

**DT 05-083**

**VERIZON NEW HAMPSHIRE**

**Wire Center Investigation**

**Order Setting Procedural Schedule**

**ORDER NO. 24,503**

**August 19, 2005**

APPEARANCES: Victor D. Del Vecchio, Esq. for Verizon New Hampshire; Orr & Reno, P.A. by Douglas L. Patch, Esq. for BayRing Communications; Gregory M. Kennan, Esq. for Conversent Communications of N.H.; David Berndt, Esq. for CTC Communications & Lightship Telecom; Jeremy I. Katz, SegTEL, Inc.; Brian Susnock, DesTek Group; John Leslie, NHISPA; Anne Ross, Esq. for the Office of Consumer Advocate; Lynn Fabrizio, Esq. for Staff.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On February 4, 2005, the Federal Communications Commission (FCC) issued its *Triennial Review Remand Order* In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 2005 WL 289015 (F.C.C., Feb. 4, 2005) (TRO Remand Order). The TRO Remand Order established, *inter alia*, a formula and method for identifying wire centers in which competitive local exchange carriers (CLECs) are deemed to be no longer impaired without access to certain unbundled network elements (UNEs) at Total Element Long Run Incremental Cost or TELRIC prices from an incumbent local exchange carrier (ILEC).

The UNEs at issue include certain high-capacity loops (*e.g.*, DS1 and DS3 loops) and dedicated high-capacity transport facilities. Such UNEs, in certain circumstances, are required to be provisioned pursuant to Section 251 of the Telecommunications Act of 1996, 47 U.S.C. § 251 (Telecom Act) and the TRO Remand Order. In its formula for determining that

impairment no longer exists in a particular wire center, the FCC set out different criteria for high-capacity loops and dedicated transport.

For high-capacity loops, two thresholds establish that impairment no longer exists. Impairment would not exist with regard to DS1 loops to any customer served by a wire center with at least 60,000 business lines and four fiber-based collocators. Impairment would not exist with regard to DS3 loops to any customer served by a wire center with at least 38,000 business lines and four fiber-based collocators.

For dedicated transport, the FCC identified tiers of wire centers, between which competitors are deemed to be not impaired in certain circumstances. A tier 1 wire center is one which has at least 38,000 business lines or at least four fiber-based collocators. A tier 2 wire center is one which has at least 24,000 business lines or at least three fiber-based collocators. CLECs are not considered to be impaired without access to DS1 transport between tier 1 wire centers. CLECs are not considered to be impaired without access to DS3 and dark fiber transport between tier 2, or between tier 2 and tier 1, wire centers. According to the TRO Remand Order, once a wire center is designated “tier 1” or “tier 2”, it cannot be downgraded.

The TRO Remand Order requires CLECs to self-certify, to the best of their knowledge, that their requests for high-capacity loops or transport UNEs are consistent with the requirements of the TRO Remand Order, and that they are therefore entitled to unbundled access to the particular network elements sought pursuant to § 251(c)(3) of the Telecom Act. In those wire centers where CLECs are deemed no longer to be impaired without access to UNEs, the TRO Remand Order directs parties to negotiate applicable changes through their interconnection agreements. In New Hampshire, however, Verizon has a wholesale tariff that sets out the rates,

terms and conditions of services to be provided, and that tariff is available to those CLECs that choose to use the wholesale tariff in lieu of individually negotiated interconnection agreements. Therefore, in this docket, we seek to identify those wire centers for which Verizon's tariff rates apply.

The New Hampshire Public Utilities Commission (Commission) opened this docket pursuant to RSA 365:5, RSA 365:19, and RSA 374:4 to clarify certain issues regarding Verizon's classification of its wire centers, and its obligation as an ILEC to continue to provision certain UNEs in light of the FCC's TRO Remand Order and the Telecom Act.

On April 22, 2005, the Commission issued an Order of Notice scheduling a prehearing conference for May 25, 2005 and noting that the purpose of the investigation is to determine which wire centers in New Hampshire are affected by the TRO Remand Order and what procedure the Commission should adopt for future determinations with respect to affected wire centers. The Commission reserved the option, if UNEs were delisted in a wire center, to determine whether Verizon continued to be obligated to provide those UNEs under Section 271 of the Telecom Act.

Requests for intervention were filed by Conversent Communications, BayRing Communications, DIECA Communications Inc. d/b/a Covad Communications Company, Biddeford Internet Corporation d/b/a Great Works Internet, CTC Communications, Lightship Telecom, segTEL, Inc., and MCI, Inc. On April 26, 2005, the Office of Consumer Advocate (OCA) filed their notice of participation on behalf of residential ratepayers consistent with RSA 363:28. The Prehearing Conference was held on May 25, 2005, at which no objections were made to the requests for intervention. Broadview Networks filed a late request to intervene on June 13, 2005.

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Staff and the Parties met in a technical session following the prehearing conference, and held two further technical sessions on June 15, 2005, and July 13, 2005. Staff filed a report after each session. At the July 13 session the Parties developed a proposed schedule for discovery. On July 15, 2005, Staff submitted the proposal to the Executive Director. The letter recommended the following schedule:

Parties to send proposed discovery request questions to Staff	July 27, 2005
Staff to send out discovery requests	August 22, 2005
Parties to object to questions to which they do not plan to respond	September 2, 2005
Parties to respond to discovery requests	September 20, 2005
Technical Session	October 5, 2005

## II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

### A. Verizon

In accordance with the TRO Remand Order, Verizon filed a public list with the FCC identifying the central offices that it believed satisfied the non-impairment criteria for high-capacity loops and dedicated transport. According to Verizon, that list shows zero wire centers in which CLECs are not impaired without access to DS1 loops, and one wire center, Manchester, in which CLECs are not impaired without access to DS 3 loops. As for transport, Verizon states that four wire centers, Keene, Manchester, Nashua and Portsmouth, qualify for relief from DS1, DS3 and dark fiber transport unbundling because they fall into Tier 1, while one wire center, Dover, meets the criteria for relief from DS3 and dark fiber transport unbundling as a Tier 2 wire center.

Verizon says that it undertook a visual inspection of the relevant central offices to identify those offices that meet the criteria. This inspection was done, Verizon states, in 2003,

and was updated in 2005 to verify that fiber-based collocators were present as Verizon has represented.

Verizon suggested that the Commission need not conduct a proceeding to determine which wire centers meet the FCC's non-impairment criteria, but should leave disputes, if there are any, to a dispute resolution mechanism, which is the procedure the FCC prescribes.

Finally, Verizon disagrees with the Commission's principle that there is potential application of Section 271 of the Telecommunications Act to UNEs that are no longer required to be unbundled.

#### **B. BayRing**

BayRing disagrees with Verizon that there is no need for this proceeding, and believes that the Commission has duly reserved its right in the Order of Notice to determine whether Verizon remains obligated to provision the affected UNEs under Section 271 of the Telecom Act at any New Hampshire wire center by virtue of their status as an RBOC.

#### **C. Conversent**

Conversent states that it is efficient to look at the classification of wire centers now, with the goal of resolving it comprehensively, rather than waiting for piecemeal disputes to rise to the Commission. This is particularly important, Conversent avers, because once a wire center is designated as Tier 1 or Tier 2, that designation cannot be removed. Conversent pointed out several issues that should be considered in this proceeding.

First, according to Conversent, there are several criteria that a fiber based collocator must meet in order to be included in the count, including: 1) the collocation arrangement must include active electrical power; 2) the fiber must be provided by a carrier other

than Verizon; 3) the fiber must terminate at a collocation arrangement owned by a carrier not affiliated with Verizon, and 4) the fiber must leave the wire center. It is not clear, according to Conversent, that a visual inspection is sufficient to ensure that all of these criteria are satisfied.

Next, Conversent asserts that MCI should not be counted as a fiber-based collocator, as a fiber-based collocator must be unaffiliated with the ILEC. Conversent contends that it would be unreasonable to count MCI, perhaps allowing a wire center to gain relief from unbundling requirements, only to have MCI merge with Verizon in the near future. Similarly, says Conversent, affiliates of SBC and AT&T in a wire center should be counted only once, as the FCC rules state that all affiliates should be counted as a single fiber-based collocator.

Finally, Conversent states that the FCC has set forth detailed criteria regarding the business line count, stating that such lines must all be for switched services, not special access, and that, in the case of high-capacity facilities, the facilities must be used for loops, and not for transport or entrance facilities.

#### **D. Great Works Internet**

GWI notes that Verizon has claimed a total of five wire centers as eligible for unbundling exemption in one way or another. Reviewing these wire centers in one proceeding is the most efficient way to determine the facts, according to GWI. GWI also contends that Verizon will continue to be obligated to provide these services pursuant to Section 271.

#### **E. segTEL**

segTEL agrees with BayRing, Conversent and GWI, and adds that small providers can be subject to a substantial amount of harm due to regulatory uncertainty on these issues. The Commission's investigation, says segTEL, will help all parties benefit from more

certainty as to what Verizon is and is not required to provide, and what CLECs are entitled to purchase under Section 251. Further, segTEL noted that it had engaged in a visual inspection of its own in every one of the central offices Verizon has identified, and its assessment was substantially different from Verizon's.

#### **F. CTC/Lightship**

CTC and Lightship agree with the other CLECs in this proceeding, adding that Verizon and SBC have sent out corrections to their lists in other states. Such corrections, according to CTC and Lightship, support the need for disclosure and critical review of the information to assure that wire centers on the list meet the FCC's criteria for non-impairment of competitive providers.

#### **G. ISP Association**

The ISP Association indicates that it is concerned mainly about the §271 issues implicated in this docket.

#### **H. DesTek Group**

DesTek notes that it is keenly aware of the need for the availability of UNEs in New Hampshire, and is participating in this docket to support CLECs in their efforts to maintain a competitive environment.

#### **I. Office of the Consumer Advocate (OCA)**

OCA observes that, while it has no direct interest in the specific issues raised in this docket, it monitors wholesale dockets to attempt to ensure that wholesale markets are working as intended.

**J. Staff**

Staff asserts that the TRO Remand Order made it clear that Verizon remains obligated to provision certain high-capacity loops and transport, including dark fiber, to CLECs, pursuant to Sections 251 and 271 of the Telecom Act. In the wire centers that have been identified for relief from Section 251 unbundling, however, Staff explained, CLECs are required to self-certify as to which UNEs continue to be available to them at Section 251 rates, and which would be assessed a different rate under Section 271. Since the changes in Verizon's rates resulting from the TRO Remand Order will be tariff changes in New Hampshire, Staff believes that to effectively meet the filing and transparency requirements of RSA 378:1 and Puc Rule 402.51, Verizon's tariff must include clear identification of the wire centers whose rates may be affected.

The goals in this investigation, according to Staff, are to review Verizon's methodology for identifying wire centers that meet the threshold requirements set by the TRO Remand Order and to ensure that Verizon's tariff accurately identifies which rates apply in each wire center. Further, Staff hopes to establish procedures that the Commission can adopt for future wire center determinations. Finally, Staff asserts that if the Commission determines that Verizon is no longer obligated to provision certain UNEs in a particular wire center pursuant to Section 251, then a case-by-case analysis needs to be conducted to determine if the elements are required to be unbundled pursuant to Section 271.

**III. COMMISSION ANALYSIS**

We have reviewed the proposed schedule and believe that it is administratively sufficient to accommodate the issues in the docket. We, therefore, approve the schedule as filed.

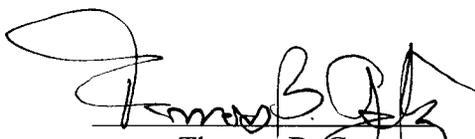
All of the pending intervention requests meet the RSA 541-A:32 requirement of demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the outcome of this proceeding. Accordingly, and in the absence of any objection, the pending intervention petitions are granted.

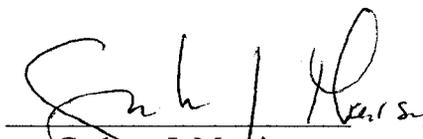
Based upon the foregoing, it is hereby

**ORDERED**, that the Procedural Schedule for the above-captioned docket is APPROVED; and it is

**FURTHER ORDERED**, that the Motions to Intervene of Conversent Communications, BayRing Communications, DIECA Communications Inc. d/b/a Covad Communications Company, Biddeford Internet Corporation d/b/a Great Works Internet, CTC Communications, Lightship Telecom, segTEL, Inc., MCI, Inc., and Broadview Networks are GRANTED.

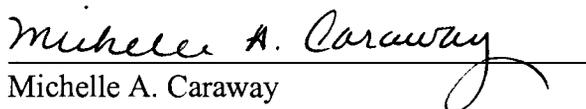
By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 2005.

  
Thomas B. Getz  
Chairman

  
Graham J. Morrison  
Commissioner

  
Michael D. Harrington  
Commissioner

Attested by:

  
Michelle A. Caraway  
Assistant Executive Director & Secretary