

ORDER NO. 78852

IN THE MATTER OF THE INVESTIGATION *
INTO RECURRING RATES FOR *
UNBUNDLED NETWORK ELEMENTS *
PURSUANT TO THE *
TELECOMMUNICATIONS ACT OF 1996. *

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

*(Petitions for Reconsideration/Rehearing and *
Motion for Stay of Non-Recurring Rates) **

CASE NO. 8879

On July 30, 2003, the Commission received three Petitions for Reconsideration/Rehearing of Order No. 78552 issued in this proceeding. The filings were made on behalf of Verizon Maryland Inc. (“Verizon”); AT&T Communications of Maryland, Inc. (“AT&T”); and WorldCom, Inc. (“MCI”). Additionally, on September 12, 2003, Cavalier Telephone Mid-Atlantic, LLC (“Cavalier”) filed a Motion for Stay of Non-Recurring Rates. Various parties filed replies to the Petitions for Reconsideration and Cavalier’s Motion for Stay on October 22, 2003.¹

The Commission, after reviewing and considering the various petitions and responses thereto, hereby grants the Petitions for Reconsideration/Rehearing filed in this matter by Verizon, AT&T and MCI. Furthermore, pursuant to its own motion, the Commission grants rehearing on the issue of the appropriate allocation of costs among the four rate groups. Finally, as discussed herein, the Commission hereby grants Cavalier’s Motion for Stay of the Non-Recurring rates established pursuant to Commission Order No. 78552. Additionally, the Commission establishes interim 2-

¹ Cavalier filed its reply jointly with its Motion for Stay on September 9, 2003.

wire hot cut rates of \$35.00, which will be subject to a true-up upon the issuance of a final order in this case.

The Commission recognizes that since the issuance of Order No. 78552 there has been considerable activity at the federal level by the Federal Communications Commission (“FCC”). Particularly, on August 21, 2003, the FCC issued its *Triennial Review Order*² and thereafter on August 29, 2003, the FCC’s Wireline Competition Bureau released its *Virginia Arbitration Price Order*.³ The Commission acknowledges that to some extent both orders may have some bearing on the issues raised by the parties in their petitions, and as such, a grant of the petitions is warranted. Moreover, the Commission has identified an issue concerning the allocation of costs among the four existing rate groups as one meriting a grant of rehearing. In furtherance of the reconsideration/rehearing process, the Commission shall in the near future issue a procedural order identifying the process and schedule by which this matter shall be considered.

As noted above, Cavalier requests that the Commission stay the Non-Recurring Charges (“NRCs”) resulting from Order No. 78552 and reinstate the previous NRC rate structure. In the alternative, Cavalier requests that the Commission set an interim hot cut rate of \$35. According to Cavalier, the Commission should follow the actions of

² In the Matters of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advances Telecommunications Capability, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36, rel. Aug. 21, 2003. (“*Triennial Review Order*”).

³ In the Matter of Petitions of WorldCom, Inc. and AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, *Memorandum Opinion and Order*, CC Docket Nos. 00-218 and 00-251, DA-03-2738. “*Virginia Arbitration Price Order*”.

the New York, New Jersey and Delaware state commissions and order an interim \$35 hot cut rate until the Commission and the industry can develop and achieve a tenable NRC regime. Cavalier argues that increases in some of the resulting NRCs create a barrier to competitive entry into the local exchange markets. Cavalier's Motion for Stay is supported by AT&T, which argues that that reinstatement of the prior NRCs would address what AT&T views as "one obvious mistake in the Commission's Order."⁴ Specifically, AT&T reiterates that the Commission, based upon evidence produced by Staff, may have been under the impression that the rates resulting from Verizon's NRC model would result in lower costs per 'typical' CLEC order. In actuality, the resulting rates are triple the previous 1998 rates for a basic loop.

Verizon opposes Cavalier's Motion to stay *only* the NRC portion of Order No. 78552. Further, Verizon argues against the Commission instituting a hot cut rate of \$35. As an alternative, Verizon argues that in light of the FCC's recent determinations pertaining to the TELRIC methodology issued after Order No. 78552, the Commission should vacate the Order, and restore the UNE rates in effect from December 18, 2002 until June 30, 2003. Verizon avers that this course of action will not be detrimental to any CLEC operating in Maryland.

The Commission finds that neither vacatur of Order No. 78552, nor a stay of the recurring portion of Order No. 78552 is warranted. However, for the reasons indicated below, the Commission does find that a stay of the NRC portion of Order No. 78552 is appropriate pending resolution of the petitions for reconsideration/rehearing. As an initial matter, the Commission based its NRCs on Verizon's sponsored NRC model.

⁴ AT&T Reply to Verizon's Reconsideration Petition at 45.

This model is substantially similar to that which Verizon used in its Virginia Arbitration before the FCC. Since Order No. 78552 was issued, the FCC has found that Verizon's NRC model is not TELRIC compliant.⁵ Pending Commission reconsideration of the issues raised with respect to the NRCs established in accordance with Order No. 78552, the Commission finds that the NRC rates should be stayed. By this decision, the Commission makes no finding that its determinations in Order No. 78552 pertaining to the NRC issues raised in the reconsideration petitions are erroneous. Instead, the Commission determines that maintaining the pre-Order No. 78552 NRCs is more appropriate given the potential impact of the FCC's finding with respect to the Verizon NRC model. As a result of the Commission's grant of a stay of the NRC portion of Order No. 78552, the pre-June 30, 2003, NRC rates remain effective pending further Commission action.

Furthermore, by Order No. 78552 the Commission adopted NRCs based upon the evidence, testimony and arguments presented during Case No. 8879. However, AT&T questions the accuracy of portions of testimony cited by the Commission. Pending the Commission review and consideration of this and other issues raised in the Petitions for Reconsideration, the Commission finds that the stay ordered herein is in the interest of all concerned.

By its Motion, Cavalier also made an alternative recommendation that should the Commission decide not to stay the NRCs, the Commission should institute a \$35 interim hot cut rate. This rate is somewhat higher than the pre-June 30, 2003, comparable rate for a coordinated cut-over of \$7.80, including service order and

⁵ *Virginia Arbitration Order*, ¶567.

installation charges. Although the Commission has decided to stay the NRC rates resulting from Order No. 78552, the Commission also determines that pending resolution of the reconsideration/rehearing petitions the interim rates for a 2-wire hot cut shall be set equal to \$35.00, inclusive of both Service Order and Installation Charges.⁶ While this rate for a 2-wire hot cut is higher than the pre-June 30, 2003 rate for the same process, the Commission finds that on an interim basis this rate is a sensible determination based upon the level of comparable rates in other Verizon jurisdictions. Furthermore, the Commission directs that the \$35.00 interim rate be instituted subject to refund, and that true-up occur after the Commission issues its final order in this proceeding. While Verizon argues that this rate has no bearing in Maryland, the Commission disagrees and finds that, as an interim solution, the \$35.00 rate is more in line with the current trend of hot cut rates than the pre-June 30, 2003. rate of \$7.80.

In making the above determination, the Commission takes administrative notice of the decisions and actions of the Delaware, New Jersey and New York Commissions in establishing an interim hot cut rate, as well as those the FCC provided in its review of this rate in connection with Verizon's §271 applications in those states. Pursuant to §3-111(d)(2), the parties to this proceeding may contest the Commission's taking of administrative notice of the rate determinations of the Delaware, New Jersey and New York Commissions. Parties wishing to contest the administrative notice taken shall file

⁶ Installation Charges, as this term is defined in Verizon August 22, 2003, compliance filing, include central office wiring and provisioning charges. The \$35.00 interim rate imposed herein shall apply to 2-wire hot cuts initial and to IDLC to Copper hot cuts initial. All other hot cut services shall be priced in accordance with the pre-June 30, 2003, established rates.

comments with the Commission on or before January 2, 2004. Therefore, based upon the Commission's determination herein, the pre-June 30, 2003, NRC rates for all non-recurring services will apply, with the exception of the 2-wire hot cut rates which shall be set at an interim rate of \$35.00.

Finally, in Case No. 8921, *In the Matter of the Review By the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. §271(c)* (the "§271 Proceeding"), the Commission found that subject to Verizon's fulfillment of several conditions, Verizon was technically in compliance with the §271 checklist as defined by the FCC.⁷ One such condition required Verizon to reduce its Case No. 8731, Phase II loop and switching rates. Specifically, by letter dated December 16, 2002, and issued in Case No. 8879, the Commission indicated that,

With regard to the UNE loop rate, the Commission requires Verizon to agree to reduce this rate from the current statewide average of \$14.50 to a statewide average of \$12.00. Additionally, Verizon is required to reduce its end-office per minute-of-use switching element 56% from \$0.003800 per minute to \$0.001676 per minute. . . . the Commission also requires that Verizon commit to make the rates adopted in Case No. 8879 retroactive to the effective date of the reduced rates discussed above. The effective date of these reduced rates shall be within five days of the date of this letter.

As a result of the Commission's decision to act on the petitions for reconsideration/rehearing in the present case, it is possible that Verizon's loop and switching rates may be further modified. Pending issuance of a Commission Order resolving the petitions for reconsideration/rehearing, the Commission directs that

⁷ 47 U.S.C. 271.

Verizon shall postpone the loop and switching rate true-up process it envisioned in the §271 proceeding.

IT IS, THEREFORE this 19th day of December, in the year Two-Thousand and Three,

ORDERED: 1) That the Petitions for Reconsideration/Rehearing filed by Verizon Maryland Inc., AT&T Communications of Maryland, Inc., and WorldCom, Inc. are hereby granted;

2) That the Commission directs rehearing on the issue of allocation of cost among rate zones;

3) That for the reasons indicated herein, the Non-Recurring Charges resulting from Order No. 78552 issued on June 30, 2003, in Case No. 8879 are hereby stayed and the pre-June 30, 2003, NRC rates, with the exception of the 2-wire hot cut non-recurring rates, shall remain effective until such time as directed by the Commission;

4) That the NRC 2-wire hot cut rate, inclusive of service order and installations charges, shall be set at an interim level of \$35.00, subject to true-up, and shall remain effective until such time as directed by the Commission

5) That the Commission shall issue a subsequent Notice of Procedural Schedule identifying the procedural process pertaining to its consideration of the granted reconsiderations/rehearings; and

6) That Verizon shall refrain from instituting a true-up of the Case No. 8879 rates in accordance with the Commission's December 16, 2002, letter issued in Case No. 8721, until such time as directed by the Commission.

/s/ Kenneth D. Schisler

/s/ J. Joseph Curran, III

/s/ Gail C. McDonald

/s/ Harold D. Williams

Commissioners