

**Federal Communications Commission  
Washington, D.C. 20554**

**Petition of Verizon, Inc. For Forbearance            )**  
**Under 47 U.S.C. § 160 From Enforcement        )**        **WC Docket No. 07-273**  
**of Certain of the Commission's                    )**  
**Cost Assignment Rules                                )**

**COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The Public Service Commission of Wisconsin (PSCW) respectfully submits these comments in response to the Federal Communications Commission's (Commission) public notice requesting comments regarding Verizon's Petition for Forbearance from the Commission's Cost Assignment Rules.<sup>1</sup> We thank the FCC for providing an opportunity to comment on this petition.

The PSCW reiterates the comments it made in response to a similar AT&T petition for forbearance.<sup>2</sup> Similar to its recommendation in that AT&T docket, the PSCW recommends that the Commission refer this issue to the Joint Board on Separations.<sup>3</sup> A Joint Board allows for a more thorough (and necessary) examination of how the Verizon proposal could affect state accounting and other regulatory requirements. In particular, these needs may include assessments, regulation of affiliate transactions, intrastate price cap oversight and other state functions. The comments also recommend that the Commission consider how the elimination of various cost

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<sup>1</sup> Petition of Verizon for Forbearance from Enforcement Under 47 U.S.C. § 160(c), From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273 (filed November 26, 2007), Public Notice DA 07-5034 (released December 18, 2007).

<sup>2</sup> Comments of the Public Service Commission of Wisconsin, In the Matter of Petition of AT&T, Inc., For Forbearance Under 47 U.S.C. § 160(c), From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21, filed Mar. 16, 2007. Although the Verizon and AT&T petitions are not identical, they address many similar cost apportionment and reporting requirements.

<sup>3</sup> The currently constituted Joint Board on Separations is recommended as a useful vehicle because of the accounting and reporting concerns at issue and the readily available expertise in that Board.

separations requirements affects the rationale and underpinnings of subscriber line charges.

### **Referral to a Joint Board**

Federal law, 47 U.S.C. § 410, has long included provisions for a referral to a Joint Board when proposed actions will have a potential impact on both state and federal jurisdictions. Moreover, Congress did not remove, or otherwise exempt, the Joint Board provisions when creating the forbearance provision in 47 U.S.C. § 160. The nature of this issue justifies a Joint Board referral to maintain an appropriate comity and cooperation between the federal and state jurisdictions. For example, rulemakings regarding jurisdictional cost separations (Part 36) are required to be referred to a Joint Board by § 410(c).<sup>4</sup> Perhaps more importantly, the differing provisions of 47 U.S.C. § 160(a) and (e) suggest Congressional awareness of the importance of FCC rules affecting the states. Subsection (a) permits the FCC to forbear from applying “any regulation or provision of this Act,” while subsection (e) only bars state ability to “apply or enforce any provision of this Act” when the FCC has decided to forbear. “Regulations” are conspicuously omitted from subsection (e), warranting the inference that FCC rules, especially in the accounting and separations area, are preserved from preemption because of their importance to state-federal jurisdictional boundaries and substantive state accounting oversight. Congress, in § 410(a) especially, clearly desires a

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<sup>4</sup> “Any interpretation of Part 67 [now Part 36] provisions should be based upon a recognition that the separations rules are in some respects more analogous to a treaty than a legislative enactment. Most provisions have evolved through consultative processes that were designed to produce a consensus among state and federal regulators with respect to the allocation of cost burdens between users of services this Commission regulates and users of services that state commissions regulate.” Memorandum Opinion and Order, *In the Matter of Reservation Tel. Coop., et al. v. AT&T et al.*, FCC 85-632, 59 Rad. Reg. 2d (P & F) 484, ¶ 11, 1985 WL 260258 (1985) (emphasis added).

Joint Board to accord appropriate focus upon important questions of state and federal cooperation and coordination.

A Joint Board could evaluate whether states would retain the data needed for state regulation. These comments identify various possible Wisconsin regulatory concerns. It is not appropriate for the Commission alone to address these matters until the impacts on state jurisdiction accounting are examined thoroughly. The Joint Board itself will be able to identify and seek input from others as to how these Verizon-suggested forbearances may impact states. Specifically, the PSCW suggests, at a minimum, the following areas need further evaluation via a Joint Board.

#### **Assessment of Verizon for Various State Purposes**

The PSCW currently assesses providers, including Verizon, for a prorated share of the operational costs of the PSCW, for the Wisconsin Universal Service Fund and for various other intrastate programs. The PSCW assesses on the basis of gross intrastate revenues. It appears, from a review of the petition, that the Part 32 accounts on which the PSCW bases its assessments will be preserved. However, other states may assess on a different basis (e.g. net revenues, or with some intrastate cost offset), and such assessments could require information resulting from Parts 36 or 64, information which may no longer be available if forbearance is granted. At this stage, the PSCW is not suggesting that the forbearance will eliminate this state ability. The PSCW is suggesting that it be explored with more specificity. The Commission should refer this question to the Joint Board on Separations for such an analysis.

### **Auditing of Affiliated Interest Transactions**

The PSCW, like many other states, has a legislative mandate to oversee transactions between Wisconsin utilities and their affiliates. This oversight is limited to preventing abuses, but the PSCW has investigated intrastate price-capped companies, like Verizon, and their affiliates. From our review of the proposal, it is not clear what impact the proposed forbearance of Section 32.27 (Transactions with Affiliates) would have on the PSCW's ability to perform its responsibilities, much less what impact the proposal would have on other states. The Commission should refer this question to the Joint Board on Separations for more analysis of this issue.

### **Review and Oversight of Alternative Regulatory Regimes**

Even if Verizon is under some form of price cap regulation in all of state jurisdictions where it operates, each of those alternatives to rate of return regulation exists under the statutes and rules particular to that specific jurisdiction. Some states may be required to review Verizon's intrastate earnings, either periodically, or as part of renewing the alternative regulatory plan under which Verizon operates. Forbearance on the reporting of cost allocations necessary to separate intrastate and interstate costs may make it difficult for states to perform this review. To evaluate the potential implications of forbearance, the Commission should refer this question to the Joint Board on Separations for analysis.

### **Reconstructing Historical Cost Data to Reflect a Change in Regulation**

Under *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944), companies have the right to reasonable compensation. Failure to provide for such compensation is considered a taking, and such a claim could be brought in either the state

or federal jurisdiction. Verizon is price capped, and therefore not subject to rate of return regulation, but the statutes and rules in Wisconsin, and presumably other states, allow it to opt back into rate of return regulation, and to make such a taking claim. (If Verizon were to return to rate regulation, albeit unlikely, the loss of historical separated accounting information needed to reestablish such a regulatory framework could render the task difficult, if not impossible, to accomplish with any accuracy.) If Verizon were to forgo its right to such a claim (i.e., to return to regulatory approval of rate changes), this concern would be mooted – but Verizon would have to explicitly waive the right in both the federal arena and each state jurisdiction. The Commission should refer this question to the Joint Board on Separations to determine how this could be accomplished.

#### **Rationale for the Subscriber Line Charge**

Verizon charges a subscriber line charge (SLC) in each state it serves. Each state charge is unique. Originally, the state charges were based on the amount of non-traffic sensitive costs allocated to the interstate jurisdiction through Parts 36 and 69, and further adjusted through the price cap mechanism. Although blurred by price cap adjustments, the logical underpinning of the differences in SLCs was the difference in costs between states.

The PSCW believes there is a potential that forbearance from cost apportionment may be viewed by Verizon as implicit approval, or at least justification, to de-average the SLC without regard to underlying costs, even within a state. Alternatively, it could be argued that the absence of cost justification by state should result in a uniform SLC across the states. In any event, the FCC should consider articulating its views on how the

SLC rate level should be set in the absence of state-by-state cost information, after receiving input from the Joint Board.

**Conclusion**

The PSCW appreciates this opportunity to comment on this forbearance proposal. The PSCW again urges the Commission to refer this important matter to the Joint Board on Separations. A failure to do so wrongly neglects the legal purposes of the Joint Board process; it also means that potential and substantial detriments to state accounting needs would not be sufficiently explored.

Dated at Madison, Wisconsin, January 31, 2008

By the Commission:

/s/ *Sandra J. Paske*

Sandra J. Paske  
Secretary to the Commission

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