

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Wisconsin Public Service Commission
Order Directing Filings
File No. CCB/CPD No. 00-1

ORDER ON RECONSIDERATION

Adopted: June 30, 2006

Released: July 7, 2006

By the Commission:

I. INTRODUCTION

1. In this order, we grant the Petition for Correction filed by the Verizon Telephone Companies (Verizon) and deny the Petition for Reconsideration filed by the Wisconsin Pay Telephone Association (WPTA). Verizon, on behalf of its affiliates, and the WPTA seek correction and reconsideration, respectively, of the Commission's decision in the Wisconsin Order. Because each petition seeks a distinctly different form of relief, we address them individually.

II. VERIZON PETITION FOR CORRECTION

A. Background

2. In the Wisconsin Order, the Commission exercised its jurisdiction under section 276 of the Communications Act of 1934, as amended ("the Act"), to require that Bell Operating Company (BOC)

1 Verizon Petition for Correction, CCB/CPD No. 00-01 (filed March 4, 2002).

2 Petition of the Wisconsin Pay Telephone Association, Inc., for Reconsideration, CCB/CPD No. 00-01 (filed Feb. 28, 2002) ("WPTA Petition").

3 Verizon submitted its petition on behalf of the following Verizon telephone companies: Contel of the South, Inc. d/b/a Verizon Mid-States, GTE Midwest Incorporated d/b/a Verizon Midwest, GTE Southwest Incorporated d/b/a Verizon Southwest, The Micronesian Telecommunications Corporation, Verizon California, Inc., Verizon Florida Inc., Verizon Hawaii Inc., Verizon North Inc., Verizon Northwest Inc., Verizon South Inc., and Verizon West Coast Inc. Verizon Petition for Correction, at 1 n.1.

4 Wisconsin Public Service Commission, Order Directing Filings, CCB/CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd 2051 (2002) ("Wisconsin Order"), aff'd sub nom. New England Public Communications Council, Inc. v. FCC, 334 F.3d 69 (D.C. Cir. 2003).

payphone line rates satisfy the new services test.⁵ It concluded, however, that it lacked jurisdiction over non-BOC LEC payphone line rates.⁶ In its Petition for Correction, Verizon requests that the Commission correct the *Wisconsin Order* to clarify that Verizon North is not a BOC within the meaning of the Act.⁷ Verizon asserts that, despite its acquisition of Verizon North, previously known as GTE North Incorporated, Verizon North is not a BOC as defined in Section 3 of the Act.⁸ Accordingly, Verizon contends that Verizon North should not have been included in paragraph 66 of the *Wisconsin Order*, concerning application of the new services test to BOC payphone line rates, and instead should have been included with the non-BOC LECs in paragraph 67.⁹ No oppositions were filed to Verizon's Petition for Correction.

B. Discussion

3. We agree that Verizon North is not a BOC. The Act defines "Bell operating company" to include 20 companies specifically named in the statute, as well as "any successor or assign of such company that provides wireline exchange service,"¹⁰ but it expressly excludes "an affiliate of such company" other than one of the named companies or their successors or assigns.¹¹ As a result of a merger between GTE and Verizon, GTE North was renamed Verizon North and became an affiliate of Verizon, but it is not one of the companies defined as a BOC, nor is it a successor or assign of Verizon.¹² Accordingly, we conclude that Verizon North is not a BOC, and it is, therefore, not within this Commission's jurisdiction to mandate application of the new services test to its intrastate payphone line rates as articulated in the *Wisconsin Order*.¹³

III. WPTA PETITION FOR RECONSIDERATION

A. Background

4. In the *Wisconsin Order*, the Commission established guidelines to assist state commissions in applying the new services test to the BOCs' payphone line rates.¹⁴ The Commission declined to review cost materials submitted by Ameritech and Verizon, instead urging the Wisconsin Commission "to review

⁵ 17 FCC Rcd at 2064, para. 42.

⁶ *Id.*

⁷ *See* 47 U.S.C. § 154.

⁸ Verizon Petition for Correction at 2-3.

⁹ *Id.*

¹⁰ 47 U.S.C. § 153(4)(A, B).

¹¹ 47 U.S.C. § 153(4)(C).

¹² *See Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region Inter-Lata Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17424 (2001) ("*Verizon Pennsylvania Section 271 Order*") (although former GTE operating company became an affiliate of Verizon as a result of a merger, it is neither a BOC nor a successor or assign of Verizon).

¹³ In that order, however, the Commission encouraged states to apply the new services test to all LECs. *Wisconsin Order*, 17 FCC Rcd at 2064, para 42.

¹⁴ *Wisconsin Order*, 17 FCC Rcd at 2065-71, paras. 43-65.

its jurisdiction to apply the new services test.”¹⁵ In its petition for reconsideration, WPTA asks the Commission to “take the next step to evaluate all cost support materials which were submitted by Ameritech and Verizon . . . and determine an appropriate payphone line rate in the State of Wisconsin.”¹⁶

5. The American Public Communications Council (“APCC”) filed comments and reply Comments in support of WPTA’s petition.¹⁷ APCC urges the Commission to grant review of the part of the *Wisconsin Order* that defers review of the cost support materials submitted by Ameritech and Verizon.¹⁸ It argues that the Commission has both the statutory authority and obligation to complete review of the cost support data under section 276 of the Act. Moreover, APCC argues that states have relied on the Commission’s statement that it would review a LEC’s payphone line rates for compliance with the new services test if a state commission were unable to conduct such a review.¹⁹ TDS advises the Commission to reject APCC’s comments as an untimely request for reconsideration of the Commission’s finding that it has no jurisdiction over the intrastate payphone line rates of non-BOC LECs.²⁰

B. Discussion

6. We deny WPTA’s petition. At the time the WPTA Petition was filed, the Wisconsin Commission had concluded that state law prohibited it from applying the new services test to intrastate payphone line tariffs filed by LECs in the state of Wisconsin.²¹ Since then, however, the Wisconsin Commission has revisited that determination and concluded that it has jurisdiction to determine whether payphone line rates comply with the new services test and to enforce this aspect of the *Wisconsin Order*.²² The Wisconsin Commission has since undertaken these investigations and issued a Notice of Proceeding

¹⁵ *Id.* at 2071, para. 66.

¹⁶ WPTA Petition at 2.

¹⁷ Comments of APCC on Petition for Reconsideration of the Wisconsin Pay Telephone Association (filed March 13, 2002) (“APCC Comments”); Reply Comments of APCC on Petition for Reconsideration of the Wisconsin Pay Telephone Association (filed April 17, 2002) (“APCC Reply Comments”).

¹⁸ In its comments, APCC appears to argue that the Commission’s review should apply to all non-BOC LECs, but it clarifies in its reply comments that its request is limited to a review of Verizon’s cost support materials even if the Commission grants Verizon’s request to clarify that it is a non-BOC. APCC Comments at 5; APCC Reply Comments at 2.

¹⁹ APCC Comments at 2.

²⁰ The TDS Telecommunications Corporation (“TDS”) Opposing Comments at 2. TDS filed comments on behalf of its subsidiaries that are incumbent LECs in Wisconsin.

²¹ See WPTA Petition at 4 (citing *Wisconsin Commission Letter Order*, Docket 05-TI-156 (Nov. 6, 1997) (unpublished)); see also *Wisconsin Order*, 17 FCC Rcd at 2057, para. 20 (same).

²² The Wisconsin Commission revisited its jurisdictional authority to apply the new services test and instituted an investigation to determine whether it has such authority under federal and state law. See *Investigation of Whether Telecommunications Utilities in Wisconsin are in Compliance with the Federal Communications Act*, 47 U.S.C. §151 et. seq., and Chapter 196 Wis. Stats., with Respect to Pay Telephone Services Offered in This State, Final Decision, 05-TI-156 (July 22, 2004) (*Wisconsin Commission Final Order*). It concluded that it has jurisdiction under section 196.291(3)(h) of the Wisconsin code to: (1) investigate whether or not the payphone line rates of SBC and Verizon comply with the new services test; and (2) enforce this federal requirement, if it finds that those rates exceed lawful levels. *Id.*

and Investigation and Assessment of Costs to Wisconsin Bell d/b/a SBC Wisconsin.²³ This action is consistent with the Commission's previously stated view that payphone line rates should, to the extent possible, be reviewed by the appropriate state commission.²⁴ Accordingly, in light of the decision of the Wisconsin Commission to review intrastate payphone line rates, we deny WPTA's request that we evaluate Ameritech's and Verizon's payphone line rates.²⁵

IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 276, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Correction filed by Verizon IS GRANTED as discussed herein.

8. IT IS ALSO ORDERED that, for the reasons stated above, the WPTA Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²³ *Investigation of the Access Line Rates of Wisconsin Bell, Inc., d/b/a SBC Wisconsin, that Apply to Private Payphone Providers*, Notice of Proceeding and Assessment of Costs, 6720-TR-108 (July 23, 2004).

²⁴ *See, e.g., Wisconsin Order*, 17 FCC Rcd at 2056, para. 15.

²⁵ For this same reason, we also deny APCC's request that we review Ameritech's and Verizon's payphone line rates.