

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)	
VERIZON DELAWARE INC. (F/K/A BELL)	
ATLANTIC-DELAWARE, INC.), FOR)	PSC DOCKET NO. 96-324
APPROVAL OF ITS STATEMENT OF TERMS)	PHASE II
AND CONDITIONS UNDER SECTION 252(f))	
OF THE TELECOMMUNICATIONS ACT OF)	
1996 (FILED DECEMBER 16, 1996;)	
REOPENED JUNE 5, 2001))	

ORDER NO. 6507

This 9th day of November, 2004, the Commission determines and Orders the following:

1. By this Order, the Commission returns to the issue of the appropriate charges for "hot cuts" performed by Verizon Delaware Inc. ("VZ-DE"). In general terms, a "hot cut" is the process by which VZ-DE disconnects the customer's loop from the incumbent's (VZ-DE's) switch and physically rewires it to a competitive local exchange carrier's ("CLEC's") switch, while concurrently reassigning the customer's original telephone number from the incumbent's switch to the CLEC's switch. In PSC Order No. 6473 (Sept. 14, 2004), the Commission reviewed how, in June 2002, it had determined "TELRIC" compliant charges for the various tasks encompassed within the hot cut process, but had then adopted a \$35 promotional rate to be charged for four basic types of loop cut-overs. This promotional rate would be in effect for two years. See also PSC Findings, Opinion, and Order No. 5967 at ¶¶ 92-95 (June 4, 2002) ("Order No. 5967").

2. In Order No. 6473, this Commission, following a procedure advanced by VZ-DE, extended the effective period of the "promotional" (\$35) hot cut rate until October 25, 2004.¹ During that time, VZ-DE would file a proposal about hot cut rates. On September 27, 2004, VZ-DE filed its proposal. In it, VZ-DE sets forth two sets of hot cut rates. The first grouping reflects rates derived from the hot cut rates recently set by the NY PSC for Verizon in that State, but with adjustments to reflect appropriate Delaware costs. According to VZ-DE, those rates would apply only if the Commission and the other parties agreed to the use of such rates, without the need for any further proceedings. In contrast, if such consensus cannot be achieved, VZ-DE said it will then seek to have approved a differing, higher-priced, set of hot cut rates, representing the charges supported by its own cost studies.² Thus, if the Commission and all parties would accept its first "offer," (and avoid further litigation), then VZ-DE would "agree" to charge the following hot cut rates in Delaware:

- Basic with WPTS: \$33.34 (2-Wire Initial), \$23.07 (2-Wire Additional), \$52.96 (4-Wire Initial), \$33.65 (4-Wire Additional);

¹A short time before the Commission entered this Order, the New York Public Service Commission ("NY PSC") had entered its own order adopting new hot cut rates to govern Verizon's wholesale operations in that jurisdiction. Proceeding on Motion of the Commission to Examine the Process and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basis, Case 02-C-1425, Order Setting Permanent Hot Cut Rates (NY PSC Aug. 25, 2004) ("NY Order"). This NY Order is still the subject of further proceedings before the NY PSC.

²VZ-DE asserts that if its first set of rates are not accepted, it will charge the TELRIC hot cut rates determined by this Commission's 2002 Order No. 5967 while its new cost-study supported rates are being examined.

- Project: \$26.16 (Initial), \$19.86 (Additional); and
- Batch \$21.33 (Initial), \$16.97 (Additional).

None of the rates would include any premise visit and the basic rates would only be available to CLECs who agree to the use of Verizon's Wholesale Provisioning and Tracking System ("WPTS"). That system, VZ-DE says, significantly automates coordination and communication between Verizon and CLECs during the hot cut cut-over process.

3. On the other hand, if its first set of rates is not accepted by the Commission or CLECs - so that the matter ends up in adversarial proceedings - then VZ-DE will file for differing hot cut rates based on its own cost studies. According to VZ-DE, those studies would support the following rates:

- Basic with WPTS: \$57.51 (2-Wire Initial), \$31.09 (2-Wire Additional), \$87.15 (4-Wire Initial), \$43.81 (4-Wire Additional);
- Project: \$46.99 (Initial), \$29.22 (Additional); and
- Batch \$21.33 (Initial), \$16.97 (Additional).

Again, those rates would be without a premises visit and conditioned on the CLECs use of the WPTS system.³

4. Of the parties listed on the present service list in this docket, only Cavalier Telephone Mid-Atlantic, LLC ("Cavalier") filed a response to VZ-DE's hot cut rates proposal. Initially, Cavalier disputes the reasonableness of both the "non-litigation" or "litigation" set of rates set forth in VZ-DE's proposal. Citing much lower hot cut rates now prevailing in Pennsylvania, the District of Columbia, and Virginia (as determined by an arbitration before the

³Under either of VZ-DE's rate groupings, if a CLEC will not agree to the use of the WPTS system, VZ-DE would then change the 2002 TELRIC rates for the more labor-intensive 2002 hot cut process.

Federal Communications Commission), as well as the rates Cavalier is presently advancing in New Jersey, Cavalier asserts that VZ-DE's proposed hot cut rates, in either variation, are unreasonable and flow from a Non-Recurring Cost Model which does not comply with the TELRIC pricing methodology. However, Cavalier suggests that it would assent to adoption of VZ-DE's "non-litigation" hot cut rates, so long as VZ-DE agrees that the "Batch" rates set forth in that grouping would be the price applicable to the particular hot cuts performed under the hot cut process developed, and successfully utilized, by VZ-DE and Cavalier over the last several years.⁴ It appears that, at this time, Cavalier and VZ-DE are unable to agree to have such Batch rate charges apply to Cavalier-initiated hot cuts.

5. Thus, as it stands now, the \$35 "promotional" hot cut rate is at an end.⁵ At the same time, the hot cut rates set forth in VZ-DE's proposal - whether in the "non-litigation" or "litigation" variation - suggest that it is appropriate to revisit the TELRIC hot cut rates which the Commission adopted in Order No. 5967. The hot cut process which drove those 2002 TELRIC rates was a more labor intensive process than the one now described by VZ-DE. According to VZ-DE, the WPTS system it has now implemented more fully automates the coordination and communication between Verizon and a CLEC "so that

⁴Both VZ-DE and Cavalier impose a condition on their respective offer and assent. They both reserve the right to later seek revisions to the "non-litigation" hot cut rates if the NY PSC might later make changes in its hot cut rulings and rates.

⁵By Order No. 6473, the effective period of the \$35 rate was extended to October 25, 2004. However, at the Commission's meeting on October 19, 2004, VZ-DE orally agreed to further extend the effective period to November 9, 2004.

much of the manual coordination and the phone calls inherent in the (basic hot cut) process" before the Commission at the time of Order No. 5967 "have now been automated through WPTS."⁶ If, as VZ-DE asserts, the WPTS is a much more efficient system, and a system which is currently available to CLECs, it is not clear why the 2002 TELRIC hot cut rates, premised on a less efficient process, should now still prevail. If a CLEC is willing to utilize the WPTS system, it should not be required to pay the 2002 TELRIC charges which were premised on a differing process and which are almost twice as high as the rates that VZ-DE (even in its litigation grouping) suggests its present cost studies support. Indeed, the TELRIC pricing principle - which premises CLEC charges on the assumption that the incumbent uses the most efficient technology currently available (47 C.F.R. § 51.505(b)(1)) - would seem to call for a re-examination of the hot cut rates in light of the introduction (and current availability) of a more efficient hot cut process. Conversely, if the WPTS system is available, it is not clear why - simply to justify the 2002 charges - CLECs should now be required to continue to use the more cumbersome, more manual process envisioned by the 2002 proceeding.

6. Additionally, according to Cavalier, since the Commission examined VZ-DE's non-recurring charges in June 2002, the regulatory authorities acting in other Verizon jurisdictions have arrived at hot cut rates significantly lower than those determined TELRIC-compliant by this Commission. According to Cavalier, the hot cut rates in Pennsylvania, the District of Columbia, and Virginia range from \$1.44

⁶VZ-DE proposal at pg. 2 (Sept. 27, 2004).

to \$5.41. And, while the recent NY PSC hot cut order arrived at rates significantly higher than the charges in these three jurisdictions, the basic hot cut charges that New York adopted in August are still about sixty percent lower than the \$113 basic rate that this Commission spoke of in Order No. 5967.⁷

7. If the Commission is now going to revisit the issue of what are appropriate TELRIC-compliant hot cut rates, the question then is what hot cut rates should be charged by VZ-DE while that re-examination proceeding moves forward. Of course, at one level, carriers' interconnection agreements might answer that question. Contractual commitments in those agreements about particular hot cut rates, and how those charges might be modified in light of subsequent pricing rulings by this Commission, will continue to control. But VZ-DE proposed its last round of hot cut rates as part of a generic SGAT-like filing which required to Commission to set a wide variety of non-recurring charges. Consequently, in revisiting the hot cut aspect of that filing, the Commission must still determine what hot cut rates shall be in effect under such a tariff-like offering while the Commission works through the proceeding.

8. For the short run, the Commission adopts, on an interim basis (and subject to a later true-up, if necessary), VZ-DE's "non-litigation" set of hot cut rates. Such interim rates shall be effective on November 9, 2004, and shall be a supplemental alternative

⁷The low hot cut rates adopted for the District of Columbia and Virginia might be attributable, in part, to the relevant commission's decision to utilize a non-recurring cost model advanced by AT&T, rather than the model offered by the Verizon operating company. The NY PSC relied more on a model

to the charges for corresponding hot cut rates determined in Order No. 5967. Such rates are interim because they will be in effect until a further Order of the Commission in this proceeding. And they are interim because the rates will also be subject to a symmetrical true-up at the conclusion of the Commission's proceeding. Thus, if the Commission should eventually determine that VZ-DE can charge higher rates for its present hot cut processes, then CLECs that have paid the lower interim rates shall be liable to VZ-DE for the rate short-falls during the interim period. Conversely, if the Commission should determine lower hot cut rates are appropriate, VZ-DE shall be obligated to refund to the CLECs the over-charge amounts.

9. Moreover, those interim rates are supplemental because their use is conditioned on the CLECs' agreement to utilize VZ-DE's WPTS system, where called for under VZ-DE's proposal. If a CLEC chooses to have a "basic" hot cut rate performed under the process before the Commission in Order No. 5967, one which utilizes less-automated procedures, then VZ-DE may charge the task costs for those activities as determined in Order No. 5967.⁸

10. The Commission now refers this matter to its Hearing Examiner. However, the Commission does not expect the Hearing Examiner

crafted by Verizon, but with significant input modifications, to arrive at its recent hot cut rates.

⁸This assumes that the CLEC made a choice to use the less-automated hot cut process. If a CLEC believes that it had no real choice but to utilize that more manual process to achieve a hot cut, then the carrier can ask the Commission to examine the continued use of the earlier TELRIC rates in that "no-choice" context. Similarly, if a CLEC believes that the WPTS system does not, in practice, work efficiencies in the process in the manner VZ-DE describes, then the carrier should promptly bring the difficulties or deficiencies to the attention of this Commission.

to immediately set a procedural schedule anticipating a full-blown proceeding involving VZ-DE's hot cut proposals. As noted above, among the present parties on the service list, only Cavalier responded to VZ-DE's September 27th hot cut rates proposal. And the focus of its disagreement was not about the proposed rates in general, but the charges applicable to the particular process it now uses with Verizon. However, no general, public notice of VZ-DE's hot cut rates proposal has been given. The Commission thinks that such notice is now appropriate; the pool of CLECs who might be interested in hot cut rates may have changed since this Phase II in this docket was initiated more than two years ago. The Commission directs the Hearing Examiner to initially publish appropriate public notice of VZ-DE's hot cut rates proposal and allow other carriers the opportunity to express their views on the proposed rates and indicate whether they wish to participate in a full-blown investigation of the proposed hot cut rates. During this time, Cavalier and VZ-DE should continue their discussions to determine whether their differences can be narrowed, and whether such differences require proceedings related to all the proposed hot cut rates or may instead be focused on the prices to be charged for a specific process utilized by those two carriers.⁹ The Hearing Examiner should provide public notice promptly. The Commission directs that within sixty days of this Order, the Hearing Examiner submit an interim Report. In that Report, the Examiner should set

⁹ The Commission does not believe that determinations made in this SGAT-like proceeding, including the adoption of interim rates, prevent VZ-DE and a particular CLEC from negotiating a set of particular hot cut rates to govern under their own bilateral interconnection agreement. Cf. 47 U.S.C. §252(f)(5).

forth: (a) whether other carriers have expressed a desire to participate in a full-blown hot cut rate proceeding; (b) the nature of the issues which would be in dispute in such a proceeding (including the parameters of the dispute between Cavalier and VZ-DE); and (c) the Examiner's recommendations about the course of further proceedings in light of the information reported under (a) and (b). After receipt of such interim Report, the Commission will determine the extent, and course of, any further proceedings needed in this matter.

11. Finally, the Commission notes that in its August 2004 hot cut Order, the NY PSC suggested that, save for one particular scenario, Verizon's imposition of a "disconnect charge" upon a CLEC either allows Verizon to impermissibly "double collect" on the tasks it performs or imposes on the departing CLEC charges that should, more appropriately, be borne by the new acquiring CLEC or Verizon's own retail operations.¹⁰ Similarly, the Wireline Competition Bureau ("WCB") of the Federal Communications Commission, acting as the arbitrator in two Virginia interconnection disputes, has also expressed skepticism about the appropriateness of collecting such disconnect charges from CLECs in the hot cut process.¹¹ In contrast, in Order No. 5967 at ¶¶ 98-100, this Commission accepted VZ-DE's imposition of a separate "disconnect" charge. In light of the later rulings by the NY PSC and the FCC's WCB, the Commission directs VZ-DE

¹⁰NY Order at pp. 55-57.

¹¹In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, 18 FCC Rcd. 17,722, Mem. Op. and Order at ¶¶ 594-96 (WCB Aug. 29, 2003).

to now file with this Commission a memorandum explaining why its current disconnect fees remain appropriate and why the determinations of the NY PSC and the WCB about "double recovery" in the context of "disconnect" charges are erroneous.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, the following "hot cut" rates are adopted on an interim basis, as non-recurring charges, which may be charged by Verizon Delaware Inc.:

- Basic with WPTS: \$33.34 (2-Wire Initial), \$23.07 (2-Wire Additional), \$52.96 (4-Wire Initial), \$33.65 (4-Wire Additional);
- Project: \$26.16 (Initial), \$19.86 (Additional); and
- Batch: \$21.33 (Initial), \$16.97 (Additional)

In the case of basic hot cuts, these supplemental, interim rates shall apply with the use of the "Wholesale Provisioning and Tracking System." These interim rates shall be effective November 9, 2004 and shall be subject to a reconciliation true-up at the time of a final decision by the Commission in this matter. Verizon Delaware Inc., shall, except as terms in an interconnection agreement may provide otherwise, charge these interim "hot cut" rates pending a further Order of the Commission. If a competitive local exchange carrier chooses to forego use of the "Wholesale Provisioning and Tracking System" for a "basic" hot cut and instead chooses have the hot cut performed under the process before the Commission in PSC Findings, Opinion and Order No. 5967 (June 4, 2002), then Verizon Delaware Inc. may charge that carrier the task costs for those activities as determined in Order No. 5967. Verizon Delaware Inc., shall record its

charges to carriers under these interim hot cut rates in order to allow for a later reconciliation.

2. That William F. O'Brien is designated the Hearing Examiner for this matter. Hearing Examiner O'Brien shall, as an initial matter, conduct the proceedings described in paragraph 10 in the body of this Order. Within sixty days from the date of this Order, Hearing Examiner O'Brien shall file the interim Report described in paragraph 10 of the body of this Order. Hearing Examiner O'Brien is delegated, under 26 Del. C. § 102A, the authority to determine the content and manner of the initial public notice. He is also delegated, under Rule 21 of the Commission's Rules of Practice and Procedure, the authority to grant or deny further petitions to intervene.

3. That, Verizon Delaware Inc., shall, within thirty days of the date of this Order, file and serve the memorandum called for by paragraph 11 of the body of this Order.

4. That, after receiving the Hearing Examiner's Interim Report, the Commission will enter a further Order concerning the further course of this proceeding and appropriate hot cut rates.

5. That Verizon Delaware Inc., and all other carriers participating in this matter are hereby notified that they will be charged the cost of this proceeding under 26 Del. C. § 114(b).

6. 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/ Norma J. Sherwood
Acting Secretary