

DT 00-071 & DT 00-185

**VERIZON NEW HAMPSHIRE AND VERIZON ADVANCED DATA SERVICES,  
INC.**

**CLEC Petition and Asset Transfer**

**Order Granting Provisional Approval and Scheduling Hearing**

**O R D E R    N O.    23,570**

**October 24, 2000**

**I. PROCEDURAL HISTORY AND COMPANY PROPOSALS**

On March 30, 2000, Bell Atlantic Network Data, Inc. (now Verizon Advanced Data, Inc. or VAD), filed with the New Hampshire Public Utilities Commission (Commission) an application for a Certificate of Convenience and Necessity to provide Local Exchange Telecommunications Services. VAD is a separate subsidiary of Verizon Communications, Inc., created to provide advanced data communications and other services. The application alleges that VAD has the managerial, technical and financial ability to provide certain telecommunications services in the State of New Hampshire. The application also contends that the granting of the authority will enhance competition because VAD, as a separate data affiliate of Verizon, will use the same processes as competitors and pay an equivalent price for facilities and services.

On September 6, 2000, Verizon-New Hampshire filed a petition to transfer its advanced services operations to a

structurally separate affiliate. In that petition, Verizon states that as a result of the merger with GTE<sup>1</sup>, the FCC required that Verizon provide advanced services through a structurally separate entity. Verizon contends that the requested transfer of assets is in the public interest, that there is "no conceivable harm to ratepayers, consumers or competitors" and that there are benefits to having an affiliate providing advanced services.

**A. DT 00-071**

In the March 30, 2000 application, VAD specifically indicated that it would offer broadband packet data services such as ATM and Frame Relay, and asked for a waiver of Puc Rule 1306.1 as it did not "have immediate plans to offer basic local dial tone services, including associated features and functions such as access to toll, dialing parity, 911, directory assistance, TRS, white page listing...", etc. The application did, however, note, that the Applicant would file an appropriate tariff revision and comply with all requirements before offering basic local service in New Hampshire. (Application, p. 7). VAD also requested a waiver of the Commission's Rule, Puc 1304.02(b) which requires an

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<sup>1</sup>Bell Atlantic merged with GTE and commenced business under the name Verizon on June 30, 2000.

Applicant to post a bond to cover customer deposits and advance billing refunds.

VAD was incorporated in the State of Delaware on February 9, 1998 as a wholly owned subsidiary of Bell Atlantic (now Verizon) corporation. On September 8, 2000, VAD filed its documentation of the corporate name change with this Commission and asked that the application be approved in the new name. VAD also submitted its Amended Certificate of Authority issued by the New Hampshire Department of State.

**B. DT 00-185**

The September 6<sup>th</sup> filing of Verizon New England Inc. d/b/a Verizon New Hampshire asks for authority under RSA 374:28 and RSA 374:30 to transfer the embedded assets used to provide advanced services, including the existing advanced services customer base, to VAD. The petition asked that the Commission approve the transaction no later than November 1, 2000.

On October 5, 2000 the Commission received an amendment to the petition indicating that the value of transferred amounts had changed. The original asset purchase agreement at paragraph 1.3 provided that the purchaser, VAD, would pay or cause to be paid to the Seller, Verizon New England

\$4,540,817.27, representing the net book value or the fair market value of the Assets as calculated by the independent firm of Mitchell & Titus, or such amount as Purchaser shall be required to pay pursuant to any valid and final order of a state or federal government or agency that has jurisdiction over this Agreement ("Purchase Price").

The amendment to paragraph 1.3 in pertinent part provides that VAD shall pay or cause to be paid or remitted to Verizon New England "shares of common stock of its parent company with a value equal to the higher of (i) \$4,540,817.27, representing the net value of the Assets, or (ii) the fair market value of the Assets as calculated by the independent firm of Mitchell & Titus."

The original petition at page 5, paragraph 6, provides a description of the asset transfer as it relates to Verizon New Hampshire. It provides that VAD will receive all plant and equipment which Verizon New Hampshire has currently dedicated to the provision of intrastate advanced services. The assets include central office assets, plug-ins and terminating equipment located in Verizon New Hampshire's central offices and, according to the petition, have an approximate net book value of \$2,941,283.15.

The petition also alleges that VAD and Verizon New Hampshire have entered into a "Master Services Agreement," or

an interconnection agreement. This interconnection agreement was docketed by the Commission as DT 00-144 and allowed to go into effect by operation of law. (Secretarial letter dated October 4, 2000.); *see also*, 47 USC 252 (e)(3).

The petition states that Verizon New Hampshire provides advanced services under special contract to several customers in this state and that Verizon NH intends to assign those contracts to VAD so that the pricing of those advanced services can continue undisturbed.

Finally, the petition alleges that the asset purchase agreement fully complies with the FCC's rules and regulations, that it has been executed by the parties acting at "arm's-length" and that the transfer protects the public interest.

## **II. COMMISSION ANALYSIS**

We have reviewed the material in the filings and are initially concerned with a number of issues in both the petition for CLEC approval and for the asset transfer. First, the removal of advanced services from the business of the regulated utility raises questions concerning the extent of contribution advanced services have and would be expected to contribute to joint and common costs. Similarly, the

potential migration of voice services to VAD from the regulated utility raises questions as to the future erosion of contributions to the joint and common costs of the public switched telephone network. VAD asks for our approval to be certified in this state as a Competitive Local Exchange Carrier and asks for a waiver of our rules requiring it to provide basic local service. It goes on to claim, however, that at some time in the future it will also ask to provide this service. When VAD is ready to provide this service, whether that is 3 or 13 months from now, we question what impact that will have on Verizon New Hampshire and whether the separate affiliate will syphon off more and more services, leaving fewer customers in Verizon New Hampshire to pay the joint and common costs of the regulated company.

We also have questions related to the asset transfer. For example, we cannot confirm based solely on the filing that VAD is appropriately compensating Verizon New Hampshire for the assets. This is especially true in light of the new language in the Purchase Agreement that essentially makes the deal a stock transfer, allowing VAD to remit to Verizon New Hampshire common shares of the parent at the higher of net book or market value, and leaving the determination of market value to a firm hired by Verizon.

According to Verizon, the assets to be transferred have an intrastate estimated book value of \$3,620,747.32 and a net book value of \$2,941,283.15 and an interstate value of almost \$5.4 million book and \$4.5 million net value. We recognize that in some states there have been arguments that it is appropriate to value the total plant, including plant which the company has characterized as exclusively interstate in nature, in order to ensure that the total assets remaining are appropriate. We believe it is necessary to further evaluate the proposed accounting for this as well. Further, there is no evidence in the filing that there has been compensation for intangibles that are being transferred, such as the development of advanced system resources, marketing, creating and establishing testing systems, goodwill, name recognition, and so forth, all of which have been supported by Verizon New Hampshire's regulated business operations.

We not only have concerns over the business valuation but with the affiliate relationship that will exist between Verizon New Hampshire and VAD. We recognize that the FCC has put safeguards in place that are intended to minimize the incumbent's ability to discriminate. Nevertheless, we remain skeptical about the competitive advantage that may accrue to the affiliate as a result of its unique relationship

with the incumbent local service provider. Our laws require the filing of contracts entered into between a public utility and an affiliate. See RSA 366:3. In this case, we have seen the interconnection agreement but we have not been provided any affiliate agreements. In addition to reviewing the affiliate agreements, we must also ascertain that codes of conduct are in place between the two entities. We recognize that the FCC has allowed the employees of the separate affiliate to be housed in the same buildings and floors as the employees of the incumbent. However, it did not support that all transactions be shared between the two groups. See *Merger Conditions*, para 3g and fn 17; Attached to FCC Order 00-221, dated June 16, 2000. The filing contains no provisions as to how the two entities will interact. Further, the FCC conditions may not be sufficient to alleviate all concerns regarding anti-competitive behavior or cross-subsidization.

Likewise, there is nothing in the filing that suggests how Verizon New Hampshire will be in a position to resolve the congestion issues that arise in DT 99-020 when it does not control the advanced services that it would have used to remedy the problems with the quality of communications on the public switched network.



These are just some of the concerns we discern without the benefit of a hearing. With a hearing these concerns may be allayed. Verizon represents that if it cannot proceed soon with the asset and business transfer, it will be required under the FCC's merger conditions to cease providing advanced services in New Hampshire for a period of years. Absent a clear indication that such an outcome is preferable to proceeding with the transfer, subject to the possibility of later conditions to prevent identified harms to the public good, at this time we will provisionally approve the petitions subject to a hearing at which time we may attach conditions related to both the CLEC authority and the asset transfer. See RSA 365:28. We also take this action, in part, as it is our understanding that Verizon has designated the New England states as first in its footprint for establishing and making operational its Advanced Services affiliate.<sup>2</sup> Moreover, the FCC has required that Verizon complete its tasks relative to the advanced services by December 27, 2000 (180 days from the merger closing date).

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<sup>2</sup>In the Bell Atlantic/GTE merger order, FCC 00-221, dated June 16, 2000, paragraph 260 provides for a phased-in basis on the creation of the separate affiliate for Advanced Services.

We point the petitioners to RSA 378:17-b which allows us to obtain information on the costs and other adverse consequences of requiring the separation or divestiture as described herein. We note that the filings do not include this information and it is required before we can deliberate on what conditions, if any, are necessary to fully implement our approval.

Verizon New Hampshire is also required to open their books to our auditors in the next 15 days in order for our Staff to analyze whether the valuation as proposed is appropriate. **Based upon the foregoing, it is hereby**

**ORDERED,** Verizon Advanced Data Services, Inc. is authorized to provide Advanced Services as a Competitive Local Exchange Carrier, subject to conditions that may be imposed after a hearing as described herein; and it is

**FURTHER ORDERED,** that the waiver of providing local service is granted, but the request for bond waiver is denied; and it is

**FURTHER ORDERED,** that the asset transfer from Verizon New Hampshire to VAD is provisionally approved subject to further hearing at which time conditions may be placed on the petitioners; and it is

**FURTHER ORDERED**, that a hearing will be held on the petitions at 10:00 a.m. on November 17, 2000; and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.01, Verizon shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order no later than October 31, 2000, in a newspaper with statewide circulation or of general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before November 17, 2000; and it is

**FURTHER ORDERED**, that any interested person must submit to our Executive Director, a request for intervention and a brief or comment regarding its position relative to the filings no later than November 14, 2000.

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By order of the Public Utilities Commission of New  
Hampshire this twenty-fourth day of October, 2000.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Claire D. DiCicco  
Assistant Secretary