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STATE OF NEW HAMPSHIRE Public Utilities Commission

FROM: Kath Mullholand, Utility Analyst, Telecommunications Division

DATE: January 18, 2006

SUBJECT: DT 05-083
Verizon New Hampshire
Wire Center Investigation

TO: Commissioners

Summary: Staff has determined that at least one wire center in New Hampshire will have Section 251 elements delisted pursuant to the FCC Triennial Review Order on Remand. Accordingly, Staff recommends that the Commission determine, prior to March 11, 2006, whether the elements at issue in this docket are Section 271 elements. Staff further recommends that the Commission require Verizon to file revisions to its list of unimpaired wire centers, including supporting data, when it notifies CLECs of those changes.

Competitive local exchange carriers (CLECs) are granted access to the legacy network of incumbent local exchange carriers (ILECs) by virtue of the Telecommunications Act of 1996 (Act), which established competition for local telephone services. The Act provides two levels of access that ILECs must provide. The first, pursuant to Section 251 of the Act, requires ILECs to open their networks to competition and to offer unbundled network elements (UNEs) in a Statement of Generally Available Terms and Conditions (SGAT) or through negotiated interconnection agreements. The second, pursuant to Section 271 of the Act, requires those ILECs that are also regional Bell Operating Companies (RBOCs), of which Verizon is one, to unbundle certain network elements in exchange for allowing the RBOC to provide interstate long distance services.

In New Hampshire, as a condition of allowing Verizon (then Bell Atlantic) to provide Section 271 long distance service, the Commission required that Verizon convert its SGAT into a wholesale tariff. Verizon did so, and NHPUC Tariff 84 was the result of that conversion.

There are two distinct differences between the network elements required by Section 251 and those required by Section 271. The first is that Section 251 elements identified by the Federal Communications Commission (FCC) must only be provided in those areas where competition is impaired without access to those elements. Once competition is found to be unimpaired without access to a Section 251 element, that element is no longer required under Section 251, but it may still be required under Section 271. The

requirement to unbundle elements under Section 271 is indefinite. The second difference between Section 251 and Section 271 is price. By long-standing precedent, the price for Section 251 elements is total element long-run incremental cost (TELRIC). On the other hand, the Act states that the price for Section 271 elements must be "just and reasonable." There is little precedent to tell us what "just and reasonable" is in the case of Section 271, or whether the state or the FCC determines whether a proposed rate meets that standard.

In earlier dockets, most notably DT 03-201, Revisions to Verizon's SGAT, the Commission found that Verizon is obligated to include Section 271 elements in its wholesale tariff, and that, until Verizon files new rates and they are approved, Verizon must provide those elements at the rates currently on file in Tariff 84. *See* Order No. 24,442. Verizon has appealed the Commission decision in DT 03-201, and other related orders, to Federal Court.

On April 22, 2005, the Commission issued an Order of Notice initiating an investigation into certain Verizon wire centers. The investigation was initiated in response to NHPUC Tariff 84 revisions filed by Verizon on February 22, 2005 in Docket No. DT 05-034. The Order of Notice indicated the Commission's intention to investigate issues related to Verizon's obligation as an ILEC to provision certain UNEs -- DS1 loops, DS3 loops and dedicated high-capacity transport facilities (including dark fiber transport) -- to CLECs pursuant to Section 251 of the Act, and the Federal Communications Commission's *Triennial Review Remand Order* (TRRO), 2005 WL 289015 (F.C.C., Feb. 4, 2005). In the Order of Notice, the Commission reserved the right to determine, upon identification of any wire center as unimpaired, whether the elements in question are still required by Section 271.

Verizon identified Dover, Keene, Manchester, Nashua and Portsmouth as offices for which CLECs are deemed no longer impaired without unbundled access to certain UNEs under Section 251. It provided to Staff confidential information to support its identification. Technical sessions were held on June 15, 2005, and July 13, 2005. Staff issued discovery to the Parties as well as to those carriers Verizon identified as possible fiber-based collocators, pursuant to 47 U.S.C. §51.5, Terms and Definitions, as promulgated with the TRRO. On November 23, 2005, Conversent notified the Commission that Verizon proposes to add Salem and Concord to the list of wire centers Verizon considers no longer impaired. Verizon has not notified the Commission of those additions in this docket.

Staff has completed its review of the discovery responses provided by the possible fiber-based collocators and the Parties. While the Parties continue to disagree about how the FCC's rules and orders should be interpreted in some instances, there are many facts and portions of the rules about which there is no dispute. Based on the undisputed facts, Staff believes that at least one of the wire centers in question is unimpaired, and, as a result, Verizon is no longer obligated to provide certain Section 251 UNEs in that wire center.

Under the terms of the TRRO, once a wire center is determined to be unimpaired under Section 251, a transition period ensues that is intended to allow for the orderly conversion

of the Section 251 elements to services provided on either a retail basis or under Section 271, as applicable. Verizon asserts that the transition period for the five wire centers under consideration ends on March 11, 2006. Since the wire centers are still under review, there has been great uncertainty between CLECs and Verizon about whether March 11, 2006 is the relevant date for the transition to end, what rates might apply as of March 11, 2006, and whether the elements are Section 271 elements required to be provided under Tariff 84 at existing Tariff 84 rates. This uncertainty has resulted in difficulty reaching agreements that will ensure an orderly transition.

In addition, no process for changes that occur during this time of review has been established. Verizon has indicated verbally to Staff that two new wire centers, Salem and Concord, have been identified, and has asserted that changes in rates and availability in those centers should mirror the changes that apply to the five wire centers identified several months earlier. Verizon has also indicated that there have been recent changes in at least one of the wire centers under investigation, but has not filed any data to support their assertion. Verizon has stated that it cannot file such changes with the Commission unless requested to do so.

Finally, Staff calls the Commission's attention to Verizon's recent filing in Docket No. DT 06-012, Revisions to NHPUC Tariff No. 84. In this new filing, Verizon proposes to revise its tariff so that it can convert delisted UNEs to special access circuits as an alternative to disconnection. This is directly relevant to the issues addressed in this memo, as Staff believes that the the first step in converting a delisted UNE to another pricing mechanism is to first determine whether that UNE is still required to be provided under Section 271.

Staff recommends that the Commission determine whether the elements at issue in this docket are Section 271 elements before the March 11 2006 close of the transition period. Such a determination will help ensure an orderly transition from Section 251 to whatever the new standard for provisioning and pricing may be.

Staff also recommends that the Commission require Verizon to file with the Commission its list of asserted unimpaired wire centers and supporting data whenever it notifies CLECs of additions or revisions to the list.