DT 03-216

VERIZON NEW HAMPSHIRE

Investigation of Problems Concerning Transition from UNE-Provisioned DS-1 Switching to Alternate Arrangements

Prehearing Conference Order

O R D E R N O. 24,259

December 31, 2003

APPEARANCES: Victor D. Del Vecchio, Esq. for Verizon New Hampshire, Robert Munnelly, Esq. for DSCI Corp. and InfoHighway, F. Anne Ross for the Office of Consumer Advocate and Kathryn M. Bailey for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On November 14, 2003, the New Hampshire Public Utilities Commission (Commission) initiated this docket, pursuant to its Order No. 24,237 in Docket No. DT 03-174, to investigate the transition problems identified in that docket by DSCI Corporation and InfoHighway Communications Corporation (collectively, DSCI/InfoHighway). The problems to be resolved concern the transition of existing customers of competitive local exchange carriers (CLECs) from Digital Signaling Level 1, or DS-1 service using unbundled network elements platforms (UNE-P), purchased from Verizon New Hampshire (Verizon) at UNE rates, to alternate arrangements. The goal, according to the Order of Notice would be to transfer the customers without interruption. Such transition is necessitated by the Federal Communications Commission's Triennial Review Order (TRO).

The Order of Notice made Verizon a mandatory party to this docket. On November 18, 2003, the Office of Consumer Advocate (OCA) filed its intent to participate in this docket on behalf of residential utility consumers pursuant to RSA 363:28, II. On November 26, 2003, Great Works Internet d/b/a Biddeford Internet Corporation (Biddeford Internet) and WorldCom, Inc. (MCI) filed Motions to Intervene. On December 1, 2003, DSCI/InfoHighway filed a Joint Petition to Intervene.

The Order of Notice established a Prehearing Conference, which was held at the Commission on December 5, 2003. At the Prehearing Conference, the Commission granted intervenor status to DSCI/InfoHighway, Biddeford Internet, and MCI. Immediately subsequent to the Prehearing Conference, all parties and Staff met for technical discussions at which a procedural schedule was agreed upon. The Commission requested a Staff report on the outcome of the technical discussions.

On December 15, 2003, DSCI/InfoHighway filed a letter further clarifying their position and indicated they will address in more detail in testimony. On December 19, 2003, Verizon responded to DSCI/InfoHighway's letter. On December 29, 2003, Staff filed its report of the December 5, 2003 technical discussions.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. DSCI/InfoHighway

DSCI/InfoHighway claim that their existing customers are "marooned" on the Verizon network as a result of the combination of certain provisions of the TRO and certain action or lack of action by Verizon. According to DSCI/InfoHighway, the TRO requires CLEC customers to transition from Verizon's switching to CLEC or self-provided switching within 90 days. At the same time, DSCI/InfoHighway aver, Verizon has not established a process for live transitioning, known as "hot cuts", of DS-1 UNE-P customers to CLEC-provided switching, despite requests for an operational trial.

DSCI/InfoHighway also argue that Verizon is obligated to continue to provide DS-1 switching as part of its Section 271 obligations. Therefore, they argue, Verizon's failure to provide transitioning will place Verizon in violation of Section 271 as soon as it ceases to provide service via UNEs and UNE-P.

B. Verizon

Verizon argues that the TRO does not require it to provide enterprise switching past March 30, 2004. To transition customers currently receiving service via UNE-P, which Verizon claims are few in number, Verizon suggests that CLECs follow an over-build scenario in order to minimize downtime. Transition via overbuild is a five-step process involving 1) ordering and installing a new 1.544 MBps connection, known as a T1, 2) connecting the new T1 to the customer premise equipment, 3) performing translations in the customer premise equipment to complete outgoing calls, 4) completing carrier translations to route incoming calls to the new T1, and 5) disconnecting the original T1.

According to Verizon, hot cuts are not needed for migration of these customers to alternative arrangements. In support, Verizon cites the FCC's conclusion, in Section 451 of the TRO, that the conversion process "obviates the need for hot cuts at the ILEC's central office." Verizon avers that, rather than focusing on hot cuts, CLECs should begin collocation in the central office in order to make the conversion possible.

Reiterating its position expressed in Docket No. DT 03-174, Verizon argued that only the FCC has jurisdiction to review the reasonableness of prices for elements that must be unbundled solely by virtue of Section 271. Furthermore, Verizon's opinion is that it need not set rates for Section 271 elements unless so requested by a CLEC. Similarly, Verizon argues that only the FCC has jurisdiction to enforce compliance with the market opening requirements of Section 271.

C. Biddeford Internet

Biddeford Internet's position is that Verizon should meet its Section 271 obligation or, if Verizon is not going to provide the services, that Verizon should enable a smooth transition to alternate services.

D. MCI

MCI intervened for the limited purpose of understanding the solutions reached to enable a smooth transition of CLEC customers from Verizon-provided switching at DS-1 speed or higher to alternate arrangements.

E. Office of Consumer Advocate

During the Prehearing Conference, the OCA took no position regarding the transition process.

F. Staff

Staff argued that Verizon has an obligation under Section 271 to provide DS-1 switching, even if this type of switching is no longer a required UNE pursuant to Section 451. Therefore, Staff reasoned, Verizon must have approved rates in place for Section 271 elements before it ceases providing those elements at the rates approved for Section 251 elements. Otherwise, Staff argued, the CLECs will surely lose their existing customers back to Verizon, a result that is incompatible with the goals of the Telecommunications Act of 1996.

III. PROCEDURAL SCHEDULE

Following the Prehearing Conference, the parties and Staff met in a Technical Session and agreed upon a procedural schedule, under which Verizon and DSCI/InfoHighway will attempt to resolve the issues through negotiation in the month of December. Failing resolution, the following procedural schedule, as reported by Staff on December 29, 2003, will commence.

Testimony from all parties and Staff	January 9, 2004
Data Requests	January 16, 2004
Data Responses	January 26, 2004
Reply Testimony	February 5, 2004
Data Requests	February 12, 2004
Data Responses	February 19, 2004
Hearing	March 4 & 5, 2004

IV. COMMISSION ANALYSIS

We have reviewed the Procedural Schedule as proposed herein and we find that it is reasonable.

In addition, we opened this docket, at least in part, to ensure New Hampshire CLEC customers' uninterrupted service. We also seek to enable New Hampshire CLECs and their customers to plan for the future and make informed choices. Consequently, we are concerned that by waiting until the procedural schedule has run, it will be too late for customers to make decisions about their service, given the March 31, 2004 FCC deadline. We therefore will require Verizon to notify the Commission by January 9, 2004, of its plans regarding offering stand-alone DS-1 switching including the date on which it intends to make rates publicly available.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as proposed herein is reasonable and is hereby adopted; and it is

FURTHER ORDERED, that Verizon shall include in its testimony on January 9, 2004 its plans regarding DS-1 switching, including the date on which it will file stand-alone DS-1 switching rates.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 2003.

Thomas B. Getz Chairman	Susan S. Geiger Commissioner	Graham J. Morrison Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director