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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UD 13

In the Matter of)	
)	
VERIZON NORTHWEST INC.)	
)	ORDER
Petition to Price List IntraLATA Toll,)	
Operator and Directory Services.)	

DISPOSITION: RECONSIDERATION GRANTED IN PART;
DENIED IN PART

On February 15, 2002, Verizon Northwest Inc. (Verizon) filed a petition with the Public Utility Commission of Oregon (Commission) under ORS 759.030(6) and (8) and OAR 860-032-0035, asking the Commission to permit Verizon to price list intraLATA toll, operator service, and directory assistance services. On May 31, 2002, the Commission entered Order No. 02-359 (Order) granting Verizon's petition to price list intraLATA toll service. The Order also allowed Verizon to price list operator service subject to a price cap condition. Finally, the Commission suspended the directory assistance service price list to allow for further investigation.

On July 25, 2002, Verizon filed an application for reconsideration of the Order, alleging that the Commission erred by 1) placing a price cap condition on the operator service price list, and 2) not granting the price list for directory assistance services. Verizon asked the Commission to remove the condition on operator services and grant the petition to price list directory assistance services.

On August 16, 2002, the Commission Staff (Staff) filed its reply.¹ Staff supports reconsideration of the Commission's decision regarding operator services, with the caveat that if the condition is removed, the petition should be suspended for further investigation. Staff does not support reconsideration of the Commission-ordered suspension and investigation for directory assistance services.

¹ Staff's reply was initially due on August 9, 2002. Staff was granted an extension of time, until August 16, 2002, to file its reply.

On August 27, 2002, Verizon submitted a response to Staff's reply, along with a motion for leave to file the response. Verizon's motion was granted. On August 29, 2002, Staff submitted a supplemental reply to Verizon's August 27, 2002 filing, along with a motion for leave to file a supplemental reply. Staff's motion was granted.

In reviewing requests for reconsideration, we are guided by the requirements in OAR 860-014-0095. Section 3 of that rule states that the Commission may grant an application if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

DISCUSSION

Verizon asks us to reconsider two decisions in the Order: 1) the placement of a price condition on operator services; and 2) the suspension of the directory assistance service price list. We address each in turn.

Operator services

Applicable law

ORS 759.030(8) provides as follows:

If the commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under such conditions as it determines are reasonable, may authorize the utility to file a price list . . . In making the determination of whether a product or service is subject to competition, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the Commission.

Verizon's position

According to Verizon, the Commission found that a competitive operator services market exists in Oregon. The Commission's error, argues Verizon, was in imposing a price cap condition. By imposing the condition, Verizon claims that the Commission treated "comparable rates" as a requirement rather than a factor, that the decision to place a condition was not based upon the entire record, that the condition is not "reasonable" under the statute, and that the Commission's decision contradicts well-established Commission policies favoring competitive entry. Verizon asks for reconsideration to be granted, and for the price cap condition to be removed.

Staff's position

Staff does not agree with Verizon's assertion that a competitive operator services market exists in Oregon. According to Staff, operator services are subject to service competition, but not price competition. By placing a price cap condition on the services, Staff argues that customers are protected.

In its August 29, 2002 reply, Staff modified its argument slightly. Staff states:

The clear import of a reading of all the relevant portions of Staff's recommendation is that Staff found and recommended to the Commission that customers would be protected by the attached condition, even though price competition does not exist, therefore, the Commission could find that the services were subject to competition in order to allow Verizon price list status for these services *because the condition substituted for the fact that the services were not subject to competition.* (Emphasis in original) *Id.* at p. 2, line 18 through p. 3, line 2.

The essence of Staff's argument is that without the condition, operator services are not subject to competition. It is the placement of that condition which fulfills the statutory requirement.

Discussion

The statutory scheme found in ORS 759.030(8) sets out a two-stage process. First, the Commission determines that a product or service is subject to competition. Then the Commission may impose reasonable conditions in authorizing a price list. Conditions must be placed *after* the Commission finds that the service or product is subject to competition. The statute does not provide for a condition to substitute as an element of proof for determining a service to be subject to competition.

We initially determined to price list operator services. In retrospect, we are not so certain that our decision was correct. We agree with Staff that further investigation is necessary. Therefore, we find that there is good cause for granting reconsideration. In the interim, the price list remains in effect with the price cap condition.

Directory assistance services

In our Order, we adopted Staff's recommendation to further investigate whether Verizon's directory assistance services should be price listed. Verizon now asks us to reconsider our Order, and determine that further investigation is not necessary because directory assistance services are subject to competition and should be price listed.² Verizon claims that the evidence it previously provided to the Commission is more than sufficient to support a finding that directory assistance services are subject to competition. Finally, Verizon asks that we consider a recent directory services study prepared for Qwest as new evidence.³

In essence, Verizon is asking us to consider the same evidence and make a different ruling. This request does not comply with the requirements for reconsideration. As for the "new evidence" that Verizon wishes us to consider, we can review that study during the investigation we previously ordered.

Verizon's application for reconsideration of the Order regarding directory assistance services is denied.

² Verizon also asks that its national directory assistance service should be declared "not essential" and thereby eligible for price listing under ORS 759.030(6).

³ This study, *Competition for Directory Assistance Services In Oregon*, by Harold Ware, Ph.D. was issued on June 17, 2002.

ORDER

IT IS ORDERED that:

1. Reconsideration of Order No 02-359 is granted in part. Further investigation and hearing is necessary for determination of whether operator services are subject to competition. The operator services price list, along with the price cap condition, remains in effect until the issuance of a final order in this docket.
2. We do not reconsider the portion of Order No. 02-359 regarding price listing directory assistance services.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.