

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: VERIZON-RHODE ISLAND'S FILING :
OF JUNE 23, 2004 TO AMEND TARIFF NO. 18 : DOCKET NO. 3614

REPORT AND ORDER

On June 23, 2004, Verizon-Rhode Island ("VZ-RI") filed with the Rhode Island Public Utilities Commission ("Commission") proposed amendments to RIPUC Tariff No. 18 to implement the FCC's Triennial Review Order ("TRO"). Specifically, VZ-RI proposed amendments which would remove enterprise switching and associated shared transport serving customers using capacity loops at DS1 or above from the classification of an unbundled network element ("UNE").¹

On July 7, 2004, the Division of Public Utilities and Carriers ("Division") filed a letter recommending that the Commission suspend VZ-RI's proposed revisions to Tariff No. 18. The Division maintained that VZ-RI's proposal could limit the development of further local telephone competition in Rhode Island. The Division indicated that the Commission has authority to suspend and reject the proposed revisions under state law, the Telecommunication Act of 1996 ("Telco Act") and the FCC's TRO.

On July 9, 2004, VZ-RI filed a response indicating that as of March 2004, VZ-RI has leased to competitors only seven UNE-P arrangements making use of DS1 or higher capacity lines. Also, VZ-RI noted that in Docket No. 3550 not a single competitive local exchange carrier ("CLEC") asked the Commission to undertake an investigation into requesting a waiver for the state of Rhode Island from the FCC for the FCC's finding that enterprise switching is not a UNE. In addition, VZ-RI argued that the FCC has

¹ VZ-RI indicated it would only provision new orders for enterprise switching customers using DS1 or above capacity loops pursuant to an interconnection agreement ("ICA"). However, to avoid service disruption, VZ-RI will bill these UNE Platform arrangements resale rate for business service.

preempted state commissions in the area of enterprise switching. Lastly, VZ-RI disputed whether there is any state law authority for the Commission to require enterprise switching to be a UNE.

On July 23, 2004, VZ-RI responded to Commission data requests indicating that of the seven enterprise switching effected by VZ-RI proposed tariff revisions, one CLEC is purchasing six DS1 UNE-Platform arrangements and the other CLEC is purchasing one PR1 UNE Platform arrangement. Also, VZ-RI stated that it has signed a letter of intent with the CLEC who is purchasing six DS1 UNE-Platform arrangements and is in negotiations with the other CLEC.

At its July 26, 2004, open meeting the Commission voted to allow VZ-RI's revised tariff to go into effect.

COMMISSION FINDINGS

When a utility seeks to de-tariff a service, it must first be determined whether it is a retail service, or a wholesale service. The Commission will allow a utility to de-tariff a retail service if a competitive market exists for the service and the quality of the service will not be undermined.² However, if the utility is providing a wholesale service, a different analysis is required. In the field of telecommunications, the Commission must determine whether VZ-RI is required under law to provide the wholesale service to its competitors. It is clear that the FCC's TRO ruled that enterprise switching is not a UNE.³ Furthermore, in Docket No. 3550, not a single CLEC requested that this Commission seek a waiver for the state of Rhode Island from the FCC for the FCC's finding that enterprise switching is not a UNE. Therefore, under federal law enterprise switching is

² Order Nos. 16744 and 16634.

³ FCC's TRO para. 451.

not a UNE. As for state law, it is clear that this Commission, in the past, has required VZ-RI to provide UNE combinations such as UNE Platform.⁴ However, subsequent to these orders, local telephone competition in Rhode Island has evolved from its primordial stage to become the second most competitive state in the nation. In addition, the FCC in its TRO made it clear that it would be “unlikely” that a state commission that contradicts the TRO in regards to enterprise switching “would fail to conflict” with federal law.⁵ Furthermore, the Commission should not exert its state law authority when it is “not vital to facilities-based competition.”⁶ Lastly, this tariff revision will only effect a small segment of the local competitive market which consists of only seven UNE-Platform arrangements provided by two CLECs and in fact, the CLEC with six UNE-Platform arrangements has reached an understanding with VZ-RI.⁷ As a result, the Commission approved VZ-RI’s proposed revisions to Tariff No. 18 in its entirety.

Accordingly, it is

(18036) ORDERED:

1. Verizon-Rhode Island’s revision to Tariff No. 18 filed on June 23, 2004, is approved.
2. Verizon-Rhode Island shall comply with all findings and instruction contained in this Report and Order.

⁴ Order Nos. 16183 and 16012.

⁵ FCC’s TRO, para. 195.

⁶ Id., and See Order No. 16808.

⁷ In contrast, on July 22, 2004, the Massachusetts D.T.E. suspended a VZ tariff revision because the enterprise switching to be eliminated by VZ affected many more customers, customers with four or more DS0 lines.

EFFECTIVE IN WARWICK, RHODE ISLAND, PURSUANT TO AN OPEN
MEETING DECISION ON JULY 26, 2004. WRITTEN ORDER ISSUED
NOVEMBER 1, 2004.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Kate F. Racine, Commissioner*

Robert B. Holbrook, Commissioner

*Commissioner Racine dissented and would have suspended the tariff.