

Agenda Date: February 11, 2004
Item Number: A2

Docket: UT-040172
Company Name: Verizon Northwest Inc.

Staff: Kathy Folsom, Regulatory Analyst
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Glenn Blackmon, Assistant Director-Telecommunications

Recommendation:

Issue an order, on the Commission's own motion, to initiate competitive classification of Verizon's out-of-area services, to become effective March 13, 2004.

Background:

On November 21, 2003, Verizon Northwest Inc. (Verizon or Company) filed, in Docket UT-031924, to establish a new out-of-area services tariff. The out-of-area services tariff would allow Verizon to serve customers in locations within LATA 674 (Seattle LATA) that are outside the Company's exchanges as described in maps filed with the Commission. Currently Verizon serves out-of-area customers only under an individual case basis contract arrangement. Since 1993 Verizon has entered into approximately 40 contracts with out-of-area customers.

Verizon subsequently extended the effective date, in Docket UT-031924, on December 16, 2003, January 21, 2004, and February 6, 2004. The current effective date is March 13, 2004.

The proposed out-of-area services include those offered via Special Access (DS1 and DS3), Synchronous Optical Network (SONET), Asynchronous Transfer Mode (ATM), Frame Relay, and Transparent LAN (TLS). These services are currently available to in-area customers through Verizon's Intrastate Access Tariff and its Advanced Data Services Tariff. Although portions of the proposed out-of-area tariff mirror the in-area tariffs, in many instances the terms and conditions are significantly different. Additionally, the rates (in most cases) for the proposed out-of-area services are higher or lower than the existing in-area rates.

Discussion:

Prior to the filing in November, Staff and Verizon had ongoing discussions regarding the Company's use of individual customer contracts. Staff has encouraged Verizon to make an out-of-area filing in order to decrease the number of contracts filed by the Company and to resolve persistent conflicts about the appropriate level of regulatory oversight to Verizon's offerings outside of its incumbent service area. Filing a separate contract for each out-of-area customer results in delays to the individual customer and additional work for both the Company and the

Commission. Companies are required to file individual customer contracts if the rates or terms are not disclosed in a tariff or price list.

The proposed tariff filing largely addresses the concern about individual contracts creating an administrative burden and delaying service to customers. However, it is not at all helpful in resolving the more significant disagreement about the level of regulatory review that should be applied to Verizon's out-of-area offerings. Verizon has typically resisted Staff's close review of these contracts, arguing that they should be treated like contracts for competitive services because Verizon has no market power with respect to these out-of-area services. Staff has declined to take this approach, in part because it would be inappropriate to engage in informal competitive classification and in part because such an informal approach would let Verizon bypass the consumer protection statutes that apply to services formally classified as competitive.

Staff and the Company have established similar positions with regard to the proposed out-of-area tariff. Staff believes that, if the Company is to have the benefits of a tariff, the rates and terms of service must be reviewed using standards that apply to non-competitive services. Staff has encouraged the Company to petition for competitive classification of these services under RCW 80.36.330. Verizon declined, stating that it believes the competitive classification process would require additional time – a concern that Staff believes is misplaced, because a close review of the prices and terms of the proposed tariff would also be time-consuming.

Staff believes that the services that would be offered in Verizon's out-of-area tariff are competitive services. It would be inappropriate for the Commission to subject this offering to the legal and economic standards applied to a tariff, and it is equally inappropriate to treat the tariff as if it were a price list. Instead, the Commission should classify the out-of-area services as competitive. Once that step has been completed, the Company can file a price list that would receive the reduced level of review appropriate to competitive services of incumbent local exchange telephone companies.

Competitive Classification Standards and Process

RCW 80.36.310 authorizes the Commission to initiate classification proceedings on its own motion. The classification becomes effective by operation of law, unless the Commission suspends it and sets it for hearing. RCW 80.36.330 authorizes the Commission to “classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service” if it finds that the service is “subject to effective competition.” The statute defines “effective competition” to mean that “customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base.”

In determining whether a particular service is a competitive service, the law requires that the Commission consider, among other factors:

1. the number and size of alternative providers of services;
2. the extent to which services are available from alternate providers in the relevant market;
3. the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
4. other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Verizon's proposed tariff filing, in Docket UT-031924, includes evidence that competition has been vigorous in the Seattle market outside of its incumbent service area. Potential customers can choose functionally equivalent service from more than one carrier. Other carriers offer largely facility-based services. These facilities are fiber networks that provide service comparable to Verizon. The fiber facilities, combined with the ability to purchase Unbundled Network Elements and provide resold services make it reasonable to conclude that virtually all of the relevant market can obtain service from more than one carrier.

Since the specified services are being offered outside of Verizon's exchange area, the competition is the carrier(s) that already offer the service in the area being served. No customer of these services is captive to Verizon, because each customer has at least one alternative provider in the incumbent local exchange company serving that area. The incumbent's services – as well as those of other competitors – are readily available and functionally equivalent, and Verizon's market power within these areas is insignificant.

Conclusion:

Staff believes that the competitive classification of Verizon's out-of-area services will provide the appropriate level of regulation and consumer protection. Staff recommends that the Commission issue an order, on the Commission's own motion, to initiate competitive classification of Verizon's out-of-area services, to become effective March 13, 2004.