

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to review the total element long run incremental)	
costs and the total service long run incremental)	Case No. U-15210
costs for VERIZON NORTH INC., AND CONTEL)	
OF THE SOUTH, INC., d/b/a VERIZON NORTH)	
SYSTEMS , to provide telecommunications services.)	
_____)	

At the June 2, 2009 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On February 27, 2007, the Commission commenced this proceeding to examine the total service long run incremental costs (TSLRIC) and total element long run incremental costs (TELRIC) for Verizon North Inc., and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon). On August 31, 2007, Verizon filed its updated cost study along with an application for review of the cost study and the testimony and exhibits of eight witnesses.

A prehearing conference before Administrative Law Judge Barbara A. Stump (ALJ) was held on October 11, 2007. TelNet Worldwide, Inc., ACD Telecom, Inc., TC3 Telecom, Inc., Michigan Access, Inc., JAS Networks, Inc., DayStarr, LLC, Clear Rate Communications, Inc., Arialink Telecom, Inc., and American Broadband and Telecommunications Company (collectively, the

competitive local exchange carriers (CLECs)),¹ the Commission Staff (Staff), Attorney General Michael A. Cox (Attorney General), and AARP Michigan (AARP) participated in the proceeding.

On March 18, 2009, the Commission issued an order approving a revised cost study and directing Verizon to file a compliant cost study no later than April 17, 2009. The order authorized parties to file objections to the cost study filing within 45 days of the date of that filing, and directed the Staff to review the objections and report to the Commission within 30 days thereafter.

On April 16, 2009, Verizon filed a petition for rehearing and motion to stay the March 18 order.

On May 7, 2009, the Staff, the Attorney General, and the CLECs filed responses to the petition for rehearing and motion to stay.

On May 22, 2009, Verizon filed a compliance study and a motion for an extension of time to file the compliance study from April 17, 2009, to May 22, 2009.

Motion to Stay

In its motion, Verizon requests that the Commission stay the effect of the March 18 order, and set a new date for its compliance filing 30 days after the issuance of this order on rehearing. Verizon makes this request on the grounds that the original date was impossible to meet, and that the Commission may change the original order as a result of Verizon's petition for rehearing, thus requiring changes to the compliance filing in any case.

The Staff states that it is not opposed to granting Verizon additional time to submit its compliance filings, but the effective date for the application of new costs and rates should remain March 18, 2009, the date of the Commission's order.

¹American Broadband and Telecommunications Company withdrew from the proceeding on March 5, 2008.

The CLECs oppose the motion to stay. The CLECs argue that the motion is for the purpose of seeking delay in setting lawful rates. The CLECs point to the affidavit of Dr. Loube attached to the CLECs' response stating that the cost study could have been re-run in the time required. The CLECs also assert that Verizon's request for rehearing and motion to stay do not stay the effect of the March 18 order, citing the January 14, 1998 order in Case No. U-11290, pp. 8-9. The CLECs point out that, while the March 18 order dealt with 25 issues, Verizon seeks rehearing on only four issues. The CLECs argue that permitting a party to delay a compliance filing by simply filing a petition for rehearing would provide that party a unilateral means of obtaining a delay. The CLECs contend that Verizon's demands for delay are unreasonable, and that the rates resulting from the new cost study should be effective as of the day after Verizon's initial compliance filing was due, namely, April 18, 2009.

The CLECs further point out that, because Verizon failed to make its compliance filing, it is in violation of the Commission's order. The CLECs urge the Commission to direct the ALJ to conduct a hearing to fulfill the procedural requirements to impose fines upon Verizon pursuant to MCL 484.2305(n) and MCL 484.2601, in an amount that is appropriate to deter such unlawful conduct in the future.

The Attorney General opposes the motion to stay on grounds that it violates MCL 484.2203(16).

Section 203(16) of the Michigan Telecommunications Act (MTA), MCL 484.2203(16), provides that "Upon the filing of a motion for stay, the commission may, on terms as it considers just, stay the effect or enforcement of an order, except an order regarding rates or cost studies." The motion to stay is denied. The effective date for application of new costs and rates shall remain March 18, 2009.

The Commission is empowered to order “remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss” as a result of a violation of the MTA. MCL 484.2601. Verizon violated the March 18 order. The language of Section 203(16) shows that the motion to stay was clearly inappropriate. For reasons unknown to the Commission, Verizon filed the motion for an extension more than a month late. Because new costs and rates will remain effective as of the date of the March 18 order – thus making ratepayers whole for any economic loss resulting from Verizon’s violation of that order – the Commission does not find it necessary, at this time, to impose a penalty on Verizon. However, Section 601 empowers the Commission to protect ratepayers, as well as make them whole. Further attempts to delay the setting of costs and rates may be deterred through imposition of an appropriate per-day penalty. MCL 484.2601.

Petition for Rehearing

Verizon argues that its petition meets the standard set out in 1999 AC, R 460.17403 (Rule 403) because of the errors in fact and law that appear in the March 18 order. Verizon further asserts that rehearing is required because the date set for the compliance filing was impossible to meet, and the changes that must be made to the March 18 order “would likely result in double work for Verizon.” Petition, p. 3.

Verizon seeks rehearing on four issues addressed in the March 18 order.

First, Verizon contends that the Commission arbitrarily reduced Verizon’s transport costs for the DS-1 transport facility per airline mile (ALM) element. In the March 18 order, the Commission directed Verizon to make the cost of the DS-1 ALM reflect the same ratio to the DS-3 ALM as is currently in place, in order to meet TELRIC and TSLRIC standards. March 18 order, p. 29. Verizon argues that maintaining the status quo with respect to the ratio of these two costs is

arbitrary and capricious. Verizon supports adjusting the DS-3 rate, rather than the DS-1 rate. Verizon contends that it has accurately calculated its costs, and those costs should be reflected in the cost study. Verizon argues that using ratios to determine whether costs are appropriate is an apples-to-oranges comparison. Verizon argues that, if it is not allowed to set its DS-1 mileage costs based on the record, then it should be allowed to adjust its termination costs.

Second, Verizon argues that the Commission erred in ordering the company to produce a single, unified loop cost. Verizon argues that its two separate loop studies are required by TSLRIC principles and the Commission's cost principles. Verizon states that no other state has rejected its separate loop studies.

Third, Verizon argues that the Commission erred in finding that the company's proposed non-recurring costs (NRCs) are excessive. Verizon describes its cost analysis as uncontroverted, and characterizes any comparison to its last approved NRCs as inappropriate. Verizon contends that the Commission's authorization of a 10% increase was arbitrary and reversible error, and does not meet the rate of inflation since 1997.

Fourth, the Commission rejected Verizon's proposed NRCs for loop conditioning because Verizon's model contained only loops that do not require conditioning. Verizon contends that the Commission erred in this decision because CLECs may actually need conditioning on real loops. Verizon maintains that it should be compensated for this work, and if it is not, CLECs will be unable to obtain loop conditioning.

The Staff argues that Verizon is not entitled to rehearing because its petition simply reargues the issues and presents no new evidence, errors, or unintended consequences. The Attorney General also argues that Verizon has only reiterated previously made arguments. The CLECs urge

the Commission to reject the petition for rehearing because it is only an expression of Verizon's disagreement with the March 18 order.

Rule 403 of the Commission's Rules of Practice and Procedure provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission agrees with the Staff, the CLECs, and the Attorney General. Verizon has not presented an argument on any of these four issues that was not presented in the proceeding. The petition for rehearing on these issues is denied.

Finally, Verizon argues that due process requires that the Commission provide Verizon with an opportunity to rebut any objections filed by other parties to the compliance filing.

The Staff does not oppose a schedule modification that would allow Verizon the opportunity to respond to objections.

The Attorney General opposes the proposal.

The CLECs also oppose the proposal, arguing that Verizon has already significantly delayed this proceeding by violating the March 18 order. The CLECs request that, if the Commission grants rebuttal time, the costs that are eventually approved should be made effective as of April 18, 2009.

The Commission finds that it is reasonable to allow Verizon seven days to rebut objections, if any. Objections to the compliance study are now due 45 days from May 22, 2009. In order to

prevent Verizon's rebuttal from further delaying final implementation of the cost study, the Staff's report to the Commission will continue to be due 30 days after the receipt of any objections. The effective date for application of new costs and rates shall remain March 18, 2009.

The motion for extension of time is moot.

THEREFORE, IT IS ORDERED that:

- A. The motion to stay is denied, and the petition for rehearing is denied.
- B. Within seven days of the filing of objections, if any, to the May 22, 2009 compliance filing, Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, may file a rebuttal limited to issues raised in the objections.
- C. Within 30 days of the filing of objections, if any, the Commission Staff shall report to the Commission after reviewing the objections filed.
- D. The effective date for application of new costs and rates remains March 18, 2009.
- E. The motion for extension of time filed on May 22, 2009, is moot.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of June 2, 2009.

Mary Jo Kunkle, Executive Secretary