumbent to continue local phone service for customers who do not choose a new company by the cut-off date *when 911-only dialing cannot be provided*.

Section IX.B.3, though, requires the exiting competitive LEC to advise its customers that the incumbent LEC is the default carrier *when there is no acquiring carrier*.

If the incumbent LEC is to be the default carrier *when there is no acquiring carrier*, should that be in the determination paragraph, instead of in the customer notification provision?

The Commission is aware that the members of the Task Force are not in total agreement that the incumbent LEC should be designated as the default carrier. It would be helpful, though, to clarify the circumstances under which the majority recommends that the incumbent LEC be designated the default carrier. The pertinent language is provided below.

B. Default Carrier

1. Determination of Default Carrier

When neither the exiting CLEC nor the underlying ILEC have the capability to provide "soft dial tone" as provided for in Section IX.A.1. the underlying ILEC is the default carrier that is obligated to continue a customer's local service for customers who have not chosen another carrier by the cut-off date and when there is no acquiring carrier. . .

* * *

3. Customer Notification

Where there is no acquiring carrier, the exiting CLEC must indicate in its customer letter (sample letter #3) that the underlying ILEC will be the new local exchange carrier unless another carrier is selected by the cut-off date.

Commission Question 5

The indicator for subpart 1 beneath Section IX.A does not appear to be needed, as there is no subdivision of the Soft Dial Tone provision. Unless there is objection, then, the number 1 will be removed, as is indicated with the strike-through below.

If it is preferred that the Soft Dial Tone provision be separated into subparts, that may be proposed in the comments.

A. Provision of Soft Dial Tone

~~+~~Where available, when an exiting CLEC serves its customers through UNE-Platform or resale, the CLEC must request the underlying ILEC to apply . . .

FINDINGS OF FACT

1. On January 9, 2004, the Task Force advised that it had completed its work and it submitted proposed Mass Migration Guidelines for the Commission to consider. Staff Memorandum p. 1, attached to Final Joint Staff Memorandum. Substantial progress was made in developing a consensus plan, although there was not agreement regarding Section IX, the Task Force chairman reported. Id.
2. The Task Force recommended that the Commission set a procedural schedule to allow comments and responses on the proposed West Virginia Mass Migration Guidelines. Id. p. 2.
3. On January 20, 2004, Verizon agreed with the request. Ltr. p. 1.

CONCLUSION OF LAW

Due to the divergent positions regarding Section IX, it will be beneficial to conduct a hearing, where the various positions may be fully explored.

ORDER

IT IS THEREFORE ORDERED that the following procedural schedule is adopted:

Initial comments See FootNote 4 , particularly about Section IX, including responses to the Commission's inquiries	March 4, 2004
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Reply comments	March 14, 2004
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Hearing, Howard M. Cunningham Hearing Room, 201 Brooks Street, Charleston, WV	9:30 a.m. March 24, 2004
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IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause the attached notice to be published one time in a newspaper of general circulation in Kanawha County about 10 days prior to the hearing. The Affidavit of Publication shall be lodged in the case file promptly upon its receipt.

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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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 24th day of February, 2004.

CASE NO. 01-1552-T-GI

GENERAL INVESTIGATION to develop a plan regarding the unexpected withdrawals from service by competitive local exchange carriers.

NOTICE OF HEARING

The Public Service Commission of West Virginia is developing a plan to handle the transfer of customers when a local telephone company leaves the market and its customers need to be provided local service by other telecommunications carriers. A Task Force has developed proposed Mass Migration Guidelines, which contain a consensus plan. There is disagreement, though, about what happens when customers do not choose a new local telephone company.

The PSC will conduct a public hearing on the proposed guidelines at 9:30 a.m. Wednesday, March 24, 2004, at the Howard M. Cunningham Hearing Room at the Commission's office, 201 Brooks Street, in Charleston. Comments will be filed prior to the hearing.

Footnote: 1 ¹ In several recent telecommunications cases at the Commission, parties have suggested that an appendix be provided of terms and abbreviations. In this case, an Appendix was attached to the Mass Migration Guidelines filed January 9, 2004.

Incumbent local exchange carriers are commonly referred to as ILECs, and competitive local exchange carriers as CLECs, and are so identified in the Mass Migration Guidelines Appendix. The critical distinction is whether the local exchange carrier is the established or incumbent provider, or is a new competitor. When either the ILEC or CLEC abbreviation is used, however, this difference is not self-evident. Therefore, in this order, the Commission will refer to the different groups as incumbent LECs and competitive LECs.

Footnote: 2 ² Participating in the final meeting were PSC Staff, the Consumer Advocate Division, Verizon West Virginia Inc., FiberNet LLC, MCI WorldCom, Inc., nTelos, and the West Virginia Independent Group. The Independent Group is comprised of West Side Telecommunications, Hardy Telecommunications, Inc., Spruce Knob-Seneca Rocks Telephone, Inc., Armstrong Telephone Company _Northern Division, and Armstrong Telephone Company _ West Virginia.

Footnote: 3 ³ The ability to dial 911 is also known as "soft dial tone." Section IX.A.1, proposed WV Mass Migration Guidelines.

Footnote: 4 ⁴ For clarity, the Commission notes that these comments and reply comments must be filed and served by the parties. These pleadings are not the same as initial comments in a general investigation case, which are served by the Commission's Executive Secretary.

You may request an electronic copy of the service list at kcalvert@psc.state.wv.us.