

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE INQUIRY INTO)
VERIZON DELAWARE INC.'S COMPLIANCE) PSC DOCKET NO. 02-001
WITH THE CONDITIONS SET FORTH IN)
47 U.S.C. § 271)

Motion of the Commission Staff to Amend the Procedural Schedule
Set Forth in PSC Order No. 4432 In Order To Allow Five Months
For Reviewing Verizon Delaware Inc.'s Proposed Application for
InterLATA Authority Under 47 U.S.C. § 271

The Commission Staff asks the Commission to revise the procedural schedule set forth in PSC Order No. 4432 (March 4, 1997), in order to allow a five month period, or until July 2, 2002, for the Commission to review Verizon Delaware, Inc.'s ("VZ-DE") recently-filed, proposed application for interLATA authority under 47 U.S.C. § 271.¹

1. In early 1997, the Commission - in response to an earlier State 271 review filing made by VZ-DE - set forth a procedural schedule to govern the procedures before the Commission. PSC Order No. 4432 (Mar. 4, 1997). Under those procedures, VZ-DE was directed to submit its State review filing ninety days before it anticipated filing for interLATA authority with the Federal Communications Commission ("FCC"). Thereafter, interested persons and VZ-DE would be afforded a total of fifty days to file comments and any rebuttal. The Hearing Examiner would then, in his discretion, decide the course of further proceedings with a goal for the Examiner to file proposed

¹ For purposes of this motion, such proceeding will be referred to as the "State 271 review" filing or proceeding.

findings and recommendations for the Commission's consideration within ninety (90) days after the initial filing date. PSC Order No. 4432 at Ordering ¶¶ 4-6.² When VZ-DE subsequently withdrew its 1997 application,³ the Commission declined to then change the procedural schedule set forth in Order 4432, but emphasized that, in the event VZ-DE might later give notice of its intent to make a subsequent State 271 review filing, "any person or entity in the future [could] ask the Commission to alter the procedural schedule or filing requirements." PSC Order No. 4662 at ¶ 7 (Dec. 9, 1997).

2. Almost five years later, on February 1, 2002, VZ-DE submitted its present State 271 review filing. VZ-DE has asked that the Commission review such proceeding within a ninety-day time period.⁴ The VZ-DE filing encompasses not only declarations concerning VZ-DE's compliance with the "checklist" requirements of 47 U.S.C. § 271(c), but also declarations and supporting appendices asking the Commission to endorse certain performance metrics and adopt a Performance Assurance Plan ("PAP") for VZ-DE. The performance metrics test, on a

²There is no federal directive setting forth a time frame for the State utility commission to preview (and review) an anticipated 271 interLATA authority filing. The only federal timing guideline is that - *once the Bell Operating Company files its formal application with the FCC* - the State commission has twenty days to submit a formal consultative report to the FCC.

³In fact, in July, 1997, the Commission had - at VZ-DE's request - suspended the procedural schedule in Order No. 4432 to allow VZ-DE the opportunity to file supplemental materials. PSC Order No. 4537 (July 8, 1997).

⁴VZ-DE filed a procedural schedule with its most recent filing. It included the comment periods called for in Order No. 4432, but provided, in some deviation from Order 4432, for a hearing before the *en banc* Commission rather than the designated Hearing Examiner. Moreover, VZ-DE's decision called for a final *Commission decision* within 90 days rather than, as set forth in Order No. 4432, the submission of a Hearing Examiner's report by that deadline.

comparative basis, VZ-DE's ability to provide wholesale services to competitive local exchange carriers ("CLEC's") in a non-discriminatory manner. The PAP proposes a self-executing regime whereby VZ-DE will be subject to liquidated damages or penalties if it, in providing wholesale services to CLEC's, fails to meet parity or benchmark standards. The metrics are typically used (and accepted by the FCC) in the 271 process to establish present non-discrimination by the Bell Operating Company in fulfilling its "checklist" requirements. Similarly, a PAP regime has been accepted by the FCC as a mechanism to prevent "back-sliding" by a BOC on its "checklist" obligation after it has been granted interLATA authority.

3. The Commission Staff now asks the Commission to allow a five month period to review the VZ-DE filing made on February 1, 2002, rather than a 90 day period as proposed by VZ-DE. Staff's proposed new schedule is set forth in the proposed attached Order No. 5892.⁵

4. The Staff believes that the five month period is now appropriate because:

- (a) the present State 271 review filing includes performance metrics and a proposed PAP which have not been previously reviewed by Staff;⁶
- (b) the five month review period will allow for continued use of a Hearing Examiner (as

⁵While the proposed schedule sets specific dates for particular events, the Staff believes that the Hearing Examiner should be empowered to make adjustments to specific dates within the total five month period in order to meet exogenous or other circumstances.

⁶The inclusion of the performance metrics and PAP reflect the changes in focus in a State 271 filing since the ninety day schedule was set in early 1997 beyond those assumed material in 1997 when the Commission directed the Hearing Examiner to attempt to provide his report within 90 days after the filing.

contemplated by Order No. 4432) to compile a record and make recommendations for the Commission;

- (c) the five month review period is consistent with the periods consumed by other state commissions in evaluating state 271 review filings;⁷ and
- (d) the five month period will allow Staff to explore whether the PAP adopted in larger states needs to be adjusted for use in a small state such as Delaware with small numbers - in absolute terms - of CLEC transactions.

Respectfully submitted,

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Dated: Feb. 14, 2002

⁷See, e.g., Vermont (5 months). In large "anchor" states, such as New York or Pennsylvania - where the State review results are now offered as templates for applications in smaller states within the region - the state Commissions' consumed at least a year in reviewing and approving performance metrics and PAPs.

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ORDER NO. 5892

This 19th day of February, 2002, the Commission determines and Orders the following:

1. In PSC Orders Nos. 4432 (Mar. 4, 1997) and 4662 (Dec. 9, 1997), this Commission adopted a 90 day period for the Hearing Examiner to submit to the Commission proposed findings and recommendations in response to any filing made by Verizon Delaware Inc. ("VZ-DE") asking for prior review by this Commission of a contemplated interLATA authority application to be made by VZ-DE under the provisions of 47 U.S.C. § 271. ("State 271 review filing").

2. On February 1, 2002, VZ-DE submitted a State 271 review filing with the Commission. Staff has now requested that the period to review such application be extended to five months, or until July 2, 2002.

3. For the reasons set forth in Staff's motion, and exercising the authority to revise the prior schedule explicitly reserved in PSC Order No. 4462 (Dec. 9, 1997), as well as the Commission's inherent authority to revise its prior procedural directives, the Commission now grants the Staff's request.

Now therefore, **IT IS ORDERED:**

1. That, the following procedural schedule shall presumptively govern the proceedings in this docket pertaining to the filing made by Verizon Delaware Inc. on February 1, 2002.

Friday, February 1, 2002	Verizon DE files 271 compliance filing w/supporting data
Friday, March 29, 2002	Close of discovery
Monday, April 8, 2002	Staff, CLECs, and other interested parties file testimony
Wednesday, April 17, 2002	Verizon DE files rebuttal testimony
April 24, 25, and 26, 2002 (Wed., Thurs., and Fri.)	Hearings
Friday, May 10, 2002	Simultaneous briefs
Monday, June 3, 2002	Hearing Examiner's Findings and Recommendations
Tuesday, June 18, 2002	Exceptions to Hearing Examiner's Findings and Recommendations
Tuesday, July 2, 2002	Commission Deliberation and Decision

2. That the previously designated Hearing Examiner William F. O'Brien, shall have the authority to reset the specific dates within the above review period, if he deems such alterations necessary or beneficial to compiling a complete record. Hearing Examiner O'Brien is delegated the authority, under 26 Del. C. § 102A, to determine the need for, content, and manner of any further public notice to be given concerning this matter. If Hearing Examiner O'Brien determines that a complete record and recommendations cannot be compiled or submitted with the time period set out above, he should advise the Commission and the Commission shall then determine the course of future proceedings in this matter.

3. That the Commission reserves the jurisdiction and authority to enter such further Order or Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae (Voted "No")
Arnetta McRae, Chair

/s/ Joshua M. Twilley
Joshua M. Twilley, Vice Chair

/s/ Donald J. Puglisi (Voted "No")
Donald J. Puglisi, Commissioner

/s/ Jaymes B. Lester
Jaymes B. Lester, Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

/s/ Joann T. Conaway
Joann Conaway, Commissioner

CERTIFICATE OF SERVICE

I, Gary A. Myers, a member of the Bar of Delaware, and counsel for Staff, do certify that I caused, on February 14, 2002, a copy of the attached Motion to be sent by Internet e-mail and by United States mail, first class postage pre-paid, to all persons listed on the service list compiled by Hearing Examiner William F. O'Brien in this matter.

So certified.

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Dated: Feb. 14, 2002