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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 5th day of May, 2004.

CASE NO. 03-0172-T-P

VERIZON WEST VIRGINIA INC.

Petition in the matter of Verizon's submission of
New York Performance Assurance Plan revisions.

COMMISSION ORDER

The Commission approves a revised West Virginia Performance Assurance Plan.

BACKGROUND

On February 13, 2003, Verizon West Virginia Inc. (Verizon) filed revisions to the "Performance Assurance Plan Verizon West Virginia Inc." (WV PAP). The filing was made in order to conform the WV PAP to the January 24, 2003, changes to the "Performance Assurance Plan Verizon New York Inc." (NY PAP). This filing was made pursuant to the requirements of the WV PAP and the Commission Order in Verizon West Virginia Inc., Case No. 02-0809-T-P (January 9, 2003).

Verizon requested that the Commission establish a comment and reply period for the proposed revisions and establish an implementation schedule for the proposed revisions. Verizon reserved the right to submit changes to the proposed revisions and to oppose the adoption of the NY PAP revisions in the WV PAP.

Verizon also suggested that the Commission direct Staff to convene a collaborative session at least one week prior to the time that initial comments are due to permit interested parties to discuss the revisions.

On March 6, 2003, Verizon filed additional revisions to the WV PAP. Verizon indicated that after the initial filing, it identified several corrections that needed to be made to more accurately conform the WV PAP to the NY PAP. Verizon stated that this filing should supercede the February 13, 2003, submission.

On March 19, 2003, Staff filed an Initial Joint Staff Memorandum. Staff recommended that a comment and reply cycle be adopted. Staff agreed that a collaborative session was reasonable and had no objection to convening such a session.

On April 4, 2003, FiberNet, LLC (FiberNet) filed its comments to the proposed revisions to the WV PAP. FiberNet indicated that most of the revisions were non- controversial in nature. FiberNet's primary

objection was the reallocation of the dollars at risk in the Unbundled Network Elements (UNE) category. FiberNet noted that under the current WV PAP, there is a single UNE category that included both UNE-Platform and UNE-Loops. Under the proposed revisions, UNE-Platform and UNE-Loops are separate categories.

While FiberNet did not object to the separation of categories, FiberNet was concerned that the proposed allocation of the dollars at risk under the UNE-Platform and UNE-Loop categories is out of balance and not reflective of the competitive environment that exists in West Virginia. Under Verizon's proposed revisions, the vast majority of the dollars at risk are contained in the new UNE-Platform category. FiberNet asserted that this is due to the competitive assumptions used in New York. UNE-Platform is a prominent method of providing service by CLECs in New York. However, FiberNet stated that the majority of CLEC customers in West Virginia are served by UNE-Loops.

FiberNet urged the Commission to look at the competitive market in West Virginia as it currently exists and is likely to continue in the near future to determine the proper allocation of dollars at risk between UNE-Loop and UNE-Platform under the WV PAP. FiberNet requested that the dollars at risk figures presented in Verizon's proposed revisions to the WV PAP be reversed so that the majority of the dollars at risk be allocated into the UNE-Loop category instead of the UNE-Platform category.

On April 10, 2004, the Commission entered an order that established a comment period for the proposed revisions that directed any objections to be filed by May 5, 2003, and replies to objections to be filed by May 20, 2003. The order directed Staff to schedule and conduct a meeting between Verizon and any interested party to discuss the proposed WV PAP revisions.

On May 2, 2003, Staff filed its Final Joint Staff Recommendation. Staff indicated that the required meeting had been conducted. Staff recommended that the Commission approve the WV PAP as set forth in the March 6, 2003, replacement filing. Staff reserved the right to file a further final recommendation if any objection or reply caused Staff to reconsider its position.

On May 5, 2003, FiberNet filed a letter stating that it had informal discussions with Verizon with regard to the allocation of dollars at risk. As a compromise, FiberNet indicated that it was willing to accept a reallocation of the proposed dollars at risk with 60% allocated to UNE-Loops and 40% allocated to UNE-Platform. FiberNet asked the Commission to approve this compromise.

On May 5, 2004, Verizon filed comments on the proposed revisions. First, Verizon stated that the existing WV PAP is substantially the same as the former NY PAP. Adopting the proposed revisions will allow it to conform to the current NY PAP and a majority of the Verizon jurisdictions in the Mid-Atlantic and the Northeastern portions of the United States. Second, Verizon indicated that the proposed revisions were the product of more than three years of litigation and review by the New York regulatory commission. Third, Verizon asserted that having a common PAP in the Verizon jurisdictions based on the NY PAP has advantages for Verizon, the CLECs and utility commissions by reducing regulatory litigation regarding the PAP in each jurisdiction, allowing Verizon's performance in one jurisdiction to be compared to its performance in other jurisdictions and allowing for easier implementation and performance review.

With regard to the dollars at risk, Verizon indicated that the proposed revisions allocate a total of \$10,780,000 annually for UNE-Platform and UNE-Loops in the Mode of Entry (MOE) section of the WV PAP. This increases the total amount at risk under the UNE category of the MOE section by \$1,960,000 over the current WV PAP. (The increase is the result of a reallocation of amounts from other categories). As proposed, the dollars at risk in the MOE section for UNE-Platform is \$8,820,000 and \$1,960,000 for UNE-Loop. Thus, 82% of the dollars at risk are allocated to UNE-Platform and 18% to

UNE-Loop.

The Critical Measures section of the proposed revisions allocates a total of \$11,959,697 annually for UNE-Platform and UNE-Loops. This increases the total amount at risk under the UNE category of the Critical Measures section by \$4,117,722. (The increase is the result of a reallocation of amounts from other categories.) As proposed, the dollars at risk in the Critical Measures section for UNE-Platform is \$8,822,727 and \$3,136,970 for UNE-Loop. This results in a 74% allocation for UNE-Platform and 26% for UNE-Loop.

Verizon indicated that the March 2003 data indicated that of the total POTS lines in service provided by CLECs, about 83% of the lines are UNE-Loop and 17% are UNE- Platform. Given the existing line allocation, Verizon indicated its agreement to FiberNet's proposal that the allocation for the dollars at risk be 60% UNE-Loop and 40% UNE- Platform.

Verizon also requested that the Commission approve a schedule for implementation of the revised WV PAP. Verizon suggested that the revised PAP become effective on the first day of the second calendar month after the month the Commission approves the WV PAP.

On May 5, 2003, AT&T Communications of West Virginia, Inc. (AT&T) filed its comments. AT&T supported the proposed revisions. AT&T stated that it had no preference between the dollars at risk proposals offered by Verizon and FiberNet. However, AT&T agreed that FiberNet's proposal more closely reflects the actual modes of entry used in West Virginia. AT&T also noted that the WV PAP contains mechanisms to revise the allocation of dollars at risk should circumstances warrant a change in the future.

On May 5, 2003, Consumer Advocate Division (CAD) filed a petition to intervene and filed objections to the proposed revisions. CAD's objections centered on the allocation of the dollars at risk. CAD stated that most of the local competition currently existing in West Virginia is facilities based using UNE-Loops.

CAD noted that of the total \$22,741,692 in potential PAP payments assigned to the MOE and Critical Measures sections of the UNE category, Verizon proposed to allocate 77.6% to UNE-Platform and 22.4% to UNE-Loop. In order to properly reflect the state of local competition in West Virginia, and to provide for expected growth in the UNE Platform mode of entry, CAD recommended that the allocation of the dollars at risk be reversed.

Due to the dynamic nature of the telecommunications market which could change substantially in a short period of time, CAD suggested that the Commission review the allocation of the WV PAP payments after two years of experience with whatever allocation method is approved.

On May 20, 2003, Verizon filed its reply to the comments. Verizon asked the Commission to approve the 60%/40% UNE-Loop/UNE-Platform compromise proposed by Verizon and FiberNet. Because FiberNet is Verizon's largest local exchange competitor in West Virginia, and it is in agreement with the proposal, Verizon asserted that the Commission should approve the compromise. Verizon also asserted that the compromise is not greatly different from the proposal offered by CAD and would allow for a modest increase in the UNE Platform method of market entry.

On May 20, 2003, FiberNet indicated that it was not filing any additional reply comments, but continues to stand by its earlier comments filed on April 4 and May 5, 2003.

On May 20, 2003, CAD filed its reply to the comments filed by the other interested parties. CAD continued to support the allocation of dollars at risk as set forth in its initial filing. CAD stated that the 60% UNE-Loop/40% UNE-Platform allocation supported by Verizon and FiberNet was an improvement over the initial Verizon proposal. However, it differed from the current state of the market in West Virginia or the market that is likely to exist in the foreseeable future. CAD asserted that its proposed allocations are more representative of the current market.

On May 22, 2003, Staff filed its Second Final Joint Staff Memorandum. Staff indicated that it had reconsidered its earlier position and supported the proposed compromise presented in Verizon's May 20, 2003, filing.

On April 19, 2004, Verizon filed a letter that set forth the number of UNE-Loop lines and UNE-Platform lines in West Virginia. According to Verizon's February 2004 Carrier to Carrier report information, there were 32,949 UNE Loop lines and 16,850 UNE Platform lines.

DISCUSSION

Based upon the current state of the market in West Virginia, as evidenced by the recent data contained in the February 2004 Carrier to Carrier report, the Commission concludes that it is appropriate to approve the compromise advocated by Verizon, FiberNet and Staff regarding the allocation of dollars at risk for the UNE-Loop and UNE-Platform categories.

The Commission concludes that with the exception of the allocation of the dollars at risk discussed herein, it is reasonable to approve the proposed revisions to the WV PAP as filed by Verizon on March 6, 2003. Verizon shall file a revised WV PAP that reflects the allocation of dollars at risk for the UNE category in both the MOE and Critical Measures section as 60% for UNE-Loop and 40% for UNE-Platform.

Both the current and the revised WV PAP contain several provisions that enable the Commission to review and modify the WV PAP, including the allocation of the dollars at risk. Such a change can also be initiated by a party's request to the Commission. (WV PAP, paragraph K). Accordingly, the Commission concludes that is not necessary to adopt CAD's recommendation to review the dollars at risk allocation after two years of experience.

FINDINGS OF FACT

1. On February 13, 2003, Verizon filed revisions to the WV PAP. The filing was made in order to conform the WV PAP to the January 24, 2003, changes to the NY PAP.

2. On March 6, 2003, Verizon filed additional revisions to the WV PAP. Verizon indicated that after the initial filing, it identified several corrections that needed to be made to more accurately conform the WV PAP to the NY PAP. Verizon stated that this filing should supercede the February 13, 2003, submission.

3. On April 4, 2003, FiberNet filed its comments to the proposed revisions to the WV PAP. FiberNet stated that the proposed allocation of the dollars at risk under the UNE- Platform and UNE-

Loop categories is out of balance and not reflective of the competitive environment that exists in West Virginia. Under Verizon's proposed revisions, the vast majority of the dollars at risk are contained in the new UNE-Platform category. FiberNet asserted that this is due to the competitive assumptions used in New York. UNE-Platform is a prominent method of providing service by CLECs in New York. However, FiberNet stated that the majority of CLEC customers in West Virginia are served by UNE-Loops.

4. FiberNet urged the Commission to look at the competitive market in West Virginia as it currently exists and is likely to continue in the near future to determine the proper allocation of dollars at risk between UNE-Loop and UNE-Platform under the WV PAP. FiberNet requested that the majority of the dollars at risk be allocated into the UNE-Loop category instead of the UNE-Platform category.

5. On May 5, 2003, FiberNet filed a letter stating that it had discussed a compromise with Verizon wherein FiberNet indicated its willingness to accept a reallocation of the proposed dollars at risk with 60% allocated to UNE-Loops and 40% allocated to UNE- Platform. FiberNet asked the Commission to approve this compromise.

6. On May 5, 2004, Verizon filed comments regarding the proposed WV PAP revisions and the proposed compromise. Verizon indicated that March 2003 data indicated that of the total POTS lines in service provided by CLECs, about 83% of the lines are UNE- Loop and 17% are UNE-Platform. Given the existing line allocation, Verizon indicated its agreement to FiberNet's proposal that the allocation for the dollars at risk be 60% UNE- Loop and 40% UNE-Platform.

7. On May 5, 2003, AT&T filed its comments. AT&T stated that it had no preference between the dollars at risk proposals offered by Verizon and FiberNet. However, AT&T agreed that FiberNet's proposal more closely reflects the actual modes of

entry used in West Virginia.

8. On May 5, 2004, filed objections to the proposed WV PAP revisions. CAD's objections centered on the allocation of the dollars at risk. CAD stated that most of the local competition currently existing in West Virginia is facilities based using UNE-Loops. CAD noted that of the total \$22,741,692 in potential PAP payments assigned to the MOE and Critical Measures sections of the UNE category, Verizon proposed to allocate 77.6% to UNE-Platform and 22.4% to UNE-Loop. In order to properly reflect the state of local competition in West Virginia, and to provide for expected growth in the UNE Platform mode of entry, CAD recommended that the allocation of the dollars at risk be reversed. CAD suggested that the Commission review the allocation of the WV PAP payments after two years of experience with whatever allocation method is approved.

9. On May 22, 2003, Staff filed its Second Final Joint Staff Memorandum. Staff indicated that it had reconsidered its earlier position and supported the compromise proposed by FiberNet and Verizon.

10. On April 19, 2004, Verizon filed a letter that set forth the number of UNE-Loop lines and UNE-Platform lines in West Virginia. According to Verizon's February 2004 Carrier to Carrier report information, there were 32,949 UNE Loop lines and 16,850 UNE Platform lines.

CONCLUSIONS OF LAW

1. The Commission concludes that it is appropriate to approve the compromise advocated by

Verizon, FiberNet and Staff regarding the allocation of dollars at risk for the UNE-Loop and UNE-Platform categories.

2. The Commission concludes that with the exception of the allocation of the dollars at risk discussed herein, it is reasonable to approve the proposed revisions to the WV PAP as filed by Verizon on March 6, 2003.

3. Verizon shall file a revised WV PAP that reflects the allocation of dollars at risk for the UNE category in both the MOE and Critical Measures section as 60% for UNE- Loop and 40% for UNE-Platform.

4. Both the current and the revised WV PAP contain several provisions that enable the Commission to review and modify the WV PAP. (WV PAP, paragraph K). Accordingly, the Commission concludes that is not necessary to set forth a specific time frame within which the dollars at risk allocation is reviewed.

ORDER

IT IS, THEREFORE, ORDERED that the dollars at risk compromise as discussed herein is hereby approved.

IT IS FURTHER ORDERED that the revisions to the West Virginia Performance Assurance Plan filed on March 6, 2003, are hereby approved as modified by the dollars at risk compromise.

IT IS FURTHER ORDERED that within twenty (20) days of the date of this order, Verizon West Virginia Inc. shall file a revised West Virginia Performance Assurance Plan that reflects the revisions approved herein and the allocation of dollars at risk as approved herein.

IT IS FURTHER ORDERED that the revised West Virginia Performance Assurance Plan as approved herein shall become effective on July 1, 2004.

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

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

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