

DT 02-171

**NYNEX LONG DISTANCE COMPANY D/B/A
VERIZON ENTERPRISE SOLUTIONS
AND
BELL ATLANTIC COMMUNICATIONS, INC. D/B/A
VERIZON LONG DISTANCE
AND
VERIZON SELECT SERVICES, INC.**

**Applications to Provide Competitive IntraLATA Toll Service in New
Hampshire**

Order Issuing Registration to Provide IntraLATA Toll Service

O R D E R N O. 24,066

October 11, 2002

I. BACKGROUND

On November 30, 2001, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions (Verizon ES) and Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance (Verizon LD) filed with the New Hampshire Public Utilities Commission (Commission) applications for authorization to provide competitive intraLATA toll service. The Commission opened Docket No. DT 01-256 to consider those applications. A pre-hearing conference and technical session in DT 01-256 were held on February 25, 2002. By Order No. 23,946 issued April 18, 2002, the Commission required all parties to DT 01-256 to file comments if they were unable to resolve the docket by April 19, 2002. On April 25, 2002, Verizon ES and Verizon LD filed a letter with the

Commission seeking to withdraw their applications without prejudice for future filing.

On July 16, 2002, Verizon ES and Verizon LD filed new applications for registration to provide competitive intraLATA toll service in New Hampshire, and on September 10, 2002, Verizon Select Services, Inc. (VSSI) also filed its application. Verizon ES, Verizon LD, and VSSI (together, the Affiliates) are affiliates of Verizon New England, Inc. d/b/a Verizon New Hampshire (Verizon-NH), the incumbent local exchange carrier for a large portion of New Hampshire. In turn, the Affiliates and the Verizon-NH operating company are owned, directly or indirectly, by Verizon Communications.

The applications reveal that: VSSI is a long distance affiliate of Verizon-NH and that VSSI's product mix is primarily designed for large business and governmental customers; VSSI also provides prepaid and postpaid long distance calling cards and operator services; Verizon LD targets its marketing efforts to residential customers; and Verizon ES targets its marketing efforts to small and medium business customers.

On October 4, 2002, Staff filed a memo summarizing its investigation and analysis. The memo identified certain issues but recommended the affiliates be allowed to provide toll service under certain conditions.

II. DISCUSSION

As reported by Staff, Verizon-NH provides intraLATA toll service as part of its regulated service offerings. During the consideration of the original filings by Verizon ES and Verizon LD in Docket No. DT 01-256, concerns were raised regarding the necessity of and the impact of Verizon-NH affiliates providing toll in competition with Verizon-NH itself. The Applicants in this renewed filing argue that if certified, they would be unregulated. A review of the new filings reveals that, with the exception of minor edits, the new filings are identical to the original applications, and no further arguments were raised to support this proposal.

According to Staff, Verizon states that separate affiliates are necessary in order to allow Verizon to provide intraLATA toll service to customers of competitive local exchange carriers (CLECs), due to deficiencies in Verizon-NH's legacy billing systems. According to the Affiliates, intrastate revenue for these new entities will be limited to three areas:

(1) calling card revenues; (2) revenues from serving out-of-franchise customers (i.e., CLEC customers) who select Verizon (via these affiliates) as their intrastate toll carrier; and (3) revenue from Verizon-NH franchise customers who require services (such as account code billing for both intrastate and interstate toll) that Verizon-NH cannot provide. In any case,

the Affiliates state that franchise intrastate toll carried by these companies would be *de minimis*.

Staff expressed concern that certifying non-regulated affiliates would result in siphoning regulated revenue into unregulated affiliates. This could ultimately raise local rates. Staff notes that out-of-franchise customers who switch back to Verizon-NH would become franchise customers, yet their intrastate toll revenue might not be moved back into Verizon-NH's revenue requirements calculation. Through such attrition, regulated revenue would gradually be lost.

In light of these concerns, Staff recommended that a method be developed to assess such attrition, and to ensure that there is no significant movement of revenue from the regulated company to the unregulated company. Staff says that Verizon has provided the Commission with revenue information from New York and Massachusetts that supports the *de minimis* nature of in-franchise intrastate toll carried by the affiliates in those states. Finally, Staff raised the issue of consumer confusion which might arise if multiple similarly-named affiliates were allowed to provide similar service.

III. COMMISSION ANALYSIS

The present filings raise issues similar to those raised by the earlier Verizon ES and Verizon LD filings. These questions include whether it is in the public good for an ILEC to

have affiliates registered as CTPs in New Hampshire and whether such affiliates would compete with the ILEC in a manner or with results that would not be in the public good. The filings further raise, inter alia, questions regarding the allocation of costs attributed to and revenues received from the operations of these affiliated CTPs. In addition, the Commission recognizes the importance of analyzing the impact of ILEC-CTP affiliates upon the competitive marketplace in New Hampshire.

In Order No. 22,473, (January 6, 1997) the Commission first addressed the regulatory approach suitable for intraLATA toll providers in an increasingly competitive market. The Commission determined to allow competitors to provide such services upon simple registration, and not to require an exhaustive certification process. We memorialized this approach in our rules, N.H. Code of Admin. Rule Puc Chapter 411. Under our rules, competitive toll providers are distinguished from incumbent local exchange carriers (ILECs). ILECs need not register, but must file tariffs if they intend to provide intraLATA toll service. (N.H. Code of Admin. Rule Puc Chapter 411.02 (d)(2) b and 411.02 (j)). We did not decide in that docket, nor provide for in our rules, the proper treatment of applications by affiliates of ILECs.

There is an important distinction between allowing an ILEC to provide a jurisdictional service through an affiliate,

and detariffing and deregulating a jurisdictional service, thus putting the net revenues of such a venture below the line. We see no reason under our statutes, previous orders, or rules, why we may not allow Verizon to conduct part of its intraLATA toll service using the vehicle of an affiliate. And given the continued competitiveness of the intraLATA toll market in New Hampshire, we see no need at this time to increase the level of regulatory oversight of Verizon's intraLATA toll activities from that level afforded to other competitive toll providers.

At the same time, permitting such an arrangement does not by itself dispose of the question of how revenues shall be treated. While the Applicants provided evidence suggesting their share of the intraLATA toll market will be *de minimis*, it may be that Verizon's strategic plans will evolve in the future, raising questions about the potential impact of competition by a Verizon affiliate against the intraLATA toll offerings of the incumbent local exchange carrier. This is particularly the case where the move of some intraLATA toll business from Verizon-NH to the Affiliates may be intended to trigger application of a different cost basis for access to the Verizon-NH underlying network. Further, given the pervasive branding by Verizon of services provided by its many subsidiaries, there may be customer confusion about the ultimate identity of the service provider.

The Affiliates, as entities who will be "owning, operating or managing ... plant or equipment ... for the conveyance of telephone... messages for the public", RSA 362:2, propose to provide a public utility service and are public utilities. See, *Re Atlantic Connections Ltd.*, 76 NHPUC 91 (1991), affirmed on appeal, *Appeal of Atlantic Connections Ltd.*, 135 N.H. 510 (1992). Their transactions with Verizon-NH are also under our jurisdiction pursuant to RSA 366:5. Together, these statutory provisions allow the Commission sufficient authority to prevent any of the adverse consequences that might otherwise occur by permitting the Affiliates to undertake intraLATA toll services in the area served by Verizon-NH. Specifically, the public good may be preserved if the proper level of costs and revenues are allocated to the Affiliates from Verizon-NH, and imputed to Verizon-NH from the Affiliates.

Accordingly, we will issue registrations for each Affiliate. The Commission retains the authority to allocate costs between Verizon-NH and each Affiliate, to impute jurisdictional net revenues from the Affiliates to Verizon-NH, and to impose such remedies as necessary should the provision of intraLATA service by the Affiliates have an adverse impact on the provision of service by Verizon-NH.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance and Verizon Select Services, Inc. are registered as competitive intraLATA toll providers; and it is

FURTHER ORDERED, that NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance and of Verizon Select Services, Inc. shall submit annual reports of the numbers of customers of the Affiliates, showing the total number of in-franchise customers, and the total number of in-franchise customers with an intraLATA PIC to the Affiliates, as well as the total intraLATA minutes of use and revenue.

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary