

DT 01-212

VERIZON NEW HAMPSHIRE

Petition For Approval Of The Transfer Of Advanced Services  
Operations Back To Verizon New Hampshire And The  
Discontinuance Of Advanced Services By Verizon Advanced Data,  
Inc.

Prehearing Conference Order

O R D E R    N O.    23,913

February 4, 2002

**APPEARANCES:** Donald Boecke, Esquire, for the Companies; Anne Ross, Esquire, for the Office of Consumer Advocate; and Lynmarie Cusack, Esquire, for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY AND BACKGROUND**

This proceeding stems from cases opened in 2000 and enumerated as DT 00-071 and DT 00-185 and have a lengthy background originating from the Federal Communications Commission (FCC) approval of the Bell Atlantic/GTE merger. The FCC merger approval contained a condition that Verizon would convey its advanced services assets into a structurally separate affiliate and conduct its advanced services operations under that affiliate in an attempt to promote the deployment of advanced services by leveling the competitive playing field. The FCC merger approval also determined that the Verizon affiliate would not have an obligation under the Telecommunications Act of 1996 to make its services available for resale at the TELRIC-required wholesale discount or

unbundle its network on TELRIC-based prices, both of which were required of Verizon, the incumbent. In other words, the affiliate, Verizon Advanced Data (VAD), would be treated like any other non-affiliated CLEC.

As a result of actions at the FCC, Bell Atlantic (now Verizon) on March 30, 2000, filed its Petition for Authority to Provide Competitive Local Exchange Services in the State of New Hampshire (Docket No. DT 00-071), and on September 7, 2000, filed its Petition for the Transfer of Advanced Services Operations to a Structurally Separate Affiliate (Docket No. DT 00-185). On October 24, 2000, the Commission issued Order No. 23,570 authorizing CLEC approval and granting approval of the transfer of advanced services from Verizon to VAD. The transfer authority, however, was granted subject to conditions that would be placed on the Company after a hearing; hearings were held in November, 2000.

In 2001, the Court of Appeals for the District of Columbia, in *Association of Communications Enterprises v. Federal Communications Commission*, 235 F.3d 662 (D.C. Cir. 2001) vacated the FCC's reasoning supporting the structural separation of the advanced services affiliate. The Court stated that the FCC exceeded its authority in finding that the structurally separate affiliate should be declared non-

dominant and, therefore, exempt from the resale and unbundling requirements of the Telecommunications Act of 1996. The practical effect of this decision is that VAD would be considered an incumbent LEC with all of the responsibilities of an incumbent.

In anticipation of this possibility, the FCC Bell Atlantic/GTE merger order contained a provision that if the FCC decision was overturned on appeal, the requirement by the FCC that Verizon operate the business as a structurally separate affiliate would no longer be valid. On September 26, 2001, Verizon obtained FCC concurrence to reintegrate the affiliate. Thereafter, on October 24, 2001, Verizon New Hampshire (Verizon) and Verizon Advanced Data, Inc. (VAD) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for approval of the transfer of the advanced services operations back to Verizon, and the discontinuance of advanced services by VAD. On December 19, 2001, the Commission issued an Order of Notice scheduling a Prehearing Conference for January 10, 2002.

On November 6, 2001, the Office of Consumer Advocate (OCA) filed a notice of participation in this docket. No other interventions have been requested. Verizon's Affidavit of Publication was filed on January 2, 2002. On January 10,

2002, a Prehearing Conference was held at the Commission,  
followed by a Technical Session.

## II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

### A. The Companies

The Companies allege that with the recent appeals court decision, the benefit of the structural separation has no financial or operational merit. The Companies state that it makes no sense to operate two incumbent phone companies with identical unbundling and wholesale/retail requirements. It is their view that it would make more sense to merge them back into a single incumbent entity. Given their position, VAD would like to surrender its Certificate of Public Convenience and cease providing advanced services in New Hampshire. The assets that were formerly VAD's, which were initially Verizon's, would now be returned to Verizon. Verizon would provide all advanced services in the state of New Hampshire, and has filed with its Petition the requisite tariffs to do so.

### B. Office of Consumer Advocate

The OCA has several concerns regarding the transfer back to Verizon of the advanced services operations of VAD. These concerns mirror the concerns expressed by the OCA in the docket transferring the advanced services operations to a structurally separate affiliate, VAD. Specifically, the OCA has concerns regarding how the assets going out and coming in

should be valued and what has happened to the assets during the interim; i.e., have the assets depreciated. The OCA is concerned about how the transfer will impact the regulated ratepayers. Additionally, the OCA has concerns regarding a group of special contracts which are believed to have gone to VAD, and any new contracts that were entered into by VAD as an unregulated entity but coming back to Verizon as a regulated entity that have not been reviewed and approved by the Commission to determine if they comply with New Hampshire statutes. Additional concerns include the treatment of revenue and expenses going out, coming in, and in the interim.

**C. Staff**

Staff pointed out that on September 26, 2001, the FCC Common Carrier Bureau approved Verizon's request to accelerate the reintegration of the advanced services back into Verizon. Additionally, Staff indicated that this Commission's statutory authority allows it to review any transfer of assets of a regulated utility. Staff concurs with the OCA's concerns regarding valuation of assets. Staff notes VAD has increased by 100% the total assets of VAD in New Hampshire. It appears to Staff that the Companies are treating the assets that were transferred to VAD differently than new assets coming back into Verizon. Staff also has

questions and concerns regarding the asset transfer agreement, including, but not limited to, a closing condition that indicates that if the asset transfer agreement or the conditions have not been satisfied by December 31, 2001, then the obligations may terminate upon written request of either party. Staff also indicated a need to investigate the advanced services agreements that VAD has entered into with Verizon, some of which have already expired, and some of which do not expire until as late as 2004. Finally, Staff conveyed that only through a discovery period could it adequately make a recommendation to the Commission on how the transfer should be handled.

### **III. PROCEDURAL SCHEDULE**

Following the Prehearing Conference, the Parties and Staff met in a Technical Session to discuss a procedural schedule for completing the case. The following schedule was agreed upon and recommended to the Commission by letter from Staff dated January 14, 2002.

Rolling Data Requests from Staff and Parties to Company	02/0 7/02
All Company Answers	02/1 9/02
Follow-Up Data Requests from Staff and Parties	02/27/02
Company Answers	03/07/02

Settlement Conference	03/15/02
Staff and Parties' Testimony	04/0 5/02
Company Data Requests	04/12/02
Staff and Parties' Responses	04/1 9/02
Company Rebuttal Testimony	04/26/02
Hearing on the Merits	05/14/02

#### **IV. COMMISSION ANALYSIS**

We have reviewed the petition of the Companies. We are in agreement with Staff and the OCA that discovery is needed in this docket to adequately evaluate whether the transfer of advanced services from VAD back into Verizon is in the public good. We have reviewed the Procedural Schedule as proposed herein and determined that it is reasonable. We note that a Verizon affiliate has recently filed petitions for CLEC status and approval of an interconnection agreement. See DT 01-216 and 01-228. We put the parties on notice that those dockets contain issues that may relate to issues in this docket, and our determinations on those dockets may have implications for the schedule and scope of this docket.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the Procedural Schedule as proposed



herein is reasonable and is therefore adopted.

By order of the Public Utilities Commission of New  
Hampshire this fourth day of February, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary