

Decision 03-08-029 August 21, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission’s Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission’s Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)

(Verizon UNE Phase)

OPINION GRANTING VERIZON CALIFORNIA’S PETITION FOR MODIFICATION OF DECISION 03-03-033 REGARDING BILLED SWITCHING FEATURES

I. Verizon’s Petition Regarding Billed Switching Features

In Decision (D.) 03-03-033, the Commission set interim rates for a subset of unbundled network elements (UNEs) that Verizon California (Verizon) sells to competitive local exchange carriers. The order set interim rates based on UNE rates recently adopted for Verizon New Jersey, with adjustments based on the Federal Communications Commission’s Synthesis Model. The decision left the proceeding open to set final UNE rates for Verizon and noted that the interim rates are subject to adjustment, either up or down, from the effective date of D.03-03-033 until final rates are adopted.

Verizon requests modification of D.03-03-033 regarding the establishment of interim per minute rates for certain switch features.¹ In its petition for modification, Verizon explains that D.03-03-033 ordered Verizon to begin charging usage based rates for “billed features” associated with Verizon New Jersey Centrex switch features. (See D.03-03-033, Appendix A.) According to Verizon, it offers a similar but structurally distinct CentraNet service in California with features that differ from the Verizon New Jersey Centrex features, and that are billed on a flat-rate basis rather than by minute-of-use. Thus, when the Commission set rates in D.03-03-033 based on New Jersey Centrex feature rates, these features do not equate to Verizon’s CentraNet offerings in California.² Verizon maintains that its CentraNet rates cannot be converted to a minute-of-use basis without extensive and time-consuming system changes.

Verizon requests that it be allowed to offer its CentraNet features in California at a rate of zero for the interim, subject to true-up once final prices are set at the conclusion of this proceeding.³ In addition, Verizon requests that

¹ Verizon also filed petitions for modification of D.03-03-033 on two other issues – namely, the schedule for implementing nonrecurring price changes and a customer notification requirement. These two additional petitions will be addressed through a separate order.

² Verizon provided a list of CentraNet features in Attachment A of its petition, but later clarified that the list was “simply provided for illustrative purposes.” (Prehearing Conference Transcript (Tr.), 5/27/03, p. 1733.)

³ Along with its petition for modification, Verizon requested a stay of the billed feature rates adopted in D.03-03-033 until its petition on this issue was resolved. On May 29, 2003, the Commission’s Executive Director considered the stay request as an extension request per Rule 48(b) and granted the extension until August 27, 2003.

D.03-03-033 be clarified to state that Verizon is not required to expand its CentraNet offerings in any way to match those offered by Verizon New Jersey, but only to modify the rates for whatever CentraNet features are currently offered in California.

At a prehearing conference on May 27, 2003, AT&T Communications of California, Inc. (AT&T) stated that it did not oppose Verizon's request but it expressed concern that the list of features provided in Verizon's petition was not a complete list. (Tr. at 1730-31.) In response, counsel for Verizon clarified that the list was illustrative only and that "we do propose to offer all switch features at zero on an interim basis subject to true-up..." (Tr. at 1733.) Verizon reiterated this position in its reply to comments on the petition by stating:

AT&T sought to clarify the scope of Verizon's petition on this issue, and as a result of discussion the parties agreed that Verizon would offer all available CentraNet switch features at zero, subject to true-up. (Verizon Reply, 6/23/03, p. 1-2.)

Comments on this petition were filed jointly by Tri-M Communications Inc. d/b/a TMC Communications, Sage Telecom, Inc., and Anew Telecommunications Corp. d/b/a Call America (collectively, the "TMC Parties"). The TMC Parties do not oppose Verizon's request to charge a zero interim rate, subject to true-up, for CentraNet switching features, but they do object to the clarification sought by Verizon. The TMC Parties believe that Verizon is required to provide competitive local carriers, upon request, whatever switching features Verizon is capable of providing. (See TMC Parties' Opposition, 6/11/03, p. 10.) The TMC Parties seek clarification from the Commission that D.03-03-033 requires Verizon to offer Centrex features, as well as any other feature a particular switch is capable of providing.

Verizon opposes this further clarification, arguing that the Commission did not intend to expand or contract Verizon's list of features when it adopted interim rates. Instead, Verizon suggests that Ordering Paragraph 3 of D.03-03-033 be modified to read:

The interim UNE prices set forth in Appendix A of this order shall be effective on the date this order is effective. Verizon shall make all billing adjustments necessary to ensure that this effective date is accurately reflected in bills applicable to these UNEs, except that the rate for any CentraNet switch feature for which a non-zero rate is contained in Appendix A (listed as "billed features") shall be set at zero, subject to true-up. The listing of individual features in Appendix A is not intended to either restrict or expand the availability of CentraNet switch features offered in California. (Verizon's proposed new language is underlined.)

II. Discussion

There is no opposition to Verizon's proposal to charge an interim rate of zero for its CentraNet switching features, subject to true-up in the same manner as the other interim rates adopted in D.03-03-033. Verizon currently charges for its CentraNet features on a flat-rate basis and it would be resource intensive to change to a minute-of-use rate simply for an interim rate. In response to concerns over which CentraNet features will be offered at an interim rate of zero, Verizon clarified that it will offer "all available CentraNet switch features at zero." (Verizon Reply, 6/23/03, p. 1.) Verizon's petition for modification should be granted to allow it to charge an interim rate of zero for all available CentraNet features, meaning those features that Verizon currently offers in California.

We do not agree with the clarification sought by the TMC Parties that would potentially enlarge the list of features Verizon must offer. The Commission did not intend to require Verizon to modify its current CentraNet

service offerings to match those offered in another state when it adopted interim rates based on Verizon New Jersey. It is understandable that Verizon's New Jersey and California service offerings may differ. Therefore, we will adopt the clarification proposed by Verizon to Ordering Paragraph 3, with the minor modification that the zero interim rate applies to all CentraNet switch features that Verizon currently offers.

III. Comments on Draft Decision

The Commission mailed the draft decision of the ALJ in this matter to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by AT&T and WorldCom, Inc. (collectively AT&T/WorldCom) and reply comments were filed by Verizon. AT&T/WorldCom ask the Commission to correct the draft decision to clarify that Verizon has proposed to offer all available CentraNet switch features at zero for the interim rather than the limited list of features contained in Appendix A of the draft decision. Verizon opposes the specific language corrections proposed by AT&T/WorldCom, but does not dispute that it requested to offer a zero rate for all CentraNet switch features that it currently offers. The draft decision has been revised to clarify this point. As part of these revisions, the list of CentraNet features that was attached to the draft order as Appendix A has been removed because its completeness was in question and Verizon admitted it was illustrative only.

IV. Assignment of Proceeding

Commissioner Michael R. Peevey is the Assigned Commissioner and Dorothy J. Duda is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.03-03-033 ordered Verizon to charge usage based rates for “billed” switch features based on Verizon New Jersey’s Centrex services.
2. Verizon offers a similar but structurally distinct CentraNet service in California, with features that differ from the New Jersey Centrex features.
3. CentraNet features are billed on a flat-rate basis rather than by minute-of-use.
4. Verizon’s proposal to charge an interim rate of zero for the CentraNet switch features it currently offers in California, subject to true-up, was unopposed.

Conclusions of Law

1. D.03-03-033 should be modified to allow Verizon to charge an interim rate of zero for the CentraNet switch features it currently offers in California.
2. The Commission did not intend to require Verizon to modify its current CentraNet service offerings to match those offered by Verizon New Jersey.
3. Ordering Paragraph 3 of D.03-03-033 should be modified as proposed by Verizon, with the additional clarification that the zero interim rate applies to all CentraNet switch features Verizon currently offers in California.

O R D E R

IT IS ORDERED that Ordering Paragraph 3 of Decision 03-03-033 is modified to read as follows:

The interim UNE prices set forth in Appendix A of this order shall be effective on the date this order is effective. Verizon shall make all billing adjustments necessary to ensure that this effective date is accurately reflected in bills applicable to these UNEs, except that the rate for any CentraNet switch feature that Verizon currently offers in California and for which a non-zero rate is contained in Appendix A (listed as “billed features”) shall be set at zero, subject to true-up. The listing of individual features in Appendix A is not intended to either restrict or expand the availability of CentraNet switch features offered in California.

This order is effective today.

Dated August 21, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners