

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 8, 2011

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APPLICATION OF

VERIZON SOUTH INC.

CASE NO. PUC-2011-00001

To Expand the Competitive Determination
and Deregulation of Retail Services
Throughout its Incumbent Territory

FINAL ORDER

On January 7, 2011, Verizon South Inc. ("Verizon") filed an application and exhibits with the State Corporation Commission ("Commission"), pursuant to 5 VAC 5-20-80 A of the Commission's Rules of Practice and Procedure and § 56-235.5 I of the Code of Virginia ("Code"), to expand the competitive determination for retail services to all of its Virginia exchanges and apply the same regulatory treatment adopted in Case No. PUC-2007-00008¹ throughout its incumbent territory ("Application"). The Application lists the exchanges that were determined in the Competitive Pricing Order to be competitive as of December 14, 2007, as well as additional exchanges that were so classified by administrative process on August 14, 2008; August 12, 2009; November 10, 2009; December 28, 2009; March 11, 2010; April 14, 2010; September 20, 2010; September 24, 2010; and November 12, 2010.

The Application sets forth the applicable statute, § 56-235.5 I of the Code, which became effective July 1, 2009. If the Commission, pursuant to subsections E and F of this statute, determines that 75% or more of residential households or businesses in Verizon's incumbent territory lie within areas that have previously been determined by the Commission to have

¹ *Application of Verizon Virginia Inc. and Verizon South Inc., For a Determination that Retail Services are Competitive and Deregulation and Detariffing of the Same*, Case No. PUC-2007-00008, 2007 S.C.C. Ann. Rept. 225, Order on Application (Dec. 14, 2007) ("Competitive Pricing Order").

competitive telephone service in accordance with the Competitive Pricing Order, then that competitive determination will be expanded to the remainder of Verizon's incumbent territory. The Application asserts that currently 75.7% of residential households and 77.2% of businesses in Verizon's incumbent territory fall within areas that have been determined to be competitive and that, consequently, such a determination should be expanded to treat all of Verizon's incumbent territory in Virginia as competitive.

On February 11, 2011, the Commission entered an Order for Notice and Inviting Comments ("Order for Notice") associated with Verizon's Application. In the Order for Notice, the Commission required Verizon to publish notice of its Application in newspapers having general circulation throughout the exchanges in which Verizon seeks to extend its competitive determination. The Commission also directed Verizon to provide a copy of its Application to all certificated local exchange and interexchange carriers in Virginia and to certain government officials in the relevant geographical areas. In addition, the Commission provided the opportunity for the filing of public comments regarding the Application, directed the Staff of the Commission ("Staff") to file a report analyzing the Application, and provided Verizon the opportunity to respond to the Staff Report.

Comments were filed by the Tazewell County Board of Supervisors ("Tazewell") on March 15, 2011, and by the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") on March 28, 2011. Neither Tazewell nor the Consumer Counsel addressed whether Verizon has met the statutory threshold; however, both pointed out that the Commission is required statutorily to extend a determination of competitiveness to all exchanges if the threshold is met. Tazewell stated that there is no competition in Tazewell County, and raised concerns that Verizon might use its monopoly status in that county to subsidize Verizon's

operations in truly competitive areas. Tazewell further stated that Verizon has already cut back on its maintenance in the county, causing residents to endure extraordinarily long delays for service repairs. Tazewell requested that if it were deemed to be competitive territory, the Commission should adopt regulatory safeguards for Verizon that would prevent it, in the less or non-competitive areas, from diverting maintenance resources and increasing rates to subsidize Verizon's competitive offerings in other areas.

Consumer Counsel's comments noted that only 38 of Verizon's total of 103 exchanges met the Competitive Pricing Order's competitiveness test for residential households, and only 43 met the competitiveness test for businesses. The Consumer Counsel states that this appears to expose customers in noncompetitive exchanges to the exercise of market power by Verizon. In light of this, the Consumer Counsel states "[i]t is therefore critical that if this application is granted the Commission include safeguards to protect consumers, as required by § 56-235.5 H and I." The annual price cap safeguards imposed by the Competitive Pricing Order were extended to all Verizon Virginia Inc. exchanges in Case No. PUC-2009-00042² and Consumer Counsel urged that they be imposed on all of Verizon South's exchanges in this docket.

Consumer Counsel's comments also noted that the price cap safeguards are due to expire at the end of 2012, and that the Competitive Pricing Order stated the Commission's intent to initiate a proceeding on or before March 1, 2012, to monitor the competitiveness of telephone services as required by § 56-235.5 G of the Code. Consumer Counsel urged the Commission to consider in that future proceeding whether to continue those safeguards or to establish different safeguards as necessary and appropriate to protect consumers from the exercise of market power

² *Application of Verizon Virginia Inc., To Expand the Competitive Determination and Deregulation of Retail Services Throughout its Incumbent Territory*, Case No. PUE-2009-00042, 2009 S.C.C. Ann. Rept. 254, Final Order (Dec. 2, 2009).

in exchanges deemed "competitive" but where actual competition or the threat of competition could not be an effective regulator of prices.

The Staff Report was filed on April 15, 2011, and Verizon made no response. The Staff concluded that Verizon had met the statute's 75% minimum threshold for businesses. The Staff Report noted that Verizon's analysis provided geographic locations for all businesses in a given exchange. However, Verizon did not have geographic locations for households and used a methodology to apportion competitive households in census blocks that crossed exchanges as well as boundaries with other incumbent telephone companies. The Staff raised concerns with Verizon's apportionment methodology and was unable to rely fully on Verizon's initial analysis. The Staff's interrogatories requested Verizon to provide an alternative "worst case scenario" analysis that apportioned borderline households to the non-competitive exchange. This method reduced the percentage of households in competitive exchanges to 75.2%. The Staff determined that the "worst case scenario" analysis provides a sufficient margin to determine that Verizon has met the statutory threshold.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Application should be granted subject to the continuing safeguards established by the Competitive Pricing Order. In addition, as the Staff and Consumer Counsel point out, we have stated previously our intent to initiate a proceeding prior to March 1, 2012 to fulfill our statutory duty under § 56-235.5 G of the Code to "monitor the competitiveness of any telephone service previously found to be competitive . . .", and to consider such other legal or factual issues relevant to that proceeding.

Accordingly, IT IS ORDERED THAT:

(1) Verizon's Application is granted subject to the continuing safeguards established by the Competitive Pricing Order.

(2) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Jennifer L. McClellan, Assistant General Counsel, Mid-Atlantic South, Verizon Virginia Inc., 703 East Grace Street, 7th Floor, Richmond, Virginia 23219; C. Eric Young, Esquire, Tazewell County Attorney, 108 East Main Street, Tazewell, Virginia 24651; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.