

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>VERIZON NORTH INC. and CONTEL OF THE</b>	)	Case No. U-12807
<b>SOUTH, INC., d/b/a VERIZON NORTH SYSTEMS,</b>	)	
to restructure rates for basic local exchange services.	)	
_____	)	

At the July 25, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

On February 1, 2001, Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, (collectively, Verizon) filed an application to restructure basic local exchange rates in their service territories.<sup>1</sup> As required by the January 4, 2001 order in Case No. U-12682, Verizon filed the application in accordance with the procedures set forth in Section 203 of the Michigan Telecommunications Act (MTA), MCL 484.2203; MSA 22.1469(203).

The application proposes the following changes: First, to comply with Sections 304 and 321 of the MTA, MCL 484.2304; MSA 22.1469(304), and MCL 484.2321; MSA 22.1469(321), local rates (except for Verizon North's business rate) would be aligned with total service long run

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<sup>1</sup>Verizon's rate restructuring proposal retains the distinction between the rates and service territories of Verizon North and Verizon North Systems.

incremental cost (TSLRIC). Verizon's TSLRICs are those established in the cost studies that it filed to comply with the May 3, 2000 order in Case No. U-11832. One effect of the rate realignment would be to create a uniform rate applicable to all of Verizon North's five residential rate groups by realigning the current rates (which vary by rate group) with Verizon's statewide average TSLRIC of providing basic local exchange service.

Second, Verizon proposes to merge the intrastate subscriber line charge or end-user common line charge (EUCL) into its basic local exchange rates. For Verizon's residential customers, this change would be revenue neutral and would be effected by eliminating the EUCL as a separate charge on their bills and increasing basic local exchange rates by an equal amount. For business customers, the proposal would also remove the EUCL as a separate charge on bills. However, Verizon North's other business rates would remain the same because they already exceed TSLRIC. Thus, the overall rates paid by the Verizon North business class would decline due to the elimination of the EUCL by 67¢ per line per month. The removal of Verizon North Systems' business EUCL of \$1.21 per line per month would be partially offset by a 42¢ per month increase in the basic local exchange rate to bring it up to TSLRIC.

Third, separate charges for touch calling (\$2.00 per month) and rural zone charges (\$2.00 per month, where applicable) would be eliminated for Verizon North's residential customers, and the revenue associated with those charges would be recovered through increases in basic local exchange rates. Existing residential customers using rotary service would be grandfathered into a local exchange rate that is reduced by \$2.00. (Verizon North's business customers would continue to pay touch calling and rural zone charges where applicable.)

As established in Case No. U-11832, Verizon's average TSLRIC for flat-rate residential service is \$31.62 per line per month. Ex. A-3, ll. 9, 28. The proposed restructuring, including the

realignment of rates with TSLRIC, would establish a uniform residential rate for service with unlimited local calling of \$21.57 per month for Verizon North and \$21.55 per month for Verizon North Systems. (Verizon also maintains residential calling plans that assess a per-call charge; these, too, would increase under the restructuring.) According to Verizon, the effect of the restructuring would to increase overall residential rates by an average of \$2.07 per month. Tr. 31. Four rate classes, Verizon North's residential rate groups 4 and 5 where subject to rural zone charges and the business rates for both Verizon North and Verizon North Systems, would realize modest decreases. As noted, Verizon's proposal would reduce the business rates by eliminating the EUCL.

At a prehearing conference on March 7, 2001, Administrative Law Judge Barbara A. Stump (ALJ) granted leave to intervene to Attorney General Jennifer M. Granholm (Attorney General). The Commission Staff (Staff) appeared and participated.

The ALJ conducted an evidentiary hearing on May 3, 2001, at which the prefiled testimony and exhibits of two Verizon witnesses and one Staff witness were bound into the record by stipulation without cross-examination. Verizon and the Attorney General filed briefs, and Verizon, the Attorney General, and the Staff filed reply briefs.

On June 8, 2001, the ALJ issued a Proposal for Decision (PFD) recommending that the application be granted in all respects. The Attorney General filed exceptions, and Verizon filed replies to exceptions.

The Attorney General argues that Verizon's evidentiary presentation excluded certain revenues that contribute to the cost recovery of the local loop. Relying on public information, including ARMIS financial reports filed with the Federal Communications Commission, the Attorney General identifies three sources of missing revenue: service connection and reconnection charges,

some unregulated services, and digital subscriber line (DSL) revenues. The Attorney General says that if Verizon had added those revenues to the other revenues that it uses to offset the revenue requirement for basic local exchange rates, it would not have been able to justify a rate increase under the TSLRIC standard.<sup>2</sup>

The Attorney General argues that the ALJ erred in rejecting this position on evidentiary grounds. The Attorney General says that it was not necessary for other parties to conduct cross-examination or present witnesses, when it is facially apparent that the applicant's evidence is inadequate to meet the burden of proof and is inconsistent with other public information. The Attorney General argues that it was not incumbent upon her to create a record that precisely quantifies the revenue offsets in order to show that the application should be dismissed. The Attorney General says that dismissal would not be unduly harsh because it would not preclude Verizon from refileing the application with appropriate evidence. The Attorney General adds that the Staff qualified its support for the application by noting the lack of substantial evidence addressing the revenue offsets, so that there is reason to doubt whether approval is in the public interest.

Verizon argues that each of the Attorney General's three allegedly missing revenue offsets are purely factual assertions, which she is attempting to make without evidence. Verizon claims that because the Attorney General did not participate in the hearing in a meaningful manner, there is nothing on the record to substantiate the claims she raised for the first time in her post-hearing brief. Verizon contends that it met its burden of proof by presenting prima facie evidence in support of its application, which none of the parties controverted at the hearing. Verizon says that

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<sup>2</sup>The Attorney General estimated the missing revenue offsets at \$9.48 per month. Attorney General's brief at 4-6.

to grant relief on an issue first raised by the Attorney General after the record closed would be unfair to the point of violating due process.

In any event, Verizon says, the revenue offsets it used to develop its rate proposal are consistent with those in the rate restructuring approved in the September 3, 1999 order in Case No. U-12005, and the claimed additional offsets do not exist. Verizon says that the revenues that the Attorney General estimated on the basis of the 2000 ARMIS report relate to pay telephone calls, sales of customer premises equipment, billing and collection agreements, and other matters that do not recover local loop costs. Verizon says that it earns no DSL revenues in Michigan.

The Commission finds that Verizon's evidentiary presentation is adequate to support its proposal to realign its basic local exchange rates with TSLRIC. Exhibit A-3 identifies the amount of offsetting revenue for each rate class, and confidential Exhibit A-2 provides detail for the offsets. As part of its burden of proof, Verizon is not required to demonstrate why it has excluded every other possible source of revenue from the offset computation. (Otherwise, Verizon would be required to prove a negative proposition.) Furthermore, the Commission finds that the Attorney General, who did not actively participate in the contested case hearing, is now attempting to raise factual issues without providing any evidentiary support. As an issue of fact, the Attorney General cannot establish that Verizon does have DSL revenues or engage in other revenue-producing activities without making an evidentiary showing. It is not as clear as the Attorney General suggests that there are in fact additional revenue sources that offset costs recovered through the basic local exchange rate, or that those additional revenues may be inferred as a matter of common knowledge on the basis of existing public records.

Section 701 of the MTA, MCL 484.2701; MSA 22.1469(701), does prohibit an increase in Verizon's rates at this time, but the company has obtained a preliminary injunction against that

provision in federal court. Michigan Bell Tel Co v Engler, \_\_ F3d \_\_ (CA 6, July 13, 2001). As it stated in the February 22, 2001 order in Case No. U-12777 with respect to an Ameritech Michigan rate restructuring, the Commission similarly places Verizon on notice that if it implements the proposed increases and if Section 701 is later found to be lawful, Verizon will be required to refund the amount of the increases with interest.

In her exceptions, the Attorney General argues that merging the intrastate EUCL into the basic local exchange rate exalts form over substance and hides the net effect from customers. In reply, Verizon notes that, regardless of whether the EUCL continues as a separate line item or is merged into the basic local exchange rate, the overall rate must be sufficient to recover TSLRIC.

As already noted, the Court in Michigan Bell Telephone Co v Engler, \_\_ F3d \_\_ (CA 6, July 13, 2001), affirmed the federal district court's issuance of a preliminary injunction against enforcement of Section 701 of the MTA. It also reversed the district court's decision to deny a preliminary injunction with respect to Section 310(7), MCL 484.2310(7); MSA 22.1469(310)(7).<sup>3</sup> Although the federal litigation concerning the constitutionality of Sections 310(7) and 701 has not run its course, the Commission must in the meantime comply with the federal court's preliminary injunction. Because the matter has not been settled conclusively, the Commission is not persuaded that it should take the further step of rolling Verizon's EUCL into its basic local exchange rate. To approve this aspect of the proposed restructuring might appear to affect issues that remain pending in the federal court litigation. The Commission again issues notice that if Sections 310(7) and 701 are later found to be lawful, Verizon will be required to refund the amount collected under the EUCL with interest.

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<sup>3</sup>The Sixth Circuit had previously issued a temporary injunction against enforcing Section 310(7) on appeal from the district court on September 28, 2000.

The Attorney General does not except to Verizon's proposal to restructure touch calling and rural zone charges, and the Commission finds that the proposed changes affecting those charges are acceptable.

To summarize, the Commission is granting Verizon's application, except for the proposal to remove the EUCL from customers' bills and increase most basic local exchange rates by a corresponding amount. If Verizon wishes to continue to collect the EUCL, it must continue to do so by billing a separate line-item charge. The basic local exchange rates approved in this order are as follows:<sup>4</sup>

Verizon North Inc.:

Residential Rate Groups 1 to 5	\$18.07
Value Pak	\$16.68
Econo Pak	\$14.56
Business	Unchanged at \$15.80

Verizon North Systems:

Residential R-1	\$18.05
Business B-1	Unchanged at \$16.64

The Commission is aware that denying Verizon's proposal to restructure the EUCL has the effect of withholding rate decreases for the business classes, whose current rates already exceed TSLRIC. Verizon may realign its business rates with TSLRIC by filing and implementing notice of a reduction in its business basic local exchange rates pursuant to Section 304(2)(a) of the MTA.

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<sup>4</sup> A more detailed analysis of the rate changes required by this order is attached as Appendix A.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.

b. Verizon should be permitted to adjust rates as proposed in the application, except that it should not be permitted to collect its intrastate EUCL by merging it into its basic local exchange rates.

c. If Sections 310(7) and 701 are later found to be lawful, Verizon will be required to refund, with interest, amounts collected as a result of the proposed rate increase and the continued imposition of the EUCL.

THEREFORE, IT IS ORDERED that Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, are authorized to adjust their rates as proposed in the application, except that they shall not collect their intrastate end-user common line charges by merging them into their basic local exchange rates.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of July 25, 2001.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-12807

Suggested Minute:

“Adopt and issue order dated July 25, 2001 granting in part the application of Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, for a rate restructuring, but rejecting the proposal to collect their end-user common line charges by merging them into their basic local exchange rates, as set forth in the order.”