

DT 03-201

VERIZON NEW HAMPSHIRE

Proposed Revisions to the SGAT

Order on Motion for
Relief from Order of Notice

O R D E R N O. 24,268

January 30, 2004

I. PROCEDURAL HISTORY AND POSITIONS OF PARTIES

Verizon New Hampshire (Verizon) filed a petition with the New Hampshire Public Utilities Commission (Commission) on October 17, 2003, for approval of proposed revisions to Verizon's Statement of Generally Available Terms (SGAT). The Commission issued an Order of Notice on October 31, 2003 scheduling a Prehearing Conference on December 2, 2003. As stated in the Order of Notice, Verizon's filing raises the issue of whether the Federal Communications Commission's (FCC's) *Triennial Review Order (TRO)*¹ allows the proposed revisions to the SGAT and whether the proposed revisions are just and reasonable and in the public interest under RSA 378:7.

In response to the Order of Notice, the Office of the Consumer Advocate notified the Commission of its intent to participate in the docket on behalf of residential ratepayers. In addition, the following parties requested intervenor status:

¹ *Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-036 (rel. August 21, 2003).

SegTEL, Inc. (SegTEL), Great Works Internet d/b/a Biddeford Internet Corporation (BIC), Conversent Communications of New Hampshire, WorldCom, Inc. (MCI), Otel Telkom, Inc., the New Hampshire Internet Service Providers Association (NHISPA), and Freedom Ring Communications, LLC (BayRing).

At the duly noticed Prehearing Conference, the Commission granted the requested intervenor status to these parties. At the technical discussions held after the Prehearing Conference the parties and Staff agreed upon a proposed procedural schedule consisting of briefs and reply briefs, with further process to be discussed and proposed to the Commission thereafter. On December 5, 2003 and December 11, 2003, respectively, Revolution Networks (RevNets) and Covad Communications (Covad) filed for late intervention.

The Commission approved the proposed schedule by executive letter dated December 19, 2003. The dates established for briefs and reply briefs were December 23, 2003 and January 16, 2004, respectively.

The Order of Notice mandated that the "current terms and conditions" contained in the SGAT would remain in effect and directed Verizon to refrain from implementing its proposed revisions to the SGAT until the Commission orders otherwise or this docket is complete. On December 12, 2003, Verizon filed a

motion for relief from the Order of Notice, to which BayRing, SegTEL, RevNets, and the NHISPA timely objected.

Verizon asks the Commission to permit it to implement the proposed revisions by recognizing the "current terms and conditions" contained in the SGAT. According to Verizon, section 3.3.2 of the SGAT authorizes Verizon to cease providing to existing customers, with 30 days written notice, and to cease offering to new customers, any unbundled network element (UNE) that the FCC finds should be removed from the national list of UNEs required to be unbundled by incumbent local exchange carriers. Verizon argues that the *TRO* contains exactly that finding by the FCC for three "de-listed" UNEs, 1) certain interoffice transport facilities, 2) certain dark fiber, and 3) line sharing. According to Verizon, the proposed revisions merely codify the *TRO*'s findings. Therefore, Verizon argues, it should be allowed to cease providing those de-listed UNEs immediately.

Verizon indicates in its SGAT filing that the de-listed interoffice transport facilities consist of OC3, OC12 or STS1 interoffice transmission facilities between Verizon end offices and Verizon tandems or end offices, between Verizon end offices and CLEC switches, between Verizon central offices, or between Verizon and CLEC central offices. Verizon indicates that the de-listed dark fiber consists of 1) dark fiber channel terminations

between a CLEC collocation and the CLEC's central office or point of presence, and 2) dark fiber feeder subloop between a CLEC collocation and an outside plant remote terminal location.

In the alternative, Verizon asks permission during the pendency of the proceeding to refuse to provide any new orders for the first and second UNEs, interoffice facilities and dark fiber, and to provide new orders for the third UNE, line-sharing, pursuant to the three-year phase-out outlined in 47 CFR § 51.319(a)(1)(i)(A). BayRing objects to Verizon's motion, claiming that Verizon is attempting to short-circuit the Commission's investigation. According to BayRing, amendments to the SGAT are within the Commission's jurisdiction. BayRing urges the Commission to persist in its examination of the revisions to ascertain that they comport with the *TRO*.

RevNets filed an objection to Verizon's motion that mirrors that of BayRing. BIC filed a letter concurring with the BayRing objection. The NHISPA objects to Verizon's motion, arguing that the briefs filed according to the approved procedural schedule should be reviewed to determine the question of interpretation of the *TRO*. The NHISPA also believes that the process set in motion by the Commission's Order of Notice should be followed to its conclusion. Further, NHISPA argues that the *TRO* will not withstand appellate scrutiny and therefore allowing implementation of the proposed revisions will create unnecessary

confusion among customers and unfair competitive disadvantages to CLECs.

SegTEL's objection to Verizon's primary motion echoes that of BayRing, asserting that the motion simply reiterates Verizon's original filing to implement the proposed revisions without Commission review. SegTEL also objects to Verizon's request for alternative relief, arguing that Verizon should not be permitted to reject new orders for the relevant UNEs during the pendency of this proceeding. According to SegTEL, by informing new customers that continued service will be subject to the outcome of this docket, Verizon can ensure that new customers, rather than Verizon, will assume the risk that they may not continue to receive service or that service may be repriced. Therefore, SegTEL avers that the relief sought is unnecessary and should be denied.

II. COMMISSION ANALYSIS

By the language of our Order of Notice, we intended that no current customer would be disconnected from the relevant services until the questions of fact raised by the filing were resolved. That remains our intent. The words "current terms and conditions," used in the Order of Notice, referred to the terms and conditions of providing the UNEs that are the subject of this proceeding. In response to Verizon's motion, we will review the requirement in light of Section 3.3.2 of the SGAT, i.e., whether

the language of section 3.3.2 in the SGAT compels the Commission to allow the proposed revisions to go into effect before examining them to determine, in light of differing interpretations of the *TRO* as presented by the parties, the particular de-listed UNE and the specific manner of cessation.

Section 3.3.2, reads:

Notwithstanding [sic] anything herein to the contrary, if, as a result of any decision, order or determination of any judicial, regulatory or other governmental authority with jurisdiction over the subject matter hereof, it is determined that [Verizon] is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to the [CLECs] hereunder, then [Verizon] may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing thirty (30) days prior written notice to the [CLECs].

On its face, the language of section 3.3.2 permits Verizon to do exactly what it has begun by providing written notice to the affected parties of its intent to cease provisioning the three categories of UNEs that it interprets the *TRO* to de-list. However, four parties in this docket have formally disputed Verizon's motion, challenging Verizon's interpretation of the *TRO*.

Because the requested relief in Verizon's Motion goes to the very issue at stake in this proceeding, we will deny the request, without prejudice, pending the final ruling at the

conclusion of the proceeding. Verizon's alternate request for relief is to continue to provide the de-listed UNEs to existing customers but to cease offering new customers the interoffice facilities UNE and dark fiber UNE on an unbundled basis, and to offer line sharing to new customers pursuant to the details of FCC rule 51.319(a)(1)(i)(A).

We will grant Verizon's alternate request, for the time being, as to the interoffice facilities UNE and dark fiber UNE, as it appears to comport with the FCC ruling and does not harm existing customers while not prejudicing the outcome of this case. We find this is a reasonable response to Verizon's concern that new customers not be allowed the UNE rates during the pendency of this case if they ultimately may be taken off those rates.

We will not grant all the relief requested by Verizon as to line sharing. The proposed SGAT language, section 5.14.1.6(A), does not exceed the FCC's directive but, on its face, contradicts the Commission's expectation of the SGAT. The FCC does not require transitional line sharing to occur by separate agreement rather than by SGAT. We find that requiring CLECs to obtain line sharing arrangements by a separate agreement is contrary to the policy we recognized in the set of conditions established in Docket No. DT 01-151 as necessary for Verizon to proceed with its §271 application to the FCC. By letter dated

June 5, 2002, Verizon agreed to those conditions, including the conversion of the SGAT to a tariff, making interconnection, UNE, and resale provisions available to all CLECs without the need to enter a specific agreement. Line sharing is still a UNE, available in the manner prescribed in FCC rule 51.319(a)(1)(i)(A) for the next three years, and should be available from the SGAT.

Implementation of Verizon's proposed language would require CLECs to expend resources to review individual transition agreements. Therefore, we will not permit Verizon's proposed revision to the SGAT, section 5.14.1.6 A, to go into effect during the pendency of this proceeding. Verizon shall accept new orders for line sharing pursuant to 51.319(a)(1)(i) during the pendency of this proceeding without requiring a separate agreement outside the SGAT. We need not determine the effect of the FCC's grandfathering treatment of line sharing in this order. We will require Verizon to file SGAT pages that track the transition provisions of the TRO for line sharing within six business days of this order, for effect as of October 2, 2003.

Based upon the foregoing, it is hereby

ORDERED, that the late filed intervention requests of Revolution Networks and Covad Communications are granted; and it is

FURTHER ORDERED, that Verizon's Motion for Relief is granted in the alternative as outlined herein for interoffice

facilities; and it is

FURTHER ORDERED, that Verizon's Motion for Relief is granted in the alternative as outlined herein for certain dark fiber; and it is

FURTHER ORDERED, that within six business days of the date this order issues, Verizon shall file revised SGAT pages to reflect the line sharing transition requirements of the *TRO* as discussed herein; and it is

FURTHER ORDERED, that the determinations regarding the de-listed UNES and line sharing contained herein are in effect during the pendency of this proceeding but are subject to change in the Commission's final order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director