

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE DETERMINATION,)
UNDER 26 DEL. C. § 704(b), OF AN)
APPROPRIATE REGULATORY REGIME FOR)
TELECOMMUNICATIONS SERVICES PROVIDED) PSC DOCKET NO. 02-026
BY VERIZON DELAWARE INC., AFTER THE)
EXPIRATION OF ITS TERM OF ELECTION)
UNDER THE TELECOMMUNICATIONS TECH-)
NOLOGY ACT (FILED OCTOBER 7, 2002))

ORDER NO. 6261

AND NOW, this 9th day of September, 2003.

WHEREAS, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner ("Report") issued in the above-captioned docket, which was submitted after an open and public proceeding in accordance with 26 Del. C. § 704(b);

AND WHEREAS, the Hearing Examiner recommends that the Proposed Settlement Agreement, which is endorsed by all the parties, and which is attached to the original hereof as "Attachment A", be approved;

AND WHEREAS, the Commission finds that the provisions of the Proposed Settlement Agreement are just and reasonable and that adoption thereof is in the public interest for the reasons set forth in the Hearing Examiner's Report;

AND WHEREAS, pursuant to 26 Del. C. § 704(b), the Commission determines that continued application of the TTIA to Verizon is in the public interest for an additional three years, or through September 23, 2006.

IT IS ORDERED:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby approves the July 17, 2003 Proposed Settlement Agreement, appended to the original hereof as "Attachment A".

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: August 20, 2003

WILLIAM F. O'BRIEN
HEARING EXAMINER

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. Ch. 101, by Commission Order No. 6125, dated March 18, 2003, reports to the Commission as follows:

I. APPEARANCES

On behalf of Verizon Delaware Inc. ("Verizon"):

ANTHONY E. GAY, ASSISTANT GENERAL COUNSEL, Verizon Corporate Services Corporation

On behalf of the Public Service Commission Staff ("Staff"):

Murphy, Spadaro & Landon
BY: FRANCIS J. MURPHY, ESQUIRE

On behalf of the Division of the Public Advocate ("DPA"):

G. ARTHUR PADMORE, PUBLIC ADVOCATE

On behalf of AT&T Communications of Delaware, Inc.:

Saul Ewing LLP
BY: WENDIE C. STABLER, ESQUIRE

II. BACKGROUND AND SUMMARY OF COMMENTS

1. On March 24, 1994, Verizon elected, pursuant to the provisions of 26 Del. C. § 704(a), to be governed - in its provision of telecommunications services - by the regulatory regime set forth in the "Telecommunications Technology Investment Act," 26 Del. C. §§ 704-11 ("TTIA"). By PSC Order No. 4821 (June 9, 1998) (entered in PSC Regulation Docket No. 41), the Commission promulgated regulations to implement the TTIA ("TTIA Rules").

2. In PSC Order No. 4759 (Mar. 24, 1998), the Commission approved an extension of the initial term for Verizon to be governed under the TTIA from March 24, 1998, until March 23, 2002. Thereafter, the Commission approved a further extension of that initial term until the earlier of March 23, 2005, or twelve months after the Federal Communications Commission ("FCC") permitted Verizon to provide interLATA services from this State. PSC Order No. 5710 (April 24, 2001). On September 25, 2002, the FCC granted Verizon that authority. Consequently, Verizon's initial term under the TTIA will now lapse on September 25, 2003.

3. Section 704(b) of the TTIA provides that:

[n]ot less that one year prior to the expiration of the initial term, and any subsequent term, [Verizon] shall notify the Commission whether or not it wishes to continue to be governed by [the TTIA]. Upon receipt of such notification the Commission shall commence an open and public proceeding to determine whether the continued application of [the TTIA] to [Verizon] is in the public interest and, if so, for how long or, if not, what appropriate form of regulation should be applied to [Verizon] under § 703 of this title. The Commission shall conclude any such proceeding within 12 months from the filing of such notification and, in making its determination, the Commission shall give appropriate consideration to the form of

regulation, if any, then applicable to competitors of [Verizon].

4. By a letter submitted October 7, 2002, Verizon notified the Commission that it did not wish to be governed by the current provisions of TTIA after the expiration of its extended initial term. Rather, Verizon proposed that, after such date, it should be governed by a regulatory regime based largely on the present TTIA but with changes or modifications to several of the current requirements in the TTIA and the TTIA Rules. In a subsequent filing made on January 28, 2003, Verizon set forth its proposed alternative scheme in more detail and suggested that the new regulatory regime could be implemented by making particular changes to several sections of the current TTIA Rules.

5. By PSC Order No. 6125 (March 18, 2003), the Commission initiated this docket, as directed by the provisions of 26 Del. C. § 704(b), to conduct an open and public proceeding to determine whether the continued application of the TTIA to Verizon after September 25, 2003, would be in the public interest and, if not, what appropriate other form of regulation (as outlined in 26 Del. C. § 703) should be applied to Verizon after such date. The Commission sought written comments from the public, interested persons and entities, and other telecommunications carriers.

6. On April 30, 2003, AT&T Communications of Delaware, LLC ("AT&T") served initial comments in response to Verizon's October 7, 2002 and January 28, 2003 filings. AT&T objected to Verizon's proposal and submitted its own proposal, which included the creation of a separate Wholesale Services category for the purpose of establishing the prices, terms and conditions for the various

wholesale services Verizon provides to competitors. (AT&T's Initial Comments at 8-13.)

7. On April 30, 2003, the Division of the Public Advocate ("DPA") filed initial comments in response to Verizon's filings. The DPA proposed a broad expansion of the scope of these proceedings to include a revision of Commission Rules 10, 41 and 45, an investigation into the reasonableness of Verizon's current rates, and an examination of the continued applicability of the Federal Telecommunications Act of 1996. (DPA's Initial Comments at 4-5, 13.) Both AT&T and DPA requested hearings in order to explore Verizon's proposed alternative regulatory regime and to further detail their own proposals.

8. On May 19, 2003, Commission Staff served its responsive comments. Staff maintained that a fully litigated inquiry into alternatives to the TTIA is premature, given the current state of telecommunications regulation at the federal level, which includes several pending decisions that will have a major impact on the regulation of local competition. (Staff's Responsive Comments at 3-4.) In addition, Staff opposed the modifications to the TTIA proposed by Verizon because Staff considers them potentially anti-competitive in effect. For these reasons, Staff recommended that Verizon should continue to be governed by the TTIA, without any modifications, for three years and that the Commission begin to reassess the TTIA regime in September 2005. Regarding procedure, Staff recommended a workshop to narrow the issues and to develop a process to address any unresolved issues.

9. In its May 19, 2003 responsive comments, Staff also raised a concern about the telecommunications infrastructure in Delaware. Staff noted in its comments that the Commission has been receiving

calls from some customers complaining of clarity problems on their telephone lines during periods of bad weather. (*Id.* at 5.) Staff considers these complaints to be a developing problem in need of prompt attention to avoid serious problems in the future.

10. On May 20, 2003, Verizon submitted further written comments in which it objected to the proposals made by AT&T and the DPA. Verizon reiterated that it wished to continue to be regulated under the TTIA with only the modifications proposed in its January 28, 2003 filing.

11. Although it received copies of filings in this docket, Cavalier Telephone Mid-Atlantic, LLC ("Cavalier") did not move to intervene as a party and has not participated. No other person sought to intervene.

12. On June 23, 2003, representatives of Verizon, the DPA, AT&T, and Commission Staff held a workshop to discuss their respective positions. Although the parties had expressed considerable differences in their written comments, they nevertheless agreed to enter into a proposed settlement agreement ("Proposed Settlement") dated July 17, 2003, which they submitted on July 21, 2003, and which is attached to the original hereof as "Attachment A." In the Proposed Settlement, the parties indicated their belief that the settlement agreement will serve the public interest. (Proposed Settlement at 4.)

13. I have considered all of the comments submitted in this case as well as the Proposed Settlement and, based thereon, I submit for the Commission's consideration these findings and recommendations. The "Background and Summary of Comments" and "Settlement Provisions" sections of this report are taken largely from the text of the Proposed Settlement, at pages one through five.

III. SETTLEMENT PROVISIONS

14. The parties agreed to adopt Staff's proposal, as set forth in Staff's May 19, 2003 responsive comments. Under the Proposed Settlement, therefore, Verizon will continue to be governed by the TTIA for an additional three years, namely through September 23, 2006. By September 23, 2005, Verizon will notify the Commission as to whether or not it wishes to continue to be governed by the TTIA after September 23, 2006, and, if so, for how long. In the event Verizon does not wish to continue to be governed by the TTIA, it will provide a comprehensive proposal about the appropriate form of regulation that Verizon contends should be applied to it. On the same day it serves the Commission, Verizon will serve a copy of its filing upon the parties to this docket, and all major local telecommunications companies then doing business in Delaware on the date of its filing.

15. In addition, Verizon agreed that, if the Proposed Settlement is approved by the Commission, within two weeks after the Commission signs its final order approving the Proposed Settlement, Verizon will meet with Staff and the Public Advocate to address Staff's concerns about the customer complaints referenced in paragraph number nine above and to formulate a plan and timetable for corrective action.

IV. DISCUSSION

16. The Commission has jurisdiction in this matter pursuant to 26 Del. C. § 704(b).

17. The parties have submitted a Proposed Settlement Agreement, which, if approved, would resolve all of the issues in this docket. Under the settlement, Verizon will continue to be governed by the TTIA for an additional three years, *i.e.*, through September 23, 2006. As

noted by Staff, an additional three years under the TTIA would allow time for the resolution of anticipated regulatory developments at the federal level, including the pending Triennial Review Order from the Federal Communications Commission and the court challenges to it that likely will follow. (Staff's Responsive Comments at 3-5.) Under the Proposed Settlement (and under § 704(b)), the issues raised in this docket will be revisited in two years, when Verizon notifies the Commission (no later than September 23, 2005) as to whether or not it wishes to continue to be governed by the TTIA after September 23, 2006, and, if not, what form of regulation should be applied to it.

18. Based on the state of flux of federal regulation of the telecommunications industry at this time and in light of the fact that the parties to this case, despite their widely differing interests, have agreed to a resolution of this matter, I recommend that the Commission adopt the Proposed Settlement as in the public interest¹ and that the Commission continue to regulate Verizon under the TTIA for an additional three years.

V. RECOMMENDATIONS

22. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

- A. That the Commission adopt as reasonable and in the public interest the attached Proposed Settlement ("Attachment A");
- B. That, pursuant to 26 Del. C. § 704(b), the Commission determine that continued application of the TTIA to Verizon is in the public interest for an additional three years, *i.e.*, through September 23, 2006.

¹ Under 26 Del. C. § 512, the Commission may approve a settlement that it finds to be in the public interest.

A proposed Order, which will implement the foregoing recommendations, is attached hereto.

Respectfully submitted,

/s/ William F. O'Brien
William F. O'Brien
Hearing Examiner

Dated: August 20, 2003

A T T A C H M E N T "A"

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ACT (FILED OCTOBER 7, 2002))

PROPOSED SETTLEMENT AGREEMENT

On this 17th day of July, 2003, Verizon Delaware Inc., a Delaware corporation (hereinafter "Verizon" or the "Company"), and the other undersigned parties (all of whom together are the "Settling Parties") hereby propose a settlement that, in the Settling Parties' view, appropriately resolves the issues raised in this docket.

I. INTRODUCTION

1. On March 24, 1994, Verizon elected, pursuant to the provisions of 26 Del. C. § 704(a), to be governed by the regulatory regime set forth in the "Telecommunications Technology Investment Act," 26 Del. C. §§ 704-11 ("TTIA"). By PSC Order No. 4821 (June 9, 1998) (entered in PSC Regulation Docket No. 41), the Commission promulgated regulations to implement the TTIA ("TTIA Rules").

2. In PSC Order No. 4759 (March 24, 1998), the Commission approved an extension of the initial term for Verizon to be governed under the TTIA from March 24, 1998 until March 23, 2002. Thereafter, the Commission approved a further extension of that initial term until the earlier of March 23, 2005, or twelve months after the Federal Communications Commission ("FCC") permitted Verizon to provide interLATA services from this State. PSC Order No. 5710

(April 24, 2001). On September 25, 2002, the FCC granted Verizon that authority.

Consequently, Verizon's initial term under the TTIA will now lapse on September 25, 2003.

3. Section 704(b) of the TTIA provides that:

[n]ot less than one year prior to the expiration of the initial term, and any subsequent term, [Verizon] shall notify the Commission whether or not it wishes to continue to be governed by [the TTIA]. Upon receipt of such notification the Commission shall commence an open and public proceeding to determine whether the continued application of [the TTIA] to [Verizon] is in the public interest and, if so, for how long or, if not, what appropriate form of regulation should be applied to [Verizon] under § 703 of this title. The Commission shall conclude any such proceeding within 12 months from the filing of such notification and, in making its determination, the Commission shall give appropriate consideration to the form of regulation, if any, then applicable to competitors of [Verizon].

4. By a letter submitted October 7, 2002, Verizon notified the Commission that it did not wish to be governed by the current provisions of the TTIA after the expiration of its extended initial term. Rather, Verizon proposed that, after such date, it should be governed by a regulatory regime based largely on the present TTIA but with changes or modifications to several of the current requirements in the TTIA and the TTIA Rules. In a subsequent filing made on January 28, 2003, Verizon set forth its proposed alternative scheme in more detail and suggested that the new regulatory regime could be implemented by making particular changes to several sections of the current TTIA Rules.

5. By means of PSC Order No. 6125 (March 18, 2003), the Commission initiated this docket, as directed by the provisions of 26 Del. C. § 704(b), to conduct an open and public proceeding to determine whether the continued application of the TTIA to Verizon after September 25, 2003, would be in the public interest and, if not, what appropriate other form of regulation (as outlined in 26 Del. C. § 703) should be applied to Verizon after such date. The Commission sought written comments from the public, interested persons and entities, and other

telecommunications carriers. The Commission instructed commenting parties to set forth their views on the two questions posed by section 704(b) and also provide a summary of the facts or policies that support those views. In addition, the Commission solicited comment on the alternative regulatory regime proposed by Verizon and, in particular, whether such regime is consistent with the provisions of 26 Del. C. § 703 and in the public interest. The Commission designated William F. O'Brien as the Hearing Examiner for this docket.

6. On April 30, 2003, AT&T Communications of Delaware, LLC ("AT&T") served initial comments in response to Verizon's October 7, 2002 and January 28, 2003 filings. AT&T objected to Verizon's proposal and submitted its own proposal.

7. On April 30, 2003, the Division of the Public Advocate ("DPA") filed initial comments in response to Verizon's filings. The DPA proposed a broad expansion of the scope of these proceedings.

8. On May 19, 2003, the Commission Staff served its responsive comments. Staff maintained that a fully litigated inquiry into alternatives to the TTIA is premature, given the current state of telecommunications regulation at the federal level, which includes several pending decisions that will have a major impact on the regulation of local competition. And, Staff opposed the modifications to the TTIA proposed by Verizon because Staff considers them potentially anti-competitive in effect. For these reasons, Staff recommended that Verizon should continue to be governed by the TTIA, without any modifications, for three years and that the Commission begin to reassess the TTIA regime in September 2005. Regarding procedure, Staff recommended a workshop to narrow the issues and to develop a process to address any unresolved issues.

9. In its May 19, 2003 responsive comments, Staff also raised a concern about the telecommunications infrastructure in Delaware. Staff noted in its comments, and further

explained during a meeting among the parties, that the Commission has been receiving calls from some customers complaining of clarity problems on their telephone lines during periods of bad weather. Staff considers these complaints to be a developing problem in need of prompt attention to avoid serious problems in the future.

10. On May 20, 2003, Verizon submitted further written comments in which it objected to the proposals made by AT&T and the DPA. Verizon reiterated that it wished to continue to be regulated under the TTIA with only the modifications proposed in its January 28, 2003 filing.

11. Although it has received copies of filings in this docket, Cavalier Telephone Mid-Atlantic, LLC ("Cavalier") has not moved to intervene and has not participated. No other parties have sought to intervene.

12. On May 21, 2003, Hearing Examiner O'Brien issued a letter setting a scheduling teleconference for May 29, 2003. Hearing Examiner O'Brien informed the parties that the first event should be a workshop as described in Staff's May 19, 2003 responsive comments. He observed that if, after the workshop, significant unresolved issues remained, he was nevertheless prepared to make a recommendation to the Commission based solely upon the submissions made thus far.

13. On June 23, 2003, representatives of Verizon, the DPA, AT&T, and the Commission Staff held a workshop to discuss their respective positions. Although the parties had expressed considerable differences in their written comments, they nevertheless agreed to enter into this Proposed Settlement Agreement. The parties believe that this Settlement Agreement will serve the public interest.

II. SETTLEMENT PROVISIONS

14. The parties agree to adopt the framework proposed by the Staff in the Staff's May 19, 2003 responsive comments. Verizon will continue to be governed by the TTIA for an additional

three years, namely through September 23, 2006. Verizon shall notify the Commission, in writing, no later than September 23, 2005, whether or not it wishes to continue to be governed by the TTIA after September 23, 2006 and, if so, for how long. In the event Verizon does not wish to continue to be governed by the TTIA, its filing shall contain a specific and comprehensive proposal about the appropriate form of regulation that Verizon contends should be applied to it, including the facts, arguments and legal authorities upon which Verizon relies to support its position. On the same day it serves the Commission, Verizon shall serve a copy of its filing upon the parties to this docket, and all major local telecommunications companies then doing business in Delaware on the date of its filing.

15. Verizon agrees that, if this Proposed Settlement Agreement is approved by the Commission, within two weeks after the Commission's final order approving this Proposed Settlement Agreement is signed, Verizon will meet with Staff and the Public Advocate to address the Staff's concerns about the customer complaints referenced in paragraph 9 above and to formulate a plan and timetable for corrective action.

III. STANDARD PROVISIONS AND RESERVATIONS

16. The provisions of this Proposed Settlement Agreement are not severable.

17. This Proposed Settlement Agreement recommends a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any rate making or any other principle in any future case or in any existing proceeding, except that, consistent with and subject to the provisos expressly set forth below, this Proposed Settlement Agreement shall preclude any Settling Party from taking a contrary position in any regulatory proceeding and/or legislative context with respect to applicability of the current provisions of the TTIA and TTIA Rules for the period through and including September 23, 2006. No party to this Proposed Settlement Agreement necessarily agrees or disagrees with the treatment of any particular item,

any procedure followed, or the resolution of any particular issue addressed in this Proposed Settlement Agreement other than as specified herein, except that each Settling Party agrees that the Proposed Settlement Agreement may be submitted to the Commission for a determination that it is in the public interest and that no Settling Party will oppose such a determination. Except as expressly set forth below, none of the Settling Parties waives any rights it may have to take any position in proceedings not directly involving the TTIA and/or the TTIA Rules. Notwithstanding anything herein contained to the contrary, the Settling Parties expressly reserve the right to pursue claims, action(s), or proceedings in other regulatory dockets or cases which do not directly involve the applicability of the TTIA or TTIA Rules to Verizon which are not being pursued in this docket as a result of Verizon's agreement to be governed by the TTIA and the TTIA Rules for the period through and including September 23, 2006. Such claims may include, but are not limited to, actions to challenge/reduce rates for Unbundled Network Elements ("UNEs"), and/or access rates and/or challenges to other pricing and/or service offerings of Verizon , including, but not limited to, claims or actions under the TTIA and the TTIA Rules and/or the Telecommunications Act of 1996.

18. In the event that this Proposed Settlement Agreement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each of the Settling Parties reserves its respective rights to take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

19. This Proposed Settlement Agreement will become effective upon the Commission's issuance of a final order approving it and all the settlement terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Settlement Agreement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Proposed Settlement Agreement or to

actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

20. The Settling Parties may enforce this Proposed Settlement Agreement through any appropriate action before the Commission or through any other available remedy. The Settling Parties shall consider any final Commission order related to the enforcement or interpretation of this Proposed Settlement Agreement as an appealable order to the Superior Court of the State of Delaware. This shall be in addition to any other available remedy at law or in equity.

21. If a Court grants a legal challenge to the Commission's approval of this Proposed Settlement Agreement and issues a final non-appealable order which prevents or precludes implementation of any material term of this Proposed Settlement Agreement, or if some other legal bar has the same effect, then this Proposed Settlement Agreement is voidable upon written notice by any of the Settling Parties.

22. This Proposed Settlement Agreement resolves all of the issues specifically addressed herein and precludes the Settling Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Settlement Agreement is made without admission against or prejudice to any factual or legal positions which any of the Settling Parties may assert (a) in the event that the Commission does not issue a final, non-appealable order approving this Proposed Settlement Agreement without modifications; or (b) in other proceedings before the Commission or other governmental body so long as such positions do not attempt to abrogate this Proposed Settlement Agreement. This Proposed Settlement Agreement is determinative and conclusive of all of the issues addressed

herein and, upon approval by the Commission, shall constitute a final adjudication as to the Settling Parties of all of the issues in this proceeding.

23. This Proposed Settlement Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission should fail to grant such approval, or should modify any of the terms and conditions herein, this Proposed Settlement Agreement will terminate and be of no force and effect, unless the Settling Parties agree to waive the application of this provision. The Settling Parties will make their best efforts to support this Proposed Settlement Agreement and to secure its approval by the Commission.

24. It is expressly understood and agreed that this Proposed Settlement Agreement constitutes a negotiated resolution of the issues in this proceeding and any related court appeals.

IV. CONCLUSION

IN WITNESS WHEREOF, intending to legally bind themselves and their successors and assigns, the undersigned parties have caused this Proposed Settlement Agreement to be signed by their duly authorized representatives.

AT&T Communications of Delaware, Inc.

By: /s/ Wendie C. Stabler
Attorney for AT&T Communications of

Delaware, Inc.

Division of the Public Advocate

By: /s/ G. Arthur Padmore_____

Delaware Public Service Commission Staff

By: /s/ Connie S. McDowell_____

Verizon Delaware Inc.

By: /s/ Anthony E. Gay_____

Assistant General Counsel

7/16/03