

**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: PETITION FOR PRICE LISTING OPERATOR AND
DIRECTORY ASSISTANCE SERVICES DENIED**

The Commission reopened this docket to comply with a remand order from the Marion County Circuit Court (Circuit Court). The remand order followed an appeal of Commission Order No. 03-531, which denied Verizon Northwest Inc.'s (Verizon) petition to price list operator and directory assistance services. The Circuit Court concluded that the Commission had failed to make the requisite findings of fact and conclusions of law to support its decision.

At the direction of an Administrative Law Judge, both Verizon and the Commission Staff filed proposed findings of facts for incorporation in a Commission order. Based on those filings, and other information contained in the record, we enter the following order on remand.

Procedural Background

On February 15, 2002, Verizon petitioned the Commission for authority to price list¹ intraLATA toll, operator services and directory assistance services. In Order No. 02-359, the Commission granted Verizon's petition to price list intraLATA toll services, and granted the operator services price list, subject to a price cap. The Commission, however, suspended the directory assistance service price list subject to further investigation.

Following reconsideration, the Commission reversed, in part, its decision with regard to operator services. In Order No. 02-639, the Commission concluded that operator services price list would remain in effect with the price cap condition until an investigation was completed to determine whether those services are subject to competition under ORS 759.030.

¹ If a service is price listed, the service remains in a telecommunications utility's revenue requirement. However, the price list, or any revision to it, is not subject to the provisions of ORS 759.180 to 759.190. Thus, changes to a price list are not subject to prior Commission review, and are effective immediately on filing.

After an investigation and hearing, the Commission concluded that neither operator services nor directory assistance services are subject to competition under ORS 759.030 and, accordingly, denied Verizon's petition. Based on that decision, the Commission also revoked its earlier decision to price list operator services with a price cap. *See* Order No. 03-531.

Verizon appealed Order No. 03-531 to the Marion County Circuit Court, who has remanded the matter back to the Commission.

FINDINGS OF FACT

Operator Services

Verizon's operator services provide live or mechanized assistance to customers in completing calls and are priced on a per-call basis. These services fall into three main categories, and are priced as follows: Operator Handled Station-to-Station calls (\$1.00 per call), Customer-Dialed Station-to-Station Calling Card calls (\$0.60 per call), and Operator Handled Person-to-Person calls (\$3.00 per call). Verizon's current prices for these services are 45 to 150 percent above the company's actual costs to provide them.

There is little customer demand for Verizon's operator services. During the three-year period for which Verizon provided data, less than three percent of Verizon customers used operator services. Moreover, revenues from operator services accounted for less than one-tenth of one percent of the company's total operating revenues in Oregon. A large majority of customers who use operator services use Station-to-Station services, which include customer-dialed collect calls, as well as third-number billed and operator-assisted toll calls.

Verizon customers can obtain operator services from other wireline telecommunications providers. Long distance carriers, such as AT&T, MCI and Sprint, along with some competitive local exchange carriers (CLECs), provide operator services to all customers in Verizon's Oregon local service territory.

Wireless telephone providers also provide services that compete with Verizon's operator services. In order to access wireless operator services, however, a customer needs to have a wireless telephone and a wireless service plan. Furthermore, wireless coverage is not ubiquitous throughout Verizon's service territory in Oregon.

The rates charged by its largest wireline competitors are generally higher than those charged by Verizon. Prior to 1998, the rates charged by these carriers were similar to Verizon's current rates for operator services. In recent years, however, the large competitors have increased their rates several hundred percent. The following chart contains a comparison of rates charged for operator services by Verizon, AT&T and MCI-Worldcom:

	Station-to-Station	Calling Card	Person-to-Person
Verizon	\$1.00	\$0.60	\$3.00
AT&T	\$4.99	\$5.50	\$9.99
MCI-Worldcom	\$2.25	\$2.25	\$4.90

Smaller wireline carriers, such as Allegiance Telecom, TCG, and XO, offer operator services as rates more comparable to Verizon. These rates are set forth in the following chart:

	Station-to-Station	Calling Card	Person-to-Person
Verizon	\$1.00	\$0.60	\$3.00
Allegiance Telecom	\$1.25	\$0.50	\$3.00
TCG	\$1.25	\$0.50	\$3.00
XO	\$1.05	\$0.25	\$3.00

Customers are generally not aware of alternative providers of operator services for a variety of reasons. First, Verizon customers use operator services very infrequently and, as a result, are unlikely to spend much time or effort in discovering alternatives that may be available—particularly from the lesser known providers. Second, the vast majority of operator service calls billed to Verizon customers are collect calls, with the Verizon customer on the terminating, and not the initiating, end of the call.² Under these circumstances, the Verizon customer is not involved in choosing the carrier, and has no prior knowledge of the rate being charged for the call.

Verizon customers must also take additional steps to access operator services from alternative providers. Verizon generally controls the easy-to-use and traditional access number of "0" for operator services in its service territory. As a result, Verizon local service customers use Verizon as their operator services provider whenever they dial "0," regardless of who their toll carrier is. To access an alternative operator services provider, a customer is typically required to use a dial-around number, such as 10-10-321, or a longer number.

There is no specific evidence that any alternative providers have a significant market share for operator services in Verizon's service territory in Oregon. Indeed, due to the lack of familiarity of alternative providers and the difficulties accessing their services, Verizon's operator services account for most of the operator services usage in its service territory.

Verizon has been allowed pricing flexibility for its operator services in several states. In those states, Verizon's rates for the three operator services listed—Station-to-Station calls, Calling Card calls, and Person-To-Person calls—are generally higher than Verizon's Oregon rates, typically by a large margin. In fact, of the 18 rates taken from six representative states in which Verizon has pricing flexibility, 17 of the rates are higher than the Oregon rates. For example, for Station-to-Station calls, Verizon

² The exact figure, found at Staff/112, Stange/4, has been designated "confidential" by Verizon.

charges \$2.50 per call in four of the six states, \$2.00 per call in the fifth state, and \$0.69 per call in the sixth state. Verizon's current Oregon rate for this service is \$1.00 per call. If granted pricing flexibility in this proceeding, Verizon acknowledges that it might take advantage of the upward pricing flexibility and raise its Oregon rates for operator services.

Directory Assistance

Verizon's directory assistance services include Local Directory Assistance (LDA) and National Directory Assistance (NDA). Verizon's LDA allows a local caller to obtain intrastate listing information, including the telephone number and directory address, for \$0.35 per call. This price is six percent above the company's actual costs to provide the service. The company's NDA provides information for listings located outside the customer's local directory assistance service area (interstate listings) and works much like LDA, except the price per call is \$0.95. This price is 188 percent above the company's actual costs to provide the service. Directory Connect Plus (DCP) Service allows a customer calling for Directory Assistance to request the completion of local or IntraLATA calls to the telephone number that was provided to that customer on the directory assistance call, for \$0.35 per call.

Verizon's customers are using the company's NDA services much more frequently than in 1999. The numbers of both residential and business customer calls to Verizon's NDA have increased a significant amount. In contrast, Verizon's LDA service sales are slightly decreasing. However, Verizon's LDA calls decreased less than LDA calls in the United States nationwide market.

Verizon customers can obtain directory assistance from other wireline telecommunications providers. Long distance providers, such as AT&T, MCI and Sprint, along with some CLECs, provide directory assistance services to all customers in Verizon's Oregon local service territory. There is no specific evidence, however, that these alternative providers have a significant market share for directory assistance services in Oregon.

Verizon customers can also obtain directory assistance numbers from print, CD-ROM, and Internet directories. Print directories are not as comprehensive as Verizon's directory assistance database, however, as they are limited to geographic areas and are often one or more years out of date. Internet and CD-ROM directories generally provide access to numbers beyond a customer's local calling area, but may similarly be dated and not as reliable. Moreover, accessing these electronic databases requires additional equipment, such as a computer and possibly an internet service provider.

Directory assistance services are also provided by wireless telephone providers. In order to access wireless LDA and NDA, however, a customer needs to have a wireless telephone and a wireless service plan. Furthermore, wireless coverage is not ubiquitous throughout Verizon's service territory in Oregon.

As with operator services, the rates charged by the larger, better known alternative wireline providers of directory assistance are higher than those charged by Verizon. Prior to 1998, the rates charged by AT&T and MCI for directory assistance were similar to Verizon's current rates for directory assistance services. In recent years, however, these providers have increased their rates. AT&T and MCI both currently charge \$1.99 for LDA and NDA, whereas Verizon charges \$0.95

Verizon customers use directory assistance services infrequently and, as a result, are unlikely to spend much time or effort in discovering alternatives that may be available. This is especially true for the lesser known providers.

Verizon customers must also take additional steps to access LDA and NDA services from alternative providers. Verizon generally controls the easy-to-use and traditional access number of "411" for directory assistance services in its service territory. To access an alternative LDA or NDA provider, a customer is typically required to use a dial-around number, such as 10-10-321. Verizon generally also has the exclusive use of 1 + (area code) + 555-1212 in its service areas for wireline directory assistance access.

There is no specific evidence that any alternative providers have a significant market share for directory assistance services in Verizon's service territory in Oregon. Again, due to the lack of familiarity of alternative providers and the difficulties accessing their services, most LDA and NDA usage in Verizon's service territory is accounted for by Verizon customers dialing 411 or 1 + (area code) + 555-1212 and using Verizon's directory assistance.

Verizon has been allowed pricing flexibility for its directory assistance services in several states. In the five jurisdictions it has been granted pricing flexibility for LDA, Verizon has increased its rates, ranging from 20 to 100 percent. Similarly, in all 10 jurisdictions in which it has been granted pricing flexibility for NDA, Verizon has increased its rates from \$0.95 to \$1.25. If granted pricing flexibility in this proceeding, Verizon acknowledges that it might take advantage of the upward pricing flexibility and raise its Oregon rates for directory assistance.

CONCLUSIONS OF LAW

Applicable Law

ORS 759.030(6) (local exchange) and ORS 759.030(8) (interexchange) allows the price listing of any service that is subject to competition. The price listing of a service, however, is never compulsory. The statute gives the Commission the ultimate discretion whether to grant a request to price list, even if the Commission finds that the service is subject to competition.³

³ ORS 759.030(6) and (8) both state that, if the Commission determines a service is subject to competition, "the commission *may* authorize a utility to file a price list, which shall contain the terms, conditions and prices of such service[.]" (*Emphasis added.*)

In making the determination of whether a service is subject to competition, ORS 759.030(6) and (8) require the Commission to consider three identified factors:

- (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.

The legislature also requires the Commission to consider other relevant factors:

- (d) Any other factors deemed relevant by the commission.

In our analysis, all factors—including additional factors we deem relevant—are important; however, no single factor is dispositive. While we address the factors individually, we view them as a whole to determine whether the evidence presented is sufficient to conclude that the service is subject to competition and thus warrants the price listing of the service.

Discussion

As discussed above, the price listing statute sets out a two-stage decision process. First, we must determine whether Verizon’s operator and directory assistance services are eligible for price listing, that is, whether they are subject to competition. Second, if the services are eligible for price listing, we must determine whether to exercise our discretion and grant Verizon’s petition.

Subject to Competition

We begin with the three factors identified by the legislature, followed by the additional factors we deem relevant.

(a) The extent to which the services are available from alternative providers in the relevant market.

At the outset, we must first decide the relevant markets for Verizon’s operator and director assistance services. Verizon argues that the relevant market for operator services includes all the alternatives that customers could use instead of Verizon’s services. This encompasses long distance providers, interexchange carriers (IXCs), calling cards, and wireless carriers. Similarly, Verizon contends that the relevant market for LDA and NDA includes all means by which customers can readily obtain phone numbers. This includes: Verizon's directory assistance services; directory assistance services from other local, long distance and wireless carriers; telephone books

(LDA only) issued by Verizon and other publishers; on-line telephone directory services; CD-ROM telephone directories; and customer retention of numbers previously obtained.

Staff contends that the relevant markets should be limited to all operator services and directory assistance services available over a wireline telephone to all customers in Verizon's Oregon local service territory. Because Verizon seeks to price list wireline services provided to its wireline customers, Staff argues that the Commission's examination should focus on wireline alternatives available to wireline customers. Consequently, Staff would exclude other possible alternatives to Verizon's operator and directory assistance services, such as print or computer based media directories, calling cards or wireless telephone services.

The Commission previously addressed the definition of the relevant market for directory assistance services in docket UX 27, *In re Qwest Corporation*, Order No. 03-368. There, the Commission adopted Staff's narrow definition to include only those services offered over a wireline telephone to all customers in Oregon where Qwest provides DA services. The Commission's analysis concluded:

We find that this is the relevant market because [directory assistance] services provided over a wireline handset are *equivalent* in convenience and accessibility.⁴

Revisiting the issue now, we conclude that the prior analysis was in error.⁵ While the issue of whether an alternative service is *equivalent* is an important consideration in determining whether competition exists, that consideration is more appropriately addressed under Factor (b) discussed below—that is, the “extent to which services of alternative providers are functionally *equivalent* or substitutable at comparable rates, terms and conditions.”⁶ While there is some degree of overlap among the three identified factors, we read Factor (a) to focus our inquiry on the degree to which services are *available* from alternative providers.

With this clarification, we adopt Verizon's definition of the relevant markets for its operator and directory assistance services. Thus, in our analysis of Verizon's operator services, we consider alternative services provided by long distance and IXC carriers, calling cards, and wireless providers. Correspondingly, for LDA and NDA services, we include all means by which customers can readily obtain phone numbers. Accordingly, for both operator and directory assistance services, we find that there are numerous services available from alternative providers.

The question remains, however, whether all these services from alternative providers are available to all of Verizon's customers throughout its Oregon service territory. Verizon serves a diverse local service territory in Oregon, one that

⁴ Order No. 03-368 at 16 (emphasis added).

⁵ This error does not affect the Commission's conclusion in docket UX 27.

⁶ ORS 759.030(6)(b) and (8)(b) (emphasis added).

encompasses both urban and rural areas. While non-wireline options are readily available to customers that live, for example, in the company's Beaverton exchange, there is insufficient information to determine the extent to which these options are available to its customers in its less populated and remote exchanges. Indeed, we have found that wireless service is not ubiquitous throughout Verizon's service territory. Given our ultimate conclusion that Verizon's operator and directory assistance services are not subject to competition under ORS 759.030(6) and (8), however, we need not and do not definitely resolve this issue here.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

Operator and directory assistance services provided by the large competitive providers, such as AT&T, MCI and Sprint, are functionally equivalent and substitutable to those services provided by Verizon, but not at comparable rates, terms and conditions. The rates charged by these competitors are substantially higher than those charged by Verizon.

Moreover, Verizon has a competitive advantage over the large and small competitive providers by essentially controlling the 411 and 1 + (area code) + 555-1212 access in its service territory for LDA and NDA, and the "0" access for operator services. While there are some limited exceptions to this control, Verizon's control over these traditional and easy-to-remember access numbers provides a substantial advantage over its competitors.

Non-wireline service options, such as those provided by wireless carriers and electronic and print directories, are not equivalent in convenience and accessibility to customers. As noted above, a customer must have a wireless telephone and service plan to access wireless services. Likewise, accessing electronic databases to obtain a telephone number requires additional equipment, such as a computer and possibly an internet service provider.

(c) Existing economic or regulatory barriers to entry.

Staff contends that Verizon's control of the 411 and 1 + (area code) + 555-1212 access LDA and NDA, and "0" access to operator services, presents a barrier to competitive entry. However, as the Commission clarified in Order No. 94-1608:

The statute requires the Commission to consider whether there are economic or regulatory barriers *to entry* that potential competitors must overcome. This section of the statute does not require that potential competitors be able to compete on an equal footing with the utility providing the subject service. The statute addresses barriers to entry into the market, rather than the ability of

competitors to match the size and scope of those already providing service.⁷

Accordingly, while we found that Verizon's control over these access numbers is relevant under factor (b) above, we find that it does not present a barrier to competitive entry.

(d) Any other factors deemed relevant by the Commission.

We identify two other factors relevant to determining whether these services are subject to competition: lack of customer knowledge and market power. With regard to the first, a service cannot be considered subject to competition if customers are not aware of alternative providers and the prices they charge, and if they cannot easily access those services. Unfortunately, most customers of operator and directory assistance services are captive customers because they lack information about alternative providers, the prices of alternative services, and how to access alternative services. Because they lack this information, they use the services of their presubscribed local carrier by simply dialing 0 for operator services, or 411 or 1 + (area code) + 555-1212 for directory assistance. Moreover, with regard to operator services, the vast majority of such calls are billed to Verizon's customers at the terminating end of the call. Thus, the paying customers are generally not aware of the service provider and, more importantly, not in a position to be able to exercise choice regarding carriers or rates. Customers must have such information as a precondition for a competitive market to exist.

As for market power, Verizon acknowledges that, if its petition is granted, the company might take advantage of the upward pricing flexibility and raise its Oregon rates for operator and directory assistance. This acknowledgment reflects the fact that Verizon is the dominate provider of these services for its customers. Indeed, Verizon produced no specific evidence that any of its competitors has a significant market share for either operator or directory assistance services. Further, a likely increase in rates would be consistent with the company's practice in other jurisdictions where price listing has been authorized. There, Verizon has significantly increased its prices for all but one service in one state, even when those services were already priced above the company's long run incremental costs. The exertion of such market power is further evidence that Verizon's operator and directory assistance services are not subject to competition.

Conclusion

For the reasons stated above, we conclude that Verizon's operator and directory assistance services are not subject to competition. Accordingly, Verizon's petition should be denied.

⁷ *In re U S WEST Communications, Inc.*, docket UX 16, Order No. 94-1608 at 6 (emphasis in original).

Commission Discretion

Having determined that Verizon's operator and directory assistance services are not subject to competition and, therefore, not eligible for price listing, we need not address the exercise of Commission discretion under ORS 759.030. Nonetheless, we further conclude that the petition is contrary to the public interest and should not be granted.

By statute we are mandated to protect customers and the public generally.⁸ While our discretion is not unfettered, we are able to make broad policy determinations in fulfilling our mandate. In this case, ORS 759.030 says that we *may* authorize a utility to file a price list if we find that the product or service is subject to competition. While we are confident with our conclusion that Verizon's operator and directory services are not subject to competition, we also exercise our discretion and deny the petition to protect customers and the public from likely price increases with no offsetting benefits to customers.⁹ As noted above, Verizon will likely increase its rates for operator and directory assistance services if granted pricing flexibility. We conclude that it would be contrary to the public interest to grant the petition under such circumstances.

This conclusion is further supported by an analysis of ORS 759.015. This statute sets broad telecommunications policy for Oregon. We are charged by the statute to "secure and maintain high quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition." Verizon has, through its petition, asked us to relax our regulatory authority over its operator services and directory assistance services. The record in this proceeding shows that if we were to grant Verizon's petition, the company would likely raise its prices, which are already above cost. This likelihood is counter to the goal of maintaining just and reasonable rates. Verizon has failed to show that higher prices would be offset by higher quality service, the advancement of universal service, or increased innovation.

⁸ See, ORS 756.040.

⁹ We reached a similar conclusion in Qwest's petition to exempt local and national directory assistance services. See Order No. 03-368 at 17.

ORDER

IT IS ORDERED that:

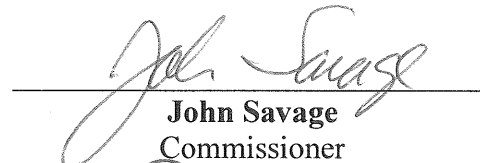
1. Verizon Northwest Inc.'s petition to price list operator services is denied. The operator services price list currently in effect is no longer valid. Verizon Northwest Inc. is to file an operator services tariff within 14 days of the date this order is entered.
2. Verizon Northwest Inc.'s petition to price list directory assistance services is denied. Verizon Northwest Inc.'s directory assistance service tariffs remain in effect.

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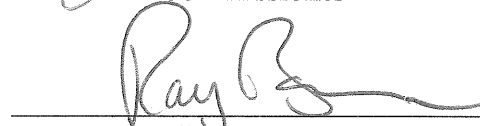
Made, entered, and effective _____.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.