

DT 03-216

VERIZON NEW HAMPSHIRE

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

Order Addressing Transition Issues

O R D E R    N O.    24,302

April 2, 2004

**APPEARANCES:** Victor D. Del Vecchio, Esq. for Verizon New Hampshire; Murtha Cullina, LLP by Robert Munnelly, Esq. for DSCI Corp. and InfoHighway Communications Corp.; Susan Weiss Alexant, Esq. from the Office of Consumer Advocate, on behalf of New Hampshire Ratepayers; and E. Barclay Jackson, Esq. 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 with an Order of Notice, pursuant to its Order No. 24,237 in Docket No. DT 03-174, to investigate the transition issues asserted in that docket by DSCI Corporation and InfoHighway Communications Corporation (collectively, DSCI/InfoHighway). The issued raised concern the seamless transition to alternative arrangements of existing customers of competitive local exchange carriers (CLECs) currently being served using Unbundled Network Element - Platform (UNE-P) Enterprise Switching purchased from Verizon New Hampshire

(Verizon) at UNE rates.<sup>1</sup> The transition away from UNE-P Enterprise Switching is necessitated by the Federal Communications Commission (FCC) of the 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 2, 2003, DSCI/InfoHighway filed a Joint Petition to Intervene.

The Order of Notice established a Prehearing Conference, which was held 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, the Parties and Staff met for technical discussions and development of a procedural schedule. 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 would provide more detail in testimony. On December 19, 2003, Verizon responded

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<sup>1</sup>UNE-P Enterprise Switching consists of two unbundled network elements: DS1 (Digital Signaling Level 1) loops (also known as T1 loops) and unbundled local switching. In this order the terms DS1 and T1 are used interchangeably.

to DSCI/InfoHighway's letter. On December 29, 2003, Staff filed its report of the December 5, 2003 technical discussions.

On December 31, 2003, the Commission issued Order No. 24,259 approving the procedural schedule recommended by the Parties, and requiring Verizon to include in testimony its plans regarding DS-1 switching, including the date on which Verizon would file stand alone DS-1 switching rates. In January 2004, the Commission approved two requests filed jointly by Verizon and DSCI/ InfoHighway to revise the procedural schedule.

During February 2004, the Parties filed testimony and reply testimony and participated with Staff in discovery. On February 24, 2004, DSCI/InfoHighway filed a motion to compel Verizon responses to its discovery requests, to which Verizon objected on March 4, 2004. A hearing in this docket was held at the Commission on March 11, 2004.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. DSCI/InfoHighway**

DSCI/InfoHighway claim that, absent Commission intervention, their existing UNE-P Enterprise Switching customers will face serious disruptions in service 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 UNE-P

Enterprise Switching to alternative switching options on or about March 31, 2004. These alternative switching options include CLEC-provisioned switching, self-provisioned switching, or Verizon-provisioned switching under different terms and conditions than UNE-P Enterprise Switching. The carriers claim that the first two options currently require the installation of expensive, redundant, problem-intensive new circuits.

DSCI/InfoHighway aver that Verizon could, but has chosen not to, establish a process for live transitioning, known as a "hot cut" process, of UNE-P Enterprise Switching customers to CLEC-provided switching, despite requests for an operational trial. According to DSCI/InfoHighway, a hot cut transition process would allow the coordinated transition of a customer from one switching provider to another, while re-using the T1 loop that connects the end-user customer to the Verizon central office. The carriers claim that a trial could show that a hot cut transition would be more reliable and less prone to failure. DSCI and InfoHighway cite a failure rate of 30% using Verizon's method of transitioning T1 services. DSCI/InfoHighway assert that there is widespread interest among carriers for a T1 hot cut process.

DSCI/InfoHighway also argue that Verizon is obligated to continue to provide local switching as part of its Section 271c(2)(B)(iv) Local Switching obligations (Section 271 Switching) under the Telecommunications Act of 1996 (TAct), but that Verizon

has failed to provide rates, terms and conditions for such switching, despite repeated requests and subsequent agreements to provide this information. Therefore, they argue, Verizon's lack of Section 271 Switching rates will place Verizon in violation of Section 271 as soon as it ceases to provide UNE-P Enterprise Switching.

DSCI/InfoHighway's Motion to Compel moved that Verizon be compelled to respond to four information requests: DSCI/IH 1-6, 1-7, 1-14, and 1-15. The requests propounded by DSCI/InfoHighway seek: 1) the methodology for determining whether Section 271 Switching rates are just and reasonable; 2) the terms and conditions that Verizon intends to apply to Section 271 Switching; 3) copies of customer-specific pricing agreements for DS-1 services; and 4) copies of Facilities-Price Option agreements for DS1 services. DSCI/InfoHighway argue that the information will allow them to develop a post-Section 251 business plan, and that it is necessary for them to evaluate Verizon's rates.

At hearing, DSCI/InfoHighway made four additional requests of the Commission:

- 1) Order Verizon to cooperate on a time-limited feasibility study of DS1 hot cuts, open to any facilities-based carrier that has expressed an interest;

2) Set a 90-day deadline for results of the study to be filed, and conduct a prompt hearing on the study if the parties are not in agreement as to whether a hot-cut process is feasible;

3) Order Verizon to maintain current rates for UNE-P Enterprise Switching during the 90-day feasibility study period, and for 60 days thereafter; and

4) If necessary, once Verizon has filed its Section 271 rates, open a hearing to consider whether the rates, terms and conditions arising out of this docket are just and reasonable.

#### **B. Verizon**

Verizon argues that the TRO does not require it to provide UNE-P Enterprise Switching past March 30, 2004. To transition customers currently receiving service via UNE-P Enterprise Switching, which Verizon claims are few in number, Verizon suggests that CLECs follow an overbuild scenario in order to minimize downtime. Verizon's recommended transition via overbuild is a five-step process involving 1) ordering and installing a new T1 connection from the Verizon central office to the end user's premises, 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 cut transitions are not needed for migration of these customers to alternative arrangements. In support, Verizon cites the FCC's conclusion, in Paragraph 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 the process of collocating in the central office or, alternatively, ordering overbuild facilities to connect to another CLEC's switching, in order to make the conversion possible. Verizon claims that DSCI/InfoHighway's asserted rate of failure is not supported by Verizon's experiences with T1 conversions. In addressing DSCI/InfoHighway's concerns, at hearing Verizon's witness offered to assign a project manager to coordinate the number portability issues for those transitions out of the UNE-P environment. Verizon also disputed the level of interest in a hot-cut trial, pointing out that the carriers DSCI/InfoHighway says would use such a process did not intervene in this docket to express their desire for a T1 hot cut trial or process.

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 Switching unless requested by a CLEC. Similarly, Verizon argues that only the FCC

has jurisdiction to enforce compliance with the market-opening requirements of Section 271.

Regarding DSCI/InfoHighway's Motion to Compel, Verizon states that the requests are not relevant to the scope of this docket, which was opened to investigate transition issues, and not Section 271 pricing. Verizon argues that the Commission lacks authority under Sections 201 and 202 of the TAct to determine just and reasonable rates for delisted UNEs, and that there need not be a determination of just and reasonable rates prior to the end of the transition period prescribed by the FCC for UNE-P Enterprise Switching.

**C. Biddeford Internet**

Biddeford Internet argues that Verizon should meet its Section 271 obligations. Alternately, if Verizon is not going to provide the services, Verizon should enable a smooth transition to other services.

**D. MCI**

MCI intervened for the limited purpose of understanding the resolution of the docket 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**

The OCA took no position regarding the transition process.

**F. Staff**

Staff argued that Verizon has an obligation to provide Section 271 Switching, even if UNE-P Enterprise Switching is no longer a required UNE pursuant to Section 251. 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, Verizon will no longer be in compliance with the provisions of Section 271. At hearing, Staff argued further that if the Carriers do not have pricing information, then a smooth transition process is even more important.

**III. COMMISSION ANALYSIS**

There are three issues to be resolved in this order. First is the outstanding Motion to Compel Verizon to respond to DSCI/InfoHighway's four information requests. Second is to resolve the issue of Section 271 rates and Verizon's compliance with our request to know the date when such rates would be available. Third is our response to DSCI/InfoHighway's four requests during the hearing.

The Motion to Compel deals with information that DSCI/InfoHighway requests in order to assess the reasonableness of Verizon's rates. We agree with Verizon that this docket was not opened as a rate proceeding, and that information regarding the

reasonableness of such rates falls outside the scope of this docket. Therefore we deny the Motion to Compel.

While this docket is not a rate proceeding, the provision of rates for Section 271 Switching is one of the transition issues contemplated by the Order of Notice in this docket. Since Section 271 requires Verizon to offer unbundled local switching, Verizon must notify the CLEC of the price increase prior to removing the CLEC from its switch. Price changes such as this are covered in our rules, and require a 30-day period of notice. N.H. Admin. Rules, Puc 1307.04 *Price Changes* states, in pertinent part:

(a) ILECs and CLECs shall notify the commission in writing of any proposed price changes.

(d) ILECs shall notify CLECs of a price increase 30 days prior to the effective date of the increase.

Moreover, to the extent that the interconnection agreements between these parties were approved by this Commission, we find that we have the authority to interpret the terms and conditions therein. InfoHighway adopted the ZTel Interconnection Agreement approved by Order No. 23,732 on September 24, 2001. DSCI and Verizon have an Interconnection Agreement that was approved by Order No. 23,811 on October 19, 2001. Both of these agreements contain change of law provisions.

The provisions of these agreements require the negotiation in good faith of changes in services, as well as the

provision of adequate notice.<sup>2</sup> Adequate notice is defined to be thirty days in the case of DSCI<sup>3</sup> and, to the extent that existing customers might be disconnected, ninety days in the case of InfoHighway.<sup>4</sup> We find that existing customers may be disconnected with the discontinuation of UNE-P Enterprise Switching and, therefore, ninety days notice is required for InfoHighway.

Further, there is a standard of reasonableness that must be considered. It is our determination that rates, terms and conditions for Section 271 Switching is an aspect of the proper transition of services in this instance, and we require Verizon to provide Section 271 Switching rates, terms and conditions at least concurrent with the notification of discontinuance of service, i.e., a minimum of thirty days prior to disconnection for DSCI and ninety days prior to disconnection for InfoHighway. We agree with Verizon that we do not need to determine whether these rates are just and reasonable to complete this docket; provision of rates, terms and conditions, and the availability of parallel provisioning for those customers that DSCI/InfoHighway choose to transition to other carriers meets the criteria for seamless transition envisioned by our Order of Notice.

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<sup>2</sup> Interconnection Agreements between Verizon and DSCI Corporation, Adopted October 19, 2001 and between Verizon and Z-Tel Corporation, Adopted by Info Highway September 24, 2001, Pricing Attachment Section 4.6.

<sup>3</sup> Interconnection Agreement between Verizon and DSCI Corporation, Adopted October 19, 2001, Section 50.1.

<sup>4</sup> Interconnection Agreement between Verizon and Z-Tel Corporation, Adopted by Info Highway September 24, 2001, Section 50.1.

At hearing, DSCI/InfoHighway asked for a feasibility study, which we assume would assess whether "hot cuts" are technically feasible, and might be done reliably and in a cost-effective manner. We are unpersuaded by the evidence that the "hot cut" process would be a technically or economically preferable method of transitioning. As such, the proposed feasibility study does not meet the requirements outlined in our Order of Notice. We find that Verizon's proposal of parallel provisioning, in conjunction with its offer to provide a project manager to resolve transition portability issues, is a reasonable approach to ensuring the seamless transition of customers as required by our Order of Notice.

DCSI and InfoHighway next asked us to grandfather existing UNE-P rates. We deny that request as we have no jurisdiction to do otherwise, based on our reading of the provisions of the TRO. As to DSCI and InfoHighway's request to open a hearing on Verizon's 271 rates, we note that the terms of the carriers' interconnection agreements would allow the carriers to request a proceeding with regard to charges for services. Since this Commission has traditionally had jurisdiction over rates, terms and conditions for intrastate services, and this issue involves local switching, it would be appropriate for a carrier to petition the Commission to initiate such a proceeding if necessary.

Finally, we should note that we are sympathetic to the situation faced by existing carriers such as DCSI/InfoHighway, who are forced to adjust their business plans, under new rates, terms and conditions. This is a predicament created not by this Commission but by the orders of the FCC. Verizon has an ongoing obligation to provide wholesale services required by the TAct, and to continue to meet its obligations under its interconnection agreements, which includes the obligation to negotiate in good faith and to assist the development of competition.

**Based upon the foregoing, it is hereby**

**ORDERED**, that DSCI/InfoHighway's Motion to Compel Verizon is DENIED; and it is

**FURTHER ORDERED**, that Verizon provide Section 271 Switching rates, terms and conditions to DSCI a minimum of thirty days prior to disconnection of UNE-P Enterprise Switching; and it is

**FURTHER ORDERED**, that Verizon provide Section 271 Switching rates, terms and conditions to InfoHighway a minimum of ninety days prior to disconnection of UNE-P Enterprise Switching.

By order of the Public Utilities Commission of New  
Hampshire this second day of April, 2004.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary